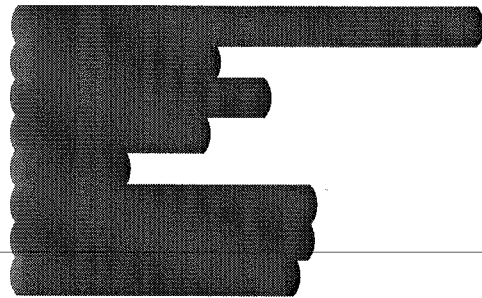


EUROPEAN COMMISSION

Brussels, 19.12.2012
SG-Greffe (2012) D/21111
C(2012) 9914 final

Stanleybet Malta Ltd
Stanleybet International Betting Ltd



Subject: Case COMP No 39785 - Stanleybet Group/OPAP
Commission Decision rejecting the complaint
(Please cite this reference in all correspondence)

Dear Mr [REDACTED]

- (1) Thank you for your letter of 29 February 2012, in which you submitted observations on the Commission's preliminary assessment of your complaint against the Greek Organization of Football Prognostics ("OPAP") and the Hellenic Republic.
- (2) Your letter of 29 February 2012, however, did not lead to a different assessment of the complaint. The Commission accordingly rejects your complaint for the reasons set out below.

1. THE COMPLAINT

- (3) By your letters of 10 March 2010 and 11 March 2011 you requested the Commission to launch an investigation in the betting and gambling sector in Greece.
- (4) In your letter of 10 March 2010 you alleged that the provisions of the agency agreements between OPAP and its sales agents in Greece infringe Articles 101 and 102 TFEU. In addition, you argued that OPAP would have a statutory monopoly in breach of Articles 102 and 106 TFEU.

- (5) In your supplementary letter of 11 March 2011 you referred to “certain recent judicial and legislative developments” in Greece which, in your view, strengthen the conclusion that OPAP infringes Articles 102 and 106 TFEU.
- (6) On 11 January 2012 you sent us a letter of formal notice pursuant to Article 265 TFEU requesting the Commission to take a decision in respect of your complaint of 10 March 2010.
- (7) By letter of 2 February 2012 you were informed of the Commission's intention to reject your complaint.
- (8) By your letter of 29 February 2012 you submitted observations on the Commission's preliminary assessment of 2 February 2012.
- (9) Your complaint essentially comprises two aspects: (1) the agreements concluded by OPAP with its sales agents (alleged breach of Articles 101/102 TFEU); and (2) OPAP's statutory monopoly in the Greek betting and gambling sector (alleged breach of Article 106 TFEU in conjunction with Article 102 TFEU). I shall discuss each aspect in turn.

2. THE AGENCY AGREEMENTS (ALLEGED BREACH OF ARTICLES 101/102 TFEU)

- (10) In your letter of 10 March 2010 you pointed out that, in 2008, OPAP changed the text of the agreement with its sales agents. In this regard, you refer to the standard agreement that was notified to the Hellenic Competition Commission (“HCC”) on 1 August 2008 and cleared by that authority on 31 January 2009 (“the agreement”).
- (11) In its decision of 31 January 2009 the HCC concluded, after a detailed assessment, that the agreement did not fall within the scope of Law 703/1977 on the Control of Monopolies and Oligopolies and the Protection of Free Competition. The HCC based its analysis, *inter alia*, on the Commission's Guidelines on Vertical Restraints of 13 October 2000 (OJ 2000, C 291, p. 1). It found that, under the terms of the agreement, OPAP's sales agents bear insufficient commercial risk to be qualified as genuine commercial agents – that is to say, as undertakings separate from OPAP.
- (12) You submit that the HCC was mistaken. You assert that certain provisions in the agreement “may very well infringe” Article 101 TFEU if they lead to “foreclosure effects in the relevant market” (page 7 of your letter of 10 March 2010). In addition, you claim that by “imposing strict non-compete obligations” OPAP infringes Article 102 TFEU (pages 13-14 of your letter of 10 March 2010). You asked the Commission to investigate whether a number of provisions in the agreement – such as, presumably, articles 13, 14(1) and 26 – give rise to a breach of Articles 101 and/or 102 TFEU.
- (13) As you will appreciate, the Commission is unable to pursue every alleged infringement of European Union competition law which is brought to its attention. The Commission has limited resources and must therefore set priorities, in accordance with the principles set out at points 41 to 45 of the Notice on the handling of complaints (OJ 2004, C 101, p. 65).
- (14) When deciding which cases to pursue, the Commission takes various factors into account. There is no fixed set of criteria, but the Commission attaches particular importance to the potential impact of the alleged infringement on the functioning of the internal market. It also considers whether a national court or authority might be well-placed to examine the allegations made. When a national competition authority has

already looked into the matter, this will weigh against intervention by the Commission. After all, the Commission and national competition authorities share the same objective: to ensure that competition in the internal market is not distorted. What is more, the relationship between the Commission and national competition authorities is based on the principle of sincere cooperation and full mutual trust (see Article 4(3) TEU).

