

# Anticipated merger of Flutter Entertainment plc and The Stars Group Inc.

## Decision on relevant merger situation and substantial lessening of competition

**ME/6865/19**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 31 March 2020. Full text of the decision published on 21 April 2020.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

### SUMMARY

1. The proposed transaction (the **Merger**) relates to the purchase by Flutter Entertainment plc (**Flutter**) of the whole of the issued share capital of The Stars Group Inc. (**Stars**). Flutter and Stars are together referred to as the **Parties** and, for statements referring to the future, the **Merged Entity**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Flutter and Stars is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the turnover test is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the supply of online gambling services to customers in the UK. Gambling services broadly fall into two categories: 'betting' (which involves customers gambling on the outcome of various events such as horse racing, greyhound races, football, etc), and 'gaming' (which involves customers gambling on digitised versions of casino games or other games such as bingo and poker). The Parties both have brands that are active in sportsbook betting, where bets are made between a customer and a bookmaker, where the customer 'backs' (bets that an outcome will occur) and

the bookmaker 'lays' (bets that the outcome will not occur). In addition, they both have brands active in poker, casino and bingo.

4. Flutter owns the Paddy Power and Betfair brands through which it provides online gambling services. Paddy Power also provides gambling services through its retail estate.
5. Stars provides gambling services in the UK primarily through the Sky Bet brand, in addition to several online gaming brands, including PokerStars, Sky Poker and Sky Casino, among others. Stars only provides these services online.
6. In addition:
  - (a) Stars operates an odds comparison website, Oddschecker, which displays the odds and promotions offered by a wide range of operators across multiple sports and events;
  - (b) Flutter operates a betting exchange via the Betfair brand, Betfair Exchange, and supplies betting exchange data to other gambling operators. Betfair Exchange also has affiliate partnerships with matched betting websites.<sup>1</sup>
7. The CMA has assessed the impact of the Merger in relation to the following frames of reference:
  - (a) The supply of online sportsbook betting services in the UK;
  - (b) The supply of online poker services in the UK, a specialist subset of gaming activities;
  - (c) The supply of odds comparison services in the UK;
  - (d) The supply of betting exchange data in the UK; and
  - (e) The supply of matched betting services in the UK.
8. The Parties overlap in the supply of online betting and gaming services. In its competitive assessment, the CMA considered whether, as a result of horizontal unilateral effects, the Merger may lead to a substantial lessening of competition (**SLC**), focusing in particular on effects in the supply of online sportsbook betting and online poker services in the UK.

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<sup>1</sup> Matched betting websites are subscription-based websites that allow customers to place 'matched bets', ie bets with different bookmakers on both outcomes of an event such that they cannot lose (see paragraph 63).

9. The Parties also operate at different levels of the supply chain. Stars provides odds comparison services to competitors who are listed on Oddschecker's platform, allowing customers to see the odds and promotions offered by a range of competing bookmakers. Flutter supplies betting exchange data to competing online bookmakers to assist them with their pricing, as well as to matched betting websites who in turn supply matched betting services to UK customers. The CMA therefore considered whether, as a result of non-horizontal effects in the supply of odds comparison services, exchange data and matched betting services, the Merged Entity would have the ability and incentive to raise its prices, refuse to supply or reduce the quality of its services (ie engage in foreclosure) to harm rival online bookmakers or matched betting websites.
10. In relation to the supply of online betting services, the Merged Entity would have a share of supply of [30-40]% with an increment of [10-20]%. The CMA considers that the Parties are one of a number of close competitors to one another.
11. However, the CMA found, based on a broad range of evidence including the Parties' regular customer surveys, internal documents and third party evidence, that there are a number of players in the market who would continue to act as a strong constraint on the Merged Entity. In particular, the CMA considers that, post-Merger, three prominent online sportsbook operators, bet365, GVC/Ladbrokes Coral and William Hill, will continue to compete strongly with the Merged Entity in terms of odds, promotions and product offering. In addition, the CMA found that there are a number of operators with a smaller presence in the UK (including Betway, Betfred, BetVictor and others) who would provide a degree of constraint on the Merged Entity.
12. Overall, the CMA found that online betting customers tend to have multiple accounts with different operators, can switch between them easily and that innovations are closely monitored and replicated amongst online sportsbook operators to attract and retain customers.
13. In light of the above evidence, the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of online betting services.
14. In relation to the supply of online poker services, the Merged Entity would have a high share of supply, with a small increment. The CMA considers that Flutter has a minor presence in this market and that, based on evidence from the Parties and third parties, Flutter does not compete closely with Stars'

primary poker brand, PokerStars.<sup>2</sup> Therefore, the CMA considers that the Parties do not currently exercise a particularly strong competitive constraint on one another, and that the Merged Entity would continue to face constraints from a number of alternative providers of online poker, including GVC/Ladbrokes Coral and 888. Accordingly, the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of online poker services.

