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Judgment in Case E-3/06 *Ladbrokes*

EFTA Court reviews Norwegian legislation on gambling and betting

In a judgment delivered today, the EFTA Court dealt with a case initiated by Ladbrokes Ltd. which is currently pending before the Oslo District Court. Established in the United Kingdom, Ladbrokes is the world's largest bookmaker company. By its action, Ladbrokes essentially challenges the Norwegian regulation of the entire gambling and betting sector, namely (1) the Gaming Act, which establishes a monopoly for the state-owned company Norsk Tipping for the operation of games such as Lotto and sports betting; (2) the Totalisator Act, which is the legal basis for the exclusive right of operation of horserace betting granted to Norsk Rikstoto, a state-controlled foundation; and (3) the Lottery Act which provides that minor money games such as Bingo and scratch cards may only be operated by non-profit organisations and associations with a humanitarian or socially beneficial purpose. The Oslo District Court referred five questions to the EFTA Court.

The Court held that all games of chance provided in return for money payment constitute economic activities falling within the scope of EEA fundamental freedoms. A system based on an exclusive right as established under the Gaming and the Totalisator Acts, respectively, completely denies private operators access to the respective market and thus encroaches upon the freedom to provide services and the right of establishment. The same holds true for the prohibition on granting commercial operators permission to operate lotteries under the Lottery Act.

In order to be justified, the Norwegian legislation needs to be based on legitimate reasons of overriding general interest. In that respect, the Court accepted the aim of fighting gambling addiction and crime and malpractice as being legitimate. In order to be lawfully based on the aim of fighting gambling addiction, legislation must, however, reflect a concern to bring about a genuine diminution in gambling opportunities. The motive of financing benevolent or public-interest activities cannot in itself be regarded as an objective justification for restrictions on free movement. The aim of preventing gambling from being a source of private profit can serve as justification only if the legislation reflects a moral concern; if a state-owned monopoly is allowed to offer a range of gambling opportunities, the legislation at issue cannot be said to genuinely pursue this aim. Under the allocation of competences between the EFTA Court and the national court, it is for the latter to verify whether the Norwegian legislation may indeed be justified by legitimate objectives. With respect to the Totalisator Act, the EFTA Court noted that the legislative aim of financing the commercial breeding of horses does not qualify as a legitimate reason in the public interest.

To the extent Norwegian legislation is found to pursue legitimate aims, the national court must consider whether the Norwegian legislation at issue is proportionate. Whilst the states are free to define the level of protection sought, the policy pursued would be inconsistent if the state took, facilitated or tolerated other measures which run counter to the objectives pursued. In the context of the Gaming Act, it is the marketing activities and the development of new games by Norsk Tipping in particular that are relevant when assessing consistency.

Finally, the national court was instructed that it must examine whether the legislation at issue goes beyond what is necessary to meet the aims pursued. Again, the level of protection chosen by the Norwegian authorities is decisive. Where other, less restrictive measures would have the effect of fully achieving the objectives at the level of protection chosen, an exclusive rights system could not be considered necessary simply because it might offer an even higher level of protection. In order to carry out its assessment, the national court must ascertain whether and to which extent there are genuine risks arising from or connected to the different games of chance. It will also have to examine whether Norsk Tipping has less economic incentives to breach the applicable rules, or less of an interest in an aggressive marketing strategy than a commercial operator under a licensing system.

In answering an additional question posed by the national court, the EFTA Court finally held that to the extent the national court concludes that the restrictions entailed by the three Acts in question are lawful, the State also has the right to prohibit the providing and marketing of games of chance from abroad, no matter whether or not these are lawful in their State of origin. To the extent the national court finds that the bans implied in the three Acts on commercial operators organising any form of gambling are not justified, the Norwegian State may still require foreign operators to seek a national licence under the same conditions as apply to domestic operators. This would, however, be excessive if the company in question already held a licence issued by its home state and the requirements to which the issue of a licence is subject coincided with the requirements already fulfilled in that latter state.

The full text of the judgment may be found on the Internet at: www.eftacourt.lu.

This press release is not an official document. Please note that the Court may not comment on the case.