

October 22, 2003; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on October 29, 2003; and the deadline for filing posthearing briefs and written statements is November 5, 2003.

For further information concerning this investigation see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

**Authority:** This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: September 22, 2003.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 03-24337 Filed 9-25-03; 8:45 am]

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## DEPARTMENT OF JUSTICE

### Antitrust Division

#### **United States v. National Council on Problem Gambling, Inc., Civil Action No. 1:03CV01278; Public Comments and Plaintiff's Response**

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) and (d), the United States hereby publishes below the written comments on the proposed Final Judgment in *United States of America v. National Council on Problem Gambling, Inc.*, Civil Action No. 1:03CV01278 filed in the United States District Court for the District of Columbia, together with the United States' response to the comments. Copies of the comments and the United States' response are available for inspection at the United States Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 200, Washington, DC 20530, and at the Office of the Clerk for the United States District Court for the District of Columbia, E. Barrett Prettyman Building, 333 Constitution Ave. NW., Washington, DC 20001.

**J. Robert Kramer,**

*Director of Operations, Antitrust Division.*

#### **Response to Public Comments**

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h) ("APPA" or "Tunney Act"), the United States hereby responds to the public comments received regarding the Proposed Final Judgment in this case.

#### **I. Background**

On June 13, 2003, the United States filed a Complaint alleging that the National Council on Problem Gambling, Inc. ("NCPG") had orchestrated an unlawful territorial allocation of problem gambling products and services along state lines in violation of section 1 of the Sherman Act, 15 U.S.C. 1. Simultaneously with the filing of the Complaint, the United States filed a Proposed Final Judgment. A Competitive Impact Statement ("CIS") was also filed with the Court at that time, and published in the **Federal Register**, along with the Proposed Final Judgment, on June 26, 2003 (*see* 68 FR 38093). Pursuant to 15 U.S.C. 16(c), a summary of the terms of the Proposed Final Judgment and CIS was published in *The Washington Post*, a newspaper of general circulation in the District of Columbia, during the period of June 24 through 30, 2003.

Under the consent order, NCPG is prohibited from directly or indirectly initiating, adopting, or pursuing any agreement, program, or policy that has the purpose or effect of prohibiting or restraining any Problem Gambling Service Provider ("PGSP") from: (1) Selling problem gambling services in any state or territory or to any customer; or (2) submitting competitive bids in any state or territory or to any customer. The NCPG is also prohibited from directly or indirectly adopting, disseminating, publishing, seeking adherence to or facilitating any agreement, code of ethics, rule, bylaw, resolution, policy, guideline, standard, certification, or statement made or ratified by an official that has the purpose or effect of prohibiting or restraining any PGSP from engaging in any of the above practices, or that states or implies that any of these practices are, in themselves, unethical, unprofessional, or contrary to the policy of the NCPG.

The consent order further provides that the NCPG is prohibited from adopting or enforcing any standard or policy that has the purpose or effect of: (1) Requiring that any PGSP obtain permission from, inform, or otherwise consult with another PGSP before selling problem gambling services or submitting bids for the provision of problem gambling services in any state or territory or to any customer; or (2) requiring that any PGSP contract with, provide a fee or a portion of revenues to, or otherwise remunerate any other PGSP as a result of selling problem gambling services in any state or territory or to any customer. Finally, the NCPG is prohibited from adopting or

enforcing any standard or policy or taking any action that has the purpose or effect of: (1) Sanctioning, penalizing or otherwise retaliating against any PGSP for competing with any other PGSP; or (2) creating or facilitating an agreement not to compete between two or more PGSPs.

The sixty-day period for public comments expired on August 29, 2003. As of today, the United States has received written comments from: (1) Joseph E. Finnerty, James A. Gentry, Fred Gottheil, and John Warren Kindt of the Gambling Research Group ("Gambling Research Group"); (2) Kathleen M. Scanlan, Executive Director of the Massachusetts Council on Compulsive Gambling, Ind., ("Massachusetts Council"); and (3) Richard A. Johnson, CEO, and Glen Gorelick, Director, of Problemgambling.com, Responsiblegaming.com, and Safegamingsystem.com ("Problemgambling.com"). The United States has carefully considered the views expressed in these comments, but nothing in the comments has altered the United States' conclusion that the Proposed Final Judgment is in the public interest. Pursuant to Section 16(d) of the Tunney Act, the United States is now filing with this Court its response to such comments. Once these comments and this response are published in the **Federal Register**, the United States will have fully complied with the Tunney Act and will file a motion for entry of the Proposed Final Judgment.

