

# The Damage to Brand Lottery Caused by Lottoland and Illegal “Secondary” Lotteries: A Call to Action



**B**efore exploring the ways and means to displace illegal operators from the marketplace, we should begin by clarifying what it means to be an illegal operator, define the difference between legal and illegal lottery. That definition varies depending on the continent, the country, or even within the jurisdiction you are taking as a reference. Let's refer to the definition articulated by the Council of Europe Convention on the Manipulation of Sports Competitions. It addresses the issue of match-fixing in sports, but it is a definition that can apply to all forms of games-of-chance. It is the first time that an international institution has endeavored to clarify the boundaries that separate legal from illegal gambling. Article 35A of the Council of Europe Convention on the Manipulation of Sports Competitions establishes that any sports betting activity whose type or operator is not allowed under the applicable law of the jurisdiction where the consumer is located is illegal. By perfectly logical extension, this definition applies to lottery and other games-of-chance. Just substitute the word “lottery” for “sports betting”. This is a sound, reasonable definition that respects the laws and authorities vested to each individual member state of the EU. In the U.S., that definition applies to Lottery but not to sports betting (which is prohibited by U.S. federal law in all but four states).

**The key part of the sentence is “where the consumer is located” as opposed to where the operator is located.** The members of the illegal gaming community are continually exploiting new developments in technology and legal loopholes to claim that a legal license in one jurisdiction entitles them to operate in all without regard to the legality in the jurisdiction where the consumer resides. This posture enables them to essentially hijack the revenues of legally licensed operators all around the world, depriving the good causes supported by licensed operators and channeling those profits over to private shareholders. The evidence of this is already having a big impact in Europe and Australia.

**T**he business model of these “secondary lotteries” works like this: First, they technically are not operating a lottery. Instead, they are operating a betting shop which takes bets on the outcomes of legitimately licensed lotteries like Powerball, Euromillions, EuroJackpot, Mega Millions, and many other games. But, take a look at their website (for example, lottoland.com). The headline is “Play Lottery, Games and Scratchcards Online at Lottoland.com”. The brand logos are not exact replicas of the actual brands, but they are very close and would appear to the consumer to be the same. In other words, the consumer is led to believe they are buying the branded lottery product from

a legal and licensed operator. In actuality, the consumer is placing a bet with an operator legally licensed in Gibraltar or Malta or some other haven of low taxes and minimal regulations and blatant disregard for the laws of other countries, but illegal and unlicensed in many of the jurisdictions where they operate. That is why they are called “secondary” lotteries. It is like selling a derivative of the lottery product.

There are reasons why it is very difficult to enforce national laws to prevent this kind of illegality. The European Union efforts to harmonize and liberalize trade among its member states serves to make all economic activities operate competitively, on an equal footing and even playing field. This is a commendable objective in the provision of most goods and services and is a founding principle upon which the EU is based. Gambling, though, was recognized even in the original treaties as having social costs and being of service for governments to channel economic benefit back to the service of society. It was excepted from the EU rules that require free and open cross-border competition. The market-driven mechanisms that drive down costs and drive up consumption maximizes efficiency and works well for almost all economic sectors. It does not work well for gambling because the goal in this sector has never been to maximize consumption or to maximize wealth for private shareholders. The European Union Commission hopefully recognizes these facts. Unfortunately, they are not taking action to provide the legal tools to eliminate illegality in the marketing and distribution of lottery games. This lack of decisive action creates legal ambiguities and loopholes through which these illegal operators are driving a well-funded attack on the businesses of legally licensed lottery operators, not just in Europe but all around the world.

The business model of the parasitic secondary lottery is simple. The private operator receives a remote gambling license from a low tax domicile such as Gibraltar or Malta in Europe. The operator offers fixed-odds betting on the outcomes of the state authorized lotteries. They sell online across jurisdictional boundaries. Since they

do not pay anything to support societal good causes in the jurisdiction where the consumer resides, they are generating huge profits. They pay taxes to their host jurisdiction, but that is typically less than 2% of net income, nowhere near the 20% to 25% of gross revenues contributed by authorized state lotteries.

How do they honor prize-payout to winners? The secondary operator takes out insurance. International insurance companies and others sell insurance that covers that liability up to a certain amount. When the jackpot size exceeds the cost of the ticket, the secondary operator may choose to outsource the risk back to the lottery by simply buying the tickets from the lottery. How do they make money if sell the ticket

**“We must clarify not only why secondary lotteries are harmful to government lotteries. We must clarify why they are harmful to society.”**

at the same price as they pay for the ticket? They don't. But they make so much money in the run-up to that threshold that it does not matter. In fact, the secondary lotteries typically offer bonus plays and incentives to register that authorized lotteries are not even allowed to offer. They sell online so their costs are minimal. They do not incur the product development and marketing costs to build the game brand because those costs have already been borne by the authorized lotteries. As can be seen on their websites, they misrepresent themselves to make it appear to the consumer that these are their products which in effect means they are stealing intellectual property and expropriating the advertising, brand-building, and good-will that authorized lotteries have invested in and created over many decades. Their hook (as advertised on Lottoland.com) is “The odds of winning the jackpot are more favorable than other major lotteries, such as

EuroMillions, Mega Millions, or Powerball”.

