

COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

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IN RE: FASTBALL HOLDINGS, LLC

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ORAL ARGUMENT

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BEFORE: MEMBERS OF THE BOARD:

DANTE SANTONI, JR., COMMISSIONER

Obra S. Kernodle, IV

Sean Logan

T. Mark Mustio

Merritt C. Reitzel

Denise J. Smyler

EX-OFFICIO MEMBERS/DESIGNEES IN ATTENDANCE:

Jennifer Langan, Esquire, Designee,

Department of Treasury

Christin Heidingsfelder, Designee,

Department of Revenue

Fred Strathmeyer, Designee,

Department of Agriculture

HEARING: Wednesday, January 15, 2020

Reporter: Amy N. Distefano

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Strawberry Square Complex
2nd Floor
Harrisburg, PA 17101

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NONE OFFERED

P R O C E E D I N G S

COMMISSIONER SANTONI: The first order of business today, we'll have an oral argument regarding Fastball Holding, LLC's Petition for a Board Order seeking a waiver of licensure for some upstream companies, as it relates to interactive gaming.

These waivers have already been granted relative to sports-wagering operations. Fastball Holdings, with a 37 percent interest, is a minority shareholder in Betfair Interactive U.S., LLC, which has an agreement to conduct iGaming on behalf of the Valley Forge Casino Resort.

As the parties agree with all the material facts in this matter and the Board is aware of these facts, we'll be only conducting oral arguments today. May we have counsel for Fastball and OEC come forward, please?

Before we begin, I would ask that Counsel state and spell your name for the court reporter prior to your presentation.

ATTORNEY DIGIACOMO: Good morning, Commissioners. Frank DiGiacomo, D-I-G-I-A-C-O-M-O, from Duane Morris, on behalf of the Petitioner,

1 Fastball Holdings.

2 ATTORNEY HAGGERTY: Good morning,
3 Commissioners. Samantha Haggerty on behalf of
4 Petitioner, Fastball Holdings, H-A-G-G-E-R-T-Y,
5 from Duane Morris as well.

6 COMMISSIONER SANTONI: Okay. Thank
7 you.

8 Petitioners, you may begin.

9 ATTORNEY DIGIACOMO: Thank you.

10 As you noted, Commissioner Santoni,
11 Fastball Holdings is currently a principal affiliate
12 in connection with the Licensee, Betfair Interactive
13 U.S. And as you also noted in - previously, this
14 Board actually, in June, granted waivers of
15 qualifications with respect to certain upstream
16 entities, specifically affiliates of Comcast
17 Corporation, two entities Comcast Sports Ventures,
18 LP and NBC Sports Ventures, both of which have filed
19 affiliate License Applications.

20 In addition, those entities include
21 Capital G, which is a subsidiary of Alphabet,
22 formerly Google, and other related entities.

23 So, the crux of our argument is what
24 you noted, that the - this Board previously
25 determined that those entities did not have a

1 controlling interest, as defined in the Act,
2 specifically that they met the burden and rebutted
3 the burden by clear and convincing evidence of
4 having the ability to control the Applicant,
5 Betfair.

6 The - you know, the - we provided
7 certifications as to the passivity of those
8 investors. There are limitations in the structure.
9 As you noted, Fastball holds only 37 percent of
10 Betfair Interactive. There's no involvement with -
11 at Fastball level, with respect to the operations of
12 Betfair, either with respect to sports wagering or
13 interactive gaming.

14 The - nothing has changed with respect
15 to those companies. They all still involved - the
16 shareholder. Percentages remain the same. It's the
17 same companies that this company - that this Board
18 has granted waivers for with respect to the Sports
19 Wagering License Application.

20 So, it's - there is a Board seat. And
21 one of the responses that OEC noted, Comcast
22 Ventures and NBC Sports Ventures, they do hold a
23 seat on the Fastball Board. And that individual,
24 Andrew Cleland, has filed for - he's a Principal
25 Licensee with the Board and has filed applications.

1 I would note this. That Board does
2 not have operational control of Betfair in any way.
3 Fastball is an entity that was created as part of
4 the merger from FanDuel into Betfair. And Fastball
5 shareholders are the legacy FanDuel shareholders.

6 And as such, they have no operational
7 control of the entity in any way. And really, that
8 Board seat's there in the case of a situation where
9 there's a buyout or a transaction where - where the
10 entity is sold or the Fastball entity is divested,
11 so - so the Board seat role is - is just in - in the
12 event, if there's a fundamental change in the - in
13 the ownership structure, and really just to have
14 some role in that fundamental change, but not on an
15 operational level in any way as a traditional Board
16 seat would hold.

