CASINO CITY'S INDIAN GAMING INDUSTRY REPORT, 2017 EDITION BY ALAN MEISTER, PHD*

REVIEWED BY KEVIN WASHBURN

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Although gaming revenue numbers have reflected a flat plateau in recent years, one would be wrong to think that the Indian gaming industry has existed in a position of virtual stasis for the last decade. The new edition of a long-running report reveals an industry that is teeming beneath the surface of the slow-growing top-line numbers.

Casino City's Indian Gaming Industry Report, written by economist Dr. Alan Meister, has been released annually each April since 2002. Meister's most recent report is a fascinating snapshot of the industry.

The market share of *AGGREGATE* the Indian gaming industry has improved immensely since 1993, when Indian gaming made up a mere 19.6% of the national gaming market and commercial gaming made up 80.3%.[1] For the first time ever, Meister estimates that Indian gaming has eclipsed the commercial casino sector in revenues. He reports 44.3% of the market share for Indian gaming, compared to 43.3% of the market for the commercial gaming industry, and 12.4% of the "racino" industry.[2] Meister estimates that gaming revenue reached an all-time high of roughly $30.5 billion in calendar year 2015.[3]

Meister documents the number of slot machines, table games, and other types of games operating at a particular locale, showing where growth is occurring in the industry. Through Meister's report, for example, one can obtain an annual update on the surprising race between California and Oklahoma for dominance in the number of slot machines in Indian gaming operations. According to last year's data, Oklahoma (population 3.9 million) was leading with approximately 70,000 slots, compared to California (population 39 million), with 69,000.[4] This year, Meister reports increases in tribal slot machines in both states, but Oklahoma has maintained the lead with nearly 73,000 machines, compared to California's 71,000 machines.[5] Together, these two states reflect nearly 40% of total Indian gaming revenue in the entire country.[6]

Meister's estimates can be fact-checked, to a degree, by national and regional numbers published annually by the federal regulator, the National Indian Gaming Commission (NIGC), but Meister's analyses are far richer for several reasons.[7] The NIGC develops its numbers from annual audits submitted by tribes.[8] The value of the NIGC's numbers is that they are audited and verified and are therefore very reliable.[9] Meister is able to use similar information (and fact-check against the NIGC's numbers), but he is also able to use numerous other data sources to develop a richer and more nuanced picture. Indeed, even NIGC staff sometimes cite Meister's report. It should be noted that while this report is the 2017 edition, the majority of financial data is from 2015, and this is because most obtainable financial data is being reported to the NIGC on a fiscal year basis.[10] Fiscal years vary depending on the tribe; hence Meister compiles the data into a calendar year-based analysis.

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* Newton, MA: Casino City Press, 2017. 254 pages printed and electronic report, and online subscription (www.indiangamingreport.com).

[1] Alan Meister, Casino City's Indian Gaming Industry Report 73 (2017 ed. 2017).

[2] *Id.* at 73.

[3] *Id.* at 29.

[4] Alan Meister, Casino City's Indian Gaming Industry Report 28 (2016 ed. 2016).

[5] Meister, *supra* note 1, at 28.

[6] *Id.* at 42.

[7] *Id.* at 116–120.

[8] *Id.* at 20.

[9] *Id.*

[10] *Id.*

Another strength of Meister's data is its breadth. In addition to gaming revenue figures, Meister estimates non-gaming revenue, such as revenue from food and beverage, lodging, shopping, and entertainment. This estimate appears to vary over time, but tribes tend to earn in non-gaming revenues an additional amount equal to 12% to 13% of gaming revenues.[11] This data is neither collected nor reported by the NIGC. Meister compiles the data from publicly available sources, private sources, and from gaming market model estimates.[12] For tribes with state revenue-sharing tribal-state compacts, a major advantage of non-gaming revenues is that the tribes keep all net revenue from these activities.[13] Meister's report can be a valuable strategic tool for learning which tribes are successfully expanding non-gaming revenue, such as in Florida, where Indian gaming facilities led the nation with 10.1% growth in 2015 totaling $158.2 million in non-gaming revenue.[14]

Unlike the NIGC, which reports revenues by region, Meister reports by state, providing a far richer and more specific account of growth in gaming.[15] Meister also reports on gaming developments in the planning stages at the tribal level, providing important market analysis and forecasts for future growth.[16] This state-by-state assessment is not accessible anywhere else and delivers much needed answers to more local and regional questions about the market. For example, Meister explains which facilities have opened and closed in each state, which are being renovated, and which tribes have expansions or new proposed developments underway.[17]

