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**Gambling Policy in the European Union: Monopolies, Market  
Access, Economic Rents, and Competitive Pressures among  
Gaming Sectors in the Member States**

**William R. Eadington**

**Department of Economics /0030  
University of Nevada, Reno  
Reno, NV 89557-0207  
(775) 784-6850 | Fax (775) 784-4728  
email: [eading@unr.edu](mailto:eading@unr.edu)**

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**Abstract**

This study examines the conflicts within the European Union regarding protected status accorded to legal commercial gaming industries and the principles of harmonization that direct EU economic policy. Member States are permitted to constrain competition for gambling services as long as the primary purpose is to protect citizens from unintended negative consequences associated with the activities. Also, because of monopoly status, high tax rates, or government ownership, many EU gaming industries have become major contributors to government coffers or for funding for “good causes.” Legal challenges by private companies trying to participate in these protected markets have led to decisions by the European Court of Justice that have questioned such protected status. A number of key economic metrics for European gaming industries are presented, and competitive dimensions of EU casino industries are examined in comparisons to trends elsewhere.

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William R. Eadington  
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## **ABSTRACT**

This study examines the conflicts within the European Union regarding protected status accorded to legal commercial gaming industries and the principles of harmonization that direct EU economic policy. Member States are permitted to constrain competition for gambling services as long as the primary purpose is to protect citizens from unintended negative consequences associated with the activities. Also, because of monopoly status, high tax rates, or government ownership, many EU gaming industries have become major contributors to government coffers or for funding for “good causes.” Legal challenges by private companies trying to participate in these protected markets have led to decisions by the European Court of Justice that have questioned such protected status. A number of key economic metrics for European gaming industries are presented, and competitive dimensions of EU casino industries are examined in comparisons to trends elsewhere.

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L43 - Legal Monopolies and Regulation or Deregulation; L83 (Gambling)

## **1. Introduction**

The purpose of this analysis is to provide a perspective on legal and economic dimensions of commercial gaming industries in the European Union—with specific emphasis on the casino industries in Europe—in comparison to similar industries in other parts of the world. This is intended to provide a platform for extrapolating from current developments in the European Union to find implications of current trends and events, based on the experiences of other jurisdictions.

The first portion of the analysis examines observations that were put forward by the author and others in the report, “Study of Gambling Services in the Internal Market of the European Union.”<sup>1</sup> That study addressed the legal and economic challenges confronting the commercial gaming industries within the European Union in the early 21<sup>st</sup> century. The essence of the study is as follows.

The European Union’s fundamental legal and economic principles relating to commerce are based upon the concepts of free and fair trade for goods and services

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<sup>1</sup> Study conducted by the Swiss Institute of Comparative Law, Lausanne, on behalf of the European Commission, June 2006. The author, along with Professor Richard Thalheimer of the University of Louisville, co-authored the economics portion of the Gambling Services Study.

among legal entities within the Member States and, more specifically, on the freedom of establishment within the European Union, and the freedom to provide services. Within the European Union, the freedom to provide services can be limited on the grounds of public policy, security and health, as contained in Article 46 of the EC Treaty. Restrictions to provide services on public policy, security and health grounds must have an “objective justification,” and part of the assessment of whether a restriction can be objectively justified is a consideration of whether the restrictive measure is *proportionate*.<sup>2</sup>

European Union law also says, in general, that Member States are not permitted to discriminate against individuals or organizations from other Member States with respect to the delivery of services within the Union. This principle is known as *non-discrimination*. Exceptions to the freedom to provide services and non-discrimination can occur around so-called morality industries, such as alcohol, tobacco, and gambling. For these economic sectors (and others,) Member States retain the right (the competence) to regulate the sector as long as they adhere to the fundamental freedoms and general principles of EC law, including the free movement of services. Indeed, as with the United States, unless a competence is explicitly given to the EC, then it resides with the Member State. With the so-called morality industries, the question of where the boundaries of the competences lie is still being debated via European Court of Justice case law and European Commission infringement proceedings. When deciding whether or not European Community institutions should have (some degree of) competences to regulate a specific sector, it would have to be shown that action within the Member States is insufficient and that the objectives (e.g. consumer protection for legal gambling environments) can only be properly upheld with the Community enjoying some competence to regulate.

With regards to the regulation of most aspects of the morality industries – alcohol, tobacco, gambling – Member States enjoy a considerable margin of discretion to maintain specific policies, which may include justifiable restrictions on the free movement of services. These restrictions form part of wider policies which reflect the desires of national policy makers to protect their citizens from the unintended negative social consequences associated with such industries. These policy objectives are often executed through the use of state monopolies and other constraints on offering such services. However, such restrictions, and ultimately the monopolistic models they support, can only be justified if they are proportionate. In this context, evaluation of the appropriateness of such exceptions can be discussed in terms of benefits and cost considerations.

## 2. Legal and Economic Circumstances of the Gambling Services Sector in the European Union

The following general observations characterize the gaming and betting industries in 2006 in the European Union. A high proportion of gaming industries within the European Union are characterized by monopoly protection. These monopolies are formally justified by particular Member States on the basis that such market constraints provide protection for their citizens from adverse consequences associated with gambling. However, the protections also allow significant capture of *economic rents* by

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<sup>2</sup> *Proportionate*, as it applies to restrictions against the provision of services, means that approaches that are adopted are the most efficient means of achieving the stated objectives, and the benefits that are achieved out-weigh the costs imposed by violations of fundamental European Union principles.

Member States; such economic rents are important contributors to general fund revenues, or are earmarked by Member States for a variety of good causes. The magnitudes of economic rents arising from protected commercial gaming industries in the Member States are dramatic, in excess of €30 billion.<sup>3</sup> This is why challenges arising from private sector organizations within the European Union who are foreclosed from competing in these markets have made this such a controversial political and legal issue.

