

Anticipated merger between Ladbrokes plc and certain businesses of Gala Coral Group Ltd

Notice of possible remedies under Rule 12 of the CMA's Rules of Procedure for Merger, Market and Special Reference Groups¹

Introduction

1. On 11 January 2016, the Competition and Markets Authority (CMA), in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the Act), referred the anticipated merger between Ladbrokes plc (Ladbrokes) and certain businesses of Gala Coral Group Limited (Gala Coral, the businesses subject to the merger being referred to herein as Coral) for further investigation and report by a group of CMA panel members (the Group).
2. In its provisional findings on the reference notified to Ladbrokes and Gala Coral (the main parties) on Friday 20 May 2016, the CMA, *inter alia*, has provisionally concluded that the acquisition will result in the creation of a relevant merger situation, and that the creation of that situation may be expected to result in a substantial lessening of competition (SLC) in the market for the supply of gambling products in Licensed Betting Offices (LBOs) in Great Britain.
3. The CMA's analysis provisionally indicates that this SLC may be expected to result in adverse effects, for example in the form of higher prices and/or lower quality of offering, than would otherwise be the case absent the merger.
4. This Notice sets out the possible actions which the CMA considers should be taken for the purpose of remedying, mitigating or preventing the SLC or any resulting adverse effect identified in the provisional findings. The CMA invites comments on possible remedies by **Monday 6 June 2016**.

¹ [CMA Rules of Procedure for Merger, Market and Special Reference Groups \(CMA17\)](#), 2014.

Criteria

5. In choosing appropriate remedial action, the CMA shall in particular have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the SLC and any adverse effects resulting from it.²
6. When deciding on an appropriate remedy, the CMA will consider the effectiveness of different possible remedies and their associated costs and will have regard to the principle of proportionality. Between two remedies that the CMA considers equally effective, it will choose that which imposes the least cost or restriction. The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.³

Possible remedies on which views are sought

7. In merger inquiries, the CMA will generally prefer structural remedies, such as divestiture or prohibition, rather than behavioural remedies because:
 - (a) structural remedies are likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring rivalry;
 - (b) behavioural remedies may not have an effective impact on the SLC and its resulting adverse effects, and may create significant costly distortions in market outcomes; and
 - (c) structural remedies do not normally require monitoring and enforcement once implemented.⁴
8. At this stage the CMA has provisionally identified the following potential structural remedies:
 - (a) Prohibition.
 - (b) Divestiture of one or more Ladbrokes LBOs and/or one or more Coral LBOs in each local area in which an SLC may be expected to result (note that, where such SLC areas overlap, it may be the case that divestiture of one LBO would remedy, mitigate or prevent the SLC or any resulting adverse effect in more than one area).

² Section 36(3) of the Act.

³ *Merger Remedies: Competition Commission Guidelines (CC8)*, November 2008, adopted by the CMA board, paragraph 1.9.

⁴ *CC8*, paragraphs 2.14 & 2.15; see also paragraph 2.2 for a summary of the distinction between structural and behavioural remedies.

9. The CMA will consider whether any of these remedies (or variants of them) may be appropriate.
10. Full prohibition of the acquisition would prevent an SLC from resulting in any relevant local market. The Group therefore takes the provisional view that full prohibition would represent a comprehensive solution to all aspects of the SLC it has provisionally found (and consequently any resulting adverse effects) and that it has very few risks in terms of effectiveness.
11. The Group's current thinking about other structural remedy options that might be effective is set out in paragraphs 14 and 15. The Group would consider any other practicable remedies that the main Parties, or any interested third parties, may propose in order to remedy, mitigate or prevent the SLC or any resulting adverse effect.
12. The Group's provisional view is that a behavioural remedy is very unlikely to be an effective remedy to the SLC or any resulting adverse effect that it has provisionally identified. However, the Group will consider any behavioural remedies put forward as part of this consultation and will have regard as to whether any behavioural remedies would be required in a supporting role to safeguard the effectiveness of any structural remedies.
13. In determining an appropriate remedy, the Group will consider the extent to which different remedy options would be effective in remedying, mitigating or preventing the SLC or any resulting adverse effect that has been provisionally identified. The Group will also consider whether a combination of measures is required to achieve a comprehensive solution, and will evaluate the cumulative impact of any such combination of measures on the SLC or any resulting adverse effect.

