

## **MERGER BETWEEN LADBROKES PLC AND CERTAIN BUSINESSES OF GALA CORAL GROUP LIMITED**

### **Notice of acceptance Final Undertakings pursuant to sections 41 and 82 of, and Schedule 10 to, the Enterprise Act 2002**

On 24 July 2015, Ladbrokes plc (Ladbrokes) agreed to merge with certain businesses (Coral) of Gala Coral Group Limited (Gala Coral) by way of the acquisition by Ladbrokes of the entire issued share capital of GC Group (Jersey) Limited, which is the holding company of Coral (the Transaction).

On 11 January 2016, the Competition and Markets Authority (CMA) made a reference to its chair in accordance with section 33(1) of the Enterprise Act 2002 (the Act) for the constitution of a Group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 to investigate and report on the proposed merger between Ladbrokes and Coral (the Reference).

The CMA decided to conduct a review, concurrent with its assessment of the Transaction, of whether, by reason of any change of circumstances, the undertakings given by Hilton Group plc on 27 October 1999 (the 1999 Undertakings) were no longer appropriate and the relevant parties could be released from the undertakings or the undertakings needed to be varied or to be superseded by new undertakings.

On 26 July 2016, the CMA published its report entitled '*Ladbrokes and Coral: A report on the anticipated merger between Ladbrokes plc and certain businesses of Gala Coral Group Limited*' (the Report).

The Report concluded, inter alia, that:

- (a) the Transaction, if carried into effect, will result in the creation of a relevant merger situation;
- (b) the creation of that situation may be expected to result in a substantial lessening of competition (SLC) within 642 local markets in Great Britain for the supply of gambling products in local betting offices (LBOs); and within the market for the supply of gambling products in Great Britain, as a result of the aggregated loss of competition at the local level;

- (c) the CMA should take action for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which may be expected to result from it;
- (d) a divestiture, to one or more suitably qualified up-front purchasers, of a Ladbrokes or a Coral LBO in each of the 642 local markets where an SLC had been identified would be effective and proportionate in remedying, mitigating or preventing the SLC and any resulting adverse effect (noting that it may be possible for divestiture of one or more LBOs to solve the SLC in more than one local market);
- (e) the divestiture would be accompanied by an obligation on Ladbrokes and Gala Coral not to re-acquire any of the divested LBOs for a period of ten years from the date of acceptance of the final undertakings; and
- (f) there have been changes of circumstances since the report of the Monopolies and Mergers Commission '*A report by the Monopolies and Mergers Commission on the merger situation involving Ladbrokes Group plc and the Coral betting business – CMA4030, September 1998*', by reason of which, and taking into account the assessment of the dynamics of the current local and national competition landscape, and having concluded that the SLC can be comprehensively remedied by the adoption of a divestiture remedy, the CMA has decided that the 1999 Undertakings are no longer appropriate and should be superseded by the final undertakings.

The CMA published a notice of proposal to accept final undertakings (the Undertakings) on 12 September 2016. The CMA has considered the representations received and has concluded that no amendments are required to the Undertakings. The CMA has decided to accept the Undertakings attached to this Notice.

The CMA, pursuant to section 82 of the Act now accepts the Undertakings as given by Ladbrokes and Gala Coral. The Reference has been finally determined and the Undertakings come into force accordingly.

This Notice and a non-confidential version of the Undertakings will be published on the CMA website.

(*signed*) by authority of the CMA

Martin Cave  
*Group Chair*  
11 October 2016

# MERGER BETWEEN LADBROKES PLC AND CERTAIN BUSINESSES OF GALA CORAL GROUP LIMITED

## Final Undertakings given to the Competition and Markets Authority by Ladbrokes plc and Gala Coral Group Limited pursuant to sections 41 and 82 of the Enterprise Act 2002

Whereas:

On 24 July 2015, Ladbrokes plc (Ladbrokes) agreed to merge with certain businesses (Coral) of Gala Coral Group Limited (Gala Coral) by way of the acquisition by Ladbrokes of the entire issued share capital of GC Group (Jersey) Limited, which is the holding company of Coral (the Transaction).

On 11 January 2016, the Competition and Markets Authority (CMA) made a reference to its chair in accordance with section 33(1) of the Enterprise Act 2002 (the Act) for the constitution of a Group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 to investigate and report on the proposed merger between Ladbrokes and Coral.

On 18 July 2016, the CMA accepted undertakings from Ladbrokes and Gala Coral in accordance with section 80(2) of the Act for the purpose of preventing pre-emptive action.

The CMA decided to conduct a review, concurrent with its assessment of the Transaction, of whether, by reason of any change of circumstances, the undertakings given by Hilton Group plc on 27 October 1999 (the 1999 Undertakings) were no longer appropriate and the relevant parties could be released from the undertakings or the undertakings needed to be varied or to be superseded by new undertakings.

On 26 July 2016, the CMA published its [report](#) entitled '*Ladbrokes and Coral: A report on the anticipated merger between Ladbrokes plc and certain businesses of Gala Coral Group Limited*' (the Report).

