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Game Monopoly

State possession and the consumer

Jurisprudence
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Jag vill rikta ett tack till min handledare Lars Henriksson och min bihandledare Sven-Axel Bergstand för hjälp med värdefulla råd och tips angående min uppsats samt hjälp med idéer om användbar och relevant litteratur och källor till information.
Abstract

The state monopolies in Sweden and other countries in the European Union have been highly criticized for a long time for being incompatible with the fundamental rules of the European Union.

The purpose of this thesis is to analyze whether the consumers in a country that has a monopolized game market is worse off because of the monopoly and what would happen if the monopoly was abolished, and what could be done better on the market and for the consumers through a possible amendment or a different way to regulate the game market.

The study is made through the perspective of law and economics. Legal practice, legislation and economic theory are used. To relate the theory to reality, the example of the Swedish game monopoly and Svenska Spel has been used.

The conclusion is that the monopoly market situation currently on several game markets today is not the best solution for the individual consumer. A perfectly competitive market is not the best solution either. There are good reasons for having the monopoly, which could not be reached on a competitive market. Hence what needs to be done is to legislate for a regulated market with multiple actors.

Keywords: monopoly, game, European Union, State possession
Sammanfattning

De statliga monopolen i Sverige och andra länder inom EU har under en längre tid blivit starkt kritiserade för att inte vara kompatibla med de nuvarande EU-reglerna.

Syftet med denna uppsats är att analysera om konsumenten i ett land som har en monopoliserad spelmarknad är påverkad till det sämre på grund av monopol och vad som skulle hända med konsumenten om monopol försvann samt att se vad som skulle kunna göras bättre för konsumenten på marknaden genom en lagändring på området.

Studien är gjord ur ett rättsekonomiskt perspektiv, rättspraxis, lagstiftning och ekonomisk teori har använts. För att relatera teorin till verkligheten har det svenska spelmonopolet och Svenska Spel använts som exempel.

Slutsatsen är att den nuvarande marknadssituationen på spelmarknaden inte är den bästa för den individuella konsumenten, det finns andra sätt att göra den bättre. En marknad med perfekt konkurrens är inte heller den rätta lösningen på problemet då de anledningar som finns för monopolens existens inte skulle kunna levas upp till på en sådan marknad. Därmed är det som behöver göras på området är att lagstifta om en reglerad marknad med ett flertal aktörer.

Nyckelord: monopol, spel, Europiska Unionen, statligt ägande.
## Table of contents

1. **Introduction** .............................................................................................................. 1
    1.2 Purpose and subject .............................................................................................. 1
    1.2.1 Target group .................................................................................................... 2
    1.3 Limitation ............................................................................................................. 2
    1.4 Criticism of the sources ...................................................................................... 3
    1.5 Disposition .......................................................................................................... 3

2. **Method** ..................................................................................................................... 4
    2.1 Criticism of the method ....................................................................................... 5

3. **The development of the competition legislation** .................................................. 6
    3.1 Common law ....................................................................................................... 6
    3.3 Development of competition legislation in Europe ............................................ 6
        3.3.1 Ius Commune .............................................................................................. 7
        3.3.2 The initial European competition law ......................................................... 7
        3.3.3 The Treaty of Rome .................................................................................... 8

4. **The rules in force concerning monopolies** .......................................................... 9
    4.1 The European Union ............................................................................................ 9
    4.2 General Legal Principles ..................................................................................... 10
    4.3 The EC-Treaty .................................................................................................... 10
    4.3 Swedish law regulating gambling ........................................................................ 12

5. **The game monopoly in Sweden** .......................................................................... 13
    5.1 Background ......................................................................................................... 13
    5.2 The actors on the market and the purpose ......................................................... 13
    5.3 Svenska Spel ....................................................................................................... 14
    5.4 Views of the Swedish game monopoly ................................................................ 15

6. **European Union’s view of game monopolies** ...................................................... 16
    6.1 Actions taken to protect the monopolization ..................................................... 21

7. **Economic theory** .................................................................................................... 22
    7.1 Consumer’s choice .............................................................................................. 22
        7.1.1 Risk ............................................................................................................. 22
        7.1.2 Probability .................................................................................................. 23
        7.1.3 Asymmetric information ............................................................................. 23
    7.2 A competitive market ......................................................................................... 24
        7.2.1 A competitive firm ...................................................................................... 25
    7.3 A monopolized market ....................................................................................... 26
        7.4 The deadweight loss ...................................................................................... 27

8. **The Consumers** ..................................................................................................... 29

9. **Analysis** ................................................................................................................... 30
    History ...................................................................................................................... 30
    The consumer .......................................................................................................... 31
    The market .............................................................................................................. 33

**De lege ferenda** ........................................................................................................ 34

10. **Conclusions** ........................................................................................................ 36
    History ...................................................................................................................... 36
    The consumer and the market .................................................................................. 36
    Further research ...................................................................................................... 37

References ...................................................................................................................... 38
1. Introduction

During the past few years there has been an increasing amount of incoming complaints to the Commission concerning the game monopolies in the European Union. It is questioned whether a monopoly of this kind is compatible with the European Union’s legislation about free movement over the borders and the freedom of establishment in any Member State.¹

Also the national courts are to a bigger extent processing legal cases concerning the game monopolies. A common opinion is that the national legislation is discriminating, limiting the markets to a too big extent, that they do not fulfill their purpose of protecting the consumers and that the States are inconsistent in their actions.²

Currently the game monopolies are a widely discussed subject within the European Union; the French organizer, ASO, of the bicycling competitions Giro d’Italia and Tour the France refuses to let the team Unibet, sponsored by the game company compete. The reason is that the French law does not allow other game companies, in their country, than the ones approved by the government. According to the European Commission this violates the rules of free competition.³ The same treatment for Unibet is currently on discussion in Denmark for the upcoming competitions, for the same reason as in France.⁴

1.2 Purpose and subject

Prior to this thesis I have studied the history and development of the competition law and monopolies in the United States, Europe and Sweden. I discovered that throughout the years of development in the different countries the consumers’ interests have always been one of the central issues. Still today competition law and consumer law are closely related. I find this relation very interesting to study closer since both subjects have been of great interest to me during my years of university studies, especially the consumer’s situation at a monopolized market. The issues of monopolies and consumers can both be related to economics as well as market law, which are my major areas of study.

¹ http://www.lotteriinsp.se/upload/Utvecklingen%20på%20spelmarknaden%202006.pdf 2007-06-06
² Ibid
A quote from Fritz Berolzheimer, a political and cultural writer, describes this relation very well: “In reality law and economics are ever and everywhere complementary and mutually determinative.”

Since I have a genuine interest in consumers’ rights and wellbeing and the issue of the future existence of the game monopolies is currently highly debated I wanted to combine law and economics to answer the following questions:

*Is the current situation an economic advantage or disadvantage for the consumers?*
*What can be done to change their situation?*

### 1.2.1 Target group

The target groups for this thesis are the gamble companies in the European countries with a monopolized game market, the companies wishing to enter the market, the gamblers and the EU-commission. Knowledge in jurisprudence is an advantage.

