**Section 1800.440 Undue Economic Concentration**

a) In addition to considering all other requirements under the Act and this Part, the Board shall consider, in deciding whether to issue or renew a terminal operator license, whether the issuance or renewal will result in undue economic concentration. No terminal operator license shall be issued or renewed if the Board determines that the issuance or renewal will result in undue economic concentration in the direct or indirect ownership, control or operation of video gaming terminals in Illinois.

b) For purposes of this Section, "undue economic concentration" means that an individual or entity, independently or in coordination or aligned combination with one or more individuals or entities, would have such actual or potential domination of video gaming in Illinois as to:

1) substantially impede or suppress competition among holders of terminal operator licenses;

2) adversely impact the economic stability of the video gaming industry in Illinois; or

3) negatively impact the purposes of the Act, including collection of State and local government revenues and development of the video gaming industry in Illinois.

c) In determining whether the issuance or renewal of a terminal operator license will result in undue economic concentration, the Board shall consider the following criteria:

1) The percentage share of the market presently owned or controlled by the applicant or licensee in each of the following categories:

A) number of licensed video gaming locations in Illinois;

B) number of video gaming terminals in Illinois;

C) total net terminal income; and

D) total amount wagered.

2) The relative position of other individuals or entities that own or control terminal operator licenses in Illinois, as evidenced by the market shares of each terminal operator license in the categories in subsection (c)(1).

3) The current and projected financial condition of the video gaming industry.

4) Current market conditions, including proximity and level of competition, consumer demand, market concentration, and any other relevant characteristics of the market.

5) Whether the terminal operator licensee or applicant has a common or related organizational or financial structure, or common or related assets, obligations, or ownership with other licensees.

6) The potential impact on the projected future growth and development of the video gaming industry, the local communities in which licenses are located, and the State of Illinois.

7) The barriers to entry into the video gaming industry, including the licensure requirements of the Act and this Part, and whether the issuance or renewal of a terminal operator license will operate as a barrier to new entities and individuals desiring to enter the market as terminal operators or in any of the other licensed categories under the Act.

8) Whether the issuance or renewal of the terminal operator license will adversely affect consumer interests, or whether that issuance or renewal is likely to result in enhancing the quality and customer appeal of products and services offered by terminal operators and other licensees under the Act in order to maintain or increase their respective market shares.

9) Whether a restriction or denial of the issuance or renewal of a terminal operator license is necessary in order to encourage and preserve competition in video gaming operations.

10) The current and projected financial condition of the terminal operator.

11) Any other information deemed relevant by the Board.

d) The Board has authority to place any restrictions or qualifications on the terms of a terminal operator license that it deems necessary to prevent or eliminate undue economic concentration, including, but not limited to, setting a limit on the maximum amount of use agreements a terminal operator may have. Any terminal operator licensee shall have the ability to contest a Board order under this subsection in accordance with Subpart G. Any hearing concerning such an order shall be limited to the reasonableness of the restrictions or qualifications placed on the terminal operator license to avert undue economic concentration.

(Source: Added at 40 Ill. Reg. 12762, effective August 19, 2016)