Anticipated merger of Betfair Group plc and Paddy Power plc

ME/6572/15

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 17 December 2015. Full text of the decision published on 29 December 2015.

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

SUMMARY

1. The proposed transaction comprises the merger of Betfair Group plc (**Betfair**) and Paddy Power plc (**Paddy Power**), resulting in the combined entity Paddy Power Betfair plc (the **Merger**). Betfair and Paddy Power are together referred to as the **Parties**.

2. The Competition and Markets Authority (**CMA**) considers that the Parties' enterprises will cease to be distinct as a result of the Merger, that the turnover 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 both provide various types of gambling services to customers. These services broadly fall into two categories: 'betting' (which involves customers gambling on the outcome of various events such as horse racing, greyhound races, football, etc), and 'gaming' (which mainly involves customers gambling on digitised versions of casino games or other games such as bingo). Paddy Power sells these gambling products both online and through its network of betting shops, whereas Betfair is only active online. Betfair also provides business-to-business (**B2B**) services, including the supply of betting exchange data to other gambling operators. The CMA has therefore assessed the impact of the Merger in relation to the supply of online betting and online gaming services in the United Kingdom (**UK**).

4. In parallel to the Merger, Ladbrokes plc (**Ladbrokes**) and Gala Coral Group Limited (**Gala Coral**) have announced their intention to merge. Both of these companies are active in the same and in adjacent markets to the Parties. Whilst taking account of the parallel transaction, the CMA does not consider that it substantially affects its competitive assessment.

5. In its competitive assessment, the CMA considered whether, as a result of horizontal unilateral effects, the Merger may lead to less competitive fixed odds or prices in the supply of online betting and gaming services in the UK and whether, as a result of vertical effects in the supply of exchange data, the merged entity would have the ability and incentive to foreclose its competitors, by refusing to supply, or by increasing the prices of its betting exchange data.

6. In relation to the supply of online fixed odds betting, the CMA considers that, based on the Parties' customer surveys, the Parties' internal marketing and strategy documents and third party responses, the Parties are not each other's closest competitors and that post-Merger, the Parties will face competitive constraints from a number of alternative providers of online fixed odds betting services.

7. In relation to the supply of online gaming services, the CMA considers that, post-Merger, the Parties' combined share of supply will be relatively low and that on a fascia count the Merger will reduce the number of competitors from eight to seven, with at least three competitors having a higher or similar share of supply to the merged entity. In addition, third party responses indicated that the Parties compete, but that they are not particularly close competitors.

8. In relation to the supply of exchange data, the CMA does not consider that Betfair's exchange data is an essential input for betting operators to price and manage customer risk and that there are alternative information sources available.

9. For these reasons, the CMA does not believe that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral or vertical effects.

10. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

11. Betfair is an international online gambling operator, offering online betting (including both a betting exchange and a sportsbook, which are described further below) and online gaming services in the UK. Betfair's B2B services include pricing and risk management services, such as the provision of exchange data and corporate accounts for hedging purposes.[1] Gambling operators may purchase pricing and volume data generated on an exchange to assist with their own sportsbook pricing and customer risk management. Betfair's net revenues in the UK for the financial year ending 30 April 2015 were approximately [✂].[2] Betfair is listed on the London Stock Exchange.

12. Paddy Power is an international gambling operator, providing online, retail and telephone gambling services in the UK. Paddy Power offers online sports betting via a sportsbook, online gaming and B2B services. It is also active in the retail distribution of gambling services through its network of betting shops. Paddy Power's net revenues in the UK for the financial year ending 31 December 2014 were approximately [✂]. Paddy Power is listed on the London Stock Exchange and the Irish Stock Exchange.

Background

Betting industry

13. The betting industry distinguishes between on-course betting (bets taken by bookmakers present at a racecourse) and off-course betting (all other bets taken through various distribution channels). The industry furthers distinguishes between fixed odds betting (ie where a customer bets a stake to win a fixed amount calculated by the odds available) and pool betting (ie where a bet is placed on the terms that all or part of the winnings will be determined by reference to the aggregate of stakes paid or be divided among the winners).

