

LADBROKES/CORAL: PADDY POWER BETFAIR PLC RESPONSE TO CMA NOTICE OF POSSIBLE REMEDIES DATED 20 MAY 2016

1. INTRODUCTION AND EXECUTIVE SUMMARY

- 1.1 On 20 May 2016, the Competition and Markets Authority (CMA) published its Notice of Possible Remedies (the **Notice**) in relation to the anticipated merger between Ladbrokes plc (**Ladbrokes**) and certain businesses of Gala Coral Group Ltd (**Coral**) (the **Transaction**). Paddy Power Betfair plc (**PPB**) welcomes the opportunity to respond and comment on the potential remedies proposed in the Notice.
- 1.2 This response is confidential to PPB and its disclosure may seriously harm PPB's legitimate business interests. Therefore, PPB requests that this response is treated as strictly confidential and is not disclosed to any third party without its prior written consent.
- 1.3 The Transaction raises many complex and difficult issues, as demonstrated by the detailed analysis that the CMA has undertaken in order to identify the 659 local areas in which the Transaction may be expected to result in a substantial lessening of competition (**SLC**) in relation to the market for supply of gambling products. PPB agrees with the CMA that the Transaction represents a *prima facie* case for prohibition and that, therefore, a divestiture package should only be considered by the CMA if it can be certain that the risk of an SLC arising is fully remedied in each and every local SLC area identified.
- 1.4 To the extent that the CMA is minded to consider divestitures of LBOs in each and every local SLC area as an appropriate solution, PPB further agrees with the CMA that this is a complicated remedies process, the outcome and effectiveness of which is uncertain. In this regard, PPB raises the following key issues:
- (i) In order to ensure that the competitive constraints lost in the local SLC areas as a result of the Transaction are adequately replaced, it is crucial that the purchaser(s) of any Licensed Betting Offices (**LBOs**) to be divested have a significant and existing retail presence in Great Britain and sufficient scale (as explained in paragraph 2.2 below).
 - (ii) Considering that the divestment package will involve a considerably high number of local areas (659), the process of divestment will clearly be complex given the scale of the divestment involved. Any divestiture remedy will be impossible to achieve in short order. Therefore, it is vital that the CMA adopts a rigorous process to ensure the effectiveness of the remedy.
 - (iii) It is also vital that the risk of an SLC is remedied in each and every local SLC area. As set out in its provisional findings, the CMA has adopted a detailed and sophisticated analysis to establish that significant concerns arise in each local SLC area, and it is therefore crucial that all of these concerns are resolved without doubt in each case.
 - (iv) Furthermore, it is clear that there are a limited number of potential purchasers available (i.e., those national LBO operators who do not already overlap with Ladbrokes and/or Coral in many of the local SLC areas). [§<]
- 1.5 On the basis of the above, it is clear that any divestiture remedy faces a considerably high risk of failure. This risk should guide the CMA in designing the divestiture process and determining its timing so as to ensure that the process is effective.

1.6 In light of this, PPB submits the following:

- (i) To ensure the success of any remedy, considering the limited number of potential purchasers, it is essential that all Ladbrokes and Coral LBOs located in the 659 local SLC areas are offered to potential purchasers and that these purchasers have the flexibility of choosing the LBOs that they are willing and able to acquire (meaning that different potential purchasers would acquire different groups of LBOs). Restricting this choice in any way could further reduce the already limited number of potential purchasers and, also given the incentives that Ladbrokes and Coral would have to divest their least profitable LBOs, may reduce the overall attractiveness of the divestiture package, thereby increasing its risk of failure.
- (ii) The CMA should be satisfied that for each and every local SLC area in which divestments are required, two or more potential purchasers exist. The most clear-cut way to achieve this result is to ensure that all required divestments complete ahead of clearance being obtained (i.e., a “fix it first” remedy).
- (iii) If a “fix it first” remedy is not possible, at a minimum, PPB submits that the Transaction should not be allowed to complete unless all necessary divestments have been completed in each and every local SLC area. To the extent that the CMA does decide to proceed with this option, it must ensure that sufficient credible potential purchasers exist in each and every of the local SLC areas (on the basis of reliable evidence) prior to its clearance decision being given.

1.7 PPB responds to each of the four specific points outlined by the CMA at paragraph 15 of the Notice below.

2. CRITERIA TO DETERMINE WHETHER A PURCHASER IS “SUITABLY QUALIFIED”

2.1 To ensure that a potential purchaser is “suitably qualified” and that a sufficient competitive constraint is maintained in each local SLC area following the Transaction, the CMA should require that the purchaser(s) of any divested LBOs: (i) has sufficient scale (i.e., has an existing retail estate extending beyond that of an independent LBO operator), and (ii) already possesses a significant retail (LBO) presence in Great Britain.

