

**IN THE MATTER** of the Gambling Act 2003

**AND** of an application by **SKYCITY MANAGEMENT LIMITED** for approval of an additional game mix containing Keno

**BEFORE THE GAMBLING COMMISSION**

Members: G L Reeves (Chief Gambling Commissioner)  
 P J Stanley  
 L M Hansen  
 R D Bell  
 A K Foote

Date of Application: 28 March 2013

Date of Decision: 14 June 2013, 12 July 2013

Date of Notification  
 of Decision: 24<sup>th</sup> July 2013

**DECISION ON AN APPLICATION BY SKYCITY MANAGEMENT LIMITED FOR APPROVAL OF AN ADDITIONAL GAME MIX CONTAINING KENO**

**Introduction and background**

1. In decision GC39/12, the Commission ruled that Keno could only be introduced at the casino if accompanied by an equivalent offsetting reduction in other casino gambling opportunities. In doing so, it rejected a submission by SKYCITY Management Limited ("SCML") that the introduction of Keno at the Auckland casino, in addition to its current table game mixes and gaming machines, would not increase the opportunities for casino gambling. SCML has now applied for amendment of its approved game mixes by adding a new Annex E, containing a game of Keno, to its currently approved Annexes A to D.
2. The proposed Annex E would amend the current regulatory benchmark, Game Mix A, by inserting provision for Keno but showing 0 Keno games and, more materially, would add a new Game Mix B providing for 1 game of Keno, with a note providing that "the Keno game comprises up to 21 ticket terminals", and reducing the number of Roulette tables from 24 to 23. Game Mix B does not adopt the form of the other alternative games mixes provided in Annexes A to D, all of which set alternative operational game mixes by sub-area. In adopting a casino-wide form like Game Mix A, the proposed Game Mix B is presented as if it were an alternative regulatory game mix to Game Mix A. If Game Mix B is approved, SCML has indicated that it intends to apply for consequent revisions to

Annexes A to D to incorporate Keno into their alternative operational game mixes by sub-area. The application thus requires the Commission to consider the necessary offsetting reduction in other gambling opportunities to introduce a game of Keno without increasing the opportunities for casino gambling.

3. The application is based on an earlier decision in GC04/09 in which the Commission fixed the regulatory game mix at the Christchurch casino. In that decision, the Commission had to decide what to allow in the casino's regulatory game mix for the removal of Keno and Racing Game games which Christchurch had deployed in September 2003 but which had subsequently been decommissioned permanently. In fixing a regulatory benchmark game mix which omitted Keno and the Racing Game, the Commission decided that each game should be regarded as the equivalent of a game of Roulette or a game of Tai Sai.
4. SCML proposes to introduce Keno with up to 21 ticket terminals spread throughout the casino's Gambling Area, in substitution for a single game of Roulette. SCML argues that the number of terminals is immaterial to the assessment of opportunity and that the Commission should allow Keno with 21 terminals in place of a single game of Roulette. The Secretary does not agree that terminal numbers are immaterial. The issue for the Commission to consider is what existing opportunity would need to be removed to allow Keno with 21 terminals to be introduced or, to put it in the alternative, what controls would need to be placed on a game of Keno for it to be substituted for a game of Roulette.

#### **Relevant law**

5. The relevant provisions of the Gambling Act 2003 (the "Act") are as follows:

##### **11 No increase in casino gambling**

A person must not increase the opportunities for casino gambling.

##### **12 What is increase in casino gambling**

- (1) Decisions on what constitutes an increase in the opportunities for casino gambling are a function and responsibility of the Casino Control Authority, until section 297 of this Act comes into force and of the Gambling Commission after that.
- (2) An increase in the opportunities for casino gambling includes but is not limited to—
  - (a) an increase in the number of gaming machines unless the increase is accompanied by a reduction in the number of table games that the Casino Control Authority, or the Gambling Commission, believes is proportionate:
  - (b) an increase in the number of table games unless the increase is accompanied by a reduction in the number of gaming machines that the Casino Control Authority, or the Gambling Commission, believes is proportionate:
  - (c) an increase in total player space at table games unless the increase is accompanied by a reduction in other opportunities for casino gambling that the Casino Control Authority, or the Gambling Commission, believes is proportionate.
- (3) Opportunities for casino gambling are not increased—

- (d) by increases, in the Auckland casino, that comply with the Order for the Variation of Conditions of Casino Premises Licence dated 6 December 2002:
- (e) by gambling conducted by the New Zealand Racing Board referred to in section 120.