15. In relation to the supply of odds comparison services in the UK, the CMA considers that Stars' Oddschecker has a degree of market power in the provision of odds comparison services. The CMA found that Stars may have the ability to harm competing online bookmakers by removing them from the Oddschecker platform, raising fees charged to be on the platform or displaying them less prominently than the Parties' brands. However, the CMA concluded that the Merged Entity will have no incentive to engage in this strategy post-Merger because the potential increase in revenue resulting from any customer diversion gained as a result of such a strategy would be outweighed by the risk of a material loss of consumer traffic and associated revenues made by Oddschecker. Accordingly, the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC as a result of vertical effects in the supply of odds comparison services.
16. In relation to the supply of betting exchange data through Flutter's Betfair Exchange, the CMA found that the Merged Entity will have no ability to foreclose competing online bookmakers either by refusing to supply Betfair's exchange data (total foreclosure), or by raising the price of such data (partial foreclosure) because there are alternative sources of information available to betting operators and, at present, very few bookmakers purchase Betfair's exchange data. Accordingly, the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC as a result of vertical effects in the supply of betting exchange data.
17. In relation to the supply of matched betting services, the CMA considered whether the Merged Entity would have the ability or incentive to foreclose matched betting websites, either by terminating Betfair Exchange's relationship with them or by negotiating the removal of the Parties' sportsbooks from these websites by threatening to terminate the Betfair Exchange relationship. The CMA found that these websites create losses for the Parties' sportsbooks business, but that they are a [X] source of customers, liquidity and revenue for Flutter's Betfair Exchange business. The

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<sup>2</sup> Stars also owns Sky Poker and Full Tilt, that are both active in poker but have a minor presence compared with PokerStars.

CMA considers that the Merged Entity would have the ability to engage in foreclosure of matched betting websites by terminating Betfair Exchange's partnerships with these websites. However, the available evidence indicates that the revenue made by Betfair Exchange as a result of these partnerships [X], and that this strategy could also affect Betfair Exchange's overall competitiveness [X]. The CMA therefore considers that post-Merger, the Merged Entity would not have the ability or incentive to engage in foreclosure strategies in respect of matched betting websites. Accordingly, the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC as a result of non-horizontal effects in the supply of matched betting services.

18. For these reasons, the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC in the UK as a result of horizontal unilateral or non-horizontal effects in respect of any frame of reference.
19. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

## **ASSESSMENT**

### **Parties**

20. Flutter is a global gambling operator providing online betting and gaming services in the UK through its Paddy Power and Betfair brands. In addition, Flutter operates an exchange betting platform via the Betfair brand, Betfair Exchange, and sells exchange data to rival bookmakers. Flutter's UK turnover (measured in net gaming revenue) in 2018 was £868.2 million. Flutter is listed on the London Stock Exchange and is a constituent of the FTSE 100 Index.
21. Stars is also a global gambling operator. Stars provides online betting and gaming services in the UK through its BetStars, PokerStars, PokerStars Casino, Full Tilt and Full Tilt Casino brands, as well as betting and gaming brands acquired as part of its acquisition of the Sky Betting and Gaming (**SBG**) Group. These are Sky Bet, Sky Vegas, Sky Casino, Sky Bingo and Sky Poker. Stars is listed on the Nasdaq Stock Exchange and the Toronto Stock Exchange.
22. Stars also owns live poker and events brands, including PokerStars Players No Limit Hold'em Championship and the European Poker Tour. Through its acquisition of the SBG Group, Stars operates odds comparison website Oddschecker which offers users direct access to the odds, promotions and free bets provided from bookmakers. Stars also owns Sporting Life, a website offering content including news, scores, results, reviews and blogs to users around the world.

23. Stars' UK turnover (measured in net gaming revenue) in 2018 was [REDACTED] million.
24. The Parties are both licensed by the Gambling Commission to operate in the UK.