### 1.3 Limitation

To narrow down the extent of this thesis I have chosen to focus my analysis merely on how the consumers are affected economically. There are other aspects, such as gamble abuse leading to worse health, prevention of crime and ethical guidelines for the activity, but their roles are not taken into consideration in the analysis. They are still mentioned since they are a vital reason why the monopolies can stay on the market but I have not studied closer how they would be affected in case of an abolishment of the monopoly.

If there was not a monopoly on the game market there are two other options for what the market would look like. Either the market could be completely free with perfect competition or there could till be some regulations for who is allowed to enter the market. I have studied what the situation would be like if the market would become completely competitive because that is the absolute opposite of monopoly and that better shows the differences and the contrasts.

To connect the theory to reality it is related to the Swedish monopoly since this thesis was written in Sweden and therefore the access of information of the Swedish monopoly

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5 Mercuro N 2006 p.1
is the most convenient and there is also the language aspect. Svenska Spel is the leading
game company in Sweden therefore only this company has been taken into consideration
and not the other companies. Also other countries and cases from other countries in
Europe that has been an issue for the European Court of Justice have been studied but I
have not studied the legislature of every country in Europe that has a monopolized
market.

1.4 Criticism of the sources
The history and development on the competition area in the European Union has been
poorly researched, little is known about the development. David J. Gerber, professor in
competition law and international law, is one of the few who has studied the subject. In
the history part of the thesis his book; Law and Competition in Twentieth Century
Europe, has been the most important source. That can be criticized since it is only one
writer’s view that is presented. Also Internet newspaper articles from the Internet have
been used as a source they can also be criticized for possibly being subjective.

1.5 Disposition
The thesis begins with a historical research of the subject, the ways monopolies have
been treated and the society’s view of them from the 15th century till the 20th century.
Following the history chapter is an account on the law enforcing concern over
monopolies in Europe and Sweden and a few legal cases from the European Court of
Justice are presented to display the interpretation of the legislature. The current situation
on the game market in Sweden is explained in the chapter.
Subsequent there are economic explanations on how consumers and companies behave
on a competitive as well as a monopolized market and what losses are caused by a
monopoly.
The theory chapters are followed by an analysis attempting to find the answers to the
question posed in 1.2 above through combining the theories in jurisprudence and law and
economics.
After the analysis the conclusions drawn from analyzing the theory are presented.
2. Method

In view of the fact that law and economics are both closely related to monopolies and consumers and since I study both of these subjects in university, I have chosen to combine an economic method and a legal method to analyze a gamble monopoly. I have used microeconomic theories since they are primarily analyzing the behavior and the choices made by individuals, households and firms and that is what is interesting to know in this study. The situation on the market is explained through macroeconomic theories.  

Law and economics is about looking at the law from an economic perspective. When looking at the world from an economic perspective all the actions taken are interpreted from economic terms. It is assumed that all actions are taken with the purpose to economize assets in an effective way and to maximize welfare. When studying law and economics the purpose is to appoint the role of the law in the economic society. Questions posed by a law economist can be as the following: Why are the forensic rules edified the way they are? What can the law do to promote welfare? What consequences do forensic solutions have on the economic society?  

I have studied the law as it is, the existing sources of law; lege lata. It is a dogmatic method and its purpose is to appoint the law in force. In this case it is about appointing the law concerning monopolies and game monopolies in the European Union and to see what is said about the consumers’ situation. To discover what law is applicable in this case I have studied legal cases from the European Court of Justice concerning State monopolies.

Teleological objective interpretation is the most common way to interpret EC-law. It is done through the endeavor to find the purposes of the rules and their functions and effects within the Community. The interpreter shall consider what a rational legislator most probably meant to achieve through the legislation. The legal connection between the Member States is taken into account. It is a lexical interpretation where the true meaning

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6 Georgakopoulos N, 2005 p.3  
7 Dahlman C, 2002 p.9  
8 Lehrberg B2006, p.220  
9 Ibid p. 121
and purpose of the law is important; what interests it is meant to protect and what it is supposed to achieve.\textsuperscript{10} I have used this interpretation through the study of legal practice to see how the Courts have interpreted the law.

Before studying the monopoly and current monopoly legislation the history and development have been studied, because in order to understand the present situation it is important to know the history and it is interesting to compare if and how the situation differs from before to today.\textsuperscript{11}

Based on my former studies of the history of the competition law and my former economics studies I have before this thesis made the assumption that the consumers are affected in a negative way economically from the monopoly. I want to see if this is true and if it is then study how that can be changed.

I wanted to look at game monopolies in general but to make it easier to understand, the theory and the analysis are connected to reality; the game monopoly in Sweden. Sweden is one of the countries in Europe that has been strongly criticized for its State monopolies.

Mostly printed sources have been used as well as Internet sources to write the theory and from the theory being able to analyze the situation. Another source has been newspaper Articles and legal practice, found on the Internet.

\textbf{2.1 Criticism of the method}

It is important to be aware that economic models simplify reality and a lot of assumptions are taken to make it possible to create the models. This is the weakness of the economic method. The assumptions are problematic and an analysis of the law from an economic perspective can therefore be criticized and the conclusion can well be questioned. As long as the assumptions taken are reasonable the conclusion should not be rejected, at least not before careful consideration.\textsuperscript{12}

\begin{flushleft}
\textsuperscript{10} Lehrberg B2006, p. 225
\textsuperscript{11} Ibid p.222
\textsuperscript{12} Dahlman C, 2002 p. 216
\end{flushleft}
3. The development of the competition legislation

In order to understand the structure and purpose of the competition and monopoly rules of today it is important to have knowledge about its history and development, the thoughts behind the Acts and the reason why they were considered necessary. Since the thesis interests in game monopolies the history chapter focuses mostly on the discussion concerning monopolies throughout history but also the development of the competition law as a whole. The history chapter focuses on the past 150 years although initially a legal case from the 15th century is presented only to set an example on how monopolies have a long history.

3.1 Common law

Legal cases concerning monopolies can be found already in the 15th century, regulated by Common Law in England. There were worries that establishments of monopolies were harming the economy. One legal case from 1602 called the Case of monopolies or Darcy vs. Allein, regarded monopolies and it has been a landmark case in English law. Three central issues when discussing the existence of the monopoly in this case were the following:

- The price will always be higher in the prevalence of monopolies.
- The quality will always be poorer compared, because a monopolist only has to be concerned with its own utility and not mind the consumers’.
- The craftsmen and workers standing outside the monopoly were left to a life in joblessness and poverty, which would not be the case with a competitive market.\(^\text{13}\)

3.3 Development of competition legislation in Europe

During the 19th century the liberalism had a big influence on the European society; politically, socially and economically. The transfer of the political ideas of freedom to the economy was a key move in the development of the European competition law. and by the second half of the century the ideas of economic freedom and competition prospered.\(^\text{14}\) Liberals wanted to free the economic actors from the governments’ rules and

\(^\text{13}\) Westin J, 1998 p. 21
\(^\text{14}\) Gerber D 2003 p. 16-17
intended to establish laws that would create and protect economic liberty. They believed that such freedom would create economic growth and increase material wealth.\textsuperscript{15} Unfair competition had to be regulated by law.

