

October 22, 2003; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on October 29, 2003; and the deadline for filing posthearing briefs and written statements is November 5, 2003.

For further information concerning this investigation see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

**Authority:** This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: September 22, 2003.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

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## DEPARTMENT OF JUSTICE

### Antitrust Division

#### **United States v. National Council on Problem Gambling, Inc., Civil Action No. 1:03CV01278; Public Comments and Plaintiff's Response**

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) and (d), the United States hereby publishes below the written comments on the proposed Final Judgment in *United States of America v. National Council on Problem Gambling, Inc.*, Civil Action No. 1:03CV01278 filed in the United States District Court for the District of Columbia, together with the United States' response to the comments. Copies of the comments and the United States' response are available for inspection at the United States Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 200, Washington, DC 20530, and at the Office of the Clerk for the United States District Court for the District of Columbia, E. Barrett Prettyman Building, 333 Constitution Ave. NW., Washington, DC 20001.

**J. Robert Kramer,**

*Director of Operations, Antitrust Division.*

#### **Response to Public Comments**

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h) ("APPA" or "Tunney Act"), the United States hereby responds to the public comments received regarding the Proposed Final Judgment in this case.

### **I. Background**

On June 13, 2003, the United States filed a Complaint alleging that the National Council on Problem Gambling, Inc. ("NCPG") had orchestrated an unlawful territorial allocation of problem gambling products and services along state lines in violation of section 1 of the Sherman Act, 15 U.S.C. 1. Simultaneously with the filing of the Complaint, the United States filed a Proposed Final Judgment. A Competitive Impact Statement ("CIS") was also filed with the Court at that time, and published in the **Federal Register**, along with the Proposed Final Judgment, on June 26, 2003 (*see* 68 FR 38093). Pursuant to 15 U.S.C. 16(c), a summary of the terms of the Proposed Final Judgment and CIS was published in *The Washington Post*, a newspaper of general circulation in the District of Columbia, during the period of June 24 through 30, 2003.

Under the consent order, NCPG is prohibited from directly or indirectly initiating, adopting, or pursuing any agreement, program, or policy that has the purpose or effect of prohibiting or restraining any Problem Gambling Service Provider ("PGSP") from: (1) Selling problem gambling services in any state or territory or to any customer; or (2) submitting competitive bids in any state or territory or to any customer. The NCPG is also prohibited from directly or indirectly adopting, disseminating, publishing, seeking adherence to or facilitating any agreement, code of ethics, rule, bylaw, resolution, policy, guideline, standard, certification, or statement made or ratified by an official that has the purpose or effect of prohibiting or restraining any PGSP from engaging in any of the above practices, or that states or implies that any of these practices are, in themselves, unethical, unprofessional, or contrary to the policy of the NCPG.

The consent order further provides that the NCPG is prohibited from adopting or enforcing any standard or policy that has the purpose or effect of: (1) Requiring that any PGSP obtain permission from, inform, or otherwise consult with another PGSP before selling problem gambling services or submitting bids for the provision of problem gambling services in any state or territory or to any customer; or (2) requiring that any PGSP contract with, provide a fee or a portion of revenues to, or otherwise remunerate any other PGSP as a result of selling problem gambling services in any state or territory or to any customer. Finally, the NCPG is prohibited from adopting or

enforcing any standard or policy or taking any action that has the purpose or effect of: (1) Sanctioning, penalizing or otherwise retaliating against any PGSP for competing with any other PGSP; or (2) creating or facilitating an agreement not to compete between two or more PGSPs.

The sixty-day period for public comments expired on August 29, 2003. As of today, the United States has received written comments from: (1) Joseph E. Finnerty, James A. Gentry, Fred Gottheil, and John Warren Kindt of the Gambling Research Group ("Gambling Research Group"); (2) Kathleen M. Scanlan, Executive Director of the Massachusetts Council on Compulsive Gambling, Inc., ("Massachusetts Council"); and (3) Richard A. Johnson, CEO, and Glen Gorelick, Director, of Problemgambling.com, Responsiblegaming.com, and Safegamingsystem.com ("Problemgambling.com"). The United States has carefully considered the views expressed in these comments, but nothing in the comments has altered the United States' conclusion that the Proposed Final Judgment is in the public interest. Pursuant to Section 16(d) of the Tunney Act, the United States is now filing with this Court its response to such comments. Once these comments and this response are published in the **Federal Register**, the United States will have fully complied with the Tunney Act and will file a motion for entry of the Proposed Final Judgment.

### **II. Response to Public Comments**

#### *A. Gambling Research Group's Comment*

The Gambling Research Group asserts that "a majority of experts would probably argue that this entire market [for services to pathological and problem gamblers] is currently dominated by problem gambling service providers (PGSPs) who are involved in direct or indirect vertical relationships [with Gambling Related Organizations ("GROs")] resulting in those PGSPs being dominated or substantially influenced by various GROs." The comment asserts that control of the PGSPs by GROs may result in less effective services to pathological and problem gamblers because GROs benefit financially from the excessive wagering of these troubled gamblers. Thus, the Gambling Research Group recommends that the NCPG be required to reveal all donations and influences impacting upon its financial viability and to divest itself from all direct and indirect