## Transaction

25. Flutter and Stars have agreed to an all-share combination by which Stars' shareholders will receive 0.2253 new Flutter shares for every one Stars share. The Merger will result in Stars' shareholders owning approximately 45.36% and Flutter's shareholders owning approximately 54.64% of the Merged Entity.
26. The Merger is conditional on shareholder, merger control, foreign investment and gaming-related approvals being obtained.
27. The Merger is also the subject of review by the Irish competition authority, and the competition authorities of Austria, Bulgaria, Germany, Malta, Romania, Spain, the US and Australia identified no competition concerns with the Merger.
28. The Parties submitted that the Merger will create a diversified business both from a geographic and product perspective, accelerate the Merged Entity's international growth, create value through cost synergies and drive revenue growth through cross-selling opportunities (particularly with regard to cross-selling Stars' gaming customers sports betting).<sup>3</sup> The Parties also submitted that the Merger will allow the Merged Entity to enhance its product offering while driving efficiencies through its cost base, including through continued investment in technology, product innovation, data analytics, brands and responsible gambling.<sup>4</sup>
29. The CMA considers that the Parties' stated rationale is broadly consistent with internal documents; with the overarching rationale to become a global leader in online sports betting and gaming.<sup>5</sup> The Merged Entity's cross-selling capabilities appear to be an important component of the Merger, having already been a successful strategy for Stars in cross-selling poker into gaming to grow its position in this segment.<sup>6</sup> Internal documents also note the Merger will give rise to value creation for shareholders and allow the Merged Entity to

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<sup>3</sup> Paragraph 54 of the Parties' Merger Notice dated 31 January 2020 (the **Merger Notice**).

<sup>4</sup> Paragraphs 55 and 56 of the Merger Notice.

<sup>5</sup> See Flutter internal documents: [REDACTED].

<sup>6</sup> See for example Flutter internal document: [REDACTED].

be more resilient to changes in the regulatory and tax environment and economic shocks.<sup>7</sup>

## Procedure

30. The Merger was considered at a Case Review Meeting.<sup>8</sup>

## Jurisdiction

31. Each of Flutter and Stars is an enterprise. As a result of the Merger, these enterprises will cease to be distinct. The UK turnover of Stars exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
32. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 5 February 2020 and the statutory 40 working day deadline for a decision is therefore 31 March 2020.

## Counterfactual

33. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.<sup>9</sup>
34. The Parties submitted that the current competitive situation is the appropriate counterfactual. In this case, the CMA received no evidence to support a different counterfactual. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

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<sup>7</sup> See for example Flutter internal document: [X].

<sup>8</sup> See *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, from paragraph 7.34.

<sup>9</sup> *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).

## Background

35. Betting involves the staking of money on the outcome of a specific event (mostly sporting events).<sup>10</sup> The industry distinguishes between pool betting, where the size of the winnings is determined by reference to the aggregate of the stakes paid and the number of winners, and fixed odds betting, where the winnings are fixed according to odds set in advance. Within fixed odds betting, the odds are either determined by the bookmaker (sportsbook betting) or derived from a betting exchange, where customers set their own odds and bet against each other (exchange betting). The Parties offer fixed odds betting via their sportsbooks and Betfair Exchange.
36. Gaming involves playing a game with some element of chance for a prize. Most games are played against a random number generator (eg slots, bingo and casino games). The exception is poker, where customers play against each other (ie peer-to-peer).
37. The Gambling Act 2005, which came into force on 1 September 2007, sets out a comprehensive regime for the regulation of gambling. It also created the Gambling Commission as a unified regulator for commercial gambling.
38. The Gambling (Licensing and Advertising) Act 2014 requires any operator advertising remote gambling or providing online gambling facilities in the UK to have an operating licence from the Gambling Commission. It also prohibits unlicensed operators from promoting their products in the UK.

## Frame of reference

39. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.<sup>11</sup>

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<sup>10</sup> Under the Gambling Act 2005, betting is defined as ‘making or accepting a bet on: (a) the outcome of a race, competition or other event or process; (b) the likelihood of anything occurring or not occurring; or (c) whether anything is or is not true’. Accordingly, it includes betting on sporting and non-sporting events and numbers betting.

<sup>11</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.



