LADBROKES / CORAL

MAIN PARTIES' RESPONSE TO THE NOTICE OF POSSIBLE REMEDIES

1 Executive summary

1.1 The Parties welcome this opportunity to comment on the CMA's Notice of Possible Remedies (the **Remedies Notice**) and will respond separately to the Provisional Findings Report (**PFs**). However for the purposes of this Response, it is worth noting that the PFs conclude that competition among LBO operators takes place at a local level (with the identification of 659 local areas in which the Merger may lead to a substantial lessening of competition (**SLC**)) and the national competition theory of harm set out by the CMA arises solely due to an aggregation of local effects. Against this background, the Remedies Notice proposes two remedies that the CMA considers may be effective to remedy these SLCs: (a) prohibition; or (b) divestiture of one or more Ladbrokes LBOs and/or one or more Coral LBOs in each local area in which an SLC may be expected to result (the "divestiture remedy").[1] In short, the divestiture remedy proposed by the CMA will comprehensively and effectively address the provisional concerns identified and therefore prohibition would clearly be disproportionate.

1.2 The Remedies Notice also seeks views on the implementation of the divestiture remedy,[2] including:

(a) whether an up-front buyer is required;

(b) the purchaser suitability criteria and in particular whether to include a requirement that a purchaser should have sufficient scale (including the LBOs to be acquired);

(c) whether the Parties should be allowed to select the LBOs to be divested;

(d) whether to prescribe a method or process for the divestiture; and

(e) the period within which the divestiture should occur and what should happen if the divestiture package cannot be sold in that period.

1.3 Each of these points is examined in detail in Section 3 below. In short:

(a) **Up-front buyer:** the sale of hundreds of shops represents a unique opportunity for potential entrants to create a large business or for existing operators to increase the size of their estates far more quickly and effectively than they would otherwise be able to do. Unsurprisingly, there has therefore been strong interest from a large pool of credible purchasers. [✂] means that there is very little risk that buyers (acceptable to the CMA) will not be found for all of the LBOs to be divested. As such the Parties believe there is no basis or need for the imposition of an upfront buyer condition.

(b) However, if the CMA were to decide to impose such a requirement despite this strong and credible interest from potential purchasers, it would be wholly unnecessary to require the Parties to complete the sale of the divestments before being allowed to complete the Merger; exchange on the divestments would be enough. In practice, it would be extremely difficult to degrade the divestiture LBOs given the specific features of this market and the practical day-to-day operation of an LBO. In any event, the typical asset maintenance undertakings relating to the protection of the divestiture package would address any residual risk. Additionally, the Parties believe it would be disproportionate to prevent the

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1 The CMA notes in this regard that, where such SLC areas overlap, it may be the case that divestiture of one LBO would remedy, mitigate or prevent the SLC or any resulting adverse effect in more than one area (Remedies Notice, at paragraph 8). As explained further in paragraphs 3.22 to 3.31 below, this implies that in certain instances, it may be possible to remedy, mitigate or prevent the SLC in a local area by divesting one or more LBOs that have not been identified as problematic by the CMA.

2 Remedies Notice, at paragraphs 14 and 15.

Merger from completing in the event that the disposal of the large majority of problematic shops had been achieved, with only a small residual package of shops remaining to be sold. Moreover, as noted above, there is little risk that the divestiture would take a protracted period and again, this can be addressed comprehensively in the undertakings given by the Parties;

(c) **Purchaser approval criteria:** the standard purchaser suitability criteria are more than adequate in this case, because they ensure that any buyer has the requisite capability and a suitable business plan, such that the LBOs will continue to be as strong a competitive constraint going forwards. Any further requirements would, therefore be disproportionate and would, in fact, have the effect of reducing the Parties' ability to conduct an efficient and effective sales process;

(d) **Selecting LBOs for divestment:** considering the UK competition authorities' previous practice, it would be unusual for the CMA to determine the specific shops that are included in a divestiture package. [3] Provided that a proposed divestment package results in none of the Parties' LBOs being identified as problematic under the CMA's rules, this will satisfy all the CMA's concerns (that is both the local SLCs and the national aggregation SLC). In the absence of any clear competition reasons for doing so, it would be disproportionate to prevent the Parties from selecting the LBOs for divestment. There are no special circumstances in the present case that would justify this, particularly where an up-front buyer requirement is imposed. Moreover, there are a number of important practical reasons why the Parties should have flexibility to select the LBOs to be included in the package.

