

Anticipated acquisition by Tattersalls Limited of the bloodstock auctioneering business of Brightwells Limited

ME/6547/15

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 15 September 2015. Full text of the decision published on 19 October 2015.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

CONTENTS

SUMMARY	2
Horizontal unilateral effects.....	3
National hunt horses in training	3
Flat racing horses in training.....	3
Breeze-up flat racing horses.....	4
Store horses	4
Co-ordinated effects.....	4
Conclusion	4
ASSESSMENT.....	5
Parties.....	5
Transaction.....	6
Rationale for the transaction.....	6
Jurisdiction	6
Counterfactual.....	7
Background.....	8
Parameters of competition.....	9
Bloodstock categories	9
Overlap between the Parties.....	10
Current activities.....	10
Potential competition	11
Frame of reference	12
Product scope.....	13

Geographic scope	18
Conclusion on frame of reference.....	20
Competitive assessment.....	20
Horizontal unilateral effects	20
Co-ordinated effects	32
Barriers to entry and expansion	34
Third party views.....	35
Conclusion on substantial lessening of competition.....	36
Exceptions to the duty to refer	36
Markets of insufficient importance	37
Decision	40

SUMMARY

1. Tattersalls Limited (**Tattersalls**) has agreed to acquire the bloodstock auctioneering business of Brightwells Limited (the **Brightwells business**) (the **Merger**). Tattersalls and the Brightwells business are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) considers that the Parties will cease to be distinct as a result of the Merger, that the share of supply test is met and that accordingly arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties are both bloodstock auctioneers with overlapping activities in the United Kingdom (**UK**) and Ireland. Bloodstock refers to horses that have been specially bred for racing, ie thoroughbred horses.
4. There are two types of bloodstock: (i) national hunt horses bred for jump racing; and (ii) flat racing horses. Bloodstock auctions for national hunt and flat racing horses are typically conducted separately, and auctions are also further categorised by the horse's stage of development (by age and/or level of training).¹
5. The CMA's market testing indicated that there is limited demand-side substitution between auctioneering services for these different types of bloodstock. The CMA also found that customers of bloodstock auctioneering services would not switch to private or internet sales in response to a small but significant and non-transitory increase in price.

¹ See Figure 1 below for a definition of each of these bloodstock categories.

6. The CMA carried out its assessment using a UK and Ireland wide geographic frame of reference. The CMA did so on the basis of evidence indicating that bloodstock auctioneers from outside UK and Ireland were alternatives only for certain high value bloodstock bought and sold by particular customers.
7. The CMA therefore, on a cautious basis, has considered the impact of the Merger in the supply of auctioneering services in the UK and Ireland for those narrow categories of bloodstock for which the Parties' activities overlap, including:
 - (a) flat racing horses in training;
 - (b) breeze-up flat racing horses; and
 - (c) national hunt horses in training.
8. The CMA assessed whether the Merger will raise competition concerns as a result of unilateral horizontal effects for these bloodstock categories, and also assessed whether the Merger could give rise to coordinated effects. Finally, the CMA also considered whether the Merger may result in a loss of actual potential competition in the supply of bloodstock auctioneering services of national hunt 'store' horses.

Horizontal unilateral effects

National hunt horses in training

9. The CMA found that the increment resulting from the Merger in this category would be very low; Tattersalls sales of national hunt horses in training are limited and, accordingly, the Parties are not close competitors. Moreover, absent the Merger, there is no evidence that Tattersalls would succeed in expanding its operations into this category of bloodstock – in fact, the CMA received evidence that Tattersalls [redacted]. On this basis, the CMA concluded that the Merger will not result in a realistic prospect of a substantial lessening of competition (**SLC**) in this category.

Flat racing horses in training

10. The CMA found that the combined share of supply of the Parties in this category was high and that the Parties are particularly close competitors at the lower value end of this category of bloodstock. The constraints that Tattersalls will face after the Merger come from a single competitor, Goffs/DBS Group (**Goffs/DBS**) and from outside the market (private sales and bloodstock auctioneers from outside the UK), and the presence of

Goffs/DBS in the lower value end is limited. As a result, the CMA could not rule out that the Merger will result in a realistic prospect of an SLC in this category.

Breeze-up flat racing horses

11. The CMA found that the overlap between the Parties in this category is not significant. Post-Merger, Tattersalls will remain constrained by both Goffs/DBS and Goresbridge. The evidence available to the CMA indicates that both Goffs/DBS and Goresbridge are close competitors of Tattersalls in this category and Brightwells is a very weak fourth player. On this basis, the CMA concluded that the Merger will not result in a realistic prospect of an SLC in this category.

Store horses

12. The CMA found that absent the Merger Brightwells may have expanded its supply of bloodstock auctioneering services for store horses, thereby exerting significant competitive pressure on Tattersalls' and Goffs/DBS' quality of offering, sales commissions and entry fees in this category. Tattersalls has a high share of supply in this category and Brightwells' entry would have led to greater competition. The CMA, therefore, could not rule out that the Merger will result in a realistic prospect of an SLC arising from a loss of potential competition in this category.

Co-ordinated effects

13. The CMA considers that the characteristics of the bloodstock auctioneering sector are not conducive to coordination and that any coordinated outcome would not be easily monitored. The Merger therefore does not substantially increase the risk of coordination in the bloodstock auctioneering sector. Accordingly, the CMA found that the Merger will not give rise to a realistic prospect of an SLC as a result of coordinated effects in relation to the supply of bloodstock auctioneering services.

Conclusion

14. The CMA therefore could not rule out that the Merger will result in the realistic prospect of an SLC as a result of unilateral horizontal effects in the supply of bloodstock auctioneering services for: (i) flat racing horses in training; and (ii) the supply of store horses in the UK and Ireland. The CMA also concluded that entry and expansion into these categories would not be timely, likely and sufficient to mitigate these potential anticompetitive effects of the Merger.

15. However, it was not necessary for the CMA to determine conclusively whether there is a realistic prospect of the Merger will result in an SLC, because, if there were, it would in any event exercise its discretion to apply the markets of insufficient importance exception (the **de minimis exception**) to the duty to refer under section 33(2)(a) of the Enterprise Act 2002 (the **Act**).
16. The Merger will therefore **not be referred** under section 33(1) of the Act.

ASSESSMENT

Parties

17. Tattersalls is a leading bloodstock auctioneer in Europe. In the financial year ending 30 June 2014, the Tattersalls Group's total revenue was £23.3 million, of which £19.1 million was derived from activities carried out in the UK and £4.2 million from its activities in Ireland.² Tattersalls' income is derived predominantly from sales commissions, entry fees and auction fees.
18. Tattersalls' UK bloodstock auction operations are based in Newmarket, Suffolk from where approximately 5,000 horses are sold annually. It also holds auctions in Ireland and France.
19. Brightwells Limited (**Brightwells**) is a company incorporated in England. It is an auctioneer of a broad range of products, including fine art, antiques, property, classic cars, bloodstock and livestock. The target business is the bloodstock auctioneering business of Brightwells Limited, which currently holds six sales annually at the Cheltenham racecourse and nine sales at the Ascot racecourse. In the last financial year ending 31 December 2014, the Brightwells business's revenue was £[REDACTED] million, of which £[REDACTED] million derived from its activities in Cheltenham and £[REDACTED] in Ascot.

² On 14 August 2014, after the end of its last financial year, Tattersalls Limited acquired a 55% shareholding in Osarus Holdings Limited (**Osarus**) whose subsidiary Ventus Osarus S.A.R.L. holds auctions in three racecourses in France (La Teste, Lion d'Angers and Clarefontaine). In 2014, Osarus generated ring turnover of €5.9 million, and its own turnover was €[REDACTED] (around £[REDACTED]). The Osarus revenue has not been included in Tattersalls' last financial year revenue figures.

Transaction

20. On 19 June 2015, Tattersalls and Brightwells Limited entered into an Asset Purchase Agreement for the acquisition of the Brightwells business for £[REDACTED] million. The Brightwells business includes the following assets:
- The Sales Ring Lease agreement with Ascot Racecourse Limited ([REDACTED] years lease with [REDACTED] years to run) (**Ascot agreement**).
 - The Auction Agreement of 3 March 2009 with Racecourse Investments Limited, with a duration of [REDACTED] years, [REDACTED] (**Cheltenham agreement**).
 - The goodwill associated with the sales held at these venues.
 - Some moveable assets associated with Brightwells trade at these venues.
 - Brightwells' four full-time employees associated with the bloodstock auctioneering business.
21. The completion of the Merger is conditional on: (i) CMA's clearance of the Merger; and (ii) [REDACTED].

Rationale for the transaction

22. Tattersalls submitted that its main reason for investing in the acquisition of the Brightwells business was to acquire the rights to hold auctions at Cheltenham and Ascot. Tattersalls' announcement of the Merger states that the 'acquisition will enable Tattersalls to serve a wider range of breeders, racehorse owners and trainers, as well as adding two further auction sites to the Tattersalls headquarters in Newmarket'.³ Tattersalls is particularly interested in expanding into the niche category that Brightwells has developed at the Cheltenham race course for the sale of point-to-point national hunt horses and national hunt horses in training. However, Tattersalls' internal documents indicate that [REDACTED] (see further at paragraph 46 below).
23. Brightwells stated that its bloodstock auctioneering business is not its core activity and it had no plans to expand this business.