An important person to be mention in this context is Adam Smith; the father of economics. One of his theories was that the market is always changing itself back to perfect competition without the help of the State. There is “an invisible hand” regulating the market therefore restrictions are not needed. The rules of the State and unions do nothing but restrain the economic development and welfare. Up until the end of the 19\textsuperscript{th} century the competition was unregulated but several events made the politicians and the society believe that the competition needed to be controlled in order to function. Two vital occurrences that gave the people that opinion were the industrialization and the economic depression 1873-1890.\textsuperscript{16}

3.3.1 Ius Commune

By the end of the century the benefits of competition was recognized as well as the harmful uncontrolled competition hence there were reasons to save the competitive market and protect it.\textsuperscript{17} The shaping of the competition law in the end of the 19\textsuperscript{th} century was done by great virtue of Ius Commune; the modern legal system based on the Roman law the way it was interpreted and reshaped by medieval jurists. Still at this time Roman law was studied in Europe. Especially three concepts were of great importance; price usury and monopolies. Monopolization of markets was forbidden, in particular markets of necessity goods because it was seen as bad for the market and the consumers and prevented efficiency.\textsuperscript{18}

3.3.2 The initial European competition law

During the First World War the German government had difficulties to control the economic market. They emboldened companies to create cartels because they deemed a few cartels being easier to control then a big quantity of independent companies. Cartels were the big subject at this time and not much was mentioned about monopolies.\textsuperscript{19} There

\textsuperscript{15} Gerber D 2003 p. 37
\textsuperscript{16} Ibid p. 34
\textsuperscript{17} Ibid p. 41
\textsuperscript{18} Ibid p. 35
\textsuperscript{19} Ibid p. 115, 135
was an interest for what happened to not perfectly competitive markets but monopolies were not mentioned a lot during the years of war and between the wars.

### 3.3.3 The Treaty of Rome

The Coal and Steel community entered into force in 1952 with the purpose to unite European countries economically and politically to secure a lasting peace and avoid another war. 20

Most of the European countries did not obtain a competition law until after the end of the Second World War. 21 In other words the laws concerning competition in Europe are rather young, even though the theories and politics behind them started long before the actual legislations were established in the different countries.

In 1957 the European Economic Community was founded and the Member States signed Treaty of Rome. This was a sequel of the former Coal and Steel community with similar aims. The founding countries wanted a common market in Europe. The preamble declares they wanted to: “ensure the economic and social progress of their countries by common action to eliminate the barriers that divide Europe”. The Treaty also provides there should be an aim for harmonious development of economic activities. The common market is based on the four freedoms; free movement of persons, services, goods and capital. 22 The Articles concerning monopolies and that are relevant for the analyses of the thesis are treated in the chapter below in 4.3 about the EC-Treaty.

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21 Gerber, D 2003 p. 171  
4. The rules in force concerning monopolies

There are no specific rules concerning game monopolies in the EC-Treaty it is instead nationally regulated in each country. The national legislation cannot violate the EU legislation.

4.1 The European Union

In the European Union the European Court of Justice is responsible to make certain that the law is obeyed. The EC-law is not a public international law in general but Sui generis; a judicial system of its own kind.

The order of the legal sources in the EC:

- The fundamental treaties*
- General legal principles*
- Agreements signed with a third country or an international organization*
- Secondary law
- Legal practice*
- Preambles
- The counsel-generals’ proposals for peremptory
- Doctrine
- Economic theories

Legal practice is very important in the European Union. The law in force in several areas can only be found in legal practice. Custom is not a legal source in the EU, which it is in many of the Member States.  

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23 Hettne J, 2005 p. 24

*Legal sources that in this case are binding, meaning the person applying the law has to follow them. The other legal sources are merely guidelines. Secondary law can be both binding and not binding. Legal practice is in principle binding.
4.2 General Legal Principles

When it comes to free movement of services over the borders there are certain legal principles that are important to recognize.

The principle of mutual acknowledgement: when a service is legally provided in a Member State it cannot be prohibited in another Member state.

The principle of equal treatment: discrimination because of nationality is prohibited. Different actors on the market are to be treated on the same competition terms.24

The principle of proportionality: the measures taken by the Member States to protect their nationals have to be proportional to the purpose.25

4.3 The EC-Treaty

The fundamental treaties are the primary law in the European Union. The EC-Treaty, signed by every Member State, provides that the Community has several tasks to accomplish. It has formally been twisted whether gambling is a service or a good but in the legal cases in this area it has been established that it is a service hence the Articles of the EC-Treaty concerning services are applicable.26 The following Articles of the EC-Treaty have been the most relevant in the legal cases concerning game monopolies in the European Union.

- Article 4EC: the Member States should create a harmonious, balanced and sustainable development of economic activities in Europe, as well as creating a high degree of competitiveness and convergence of economic performance among the Member States. In order to fulfill and sustain these goals it is important that free movement of goods, persons, services and capital characterizes the markets. An economic policy of common objectives should be accepted by the Member States on their internal markets and conducted with the principle of an open market and economy with free competition.27

- Similar principles are repeated in Article 98EC, concerning economic policy, where the community and the Member States are required to “act in accordance with the principle of an open market economy with free competition.”28

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24 Hettne 2005 p. 147
25 Ibid p. 150
26 Schindler C-275/92
27 Article 2-4EC
28 Article 98EC
• Articles 31EC and 86EC: proposing how State monopolies are to be supervised by the Member States. A monopoly shall be adjusted so that it is not discriminating and so that it does not affect the trade on the European common market to an extent that is against the European interest.\(^{29}\) The monopolies created through licenses from the State cannot violate the EC-Treaty; they shall be regulated after the competition rules (Articles 81-89EC) as long as these rules are not restricting the purpose of the monopolies.\(^{30}\)

• According to Article 28EC import restrictions and other measures with similar effects shall be prohibited between Member States.\(^{31}\) Although in Article 30EC such measures are allowed presupposed that they are justified by providing public morality, public policy or public security; protecting the health and life of the nationals.\(^{32}\)

• Article 43EC is about the right to establish a firm in any European country; restrictions for companies from another Member State to establish a firm are prohibited. A firm or national of a Member State can establish their activity on the territory of any other Member State.\(^{33}\)

• Article 46EC is regulating the right for special treatment if it can be motivated by a good cause. It is frequently seen in legal cases as an argument for the legality of State monopolies that provides for public health, public policy and public security.\(^{34}\)

• Articles 49EC and 55EC are about services. There shall be no restrictions to provide services in any Member State for nationals of a state in the Community.\(^{35}\) All companies within the Community should be treated equally.\(^{36}\)

\(^{29}\) Article 31EC  
\(^{30}\) Article 86EC  
\(^{31}\) Article 28EC  
\(^{32}\) Article 30EC  
\(^{33}\) Article 43EC  
\(^{34}\) Article 46EC  
\(^{35}\) Article 49EC  
\(^{36}\) Article 55EC
4.3 Swedish law regulating gambling

There are two fundamental laws regulating gambling in Sweden; the lottery law, regulating general lotteries and the casino law, regulating casinos with international gambling rules.\textsuperscript{37}

To pursue a lottery permission from the State is needed. Permission can only be given if it can be assumed that the business will be run in an appropriate way and consider the public health and what is best for the citizens.\textsuperscript{38} It is an offence to pursue a lottery with no permission and to market lotteries or other gambling from abroad. The sentence is a fine or prison sentence of maximum two years.\textsuperscript{39} It is not allowed to pursue gambling for business purposes.\textsuperscript{40} The purpose of these laws will be presented in the next chapter about the game monopoly in Sweden.

