

IG Taskforce

From: IG Taskforce <IGTaskforce@acma.gov.au>
Sent: Friday, 26 August 2022 2:56 PM
To: compliance@emoore.com; george.bergmann@emoore.com
Subject: Preliminary findings letter from ACMA [SEC=OFFICIAL]
Attachments: 2022-08-26 Preliminary findings letter to 978 Tech NV.pdf

Dear Mr Bergmann

Please find attach a preliminary findings letter from the Australian Communications and Media Authority.

Regards

Interactive Gambling Team

Australian Communications and Media Authority

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26 August 2022

Mr George F.J.M. Van Zinniq Bergmann
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Via Email: compliance@emoore.com; george.bergmann@emoore.com;

ACMA file reference: ACMA2022/353-7

Dear Mr Bergmann

Preliminary Finding – Contravention of the *Australian Interactive Gambling Act 2001*

The Australian Communications and Media Authority (ACMA) administers the Australian *Interactive Gambling Act 2001* (the IGA). We have investigated the 8Xbet service available at the website <https://www.8xbet5.com> and reached the preliminary finding that the service is provided in contravention of:

- > subsection 15(2A) of the IGA, as the service is a prohibited interactive gambling service with an Australian-customer link
- > subsection 15AA(3) of the IGA, as the service is an unlicensed regulated interactive gambling services with an Australian-customer link.

Why have you received this letter?

We are writing to you as eMoore N.V. is the Managing Director of 978 Tech N.V. which holds the licence issued by Antillephone N.V. for the 8Xbet service at <https://www.8xbet5.com>.

The purpose of this letter is to give you an opportunity to comment on the preliminary findings set out in this letter before we reach a final view and consider what enforcement action or disruption measures (if any) are appropriate in this case.

Prohibitions under the IGA

It is prohibited under the IGA to provide or advertise the following services to customers in Australia:

- > prohibited interactive gambling services—such as online casinos, online slot machines and online wagering services that accept in-play betting on sporting events
- > unlicensed regulated interactive gambling services—such as online wagering services provided without a licence issued by an Australian state or territory.

We have attached the key provisions of the IGA to this letter and further information is available on our website at: <https://www.acma.gov.au/interactivegambling>.

Providing a prohibited interactive gambling service to customers in Australia

We investigated whether the 8Xbet service is provided in contravention of subsection 15(2A) of the IGA. That is, whether the service is a prohibited interactive gambling service that is provided to customers in Australia.

'Prohibited interactive gambling service' is defined at section 5 of the IGA. We accessed the 8Xbet website and confirmed that the service met this definition because it offered casino-style games such as slots and table games, as well as in-play wagering on sporting events, in the course of carrying on a business, to customers using an internet carriage service.

We found that the service was provided to customers physically present in Australia (an 'Australian-customer link', as defined in section 8 of the IGA). During the investigation, a user physically present in Australia was able to register on the 8Xbet website using an Australian email address and a telephone number with the Australian country code +61.

Therefore, we have reached the preliminary view that the 8Xbet service is provided in contravention of subsection 15(2A) of the IGA.

Providing an unlicensed regulated interactive gambling service to customers in Australia

We also investigated whether the 8Xbet service is provided in contravention of subsection 15AA(3) of the IGA. That is, whether the service is an unlicensed regulated interactive gambling service that is provided to customers in Australia.

A regulated interactive gambling service is defined at section 8E of the IGA. We accessed the 8Xbet website and found that the service met this definition because it offered wagering on sporting events, in the course of carrying on a business, to customers using an internet carriage service.

We found that the service was provided to customers physically present in Australia (an 'Australian-customer link', as defined in section 8 of the IGA). As stated above, a user physically present in Australia was able to register using an Australian email address and a telephone number with the Australian country code +61.

These types of services can only be provided to customers in Australia if the service provider has a licence, allocated by an Australian state or territory, which authorises the provision of such services to Australian customers. None of the licensed providers appear to be a provider of the 8Xbet service.

Therefore, we have reached the preliminary view that the 8Xbet service is provided in contravention of subsection 15AA(3) of the IGA.

Defence to the contraventions of subsections 15(2A) and 15AA(3)

A person does not contravene subsections 15(2A) or 15AA(3) of the IGA if they did not know, or could not, with reasonable diligence, have ascertained, that the service was provided to customers in Australia. To consider the application of this defence, we would look at:

- > whether prospective customers of the 8Xbet service were informed that Australian law prohibits the provision of the service to customers who are physically present in Australia
- > whether customers were required to enter into contracts that were subject to an express condition that the customer was not to use the service if the customer was physically present in Australia
- > whether the provider of the 8Xbet service required customers to provide personal details and, if so, whether those details suggested that the customer was not physically present in Australia
- > whether the provider of the 8Xbet service has network data that indicates that customers were physically present outside Australia when the relevant customer account was opened or throughout the period when the service was provided to the customer
- > any other relevant matters.

You may wish to make submissions about whether any defence applies, having regard to the factors above.

