

6 June 2016

Mr Martin Cave
Inquiry Chair – Ladbrokes/Coral Merger Inquiry
Competition and Markets Authority
Victoria House
Southampton Row
London, WC1B 4AD

Dear Mr Cave,

Anticipated merger between Ladbrokes plc and certain businesses of Gala Coral Group Ltd – Potential remedies and 1999 undertakings from Hilton Group plc – British Horseracing Authority comment

I write in my capacity as Chief Executive of the British Horseracing Authority (BHA), the governing and regulatory body of the sport of thoroughbred horseracing in Great Britain – which includes as its Members the Racecourse Association (the trade body for 58 British racecourses) and the representative bodies for jockeys, trainers, breeders, owners and stable staff – in response to the Provisional Findings of your investigation of the proposed merger of Ladbrokes plc and certain businesses of Gala Coral Group Limited.

Our industry is one of significant importance to the British economy – the country's second largest sport behind football in respect of attendance (over 6.1 million in 2015), revenues generated and employment. With an annual economic impact of £3.45 billion and over 85,000 Full Time Equivalent jobs supported, British Racing was hailed by the Prime Minister last year as a "massive success story".

A key element of this success is British Racing's inherent attractiveness as a betting product, with an estimated £11 billion bet annually in the UK on our 1,450 fixtures. Indeed, Racing and Betting share a unique and symbiotic relationship, with many aspects of our central funding, administration and scheduling interlinked with the Betting industry. The future success of the British Racing industry is directly linked to a thriving and competitive betting market on our sport – in both the traditional 'bricks and mortar' retail market, and remote (online, mobile, telephone) market.

It is for this reason that the BHA and the wider British Racing industry has been closely monitoring, and has engaged proactively with, your ongoing investigation into the proposed merger between Ladbrokes plc and Gala Coral (the Parties). We understand that this is a complex case with a number of prevailing factors for the Competition and Markets Authority (CMA) to take into account – and that it is critical that choice and price for the betting consumer is protected.

However, we also feel that it is important that the impact of the proposed merger on 'supplier' industries such as ours – which provide the Parties with a consistent, high-quality and well-regulated product 362 days of the year – is given appropriate weight (similar to that of software suppliers like Playtech).

This was indeed the view of the Monopolies and Mergers Commission (MMC) in its 1998 report on the previous proposed merger between the Parties, which stated that "the effects on racing – a

substantial industry in terms of turnover and employment – are also relevant”.¹ Further, it concluded that the prospect of two operators with a 60% market share having “the ability effectively to control key elements of the institutional framework within which the betting industry’s relationship with racing is worked out” to be “undesirable”.

It is our clear contention, in line with your Provisional Findings that the retail and remote betting markets are separate (even if the latter provides a constraint on the former), that an even greater concentration of market share in the UK retail betting market will prevail than would have been the case in 1998 if the proposed Merger is allowed to proceed with the current remedies in place. This will have clear, and potentially significantly detrimental, impacts on the British Racing industry as outlined by the MMC in 1998, which I will again take the opportunity to outline below.

We are concerned that the current investigation has not appropriately considered the impact of the proposed merger on our industry, which delivers the anchor Over The Counter (OTC) product in the UK retail betting market. Indeed, we have received no further contact from the Inquiry Group since our submission to the Phase 2 investigation on 1 February. Further, it is regrettable that such a short period of time has been provided to third parties to respond to the Provisional Findings given this is an issue of such complexity, and in the case of our industry, significant importance.

This investigation comes at a time when the UK Government, under the lead of the Department for Culture, Media and Sport (DCMS), has announced its intention to safeguard the future of British Racing’s funding from betting activity by replacing the 1960s Horserace Betting Levy with a new statutory mechanism that will “create a level playing field for British based and offshore gambling operators” by April 2017.² The Government’s aim in this policy has been to “arrive at an outcome that benefits both [the Racing and Betting] industries, the wider economy and consumers.”³ British Racing is concerned that the approval of the merger with the current proposed remedies could significantly undermine those objectives through restriction of competition in the UK retail betting market.