(i) It may prevent the Parties from divesting a "silver bullet" LBO that either remedies multiple SLCs or affects the list of potential purchasers, as explained in the point below. This would be unnecessarily restrictive and would add cost to the process, because the Parties would lose the ability to build the most effective package for sale.

(ii) Flexibility is important, because some purchasers (existing bookmakers) may be able to acquire certain stores but not others (for competition law reasons) and as the sales process gathers pace, the Parties will need to be in a position to adjust the package/packages to suit purchasers' bespoke requirements.

(iii) It is unclear how the CMA would set criteria to choose different LBOs that are all equally capable of remedying an SLC, and any such decisions by the CMA would be highly arbitrary.

In the time available, it has not yet been possible for the Parties to consider in detail the CMA's approach in the PFs to identifying problematic areas and how these may be remedied by reference to specific LBOs. However, the Parties will separately provide a proposal setting out a package of LBOs for divestiture such that none of the merged entity's LBOs fail the CMA's rules for identifying local SLCs,[4] although this may need to change depending on buyer requirements;

(e) **Sales process:** again, there are no unusual features to divestiture in this case that require any special provisions. The ordinary asset maintenance undertakings which impose a general duty to maintain the divestment package in good order and not to undermine its

[3] See paragraph 3.22 and footnote 23 below regarding the UK competition authorities' decisional practice in this regard.

[4] That is for an overlap at 400m, an LBO does not fail the CMA's rules if either (i) the LBO's Weighted Share of Shops (**WSS**) is below 35%; or (ii) the LBO has four or more competing LBOs within 400m. For overlaps at 400m to 800m, an LBO is not deemed to be problematic if there is at least one competing LBO within 1600m.

competitive position will therefore be sufficient. There is no need for a formal hold separate in this case, as there is a low risk that the assets will degrade and it would therefore be overly burdensome; and

(f) **Divestiture period:** there is no reason why the divestiture cannot be concluded relatively quickly. Where an up-front buyer is required, there is no need to set a divestiture period at all. However, if the CMA imposes a set period, this must be significantly longer than the period ordinarily granted (at least 6 months) to prevent buyers from gaming the process (and given that there is no material risk in practice of the assets degrading during that period).

1.4 Finally, the CMA seeks views on the undertakings given by Ladbrokes (at the time named Hilton Group plc) on 27 October 1999 (the **1999 Undertakings**). It is clear that these undertakings relate to the same matters that are under review by the CMA in the present merger inquiry. It is therefore necessary either to release Ladbrokes from these undertakings in their entirety or alternatively for the undertakings in this inquiry to supersede the 1999 Undertakings, given that the CMA's findings from 1998 no longer apply. This is explained in further detail in Section 4 below.

2 Divestiture is the only effective and proportionate remedy

2.1 The divestment of certain Ladbrokes and Coral LBOs will remedy comprehensively and effectively the SLCs that the CMA has provisionally identified (1) in 659 local areas (some of which overlap)[5] and (2) at the national level, resulting from the aggregated effect of the reduction in competition in these local areas.[6] As this is an effective remedy, the CMA must choose this option over prohibition, because it is the remedy that imposes the least cost and/or restriction on the Parties, having regard to the principle of proportionality.