Jurisdiction

24. The Parties submit that the rights Tattersalls is acquiring as part of the Merger may not constitute an enterprise in light of their short duration and temporary

³ See [Tattersalls' media release announcing the Merger](#).

nature. In particular, the rights to conduct auctions at the Ascot Racecourse only runs for a further [X] years and, in light of this, the Parties consider that the Ascot agreement should 'not be considered part of the merger situation'.⁴

25. In making a judgement as to whether or not the activities of a business, or part of a business, constitute an enterprise, the CMA will make an assessment based on all relevant considerations and have regard to the substance of the arrangement under consideration, rather than merely its legal form.⁵ As set out above, Tattersalls is acquiring not only Brightwells' rights to hold auctions at the Cheltenham and Ascot Racecourses, but also Brightwells' goodwill, physical assets and the employees associated with its bloodstock auctioneering services business will be transferred. The CMA considers that the assets, goodwill and employees being acquired by Tattersalls will enable the business activity carried out by the Brightwells business to continue both at Cheltenham and Ascot racecourses. Accordingly, the CMA believes that both Tattersalls and the bloodstock auctioneering business of Brightwells are 'enterprises' for the purposes of the Act.⁶ These enterprises will cease to be distinct as a result of the Merger.
26. The Parties submit that they overlap in the supply of bloodstock auctioneering services in the UK with a combined share of 84%, by volume, and an increment of 7%. The CMA therefore considers that the share of supply test in section 23 of the Act is met.
27. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
28. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 23 July 2015 and the statutory 40 working day deadline for a decision is therefore 17 September 2015.

Counterfactual

29. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, the CMA considers that in the absence

⁴ See Merger Notice, p12.

⁵ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraph 4.7.

⁶ See section 129 of the Act; and [Mergers: Guidance on the CMA's jurisdiction and procedure](#), paragraph 4.8.

of the merger the prospect of these conditions continuing is not realistic, or that there is a realistic prospect of a counterfactual that is more competitive as between the Parties than these conditions.⁷

30. The Parties submit that, absent the Merger, the Brightwells business would have continued to hold bloodstock auctions at Cheltenham and Ascot and that this business would have remained non-core to Brightwells.
31. In this case, there is no evidence supporting a different counterfactual, and the Parties and third parties have not put forward arguments in this respect. Therefore, the CMA considers the prevailing conditions of competition to be the relevant counterfactual.
32. For the reasons set out in paragraphs 147 to 168, the CMA considered in its competitive assessment whether absent the Merger the Brightwells business would expand and, accordingly, whether there would be a loss of potential competition as a result of the Merger.⁸

Background

33. The Parties overlap in the supply of bloodstock auctioneering services, ie, the sale of thoroughbred horses by auction.
34. Bloodstock auctioneers are platforms that intermediate between buyers and sellers of bloodstock, and the value that each of these group of customers realises from using an auctioneer as an intermediary depends on the volume of customers from the other group. The Parties are therefore active in a two-sided market in that they compete both for sellers and buyers of bloodstock horses (together referred to as **customers**).⁹
35. The second largest bloodstock auctioneer based in the UK and Ireland (after Tattersalls) is Goffs/DBS which, through its subsidiaries Doncaster Bloodstock Sales Ltd and Goffs Bloodstock Sales Ltd, holds auctions of various types of bloodstock at one venue in Ireland and two venues in the UK (London and Doncaster).¹⁰

⁷ [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The Merger Assessment Guidelines have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#), Annex D).

⁸ As indicated in the [Merger Assessment Guidelines](#) (paragraphs 4.3.19 and 5.4.15) the loss of a potential entrant may alternatively be assessed by considering that entry would have resulted in a more competitive counterfactual than the prevailing conditions of competition.

⁹ [Merger Assessment Guidelines](#), paragraph 5.2.20.

¹⁰ See the decision of 25 October 2007 by the Office of Fair Trading (**OFT**) regarding the completed acquisition by Robert J Goff & Co of Doncaster Bloodstock Sales Ltd (**Goffs/Doncaster**).

36. Goresbridge is a bloodstock auctioneer with operations in Ireland and is mainly present in the supply of auctioneering services of breeze-up flat racing horses for flat racing (see Figure 1 below for a definition).
37. Other bloodstock auctioneers based in Europe, but without operations in the UK or in Ireland, are, for instance, Arqana (France) and Baden-Badener Auktionsgesellschaft (Germany).

Parameters of competition

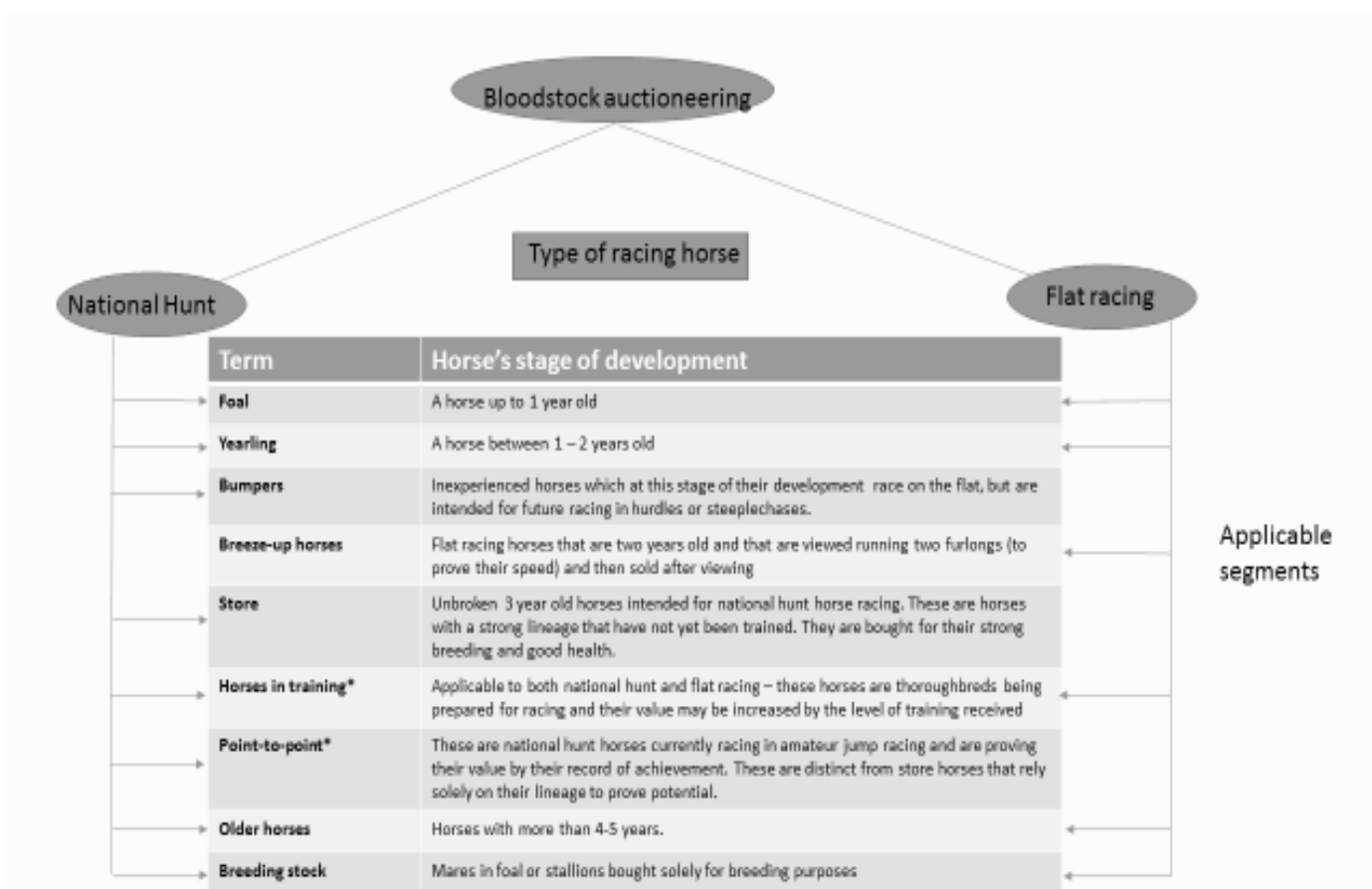
38. Customer submissions suggest that bloodstock auctioneers compete not only on the level of the commissions and fees charged for their services,¹¹ⁱ but also regarding the calendar of their sales, the location of the auction venue, the number and type of customers they attract to their auctions, and the overall quality of the services provided.

Bloodstock categories

39. Bloodstock auctions can be specialist (eg by category of horse) or include a mixture of different horse types.
40. The evidence gathered by the CMA indicates that bloodstock is normally categorised in the industry based on: (i) the type of race the horse is bred for; and (ii) the horse's stage of development (by age and/or level of training). The categorisation of bloodstock based on these factors is intertwined.
41. The diagram below defines the main categories of bloodstock used and illustrates these by reference to the two main types of horse racing:
 - (a) Flat horse racing: a form of horse racing that is run over a level track at a predetermined distance (**flat racing**).
 - (b) National hunt racing: a form of horse racing in which horses are required to jump fences and ditches and is divided into two major distinct branches; hurdles and steeplechases (**national hunt**). Some horses begin their racing careers in amateur point-to-point where they compete over steeplechase races of 3 miles (**point-to-point**).