The Report concluded, inter alia, that:

- (a) the Transaction, if carried into effect, will result in the creation of a relevant merger situation;
- (b) the creation of that situation may be expected to result in a substantial lessening of competition (SLC) within 642 local markets in Great Britain for the supply of gambling products in local betting offices (LBOs); and within the market for the

supply of gambling products in Great Britain, as a result of the aggregated loss of competition at the local level;

- (c) the CMA should take action for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which may be expected to result from it;
- (d) a divestiture, to one or more suitably qualified up-front purchasers, of a Ladbrokes or a Coral LBO in each of the 642 local markets where an SLC had been identified would be effective and proportionate in remedying, mitigating or preventing the SLC and any resulting adverse effect (noting that it may be possible for divestiture of one or more LBOs to solve the SLC in more than one local market);
- (e) the divestiture would be accompanied by an obligation on Ladbrokes and Gala Coral not to re-acquire any of the divested LBOs for a period of ten years from the date of acceptance of the final undertakings;
- (f) there have been changes of circumstances since the report of the Monopolies and Mergers Commission '*A report by the Monopolies and Mergers Commission on the merger situation involving Ladbrokes Group plc and the Coral betting business – CMA4030, September 1998*', by reason of which, and taking into account the assessment of the dynamics of the current local and national competition landscape, and having concluded that the SLC can be comprehensively remedied by the adoption of a divestiture remedy, the CMA has decided that the 1999 Undertakings are no longer appropriate and should be superseded by the final undertakings.

Now therefore Ladbrokes and Gala Coral give to the CMA the following undertakings under section 82 of the Act, in accordance with section 41 of the Act, for the purpose of remedying, mitigating or preventing the SLC and any adverse effects which may be expected to result from it, as identified in the Report.

## **1. Commencement and application**

- 1.1 The Undertakings shall come into effect on the Commencement Date.

## **2. Supersession of the 1999 Undertakings**

- 2.1 The 1999 Undertakings are superseded by the Undertakings.

## **3. Interpretation**

- 3.1 Words and expressions used and defined in the recitals to the Undertakings have the same meaning as they do in the Undertakings.

- 3.2 In the Undertakings the word ‘including’ means including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word ‘include’ and its derivatives shall be construed accordingly.
- 3.3 The headings used in the Undertakings are for presentation purposes and have no legal effect.
- 3.4 Expressions in the singular include the plural and vice versa and references to persons include corporations.
- 3.5 References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise.
- 3.6 References to recitals, paragraphs, subparagraphs and annexes are references to the recitals to, paragraphs and subparagraphs of, and annexes to, the Undertakings.
- 3.7 The annexes to the Undertakings form part of the Undertakings.
- 3.8 The Undertakings are in furtherance of Sections 14 and 15 of the Report and shall be construed consistently with those sections and so as to give effect to their conclusions.
- 3.9 The Interpretation Act 1978 shall apply to these Undertakings as it does to Acts of Parliament.
- 3.10 For the purposes of the Undertakings and the annexes, unless the context otherwise requires:

**1999 Undertakings** means the undertakings given by Hilton Group plc (which was subsequently renamed Ladbrokes plc) to the Secretary of State on 27 October 1999 pursuant to section 88(2) of the Fair Trading Act 1973 following the report of the Monopolies and Mergers Commission ‘*A report by the Monopolies and Mergers Commission on the merger situation involving Ladbrokes Group plc and the Coral betting business – CMA4030, September 1998*’;

**Act** means the Enterprise Act 2002;

**Approved Agreement** means a binding agreement or agreements approved by the CMA in accordance with the Undertakings;

**Approved Purchaser** means a purchaser of some or all of the Divestiture Package who, in the CMA’s view, satisfies the relevant purchaser suitability

criteria as set out in paragraphs 14.85 to 14.86 of the Report and paragraph 6 of the Undertakings;

**Commencement Date** means the date on which the Undertakings are accepted by the CMA;

**Coral** means the businesses of Gala Coral which are to be merged with Ladbrokes, namely the Coral retail, Eurobet retail and Coral's online businesses which are currently run by a group of companies which are ultimately controlled by Gala Coral;

**CMA** means the Competition and Markets Authority;

**Compliance Statement** means the statement provided by each of Ladbrokes and Gala Coral in accordance with paragraph 12 of the Undertakings;

**Divestiture Package** means the LBOs nominated for divestiture by the Parties pursuant to paragraph 5 and approved for divestiture by the CMA pursuant to the Undertakings;

**Divestiture Trustee** means a person appointed pursuant to paragraph 11;

**Divestiture Period** means the period of [X] months from the Commencement Date;

**Effective Divestiture** means the completed sale of the Divestiture Package to one or more Approved Purchasers;

**Effective Transition** means the completed integration of the Divestiture Package into the business of the Approved Purchaser and the cessation of any transitional services arrangements between the Parties, Coral and the Approved Purchaser;

**Gala Coral** means Gala Coral Group Limited, a private company limited by shares incorporated and registered in England and Wales with the company number 0725686, whose registered office is located at New Castle House, Castle Boulevard, Nottingham, Nottinghamshire;

**Group of Interconnected Bodies Corporate** has the meaning given in section 129(2) of the Act;

**Interest** means any interest conferring control within the meaning of section 26 of the Act which includes the ability, directly or indirectly, to control or materially influence the policy of a body corporate, or the policy of any person in carrying on an enterprise but without having a controlling interest in that body corporate or in that enterprise.

**Ladbrokes** means Ladbrokes plc, a company registered in England and Wales with registered number 00566221 and having its registered office at Imperial House, Imperial Drive Rayners Lane, Harrow, Middlesex;

**LBOs** means licensed betting offices;

**Merged Entity** means the combined businesses of Coral and Ladbrokes post-Transaction to be known as Ladbrokes Coral Group plc;

**Monitoring Trustee** means Grant Thornton UK LLP appointed pursuant to the directions given by the CMA under paragraph 14 of the interim undertakings accepted by the CMA on 18 July 2016 and whose appointment will continue in accordance with paragraph 8 of the Undertakings;

**Notice** means a written communication from Ladbrokes, Gala Coral or the Merged Entity to the Relevant Contact at the CMA or to the Relevant Contact at Ladbrokes, Gala Coral or the Merged Entity, as appropriate, sent by post, personal delivery or email; and notify, notified and notification shall be construed accordingly;