2.2 The CMA's Mergers Remedies Guidelines (the **Remedies Guidance**) indicates that a remedy will be effective where it: (a) addresses the SLC and its adverse effects; (b) addresses the SLC throughout its expected duration and acts quickly to address the competitive concerns; (c) is capable of effective implementation, monitoring and enforcement; and (d) has a high degree of certainty of achieving its intended effect.[7]

2.3 The divestiture remedy proposed by the CMA fulfils each of these criteria.

2.4 First, the remedy addresses each of the SLCs identified by the CMA.

(a) At the local level, in each of the 659 local areas identified in Appendix J to the PFs, the Parties will divest either (1) the problematic centroid LBO or (2) one or more other of their LBOs such that a problematic LBO becomes unproblematic when the CMA's rules for identifying a local SLC are applied.[8] These divestments would therefore comprehensively and effectively remedy each SLC identified provisionally by the CMA.

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5 PFs, at paragraph 7.136 and Appendix J.

6 Ibid, at paragraph 8.48.

7 Competition Commission, Mergers Remedies: Competition Guidelines, November 2008 (which has been adopted by the CMA Board), at paragraph 1.8.

8 The Parties note that the CMA has been prepared to accept a remedy which does not restore competition to its pre-merger levels, because it nevertheless clearly and comprehensively removes the SLC that has been identified. In the present case, the divestment of the centroid LBO will comprehensively remedy the SLC identified in each local area. This is because each LBO has been subjected to its own independent analysis. To the extent that there are other of the Parties' LBOs within the catchment of a given problematic centroid LBO, these would not, as a point of principle, need to be divested since they have also been the subject of their own independent analysis (in other words, there is no need to divest the increment in each problematic area where the SLC can be remedied effectively with a lesser remedy). See for example Greene King / Spirit (2015) and Travis Perkins / BSS Group (2010). Similarly, the UK competition authorities have accepted divestments that have reduced the combined market shares of the merger parties down to a certain level at which an SLC would not arise (see, for example, Punch Taverns Plc / Spirit Group Holdings Ltd (2006)). Applying this reasoning to the present case, there is no reason why the Parties should not divest one or more LBOs within the catchment of a problematic centroid LBO (i.e. divesting LBOs other than the

(b) Given that each SLC identified at the local level will be remedied (i.e. there will be no substantial loss of competition at the local level), it logically follows that there can be no SLC at the national level.[9]

2.5 Second, the divestiture of LBOs is a structural remedy that will restore, on a permanent basis, the rivalry that the CMA provisionally expects to be lost as a result of the Merger. The divestment can be effected quickly (as explained in Section 3 below) and will act immediately to address the SLCs identified in the PFs. Accordingly, there is no requirement for any specific supplemental behavioural undertakings to make this remedial action effective (other than the ordinary undertakings relating to the maintenance of the divestiture package, as discussed further below).

2.6 Third, and as explained in further detail in Section 3 below, divestiture is a structural remedy, which can be implemented effectively, will require no on-going monitoring and can be enforced easily.

2.7 Finally, again as explored further in Section 3 below, there is a high degree of certainty that the LBOs can be sold easily to a suitably qualified purchaser or purchasers, resulting in an enduring structural change to the market and restoring the competition that the CMA considers will be lost as a result of the Merger.

Prohibition is disproportionate

2.8 The CMA suggests that it is considering outright prohibition of the Merger.[10] This is unequivocally disproportionate. The CMA's Remedies Guidance provides that "*[in] order to be reasonable and proportionate the [CMA] will seek to select the least costly remedy, or package of remedies, that it considers will be effective. If the [CMA] is choosing between two remedies which it considers to be equally effective, it will seek the remedy that imposes the least cost or that is least restrictive*."[11] As explained above, the divestiture remedy will be entirely effective. On the other hand, it is clear that prohibition of the Merger will be highly restrictive and costly to the Parties in comparison to divestment, which would also remedy the SLCs. Therefore, the CMA must choose the divestiture remedy over outright prohibition.

Conclusion on the appropriate remedy

2.9 It is clear that the divestment remedy proposed by the CMA is the only effective and proportionate remedy. The section below explores how this remedy can best be implemented.

