

Executive Summary

1.1 The development and evolution of new technologies has made a considerable impact on the operation of every sector of the global economy. The affect upon the licensed gambling industry has been no different in that regard, opening new product platforms and access to a wider consumer base.

1.2 It has also created a highly competitive gambling market which has considerably benefited consumers, but which has created new challenges for legislators and regulators who have previously exercised complete control over gambling products within their jurisdictions.

1.3 This has raised concerns amongst sporting bodies who perceive that the increased availability of betting on sport opens up new threats to the integrity of sporting events. International and national sporting bodies seek to control the betting product and to obtain increased revenues from licensed gambling operators that offer betting on sporting events.

1.4 To this end, many sporting groups continue to lobby Member States and European institutions for some form of statutory reform that would provide them with new rights to improve their already favourable fiscal position, which includes State aids and taxation benefits.

1.5 In general, they would also like those reforms to give them control over the types of bets that can be offered, believing that certain bets are more likely to lead to corruption than others. In some jurisdictions there are fears that the introduction of new betting licensing regimes will serve to reduce the income that sports currently receive from state gambling monopolies.

1.6 The aim of this report has been to assess these matters objectively, within the wider context set out above, in order to help the Remote Gambling Association (RGA) to develop a cohesive strategy for addressing these complex and often inter-related issues, notably within the legal and economic framework of the European Union (EU).

1.7 These sports betting issues have permeated into the political debate at both national and international levels. The professional sporting movement has been particularly proactive in pressing its case through various forums where the focus has been on the promotion of sport.

1.8 However, neither the RGA nor the wider licensed gambling industry has been invited to participate in the detailed discussions that have taken place. As such, there must be a serious risk that the policy considerations of these issues have not been balanced or properly informed.

1.9 To assess fully the validity of the opinions that have been advanced in relation to sports betting, the RGA determined to engage in discussions with sports betting stakeholders with a view to collating the principal points into a central resource (this report) and to strengthening the dialogue and relationship between the betting and sporting industries.

1.10 The subsequent written consultation invited 239 stakeholders to respond to a range of commercial and integrity questions aimed at: sports; governments; gambling operators; and other interested parties. The consultation sought to obtain information regarding the basis of the commercial arguments present by sports and to consider the existing integrity mechanisms.

1.11 Overall, the response was limited both in number and in the information advanced, notably in relation to the professional sporting sector. There is, however, considerable material within the public domain that provided more than sufficient information for a detailed assessment of the legal, commercial and integrity aspects surrounding the sports betting debate.

1.12 The European Commission has rightly determined that sport is subject to EU competition law and internal market provisions in so far as it constitutes an economic activity (the specificity of sport should be assessed on a case-by-case basis), and has rejected a general exemption as proposed by the Independent European Sport Review, funded by UEFA.

1.13 EU case law provides that gambling is a service and subject to the application of the Treaty, notably Articles 43 and 49. The Database Directive and judgements surrounding its application to sporting data such as fixtures lists, determined that this data amounts to creation and not investment, which does not fall within the scope of the protection of the Directive. This means that this potential source of revenue for professional sports can be nowhere near as high as they would like, or in some cases, had expected prior to the ECJ's ruling in *BHB v. William Hill*.

1.14 The concept of a 'fair return' as presented by sports is a misnomer, as it determines from the outset that sports are not receiving the appropriate level of fiscal benefits from the licensed gambling industry. It is worth noting that the latter provides €3.4bn per annum to EU sport alone, with €2.1bn (62%) contributed by private gambling companies.

1.15 This is by no means an inconsequential amount, and while it may not be as much as sports would like - no robust evidence or figures to support its claims for additional revenues from the gambling industry has been provided by the sporting sector - it clearly counters any suggestion that the licensed gambling industry puts nothing back into sport.

1.16 The gambling industry's financial commitment to sport manifests itself in numerous income streams and commercial deals. The assertion that licensed gambling operators exploit the sporting product and should pay additional revenues as a result does not recognize that many other products also seek to associate themselves and exploit sports to profit.

1.17 Those businesses are not pursued for a greater contribution to the sporting sector, or control over their commercial products or trading practices. It must be underlined that the licensed gambling sector pays everything it is legally obliged to pay to sport and invests substantial funding over and above that amount, primarily in the form of sponsorship and joint ventures with sporting bodies.