## **Product scope**

40. The Parties overlap in the supply of online betting and gaming services, with brands that are active in sportsbook betting, poker, casino and bingo.
  - (a) Flutter owns the Paddy Power and Betfair brands through which it provides online betting and gaming services. In addition to its sportsbook offering, Flutter operates a betting exchange and provides exchange data via Betfair Exchange.
  - (b) Stars provides betting services in the UK through its BetStars brand and the Sky Bet brand. In respect of gaming, it provides online poker through its PokerStars, Full Tilt and Sky Poker brands, and online casino services through PokerStars Casino, Full Tilt Casino, Sky Casino, Sky Vegas and Sky Bingo. Stars also operates Oddschecker, an odds comparison site that allows customers to compare odds in the market.
41. While the Parties overlap in online casino and online bingo, the CMA did not find evidence of competition concerns in relation to these services given the Parties' relatively minor presence and the number of alternative providers available. The CMA has therefore not considered online casino and online bingo further in this decision.
42. As set out below, in relation to the CMA's assessment of horizontal unilateral effects, the CMA has considered:
  - (a) Whether online betting and online gaming should be considered as a single frame of reference;
  - (b) Within online betting, whether different types of online betting should be considered as different frames of reference; and
  - (c) Within online gaming, whether different types of online gaming should be considered as different frames of reference.
43. In relation to the CMA's assessment of non-horizontal effects, the CMA has considered:
  - (a) Whether odds comparison websites and matched betting websites should be considered as a single frame of reference; and
  - (b) Whether the supply of betting exchange data should be considered as a separate frame of reference.

## *Betting vs gaming*

### *Parties' submission*

44. The Parties submitted that the appropriate frame of reference for the assessment of the Merger should be online gambling, including online betting and gaming. However, the Parties recognised that the CMA has recently analysed the gambling market on the basis of narrower segments. Accordingly, the Parties provided information in relation to: (i) online betting; (ii) online gaming; and (iii) within online gaming, online poker, in the UK.<sup>12</sup>
45. Further, the Parties submitted that betting services are distributed in various ways – via retail outlets, by telephone, and online (via desktop, tablet and mobile) – but that they only overlap in the online distribution channel.<sup>13</sup>

### *The CMA's assessment*

46. In previous decisions, the CMA and its predecessors distinguished between betting and gaming, mainly based on limited demand-side substitutability.<sup>14</sup>
47. The CMA found no evidence to suggest that it is appropriate to depart from the conclusion that there is limited demand-side substitutability between betting and gaming. While many consumers engage in both activities, the CMA does not consider this to indicate that betting and gaming are demand substitutes. The CMA notes that consumers may wish to bet on some occasions and game on others, and that some consumers engage only in betting or gaming.<sup>15</sup> This is supported by third party evidence provided to the CMA during its merger investigation, which indicated that competitors generally focused on the markets for online betting and gaming separately.
48. With regards to the supply-side substitutability of online betting and gaming, both Parties and most other market players offer both online betting and gaming. However, the CMA found that shares of supply and market structures vary significantly across different activities, indicating that competitive conditions are different.<sup>16</sup> For example, while bet365 is the largest online sports betting operator by share of supply with a share of [20-30]% (see Table 1 below), it has limited presence in online gaming (with a share of less than [0-5]%) based on the Parties' data. In addition, while the majority of providers

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<sup>12</sup> Paragraph 5 of the Merger Notice.

<sup>13</sup> Paragraph 112 and 113 of the Merger Notice.

<sup>14</sup> See for example *Stars/SkyBet* (2018), paragraph 29, *GVC/Ladbrokes Coral* (2017), paragraph 43, and *Paddy Power/Betfair* (2015), paragraph 33.

<sup>15</sup> See also Flutter internal document: [REDACTED], which considers the online gaming market participation dynamics and notes differences between gaming and betting customers.

<sup>16</sup> See Tables 9 and 10 of the Merger Notice.

offer both betting and gaming services, the CMA identified a small number of gaming-only specialists who do not operate in the online betting market, such as Jackpotjoy and Tombola.

49. Further, the Parties' internal documents indicate that they monitor competitive conditions, customer views, and acquisition channels for different product types separately; often in entirely separate documents.<sup>17</sup> Accordingly, the CMA considers that online betting and online gaming should not be treated as a single frame of reference in this case.