17 So, if there's any questions, I'm
18 certainly free -.

19 COMMISSIONER SANTONI: We'll get to
20 that in a second, but I think at this point that -
21 Enforcement Counsel, we'll hear from you now.

22 ATTORNEY ROLAND: Thank you,
23 Commissioner. And good morning to the other members
24 of the Board.

25 It's Michael Roland, R-O-L-A-N-D, with

1 the Office of Enforcement Counsel (OEC).

2 And by way of background, again,
3 Betfair Interactive U.S., LLC is an applicant for an
4 Interactive Gaming Operator License and is presently
5 seeking to offer internet wagering in conjunction
6 with Valley Forge Convention Center Partners, LLC,
7 who's doing business as Valley Forge Casino Resort.

8 Fastball Holdings, LLC is a principal
9 affiliate of Betfair. And as stated, owns
10 approximately 37 percent of the equity interest in
11 Betfair. As a result, Fastball has filed a
12 Principal Affiliate Application with the Board.

13 CapitalG 2015 LP, Comcast Ventures LP
14 and NBC Sports Venture, LP are investors in Fastball
15 and each have an ownership interest in Betfair.
16 After reviewing these investor companies, along with
17 the parent companies of each, and several affiliated
18 companies, the Bureau of Licensing determined that
19 in addition to the three investor companies, nine
20 additional entities were required applicants for
21 Betfair to conduct interactive gaming in
22 Pennsylvania.

23 Those entities included Comcast, CV,
24 LP, Comcast Holdings Corporation, Comcast
25 Corporation, NBC Universal Media, LLC, NBC

1 Universal, LLC and NBC Universal Enterprise, Inc.
2 DHC, all of which essentially make up NBC and its
3 parent, Comcast. And then the three remaining
4 entities are Alphabet Holdings, LLC, XXVI Holdings,
5 Inc. and Alphabet, Inc., all of which are
6 essentially Google.

7 After receiving the Bureau of
8 Licensing's request for applications, Fastball filed
9 the instant petition before you today, seeking
10 waiver of the qualification requirements for the six
11 Comcast entities and the three Google entities
12 identified. And it should be noted, I believe it
13 previously was, that on June 12th, 2019 the Board
14 granted waivers for these nine entities in
15 conjunction with Betfair's application for a Sports
16 Wagering License.

17 The OEC is of the opinion that the
18 Applicant made a conscious decision to enter the
19 strictly regulated world of interactive gaming and
20 should be held subject to the same strict licensing
21 standards of any company seeking to operate and
22 offer similar types of gaming in a brick-and-mortar
23 casino in the Commonwealth.

24 In fact, oversight in the virtual
25 world of interactive gaming, where there's no face

1 to face or physical interaction with individuals,
2 and identifications are made by names, accounts and
3 locations should be equally, if not more strict.

4 Interactive gaming, as set forth in
5 the Act, is similar to traditional casino gaming,
6 but operates in a virtual or online platform. Like
7 its brick-and-mortar counterparts, interactive
8 gaming is subject to regulation and policing of all
9 its activities in order to protect the public.

10 An Interactive Gaming Licensee can
11 offer the same games to the general public that a
12 brick-and-mortar casino can offer. Therefore,
13 online games offered by Interactive Gaming Licensees
14 can include slots, Blackjack, Baccarat, Craps,
15 Roulette and Poker, just to name a few.

16 Sports wagering, whether it's retail
17 sports wagering or online sports wagering, is not
18 analogous to interactive slots, table games and
19 Poker. Interactive sports wagering is significantly
20 more focused and limited than interactive slots,
21 table games and Poker in that it's restricted to
22 sporting events or the individual performance
23 statistics of athletes.

24 Sports wagering is a small fraction of
25 gaming revenue in this Commonwealth. OEC is of the

1 opinion, in light of the existing statutory and
2 regulatory language, that interactive gaming is
3 essentially the infancy of internet available
4 casinos in the Commonwealth, and applicants should
5 be held to the same strict licensing standards more
6 in line with that of brick-and-mortar casinos which
7 offer similar types of gaming.

8 Therefore, the Comcast and Google
9 entities identified by the Bureau of Licensing
10 should be subject to the same licensure under the
11 Board's current regulation and regulatory standards.

12 Almost daily there is news of Comcast
13 or Google gathering information on individuals who
14 utilize its services. In fact, there have been
15 Congressional hearings regarding both companies.

16 However, when Comcast and Google seek
17 the privilege of participating in the Commonwealth's
18 gaming industry, they point to SEC filings or other
19 federal regulatory bodies and refuse to provide the
20 same information required of other gaming-related
21 companies operating in the Commonwealth.