14. The Parties offer fixed odds betting via their sportsbooks and Betfair's exchange. On a sportsbook, bets are made between a customer and a bookmaker, where the customer 'backs' (bets that an outcome will occur) and

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[1] The Parties submitted that betting providers typically hold corporate accounts with other gambling operators for the purpose of hedging their liabilities as and when required.
[2] The Parties submitted that for sportsbooks, fixed-odds games and online casinos, net revenues represent the net gain from betting activities (ie, amounts staked, less winnings, less any 'free bets'). In relation to the Parties' peer-to-peer games, and Betfair's exchange and exchange games, net revenue represents the commission earned from customers and any tournament fees charged.

the bookmaker 'lays' (bets that the outcome will not occur). By contrast, a betting exchange facilitates the making or acceptance of bets between individuals by providing an internet-based forum for users to either 'back' or 'lay'. Bets are matched between people with opposing views on the outcome of those events.

Gaming industry

15. Online gaming operators may offer a broad range of different games, including bingo, casino, poker and slots, in which customers participate in a game played for money or another prize. The Parties submitted that, although games may appear to be different, most gaming products involve bets against the outcome of a random number generator and are commonly produced by third party developers and licensed to operators. Certain games, such as poker, are played directly against other customers (ie, peer-to-peer games).

Regulatory framework

16. The Gambling Commission was set up under the Gambling Act 2005 and regulates commercial gambling in Great Britain. The Gambling (Licensing and Advertising) Act 2014 (the **2014 Act**) requires a gambling operator to hold the relevant operating licence if it offers or advertises remote gambling services to customers in Great Britain.

17. To offer remote gambling services (for example online gambling) to customers in Northern Ireland, gambling operators do not require an operating licence under the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (the **1985 Order**).[3] However, the 2014 Act requires remote gambling operators to hold a licence if they advertise to customers in Northern Ireland.[4]

Transaction

18. The Parties submitted that the proposed transaction comprises an all-share merger of Betfair and Paddy Power, resulting in the combined entity Paddy Power Betfair plc. Shareholders of Paddy Power will own 52% and shareholders of Betfair will own 48% of Paddy Power Betfair plc's shares. It is

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[3] Gambling operators do require an operating licence from the court under the 1985 Order to service betting shops in Northern Ireland.
[4] The CMA understands from the Gambling Commission that this is the same licence that an operator would hold for the provision of remote gambling services in Great Britain.

intended that the Merger will be implemented by way of a court sanctioned scheme of arrangement under Part 26 of the Companies Act 2006.

19. The Parties submitted that the rationale for the Merger is to compete more effectively in the global marketplace, in particular to combine complementary products, distribution channels and capabilities to offer a broader range and more innovative products and services to existing and new customers across a wider geographic market.

20. The Parties informed the CMA that, in addition to the UK, the Merger is also the subject of review by the competition authorities in Ireland and the United States.

Jurisdiction

21. As a result of the Merger, the enterprises of Betfair and Paddy Power will cease to be distinct. The UK turnover of Betfair exceeds £70 million, satisfying the turnover test in section 23(1)(b) of the Act. Therefore, the CMA 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.

22. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 10 November 2015 and the statutory 40 working day deadline for a decision is therefore 7 January 2016.

Counterfactual

23. The Parties submitted that the CMA should assess the competitive effects of the Merger against the current conditions of competition.

24. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). When the CMA is required to consider a merger at a time when there is the prospect of another merger in the same market (ie a parallel transaction), the CMA will assess whether the merger under review creates a realistic prospect of an SLC, and it is likely to consider whether the statutory test would be met whether or not the parallel transaction proceeds, unless the parallel transaction can clearly be ruled out as being too speculative.[5]

[5] *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5, in particular paragraphs 4.3.25 to 4.3.26. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).

25. In parallel to the Merger, as set out above, Ladbrokes and Gala Coral have announced their intention to merge. The CMA considers that Ladbrokes/Gala Coral is a parallel transaction and has therefore assessed the Merger against a counterfactual which assumes that the Ladbrokes/Gala Coral merger will take place. The CMA did not find it necessary to assess the Merger against a counterfactual that did not take into consideration the parallel transaction, as the Merger does not create a realistic prospect of an SLC when assessed against the less competitive counterfactual in which the Ladbrokes/Gala Coral merger does take place.

