

Tilbage har vi en udfordring med moms på provision hos de ca. 3.500 forhandlere for Danske Spil. Skatteministeriet anslår problemet til at udgøre 105 mio. kroner årligt (Tabel 3, side 29).

På trods af det meget grundige lovforberedende arbejde, og de mange udførlige bemærkninger til dette lovforslag, synes SKAT's praksisændring for spilleområdet ikke omtalt. Men praksisændringen hænger nøje sammen med den delvise liberalisering af spillemarkedet; alene af den grund, at ikrafttrædelsestidspunktet er kædet sammen med spillelovene og dermed 1. januar 2011.

I Tabel 3 (side 29) optræder en oversigt med de samlede økonomiske konsekvenser af lovpakken til liberalisering af spillelovgivningen. Her forventes et provenu fra moms på forhandlerprovision på 105 mio. kroner. Forklaringerne til den beregnede provenuvirkning er ikke medtaget i bemærkningerne til loven. Umiddelbart tyder det på, at ministeriet har tilstræbt en provenuneutral omlægning af de berørte afgifter. Dette er i så fald både nødvendigt og på alle måder meget positivt. Hvis der er tilstræbt en provenuneutral omlægning, vil Danske Spil A/S kunne kompensere forhandlerne i form af forhøjet provision for et beløb svarende til moms på forhandlerprovisionen. På den måde vil status quo være opretholdt for statskassen, for Danske Spil A/S og for forhandlerne.

Ministeriet bedes i forbindelse med fremsættelsen af lovforslaget i Folketinget bekræfte, at der generelt er tilstræbt en provenuneutral omlægning af afgifterne, så detailhandelen og Danske Spil A/S kan forhandle om forhandlernes fremtidige vilkår for provision med en viden om, at der omkostningsneutralt for Danske Spil kan kompenseres for momsen på forhandlerprovisionen fra 1. januar 2011.

Med venlig hilsen



Claus Bøgelund Nielsen  
Underdirektør

STRICTLY CONFIDENTIAL - LEGAL PRIVILEGE

**MEMORANDUM**

CONSULTATION PROCEDURE - DRAFT DANISH GAMBLING ACT  
COMMENTS FROM STANLEYBET

## MEMORANDUM

### CONSULTATION PROCEDURE - DRAFT DANISH GAMBLING ACT COMMENTS FROM STANLEYBET

#### 1 Introduction

By reference to the letter of 12 February 2010 from the Danish Ministry of Taxation regarding the consultation procedure on the draft Danish Gambling Act our client Stanleybet International Betting Ltd. has asked us to present their comments, cf. item 2 below.

#### 2 Comments

##### 2.1 *Comments regarding prohibition on payout gaming machines in dedicated betting outlets*

It seems both illogical and inequitable that section 25 of the Gambling Act allows up to 3 payout gaming machines to be installed and operated in restaurants with only a loose "not to be played by persons under 18" requirement and yet there is no provision in the Gambling Act for payout gaming machines to be installed and operated from dedicated betting outlets (i.e. non-retail). Given that dedicated betting outlets will be staffed by licence holders/approved managers and are situated in controlled areas in which only persons over 18 are admitted, we do not see the justification of a mandatory prohibition on the installation and operation of payout gaming machines in respect of such dedicated betting outlets. We would normally expect to see gambling legislation provide for a limited number, (we would suggest at least up to 10), of payout gaming machines to be allowed to be installed and operated from such outlets.

##### 2.2 *Comments regarding fee for the operators under the Gambling Act*

The anticipated amounts of the fees (the application fee, annual licence fee and platform fee) that it is proposed to charge businesses under the Gambling Act are not, of course, contained in the draft Gambling Act. However, Stanleybet International Betting Ltd would like to raise its concern, at this stage, that it would seem inequitable to propose a flat annual fee for all operators – given that Danske Spil will commence, on 1 January 2011, with an extensive network of mature opera-

tions whereas new entrants to the market will be building their businesses from nothing. It is clearly not within the spirit of seeking to ensure that Danske Spil operates "on a commercial basis" (as stated in section 1(3) of the Bill to amend the Danish Act on Danske Spil A/S) to have Danske Spil operating with such an advantage over its competitors. Finally, in this respect, a large flat fee (irrespective of the size of the business and payable at the outset of trading) will represent a large bar to the opening up of the market to competitors (which underpins the whole rationale for this new regime) and is discriminatory against new entrants to the market and in particular smaller operators.

2.3 *Comments regarding timetable for implementation*

It is Stanleybet International Betting Ltd's opinion that the current timetable for implementation of the gambling legislation is prejudicial to most, if not all, non-Danish operators (who are expected to make up the majority of the operators that will take advantage of the new regime and are therefore an integral part of the consultation process), due to the relatively tight timetable that is envisaged. There is clearly significant additional time required for the non-Danish operators to translate legal documents accurately in order to participate properly in the process. Stanleybet International Betting Ltd would therefore be grateful if the Ministry of Taxation would seek to factor this into any future timetable.

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Copenhagen, 5 March 2010  
Jacob Christensen

Frederik Lassen  
Attorney-at-Law

**Slettet:** 70056016  
**Slettet:** 1840058v1

\* 4 March 2010

STRICTLY CONFIDENTIAL - LEGAL PRIVILEGE

**MEMORANDUM**

CONSULTATION PROCEDURE - DRAFT DANISH GAMBLING TAX ACT  
COMMENTS FROM STANLEYBET

## **MEMORANDUM**

### **CONSULTATION PROCEDURE - DRAFT DANISH GAMBLING TAX ACT COMMENTS FROM STANLEYBET**

#### **1 Introduction**

By reference to the letter of 12 February 2010 from The Danish Ministry of Taxation regarding the consultation procedure on the draft Danish Gambling Tax Act our client Stanleybet International Betting Ltd has asked us to present their comments, cf. item 2 below.

#### **2 Comments**

##### *2.1 Comments as to the taxable period for betting - losses to be carried forward*

Under section 31 of the Gambling Tax Act, the taxable period for betting is only one week (as opposed to one month for four of the other forms of gambling) and yet there does not appear to be any provision in the Gambling Tax Act for losses in any week to be carried forward and set off against future gross gambling income (which we do not consider to be equitable). We would therefore request that the Gambling Tax Act either provides for any such weekly losses to be carried forward or alternatively for the taxable period to be extended to one month (in line with some of the other forms of gambling).