¹¹ In addition to the buyers' and sellers' sales commissions, other charges include: entry fees, withdrawal fees, veterinary charges and bought-in sales commissions (ie the sales commissions charged if there are no bids on a lot, or if bidding does not reach the reserve price, meaning that the lot is left unsold).

Figure 1: Bloodstock auctioneering market by type of horse and stage of developmentⁱⁱ



Source: CMA, based on information submitted by the parties and third parties

*As explained below, bumpers, horses in training and point-to-point horses can be considered as part of a wider 'horses in training' category within the national hunt category.

42. These categories are not rigid, and the level of demand-side and supply-side substitutability between them is assessed in the Product frame of reference section.

Overlap between the Parties

Current activities

43. Tattersalls' operations in the UK include the following:

- (a) In Newmarket (UK) it holds auctions of flat racing horses at the following stages of development: foals, yearlings, breeze-up flat racing horses and horses in training.
- (b) In Fairyhouse (Ireland) it holds auctions of national hunt horses at the following stage of development: foals, yearlings, store horses, bumpers and horses in training.

- (c) At the racecourses where Osarus, a subsidiary of Tattersalls, holds auctions in France (La Teste, Lion d'Angers and Clarefontaine) it sells flat racing horses at various stages of development, along with national hunt horses in training, national hunt yearlings and two year national hunt horses.
44. The Brightwells business auctions the following types and categories of bloodstock at Cheltenham and Ascot racecourses in the UK:
- (a) Cheltenham racecourse: auctions primarily of national hunt horses in training.
- (b) Ascot racecourse: mixed auctions of typically lower value horses for both flat racing and national hunt racing with a focus on breeze-up flat racing horses and flat racing horses in training.
45. Therefore, in the UK and Ireland the Parties currently overlap in the supply of bloodstock auctioneering services for:
- (a) flat racing horses in training;
- (b) breeze-up flat racing horses; and
- (c) national hunt horses in training.

Potential competition

46. Tattersalls' internal documents indicate that one of the reasons motivating Tattersalls' acquisition of the Brightwells business was to [REDACTED] for the sale of national hunt 'store horses' (as defined in Figure 1). For instance:
- the papers tabled at Tattersalls' Board Meeting of 7 July 2014 state [REDACTED].
 - the minutes of Tattersalls' Board of Directors meeting of 9 February 2015 state that Tattersalls 'recognised that it was likely to be the last opportunity for Tattersalls to acquire the [Brightwells] business and, [REDACTED]'.
 - Tattersalls Ireland Business Review 2014 states that: 'Brightwells has firmly established Cheltenham as the primary site for "boutiques" sales and has successfully introduced a "Festival" sale in 2014' and '[REDACTED]'.
47. A valuation report prepared for Brightwells by an independent entity to assess whether Brightwells should accept Tattersalls' last offer states Tattersalls is [REDACTED]. This suggests that Tattersalls may be paying a premium for Brightwells' auctioneering business for the elimination of actual or potential competition from Brightwells.

48. Based on the above evidence, the CMA has assessed whether the Merger may result in the loss of actual potential competition in the supply of auctioneering services for national hunt store horses in its competitive assessment.

Frame of reference

49. The CMA considers that market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.¹²
50. The CMA's approach to market definition is generally, to begin with, the overlapping products of the Parties in the narrowest plausible candidate market, and then to consider whether this can be widened primarily on the basis of demand-side considerations. If appropriate, the CMA then considers if supply-side substitution allows several products to be aggregated into a wider market.¹³
51. Furthermore, in assessing the frame of reference in a two-sided market (see paragraph 34 above), the CMA may consider the constraints on a hypothetical monopolist from profitably raising prices from demand substitution on either side of the market. There may be feedback effects (indirect network effects) as switching by one side of the market may make the product or service less valuable to the other side of the market. This may affect the frame of reference.¹⁴
52. The CMA is mindful of these possible feedback effects in its analysis and the possibility that the conditions of competition are different for buyers and sellers. However, as the evidence gathered by the CMA indicates many customers of bloodstock auctioneers are both buyers and sellers, the CMA has not considered each category of customers as a separate frame of reference, but has for each theory of harm assessed whether the Merger has a particular effect on buyers or sellers.

¹² [Merger Assessment Guidelines](#), paragraph 5.2.2.

¹³ [Merger Assessment Guidelines](#), section 5.2.17

¹⁴ [Merger Assessment Guidelines](#), paragraph 5.2.20.

Product scope

53. As set out above in paragraph 45, the Parties overlap in the supply of auctioneering services of particular types of bloodstock.
54. The CMA took the supply of auctioneering services for each type and category of bloodstock in which the Parties overlap (or may potentially overlap) as its starting point and then considered whether it was appropriate to broaden the frame of reference to include:
 - (a) private and internet bloodstock sales; and/or
 - (b) bloodstock auctioneering services as a single market (ie without distinguishing between types of bloodstock).

Private sales and internet sales

Parties' views

55. In the Parties' view, private auctions and internet sales act, to some extent, as a constraint on bloodstock auctioneers.
56. The Parties submit that, whilst the majority of sales of quality bloodstock are conducted by public auction, private sales do take place, even for high value bloodstock. They state that auctioneers' terms and conditions typically allow for the possibility of private sales.
57. The Parties also consider that internet sales of bloodstock are growing in significance as an alternative to bloodstock auctions.

Third party submissions

58. Almost all the customers that responded to the CMA's market testing (except one) did not consider private sales or internet sales to be an alternative to the supply of bloodstock auctioneering services, as they achieve the optimum value for their bloodstock using bloodstock auctioneering services.

CMA analysis

59. Based on the evidence available to it, the CMA considers that, from a demand-side perspective, bloodstock auctioneers offer customers an added value (that customers do not benefit from through private or internet sales) in terms of the 'audience' they reach, expertise and additional services such as

assistance in the conveyancing process, veterinary and transport services.¹⁵ Furthermore, the additional price that customers are willing to pay for bloodstock auctioneering services indicates that customers place value on these services and that they may not switch to private sales and/or internet sales in response to a small but significant and non-transitory increase in price.¹⁶ This is confirmed by third party responses to the CMA's market testing.

60. In a previous decision, the CMA's predecessor (the Office of Fair Trading), although noting that there are alternatives to auctioneers for the sale of bloodstock, such as private sales, found that customers do not use these for more valuable bloodstock.¹⁷
61. In light of the evidence available to it, the CMA therefore does not believe that the product frame of reference should be widened to include private and internet sales for the purpose of assessing the Merger. The CMA has, however, considered the constraints imposed by private and internet sales in its assessment of the competitive effects of the Merger.

Supply of auctioneering services to all types of bloodstock

Parties' views

62. The Parties submit that the Merger should be assessed by reference to the supply of bloodstock auction services. They state that although many auctioneers hold specialist sales for a particular type of bloodstock, auctioneers' skills are the same whatever the type of horse, and some auctioneers, particularly the smaller ones, hold mixed sales combining different types of horse into one sale.
63. The Parties acknowledge that there is limited demand-side substitution between the different types and categories of bloodstock, but they state that the distinction between the each bloodstock category is not entirely rigid.

Third party submissions

64. The customers' submissions received by the CMA suggest that their choice of auctioneer depends, to some extent, on the category of horse each auctioneer specialises in.

¹⁵ See terms and conditions set out in the Parties' catalogues for the supply of their bloodstock auctioneering services.

¹⁶ A 'SSNIP' – see [Merger Assessment Guidelines](#), paragraph 5.2.11.

¹⁷ See Goffs/Doncaster, paragraph 8.

65. Most customers that responded to the CMA's market testing noted that the Parties had built expertise and a reputation regarding the sale of particular types/categories of horses (eg Brightwells sales of national hunt point-to-point horses at the Cheltenham racecourse). They note that the competitive strength of each bloodstock auctioneer varies depending on the type of bloodstock, and that the auctioneers that they would consider using vary depending on the horse they intend to sell or buy. A trade association also submitted that it is important for the customer that the horse is auctioned in front of the right audience.
66. One customer stated that the distinction between national hunt and flat racing horses is not relevant in terms of the supply of bloodstock auctioneering services, as the auctioneering services provided do not differ depending on the type of horse. However, this same customer submitted that the Cheltenham racecourse, for instance, has a reputation for the sale of national hunt horses in particular. This customer also stated that normally horses whose progenitors were national hunt horses do not become good flat racing horses.
67. From a supply-side perspective, based on the submissions of competitors that responded to the CMA's market testing, most auctions they conduct are specialist auctions. A competitor stated that it is difficult for an auctioneer to attract bloodstock for a new category that is already covered by another auctioneer, as there is a limited stock for each bloodstock category. Another competitor, and a number of trade associations, submitted that the auction dates are dictated by the horseracing calendar and, therefore, another obstacle is to find suitable auction dates for particular types of horses that do not overlap with the auctions calendar of other auctioneers already present in that category.
68. On the other hand, one customer stated that the auction venues and other infra-structure can be used for the supply of auctioneering services of any type of bloodstock.