Meister is an economist, not a lawyer, and he works with data, which is historical.[18] The report is focused predominantly on historical facts and proposed developments and plans, and less on controversy and litigation. For example, Meister reports about the Ho-Chunk Nation's planned expansion of its facility in Wittenberg, Wisconsin, but does not report the objections being raised by a neighboring tribe about the legality of the plan.[19] Meister's report does, however, frequently mention the outcome of such controversies when decided by courts.[20] So, sticking with the Wisconsin example, Meister mentions the 2015 Seventh Circuit decision in *Wisconsin v. Ho-Chunk Nation* in which the court held that Wisconsin could not interfere with the tribe's decision to conduct non-banked poker on tribal lands.[21] Since Wisconsin allows poker in taverns, Wisconsin has no authority under the Indian Gaming Regulatory Act (IGRA) from denying Ho-Chunk Nation the ability to offer poker on its own Indian lands.[22]

The report is likely to be most valuable to casino vendors, marketers, and casino operators, and also state and tribal policymakers and planners, state and tribal compact negotiators, academics, investors, and even news organizations. Meister's report is loaded with significant and meaningful information for those conducting in-depth market analysis or research.

Meister succeeds with a vivid and methodical presentation of the material. Helpfully, the report has the same structure each year, making comparisons between yearly reports easy to accomplish.

Meister's report fills an important niche in the data-driven industry. The analysis is sharp and pays particular attention to large and small-scale data on the state level. Data is delivered on all 28 states with Indian gaming.[23] Meister also includes information on proposed developments in states without existing Indian gaming, such as Maine in 2016 when the state legislature was considering legislation regarding allowing tribes to operate gaming facilities within the state.[24] Due to some tribes and casinos voluntarily offering confidential data, data for

[11] *Id*. at 18, 29.

[12] *Id*. at 19.

[13] *Id*.

[14] *Id*. at 29.

[15] *Id*. at 25–29.

[16] *See id*. at 43–69.

[17] *Id*.

[18] *Id*. 246.

[19] Patrick Marley, *Stockbridge-Munsee Tribe Sues Wisconsin over Ho-Chunk Casino Expansion*, MILWAUKEE JOURNAL SENTINEL, Apr. 19, 2017, http://www.jsonline.com/story/news/local/wisconsin/2017/04/19/stockbridge-munsee-tribe-sues-wisconsin-over-ho-chunk-casino-expansion/100615296/ (last visited May 3, 2017).

[20] MEISTER, *supra* note 1, at 43–69.

[21] *Id*. at 67.

[22] Wisconsin v. Ho-Chunk Nation, 784 F.3d 1076, 1086 (7th Cir. 2015) *cert. denied*, 136 S. Ct. 231 (2015).

[23] MEISTER, *supra* note 1, at 28–29, 36–39, and 43–69.

[24] *Id*. at 68–69.

some states had to be aggregated, and thus those individual states are not separately verifiable by an independent reader.[25] This data concerns metrics in gaming and non-gaming revenue for Alabama, Alaska, Colorado, Mississippi, Nebraska, Nevada, North Carolina, Texas, and Wyoming.[26]

Meister shares many potential opportunities and challenges that could affect the gaming industry in the future.[27] For example, the usual presumption is that slots are the most profitable venture in the gaming industry. Meister opines that slots reflect the past and present, but maybe not the future of gaming.[28] Instead, Meister concludes that members of the next generation of "gamers" are not as enthused with slot machines, and instead are much more interested with social and interactive gaming.[29] Also, future developments in Internet gaming are likely to change the gaming industry.[30] Meister highlights the challenges coming in the fast-paced industry, which will likely change the entire landscape of gaming.

At a much broader perspective, Meister also assesses the economic and fiscal impact of Indian gaming and its contribution to the U.S. economy.[31] This data ranges from output, jobs, wages, taxes, and revenue sharing, both at the direct and secondary levels, culminating in a total impact on the U.S. economy that Meister estimates at approximately $100 billion dollars in output, 770,000 jobs, $35 billion in wages, $11 billion in taxes, $53 million in reimbursement of state regulatory costs, and $1.7 billion in revenue sharing payments by tribes to state and local governments.[32] Meister does not fill every gap. For example, he does not offer commentary or data on Internet gaming, due to the fact that it is not conducted as Indian gaming as defined under the IGRA.[33]

In sum, Meister's report is serious data presented with commentary and thoughtful insight. Meister's annual snapshots of the industry are useful in an industry in which such data is scarce.

[25] *Id*. at 11 and 19.

[26] *Id*. at 43.

[27] *Id*. at 89–98.

[28] *See id*. at 98.

[29] *Id*.

[30] *Id*.

[31] *Id*. at 99–107.

[32] *Id.*

[33] *Id*. at 18.