3 Implementation of the divestiture remedy

3.1 The Parties respond below to the each of the topics relating to the implementation of the divestiture remedy, upon which the CMA has sought views from interested parties. This section is divided into five sub-sections regarding:

(i) the requirement for an up-front buyer;

(ii) the purchaser suitability requirements;

(iii) whether the Parties should be able to select the LBOs for divestment;

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centroid LBO), such that an SLC no longer arises in that area (when the filtering criteria are applied to it post-divestiture), because its WSS has fallen below the intervention threshold. This is acknowledged by the CMA in Appendix J to the PFs where it states "*it does not follow automatically that the [problematic centroid LBOs] would need to be divested; and it may also be the case that divestiture of one LBO (whether or not listed [in Appendix J]) would remedy, mitigate or prevent the SLC or any resulting adverse effect in more than one area*."

9 Post-divestiture the aggregated national diversion ratio will be below the level at which the CMA considers that an SLC may arise. This is because where the estimated diversion ratio in each local area does not raise any competition concerns, the average diversion ratio at the national level must also be below this level.

10 Remedies Notice, at paragraph 10.

11 Remedies Guidance, at paragraph 1.9

(iv) whether a sales process or method should be prescribed; and

(v) the divestiture period.

An up-front buyer is not required – paragraph 14 Remedies Notice

3.2 The Parties consider that an up-front buyer requirement is not necessary. As noted above the divestment of hundreds of shops provides a unique opportunity for small operators (or new entrants) to create a large business and for the larger ones significantly to increase the size of their estates far more quickly and effectively than would otherwise be the case. Unsurprisingly, therefore, there has been strong interest from a large pool of credible purchasers. It should also be noted that the Parties are strongly incentivised to sell the shops as quickly as possible. There are two reasons for this.

3.3 [✂].

3.4 [✂].

3.5 The desire of purchasers to buy large packages combined with the Parties' need to sell shops quickly means that the divestment of the LBOs will quickly lead to a viable competitive constraint.

3.6 However, should the CMA decide that an up-front buyer is required, there is no reason to depart from the CMA's ordinary practice of allowing the Merger to complete after a suitable purchaser(s) becomes contractually committed[12] to the divestment transaction(s). The Parties and potential purchasers are highly incentivised to move forwards with the divestment sales as quickly as possible. There are therefore no grounds for the CMA to be concerned that the divestment may take a prolonged period.

3.7 The CMA's Remedies Guidance provides for an up-front buyer only in limited circumstances where it:

(a) has concerns about the viability or attractiveness to purchasers of a proposed divestiture package (i.e., composition risk) or

(b) believes there may be only a limited pool of suitable purchasers (i.e. purchaser risk).

3.8 In its Remedies Notice, the CMA indicates that it is minded to require an up-front buyer in the present case, because *"the divestiture would not necessarily be straightforward and where there is a not insignificant risk that it would not be possible to find one or more suitably qualified purchasers and so to complete the divestiture.*"[13]

3.9 In reality, the factual position is at odds with this concern and there is very low risk that the Parties would not be able to find a suitable purchaser(s) or compose an attractive package, or packages, such that each local SLC identified by the CMA can be remedied.

3.10 The Parties have already received very serious expressions of interest from a large number of potentially suitable purchasers, which includes trade buyers (domestic bookmakers, other gaming or leisure industry operators, and international bookmakers) and appropriately resourced investment firms with experienced management teams with significant industry experience. Among these potential purchasers, there has been interest in relation to the acquisition of both large and small packages of LBOs. There are a sufficient number of potential purchasers and combinations of attractive packages, such that any acquisition would not raise *prima facie* competition concerns (when applying the relevant filters set out in the CMA's PFs).[14]

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12 The CMA gives as an example of such a commitment, the exchange of contracts subject to limited conditions.

