

## AN UPDATE ON THE REGULATORY FRAMEWORK

8 MARCH 2013

# OPAP S.A.

S. Travlos

# THE EUROPEAN COURT OF JUSTICE RULING: SOME COMFORT FOR BOTH SIDES

- The ECJ was to evaluate three different aspects of Greek law, namely:
  - The compatibility of the position that OPAP holds in the Greek market with Community law,
  - The probability of granting a transition period in case of an incompatibility of national legislation to Community law and,
  - The limits in the power of the Member States in cases that do not allow for a transition period.
- The ECJ has ruled broadly in favor of OPAP:
  - Regarding the first issue, the Court held that it is for the national courts to determine whether the monopoly of a Member State is compatible with the requirements of the law of the ECJ (ie consistency, proportionality and non-discrimination).
  - A Member State which seeks to ensure a particularly high level of protection may be validly held, as the Court in its case law, that only the granting of exclusive rights to a single organization that is subject to strict control by the public authorities allow these authorities to put under control the risks inherent in the gaming sector and pursue the objective which is to prevent urging consumers to be subjected to extremely high costs associated with gambling and combating addiction by them in a sufficiently effective manner (see judgment of 30 June 2011, C-212/08, Zeturf, not yet published in the ECR, paragraph 41).
  - Finally, in paragraph 46, the Court held that the refusal to grant a transitional period in case of incompatibility of national legislation with Articles 43 EC and 49 EC do not necessarily imply an obligation for the Member State to liberalize the market for gaming if the State believes that such a release is not compatible with the level of consumer protection and the social order in which the State seeks to ensure.

# TWO READINGS OF THE DECISION

The European Lotteries has taken a positive for OPAP view on the judgment claiming that the monopoly can be retained, while

the European Gaming and Betting Association claimed that the ECJ decision opens the door to the European Commission to take action against Member States that do not conform with european legislation.

The State Council of HR will decide on the issue of monopoly within 2013.

# REACTION BY GOVERNMENT EXPECTED

- The reaction of the government to the ECJ's ruling was immediate although it once again changes the main parameters of the bid process for the privatization as it alters basic assumptions of the business model and the decision making process of OPAP.
- The government is aiming towards creating a highly regulated private monopoly inline with ECJ decision setting "a high level of protection" for society.
- OPAP SA will be under effective and strict outside control.
- An amendment has been tabled in parliament and is expected to be passed over the next 15 days.

# MAJOR CHANGES WILL BE INTRODUCED

It envisages the expansion of the sales network outside of OPAP existing agencies, including news outlets (and even gas stations). This stipulation is expected to cause an upheaval among the existing agents.

It encourages the concentration of activity of VLTs in larger areas, which will include more game machines, the number 50 instead of 25 so far provided by law. This means that effectively the new outlets will be small casinos. So smoking will be permitted in these areas. All these changes create the right environment for corporate interests that exploit VLTs's.

It reinforces the overseeing and monitoring of the initiatives undertaken by OPAP S.A. not only regarding the advertising-promotional messages as required by law so far, but across the whole spectrum of activity i.e. from design to full development of the games and all commercial communication. Furthermore, the main alteration introduced in terms of management is that the Board of Directors of OPAP will come under strict supervision.

# MONITORING INTRUDES ON MANAGEMENT

- "By decision of Audit and Supervisory Committee on Gaming recommended for reasons of public interest, a three-member Audit Committee is appointed either from its members or from outsiders, which shall attend meetings of the Board of OPAP, oversees and ensures that OPAP complies with:
  - The legislative framework governing the gambling market and with the 15. 12.2000 and 4.11.2011 contracts between OPAP SA and the Greek government,
  - The regulations of the Audit and Supervisory Committee on Gaming and any decision taken pursuant to Article 54 paragraph 5 of Law 4002/2011,
  - The law on protection of personal data, as applicable,
  - Its commercial communication regarding its activities and its agents conduct so that gamblers participate through legitimate channels and to protect minors and vulnerable to exposure to gambling. Any promotion campaign should not be misleading, not to pass the message that gambling leads to enrichment and does not include individuals who seem to be aged of less than 21 years.
- Moreover, the Board of Directors of OPAP SA and the persons to whom the Board delegates powers of execution under Article 22 paragraph 3 of CL 2190/1920, as applicable, must inform the Audit Committee on proposals regarding gambling conducted under the 15.12.2000 and 4.11.2011 contracts between the State and OPAP and relating to the following:
  - The introduction of new or modifications of existing measures for marketing and conduct of gambling.
  - Contracts OPAP SA. with its agents.
  - Contracts and other decisions relating to marketing communications.

# TAXATION OF PROFITS REVISED

- The HR has introduced a winning tax at the rate of 10% on all winnings for existing OPAP games as for 1st January 2013.
- The government has agreed with the Commission to revise the winnings tax system and according to the amendment handouts of up to 100 euro will be exempted from taxation.
- Winnings of 100,1 -500 euro will be taxed at 15% and above 500,1 euro will be taxed at 20%.

# NEW TECHNOLOGY PROVIDER CONTRACT

- A compromise has been reached on the new contract on technology support by Intralot S.A.
- The length of the agreement is cut to 3+2 years instead of 5+5.
- The new agreement involves much more competitive pricing compared with the existing contract (about 1/2 according to sources).
- The agreement will be ratified by the general assembly of shareholders on the 26<sup>th</sup> of March.



# JOINING FORCES FOR OPAP S.A.

- On the 18<sup>th</sup> of March bidders have to submit to HRDF their final consortium structure.
- On the 4<sup>th</sup> of April final bids will be submitted.
- Main players still active include:
  - Intralot
  - BC Partners
  - Primrose Treasure Limited (subsidiary of FOSUN)
  - Gauselman AG (German interest)
  - Emma Delta Management (Chech origin fund).
- Discussions among participants on going on structure of consortiums, financing and post privatization relations.
- Privatization of OPAP S.A. may lead to a consolidation of the sector in Greece involving also the acquisition of Intralot S.A. at a later date if Intralot S.A. fails to secure the winning bid on the 4<sup>th</sup> of April.

# CONCLUSIONS

- **The regulatory environment not yet well defined as the Regulator (Games Committee) is not yet fully functioning and the basic regulatory documents not yet published. Amendments continue to flow and some regulatory uncertainty persists.**
- The new regulative framework is creating a new business environment for OPAP S.A.
- Restrictions and controls may intrude on management and create frictions in the future if the Audit Committee takes a heavy hand approach to monitoring.
- We expect that after a transition period of 3/6 months with the new private management in place the two sides will tend to work together without friction.