

Breaking Down the Adversarial Wall!

Building the operator and regulator relationship through education and dialog **By Brendan D. Bussmann**

As the gaming industry continues to expand as a form of entertainment across the globe, operators and suppliers typically have three questions when they are looking at a brand-new jurisdiction or an expansion in an existing jurisdiction. Those three questions are: what is the tax rate, what is the license fee, and who is the regulator?

On the flip side, legislators and regulators will seek input from prospective or existing operators as jurisdictions look to craft a new market, expand their market, or bring further innovation. The balance between these interests can in some cases become awkward as operators look to effectively compete while also balancing the public policy goals of the market and allowing a strictly regulated market.

The crux of this is creating a healthy balance that allows effective regulation in the market, and not to be overly influenced by an operator or an outside stakeholder. However, regulators must also allow ongoing, healthy dialogue and input into how a market needs to be crafted, how regulations may impede innovation, or how stakeholders can effectively operate in a market that allows the right amount of competition.

This is often referred to as a partnership, which some regulators have rejected because of the hierarchy of the relationship. However, regulators that do not seek input from operators in an open dialogue may constrain their own market. To the same extent, operators need to continually educate the regulator on not only the benefits they provide, but also how actively reforming the industry can be a positive outcome for both parties.

Learning from the U.K.'s Missteps

The gaming industry in the United Kingdom continues to be hammered by the regulators and, in some cases, rightfully so, considering some of the missteps and actions by certain operators. Most of this has surrounded advertising, responsible gaming, credit cards, youth gambling, and other issues that have affected the industry especially over the last several years.

The industry has pushed both the regulator and public opinion campaigning to the max with some of these more cavalier approaches to the market. Because of this massive swing, quality operators in

the market are mistaken for those that pushed the envelope and have now intensified their efforts even further to regain their reputations and, frankly, the industry as a whole. This all starts with re-educating the market on the many positive impacts and standards to which these operators strive.

It begins, first and foremost, with education of these operators as they also push the limits to develop new and innovative approaches to responsible gaming efforts. This includes the introduction of artificial intelligence and other tools to assist with these programs. Technology adds another dynamic into the mix, as it is typically a new factor to many regulators. This takes time to make sure both sides are comfortable with the direction of the industry, the understanding of how things work, and how to protect consumers, which has been the problem in the U.K. for many years.

A Tale Of Two Jurisdictions

There are two current examples of emerging jurisdictions in Japan and the United States that have had similar experiences as they have worked through gaming regulations. Japan shows how additional operator input may craft a better market, whereas the United States shows how some markets may be influenced by other factors outside of the regulatory body.

Japan released its initial set of regulations in the spring of 2021 for its future integrated resort industry. This comes after the IR Promotion Act that was passed by the National Diet in December 2016 and the IR Implementation Act passed by the same legislative body in July 2018.

Both of these documents served as a template for the formation of the



Decisions by the U.K. Gambling Commission have had a stifling effect on the gaming industry in Britain



The late Sheldon Adelson pulled Las Vegas Sands out of the running for an integrated resort in Japan because he perceived the regulatory environment would work against his vision for an IR



Limiting its sports betting business to one operator has not turned out so well for Washington, D.C.

Casino Regulatory Commission (CRC) that began its efforts in earnest at the start of 2020; the regulations that were released earlier this spring had been delayed due to the pandemic. One of the challenges with the CRC was the 500.com scandal that centered around an operator that did not desire to operate at the highest market standards, which partially hindered the process for those operators that want to operate in a strictly regulated market.

Additionally, in light of the fallout from the scandal, the CRC became somewhat hesitant to accept direct meetings with operators to understand their thoughts and concerns.

Prior to the release of the regulations, Las Vegas Sands Corp., one of the dominant companies that spent nearly 20 years pursuing the market, announced that they were no longer interested in pursuing development in Japan. The former Sands chairman, the late Sheldon G. Adelson, stated, “While my positive feelings for Japan are undiminished, and I believe the country would benefit from the business and leisure tourism generated by an integrated resort, the framework around the development of an IR has made our goals there unreachable.”

One of the constant criticisms of Japan’s process has been its desire to pave its own path in crafting its regulatory structure. This includes not meeting with operators directly to inform them how the current regulations were drafted, and how they may impact the investment in the IR market or general operations once the up to three licenses have been built and opened.

The concerns of taxation rates, license terms, spatial constraints and other key operating parameters have hindered the ability to keep companies like Las Vegas Sands in the market. While operators and industry stakeholders have tried to communicate the effects that some policies may have on the industry, the CRC has continued to take a reserved approach to accepting input from these sources publicly. It must be noted that operator input was accepted following the release of the draft regulations this spring, although it is yet to be determined how much of this input may be relayed into the working draft regulations.

