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PGRI Introduction:

Dr. Sundermann was appointed to lead Lotto Hessen in 2002. The years since then have been marked by significant changes in the European regulatory environment and market-place. And the rate of change is not likely to slow down any time soon. Adversaries are capitalizing on the instability and uncertainty wrought by rapid change and revisions of regulatory structures. The challenge for state lotteries is to identify ways to compete and grow, to capitalize on the opportunities, and mobilize our stakeholders to help us defend the stability, integrity, and regulatory infrastructure so vital to a sustainable games-of-chance industry.

Paul Jason:

EU members must comply with terms and conditions of the treaties that established the Union, but does it seem like the posture of the European Union Commission has evolved to support more autonomy for member states to decide their own gambling regulatory model?

Heinz-Georg Sundermann: Over the last few years, the European Court of Justice has taken a series of decisions detailing the boundary conditions for games-of-chance in the Member States. In this context, the European Court of Justice first ruled that a game-of-chance is an economic activity that is unlike any other, and thus not subject to the fundamental provisions governing the freedom to provide services across borders in the EU. When it comes to games-of-chance, every member country has the right to determine its own regulatory course. The related spectrum is very wide, which means that prohibition, a single-operator model, a

procedure for the controlled opening of the market, as well as a free market with multiple operators – these are all admissible under the rulings of the European Court of Justice.

The only requirement the European Court of Justice imposes on the corresponding provisions in a Member State is to be coherent, and the European Court of Justice assumes such coherence has to be horizontal. This requires the provisions applicable to the various types of games-of-chance like lotteries, sports betting including live bets, casino games (whether on the Internet or terrestrial), as well as gambling laws in amusement arcades, to be coherent with regard to one another while considering the corresponding objectives defined for protection. If your primary objective is, for instance, to protect the gamblers and minimize problem gambling, the provisions applied to less harmful sectors of games-of-chance like state-owned lotteries cannot be more stringent than in areas like casinos or amusement arcades, which tend to have much higher rates of gambling addiction.

The European Court of Justice also stated that there must not only be a statutory basis, but that this basis cannot be considered sufficient unless the state also enforces the legislation it has adopted. Every state in Europe may organise the framework applicable to games-of-chance in accordance with its own social ideas as long as the standards defined above are observed.

In the end, are the European states migrating towards the more liberal, open market model?

H-G Sundermann: Not necessarily. When you look at the European regulations, you can see a large bandwidth of completely different sets of rules applicable to games-of-chance. There are very liberal approaches as in Denmark and in the betting sector in the United Kingdom. Apart from this, you have clear monopoly structures as, for instance, in Norway. And there are many mixed forms in between, like in France and Germany.

Regulatory structures and markets are more liberal than they were twenty years ago. But I do not think there is an inevitable trend-line toward more and more open markets. Games-of-chance are an economic activity that exact social costs and member state governments do retain the right to install regulatory systems that protect their citizens.

What are the biggest challenges in Germany?

H-G Sundermann: Germany has a historic problem in the fact that classical lottery legislation, because of the risks it involves for the gamblers, has been allocated to the state-owned lottery companies acting as monopolies. On the other hand, the gambling laws applicable in the field of amusement arcades evolved from normal commercial law. This was due to the fact that amusement arcades originally offered relatively harmless games-of-chance like billiards. Now, you can hardly tell the difference between professional amusement arcades and conventional casinos, but the regulatory structure has not changed to catch up with these changes in the amusement arcade industry. Accordingly, a massive risk of gambling addiction exists in this area while the economic dimensions are very large at the same time. Unfortunately, it has not been possible to find an updated, clear and consistent set of rules as defined by the European Court of Justice in this area. In addition, the Internet provides a distribution channel for offering games-of-chance across borders. This creates a big problem in Germany in the same way as almost every country in the world. On the Internet, gambling providers from countries like Malta and Gibraltar or even from the Caribbean are gaining access to gamblers inside national territories without any statutory legitimation and without complying with jurisdictional rules. And when you have a country with a setup like the Federal Republic of Germany with its 16 federal states, it is almost impossible to take effective action and counter these illegal



approaches as far as gambling supervision authorities are concerned. Moreover, Germany has a consistency problem of its own making - sports betting is being tolerated on the Internet which is tantamount to legalizing it on a de-facto basis. Likewise, casino games are prohibited on the Internet while the overall market of these casino games on the Internet is estimated to run into a higher two-digit billion euro amount. In this regard, when considering the deficit in terms of enforcement, the provisions applicable to sports betting and casino games are inconsistent according to the rulings of the European Court of Justice. This unwillingness or inability to enforce the laws is contrary to the will of our lawmakers, contrary to the interests of the state-owned lotteries and the Good Causes they serve, detrimental to the interests of the general public and inconsistent with EU directives.

