

associations and vertical and horizontal influences from GROs. (A copy of the Gambling Research Group's comment is attached as Exhibit A.)

The Proposed Final Judgment addresses the violation alleged in the Complaint—an unlawful territorial allocation of problem gambling products and services along state lines in violation of Section One of the Sherman Act. While the Gambling Research Group's comment raises interesting issues, it does not address the violation alleged in the Complaint. Nothing in the Gambling Research Group's comment changes the view of the United States that the Proposed Final Judgment is in the public interest. In making its determination whether the Proposed Final Judgment is "in the public interest," the "court is without authority to 'reach beyond the complaint to evaluate claims that the government did not make and to inquire as to why they were not made.'" *United States v. Microsoft Corp.*, 231 F. Supp. 2d 144, 154 (D.D.C. 2002) (quoting *United States v. Microsoft Corp.*, 56 F. 3d 1448, 1459 (D.D.C. 1995)).

#### B. Massachusetts Council's Comment

The Massachusetts Council's comment does not state whether it supports or opposes entry of the Proposed Final Judgment. Rather, the comment cites various instances in which the Massachusetts Council—as a member of NCPG—and others, spoke out against or disagreed with NCPG's policy of territorial allocation of problem gambling products and services along state lines. (A copy of the Massachusetts Council's comment is attached as Exhibit B.) The NCPG's policy of territorial allocation is the issue squarely addressed by the Complaint and the Proposed Final Judgment. Given the Massachusetts Council's stated disagreement with the NCPG's policy of territorial allocation, the United States views this comment as one in support of the entry of the Proposed Final Judgment.

#### C. Problemgambling.com's Comment

Two executives of Problemgambling.com stated that they support the Proposed Final Judgment and it is in the public interest. (A copy of Problemgambling.com's comment is attached as Exhibit C.)

### III. Conclusion

After careful consideration of these public comments, the United States has concluded that entry of the Proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint, and

is therefore in the public interest. Pursuant to section 16(d) of the APPA, the United States is submitting these public comments and this response to the **Federal Register** for publication. After these comments and this response are published in the **Federal Register**, the United States will move this Court to enter the Proposed Final Judgment.

Dated:

Washington, D.C.  
Respectfully submitted,

/s/  
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#### Certificate of Service

I hereby certify that I served a copy of the foregoing Response to Public Comments via First Class United States Mail, this \_\_ day of \_\_, 2003, on:

Sanford M. Saunders, Jr., Esq., Greenberg  
Traurig, LP, 800 Connecticut Avenue, NW.,  
Suite 500, Washington, DC 20006.

/s/  
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#### EXHIBIT A

Gambling Research Group  
P.O. Box 70  
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August 21, 2003  
Marvin N. Price, Jr., Chief  
Field Office  
Chicago U.S. Department of Justice, Antitrust  
Division  
209 S. LaSalle St., Suite 600  
Chicago, IL 60604  
RE: *U.S. v. Nat'l Coun. Problem Gambling, Inc.*

Dear Mr. Price: This comment is made pursuant to 68 Fed. Reg. 38090-98 (June 26, 2003). If the gambling industry, its affiliates, associates, or related service industries (hereinafter gambling related organizations: GROs) can control, dominate, or substantially influence the expertise and policies at the only national organization (such as the National Council on Problem Gambling: NCPG) or cluster of organizations dealing with pathological and problem gambling (Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders*, Sec. 312.31 "Pathological Gambling"), the GROs can control, dominate, or substantially influence both horizontal and vertical relationships regarding the expertise and policies relating to nomenclature, terminology, standards, markets, and even market shares. For example, they have ostensibly supported the introduction of new terms, such as "disordered gambling" that have had the effect of obfuscating issues and market segments.

Two prime relevant markets consist of the provision of services to the pathological (*i.e.*, compulsive) gambler market segment and the problem gambler market segment. (These market segments are delimited in the next paragraph). As indicated in 68 Fed. Reg. 38090 *et seq.*, a majority of experts would probably argue that this entire market is currently dominated by problem gambling service providers (PGSPs) who are involved in direct or indirect vertical relationships resulting in those PGSPs being dominated or substantially influenced by various GROs. The conflict of interest is that theoretically GROs would not want to have the most effective or efficient PGSP programs for pathological and problem gamblers since those gamblers constitute cr me market segments. The analogy is to *United States v. Motor Vehicles Manufacturing Ass'n*, No. CV 69-75-JWC (D.C., Central Dist. Calif.), 1982 U.S. Dist. LEXIS 17850; Trade Cas. (CCH) P65, 175, Oct. 28, 1982 which resulted in a consent decree prohibiting major auto manufacturers from combining to research pollution control devices. The theory in *Motor Ass'n* is that they all have incentives to repress innovation in this area.

All of these determinations also impact on the identification of market segments and abilities to attract or market to those segments—if any GRO should desire to do so. For example, the cr me market for gambling revenues apparently consists of the pathological (*i.e.*, compulsive) gambler market segment (approximately 1-2 percent of the general population) and the problem gambler market segment (approximately 3-5 percent of the general population). These two segments account for between 10-74 percent of the total dollars lost in all geographic gambling markets. (Lesieur, 1998). As indicated in the *Final Report of the 1999 National Gambling Impact Study Commission* (*e.g.*, page 4-4), these market segments are more concentrated near gambling venues. The percentages of these markets and their percentages of total dollars lost to the different types of gambling were first categorized during the 1996 annual meeting of the National Council on Problem Gambling (NCPG) and were subsequently published as a table in: Henry R. Lesieur, *Costs and Treatment of Pathological Gambling*, 556 Annals Am. Acad. Pol. & Sci. 153, 165 Table 1 (1998) (Table 1: "Percentage of Expenditures by Problem Gamblers for Selected Forms of Gambling by State or Province"). (See also Australian Productivity Commission 1999; Focal Research (1998); 1997/1998 Nova Scotia lottery players survey.)

Thus, if the GROs can control, dominate, or substantially influence the financial viability of the NCPG, the GROs almost necessarily control, dominate, or substantially influence the expertise and policies relating to nomenclature, terminology, standards, markets, and even market shares among segments of gamblers, as well as the problem gambling services providers (PGSPs) which service segments of those markets.

Accordingly, the NCPG should be required to reveal all donations and influences impacting upon the financial viability of the