#### **II. Response to Public Comments**

##### *A. Gambling Research Group's Comment*

The Gambling Research Group asserts that "a majority of experts would probably argue that this entire market [for services to pathological and problem gamblers] is currently dominated by problem gambling service providers (PGSPs) who are involved in direct or indirect vertical relationships [with Gambling Related Organizations ("GROs")] resulting in those PGSPs being dominated or substantially influenced by various GROs." The comment asserts that control of the PGSPs by GROs may result in less effective services to pathological and problem gamblers because GROs benefit financially from the excessive wagering of these troubled gamblers. Thus, the Gambling Research Group recommends that the NCPG be required to reveal all donations and influences impacting upon its financial viability and to divest itself from all direct and indirect

associations and vertical and horizontal influences from GROs. (A copy of the Gambling Research Group's comment is attached as Exhibit A.)

The Proposed Final Judgment addresses the violation alleged in the Complaint—an unlawful territorial allocation of problem gambling products and services along state lines in violation of Section One of the Sherman Act. While the Gambling Research Group's comment raises interesting issues, it does not address the violation alleged in the Complaint. Nothing in the Gambling Research Group's comment changes the view of the United States that the Proposed Final Judgment is in the public interest. In making its determination whether the Proposed Final Judgment is "in the public interest," the "court is without authority to 'reach beyond the complaint to evaluate claims that the government did not make and to inquire as to why they were not made.'" *United States v. Microsoft Corp.*, 231 F. Supp. 2d 144, 154 (D.D.C. 2002) (quoting *United States v. Microsoft Corp.*, 56 F. 3d 1448, 1459 (D.D.C. 1995)).

#### B. Massachusetts Council's Comment

The Massachusetts Council's comment does not state whether it supports or opposes entry of the Proposed Final Judgment. Rather, the comment cites various instances in which the Massachusetts Council—as a member of NCPG—and others, spoke out against or disagreed with NCPG's policy of territorial allocation of problem gambling products and services along state lines. (A copy of the Massachusetts Council's comment is attached as Exhibit B.) The NCPG's policy of territorial allocation is the issue squarely addressed by the Complaint and the Proposed Final Judgment. Given the Massachusetts Council's stated disagreement with the NCPG's policy of territorial allocation, the United States views this comment as one in support of the entry of the Proposed Final Judgment.

#### C. Problemgambling.com's Comment

Two executives of Problemgambling.com stated that they support the Proposed Final Judgment and it is in the public interest. (A copy of Problemgambling.com's comment is attached as Exhibit C.)

### III. Conclusion

After careful consideration of these public comments, the United States has concluded that entry of the Proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint, and

is therefore in the public interest. Pursuant to section 16(d) of the APPA, the United States is submitting these public comments and this response to the **Federal Register** for publication. After these comments and this response are published in the **Federal Register**, the United States will move this Court to enter the Proposed Final Judgment.

Dated:

Washington, D.C.

Respectfully submitted,

/s/

Rosemary Simota Thompson,  
IL Bar #6204990, United States Department  
of Justice, Antitrust Division, 209 South  
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Rosemary.Thompson@usdoj.gov.

#### Certificate of Service

I hereby certify that I served a copy of the foregoing Response to Public Comments via First Class United States Mail, this \_\_ day of \_\_, 2003, on:

Sanford M. Saunders, Jr., Esq., Greenberg  
Traurig, LP, 800 Connecticut Avenue, NW.,  
Suite 500, Washington, DC 20006.

/s/

Rosemary Simota Thompson,  
Attorney, Chicago Field Office, U.S.  
Department of Justice, Antitrust Division, 209  
South LaSalle Street, Suite 600, Chicago,  
Illinois 60604, (312) 353-7530 (telephone).