##### *2.2 Comments regarding appointment of representatives for non-Danish operators*

The requirement under section 29 of the Gambling Tax Act for appointed representatives of non-Danish enterprises to be jointly and severally liable for taxes under the Gambling Tax Act is, in Stanleybet International Betting Ltd's opinion, discriminatory against other EU enterprises as this provision will, in practice, make it extremely difficult for such enterprises to engage such representatives (due to the potential liability they must assume on behalf of the non-Danish enterprise) and will therefore have the effect of forcing them to establish themselves in Denmark before trading.

##### *2.3 Comments regarding timetable for implementation*

It is Stanleybet International Betting Ltd's opinion that the current timetable for implementation of the gambling legislation is prejudicial to most, if not all, non-Danish operators (who are expected to make up the majority of the operators that will take advantage of the new regime and are therefore an integral part of the consultation process), due to the relatively tight timetable that is envisaged. There is clearly significant additional time required for the non-Danish operators to translate legal documents accurately in order to participate properly in the process. Stanleybet International Betting Ltd would therefore be grateful if the Ministry of Taxation would seek to factor this into any future timetable.

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Copenhagen, 5 March 2010

Jacob Christensen

Frederik Lassen

Attorney-at-Law

**Slettet:** 70056016

**Slettet:** 1840013v1



## 1. Liberalisering

Vi er en dansk iværksætter virksomhed der i 10 år lovligt har udbudt managerspil i Danmark. Som vi læser den nye spillov falder managerspil nu ind under den nye liberalisering af spillovgivning. Dette opfatter vi ikke som en liberalisering på området. I USA, som har en af verdens strengeste spillove, opfattes managerspil ikke som *gambling* og er derfor ikke ulovligt eller pålagt licenser.

*Spørgsmål:*

- A. Hvad er grundlaget for at managerspil skal være omfattet af den nye spillov?
- B. Hvad er definitionen af "managerspil"?
- C. Frygter staten ikke at miste en lang række arbejdspladser fra virksomheder der i dag udbyder lovlige spil, men som fremover ikke er lovlige, og som ikke har råd til at købe licens?

## 2. Effektivisering af loven

Vi formoder der vil være en overgangsperiode hvor virksomheder, som vores, bliver varslet så man kan omstille sig til den nye lovgivning og vilkår, herunder tilpasse produkter samt ansøge om licens.

*Spørgsmål:*

- A. Hvornår vil den nye spillov træde i kraft?
- B. Hvor lang vil varslingsperioden være?
- C. Træder lovgivningen i kraft før man kan få licens?

## 3. Licens omfang og størrelse

Det er svært at tolke hvilke licenser man skal benytte samt størrelsen herpå.

*Spørgsmål:*

- A. Hvor stor bliver den konkrete licens/omkostninger for at udbyde managerspil?
- B. Under pkt. 4.10 Gebyrer, nævnes: "...begrænsede online tilladelse..." der henvises til spil hvor antallet af spillere og omsætning er på et relativt lavt niveau. Det bedes uddybet konkret hvilket niveau det er?

## 4. Beskyttelse mod ikke-licenshavere / DNS blokering

Hvis vi køber en licens hvordan forsikre myndighederne os at blokeringen reelt kan opretholdes.

*Spørgsmål:*

- A. Frygter man ikke at brugerne omgår DNS blokeringen som tilfældet er med eksempelvis Piratbay?
- B. På hvilke niveau fungerer DNS blokering. Vil sites som eksempelvis PremierLeague.com, BBC.co.uk, CNN.com, Telegraph.co.uk, Eurosport.com og Facebook som jævnligt udbyder



managerspil og betting blive blokeret?

- C. Der findes en lang række elektroniske betalingssystemer som eks. Paypal, hvor penge kan overføres til, og videreføres til kundens danske konto, vil myndighederne også kræve DNS spærring af disse betalings løsninger.
- D. Hvordan vil myndighederne forhindre folk i at overføre penge fra udenlandske spiludbydere?
- E. Vil der være en offentlig tilgængelig liste hvorpå man kan se hvilke domænenavne der er blokeret og hvorfor?
- F. Vil site-ejere få information om deres site er blokeret og hvad der skal til for at fjernet blokering igen?
- G. Eftersom DNS blokering blot kræver en henstilling fra spilmyndigheder til internetudbydere, som derfor gør at, site-ejeren er uden nogen retslig sikkerhed for om blokeringen er korrekt. Hvordan afprøves denne blokering ved dansk ret.? Forventer ministeriet at en sådan sag køres individuelt mod samtlige internet udbydere, eller den danske stat?
- H. Er det realistisk at vedligeholde et så omfattende system?
- I. Hvordan ser staten på en liberalisering af spiloven der ved hjælp af DNS blokering begrænser danskernes ytringsfrihed, informationssøgning og den fri konkurrence i EU?

## 5. Licensen

### Spørgsmål

- A. I Storbritannien er udgifter til licenser langt mindre, hvilket giver et åbent marked med fri konkurrence og bedre produkter til forbrugeren. Hvad er årsagen til den valgte model med så store licens udgifter?
- B. Man må formode at de store internationale spiludbydere er interesserede i at licenserne er tilpas store, for at holde mindre konkurrenter væk fra marked. Er det korrekt at SKM har inviteret Ladbrokes med til at udforme den nye spillelov?
- C. Med de store udgifter til licenser og afgifter, tilgodeser den nye lovgivning derfor ikke kun de store nationale/internationale udbydere?
- D. Med kun få store udbydere på det danske marked vil det være væsentlig ringere produkter det bliver udbudt, end dem der er på det nuværende åbne marked – er det således ikke forbrugerne der er taberne med den nye spillovgivning, i form af manglende konkurrence de få licenstagere imellem?
- E. Med de store udgifter til at opnå og drive en licens, lukker man samtidig muligheden for et nyt vækstområde for danske iværksættere. Hvorfor ønsker myndighederne at holde de små

danske iværksætte ude af markedet?

- F. Licens- og ansøgningsomkostningerne virker enormt høje hvis de skal modsvare statens reelle udgifter. Hvad er de forventede udgifter til at opsætte og drive kontrol systemet?

## **6. EU**

### **Spørgsmål**

- A. Er det ikke relevant, i forbindelse med den nye spillovgivning, at offentliggøre de dokumenter ministeriet har fremsendt til EU, samt EU tilbagemelding/svar?