1.18 In 2008 FIFA, UEFA and the IOC had combined revenue streams that amounted to over €4bn (effectively tax free) with the five major European football leagues accounting for another €7.6bn. In addition to this, sport and its participants receive numerous fiscal advantages through State aid and taxation measures, and use, or are located in, offshore tax havens.

1.19 This is not a criticism of any tax efficient policies or preferential tax treatments that are employed or enjoyed by sporting organisations, but it does bring into question the public attacks that have been made by some sporting representatives on online gambling companies who choose to base themselves in jurisdictions providing comparable taxation regimes.

1.20 The argument presented by sports that a new EU-wide statutory mechanism is required to permit sports greater control over the betting product and to enforce additional payments from licensed gambling operators does not appear to be valid, necessary or proportionate.

1.21 There is ample income within the professional sporting sector, which is markedly more affluent than the betting industry, to fund both integrity and grassroots sport. Whether or not that sporting income is currently being distributed in a fair manner through its various solidarity mechanisms is an issue for each sport to determine and not for this report to examine.

1.22 With regard to the integrity of sport, again professional sporting bodies seek control over the operation of the commercial betting product. Sport has determined that sports betting, or more specifically certain types of bets, make it more susceptible to corrupt activities and a result that sports should have control of betting and, as a minimum, receive integrity payments from licensed gambling operators that offer betting products on sporting events.

1.23 Unfortunately, corrupt activities do occur in sport (betting and non-betting related). To combat betting corruption, licensed gambling operators have encouraged professional sporting bodies to agree information sharing agreements and to put in place specific betting and/or corruption rules. Those operators have also invested considerable resources in establishing integrity mechanisms that seek to detect and deter corruption in sport linked to betting.

1.24 All of these are important ingredients in a joint effort by both industries to protect the sporting and betting products, but which have been principally promoted by licensed gambling operators. Indeed, licensed gambling operators have a particular commercial interest in ensuring that the sporting product, and by association, the betting product are not corrupted. It is fundamental to understand that the European licensed gambling industry is the likely victim of any fraud that is perpetrated and in no sense can it fairly be described as the 'polluter'.

1.25 This protection is, however, predicated on the establishment and enforcement of suitable rules by sports and their ability to act promptly when receiving information from gambling operators. There are some good examples within sport, but the vast majority declined to provide their betting rules as part of this study; the overall position is therefore unclear.

1.26 Some sporting bodies have publicly encouraged the enhancement of information sharing arrangements (MoUs) with licensed gambling operators, noting the benefits that such joint agreements provide to both industries. The establishment of such information sharing arrangements with the RGA formed a particular aspect of this report's consultation, yet of the 161 sporting bodies invited to discuss establishing an MoU, only 2 responded positively.

1.27 With regard to suggestions that the commercial sporting sector should have control of the betting product, again it has to be determined if the argument presented is valid and the action necessary and proportionate. The evidence strongly demonstrates that it is not.

1.28 As the British Gambling Commission has rightly pointed out, there would need to be a very strong evidence-based justification to introduce and enforce statutory licensing regulations which would essentially be a restriction on trade.

1.29 There is no available evidence to suggest that restricting bet types would prove an effective mechanism to ensuring a significantly increased level of protection for sport in a global market when the very people that constitute the threat are the very ones that would not be bound by such licensing or contractual restrictions.

1.30 What is self evident is that both the sporting and the licensed gambling industries have a common objective in safeguarding the integrity of sporting events, especially when the examples of serious corruption tend to point to the activities of organised crime groups and unlicensed betting operations which are commonly based outside of Europe.

1.31 Given the €3.4bn per annum that the gambling industry contributes towards the EU sports sector alone, it appears reasonable to suggest that sufficient integrity income is available and that, if issues surrounding integrity costs are of paramount importance, then they should be taken into account when agreeing commercial deals with gambling operators.

1.32 In the light of these many issues that are of interest to both parties there is an important need for them to engage in regular structured dialogue surrounding sporting integrity and the continued development of protective measures.

1.33 Following on from the analysis contained in this report, a number of confidential recommendations have been provided for the RGA to consider. As they are confidential they do not form part of this publicly available report.