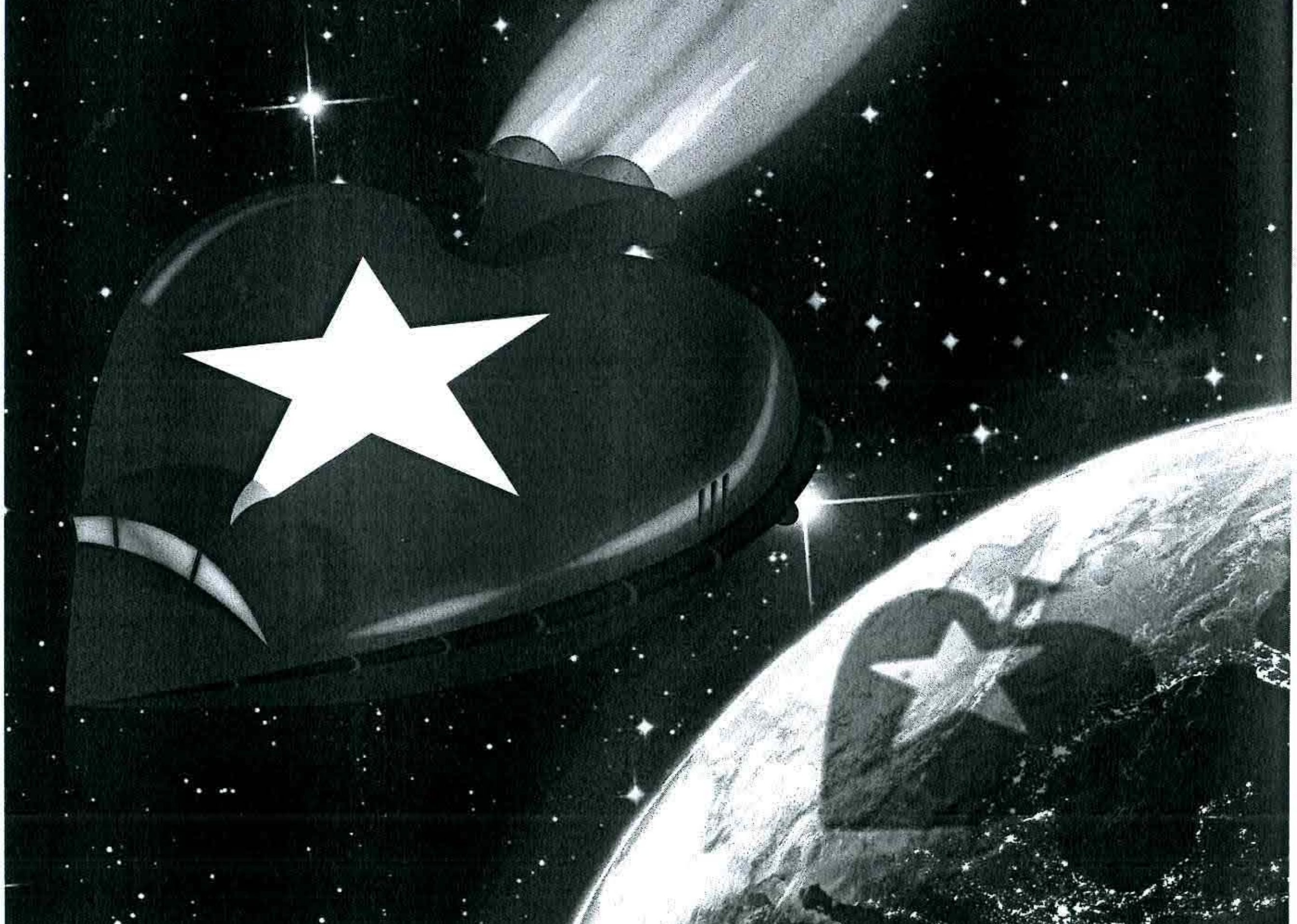
THE RETURN OF THE KING

When news of PokerStars' acquisition of Full Tilt Poker filtered through last month, it was accompanied by confirmation that the door was open for the world's largest online poker operator to prepare a fresh assault on the US market. But PokerStars' return might not be as easy as it seems

BY TOM WASHINGTON



The US$731m settlement with the United States Department of Justice (DoJ), which saw PokerStars acquire the assets of Full Tilt Poker (FTP) and civil cases of fraud and money laundering against both operators dropped, is a game changer in every sense. While plans for PokerStars to relaunch FTP as a separate brand in Europe are already afoot, a potential return to the US market – where prior to Black Friday the two operators held a combined market share of just under 80% according to H2 Gambling Capital – looms large over the industry.

The terms of the settlement mean the door is ajar, but talk of PokerStars making a return to the lucrative US market could be premature, with many hurdles still to overcome. The very thought has left some operators smarting. While many online poker sites willingly removed themselves from the US after the Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA) was introduced, PokerStars and FTP remained, strengthening their brands, building a huge player base and making millions of dollars in the process.