Frame of reference

26. 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.[6]

Product scope

27. The Parties submitted that they both operate across a wide spectrum of gambling services and that both betting and gaming are two components of the wider gambling services sector, which may constitute a single product market. Accordingly, most providers offer gaming and betting services and many customers engage in both betting and gaming activity with the same motivations (eg to win money).

28. Within betting, the Parties submitted that exchange and sportsbook betting are different ways of satisfying the same demand (ie to gamble by placing a bet), but that they are differentiated offerings to a certain extent and are of varying appeal to different types of customers, as betting on exchange is arguably more complicated than betting via a sportsbook. However, the Parties also submitted that these products have a competitive relationship.

29. Further, the Parties submitted that there are different distribution channels, but that they only overlap in the supply of online services.

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[6] *Merger Assessment Guidelines*, paragraph 5.2.2.

Gambling: betting vs. gaming

30. In the completed acquisition by Lightcatch Limited (trading as Betfred) of Tote (Successor Company) Limited (**Lightcatch/Tote**), the OFT considered there to be separate markets for betting and gaming.[7]

31. The CMA considers that, from a demand-side perspective, the Parties' internal documents suggest that [✂].[8] However, gambling operators told the CMA that the demographics within the gaming market differ significantly from the betting market, for example, bingo is mainly played by women whereas gambling punters are primarily men.

32. From a supply-side perspective, the CMA's market testing has shown that the majority of providers offer both betting and gaming services. However, several competitors only offer gaming services.[9] The CMA considers that betting operators require different capabilities to gaming operators, in particular in relation to setting odds and managing a sportsbook. In addition, the shares of supply of most operators differ significantly between betting and gaming,[10] suggesting that competitive conditions between the two services are different.

33. The CMA has therefore assessed the Merger on the basis of separate markets for fixed odds betting and gaming, but did not consider it necessary to reach a definitive conclusion given that no competition concerns arise on this narrower basis.

Fixed odds betting: sportsbook vs. exchange

34. From a demand-side perspective, providers of online betting services told the CMA that, in their view, exchange and sportsbook betting are seen as alternatives and meaningful substitutes by customers, as they are both fixed odds betting services and some customers hold accounts for both types of betting services.[11] However, several third party responses and the Parties' internal documents[12] also indicate that more professional and/or sophisticated punters prefer betting on exchange, whereas recreational punters prefer betting on sportsbook.

35. From a supply-side perspective, the CMA considers that there might be some barriers to gambling operators moving between the operation of sportsbooks and exchanges as these two types of service require different types of

[7] Lightcatch/Tote, 19 January 2012, paragraph 15.
[8] Paddy Power internal document, [✂].
[9] Gamesys, Rank, Jackpot Joy, Mecca and Tombola are not active in betting services.
[10] See Table 1 and Table 2 below.
[11] A third party referred to the Kantar market sizing report, [✂].
[12] Betfair internal document, [✂] and Paddy Power internal document, [✂].

systems and skills. Moreover, the operation of an exchange can involve network effects that can make it difficult for other operators to enter and build scale. Betfair operates by far the largest betting exchange and a competitor informed the CMA that competing exchanges found it difficult to attract large numbers of punters, which suggests that entry into the supply of exchange betting is not straightforward.

36. The CMA has assessed the Merger on the basis of a single market for online fixed odds betting, including exchange and sportsbook.[13] However, the CMA has not considered it necessary to reach a definitive conclusion in this regard.

Distribution channel

37. In Lightcatch/Tote,[14] the OFT considered segmenting the market by distribution channel, for example retail and online. On the basis that the Parties only overlap in relation to the supply of online services, the CMA assessed the Merger in relation to online betting and gaming services only, and due to the lack of overlap in other channels, did not consider it necessary to conclude on whether different distribution channels should form separate markets.

Betting exchange data

38. The Parties submitted that gambling operators may purchase pricing and volume data generated on a betting exchange to assist with their own sportsbook pricing and customer risk management. The Parties further submitted that there is other data available which sportsbook operators can rely on for the purposes of pricing and managing customer risk.