Divestiture

14. The CMA invites views on whether the divestiture, to one or more suitably qualified upfront purchasers, of a Ladbrokes and/or a Coral LBO in each of the 659 overlap areas where the Group has provisionally identified an SLC, would be an effective remedy (noting that it may be possible for a divestiture of one LBO to solve the SLC in more than one area). The Group provisionally considers that, if divestiture of a number of LBOs is adopted as the remedy, then such divestiture is likely to be required to be substantially completed prior to the proposed merger being cleared to complete. The Group provisionally considers that this is appropriate in cases (such as this one) where the divestiture would not necessarily be straightforward and where there is a not insignificant risk that it would not be possible to find one or more suitably qualified purchasers and so to complete the divestiture.

15. The CMA also invites views on the following:
- (a) The criteria it should take into account in determining whether a purchaser is a 'suitably qualified purchaser'. In determining whether a purchaser is suitably qualified, and so acceptable to it, the CMA will have regard, inter alia, to the scale of the resulting entity (ie taking into account any existing LBOs plus the LBOs to be acquired). The CMA provisionally considers that potential purchasers would need to possess (including the LBOs to be acquired) a certain scale of LBO operations in order to be able to remedy, mitigate or prevent the SLC or any resulting adverse effect that the Group has provisionally identified. The CMA is interested in receiving representations on what constitutes an acceptable minimum scale in this case.
 - (b) Whether Ladbrokes and Coral should be allowed to propose which LBO to divest in each local SLC area, subject to the consent of the CMA in each case.
 - (c) Whether the method or process by which the divestiture is undertaken should be prescribed, and if so, what factors are relevant to determining the appropriate implementation process.
 - (d) How long a period of time should be allowed to Ladbrokes and Coral to secure binding contractual commitments from one or more suitably qualified purchasers to acquire the LBOs to be divested. If it does not prove possible to divest the required LBOs within a reasonable period of time, then the CMA provisionally considers that, subject to any views on other potential remedies received as part of this consultation, prohibition of the merger would then be the only effective remedy available to it.

Relevant customer benefits

16. The CMA may, in particular, have regard to the effect of remedial action on any relevant customer benefits (within the meaning of section 30 of the Act) in relation to the creation of the relevant merger situation.⁵ Such benefits might comprise lower prices, higher quality or greater choice of goods or services or greater innovation in relation to such goods or services. For the purposes of the Act, in respect of an anticipated merger, a benefit is only a relevant customer benefit if the CMA believes that: (a) the benefit may be expected to accrue within a reasonable period as a result of the creation of the relevant

⁵ Section 36(4) of the Act.

merger situation; and (b) the benefit is unlikely to accrue without the creation of that situation or a similar lessening of competition.⁶

17. The CMA welcomes views on the nature of any relevant customer benefits and on the scale and likelihood of such benefits and the extent (if any) to which these are affected by the different remedy options we are considering.

Review of undertakings given by Hilton Group plc on 27 October 1999

18. In view of the provisional findings in the present inquiry, the CMA has decided to reopen the review of the undertakings given by Hilton Group plc⁷ on 27 October 1999 (the 1999 undertakings).⁸ The Chair of the CMA has appointed the same group of panel members constituted for the purposes of the Ladbrokes/Coral merger inquiry to conduct the review of the 1999 undertakings (the Group).
19. The Group will conduct its review of the 1999 undertakings in parallel with its consideration of appropriate remedial action to the SLC or any resulting adverse effect provisionally identified.