Given the timescales for your investigation, the BHA would be delighted to facilitate a meeting of the Inquiry Group with representatives of British Racing in the coming days or weeks to assist you in understanding our concerns further. We feel it is very important that the impacts on the British Racing industry from the proposed merger are considered fully by the Inquiry Group.

We comment below on some specific points covered in the Provisional Findings, the proposed nature and extent of remedies proposed by the Inquiry Group, and express our view that the 1999 Undertakings provided by Hilton Group plc remain in force.

National loss of competition

We agree with the conclusion of the Inquiry Group that the UK retail and remote betting markets are distinct – with separate customer and revenue bases, differing product mixes and pricing structures.

¹ Paragraph 2.180, Monopolies and Mergers Commission, *Ladbroke Group PLC and the Coral betting business: A report on the merger situation*, September 1998, p.42

² Department for Culture, Media and Sport, *Implementing the replacement for the Horserace Betting Levy*, March 2016

(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/508313/Implementing_the_replacement_for_the_Horserace_Betting_Levy.pdf)

³ Ministerial Foreword, *Horserace Betting Right: A consultation on potential structure and operation*, February 2015, p.4

(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/401568/20150205FIN_ALConsultationDocument.pdf)

The Inquiry Group found that there was no Substantial Lessening of Competition (SLC) as a result of the overall market share of the Parties. We believe that a national market share approach needs to be considered. Based on the most recent Gambling Commission Industry Statistics, a merged Ladbrokes-Coral would hold a c.45% market share of UK Licensed Betting Offices (LBOs) before divestment.⁴ If, as has been reported, the Merged Entity is required to divest 400 LBOs (as has been reported as a potential divestment) this would still leave it with over 40% of UK LBOs. Assuming that William Hill were not to acquire shops, this would mean that the two largest operators in the UK Retail Betting market would have 65-70% of UK LBOs.

We believe that this represents an SLC on a national level, with adverse impacts not only for customers in terms of available prices (as elaborated on below) but also for other industries of national importance including the thoroughbred horseracing and greyhound racing industries – particularly in respect of the market for LBO media rights and other areas of policy including contributions to the Horserace Betting Levy and British Greyhound Racing Fund. Whilst competition takes place at the local level, it also takes place at a national level and it is important the CMA addresses the loss of national competition that the transaction entails. Unless properly remedied by the CMA, that loss of competition will manifest itself in a deterioration in odds to the detriment of consumers.

[REDACTED].

We believe that [REDACTED] [it is] required to allow a fourth operator of sufficient scale to be able to compete in the UK retail betting market, to counter the national SLC and its effects on consumers and supplier industries, such as British Racing. Some specific areas where these would take effect includes competition for pricing in horseracing and the market for LBO media rights.

Competition for pricing in horseracing

The Provisional Findings detail an analysis by the Inquiry Group of competition between bookmakers for top-price 'black-type' in the Racing Post *Pricewise* column – an indication of the importance placed on acquiring horseracing betting customers, who are more likely to have a wider betting and gaming repertoire, for operators.

However, we are concerned that the analysis of competition in the UK retail betting market for pricing on horserace betting in the provisional findings was limited to competition for *Pricewise* 'black-type', which fails to understand the depth and intricacies of the market on horserace betting in the UK.