39. Third party responses to the CMA's market testing indicate that Betfair's exchange is of particular value to betting operators due to its liquidity and the quality of the information.

40. Therefore, the CMA also assessed this Merger in relation to the supply of betting exchange data, but does not consider it necessary to form a firm view on this frame of reference as no competition concerns arise on any plausible basis.

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[13] As Paddy Power does not operate a betting exchange, it is more cautious to assess the Merger on a wider frame of reference including sportsbook and betting exchange.
[14] Lightcatch/Tote, paragraphs 16–20.

Geographic scope

41. The Parties submitted that competition takes place on an international level, but also provided details for a combined UK and Ireland market as well as for the UK separately.

42. In Lightcatch/Tote,[15] the OFT noted that the online market was at least EEA-wide, if not worldwide, as there were no barriers (regulatory or otherwise) to non-UK websites offering betting and gaming services to UK customers. However, as set out above, the implementation of the 2014 Act changed the licensing regime and all remote gambling operators are required to obtain the relevant operating licence from the Gambling Commission if they wish to provide remote gambling services to customers in Great Britain.[16]

43. Responses from the Gambling Commission and other third parties indicate that all operators that supply to UK customers operate under a licence from the Gambling Commission.

44. Therefore, the CMA considers that the relevant geographic frame of reference is the UK (ie the supply to UK customers), but does not consider it necessary to reach a definitive conclusion given that no competition concerns arise on this narrower basis.

45. In relation to the supply of betting exchange data, the CMA considers that Betfair supplies gambling operators, which in turn supply UK customers. Therefore, the CMA has assessed the supply of exchange data on a UK-wide basis, but notes that the market might be wider, as the supply of exchange data is not subject to the same regulatory restricitions as the supply of gambling services to UK customers.

Conclusion on frames of reference

46. For the reasons set out above, the CMA considered the impact of the Merger in relation to the following frames of reference:

    (a) The supply of online fixed odds betting services to customers in the UK.

    (b) The supply of online gaming services to customers in the UK.

    (c) The supply of betting exchange data in the UK.

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[15] Lightcatch/Tote, paragraph 39.
[16] As set out above, remote gambling operators only require a licence to advertise to customers in Northern Ireland, but do not require a licence to provide remote gambling services to customers in Northern Ireland.

47. However, it was not necessary for the CMA to reach a conclusion on the frames of reference, since, as set out below, no competition concerns arise in this case.

Competitive assessment

Horizontal unilateral effects

48. 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 and/or other non-price factors on its own and without needing to coordinate with its rivals.[17] 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 has resulted, or may be expected to result, in an SLC in relation to unilateral horizontal effects in the frames of reference set out above.

Theory of harm 1: horizontal unilateral effects in the supply of online fixed odds betting

Shares of supply

Table 1: The Parties' and their competitors' shares of supply of online fixed odds betting in the UK, 2014

	£m	*%*
Entity		*Shares of supply*
Paddy Power	[✄]	[5–10]
Betfair	[✄]	[10–20]
Betfair Paddy Power	[✄]	[20–30]
Bet365	[✄]	[20–30]
William Hill	[✄]	[10–20]
Sky Bet	[✄]	[5–10]
Ladbrokes	[✄]	[5–10]
Gala Coral	[✄]	[0–5]
Ladbrokes/Gala Coral	[✄]	[5–10]
Others	[✄]	[5–10]
Total market size	[✄]	100

Source: Parties' submissions, 6 November 2015.

49. As set out above, whilst, post-Merger, the Parties will become the largest supplier of online fixed odds betting in the UK, their combined share of supply will be moderate and there are a number of other credible competitors remaining in the market.

[17] *Merger Assessment Guidelines*, from paragraph 5.4.1.

Closeness of competition

50. The Parties submitted that they are not each other’s closest competitors and that this is supported by survey evidence and a so-called share of competitive wallet analysis.[18] The CMA also assessed each party’s list of terms provided to Google AdWords together with their spend for each of these terms.