For the most part, the gaming and betting industries within the European Union have become mature markets with slow growth or even stagnation in terms of revenue performance. In some respects, the performance of commercial gaming industries in the European Union reflects inefficiencies that are generally associated with monopoly or with organizations that are not confronted with the disciplines of competition. Monopoly, by its very nature, is characterized by constraints on supply, by higher prices than would occur in more competitive circumstances, and by limited choices confronting consumers. Furthermore, monopoly can lead to questionable quality of products offered in the marketplace, in comparison to what might prevail in a competitive environment. Furthermore, when there is either state ownership or significant state influence over operations, operators may not be clear with respect to what they are supposed to be doing. If a firm is in a highly competitive private sector ownership environment, maximizing shareholder wealth via pursuit of profitability of gaming operations is a much clearer objective than when there a protected market position for an organization that is subject to public scrutiny and political pressures.

However, as has characterized much of the litigation that has challenged the European Union's gaming and betting industries in recent years, state monopolies in gaming and betting—as well as limited or exclusive franchises that are protected by Member State law—are threatened by cross-border competition, especially from the Internet and the betting sectors. Much of the litigation that has occurred in recent years has come about because of expansions and new technologies in these sectors, as well as the perceived or real threats that such competitors pose for the existing monopolies and protected sectors. Protected markets can be easily threatened by properly incentivized competitors.

The European Court of Justice has produced a number of important decisions since 1994 addressing the restrictions which Member States may uphold against the free movement of gambling services.<sup>4</sup> Non-discriminatory restrictions to the free movement of services can be justified by public policy objectives, including protecting consumers against the negative individual and social consequences of gambling. Such restrictions have to be proportionate to their objectives.

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<sup>3</sup> *Study of Gambling Services in the Internal Market of the European Union* (2006), a study commissioned and owned by the European Commission, pp. 1485-1487. The entire report can be found and electronically downloaded for free at [http://ec.europa.eu/internal\\_market/services/gambling\\_en.htm](http://ec.europa.eu/internal_market/services/gambling_en.htm).

<sup>4</sup> The most important European Court of Justice decisions in recent years include Gambelli (November 11, 2003), Lindman (November 13, 2003), Laara (September 21, 1999), Zenatti (November 6, 2003) and Schindler (March 24, 1994). A similar case that was announced in March 2007 is the Placanica case.

Based on the principle of subsidiarity<sup>5</sup>, Member States are not in violation of the European Community Treaty as long as restrictions on the provision of gaming services can be justified by the objectives of social policy and consumer protection aimed at limiting the harmful effects associated with gambling activities, the restrictions are not discriminatory, and they are proportionate to these objectives. Thus, the rulings of the European Court of Justice suggest the need to weigh the trade-offs between violation of fundamental European Union principles versus the benefits that may accrue by allowing Member States to provide such protections.

Interestingly the raising of money for good causes or for general fund revenues of Member States cannot be used as a justification for restrictive policy. This is one of the basic dilemmas associated with European Union policy toward commercial gaming. Every Member State is dependent to some extent on the economic rents captured through permitting monopolies—in one form or another—on gambling services. However, Member States cannot have such fiscal benefits as the primary or even a contributing factor for the legal justification. Thus, Member States are put into the position of having to offer hypocritical and sometimes disingenuous claims to the effect that the primary purpose of market-restricted gaming and betting markets is to protect their own consumers, rather than generate revenues on behalf of the State.

The European Court of Justice has also stated that Member State gambling restrictions are only acceptable if they reflect an honest attempt to bring about a genuine diminution of gambling opportunities.<sup>6</sup> This creates conflicting objectives with regard to various Member States because the protected organizations typically are charged by their own governments with improving contributions to tax coffers or good causes. Furthermore, gaming and betting organizations typically want to improve their financial performance as organizations, and such inclinations are not necessarily consistent with actions that would “genuinely diminish” the gambling opportunities to their citizens at large.

The *Study of Gambling Services in the Internal Market of the European Union* (The *Gambling Services Study*) examined the status of European Union gaming and betting revenue performance by sector, which provided rough estimates of the size and competitive characteristics of the European Union commercial gaming industries. Table 1 presents estimates of aggregate Gross Gaming Revenues (defined as total revenues less payment of prizes) for the year 2003, covering the five measurable gaming sectors: casinos, lottery, gaming machines, betting services, and bingo services. For the European Union Member States in total, aggregate Gross Gaming Revenues were about 52 billion Euros.<sup>7</sup> A separate survey of remote gaming for internet gambling estimated gross gaming revenues of approximately 2.5 billion Euros for that sector in 2004.

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<sup>5</sup> The principle of subsidiarity is found within Article 5 of the EC Treaty, which reads:

*The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein. In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.*

<sup>6</sup> European Court of Justice, Zenatti (November 3, 2003, para. 36)

<sup>7</sup> This includes those Member States that did not become members of the European Union until 2004. These Member States are Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia.

