

LADBROKES / CORAL

MAIN PARTIES' RESPONSE TO THE PROVISIONAL FINDINGS REPORT

**1 Introduction**

- 1.1 The Parties welcome this opportunity to comment on the CMA's Provisional Findings Report (the **PFs**). The CMA has provisionally found that the transaction may be expected to result in an SLC:
- (a) within 659 local markets in Great Britain; and
  - (b) on a national level, as a result of the aggregated loss of competition at the local level.
- 1.2 The CMA has also provisionally found that the transaction may not otherwise be expected to result in an SLC at a national level, having considered various possible Theories of Harm (**TOHs**).<sup>1</sup>
- 1.3 The Parties' response to the PFs addresses both the local and national assessment carried out by the CMA. The Parties will liaise with the CMA separately in relation to recent changes to their respective estates in the ordinary course of business that may affect the CMA's findings.
- 1.4 As regards the local assessment, the CMA has assessed the possible effects of the transaction at a local level by reference to the "weighted share of shops" (**WSS**) methodology. The Parties had previously expressed concerns with the weighted methodology in the CMA's local assessment working paper, primarily because it disproportionately relied on the CMA's survey results. The CMA appears to have taken these concerns broadly into account through its revisions to the weighted approach which now relies on a broader array of evidence to determine the appropriate WSS threshold and uses the segmentation approach as a robustness check. The Parties welcome the changes to the WSS approach in light of their previous submissions and the evidence put to the CMA.
- 1.5 However, the Parties are concerned that the WSS approach in the PFs is still overly conservative in two key respects:
- (a) the CMA continues to underestimate the importance of the online constraint on retail LBOs by using a diversion ratio that is not weighted by expenditure and by failing to account for the fact that online use will continue to grow strongly in the near future; and
  - (b) the CMA's segmentation model robustness check is conservative, particularly by requiring at least four competing stores within 400m, which implies a "6 to 5" intervention threshold. The evidence does not support such a threshold.
- 1.6 The Parties address these issues at sections 2 and 3 below.
- 1.7 Further, the CMA's local analysis regards independents as being less able to compete effectively than large, national LBO operators because they lack sufficient scale. As a result, the CMA discounts the weight to be given to independents in its assessment. The Parties do not agree that independents impose a weaker constraint. Indeed, the evidence shows that independents are an effective constraint and that they have various means of overcoming what might, at first glance, appear to be scale disadvantages compared to larger LBO operators. The Parties address this issue at section 4 below.
- 1.8 At section 5, the Parties make a number of points concerning the CMA's provisional findings regarding the national effect of an aggregated loss of local competition.

---

<sup>1</sup> These are competition on top price for certain events, potential competition, innovation, online gambling, the operation of greyhound tracks, the supply/acquisition of media rights in relation to greyhound races, and the Parties' relationship with Playtech.

- 1.9 Finally, as regards the various possible national TOHs, the Parties welcome the CMA's provisional findings. The Parties have made detailed submissions and provided the CMA with vast amounts of evidence regarding these TOHs. The Parties do not propose to repeat their submissions on these TOHs in detail in this Response given the provisional findings. However, at section 6 below, the Parties make submissions on various specific points where these help to shed additional light on the submissions and evidence already provided to the CMA.

## **2 The local assessment methodology continues to underestimate the importance of the online constraint**

- 2.1 The CMA's approach to the constraint from online continues to rely on estimates derived from its customer survey. However, at paragraph 6.63 of the PFs, the CMA acknowledges that its own customer survey suffers from (at least some degree of) framing bias and also that it is likely to underestimate the share of spend by multi-channel customers (who are more likely to divert to online). The CMA accepts that these two limitations are likely to underestimate the likely diversion to online alternatives.

- 2.2 To address the underestimation, the CMA adjusts its diversion ratio by taking the mid-point of the upper bound (Parties' telephone survey result reweighted for frequency) and lower bound (CMA's survey result). As this section shows, both the upper and lower bounds used by the CMA are based on frequency rather than expenditure, which the CMA acknowledges is more appropriate. Furthermore, the surveys are informative only about **today's** diversion to online and not what the diversion ratio will be in 6-12 months' time. In this respect, the evidence is clear that diversion ratios will be significantly increasing over this period. As a result, the CMA's methodology risks being backward looking and overly-conservative.

### **(i) The CMA's adjustment is overly conservative, as it is based on frequency rather than expenditure**

- 2.3 The CMA accepts (at paragraph 16 of Appendix C to the PFs) that the most relevant metric for the diversion ratio is an "expenditure" or "spend" weighted measure, which gives more weight to the responses of customers who spend more. This is because the aim is to examine how much revenue or volume is lost by a retail LBO because of customers' diversion to online. However, as explained at paragraph 18 of Appendix C, the CMA's survey did not include a question about spend and could not therefore weight the results in this way. As a consequence, the CMA used frequency of visits as a proxy for spend, reasoning that a customer who visits frequently is more likely to be surveyed (i.e. given relatively more weight) than a customer who visits less frequently.<sup>2</sup>