Surveys

The Parties submitted that Paddy Power asks customers who have stopped using their account for three months why this is the case and whether they opened an account with (or returned to) a competitor. Customers are also asked which provider they used most for their sports bets. These surveys resulted in the following [✂]: [Bet365 [✂], Betfair [✂], Sky Bet [✂] and William Hill [✂]].

51. In addition, regular Betfair surveys of new customers indicate that these customers have mainly switched to Betfair from William Hill, Sky Bet, Paddy Power, Bet365 and Ladbrokes.[19]

Share of competitive wallet analysis

52. Paddy Power submitted that it surveys its online customers to understand how it is perceived regarding its competitors. By assuming that there is a positive correlation between the rank that customers assign to a brand that they use and the percentage of their total spend on that brand, each brand’s share of competitive wallet is generated. Based on results in April 2015, Paddy Power’s UK customers [✂] of their wallet by betting on [Bet365 [✂], Betfair [✂], Gala Coral [✂], Paddy Power [✂], Sky Bet [✂] and William Hill [✂]]. This is broadly consistent with the results of Paddy Power’s survey referred to above and indicates that competitors other than Betfair are providing a competitive constraint on Paddy Power.

Google AdWords

53. Whilst the Parties submitted that the choice of terms provided to Google AdWords is driven by a variety of reasons, the CMA focused on terms that target customers searching for a competitor as this gives an indication of

[18] The Parties also submitted brand inter-relation evidence for the wider online gambling market which the CMA considered as part of its overall review. On average, Paddy Power’s customers used [✂] online gambling sites, including William Hill, Bet365, Ladbrokes, Sky Bet, Betfred, Betfair and Gala Coral; and Betfair’s customers used [✂] online gambling sites, including Bet365, William Hill, Sky Bet, Paddy Power, Ladbrokes, Betfred and Gala Coral; [✂].

[19] Betfair internal document: [✂].

which competitor's customers are being targeted by the Parties and therefore which rivals they consider themselves to compete with most closely.

54. On the basis of the relative amounts of spend in relation to each competitor, the CMA found that Paddy Power primarily targets customers searching for [Bet365, Betfair, Betfred, Gala Coral, Ladbrokes, Sky Bet and William Hill] [✂].[20] This suggests that Paddy Power is not targeting Betfair's customers in preference to customers of its other competitors.

55. Conversely, in relation to Betfair, the Google AdWords spend suggested that Betfair is [✂] targeting customers that are searching for Paddy Power, [✂] Bet365, Betfred, Gala Coral, William Hill and Ladbrokes.[21]

Third party responses

56. The CMA's market testing has shown that third parties consistently referred to the Parties as close competitors. The CMA received 12 responses from the Parties' competitors, of which eleven considered the Parties to be close competitors and one considered the Parties to be particularly close competitors. In addition, two odds comparison websites told the CMA that they consider the Parties to be close competitors.

Internal documents

57. The CMA reviewed a large number of the Parties' internal documents and found that each of the Parties monitors the offerings of a group of competitors, which usually includes the other merging party. For example, an internal Paddy Power presentation about online sportsbook betting lists [✂] competitors as William Hill, Ladbrokes, Sky Bet, Bet365 and Betfair.[22] The same set of competitors is included in a competitor gap analysis performed by Betfair.[23] A price benchmarking analysis conducted by Betfair additionally includes BetVictor and Gala Coral in the competitor set, but does not include Sky Bet.[24]

58. The CMA considers that the Parties' internal documents indicate that the Parties are close competitors, but that the documents do not suggest that the Parties compete more closely with each other than with other large online betting operators.

[20] [✂].
[21] [✂].
[22] Paddy Power internal document: [✂].
[23] Betfair internal document: [✂].
[24] Betfair internal document: [✂].

Conclusion on closeness of competition

59. Based on the evidence set out above, the CMA considers that the Parties are close competitors. However, on balance, the CMA does not consider that the Parties compete more closely with each other than with other large online betting operators. Although Betfair's Google AdWords terms suggest that Betfair is targeting Paddy Power's customers (as well as customers from a number of other competitors), the CMA notes that Betfair's internal documents as well as third party responses indicated that other rivals compete at least as closely.