13 Remedies Notice, at paragraph 14.

14 While the number of shops that are being divested may be large in the context of previous retail remedies packages (although William Hill was required to sell 78 LBOs in order to merge with Stanley, which is not out of all proportion to the number of LBOs

3.11 At most, the CMA should apply an up-front buyer requirement only to a proportion of the overall package. A requirement that the whole divestiture package must be sold to an up-front buyer(s) (or else the Merger would be prohibited) would be disproportionate to the very low risk involved in selling the divestiture package. The Parties consider that a requirement relating to three quarters of the local areas would be more proportionate with the remaining LBOs forming a residual package that would be subject to a divestiture trustee if they could not be sold to an appropriate purchaser or purchasers in the requisite time-frame.[15]

Even if an up-front buyer is required, exchange with that buyer would be sufficient

3.12 Should the CMA decide to impose an up-front buyer requirement (in relation to all or a proportion of the divestiture package), there is no reasonable basis upon which to depart from its ordinary practice, in other words to require "*a suitable purchaser that is contractually committed[16] to [the divestment sale] before permitting the merger to proceed.*" The Parties understand that this is the CMA's provisional position.[17]

3.13 The CMA's Remedies Guidance envisages a more onerous requirement of completion with an up-front buyer only in very limited circumstances, where it considers:

(a) the competitive capability of the divestiture package may deteriorate pending the divestiture (i.e., asset risk) or

(b) completion of the divestiture may be prolonged.

3.14 There is no material risk that either of these would occur.

3.15 As regards the timing for the divestiture, there are no special circumstances that would require a prolonged period before completion. On the contrary, the Parties are highly incentivised to move forward as quickly as possible to ensure that they can complete the Merger and realise the significant synergies expected from the transaction and consequent benefits for consumers. The very limited asset risk can therefore be addressed readily and comprehensively in the undertakings, as discussed in further detail at paragraphs 3.32 to 3.37 below.

3.16 In relation to any risk of deterioration to the divestment assets, this can similarly be addressed through suitable asset maintenance undertakings given by the Parties. In any event, there are very few levers through which the Parties could deteriorate the assets prior to their sale. The CMA's PFs support this position. In particular, the CMA notes that convenience and location are the primary drivers of customer choice[18] and acknowledges that overall, the main LBO operators offer a similar core of products and content in their LBOs with a relatively low degree of differentiation.[19] With the exception of certain concessional offers, pricing and content are determined centrally and delivered uniformly to all LBOs across the Parties' respective estates and the LBOs will necessarily remain open and in the same locations. Accordingly, a simple undertaking to run shops in the ordinary course

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in the present case), the divestment package is not particularly large in the context of previous acquisitions of bookmakers. For example, William Hill and Betfred each acquired more than 500 LBOs in their respective acquisitions of Stanley and the Tote.

15 There are a number of examples where the UK competition authorities have considered a partial up-front buyer requirement (see for example Anglo American / Lafarge (2012), Shell / Consortium Rontec Investments (2011), Asda / Netto (2010) and Cooperative Group Limited / Somerfield (2008). In these cases, the authority has typically been concerned regarding the viability of part of the divestiture assets, whereas there were a sufficient number of potential purchasers in relation to the remainder of the package. It only considered it proportionate to impose an up-front buyer requirement in respect of those parts of the divestiture assets, in relation to which it had concerns.

16 Contractual commitment may occur, for instance, through exchange of contracts subject to limited conditions.

17 Paragraph 14 of the Remedies Notice suggests that the divestiture is likely to be required to be *"substantially completed prior to the proposed merger being cleared to complete*" and paragraph 15(d) refers to the time period within which the Parties would need to "*secure binding contractual commitments from one or more suitably qualified purchasers*."

18 PFs, at paragraph 7.46.

19 PFs, at paragraph 7.49.

of business will be sufficient to negate any asset risk. These terms of the undertakings are discussed in further detail at paragraphs 3.38 and 3.39 below.