The 1999 undertakings

20. On 31 March 1998, the Secretary of State for Trade and Industry made a reference to the (then) Monopolies and Mergers Commission (MMC) of the completed acquisition by Hilton Group plc (Hilton) of the Coral betting business from Bass plc.
21. In its report,⁹ the MMC found that the merger would increase Ladbrokes'¹⁰ lead in the national retail betting market and its size in that market relative to William Hill. The MMC considered that the effect of this change would likely be a weakening of price competition at a national level to the detriment of customers.
22. The MMC concluded that the adverse effects identified could only be remedied by restoring the market structure to its state before the merger; that is, Hilton should divest the entire Coral business that it had acquired.

⁶ Section 30(3) of the Act.

⁷ Hilton Group plc changed its name to Ladbrokes plc in 2006.

⁸ The CMA's review of all structural merger remedies put in place before 1 January 2005 (launched on 26 March 2015) originally included the 1999 undertakings. In February 2016 the CMA decided, on administrative priority grounds, not to conduct a stand-alone review of the 1999 undertakings in view of the Ladbrokes/Coral merger inquiry.

⁹ [A report by the Monopolies and Mergers Commission on the merger situation involving Ladbroke Group plc and the Coral betting business](#), CM4030, September 1998.

¹⁰ Hilton operated its betting shops under the brand Ladbrokes.

23. On 27 October 1999, Hilton gave the 1999 undertakings, which provided, among other matters, that Hilton would not reacquire an interest in the Coral betting business without the prior consent of the Secretary of State and would not acquire, without the consent of the Director General of Fair Trading, any asset of the Coral betting business where the acquisition would result in the creation of a relevant merger situation qualifying for investigation.¹¹ The 1999 undertakings continue to be in force.

Statutory framework for the review of the 1999 undertakings

24. Where an undertaking was given under section 88 of the Fair Trading Act 1973 (the 1973 Act), as is applicable in respect of the 1999 undertakings, paragraph 16 of Schedule 24 to the Act applies. That paragraph provides that such an undertaking may be superseded, varied or released by the CMA.¹² By virtue of paragraph 16(3) of Schedule 24 to the Act, the power of the CMA to supersede, vary or release an undertaking is exercisable in the same circumstances and on the same terms and conditions as would be exercisable under the 1973 Act.
25. Accordingly, applying the test under section 88(4) of the 1973 Act, the CMA must consider whether, by reason of any change of circumstances, the 1999 undertakings are no longer appropriate and either the relevant parties (or any of them) can be released from them, or the 1999 undertakings need to be varied or to be superseded by new undertakings.

Representations on the review

26. In conducting the review of the 1999 undertakings, the Group will consider all relevant information, including as applicable the evidence and submissions made in the Ladbrokes/Coral merger inquiry to date, as well as in response to the provisional findings and this notice of possible remedies.
27. Persons wishing to make any representations in respect of the review of the 1999 undertakings should refer to the details provided at the end of this document. If any such representations are made together with representations on other aspects of the Ladbrokes/Coral merger, please identify clearly those parts of the representations that relate to the 1999 undertakings review.

¹¹ For ease of reference, the 1999 undertakings can be found on the Ladbrokes/Coral merger inquiry [case page](#).

¹² Paragraph 16(2) of Schedule 24 to the Act.

Next steps

28. Interested parties are requested to provide any views in writing, including any practical alternative remedies they wish the Group to consider, by **Monday 6 June 2016** (see note (i)).
29. A copy of this notice will be posted on the CMA website.

(signed) MARTIN CAVE
Group Chairman
20 May 2016

Note:

- (i) This notice of possible actions to remedy, mitigate or prevent the SLC or any resulting adverse effect is given having regard to the provisional findings announced on 20 May 2016. The main parties have until 13 June 2016 to respond to the provisional findings. The Group's provisional findings may alter in response to comments it receives on its provisional findings, in which case the Group may consider other possible remedies, if appropriate.