- 2.4 At paragraph 6.63 of the PFs, the CMA accepts that this measure (albeit superior to a simple number of customers) is likely to understate the diversion to online and that therefore an expenditure-weighted diversion to online would be higher (as indeed is the case using the results from the Parties' telephone survey). The Parties agree with the CMA's conclusion on this point. The reason that an expenditure-weighted measure produces higher diversions to online than a measure weighted by frequency of visits is because (i) multi-channel customers are more likely to divert to online (this finding is consistent across both the CMA's and the Parties' surveys) and (ii) these customers have higher expenditure, as shown by the Parties' evidence and the Kantar data (paragraphs 47 to 50 of

---

<sup>2</sup> As the Parties noted in their Joint Response to the Working Papers on 14 April 2016, the CMA's survey may not adequately capture the mix of customers in betting shops and, in particular, may under-sample workers who bet during their lunch hour. Office workers have a lower probability of being approached by the survey company (regardless of whether they respond or not) because they are in the store for a much shorter period and their visits peak in concentrated periods, such as lunch hours, when a surveyor is less likely to be able to approach all customers. Further, because the CMA's survey data does not contain timestamps, it is not possible to determine whether there are a high proportion of non-respondents in peak times when office workers are most likely to gamble.

Appendix C). These two facts ensure that expenditure weighted diversions are higher than frequency based diversions, and hence frequency of visits is a poor proxy for spend.

2.5 Given the CMA's acceptance that a spend weighted measure is more appropriate than the frequency based measure it used, the Parties have carried out a number of weighting exercises on the basis of the Parties' telephone survey (which asks questions about stakes/spend at an LBO, allowing for such a weighting).

2.6 First, the Parties have weighted the Parties' telephone survey results on the basis of annual retail spend, to provide a more accurate upper bound for the CMA's adjustment. Doing so increases the diversion to online from 14% (when the telephone results are weighted by customer visits) to 27%. Table 1 below provides a comparison of the stated diversion to online using the three possible different metrics (number of customers, number of customer visits, and customer retail spend). The table also shows how diversion ratios vary across different frequency categories (bearing in mind that the sampling errors for these sub-categories may be large, due to small sample sizes).

Table 1: Proportion of retail customers diverting online, the Parties' telephone survey using different measures

<b>Frequency</b>	<b>By number of customers</b>	<b>By customer visits</b>	<b>By retail spend</b>
Most days	9%	9%	45%
2-3 days a week	16%	16%	4%
About once a week	18%	18%	20%
About once a month	32%	32%	31%
Once every few months	23%	23%	19%
Once or twice a year	19%	19%	38%
<b>All users</b>	<b>20%</b>	<b>14%</b>	<b>27%</b>

2.7 As seen in the table, diversion ratios weighted by spend are higher than diversions weighted by frequency of visits across most frequency categories. This is seen even if one adds together frequency categories in order to increase the sample size. For example, adding the first three categories together in order to capture who visit an LBO at least once a week, the diversion to online by reference to customer visits is 13% while the diversion to online re-weighted to a spend basis is 26%.

2.8 We understand that the CMA may be concerned that simply weighting by expenditure (rather than the CMA's frequency of visits) may over-estimate diversions if the Parties' survey happened to under-represent those who visit the store the most and if these individuals are also less likely to divert to online. To avoid such a possibility, the Parties weighted for both expenditure and the CMA's frequency of visits.

2.9 The Parties did so in two ways. The first methodology uses the CMA survey and simply weights its results using the Parties' survey data on expenditure. The second methodology uses the Parties' telephone survey results on expenditure and weights it according to the CMA's frequency of visits. The results of these two methodologies are summarised in the table below.

Table 2: Proportion of retail spend diverting online, the Parties' telephone survey using different weights

	The CMA survey using the Parties' spend per visit		Parties' telephone survey using CMA weights		The Parties' telephone survey	
	CMA weights (*)	CMA diversion to online	CMA weights (*)	Parties' diversion to online	Parties' Weights	Parties' diversion to online
Most days	41%	37%	41%	45%	42%	45%
2-3 days a week	47%	1%	47%	4%	28%	4%
About once a week	11%	7%	11%	20%	24%	20%
About once a month	1%	4%	1%	31%	3%	31%
Once every few months	0%	8%	0%	19%	1%	19%
Once or twice a year	-	-	-	38%	3%	38%
<b>All users (weighted)</b>	<b>100%</b>	<b>17%</b>	<b>100%</b>	<b>23%</b>	<b>100%</b>	<b>27%</b>

(\*) The "CMA weights" are measured on spend, which is calculated for each frequency band as the number of customer visits from the CMA survey times the average spend per visit from the Parties' telephone survey.

2.10 The table shows that taking the CMA's survey and weighting for the Parties' average spend per visit produces a diversion ratio to online of 17%; while taking the Parties' telephone survey and weighting for the CMA's customer visits produces a diversion ratio to online of 23%.

2.11 Thus, depending on how the weighting is done, incorporating expenditure into estimates of diversion – as the CMA acknowledges is appropriate – results in an online diversion ratio of between 17% and 23%. In the Parties' view, these diversion ratios are not upper bounds but are the correct diversions accounting for both the CMA's frequency results and expenditure. This is significantly higher than the CMA's estimate of 10% derived by taking a mid-point of the two estimates based on the frequency of visits measure alone, which the CMA accepts understates diversion to online.