CMA analysis

69. In the Goffs/Doncaster decision, the Office of Fair Trading (OFT) used a frame of reference for the supply of bloodstock auctioneering services. The OFT in its assessment did not consider whether the product scope of the frame of reference could be narrower.
70. The frame of reference cannot be separated from the particular merger under investigation as it depends on the specific facts and circumstances of a case, and current evidence from market participants will often be critical. Therefore,

decisions relating to the frame of reference in previous merger inquiries will provide only limited guidance.

71. Based on the evidence gathered by the CMA, including third party submissions and documents submitted by the Parties, the CMA found that that demand-side substitution is limited between certain categories of horses, determined by the bloodstock age/stage of training and the type of race it is bred for.
72. For instance, Tattersalls' annual business review documents distinguish between flat racing horses and national hunt horses, in line with the distinction between its UK and Ireland operations, and singles out the sales of yearlings and of horses in training from horses in other stages of development. Catalogues from the Parties, as well as catalogues from Goffs/Doncaster demonstrate that each auction is specialised on particular categories of bloodstock and that therefore the catalogue includes only bloodstock listings for that category. Furthermore, publications in the industry, such as the *The Bloodstock Sales Review*, also distinguish between types of bloodstock based on their stage of development and the type of races they perform. The differentiation between each category of bloodstock is also indicated by the different entry fees charged for different categories of bloodstock.
73. From a supply-side perspective, a bloodstock auctioneer mainly offers a platform and, as such, in theory it would have the ability, in terms of skills and infrastructure, to auction any bloodstock.
74. However, the conditions of competition for the supply of auctioneering services are not similar for each type of bloodstock. For instance, as explained in more detail below, while Brightwells has a strong presence in the auctioning of national hunt horses in training, Tattersalls' and Goffs/DBS' focus is on store horses, with only a small presence in the auctioning of national hunt horses in training.
75. The evidence available to the CMA therefore indicates that different auctioneers do specialise in the supply of different types of bloodstock and that historically suppliers seek to consolidate their market position for particular types and categories of bloodstock. This specialisation is reinforced because the value that one group of customers realises from using the intermediary in a two-sided market depends on the volume and quality of customers from the other group ('indirect network effects').¹⁸ In other words, specialisation precipitates an advantage for incumbent auctioneers for a particular type of bloodstock by generating barriers to entry in terms of

¹⁸ [Merger Assessment Guidelines](#), paragraph 5.2.20.

reputation enabling auctioneers to attract the limited available stock and conduct auctions on the limited available dates (see paragraphs 65 to 67 above).

76. Nevertheless, the boundaries between each bloodstock category are not rigid, particularly regarding horses at early stage of their development. For instance, the Parties submit that, while the origin of the horses in training auctioned at the Ascot racecourse, based on their parentage, is flat racing, some may be bought with a view to their transferring to national hunt or, more likely, amateur point-to-point racing.
77. Furthermore, based on third party submissions and industry publications, bumpers, horses in training and point-to-pointers could be included as part of a wider national horses 'horses in training' category. The CMA also found that the conclusions of its competition analysis would not differ if bumpers, horses in training and point-to-pointers had each been considered a separate product frame of reference.

Conclusion on product scope

78. The CMA therefore finds that there is limited demand-side substitution between each category of bloodstock. Furthermore, the evidence does not support broadening the frame of reference based on supply-side considerations, as there are barriers preventing bloodstock auctioneers in other bloodstock categories switching supply in response to relative changes in price.¹⁹
79. For the reasons set out above, on a cautious basis, the CMA found that the candidate frame of reference should not be widened to include the supply of bloodstock auctioneering services to all bloodstock categories or other ways of selling bloodstock (eg internet and private sales).
80. However, in the competitive assessment, the CMA took into account that the boundaries between some categories are not rigid and considered the constraints imposed by private and internet sales.
81. The CMA, therefore, on a cautious basis, considered the impact of the Merger in the supply of auctioneering services for:
 - (a) flat racing horses in training;
 - (b) breeze-up flat racing horses;

¹⁹ [Merger Assessment Guidelines](#), paragraph 5.2.17.

(c) national hunt horses in training; and

(d) store (national hunt) horses.

Geographic scope

Parties' views

82. In its Goffs/Doncaster decision, the OFT considered, on a cautious basis, the UK and Ireland as the appropriate geographic frame of reference for the supply of bloodstock auctioneering services. Based on this precedent, the Parties consider that the geographic frame of reference is at least the UK and Ireland, and it may be even broader. It submits that buyers of high quality bloodstock are very mobile, as evidenced by data indicating that horses auctioned by Tattersalls were bought by buyers based all over the world, from the USA to China, Australia to Bulgaria. The Parties also stated that numerous publications produce timetables listing the key auctions worldwide for the year ahead and that some buyers (and these are often sellers too) will tour the world attending most, if not all, of the sales.
83. From a seller's perspective, most sellers that use the Parties' bloodstock auctioneering services are from the UK or Ireland. The Parties stated that the quality of the horses for sale listed in an auction determines how far a seller may be willing to travel to sell it, with more valuable horses justifying travel further afield.
84. Tattersalls estimates that it costs approximately £4,000 to transport a horse by air between continents (eg, Europe to USA) and that transportation within a continent by road will cost a fraction of this amount. It submits that transport costs are not the major consideration in terms of where to sell the horse, particularly for high value horses.
85. Although sellers may not be as mobile as buyers, the Parties submit that the geographic scope of the supply of bloodstock auctioneering services should reflect its two-sided market nature. Both sides of this market are interdependent and a seller will want to know that there will be a large number of potential buyers at the sale so that it can realise the highest price for its horses.

Third parties

86. The Parties' customers' submissions were mixed. While the majority of private customers that responded to the CMA's market testing stated that, in the past, they only used the services of bloodstock auctioneers based in the UK and

Ireland, some agents submitted that they used bloodstock auctioneers in the USA, UK, Ireland, France, Italy and Germany. Customers also submitted that a factor that may incentivise or deter them from using a bloodstock auctioneer from outside the UK is the applicable exchange rate at the time of the sale or purchase. One customer stated that transport costs are not a significant obstacle to selling or purchasing bloodstock overseas.

87. Competitors stated that transport costs are normally supported directly by customers.
88. Goffs/DBS stated that the large majority of both sellers and buyers that use its bloodstock auctioneering services come from the UK and Ireland.
89. Other bloodstock auctioneers based in Europe without operations in the UK or Ireland, stated that around 10 to 20% of buyers and around 20 to 30% of their customers are from the UK or Ireland. One of the competitors based outside the UK identifies both Parties as their competitors, while the other states that it only competes to a small degree with the Parties.

CMA analysis

90. Based on this evidence, the CMA found that the supply of bloodstock auctioneering services is at least UK and Ireland wide. This is applicable for all relevant overlap categories.
91. Although some customers, particularly buyers, based in the UK or Ireland do seek bloodstock auctioneering services outside of the UK and Ireland, those bloodstock auctioneers may not be an alternative for all customers. The Parties' customers that seek the services of a bloodstock auctioneer for the sale or the purchase of lower value horses may not switch to bloodstock auctioneers outside the UK and Ireland in response to a small but significant and non-transitory increase in price, as they would have to incur relatively high travel and transport expenses by comparison with the value of the horse they intend to sell or purchase.

Conclusion on geographic scope

92. Therefore the CMA, on a cautious basis, will assess the effects of the Merger by reference to the supply of bloodstock auctioneering services for each bloodstock category in which the Parties overlap in the UK and Ireland.
93. However, the CMA has considered in its competitive assessment the constraints that bloodstock auctioneers from outside the UK and Ireland may impose on the Parties.

Conclusion on frame of reference

94. For the reasons set out above, the CMA, on a cautious basis, has considered the impact of the Merger in the supply of bloodstock auctioneering services in the UK and Ireland for:

- (a) flat horses in training;
- (b) breeze-up flat racing horses;
- (c) national hunt horses in training; and
- (d) store (national hunt) horses.

Competitive assessment

Horizontal unilateral effects

95. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to co-ordinate with its rivals.²⁰ Horizontal unilateral effects are more likely when the merger parties are close competitors. The CMA assessed whether it is or may be the case that the Merger may be expected to result in an SLC in relation to unilateral horizontal effects in the supply of bloodstock auctioneering services, by reference to the bloodstock categories in which the Parties (potentially) overlap in the UK and Ireland.

Supply of auctioneering services for national hunt horses in training

Shares of supply

96. The Parties' shares of supply of auctioneering services for national hunt horses in training²¹ in the UK and Ireland differs significantly depending on whether it is estimated based on the volume of sales or turnover (sales ring turnover²² and the bloodstock auctioneers turnover).²³

²⁰ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

²¹ For this purpose, bumpers, horses in training and point-to-point are all considered as part of the category 'national hunt horses in training'.

²² 'Sales ring turnover' means the aggregate of the hammer prices paid by buyers at the auctioneers' sales in 2014, excluding sales commissions paid to the auctioneer. Each company's turnover is a fraction of this amount, based on commissions received and other fees charged.

²³ This includes the commissions and other fees charged by the auctioneers.

