

Brussels, July 2011

ACT Response to the Commission consultation on online gambling in the Internal Market

Introduction:

This submission is made on behalf of the Association of Commercial Television. The Association of Commercial Television in Europe (ACT) represents the interests of the commercial audiovisual broadcasting sector in Europe. Formed in 1989, the ACT has thirty-three member companies licensed in 30 different European countries and distributed across 45 European markets and beyond. Our members operate several hundred free-to-air and pay-tv channels and distribute many more channels and new services. The ACT members encompass several business models: free-to-air broadcasters and pay-TV players, digital platform operators and multimedia groups.

The ACT is registered in the Interinstitutional Transparency Register under the identification number 18574111503-28.

The ACT's response to this consultation will focus on the broadcasting market and commercial communication.

Definition of Online Gambling

The ACT considers the definition of online gambling as set out on page 14 of the green paper as ambiguous:

“On-line gambling services are any service which involves wagering a stake with monetary value in games of chance, including lotteries and betting transactions that are provided at a distance, by electronic means and at the individual request of a recipient of services.”

This definition would e.g. include online games where consumers participate via sms, a postcard or a phone call or similar means. The participation in these games should not be included into the definition of online gambling.

The ACT would endorse to exclude these promotional games offered by the media from the scope of definition of online gambling.

TV Advertising

The audiovisual sector in the EU is regulated by a sector specific regulation, the Audiovisual Media Services Directive (AVMS)¹. This framework regulates all aspects of commercial broadcasting activity, including audiovisual commercial communication.

¹ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive).



The ACT understands that advertising on TV is exclusively regulated under this AVMS - falling into the competence of the Directorate General Information Society (DG INFSO).

Advertising & Sponsoring as main Funding Source for Free-to-air Television

The main financing source of Free-to air television is advertising, sponsoring and Product Placement. These sources of funding re-finance Free-to-air content. Consequently, the health of the Free-to-air TV sector depends on European and national advertising regulation rules. The digitisation of content and its distribution ways led to an incredible increase of TV channels: While in the late 1980's, a household could receive half a dozen Free-to-air TV channels over analogue antenna or around 30 channels over analogue cable, the MAVISE Database² lists thousands of advertising-financed channels today. This increase of consumer choice was not accompanied with an increase of advertising funding. Television is – compared to all other media – the most regulated medium in the EU, but sustainable TV services need flexible, non-discriminatory and fair advertising regulation in order to finance content.

Online Gambling Advertising

The ACT members observe a very fragmented, incoherent internal online gambling market³: In a few EU member states, online gambling is regulated, in others forbidden, in the most countries it is a grey market. On the other hand state monopolies for lotteries are common. The patchwork of restrictions and prohibition of advertising and sponsorship rules for online gambling is intolerable and incompatible with the idea of the internal market, where it should be possible to show e.g. Real Madrid footballers on TV wearing their football shirts with the name of their main sponsor, an online gambling company, everywhere in Europe. At the same time, the ACT recognises the need to protect children. Therefore, advertising for online gambling services should not target children. The ACT also believes that illegal online gambling should be fought with a controlled opening of the market, not with bans and complete restrictions. A controlled opening of the market will channel online-gambling customers and help to prevent fraud and gambling addiction.

Advertising for Online Gaming should be excluded from the scope of this consultation as promotional games offered by the media should be excluded from the scope of definition of online gambling (see above).


Advertising Self-Regulation

Commercial communication should be controlled by self-regulatory bodies. The standard CEN Workshop Agreement on „Responsible Remote Gambling Measures“ offers a list of control measures that can be applied to prevent exploitation of vulnerable groups.

The UK advertising standards offer a best practice example of how a regulatory regime can successfully enforce responsible advertising in practice. Also the code of conduct on advertising,

² MAVISE database of TV companies and TV channels in the European Union and candidate countries; European Audiovisual Observatory < <http://mavise.obs.coe.int/> >

³ As described in the Commissions Green Paper on On-line gambling in the Internal Market; COM 2011 (128) final ('Green Paper').



promotions and inducements of the Maltese regulator (LGA) is included in the Maltese gambling Act (see LGA directive attached in Annex 10).

The ACT calls the European Commission to harmonise and liberalise European advertising and sponsoring rules on online gambling within a self-regulatory framework⁴.

Association of Commercial Television in Europe



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Director General

About the ACT:

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⁴ The ACT fully supports the contribution to the Online gambling consultation of the European Advertising Standards Alliance EASA.