Competitive constraints exerted from the remaining online betting operators

60. As set out above, based on the Parties' internal surveys and documents, the CMA considers that there are a number of large online betting operators with whom the Parties compete closely. In particular, the Parties' internal documents and customer surveys refer to Bet365, William Hill, Sky Bet, Ladbrokes and Gala Coral. The CMA considers that these competitors will exert a competitive constraint on the merged entity.

61. Therefore, the CMA considers that, post-Merger, the Parties will face competitive constraints from a number of large online betting operators and that the Merger will reduce the number of credible competitors from six to five.[25]

Third party views regarding the impact of the Merger

62. The majority of third party responses indicated that they expect the Merger to have little impact on the market, with some competitors expecting a stronger competitive constraint from the merged entity, with two competitors raising concerns in relation to the Merger's impact on price rises and reduction in choice of operators in the market.

Conclusion on horizontal unilateral effects in online fixed odds betting

63. As set out above, the CMA considers that the Parties are not each other's closest competitors and that they will continue to face competitive constraints from other large online betting operators. Accordingly, the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of online fixed odds betting services in the UK.

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[25] See Table 1 above.

Theory of harm 2: horizontal unilateral effects in the supply of online gaming

Shares of supply and remaining competitive constraints post-Merger

Table 2: The Parties' and their competitors' shares of supply for online gaming in the UK, 2014

Entity	*£m*	*%* *Shares of supply*
Paddy Power	[✂]	[5–10]
Betfair	[✂]	[0–5]
Betfair Paddy Power	[✂]	[10–20]
William Hill	[✂]	[10–20]
Gamesys	[✂]	[10–20]
Gala Coral	[✂]	[10–20]
Sky Bet	[✂]	[5–10]
888	[✂]	[5–10]
Ladbrokes	[✂]	[5–10]
Ladbrokes/Gala Coral	[✂]	[10–20]
Bet365	[✂]	[0–5]
Others	[✂]	[30–40]
Total market size	[✂]	100

Source: Parties' submission, 6 November 2015.

64. As set out above, post-Merger, the Parties' combined share of supply will be relatively modest with several other large suppliers present in the market. On the basis of a fascia count, the Merger will reduce the number of competitors from eight to seven, with at least three competitors having a similar or higher share of supply than the merged entity.

65. Third party responses indicated that the Parties compete against each other, but that they are not particularly close competitors. In addition, a large majority of third parties told the CMA that they do not expect any negative impact on the market for online gaming.

Conclusion on horizontal unilateral effects

66. As set out above, the CMA considers that based on the shares of supply of the merged entity and the significant number of competitors who can be expected to constrain the Parties post-Merger, the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of online gaming services in the UK.

Theory of harm 3: vertical unilateral effects in the supply of exchange data

67. Vertical effects may arise when a merger involves firms at different levels of the supply chain. Vertical mergers may be competitively benign or even efficiency-enhancing, but in certain circumstances can weaken rivalry (eg when they result in foreclosure of the merged firm's competitors). The CMA

only regards such foreclosure to be anticompetitive where it results in an SLC in the foreclosed market(s), not merely where it disadvantages one or more competitors.[26]

68. Betfair told the CMA that the formal sale of exchange data was a by-product of its exchange operation and that the data sold was identical to the data that can be seen on its website as a logged-in customer. However, if a betting operator purchases data, it can access it either through browsing the Betfair website or through a data feed, which allows for instant data processing.

69. In the present case, the CMA considered whether the Merger may give rise to vertical effects by foreclosing competitors' access to the merged entity's exchange data. To this end, the CMA assessed the merged entity's ability to foreclose competitors, its incentive to do so and the overall effect of such a strategy on competition.[27]

Ability to foreclose

70. The Parties submitted that exchange data is not an essential input for the operation of a sportsbook, that there are alternatives available and that they would not be able to cause rivals' customers to divert downstream.

Essential input

71. In response to the CMA's market testing, some large betting operators told the CMA that they consider Betfair's betting exchange data to be important in relation to offering competitive odds and monitoring trading risks. They were concerned that, post-Merger, the exchange data would become unavailable and that this might impact on competition. One operator told the CMA that if the exchange data were to become unavailable, this would have a negative industry wide effect on service and price, leading to poorer value for the end-user as operators manage risk in different ways.

