

## IN SEARCH OF HARMONISATION – CAN THE ENFORCER BECOME THE ENABLER?

The South African Government and captains of industry are seized with finding new ways to revive and boost economic growth and job creation. Government has taken steps to ease some of the regulatory requirements or red tape and it is time that the regulators of the betting industry consider the same strategy.

The traditional role of the gambling regulator is to achieve sustainable gambling whilst demonstrating an approach that balances economic, legal and social responsibilities by its gambling operators or licensees. Policy makers and regulators continue to weigh these various considerations in deciding whether, and under what conditions various forms of gambling or certain gambling products will be operated and legalised.

So how do we get gambling regulators to view their daily interactions with gambling operators as an opportunity to be exploited? The answer may lie in driving gambling policy by economic and commercial criteria in pursuit of increased tax revenue, economic development and job creation. Intense competition for the entertainment spend of gambling operators' customers drives technological developments and diversification strategies, fuelling the economic focus of gambling operators.

Is the regulatory framework in step with technology or will it choke the sector? New products and business models continually emerge that do not fit into the conventional regulatory framework and gambling operators have to walk the tightrope with their respective regulators who often display a resistance to change. The need for regulators to adopt adaptive practices in which fluidity and reflexivity replaces stability and control is essential.

One recent development in the South African context makes for a practical example.

Embracing technology, gambling operators have recently developed and introduced top up vouchers for customers to fund their accounts. A top up voucher is a cash voucher that converts cash into an online currency to be able to transact online. No customer can use a top up voucher unless they have been FICA'D and abide by the terms of use stipulated by the gambling operator who is licensed by the regulatory authority. These vouchers are similar to airtime vouchers for cellular phones.

Gambling regulators in at least two provinces have adopted the view that the selling of these vouchers is illegal as it, inter alia, constitutes betting or gambling. This they say is because the sale of the voucher equates to the placing of a bet. Imagine a world where you are deemed to make a phone call because you have bought an airtime voucher.

Action was taken not only against the respective gambling operator but also against the retail stores selling the vouchers who, it was argued, were acting as agents or intermediaries for the purpose of gambling or betting. In one province the matter has been ruled on already. The North West High Court recently declared that the sale of top up vouchers for online

betting accounts did not constitute betting, wagering or gambling. Common sense I hear you say, “not so” shouts the regulator “we have a responsibility to regulate over proliferation of gambling”. “A perfect illustration” I say.

Another more historic example finds regulators in South Africa who have attempted the imposition of various bookmaker betting rules in the pursuit of punter/patron protection. Patrons are at all times at liberty to negotiate with the bookmaker in respect of bets which the bookmaker may or may not be prepared to lay in the circumstances, as well as to choose between bookmakers, depending on the nature of the betting offered. The perfect choice for patrons to consider transacting on terms and conditions that they find palatable.

It is not the function of the regulator to dictate the terms of any betting contract to be entered into between a bookmaker and a patron. If, for example, a bookmaker is prepared to lay place bets in respect of a horserace in which there are fewer than 6 horses, this is the commercial decision of the bookmaker concerned, based on his or her own judgment. Rules that limit the bookmaker in the conduct of its licensed operations, or that impose regulatory terms and conditions, serves no legitimate regulatory purpose and is a profound disabler.

Nobody is calling for deregulation but a change in style of regulation perhaps best described as re-regulation is necessary. Nobody is asking for the removal of safeguards but a common sense approach to achieve balanced regulation whilst allowing meaningful exploitation of opportunities. This will allow all of us to reap rewards from it and a much needed degree of harmony.

The National Gambling Amendment Bill is currently undergoing a period of comment and public hearings. The hearings will be held on 23, 24 and 26 October 2018 in parliament. This would be the ultimate place to start!

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