One operator has perhaps already felt the impact; the share price of bwin.party – the European operator that has wasted little time in preparing for a regulated US market by striking deals to launch online poker with MGM Resorts and Boyd Gaming – dropped by 10% in the three days after the Stars-Tilt deal was confirmed.

Getting to this point has been a protracted process, with rumours of an audacious PokerStars bid first circulating in late April when the only previous bidder, French investment firm Groupe Bernard Tapie (GBT), released a statement saying it had pulled out of seven-month-long negotiations to buy FTP due to "unresolvable" legal complications and a failure to agree a player repayment plan.

As rumours intensified in recent months, the online poker world could only sit and wait for the news to break. But PokerStars' attention was already turning to the world of opportunities the agreement opens up. When the settlement was signed off by Judge Leonard B. Sand on 14 August, chairman Mark Scheinberg said in a statement: "We are delighted we have been able to put this matter behind us, and also secured our ability to operate in the US whenever the regulations allow."

For those operators that pulled out of the market in 2006, this statement irked. Why, having operated against government wishes for five years, should PokerStars – the world's most popular site, with 42% market share – be allowed re-entry? Indeed, for the likes of Caesars, Fertitta Interactive, Monarch and South Point – all with plans underway to

"" It is yet to be seen whether PokerStars will enter the US again but if so, it sets a very bad precedent, that a company can basically cheat, gain huge competitive advantage, and then return

DAVID FARAHI, MONARCH CASINO AND RESORT

establish a healthy market share – the re-emergence of PokerStars means facing a daunting competitor many thought had been banished for good.

David Farahi, COO of Monarch Casino and Resort and responsible to the casino operator's online arm, Monarch Interactive, says he was "not happy" that the deal could give PokerStars back access to the US. "There are many companies that played by the rules (post-UIEGA) – to their disadvantage – in order to hopefully one day re-enter the US. It is yet to be seen whether PokerStars will enter the US again but if so, it sets a very bad precedent, that a company can basically cheat, gain huge competitive advantage while others have left the market, and then return at a later date. The brand and player base they have is hugely powerful. Who's to say $731m covers the advantage [PokerStars] gained while it remained in the US?"

Sale of the century

For former Full Tilt players around the world the deal brought good news, with around $330m set aside to reunite them with their funds which were seized on Black Friday, but it's PokerStars for whom the settlement brings most potential. While the pending criminal charges against PokerStars founder Isai Scheinberg, who was among the 11 individuals indicted in Black Friday and has since been instructed to step down, are not affected, the deal resolves the civil forfeiture and money laundering claims made against the company. As Jeff Ifrah, partner with Ifrah Law, the Washington DC law firm that represented Full Tilt, explains, this means the operator has come away without admitting to any wrongdoing whatsoever.

"I do not know the company's intention, but I don't see any obstacles preventing Stars from obtaining a licence now," he says. "Unlike PartyGaming, PokerStars has not admitted to any wrongdoing or liability, so there is no impediment to Stars obtaining a licence in the future. I think the dismissal of all civil charges against the company is a very significant achievement especially as it comes with no admission of wrongdoing or liability."

The benefits don't end there. PokerStars also acquires some – albeit significantly impaired – assets and puts a competitor out of business. Then there's the goodwill gained from players for assuming FTP players' balances, as gaming attorney Stuart Hoegner explains. "Stars justifiably gets to play the white knight here. But it's not clear to me how valuable that role is in relation to US players as I'm not clear that this deal puts it that much closer to launching in a regulated US market."

One casino executive, who requested not to be named, told *eGR NA* he thought it was "a very smart deal" for PokerStars but didn't believe the privately owned operator had "any chance of coming back in the next three to five years".

"The criminal charges will take a long time to sort out, so they are obviously taking a long-term view," he says. "They have done a good job of regaining trust and have bought influence and covered up the criminal issues. But their management board will not get past state or federal regulators. First-mover advantage is very important so I'm not sure how relevant Stars will be by the time they can get back in."

State-by-state hurdles

Indeed, the DoJ may no longer be standing in PokerStars' way, but its path back to former glories is still far from clear. The settlement states that the company is precluded from offering online poker for real-money play in the US until, if, and when it "becomes permissible to do so under relevant law". So, far from being an endorsement of the operator, the language simply makes clear that it can't take US online wagers until it is legal to do so, which is not within the DoJ's power to dictate. "The states or Congress need to legalise [online poker] and set out a framework for regulation, then Stars needs to get licensed, and who knows if or when that will happen. The US Attorney is just punting this down the road to other agencies to deal with," says Hoegner. With US online poker regulation, for now at least, taking a state-by-state path, any re-entry will ultimately be down to the independent regulatory bodies of individual jurisdictions. Some states will try to exclude those that took wagers from US residents post-UIGEA, but even in those states that don't have a blanket prohibition, PokerStars will need to pass stringent regulatory restrictions and standards.

