

Gaming & Leisure Industry Update

August 2013

Crown Limited progresses to Stage 3 of its Barangaroo proposal

After a tough and very public battle, Crown Limited's unsolicited proposal to build a \$1.3 billion 6 star resort and VIP gaming facility on Sydney Harbour has been progressed to Stage 3 – negotiation of a final binding offer. Crown's proposal was selected by the NSW government over that of Echo Entertainment Group Limited which operates Sydney's existing Star City casino. Echo sought to extend its exclusive NSW casino licence past November 2019 for a further 15 years.

Stage 3 of the bid process involves negotiations to formulate a final offer which the NSW Government may or may not accept. Conditions will include payment of an upfront \$100 million licence fee, a 29% tax on Crown's non-rebate gaming, a guarantee that total licence fee and gaming tax payments to NSW will exceed \$1 billion in the first 15 years, an independent review of fee and tax rates after 20 years of operation, and mandatory local VIP membership criteria (including examining applicants' gambling history and VIP membership to other casinos and a 24 hour cooling off period). The NSW Government has confirmed that Crown will not be allowed poker machines or low limit bets on table games.



NSW Premier Barry O'Farrell confirmed that the deciding factor to progress to Stage 3 was the introduction of competition to the currently monopolised NSW casino market.

An Independent Steering Committee (the **Steering Committee**) was appointed to assess both proposals.

The Steering Committee found Sydney was falling short of its potential share in the international gaming and tourism market, specifically, that it had underperformed when compared with Melbourne. It also observed that Crown's contribution to Gross State Product and tax under its proposal was respectively 26% higher and 31% larger than Echo's and would create 1,250 jobs after construction.

Jones Lang LaSalle did not share the same optimism, particularly with respect to an increase in international tourism, in a report provided to the Steering Committee and made public the day after the decision was announced. The report suggested that *"the proposal will not have a significant impact on tourist trends in NSW"* and will only add 0.03% to the number of nights spent in Sydney by tourists. The report argues that a second casino is not necessary for the facilitation of "high-end" tourism in Sydney.

Whatever the case, there is the lingering question being widely asked as to why the bid process for such an important development was not opened up to at least other large scale casino and hotel developers and operators.

Crown sets its sights on Queensland

The bad blood between Crown and Echo has spilled from the NSW battleground into Queensland.

Crown has indicated its interest in expanding its casino operations into Queensland which is currently the sole domain of Echo.

The Queensland Government has confirmed it has met with both Crown and Echo regarding bids to build casinos in Brisbane's George Street precinct. Echo currently operates Brisbane's sole casino, the Treasury Casino & Hotel. Although Echo maintains that there is no

need for two casinos in the city, it has made a bid for the second casino in any event. Should Crown succeed, Echo would be set to lose two State wide casino monopolies to the rival casino company in short space.

Deputy Premier Jeff Seeney says that he has also had meetings regarding proposals to develop casinos in North Queensland. However, such discussions are said to be preliminary, with no firm proposals or bids at this stage.

Adding fuel to the media fire, the ACCC is investigating allegations of misconduct arising from a private conversation between James Packer and Echo Chairman, John O'Neill. It is reported O'Neill has alleged that Packer agreed that Crown would stay out of Queensland if Echo "behaved" itself "vis-a-vis Sydney". O'Neill's account of the conversation has been supported by Echo Chief Executive, John Redmond. The ACCC is investigating the alleged conduct, which if proven, could constitute unlawful market sharing and bid rigging. It is noted that the allegations are strongly denied by the Crown and Packer.

Proposed amendment to the *Interactive Gambling Act* targets social gaming

The Joint Select Committee on Gambling Reform (the **Committee**) has completed its review of the *Interactive Gambling Amendment (Virtual Credits) Bill 2013* (Cth) (the **Bill**). Presently, the *Interactive Gambling Act (2001)* (Cth) (the **IGA**) prohibits the conduct of "interactive gambling services" within Australia. Relevantly, prohibited services include games played over the internet and via mobile devices, if they are games of chance or mixed chance and skill requiring consideration to enter or play and are played for money or anything else of value.

The necessary element from the prohibition currently under scrutiny relates to the requirement the game must be played for "money or anything else of value". It is a widely held view that games in which players can purchase virtual currency, extra lives and other items of value in the virtual game, which cannot be "cashed out" into real world money or value, do not satisfy this element and are therefore not prohibited. Whether this view is correct or not, the Bill seeks to amend the definition of "anything else of value" to ensure that such games are captured by the prohibition. As drafted the Bill would result in many social games, including those which would not typically be considered gambling, being prohibited. Proponents argue that these social games should be prohibited as they encourage and normalise gambling, particularly amongst children and problem gamblers.

Conversely, the Committee argues that the Bill casts the net too wide and would ultimately prohibit "freemium" style social games that allow (as opposed to require) in-game purchases, while failing to prohibit casino-style games that involve gambling with virtual currency but do not have a real currency "buy in" element. Further, it is argued that the free casino-style games appear more likely to encourage and normalise gambling than the "freemium" style social games.



The Committee also found that the global nature of the platforms upon which social games are offered, coupled with the lack of similar prohibitions in other jurisdictions, provided a practical barrier to the enforcement of the Bill. As such, the Committee recommended that the Bill not be passed.

The Government is yet to respond to the recommendations.

Inquiry into the advertising and promotion of gambling services in sport

The Committee has also released a report as a result of its inquiry into sports betting advertising and its impact and effect on children, problem gamblers and the integrity of and attitudes towards sport. The inquiry sought to determine whether the *Broadcasting Services Amendment (Advertising for Sports Betting) Bill 2013* (the **BSA Bill**) should be passed. The BSA Bill seeks to ban the broadcast advertising of live odds for sports betting, ban the advertising of sports betting services on both television and radio during children's viewing hours (before 9pm) and ban the promotion of sports betting services by sporting commentators and their guests during sports broadcasts.

The Committee made the following 9 recommendations:

- review self-regulation of gambling advertisement within the industry and legislate if necessary;
- review and encourage public consultation regarding gambling advertising during sporting programs;
- commission further study into long-term effects of gambling advertising on children;
- implement nationally consistent responsible gambling message requirements;
- review and encourage public consultation regarding the promotion of betting at venues and on sporting uniforms in family environments;
- review the availability for purchase of sporting merchandise featuring sports betting logos;
- commission further research regarding mobile phone applications' effects on problem gambling;
- increase amateur sport participants' awareness of risks and threats to the integrity of their sport (such as match fixing); and
- that the BSA Bill not be passed.

In essence, the Committee suggested regulation and restriction as opposed to the imposition of the bans as per the BSA Bill. The recommendations recognise the importance of harm minimisation measures whilst also advocating further research into the long term effects and potential detrimental financial impact the proposed bans would have on Australian sports.

Once again the Government is yet to respond to the recommendations which is not surprising given we are in full election mode.

As we go to print, the Australian Communications and Media Authority has registered 5 new codes of practice which limit betting odds promotions and gambling advertising on both television and radio during certain periods of live sports broadcasts. The industry groups involved include radio, free to air commercial TV and subscription TV. We will review these and of course, report in our next update.

Thomsons welcomes new member to Gaming & Leisure Industry team



Melissa Baxter

Thomsons welcomes lawyer Melissa Baxter into its expanding Gaming & Leisure Industry team.

Melissa comes from a private practice background predominantly focussed on corporate advisory and M&A and will work closely with partner Tony Rein.

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