**(ii) The CMA's diversion calculation does not consider clear evidence that online diversions will increase**

2.12 The approach of surveys to the level of online constraint is inherently static, in that they obtain responses covering the extent of diversion to online at the time that the survey is asked. However, the evidence shows that the diversion to online will increase in the future. First, the number of multi-channel customers is increasing. Second the number of multi-channel customers who divert to online is significantly higher than non-multi-channel customers. As we show below, this evidence can only mean that diversion ratios will increase in the future. Failing to take account of this would seriously underestimate the dynamic and growing nature of the online constraint.

2.13 As regards the growth of multi-channel, the evidence is clear.

(a) First, Coral's most recent financial results (Q2 2016) announced on 8 June 2016 show clearly the increasing multi-channel growth. As highlighted in the results announcement, Coral Connect sign-ups are accelerating: FY16 H1 sign ups (160,000 new sign-ups) are already ahead of the total signed up in the whole of FY15.<sup>3</sup> Rather than multi-channel growth slowing down, this shows that multi-channel growth is actually accelerating.

<sup>3</sup> See Q2 results presentation at <http://www.galacoral.co.uk/financial-centre/results-centre/2016>.

Similarly, Ladbrokes' Q1 2016 Trading Update shows that its multi-channel strategy has delivered a further 43,000 active customers in the quarter.<sup>4</sup> [X].<sup>5</sup>[X].

- (b) Second, the Kantar data show an undisputed increase in multi-channel customers and a decline of retail-only customers. For example, in just one year (Q2 2014 to Q2 2015), multi-channel customers increased from 29% to 32%, while retail only customers fell from 50% to 37% (by value) and online only customers increased more sharply from 21% to 31%. This change shows no sign of changing over time.

- 2.14 As regards the extent of diversion by multi-channel customers, the surveys carried out by both the CMA and the Parties have found that the most important driver of customers' tendency to divert to online is multi-channel use. As demonstrated in Table 3 below, diversions to online are consistently higher amongst multi-channel customers as compared to retail-only customers. This finding is consistent across all surveys (including the CMA survey).

Table 3: Proportion of regular (monthly+) retail customers diverting online, by channel use - the Parties' telephone survey and the CMA survey

	<b>Parties' telephone survey</b>	<b>CMA survey</b>
Multi-channel regular users	45%	21%
Retail only regular users	6%	1%
<b>All most regular (monthly+) users</b>	<b>20%</b>	<b>6%</b>

- 2.15 Taken together these two pieces of evidence mean that the online diversion ratio found by the CMA in its survey will only increase going forward. As such if the CMA were to conduct the exact same survey in-store in 6 months' time, the diversion ratio it would find would be significantly higher (even without taking account of expenditure).

- 2.16 The fact that multi-channel usage is still growing strongly and is likely to continue to grow is supported by the growth of mobile gambling and the demographics of gamblers:

- (a) Kantar data shows that the proportion of regular mobile only bettors increased from 16% in Q2 2014 to 26% in Q3 2015. Furthermore survey evidence suggests that many retail gamblers would consider using mobile betting in future. For example, in less than a year the proportion of people who gamble online and say they do not currently use a mobile but would consider gambling via that channel has increased from 41% to 46%, whilst those that say they would not use their mobile have declined from 59% to 54%.<sup>6</sup> The same trend is even seen within the set of gamblers who currently only gamble using the retail channel (and do not therefore gamble online). The proportion of these gamblers who say they would consider gambling via a mobile phone increased from 20% in August 2014 to 31% in May 2015. Similarly the proportion who said they would not consider it has fallen from 80% to 69%.<sup>7</sup>
- (b) The Parties have already submitted evidence regarding the use of mobile betting technologies on-course, which is indicative of the increasing trend towards online betting using mobile technologies.<sup>8</sup> Further evidence of the importance of mobile use is found in Coral's Q2 2016 results, with one of the highlights under "Momentum into H2" being the relaunch of Coral's mobile app on a proprietary platform.

<sup>4</sup> See Ladbrokes Q1 2016 Trading Update at <http://www.ladbrokesplc.com/~media/Files/L/Ladbrokes-V2/Press-releases/q1-2016-trading-update-v2.pdf>.

<sup>5</sup> Ladbrokes Hearing Transcript at pp. 34-35.

<sup>6</sup> See paragraph 14.45 of the Merger Notice.

<sup>7</sup> See paragraph 14.46 of the Merger Notice.

<sup>8</sup> See the Parties' joint response to the RFI on on-course betting, submitted on 7 December 2015.

- (c) Finally, the Parties provided detailed demographic evidence showing that customers using the retail channel are significantly older on average than customers who bet online either through PCs or through mobiles (see Annex 14.191 of the Merger Notice). As the Parties have already noted, as these online gamblers age, it is expected that they will maintain the same mix of channels going forward – thus resulting in a steady reduction in those customers only using the retail channel and a steady increase in multi-channel customers.

2.17 The continued growth of multi-channel and its likely impact on diversions is also supported by analyst comments. For example, as highlighted in the Parties' response to the Issues Statement, Morgan Stanley commented recently that "*strong growth and increasing participation in online gambling could put further downwards pressure on UK retail revenues*", stating further that "*there is some evidence that the migration from retail to online is accelerating, partly due to the expansion of mobile gambling, which facilitates online gambling*".

2.18 As such, the Parties strongly believe that even taking the CMA's survey evidence at face value, the evidence clearly indicates that the diversion ratio would be substantially higher if the CMA were to conduct an identical survey in six months to a year.

