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Submission to the Department of Culture, Media and Sport by the Mobile Broadband Group in response to the consultation on the Draft Gambling Bill

The members of the Mobile Broadband Group ("MBG") are 3, O2, Orange, T-Mobile and Vodafone.

1. Summary

- The MBG supports the Bill and its objectives. However there is still work to be done to improve the clarity of the drafting.
- We urge the Government to find room in its timetable to introduce the Bill at the earliest opportunity, so that UK can be first major EU country to licence remote gambling.
- We endorse the approach of actively defining and prohibiting commercial lotteries and thus defining prize competitions as anything that is not a lottery. However, the definition of "games of chance" is broadly defined and may inadvertently capture some prize competitions in particular free prize draws and competitions that include both an element of skill and an element of chance. This needs urgent review.
- We are concerned that the limited exclusions to provision of gambling facilities set out in clause 4(3)(d), the scope of the definition of a betting intermediary and the definition of remote gambling equipment in clause 25 (4) (d) of the Bill could result in too many organisations in the value chain, for example those that are providing the payment mechanism, being regulated and requiring an operating licence.
- The licensing of remote gambling is very much welcomed. As far as practical the regime for the virtual world should be comparable to the physical world.
- The technology neutral approach towards remote gambling, as set out in the policy narrative, is to be welcomed. The Bill needs some adjustment to reflect this intent.
- There is already extensive money laundering regulation in place in the UK. The Bill must not create extra provisions that give rise to duplication or even contradiction.

- Government should consider whether more detail should go into legislation rather than Codes of Practice. This would provide greater safeguards in the face of a very powerful Gambling Commission.

2. Introduction

2.1 The MBG welcomes the opportunity to respond to the DCMS's consultation on the Draft Gambling Bill.

2.2 Increasingly, mobile devices are available with enhanced features, including colour screens, picture messaging, video calling and Internet browsers and can be used to access a growing variety of content at ever increasing data speeds, through GPRS and 3G technologies.

2.3 The MBG has a significant interest in the deliberations of Parliament on the Bill. Some mobile operators already offer a number of gambling services through third parties, including betting services, mobile lotteries, based on virtual scratch-cards, bingo and slot machines, where some of the proceeds are donated to charity. We are all also active in the provision of prize competitions directly to our customers. With the advent of increased data speeds we anticipate that customers will increasingly use their mobile devices to engage in a variety of remote gambling services including fruit machine applications and virtual casino games.

2.4 The MBG broadly supports the Government's proposed approach to the future regulation of gambling, in particular its wish to recognise gambling as a normal leisure activity and the measures to provide a licensing regime for remote gambling in the UK.

2.5 We support the key objective to make the UK a sustainable environment in which to operate gambling services. However, it is not sufficient just to make it sustainable. The regulatory regime must be conducive to attracting and retaining gambling providers that now operate overseas. The Bill cannot be considered in isolation to the regimes in other countries. It is extremely important to ensure that the regulatory regime is proportionate and does not impose costs that place unnecessary barriers to market entry.

2.6 We also support the establishment of a single regulator, the desire to keep crime out of gambling, the removal of unnecessary restrictions on businesses' ability to meet customer wishes and the aim of strengthening safeguards protecting children and the vulnerable. The mobile operators fully recognise their responsibilities in this regard and have all signed up to a Code of Practice that addresses customer concerns about vulnerable groups accessing inappropriate content.

3. Prize competitions

- 3.1 The MBG strongly supports the approach of actively defining and prohibiting commercial lotteries and thus defining a prize competition as anything that is not a lottery. This approach prevents there being any gaps in the definitions.
- 3.2 It is noted, however, that the Bill contains a very broad definition of “games of chance” that seems contradictory to the approach taken to defining lotteries. In particular, the definition encompasses games that involve both an element of chance and an element of skill and, accordingly, may unintentionally bring within regulation a variety of prize competitions and hybrid competitions even where the outcome of the competition relies on just a small element of chance.
- 3.3 The MBG fully supports the recommendations in the DCMS statement “Law on prize competitions and lotteries” (19 June 2003) which sets out the Government’s conclusions on prize competitions and lotteries following extensive consultation with the industry and interested parties. Accordingly, the MBG suggests that the definition of “games of chance” in the Bill be clarified in order to remove the inconsistencies between the Bill and the recommendations. The MBG suggests that if some skill is involved in playing a competition, the element of chance then becomes irrelevant and these types of competitions need not be regulated.
- 3.4 The MBG is particularly concerned that clause 6 brings a “free prize draw” within the definition of gaming and within the scope of the Bill.
- 3.5 This is because no clear distinction is made between a free prize draw (such as selecting random numbers to enter a draw) and playing “a game of chance” for a prize where the participants have to hazard a stake (as when playing roulette). The distinction between these activities lies in the risk involved. By way of example, the person playing roulette risks losing his or her stake but the participant in the free prize draw can only benefit. However, in the light of clause 6(4)(b) the presence or absence of this element of risk will not be relevant to the classification of the activity as a game of chance. The policy behind this provision is somewhat unclear, since the presence or absence of risk to the players would appear to be fundamental to the need to regulate the activity in question.
- 3.6 The MBG does not believe it is the intention of the Bill that merely participating in a free prize draw should constitute ‘play a game’ as free prize draws are expressly excluded from the definition of lotteries at clause 208 of the Bill. The MBG proposes that the wording of clause 6 should include an express exception for the selection of random numbers to enter a free prize draw, where the participants are not hazarding a stake.
- 3.7 Furthermore as there is some overlap between gaming and lotteries, a definition of “whether or not he risks losing anything at the game” should be inserted into the Bill which reflects the policy in Schedule 7.