(a) Sufficient scale

2.2 The CMA has provisionally found that potential purchasers would need to possess 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 CMA’s inquiry group has provisionally identified. PPB agrees that, in order for any divestiture remedy to prove sufficient and to ensure that an adequate competitive constraint remains following the Transaction, it is crucial that the purchaser(s) of any divested LBOs are LBO operators of scale.

2.3 In this regard, the CMA has already noted that a number of third parties have submitted that a lack of scale may prevent smaller independent LBO operators from competing as effectively as large rivals (such as Ladbrokes and Coral) with a national network of LBOs.¹ For example, small chains of independent LBO operators may not have the scale to operate across the same breadth of sports as national LBO operators, and cannot manage risk in the same way. Independent operators may also have less of an ability to invest in products, technologies and LBO environments, and lack leverage with major suppliers.² Further, it has been acknowledged that independent LBO operators have also

¹ CMA Provisional Findings Report, para. 7.55.

² Ibid., para. 7.84.

been in decline. Therefore, it is clear that only a purchaser(s) of scale would exercise a sufficient competitive constraint to alleviate the CMA's concerns in the local SLC areas identified.

- 2.4 In particular, PPB notes that in order to have “sufficient scale” one crucially important factor is for potential purchasers to have a full, multi-channel offering, which provides the ability (if potential purchasers so wish) to allow retail customers to realise the benefits of the online experience in the retail channel. Existing scale operators already offer a variety of multi-channel products, including, for example, online bet tracking for retail bets and ‘cash cards’ where customers can deposit directly into their online accounts, which are an essential part of their propositions and represent a key competitive strength. These scale operators would easily be able to replicate these offerings in any LBOs acquired through a divestment remedy. In contrast, operators without an existing multi-channel offering will not be able to effectively replace the range of multi-channel propositions currently offered by Ladbrokes and Coral in each of the local SLC areas. Indeed, the CMA notes in its provisional findings report that Ladbrokes and Coral have pursued a retail strategy which focuses on emulating the online experience inside an LBO and on encouraging multi-channel use,³ reflecting the importance of these products.

(b) Existing significant retail presence in Great Britain

- 2.5 PPB is also firmly of the view that any potential purchasers need to have an existing and significant retail (LBO) presence in Great Britain in order to ensure that the competitive constraint lost in each of the local SLC areas as a result of the Transaction is adequately replaced. To compete successfully with the merged Ladbrokes/Coral entity post-transaction, a purchaser will need to have existing scale in Great Britain so that the purchaser can leverage off its existing commercial relationships (for example with suppliers), which are often contracted on a national basis. A retail operator outside of Great Britain would not be able to leverage off those relationships based in Great Britain and so would not be as effective a competitor from the start.
- 2.6 By way of example, fixed-odds betting terminals (**FOBTs**) account for over half of all total stakes in retail betting in Great Britain. FOBTs therefore represent a crucial “must have” offering for any LBO in Great Britain. In PPB's view, in order for FOBTs to be offered on terms similar to those already offered by Ladbrokes and Coral (thereby replacing the competitive constraints lost in each of the local SLC areas as a result of the Transaction), it is vitally important that any potential purchasers have existing strong commercial relationships with providers of FOBTs in Great Britain.
- 2.7 Similarly, in relation to live sports content, certain providers (such as BT and Sky) hold exclusive rights for particular content in Great Britain. In order to replicate the offering currently provided by Ladbrokes and Coral to their retail customers as soon as any divestiture process is completed, it is crucial that any potential purchaser already has ready access to the content required through their existing relationships. A similar situation exists in relation to live racing content.

(c) Limited pool of potential purchasers

- 2.8 PPB acknowledges that the requirements that the CMA needs to impose on the potential purchaser(s) to make a divestiture remedy effective necessarily means that the number of potential purchasers of any LBOs to be divested is limited to the few operators of scale currently present in Great Britain (e.g., PPB, William Hill, Betfred and Jennings) and not smaller independent LBOs or those without an existing national presence. [3<] It is also extremely unlikely that a single purchaser would be willing and/or able to acquire the entire divestment package.
- 2.9 [3<]

³ Ibid., para. 6.17.

3. CHOICE OF LBOS TO BE DIVESTED

(a) Ladbrokes/Coral should not propose LBOs to be divested

3.1 As explained above, there are a limited number of potential purchasers with the necessary scale and lack of existing overlap required in each of the local SLC areas that are able to provide an effective divestiture remedy. PPB therefore submits that it would not be appropriate to allow Ladbrokes and Coral to propose which LBOs to divest in each local SLC area, [REDACTED]

3.2 Furthermore, although the CMA has access to a considerable level of information by virtue of its assessment of the Transaction to date, there are a number of complex and technical issues at play – each potential purchaser will have its own view with regard to the LBOs that would be viable and effective additions to their existing retail estates (i.e., it is likely that each potential purchaser will wish to acquire different combinations of LBOs). Consequently, if the range of LBOs made available for divestment is too narrow, the remedy as a whole would be at significant risk of complete failure, as it is unlikely that concerns would be sufficiently alleviated in each and every local SLC area. This would likely lead to the Transaction failing as a result.