Pricewise races represent only 10-20% of Coral's gross win on horseracing and only a small percentage of the over 10,000 thoroughbred horseraces run under Rules in Great Britain annually on which bookmakers offer bets. Horseracing remains the anchor OTC betting product in the UK retail betting sector with £4.7 billion of turnover in 2014-15⁵ – representing 42% of OTC gross win for William Hill (currently the largest LBO operator) in 2015.⁶

Operators also segregate their analysis of horseracing margin and performance on the basis of 'Tiers' – reflective of the relative quality/importance of the races – which indicates there are differing pricing structures and market dynamics at play between these tiers, which the *Pricewise* analysis

⁴ *Gambling Commission Industry Statistics April 2010 to March 2015*

⁵ *Gambling Commission Industry Statistics April 2010 to March 2015*

⁶ *William Hill PLC Corporate Presentation, April 2016, (<http://files.williamhillplc.com/media/4037/wmh-corporate-presentation-apr-2016.pdf>)*

would not fully reflect.⁷ BHA considers that the CMA's limited assessment therefore may fail to appropriately reflect the impact on price competition in the remainder of the market.

The 1998 MMC report included an analysis of the then 'Big 3' bookmakers' horseracing odds on Saturdays in March/April 1997 and 1998, and found that removal of Coral's odds would raise the average over-round by three to four percentage points and "worsen the odds available to punters."⁸ Our view is that – even though there is now some impact from the remote betting sector, and there is now a different product mix in LBOs – there would still be a potential adverse impact on pricing competition for UK Retail horserace betting customers as a result of the proposed merger.

For these reasons, we believe that a more detailed analysis – reflective of the scale and diversity of betting on horseracing in UK LBOs – is required in order to: ensure that customers betting on horseracing in UK LBOs do not suffer, through an SLC, deterioration of prices offered on UK horserace betting as a result of the proposed merger, and; assess what scale of competition would need to be introduced by a new or expanded market entrant to potentially mitigate against this SLC, if, following proper analysis, an SLC is detected.

Supply of media rights for horseracing to LBOs

We represented in our submission in February our view that the proposed merger would have an adverse impact on competition for LBO media rights for British Racing. In your provisional findings however, the Inquiry Group states that there are no "competition concerns on the basis of increased buyer power of the Merged Entity". We disagree with this finding.

The Merged Entity will constitute 40-45% of the UK LBO Market following the proposed divestiture of LBOs – and will therefore have significant buying power in the media rights market. [REDACTED].

Further, and particularly in the context of the acquisition of media rights from racecourses, the BHA is surprised that the level of buyer power of the merged entity and of the two largest betting operators post-merger does not appear to have factored into the CMA's (short) assessment at paragraphs 11.30 - 11.36 of the report which instead appear to focus on LBO operators rather generally as independent customers of media rights. A single LBO operator holding a 40-45% market share could conceivably affect the value of media rights acquired from racecourses despite bilateral negotiations occurring between racecourses and individual LBO operators. [REDACTED].

The Inquiry Group concluded that the Merged Entity would be unlikely to lower purchasing prices to the extent that racecourses may be forced to close as it would leave less content to broadcast. In our view, the threat of closure of such 'marginal racecourses' would not be an appropriately significant restraint on the Merged Entity leveraging lower media rights values. [REDACTED]. If media rights values were to fall as a result of the Merger, some of these 'marginal' racecourses – often located in rural areas and playing a significant role in their local communities and economies – would be forced to close, resulting in a loss of the diversity of horseracing in Great Britain which makes it so distinctive.

We believe that a new or existing operator of sufficient scale and buying power will need to be introduced to the market to mitigate the SLC in media rights purchasing caused by the Merger, [REDACTED].

⁷ William Hill 2014 Final Results Presentation, 27 February 2015, Slide 8 (<http://files.williamhillplc.com/media/1830/wmh-final-results-presentation-27-feb-15.pdf>)

⁸ Monopolies and Mergers Commission, *Ladbroke Group PLC and the Coral betting business: A report on the merger situation*, p.34