In 2005 the Gaming Board ordered several media companies to pay a fine for violating the Swedish rules about marketing foreign gambling companies’ services. The companies appealed against it. Several judgments can be found where the company marketing a gambling company on the Swedish market that is not allowed they are convicted, still the marketing continues.\textsuperscript{41} In a recent judgment in Sweden it was appointed that the Swedish game monopoly corresponds to the EC-law and does not need to be changed.\textsuperscript{42}

The European Treaties are a part of the Swedish legislation and they are binding and have to be followed by the Swedish courts and authorities.\textsuperscript{43} Hence the Articles from the EC-Treaty and the general legal principles above are applicable in Sweden.
5. The game monopoly in Sweden

5.1 Background

Sweden is one of the seven countries in the European Union who has a game monopoly. Gambling in Sweden has a history as a business since 1897, in form of a lottery. The companies were privately owned but the government decided how to invest the profit. Already in 1757 the government organized a lottery, to finance the building of a statue. In the beginning lotteries were always organized to finance a specific project. Gambling and lotteries have always been regulated by the state.\textsuperscript{44} In 1939 the government started to invest the profit of the gambling into the exchequer and that is what they do still today unless it is invested in a certain purpose such as research or youth sports clubs.\textsuperscript{45}

The game market in Sweden prospered during the 1970 and 1980. The government increased its own influence on the game market leading to less influence for the national movements such as non-profit organizations. The division of the market between the two has gone back and forth during the decades and still does. The government always possesses the biggest market share; the national movement normally has a market share of approximately 20%.\textsuperscript{46}

5.2 The actors on the market and the purpose

The Swedish game- and lottery market is regulated; the Government is in charge of whom is allowed on the game market. The government, the horse sports and non-profit organizations are part of the market.\textsuperscript{47} Only Swedish non-profit organizations with a purpose to promote a common good within the country are allowed on this market, hence foreign organizations are not allowed. ATG is the only company in charge when it comes to betting on horses. When it comes to regular lottery tickets the national movement and Svenska Spel share the market. The national movement has a monopoly on the games

\textsuperscript{44} http://www.svenskaspel.se/pl.aspx?PageID=3697&menuid=8&parentid=4314&childid=4576 2007-06-06
\textsuperscript{45} Ibid
\textsuperscript{46} SOU 2000:9 p.23
\textsuperscript{47} Lotterilagen 9,45 §§
where the prizes are goods (such as Bingolotto). The dominating company in the rest of area is Svenska Spel (further explained below in 5.3). Currently the business world is practically completely excluded. The reason for this regulation is that gambling can be a risk for the consumer where it is easy to get addicted and trapped in dept and the market could also be attractive for unserious actors. The health aspect and the aim to protect the individual are the main reasons why this kind of monopoly is allowed in the European Union and exempted from the rules about free competition. Another reason for the State to keep the monopoly has been to restrict the competition on the market because they argue that it is more costly; if the competition on the game market would increase the cost of marketing, the amount of winning money would rise as well as the commission on sales.

5.3 Svenska Spel

The dominating company on the game market is Svenska Spel. It is owned by the State and possessing 55% of the market share. Last year the turnover was approximately 2.2 billion Euros. Last years profit was 50 million Euros of which 12 million Euros was donated to non-governmental organizations. Approximately 55% of the turnover from the Swedish companies is paid back to the gamblers in form of prize money, while in other countries the average is at 85-98%. Considering where this information was found it can well be questioned.

Provided by the Swedish law anyone who wants to start a gambling company is obliged to pay taxes to the state. Svenska Spel is exempted from this rule since their profit goes in full to the state.

Svenska Spel has a financial goal and strong focus on profitability. They are concerned to fulfil the requests of the consumers by developing new lotteries and types of gambling to be the most attractive gambling company on the market. At the same time they have a

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48 SOU 2005:21 p. 16
49 SOU 2000:50 p. 11
50 SOU 1992:130 p. 178
52 Ibid
goal of responsibility and are concerned with the seamy side of gambling and are engaged in preventing anyone risking to end up in a gambling addiction.  

5.4 Views of the Swedish game monopoly

The Swedish game monopoly is on the edge of being abolished. 20% of the Swedish game market is already unregulated and there are opinions that the monopoly is already abolished and that it is uncontrolled. It is easy to gamble on the Internet and to spend big amounts of money.

The monopoly is a political issue and Annika Qarlsson, a member of the board of directors of the Swedish “Center party” that wants to let other actors enter the market says that “There are actors that are not serious, we have let it gone too far. Through licenses it’s possible to regulate how the actors behave.” The other parties on the alliance have before expressed their wish to abolish the game monopoly. Also Svenska Spel seems to be positive to a different market situation where the companies need a licence to provide and market their services because it would prevent unserious actors to enter the market. The Swedish regulation of the game market is, in the opinion of the managing director of Svenska Spel, at this moment not a functioning or effective solution and it needs to be changed prompt.
6. European Union’s view of game monopolies

When it comes to gambling and lottery there are no specific rules in the European Union, but the regulations in the EC-Treaty apply. The Commission consider the game monopolies a problem since they violate the principle of free competition within the Member States. The commission has no aim to deregulate the game market but they want to include all game companies on the market and they want equal treatment for domestic and foreign companies. The fact that laws concerning gambling are different in different countries is not considered a problem.

According to legal practice from the European Court of Justice the national legislation is allowed to restrict the freedom to establish a company and the freedom to provide services within the Member States. That is if the restriction is applied in a non-discriminating way and if it is motivated by cogent consideration of the public interest, if it is securing the strive to accomplish the goals and if the actions taken are not more than necessary to fulfil this aim.

The Gebhard test

A German citizen, Reinhard Gebhard, established a law firm in Italy. This was not approved of by the Italian State since Gebhard was not a citizen of Italy. What is important here is the judgment from the court, which proposed that in order to be allowed the national legislation limiting the European law and the four freedoms should fulfill four conditions, it should:

- be applied in a non-discriminating way.
- be motivating with respect to a common interest.
- be devoted to ensure that their purpose is reached.
- not be more restricting than what is just necessary to reach the purpose, according to the principle of proportionality presented above in 4.2.

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59 SOU 2000:50 p.9
63 SOU 2000:50 p.128-129
64 Gebhard C-55/94
This judgment has become the model of how all-similar cases should be treded. What is always looked at when Article 49EC is violated, are the four conditions mentioned above, this is called the Gebhard test.

The Franzén Case

Sweden also has a State monopoly on the medicine market as well as the alcohol market that are similar to the game monopoly with the same purpose to protect the citizens.