Enforcement options

Under the IGA, the ACMA has a range of enforcement and disruption options available for such contraventions, including:

- > issuing a formal warning
- > issuing an infringement notice
- > applying to the Federal Court of Australia for an injunction or imposition of a civil penalty order (being up to AUD\$8.325 million per day for corporations)
- > notifying the Australian Federal Police, as there are similar criminal offence provisions relevant to the same conduct
- > notifying the relevant regulatory authorities that has licensed the provision of the 8Xbet service about the ACMA's finding
- > providing the Australian border protection agencies with the details of any or all principals/directors of entities involved in providing the 8Xbet service for inclusion on the Movement Alert List which may disrupt their future travel to Australia
- > requesting Internet Service Providers (ISPs) to block access to websites for the 8Xbet service in Australia
- > notifying relevant providers of internet filters of the URLs for the 8Xbet service for adding to their list.

Next steps

Please provide your response to the preliminary findings by **9 September 2022** to igtaskforce@acma.gov.au.

Your response should specify what actions will be taken to rectify the alleged contraventions of the IGA.

If you do not respond, the ACMA will finalise the matter without further reference to you. The ACMA will also publish details about this investigation when concluded, and any enforcement action, on its website and other relevant websites. This may include details about 8Xbet, its agents and or affiliates.

Please note that giving false or misleading information to the ACMA in the course of an investigation is a serious offence. This includes information that may be misleading due to omission.

You can contact the Interactive Gambling Team by return email if you have any queries, at igtaskforce@acma.gov.au.

Yours sincerely



Interactive Gambling Team

4 Definitions

designated interactive gambling service means:

- (a) a prohibited interactive gambling service; or
- (b) an unlicensed regulated interactive gambling service.

gambling service means:

- (a) a service for the placing, making, receiving or acceptance of bets; or
- (b) a service the sole or dominant purpose of which is to introduce individuals who wish to make or place bets to individuals who are willing to receive or accept those bets; or
- (c) a service for the conduct of a lottery; or
- (d) a service for the supply of lottery tickets; or
- (e) a service for the conduct of a game, where:
 - (i) the game is played for money or anything of value; and
 - (ii) the game is a game of chance or of mixed chance and skill; and
 - (iii) a customer of the service gives or agrees to give consideration to play or enter the game; or
- (f) a gambling service (within the ordinary meaning of that expression) that is not covered by any of the above paragraphs.

Unlicensed regulated interactive gambling service means a regulated interactive gambling service that is provided in contravention of subsection 15AA(3).

5 Prohibited interactive gambling services

(1) For the purposes of this Act, a **prohibited interactive gambling service** is a gambling service, where:

- (a) the service is provided in the course of carrying on a business; and
- (b) the service is provided to customers using any of the following:
 - (i) an internet carriage service;
 - (ii) any other listed carriage service;
 - (iii) a broadcasting service;
 - (iv) any other content service;
 - (v) a datacasting service

Note: This definition relates to the offence provisions and civil penalty provisions set out in section 15 and Part 7A.

(2) Subsection (1) has effect subject to subsection (3).

Excluded services

(3) For the purposes of this Act, none of the following services is a **prohibited interactive gambling service**:

- (a) a telephone betting service;
- (aa) an excluded wagering service (see section 8A);
- (ab) an excluded gaming service (see section 8B);
- (aba) a place-based betting service (see section 8BA);
- (ac) a service that has a designated broadcasting link (see section 8C);
- (ad) a service that has a designated datacasting link (see section 8C);
- (ae) an excluded lottery service (see section 8D);
- (b) a service to the extent to which it relates to the entering into of contracts that are financial products within the meaning of Chapter 7 of the *Corporations Act 2001*;
- (ba) a wholesale gambling service;
- (bb) a trade promotion gambling service (see section 8BB);
- (c) an exempt service (see section 10).

8 Australian-customer link

For the purposes of this Act, a gambling service has an Australian-customer link if, and only if, any or all of the customers of the service are physically present in Australia.

8E Regulated interactive gambling service

- (1) For the purposes of this Act, a **regulated interactive gambling service** is:
- (a) a telephone betting service (see section 8AA); or
 - (b) an excluded wagering service (see section 8A); or
 - (c) an excluded gaming service (see section 8B); or
 - (d) a place-based betting service (see section 8BA); or
 - (e) a service that has a designated broadcasting link (see section 8C); or
 - (f) a service that has a designated datacasting link (see section 8C); or
 - (g) an excluded lottery service (see section 8D); or
 - (h) an exempt service (see section 10);
- where:
- (i) the service is provided in the course of carrying on a business; and
 - (j) the service is provided to customers using any of the following:
 - (i) an internet carriage service;
 - (ii) any other listed carriage service;
 - (iii) a broadcasting service;
 - (iv) any other content service;
 - (v) a datacasting service; and
 - (k) in the case of an exempt service—a determination under subsection (2) is in force in relation to the service.
- (2) The Minister may, by legislative instrument, determine that each exempt service included in a specified class of exempt services is covered by paragraph (1)(k).
- (3) Subsection (1) has effect subject to subsection (4).
- (4) For the purposes of this Act, neither of the following services is a **regulated interactive gambling service**:
- (a) a wholesale gambling service;
 - (b) a trade promotion gambling service (see section 8BB).

15 Prohibited interactive gambling services not to be provided to customers in Australia

- (2A) A person must not provide a prohibited interactive gambling service that has an Australian-customer link (see section 8).

Civil penalty: 7,500 penalty units.

- (3) Subsections (1) and (2A) do not apply if the person:
- (a) did not know; and
 - (b) could not, with reasonable diligence, have ascertained;
- that the service had an Australian-customer link.

Note: In the case of proceedings for an offence against subsection (1), the defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).