- (15) In light of the above considerations the Commission has decided not to conduct a further investigation into your allegation that OPAP infringes European Union competition law.
- (16) First, the alleged infringement primarily concerns one Member State (Greece). The Commission generally gives precedence to cases that concern multiple Member States or that have a strong cross-border dimension.
- (17) At paragraph 7 of your letter of 29 February 2012, you argue that, because OPAP would be active in other Member States than Greece, and because some EU operators would be prevented from making use of OPAP's agents in order to offer gaming and betting services in Greece, the alleged infringement has an "inherent cross-border impact". However, the fact that OPAP might have activities outside of Greece or that some EU operators might want to offer gaming and betting services in Greece does not alter our analysis that the alleged infringement, i.e. the agency agreements between OPAP and its sale agents located in Greece for the provision of gaming and betting services in Greece, primarily has effects in Greece.
- (18) Second, national courts and authorities would seem to be particularly well-placed to look into the matters raised in your complaint. Though you mention that OPAP is also active in Cyprus, your complaint relates specifically to OPAP's sales network in Greece. And since the complaint hinges on the exact interpretation of a contract between private parties, it involves questions of national contract law which Greek courts/authorities would be well placed to assess.
- (19) In paragraph 8 of your letter of 29 February 2012, you refer to point 14 of the Commission Notice on cooperation within the Network of Competition Authorities (OJ 2004, C 101, p. 43). Point 14 of the Notice provides that the Commission is particularly well placed to deal with a case if the agreement or practice at stake has effects on competition in more than three Member States. However, nothing in your complaint or your letter of 29 February 2012 demonstrates the existence of such type of cross-border effects in more than three Member States. Thus, point 14 of the Notice does not contradict the conclusion that national courts and authorities are well-placed to look into the matters raised in your complaint.
- (20) The comparison, at paragraphs 9 and 13 of your letter of 29 February 2012, between your case and the case that gave rise to the judgment in *CEAHR* is inaccurate. In particular, in *CEAHR*, the practice complained of appeared to take place in several Member States and emanated from undertakings that were established outside the European Union. The General Court held that, in those circumstances, the sole consideration that the national authorities and courts were well-placed to address the possible infringements complained of was insufficient to support the Commission's final conclusion that there was insufficient interest to pursue the complaint (Case T-427/08 *CEAHR v Commission* [2010] ECR II- 05865, paragraph 176). It does not follow from the General Court's judgment in *CEAHR* that national courts and authorities are not well-placed to look into matters such as those raised in your complaint.

- (21) At paragraphs 10 to 12 of your letter of 29 February 2012 you claim, essentially, that the Greek national courts are unable to adequately safeguard your rights. However, neither your complaint nor your letter of 29 February 2012 produces any evidence from which it might be inferred that Greek law provides no legal remedy enabling the Greek courts to safeguard your rights in a satisfactory manner (Case T-24/90, *Automec* [1992] ECR II-2250, paragraph 94).
- (22) Third, the HCC has already examined the agreement in question by reference to rules and principles that apply in European Union competition law. An in-depth investigation into your complaint would be tantamount to a reassessment of a decision of a national competition authority.
- (23) These three grounds – considered alone or in combination – are sufficient to justify the rejection of your complaint.¹ Consequently, the Commission has decided to reject your complaint against OPAP in accordance with Article 7(2) of Regulation (EC) No 773/2004.