(b) Potential purchasers should choose from every relevant LBO in the local SLC areas

3.3 To maximise the probability of success of any divestment remedy and considering that each potential purchaser will need to make their selections on the basis of the complex factors specifically relevant to each of them, it is essential that all relevant Ladbrokes and Coral LBOs within the local SLC areas identified by the CMA are included in the potential divestment package.

3.4 In this regard, PPB notes in particular that, on the basis of the CMA’s methodology, it is not clear which specific LBOs would be included in any potential divestiture package. For example, in Chester, one Ladbrokes/Coral LBO is identified in the CMA’s list of local SLC areas, whereas there are five Ladbrokes/Coral LBOs located in the city centre (within 400m) in total. In contrast, three of the four Ladbrokes/Coral LBOs located in Rugby city centre are included in the list. In light of this uncertainty and the limited number of potential purchasers, it is crucial that potential purchasers are provided with a full list of all Ladbrokes/Coral LBOs located in each of the local SLC areas, and that potential purchasers are able to choose freely the LBOs that they wish to acquire from this list to ensure maximum flexibility and the success of any remedy package.

3.5 [REDACTED]

4. SALE PROCESS

4.1 The process for selling a large number of LBOs simultaneously as will be required in the present case is understandably complex, as numerous steps will need to be completed in relation to each individual LBO. [REDACTED]

4.2 To ensure that any remedy is structured effectively and to enable each purchaser to determine the LBOs that they are each willing and able to acquire, it is important that potential purchasers are able to understand the full ambit of the LBOs potentially to be divested in short order. Therefore, it will be necessary to ensure that potential purchasers are provided with granular information on an individual LBO basis as soon as possible, including full financial information (such as profit and loss data), and are given adequate time to make their own internal assessment of such information to enable the required decisions to be made.

4.3 [REDACTED]

5. TIMING OF DIVESTITURE / UPFRONT BUYER

- 5.1 Considering the complexity of the remedies process and the limited pool of purchasers available, there is a real risk that any proposed divestiture remedy may not be achievable. In this regard, the CMA has clearly identified the importance of competition in each of the individual local SLC areas, and the risk to competition in those areas that the Transaction presents. Unless the sale of each and every LBO (not “substantially all” LBOs as indicated by the CMA) required as part of any divestment package is fully completed prior to closing, a substantial risk of an SLC will still exist in at least some local areas and the success of the remedy will be put in jeopardy.
- 5.2 In addition, allowing the Transaction to close before any divestiture remedy is fully implemented will also reduce the incentive for Ladbroke and Coral to complete divestitures in a timely manner, which may be particularly problematic in light of the likely complexity of the sales process as outlined in section 4 above.
- 5.3 PPB submits that the most clear-cut way to achieve a successful divestment package is to ensure that all required divestments complete ahead of clearance being obtained (i.e., a “fix it first” remedy). If this is not possible, at a minimum, the Transaction should not be allowed to complete unless all necessary divestments have been made in each and every local SLC area. Further, to the extent that the CMA does decide to proceed with this option, it must ensure that sufficient credible potential purchasers exist in each and every of the local SLC areas prior to its clearance decision being given.
- 5.4 Although PPB believes that an appropriate divestment package is the best available remedy in the present case, if it is not possible to divest the necessary LBOs within a reasonable period of time, PPB agrees with the CMA’s provisional conclusion that prohibition of the Transaction would be the only remaining effective remedy available to it.

6. CONCLUSION

- 6.1 As previously stated, PPB agrees with the CMA that the Transaction represents a *prima facie* case for prohibition and that, therefore, a divestiture package should only be considered by the CMA if it can be certain that the risk of an SLC arising is fully remedied in each and every local SLC area identified.
- 6.2 To ensure the success of any divestment remedy, it is crucial that the purchaser(s) of any LBOs to be divested have a significant and existing retail presence in Great Britain. Further, considering the large number of local SLC areas involved, it is clear that any process of divestment will be complex. It is crucial that the risk of an SLC is remedied in each and every local area identified by the CMA as raising concerns.
- 6.3 Given the limited number of potential purchasers available, all Ladbroke and Coral LBOs in the 659 local SLC areas should be made available as part of any divestment package. To allow Ladbroke and Coral to decide which LBOs to divest would potentially further limit the pool of potential purchasers, putting any divestment remedy at significant risk of failure.
- 6.4 PPB submits that the most clear-cut way to achieve a successful divestment package is through a “fix it first” remedy. Otherwise, at a minimum, the Transaction should not be allowed to complete unless all necessary divestments have been made in each and every local SLC area. In this regard, the CMA must ensure that sufficient credible potential purchasers exist in each and every of the local SLC areas prior to its clearance decision being given.

6 June 2016