Med Venlig Hilsen

Ole Christensen,  
Partner

Swush.com Aps  
Vesterbrogade 46, 1  
1620 København V

Tel. 33 21 72 09  
Mobil 22 50 56 57  
Mail ole@swush.com

Skatteministeriet  
Nicolai Egtveds Gade 28  
1402 København K

5. marts 2010  
IMT/SUP

Sendt pr. e-mail: [pafgft@skm.dk](mailto:pafgft@skm.dk), [ihj@skm.dk](mailto:ihj@skm.dk),  
[llj@skm.dk](mailto:llj@skm.dk) og [spillemyndigheden@skat.dk](mailto:spillemyndigheden@skat.dk)

### **Høring af forslag til Lov om spil (Spilleloven)**

Telekommunikationsindustrien i Danmark og Dansk Energi (herefter Telebranchen) er blevet opmærksom på, at Skatteministeriet har sendt forslag til Lov om spil (spilleloven) i høring.

Telebranchen finder det i den forbindelse beklageligt, at Telebranchen ikke er på Skatteministeriets høringsliste, og at Telebranchen selv via høringsportalen skal være opmærksom på forslaget.

Det gælder særligt i forhold til, at der indføres et handlings- og strafansvar for teleoperatørerne, samt i forhold til at TDC, Telenor og Telia nævnes direkte i forslagets bemærkninger.

For så vidt angår selve lovforslaget har Telebranchen noteret sig, at spillemarkedet blandt andet skal beskyttes ved, at det bliver strafbart for internetudbydere at formidle adgang til ulovlige spilhjemmesider, som markedsføres i Danmark.

Det fremgår videre af forslagets bemærkninger, at straf for formidling af internetadgang vil kunne imødegås ved, at internetudbyderen etablerer en DNS-blokering mod et bestemt internetdomæne, efter at udbyderen har modtaget en henstilling fra spilmyndigheden om, at der ulovligt formidles adgang til en spiludbyders ulovlige spilsystem.

Kendskab til en sådan henstilling og den deraf følgende ansvarsfritagelse for formidlingsansvar for Internetudbydere/operatører fremgår udelukkende af



bemærkningerne. En så væsentlig forudsætning bør fremgå direkte af lovteksten og ikke blot af bemærkningerne.

Telebranchen har følgende bemærkninger hertil:

*Overordnede principielle bemærkninger*

Internettet har været den ubestridt vigtigste ændring i vores alles dagligdag de sidste 10 år. Internettet har på mange måder ændret vores generations og formentlig også fremtidige generationers måde at leve på.

Derfor ser Telebranchen med udtalt bekymring, på den tiltagende tendens i Danmark til, at blokering af hjemmesider er et middel, man uden større betænkeligheder kan trække op ad hatten, når man fra politisk hold skal have løst et problem på internettet.

I det pågældende tilfælde med forslag til Lov om spil, er prisen for delvist at liberalisere markedet og nedbryde spillemonopolet, således en begrænsning i danskernes adgang til det ellers frie internet.

Processen omkring lovforslaget har samtidig ikke sikret den principielle debat om internetblokeringer, som er vigtig at have.

*Offentligretlige problemstillinger*

Telebranchen finder det problematisk i forhold til Internetudbydernes/teleoperatørernes retssikkerhed, at Internetudbydernes/teleoperatørernes strafbelagte handlepligt i lovforslaget alene er baseret på en henstilling fra spilmyndigheden.

Telebranchen skal i samme forbindelse gøre opmærksom på, at der ikke findes udtømmende fortegnelser over udbydere af Internetadgang og forslaget derfor – ud over ikke at virke som tilsigtet – også kan få en konkurrenceforvridende effekt over for de etablerede udbydere.

Det forvaltningsretlige udgangspunkt er, at den offentlige myndighed træffer en afgørelse, og at afgørelsen blandt andet har været genstand for en høringsproces af de involverede parter, at afgørelsen har en begrundelse, samt at afgørelsen kan påklages.

Lovforslaget omgår denne helt grundlæggende forvaltningsretlige grundsætning i forhold til henstillingen til teleoperatørerne.

Det er tilmed uklart i lovforslaget, i hvilket omfang grundsætningen gælder ved spilmyndighedens beslutning om, at en given spilhjemmeside er ulovlig. Lovforslagets bemærkninger synes nærmest at lægge op til, at indehaveren af en spilhjemmeside blot informeres af spilmyndigheden.

Telebranchen finder ovenstående uacceptabelt, idet henstillingen til teleoperatørerne i det mindste skal fremstå som en forvaltningsretlig afgørelse og eventuelt som et påbud.

Ligeledes skal beslutningen om, at en hjemmeside er ulovlig, fremstå som en forvaltningsretlig afgørelse, som skal kunne påklages.

Det er således ikke forvaltningsretligt tilstrækkeligt, at der blot fra spilmyndighedens laves en henvisning.

Lovforslaget tager samtidig ikke stilling til den situation, hvor en spilhjemmeside indeholder både lovlige og ulovlige elementer – f.eks. en sportshjemmeside, der udover nyheder om sport også indeholder spilelementer, der strider mod reglerne. Nyhederne er naturligvis lovlige, men spildelen kan være i strid med reglerne. Begge dele vil spærres ved en DNS-blokering.

Uanset lovforslaget forholder sig til grundloven med hensyn til, om beslutningen fra spilmyndigheden om, at der skal spærres for en given hjemmeside kan udgøre et indgreb i ytringsfriheden, så er det Telebranchen's vurdering, at det er ligegyldigt, om spilmyndighedens beslutning ligger i form af en korrekt forvaltningsretlig afgørelse overfor teleoperatøren, eller spilmyndigheden – som forslaget lægger op til - blot uden om de grundlæggende forvaltningsretlige principper beslutter, at en hjemmeside er ulovlig og henstiller til teleoperatøren at spærre for hjemmesiden med en efterfølgende strafbelagt handlepligt.

Årsagen er, at det er spilmyndigheden, der bestemmer, at der skal spærres for hjemmesiden, og det således også er spilmyndigheden, der beslutter en begrænsning af ytringsfriheden.

Det afgørende i forhold til grundloven er nemlig ikke, i hvilken form beslutningen om spærring kommer, men derimod at beslutningen kommer fra en offentlig myndighed.

På baggrund af ovenstående er det Telebranchen's vurdering, at Skatteministeriet ikke uden videre kan indføre strafbelagt handlingspligt for internetudbydere, da det vil stride mod grundlæggende offentligretlige principper.