**Parties** means Ladbrokes and Gala Coral;

**Related Person** means any subsidiary, affiliate or associated person;

**Relevant Contact** means in the case of the CMA, any person or persons as may be notified to Ladbrokes and Gala Coral by the CMA from time to time, and in the case of Ladbrokes, Ladbrokes' Group General Counsel, and in the case of Gala Coral, Gala Coral's Group General Counsel or such other person or persons as may be notified to the CMA by Ladbrokes or Gala Coral from time to time;

**Report** means the report published by the CMA on 26 July 2016 entitled '*Ladbrokes and Coral: A report on the anticipated merger between Ladbrokes plc and certain businesses of Gala Coral Group Limited*';

**SLC** means the 'substantial lessening of competition' referred to in sections 33 and 36 of the Act;

**Subsidiary** unless otherwise stated has the meaning given by section 1159 of the Companies Act 2006;

**Transaction** means the proposed merger between Ladbrokes and Coral as set out in the sale and purchase agreement between Ladbrokes and Gala Group Finance plc dated 27 July 2015;

**Weighted Share of Shops** means the indicator of competitive constraint used by the CMA to determine whether competition concerns might arise in local markets as described in Section 7 of the Report;

**Working day** means any day which is not a Saturday, Sunday, Christmas Day, Good Friday or bank holiday in any part of the United Kingdom under the Banking and Financial Dealings Act 1971;

**Undertakings** means these undertakings.

#### **4. Divestiture**

- 4.1 Ladbrokes and Gala Coral each undertakes that it and any Related Person or member of the Group of Interconnected Bodies Corporate to which it may belong shall not complete the Transaction until all of the conditions precedent set out in paragraph 4.2 are satisfied.
- 4.2 The conditions precedent referred to in paragraph 4.1 are:
- 4.2.1 the CMA has notified the Parties of its consent for each of Ladbrokes and Gala Coral to divest the Divestiture Package to one or more Approved Purchasers;
- 4.2.2 the CMA has notified the Parties of its approval of the business transfer agreement and managed services agreement and any other final drafts of agreements or arrangements ancillary or connected to the business transfer agreement and managed services agreement (Approved Agreements) that are necessary for there to be an Effective Divestiture and Effective Transition to the Approved Purchaser; and
- 4.2.3 an approved business transfer agreement, between each of Ladbrokes and Gala Coral and the Approved Purchaser has been executed.
- 4.3 Ladbrokes and Gala Coral each undertakes to ensure Effective Divestiture of the Divestiture Package to one or more Approved Purchasers.
- 4.4 Ladbrokes and Gala Coral each undertakes to ensure Effective Transition to the Approved Purchaser as soon as reasonably practicable following Effective Divestiture and provisions to this effect shall be included in any managed services agreement or other transitional arrangements.
- 4.5 Ladbrokes and Gala Coral each undertakes not to acquire an Interest in any of the LBOs forming part of the Divestiture Package without the prior written consent of the CMA for a period of 10 years from Effective Divestiture.



- 4.6 If the Transaction does not proceed each of Ladbrokes and Gala Coral undertakes not to acquire an Interest in Gala Coral and Ladbrokes, respectively, for a period of 10 years from the end of the Divestiture Period.
- 4.7 If, despite their reasonable endeavours, Ladbrokes and Gala Coral can divest substantially all, but not all, of the Divestiture Package to one or more Approved Purchasers, Ladbrokes and Gala Coral may seek the CMA's consent to complete the Transaction subject to the divestiture of the remainder of the LBOs within the Divestiture Period. In seeking the CMA's consent, Ladbrokes and Gala Coral each undertakes to provide a written explanation detailing all steps taken to satisfy the undertaking in paragraph 4.3 together with a reasoned submission detailing the plan and timetable for divestiture of the remainder of the LBOs.
- 4.8 If the CMA consents to the Transaction completing subject to the divestiture of the remainder of the LBOs, Ladbrokes and Gala Coral each undertakes that it will divest all the remaining LBOs to one or more Approved Purchasers in accordance with the obligations set out in the Undertakings as applicable to the divestiture of the Divestiture Package.

## **5. Nomination of LBOs for Divestiture**

- 5.1 Ladbrokes and Gala Coral each undertakes to give notice to the CMA of the list of LBOs that Ladbrokes and Gala Coral propose will form the Divestiture Package no later than ten working days in advance of when the CMA's approval for the Approved Purchaser pursuant to paragraph 6 is sought.
- 5.2 Ladbrokes and Gala Coral each undertakes that the list of LBOs shall comprise LBOs within or adjacent to the local markets where the CMA found SLCs as set out in Appendix J of the Report and to provide an explanation as to why, by reason of their selection, Ladbrokes and Gala Coral each considers that the divestiture of the LBOs will address the SLCs identified in all 642 local markets and within the market for the supply of gambling products in Great Britain having regard to the CMA's approach to its substantive assessment, including the Weighted Share of Shops methodology as set out in Section 7 of the Report.
- 5.3 Ladbrokes and Gala Coral each undertakes to provide the following additional information to the CMA when submitting the list of LBOs that Ladbrokes and Gala Coral propose will comprise the Divestiture Package:
- 5.3.1 the methodology and underlying data used to select the proposed LBOs including the Weighted Share of Shops figure for each SLC area after the sale of the proposed LBO; and

- 5.3.2 for each LBO: the postal address; actual and budgeted EBITDA for the twelve months to 31 March 2016; actual EBITDA for each of 2013, 2014 and 2015; budgeted and actual over-the-counter stakes and machine stakes for the twelve months to 31 March 2016; and the date of expiry of the lease.
- 5.4 Any amendment to the list of LBOs shall be notified to the CMA no later than two working days in advance of when the CMA's approval for the Approved Purchaser pursuant to paragraph 6 is sought.