Table 1: Shares in the supply of auctioneering services for national hunt horses in training in UK and Ireland

<i>Auctioneer</i>	%		
	<i>Share by volume</i>	<i>Share by sales ring turnover</i>	<i>Share by auctioneer turnover</i>
Tattersalls	[0–5]	[0–5]	[0–5]
Brightwells	[20–30]	[60–70]	[70–80]
Combined share	[20–30]	[70–80]	[70–80]
Goffs/DBS	[70–80]	[20–30]	[20–30]
Total	100	100	100

Source: CMA estimates, based on the Parties' and third parties' sales information

97. On any basis, the increment resulting from the Merger is low ([0–5]% or less). Although the Parties' combined share of supply is [70–80]% based on sales revenue, it is only [20–30]% based on volume of sales.
98. Goffs/DBS' share of supply by volume is markedly higher than its share of supply based on sales ring turnover. This indicates that the horses in training auctioned by Brightwells were sold for a higher value than those auctioned by Goffs/DBS and, accordingly, there is a degree of differentiation between these two competitors in this category of bloodstock.
99. While Brightwells' volume of sales of national hunt horses in training decreased slightly between 2012 and 2014 (–11%), the number of national hunt horses in training sold by Tattersalls doubled. However, Tattersalls' sales of national hunt horses in training are still very low (only 20 horses in 2014) and [redacted] (see below in paragraph 109).

Parties' submissions

100. The Parties submit that the overlap between them in this category is very limited.
101. While the Brightwells business holds a highly selective sale of national hunt horses in training at the Cheltenham racecourse, the large majority of which are point-to-point horses, Tattersalls only auctions a very limited number of national hunt horses in training in Ireland and only sold three point-to-point horses.
102. Tattersalls submit that the main reason for the Merger is to complement its business with the Brightwells business operations at the Cheltenham racecourse.
103. The Parties consider that the Brightwells business' closest competitor in the supply of auctioneering services for national hunt horses in training is Goffs/DBS and that the Parties, after the Merger, will remain constrained, not

only by Goffs/DBS, but also by Arqana in France, which also holds specialist sales of national hunt horses.

Third party submissions

104. None of the competitors, customers and trade associations that responded to the CMA's market testing raised particular concerns regarding the effect of the Merger on the supply of auctioneering services for national hunt horses in training.
105. Most customers noted the complementarity and limited overlap between the activities of the Parties in this category, submitting that the Parties are not close competitors and that Merger will be beneficial by allowing the expansion of Tattersalls' activities in the auctioning of this type of national hunt horses.
106. The two customers and one competitor that raised concerns about the Merger were more generally concerned that the Merger will reduce the number of suppliers of bloodstock auctioneering services, in general, from three to two.

CMA analysis

107. Based on the evidence available to the CMA, described above, the CMA found that the increment resulting from the Merger in the supply of auctioneering services for national hunt horses in training is low ([0-5]%) and that the overlap between the Parties in this category is very limited.
108. The majority of the national hunt horses in training auctioned by Brightwells are point-to-point horses and Tattersalls only sold three point-to-point horses at Fairyhouse (Ireland) in 2014. Brightwells' main competitor is Goffs/DBS (the second player in terms of share of supply by turnover), which supplies auctioneering services for national hunt horses in training at its venues in Ireland and in Doncaster (UK).
109. The CMA received evidence that Tattersalls attempted to expand its operations in the UK to the supply of auctioneering services for point-to-point horses between 2011 and 2012.ⁱⁱⁱ However, [REDACTED].²⁴ [REDACTED].
110. The evidence available to the CMA does not indicate that Tattersalls, absent the Merger, would likely succeed in timely expanding its operation to this category to become a relevant alternative to Brightwells.

²⁴ See, for instance, the papers tabled at Tattersalls Board Meeting of 7 July 2014.

111. The CMA also notes that, based on third parties submissions, Tattersalls may remain constrained after the Merger by a bloodstock auctioneer with operations outside the UK which identified Brightwells as a competitor in the supply of auctioneering services for national hunt horses in training.

Conclusion

112. The CMA therefore considers that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of auctioneering services for national hunt horses in training in the UK and Ireland.

Supply of auctioneering services for flat racing horses in training

Shares of supply

113. The Parties' shares of supply of auctioneering services for flat racing horses in training²⁵ in the UK and Ireland by volume of sales and turnover, ring sales turnover and auctioneer turnover is set out in the table below.

Table 2: Shares in the supply of auctioneering services for flat racing horses in training in UK and Ireland

<i>Auctioneer</i>	%		
	<i>Share by volume</i>	<i>Share by sales ring turnover</i>	<i>Share by auctioneer turnover</i>
Tattersalls	[60–70]	[80–90]	[80–90]
Brightwells	[20–30]	[0–5]	[0–5]
Combined share	[80–90]	[80–90]	[80–90]
Goffs/DBS	[10–20]	[10–20]	[10–20]
Total	100	100	100

Source: CMA estimates, based on the Parties' and third parties' sales information

114. The combined share of Parties in this category is on all measures higher than 80%. Furthermore, the increment resulting from the Merger is significant when considered by volume of sales.
115. While the Brightwells business's volume of sales of flat racing horses in training decreased between 2012 and 2014 (-32%), the number of flat racing horses in training sold by Tattersalls increased slightly by 7%.

²⁵ For this purpose, bumpers, horses in training and point-to-point are all considered as part of the category 'national hunt horses in training'.

Parties' submissions

116. The Parties submit that they are not close competitors in this category because Tattersalls auctions high-value flat racing horses, while Brightwells focuses on the lower end of the market. The Parties noted that some of the flat racing horses in training auctioned by Brightwells at the Ascot racecourse would not be accepted by Tattersalls' auction at Newmarket.
117. Furthermore, as mentioned above, the Parties submit that, although the horses in training auctioned at the Ascot racecourse may be categorised as flat racing horses, based on their parentage, some of those horses may be bought with a view to their transferring to National Hunt or, more likely, amateur point-to-point racing.
118. Tattersalls stated that, if it acquires the Brightwells business, it would not reduce the number of auctions conducted at the Ascot racecourse for this category of horses or move those auctions to its venues in the UK and Ireland.

Third party submissions

119. Although most third parties that responded to the CMA's markets testing did not raise concerns regarding the Merger, the concerns expressed by one competitor and two customers regarding the overall impact of the Merger were particularly pertinent in this category. In addition to the submission that after the Merger there would be only one remaining competitor to Tattersalls in the UK and Ireland, these third parties further submitted that the Merger would result in the elimination of Brightwells as the most competitive or even the only option for the sale of less valuable horses in the UK and Ireland.
120. One of the customers that raised concerns submitted that it switched almost all of its flat racing horses in training business from Tattersalls to Brightwells. The other customer stated that, although it has used the auctioneering services of three auctioneers based in the UK and Ireland (Brightwells, Tattersalls and Goffs/DBS), Tattersalls is the preferred auctioneer for more valuable/high end horses, while Brightwells' services are used for the sale or purchase of less valuable horses. This customer also noted that Brightwells' entry fees and the prices it charges for the bloodstock accreditation (bought-in commissions) are more competitive than fees charged by Tattersalls for the same services.
121. In particular, this customer explained that to qualify a horse for some races requires certification that it meets certain standards, for instance in terms of its physical health condition and participation in previous races – this can be

achieved by going through a sales process with an auctioneer. This customer stated that accreditation is particularly important for flat racing horses at the training stage of development and adds to their value and that, as Brightwells does not normally charge a bought-in fee (differently from other auctioneers such as Tattersalls), it can use Brightwells' services and racecourses for this accreditation process.

CMA analysis

122. The CMA considers that the combined share of supply of the Parties in the supply of auctioneering services for flat racing horses in training is very high and that the overlap between the Parties in this category is significant: in 2014, the Brightwells business sold 552 flat racing horses in training at the Ascot racecourse²⁶ and Tattersalls sold 1539 horses in this category.
123. Looking at each of the Parties' average prices alone, it would appear that the Parties do not compete closely in the supply of auctioneering services for flat racing horses because Brightwells' average price per horse of £3,172 is significantly lower than Tattersalls' average price of £24,218 per horse in this category.
124. However, a more granular analysis of the prices of the flat racing horses in training sold by each of the Parties shows that while the large majority of the flat racing horses in training sold by the Brightwells business were at the low-end of this category – with 437 flat racing horses in training sold in 2014 for less than £3,000 – Tattersalls also has a strong presence in this end of the spectrum, with 242 flat racing horses in training sold in the same year for less than £3,000. This pricing analysis indicates that the Parties are closer competitors in the supply of auctioneering services for low-value flat racing horses in training than the Parties' average prices suggest.
125. The CMA therefore assessed whether, as a result of unilateral effects resulting from the Merger in this category, Tattersalls would have an ability and incentive to raise the commissions and other fees charged for, and worsen the services in relation to, the supply of auctioneering services to low-value flat racing horses in training, either directly or by, for example, discontinuing the auctions for this type of horse at the Ascot racecourse forcing the diversion of this business to Newmarket.

²⁶ Even if some of these horses in training auctioned by Brightwells at the Ascot racecourse may become trained for national hunt or used for other purpose, the number of the horses that are bought as flat racing horses in training will still, in any case, be significant.