**Table 1**  
**Gross Gaming Revenues, by Country and Sector**  
**European Union 2003<sup>8</sup>**

COUNTRY	TOTAL	CASINOS	LOTTERY	GAMING MACHINES	BETTING SERVICES	BINGO SERVICES
AUSTRIA	€893,539	€217,951	€595,000	€0	€80,588	n/a
BELGIUM	€679,306	€47,478	€485,734	€136,767	€9,327	€0
CYPRUS	€72,584	€0	€34,060	€0	€38,523	n/a
CZECH REPUBLIC*	€593,400	€66,300	€109,200	€346,700	€34,300	€1,900
DENMARK	€829,549	€43,624	€428,859	€220,824	€95,973	€40,268
ESTONIA	€24,730	€18,187	€6,544	n/a	n/a	n/a
FINLAND	€1,240,874	€22,000	€485,000	€571,000	€157,000	€5,874
FRANCE	€7,603,200	€2,546,000	€3,085,200	€0	€1,972,000	n/a
GERMANY	€8,420,817	€958,673	€4,991,217	€2,335,000	€135,927	n/a
GREECE	€1,068,203	€88,721	€474,000	€0	€505,482	€0
HUNGARY	€580,180	€36,957	€278,240	€235,851	€23,529	€5,603
IRELAND	€1,143,638	€0	€264,900	€242,692	€608,914	€27,132
ITALY	€6,204,712	€616,744	€4,502,000	€0	€974,981	€110,987
LATVIA	€66,611	€7,114	€4,159	€52,831	€1,155	€1,352
LITHUANIA	€40,724	€13,517	€24,688	€492	€2,028	n/a
LUXEMBOURG	€96,584	€77,907	€18,676	n/a	n/a	n/a
MALTA	€113,921	€23,269	€23,884	€0	€65,923	€845
NETHERLANDS	€2,064,500	€699,400	€783,200	€564,000	€17,900	n/a
POLAND	€432,408	€44,535	€295,393	€52,703	€37,691	€2,085
PORTUGAL	€1,434,379	€301,006	€801,976	€200,666	€10,647	€120,084
SLOVAKIA	€216,150	€95,479	€71,000	€49,644	€27	n/a
SLOVENIA	€264,478	€193,227	€38,192	€33,059	n/a	n/a
SPAIN	€4,886,812	€320,912	€1,126,400	€2,550,000	€62,259	€827,241
SWEDEN	€1,583,200	€124,900	€664,200	€224,100	€506,700	€63,300
UNITED KINGDOM	€10,972,019	€950,007	€3,389,000	€1,858,834	€3,525,962	€1,248,216
<b>TOTALS*</b>	<b>€51,526,518</b>	<b>€7,513,908</b>	<b>€22,980,723</b>	<b>€9,675,162</b>	<b>€8,866,836</b>	<b>€2,454,887</b>
<b>PERCENT OF TOTAL</b>	<b>100.0%</b>	<b>14.6%</b>	<b>44.6%</b>	<b>18.8%</b>	<b>17.2%</b>	<b>4.8%</b>

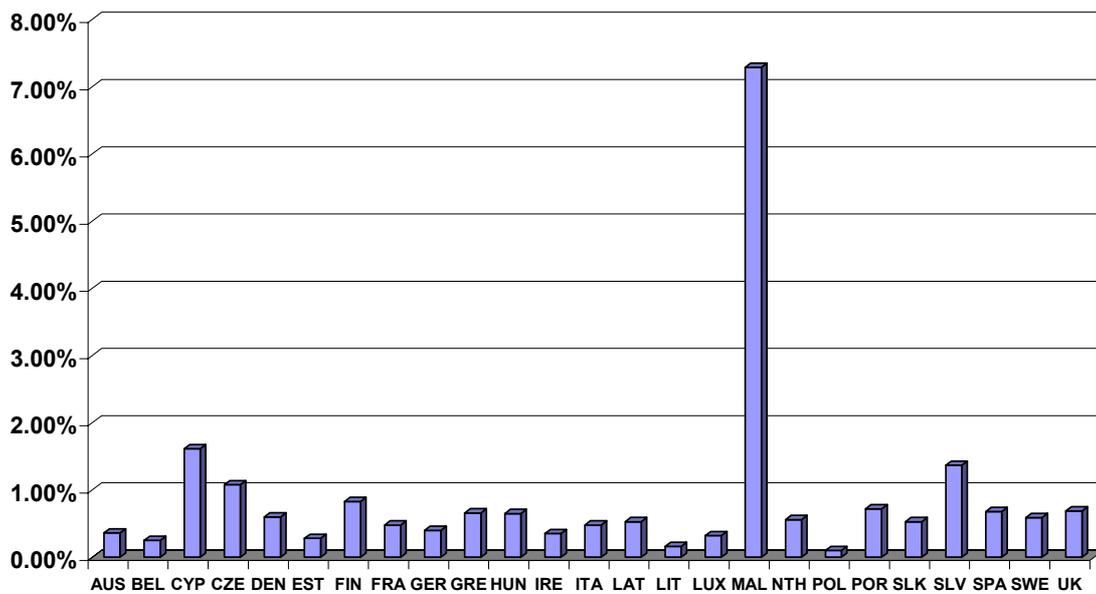
What is noteworthy is the composition of gaming revenues within the European Union. Lotteries take the largest share with nearly half (44.6%) of gross gaming revenue. Casinos provide a relatively unimportant 14.6% (in comparison to the experience of jurisdictions in other parts of the world.) Gaming machines (outside of casinos) generated 18.8% of total gaming revenues, much larger than their share in the United States. Betting services made up 17.2% of the total, and bingos contributed a small sliver of the overall pie, with 4.8% of the total.

<sup>8</sup> *Gambling Services Study* (2006), *op. cit.*, p. 1106; shaded entries came from Gaming and Betting Global Consultants (2005), *Double or Quits? - Global Gaming Review 2004-2005*. London.

The *Gambling Services Study* also made comparisons on the ratio of Gross Gaming Revenues to GDP within the European Union among the various Member States. These are presented in Figure 1.

Figure 1

### Gross Gaming Revenues as percentage of GDP, 2003



The variances from Member State to Member State are probably due to differences in the attractiveness and availability of various gaming products, especially gaming machines and casino style gaming. Malta, which is the striking exception, generates a high proportion of its gaming revenues from export-based internet gaming services.

It is also worthwhile to note differences in composition of spending between the European Union and the United States. Table 2 provides a breakdown for Gross Gaming Revenues by category for the United States.