(iii) **Additional points regarding the CMA's consideration of the strength of the online constraint**

2.19 Finally, there are some areas of the CMA's analysis of constraints where the CMA appears to have either not fully considered or misunderstood certain pieces of the Parties evidence. Specifically, the Parties note that:

- (a) the CMA appears to have given little weight to the recent analysis undertaken by Ladbrokes which shows that customers substitute significant retail spend to online after becoming multi-channel customers. As set out in the Parties' Joint Response to the Working Papers, submitted on 14 April 2016, [§]<sup>9</sup> [§]. This evidence is particularly important in light of the growth of multi-channel, as it is these customers that are the most marginal between retail and online and will serve to "protect" retail-only customers (which cannot be identified);
- (b) the CMA has mischaracterised Ladbrokes' multi-channel strategy at paragraph 6.26(a) of the PFs. Ladbrokes is currently focused on converting customers from retail-only to multi-channel, and not on "*increasing multi-channel customers' use of its online offer*". Again, this underplays the growth of multi-channel;
- (c) in its comparison of online and retail pricing, the CMA continues to place too much weight on the results of its comparison of gross win margins. For the detailed reasons submitted on 14 April 2016, such an analysis is inherently unreliable (shown by the fact that mobile and desktop channels have materially different gross win margins despite having identical prices and promotions); and
- (d) the CMA's comparison of online and retail pricing also places unduly limited weight on (i) the convergence between retail and online football odds for the favourite selection, which shows on a sample of recent 2015/2016 Premier League fixtures that the difference in the level of odds between the two channels was less than 1% when considering Wednesday retail and online prices; and (ii) [§].

2.20 In conclusion, whilst the Parties support the CMA's finding that there is a clear competitive constraint from online, they believe that the CMA has significantly underestimated its significance. In particular,

---

<sup>9</sup>

[§].

by relying so heavily on the static results of a survey carried out some months ago, the CMA does not adequately recognise and reflect that this constraint is continuing to grow strongly.

- 2.21 To address this underestimation, the Parties consider that it would be appropriate to increase the diversion ratio calculated by the CMA (using the survey results) significantly beyond the current 10% level in the PFs. An appropriate diversion ratio would be between 17% and 23%, as discussed above.

























### 3 The adjustments to the WSS approach are overly conservative

- 3.1 At paragraph 7.120 *et seq* of the PFs, the CMA conducts a number of cross-checks on the WSS results to establish whether there are additional local areas of concern or areas that should not have been identified as problematic. In carrying out the cross-checks, the CMA focuses on areas with high or low density of LBOs, recognising that because the survey did not focus on such areas, it therefore risked over or underestimating problems in those areas.
- 3.2 The Parties agree that it is appropriate to carry out a cross-check on the robustness of the WSS results and to do so by reference to evidence on entry and exit, refurbishment decisions and concessions. However, the Parties consider that the CMA has been overly cautious in how it carries out the cross-check and makes the consequent adjustments to the results of the WSS.

(i) **A threshold of 6 to 5 is unnecessary and is not supported by the majority of the evidence**

- 3.3 In areas where there are a large number of shops, the CMA cross-checks by reference to the evidence on refurbishment decisions (Table 7 in the PFs) and concessions (Table 10 in the PFs). The CMA concludes that this evidence does not show material competitive interaction in settings where there are four or more competing shops within 400m and that, as a result, these areas are unlikely to give rise to competition concerns.
- 3.4 The CMA's conclusion appears to assume that there needs to be at least four competing shops (in addition to the Parties) within 400m in order for an LBO to be deemed unproblematic. This results in a "6 to 5" intervention threshold. The Parties do not agree with this assumption. In the Parties' view, this is overly conservative, and is not supported by the majority of the evidence that the CMA has presented.
- 3.5 First, the evidence relied on by the CMA on refurbishment decisions provides only limited support for that threshold. Table 4 below shows how the propensity to refurbish an LBO in response to entry by a competitor in a local area varies by distance and local concentration in the area.

Table 4: Response rate for different types of competitive environments (PFs Table 7)

Number of other LBOs (400m) (*)	Distance between centroid LBO and entrant (m)			
	0-100	100-200	200-300	300-400
0				
1				
2				
3				
4				
5+				

(\*) Other LBOs refers to the number of shops other than the centroid LBO and the entrant. Excludes LBOs of the same fascia as the centroid LBO (i.e. that is own brand LBOs).

- 3.6 The table shows that within 200m, competitive interactions on refurbishments are nearly completely exhausted when there are three or more competing shops – with a substantial drop in impact going from three competitors to four competitors. Furthermore, beyond 100m, the competitive impact drops off much faster, with almost all interaction depleted by two competitors at 100-200m, and one

competitor at 200m plus. This supports a threshold that is less conservative than the four competitors chosen by the CMA.

- 3.7 Second, this finding is also consistent with the evidence on concessions. Table 5 shows the impact on the number of concessions from adding one competitor within a distance band when there are already a number of other competitors present in the area.