### 139 Condition of casino licence

- (1) The Gambling Commission may specify the condition of a casino licence or vary or revoke the conditions of a casino licence on the following circumstances:
  - ...
  - (a) on application by the holder of the casino licence:
  - (b) on its own initiative or on the request of the Secretary.
- (2) A condition of a casino licence specified under subsection (1)-
  - ...
  - (d) Must not permit an increase in the opportunities for casino gambling; and
  - ...

6. The current casino operator's licence conditions contain approved game mixes that are intended to control, by reference to the level of opportunity available on commencement of the Act, the opportunities produced by the 110 table games permitted by the casino operator's licence. The application is therefore to vary a casino licence condition under section 139.

### SCML submissions

7. SCML submits, in summary, as follows:
- (a) In decision GC04/09, the Commission was unable to determine conclusively the number of terminals installed in September 2003. It received submissions that 4 terminals were installed in 1994 and only 2 remained when it was removed in 2007. The Commission made its decision without knowing the precise number.
  - (b) In deciding that Keno at the Christchurch casino was the equivalent of a Roulette or Tai Sai game, the Commission did not indicate what importance it attached to the number of Keno ticket terminals.
  - (c) The proposed 21 terminals would be spread throughout the Gambling Area. Casino operators have treated Roulette games as having 21 theoretical player spaces. Allowing 21 terminals would align with the operators' theoretical space calculations and be broadly consistent with decision GC04/09, where the number of terminals was undetermined (albeit fewer than 21).
  - (d) The number of terminals, up to a stipulated maximum, is largely irrelevant and the maximum should reflect the player spaces substituted.

- (e) Comparing Keno (and its terminals) to any table game is not easy and the Commission did not use the calculations submitted for the Christchurch casino decision.
- (f) The Commission may wish to limit Keno installation to substitution for a Roulette game (and make no other form of opportunity substitutable).

#### **Secretary's submissions**

8. The Secretary submits, in summary, as follows:

- (a) While the Commission did not indicate the importance of the number of terminals in decision GC04/09, the Secretary regards the number as material.
- (b) In the submissions leading to decision GC04/09, the numerical calculations were held to be of little value, other than to provide general parameters, but that does not mean that the effect of terminal numbers should be ignored. Opportunities for casino gambling are directly related to access to the placing of wagers.
- (c) The number of permitted player spaces at tables has been recognised as relevant in the past. Terminals are their equivalents, as each is capable of processing a certain number of wagers. If the game cycle is 4 minutes (as submitted in Christchurch), there is only a small window of temporal opportunity to place bets and to validate winnings. Within a short timeframe, the number of terminals available directly affects opportunity.
- (d) Consistency with decision GC04/09 would require terminals to be limited to 4.
- (e) A further material consideration for assessment of opportunity is floor space. Recent increases in the Auckland casino Gambling Area have been approved on the basis that no additional gambling activities were thereby permitted in the new area. The proposal involves spreading 21 terminals throughout the expanded area in place of a single Roulette table.
- (f) Increased gambling area is most likely to affect opportunity which is limited only by floor space, namely games without maximum player numbers controlled by game rules, such as Keno.
- (g) He is unable to confirm, on the limited information provided, that the proposed Keno game does not fall within the definition of gaming machine.

#### **SCML's submissions in reply**

9. In reply, SCML submitted as follows:



- (a) The Commission's decision GC04/09 did not make clear how the number of terminals affected the outcome. It may have reached the same conclusion with a larger number of terminals.
- (b) On the Secretary's reasoning, if Christchurch casino had operated 8 terminals, it would have been allowed 2 Roulette tables as an equivalent.
- (c) On the same reasoning, 5 Roulette tables would need to be removed for a Keno game with 21 terminals. That feels intuitively wrong.
- (d) While ticket terminals are an essential component of Keno, the rules do not limit either player numbers or the number of terminals.
- (e) A better comparison with Keno with 21 terminals would be Rapid Roulette using 21 terminals. The number of player interfaces is the same, with the main difference being the potential for the Keno terminals to be used by multiple players during a game cycle, whereas each Rapid Roulette terminal can only be used by a single player.
- (f) The differences mean that the basis for comparison will not be easy or obvious. Substituting one game for the other would be reasonable.