Table 2  
Gross Gaming Revenues by Sector  
United States, 2004

	U.S.\$ (billions)	Market Share
Casinos (Commercial and Tribal)	\$50.0	63.5%
Lottery (including VLTs)	\$21.4	27.2%
Pari-mutuel wagering	\$3.7	4.7%
Bingo and Charities	\$3.6	4.6%

Overall, the ratio of Gross Gaming Revenues as a proportion of GDP for the European Union (0.52%) is not significantly different from the United States (0.65%), though the composition is dramatically different. In 2004, the legal commercial gaming industries in the United States generated approximately US\$ 80 billion in Gross Gaming Revenues, of which roughly two-thirds came from either commercial or tribal casinos. Commercial casinos are to be found in the eleven United States, including Nevada, that

permit such casinos, which generated about US\$30 billion in Gross Gaming Revenues in 2004. Tribal casinos, which are permitted in about 25 states in the United States, generated around US\$ 20 billion in Gross Gaming Revenues.

The differences between the United States and the European Union in composition of Gross Gaming Revenues spending are quite dramatic. Casinos within the United States capture most spending on gambling, whereas in the European Union casinos provide a relatively small portion of total gaming spend. Among the important institutional differences is the fact that, in the United States, gaming machines outside of casinos are uncommon, whereas in Europe they are well established. Furthermore, American casinos are often much larger and more multi-dimensional in terms of non-gaming offerings than are those found in Europe.

A second differential factor is betting shops—legal betting facilities which permit wagers on races or sporting events. These are generally prohibited in the United States with only a few exceptions, but they are quite common in Europe.

Though both the United States and the European Union spend slightly more than one-half of one percent on gambling and betting services, a number of other countries—Canada, New Zealand, and Australia— are all above 1% on the Gross Gaming Revenues/GDP ratio, with Australia approaching 2%. (Table 3) These countries also happen to have considerably more accessible forms of popular gaming, especially electronic gaming devices or gaming machines. Perhaps related to this higher ratio, all three of these countries have experienced substantial political backlash in the past decade related to gambling’s social costs issues especially around problem gambling than has been the case in either the European Union or the United States.

*Table 3*  
*Ratio of Gross Gaming Revenues to Gross Domestic Product, 2003*

<b>EUROPEAN UNION</b>	<b>0.52%</b>
<b>UNITED STATES</b>	<b>0.65%</b>
<b>CANADA</b>	<b>1.11%</b>
<b>NEW ZEALAND</b>	<b>1.45%</b>
<b>AUSTRALIA</b>	<b>1.93%</b>

### 3. Justifications for Subsidiarity: Protections of European Union Citizens

The primary question regarding the justification of national restrictions against the cross-border provision of gambling is: *Are Member States really providing adequate protections for their citizens against the negative consequences associated with gambling?* In the same vein, what is the relationship of particular protections to results of policies created by Member States? So far, Member States have claimed that the underlying purpose or philosophy for their justifications for monopolizing or constraining specific sectors of their gaming industries are the protections offered for consumers. However, there is virtually no scientifically based evidence that demonstrates the protections provided are actually working. This phenomenon—an

absence of proof of the efficacy of protection-based strategies—is occurring throughout the world, though in different policy contexts.

There is only limited understanding and research that establishes cause-effect relationships linking problem and pathological gambling to the availability and access of permitted gambling services. There is even less understanding of the extent to which strategies are effective in terms of mitigating adverse consequences associated with problem gambling in a commercial gaming environment. Thus, jurisdictions throughout the world are typically approaching this issue without hard evidence but rather on hopes and beliefs. Often the attitude that “something must be done” leads to “symbolic” actions that are undertaken even when there is only low expectations that they might be even partially effective. So everybody is shooting in the dark. However, for the European Union, the issues of subsidiarity and proportionality are very important to the Member States for fiscal reasons as well, to the extent that preservations of monopoly protections are necessary to insulate the current flow of economic rents captured by the Member States from erosion by competition.

Could these protections be provided just as well or better under different ownership or market structure regimes? It has been argued that the existing gaming and betting industries in the European Union are justified in providing services even though they might violate fundamental EU principles via monopoly or market protections, or government ownership, because such structures are necessary to provide consumer protections. However, there is no evidence that demonstrate whether the protections provided actually work or not. Nor is there evidence that if market structures were modified towards more competitive markets or more private sector ownership whether situations would be much worse—or much different—with regard to protections than the status quo. These are the fundamental scientific questions on which the law may ultimately have to be determined.

The principle of proportionality can also be brought to bear on this question. There are indeed certain social and private costs that accrue to various economic actors—in terms of loss of efficiency, reductions in consumer convenience, and losses of consumer surplus—because of monopoly constraints or state ownership with respect to a consumer service activity. These must be weighed against the purported benefits coming from such protections. This is where the real challenge for future social scientists will lie in addressing this issue.

One implication of the relevant European Court of Justice decisions is that Member States must implement effective and verifiable mitigation programs or put at risk the substantial economic rents that come from their gambling sectors. In terms of the magnitudes of risk, the *Gambling Services Study* estimated that economic rents accruing either to member states, general fund revenues, or to good causes are somewhere in the vicinity of €7.6 billion, or about 73% of Gross Gaming Revenues in 2003.<sup>9</sup> These are significant amounts whose future will remain in doubt until the legal issues surrounding restrictions against the cross-border supply of gambling services are resolved. Of course, there are interested parties trying to persuade the European Court of Justice and the European Commission one way or the other in this very interesting debate.

