

Authority submission

Meeting date: 1 February 2024

Agenda item no: 6.2

Title: Investigation into [REDACTED] [REDACTED] - Notices to produce documents

Description: This paper seeks the Authority's agreement to give notices under paragraph 173(1)(b) of the *Broadcasting Services Act 1992* (BSA) requiring the production of documents and information about [REDACTED] and associated entities.

RECOMMENDATION

That the Authority:

AGREE to give notices under paragraph 173(1)(b) of the BSA for the purpose of requiring the entities and individual below to provide documents and information relevant to investigating possible contraventions of the *Interactive Gambling Act 2001* (IGA):

- a. [REDACTED] in the form set out in **Attachment A**.
- b. [REDACTED] the form set out in **Attachment B**.
- c. Authenticate Solutions Pty Ltd in the form set out in **Attachment C**.

TIMING

There is no statutory deadline. The ACMA has adopted internal Key Performance Indicators (KPIs) for 95% of investigations into interactive gambling matters to be completed within six months. A new investigation was commenced on 23 January 2024.

COMMITTEE OR PROJECT BOARD CONSIDERATION

- | | |
|--|--|
| <input type="checkbox"/> Content Committee | <input type="checkbox"/> Compliance Priority (<i>please specify</i>) |
| <input type="checkbox"/> Spectrum Committee | |
| <input type="checkbox"/> Telecommunications and Consumer Committee | <input type="checkbox"/> Project Board (<i>please specify</i>) |
| <input type="checkbox"/> Compliance and Enforcement Committee | |
-

Paper by: [REDACTED] [REDACTED]

Cleared by: EM: Rochelle Zurnamer

Legal contact officer: [REDACTED]

File no.: PJ17/18

INVESTIGATION INTO [REDACTED] – NOTICES

BACKGROUND

1. The IGA prohibits certain interactive gambling services with an Australian-customer link from being provided or advertised. Prohibited interactive gambling services include online casino-style services and services which provide in-play betting on sporting events. Regulated interactive gambling services such as online wagering and lottery services with an Australian-customer link can be provided if a relevant licence issued by an Australian state or territory regulator is held.
2. We have previously investigated the 17 online gambling services ([REDACTED]) listed in **Attachment D**. In each case, we found that the services were being provided in contravention of subsection 15(2A) and/or 15AA(3) of the IGA, because they are prohibited and/or unlicensed regulated interactive gambling services with an Australian-customer link. These services were all found to be provided by [REDACTED].
3. [REDACTED] has been issued several formal warnings in respect of these services. The services have also been, [REDACTED], the subject of website blocking requests. [REDACTED]
4. Other than blocking requests, other enforcement options have, to date, been limited [REDACTED]
5. The [REDACTED] have a large market presence and are causing significant harm to the Australian community, based on the relatively large number of complaints received about services² and the ongoing creation of mirror sites following website blocking. In addition, the majority of these services continue to have substantial Australian traffic each month.³
6. We have identified several entities related to the [REDACTED] in **Attachment D** including:
 - (a) [REDACTED]
 - (b) [REDACTED]
 - (c) [REDACTED]
7. A map outlining the relationships between [REDACTED] and its associated entities is at **Attachment E**.

¹ A mirror website is where the internet content and service of a website is the same as, or substantially similar to, that available at the primary website when it was investigated previously by the ACMA.

² Since the first complaint was received in October 2018 to December 2023, we have received 37 complaints about the [REDACTED] Services.

³ For example, during a 6-month period (between July and December 2023), there were over 2.1 million visits to the [REDACTED] service from Australia.

⁴ [REDACTED]

8. [REDACTED]

Power to compulsorily gather information

9. The ACMA has the power under Part 13 of the BSA to compulsorily gather documents or other information relevant to the subject matter of investigations under the IGA. (See subsection 22(3) of the IGA, section 170 of the BSA and subparagraph 10(1)(o)(iii) of the *Australian Communications and Media Authority Act 2005* (the **ACMA Act**), as set out in **Attachment F** to this paper).
10. The power to give notices under paragraph 173(1)(b) of the BSA cannot be delegated due to a limitation on powers that can be delegated imposed by paragraph 53(2)(k) of the ACMA Act (excerpt in **Attachment F**).

DISCUSSION

11. We have obtained information that indicates that providers of the [REDACTED] in **Attachment D**, have had dealings with certain Australian individuals or entities incorporated in Australia. We propose giving notices under paragraph 173(1)(b) of the BSA (**Statutory Notices**) to the entities and individual listed below, all based in Australia.
12. The purpose of each notice is to obtain information about the person(s) representing the [REDACTED] (defined as the relevant online services in each notice) or relevant entities, in any dealings with these Australian entities and individual. This may provide information about the entities and individuals associated with and providing the relevant online services.
13. The scope of information/documents required under each notice is similar and includes details of any goods, services or other dealings (depending on the notice) provided in relation to the relevant online services and/or relevant entities, contact and payment details and any related contracts or understandings, billing records or correspondence. The notices also require details of any persons known to operate or otherwise be involved with the relevant services or entities.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁵ To rely on the ACMA's power to compulsorily gather information via a notice issued under paragraph 173(b) of the BSA, the notice must be given in relation to an investigation under subsection 21(1) of the IGA.

⁶ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Authenticate Solutions Pty Ltd (formerly ISIGNTHIS EMONEY (AU) Pty Ltd) (ACN: 624 762 269) (Authenticate Solutions)

19. Authenticate Solutions Pty Ltd is an Australian FinTech company with registered offices in Melbourne. Authenticate Solutions was known as ISIGNTHIS eMoney (AU) Pty Ltd between March 2018 and November 2020.⁸ The company provides financial technology software solutions for customer onboarding, identity verification, core banking and e-wallet solutions.⁹
20. Authenticate Solutions is a wholly owned subsidiary of ISX Financial EU PLC, an offshore company registered in Cyprus.

21. [REDACTED]

Therefore, it is likely that any information obtained through issuing of this notice will be relevant to the investigation.

RISKS/SENSITIVITIES

22. Green - The risk of giving these notices is considered to be low.

23. [REDACTED]

24. [REDACTED]

⁸ Authenticate Solutions was known as ISX Financial Pty Ltd between November 2020 and December 2021 and ISIGNTHIS AUSTRALIA PTY LTD from December 2021 to March 2023.

⁹ [REDACTED]

25. [REDACTED]

CONSULTATION:

26. The Legal Services Division (LSD) reviewed the notices in **Attachments A, B, C** and this paper. The notices and this paper are consistent with the advice provided by LSD.

COMMUNICATIONS

27. Communications strategy required? No.

28. Ministerial briefing required? No.

REGULATORY IMPACT ANALYSIS PROCESS

29. We have considered whether a regulatory impact analysis process is required and formed the view that the recommendation in this submission would not give rise to a regulatory change as defined by the Office of Impact Analysis (OIA). Therefore, a regulatory impact analysis process has not been applied.

STATEMENTS OF COMPATIBILITY (SOC) WITH HUMAN RIGHTS

30. N/A

ATTACHMENTS

- A** [REDACTED]
- B** [REDACTED]
- C** Notice to Authenticate Solutions Pty Ltd
- D** Background – relevant online gambling services
- E** Map of related entities
- F** Key legislative provisions referred to in this paper