Is there a way to measure the impacts that these problems have on the German lotteries and the market for games-of-chance?

H-G Sundermann: Over the years, the sports betting market was a problem mainly in the view of the lottery companies as they lost more and more market share in this area. While state-owned lotteries still held a quasi-monopoly in this sector in the year 2005, the current market share of the state-owned lottery companies is less than 3%! And, online casinos are prohibited in general. In spite of that, illegals romp around unchecked, enriching their own shareholders in this market which is estimated to be worth a two-digit billion euro amount. Attacks on the lottery market by online operators like Lottoland have also been causing a growing problem for the state-owned lottery companies during the last two or three years.

What is the problem with “Secondary or Synthetic Lotteries“ like Lottoland?

H-G Sundermann: The problem with Secondary Lotteries is the impudence of its business model on the one hand, and the venality of a media market that runs advertising no matter how illegal the advertising offer is. The impudence of the business model is mainly due to the fact that these Secondary Lotteries do not create the product. They place bets on the successful products of other lottery providers on the market, even leveraging the brands and trademarked logos of authorized lottery operators. The players typically do not even know that the game-of-chance they are playing is not the legally authorized state-owned lottery. The high margin contributions intended for non-profit purposes are thus cashed in as a profit by private shareholders of these unauthorized operators like Lottoland. A portion of these large profits are used to fund massive advertising campaigns. It is estimated that in 2017 alone, Lottoland spent approximately € 70 million for advertising on TV. As legal enforcement is fragmented due to Germany’s complicated federal setup, it is very hard to take action against these advertising activities. This is unfortunate because most consumers are not even aware that they are playing on a website that is operated without proper license and is not compliant with the regulatory standards required of authorized operators.

What do German legislators need to do in order to counteract this anarchy in the gambling sector?

H-G Sundermann: Germany has an urgent need for a new gambling legislation which is consistently in line with the requirements on coherence as defined by the European Court of Justice. This means, for instance, that the

rules applicable to games-of-chance in online casinos must not differ from those for sports betting on the Internet. If you define rules for one area, you also have to do so for the other one. Apart from this, the federal states must set up a national authority for gambling supervision that has the human and material resources that enable it to take effective action against illegal offers on the market. This new law must come as quickly as possible as any delay weakens the commercial viability of the state-owned lottery companies.

Supposing that Germany is given this new gambling legislation - what actions do the state-owned lottery companies need to take in order to be successful in the future as well?

H-G Sundermann: On a product level, there is more cooperation between the different jurisdictional lottery companies. This is good and we need to do even more. Euromillions and Eurojackpot are just two good examples of this. We need to find the ways which lead to a stronger customer focus. We are offering these games to all European lotteries, but many of the conditions are still regional or national. For instance, a customer playing Eurojackpot in Oslo is still not able to cash in his or her prize in Frankfurt. That is an unnecessary inconvenience to the player and an impediment to optimizing the overall player experience. We need to eliminate these kinds of impediments that interfere with the seamless, frictionless player experience that the modern consumer expects. After all, private providers, whether legal or illegal, have no boundaries when using the Internet as a distribution channel; that makes them attractive for customers. We also need to tear down these walls when providing our services to customers. In order to do that, we need cross-border services. Germany is an almost ideal market to show that the lottery companies are able to bring about this multi-jurisdictional service offering for the customers. The same is true for accepting customer cards to participate in a game which is only accessible when using a customer card, to mention just two important examples.

The sector of instant lotteries provides a huge potential, especially for Germany. The higher per-capita sales achieved in other European countries and in the USA indicate a very exciting potential. We have not fully tapped into that potential in Germany and that represents an opportunity for us. Too, the opportunities for product improvements to drive sales are immense. And when 16 state-owned lottery companies work together and collaborate on nationwide or regional games and distributional initiatives, the upside becomes even more exciting! 🇩🇪