### *Types of online betting*

50. Within online betting, the Parties offer online betting via their sportsbooks and Betfair Exchange. On a sportsbook, bets are made between a customer and a bookmaker, whilst a betting exchange facilitates the making or acceptance of bets between individuals on an internet-based forum.<sup>18</sup> The Parties submitted that these services are different ways of satisfying the same demand (that is, to gamble by placing a bet), but they may be of varying appeal to different types of customers.<sup>19</sup>
51. While there are similarities between betting on an exchange and betting through an online sportsbook,<sup>20</sup> evidence from third parties provided to the CMA as part of its merger investigation indicates that sportsbook and exchange betting appeal to different types of customers.<sup>21</sup> For instance, one competitor observed that it has proven difficult to convert traditional sports betting customers to exchange betting.<sup>22</sup> The CMA has previously found that betting on an exchange typically attracts a more professional or sophisticated consumer than betting via a sportsbook.<sup>23</sup>
52. From a supply-side perspective, the CMA considers there may be some barriers to gambling operators moving between the operation of sportsbooks and exchanges as these services require different types of systems and skills, and entry into the supply of exchange betting is not straightforward given, for instance, the need to attract a large number of customers in order to benefit

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<sup>17</sup> See for example, Parties' internal documents: [REDACTED].

<sup>18</sup> A betting exchange (including Flutter's Betfair Exchange brand) allows customers to place bets that an outcome will happen (as is the case for sportsbook betting), or to take on the other side of a bet by offering odds on an outcome not happening. Exchange operators generate revenue by charging winning customers a commission.

<sup>19</sup> Paragraph 101 of the Merger Notice

<sup>20</sup> [REDACTED].

<sup>21</sup> [REDACTED].

<sup>22</sup> [REDACTED].

<sup>23</sup> *Paddy Power/Betfair* decision, paragraph 34.

from network effects.<sup>24</sup> The CMA found that few online betting companies offer both sportsbook and exchange betting. Further, Flutter generally monitors its sportsbook and exchange in separate documents (or in separate sections within the same documents), and has separate teams for exchange, sportsbook and gaming.<sup>25</sup> One internal document notes that [REDACTED].<sup>26</sup> Accordingly, while there are some competitive interactions between sportsbooks and exchanges, the evidence indicates that sportsbook and exchange betting do not compete particularly closely with one another, relative to the competition between sportsbooks.

53. Accordingly, the CMA has assessed the Merger on the basis of separate frames of reference for:

- (a) The supply of online sportsbook betting; and
- (b) Online exchange betting.

54. However, it has not been necessary for the CMA to reach a definitive conclusion since no competition concerns arise on any plausible basis.

#### *Different types of sportsbooks*

55. The Parties submitted that it was not necessary to consider individual sports (eg horse racing, football, etc) as separate product frames of reference.<sup>27</sup>

56. In *GVC/Ladbrokes Coral*, the CMA considered looking at the impact of the merger on a more granular basis by looking at the provision of betting services for individual sports. The CMA concluded, however, that such a distinction is not necessary to reach a conclusion on the appropriate frame of reference.<sup>28</sup>

57. Evidence received by the CMA from the Gambling Commission during its merger investigation indicates that shares of supply for online betting by sport are similar to aggregate shares of supply. The CMA also notes that, in their internal documents, the Parties generally appear to analyse competitive conditions and customer behaviour for different sports at an aggregate level and in the same documents. For the purpose of assessing competitive effects in this case, the CMA has not assessed the Merger on a narrower frame of reference than online sportsbook betting.

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<sup>24</sup> *Paddy Power/Betfair* decision, paragraph 35.

<sup>25</sup> For example, Flutter produces [REDACTED]. See Flutter internal documents: [REDACTED].

<sup>26</sup> Parties' internal document: [REDACTED].

<sup>27</sup> Paragraph 109 of the Merger Notice.

<sup>28</sup> See *GVC/Ladbrokes Coral*, paragraphs 6 and 47.

## *Types of online gaming*

58. The Parties submitted that further segmentation within online gaming by game type would be inappropriate. They referred to the existence of both demand and supply side substitutability between different types of online games (casino, bingo and poker). In particular, the Parties submitted that the product offering behind the different gaming categories offered by providers is largely the same and that customers can easily switch between them. The Parties also submitted that there are no material barriers to supply-side substitutability, as it is not difficult to develop online games in-house or to buy them from third party developers.<sup>29</sup>
59. The CMA considers, however, that customers have preferences for different types of games and that poker players in particular require specific skills and knowledge as distinct from consumers playing random number generated casino games or bingo.<sup>30</sup> One third party that responded to the CMA's merger investigation submitted that customers also tend to have different preferences for different types of games.<sup>31</sup> The Parties' internal documents show that bingo appeals to specific demographics, which indicates that these customers may be less likely to consider other games as substitutes.<sup>32</sup> Further, an internal document notes that very few [REDACTED] have any affinity with poker.<sup>33</sup> The available evidence indicates that while some customers may play all games, they typically have a preference for one type and do not consider casino games, bingo and poker as substitutes for each other.
60. The CMA further notes that shares of supply and market structures vary significantly across different games, indicating that competitive conditions are different. For example, while Stars has the largest market share in online poker, Tombola has the highest share in bingo and GVC/Ladbrokes Coral has the highest share in online casino.<sup>34</sup> Moreover, entry into the supply of online poker may not be as straightforward as in relation to other online games, given the need to attract a large number of customers in order to benefit from network effects. Finally, internal documents demonstrate that the Parties consider different games separately, and poker in particular is usually considered in separate documents.<sup>35</sup>

