

Consequently, the types of problem gambling services sold by each state affiliate are different from those sold by other state affiliates. Each state affiliate directly markets its problem gambling services.

Public and private parties seeking problem gambling products and services have few, if any, alternatives to the state affiliates. In most instances, the only bidder for the business is the NCPG affiliate within the customer's state. Several state affiliates have also offered services outside of their borders, which prompted defendant's unlawful territorial allocation. In a few instances, a party unaffiliated with the NCPG has submitted a bid for a customer's business.

C. The Illegal Territorial Allocation Agreement

Beginning at least as early as 1995 and continuing until at least 2001, the NCPG, through its officers and directors, and its state affiliates, facilitated, organized, promoted, and advocated an unlawful territorial allocation between and among the state affiliates for the provision of problem gambling services in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The territorial allocation was a horizontal agreement among the state affiliates of the NCPG which was effectuated by the NCPG. The purpose of this unlawful territorial allocation was to prevent the NCPG's state affiliates from offering or selling problem gambling services outside of their home states, thereby eliminating competition between and among the state affiliates of the NCPG.

Although many of its activities are in the public interest, the NCPG was acting illegally to curtail competition by establishing the territorial allocation. Its purpose in doing so reflected the desire of a controlling majority of its state affiliates to prevent competitive incursions by other state affiliates. In response to incipient competition from certain state affiliates, state affiliates met and agreed with the NCPG to adopt, publish, and enforce resolutions, policies, guidelines, and certification standards to limit the provision of problem gambling services across state lines. The territorial allocation was enforced by threats of sanctions, including fines and revocation of NCPG membership, and threats to deny national certification to counselors trained by out-of-state affiliates. These actions reduced competition among state affiliates, leaving customers with few, if any, choices other than the affiliate in their state. The territorial allocation deprived customers of the

benefits of free competition, stifled innovation, and decreased quality.

In contrast to the legitimate, pro-competitive territorial allocations put into effect by many associations, the territorial allocation agreed to by the state affiliates and orchestrated by the NCPG curtailed competition among the state affiliates, without enhancing economic efficiency. When territorial allocations enhance economic efficiency, they may be pro-competitive. For example, when a manufacturer of a product sets up exclusive territories for its distributors to encourage them to maximize their sales, advertising, and promotion efforts, while at the same time providing them with assurance that they, and not other sellers of the manufacturer's product, will reap the benefits of their efforts, the public as well as the product manufacturer may benefit from their competitive efforts, vis-a-vis other competitive products. Thus, by limiting "intra-brand" competition for the product, "inter-brand" competition among the competing products may be increased. Here, however, there is no "product" offered by the NCPG to its state affiliates. The NCPG does not create problem gambling services or products that it then distributes through its state affiliates, nor does it make an effort to identify the best problem gambling services or products among those sold by its affiliates or to encourage them to adopt any set of best problem gambling services or products. Instead, each of the state affiliates independently creates and sells its own problem gambling services and products, many of which are unique. For example, the Minnesota affiliate has developed a 60-hour counselor training program which also is offered as an interactive, web-based course. The Minnesota affiliate also consults with public policy think-tanks focused on the problem of compulsive gambling, such as one held at Harvard University. Other state affiliates, including the Texas affiliate, create and distribute publications in Spanish to meet the needs of Hispanic problem gamblers. Still other state affiliates sponsor programs for troubled teenagers, such as the Washington affiliate's "Gambling, Addictions, and At-Risk Youth." Thus, the territorial allocation deprived customers of the benefits of free competition among the different services offered by different state affiliates.

The state affiliates agreed to have the NCPG implement and enforce the territorial allocation agreement in several ways. At a 1995 meeting in Puerto Rico, the NCPG state affiliates agreed to modify the Affiliate

Guidelines to discourage competition between and among the state affiliates, requiring an out-of-state affiliate to get permission from the in-state affiliate before seeking business in that affiliate's state.

The following year, when some state affiliates continued to bid out-of-state, the state affiliates passed a resolution imposing sanctions against any state affiliate that attempted to compete outside its home state. Later in 1996, the state affiliates agreed with the NCPG Board Directors to adopt an "Ethics Resolution" setting forth the agreement to allocate territories as an ethical standard. It also required that a fee or a portion of revenues be paid to the in-state affiliate who consented to another affiliate providing in-state services. Affiliates failing to heed the Ethics Resolution were subject to sanctions, including fines or revocation of NCPG membership. In 1999, the NCPG incorporated the provisions of the Ethics Resolution into a formal Affiliate Agreement, which was ratified by a majority of state affiliates.

D. Effects of the Agreement

The unlawful territorial allocation has had the effect of limiting choice, reducing quality, and stifling innovation in the development and sale of problem gambling services. Customers have been deprived of the benefits of free and open competition in the purchase of problem gambling services, including the benefit of choosing among a variety of problem gambling services offered by different state affiliates. Prospectively, eliminating the unlawful territorial allocation will have the effect of increasing choice, increasing quality, and encouraging innovation.

The territorial allocation has been effective because the NCPG has had the means and the will to enforce it against affiliates that have sought to compete across state lines. Accusations of unethical conduct have dissuaded customers from contracting with offending affiliates. Withholding credit for problem gambling counselor training has prevented affiliates from offering training programs outside their home states. Threatening affiliates with the loss of NCPG membership also has served to confine affiliates to their home states because some states will contract only with the NCPG members.

Although the territorial allocation has been largely effective in preventing interstate competition, a few affiliates, most notably the Minnesota affiliate, have sought business outside their home states. These transgressions frequently precipitated NCPG enforcement actions that achieved their anti-competitive