4. Cost of Entry

4.1 The MBG notes that Schedule 7 of the Bill provides that an arrangement will not be treated as requiring a person to pay pursuant to Section 208 if a choice of free entry route is provided. The MBG supports this approach. However, we think that the definition of free entry in clause 7 (b) (ii) of Schedule 7 is inconsistent with the definition of paying in paragraph 5 (1) of Schedule 7. The MBG would welcome further clarity on this point.

5. Remote Gambling

5.1 The MBG welcomes the principle of licensing remote gambling in the UK for the first time and the Government's firm belief that this sector 'can establish itself as a world leader.' Ensuring regulatory intervention is appropriate to the risks posed is crucial to achieving this.

5.2 There seems, however, to be a mismatch between how services are treated in the physical world and how they are treated in the virtual world. Underlying this, there is a concern that gambling problems will intensify where customers are not present at physical premises. We understand that the remote gambling operators (currently supplying UK customers from overseas) have agreed a code of practice that provides for clocks, on screen reality checks and similar measures. We urge that this approach be kept under review to ensure that such measures are relevant to combating problem gambling and can be applied to all technology platforms. Creating artificial barriers to the delivery of games by remote means could stifle the ability of UK licensed gambling operators to serve the emerging "softer" gambling market i.e. the occasional gambler, who may prefer to play remotely.

5.3 The MBG would also like to have it made clear that the responsibility to provide the suite of control messages falls on the licensed gambling operator and not the conduit providing access to the remote gambling service.

5.4 The MBG would like further clarification on the licensing requirements for operators of remote gambling services. There needs to be greater clarity as to which bits of equipment are the key determinant as to whether an operator needs a licence within Great Britain.

6. Payment for gambling and the mobile prepay accounts

6.1 The MBG is concerned that the exclusions highlighted in clause 4(3)(d) and the broad scope of the definition of a "betting intermediary" (section 8) means that any electronic payment service may fall within the definition of a "betting intermediary". This would encompass the use of debit and credit cards, bank clearing and mobile pre-paid accounts. We wish the Bill to make an unambiguous statement excluding the provision of payment mechanisms under clause 4.

6.2 Banks, debit and credit card operators are already extensively regulated by the Financial Services Authority (FSA). Further, following recent

developments with the European Commission, it is expected that the e-money regulations will bring the use of pre-paid mobile accounts within the scope of FSA regulation, where it is used as a means of payment for some third party goods and services.

6.3 In order to avoid duplication and non-alignment of such regulations the MBG proposes that all payment mechanisms are specifically excluded from the definition of “Facilities for Gambling” under Clause 4(3).

6.4 We also note that clause 66(6) of the draft Bill gives the Gambling Commission powers to attach a licence condition which may relate to the financial circumstances of the Licensee or of another person involved or likely to be involved in the conduct of the licensed activities. In particular, a condition may “make provision about the maintenance of reserves in respect of potential liabilities”. Any proposals requiring players gambling deposits to be “ring fenced” would preclude the use of prepay accounts. This is because it is impossible for mobile operators billing systems to separately identify the proportion of a customer's prepay account that will be allocated for a specific service, such as gambling, as the prepayment can be used to pay for any one of a range of services such as voice calls, video clips or ring tones. We seek clarification that these provisions will not be applied in such a way as to preclude mobile operators' prepay accounts from being used to pay for licensed gambling activities.

7. Age verification and identity checks for anti-money laundering

7.1 The main gambling activities are restricted to those aged 18 and over. The Gambling Bill does not stipulate how a gambling operator should obtain confirmation of age other than to take reasonable steps to determine the individual's age. The MBG supports this approach. The mobile operators are putting in place measures to verify the ages of customers for a range of 18 rated services. These age verification processes will be robust for gambling applications. The regulatory regime should allow for these procedures to be relied upon by those of our commercial partners that are licensed gambling operators.

7.2 We are concerned, though, about the anti-money laundering proposals for remote gambling. There is already extensive money laundering regulation in place in the UK. The Bill must not create extra provisions that give rise to duplication or even contradiction. This would run the risk of increasing cost and complexity of implementation. Going forward there is a risk that FSA obligations and those within the Bill will become mis-aligned. The MBG proposes that FSA Money Laundering Regulations are already sufficient, and where an organisation is regulated by the FSA, such conditions should obviate the need to comply with separate provisions under the Gambling Bill.