#### *EU-retlige problemstillinger*

I henhold til § 14, stk. 1, i Lov nr. 227 af 22. april 2002 om tjenester i informationssamfundet herunder visse aspekter af elektronisk handel fremgår følgende:

*”En tjenesteyder, som på et kommunikationsnet transmitterer information, der leveres af en tjenestemodtager, er ikke ansvarlig for den transmitterede information, hvis tjenesteyderen*

- 1) *ikke selv tager initiativ til transmissionen,*
- 2) *ikke udvælger modtageren af transmissionen og*



3) *hverken udvælger eller ændrer den transmitterede information*”

Af stk. 3 i samme bestemmelse fremgår endvidere, at bestemmelsen også gælder for en tjenesteyder, der leverer adgang til et kommunikationsnet.

Bestemmelsen er en implementering af direktiv af 8. juni 2000 om visse retlige aspekter af informationssamfundstjenester, navnlig elektronisk handel, i det indre marked (e-handelsdirektivet) artikel 12.

Direktivet/loven betyder, at hvis de ovenfor tre betingelser er opfyldt, er en internetudbyder ansvarsfri og kan derfor ikke ifalde hverken straf- eller erstatningsansvar.

De tre betingelser normalt er opfyldt for internetudbydere, hvis aktiviteter typisk er ren videreformidling (mere conduit).

Det forhold, at internetudbyderen er bragt i ond tro via f.eks. en meddelelse fra spilmyndigheden gør ingen forskel i forhold til ansvarsfriheden.

Telebranchen er i øvrigt opmærksom på, at både e-handelsloven og e-handelsdirektivet indeholder en undtagelse for forhold, der vedrører spil, og at der herefter kan opstå spørgsmål om, hvorvidt internetudbyderne kan påberåbe sig ansvarsfrihed.

Telebranchen skal hertil bemærke, at undtagelsen vedrørende spil i e-handelsdirektivets artikel 1, stk. 5, litra d, ifølge ordlyden ikke omfatter informationssamfundstjenester generelt, men kun *aktiviteter inden for informationssamfundstjenester*.

Det er Telebranchen's forståelse heraf, at det alene er *selve spilleaktiviteten* på en given online-tjeneste, der ikke omfattes af direktivet.

Den aktivitet, der ligger i at *formidle* online-tjenesten gennem et netværk, er derfor ikke nødvendigvis undtaget.

En mere conduit formidler ved netop ikke – og kan ikke vide – hvad der formidles gennem netværket.

Det er strid med direktivets hensigt, at en internetudbyder ikke skal kunne opnå ansvarsfrihed ved spil, når internetudbyderen ikke selv er herre over, hvornår internetbrugerne går ind på ulovlige spilhjemmesider.

Skatteministeriet vil således ikke uden videre kunne lægge til grund, at e-handelsloven og e-handelsdirektivet ikke finder anvendelse på selve formidlingen af adgang til spilletjenester.

På baggrund af ovennævnte er det Telebranchens opfattelse, at pålæggelse af straf overfor internetudbyderne for en undladelse efter spilmyndighedens henstilling at



spærre for en hjemmeside strider imod det grundlæggende princip i både Danmark og EU om, at Internetudbydere ikke er ansvarlige for formidling af indholdet på internettet, samt at det muligvis kan være i strid med e-handelsloven og e-handelsdirektivet.

Eftersom Telebranchen ikke har kunnet få aktindsigt i den dialog mellem ministerium og Kommissionen vedr. overensstemmelse med EU-reglerne, det indikeres at have foregået, vil telebranchen gerne forbeholde sig ret til efter høringsfristens udløb at fremsende materiale, der yderligere belyser forholdet til EU-reglerne.

Udover ovenstående skal Telebranchen henlede Skatteministeriets opmærksomhed på EU's nye teledirektivpakke, der står overfor implementering i dansk ret.

Det fremgår i den forbindelse blandt andet af EU-Kommissionens pressemeddelelse om den endelige aftale vedrørende teledirektivpakken, at:

*"With regard to any measures of Member States taken on their Internet access (e.g. to fight child pornography or other illegal activities), citizens in the EU are entitled to a prior fair and impartial procedure, including the right to be heard, and they have a right to an effective and timely judicial review."*

Ovenstående betyder, at der skal sikres EU-borgere en grundlæggende retssikkerhed i forhold til foranstaltninger, der foretager overfor deres adgang til internettet.

Som det fremgår af ovenstående afsnit om offentligretlige problemstillinger tyder det på, at lovforslaget ikke vil overholde den nye teledirektivpakke.

*Kulturministeriets møderække om pirateri på internettet*

Spørgsmålet om teleoperatørernes ansvar og pligter i forhold til borgeres adgang til og brug af internettet, herunder DNS spæringer, diskuteres også i andre sammenhænge end på spilområdet.

F.eks. har der gennem de sidste par år pågået mange drøftelser mellem relevante parter og myndigheder i møderækker under Kulturministeriet i forhold til pirateri på internettet, ligesom Kulturministeriet sidste år udgav en rapport om området.

Kulturministeriet har desuden nedsat et udvalg med henblik på afklaring af, hvordan pirateri på internettet kan undgås. Udvalgsarbejdet forventes afsluttet i september 2010 og involverer flere ministerier.

Da regeringens politik på området for spæringer af borgeres adgang til internettet, herunder hvad teleoperatørernes ansvar og pligter er i forhold hertil, bør være den samme uanset ressortområde, vil Telebranchen anbefale, at Skatteministeriet koordinerer spørgsmålet med arbejdet i Kulturministeriet.

I forlængelse heraf kan Telebranchen oplyse, at det generelt er Telebranchen's grundlæggende holdning i forhold til teleoperatørernes ansvar og pligter overfor borgeres brug af internettet, at

- Teleoperatøerne ikke skal overvåge og kontrollere borgeres brug af internettet.
- Teleoperatøerne ikke skal sanktionere borgere.
- Teleoperatøerne alene handler efter afgørelse fra en domstol eller offentlig myndighed.

Telebranchen er samtidig bekymret for, at DNS-spærringer på ét område (f.eks. spilområdet) let kan sprede sig til ønsker om DNS-spærringer på andre områder (f.eks. lægemiddelområdet), og at danske borgeres adgang til internettet pludselig er reguleret af forbud og begrænsninger med de uhensigtsmæssigheder det måtte have i forhold til internettets natur, proportionalitet overfor beskyttelsesbehovet, borgernes frihed og Danmarks ønske om at være et netværkssamfund.