126. The evidence gathered by the CMA indicates that while the sellers' commissions charged by Tattersalls and Brightwells for flat racing horses in training does not differ substantially (5% and 6%, respectively), Brightwells tends to charge lower entry fees, with a maximum limit of £580, while Tattersalls' maximum entry fee for this type of horses is £1,350. Furthermore, Brightwells rarely enforces the payment of 'bought-in' commissions, which allows trainers to use the Ascot racecourse for the accreditation of their horses and re-purchase their horses without the payment of any sales commissions.
127. Furthermore, Tattersalls has a minimum bid requirement of £800 to £5,000, while Brightwells' minimum bid requirement at the Ascot racecourse is £600.
128. The conditions offered by [REDACTED].
129. The above evidence, although suggesting some level of differentiation between the Tattersalls and Brightwells flat racing horses in training auction business activities, indicates that Tattersalls may be able to profitably increase entry fees and/or commissions for the supply of auctioneering services for low value flat racing horses in training following the elimination of the competitive constraint between the Parties' activities.
130. The CMA assessed whether and to what extent Tattersalls will remain constrained by Goffs/DBS in the supply of auctioneering services for flat racing horses in training. Goffs/DBS's share of supply in the category is lower than Brightwells' share of supply. Furthermore, Goffs/DBS's average sale price of flat racing horses in training (£[REDACTED]) suggests that it is mainly present in the medium to high end of this category. Furthermore, the Goffs/DBS share of supply by volume and by sales ring revenue does not differ substantially and, in either case, is not significant, which suggests that the number of low-value flat racing horses it auctions is not significant. The evidence available to the CMA, therefore, suggests that Goffs/DBS may impose a significant constraint on Tattersalls regarding customers seeking auctioneering services for medium or high-end flat racing horses in training. However, it may not be a significant constraint on Tattersalls regarding the customers that seek Tattersalls or Brightwells auctioneering services for low-end flat racing horses in training.
131. The CMA also found that the auctioneering services offered by auctioneers outside the UK may not be an alternative for the customers that currently use the Parties' auctioneering services for low value flat racing horses in training, as the transport costs these customers would have to incur would be significant compared with the value of the horses they want to purchase or sell.

132. Although customers may also purchase or sell low value flat racing horses in training through private sales, the reasons explained above in paragraph 59 suggest that this option would not serve to fully constrain the offer (in terms of price and service quality) of bloodstock auctioneers.

Conclusion

133. For the reasons set out above, the CMA considers that the combined share of supply of the Parties in the supply of auctioneering services for flat racing horses in training is very high and that the Parties are closer competitors at the lower end of this category than at the more valuable end. The constraints that Tattersalls will face after the Merger from inside (Goffs/DBS) and outside the market (private sales and bloodstock auctioneers from outside the UK) are likely to be limited regarding the supply of auctioneering services for low-value flat racing horses in training.
134. As a result, the CMA cannot rule out that the Merger will give rise to a realistic prospect of an SLC in the supply of auctioneering services for low-value flat racing horses in training in the UK and Ireland. However, in light of paragraphs 194 to 213 below regarding the *de minimis* exception, the CMA does not find it necessary to conclude on this point in this case.

Supply of auctioneering services for breeze-up flat racing horses

Shares of supply

135. The Parties' shares of supply of auctioneering services for breeze-up flat racing horses in the UK and Ireland by volume of sales and turnover, sales ring turnover and bloodstock auctioneer turnover is set out in the table below.

Table 3: Shares in the supply of auctioneering services for breeze-up flat racing horses in UK and Ireland

<i>Auctioneer</i>	%		
	<i>Share by volume</i>	<i>Share by sales ring turnover</i>	<i>Share by auctioneer turnover</i>
Tattersalls	[30–40]	[50–60]	[50–60]
Brightwells	[0–5]	[0–5]	[0–5]
Combined share	[30–40]	[50–60]	[50–60]
Goffs/DBS	[30–40]	[30–40]	[30–40]
Goresbridge	[30–40]	[10–20]	[10–20]
Total	100	100	100

Source: CMA estimates, based on the Parties' and third parties' sales information.

136. Although the combined share of supply by sales ring turnover and auctioneer turnover is higher than 50%, the increment resulting from the Merger on this basis is only [0–5]% or lower.

137. The differences between the Parties' and their competitors' shares of supply by volume, on the one hand, and its share of supply by sales ring turnover and auctioneer turnover, on the other hand, indicate that the value of the breeze-up flat racing horses auctioned by Tattersalls tends to be higher than the value of this type of horses auctioned by Brightwells and Goresbridge.

Third Party submissions

138. A competitor and a customer that expressed concerns regarding the Merger stated that both Parties hold breeze-up sales for two-year-olds and that there 'would appear to be crossover in this category'.

CMA's analysis

139. The CMA found that the overlap between the Parties in the supply of auctioneering services for breeze-up horses is limited.
140. Brightwells only recently (2011) started to conduct auctions of this type of horses at the Ascot racecourses, although, in 2014, it registered its highest sales average for breeze-up flat racing horses.
141. Nevertheless, Brightwells presence in this category is still nascent with only one auction of breeze-up flat racing horses held this year in early April 2015. The evidence available to the CMA does not indicate that Brightwells, absent the Merger, may invest further to develop its presence in this category.
142. Moreover, after the Merger, Tattersalls will remain constrained by both of Goffs/DBS's and Goresbridge's auctions. The evidence available to the CMA indicates that both Goffs/DBS and Goresbridge compete with the Parties in this category. Furthermore, in 2014, the Parties estimate that Goresbridge sold a significant number of 162 breeze-up horses and the evidence available to the CMA indicates that it is a well-known bloodstock auctioneer for this category of horses.
143. The average price of Tattersalls (£74,865), Goffs/DBS (£[redacted]), Goresbridge (£[redacted]) and Brightwells (£12,500) suggests that Tattersalls is a closer competitor to Goffs/DBS than Brightwells.
144. The evidence gathered by the CMA, therefore, indicates that Tattersalls, after the Merger, will remain sufficiently constrained in the supply of bloodstock auctioneering services for breeze-up flat racing horses by other bloodstock auctioneers based in the UK and Ireland.
145. In terms of out of market constraints, Arqana also has a relevant presence in this category.

Conclusion

146. For the reasons set out above, the CMA considers that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of auctioneering services for breeze-up flat racing horses in the UK and Ireland.

Supply of auctioneering services for store horses

Parties' submissions

147. As mentioned above, the Parties submit that Brightwells does not currently supply auctioneering services for store horses.
148. Brightwells stated that it does not hold a specific store horse auction due to the cost and scale requirements. A store horse sale is expensive to run for an auctioneer and Brightwells stated that [REDACTED] (see below in paragraphs 157 to 159). Brightwells further explained that [REDACTED].

Internal document

149. As mentioned above in paragraph 0, the Tattersalls internal documents which set out the rationale for the Merger indicated a concern that [REDACTED].^{27 28}
150. Tattersalls' concern [REDACTED] is evidenced in its internal documents that were tabled at Tattersalls' board meeting of 7 July 2014. In these documents, Tattersalls' board considered whether to submit a new offer to acquire the Brightwells business [REDACTED].
151. The same concern was reiterated more recently in the minutes of Tattersalls' Board of Directors meeting of 9 February 2015, in which the value of Tattersall's offer was discussed.
152. Evidence from customers, internal documents from Tattersalls and auction announcements from Brightwells' auction site at the Ascot racecourse²⁹ indicates that Brightwells has in the past included 'store horses' in its auctions at Ascot and that it also auctioned store horses at a 'Festival sale' it commenced at the Cheltenham racecourse in 2014.

²⁷ See the papers tabled at Tattersalls Board Meeting of 7 July 2014.

²⁸ See the Minutes of Tattersalls Board of Directors meeting of 9 February 2015.

²⁹ See for instance, the announcement of Ascot's Derby Sale (July 2013)

<http://staging.brightwells.com/Equine/Bloodstock/AscotMonthly/AscotSales.aspx> and for an action at the Ascot Racecourse in August 2015:

http://www.brightwells.com/Libraries/Ascot_Monthly_Bloodstock_Forms/Printable_Entry_Form.sflb.ashx

CMA's assessment

153. Unilateral effects may also arise from the elimination of potential competition. The removal of both an actual or perceived potential entrant can lessen competition by weakening the competitive constraint on an incumbent supplier. 'Actual potential competition' refers to a potential entrant that would increase competition if and when entry occurs. 'Perceived potential competition' refers to a firm which imposes an existing constraint because of the threat that it would enter if existing firms in the market raised their prices.³⁰
154. As set out above, evidence indicates that Brightwells is auctioning a very limited number of store horses and Brightwells submitted that it does not actively compete in this category. However, the CMA has assessed the effects of Merger on the supply of bloodstock auctioneering services for store horses within the framework of elimination of actual potential competition.
155. In assessing whether, with the Merger, Tattersalls is eliminating a potential entrant that could have increased competition in the supply of auctioneering services for store horses, the CMA considered:
- (a) whether Brightwells would be likely to enter in this category, absent the merger; and
 - (b) whether Brightwells' entry would have led to greater competition.³¹
156. The evidence on whether Brightwells would have expanded its operation into the supply of auctioneering services for store horses is mixed.
157. Brightwells' senior employees submitted to the CMA that, [redacted], because the auctioneers currently operating in the category in the UK and Ireland (Tattersalls and Goffs/DBS) have '*defined sales that are very long established*'. It is therefore an obstacle to entry to find a suitable auction date, within the calendar already established for the auctions of store horses and to attract sufficient and quality stock.³²
158. Brightwells further submitted that [redacted]. To enter into the auctioning of store horse, Brightwells would [redacted].

