

WELCOME TO THE NEW “HOST” LICENCE

A rather less well publicised component of the Gambling Commission’s proposed new licensing fee structure announced ahead of the Christmas break was the introduction of new ‘game host’ operating licences for gambling software licensees. **David Clifton** of Clifton Davies Consultancy looks in detail at the new categories for *iGaming Business*.

Just four days before Christmas, the UK Government’s Department for Culture, Media & Sport delivered its present to the gambling industry in the form of its unseasonably titled *Proposals for Gambling Commission fees from April 2017 - consultation response*.

Given the title of the responses document, not surprisingly most commentators have focused on:

- the amendments to the original proposals for the Commission’s fees that had been set out within the joint consultation exercise that had been held by DCMS and the Gambling Commission between 8 July and 9 September 2016; and
- the negative reaction of the estimated 75 or so larger-sized non-remote operators who will be subjected to an increase in fee levels with effect from April 2017, notwithstanding the regulator’s view that replacing “number of premises” with gross gambling yield (“GGY”) as the basis for fee categories will “ensure that the Commission’s costs are recovered on a more proportionate basis in line with the volume of gambling conducted with those operators”.

However, offsetting the disappointment felt by those 75 or so, and arguably more in keeping with the spirit of Christmas, the Gambling Commission says that, with effect from April 2017:

- there will be fee reductions for around 1,900 operators; and
- fees will be held at their current levels for around 1,000 operators.

It maintains that the revised fees structure will:

- take account of the significant changes to the Commission’s costs, and income

following the implementation of the *Gambling (Licensing & Advertising) Act 2014* (“the 2014 Act”);

- reflect the efficiencies it claims to have achieved in its expenditure and reduce the overall fee burden across the industry by over 10%;
- ensure that its costs continue to be recovered on a proportionate basis from different types and sizes of operator; and
- address other issues identified in the current fees structure.

The details of the fee changes can be found in Appendix A to the DCMS responses document that is published on the Commission’s www.gamblingcommission.gov.uk website.

The “host” licence question

What has not attracted the same level of attention from gambling industry commentators is that part of the DCMS responses document that addresses the following question from last year’s joint consultation document: “Do you agree with the proposed introduction of a new ‘game host’ operating licence type for gambling software licensees that also provide facilities for gambling by making their games available directly to customers of another remote casino or bingo operator?”

The September 2015 discussion paper

The above question did not come out of the blue. On 1 September 2015, the Commission had published a fees discussion paper, in which it had posed the question “whether certain B2B software manufacturers that also operate casino games on behalf of another remote casino operator (and therefore require a remote casino licence themselves for providing those gaming facilities) should have their own licence type or fee category”.

I know from advising my own clients that this has been an area that has caused equal measures of consternation and confusion, particularly since the remote gambling software licensing obligations under the 2014 Act were unveiled. The Commission’s position was clearly set out at paragraph 5.1 of its *What is gambling Software?* Advice Note published in June 2014, in which it said:

“A gambling software licence only authorises the manufacture, supply, installation and adaptation of gambling software. It does not permit the provision of facilities for gambling and therefore any business that provides facilities for gambling (even if they hold a gambling software licence) will need a relevant remote operating licence: a casino, bingo, general betting, pool betting, betting intermediary or lottery licence. For example a business that holds a gambling software licence but also hosts a poker network or a games platform will also require a remote casino operating licence as it is responsible for the fairness of the gambling.”

“The Gambling Commission says that, with effect from April 2017, there will be fee reductions for around 1,900 operators and fees will be held at their current levels for around 1,000 operators”

The December 2015 responses document

The Commission made the point that, as matters presently stand, there is no difference between the fees payable to the Commission by a B2B and a B2C operator, both of which provide remote casino facilities, although in most instances the fee category to which the B2B operator may fall into tends to be lower than that for the B2C operator, depending on the commission or revenue share arrangements between the two.

By reference to responses to this aspect of the discussion paper, the Commission described variations in the B2B supply model including, in particular, the differentiation between (a) 'software as a product', whereby a B2C purchases the software from the B2B supplier and installs it directly onto their systems and (b) the "software as a service" distribution model whereby:

- the B2B supplier hosts its own game software on a server and makes those games available for use by customers of B2C operators; and
- the B2C operator retains responsibility for the bulk of requirements such as player registration and payment services, but the B2B retains control of the RNG during game play (thereby triggering the need for a remote casino licence).