The shop owner Harry Franzén just like in the Hanner case below considered the monopoly a violation against the European legislation and decided to sell alcohol in his shop that he bought at Systembolaget or imported from Denmark. He believed that the company was discriminating when deciding in their selection of goods, that not all products were offered by Systembolaget and therefore the possibility of selling those products were restricted and that the Swedish alcohol products were favored in the marketing. Franzén was prosecuted for illegal selling and illegal holding of alcohol.

The Court found that the monopoly was not violating Article 31EC; their selection of products could not be considered discriminating against foreign producers neither could the marketing be considered discriminating. On the other hand the monopoly restricted Article 28EC concerning import restrictions because of the domestic taxes and additional costs on exporting to Sweden. They also found the State monopoly was fulfilling its purpose and Mr. Franzén was pleaded guilty.65

The Hanner Case

This case treats Brungwell International AB, a company that was selling nicotine replacement products. These products are considered being non-prescription medication in Sweden and are only allowed to be sold by the company approved by the State. The defendant claimed the monopoly was violating the Articles 28, 31 and 43EC and therefore he was allowed to sell the medication.

The European Court of Justice declared that the State Monopolies are allowed as long as they are not discriminating the nationals of the Member States when it comes to obtaining

65 Franzén C-189/95
and offer for selling the goods and if the monopolies are a not disadvantage for the trade from other countries compared to the domestic market.

The monopoly has a purpose to provide a good quality on medicine and prevent damage caused by medicine that is to protect the consumer.

Mr. Hanner claimed the monopoly was discriminating when deciding in their selection of goods which makes it difficult to introduce new medicine on the market; he was referring to non-prescription medicine. Despite the fact that the state presented many ways in which they were fulfilling the purpose of the monopoly it was found discriminating according to Article 31EC because of the way they select the products. The amount of selling points was not considered enough and therefore violating Article 28EC as well. The Court considered these arguments enough to prove the discrimination caused by the State monopoly.  

The following legal cases are concerning the game monopoly in European counties.

**The Schindler Case**

Two German citizens (called Schindler) marketed their German game company in England. The marketing was for a lottery especially for British citizens. This was considered a violation against the British lottery law where only a few certain companies are allowed to market and pursue lottery; legal proceedings was taken against them.

The European Court of Justice found that the legislation in England preventing other companies on the game market was an obstacle to the freedom of providing services over the borders. However the legislation has a purpose to prevent crime and to guarantee the gambler that the money are handled in an honest way and prevent or limit the harmful effects of gambling and to protect the common interest. The purposes are enough to justify the monopoly despite the fact that it is not compatible with Article 49EC.  

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66 Hanner C- 438/02  
67 Schindler C-275/92
The Gambelli Case

On the 22 of June 2001, the Tribunale di Ascoli Peceno in Italy questioned the European Court of Justice on the interpretation of Articles 43 and 49 EC. The matter was raised in criminal proceedings brought against Mr. Gambelli, belonging to the British betting company Ltd Stanley, and 137 other defendants, who were accused of having unlawfully organized clandestine bets and of being the proprietors of centers carrying on the activity of collecting and transmitting betting data, which constitutes an offence of fraud against the Italian State since they did not have permission to do so.

The judgment was based on four different Articles of the EC-Treaty;

- **Article 43EC** declaring that limitations on the freedom of establishment of nationals of a Member State in the province of another Member State shall be forbidden. Such prohibition also applies to restrictions on the creation of agencies, branches or subsidiaries.
- **Article 48EC**; companies created in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community shall be treated in the same way as persons who are nationals of Member States.
- **Article 46EC**; the requirements of the right to establishment shall not injustice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment for foreign nationals on grounds of public policy, public security or public health.
- **Article 49EC**; restrictions on freedom to provide services within the European Union shall be prohibited in respect of companies who are established in a Member State of the Community other than that of the person for whom the services are intended.

In this case the European Court of Justice meant that National legislation which prohibits the activities of collecting, taking, booking and forwarding offers of bets, without a license or authorization from the Member State concerned constitutes a restriction on the freedom of establishment and the freedom to provide services provided for in Articles 43 and 49EC. It is for the national court to decide whether such legislation actually serves the aims, which might justify it, and whether the restrictions it imposes are inconsistent.
The Italian legislation provides that a person that unlawfully participated in the organization of lotteries, betting or pools reserved by law to the State or to entities operating under license from the State shall be legally responsible. Therefore the Gambelli case turned out with a restriction for this kind of action. 68

**The Placania Case**

It’s been over a decade since it’s been possible to gamble via Internet. This opportunity makes it easier than before for game companies to market and provide their services in many different countries, and that is what many companies do despite the fact that several Member States have a regulated market for gambling.

The most recent case on this matter is the Placania case. The British company Stanley Ltd let Italian citizens gamble on their site without having permission from the Italian police to provide this service in Italy. The case became a matter for the European Court of Justice who pleaded in favour of the British company and against the Italian government, which was a new turn for this kind of case. It gave hope to opponents of the monopolies especially since in 2006 the Internet gambling was established as not part of the direction of freedom for providing services.

The judgment was a preliminary peremptory of the Articles 43 and 49EC saying that; A national legislation prescribing prohibition to pursue a business of gambling without permission is a limitation of the Articles 43 and 49EC, which establishes the freedom of providing services in any Member State. It is up to the national courts to decide whether the national legislation is fulfilling its purpose or if it is violating the European legislation. Articles 43 and 49EC should be interpreted in a way such as they are a hinder to the national legislations prohibiting the companies to provide their services without permission from the state. 69. The judgment turned out to be a complete opposite of the Gambelli case, presented above.

According to Ulf Bernitz, Swedish professor in EU law, this judgment is of importance to the game companies that wish to enter the game market in Sweden since the judgment is to their advantage. The ones in favour of the monopoly consider this judgment an

68 Gambelli C-243/01

69 Massimiliano Placanica C-338/04
advantage to the monopoly and say the judgment only is applicable on this case in particular. The ones negative to the monopoly believe this is the start of the Commissions’ abolishment of monopolies.  

When the European Court of Justice rules they refer to former legal cases hence this can not be a judgment only for this particular case. Even if the monopolies will not be abolished this is a new start.

6.1 Actions taken to protect the monopolization

The game market is a complex market, if not regulated it could be in interest of unserious actors. It is possible to block payments to companies that are not willing to accept the rules that the politicians want for this market. In France and the USA these actions to control gambling has already been taken. In the USA gambling on the Internet is forbidden as well as card payment via Internet to game companies. In France an indictment has been brought against the Austrian game company Bwin for offering their services via Internet to French customers but they were never convicted. The Swedish Internet gambling company Unibet could also be in difficulty after selling their services to French citizens and therefore, according to the French gambling companies, interfering with the French game monopoly. France will have a new, more severe game law coming into force in September 2007. The penalty imposed will be higher for marketing gambling in France and the French banks will be forbidden to transfer money to the gambling companies.

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73 Ibid
7. Economic theory

7.1 Consumer’s choice

Consumers make choices every day of their life, several times during one day. According to economic theory consumers are assumed to be rational in their choices and always choose the option that maximizes their utility. When it comes to gambling the choices made by the consumers are made under uncertainty and they do not know which choice that would maximize the utility. According to the expected utility theory the consumer is then trying to maximize its expected utility. Expected utility is different for different persons; the choice to gamble or not gamble is dependent on personal references. More about the choice made by individuals can be read in the following chapter concerning risk which is one of the factors impacting the choice.