22 However, with that said, OEC is also
23 of the opinion that other factors need to be
24 considered before a final determination can be made.
25 And that if the Board is inclined to grant the

1 requested waivers in this matter, OEC recommends
2 that the Board order and adopt regulation changes in
3 this regard.

4 OEC is of the opinion that entities
5 should not be licensed just for the sake of
6 licensing and a significant or compelling reason
7 should exist for the licensure of federally
8 regulated, publicly-traded companies that make
9 passive or even semi-passive investments in the
10 Commonwealth's gaming industry.

11 Moving forward, OEC believes that
12 meaningful pointed regulatory standards in such
13 instances should be drafted and considered for
14 adoption by the Board to spur investment in the
15 Commonwealth's gaming industry without sacrificing
16 oversight. The regulatory standards should provide
17 for some type of review and approval by a Board
18 designed in order to alleviate the need for filing
19 waiver petitions in such instances.

20 On a statutory level, Section 1311(e)
21 and (f) of the Act allows for waiver of licensing
22 requirements related to Slot Machine Licenses. Slot
23 Machine Licenses are arguably the core of gaming in
24 the Commonwealth since they were the starting point
25 for our licensing.

1 Section (e) provides that the Board
2 may waive licensing requirements for a person
3 directly or indirectly holding ownership of
4 securities in a publicly-traded corporation if the
5 Board determines that the holder of the securities
6 is not significantly involved in the activities of
7 the corporation and does not have the ability to
8 control the corporation or elect one or more
9 Directors.

10 Section (f) provides waivers for
11 subsidiaries, primarily holding companies and
12 intermediaries. Under Section (f) if the applicant
13 is a publicly-traded corporation, the Board may
14 issue a waiver if it determines that the Principal,
15 or Key Employee, does not have the ability to
16 control, have a controlling interest in, or elect
17 one or more Directors of the holding company or
18 intermediary and is not actively involved in the
19 activities of the applicant.

20 If the applicant is a noncorporate
21 organization, the Board may issue a waiver for a
22 person who directly or indirectly holds a beneficial
23 or ownership interest in the applicant, if it deems
24 the Board does not have the ability to control the
25 applicant.

1 This statutory language, coupled with
2 the great discretion given to the Board throughout
3 the Act, should allow for meaningful regulatory
4 changes in this area. In fact, the Bureau of
5 Licensing provided an alternative which has been
6 incorporated in our responsive pleadings.

7 However, the OEC believes that
8 substantial regulation changes should be made in
9 this area to ensure ongoing integrity, consistency
10 and efficiency in order to adapt to the constantly
11 changing gaming environment in the Commonwealth.

12 Since OEC is of the opinion that
13 interactive gaming applicants should be held to the
14 same licensing standards consistent with that of
15 traditional casinos which offer similar types of
16 gaming, it seems only appropriate that the same
17 considerations and waivers should be made available
18 to those interactive gaming applicants.

19 In fact, for purposes of consistency
20 and simplicity, the same considerations and waivers
21 should be applied to licenses across the Board. The
22 OEC believes that waivers in this situation could be
23 accomplished by way of staff review through the
24 appropriate Board designee with appropriate checks
25 and balances created by regulations, which are

1 adopted by the Board.

2 OEC believes that by adopting
3 equitable and updated licensing regulatory standards
4 where possible, regarding passive or semi-passive
5 investments made by publicly-traded companies, the
6 result would increase and spur future investments in
7 the Commonwealth's gaming industry without
8 sacrificing strict regulatory standards.

9 As a result, the OEC has proposed
10 several conditions to implement, should the Board
11 choose to grant application waivers in this matter.
12 To be clear, and so the point isn't taken out of our
13 pleadings, gets lost in translation, we're not
14 advocating the position that publicly-traded
15 companies should be considered institutional
16 investors.

17 We're advocating the use of the
18 institutional investor and foreign institutional
19 investor requirements to serve as potential
20 framework when crafting or creating regulatory
21 standards for publicly-traded companies. As a
22 result, any conditions in this regard should only
23 serve as a placeholder until meaningful regulatory
24 changes are adopted.

25 Therefore, in conclusion, the OEC

1 respectfully requests that the Board require that
2 the nine Principal entities additionally identified
3 by the Bureau of Licensing, as set forth in its
4 September 25, 2019 letter to the Applicant, be
5 subject to the present-day licensing requirements.

6 However, in the alternative, should
7 the Board grant the relief sought by Fastball
8 Holdings, LLC regarding waiver of the qualification
9 requirements of those entities, the OEC requests
10 that the relief be made subject to the six
11 conditions set forth in OEC's December 17th, 2019
12 Answer.