**Table 5: Concession numbers for different types of competitive environments (PFs Table 10)**

Number of other LBOs (400m) (*)	Ladbrokes marginal effects				Coral marginal effects			
	Distance band (m)				Distance band (m)			
	0-100	100-200	200-300	300-400	0-100	100-200	200-300	300-400
0	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
1	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
2	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
3	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]
4+	[X]	[X]	[X]	[X]	[X]	[X]	[X]	[X]

(\*) Other LBOs refers to the number of shops other than the centroid LBO. Excludes LBOs of the same fascia as the centroid LBO (i.e. that is own brand LBOs). The tables show the “marginal effects”, which are the differences between the number of concessions for each number of competitors. For example, the first rows labelled “0” show the effect from moving from 0 to 1 competitor.

- 3.8 Once again, there is limited interaction beyond two competitors. Indeed, for Ladbrokes, beyond two competitors even at 100m there is almost no effect, or negative effects (which is not predicted). As with the refurbishment evidence, these effects diminish with distance, such that only one competitor is needed beyond 200m. Similar results are seen from Coral’s analysis, namely limited impact beyond two competitors and even then some of those results being the opposite of what one would expect.
- 3.9 The CMA has not pointed to any other evidence (whether submitted by the Parties or by third parties) that would support an intervention threshold requiring four other competitors to be present within 400m of the centroid LBO. The Parties note, however, that the CMA could have looked at the entry and exit analysis to assess the impact of an entry and exit dependent on the distance and number of competitors. Had they done so, it would have shown that whilst there is some support for an impact at four competitors within 200m, this effect diminishes quickly after 200m. For example, at 200-400m most of the coefficients on the number of competitors beyond three are either not statistically significant or are close to zero in magnitude. Indeed, whilst the CMA finds that distance is the key factor when the focal competitor LBO is located further away, the impact is generally only important when there are few LBOs in the area (paragraph 7.15 of the PFs). Once again this evidence questions the CMA’s choice of threshold especially for distances beyond 200m.
- 3.10 On the basis of the above, it would be appropriate for the CMA to relax the ‘four competitor’ threshold that it has used and to recognise that the presence of three competing LBOs together with the growing constraint from the online would provide a sufficient competitive constraint on the centroid LBOs.<sup>10</sup>

#### **4 The CMA underestimates the competitive constraint from independents**

- 4.1 At paragraph 7.88 of the PFs, the CMA notes that third party evidence “supported the view that independent LBO operators are generally associated with a lack of sufficient scale” and concludes that this may impact on their ability to compete as effectively as large, national LBO operators, “for

<sup>10</sup> This is particularly the case if the CMA is not minded to increase the online diversion ratio, as relaxing the threshold would be one way in which the CMA could recognise the increasingly strong online constraint going forward; a stronger online constraint effectively means that an intervention threshold that is conservative today will be overly-conservative in the near future.



instance in terms of their ability to invest in products and technology as well as the level of concessions or betting limits they are able to offer". As a result, the CMA has discounted the weight associated with independents in its weighted methodology (giving them a weight of 0.9 rather than 1.0).

- 4.2 The extent or nature of the third party evidence noted by the CMA is not clear from the PFs. The Parties note, however, that as a general matter, competitors who are concerned that this merger will result in greater competition for them or third parties seeking to purchase a significant divestment package, will clearly have an incentive to downplay the strength of independent competitors and thus increase the number of local SLC findings. The Parties would therefore caution against undue reliance on claims that may not be substantiated.
- 4.3 Based on the evidence that the Parties have seen, the Parties consider that there is no reason to conclude that independents are less able to compete effectively (whether for lack of scale or otherwise).
- 4.4 On the balance of the CMA's own analysis, the Parties believe that there is stronger support for independents being an equal constraint than there is for independents being a weaker constraint compared to LBOs of the larger chains.
- (a) Entry and exit analysis: in paragraph 7.17 of the PFs, the CMA states that entry by independents has a marginally lower effect on volumes at both Ladbrokes and Coral LBOs than entry by large national LBO operators. This is inconsistent with the econometric results of the entry and exit analysis contained in Tables 2 and 3 of Appendix E. For example, as discussed in paragraph 26 of Appendix E, the entry of a competing LBO within 200m, *whatever the fascia of that entrant*, significantly reduces stakes for both Coral and Ladbrokes.
- [✂].
- [✂].
- (b) Concessions decisions: in paragraph 7.33 of the PFs, the CMA explicitly states that "*there is no material difference in the competitive pressure exercised by an independent LBO or an LBO of a national chain*" when it comes to concessions offered by the Parties. The Parties fully agree with the CMA's interpretation of this evidence.
- (c) Refurbishment decisions: for refurbishment requests, the data do not allow the CMA to calculate reliable response rates for independents because the data only recorded entries from a few of the larger independent operators and not from smaller independents. However, the Parties believe that the CMA is not taking sufficient account of its own analysis of the Ladbrokes data (Figure 2 of Appendix F). This clearly shows that competitive events from independents are not associated with lower estimated loss of gross win for Ladbrokes LBOs compared to competitive events from other operators – indeed there is remarkably little difference between any of the fascia identities (with all identities having a significant impact on Ladbrokes).
- (d) Survey evidence: the final piece of evidence is the CMA's survey. Here we note that the CMA's analysis of the survey data shows some support for independent operators attracting less diversion compared to national chains. However the Parties consider that this analysis suffers from small sample sizes. Indeed, the locations surveyed by the CMA contain *only one independent* and therefore any inferences based on the survey results are not likely to be robust. Furthermore, in the Parties' view, the *actual* response by the