Conclusion regarding the need for an up-front buyer

3.17 An up-front buyer is not required in the present case. There is negligible purchaser and composition risk. However, should the CMA nevertheless require an up-front buyer (for all or a proportion of the divestiture package), there is no justification for departing from the CMA's ordinary procedure (where the merger is able to complete after exchange with the up-front buyer). Any limited risk of degradation to the divestiture assets or of a protracted sale process can be addressed fully in the undertakings given by the Parties.

Purchaser approval criteria – paragraph 15(a) Remedies Notice

3.18 The CMA is provisionally minded to supplement the standard purchaser approval criteria with a requirement that potential purchasers would need to possess (including the LBOs to be acquired) a certain scale of LBO operations in order to be able to remedy, mitigate or prevent the SLC or any resulting adverse effect that the Group has provisionally identified.[20] The Parties understand this to mean the scale of a purchaser's LBO estate *after* the acquisition of any divestiture LBOs, rather than seeking to impose any requirement as to the identity of the purchaser.[21]

3.19 The Parties do not believe that this requirement is necessary in order to remedy the SLC provisionally identified by the CMA. In fact, it is in the interest of the Parties to sell the LBOs that are to be divested in the largest packages possible. There are three main reasons for this. First, as already noted above, the opportunity to purchase a large number of shops creates a unique opportunity for operators either to enter with significant scale or to expand their businesses very quickly. There will therefore be significant demand for large portfolios of shops. [✂].

3.20 Moreover, the standard purchaser approval criteria ensure already that any purchaser(s) has the requisite capability to operate the divestment business as a competitive force in the market.[22]

Parties must be able to propose which shops to sell – paragraph 15(b) Remedies Notice

3.21 For a number of reasons, it is essential that the Parties are able to (1) select which LBOs can be included in the divestiture package(s) and (2) divide the LBOs into more than one package if required.

3.22 As a starting point, the Parties note that the UK competition authorities have typically allowed merger parties the flexibility to select the shops for divestiture in retail cases.[23] There is no reasonable basis upon which to depart from this practice in the present case.

3.23 The identity of the LBO(s) that are selected for divestiture in each local area (and whether they form part of a larger package) does not affect the remedy's ability to address the SLC in that area. The only requirement is that as a result of the proposed divestment package, none of the Parties' LBOs

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20 Remedies Notice, at paragraph 15(a).

21 In the Parties' view, all operators in the market (and indeed potential new entrants) are suitable purchasers. As the CMA's quantitative analysis shows, differences in fascia (including independents with less scale) make only limited differences to the competitive impact of an LBO operator and all competitors in a given locality are effective. This is the case despite the CMA's provisional view that independents exercise a lesser constraint than national operators. The magnitude of the constraint of independents is still calculated to be 90% of that of a national operator and therefore not materially different. Accordingly provided that a purchaser has the necessary capability to compete and a sufficient commitment to the market (both of which are included in the standard approval criteria), there is no reasonable basis upon which to find that it is not suitable. See further paragraph 3.20 below.

22 The CMA's Remedies Guidance defines a capable purchaser as one which has "*access to appropriate financial resources, expertise and assets to enable the divested business to be an effective competitor in the market*" (Remedies Guidance at paragraph 3.15(b)).

23 See, for example, the CMA's decision in Original Bowling / Bowlplex (2015), the CC's decision in Cineworld / City Screen (2013) and the OFT's decisions in Betfred / Tote (2012), Asda / Netto (2010), Cooperative Group / Somerfield (2008) and William Hill / Stanley (2005).

are identified as problematic under the CMA's filtering rules.[24, 25] The CMA should, therefore, be agnostic as to the LBOs that are divested provided that this condition is met. Indeed, given that there could be a number of options in terms of the LBOs that are capable of effectively remedying the SLC in a given area, it would be disproportionate for the CMA to select the specific LBOs or impose criteria for selecting those LBOs. This would be unnecessarily restrictive and would add cost and complexity to the process, because the Parties would lose the ability to build the most effective package for sale.