13 Finally, it's respectfully requested
14 that the Board issue a directive in its Order to
15 initiate regulatory changes in this regard. The OEC
16 is available for any questions you might have.

17 Thank you.

18 COMMISSIONER SANTONI: Thank you.

19 Does Fastball Holdings have anything
20 to add?

21 ATTORNEY DIGIACOMO: Yes,
22 Commissioner.

23 COMMISSIONER SANTONI: Go ahead.

24 ATTORNEY DIGIACOMO: With respect to
25 the latter point, Fastball and Comcast certainly are

1 receptive to any regulatory modification that gives
2 staff or this Board more discretion to grant
3 waivers. I think that is just sound regulatory
4 principals. It allows the staff to view each
5 situation on its own merits and to recommend waivers
6 and have that enhanced flexibility. We certainly
7 support that.

8 With respect to the more specific
9 arguments, the - Comcast and Google invested in a
10 company called FanDuel, when it was a fantasy sports
11 company, right. They did not enter the gaming
12 industry with their eyes wide open. What happened
13 after the Supreme Court Decision where FanDuel
14 repositioned itself as a sports-wagering company,
15 and then the subsequent merger with Betfair, that
16 foisted upon those regulatory obligations onto
17 Comcast and Google.

18 Both are passive investors. They were
19 passive investors in FanDuel and they remain passive
20 investors. You know, OEC referenced the fact that
21 both of the entities, in their other roles, gather
22 information. They do, but they have no active role
23 whatsoever in Betfair Interactive or FanDuel. They
24 are passive investors and that was the basis for the
25 initial Waiver Petition.

1 We submitted certifications as to that
2 passivity. We - although the Board seat is at a
3 holding company level, it is not an operational
4 Board seat. There's no ability to control
5 operations, to make decisions as to what
6 jurisdictions Betfair enters into, whether that's
7 Pennsylvania or any other jurisdiction.

8 We played no role whatsoever into the
9 company's decision to enter into - to file an
10 application for an Interactive Gaming License.

11 We are along for the ride and are
12 trying to accommodate the regulators in every - and
13 have accommodated. We have put an individual off
14 for licensure. We have filed for two - in Comcast
15 situation, for two entities have filed applications
16 with the Bureau of Licensing.

17 It is just those entities above - all
18 the way up to the publicly-traded entity for which
19 we are - we are seeking waiver. Entities that have
20 no involvement whatsoever in - even in this
21 investment, entities that are just part of a large
22 corporate structure that have been in place for a
23 lot of different reasons for a number of years.

24 So, with respect to the distinction
25 between sports wagering and iGaming, the Act makes

1 no distinction. It creates this license level of
2 principal, whether or not you are involved in sports
3 wagering, interactive gaming, casino gaming.

4 We have sought a waiver, we - we -
5 this Board granted a waiver for those entities from
6 that level of licensure, because we met the burden
7 that we have no controlling interest.

8 OEC is effectively asking for some
9 bifurcated level of licensure here with respect to
10 sports wagering and interactive gaming, a
11 bifurcation that's not anywhere in the Act or the
12 regulations. And we're just asking this Board to be
13 consistent with its prior ruling and grant a
14 consistent ruling with respect to this license
15 application as well.

16 COMMISSIONER SANTONI: Anything else
17 from OEC?

18 ATTORNEY ROLAND: Nothing additional.
19 Thank you.

20 COMMISSIONER SANTONI: Any questions
21 or comments from the Board?

22 Hearing none, thank you all. The
23 Board will consider this petition later in the
24 meeting under the Office of Chief Counsel's (OCC)
25 portion of the Agenda.

1 What we're going to do now is get
2 through the administrative portion of the Agenda,
3 take a short break. And the Board will convene in
4 Executive Session to deliberate on the Fastball
5 Holdings. And then when we return, we'll do the
6 rest of the Agenda.

7 Yes?

8 ATTORNEY DIGIACOMO: Just, we also had
9 the motion for confidentiality. I didn't address
10 that, but -.

11 COMMISSIONER SANTONI: So moved.

12 ATTORNEY DIGIACOMO: Thank you.

13 * * * * *

14 ORAL ARGUMENT CONCLUDED

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CERTIFICATE

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I hereby certify that the foregoing proceeding was reported by me on 01/15/2020 and that I, Amy N. Distefano, read this transcript, and that I attest that this transcript is a true and accurate record of the proceeding.

Dated the 29th day of January, 2020



Amy N. Distefano,

Court Reporter