

Completed acquisition by Lightcatch Limited (trading as Betfred) of Tote (Successor Company) Limited

ME/5160/11

The OFT's decision on reference given on 6 August 2012. Full text of decision published 9 August 2012.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

PARTIES

1. **Lightcatch Limited ('Lightcatch')** is the parent company of Done Brothers (Cash Betting) Limited, a UK bookmaker trading under the name 'Betfred' (jointly, '**Betfred**'). Betfred provides fixed odds betting services in licensed betting offices ('**LBOs**'), by telephone, on the internet and on racecourses and gaming services in LBOs and on the internet. In 2010, the total amounts staked with Betfred were around £[] million with a gross win (the amounts staked with customers' winnings deducted) of around £[] million.
2. **Tote (Successor Company) Limited** (the '**Tote**') is a Crown-owned company that was established for the purposes of the merger in order to succeed to the property, rights and liabilities of the Horserace Totalisator Board. The Tote provided fixed odds betting services in LBOs (branded as 'totesport'), by telephone, on the internet and on racecourses and gaming services in LBOs and on the internet. It also provided pool betting services on horseracing. In 2010, the total amounts staked with the Tote were around £[] million with a gross win of around £[] million.

TRANSACTION

3. On 13 July 2011 Lightcatch acquired the Tote from the Secretary of State for Culture, Media and Sport (the '**Transaction**').

JURISDICTION

4. As a result of the Transaction Lightcatch and the Tote ceased to be distinct. The UK turnover of the Tote exceeds £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the 'Act') is met. Therefore, the OFT believes that it is or may be the case that the Transaction has resulted in the creation of a relevant merger situation.
5. The Transaction was completed on 13 July 2011. Following an extension under section 25(2) of the Act, the statutory deadline was 16 December 2011. The statutory deadline was extended pursuant to section 25(4) of the Act as the OFT was seeking undertakings under section 73 of the Act (see paragraph 8 below).

BACKGROUND

6. In its decision of 16 December 2011 with regard to the Transaction (the '**Decision**'), the OFT stated its belief that it is or may be the case that the Transaction has resulted or may be expected to result in a substantial lessening of competition in relation to the provision of betting and gaming services in licensed betting offices ('**LBOs**') in 25 local areas, as set out in detail in the Decision. Accordingly, the OFT found itself under a duty to refer the Transaction to the Competition Commission.
7. To address the OFT's competition concerns, Betfred offered undertakings in lieu of a reference to divest either the Betfred or the Tote LBO in each of the 25 local catchment areas in which the OFT identified competition concerns, thereby removing the LBO overlap created by the merger in these areas.¹ The OFT stated in the Decision that the proposed undertakings were a structural remedy that would, in each local area, remove the overlap between the parties. The OFT therefore considered that the proposed undertakings were sufficient in principle to act as a clear-cut and comprehensive remedy to the competition concerns identified by the OFT. As set out in the Decision, the OFT considered that it was reasonable and

¹ In one local area (Pontefract), the OFT considered it was appropriate to permit Betfred to divest one of the two Tote LBOs given the exceptional circumstances in this case, in particular regarding relative geographic proximity of the Betfred and the proposed Tote Divestment LBO in this area (in line with the analysis in the Decision) and the fact that, in particular for horseracing, there is comparatively less scope for local price differentiation between shops than in other retail sectors (the OFT notes also that there is a maximum number of gaming machines per shop of four, regardless of the shop size).

proportionate to seek an up-front buyer in respect of all of the LBOs to be divested.

8. In the Decision the OFT therefore stated that it was suspending its duty to refer the Transaction to the Competition Commission under section 22 of the Act, because the OFT was considering whether to accept appropriate undertakings from Betfred in lieu of reference. Subsequently Betfred entered into a sale and purchase agreement with Stan James (Abingdon) Limited ('**Stan James**') to transfer all of the LBOs to be divested, as listed in the undertakings (the '**Divestment LBOs**'), conditional upon OFT acceptance of the undertakings.

CONSULTATION

9. On 2 July 2012, pursuant to paragraph 2(1) of Schedule 10 of the Act, the OFT published the proposed undertakings in lieu of a reference, inviting comments and representations from third parties in relation to the overall divestment package, including the form of the proposed undertakings and the proposed purchaser. The consultation text published on the OFT's website alongside the proposed undertakings is set out in the Annex to this decision.
10. For the reasons set out in the consultation text, the OFT considered, subject to the outcome of the consultation, that Stan James was a suitable purchaser of the Divestment LBOs and that the proposed undertakings offered by Betfred were clear cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the Decision.
11. The OFT received no comments from third parties during the consultation period.

DECISION

12. The Decision concluded that the Transaction would be referred to the Competition Commission if Betfred failed to give suitable undertakings in lieu of reference pursuant to section 73 of the Act to address the competition concerns identified in the Decision.
13. The OFT considers that the undertakings provided by Betfred are clear cut and appropriate to remedy, mitigate or prevent the substantial lessening of competition and any adverse effects resulting from it. The OFT has

therefore decided to accept the undertakings offered by Betfred, including Stan James as the purchaser for the Divestment LBOs.

14. The Transaction will therefore not be referred to the Competition Commission and the undertakings, which have been signed by Betfred, will come into effect from this date.

