

**Mr Leon Y. Xiao ([lexi@itu.dk](mailto:lexi@itu.dk)) – Response to Inquiry: Supplementary 2 to Sub. 127**

1. This is a second supplementary response to my Submission 127 to the Australian House of Representatives Standing Committee on Social Policy and Legal Affairs' Inquiry into online gambling and its impacts on those experiencing gambling harm launched in September 2022 and amended in October 2022.
2. I address three additional factual matters that arose during the public hearing on 1 March 2023. I want to ensure that the record is accurate. I also note a Chinese finding that the Committee might find relevant and a recent legal development in Austria.
3. Firstly, two games were mentioned as potentially containing loot boxes (p. 3 of the transcripts proof received on 9 March 2023). Neither of them do presently. These two games are actually examples of games that have removed loot boxes.
  - 3.1. The *Mario Kart* game series on Nintendo home consoles (*e.g.*, the Nintendo Switch) do not contain, and have never contained, loot boxes. The mobile spin-off game, *Mario Kart Tour*, did contain paid loot boxes, but these have been removed since October 2022.<sup>1</sup>
  - 3.2. Similarly, loot boxes were removed from *Fortnite* in 2019.<sup>2</sup>
4. Secondly, references were made to French law (pp. 14 & 17 of the transcripts proof received on 9 March 2023). My understanding is that France has not attempted to enforce its laws against loot boxes. The online gambling regulator did publish its opinion on what types of loot boxes would legally constitute gambling but has not enforced that position in practice.<sup>3</sup> I believe perhaps the Dr

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<sup>1</sup> James Batchelor, 'Nintendo Removing Mario Kart Tour Loot Boxes in October' (*GamesIndustry.biz*, 5 September 2022) <<https://www.gamesindustry.biz/nintendo-removing-mario-kart-tour-loot-boxes-in-october>> accessed 13 January 2023.

<sup>2</sup> Fortnite Team, 'Loot Unboxing' (*Fortnite Official Website*, 25 January 2019) <<https://www.epicgames.com/fortnite/en-US/news/loot-unboxing>> accessed 3 August 2020.

<sup>3</sup> Autorité de régulation des jeux en ligne (ARJEL) [Regulatory Authority for Online Games (France)], 'Rapport d'activité 2017-2018 [Activity Report 2017-2018]' (2018)

Drummond intended to say 'Belgian' rather than 'French.' I have not proposed to amend the relevant sections of the transcript but deemed it appropriate to highlight that here.

5. Thirdly, references were made to the German age rating organisation: Unterhaltungssoftware Selbstkontrolle (USK) (p. 17 of the transcripts proof received on 9 March 2023). The USK did introduce a loot box label of 'In-Game-Käufe + zufällige Objekte [In-game purchases + random items]', effective 1 January 2023.<sup>4</sup> However, my understanding is that, similarly to the North American (ESRB) and European (PEGI) approaches (which I discussed in my first supplementary response dated 12 February 2023), the German label does not affect the *age* part of the age rating. It is merely a content-related label that provides additional information about loot boxes.
6. Fourthly, as I was asked about probability disclosures during the 1 March 2023 hearing. I wanted to share that in China, we found that 362 of 428 (84.6%) loot box-purchasing participants in a survey reported seeing probability disclosures.<sup>5</sup> However, amongst those 362 participants:
  - 262 participants (72.4%) reported that their loot box purchasing behaviour has *not been affected* by probability disclosures;
  - 70 participants (19.3%) reported buying *FEWER* loot boxes and spending less; and
  - 30 participants (8.3%) reported buying *MORE* loot boxes.<sup>6</sup>

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<<https://web.archive.org/web/20200414184944/http://www.arjel.fr/IMG/pdf/rapport-activite-2017.pdf>> accessed 29 June 2021.

<sup>4</sup> USK (Unterhaltungssoftware Selbstkontrolle), 'In-Game-Käufe, Chats Und Lootboxen: USK Erweitert Prüfkriterien - Unterhaltungssoftware Selbstkontrolle [In-Game Purchases, Chats and Loot Boxes: USK Expands Test Criteria]' (14 December 2022) <<https://usk.de/usk-pressemitteilung-umsetzung-neues-jugendschutzgesetz/>> accessed 16 December 2022.

<sup>5</sup> Leon Y Xiao, Tullia C Fraser and Philip WS Newall, 'Opening Pandora's Loot Box: Weak Links Between Gambling and Loot Box Expenditure in China, and Player Opinions on Probability Disclosures and Pity-Timers' (2022) <<https://doi.org/10.1007/s10899-022-10148-0>> accessed 27 July 2022.

<sup>6</sup> *ibid.*

Those results indicate that probability disclosures likely only have limited impact on reducing spending, particularly in relation to dedicated and high-spending players.<sup>7</sup>

7. Fifthly, a first instance court in Austria found that loot boxes whose prizes can be cashed-out do indeed legally constitute gambling under existing law.<sup>8</sup> My understanding is that a similar finding is capable of being made under the existing gambling laws of many other countries, including Australia. The technical legal point upon which the Dutch court decided not to apply gambling law to loot boxes in March 2022 is unlikely to be recognised and applied by the courts in other countries.<sup>9</sup>
8. The views and recommendations expressed herein are those of Mr Leon Y. Xiao personally, based on a reasonable search and analysis of publicly available information. No representation or warranty is given as to the accuracy or completeness of the information provided; other people considering the same might reach different conclusions from those reached by Mr Xiao. To the extent permissible by law, Mr Xiao accepts no liability or responsibility, whether in contract, in tort (including negligence), under statute or otherwise, in respect of any loss or damage (whether direct or indirect) suffered by any party: (i) as a result of, or in connection with the content of, or any omissions from, this response; and/or (ii) as a result of any actions taken or decisions made by any person as a consequence of the views and recommendations contained herein.

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9 March 2023

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<sup>7</sup> Leon Y Xiao and Philip WS Newall, 'Probability Disclosures Are Not Enough: Reducing Loot Box Reward Complexity as a Part of Ethical Video Game Design' (2022) 50 *Journal of Gambling Issues* <<https://doi.org/10.4309/LDOM8890>> accessed 26 July 2022.

<sup>8</sup> Vikki Blake, 'Austrian Court Rules That FIFA's FUT Packs Violate the Country's Gambling Laws' (*Eurogamer*, 5 March 2023) <<https://www.eurogamer.net/austrian-court-rules-that-fifas-fut-packs-violate-the-countrys-gambling-laws>> accessed 8 March 2023.

<sup>9</sup> Leon Y Xiao and Pieterjan Declerck, 'Video Game Loot Boxes Are NOT Gambling under Dutch Gambling Regulation? Shifting the Goalpost in *Electronic Arts v Kansspelautoriteit*' (23 April 2022) <<https://osf.io/pz24d/>> accessed 26 April 2022.