An individual’s decision whether to gamble or not can be illustrated by the game tree.

![Game Tree]

Figure 1 shows the possible outcomes of an individual’s decision on gambling.

7.1.1 Risk

When gambling the individual takes a risk. If the individual is willing to gamble and how much it is willing to bet depends on its risk aversion. If staking a small amount of money the risk factor is of smaller importance than when staking bigger amounts.

There are three different ways to look at risks:

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74 Dahlman C, 2002 p. 30
• *Risk aversion*; the individual try to avoid risk and prefer certainty over uncertainty. The risk of a game makes this person unwilling to gamble because the risk makes the individual worse off. The risk of losing $X hurts more than the benefit of possible gain of $X which is the reason why a person is risk averse. This is the most common type of individual.

• A *risk neutral* person only cares about expected wealth, it does not care about the risk; if it is big or small.\(^75\)

• *Risk preference*; the individual like taking risks, uncertainty is to be preferred. This person is acting in an opposite way from the risk adverse person.\(^76\)

### 7.1.2 Probability

Before deciding on weather or not to gamble the probability also needs to be taken into account. The price of the game and the probability to win are important factors when it comes to deciding in whether to play. Therefore if the price of the gambling would go down which it would do on a competitive market, as can be seen below in figure 4 and 5, the demand would rise. That is if the chance of winning stays the same or rises as well.

### 7.1.3 Asymmetric information

The producer always knows more about their production than the consumer does. It can also be that the consumer does not take part of the information available because it is irrelevant or too costly to find out. This is called asymmetric information when the consumer does not have enough information.\(^77\) On the game market the asymmetric information can be that the consumer can not be certain of the legality of the game, that the consumer does not know if only blank lottery tickets were sold and there is no chance to win on the game another form of asymmetric information is that the information is not comprehensive enough to know the actual chance of winning.

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\(^{75}\) Harrington E. Scott, 2003 p.164  
\(^{76}\) Dahlman C, 2002 p.114  
\(^{77}\) O’Sullivan A, 2006 p. 171
7.2 A competitive market

When there are a large number of small firms on the market it is most likely to be a competitive market. In market equilibrium the quantity demanded equals the quantity supplied, which is in the cross of the diagram below in figure 2. The price of the service is based on the demand and the production cost. If the demand is higher or lower than in equilibrium the supply and the price will adjust in the long run so that the market again reaches equilibrium.\(^{78}\)

\begin{center}
\text{A perfectly competitive market}
\end{center}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure2.png}
\caption{Figure 2 shows how the price is set and what quantity to produce is decided on a perfectly competitive market. The price and the quantity are where the demand and the supply cross each other, in equilibrium.\(^{79}\)}
\end{figure}

This is the theory that Adam Smith (see 3.3) used when he was talking about the “invisible hand”; that the market is always changing itself back to perfect competition, where the demand and supply are in equilibrium.\(^{80}\)

He also believed that the competition made the companies produce the best products and services possible in order to make themselves competitive; a competitive market contribute to the best price and the best quality possible.\(^{81}\)

\begin{footnotesize}
\begin{itemize}
\item \(^{78}\) O’Sullivan A, 2006 p. 274
\item \(^{79}\) Ibid p. 274, 276
\item \(^{80}\) Ibid p. 53-54
\item \(^{81}\) Gerber D, 2003 p. 19-20
\end{itemize}
\end{footnotesize}
7.2.1 A competitive firm

A perfectly competitive firm produces where profit is maximized; where the marginal cost equals marginal revenue. That is where the cost of producing one extra unit equals the selling price. The firm has to adjust its price to the market price. If they charge a price that is over the market price they will not be able to sell their services because the competitors charge a lower price for the same service and the consumers will chose the lower price. 82

The Individual Firm

Figure 3 A perfectly competitive firm produces where profit is maximized; where the marginal cost equals marginal revenue. That is where the cost of producing one extra unit equals the selling price. Each firm on the market makes just enough profit to stay in business; there are no incentives for additional firms to enter the market. 83

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82 O’Sullivan A, 2006 p. 274
83 Ibid
Figure 4 shows how the perfectly competitive firm’s way of choosing production relates to the quantity and price in the market. The price is lower than on the monopolized market and the quantity is bigger. Compare with figure 5 below.⁸⁴

7.3 A monopolized market

In the real world a perfect market with perfect competition does not exist, it is a theory developed by economists. There are always factors affecting the market so that it cannot be a perfect market. One of these factors are monopolies.⁸⁵

A competitive firm takes the price as given on the market; a monopolist in contrast is the price maker on the market. The monopolist has the market power but still it has to take into consideration the consumers’ tendency to consume at different price levels.⁸⁶ On the game market it has to take into consideration what is said above about consumers’ choice in 8.1.

State monopolies can have positive or normative purposes. Normative purposes have to do with desirability, what is to be achieved. Positive purposes is about what is at the

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⁸⁴ O’Sullivan A, 2006 p. 297
⁸⁵ Dahlman C, 2002 p. 11
⁸⁶ O’Sullivan A, 2006 p.289
moment; the truth. The type of monopoly treated in this thesis has a normative purpose; to protect the inhabitants in the county. They can reach two goals by one action through higher prices, which limits the consumption as well as creating profits for the state.

The monopolist produces where the marginal revenue equals marginal cost giving the price P which is higher than the competitive market and the quantity Q which is less than the competitive market. Compare with figure 4 above.

7.4 The deadweight loss

Monopolists use their market power to charge a higher price than what the price would be on a perfectly competitive market, consequently the monopolist gains from this market situation and the consumer loses. But the negative effects of a monopoly does not end with that; a monopoly also causes inefficiency and reduces the total yield on the market that means the market as a whole is worse off.

I will here explain why that is.

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87 Klein P, 1994 p. 24
88 O’Sullivan A, 2006 p. 297
89 Ibid p. 296
On a perfectly competitive market the firms can not affect the price on the market hence they take the price as given in the equilibrium were marginal cost equals marginal revenue as explained above. The monopolist’s price differs from this equilibrium price. They can set a price that is higher than the marginal cost. That conveys in a redistribution of surplus from the consumer to the producer. It also causes a loss in efficiency because the consumption of the good has diminished, because the monopolist produces less and sells it to a higher price than a perfectly competitive firm. On a monopolized market the price is higher and the quantity produced is smaller than on a perfectly competitive market, hence the monopolized market makes the consumer worse off.⁹⁰

Figure 6 shows the deadweight loss of a monopoly. The price increases while the quantity decreases. D is the deadweight loss for the society. R is the profit increase for the company and R plus D is the amount of reduction of consumer surplus. On a perfectly competitive market C, R and D are together the consumer surplus.⁹¹

⁹⁰ O’Sullivan A, 2006 p. 297-298
⁹¹ Ibid p. 298
8. The Consumers

The main reason why Sweden has a regulated game market as mentioned above is, according to the State, that gambling can be a risk for the consumer where it is easy to become addicted and trapped in dept and the market could also be attractive for unserious actors which also can be a risk for the consumers.⁹²

The health aspect and the aim to protect the individual are the main reasons why this kind of monopoly is allowed in the European Union and exempted from the rules about free competition. The commission is of the opinion that the game monopolies that has a purpose to protect the gambler from getting into abuse does not go well together with the fact that the companies market their services with the purpose to make more individuals gamble.⁹³

The purpose is well meant but is it really necessary to have a monopolized market? Would it not be better for the gamblers in general to have more actors on the market creating a competition and all the good consequences that come of that? What is causing the addiction are often other reasons and there are examples of gamblers getting caught in an addiction despite the monopoly. They find their ways around it.