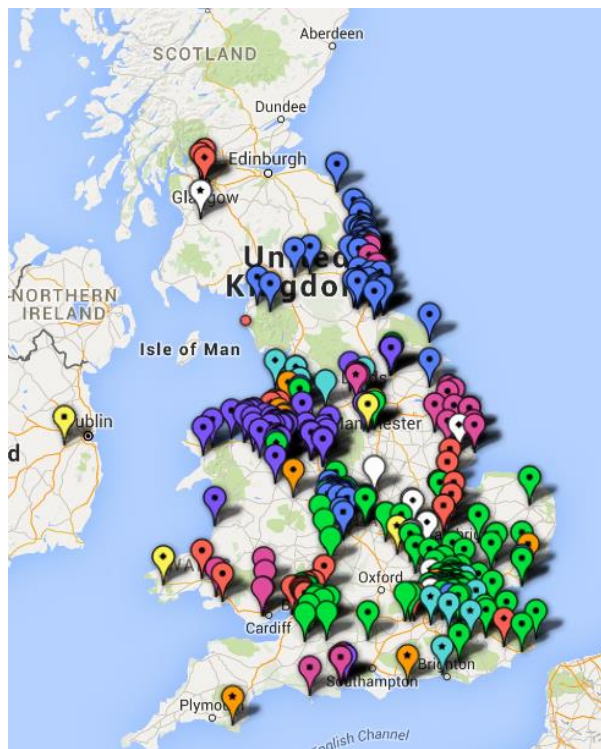
Parties to independents – as the evidence above shows, should be considered superior to evidence on stated response.

- 4.5 The results of the CMA's own analysis is supported by the evidence submitted by the Parties regarding the strength of local competitive constraint by independents. As this evidence shows, not only is there no *a priori* reason to suggest that independents are not effective competitors in any given locality, but the Parties react as strongly to competitive action by independents in their local areas as they do to the other three national chains.
- (a) The internal documents of the Parties demonstrate that both Parties respond to the actions of local independent competitors by making defensive refurbishment or capex requests. Examples of responses to local independents were provided by the Parties with the Merger Notice.
  - (b) As set out at paragraphs 15.35 to 15.42 of the Merger Notice, the Parties also offer concessions as a targeted response to local competition, demonstrating the credible constraint from all competitors. Indeed, as the CMA's analysis shows, following Coral's 2014 re-base of its concessions, it "[X]" but [X].
- 4.6 The fact that the Parties react strongly to local competitive action on the part of independents follows from the fact that the offerings of all LBOs (whether national chains or independents) are broadly similar and increasingly standardised, as set out in detail in the Parties' earlier submissions.
- 4.7 Finally, the evidence does not support a finding that independents have scale disadvantages that significantly impact on their ability to compete.
- 4.8 First, there are a significant number of independent chains of considerable scale whose offerings clearly match those of the larger, national chains. These independent chains are active and fierce competitors, as can be seen from the illustrative selection below:
- (a) JenningsBet, which is the largest independent chain, has an estate of over 100 shops in locations and over 500 employees. It describes itself as "*one of the most innovative and competitive bookmakers on the modern day High Street.*" Indeed, Jennings has recently signed a new 3 year deal with Europe's leading SSBT provider Best Gaming Technology (BGT) to further expand its SSBT offering and were described by BGT as "*one of the first UK operators to see the vast potential of the product*". Jennings offers gaming through FOBTs across its estate and offers online betting and gaming through [www.Jenningsbet.com](http://www.Jenningsbet.com).
  - (b) Chisholm bookmakers has 50 shops in the North-East of England and North & East Yorkshire and currently has 240 employees with an annual turnover of £40m per year. According to Chisholm, they offer "*a full range of betting products together with unrivalled regular and special offers*" as well as "*well-trained staff who provide a high quality service to customers [and] recent shop-fits, which have an up-market image, and feature vibrant shop windows and impressive internal features*". All Chisholm shops have a range of the latest FOBTs, and Chisolm offer online betting through [www.chisholmbet.com](http://www.chisholmbet.com).
  - (c) David Pluck which describes itself as one of the "*top six independent bookmakers in the UK*" has over 40 shops and current applications across the North West and an "*active expansion programme*". It has rolled out SSBTs across its estate and offers a "*huge range*" of sports betting, including bet-in-play. Every David Pluck shop has between two and four FOBTs and it is actively considering expanding into online betting.
  - (d) Scotbet has over 60 shops in Scotland, which it describes as being "*fitted to the highest standard and including the latest technology*" and "*a firm favourite with customers*". When

Scotbet recently joined the Senet Group, that group described itself as “*over the moon [as] it now means we have approximately 90% of the betting shops in Scotland on board*”.

