

IN THE MATTER of the Gambling Act 2003
AND of an application by
SKYCITY AUCKLAND LIMITED to extend the period during which Touchbet can be operated as a table game

BEFORE THE GAMBLING COMMISSION

Members: P Chin (Chief Gambling Commissioner)
K M Ford
M M Lythe
P Stanley
G Reeves

Date of Application: 27 May 2005

Date of Decision: 17 June 2005

Date of Notification of Decision: *29 JUNE* 2005

DECISION

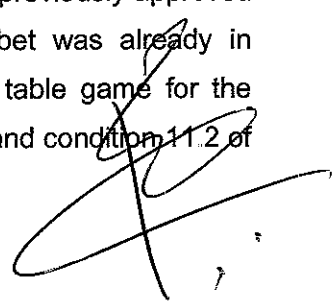
ON AN APPLICATION BY SKYCITY AUCKLAND LIMITED TO EXTEND THE PERIOD DURING WHICH TOUCHBET CAN BE OPERATED AS A TABLE GAME

Application

1. SKYCITY Auckland Limited ("**SCAL**") applied to extend the period during which it could operate Touchbet Roulette ("**Touchbet**") as a table game pending the resolution of matters relating to the status of electronic roulette as either a table game or a series of gaming machines.

Background

2. The application relates to the Commission's decision GC02/05, dated 24 January 2005, approving revised floor plans for SKYCITY Auckland casino. In its decision, the Commission decided that Touchbet was a gaming machine as defined by section 4 of the Gambling Act 2003 (the "**Act**"). As the Casino Control Authority had previously approved floor plans incorporating Touchbet as a table game, and Touchbet was already in operation, the Commission temporarily deemed Touchbet to be a table game for the purposes of licence condition A2 of the venue licence held by SCAL and condition 11.2 of



SKYCITY Casino Management Limited's ("SCML") operator's licence (relating to the permitted number of machines and tables at the SKYCITY Auckland casino, and the approved ratio between the two). The deeming period was expressed to be for a six month period from 24 January or until such time as a Regulation was made under section 368 of the Act, declaring Touchbet not to be a gaming machine, whichever was the earlier. The purpose was to allow the Department of Internal Affairs ("DIA") to resolve matters rapidly by regulation, in the reasonable expectation at that time that this would occur.

3. SCAL appealed decision GC02/05, and the imposition of conditions relating to Touchbet and Rapid Roulette, on the grounds, inter alia, that the Commission wrongly concluded that Touchbet and Rapid Roulette are gaming machines as defined in section 4 of the Act.
4. The Commission has since been substituted by the DIA as the respondent in the appeal. Timetable orders have been made for numerous pre-hearing steps, extending through to 6 October 2005, at which point there will be a further conference to consider further pre-hearing steps. Based on this timetable, it is the Commission's expectation that a hearing will not be held before early 2006, probably later, with time for a decision to follow.
5. The DIA has advised SCAL and the Commission that it will not seek regulations, or determine whether to seek regulations, until the appeal relating to GC02/05 is determined. The DIA supports SCAL's application for an extension of the deeming period until then.

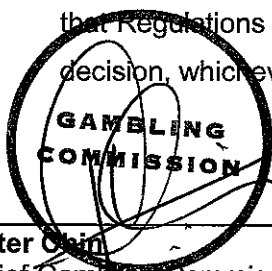
Analysis

6. The Commission's original purpose in allowing Touchbet to continue to operate as a table game for the purpose of licence conditions was to hold the status quo for a limited period while the position was regularised by the passage of Regulations. The extension was not granted for the purpose of enabling SCAL to pursue an appeal against a Commission decision.
7. As matters have transpired, however, both SCAL and DIA support extending the deeming period until the appeal is determined, with the DIA stating that it will not seek regulations or make a decision to do so until it is.
8. The Commission considered that extending the present situation by reference to the appeal needed to take into account the fact that SCAL has not to date sought to advance the appeal with urgency, and the appeal has an extended pre-hearing timetable. The possibility of further delay or even abandonment of the appeal was also noted. To ensure

that parties continue to move to resolve this issue, the Commission decided that the extension should be for a maximum of 18 months from the date of this decision, on the basis that the appeal should comfortably be capable of determination within this period.

Decision

9. The Commission decided unanimously that, for the purpose of licence condition A2 of SCAL's venue licence and condition 11.2 of SCML's operator's licence, Touchbet was deemed to be a table game until such time as the High Court issues its decision in relation to the SCAL appeal of GC02/05, abandonment of those appeal proceedings, the passage of Regulations declaring Touchbet not to be a gaming machine, a determination that Regulations will not be promulgated, or the expiry of 18 months from the date of this decision, whichever is the earlier.



Peter Chin
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

20 JUNE 2005