### Analysis

- 10. It is correct that the Commission did not focus heavily on the number of former Keno terminals in decision GC04/09. The Commission's primary focus was naturally on what was being introduced rather than what had been there 6 years earlier. In addition, the Commission was engaged in fixing one of the final remaining issues left over from the 2003 legislative change and the key aim was to achieve a degree of future certainty in place of the acknowledged uncertainty about the past.
- 11. In this application, as the Commission is being asked to provide for the introduction of a new form of gambling at the Auckland casino, the potential need to impose limitations on its deployment to ensure that casino gambling opportunities are not thereby increased means that a close examination of how Keno works is appropriate.
- 12. Keno is a form of gambling that does not categorise easily with other forms of casino gambling. Subject to how it is implemented operationally, it is neither a table game nor an electronic gaming machine. Comparison with table games is accordingly very difficult. The problem with comparing Keno to table games was well summarised in the following passage in the SCML submission made prior to decision GC04/09:
  - (18) Neither Keno nor Racing Game are played around a table. Rather, players queue to purchase tickets from ticket terminals operated by casino staff. A player does not have to be present when the game result is determined and



tickets may be purchased for multiple games in advance – not just the next game. In this sense the rationale supporting the theoretical number of player spaces assigned to Roulette and Tai Sai has no comparable application to either Keno or Racing Game.

- (19) Another matter the Commission has deemed relevant to a determination of casino gambling opportunities is 'rate of play'. While there are a large number of variables which impact play rates, the Commission has previously relied on information that Roulette games generate approximately 34 spins per hour and Tai Sai approximately 36. In the case of Keno and Racing Game, the hourly rate may be configured through the system and in Christchurch Casino's case we understand the systems were configured to generate approximately 14 Keno games per hour and 17 racing Games per hour.
- (20) Not only are these hourly rates quite distinct from the Roulette and Tai Sai hourly rates but more importantly it would appear to us that they could not be properly used as a measure of gambling opportunity. Unlike Roulette and Tai Sai the gambling opportunities with Keno and the Racing Game are not limited to the number of games conducted each hour. Tickets may be purchased for multiple games in advance. In the case of Keno up to a maximum of 1,000 games may be purchased in advance (the maximum number for Racing Gaming is determined by the operator and approved by the Authority). In this sense the Commission's approach involving the use of estimated table game play rates as one of the measures of casino gambling opportunities does not translate well to games like Keno or the Racing Game.
- (21) Another factor the Commission has used from time to time to assess casino gambling opportunities is the number of wagering opportunities available in each game. The number of opportunities created by different selection combinations associated with Tai Sai and roulette games equates to approximately 105 and 160 respectively. However these figures bear no comparison with either Keno or the Racing Game. In the case of Keno a player may select a number or numbers (up to 10 may be selected) from a pool of eighty numbers. In effect this arrangement creates an almost endless combination of wagering opportunities (in the millions) that bears no comparison to any other casino game. The wagering combinations available in the Racing Game are similarly high.

13. While there are a number of similarities between Roulette and Keno – similar style of play (placing bets, outcome decided mechanically and winner paid), unlimited player numbers, and numerous betting options – there are also material differences, especially the ability to place wagers on other than simply the current game (with an indication that wagers can be placed up to 1,000 games in advance). In addition, the rate of play (or number of games per period) is determined by an automated setting under the control of the casino operator (at Christchurch casino, the game cycles were said to be every 4 minutes) whereas Roulette dealers control game cycles on a game-by-game basis to reflect actual betting activity.
14. Because the game cycles are set to run automatically (albeit that the programme can be altered by the casino operator), time and access combine to even out the opportunity offered by unlimited player numbers and wager combinations (as the Commission recognised in decision GC04/09 at paragraph 5.34). To the extent that betting opportunities are utilised, they tend to slow down the game cycle in a game controlled by the dealer and are necessarily limited in number in a game controlled strictly by time.