And what happens if or when the secondary lottery fails to pay the winner of a big jackpot? Clearly, that will blow a big hole in the brand value of legitimate lotteries. Think about it. The consumer wins a big jackpot and perceives the secondary lottery as being legitimate. The licensed operator advises the player that the ticket they hold is not legitimate, that the licensed operator is not obligated to honor their winning bet because it is not actually a lottery ticket. Telling the player to sue the operator in the host country will not likely settle the matter! It is our product, our brand, the value of our licensed lottery business that will be damaged. The PR backlash and potential legal issues are frightening. We should be planning for the day when a player wins a \$100 million or 100 EURO jackpot that is not honored by the betting shop misrepresenting itself as a legally licensed lottery.

Lottoland is not the only secondary lottery, but they are the biggest and the one who has most flagrantly and effectively exploited the loopholes that enable unlicensed operators to sell lottery products online across jurisdictional boundaries. Their marketing is creative, aggressive, and effective. Legally licensed in Gibraltar, Lottoland began operations in 2013 and exploded on the scene over the last three years. Now, they are also legally licensed by the UK Gambling Commission, the Republic of Ireland National Excise License Office, and the Northern Territories Racing Commission in Australia, and operate legally in Sweden, Hungary, and Poland. But, but they also offer their products anywhere else without license or authorization. Through its websites, Lottoland offers fixed odds betting on Powerball, Mega Millions, Euromillions, El Gordo in Spain, Euro Jackpot in Europe and more than twenty-five other games. And they are aggressively moving into other products like online Instant as well.

In Australia, Lottoland received its license from the Northern Territory government in December 2015. They began operation just in time for the record-breaking \$1.56 billion Powerball last year in January. Within one

week of commencing operations in Australia it had attracted 250,000 clients drawn by the possibility of playing Powerball and winning the huge jackpot from Australia. By the end of 2016, Lottoland had a customer base of 400,000 and accounted for 8% of the online spend in the Australian market, or 1% of the overall market of 2 billion Australian dollars. Worldwide, Lottoland now has a customer base of 5 million people. They now have the marketing experience, the established customer and revenue base, and the legal and political know-how to continue this drive of exponential growth.

The U.S. has been successful at implementing enforcement mechanisms against illegal i-Poker operators. This is so important because it demonstrates that there are effective tools to prevent illegality in all gaming markets. Illegals, including secondary lotteries, can be stopped. But only when there is the political will to make it happen. Even in the U.S., the measures that were deployed to great effect against illegal i-Poker operators have not been deployed against illegal sports-betting operators. How can U.S. lotteries be confident that the illegal operators will not find a way to penetrate the U.S. market like they have everywhere else? Or that U.S. law enforcement mechanisms will be applied to stop them when they do? What will happen when the secondary lottery operator sells a winning Powerball jackpot ticket and fails to honor it? Or that with success after success at circumventing the laws all around the world, illegals like Lottoland isn't right now thinking about the ways to enter the U.S., the biggest market in the world? All of these things will happen eventually if we do not take action now to stop the global proliferation of illegal lotteries.

Lottoland's most recent initiative is to launch its own global lottery game called WorldMillions. The game metrics they use are derived from games the players are familiar with, like the German keno game, the ToiToiToi of the Austrian Lotteries. The jackpot on offer is 150 million Euros every week which is significantly higher than the traditional German Lotto. And the odds are better: the advertised chance of winning the WorldMillions jackpot is one in 100 million whereas the chance of winning the German



Lotto is one in 140 million. So, Lottoland leveraged the initial abuse of intellectual property and brands of licensed lotteries to establish this beach-head for developing its own portfolio of branded products. And they are applying to get licensed in markets

**“The regulated gaming sector needs to act in concert to help our political constituents and regulators appreciate the urgency of the threat posed by secondary lotteries.”**

like Germany. They may not succeed in the short-term. But we have already seen how these situations evolve. They will capture more and more market-share so the jurisdictional authorities are pressured to collect taxes on this revenue. The only way to do that is to license and tax them. The morphing of illegal secondary lotteries into licensed operators is potentially catastrophic for state-owned operators.