Det kræver derfor grundige overvejelser, inden at der iværksættes regulering om foranstaltninger som spærring af adgang til internettet.

#### *Administrativ økonomisk byrde*

Telebranchen skal bemærke, at det fremgår af § 50 i lovforslaget, at staten skal have dækket sine udgifter til spilmyndigheden mv.

Det fremgår imidlertid ikke af lovforslaget, at de udgifter som internetudbydere pålægges ved administration af DNS spærringen også dækkes.

Da Telebranchen ikke finder, at der er sammenhæng mellem, at staten skal have dækket sine udgifter, men at internetudbydere ikke får dækket deres udgifter, skal Telebranchen foreslå, at lovforslaget i det mindste rettes, så enten alle parter eller ingen parter får dækket udgifterne til lovens administration.

#### *Erstatningsansvar*

Telebranchen skal henlede opmærksomheden på, at såfremt en internetudbyder bliver mødt af et erstatningskrav for uberettiget spærring af en indehaver af en hjemmeside, går Telebranchen ud fra, at kravet uden videre kan føres videre til spilmyndigheden, der er årsag til spærringen.

#### *Konklusion*

Telebranchen ønsker ikke, at internetudbydere skal pålægges et strafbelagt handlingsansvar.

Telebranchen finder det i en forbindelse uhensigtsmæssigt, at spørgsmålet om spærring for borgeres brug af internettet og internetudbydernes rolle og ansvar heroverfor ikke gøres til genstand for en politisk diskussion i en bredere kreds som tilfældet er i Kulturministeriets arbejde med pirateri på internettet.

Ligeledes finder Telebranchen at der er en sådan usikkerhed omkring fortolkningen af både offentligretlige som eu-retlige forhold, der gør, at såfremt lovforslaget opretholdes, vil Telebranchen forbeholde sig sin retsstilling i forhold til at indbringe sagen for de relevante domstole.

Siminn Danmark A/S har tilsluttet sig dette høringssvar, som er på vegne af såvel Telekommunikationsindustrien (TI) som af Dansk Energi (DE).

Med venlig hilsen



Ib M. Tolstrup  
Direktør



The Danish Ministry of Taxation  
Nicolai Eigtveds Gade 28  
DK-1402 Copenhagen K  
Denmark

Registered letter  
Sent by e-mail to:

- o [pafgft@skm.dk](mailto:pafgft@skm.dk);
- o [ihj@skm.dk](mailto:ihj@skm.dk);
- o [llj@skm.dk](mailto:llj@skm.dk);
- o [spillemyndigheden@skat.dk](mailto:spillemyndigheden@skat.dk)

Valetta, 5 March 2010

RE: SUBMISSION TO THE DANISH MINISTRY OF TAXATION REGARDING THE DRAFT  
"REGULATION AND CONTROL OF GAMING ACT" (THE GAMING ACT)

*To whom it may concern,*

#### EXECUTIVE SUMMARY

Unibet welcomes the Danish reregulation and the pragmatic approach taken. Based on its history and being a frontrunner in the European and Danish moneytainment market, Unibet finds that:

- **The product scope of the regulatory reform should meet customer demand.**
  - o **Online Bingo** should be defined as a "Combination game" instead of a "lottery" since Online Bingo has more in common with the "Combination game" category than with the "lottery" category.
  - o **Horse and dog racing** should not be kept under the monopoly of Danske Spil since keeping horse and dog racing under the monopoly will mean the demise of the sport in Denmark.
- **Regulation based on EU cooperation and non-duplication of requirements already in place.** Denmark should cooperate with other member states in the EU and within a well-defined scope not duplicate requirements already met in other EU jurisdictions".
- The **"black period" should be abandoned** since it could have some undesirable effects and would lead to numerous legal challenges due to the preferential treatment of the historical monopoly.
- **ISP blocking, financial transaction blocking and the marketing ban** should be abandoned since they are unsuitable for reaching the objectives aimed at and in violation



of EU law. They will further create material collateral damage for the society stakeholders' concerns, media, sports, technology and financial service providers.

For the reasons expressed further in this letter, Unibet would like to **invite the Gaming Commission and representatives of the Danish government to visit our offices in London.**

#### PRESENTATION OF UNIBET

Unibet<sup>1</sup> was founded in 1997 by a sports fanatic and leisure punter. It is a remote gaming company listed on NASDAQ OMX Nordic Exchange in Stockholm since 2004. Unibet is one of the largest privately-owned gaming operators in the European market and has a number of leading Scandinavian and European institutional investors as shareholders. Unibet provides services in 27 languages through [www.unibet.com](http://www.unibet.com) and [mariabingo.com](http://mariabingo.com)

In December 2007, Unibet acquired Maria Holdings ([www.mariabingo.com](http://www.mariabingo.com)), the largest online bingo operator in the Nordic market, and in April 2008 acquired Scandinavia's largest trotting community, Travnet.

In November 2009 and for the third time, Unibet has been elected European Sports-Betting operator of the year at the prestigious eGaming annual awards ceremony. The International gaming magazine eGaming Review awards every year the excellence of online gaming operators.

Being more than 10 years at the forefront of this dynamic moneytainment industry, Unibet has gained the trust of more than 4.1 million customers in over 100 countries. That consumer trust we have to earn every day. For this reason, our key objective as a consumer centric company is to provide value added service to our customers over a longer period of time, build trust and increase customer retention and satisfaction. In this regard, transparency, responsibility and customer care are an integrated part of the overriding company objectives and mantra: "By players, for players".

#### *About Unibet's corporate engagements and partners*

Being a founding member of the EGBA and ESSA, Unibet has always advocated for a constructive dialogue based upon facts, instead of myths and misunderstandings. Whilst acknowledging that consumer protection and problem gaming, like any other problem behaviour, must be addressed in the most adequate manner, one may not forget that studies in the field of responsible gaming reveal that more than 98% of the population enjoy gaming and betting in a responsible manner.

Our engagement to fair gaming and high-end regulatory solutions based on a fact-based dialogue is expressed by our ongoing commitment to the following associations:


-  **eCOGRA: e-Commerce Online Gaming Regulation and Assurance:**  
[www.ecogra.org](http://www.ecogra.org)


eCOGRA, a non-profit organisation, is the independent standards authority of the online gaming industry, specifically overseeing fair gaming, player protection and responsible operator conduct. The function that eCOGRA performs protects those who engage in online gaming where it is lawful. Prompt payments, safe storage of information, random games, honest advertising and responsible behavior by the online casino and poker room operator are the primary concerns of every player so that means they are also the primary concerns of eCOGRA, "eCommerce and Online Gaming Regulation and Assurance". eCOGRA is


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<sup>1</sup>Annual report available on [www.unibetgroupplc.com](http://www.unibetgroupplc.com)

appointed by the EGBA to audit continued compliance with and enforce the EGBA standards<sup>2</sup>.

