

# FANDUEL GROUP



August 16, 2018

## OFFICE OF THE ATTORNEY GENERAL

Mr. Brantley Starr , Deputy Attorney General for Legal Counsel Office of the Attorney General

P.O. Box 12548

Austin , TX 78711

BY EMAIL and MAIL

Dear Mr. Starr:

In March 2016, FanDuel Inc. reached an agreement with the Office of the Attorney General to cease offering paid daily fantasy contests in Texas on May 2, 2016. In exchange, the Attorney General agreed not to take any legal action against FanDuel Inc. or its related entities or successors and to release it from any cause of action arising out of the prior operation of its contests. FanDuel Inc. has remained in full compliance with the settlement agreement through the completion of a recent corporate merger.

On July 10, 2018, FanDuel completed a merger with Betfair Interactive U.S. As a result, the entire FanDuel Ltd. and FanDuel, Inc. businesses have been contributed into a new entity (called “FanDuel Group”) that will be 60% owned (and therefore controlled) by TSE Holdings (a subsidiary of Paddy Power Betfair, a FTSE listed company based in Dublin, Ireland and London, U.K.) and 40% by FanDuel Holdings (a holding company for the interests of surviving FanDuel Inc. investors).

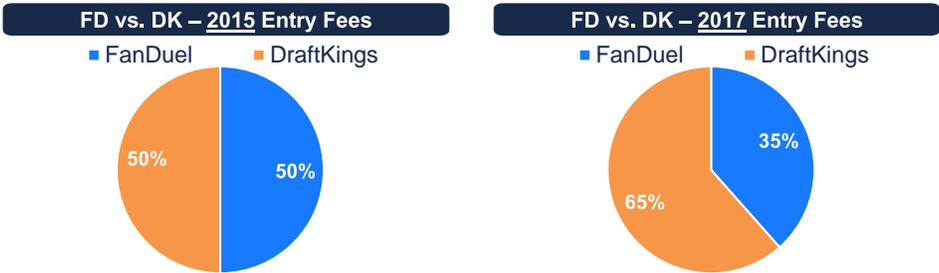
Under its agreement with the Attorney General, FanDuel may give the Attorney General advance notice of its intent to re-enter Texas and then re-enter the state. Due to business necessity, FanDuel Group is by this letter providing the Attorney General’s office with notice of its intent to offer paid entry fantasy sports contests through the FanDuel brand to Texas residents. In this notice letter, we identify the business necessity driving this decision, as well as a set of restrictions we intend to impose on our operations in conjunction with this action. The agreement provides for a 3 day notice period, but we are providing the office with 7 days notice to permit review of this notice and provide any feedback. **Accordingly, we intend to resume offering paid entry fantasy contests on August 23, 2018.**

**Business Necessity/Market Impact 2016-2018.** Unlike FanDuel, its largest DFS competitor has continued to conduct operations in Texas, even proactively filing suit against the Attorney General in a 2016 civil litigation (re-filed in 2018). The contrasting positions of the two companies over these two-plus years has placed FanDuel at a material market disadvantage versus that competitor.

Texas has consistently been a top tier revenue state for daily fantasy sports, comprising over 7% of FanDuel’s overall revenue in 2015. As shown in the graphics below and the analysis of the leading independent research firm on the fantasy sports sector, FanDuel’s disadvantage in Texas has had a sizable negative impact on its overall business, and its largest competitor has benefited directly from taking a different path. The disparity in Texas operations that has contributed significantly to the shift in market share has negatively impacted FanDuel’s valuation and impeded its ability to raise capital. Given these factors, FanDuel feels compelled by market pressure to re-enter the Texas market.

**FanDuel vs. DraftKings – The Impact of Texas**

FanDuel & DraftKings generated the same amount of Entry Fees and had equal market share for the year ended 2015 when both companies accepted Entries from Texas; that has shifted materially since FanDuel only exited from the state



**Texas Impacts the Addressable Market Opportunity & Competitive Landscape**

*Per Eilers Research (3rd party industry expert)*

III. FD / DK Deep Dive: Overview And Status Quo (2/2)		
Green = Advantage	DraftKings	FanDuel
Cash on hand	A \$100mm+ round during the merger period and a roughly 2-1 fundraising advantage overall likely leaves DraftKings with sufficient cash on hand to continue aggressive expansion through early 2018 at a minimum.	A recent auditor’s report suggests that FanDuel has a funding gap that requires additional fundraising to close. While the company is at or approaching operational profitability, we still believe it is in or near a cash crunch.
Market share	DraftKings controls roughly 65% of the market by total entry fees, and around 57% by revenue.	FanDuel controls roughly 35% of the market by total entry fees, and around 43% by revenue.

## Re-Entry.

In connection with re-entering, however, FanDuel Group intends to adhere to stringent self-imposed restrictions. FanDuel Group will avoid any deceptive trade practices by:

- 1) Refraining from any physical in-state direct marketing of FanDuel, and any intentional marketing directed to Texas residents that makes claims about the legality of paid contests in Texas; and
- 2) Providing disclaimers in its Terms of Use and marketing materials that state: **FanDuel makes no representation that participation in paid entry fantasy sports contests is lawful under Texas state law.**

FanDuel Group further intends to refrain from seeking any widespread press or publicity concerning its Texas activities, other than on its own sites, apps, or social media feeds.<sup>1</sup>

We hope that the above identified approach and self-imposed restrictions ably address any concerns of the Attorney General's Office, but would appreciate you letting us know if that is not the case.

Sincerely,



Christian Genetski  
Chief Legal Officer  
FanDuel Group, Inc.

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<sup>1</sup> The Betfair Interactive U.S. business also has a subsidiary fantasy sports site, DRAFT, which has been merged into the new FanDuel Group. DRAFT is a much smaller site that runs "snake draft" contests similar to season-long leagues but for which the duration is only one day. The site has not engaged in significant advertising in Texas, and is not involved in any litigation with the state, but does offer paid entry contests in Texas. We propose that under FanDuel Group's operation, DRAFT will abide by the same operating guidelines going forward as proposed for the FanDuel product offering.