3.24 Moreover, there are no material composition, purchaser or asset risks that would justify a different approach. The CMA retains control over the decision on whether the buyer of each package of shops has the requisite 'capability' to run the LBOs as an effective competitor in each local market (as explained in paragraph 3.20 above).

3.25 There are also a number of important practical reasons why the Parties must be able to select the LBOs to be included in the divestiture package.

3.26 First, it is important that the Parties retain flexibility in their ability to conduct a sound sales process. The specific composition of the package will affect the pool of purchasers that may be able to acquire it. For example, a purchaser may not be able to acquire a specific LBO in a given area, because it may raise *prima facie* competition concerns due to an overlap with that purchaser's existing LBOs. On the other hand, choosing an alternative LBO nearby may be equally effective in remedying the SLC without raising any concerns for the purchaser. This is particularly relevant given the CMA's stated preference for purchasers to have "scale". It would therefore be advantageous, and may in certain circumstances be necessary, following the CMA's reasoning, to allow the Parties the flexibility to compose a package that maximises the LBOs that a purchaser is able or wants to acquire.

3.27 Similarly, there may be "silver bullet" shops that only a particular purchaser could buy. If this purchaser were to choose not to do so, the Parties may need to sell a larger number of shops in order to eliminate the SLC identified by the CMA. The approach to the sale of shops therefore needs to be flexible and dynamic so that these kinds of decisions can be made at speed.

3.28 Second, it would be extremely difficult for the CMA to identify the "smallest viable" package of assets,[26] in circumstances where it has to choose between various options of LBO divestitures that are each capable of remedying the SLC identified in a given area. For example, the CMA may need to decide between the divestment of two LBOs to remedy the SLC in a problematic area, in circumstances where divesting one of the two LBOs would suffice.

3.29 In the context of the above examples, it is far from clear how the CMA would go about choosing which LBOs should be divested (something that is potentially compounded further by the needs of potential purchasers, as noted above). In order to arrive at a divestment decision that is proportionate to the SLC identified (i.e., the least burdensome effective remedy), the CMA would require very detailed (and rational) rules to define the criteria for deciding which LBO(s) to divest in each case, and any such criteria would need to be related to remedying the specific SLCs identified by the CMA. The Parties do not believe that it will be possible to create a set of rules that take account of all the possible decisions that will need to be made quickly in a dynamic sales process. Moreover, any such rules are likely to be of an arbitrary nature, and it is not clear that such rules/criteria can be determined in the context of the inquiry.

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[24] As explained in further detail at footnote 8 above, the CMA's comments in Appendix J of the PFs and the UK competition authorities' decisional practice support this approach, because it would clearly and comprehensively remedy the SLC that has been identified.

[25] See footnote 4, which explains the CMA's rules in further detail.

[26] Remedies Guidance, at paragraph 3.7.

3.30 Third, the selection of shops would place an undue burden on the CMA's time and resources. For example, it may require a review of each LBO's financial performance and marketability, affecting its likely attractiveness to a purchaser.

3.31 In conclusion, there is no need for the CMA to specify any conditions relating to LBO selection or otherwise to specify the LBOs that must be divested. To do so would be disproportionate and the lack of flexibility in selecting which shops to include in the divestiture package(s) may, for example, inadvertently limit the pool of suitable purchasers or otherwise affect the attractiveness of the divestment package to a potential purchaser. Moreover, there is no reasonable basis upon which the CMA could decide to do so, in the absence of any clear divestiture risks, which is particularly the case where the CMA includes an up-front purchaser requirement.

No requirement for a prescribed sales process – paragraph 15(c) Remedies Notice

3.32 There are no specific features of the divestiture remedy proposed by the CMA that require a prescriptive method or process for the effective sale of the LBOs. While the divestiture in the present case relates to potentially a large number of LBOs, the transaction(s) will not differ in any material respect from similar divestments in other UK retail mergers. A number of retail bookmaking mergers have occurred over the years without the need for any prescriptive process and the larger number of shops in this case does not necessitate a different approach.