³⁰ See [Merger Assessment Guidelines](#), paragraphs 5.4.13, 5.4.14, and 5.4.16.

³¹ See [Merger Assessment Guidelines](#), paragraph 5.4.15.

³² The limited availability of store horses was also mentioned by a trade association and by a competitor as a barrier to entry.

159. Finally, Brightwells stated that to supply auctioneering services for store horses [redacted], as the customers of store horses auctioneering services expect the auctioneer to pay the vendor before it collects money from the purchaser.
160. However, the CMA found that, if the possibility of Brightwells entering into the store horses category were not more than fanciful, Tattersalls would not consider its entry in this category [redacted], as evidenced in Tattersalls' internal documents.
161. Tattersalls internal documents and the fact that, between 2012 and 2015, Tattersalls increased the consideration it is willing to pay for the Brightwells business from £[redacted] million to £[redacted] million suggest that Tattersalls may be paying a 'premium' for the Brightwells business [redacted].
162. Furthermore, internal documents from Tattersalls³³ and Brightwells³⁴ indicate that [redacted].
163. Finally, as mentioned above, Brightwells already has a significant market position in the supply of bloodstock auctioneering services to national hunt horses, in particular point-to point horses, and has built a strong reputation around the auctioning of national hunt horses at the Cheltenham racecourse. The CMA considers that its success and good reputation in this category may facilitate Brightwells entry in the supply of auctioneering services to store horses. The network of contacts that Brightwells has developed with customers that seek its auctioneering services for national horses in training may enable Brightwells to have access to a sufficient number of store horses listings, as customers (in particular agents) tend to sell and purchase more than one category of bloodstock.
164. The CMA therefore cannot rule out that, absent the Merger, Brightwells would have entered in the supply of auctioneering services for store horses.
165. Regarding the impact on competition of Brightwells' entry in this category, based on Tattersalls' internal documents and Brightwells success in the sale of national hunt horses in training, the CMA considers that Brightwells could have been a sufficiently close competitor to Tattersalls for the supply of auctioneering services for store horses, such that the elimination of such a constraint would raise competition concerns.
166. The category of the market is currently concentrated with Tattersalls currently holding a share of supply of 56% by volume and 56% by sales ring turnover, and Goffs/DBS being the only other auctioneer present in this category in the

³³ See Tattersalls Ireland Business Review 2014.

³⁴ See the valuation report commissioned by Brightwells to Sidney Phillips.

UK and Ireland. Accordingly, the entry/expansion of Brightwells into this category would have led to greater competition.

167. Therefore, the CMA could not rule out that absent the Merger Brightwells would have expanded its supply of bloodstock auctioneering services for store horses thereby exerting significant competitive pressure on Tattersalls' and Goffs/DBS' quality of offering, sales commissions and entry fees in this category.

Conclusion

168. The CMA cannot rule out that the Merger will give rise to a realistic prospect of an SLC arising from a loss of actual potential competition in the supply of auctioneering services of store horses in the UK and Ireland. However, in light of paragraphs 194 to 213 below regarding the *de minimis* exception, the CMA does not find it necessary to conclude on this point in this case.

Co-ordinated effects

169. Co-ordinated effects may arise when firms operating in the same market recognise that they are mutually interdependent and that they can reach a more profitable outcome if they co-ordinate to limit their rivalry. The following conditions must be satisfied for co-ordination to be possible:

- (a) Firms must be able to reach and monitor the terms of co-ordination.
- (b) Co-ordination must be internally sustainable among the coordinating group, ie firms have to find it in their individual interests to adhere to the coordinated outcome.
- (c) Co-ordination must be externally sustainable, in that there is little likelihood of co-ordination being undermined by competition from outside the co-ordinating group.³⁵

Parties' views on co-ordination

170. The Parties submit that to reach and monitor the terms of price co-ordination in the bloodstock auctioneering market is difficult, as demonstrated by the wide variety of sales commission rates and fees charged by the different auctioneers. In the Parties' view, co-ordination based on customer allocation is also unsustainable because buyers can easily switch bloodstock auctioneer and their behaviour is unpredictable. Furthermore, the Parties note that

³⁵ *Merger Assessment Guidelines*, paragraphs 5.5.1–5.5.19.

bloodstock is highly differentiated, which makes co-ordination even more difficult to achieve.

171. The Parties therefore consider that any attempt at co-ordination would be easily noticed by customers and would risk driving customers to other auctioneers and to private sales.

Third party submissions

172. No third party expressed concerned with the risk of the Merger facilitating co-ordination in the bloodstock auctioneering sector.

CMA analysis

173. The CMA is not aware of evidence of any pre-existing co-ordination in the bloodstock auctioneering sector or any evidence that the specialisation of some bloodstock auctioneers in particular categories of bloodstock is the result of any co-ordinated behaviour, instead of unilateral choices of each auctioneer.
174. The evidence available to the CMA does not suggest that the characteristics of bloodstock auctioneering services are conducive to co-ordination or that any co-ordinated outcome would be easily monitored.
175. Although this sector is highly concentrated, there is limited price transparency and the product auctioned is highly differentiated. Bloodstock auctioneers have limited control on the stock available for each category of horses and the number of auctions that each bloodstock can conduct each is limited and conditioned by the races calendar.
176. Furthermore, from a demand-side perspective, there is a significant number of customers of bloodstock auctioneering services with a high degree of mobility and facing limited switching costs. Although the Merger will reduce the number of bloodstock auctioneers for some categories of horses, for the reasons set out above, the CMA considers that the Merger will not substantially increase the risk of co-ordination in the bloodstock auctioneering sector as it does not significantly impact on the incentive of bloodstock auctioneers in the UK and Ireland to coordinate, and on the sustainability of any coordinated behaviour.

Conclusion on co-ordinated effects

177. For the reasons set out above, the CMA considers that the Merger does not give rise to a realistic prospect of an SLC as a result of co-ordinated effects in relation to the supply of bloodstock auctioneering services.

Barriers to entry and expansion

178. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient.³⁶
179. The Parties submitted that barriers to entry in the supply of bloodstock auctioneering services are not significant because it is possible to commence operations in this sector through leasing or hiring premises in which to hold an auction, ie, without dedicated, permanent auction and stabling facilities.
180. However, the CMA received evidence from third parties that barriers to entry were significant in this market due to the need for an auctioneer to build its customer base and the reputation of its venue for the sale of particular types of bloodstock. Third parties also submitted that incumbent auctioneers had advantages in terms of: (i) conducting auctions on the most suitable dates, in line with the races calendar, and (ii) having developed a knowledge of the sector and personal relations with customers which facilitate access to listing, even when the stock is limited.
181. The CMA also found that access to suitable venues to hold actions may be a barrier to entry. As submitted by the Parties, racecourses are the preferred auctioning venues. Based on Brightwells' example, the incumbent auctioneers tend to have exclusive rights to hold auctions at these venues. Even if the contracts granting the incumbent auctioneer the right to hold auctions at those venues many have a relative short duration (eg Brightwells' agreement with the Ascot racecourse), the information submitted by the Parties and third parties indicates that racecourses normally renew the existing contract with the incumbent auctioneer.
182. The difficulty in obtaining the right to hold auctions at some racecourses is evidenced by Tattersalls' internal documents, which indicate that one of the

³⁶ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

reasons for Tattersalls to acquire the Brightwells business was that the 'acquisition of sales rights at Ascot could [redacted]'.³⁷

183. Barriers to expansion appear lower than barriers to entry as established bloodstock auctioneers (for the reasons set out above regarding Brightwells' potential expansion into the store horses auctioneering category) may expand into different categories more easily than new entrants, based on their customer base, reputation and existing auctioning venues.
184. However, the CMA found no examples of successful recent entry in the bloodstock auctioneering sector in the UK and Ireland, and received no evidence that any third party intended entering or expanding into the categories where the Merger raises competition concerns.
185. Furthermore, none of the competitors that responded to the CMA's market testing stated that it was considering expanding its operations into the UK or Ireland.
186. Accordingly, the CMA concluded that there would not be timely, likely and sufficient entry and/or expansion to mitigate the potential anti-competitive effects of the Merger such that the Merger would not give rise to a realistic prospect of an SLC.

Third party views

187. The CMA contacted customers and competitors of the Parties, as well as racecourses and trade associations. From the four competitors that responded to the CMA's market testing only one expressed concerns regarding the effects of the Merger on the bloodstock auctioneering sector overall, as after the Merger Tattersalls will only be constrained by one remaining competitor of significance in the UK and Ireland.
188. The CMA received submissions from ten customers of the Parties. Only two of these customer raised concerns with the Merger, stating that after the Merger only two bloodstock auctioneers would remain the UK and Ireland and that the Merger removes Brightwells as the most competitive or even only option for the sale of less valuable horses.
189. The racecourses and the trade associations that responded to the CMA's market testing were neutral or supportive of the Merger. One trade association noted that it would be negative for its members if, as a result of

³⁷ See the papers tabled at Tattersalls Board Meeting of 7 July 2014.

the Merger, sales commissions rates were to increase, or the auctions of Brightwells were moved to Newmarket, but it did not conclude on the likelihood of those hypothetical effects of the Merger.

