

Will EU cartel law overthrow the German gambling monopoly?

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On 23rd October 2006 the Higher Regional Court Düsseldorf approved all of the major points of a decision of the German Federal Cartel Office of 23rd August 2006. As a consequence, the German state-run lottery companies will now be obliged to accept lottery tickets from private intermediaries. The court pointed out that the new state treaty on lotteries, which the German Länder is drafting at the moment, will also have to comply with European cartel law. The German monopolists announced that they intend to appeal the decision to the Federal Court of Justice.

The decision of the Federal Cartel Office contains rather positive statements for private gambling providers. The court stated that it considered the state-run lottery companies to be operating in furtherance of their own economic interests rather than in furtherance of the state in general. The court also found that the active addiction prevention measures, as specified in the sports betting decision of the Federal Constitutional Court, were not in place. The existing private ticket acceptance points which are licensed by the state were also considered to be acting in their own economic interests and seeking to gain as many customers as possible.

It should be borne in mind that European cartel law also applies to restrictions enacted in national rules which seek to protect the German monopolists against private providers from other EU countries. Eventually, the German gambling monopoly is therefore likely to be found invalid because of an infringement of European cartel law. The Administrative Court of Gießen also appears to share this opinion. In a press

release of 25th October and various corresponding decisions, the court pointed out that the findings of the Cartel Office must also be considered in proceedings concerning gambling services, which are genuinely private (as opposed to services by intermediaries who arrange the sale of state-run products).

Just like the statement of EU Commissioner for Internal Market and Services, Charlie McCreevy, regarding the plans of the German Länder (cf. page 21), the decisions of the Federal Cartel Office and of the Higher Regional Court of Düsseldorf set down clear boundaries for the German state monopoly. The hypocritical conduct of the state providers fails to comply with EU law. Since it is clear that the state-run gambling services are themselves motivated by financial interests, the monopolists cannot hide behind their alleged protective function and claim that they operate to prevent addiction. Thus, EU cartel law will play its part in the battle against the German gambling monopoly, to the benefit of private providers.