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<sup>29</sup> Paragraphs 116, 117 and 120 of the Merger Notice.

<sup>30</sup> The CMA notes that in *Stars/SkyBet* (2018), the CMA considered different types of online games and found that customers often have preferences for different types of game they wish to play (paragraph 34).

<sup>31</sup> [REDACTED].

<sup>32</sup> Stars internal document: [REDACTED].

<sup>33</sup> Stars internal document: [REDACTED].

<sup>34</sup> Table 25 of the Merger Notice.

<sup>35</sup> For example, see Parties' internal documents: [REDACTED].

61. Accordingly, the available evidence indicates that conditions for competition between online poker and other types of online games are different and the CMA has not aggregated different games based on supply-side substitutability. The CMA has therefore assessed this Merger on the basis of a separate frame of reference for the supply of online poker services, where the Parties have a material overlap. Given the Parties' relatively minor presence in online casino and bingo, the CMA did not consider these other types of games further as no competition concerns would arise on any plausible basis.

#### *Odds comparison websites and matched betting websites*

62. Stars supplies odds comparison services via its Oddschecker brand, which allows end users (ie bettors) to compare odds and promotional offers for different betting events across a number of different sportsbook operators. Oddschecker is free-to-use for individual consumers. It generates revenue from sportsbook operators through commission from affiliated customers, tenancy fees for being listed on the platform, and advertising.
63. Flutter's Betfair Exchange supplies data on odds and promotions to matched betting websites. Matched betting websites use their own software and tools to source 'matched bets', ie bets from different bookmakers where bettors cannot lose as they bet on both outcomes, but still make some profit. These websites often scrape freely available pricing data from betting operators' websites without a commercial agreement and generate subscription revenues from end consumers.
64. The Parties' submissions in relation to matched betting websites indicate that they consider it appropriate to consider matched betting websites in the same product frame of reference as odds comparison websites.
65. The CMA received mixed evidence from third parties on whether matched betting websites and odds comparison websites could be considered substitutes.<sup>36</sup> Odds comparison websites are generally a free-to-use service that bettors use to view the odds and promotions on offer from a wide range of bookmakers, while matched betting websites are subscription-based services offering bettors low-risk betting opportunities. The CMA considers that these are not necessarily substitutable for end consumers.
66. In previous decisions, the CMA has considered shares of supply on the basis of odds comparison websites.<sup>37</sup>

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<sup>36</sup> [redacted].

<sup>37</sup> See *Stars/SkyBet* (2018), paragraph 24, fn 88.

67. The CMA has therefore assessed this Merger on the basis of separate frames of reference for:
- (a) The provision of odds comparison services; and
  - (b) The provision of matched betting services (for both online sportsbook betting and online exchange betting).<sup>38</sup>
68. However, it does not consider it necessary to conclude on this frame of reference as no competition concerns arise on any plausible basis.

#### *Betting exchange data*

69. Flutter provides exchange data to other betting operators for odds compilation and risk management activities via its Betfair brand.<sup>39</sup> The Parties did not make a submission in relation to the appropriate product frame of reference in this regard.
70. Consistent with previous decisions of the CMA<sup>40</sup>, the CMA assessed this Merger on the basis of a separate frame of reference for the supply of betting exchange data. However, it does not consider it necessary to conclude on this frame of reference as no competition concerns arise on any plausible basis.