#### EXHIBIT A

Gambling Research Group  
P.O. Box 70  
Savoy, IL 61874

August 21, 2003

Marvin N. Price, Jr., Chief  
Field Office  
Chicago U.S. Department of Justice, Antitrust  
Division  
209 S. LaSalle St., Suite 600  
Chicago, IL 60604

RE: *U.S. v. Nat'l Coun. Problem Gambling, Inc.*

Dear Mr. Price: This comment is made pursuant to 68 *Fed. Reg.* 38090-98 (June 26, 2003). If the gambling industry, its affiliates, associates, or related service industries (hereinafter gambling related organizations: GROs) can control, dominate, or substantially influence the expertise and policies at the only national organization (such as the National Council on Problem Gambling: NCPG) or cluster of organizations dealing with pathological and problem gambling (Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders*, Sec. 312.31 "Pathological Gambling"), the GROs can control, dominate, or substantially influence both horizontal and vertical relationships regarding the expertise and policies relating to nomenclature, terminology, standards, markets, and even market shares. For example, they have ostensibly supported the introduction of new terms, such as "disordered gambling" that have had the effect of obfuscating issues and market segments.

Two prime relevant markets consist of the provision of services to the pathological (*i.e.*, compulsive) gambler market segment and the problem gambler market segment. (These market segments are delimited in the next paragraph). As indicated in 68 *Fed. Reg.* 38090 *et seq.*, a majority of experts would probably argue that this entire market is currently dominated by problem gambling service providers (PGSPs) who are involved in direct or indirect vertical relationships resulting in those PGSPs being dominated or substantially influenced by various GROs. The conflict of interest is that theoretically GROs would not want to have the most effective or efficient PGSP programs for pathological and problem gamblers since those gamblers constitute *crème* market segments. The analogy is to *United States v. Motor Vehicles Manufacturing Ass'n*, No. CV 69-75-JWC (D.C., Central Dist. Calif.), 1982 U.S. Dist. LEXIS 17850; Trade Cas. (CCH) P65, 175, Oct. 28, 1982 which resulted in a consent decree prohibiting major auto manufacturers from combining to research pollution control devices. The theory in *Motor Ass'n* is that they all have incentives to repress innovation in this area.

All of these determinations also impact on the identification of market segments and abilities to attract or market to those segments—if any GRO should desire to do so. For example, the *crème* market for gambling revenues apparently consists of the pathological (*i.e.*, compulsive) gambler market segment (approximately 1-2 percent of the general population) and the problem gambler market segment (approximately 3-5 percent of the general population). These two segments account for between 10-74 percent of the total dollars lost in all geographic gambling markets. (Lesieur, 1998). As indicated in the *Final Report of the 1999 National Gambling Impact Study Commission* (*e.g.*, page 4-4), these market segments are more concentrated near gambling venues. The percentages of these markets and their percentages of total dollars lost to the different types of gambling were first categorized during the 1996 annual meeting of the National Council on Problem Gambling (NCPG) and were subsequently published as a table in: Henry R. Lesieur, *Costs and Treatment of Pathological Gambling*, 556 *Annals Am. Acad. Pol. & Sci.* 153, 165 Table 1 (1998) (Table 1: "Percentage of Expenditures by Problem Gamblers for Selected Forms of Gambling by State or Province"). (See also Australian Productivity Commission 1999; Focal Research (1998); 1997/1998 *Nova Scotia lottery players survey*.)

Thus, if the GROs can control, dominate, or substantially influence the financial viability of the NCPG, the GROs almost necessarily control, dominate, or substantially influence the expertise and policies relating to nomenclature, terminology, standards, markets, and even market shares among segments of gamblers, as well as the problem gambling services providers (PGSPs) which service segments of those markets.

Accordingly, the NCPG should be required to reveal all donations and influences impacting upon the financial viability of the

NCPG for the last ten years and divest itself from all direct and indirect associations and vertical and horizontal influences from GROs both now and in the future.

In this regard, any direct or indirect interlocking relationships, both vertical and horizontal, between the NCPG and other organizations do not appear to be fully discovered, explored, or addressed. The NCPG and state PGSPs should be compelled to divest themselves of any such relationships from which GROs could obtain quasi-public or inside marketing advantage information.

Sincerely,

Joseph E. Finnerty  
James A. Gentry  
Fred Gottheil  
John Warren Kindt

### Massachusetts Council on Compulsive Gambling

August 11, 2003

Marvin N. Price, Jr., Chief  
Chicago Field Office  
U.S. Department of Justice  
Antitrust Division  
209 S. LaSalle St., Suite 600  
Chicago, Illinois 60604

Dear Mr. Price: In regard to the Civil Action No. 1-03CV01278, United States v. National Council on Problem Gambling, the Massachusetts Council on Compulsive Gambling is taking the opportunity to comment on the Complaint, proposed Final Judgment, Stipulation, and Competitive Impact Statement filed on June 13, 2003.