7.3 We are concerned that the Bill uses the terms identity checks and age checks interchangeably – with both having very different implications for the mobile operators in terms of cost and administrative process. The need to verify identity is driven by money laundering policy, the need for age verification driven by the legal age for gambling. Reasonable proof of the latter is very much less onerous to obtain. For example, people who

use credit cards can be assumed to be over the age of 18. Where suppliers accept credit card payments over the Internet or telephone – for any service, they cannot possibly verify the identity of the purchaser on each transaction. The same principles must apply to remote gambling.

8. Risk based approach

8.1 Regulatory intervention should be appropriate to the risks posed. Both remote and non-remote operators providing modest prizes based on low value stakes should not be subject to the full licensing procedure.

8.2 A risk based approach is already adopted for gaming machines. For example children of any age will be allowed to use Category D gaming machines with a total prize of £5. Furthermore, in pubs and clubs, Bingo and other equal chance games are not regulated when the size of the prize is under £1000 per week.

8.3 Where there are no age limits in the physical world, the same should apply in the remote world. We advocate a stepped approach whereby there is a correlation between the level of regulation, including the rules on advertising, and the size of the stakes and pay-outs.

9. Codes of practice

9.1 The MBG supports the principle of flexibility enshrined in the Bill, whereby the Commission will be able to respond to changes in circumstances by amending licence conditions and codes of practice. However, the need to amend the regulatory regime to keep pace with changes in technology and innovation must be dovetailed with the requirement to make informed and balanced decisions.

9.2 The Government should also give further consideration as to the balance between what goes into primary and secondary legislation and the codes of practice. The Gambling Commission is going to have enormous powers – powers to licence, powers to bring prosecutions and powers to fine. As it stands a great deal of the detail behind this Bill will derive from the codes of practice. It would be better that more detail is written into secondary legislation at least, so that Parliament has greater control over the Gambling Commission's power and functions.

9.3 Furthermore, at present, clause 16(7) seems to require the Commission to consult only a prescribed number of people before issuing or revising a code of practice. Although it will be required to consult those who appear to the Commission may be affected by a code or its revision, we are concerned that those with a legitimate interest in the making or revision of a code of practice may be excluded from a consultation exercise if it does not occur to the Commission that they have an interest.

9.4 We would prefer an obligation on the Commission to conduct public consultation exercises, to lessen the chance that those with a legitimate interest are excluded. This change would not represent a burden on the Commission - sectoral regulators, like Ofcom, presently conduct a large number of wide consultations exercises and they are able to respond

promptly to changes in circumstances in their respective industries. The procedural model for amending conditions of entitlement set out in section 48 of the Communications Act 2003 seems to us to be suitable for the purposes of the making and revising of codes of practice by the Commission.

10. Other Definitions

Clause 8: Betting Intermediary

- 10.1 Clause 8 is intended to apply to internet betting exchanges, which do not themselves enter into betting transactions, but operate “markets” in which individuals can offer or take bets at whatever odds they choose.
- 10.2 As currently drafted, there is some risk that clause 8 could be argued to apply much more broadly, and to catch, for example, services consisting of the advertising of the availability of betting services through a telephone menu.
- 10.3 The MBG suggests that an exclusion to clause 8 should be drafted to make it clear that mobile telephone operators and internet service providers which simply facilitate contact between remote gambling operators and consumers by providing electronic communication facilities are not to be treated as betting intermediaries.

Clause 25: Territorial Application

- 10.4 It is surprising that the exemption at clause 25(5) refers only to computers and not to other equipment such as mobile devices which are used today to connect to remote gambling facilities provided by others. This seems at odds with the stated intention in the policy narrative to define remote gambling in a technologically neutral way. We therefore suggest clause 25(5) includes an express exemption for mobile phones and it is also made clear that the exclusion refers to equipment operated by persons acting in the capacity of a conduit by providing electronic communications services between consumers and licensed operators.
- 10.5 We are also concerned that clause 25(4)(d), referring to equipment used to accept payment for gambling, could apply to equipment used to deduct gambling stakes from prepay phone accounts. This would mean that low value games could not be offered remotely. We do not believe this is the DCMS intention.

Clause 210: Lotteries

- 10.6 We read that Lotteries that are within the scope of regulation under the Bill at Part 11 do not require a ticket to be a “document”. However we note that there is no definition of ‘document’ in the Bill.

Clause 32: Prohibited Territories

10.7 The potential for the offence is potentially very broad, “if he does anything in Great Britain... for the purpose of enabling a person in a prohibited territory to participate in remote gambling”. The MBG suggests tighter wording to ensure it does not apply to those acting as a conduit by providing electronic communications services.

If any further information is required with regard to this submission, please contact Hamish MacLeod on at mobilebq@btopenworld.com