190. Third party comments have been taken into account where appropriate in the competitive assessment above.

Conclusion on substantial lessening of competition

191. Based on the evidence set out above, the CMA's investigation cannot rule out that it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in relation to: (i) the supply of auctioneering services for flat racing horses in training in the UK and Ireland; (ii) the supply of auctioneering services for store horses in the UK and Ireland. The CMA therefore cannot rule out that the test for reference may be met in this case. However, it has not been necessary for the CMA to reach a conclusion on this point because the CMA has, for the reasons set out below, exercised its discretion to apply the *de minimis* exception to the duty to refer under section 33(2)(a) of the Act.

Exceptions to the duty to refer

192. Where the CMA's duty to refer is engaged, the CMA may, pursuant to section 33(2)(a) of the Act, decide not to refer the merger under investigation for a Phase 2 investigation on the basis that the market(s) concerned is/are not of sufficient importance to justify the making of a reference. The CMA has considered below whether it is appropriate to apply the *de minimis* exception to the present case.
193. The Parties stated that they were willing to waive their procedural rights to a full investigation, including the receipt of an Issues Letter and an Issues Meeting, in the event that the CMA found that its duty to refer might be met but that it would exercise its discretion not to refer given the markets concerned were of insufficient importance. This statement was provided without prejudice to the Parties' views on whether the duty to refer was met.³⁸ Given that, on the basis of the factors below, the CMA decided to apply this discretion, it did not send an Issues Letter to the Parties and no Issues Meeting was held.

³⁸ This procedural approach is in line with the *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance* (OFT1122), December 2010 – see paragraph 2.53. This guidance has been adopted by the CMA (see Annex D to *Mergers: Guidance on the CMA's Jurisdiction and Procedure*).

Markets of insufficient importance

194. In considering whether to apply the *de minimis* exception, the CMA will consider, in broad terms, whether the costs involved in a reference would be disproportionate to the size of the market(s) concerned, taking into account also the likelihood that harm will arise, the magnitude of competition potentially lost and the duration of such effects.³⁹

'In principle' availability of undertakings in lieu

195. The CMA's general policy, regardless of the size of the affected market, is not to apply the *de minimis* exception where clear-cut undertakings in lieu of a reference (UiLs) could, in principle, be offered by the parties to resolve the concerns identified.⁴⁰

196. In order for an UiL to be available in principle it must be:

(a) sufficiently clear-cut; and

(b) not wholly disproportionate in relation to the concerns identified.⁴¹

197. If the competition concerns arising from a merger relate to such an integral part of the transaction that to remedy them via a structural divestment would be tantamount to prohibiting the merger altogether, then clear-cut UiLs are not in principle available.⁴²

198. The CMA's concerns regarding the supply of bloodstock auctioneering services for low-value flat racing horses in training in the UK and Ireland may in principle have been addressed by the divestment of the Ascot lease. However, the CMA found that the competition concerns that the Merger raises in terms of elimination of Brightwells as a potential competitor in the supply of auctioneering services for store horses do not lead themselves, in principle, to being addressed through UiLs in the specific circumstances of this case. Based on the strong reputation of the Cheltenham racecourse for national hunt horse auctions, Brightwells would likely rely on this racecourse to expand its activities into the store horses category. In any event, Brightwells would need to rely on its expertise and goodwill to expand into this category, which means that only the divestment of the whole Brightwells business could potentially resolve this competition concern comprehensively.

³⁹ [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance](#), chapter 2.

⁴⁰ [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance](#), paragraphs 2.2 and 2.18-27.

⁴¹ [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance](#), paragraphs 2.22-2.27.

⁴² [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance](#), paragraph 2.25.

199. Accordingly, the CMA considers that, because any divestment capable of addressing the competition concerns raised by the Merger would be tantamount to prohibition, there are no clear-cut undertakings in lieu available in principle in this case.
200. On this basis the CMA therefore proceeded to consider whether to exercise its discretion to apply the *de minimis* exception.

Relevant factors

201. The CMA will consider the likely level of consumer harm by reference to a number of factors when deciding whether or not to apply the *de minimis* exception: the size of the market, the strength of the CMA's concerns that harm will occur as a result of the merger, the magnitude of competition that would be lost by the merger, and the likely durability of the merger's impact.⁴³ The CMA will also consider the wider implications of a *de minimis* decision.⁴⁴ Each is considered in turn below.

Market size

202. Based on conservative estimates, the aggregated revenues in the UK in the markets for the supply of auctioneering services for flat racing horses in training and store horses (**markets concerned**) is between £[3] million and £[10] million. These revenues were estimated by reference to the total revenue of the auctioneers present in UK and Ireland - including commissions and any other charges - derived from their operations in the UK regarding the markets concerned.⁴⁵
203. The total size of the markets concerned [£<] exceeds £3 million. However, the CMA notes, regarding the supply of auctioneering services for flat racing horses in training, the Parties only compete closely in the lower end of this market. Taking this into account would substantially reduce the size of the affected market.⁴⁶ Together the Parties, in 2014, sold less than 700 flat racing horses in training at the low end of the market (ie sold for less than £3,000).

⁴³ [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance](#), paragraph 2.28.

⁴⁴ [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance](#), paragraph 2.40-43.

⁴⁵ [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance](#), paragraphs 2.14, 2.15 and 2.30 state that for the purpose of the application of the *de minimis* exception, the CMA only includes the 'annual value in the UK of the market(s) concerned', independently of the geographic dimension of those markets. The CMA notes that in this case, even if the revenue derived from the auctioneers operations in Ireland was included, the aggregate value of markets concerned would be below £10 million (between £[£<] million).

⁴⁶ See footnote 13 of the [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance](#), which explains that the market concerned may be a subset of the relevant market as defined for the purpose of the competition assessment, where it is clear that the size of any customer detriment will be experienced by only a proportion of the relevant market.

204. The evidence available to the CMA does not indicate that the size of the markets concerned is expected to rise materially in the foreseeable future.
205. Overall, the CMA therefore considers that the market size is a factor pointing strongly in favour of the application of the *de minimis* exception.

Strength of the CMA's concerns

206. Based on the evidence assessed in the competitive assessment, the CMA considers that the Merger will have an anti-competitive effect regarding the supply of auctioneering services for flat racing horses in training, as the Merger will reduce the number of competitors from three to two in this market and this anti-competitive effect will be felt more acutely where the Parties compete more closely at the lower end of the market.
207. Regarding the market for the supply of auctioneering services for store horses, the evidence is finely balanced regarding the likelihood of Brightwells entering this market, but based on the evidence set out above the CMA cannot rule out that it is more than fanciful that the Merger will result in an SLC in this market arising from concerns about the loss of potential competition.

Magnitude of competition lost

208. Although the Merger in the markets concerned will reduce the number of auctioneers actually or potentially present in these markets from three to two, only three third Parties (two customers and one competitor) expressed concerns regarding the Merger and the majority of customers that responded to the CMA's market testing stated that the Parties are not close competitors. This suggests that the magnitude of competition lost may not be high. The evidence available to the CMA does not suggest that customers use the rivalry between the Parties to obtain better prices.
209. Overall, the CMA does not consider that the magnitude of competition lost by the Merger is a factor pointing against the application of the *de minimis* exception.

Durability

210. The likelihood of new entry and expansion is not sufficient to counter the SLC that may arise from the Merger in the markets concerned. The CMA, however, notes [X] and that barriers to expansion may be lower than barriers to entry.

Replicability

211. The CMA will also take account of the wider implications of its decisions in this area, and will be less likely to exercise its discretion, and therefore more likely to refer, where a Merger is potentially replicable across a number of similar markets in a particular sector.⁴⁷
212. The Merger is not one of a potentially large number of similar mergers that could be replicated across the bloodstock auctioneering sector. In any future transactions in this sector the CMA would, in any event, examine to what extent the competitive conditions are comparable to those it has assessed for the purposes of this decision.
213. The CMA thus considers, on the basis of the evidence available to it, that its *de minimis* decision is not likely to be replicable in similar markets across the sector.

Conclusion on the application of the de minimis exception

214. Taking all the above factors into consideration, and having particular regard to the size of the markets concerned, the CMA considers that the markets concerned in this case are not of sufficient importance to justify the making of a reference. As such, the CMA considers that it is appropriate for it to exercise its discretion to apply the *de minimis* exception.

Decision

215. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom. However, pursuant to section 33(2)(a) of the Act, the CMA believes that the market concerned are not of sufficient importance to justify the making of a reference.
216. The Merger will therefore **not be referred** under section 33 of the Act.

Nelson Jung
Director, Mergers
Competition and Markets Authority
15 September 2015

⁴⁷ [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance](#), paragraphs 2.40-2.43.

ⁱ Footnote 11 should read: 'bought-in sales commissions (ie commission charged to the vendor when it bids on its own horse and buys it back in the ring.)'.

ⁱⁱ The definition of older horses in Figure 1 should read: 'Horses that are no longer in training'.

ⁱⁱⁱ Paragraph 109 should read: 'The CMA received evidence that Tattersalls attempted to expand its operations in Ireland to the supply of auctioneering services for point-to-point horses between 2011-2012.'