## **6. Approved Purchaser**

- 6.1 Ladbrokes and Gala Coral each undertakes not to execute a business transfer agreement or a managed services agreement with a prospective purchaser relating to the Divestiture Package without first obtaining the approval of the CMA.
- 6.2 Ladbrokes and Gala Coral each undertakes to notify the CMA of one or more prospective purchasers of the Divestiture Package no later than ten working days in advance of when the CMA's approval is sought.
- 6.3 Ladbrokes and Gala Coral may each amend its recommendation for one or more prospective purchasers but this shall not have the effect of changing the Divestiture Period. Any change to the recommendation for one or more prospective purchasers shall be notified to the CMA as soon as reasonably practicable.
- 6.4 To assist the CMA with its assessment of the suitability of the prospective purchaser, Ladbrokes and Gala Coral each undertakes to require the following information from the prospective purchaser, or other such information as the CMA deems necessary, and to provide such information to the CMA as soon as reasonably practicable upon receipt save where the prospective purchaser has already provided the relevant information directly to the CMA:
- 6.4.1 confirmation that the prospective purchaser is independent of each of Ladbrokes and Gala Coral and any Group of Interconnected Bodies Corporate to which they belong other than in a transitional capacity governed by an Approved Agreement;
- 6.4.2 evidence that the prospective purchaser has and will continue to have post-acquisition appropriate financial resources, expertise, assets and, where deemed necessary, scale to compete effectively with the Merged Entity in the relevant market(s);

- 6.4.3 evidence of the prospective purchaser's current operations in the UK, if any, and a clear business plan and objectives for competing effectively with the Merged Entity in the relevant market(s); and
  - 6.4.4 clear plans for the Effective Transition of the Divestiture Package to the sole ownership of the prospective purchaser, including its integration into any pre-existing UK business, if applicable.
- 6.5 For the avoidance of doubt, the Approved Purchaser process is without prejudice to the potential application of merger control rules in respect of the acquisition of LBO(s) by the Approved Purchaser.

## **7. No pre-emptive action**

- 7.1 Ladbrokes and Gala Coral each undertakes that until Effective Transition it shall not take any action that might prejudice the Effective Divestiture and Effective Transition or otherwise impair the ability of the LBOs comprising the Divestiture Package to compete effectively with the Merged Entity in the relevant market(s).
- 7.2 Further and without prejudice to the generality of paragraph 7.1 Ladbrokes and Gala Coral each undertakes that at all times before Effective Divestiture, except with the prior written consent of the CMA, it shall comply with the obligations set out in Annex 1.

## **8. Monitoring Trustee**

- 8.1 Ladbrokes and Gala Coral each undertakes that it shall secure on the same terms and conditions the continued appointment of the Monitoring Trustee which arises from the CMA's written direction of 26 July 2016 and to comply with any further directions notified by the CMA.
- 8.2 Ladbrokes and Gala Coral each undertakes that the Monitoring Trustee will have the duties and functions as set out in this paragraph 8. Ladbrokes and Gala Coral each undertakes that it shall ensure that the Monitoring Trustee continues to act until Effective Transition.
- 8.3 The duties of the Monitoring Trustee shall include:
  - 8.3.1 reporting on the current state of any integration between the Coral and Ladbrokes businesses;
  - 8.3.2 monitoring compliance by Ladbrokes and Gala Coral, their subsidiaries and any successors in title, with the obligations under the Undertakings; and

- 8.3.3 supporting the CMA as it may require in approving the Divestiture Package and one or more Approved Purchasers.
- 8.4 The functions of the Monitoring Trustee shall be to:
- 8.4.1 assess the arrangements proposed by Gala Coral and Ladbrokes for compliance with the Undertakings;
  - 8.4.2 assess and report to the CMA the extent of any integration between Gala Coral and Ladbrokes;
  - 8.4.3 ascertain and report to the CMA on the level of compliance by Gala Coral and Ladbrokes with the Undertakings;
  - 8.4.4 without prejudice to the right of Gala Coral and Ladbrokes to contact the CMA, respond to any questions which Ladbrokes or Gala Coral may have in relation to compliance with paragraph 7 of the Undertakings, in consultation with the CMA;
  - 8.4.5 report to the CMA on any changes recommended by the Monitoring Trustee and the steps required to implement them; and
  - 8.4.6 assist, by providing such information as may be required by the CMA, in the consideration of derogation requests or consents relating to the Undertakings.
- 8.5 Ladbrokes and Gala Coral each undertakes that the Monitoring Trustee shall act on behalf of the CMA and be under an obligation to the CMA to carry out his or her functions to the best of his or her abilities and Ladbrokes and Gala Coral each undertakes to comply with any written requests made by the CMA for the purpose of ensuring the full and effective compliance by Gala Coral and Ladbrokes with the Undertakings.
- 8.6 Ladbrokes and Gala Coral each undertakes that it shall cooperate fully with the Monitoring Trustee and Ladbrokes and Gala Coral shall ensure that the terms and conditions of appointment of the Monitoring Trustee reflect and give effect to the duties and functions of the Monitoring Trustee and the obligations of Ladbrokes and Gala Coral set out in the Undertakings.
- 8.7 Ladbrokes and Gala Coral each undertakes that it and each of its affiliates and its employees, officers, directors, advisers and consultants shall cooperate fully with the Monitoring Trustee, in particular by providing the Monitoring Trustee with all cooperation, assistance and information as the Monitoring Trustee may reasonably require in order to discharge his or her functions, including but not limited to:

8.7.1 the provision of full and complete access to all personnel, books, records, documents, facilities and information of Coral and Ladbrokes businesses (as available to Gala Coral and Ladbrokes) as the Monitoring Trustee may reasonably require; and

8.7.2 the provision of such office and supporting facilities as the Monitoring Trustee may reasonably require.