The *Gambling Services Study* tried to provide insights for future developments within the European Union without passing judgment on how the legal arguments might ultimately be resolved. Models were developed to project forward what might happen to Gross Gaming Revenues and to economic rents to the year 2010, broken down by Member State and by gaming sector under three scenarios.<sup>10</sup>

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<sup>9</sup> *Gambling Services Study*, *op. cit.*, p. 1404

<sup>10</sup> This entire analysis can be found at *Ibid.*, pp. 1399-1430

The first model scenario—referred to as the “preservation of the status quo”—basically assumes that the current legal environment would remain relatively unchanged for the next five years; and patterns of growth of the various sectors of the commercial gaming and betting industries within the Member States would reflect their current economic and legal realities. Because, for the most part, Member State gaming markets are relatively mature, they would grow in proportion to aggregate personal income in the respective Member States. Under this scenario, Gross Gaming Revenues would increase to about €60 billion and economic rents to about €44 billion by 2010. The economic rents captured by Member States reflect tax revenues and “taxes-in-kind” that would be collected as a by-product of the profits that emerge from the constrained markets of the gaming and betting industries.

The first alternative scenario—the “moderate change” scenario—assumes that legal findings would find in favor of those who have argued that market protections cannot be legally justified on proportionality grounds, i.e. the protections that come from state monopolies could just as efficiently be delivered with private sector ownership alternatives. However, the protective measures that affect consumers—such as limitations on advertising, hours of operation, games to be offered, prohibitions on credit, etc.—would be preserved. The moderate change scenario would open the door to additional competitors who could then bid on limited license opportunities for casinos, lotteries, or whatever opportunities may be available. In this case, the model suggests that growth in Gross Gaming Revenues would be about the same as the status quo scenario, but there would be some erosion in economic rents brought about by a more competitive environment.

The second alternative scenario—the “dramatic change” scenario—assumes that the courts would find that justifications for restrictive measures would largely be thrown out and the European Union’s commercial gaming industries would be open to much more substantial competitive pressures in the forms of cross-border competition, greater numbers of providers of gambling services, and better access to gambling services for consumers throughout the European Union generally. In this case, there would be more substantial growth in Gross Gaming Revenues, as a by-product of increased competition. To some extent, revenue growth would be neutralized by downward pressure on prices that, *ceteris paribus*, would lower revenues as markets moved away from monopoly pricing towards more competitive pricing. However, based upon elasticity studies from the literature that were used as a foundation for the modeling, it was estimated that Gross Gaming Revenues would grow moderately over the next five years; however, there would be significant erosion in economic rents. The model only looked forward about five years. Longer term implications might be even more dramatic if, indeed, harmonization were to come to the commercial gaming industries.

#### 4. A Case Study: the Casino Industry in the European Union

The balance of this analysis addresses the casino sector in the European Union and discusses the implications of greater competition for this particular sector as part of the broader question: “What would happen in the European Union if the legal rules that govern competitive conditions change?” This could occur as a result of either European Court of Justice decisions, the development of secondary Community legislation, or because of competitive pressures coming from either Member States or nearby countries that would subject the European casino industries to competition similar to developments elsewhere in the world. This section examines the implications of such a

direction, how such a transformation might take place, and what Europeans might anticipate based upon the experiences elsewhere.

The casino industries of Europe are presently noteworthy because of a number of characteristics. When casinos were legalized and authorized by the various Member States over the past century, it was common for countries to mimic the laws and practices of casino industries in nearby or adjacent countries. For example, the French casino industry—whose enabling legislation was passed in 1907—was influential in shaping the Spanish casino industry in terms of labor practices, ambiance, size, and even tax revenue structures. Most casinos throughout the European Union follow the legal pattern of limited or exclusive licenses that form the basis for regional monopoly casinos. Rarely in the European Union is there anything that approaches competition in the American context – as one would find in casino industries in Nevada, Atlantic City or Mississippi.

In comparison to many other parts of the world, casino industries in the European Union have seen relatively little change in legislative status over the past three decades. Legal casinos in Germany, Austria, and Italy pre-date World War II. The Netherlands legalized casinos in the early 1970s; and Spain and Luxembourg authorized their casinos in 1977. Switzerland had very limited casinos throughout the 20<sup>th</sup> century, but passed their current law in 1992. However, they did not implement the new law until after 1999. Sweden enacted its legislation in 1999, and opened four state-operated casinos (through the lottery Svenska Spel) over the next few years. Belgium legalized casinos in 1999 even though there had been “illegal” casinos openly operating and paying taxes without enabling legislation for some time. Between 1999 and 2005, the United Kingdom went through a very thorough but in some respects unsuccessful effort to reform their casino gaming laws with the Gaming Act 2005.<sup>11</sup> The prior legislation was the Gaming Act 1968.

Tax rates for casinos in the European Union are comparatively high by world standards. Furthermore, labor unions exercise considerable influence in many European Union casinos relative to other jurisdictions. Ownership of casinos throughout the European Union can be either private sector or government ownership; however, government is always the major revenue sharer through direct ownership or high tax rates.

There is considerable resistance to change and strong political sentiment for protectionism, especially among some of the original Member States of the European Union, such as France, Italy, the Netherlands and Germany. More competitive dynamics, for the casino sector at least, can be seen in the newer Member States of the European Union, especially Eastern European countries.

Some of the important distinctions that can be made when comparing European Union casino industries to casino industries globally can be based on traditional economic typologies. Table 4 summarizes a number of these distinctions. Those attributes noted in **bold** are found in European Union casino industries.

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<sup>11</sup> The original intent of the Gaming Act 2005 was to allow a number of “regional casinos” that would both meet the demand of British consumers and serve to regenerate city centers throughout the country, linked to the nine regional planning jurisdictions in the country. However, because of political manipulations prior to the 2005 elections, the Act was amended such that the number of permitted regional casinos was reduced initially to eight, and then later to one. Furthermore, the government’s recommended siting for that one regional casino was rejected by the House of Lords in spring 2007.