- 4.9 Second, independent bookmakers have cost-effective and easy ways to acquire the products and technology they need in order to provide a full service offering. Options available to independents include purchasing these inputs through “aggregators” who offer a full suite of inputs, purchasing “white label” services, and participation in industry purchasing consortia, as described in the paragraphs below.
- 4.10 Aggregators include companies like Openbet, which recently acquired Alphameric Solutions Ltd. It provides end-to-end technology to high street bookmakers, including integrated hardware and software. Openbet also provides 24/7 support, compliance support and hosting services. According to Openbet’s website, its integrated solutions enable customers with multiple business channels to have a single view of data for liability management, improved reporting and marketing capabilities. Independent chains who use Openbet technologies include David Pluck and Joe Jennings.
- 4.11 Another option for bookmakers is the purchase of “white label” services, which are then rebranded. This is a cost-effective solution for smaller bookmaker chains that wish to offer online betting. For example, companies such as Betsys and Optima offer or partner with white label services to provide full online services (CRM, risk management, content, etc). White label services are also available from other bookmakers. Corbett Sports (the online arm of Corbett bookmakers) provides the online operations for Mark Jarvis, Chisholmbet, Choicebet, Pridemore bookmakers, and Scotbet.
- 4.12 Finally, independent bookmakers can procure and operate new technology on the basis of best of breed solutions and on beneficial commercial terms through participation in consortia such as Bookmakers Technology Consortium (**BTC**). BTC is a non-profit organisation, whose membership is open to any independent bookmaker in the UK and Ireland. It uses the joint buying power of all of its members to negotiate advantageous deals with suppliers. BTC currently has 57 members, with shops across the UK, as shown in Figure 1 below.

Figure 1: BTC shop coverage:



- 4.13 Examples of the deals that BTC has secured for its members include agreements:
- (a) with Optima Information Systems for the supply of an EPoS system together with internet and call centre software, which will result in an immediate reduction in the cost of new installations;
  - (b) for the supply of the Genus display system from 2DB, which provides independent bookmakers with significantly more central control of their display systems than the previous screen display systems;
  - (c) with SIS for the provision of data at considerably lower cost than was previously available; and
  - (d) with Inspired for the supply of its full offer of virtual sports and number games through Inspired's Multi-viewer system.
- 4.14 On the basis of the above, it is clear that independents have many options available to them in order to secure the products and technology needed to offer a full service in competition with the larger, national chains.
- 4.15 As regards competition on the basis of concessions or betting limits, there is no reason why the larger size of a national chain would allow it to compete more effectively than a smaller independent. In particular, while at first sight it might appear that a national chain would have a larger financial base from which to offer concessions and spread the risk of larger bets, it must be remembered that the larger base would also increase the cost of these elements. For example, while a smaller independent may face 100 customers wishing to place large bets on a given race, a national chain may face 1,000. There is no reason to assume that the risk/benefit assessment would (as a proportion of the business) be significantly different as between the operators.
- 4.16 For all of these reasons, the Parties do not consider that the evidence supports a conclusion that independents do not compete as effectively as the five national chains in local areas. On the contrary, the evidence submitted by the Parties shows that there is little difference between LBO operators at the local level and the Parties react strongly to local competitive actions by independents. The CMA has therefore underestimated the competitive constraint from independents by according them a weight of 0.9 in the WSS methodology. To redress this underestimation, independents should be accorded a weight of 1.0, in line with the weight accorded to William Hill, Betfred and Paddy Power.

## **5 There will be no national SLC arising out of the “aggregation” of local effects**

- 5.1 Section 8 of the PFs considers the potential impact of the transaction at a national level as a result of aggregated loss of competition at the local level. The CMA carries out this assessment in respect of parameters of competition that are set centrally and applied uniformly across the Parties' estates and thus reflect the aggregate effect of local constraints across those estates, namely odds, promotions, betting limits, gaming RTPs and product ranges.
- 5.2 For the majority of these parameters, the Parties agree with the CMA's finding that these are applied uniformly and thus reflect the aggregate effect of local constraints. For example, as set out in paragraphs 15.186 to 15.189 of the Merger Notice (and associated annexes), the internal documents of the Parties clearly show that the Parties' decisions relating to changes in gaming RTPs are based on the performance of games across all shops in the estate. In relation to betting limits, however, contrary to the CMA's finding, the application of Permission-to-Lay (**PTL**) thresholds is not wholly uniform across both Parties' estates. As Coral has pointed out to the CMA, [REDACTED]. That said, the Parties do not consider that these local differences in PTL application would have a material impact on the

transaction (and in any event, they would fall to be assessed more under the “local” than “national” ToH).

- 5.3 As regards the methodology by which the CMA assesses the national impact, the Parties welcome the fact that the CMA has recognised the relevance and importance of the limited overlap between the Parties’ estates and has not adopted a “top down” methodology based on national market shares. However, the calculation of aggregated diversion ratios suffers from the same failure to properly take account of the online constraint as the local assessment. In light of the evidence set out above at section 2, the Parties consider that the diversion ratio applied to the online channel should be considerably greater than 10%. As set out above, an appropriate diversion ratio would be between 17% and 23%.
- 5.4 Finally, the Parties note for completeness that, as set out in detail in the Parties’ Initial Submission of 24 March 2016 and Joint Response to the Working Papers of 14 April 2016, as long as the competitive constraints on the Parties do not change substantially in any of the local overlaps, the aggregate competitive constraint felt by the Parties will also remain unchanged. Therefore, any divestments necessary to address local concerns will also solve any potential reduction in competition relating to these centrally decided competitive parameters and there can be no aggregated loss of competition.

