GamblingCompliance

Published on *GamblingCompliance* (https://gamblingcompliance.com)

In Illinois, Market-Access Deals Offer No Access

5TH JUN 2019 | WRITTEN BY: JAMES KILSBY

Restrictions in Illinois’ sports-betting legislation mean none of the series of high-profile "market-access" deals struck between casino operators and leading online-betting brands will be applied in perhaps the largest U.S. market to open to date, with the likes of FanDuel, DraftKings and Fox Bet instead facing a battle for three online-only licenses costing $20m each.

Illinois casino operators Boyd Gaming, Eldorado Resorts and Caesars Entertainment have all inked so-called “market-access agreements” in recent months to allow Flutter Entertainment’s FanDuel, MGM/GVC, William Hill, The Stars Group and DraftKings to deploy online-betting skins under their licenses in multiple states.

The bill passed this weekend by the legislature in populous Illinois not only restricts local casinos and racetracks to a single skin, it also requires them to use either the same brand as their Illinois land-based properties or one directly owned by their parent company.

Leading operators have consistently highlighted pre-emptive market-access deals as a critical component of their strategies to expand in a U.S. sports-betting market that is rapidly evolving on a state-by-state basis.

But Illinois underlines the reality that the deals are only effective when states adopt laws and regulations accomodating them.

“That’s the obvious risk in all the market-access deals — you don’t know how future states will treat skins,” said Jeremy Kleiman, a partner at Saiber Law in New Jersey who counsels online gambling companies.

Illinois’ legislation does not appear to rule out William Hill or FanDuel supporting the sportsbook operations of Eldorado’s Grand Victoria or Boyd’s Par-a-Dice casinos, or even offering a branded retail sportsbook at those locations. Neither brand, however, could be used for mobile sports betting.

The market-access deals of The Stars Group/Fox Bet and MGM/GVC with the same companies require states to allow at least two or three online skins, respectively.

Neither could DraftKings deploy its brand in Illinois as a skin under the license of Caesars, the most recent of the series of high-profile multi-state partnerships that was announced in February.

Despite the risks inherent in entering into market-access agreements in advance of legislation passing, they are still probably the optimal strategy for operators to pursue, particularly when it comes to highly coveted markets like Illinois, said Gideon Bierer, managing partner at consulting firm Partis Solutions who has advised on several sports-betting partnerships in the U.S. market.

The alternative — waiting until a state's licensing framework is confirmed before striking a deal — involves running the risk that all available skins could already be accounted for by the time a law is passed.

Other market risks, such as tax rates or the level of competition as determined by the number of licenses or skins available, can be largely mitigated by structuring a deal to take account of different legislative outcomes, Bierer said.

"I think the odds are still heavily in favor of doing market-access deals and drafting around the areas of most risk," he said. "I think these types of deals are going to continue."

How Will Illinois' Online Licenses Be Awarded?

The skin restrictions of Illinois' Senate Bill 690 now leaves leading online brands contemplating alternative ways of entering a market that GamblingCompliance estimates will be worth at least $515m by 2024.

It is not inconceivable that an operator could pursue a branding deal with an Illinois casino or racetrack, although buying one outright might be a stretch, according to one industry analyst who requested anonymity.

The more obvious strategy is to wait and apply for one of the three online-only sports-betting licenses that will become available 18 months after casinos and tracks receive theirs.

It is not clear exactly how many applicants will step forward for the three licenses given the stiff $20m fee.

Still, the size of the Illinois market at least raises the prospect of demand outstripping supply, drawing attention to the criteria that will be used to determine the licensing process.

SB 690 offers scant detail, mandating the Illinois Gaming Board (IGB) to establish specific licensing requirements designed to "preserve the integrity and security of sports wagering … and to promote and maintain a competitive sports wagering market."

Similar processes in international jurisdictions have involved criteria such as the financial health of applicants, their depth of experience, quality of technology and commitment to responsible betting, among other things.

But regulators in Illinois will essentially be drawing on a blank canvas, with no obvious U.S. precedent for competitive bidding in the context of sports betting or online gambling, and traditional casino licensing processes tilted heavily toward capital commitments, site locations, community support and other criteria that are not exactly germane.

The Pennsylvania Gaming Control Board did invite open bidding last year on a limited number of online casino licenses, but resolved to select licensees by "blind random drawing" rather than a competitive scoring system.

The IGB has historically been conservative and may place emphasis on the regulatory risk associated with bidders, said Greg Gemignani of Dickinson Wright law firm in Las Vegas.

But the legislation also provides a lot of wiggle room, he noted.

"It gives the regulators a lot of discretion in that area," Gemignani said.

If nothing else, the somewhat schizophrenic nature of the Illinois bill — restrictive language on casino skins, yet open licensing for online wagering — underscores the increasingly diverse regulatory approaches to online sports betting in the U.S.

Pennsylvania, New York and Ohio have either restricted casinos to one skin or are considering legislation that would do so, while Oregon and the District of Columbia are preparing to launch mobile wagering exclusively through their lotteries.

On the other hand, Tennessee recently adopted a law creating a European-style regime to award an unlimited number of online betting licenses without any local partnership requirement.