*Table 4*  
*Typologies for Casino Industries*  
(Those found in the European Union are in bold letters)

<b>Ownership structure</b>	<b>Private</b>	<b>Government</b>	Hybrid
<b>Tax rates</b>	Low	Medium	<b>High</b>
<b>Market structure</b>	Monopolistic Competition	<b>Oligopoly</b>	<b>Monopoly</b>
<b>Regulatory constraints</b>	<b>Casino size, bet size, credit, hours of operation, games to be offered</b>	<b>Mandated responsible gambling dimensions</b>	<b>Questioned legitimacy of private profit</b>
<b>External competition</b>	<b>Other casinos; cross-border casinos</b>	<b>Convenience gaming</b>	Internet gaming
<b>Growth potential</b>	<b>Legal constraints against expansion</b>	<b>Dependent upon Expected Returns on Invested Capital</b>	<b>Affected by ownership structure</b>

Ownership structures in the United States are typically private sector in orientation with the exception of American Indian tribal casinos, which are government owned. Casinos in Australia, New Zealand, South Africa, Macau, and most of South America are privately owned, as are casinos in UK, Estonia, Spain, France, Portugal and Greece. Government ownership of casinos is the norm in the Philippines, in Quebec and Manitoba in Canada, as well as Austria, the Netherlands, Finland, Slovenia, and Sweden. There are also various hybrid ownership structures where government owns a portion of the assets or operations of casino operations, and private sector interests own the balance of assets. This is the case in British Columbia, Alberta, Ontario and Nova Scotia, as well as in Switzerland and Italy.

There is tremendous variation in tax rates for casinos from jurisdiction to jurisdiction around the world. Tax rates on gross gaming revenues for casinos range from a 6.75% rate in Nevada and 8% in Atlantic City to rates that climb as high as 80% to 92% in parts of Europe. As a general rule, the tax rates imposed on casinos in the European Union are substantially above those in most other casino jurisdictions in the world. (Table 5.)

*Table 5*  
*Maximum Percentage Tax Rates*  
*On European Union Casino Gross Gaming Revenues*

<b>MEMBER STATE</b>	<b>MAXIMUM INCREMENTAL PERCENTAGE TAX RATE (2004)</b>
<b>AUSTRIA</b>	<b>80% for tables; 48% for EGMs*</b>
<b>BELGIUM</b>	<b>44% for tables; 50% for EGMs*</b>
<b>CYPRUS</b>	<b>N/A</b>
<b>CZECH REPUBLIC</b>	<b>31% for tables; 20% for EGMs*</b>
<b>DENMARK</b>	<b>75%</b>
<b>ESTONIA</b>	<b>60%</b>
<b>FINLAND</b>	<b>All profits accrue to State</b>
<b>FRANCE</b>	<b>80%</b>
<b>GERMANY</b>	<b>92%</b>
<b>GREECE</b>	<b>33%</b>
<b>HUNGARY</b>	<b>34.5%</b>
<b>IRELAND</b>	<b>N/A</b>
<b>ITALY</b>	<b>72%</b>
<b>LATVIA</b>	<b>25%</b>
<b>LITHUANIA</b>	<b>Unit tax on tables and machines</b>
<b>LUXEMBOURG</b>	<b>Between 10% and 80%</b>
<b>MALTA</b>	<b>40%</b>
<b>NETHERLANDS</b>	<b>33.3%</b>
<b>POLAND</b>	<b>50%</b>
<b>PORTUGAL</b>	<b>50%</b>
<b>SLOVAKIA</b>	<b>27%</b>
<b>SLOVENIA</b>	<b>50%</b>
<b>SPAIN</b>	<b>61%</b>
<b>SWEDEN</b>	<b>All profits accrue to State</b>
<b>UNITED KINGDOM</b>	<b>40%</b>

With respect to market structures, monopolistically competitive and oligopolistic casino industries can be found in the American jurisdictions of Nevada, Atlantic City, and Mississippi, but almost nowhere else. Such markets have evolved toward oligopoly largely as a result of economies of scale and scope inherent in the casino/hotel resort

industry.<sup>12</sup> Monopoly markets—created typically by legislative constraints and exclusive casino franchises— are not uncommon in Europe and, for that matter, in many other parts of the world as well.

There are a wide variety of regulatory constraints that casino industries have to abide by. Casino size— constraints on how large casinos can be—is one that has greater importance in Europe than in many other parts of the world. This is often a zoning and planning issue at the municipal level, though high tax rates have the effect of discouraging the levels of capital investment that characterize modern “mega-casino” complexes. European casinos are substantially smaller than modern casinos found in many other countries, including the United States, Australia, Macau, and South Africa.

Limits on the size of wagers that can be made within casinos, prohibitions against credit, limited hours of operation, specifications on which games or devices can be offered, mandated responsible gambling programs, and challenges to the legitimacy of private profit from casino operations, also appear as regulatory constraints on casino operations. Various Member States declare as a matter of policy that private profit is not a justifiable outcome of casinos. In such cases, profit has to be redirected to state coffers or “good causes,” at least partly because of the moral taint associated with gambling as an activity.

Casino industries are also affected by external competition. This may take the form of cross border competition emanating from another Member State, another province, or another country, where casinos are competing for the same customer base. Convenience gaming—gaming machines located outside of casinos—may absorb a significant portion of demand for gambling if there is a substantial gaming machine industry. This is the case in many European Union countries, including the UK, Spain, Germany, Finland, Sweden, and the Netherlands, as well as Australia, New Zealand, and Canada; gaming machines are largely prohibited in France, Austria, Italy, and the United States. Internet gaming is another growing and emerging external competitive factor that will likely affect the casino industry in varying degrees in different parts of the world, but it still has many of its own legal and legitimacy challenges in various countries.

The growth potential of casino markets is often linked to potential returns on invested capital, as well as legal rights to expand. In many European Union jurisdictions, it is virtually impossible for casinos to grow beyond their current dimensions without new legislation because of political and legal constraints either at the national or local level.