#### **Geographic scope**

##### *Parties' submission*

71. The Parties submitted that the relevant market is at least EEA-wide, if not worldwide, noting the following reasons: (i) there are no barriers to non-UK websites competing for UK consumers; (ii) non-UK websites advertise to UK consumers and offer betting on UK sports, and non-UK consumers can access UK-based betting and gaming websites; (iii) the Parties and their competitors have global reach; (iv) internet penetration continues to improve, particularly in developing countries; (v) popular betting events are global in nature and attract gamblers worldwide; and (vi) gaming rules are homogeneous worldwide.<sup>41</sup>

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<sup>38</sup> On the basis that matched betting websites display odds (and promotions) of both sportsbook operators and online betting exchange operators.

<sup>39</sup> Exchange data refers to pricing and volume data generated on a betting exchange, which is used to assist bookmakers with their own sportsbook pricing and customer risk management.

<sup>40</sup> *Paddy Power/Betfair* (2015), paragraph 40.

<sup>41</sup> Paragraph 125 of the Merger Notice.

72. The CMA has previously considered that the relevant geographic frame of reference in relation to various segments within online gambling is the UK (ie the supply to UK customers).<sup>42</sup> This is on the basis that different regulatory requirements exist across different jurisdictions, with the Gambling Commission responsible for regulating commercial gambling in the UK.

#### *Online betting and gaming*

73. The Parties' internal documents generally analyse the UK separately to other geographic areas.<sup>43</sup> This demonstrates that the competitor set and the Parties' market position varies to some degree from country to country.<sup>44</sup> Further, regulatory requirements and taxation systems differ significantly across different jurisdictions, and gambling providers require licences to operate in the UK, issued by the Gambling Commission.

74. For these reasons, and consistent with previous practice as outlined in paragraph 72, the CMA has assessed the impact of this Merger in relation to the supply of online betting (including sportsbook betting and exchange betting) and online gaming (in particular, online poker) in the UK.

#### *Odds comparison websites*

75. In relation to the provision of odds comparison services, the CMA notes that Stars' Oddschecker brand supplies odds comparison services to sportsbook operators, which in turn supply UK customers. The CMA therefore assessed the impact of this Merger on a UK-wide basis. However, it has not been necessary to reach a definitive conclusion on this frame of reference given that no competition concerns arise on any plausible basis.

#### *Matched betting websites*

76. In relation to the provision of matched betting services, the CMA notes that matched betting websites list online betting operators who are licensed in the UK. The CMA therefore assessed the impact of this Merger in relation to the supply of matched betting websites on a UK-wide basis. However, it has not been necessary to reach a definitive conclusion on this frame of reference given that no competition concerns arise on any plausible basis.

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<sup>42</sup> See for example *Stars/SkyBet* (2018), paragraph 41, *GVC/Ladbrokes Coral* (2017), paragraph 56, and *Paddy Power/Betfair* (2015), paragraph 44.

<sup>43</sup> Parties' internal documents: [REDACTED].

<sup>44</sup> For example, one internal document notes that markets can be segmented by their regulatory status and that the competitive dynamic and intensity varies from country to country. See Flutter internal documents: [REDACTED].



### *Betting exchange data*

77. Consistent with previous practice, the CMA considers that Betfair supplies betting exchange data to other gambling operators, which in turn supply UK customers.<sup>45</sup> Therefore, the CMA assessed this Merger in relation to the supply of exchange data on a UK-wide basis. As the CMA noted in *Paddy Power/Betfair*, however, betting exchange data is not subject to regulatory restrictions that limit where it can be supplied (unlike gambling operators who must be licensed in the UK to supply to UK customers) and therefore the market might be wider than the UK.
78. It has not been necessary to reach a definitive conclusion on the geographic frame of reference given that no competition concerns arise on any plausible basis.

### **Conclusion on frame of reference**

79. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- (a) The supply of online sportsbook betting services in the UK;
  - (b) The supply of online poker services in the UK;
  - (c) The supply of odds comparison services in the UK;
  - (d) The supply of betting exchange data in the UK; and
  - (e) The supply of matched betting services in the UK.

## **Competitive assessment**

### ***Horizontal unilateral effects***

80. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.<sup>46</sup> Horizontal unilateral effects are more likely when the merging parties are close competitors. The CMA assessed whether it is or may be the case that the Merger may be expected

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<sup>45</sup> *Paddy Power/Betfair* (2015), paragraph 45.

<sup>46</sup> *Merger Assessment Guidelines*, from paragraph 5.4.1.

to result in an SLC in relation to horizontal unilateral effects in the supply of online sportsbook betting and in the supply of online poker in the UK.