Gambling on the internet is possible and there the gamblers can find other actors on the market. Svenska Spel also offers gambling on the internet and according to them they have a big part of the market share even there.

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⁹² SOU 1992:130 p.178
9. Analysis

**History**

As can be seen in the history chapter economic analysis of law is not a new phenomenon and the legislations concerning monopolies are no exception. Even if law and economics has not been a pronounced science it has still been used. It is in many parts of the law not possible to do without it and probably it is not enough used. That could be because jurisprudence and economics are two different sciences and great knowledge in both subject is needed to be able to combine them and a legal scientist may not know enough about what an economist knows to be able to use the knowledge and vice versa. Most of the time it is the economists using their knowledge to analyze law, it is possible that they are overestimating their own importance in the matter.

The first legal case concerning monopolies was in 1602. Already at this time the monopolies were considered to be negative for the market and for the consumers, causing higher prices and less quality since the monopolist does not have to make their services competitive. Centuries ahead the same theories are still relevant. In the beginning of the 19th century, liberals wanted economic liberty and to free the actors on the market from State regulations. Adam Smith had theories about the “invisible hand” to prove that the market does not need the regulations from the State. He was of the opinion that the rules of the State and unions do nothing but restrain the economic development and welfare. His theories are accepted still today. The industrialization and the economic depression made the people see that the markets cannot be set completely free because that would also harm the market. That is what is said about the game market today. The monopolies are not handled in the correct way since they are violating the rules of the EC-Treaty, but the market can not be completely competitive either, that would harm the consumers because that would open up the market for the unserious actors.

The purpose of the Treaty of Rome was to “ensure the economic and social progress of their countries by common action to eliminate the barriers that divide Europe.” The aims of the EC-Treaty are mostly set up to protect the market and to create an open market within the union and to make sure that the Member States are equal and that there is no discrimination on the market. In the end it is still the consumers that are affected by these rules since they are the inhabitants of the countries the employees of the firms etc. hence
the rules are there to protect them, which can be seen through the history that has always been a vital reason.

**The consumer**

A consumer’s choice whether to stake its money or to save them or to spend them on other goods is probably not always that well considered as proposed in the theory chapter. If the consumer is certain that the companies on the markets are serious actors, that is one issue that does not need be considered; the risk of gambling is lower because they will not lose their money to an unserious business. Currently they can trust the actors on the market and the issue of asymmetric information is not as big. The information about the games can still be limited but they know they are gambling with a serious company.

If the market was perfectly competitive anyone could enter the market that would mean that the individual would take a bigger risk every time they decided to game with a new company. That is an argument to let the market stay regulated to some extent. This solution for the situation is also proposed in the Gambelli case, presented above.

The diagram in figure 5 above shows that the consumer and the market as a whole is worse off in a monopolized marked compared to a perfectly competitive market, because of the deadweight loss. But the monopolized game market is particular since all the profit made goes right back to society; to the non-profit organizations or to the state. Exactly how that money in particular is spent by the state is not clear but we can assume that it is spend in a way that makes the inhabitants of the country better off. Therefore the sum of the amount of the deadweight loss is coming back to the society and the consumers by the amount of the profit from Svenska Spel. But the loss of the smaller quantity produced and the higher price of the services are still there. One thought is that the State could also regulate this issue on the market. They could set a price roof, and with a lower price the demand would rise causing the production to have to rise as well.

If the monopoly was abolished prices would be lower. But would the winning prices and the probability to win change? This is something that could be difficult to legislate. For the consumer of course it would be ideal situation with lower prices higher winning money and higher probability to win. More companies on the market would lead to lower prices and more consumers will gamble because their reservation price (the price where they are indifferent to gamble or not gamble) is reached. If more individuals are gambling
also more individuals will probably be trapped in the gambling addiction which leads to a lost economy. Therefore perfect competition would not be the best solution.

The loss for the society and the consumers if the monopoly was abolished would be the profit from the State owned company that is said to go right back to society. The youth sports club would not receive the money, neither the exchequer nor the research groups. Unless that would be a rule for the companies on the game market and that rule might prevent the companies to be willing to enter the market. Svenska Spel is not currently paying the taxes to the government, that a game company in Sweden is obliged to do, since the profit goes to the government. That could also be an alternative for the companies on a market with free competition not having to pay taxes but instead donate part of their profit.

The money the consumers spend on gambling come back to them in one way or the other even if they do not win on the gambling. This sounds like a win-win situation. Why then are there so many complaints about this type of monopoly? One reason could be that the consumers do not directly decide how the money is spent. They pay the money when they gamble, which then partly goes to the state and the state decides how to spend it and not the consumer. The politically active may feel they have more influence or if the party they voted for is at force at the moment. The money does not go right back to their pocket and it has to be shared with the rest of the society, even the citizens that do not gamble. That may seem unfair but then again they pay taxes and contribute in other ways to the exchequer.

If the money did not go to the state but to a profit maximizing company the money would not be coming back to the consumer. But that thought can also be discussed since if there would be a profit maximizing company they would want all the consumers to spend their money with only their company. They would do all they could to make it that way; through new thoughts, new games, maybe higher prize money and higher chance to win. If the consumer finds these new ideas and new games amusing that might contribute to the consumers’ increase in wellbeing and in economic theory a consumer always tries to maximize their utility. Therefore the gamblers may prefer that the profit maximizing company receives the money instead of the State and the society. The way a business would spend the extra profit or the way they would try and make themselves competitive would maybe benefit the players more than what the government could do with the profit they get from the game market. The game companies would spend it in a way to please
their customers who would make them feel they have a bigger utility than by money spent on other things not related to their game interest. Other consumers that are not interested in gambling would then if this theory holds be worse off because the profit given to the state would be smaller than it is today. The question is whether the benefit of the gamblers and the loss of the other consumers would be equal or which one would be bigger if the game monopoly was abolished.

If the game market was set free the government would lose the profit from Svenska Spel but they would also earn more profit from taxes from companies entering the game market. This income may not be able to be as big; meaning the government would lose on the deregulation as well as the consumers that do not play because they would not obtain the money from the companies as they do today.

