

Does WestLotto offer Sports Betting without a License?

The online magazine Spiegel Online reported already more than seven months ago that the state lottery operator of North-Rhine Westphalia, Westdeutsche Lotterie GmbH & Co. oHG (WestLotto), did not hold a license for operating sports betting (Dietmar Hipp: Oddset droht in NRW das Aus, Spiegel Online of 1 June 2006). WestLotto was therefore served a cease and desist letter and, according to a press release of an association of private betting operators, Verband Europäischer Wettunternehmer (VEWU), had to issue a statement, supported by contractual penalty, to refrain from claiming to be hold such a license on 12 January 2007 in proceedings before the Court of Appeal of Cologne (Oberlandesgericht Köln, case-no. 6 U 196/06). WestLotto thereby engages not to appear as license holder of sports betting operations anymore.

According to VEWU, a private bookmaker from Cologne and the German bookmaker's association (Deutscher Buchmacherband e.V.) had filed suit. They had complained that WestLotto appeared as the operator of sports betting, whereas the holder of the license was in fact Nordwestlotto in Nordrhein-Westfalen GmbH (Nordwestlotto). According to VEWU, the Court of Appeal of Cologne considered proved that WestLotto was indeed not the holder of the license. The Court expressed severe doubts as to the legal construction invoked by WestLotto in order to justify its operation. Thereupon WestLotto made a statement to refrain. WestLotto now has time until 31 January 2007 to establish a legal situation.

According to documents produced by WestLotto upon summons of the Court of Appeal of Cologne, it was in fact Nordwestlotto which filed for a license for the operation of sporting bets with fixed quota ("ODDSET-Wette") in the state of North-Rhine Westphalia on 14 December 1999. Thereupon the Ministry of the

Interior of North Rhine-Westphalia granted Nordwestlotto the "license for the operation of a betting enterprise for sporting bets with fixed quotas" on 11 January 2000. Management of this operation by WestLotto is not mentioned in the text of the license itself; instead it explicitly mentions the operation by Nordwestlotto. In the aftermath it was not Nordwestlotto who apparently operated ODDSET bets, but exclusively WestLotto. The last annual report of 2005 of WestLotto reports sports betting revenues as its own revenues (page 27) and the license of 11 January 2000 is mentioned under "licenses/concessions" granted to WestLotto (page 35). Under the participation conditions, a gaming contract is concluded between the operator (WestLotto) and the participant. WestLotto therefore is the bookmaker and bears the economic risk of an operator. At least from a civil law point of view, agreements like those between a principal and an agent do not seem to exist. In addition Nordwestlotto evidently is not accountable.

On the other hand, WestLotto argued in several court proceedings that Nordwestlotto acted as the "responsible body" (Träger) with regard to sports betting, whereas WestLotto was commissioned with the management (which cannot be concluded by the terms of license, but only by the participation conditions). Furthermore WestLotto produced a strange letter of the Ministry of the Interior of the state of North-Rhine Westphalia of 7 December 2006 stating that "for reasons of clarification" it informed that the license of 11 January 2000 applied to the "management of the operation of sporting bets" by WestLotto as well.

Commentary: Regarding the sports betting business this is insanity by method. Only a state enterprise could possibly have an almost seven year old license, duly signed by the state prime minister, the minister of the interior and the minister of finance, be referred to another company by a civil servant. The fact that a state operator apparently acts

without a license does not surprise anymore. Possible penal sanctions will have to be examined. Last year already a criminal investigation was initiated on these facts, but will probably come to nothing. For the rest, in several court proceedings WestLotto had maintained to hold a license for operating sports betting. One will have to examine whether this does not constitute an act of deceitful plea or malicious use of process.