15. The relative inflexibility of the game cycle in Keno compared to Roulette would tend to indicate that terminal numbers are highly material. The number of bets that can be placed in a given period is likely to be significantly affected by the number of points of access to place bets, namely the terminals. The effect of much smaller differences in access can be seen even in the artificial trial game cycles of manual Roulette and the electronic forms of Roulette (such as Rapid Roulette). Because player numbers are limited to terminal numbers with each player having a terminal exclusively, each player has immediate and unimpeded access to the entire table and the process of placing bets and paying winnings is faster than for manual Roulette because of the lack of physical constraints.
16. Only limited assistance may be gained by the data from the game speed trials run by SCML several years ago. The trials were highly artificial; they held as many things constant as possible, regardless of whether they were constant in fact, including limiting all trial games to 4 players. They are not an accurate indicator of actual speed or opportunity and, at best, give an indication of relative speed differences, assuming actually variable things are held constant. Keno was not, in any event, one of the trial games and, unlike table games, its game cycle is not determined by the dealer.
17. The proposed game cycle for the Auckland proposal is not stated, but 21 (rather than 4) terminals are proposed. The proposal thus involves increasing the number of points of access five-fold compared to Christchurch casino. Terminals can be accessed either by patrons dealing directly with the terminal operators (Keno writers) or by the use of intermediary staff (Keno runners) so the number of terminals physically limits opportunity to place bets within a given period. The provision for Keno runners means that bets in Keno, unlike other forms of casino gambling, can be placed while the customer engages in other forms of gambling at the same time. Having regard to the ability to purchase tickets in advance, the game can even be played without all players being present in the casino.
18. It is therefore difficult to see a rational basis for SCML's submission that terminal numbers are irrelevant. In the Commission's view, the effect of terminal numbers is likely to depend on the programmed game cycle and vice versa. Terminal numbers will be increasingly material, the shorter the game cycle or, to put it another way, the more terminals are installed, the shorter the likely game cycle and the greater the number of games per hour. This conclusion is consistent with the following passage in SCML's submission for decision GC04/09:

- (27) As participation is based on the purchase of tickets, the number of persons that may play the "next" game will largely depend on the number of available ticket terminals, the length of the time a player has to place a wager and transaction processing times.

19. Substitution of a game of Keno for a game of Roulette therefore involves fixing suitable opportunity parameters for the new game, involving the number of games per hour and/or the number of terminals. However the significant differences in how customers gain access to Keno betting, including the absence of the usual constraints of time and location, mean that equivalency calculations are even more difficult than usual and the ultimate assessment is necessarily a matter of overall impression.
20. The Commission considers that the best starting point is its decision GC04/09, where it substituted a game of Roulette for a game of Keno that had had up to 4 terminals. It is satisfied that terminal numbers directly and materially affect opportunities for casino gambling and that introducing Keno at a casino requires limitation of terminal numbers. There is no material before it that suggests that its decision in decision GC04/09 was wrong. In the absence of any reason to think so, it considers that it should maintain consistency with that decision. On the information before it, the Commission would be prepared to approve a game mix that allows a game of Roulette to be substituted for a game of Keno using 4 terminals only.
21. The Commission has considered whether it should approve the proposed Annex E with an amendment to reduce the permitted number of terminals to 4. It has decided not to do so for the following reasons:
- (a) SCML's application did not invite it to approve an amended Annex E.
  - (b) Proposed Game Mix B might be seen as an alternative regulatory benchmark game mix. A possible consequence of approving an alternative benchmark in amended form would be to make it difficult to increase components of it subsequently (as the Commission uses the regulatory benchmark game mix or mixes as its point of comparison for approving operational game mixes).
  - (c) It did not appear that the proposed Game Mix B was intended to be deployed operationally. The game mix application did not incorporate a request for approval of any floor plans to enable its immediate deployment (see below) and the application indicated that an application for approval of operational game mixes incorporating Keno would follow.
  - (d) The reasoning in this decision provides the necessary guidance to SCML and other casino operators about the Commission's thinking for the purpose of future applications.
  - (e) Accordingly, it decided that it would not approve the proposed game mix in amended form unless SCML expressly sought that outcome.

22. While the Secretary is correct that the increased Gambling Area might increase opportunities for casino gambling, depending on what new gaming activity is permitted to be placed there (and where it comes from), unlike table games and gaming machines, Keno gambling activity is not location-specific (or even time-specific). The proposal apparently involves spreading Keno terminals throughout the Gambling Area. As a result, while opportunity is probably more greatly affected by the number of terminals than their location, location is also likely to affect access, whether directly or through Keno runners. Deployment of Keno should therefore be controlled, by approval of terminal location and possibly Keno runner numbers, in the form of approved floor plans.
23. As the Secretary has reserved his position on whether the proposed Keno device is or is not a gaming machine, the Commission records that it has made its decision on the assumption that it is not. That issue remains open for consideration if the Secretary wishes to challenge that assumption after the operational device is identified and examined by the Secretary.

#### **Decision of the Commission**

24. For the reasons set out above, the Commission declines to approve the proposed Annex E.

#### **Right of appeal**

25. Pursuant to section 235 of the Act, a person affected by this decision may appeal that decision to the High Court. An appeal must be made within 15 working days of the date of notice of the Commission's decision, or any longer period that the High Court may allow.



Graeme Reeves  
Chief Gambling Commissioner

for and on behalf of the  
Gambling Commission

24<sup>th</sup> July 2013