## **9. Reporting**

9.1 Ladbrokes and Gala Coral each undertakes that, within two weeks from the Commencement Date, they will provide a joint written report to the CMA, copied to the Monitoring Trustee, setting out the timetable that they propose to adopt, to ensure Effective Divestiture and Effective Transition to one or more Approved Purchasers within the Divestiture Period. The report will outline the progress that the Parties have made and the steps that have otherwise been taken to comply with the Undertakings.

9.2 In the event that Ladbrokes and Gala Coral encounter any material delay in nominating the LBOs for divestiture and nominating one or more prospective purchasers, Ladbrokes and Gala Coral each undertakes to inform the CMA in writing of the occurrence and the reasons for the failure promptly and no later than two working days of becoming aware of the delay.

## **10. Procedure for consent and approval**

10.1 Ladbrokes and Gala Coral each undertakes that where it requires the consent or approval of the CMA (however that requirement is expressed in the Undertakings) it will seek the consent or approval in writing. Any consent or approval given by the CMA under the Undertakings shall be given in writing pursuant to paragraph 16.

10.2 Ladbrokes and Gala Coral each undertakes that any application by it for the CMA's consent or approval shall make full disclosure of every fact and matter within its knowledge that it reasonably considers is relevant to the CMA's decision (Relevant Information).

10.3 Ladbrokes and Gala Coral each recognises that where the CMA grants consent or approval on the basis of information that is false or misleading in a material respect, the consent or approval is voidable at the discretion of the CMA.

10.4 In the event that Ladbrokes or Gala Coral discovers that an application for consent or approval has been made without full disclosure of, or with incorrect, Relevant Information, Ladbrokes and Gala Coral each undertakes to:

10.4.1 inform the CMA in writing identifying Relevant Information that it omitted to include and/or which is incorrect in the application for consent, promptly and no later than two working days of becoming aware that the Relevant Information is incomplete or incorrect; and

10.4.2 provide to the CMA an application for consent that includes the missing and/or correct Relevant Information, promptly and no later than two working days starting with the date on which it informed the CMA of the omission or inaccuracy in accordance with paragraph 10.4.1 above.

## 11. Divestiture Trustee

11.1 Ladbrokes and Gala Coral each undertakes that it shall at the written direction of the CMA appoint a Divestiture Trustee, in accordance with the provisions of this paragraph 11, to bring about the Effective Divestiture and Effective Transition of the Divestiture Package to one or more Approved Purchasers (the **Divestiture Trustee Obligation**).

11.2 The CMA will keep under review the need for a Divestiture Trustee and in particular may, when it is reasonable to do so, issue directions for the appointment of a Divestiture Trustee, where:

11.2.1 the CMA considers that the reports received in accordance with paragraph 9 or the advice of the Monitoring Trustee indicate that it is unlikely that Ladbrokes and Gala Coral will achieve Effective Divestiture within the Divestiture Period; or

11.2.2 the CMA considers that Ladbrokes or Gala Coral is in material breach of any provisions of the Undertakings or has failed to comply with the Undertakings and that such breach or failure is not remedied within a reasonable period of time.

11.3 Ladbrokes and Gala Coral each undertakes that it will appoint a Divestiture Trustee in accordance with the obligations and conditions set out in Annex 2.

## 12. Compliance

12.1 Ladbrokes and Gala Coral each undertakes to comply with such written directions as the CMA may from time to time give and to take such steps as are within its reasonable competence for the purpose of carrying out or securing compliance with the Undertakings.

12.2 Ladbrokes and Gala Coral each undertakes to provide to the CMA such information or statement of compliance as it may from time to time require for the purpose of monitoring compliance by Ladbrokes and Gala Coral and their subsidiaries with the Undertakings. In particular, by 5pm (UK time) on 24 October 2016 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officer of Ladbrokes and the Chief Executive of Gala Coral, on behalf of Ladbrokes and Gala Coral respectively, shall provide a statement to the CMA in the form set out in Annex 3 to the Undertakings confirming compliance with the Undertakings.

12.3 Ladbrokes and Gala Coral each undertakes to procure that each of its Subsidiaries and (as may be the case) successors in title complies fully with the Undertakings.

### **13. Effect of invalidity**

13.1 Ladbrokes and Gala Coral each undertakes that should any provision of the Undertakings be contrary to law or invalid for any reason, Ladbrokes, Gala Coral and any member of the Group of Interconnected Bodies Corporate to which they belong shall continue to observe the remaining provisions.

### **14. Extension of time limits**

14.1 Ladbrokes and Gala Coral each recognises and acknowledges that the CMA may, where it considers appropriate, in response to a written request from Ladbrokes or Gala Coral showing good cause, or otherwise at its own discretion, grant an extension of any period specified in the Undertakings within which Ladbrokes and Gala Coral must take action.

### **15. Provision of information to the CMA**

15.1 Ladbrokes and Gala Coral each undertakes that it shall promptly provide to the CMA such information as the CMA may reasonably require for the purpose of performing any of its functions under the Undertakings or under sections 82, 83, 92 and 94(6) of the Act.

15.2 Ladbrokes and Gala Coral each undertakes that should it at any time be in breach of any provision of the Undertakings, it will notify the CMA promptly and no later than two working days starting with the date it becomes aware of the breach to inform the CMA that there has been a breach, the circumstances of that breach and the steps taken or to be taken to remedy the breach.