72. The CMA found that several of the large betting operators currently do not purchase Betfair's exchange data, either because they no longer considered it to be good value for money or because they have found alternative sources of information.

[26] In relation to this theory of harm 'foreclosure' means either foreclosure of a rival or to substantially competitively weaken a rival.
[27] *Merger Assessment Guidelines*, paragraph 5.6.6.

Available alternatives

73. The Parties submitted that there are alternatives to Betfair's exchange data, such as exchange data from Ladbrokes/Betdaq, Matchbook and Smarkets as well as source data from established third party odds providers (eg Betrader) or odds comparison websites (eg Oddschecker).

74. Third parties told the CMA that Betfair's exchange data is superior to other exchange data available in the market, for example Betdaq and Smarkets, as these do not have the same level of liquidity as Betfair. One third party told the CMA that it views Betfair's data as the most reliable and accurate source, given the high transaction volume and value traded on the Betfair exchange.

75. The CMA considers that whilst Betfair's exchange data appears to be of particular value to betting operators due to its liquidity and the quality of the information, there are other available sources of information available to betting operators for the management of their sportsbook, such as from odds comparison websites or third party odds providers.

Diversion

76. The Parties submitted that input foreclosure requires not only that a rival's costs are raised but also that, as a result of the higher cost, the rival increases its own price substantially, causing customers to divert from the rival to the merged entity's downstream operation. According to the Parties, Betfair does not have the ability to cause this to occur to any meaningful degree, as the cost of exchange data is small (meaning that rivals' costs cannot be raised materially) and are not likely to be passed on (as they are a fixed cost).

77. One third party told the CMA that its betting markets were performing less well without the supply of Betfair's exchange data. However, it was not possible to quantify this impact and the CMA considers that the impact of the missing data is unlikely to be substantial. The CMA also notes that Paddy Power itself did not purchase Betfair's exchange data since June 2014, but its net revenues grew by 18% in 2014 compared to the previous year.

78. The CMA found that the size of the data cost is small relative to the net revenues of the betting operations (well below 1%) and is fixed in nature. Even if the cost of exchange data were to increase significantly, this is unlikely to prevent any of the large betting operators setting their odds competitively and hence, the Parties are not able to cause any meaningful diversion.

Incentive to foreclose

79. To assess whether the Parties would have an incentive to stop supplying exchange data or increase prices substantially, the CMA assessed whether this would be likely to be a profitable strategy for the Parties and whether the Merger was likely to change their incentive significantly.

80. The Parties submitted that they were unlikely to engage in total foreclosure because they would forgo the margin earned on the supply of exchange data without the prospect of generating significant diversion from rivals to the Parties.

81. The CMA considers that Betfair already operates a sportsbook and directly competes against other betting operators. This implies that it would already have an incentive to stop supplying exchange data if this were to be a profitable strategy. In addition, and as set out above, there are a number of other close competitors that customers may divert to (and that do not currently purchase exchange data) meaning that the Parties will not recapture significant diversion from any foreclosed competitor. Therefore, the CMA considers that the Merger is unlikely to increase the Parties' incentive to foreclose significantly. As there is no ability or incentive to foreclose, the CMA did not consider it necessary to assess the effect of foreclosure on competition.

Conclusion on vertical effects

82. The CMA considers that although Betfair's exchange data appears to be a useful input, it is not essential to betting operators, as large betting operators trade and offer competitive odds without it and there are alternative sources available. In addition, the CMA believes that the Parties would not be able to cause any meaningful diversion and that they would not have the incentive to foreclose. Accordingly, the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC as a result of vertical effects in relation to the supply of exchange data.

Barriers to entry and expansion

83. 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.[28] However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

Third party views

84. The CMA contacted the Parties' competitors and customers of exchange data. The CMA also contacted odds comparison websites and providers of sports betting data. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

85. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the UK.

86. The Merger will therefore **not be referred** under section 33(1) of the Act.

Jonathan Parker
Director of Mergers
Competition and Markets Authority
17 December 2015

[28] *Merger Assessment Guidelines*, from paragraph 5.8.1.