So what can we do? First, understand the nature of this threat. Second, we must clarify not only why secondary lotteries are harmful to government lotteries. We must clarify why they are harmful to society. Commercializing the marketing and promotion of gambling and lottery as though it is no different than Consumer Packaged Goods poses many problems for society, which makes it terribly irresponsible public policy. Besides leaving the customer with little or no protection against excessive gambling behaviors, it channels economic benefit away from good causes that Lottery supports over to private shareholders. Secondary lotteries operate with no transparency, and no accountability for the security and integrity of their products in the jurisdictions where they are sold. They offer little protection for at-risk groups including minors and those with addiction problems. They pay little or no tax in the jurisdictions where they operate. Further, by legitimizing the actions of secondary lotteries to violate the intellectual property rights of regulated lotteries opens the door to the destruction of patent and copyright laws that protect all other businesses and owners of brands. What would prevent a start-up consumer electronics company from branding itself as Apple and selling knock-off i-phones?

Australia and others offer examples of effective action to at least defend trademarks.

Lottoland was successfully sued to prevent it from using the Tatts' Quick Pick trademark as a result. Similarly, the EuroMillions and EuroJackpot communities have initiated proceedings to protect their intellectual property rights. We all need to take more aggressive legal and political action.

The regulated gaming sector needs to act in concert to help our political constituents and regulators appreciate the urgency of the threat posed by secondary lotteries. The capability and technologies do exist to prohibit illegal online operators from entering a market. The laws do exist that make it illegal to operate the way secondary lotteries operate. They just need to be enforced. At the same time, we should also explore market-driven responses, how to effectively compete with better products, promotions, retailer relations, and all the tools we have available to us. This is something that should be discussed in meetings such as PGRI, European Lotteries, NASPL, World Lottery Association, and other association and industry events.

This is a fight that we can win. Governments around the world depend on their lotteries to generate funds to support good causes. They depend on lotteries to establish the highest standards of transparency, security, integrity, responsible gaming, and protection of the consumer. The brand value that took decades to build is owned by the government of the people and they want to protect that value for future generations. There is no lack of incentive and compelling reasons for our political constituents to protect the value of their lottery. We just need to find a way to mobilize the political will for the defenders of the people to enforce existing laws and regulatory policy. That is no small task. It will take the work of the professional associations of NASPL, European Lotteries, World Lottery Association, Cibelae, APLA, and Africa Lotteries to defend the rights of lottery stakeholders. It will ultimately depend on the full engagement of all of us who are dedicated to the preservation of the lottery model and the stakeholders it serves. It's up to us. ■

## Lottoland Launches WorldMillions, The World's First Global Lottery

PGRI Note: Lottoland is a private betting company which sells bets on the outcome of branded lottery products. Check out its website at [lottoland.com](http://lottoland.com).

The world's first global lottery has been launched by rogue "secondary" lottery operator LottoLand. Lottoland claims that "WorldMillions" will offer the largest guaranteed prize in the world, and frequently will represent the largest jackpot in the world on a week to week basis. The new product will be available exclusively through Lottoland and will take place every Thursday and Sunday. The Sunday draw will offer a guaranteed prize of £100m; the Thursday jackpot will be fixed at £50m.

Lottoland also claims that the odds of winning the jackpot are more favorable than other major lotteries, such as EuroMillions, MegaMillions, or PowerBall. To play, customers will choose an eight-digit number between 00,000,000 and 99,999,999. Each number will be sold just once, so the winner will always receive the full jackpot. As an added feature, customers can reserve their favorite numbers. Tickets are available for £10 on Sunday (and £5 on Thursday). Players also may purchase 1/10 shares from just 50 pence. By purchasing a 1/10 share of numerous lines, players can increase their chances of winning.

Lottoland claims that WorldMillions and its other games are backed by insurance which protects the business against large pay-outs. To date, Lottoland claims to have paid out more than £400m, with the largest individual lottery prize of £19 million paid last year.

Regarding the launch of WorldMillions, Lottoland CEO, Nigel Birrell, said, "We're delighted to be able to announce the launch of our first bespoke and exclusive lottery betting product, World Millions at the time the Gambling Commission is calling for innovation within the industry.

"Innovation is what drives everything we do at Lottoland. We are not afraid of experimenting, however we never lose sight of what our customers want. WorldMillions will be the first of several major innovations that will be introduced in 2017 and that will see us further establish our business as a truly world leading operator in the lottery sector."

Lottoland has recently called upon the UK government to open a far-reaching review into allowing consumers to bet on non-UK EuroMillions draws after claiming that a recent consultation found no evidence that its product has impacted ticket sales in the UK. Based on that, the operator is calling for a review period lasting for a minimum of two years before any final regulatory or legislative changes to lottery betting are made.