## **16. Service**

- 16.1 Ladbroke's hereby authorises King & Wood Mallesons LLP and Gala Coral hereby authorises Gibson Dunn & Crutcher LLP to accept service on their behalf of all documents connected with the Undertakings (including any document of any kind which falls to be served on or sent to Ladbroke's and Gala Coral or any of their respective Subsidiaries in connection with any proceedings in courts in the UK) orders, requests, notifications or other communications connected with the Undertakings.
- 16.2 Unless Ladbroke's and Gala Coral inform the CMA in writing that King & Wood Mallesons LLP and Gibson Dunn & Crutcher LLP respectively has ceased to have authority to accept and acknowledge service on their or any of their subsidiaries' behalf, any document, order, request, notification or other communication shall be validly served on Ladbroke's and Gala Coral if it is served on King & Wood Mallesons LLP and Gibson Dunn & Crutcher LLP respectively; and service shall be deemed to have been acknowledged by Ladbroke's and Gala Coral if it is acknowledged by King & Wood Mallesons LLP and Gibson Dunn & Crutcher LLP or such other nominee.
- 16.3 Any communication from Ladbroke's or Gala Coral to the CMA under the Undertakings shall be addressed to the Director of Remedies, Ladbroke's/Coral Inquiry, CMA, Victoria House, Southampton Row, London WC1B 4AD or such other person or address as the CMA may direct in writing.

## **17. Governing law**

- 17.1 Ladbroke's and Gala Coral each recognises and acknowledges that the Undertakings shall be governed and construed in all respects in accordance with English law.
- 17.2 In the event that a dispute arises concerning the Undertakings, Ladbroke's and Gala Coral each undertakes to submit that dispute to the courts of England and Wales.
- 17.3 Ladbroke's and Gala Coral each undertakes to exercise reasonable endeavours to secure that any contractual or non-contractual obligations arising out of or in connection with the Undertakings shall be governed and construed in all respects in accordance with English law.

## **18. Termination**

- 18.1 Ladbroke's and Gala Coral each recognises and acknowledges that the Undertakings shall remain in force until such time as Effective Transition and,



with respect to the Undertaking in paragraphs 4.5 and 4.6 for a period of ten years from the Commencement Date.

**FOR AND ON BEHALF OF LADBROKES PLC**

(signed)

**FOR AND ON BEHALF OF GALA CORAL GROUP LIMITED**

(signed)

## **Annex 1: No pre-emptive action**

1. Ladbrokes and Gala Coral each undertakes to ensure that at all times prior to completion of the Transaction except with the prior written consent of the CMA at each of its LBOs located within the 642 local markets in respect of which an SLC was identified in the Report and as applicable any additional LBOs nominated by the Parties:
  - 1.1 the Coral business is carried on separately from the Ladbrokes business;
  - 1.2 the Ladbrokes' and Coral businesses' separate sales and/or brand identity are maintained;
  - 1.3 the Coral business and the Ladbrokes business are each maintained as a going concern and sufficient resources are made available for the development of the Coral business and the Ladbrokes business, on the basis of their respective pre-merger business plans;
  - 1.4 customers of the Coral business and the Ladbrokes business shall not be encouraged or incentivised to transfer to other Gala Coral or Ladbrokes LBOs in each of the 642 local markets where an SLC had been identified or to Gala Coral or Ladbrokes LBOs outside those local markets, provided that this shall not prevent the use of concessions or promotions in the ordinary course of business in or outside the SLC areas;
  - 1.5 except in the ordinary course of business, staff of the Coral business and the Ladbrokes business are not moved to other LBOs and all reasonable steps are taken to encourage Gala Coral staff and Ladbrokes staff to remain at their current LBOs;
  - 1.6 except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the Coral business or the Ladbrokes business;
  - 1.7 except in the ordinary course of business, no changes are made to the odds, return to player prizes, concessions or promotions offered by the Coral business or the Ladbrokes business;
  - 1.8 except in the ordinary course of business, the nature, description, range and quality of services supplied by Gala Coral and Ladbrokes are maintained and preserved.

- 1.9 Except in the ordinary course of business for the separate operation of the two businesses:
    - 1.9.1 all of the assets of the Coral business and the Ladbrokes business are maintained and preserved, including premises, customer lists and goodwill;
    - 1.9.2 none of the assets of the Coral business or the Ladbrokes business are disposed of; and
    - 1.9.3 no interest in the assets of the Coral business or the Ladbrokes business is created or disposed of;
  - 1.10 there is no integration of the information technology of the Coral business with the Ladbrokes business, and the software and hardware platforms of the Coral business and the Ladbrokes business remain essentially unchanged, except for routine changes and maintenance;
  - 1.11 the customer and supplier lists of the Ladbrokes and Coral businesses are operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Coral business are carried out by the Coral business alone and any negotiations with any existing or potential customers and suppliers in relation to the Ladbrokes business are carried out by the Ladbrokes business alone, and for the avoidance of doubt, the Ladbrokes business does not negotiate on behalf of the Coral business (and vice versa) or enter into any joint agreements with the Coral business (and vice versa);
  - 1.12 all existing contracts of the Coral business and the Ladbrokes business continue to be serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the date of acceptance of the Undertakings;
  - 1.13 no Confidential Information passes, directly or indirectly, from Gala Coral (or any of its employees, directors, agents or affiliates) to Ladbrokes (or any of its employees, directors, agents or affiliates), or vice versa, except where required for compliance with external regulatory and/or accounting obligations or where permitted pursuant to the Clean Team Arrangements, agreed with the CMA.
2. Notwithstanding the provisions of paragraph 1, Ladbrokes and Gala Coral each undertakes that before completion of the Transaction:

- 2.1 employees of Gala Coral are located in offices which are separate from the offices used by Ladbrokes; and
  - 2.2 Gala Coral continues to operate under the same brand name as prior to the Transaction.
3. Ladbrokes and Gala Coral each undertakes that, following completion of the Transaction and at all times until Effective Divestiture, except with the prior written consent of the CMA, at each of its LBOs which form part of the Divestiture Package (excluding any LBOs in respect of which a sale to an Approved Purchaser has completed) it shall comply with the obligations set out in paragraphs 1.2, 1.3, 1.4, 1.5, 1.6, 1.7 and 1.8 of this Annex 1.
4. The CMA may, upon written request by Ladbrokes or Gala Coral, grant a derogation from the obligations set out in this Annex 1.
5. At all times before Effective Divestiture, Gala Coral and Ladbrokes shall actively keep the CMA informed of any material developments relating to the LBOs in the 642 local markets in respect of which an SLC was identified in the Report (excluding any LBOs in respect of which a sale to an Approved Purchaser has completed), which includes but is not limited to:
  - 5.1 details of managers and other managerial staff responsible for the viability and business performance of the LBOs in the SLC local areas identified in the Report or which have been approved for divestiture by the CMA who leave or join the Coral business or the Ladbrokes business;
  - 5.2 any interruption of the Coral business or the Ladbrokes business (including without limitation its procurement, service, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours; and,
  - 5.3 substantial changes in the contractual arrangements or relationships with key suppliers of the Coral business or the Ladbrokes business.
6. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, the obligations in this Annex 1, or to do or refrain from doing any specified action in order to ensure compliance with the provisions of this Annex 1.
7. Ladbrokes and Gala Coral each undertakes that it shall comply in so far as it is able with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with the provisions of this Annex 1.

8. For the purposes of this Annex 1:

8.1 **Confidential Information** means business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a commercial or proprietary and non-public nature relating to the business of Ladbrokes or Gala Coral.

8.2 **Clean Team Arrangements** means the arrangements for exchange of confidential information between certain employees of Ladbrokes and Gala Coral as agreed with the CMA.

## Annex 2: Appointment of a Divestiture Trustee

1. Pursuant to paragraph 11 of the Undertakings, Ladbrokes and Gala Coral each undertakes to comply with the following obligations, as are deemed appropriate and necessary by the CMA.

### Nomination of a Divestiture Trustee

2. Within the period of five working days following the day on which pursuant to paragraph 11.2 of the Undertakings the CMA issues a direction, the Chief Executive Officers of the Parties or Chief Executive Officer of the Merged Entity, as applicable, (the **Chief Executive Officer**) shall submit to the CMA for approval a list of two or more persons whom the Parties or Merged Entity, as applicable, (the **Appointor**) proposes to appoint as Divestiture Trustee.
3. Each person on the list referred to in paragraph 2 above shall be independent of and unconnected to the Merged Entity, Ladbrokes and Gala Coral and the Group of Interconnected Bodies Corporate to which they belong, possess the qualifications necessary for the performance of the mandate and shall on appointment and thereafter be free of any conflict of interest including any conflict of interest that might arise by virtue of the terms of remuneration.
4. The CMA may approve or reject any or all of the proposed persons (such approval not to be unreasonably withheld) and may approve the proposed mandate subject to any modifications it deems necessary for the Divestiture Trustee to fulfil the Divestiture Trustee Obligation. If only one proposed person is approved, the Appointor undertakes to use its reasonable endeavours to appoint, or cause to be appointed, the individual or institution concerned as Divestiture Trustee in accordance with the mandate approved by the CMA. If more than one proposed person is approved, the Appointor shall decide which person to appoint as Divestiture Trustee from among the approved persons. The Appointor undertakes to appoint the Divestiture Trustee within two working days from the CMA's approval and on the terms of the mandate approved by the CMA.
5. If all the proposed Divestiture Trustees are rejected by the CMA, the Chief Executive Officer of the Appointor shall submit the names of at least two further persons within four working days from being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 2 to 4 above.
6. The provisions of paragraph 7 shall apply if:

- 6.1 the Appointor fails to nominate further persons in accordance with paragraph 5; or
  - 6.2 those further persons nominated by the Appointor in accordance with paragraph 5 are rejected by the CMA (acting reasonably); or
  - 6.3 the Appointor is unable for any reason to conclude the appointment of the Divestiture Trustee within the time limit specified by the CMA.
7. The CMA shall nominate one or more persons to act as Divestiture Trustee, and the Appointor shall appoint or cause to be appointed one of those Divestiture Trustees within two working days starting with the date of nomination under the terms of a Divestiture Trustee mandate approved by the CMA.
  8. The Appointor recognises that the function of the Divestiture Trustee is distinct from the function of the Monitoring Trustee, although the two functions may be performed by the same person subject to that person meeting the requirements of paragraph 3.
  9. The Appointor undertakes to remunerate and reimburse the Divestiture Trustee for all reasonable costs properly incurred in accordance with the terms and conditions of his or her appointment and in accordance with the directions or instructions given in paragraph 12, in such a way so as not to impede the Divestiture Trustee's independence or ability to effectively and properly fulfil the Divestiture Trustee Obligation.

#### **Divestiture Trustee – functions**

10. The Appointor undertakes to enable the Divestiture Trustee to carry out the Divestiture Trustee Obligation.
11. The Divestiture Trustee shall undertake such preparatory matters as it considers necessary to discharge the Divestiture Trustee Obligation and for these purposes may give written directions to the Appointor and the Appointor undertakes to comply with any such written directions.
12. The Appointor recognises and acknowledges that:
  - 12.1 The CMA may, on its own initiative or at the request of the Divestiture Trustee or the Appointor, give written directions or instructions to the Divestiture Trustee in order to assist it in the discharge of the Divestiture Trustee Obligation (including directions as to the divestiture of such property, assets, rights, consents, licences, privileges or interests as the CMA considers necessary to bring about Effective Divestiture.