Nonetheless, casino law has seen substantial liberalization in many parts of the world over the past two decades, and there is reason to believe the same considerations will soon—or eventually—come to the European Union. Typical objectives when enacting or liberalizing casino law can be found in one of three arguments. Liberalization of casino laws is often undertaken for fiscal benefits—to generate tax revenues either for the general fund or for earmarked purposes. Alternatively, casinos might be justified on the economic benefits they create; casinos can be strong catalysts to reverse the decline of particular regions, cities or areas within cities, for example. The third justification lies in the creation of consumer benefits; casinos are sometimes authorized because a jurisdiction’s citizens want to participate in casino gaming, and there is consensus that people have the right to make their own choices over such activities.

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<sup>12</sup> See, for example, William R. Eadington, “The economics of casino gambling,” in *Journal of Economic Perspectives*, vol 13, no. 3, August, 1999, pp. 173-192.

However, it is not unusual for governments to be unclear in stating their explicit objectives for legalization or liberalization. A good example of this is found with the United Kingdom's legislative efforts between 1999 to 2005, which led to passage of the Gaming Act 2005. The process was initiated by the Home Office with formation of the Budd Commission in 2000, whose final report argued that the primary purpose in reforming the law was consumer benefit.<sup>13</sup> However, after government and parliamentary review, this objective eventually evolved into regeneration of needy areas as the primary purpose of reforming the law. Finally, at least with respect to casinos, the lack of clear objectives, along with an aggressive and cynical media campaign, resulted in passage of an inconsistent and generally unsatisfactory piece of legislation, at least with respect to casinos.

What the British experience points out, and what the experience of many other jurisdictions has also demonstrated, is that it is politically difficult to justify consumer benefit as the primary reason for legalization or liberalization. The gaming industry remains a second class industry in the eyes of many, and casinos are symbolic of gaming in general. However, of the other two motivations for legalization or liberalization of casino laws, economic development potential is arguably considerably greater than fiscal contribution potential. This is perhaps best demonstrated by the experiences of casino developments and related investments in the cities of Melbourne, Australia and Cape Town, South Africa. In both cases, the economic rents created by casino legalization, and their ability to either concentrate economic activity around the casino or to fund other capital investments as part of the competitive bid process, resulted in spin-offs that generated significant economic benefits for the respective cities.

## **5. The Essential Policy Question, and the Future of Gaming in the European Union**

The fundamental hypothesis suggested by this analysis with regard to the European Union is: *“Does the current restrictive structure that prevails for casinos and other commercial gaming and betting industries throughout the European Union really provide protections that are not realized in other countries?”* The European Union has monopolies and protected markets not only for casinos but for all other forms of commercial gaming, but do they really do a better job in protecting consumers than is the case in America, Australia, Canada, South Africa, or other jurisdictions that have different market structures? That is a question of science. Furthermore, what science reveals may undermine the reasoning behind national restrictions to the cross-border supply of gambling services within the European Union.

A related question is: *“Will Europeans embrace the kind of casino gaming that characterizes much of the rest of the world?”* In other words, if some Member State laws were modified to permit American-style destination multifaceted casino resorts, would Europeans find them attractive? Many in Europe would claim: “No, we are different,” but the counter-question is: “Are Europeans different in terms of their tastes and preferences—in fundamental human behaviors with respect to gambling—from what can be found in every other corner of the world?” It is likely that Europeans are not much different than people who have left Europe for other parts of the world, and who have embraced other models of gambling that are quite different than the current offerings within Europe.

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<sup>13</sup> Department of Culture, Media and Sport, The Gambling Review Report (The Budd Report) 2001; retrieved at [http://www.culture.gov.uk/Reference\\_library/Publications/archive\\_2001/gamb\\_rev\\_report.htm](http://www.culture.gov.uk/Reference_library/Publications/archive_2001/gamb_rev_report.htm)

Which legal and economic models might some of the European Union Member States embrace? Can European Union Member States move away from the high tax, market-constrained, and state-owned models that are now common in Europe? Furthermore, if some Member States move in non-traditional directions, will there be a domino effect once those Member States successfully introduce “international style” casinos resorts? This is a process that has been observed in many other parts of the world, but will it also occur in Europe? There is good reason to believe the ultimate answer is going to be yes.

In light of this expectation, what can Europe learn from the dynamics of casino industries elsewhere? One can start by examining the evolution of the casino industry in Las Vegas. Las Vegas has served as the prime inspiration for the past two decades for other jurisdictions throughout the world for legalizing casinos or liberalizing gaming legislation, because of the objective economic accomplishments that Las Vegas has achieved. Las Vegas has had the fastest population growth rate of any city in America for the last 30 years, driven by expansions in the casino industry. Its population is approaching two million, making Las Vegas by far the largest city in Nevada. Las Vegas has more quality hotel rooms than New York, Tokyo, London, and Paris combined. Las Vegas is arguably the best convention city and entertainment city in the world. It has become one of the best shopping cities in America and it continues to grow and create jobs in the tourism and construction sectors because of the inherent popularity of the products and services that it offers. The kind of multi-billion investment that typifies the Las Vegas Strip has occurred mainly since 1989. The next decade will bring a new generation of growth in Las Vegas, with projects like MGM Mirage’s \$7 billion Cite Center and the Boyd Group’s \$5 billion Echelon Place, which will add residential components to the more traditional casino-entertainment-restaurant-convention-hotel mix.