3.33 As explained at paragraph 3.16 above, there are very few levers through which the divestiture package's business could be degraded, given the relatively homogenous offering of LBOs and customers' primary focus on convenience and location (as found by the CMA in its PFs). As such, it is not easy to erode customer goodwill, and virtually impossible to do this permanently, particularly where all staff on the shop floor will be transitioning to the buyer (and will therefore be incentivised to maintain service levels in the shop).

3.34 Accordingly, the package can be protected adequately by the Parties entering into asset maintenance undertakings, which impose on the Parties a general duty to maintain the divestment package in good order and not to undermine its competitive position.

3.35 Furthermore, the Parties are incentivised to ensure that the divestment shops continue to trade well, as this will determine the price that they receive. Even if the competitive position of the divestment shops could be worsened, this could only ever be temporary and would be fixed very quickly by the new owner. The Parties would have reduced the price they receive for no long-term advantage, which would obviously not be a sensible thing to do commercially.

3.36 A formal hold-separate undertaking[27] is not therefore required in the present case. While the implementation of such a structure is possible in theory, it presents a number of very significant practical challenges. The burden imposed by the hold separate requirement would be disproportionate in the context of the limited asset risk in this case. It is also noted that there are a significant number of retail mergers where the UK competition authorities have not required a formal hold separate.[28]

3.37 The Parties are also prepared to appoint a monitoring trustee to oversee the period between completion of the Merger and completion on the divestments sale, even though such a measure is not required given the low level of asset risk in this case.

Divestiture period – paragraph 15(d) Remedies Notice

[27] In other words, a structure whereby the LBOs to be divested by each Party are pooled and managed separately from the retained LBOs.

[28] See, for example, the CMA's decision in Breedon Aggregates / Aggregate Industries (2014), the CC's decisions in Cineworld / City Screen (2013) and Hamsard 2786 / Academy Music (2007) and William Hill / Stanley (2005)

3.38 As noted above, the Parties face significant pressure to complete the sale process as quickly as possible. That, and the degree of interest from potential purchasers, means that there is no reason why the process could not be completed rapidly. In addition, as explained above, there is limited asset risk in the present case, which can be mitigated even further through appropriate undertakings. As such, there is no need from the CMA's perspective for a period to be specified within which the Parties must enter into a binding contract with a purchaser(s). In fact, the inclusion of a definitive period for the sale of the divested LBOs (unless it were long) could have the effect of delaying the sale by creating an incentive for potential purchasers to lengthen the negotiation period in the hope of gaming the process.

3.39 For these reasons, the Parties would urge the CMA not to impose an initial divestiture period. If the CMA were however minded to do so, they would ask it to consider that it be significantly longer than the period ordinarily granted (6 months) to prevent buyers from gaming the process.

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

4.1 The CMA has rightly decided to reopen the review of 1999 Undertakings. Pursuant to paragraph 16 of Schedule 24 to the Enterprise Act 2002, the undertakings may be superseded, varied or released by the CMA if there has been any change of circumstances, applying the test under section 88(4) of the Fair Trading Act 1973.

4.2 Applying that test, it is clear that there has been a considerable change in circumstances since the 1999 Undertakings were entered into and therefore the undertakings are no longer appropriate and Ladbrokes should be released from them. This is because the competition concerns which were being addressed by the 1999 Undertakings (namely (i) the loss of competition at the national level in respect of early price prices in off-course horserace betting; (ii) innovation in off-course betting; (iii) choice of major chains of LBOs and the prices; and (iv) standards of service in telephone betting) have been assessed by the CMA in the present merger inquiry and have been provisionally found not to be of concern if the Parties were to merge today.[29]

4.3 Alternatively, to the extent that the CMA decides that the Merger is likely to result in an SLC, the 1999 Undertakings should be superseded by the undertakings that the Parties agree to enter into as part of the remedies package, since the CMA's competition concerns will be addressed by the new undertakings.

[29] See Section 9 and paragraph 13.2 of the PFs.