



Regulation

Politically geared crackdown on casino operators in Sweden is risking the entire licensing system

Dr Ola Wiklund, founder of Wiklund Law, on how the Swedish restrictions will impact online casino operators versus state-controlled firms

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Under the pretence of protecting players during the coronavirus pandemic, the Swedish government has proposed temporary legislation that's designed to strengthen the market position of the state-controlled operators Svenska Spel and ATG and weaken the position of online casino operators. The proposal (under consultation until 5 June) is a crackdown on the licensed online casino operators in Sweden. It consists of **deposit limits** of SEK5,000 (£415), an obligation for players to set limits on playing time at online casinos and a welcome bonus restriction of SEK100 (£8.30). The proposal is especially detrimental for licence holders that offer both casino and sports betting from the same company. The government is aware of the technical and practical adjustment problems and bluntly suggests that the licence holder should cancel the offering of casino games for the time being.

This policy choice is allegedly based on Minister Ardalan Shekarabi's assumption that casino gaming has drastically increased due to Covid-19 lockdowns. This assumption is clearly unfounded empirically. On 18 May, the Swedish Gambling Authority released a report in which their analysts have found no such increase in online casino gaming. Similar numbers have been reported in other jurisdictions as well, where reports from both the Danish Spillemyndigheten and the UK Gambling Commission have found no links between Covid-19 and increases in casino gambling.

Hence, the proposal is effectively cracking down on casino operators and leaving the state operators dominance on the sports betting market untouched and strengthened. The effects of the proposal will manifestly transform the licence market and distort fair competition.

The government's suggestion to refrain from casino offerings also reveals a strategy to continuously starve the casino operators to death. The "temporary" restrictions will most likely become permanent. The proposal therefore involves a real shake-up of the Swedish market.

Legal limbo

Moreover, the weak legal justification of the proposal is likely to create a legal *limbo* affecting the whole licensing system.

Firstly, it's important to point out that the government-owned Svenska Spel has been brought before the Swedish Competition Authority as the company consistently uses the main brand in both the monopoly part and the competitive part of the market in order to have cross-border effects. The marketing aims to link the various products, e.g. lotteries (exclusive rights) with betting products and online casinos. Betting and online casino costs are expensed in the monopoly section. Customer databases and other monopoly infrastructure are used on the competitive part. This type of cross-subsidisation runs counter to the ban on abuse of dominant position.

The government owns Svenska Spel and controls ATG. Svenska Spel is a dominant player in the market for sports games and has a much weaker position in the market for online casinos. ATG completely dominates the horse betting market.

The dominant state-owned giant Svenska Spel seems to have launched a strategy aimed at exaggerating the risks of online casino gaming with the aim of banning online casino marketing and otherwise making it difficult for competitors who are strong in the online casino market. Svenska Spel has also funded research that, on loose scientific grounds, exaggerated the risks of online casinos. The research regarding public health risks of online casino invoked by the government has been carried out by a professor who upholds a professorship and tenure entirely financed by Svenska Spel.

The owner of Svenska Spel has through cabinet minister Ardalan Shekarabi come to orchestrate a campaign aimed at far-reaching restrictions on opportunities to advertise and otherwise operate online casinos. This is rational from a commercial perspective, since the restrictions would hardly affect Svenska Spel at all. Instead, the proposal will lead to Svenska Spel benefiting by allowing the company to continue to secure its grip on consumers with its cross-subsidising marketing strategy.

Secondly, the legislative proposals cannot be considered as objectively justified from the point of view of public health. There is no evidence whatsoever that the new regulations are justified and are likely to have any effect on public health. In the consultation process, an overwhelming majority of courts, agencies and corporates have asserted that the proposal lacks justification and an empirical basis.

According to both the Swedish constitution and EU law, current restrictions violate the right to provide gambling services in the Swedish market and cannot be considered appropriate to achieve the goals invoked by the government. The restrictions lack necessity and coherence and represent a disproportional violation of the right to freely offer gaming services cross-border.

Health concerns

It's therefore surprising that the government proposal completely lacks an analysis of the proposal's EU law compatibility. The regulation is likely to be challenged in court. The legal question will be if the deposit restrictions, bonus restrictions and login requirements could have any effects on public health. The burden of proof here lies firmly with the government. If the government fails to prove this the regulation will be struck down as a violation of the freedom to provide services in the EU Treaty. A court is also likely to understand that the regulation will drive casino players into the arms of unlicensed casino operators. It's therefore evident that the public health justifications lack any coherence and consistency.

Thirdly, the proposal for the revised regulation needs to be notified to the EU Commission (EU Directive) in view of its detrimental effects on competition and cross-border trading. The regulation won't become valid law until a standstill period of three months has expired. Since the proposal hasn't been notified, there are serious doubts whether the regulation will come into force on 2 June as planned.

The proposal is on the fences legally and is likely to contaminate the licensing system as a whole and create legitimacy problems for the entire regulated market in Sweden.

Apart from having the hallmarks of a measure of an autocratic banana republic, the proposal shamelessly advances the commercial interests of the political branch itself. It also violates Swedish and EU competition law. The unsubstantiated and flawed justification of the proposal also violates the freedom to provide services,

according to Article 56 of the EU-treaty. The regulation is also likely to stumble on the notification requirement imposed by EU Law.

However, the minister couldn't care less about The Rule of Law. Shekarabi's crackdown on online casino operators serves to maintain the minister's own sought conflict with the unloved casino operators. Shekarabi is clearly using the conflict as a political springboard for his party leadership ambitions.

However, this political venture is likely to turn the tide of channelisation of casino players out from the licensing system and legally drain the current licensing regime of any legitimacy. Hence, the stakes are pretty high.



Dr Ola Wiklund has been advising major online gaming operators for more than 15 years. His sector expertise ranges from commercial and regulatory to M&A and litigation. He is also advising private operators in the healthcare sector. He has acted as counsel in proceedings before the European Courts in Luxembourg and Strasbourg. He has represented clients in the European Commission and the Swedish Competition Authority. Dr. Wiklund is acting for clients in a number of pending high profile monopoly EU lawsuits against the Swedish government. He runs an extensive Public Affairs practice on a pan-European level. Dr. Wiklund has published several articles and books in his field of practice.

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