It also picked up on a respondent's comment that B2Bs that provide white label, turnkey solutions or full platform services will have a more complicated business model that may warrant the need for the "full" remote casino operating licence.

The July 2016 joint consultation

This same focus on gaming, as opposed to other types of gambling, was maintained in the joint consultation that commenced in July 2016.

The joint consultation paper proposed the introduction of a new type of "game host" licence for B2B casino and bingo operators whose operating model involves the B2B manufacturing games and hosting those games for the registered customers of B2C operators (rather than supplying

its software products to the B2C), with the customers accessing the games via the B2C's website, albeit that it would remain essential in such circumstances that such B2B businesses should continue to hold a gambling software licence for the manufacture of gambling software.

The consultation proposed that such "host" licences would:

- be restricted by a condition that only permits the B2B to provide facilities for gaming in circumstances where it does not itself contract with any participant or customer; and
- attract lower fees than the current remote casino and bingo licences (which it described as being "more appropriate for the B2C model") because fewer of the Commission's Licence Conditions and Codes of Practice ("LCCP") would apply to them, consistent with the above proposed specific licence condition.

However, it was made clear that a "host" licence would not cover circumstances in which a B2B provides network facilities for peer-to-peer gaming, such as poker networks, as a result of which the B2B would

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need to continue to hold the existing casino operating licence. The explanation for this was that, whilst B2Bs do not contract directly with customers in those circumstances, they do make arrangements for participants to play against each other and have particular responsibility for monitoring collusion and cheating across the network.

The December 2016 responses document

In a significant departure from the proposals in the July 2016 joint consultation,

it has been announced in the responses document that the following new types of remote operating licence will be introduced:

- (a) game host (casino)
- (b) game host (bingo)
- (c) betting host (general betting (standard) real events); and
- (d) betting host (general betting (standard) virtual events).

Insofar as betting is concerned, it was accepted in the responses document that it would be consistent with the proposals for "game host" licences to be introduced for operators which provide facilities for betting to customers of a B2C operator but do not contract with any customers themselves, whether it is real event betting or betting on virtual events that takes place, given the synergies between virtual event betting and casino gaming (i.e. the use of RNG software).

A summary of all LCCP provisions that will apply to host licences is provided at Appendix G to the responses document, but specific conditions that will be imposed are that the licence:

- is held by the holder of a gambling software operating licence;

- only permits the licensee to provide facilities for gambling in circumstances in which it does not contract directly with any of the participants using those facilities; and
- does not authorise the licensee to provide facilities for peer-to-peer gaming networks.

A new general condition 3.1.3 will require hosts to make arrangements to share information with the B2C operator whose customers use the host's products, so that both the B2C and the host can discharge their obligations in respect of the prevention

of money laundering and problem gambling. Such a condition also recognises that there is no standard business model for hosts and some B2C operators depend on their game hosts for the provision of key information such as customer spend and play patterns.

The Commission's Remote Technical Standards, Testing Strategy and security audit requirements will apply to all host licences. The Commission states that it considers this to be important because a games manufacturer may host its games through several different B2C operators, and each will need to have confidence that the host has the appropriate security controls in place for those games. While the game host may not hold specific details of a customer, secure functions such as holding gambling transaction records, generating random numbers to determine game outcomes, and transmitting or processing customer balances from an individual game back to

the main account, will all rest primarily with the game host.

The Commission's fees for host licences will be calculated by reference to nine different scales of GGY ranging from:

- a £1,980 fee where GGY is less than £550,000 to a £42,978 fee where GGY is above £1 billion (in the case of casino, bingo and betting on virtual events hosts); and
- a £2,200 fee where GGY is less than £550,000 to a £19,333 fee where GGY is above £1 billion (in the case of betting on real events only hosts).

In terms of calculating the GGY for fees purposes, the Commission has said that where a game host receives a fixed payment from the B2C, that payment would be reflected as GGY. Where revenue share arrangements apply:

- it will require B2Cs to record the revenue of all products subject to such arrangements as revenue share;

- to prevent double-counting, each party (B2C and host) will have to record the amount that it actually receives from the transactions permitted by the licence; and
- in the case of a hosted game, the B2C should record whatever amount is left after payment to the B2B (whether that payment is a fixed sum or a percentage of revenue), and the host will, in turn, report the amount it receives from the B2C, so that 100% of GGY is recorded overall for the game.

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