3. THE STATUTORY MONOPOLY (ALLEGED BREACH OF ARTICLE 106 TFEU IN CONJUNCTION WITH ARTICLE 102 TFEU)

- (24) In your letters of 10 March 2010 and 11 March 2011 you emphasised that, under Greek law, OPAP has the exclusive right to manage, organise and operate games of chance in Greece. In this connection, you referred, in particular, to article 27(2) of Law 2843/2000 on the Modernization of Stock Market Trading, Listing of Companies investing in Ocean Shipping on the Athens Stock Exchange and other provisions.
- (25) You claim that OPAP infringes Article 102 TFEU by imposing non-compete obligations on its sales agents and that, as a result, the Hellenic Republic is in breach of Article 106 TFEU (pages 13-17 of your letter of 10 March 2010).
- (26) The Commission has initiated an infringement procedure against the Hellenic Republic on the specific subject of OPAP's exclusive rights (Case No 2007/4094). In the Commission's view, subject to the comments of the Hellenic Republic, OPAP's statutory monopoly was incompatible with Article 56 TFEU. In the meantime, as you know, the legal framework in Greece has been amended.
- (27) Moreover, the question whether OPAP's statutory monopoly is keeping with EU law is the subject of on-going proceedings involving Stanleybet International Ltd before the Symvoulío tis Epikrateias (Greek Council of State). The Symvoulío tis Epikrateias lodged a reference for a preliminary ruling to the Court of Justice of the European Union on 20 April 2011 (Case C-186/11; OJ 2011, C 186, p. 15). It has requested an interpretation of Articles 43 and 49 of the EC Treaty (now Articles 49 and 56 TFEU). The Commission submitted its written observations to the Court on 10 August 2011.
- (28) Advocate General Mazák delivered his Opinion on 20 September 2012 in the context of these proceedings. He considered that, in view inter alia of OPAP's expansionist commercial policy, it should be ruled that OPAP's monopoly cannot be justified by a purported reduction of gambling opportunities (C-186/11, paragraphs 50 to 53). He also

¹ The European Courts have stated that one single criterion may be sufficient to reject a complaint; see, e.g., Case C-449/98 P, *IECC v Commission of the European* [2001] ECR I-3875, paras 47-49.

concluded that the activities of OPAP are “neither subject to strict control by the Greek public authorities nor effectively limited by the legislative framework applicable to it” (C-186/11, paragraph 60). The Court’s ruling is expected in the next few months. It will be for the national court to draw the consequences of that ruling.

- (29) Although these two cases deal with OPAP’s exclusive rights from the angle of the right of establishment and the freedom to provide services, they have a direct bearing on the issues raised in your complaint (as you acknowledge in your letter of 11 March 2011).
- (30) In your letter of 11 March 2011, you further mention plans for legislation that would reinforce OPAP’s position and extend its statutory monopoly to online betting and gambling (draft Law 231/2011 on the Regulation of the Gaming Market). Draft Law 231/2011 was notified to the Commission in the framework of Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (OJ L 24, 21.7.1998, p. 37). On 6 July 2011, the Commission issued detailed comments on the draft law to the Greek authorities. The law has in the meantime been enacted and was published in the Greek Official Gazette on 22 August 2011 (Law 4002/2011 FEK A’180). Section D, Chapter H of the law introduces the possibility for operators other than OPAP to apply for a sub-licence to become active on the Greek gaming market.

- (31) In your letter of 11 January 2012, you claim that the situation has deteriorated as a result of the new law. You mention that “without any transparent competitive procedure”, OPAP was granted a licence for the operation of gaming machines (video lottery terminals) with the right to grant to third parties sub-licences for their exploitation. However, in the absence of any further substantiation, these allegations are insufficient to conclude that OPAP and/or the Hellenic Republic have infringed European Union competition law.
- (32) Your letter of 29 February 2012 fails to provide additional facts that would lead the Commission to reconsider its position. In light of these circumstances, the Commission considers that, given the extensive efforts it has already undertaken, in particular with respect to Greece, to ensure a better functioning of the internal market in the area of off-line and on-line gambling, it would be disproportionate to launch an additional investigation from the perspective of Article 106 TFEU in conjunction with Article 102 TFEU – especially since the criteria for establishing a breach are very strict (see, for instance, Case C-41/90 *Höfner and Elser* [1991] ECR I-2015, Case C-260/89 *ERT* [1991] ECR I-2925 and C-475/99 *Ambulanz Glöckner* [2001] ECR I-8089).
- (33) In any event, I should point out that, even when faced with a specific complaint, the Commission is not obliged to bring proceedings regarding the application of Article 106 TFEU (Case C-141/02 P *Commission v T-Mobile Austria* [2005] ECR I-1283, paragraph 69).

4. CONCLUSION

- (34) In view of the above considerations, the Commission, in its discretion to set priorities, rejects your complaint against OPAP and the Hellenic Republic.

5. PROCEDURE

5.1. Possibility to challenge this decision

- (35) In accordance with Article 263 TFEU, an action may be brought before the General Court of the European Union against this decision insofar as it rejects your complaint against OPAP (section 2 above). Please note, however, that you do not have standing to bring an action before the General Court of the European Union against this decision insofar as it rejects your complaint against the Hellenic Republic (section 3 above).

5.2. Confidentiality

- (36) The Commission reserves the right to send a copy of this decision to OPAP.
- (37) If you consider that certain parts of this decision contain confidential information, I should be grateful if, within two weeks from the date of receipt, you would inform [REDACTED]
[REDACTED] Please identify clearly the information in question and indicate why you consider it should be treated as confidential.

For the Commission

*Joaquín Almunia
Vice-President*