

# CLIENT ALERT

## Contracts & E-Commerce

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*EU countries can restrict online gambling to a single publicly controlled operator if their aim is to combat fraud and protect the consumer from addiction, Europe's highest court said on Thursday 3 June 2010, dealing a blow to the multi-billion euro online betting industry seeking to break domestic monopolies.*

The European Union Court of Justice (ECJ) issued rulings on two separate challenges involving online gambling in the Netherlands.

The first ruling concerns proceedings opposing Ladbrokes to De Lotto. De Lotto is a Dutch non-profit-making foundation holding a license for the organization of sports-related prize competitions, the lottery and number games in The Netherlands. It is also the exclusive operator allowed to offer games of chance via the internet to consumers on the Dutch territory.

De Lotto had asked a Dutch court to stop residents from using British bookmaker Ladbrokes' online gambling operation as it was not licensed in the Netherlands. Ladbrokes appealed to the Dutch Supreme Court after the lower and appellate courts backed De Lotto. In turn, the Dutch Supreme Court asked the ECJ in 2008 to rule whether the Dutch licensing system was compatible with EU law allowing for the free movement of goods and services across the 27-country European Union.

The ECJ reiterated its previous "Santa Casa" case-law and ruled that, in light of the specific features associated with the provision of games of chance via the internet, the restriction to a single online operator may be regarded as justified by the objective of combating fraud and crime. In addition, the court now went one step further and decided that a national policy of controlled expansion of the exclusively licensed games of chance, and even to a certain extent their advertising, could be compatible with the objective of protecting consumers from gambling addiction, provided that the scale of unlawful activity is significant and the measures adopted are aimed at channeling consumers' propensity to gamble into activities that are lawful. It cannot be stressed enough, however, that the court did remind that everything depends on the specific circumstances and that it is for the national courts to determine whether their national legislation actually serves the objectives which might justify it and whether the restrictions it imposes do not appear disproportionate in light of those objectives.

In the second case before the court, Betfair, the world's largest online gaming exchange, took its case to a Dutch court after Dutch authorities refused to grant it a license similar to the ones given to two other Dutch companies. The court subsequently sought guidance from the ECJ, which again pointed out the discretionary power of Member States in this area : "The grant to such an operator of exclusive rights to operate games of chance, or the renewal of such rights, without any competitive

tendering procedure would not appear to be disproportionate in the light of the objectives pursued by the Netherlands legislation,".

The European Gaming & Betting Association (EGBA), a lobbying group, said the judicial process could not resolve Internet issues and urged the European Commission to take action on a pan-European level. "It is for the European legislator to ensure that this IT-based medium which allows for the highest security standards warrants consistent customer protection and fraud control throughout the EU," EGBA secretary-general Sigrid Ligne said. A host of online gambling companies have taken several European countries to court in a bid to break into lucrative markets but have found it a tough battle. Consultancy H2 Gambling Capital estimates the European interactive market could be worth as much as 12.6 billion euros (\$15.50 billion) by 2012, up from 8.3 billion euros last year. (\$1=.8131 Euro).

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