- 12.2 Such written direction may require the Appointor to [✂].
- 12.3 The Divestiture Trustee may include in such agreements, deeds, instruments of transfer and other instruments and documents as are necessary for the performance of its duty, such terms and conditions as it reasonably considers appropriate.
- 12.4 The Divestiture Trustee shall protect the legitimate financial interests of the Appointor subject to the Divestiture Trustee's overriding obligation to give effect to the Divestiture Trustee Obligation which may include the Effective Divestiture of the Divestiture Package at no minimum price.
13. The Appointor recognises and acknowledges that the Divestiture Trustee shall take such steps and measures it considers necessary to discharge the Divestiture Trustee Obligation and to that end the Divestiture Trustee may give written directions to the Appointor and the Appointor undertakes to comply with such directions or to procure compliance with such directions as are within its powers and to take such steps within its competence as the Divestiture Trustee may specify.
14. The Appointor recognises and acknowledges that in the performance of the Divestiture Trustee Obligation the Divestiture Trustee shall act solely on the instructions of the CMA and shall not be bound by any instruction of the Appointor and the Appointor undertakes that it shall not seek to create or vary the obligations and duties of the Divestiture Trustee except with the CMA's prior written consent.

#### **Divestiture Trustee – obligations of the Appointor**

15. The Appointor undertakes to provide the Divestiture Trustee with all such cooperation, assistance and information (including by the production of financial or other information whether or not such information is in existence at the time of the request but excluding any material properly the subject of legal privilege) as the Divestiture Trustee may reasonably require in the discharge of the Divestiture Trustee Obligation.
16. The Appointor recognises and acknowledges that the Divestiture Trustee shall be entitled, subject to the duty of confidentiality, to full and complete access to the books, records, documents, management or other personnel, facilities, sites and technical information necessary for the fulfilment of its duty (save where material is properly the subject of legal privilege). The Appointor undertakes to provide the Divestiture Trustee upon request with copies of any such document. On the request of the Divestiture Trustee, the Appointor undertakes to make available to the Divestiture Trustee one or more offices on



its premises and to ensure that personnel are available where necessary for meetings in order to provide the Divestiture Trustee with all information necessary for the performance of the Divestiture Trustee Obligation.

17. The Appointor undertakes to grant reasonable, comprehensive powers of attorney, on terms approved by the CMA, and duly executed, to the Divestiture Trustee to enable it to discharge the Divestiture Trustee Obligation including by the appointment of advisers to assist with the divestiture process. Before appointing any advisers, the Divestiture Trustee will consider using the advisers already appointed by the Appointor and will only appoint advisers (whether in replacement of, or in addition to the Appointor's advisers) if it reasonably considers the appointment of such advisers necessary or appropriate in the discharge of the Divestiture Trustee Obligation. The Appointor undertakes that, upon the reasonable request of the Divestiture Trustee, it shall execute the documents required to give effect to the Divestiture Trustee Obligation. Should the Appointor refuse to approve the advisers proposed by the Divestiture Trustee, the CMA may, after consulting with the Appointor, approve and direct the appointment of such advisers.
18. The Appointor undertakes to hold the Divestiture Trustee, its employees, agents or advisers harmless against any liabilities arising out of the proper performance of the Divestiture Trustee Obligation. The Appointor recognises and acknowledges that the Divestiture Trustee, its employees, agents or advisers shall have no liability to the Appointor for any liabilities arising out of the proper performance of the Divestiture Trustee Obligation, except to the extent that such liabilities result from the negligence or bad faith of the Divestiture Trustee, its employees, agents or advisers.
19. The Appointor undertakes to make no objection to the fulfilment by the Divestiture Trustee of the Divestiture Trustee Obligation or any part thereof save on the grounds of bad faith by the Divestiture Trustee or failure of the Divestiture Trustee to reasonably protect the legitimate financial interests of the Appointor subject always to the Divestiture Trustee Obligation; and where the Appointor wishes to make an objection on these grounds it shall submit to the CMA a notice setting out its objections promptly and no later than two working days from the day on which it became aware of the fact or facts giving rise to its objection.

#### **Divestiture Trustee – replacement, discharge, and reappointment**

20. The Appointor acknowledges that if the Divestiture Trustee ceases to perform the Divestiture Trustee Obligation, or for any other good cause, including the exposure of the Divestiture Trustee to a conflict of interest the CMA may, after

consulting with the Appointor, require the Appointor to replace the Divestiture Trustee.

21. If the Divestiture Trustee is removed under paragraph 20 above, the Divestiture Trustee may be required to continue in its post until a new Divestiture Trustee is in place to whom the Divestiture Trustee has effected a full handover of all relevant information. The new Divestiture Trustee shall be appointed in accordance with the procedure in paragraphs 2 to 4.
22. The Appointor recognises and acknowledges that, other than in accordance with paragraph 20, the Divestiture Trustee shall cease to act as Divestiture Trustee only after the CMA has discharged it from its duties at a time at which all the functions with which the Divestiture Trustee has been entrusted have been met.

## Annex 3: Pro forma compliance statement

### Compliance statement for [insert Ladbrokes or Gala Coral as appropriate]

I **[insert name]** confirm on behalf of **[insert Ladbrokes or Gala Coral as appropriate]** that:

#### Compliance in the Relevant Period

1. In the period from **[insert date]** to **[insert date]**:
  - (a) **[insert Ladbrokes or Gala Coral as appropriate]** has complied with the Undertakings accepted by the CMA on **[insert date of the Undertakings]** in relation to the Transaction.
  - (b) The subsidiaries of **[insert Ladbrokes or Gala Coral as appropriate]** have also complied with the Undertakings in the period from **[insert date]** to **[insert date]**
  - (c) No action has been taken by **[insert Ladbrokes or Gala Coral as appropriate]** that might prejudice the Effective Divestiture and Effective Transition of the Divestiture Package or otherwise impair the ability of the LBOs comprising the Divestiture Package to compete effectively with the Merged Entity in the relevant market(s).
  - (d) **[insert Ladbrokes or Gala Coral as appropriate]** and its subsidiaries remain in full compliance with the Undertakings.