The United States has also provided examples where regulators control

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too much of the conversation. The District of Columbia recently moved to expand its existing lottery offering to include sports betting. The City Council in partnership with the D.C. Lottery virtually allowed the existing lottery operator to dictate the terms under the guise of efficiency to move the market forward against potential competition from Virginia and Maryland.

This was due in part to a study stating that opening the market to a spectrum of operators would delay the process and not enhance the market. As of today, D.C. is far from an ideal model of sports betting. It is more of a model of what not to do because of the political events

that have surrounded the process, the lack of minority-owned businesses desired to be a part of the process, and dismal revenue levels generated by the lottery.

Another example would be the emerging gaming market in Nebraska. While the legislature was prudent in putting more meat on the bones following the single-subject initiative process, many of the horse track owners/potential licensees have been meeting privately to help formulate the rules by which they will be regulated. This will potentially cause problems down the line when the regulator, in the Nebraska Racing and Gaming Commission, has to decide on suitability of potential licensees and the structure that has been established.

While it is valuable to have operator input, the operator should not be at the table while they are developing the process, especially as the regulatory structure is being created. This is not to say that the industry should not educate, but they should not dictate the interests of regulators, as potential operators in the market have already made it clear that they believe they are entitled to a license, which was stated in testimony before the legislature earlier this year.

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Resorts World Las Vegas opened in June with a full suite of cashless gaming options, except the most important one. Regulations still required players to show up in person to open an account.

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where gaming, entertainment and integrated resorts continue to be the economic driver of the state through gaming and non-gaming taxes. Yet, every time there is a need for money, the gaming industry is forced to make its case to the legislature, the governor and other key stakeholders to promote the positive impact of the industry and to fight perceptions that it does not exist.

The education effort starts with routine communication, and bringing forward issues of concern by both parties to advance the industry. Communication can and should not be a one-way street, but mutual respect must also come into play. This includes understanding the roles that both the regulator and the operator will play in the industry. Both must keep up to date on their efforts to serve the consumers in the market. This includes offering pathways for innovation including technology as well as consumer protections that may be offered. No assumptions can be made, and nothing should be taken for granted.

One can see the continued need to do this as sports betting has expanded across the United States and brought new market players into the discussion. This year, most jurisdictions have seen interesting dynamics in the discussion that can lead to constraints on the market. This includes inoperable tax rates, not understanding how competitive markets work to allow enough licenses, or in some cases too many licenses that may expose licensure to unsuitable operators or individuals. The gaming industry and regulators need to coexist in the space to achieve desired outcomes that provide a well-regulated but competitive market.

Fostering Innovation

As technology continues to advance the industry, the education component becomes even more important to help regulators advance the structure of the current and future gaming sector. One of the most important trends is cashless payment options in and around the gaming and hospitality experience. While cashless wagering is not new to the industry, the Great Shutdown was supposed to advance its efforts in a strong manner.

However, Resorts World Las Vegas only just opened with the first cashless environment on the Las Vegas Strip. The challenge still is that players have to initially sign up in person from the floor of the casino.

This adds an unnecessary step to the process in today's technology platform. Changes need to occur at the highest level among the Nevada Gaming Control Board for this provision to be removed and modernized, as seen in numerous other jurisdictions around the globe. However, this also involves resolving political dynamics within the marketplace itself.

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routine conversation between the regulator and the operator are necessary to advance the industry while balancing it with strong regulation. Cashless is only just touching the surface with further opportunity in iGaming, esports and other initiatives.

The relationship between operator and regulator is key to the future of the gaming and hospitality industries. The challenge that exists is creating a healthy balance in this relationship. Education continues to be the key component in achieving this goal. This starts not only with the regulator, but also with legislators and the general public as well. All of these stakeholders need to understand the benefits, opportunities and safeguards to move the industry forward.

Industry academic institutions and think tanks also play a role in serving as a "nonpartisan" voice in enhancing the relationship between the operator and the regulator. This can help to promote best practices from other jurisdictions, certify the validity of technical standards, and serve as centers of excellence to advance ideas, research and innovation to push the industry forward.

The relationship between the operator and the regulator cannot be taken for granted. It is a constructive partnership that can be mutually beneficial within certain boundaries. Healthy dialogue between these two parties and other stakeholders will only further enhance the ability to regulate the industry while also allowing it to grow and thrive further into the mainstream among other forms of entertainment that operate in a strictly regulated market.

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