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**ESSA: European Sport Security Association:** [www.eu-ssa.org](http://www.eu-ssa.org) : Formed in 2005 by UNibet and other leading European bookmakers, this association safeguards the integrity of sport and ensures that consumers are provided with a fair and safe betting product. Since 2005 ESSA has established an Early Warning System and an information network with all major sports governing bodies such as FIFA, UEFA, ATP and the IOC
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**G4: Global Gambling Guidance Group:** [www.gx4.com](http://www.gx4.com) : G4 is a group whose objective is to establish responsible gaming with the aid of protocols and rules of conduct for players and operators in the gaming industry. It also offers a wide range of information, training services, advice, etc. to prevent addiction problems associated with gaming.
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**RGA: Remote Gambling Association:** [www.rga.eu.com](http://www.rga.eu.com) : Formed in August 2005, the RGA unites the majority of gaming operators on the stock market. As a regulatory body, the RGA positions itself as an intermediary between the various operators and public authorities, with the purpose of promoting integrity and social responsibility in the gaming industry.
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**EGBA: European Gaming and Betting Association:** [www.egba.eu](http://www.egba.eu) : The EGBA is a non-profit association formed by Europe's seven principal online gaming operators: PartyGaming, bwin, Unibet, bet-at-home.com, Expekt, Interwetten and Digibet.

The EGBA promotes fair competition for licensed EU operators and the possibility for consumers throughout Europe to access regulated, secured and safe gaming and betting services. We are committed to and apply an exemplary level of corporate and social responsibility. The EGBA strives for a regulatory regime that is proportionate, non-discriminatory, fully adapted to the Internet and the cross-border nature of our sector<sup>3</sup>.

<sup>2</sup> See "Online gaming and betting: EU private industry leads first ever benchmark study on responsible gaming practices"  
<http://www.egba.eu/en/studies/benchmarkstudy>

<sup>3</sup> <http://www.egba.eu/en/press/348>





## OUR VIEW ON A MODERN EUROPEAN GAMING MARKET AND NATION RE-REGULATION

In the last 10 years, the arrival of new technology and market dynamics transformed the national and European entertainment market in an unparalleled manner. New technologies have given consumers more choice and freedom to find an offer meeting their demands. As such, this is not more dangerous or problematic. However, addressing new challenges and risks associated with e-commerce, e.g., the protection of minors on the Internet, is a shared responsibility of us all, including service providers, politicians, adults and regulators.

New technologies as well provide new opportunities to increase protection and security. The mere fact that responsible gaming is high on the agenda of all stakeholders, including monopolies and politicians, finds its root cause in the arrival of technology-driven operators such as Unibet.

For these reasons, Unibet holds that it is part of the solution and that its operational and regulatory experience may give added value for any re-regulatory process.

In line with the 6 points below, Unibet advocates a white list recognition mechanism based on cooperation between Member States<sup>4</sup>, conditional recognition of technical standards and the equivalent or minimum consumer protection standards in the European Union.

1. **Free movement**, e.g., article 56, and competition: One of the fundamental principles of EU prosperity over the last 60 years;
2. **Non-discriminating national regulation**: A member state may, at its own discretion, prohibit gaming, or restrict marketing of gaming. However, such measures must be non-discriminating and proportionate.
3. **Fight problem gaming based on science**: The key players of the European private gaming industry put responsible gaming as a top priority on their agendas;
4. **State should regulate, not operate**: No evidence that state-controlled operators are better than private operators in handling and mitigating undesired effects of gaming. A competitive market has a regulatory and controlling effect between market operations. As in telecoms, we wish a highly regulated EU market with appropriate consumer protection mechanisms. An appropriate EU framework is the only way to guarantee consumer choice.
5. **Fair and equal licensing conditions**:
  - Betting tax up to 10% of gross winnings to the country of consumption
  - Likely to be income neutral to stakeholders
  - Same opportunities for state and private
  - Compliance secured by independent authority
6. **Unibet at the forefront and in cooperation with all stakeholders**: it is not just about gaming, but also individual freedoms. Consumer choice and technology will make legal restrictions unsustainable and ineffective.

In this view, it is important to understand that a too restrictive approach will only work counter productive as i) it will not allow a product offer that meets consumer demand, and/or ii) too high

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<sup>4</sup> This cooperation could be established and further elaborated within the context of existing cooperation mechanism between Member States. European gaming regulators, for instance, are meet on a regular basis within GREF Gaming Regulators European Forum (GREF) [www.gref.net](http://www.gref.net) Also see the existing frameworks of cooperation between Member States, notably in relation to taxation and customs Union and electronic commerce.



taxes will lower pay-back ratios and increase the price for the end-consumer. In consequence, consumers will continue to buy services outside a Danish or EU regulated environment, i) leaving the Danish consumers without any redress or minimum level of protection, nor will it provide for a mechanism for the Danish state to yield a certain tax.

## THE DANISH PROPOSAL

Unibet welcomes the initiative to re-regulate the Danish gaming market. Unibet finds the acts presented in public hearing in connection with the reregulation well written and to an extent well balanced.

We would, however, hold that any regulatory approach must respond to market reality and ensure that the member state concerned continues to meet its obligations under overriding EU law. Whilst we welcome the Danish proposal, we underline that it cannot prejudice vested EU rights or impose unjustified restrictions to market access under EU law. For this reason, Unibet would like to bring to the attention of the Danish Ministry of Taxation the following points:

- Restrictions on the product scope will not meet customer demand
- Cooperation between Member States and requirements already met
- Blackout
- ISP and PSP blocking
- Marketing ban denies mutual opportunities

Further, Unibet assumes that the effect of the act might have some negative financial consequences for the Danish Government.

### 1. LIMITATION OF PRODUCT SCOPE

It is Unibet's understanding that material product restrictions will be maintained in relation to the following three (3) products: Bingo, Horse and dog racing bets.

As indicated before, Unibet holds that it is vital that any regulatory framework meets consumer choice and consumer demand. If not, consumers will find "their" product outside the Danish regulatory framework.

