Ontario iGaming round-up: end of transition period and first quarter results

October 13, 2022

What you need to know

- On October 4, 2022, the Alcohol and Gaming Commission of Ontario (the AGCO) announced updates to the Registrar's Standards for Internet Gaming, which set October 31, 2022 as the end date of the 'transition period' afforded to unregulated iGaming operators and gaming-related suppliers. Applicants that are non-compliant with new Standard 1.22 as of October 31st will risk having their application for registration refused in addition to facing appropriate regulatory action.
- iGaming Ontario's first report on market performance shows strong market fundamentals with total wagers of approximately C$4 billion and gaming revenue of approximately C$162 million in Q1 (April 4 – June 30). However, a complete assessment of the new market's potential is likely not possible until the early half of 2023.
- Registrations continue to roll-in as Live Dealer games draw the attention of the AGCO.
- BLG advises Mohegan on launching the first online sportsbook and real money online casino borne from an existing land-based operator.

Cracking down on the 'grey market'

Since its inception, Ontario's iGaming market has attracted enthusiasm for its economic potential and the responsible gaming safeguards it would introduce as a fully regulated marketplace. However, iGaming Ontario's potential to fully realize on the bullish economic projections that accompanied its launch will be predicated to a large degree around how effectively the province can neutralize the grey market going forward. As witnessed recently in Canada in the wake of the federal legalization of cannabis, the grey market can continue to thrive where (i) the regulated marketplace fails to offer competitive product and service offerings, and (ii) there is a lack of sanctions and enforcement action to combat illegal activities.

On October 4, 2022, the AGCO took an important first step towards addressing this issue by announcing an effective deadline for operator and gaming-related suppliers (GRS) currently active in the unregulated market in Ontario to end such activities.

The new Standard 1.22, effective October 31, 2022 (the Effective Date), is applicable to all registered iGaming operators, GRS' and prospective applicants. Those Registered iGaming operators who have not yet transitioned from the unregulated marked to the regulated market by the Effective Date will be required to end unregulated operations within Ontario prior to entry into the regulated market. Prospective applicants will need to ensure compliance with the new Standard by the Effective Date or risk having their application for registration refused.

There remains some ambiguity, however, as to how future instances of non-compliance with the new Standard will be addressed. The AGCO has stated that, "…it will take appropriate regulatory action against any registrant that does not meet this Standard (once it comes into force)." The scope and scale of such regulatory action will surely be monitored by industry participants once the Effective Date has passed, as will the progress of the coalition of provincial gaming corporations currently calling on the federal government to take further action to address the operation of illegal gambling websites in Canada.

Nevertheless, the AGCO has now drawn a much anticipated line in the sand for all iGaming operators and suppliers in Ontario and there is hope this will serve to reinforce the regulated market's footing in the province.

Assessing market growth

On August 30, 2022, industry onlookers received their first official insight into the state of Ontario's new iGaming market via iGaming Ontario's release of its report (the Q1 Report) on the first full quarter of market operations, ending on June 30, 2022. The key highlights included a total gaming revenue of $162 million, 492,000 active plater accounts and total cash wagers of $4,076 million, not including promotional wagers (bonuses).

At face value, the results appear less promising than those of comparable jurisdictions south of the border such as Michigan and Pennsylvania. However, it would be both unfair and inaccurate to make an 'apples to apples' comparison with those markets at this stage. Unlike comparable U.S. jurisdictions, an expansive unregulated grey market prevailed in Ontario prior to the introduction of the regulated market. As noted above, the transition of unregulated operators to the regulated market is an ongoing process such that current market figures cannot accurately capture the regulated market's economic potential. It should also be noted that the report does not included figures from the Ontario Lottery and Gaming Corporation's iGaming offering ProLine+.

Another underlying factor is the prohibition on advertising inducements in Ontario. Standard 2.05 prohibits the public advertising of inducements to engage in any gaming activity, including bonuses and credits. Despite the considerable advertising spend of registered operators over the last several months, this prohibition limits the marketing of iGaming offerings in Ontario in a way not seen in the U.S. Time will tell if this prohibition is lifted as the AGCO has maintained it is open to adjusting the advertising rules within

the Registrar's Standards for Internet Gaming (the Standards) based on feedback from industry stakeholders.

All to say, a complete assessment of the state of Ontario's iGaming market will likely only be possible in the early half of 2023 once the 'transition period' has concluded and the market has become firmly established. However, a solid player base and low barriers of entry to the regulated market continue to give reason for optimism.

Industry update

As of October 13, 2022, 43 different iGaming websites were registered and operating in Ontario's new iGaming market, representing 12 additional websites since the release of the Q1 Report. These numbers do not include the seven additional registrations issued by the AGCO to Apollo Entertainment Ltd., GWN Limited and Pala Interactive as announced on September 30, 2022.

The recent flurry of registrations has significantly broadened the scope of iGaming offerings available to Ontarians and includes the launch of the World Series of Poker powered by GGPoker software on September 30, 2022, as well as PlayFallsview, the first iGaming site in Ontario to be borne out of a land-based establishment, the Fallsview Casino Resort in Niagara Falls, ON.

It should also be noted that the growing popularity of Live Dealer games, which are games played with live presenters or dealers that players connect to and play through an iGaming site, has led the AGCO to make further amendments to the Standards to address the potential risk related to the use of physical gaming equipment and the risk related to the use of live presenters.

We expect to see continued and steady growth in registrations and ongoing regulatory updates are sure to follow given the iterative relationship between operators and both the AGCO and iGaming Ontario. Both registered and prospective iGaming operators and GRS' must continue to carefully track their regulatory responsibilities and reach out to counsel as questions arise.

We also expect to see an increase in strategic acquisitions over the medium term as Ontario's iGaming market develops away from its nascent state. As the industry matures, we encourage all industry participants to engage with counsel to assist with navigating through the complex regulatory and commercial considerations involved in such transactions.

Takeaways

The launch of Ontario's iGaming market in April 2022, and the legalization of single-event sports betting by the federal government in 2021, have led to one of the most dynamic years in Canadian gaming in recent history.

As current and prospective operators and suppliers look to capitalize on the opportunities presented, we encourage them to engage with local counsel to assist with maneuvering through this rapidly evolving regulatory and commercial space.

For more information on Ontario's iGaming market, reach out to the key contacts below.

By

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