The other remarkable jurisdiction with respect to casino growth is Macau. As recently as the 1990s, Macau, which at the time was still under the administrative jurisdiction of the Portuguese, had a casino industry that was unattractive, tired, and arguably corrupt. Triads—Chinese organized crime—were actively involved in gaming operations, and scandals and assassinations linked to turf wars were not uncommon.<sup>14</sup>

One lesson from Macau relates to the consequences of monopoly. A single concessionaire had held the monopoly for gaming in Macau from 1962 to 2002; over that 40 year period, even though billions of dollars in profits were earned, almost nothing was put back into Macau’s casino industry. There was a perception on the part of the concessionaire that there was little justification to make capital improvements, perhaps linked to a belief that their customers enjoyed squalid, dirty, smoky, and crowded conditions in the casinos. However, following the handover from Portugal to China in 1999, the Special Administrative Region of Macau decided to reform and expand the casino industry through legislative change. The new law called for three licenses to be issued, which ultimately led to six total licenses, as each concessionaire was allowed to give out a sub-license. This created a far more competitive environment, in some respects mirroring Las Vegas.

Subsequently, Macau has become a highly competitive and dynamic market. Between 1989 and 2006, Las Vegas saw about \$30 billion in new casino or capital expansion projects along the Las Vegas Strip. Macau, will generate about \$20 billion in capital projects between 2004 and 2010. Even though Macau has a very high tax rate of

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<sup>14</sup> See, for example, William R. Eadington and Ricardo Siu, “Between Law and Custom — Examining the Interaction between Legislative Change and the Evolution of Macao’s Casino Industry,” *International Gambling Studies*, Vol. 7, No. 1, 1–28, April 2007

nearly 40% (compared to Nevada's 6.75%) as well as serious regulatory challenges,<sup>15</sup> it still offers high enough expected returns on capital investment to attract substantial investments in new casino resorts.

Another noteworthy jurisdiction is Singapore. Singapore is a relatively conservative city-state with the reputation of being a highly socially controlled environment, as well as a somewhat dull destination for tourists. The government of Singapore in 2005 came to the conclusion that casinos might be a way to change the city-state's basic image and therefore the interest that potential visitors might have in visiting Singapore. Casinos were envisioned as a catalyst to stimulate Singaporean tourism. Singapore passed a comprehensive and focused law in 2005 that, among other things, created two gaming licenses—to be awarded via competitive bidding—with low tax rates which made it very attractive for potential international investors. The tax rates—at between 5% and 15% of gaming revenues – are substantially lower than those in Macau. As the result of the bidding process, Singapore will receive over US\$7 billion in foreign direct investment with respect to the two “integrated resort” casino properties. Based on the criteria delineated in the bidding process, Singapore will end up with two integrated resorts that will have significant convention, entertainment, and retail offerings, as well as iconic architecture. Furthermore, there will be substantial direct tax revenue accruing to Singapore as a result of the casinos, as well as the creation of about 10,000 to 15,000 jobs and significant entertainment offerings.

What if a jurisdiction has different objectives than those represented by Las Vegas, Macau or Singapore? In the absence of explicit objectives, less desirable outcomes might evolve. One alternative is what has developed in Japan. In Japan, there are in excess of 18,000 pachinko/pachisuro parlors located throughout the country. A typical pachinko/pachisuro parlor has about 300 electronic gaming devices in a retail outlet, half of them pachinko (a form of vertical pinball), and the other half electronic gaming devices.<sup>16</sup> Total gaming revenues generated by these parlors in 2004 were approximately US\$30 billion which, on a per capita basis, exceeds what Americans spend annually on their entire mix of gambling products and services. In general, such gaming is considered an “unattractive” gaming product and is more likely to invite social and political backlash. This is probably not considered a desirable outcome.

If Europe is going to end up with a reasonable mix of gaming and casino services, what might need to happen to bring it about is a change in fundamental law, as well as a lowering of tax rates and improvements in competitive conditions. However, many European Union countries remain committed to their protectionist policies for gambling and casinos, but either legal challenges or cross border competition could bring about changes that trigger a rationalized evolution.

In summary, one challenge that the European Union and its policy makers need to seriously evaluate is the absence of focused casino and gaming policy consistent with legal developments in the European Union, along with the risk of a continuing spread of “convenience gambling” in the Member States. If this were to occur, the European Union could very well end up with “unattractive” gaming in the Japanese sense, in

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<sup>15</sup> The regulatory issues that remain significant in Macau include concerns over money laundering, loan sharking, and participation in gaming operations by Triads. In particular, these issues pose problems for American, Australian and European regulators as well as for gaming companies licensed in those jurisdictions.

<sup>16</sup> CLSA Asia-Pacific Markets, “Unfavorable Odds: Japanese Pachinko Pachislot,” February 6, 2007.

contrast to “attractive” gaming in the context of the other jurisdictions discussed.<sup>17</sup> Furthermore, the social impacts associated with such gambling might be more pronounced. Countries where gambling has become most controversial—such as Australia, New Zealand, and Canada—demonstrate this particular point. Finally, if the objective is to use casinos for broader economic development purposes or as catalysts to change the general attractiveness or ambience of particular areas, then convenience gambling, Japanese-style, that is already evolving in many countries in Europe, would erode that potential and may end up creating relatively undesirable outcomes.

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<sup>17</sup> Pachinko and other forms of “convenience gambling” (gaming machines located in retail outlets, arcades, bars and taverns, or Spartan purpose-built facilities) might be considered “unattractive gambling” in the sense that they do not provide gaming in aesthetically pleasing setting, they often draw their customers from disadvantaged sub-groups of society, they do not bring about visible economic benefits in the form of job creation or capital investment, and they seem to have a disproportionate impact on problem gambling in communities. See, for example, *Pachinko Nation* by David Plotz, U.S.-Japan Foundation Media Fellows Program, 2001-2002, (retrieved at [http://www.japansociety.org/web\\_docs/plotz\\_pachinko.pdf](http://www.japansociety.org/web_docs/plotz_pachinko.pdf) )