## **6 The CMA is correct to find that no SLC will arise on various national theories of harm**

- 6.1 At section 9 of the PFs, the CMA considers various possible national TOHs and concludes that the transaction will not result in an SLC in relation to any of these issues. The Parties welcome these provisional findings and note that they are consistent with the vast majority of evidence regarding competition.
- 6.2 As set out in detail in the Parties’ submissions and evidence, a comparison of key parameters of competition shows little to no difference between the five national chains. Evidence submitted by the Parties regarding the offerings of different LBOs and, most importantly, customer perception of different national chains is noted at paragraphs 7.49 and 7.50 of the PFs. Similarly, as noted at paragraph 7.51, the Parties submitted detailed evidence showing that competition on odds between the five largest chains is equally close. In particular:
- (a) Annex 2 of the Parties’ Initial Submission, based on an analysis of horse race betting prices between 2012 and 2015 showed that:
    - (i) On the favourite horse, in races where Coral was the most competitive on the favourite, there is limited difference in the proportion of races for which each of the other LBO operators were the next closest. William Hill is the runner-up slightly more frequently than the other three (Betfred, Ladbrokes and Paddy Power). The same is true of races in which Ladbrokes was the most competitive on the favourite. William Hill was the runner-up slightly more frequently, but all the other LBO operators were relatively similar.
    - (ii) Looking across all horses within a race (i.e. considering the “book margin”), when Coral was the most competitive across all horses, Paddy Power and William Hill were the runners-up most frequently, with Betfred and Ladbrokes significantly lower. For the relatively small proportion of races in which Ladbrokes offered the best race book margin, Paddy Power, William Hill and Coral were the runner-up approximately the same proportion of times, with Betfred further behind.

- (b) Further as set out at Annex 3 of the Parties' Initial Submission, an analysis of football odds for the favourite selection across nine weeks in the 2015/16 football season to date shows that Ladbrokes and Coral face strong competition from all other bookmakers. Indeed, to the extent that there is a degree of differentiation on price, other competitors are closer competitors to the Parties than the Parties are to each other.

6.3 Equally, the Parties agree with the finding at paragraph 7.62 that the identity of the brand has a relatively weak impact, indicating that factors relating to brand place a largely negligible role. This is clear, both from the Parties' data and from the economic analysis carried out by the CMA (for example, as detailed at paragraph 7.40 the analysis of the CMA survey found that the Parties' customers are largely indifferent in terms of different brands, and the CMA's analysis of refurbishments, concessions and entry/exit data all showed a lack of significant differentiation between LBO brands). This finding also accords with the evidence submitted by the Parties regarding the limited importance of brand-type factors for customer choice.

- (a) For example, the Kantar Market Update Retail Presentation for Ladbrokes, dated February 2015, (annexed to the Merger Notice) indicates that approximately 30 to 40% of customers switched brands from the brand that they first used. Further, a Q1 2014 Kantar Retail report indicates that on average, Ladbrokes' regular retail customers use 1.7 retail brands, Coral's regular retail customers use 1.8 retail brands, Betfred's regular retail customers use 1.9 brands, Paddy Power's use 2.4 brands and William Hill's use 1.7 brands.
- (b) The relatively minor role that brand plays in customer choice of betting shop is also supported by the internal documents of the Parties. For example, the SPA Future Thinking Survey carried out for Ladbrokes sums up customers' attitude to brand as follows, "[§]" The relative lack of importance of branding to customers (and thus to operators) is further supported by Coral documents showing that [§].

6.4 Given the above evidence, it is not surprising that the transaction will not result in an SLC at national level, regardless of what TOH is examined. As regards specific TOHs considered, the Parties offer the following comments.

6.5 Competition for "top price" selections: the Parties agree with the CMA's conclusion that no SLC will result for these selections. In particular, the evidence shows clearly that the Parties will continue to compete with many operators (both retail and online) to provide attractive odds on these selections. Indeed, as set out in the Parties' Joint Response to the working papers, pricing for these events is driven in the same way as pricing for football and horse racing generally, namely by the need to compete with a wide number of retail and online operators. The ultimate driver of pricing is the need to increase volume across the estate. The merger will not, therefore, reduce or dampen competition in relation to these "top prices. Further, as the CMA has recognised, these selections cover only a minimal proportion of the Parties' business.

6.6 Potential competition: the Parties agree with the CMA's conclusion that the Parties will not expand significantly into local areas where they are not currently present. The Parties note that, in addition to their lack of expansion plans (of which the CMA has taken account), the Parties have also provided internal documentary evidence showing clearly that neither Party has a policy of actively seeking to enter into areas where the other is present. This further supports the CMA's conclusion that the transaction will not result in an SLC in relation to potential competition.

## 7 Conclusion

- 7.1 On balance, the Parties agree with the approaches taken by the CMA to assessing the potential impact of the transaction and with the CMA's assessment of the majority of the evidence. The Parties have a number of residual concerns regarding the CMA's treatment of the online constraint, the cross-check threshold used, and the CMA's assessment of the constraint imposed by independents. The result of the CMA's approach to these issues means that the local assessment model adopts an overly-conservative approach in a number of areas. The Parties request the CMA to reconsider its approach to these issues.
- 7.2 As regards the national assessment, the Parties consider that the CMA's assessment of the evidence has led it to the right conclusions and, indeed, that there is further support for the CMA's provisional findings in the evidence put forward by the Parties.