Possible remedies

With respect to the Notice of Possible Remedies published by the Inquiry Group on 20 May, we agree with the conclusion that a “behavioural remedy is very unlikely to be an effective remedy to the SLC.” Statutory remedies are required. The Parties have previously reneged on commitments, including locating their remote businesses to the UK following the introduction of Gross Profits Tax 2002 (these soon relocated offshore). Further, in October 2013, the ‘Big Four’ retail operators agreed a four year arrangement with British Racing to contribute £4.5 million voluntarily to the Horserace Betting Levy in lieu of their remote businesses being located offshore and outwith the Levy’s jurisdiction. This arrangement collapsed after only one year.⁹ Concerns have also been raised by the House of Commons Environment, Food and Rural Affairs Select Committee regarding the reduced contribution to the voluntary British Racing Greyhound Fund from betting operators.¹⁰

In respect of the proposed divestiture, we agree with the Inquiry Group’s view that the purchaser of any divested LBOs needs to have sufficient scale nationally to be able to mitigate against the SLC identified from the cumulative effects of local SLCs on the national market, and also – as per our view above – to mitigate against the SLC in the national market for retail betting, with its impact for on pricing on horseracing for betting customers and on the media rights market. We also agree that any divestiture should be sufficiently advanced before it is allowed to progress.

[].

The Notice of Possible Remedies also invites comment on any “relevant customer benefits” which could follow from the remedies being considered, including “higher quality” goods or services. In our submission of 1 February, we outlined that a potential remedy could be a requirement that the Merged Entity contributed to the funding of British Racing across all of its distribution platforms (retail and remote) – as at present both Parties do not contribute to the Horserace Betting Levy from profits on their remote businesses. While Government has – as per above – outlined its intention to reform the funding of British Racing on a statutory basis by April 2017, the Inquiry Group could require as a remedy that the Merged Entity contributes to the Levy through its online business in advance of the statutory introduction of the replacement system. We believe that this would be justified as it would ensure, through a more sustainably funded British Racing industry, a “higher quality” product for UK betting customers to bet on.

1999 Undertakings by Hilton Group plc

The CMA has invited comment on whether the Undertakings, made by Hilton Group plc in October 1999 regarding any future interest in the Coral betting business, remain valid. British Racing is of the view that the Undertakings remain in force and that it would be inappropriate for these to be altered or the relevant Parties released from them.

Our principal reason for this view is that the proposed Merger would result in a greater degree of concentration of LBO market share between two operators in the UK retail betting market than was deemed damaging to competition by the MMC in 1998. The 1998 report stated that the combined Ladbrokes-Coral business would have 30.5% of LBOs – while the Merged Entity today would have, even after the proposed divestment, an LBO share of 40-45%. The two largest operators post-Merger would have a c.70% market share, compared to the 60% deemed “undesirable” for its impact on horseracing and pricing competitiveness for customers by the MMC in 1998.

⁹ HBLB Press Release, *Agreement of Levy Scheme for 2014/15 and four-year arrangement between Racing and major bookmakers*, 24 October 2013, (<http://www.hblb.org.uk/release/613>)

¹⁰ House of Commons Environment, Food and Rural Affairs Select Committee, *Greyhound Welfare*, (Feb 2016), p.20

On the basis of the Inquiry Group's provisional conclusion that the retail betting sector constitutes a separate market – a finding that the BHA endorses – the concerns of the MMC in 1998 regarding the market share of the Merged Entity and its impacts on horseracing still hold.

Finally, the BHA's view is that there has been no change in circumstance since 1999 that would render the 1999 Undertakings unnecessary: the merger is exactly the situation that was anticipated by the MMC in 1998 and what the 1999 undertakings sought to protect from proceeding without due consent and approval being obtained. Therefore, the Undertakings given in 1999 still apply, and it is our view that any Merger between the Parties should be subject to the prior written consent of the Secretary of State for Business, Innovation and Skills.

The BHA would be delighted to facilitate a meeting between relevant stakeholders within British Racing and the Inquiry Group to discuss the significant issues raised in this submission. We would also be happy to provide the Inquiry Group with any more information it requires to assist its investigation and final conclusions.

Yours sincerely,

Nick Rust
Chief Executive