**The market**

There are only seven countries in the European Union that have a State monopoly on gambling. One of the reasons why they are allowed to keep the monopolies is that they are said to be protecting the consumers’ health and also protecting them economically. It may be that it would be easier for deceivers to enter the market if it was not controlled the way it is. As it is now the game companies are well known and the gamblers can always feel secure when betting or buying a lottery ticket and be certain they are not being fooled and that there is actually the chance to win. That makes the insecurity less but there is still the risk of losing the money as there always will be. There are many unregulated markets in Europe and on an uncontrolled market the consumer is always faced with the risk of being swindled. If this market is especially attractive for this kind of affairs it is still possible to control the market to a certain point but not let it be monopolized. Apparently it is working in other Member States since they don’t see the need in having a State monopoly. It seems to be in everyone’s interest to have a regulated market;

- the consumers are more secure and take a smaller risk, they pay a less price and obtain a better quality and possibly bigger prize money.
- the State to protect the consumers’ health and they also make a profit from it.
- the companies on the regulated market are subjected to less competition than on a free competitive market.

The consumers and the companies would be better off on a less regulated market (not a monopolized market). Only the State has a bigger interest in a monopolized market than in a regulated market with more companies.
The Swedish company Svenska Spel is taking precautions for their consumers not to get trapped in a gambling addiction where they would lose money and become in deep dept. That is a responsibility that could be an obligation for any company that wants to enter the game market to protect the gamblers and their economy; a monopolized market is not the only solution. It is possible that could be done even better and more efficient than it is done today.

It can be questioned whether the Swedish state is fulfilling all of its purposes. They do not want the individuals to be trapped in a gambling addiction, which would cause them to be in dept. Still Svenska Spel has a financial goal and strong focus on profitability and they market their services to make people play. A restriction on the marketing of the services for the companies would be appropriate.

If it is possible to regulate and control the game market completely even on the Internet after an abolishment of the monopoly it would prevent the gamblers to stake money with an unserious and illegal company where the risk could be bigger to be swindled on the money.

**De lege ferenda**

The EU legislation is already provided with restrictions necessary to prevent the abuse of monopolies. There are furthermore restrictions on preventing anyone from establishing a company in a Member State, there is the principle of free movement of services and capital and legislation against import restrictions. What the European Union does not have is a developed legislation regarding State monopolies; it is instead nationally regulated in each country. The national legislation cannot violate the EU legislation. The question is if it does. Each country has a different legislation concerning their monopoly therefore it might be hard to draw general conclusions. In this case I have looked closer at the Swedish monopoly which has to comply with the European rules which is the EC-Treaty as well as the legal practice as can be seen above.

According to the Gebhard test a restriction of the EU legislation has to be motivated by the common good, this has been emphasized in the judgments from the European Court of Justice. The Swedish legislation and preambles and the vision of Svenska Spel all say
that is what the Swedish monopoly does. Through that aspect the monopoly should stay
on the market. With the current market situation it is easier for the State to supervise the
situation, it would be harder to do with more companies on the market and more costly.
With less money from the profit of Svenska Spel and more costs to control the market
that would only result in a big loss for the State.
The Gebhard test also provides that the State has to be devoted to ensure that the
purposes are reached. In Sweden this can be questioned if it is truly attained.

The Swedish regulation of the game market is, in the opinion of the managing director of
Svenska Spel, at this moment not a functioning or effective solution and it needs to be
changed prompt. If the president of the leading company on the market is of this opinion
that is probably a sign that adjustment of the market situation and an amendment to
regulate it is truly required.

The game market is a complex market, if not regulated it could be in interest of unserious
actors. In France and USA they have found solutions to that through regulation that is
successful even on the internet. That can be an option even for the Swedish market if the
regulation should stay on the market.

As can be seen above in the legal cases presented the discontent with the State
monopolies are evident, not only the game monopoly but the medicine monopoly and the
alcohol monopoly. The purpose is well meant and good but is it truly necessary, is it
compatible with the principle of proportionality? The citizens might feel more restricted
than protected by the precautions. There can not be one answer that applies to the three
monopolies. It seems though that the common opinion is that the monopolies are taken to
a too big extent to fulfill their purposes and in that matter is violating the EC-Treaty. That
is not the opinion of the European Court of Justice generally but it can be discussed if
they are too easy on the State monopolies. The principles presented above in chapter 4.2
are proposing the same restrictions as the primary law in force and these are principles
that are well established are probably not likely to be changed or rejected any time soon.
It may not be the law that is allowing too much but the interpretation of the law that is
wrong. Hence what is needed may not be an amendment but a different interpretation of
the law in force; the Treaties as well as the legal principles.
10. Conclusions

**History**

The disapproval of monopolies has an equal long history as the existence of monopolies. It could soon be seen, with the help of economic theory, that it was an economical disadvantage for the consumer; for the individual’s economy as well as for the society as a whole. The politicians and the inhabitants in the counties where monopolies were at discussion could see that monopolies needed to be regulated by law because of the fact that they were making the society and the consumers worse off. Throughout the history and still today these theories are accepted.

**The consumer and the market**

In the judgments settled by the European Court of Justice we can see time after time that they rule in favor of the game monopolies. Still they are investigating the existence of the State monopolies to see if they are compatible with the European Union’s rules. And in the last legal case, the Placania case, there was a change in the judgment; favoring the companies wanting to enter the game market and not the monopolies. It is possible that has set the example for what the future will look like in this area.

If the monopoly is abolished there can be a free competitive game market. Most likely this will not be the case. The game market will still be regulated but with a bigger number of firms. For the consumers this would mean that the price would be lower, the quantity of games would be bigger. But it would also mean that the money redistributed to society would be smaller. This would not be a big loss for the gambler since they could instead spend the money the way they wish. For the consumers that are not gambling or not gambling to a big extent on the other hand it would be a loss. The redistribution from the gamblers to the rest of the society would not happen if the market were not regulated by the state. If the market would be perfectly competitive the redistribution would be non-existent and the only winners would be the gamblers and the companies that would be able to enter the market and make a profit. The gambling market needs to be regulated because of the many risks concerning gambling. Even without the monopoly there can be ways to protect the consumers. The same requests that the State currently has for the companies on the market can be made also on a less regulated market.
Already the Swedish company Svenska Spel is taking precautions for their consumers not to get trapped in a gambling addiction where they would lose money and become in deep dept. That is a responsibility that should be an obligation for any company that wants to enter the game market to protect the gamblers and their economy.

To make the consumers better off the monopoly should be abolished. There are many advantages from the monopoly and to keep the good effects on the market there should be obligations for the companies on the market.

The conclusion is that the monopoly market situation that we have on the game market today is not the best solution for the individual consumer. A perfectly competitive market is not the best solution either. There are good reasons for having the monopoly that could not be reached on a competitive market. Hence what needs to be done is to legislate for a regulated market with multiple actors. They can still care for the consumer and have obligations to prevent the risks for the consumers to be in trouble. The consumer would then benefit from all the good causes from the monopoly at the same time as the market is competitive which means lower prices and bigger quantity produced.

**Further research**

To analyze the subject further it could be interesting to make a survey and analysis to see how the economic situation of the gamblers in a country with a State monopoly and gamblers in a country with a competitive market differs to see who are better and who are worse off. It is possible there is no noticeable difference.

Another interesting research to do could be to make a survey among the consumers and gamblers in the countries that have a game monopoly to see their view of the situation.

It would also be interesting to see how the legislation differs in a country with a State monopoly on the game market and a country that does not have the State monopoly.
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