Annex to decision
Consultation paper issued on 2 July 2012

**COMPLETED ACQUISITION BY LIGHTCATCH LIMITED (TRADING AS BETFRED)
OF TOTE (SUCCESSOR COMPANY) LIMITED**

**Notice under Paragraph 2(1) Schedule 10 of the Enterprise Act 2002 of
proposed undertakings in lieu of reference pursuant to section 73 of the
Enterprise Act 2002**

OFT's duty to refer

On 16 December 2012 the OFT announced its decision to suspend its duty to refer the completed acquisition by Lightcatch Limited (trading as Betfred, 'Betfred') of Tote (Successor Company) Limited (the 'Tote') to the Competition Commission under section 22 of the Enterprise Act 2002 because the OFT was considering whether to accept appropriate undertakings from Betfred in lieu of reference.

The OFT believes that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition in relation to the provision of betting and gaming services in licensed betting offices ('LBOs') in 25 local areas, as set out in detail in the OFT's decision (the 'Decision'), which was published on 19 January 2012. Accordingly, the OFT found itself under a duty to refer the merger to the Competition Commission.

Divestment undertakings offered by Betfred

To address the OFT's competition concerns, Betfred offered to divest either the Betfred or the Tote LBO in each of the 25 local catchment areas in which the OFT identified competition concerns, thereby removing the LBO overlap created by the merger in these areas.¹ These local areas, and the LBOs that Betfred proposes to divest in each area (the 'Divestment LBOs'), are listed in Annex 1 to

¹ In one local area (Pontefract), the OFT considered it was appropriate to permit Betfred to divest one of the two Tote LBOs given the exceptional circumstances in this case, in particular regarding relative geographic proximity of the Betfred and proposed Tote Divestment LBO in this area (in line with the analysis in the Decision) and the fact that, in particular for horseracing, there is comparatively less scope for local price differentiation between shops than in other retail sectors (the OFT notes also that there is a maximum number of gaming machines per shop of four, regardless of the shop size).

the proposed undertakings in lieu (the 'Proposed Undertakings') on which the OFT is consulting (these can be downloaded below).

Up-front buyer for the Divestment LBOs

As set out in the Decision (paragraphs 129 to 131), the OFT considered that it was reasonable and proportionate to seek an up-front buyer in respect of all of the LBOs to be divested.

Betfred has proposed Stan James (Abingdon) Limited ('Stan James') as the purchaser of all of the LBOs to be divested and Stan James is identified as such in the Proposed Undertakings. Betfred and Stan James have entered into a sale and purchase agreement to transfer the Divestment LBOs, conditional upon OFT acceptance of the Proposed Undertakings.

Suitability of the proposed purchaser

In approving a purchaser, the OFT's starting position is that it must be confident without undertaking a detailed investigation that the proposed purchaser will remedy the substantial lessening of competition identified in the Decision by restoring pre-merger levels of competition. As such, the proposed purchaser must not raise **prima facie** competition concerns.

The proposed purchaser, Stan James, is a bookmaker operating 68 LBOs across the UK and five LBOs in Ireland. Its LBOs offer the same or similar type of betting and gaming activities as Betfred's and the Tote's LBOs. Stan James was founded in 1973 and its owners (the Fisher family) and management team have significant experience in the industry. Stan James has shown an ability to incorporate a relatively large number of LBOs into its business through its acquisition of 27 LBOs from Pagebet in 2010.

Stan James has no LBOs within 1600 metres of a Divestment LBO, with the exception of the city centre of Leicester where there are four competing LBO fascias (including Betfred) and the Stan James LBOs and the Divestment LBO are not geographically closest. The proposed sale of the Divestment LBOs to Stan James does not therefore raise competition concerns taking account of any of the factors considered in the local overlap analysis in the Decision (paragraphs 52 to 64). The proposed sale also does not raise competition concerns at a national or regional level given Stan James's relatively small size at these levels.

Based on the evidence presented to the OFT, Stan James is independent of and unconnected to Betfred; is expected to obtain all necessary approvals, licences and consents from landlords, licensing authorities and any other authorities; and has the necessary expertise, resources, incentives and intention to operate the Divestment LBOs as an effective competitor.

Therefore, subject to the outcome of this consultation, the OFT considers Stan James to be a suitable purchaser of the Divestment LBOs.

OFT minded to accept proposed undertakings in lieu

Subject to the outcome of this consultation, the OFT considers that the Proposed Undertakings offered by Betfred, including Stan James as the proposed purchaser of the Divestment LBOs, are clear cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the Decision.

The OFT therefore gives notice that it is minded to accept undertakings in lieu in the form of the Proposed Undertakings.

Invitation to comment

The OFT has a duty to consult the public in relation to proposed undertakings in lieu of a reference to the Competition Commission before taking any final decision. It therefore invites comments and representations from third parties in relation to the overall divestment package, including the form of the Proposed Undertakings and the proposed purchaser.

Representations should be made in writing to:

Tom Heideman
Mergers Group
Office of Fair Trading
Fleetbank House
2-6 Salisbury Square
London EC4Y 8JX

Email: tom.heideman@oft.gsi.gov.uk

Telephone: 020 7211 8499

Deadline for comments: 23 July 2012