#### 1.1 Bingo

Unibet would like to bring attention to the fact that online bingo is a new type of game that, even though it bears some resemblance to the traditional form of bingo, it also differs in many ways. As a consequence, it should not be included in the category "Lottery" in section 4 (2) of the Gaming Act and thus kept as a monopoly, but should be included in the category "Combination Games" in section 4 (3) and part of the competitive market per 1 January 2011. The reason for this is that online bingo is driven by the community element: Players chat and interact during and between the bingo drawings.

While traditional bingo has the character of a numbers game in the sense that the numbers are drawn and displayed to the individual player, the main attraction of the online game is that you play together with other players and interact during the game.



Further it is, as in online poker, the liquidity (number of players playing at the same time) that mainly drives the game instead of as in traditional bingo the individual chance of winning a prize. Thus, in this respect, Bingo is more similar to online poker which will be part of the competitive market.

Unibet recognises that defining different categories of games is purposeful and difficult: e.g. it can be argued that Roulette is a numbers game and should be defined as a "Lottery", but as it historically has been more associated with casino games, it is reasonable that it instead should belong to "Combination games".

Based on the arguments above, it is Unibet's opinion that the same applies to online bingo: the players perceive and play this game as a modern community style game like online poker and it should therefore be regulated as a "combination game" together with Poker.

Unibet appreciates that it may be necessary to narrowly define online bingo in order to make sure that including the game in the "combination game" category will not lead to the undesired acceptance of other types of numbers games that do not have the special character of online bingo.

Finally, please be aware that, in Unibet's opinion, defining online bingo as a "lottery" and thus keeping Bingo as a monopoly held by Danske Spil might have the effect that online bingo will be offered for free and the operator will generate its income from side activities connected to the site. 100 % free online bingo games would not be covered by the Gaming Act and would thus lead to the demise of Danske Spil's online bingo business, contrary to the objective of the provision. In this context the e-commerce Directive (2000/31) applies to free online Bingo games.

## 1.2 HORSE/DOG RACING ISSUES

Keeping Horse and dog racing under monopoly is a restriction on the freedom of establishment (article 49) and the freedom to provide services (article 56).

Restrictions on the freedom of establishment and the freedom to provide services can only be accepted if the four criteria from former ECJ practice are met<sup>5</sup>:

1. A restriction must be applied in a non-discriminatory manner;
2. it must be justified by imperative requirements in the general interest;
3. it must be suitable for securing the attainment of the objective which they pursue; and
4. it must not go beyond what is necessary in order to attain it.

(The "Gebhard criterion")

In the Preparatory Work for the Gaming Act it is stated that the reason horse and dog racing is kept under monopoly is that Denmark thereby is trying to protect part of its cultural heritage. Unibet finds that this is an honourable cause. However, it seems peculiar that when the draft which was notified to the Commission was notified, the reasoning was purely economic.

Although protection of cultural heritage is honourable in any society, Unibet is of the opinion that the manner in which this goal is pursued will clearly not have the described effect and, in addition, is disproportionate (criteria 3 and 4) since the goal could be obtained with measures which are proportionate, e.g. subsidisation or the overall macro-economic effects of a re-regulated market.

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<sup>5</sup> C-55/94, Gebhard par. 37, also see C-243/01 Gambelli par 65

2. COOPERATION BETWEEN MEMBER STATES AND RECOGNITION OF REQUIREMENTS ALREADY IN PLACE

Considering the cross-border nature of new technologies and the principle of subsidiarity, Unibet holds that a pure national regulatory approach will not be successful. Awaiting a possible (gradual) EU initiative in this sector, Unibet advocates cooperation between Member States, based on exchange of information and assistance and recognition of well-defined requirements.

In this context, Unibet refers to the possibility of signing bilateral cooperation agreements between EU regulatory jurisdictions and the recently launched CEN workshop<sup>6</sup>. The main objective of the workshop is to achieve an agreement on preserving consumer and stakeholder confidence in the industry and ensure that the remote gaming industry operates responsibly in accordance with best practices and high standards.

Unibet recognises Denmark's wish to implement a Danish licensing system. Unibet further appreciates that Denmark can impose restrictions which are more restrictive than those imposed in other jurisdictions. However, Denmark cannot per se reject existing licensing regimes from other EU/EAA countries.

On the contrary, if Denmark were to impose parallel restrictions, there is a continued obligation to do so on an ad hoc basis and always provided it can prove with statistical evidence that the restriction concerned is compliant with overriding EU law. (Gebhard criterion<sup>7</sup>). If licences from other EU/EAA member states are disregarded, notwithstanding the fact that the EU/EEA licences may give the same insurance that a Danish licence would give (e.g. UK, Malta), it will in Unibet's opinion be a violation of article 49 (former article 43) and article 56 (former article 49.).

As a consequence, operators holding such EU/EEA licence should not be required to obtain a Danish licence as a prerequisite for offering gaming on the Danish market, if the licence they hold ensures the same things as the Danish licence. This is further supported by the 2007 EFTA Ladbroke's decision<sup>7</sup> and would deprive EU established citizens of vested EU rights to purchase, promote and provide services across borders.

Disregardful of the above mentioned, any control system which is implemented must however, of course, respect the "Gebhard criterion".

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<sup>6</sup> <http://www.cen.eu/cen/pages/default.aspx>

<sup>7</sup> EFTA case E-3/06 Ladbroke's par. 85-88



### 3. THE BLACK OUT PERIOD

Part 15 (section 78, cf. section 76 (2)) of the Gaming Act introduces ISP blocking and financial transaction blocking provisions into the existing Danish Gaming legislation per 1 July 2010 and it will thus come into effect before the reregulation of the Danish Gaming Market 1 January 2011.

Part 15 does not apply to Dansk Spil. As a consequence, Danske Spil will be given an unfair competitive advantage in the period between 1 July 2010 and 1 January 2011 ("the black period"). Leaving any other legal remedies aside, Unibet holds that such preferential treatment of the historical market monopoly is discriminatory and in breach of EU and national competition law.

Further, "the black out period" will have the effect that serious Gaming Providers applying for a Danish licence will be forced out of the Danish market in fear of the Gaming Authority pursuing a case against them, which could lead to a judgment against the provider. Such a judgment or case could seriously impede the serious Gaming Providers chances of obtaining a licence (please see section 33). This will mean that Gaming Providers who have no intention of applying for a Danish licence will be able to get a secure footing on the Danish market in "the black period"

Finally, it is stressed that section 78 has not been notified to the Commission in accordance with Directive 98/48. The effect of this is that the section cannot be maintained, nor enforced.