These documents refer to "the NCPG acting illegally to curtail competition by establishing territorial allocation." They also describe the state affiliates agreeing with the NCPG on these policies.

The Massachusetts Council on Compulsive Gambling would like to call to your attention that it consistently during the 1995-2001 period argued against territorial allocation, disagreed with proposed policies related to it, voted against these policies, and in August 2000 submitted a written refusal to sign a proposed affiliate agreement, in part, due to this issue.

Also, during that time period, the NCPG requested that the Director of the Harvard Medical School, Division on Addictions conduct a study designed to find facts and make recommendations regarding the issue. The Massachusetts Council on Compulsive Gambling participated by providing interviews and again spoke against territorial allocation. The final document provided to NACPG by Harvard Medical School recommended against territorial allocation of problem gambling services.

The documents also refer to a complaint of the Arizona Council against the Minnesota Council for a successful bid on a contract with the Arizona Lottery that resulted in a hearing for both parties to present their cases to a committee of the NCPG. The Massachusetts Council on Compulsive Gambling was selected to participate as a committee member. The committee was charged with presenting a finding and making recommendations to the NCPG. Again, the final report recommended against

territorial allocation of problem gambling services.

### EXHIBIT B

The Massachusetts Council on Compulsive Gambling brings this information to your attention in order to persuade you that state affiliates were not necessarily in agreement with NCPG policies related to territorial allocation of problem gambling services. The Massachusetts Council on Compulsive Gambling would like to go on record as having opposed these policies since they surfaced and having actively worked to eliminate them.

Thank you for your attention to this.

Sincerely,

Kathleen M. Scanlan  
Executive Director

### EXHIBIT C

Richard A. Johnson, CEO  
Problemgambling.com,  
Responsiblegambling.com,  
Safegamingsystem.com,  
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Las Vegas, Nevada 89135  
(702) 562-0232

Marvin N. Price, Jr.  
Chief, Chicago Field Office,  
Anti Trust Division,  
Department of Justice,  
209 S. LaSalle Street, Suite 600,  
Chicago, Illinois 60604  
August 1, 2003

### Re: Civil Action No. 1:03CV01278, United States of America vs The National Council on Problem Gambling, Inc., Comments on Proposed Judgment

Dear Mr. Price, We respectfully attach our comments dated July 24, 2003 to the proposed judgment dated June 13, 2003 in the aforesaid action.

Naturally if you have any questions, please feel free to call.

Sincerely,

Richard A. Johnson  
cc: Rosemary Simota Thompson

### Comments

Pursuant to the Notice dated June 26, 2003 given according to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in the United States of America v. National Council on Problem Gambling, Inc. and in which said notice requested public comment within (60) days of said notice, the following response is hereby submitted:

1. The proposed settlement appears to render fair and unhindered competition among those "persons" interested in promoting "problem gambling services" as defined in Section II (Definitions) of the Final Judgment dated June 13, 2003.

Moreover, the aforesaid document appears to be clear that "problem gambling service providers" are free to do business anywhere in the United States without interference from the National Council on Problem

Gambling, Inc. or any of its state affiliates, including but not limited to Arizona, California, Connecticut, Florida, Louisiana, Massachusetts, Minnesota, New York and Nevada. Said conduct appears to be set forth in section IV, entitled, *Prohibited Conduct* of the Final Judgment.

As such, the undersigned support the proposed final judgment between the United States of America and the National Council on Problem Gambling, Inc. and its state affiliates. The agreement appears to be in the best public interest. It promotes fair business practices and assures a competitive process. As a problem gambling service provider ("PGSP"), we feel that it opens the door to a more creative environment wherein the future development and application of responsible gaming and problem gambling products and services will be enhanced. As a result, any damage to our social system due to increased availability of gambling can be mitigated.

Richard A. Johnson,  
CEO, Problemgambling.com.,  
Responsiblegambling.com.,  
Safegamingsystem.com, 10443 Noontide  
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562-0232.

Glenn Gorelick,  
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0292.

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## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Internet Streaming Media Alliance, Inc.

Notice is hereby given that, on September 5, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Internet Streaming Media Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Analog Devices, Inc., Norwood, MA; AOL Time Warner, Inc., New York, NY; BitBand Technologies Ltd, Tel Aviv, Israel; Coding Technologies, Nuremberg, Germany; Content Guard, Bethesda, MD; Dolby Laboratories Inc., San Francisco, CA; Envivio, San Francisco, CA; France Telecom, Cesson Sevigne, France;