"Given its history, that will be difficult," adds Hoegner. "It's possible that an asset sale or some kind of joint venture – without certain principals that were part of Stars leading up to Black Friday – might work in those states, but it's unclear how much needs to change for them to be suitable for licensure."

Currently, Nevada is the only state to have begun licensing operators, but provisions are being negotiated in state capitols around the country, with many yet to be fully understood in terms of who will be eligible for a licence and who will be shut out. In New Jersey, Senator Raymond Lesniak's egaming bill, which awaits a final hearing and

> **If PokerStars gets in, it drastically changes the landscape in the US. However, it does not mean it's game over for other operators**
>
> CHRIS PORTER, GOLDEN GAMING

Governor Chris Christie's signature, could potentially block all operators that continued to accept US players post-UIGEA from obtaining an online poker licence. The bill was amended in May to include the provision addressing so-called "bad actors" which "knowingly and willfully offered, accepted, or made available bets, wagers, or stakes using the internet from persons located in the United States after 31 December 2006".

Ifrah, however, believes the provision will eventually be removed. "We do not expect that language to remain in the final version," he says. "We imagine New Jersey wants to maintain a competitive edge over Nevada and to encourage the top operators and their software to locate to New Jersey. To do so, New Jersey will clearly have to drop provisions like the tainted assets provision in the current section of the bill. The provision serves one purpose – to provide a competitive advantage to US-based software providers and operators."

One man who could have a say in PokerStars' re-entry into a vital gambling state is Nevada Gaming Control Board chairman Mark Lipparelli. While unable to comment on any individual operator's potential chances of obtaining a licence, he stressed that PokerStars' settlement with the DoJ has little or no impact on the success or failure of an application in the Silver State.

"People have made assumptions that the fact someone can apply is some kind of advantage, and I don't think that's the case at all," he explains. "Nevada has very strict standards and, for someone with a past that doesn't justify licensing, just because they can apply doesn't give them any expectation of approval – that would be a wrong assumption. Companies' practises will definitely be scrutinised as part of our investigatory process.

"Some people have made a big deal that there was nothing in the DoJ settlement that would prohibit PokerStars from applying for a licence. That really has no bearing on any state but a lot of people have made the assumption that it somehow does. If there was, it would probably be an unenforceable term in any case because it's stepping in front of states' rights in terms of who they want to license. I didn't view [allowing Stars' re-entry] as any great harm – it would've been interesting but makes little difference."

Alternative routes

Both Full Tilt and PokerStars announced partnerships with US operators within the space of two weeks in March 2011, just prior to Black Friday. The combined might of FTP and PokerStars, partnered with Fertitta Interactive and Wynn Resorts respectively, was designed to throw weight behind the push for federal online poker legislation and facilitate joint ventures. These landmark deals were contingent on Congress passing that perpetually elusive bill, and although quite the opposite occurred just a few months later, meaning both were ultimately doomed, they serve to highlight the willingness of large US brands to match up with their counterparts in the online world. In Nevada in particular, only current casino licensees can become operators of online poker, so a partnership deal in the Silver State, with PokerStars providing the software, is highly likely.

And while Farahi says he would be "very surprised" if a bricks and mortar operator would partner with PokerStars without getting assurances that it will pass licensing tests, some industry insiders believe the likes of Steve Wynn will again put past discrepancies to one side in an attempt to grab a larger share of the market. After all, the potential winnings could certainly outweigh the risk of engaging with a partner that may face tough questions from regulators.

However, relaunching Full Tilt as a consumer-facing brand, as is planned in Europe, is not the only option for PokerStars. The much vaunted Full Tilt software is a valuable commodity in itself and many expect that rather than introduce it as a competitor to the PokerStars brand, it will instead be 'kept clean' and be licensed out to other operators at a premium. It's a business plan with serious potential, due to the popularity of the technology and reluctance among land-based operators to build their own. Ifrah argues that players should be able to "play on the software they prefer and should not be forced to play on untested and unproven software. Because the settlement provides players an opportunity to play on the software that they know and love, it seems to me that players will be very happy with the settlement".

Many of these questions are likely to remain unanswered for some time, with US poker players and operators alike keeping a close eye on what PokerStars does next. The return of one if not two of the world's largest online poker brands will, however, be highly influential, as Chris Porter, director of interactive marketing at Golden Gaming, comments: "There is no doubt about it. If PokerStars gets in, it drastically changes the landscape in the US. However, it does not mean it's game over for other operators. Regardless, the US market is going to be highly competitive. This is going to be a marathon, not a sprint."

Either way, the race for US online poker dominance is well and truly on. ■