Unibet appreciates the Danish Government's concerns regarding the gaming market up until the reregulation and thus supports some kind of transitional regime. However, it is Unibet's opinion that such a transitional regime must be applied equally to all EEA licensed operators.

### 4. FINANCIAL TRANSACTION BLOCKING AND ISP BLOCKING

It is Unibet's position that ISP blocking is an unsuitable measure due to the fact that it is easily circumvented as domain holders can easily place the content of a relevant server on another ISP with close similarity to the blocked site. Market reality in Italy reveals that ISP blocking hardly impacts customer behaviour and that the best manner to "lock" national customers in a national license scheme is to provide for a product rich regulatory framework with competitive gaming taxes<sup>8</sup>.

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<sup>8</sup> Gaming taxes have a direct effect on the pay-back ratio (PBR) and the price a customer will need to pay for its consumption behaviour. A PBR of 70% allows payment of higher gaming taxes, but a customer will have to deposit approximately 400% more to purchase the same quantity of services compared to a PBR. With PBR 93% one can statistically place 68 bets, whereas – keeping all conditions equal – a PBR of 70% only allows 14 bets.



ISP blocking generally entails disproportional costs as it is expensive to establish, monitor and control an ISP blocking system which rarely fulfils the intended purpose.

Further, ISP blocking and financial transaction blocking restrict the freedom of establishment (article 49) and the free movement of services (article 56).

For ISP blocking and financial transaction blocking to be compliant with EU law, it must fulfil the "Gebhard criterion". In Unibet's opinion, it is especially criteria 3 and 4 which are problematic since ISP blocking and financial transaction blocking are not suitable for securing the attainment of the objective which they pursue and since they go beyond what is necessary to attain this objective: the objective being the prevention of Danish transfers to operators without a licence.

Accordingly, the Commission has issued a detailed opinion to the France a Letter of Formal Notice against Germany in relation to ISP and PSP blocking. The EFTA Surveillance Authority has in April 2008 criticised the Norwegian Government's proposals to introduce financial transaction blocking legislation. Further, the Commission has raised its concerns to the Danish Government in connection with the hearing procedure in 2009.

It is Unibet's opinion that ISP blocking and financial transaction blocking are completely incompatible with the European dimension and the cross-border nature of this leading Internet sector; and in Unibet's opinion might be in violation of the SEPA (Single European Payments Area, EC Directive 2007/64).

Customers are always looking for the best deal and thus there is a real risk that the implementation of ISP blocking and financial transaction blocking will drive the gaming industry underground as the players will seek the best deal possible regardless of a licence in the relevant country.

The Danish Government can look towards the USA: US customers have to a wide extent been driven to unregulated operators not necessarily having an adequate level of consumer protection and measures to prevent gaming addiction as a consequence of the UIEGA legislation.

Moreover, if financial transactions cannot be processed by well regulated EU or Danish financial institutions, the market will provide for less transparent or less regulated manners to process money. If financial streams are forced outside a EU regulated environment for financial services, Unibet holds that this will create a material adverse effect on the fight against organised crime and money laundering.

Unibet is of the opinion that ISP blocking is in violation of Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms as said Article explicitly states that the freedom of expression includes the right to receive and impart information and ideas without interference by public authority and regardless of frontiers. For the same reason, we refer to Article 11 of the Charter of Fundamental Rights of the European Union.





## 5. THE MARKETING BAN

The marketing ban is, presumably, designed to prevent operators without a Danish licence to market themselves and their products in Denmark.

As stated above it is the opinion of Unibet that operators with valid licences issued within the EU/EEA should be able to offer their services on the Danish market without a Danish licence.

In obvious connection with this, said operators must be able to market their services free of any restrictions – a right that includes that media are entitled to bring such marketing without any risk of penalty.

To the extent valid licences issued within the EU/EEA are applicable in Denmark, a restriction to the fundamental principle of freedom of movement of services is subject to the Gebhard criterion listed above. For further information, we refer to the comments above.

Finally, we would also stress that a marketing effect may have an adverse effect on the sports and other society stakeholders, notably media and technology. The relationship between private operators and sports will strengthen even more over time, creating more positive effects for the sports community. Whilst the sports sector has grown outside national boundaries, establishing an increasing number of pan-European or international competitions, the regulatory framework has not yet evolved in the same direction. Ever since its conception by sports fanatics, Unibet established a strong relationship with the world of sports, resulting, for instance, in sponsorship agreements with football clubs, football federations, tennis, ice hockey, soft ball, grass root sports and cycling.

By the same token, Unibet believes that it is at the forefront of e-commerce in Europe. Its business processes in terms of KYC and fight against fraud are not only an example for e-commerce in general, it creates a positive spill-over effect for an underlying service economy. Innovation leads to new opportunities and should be embraced.

Europe and Denmark, wish to be at the forefront of a global knowledge and service economy, in which technology and innovation are key factors. Early adaptors have always prospered and created welfare for society at large. It is only by embracing the opportunities that come with innovation, being early adaptors that Denmark will succeed

A good case study thereof is live streaming of sports events and the possibility that our customers have to watch them as part of their overall online entertainment, this in combination with betting. Innovation and technology are converging sports events and bookmakers to one online space, accessible across the globe. It also demonstrates that organizers of sports events can establish new revenue streams by carving out IPTV/live stream audiovisual rights from the more traditional TV rights sold to traditional TV broadcasters. We do not dispute that appropriate licence fees should be paid for those rights.



The potential market for IPTV/live streaming rights is enormous and demonstrates that financial synergies can be established between all stakeholders based on an open and constructive approach.

6. INVITATION TO A MEETING IN LONDON

Unibet would like to take this opportunity to invite the Danish Gaming Authority to a meeting in London at Unibet's offices.

Unibet has extensive experience in relation to assisting governments in relation to reregulation of gaming and will gladly share experiences with the Danish Gaming Authority.

It would also be an opportunity to foster mutual understanding of requirements, including requirements enshrined in the 2005 Gaming Act or the Remote Gaming Regulations 2004.

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If you have any queries in relation to the subject matter, please feel free to contact the undersigned.

A translation of the present document can be made upon your first request

Sincerely yours,

A handwritten signature in black ink, appearing to read "Petter Nylander".

Petter Nylander  
CEO Unibet Group Plc.

[petter.Nylander@unibet.com](mailto:petter.Nylander@unibet.com)