81. The concern under these theories of harm is that the removal of one party as a competitor could allow the Merged Entity to increase prices (in terms of odds and/or promotions), lower quality and/or reduce innovation. After the Merger, it may be less costly for the Merged Entity to raise prices (or lower quality) because it would recoup the profit on recaptured sales from those customers who would have switched to the offer of the other merging firm.

### ***Horizontal unilateral effects in the supply of online sportsbook betting***

82. In assessing whether the Merger will lead to an SLC in relation to the supply of online sportsbook betting, the CMA considered: (i) shares of supply; (ii) closeness of competition between the Parties; and (iii) the degree of constraint from rivals. In conducting its analysis, the CMA has considered the following evidence:

- (a) Gambling Commission data in relation to shares of supply;
- (b) The Parties' submissions;
- (c) The Parties' internal documents; and
- (d) Third party views.

### ***Shares of supply***

83. Table 1 below sets out the CMA's estimates of shares of supply based on the Gambling Commission's 2018/19 Gross Gambling Yield data.<sup>47</sup>

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<sup>47</sup> The Parties' estimates of shares of supply are based on Regulus Partners' net gaming revenues data. The Parties' estimates are very similar to those in Table 1, although less recent (2018) – see Table 9 of the Merger Notice.

**Table 1: Estimated shares of supply of online sportsbook betting in the UK**

Provider	Online sportsbook betting share (2018/2019)
Stars	[10-20]%
Flutter	[10-20]%
<b>Merged entity</b>	<b>[30-40]%</b>
bet365	[20-30]%
William Hill	[10-20]%
GVC/Ladbrokes Coral	[10-20]%
Betway	[0-5]%
Betfred	[0-5]%
BetVictor	[0-5]%
Others	[10-20]%
<b>Total</b>	<b>100%</b>

Source: CMA estimates based on Gambling Commission Gross Gambling Yield data.<sup>48</sup>

84. Post-Merger, the Parties will become the largest supplier of online sportsbook betting in the UK, with a combined share of supply of [30-40]% and an increment of [10-20]%. There are a number of other competitors in the market who hold material shares, in particular bet365, William Hill and GVC/Ladbrokes Coral. These three main groups, together with the Parties, account for around [70-80]% of the market. There is also a long tail of competitors with a smaller presence in the UK (including Betway, Betfred, BetVictor and others). While these competitors do not account for a large share of the market, as set out further below, evidence available to the CMA suggests that they nonetheless represent a competitive constraint on the Parties.<sup>49</sup>

### *Closeness of competition*

#### *Parties' submissions*

85. The Parties submitted that they are not each other's closest competitors and that this is supported by internal documents, survey evidence and multi-homing data. In particular, they submitted that there is a high rate of churn, multi-homing and switching among betting customers (particularly given the ease of opening a new account and promotions offered to attract customers). The Parties submitted that all larger operators are close competitors, and to the extent there is greater closeness, bet365 is considerably closer to the Parties than they are to each other.<sup>50</sup> The Parties also submitted that they are not closer to one another than they are to other major brands, both generally

<sup>48</sup> Gross Gambling Yield (GGY) is defined as the amount retained by operators after the payment of winnings but before the deductions of the costs of the operation. The CMA has previously analysed GGY data provided by the Gambling Commission in its share of supply analysis (see *Stars/SkyBet* (2018), paragraph 44 and *GVC/Ladbrokes Coral* (2017), paragraph 65).

<sup>49</sup> See from paragraph 104.

<sup>50</sup> Parties' Issues Meeting presentation.

and in relation to their targeted audience, with all players generally serving a recreational customer base.

86. The CMA analysed a broad range of evidence in order to assess the closeness of competition between the Parties, including the Parties' internal documents, the Parties' internal customer survey data, evidence of innovation and advertising expenditure among online sportsbook operators. The CMA also assessed each Party's spend on Google AdWords and gathered feedback from third parties.

#### *Internal documents*

87. The CMA considered the extent to which the Parties view each other as close competitors based on its review of a large number of the Parties' internal documents.
88. The CMA considers that the Parties' internal documents indicate that they are among each other's close competitors, but that they also compete closely with other large online betting operators. Moreover, the Parties' internal documents show that they actively monitor a wide range of sportsbook operators, indicating that they consider all these players to represent a competitive constraint on the Parties. For example, the CMA analysed 99 weekly betting market reports produced by Sky Bet from November 2017 to November 2019 and observed that it regularly monitors online metrics for the following competitors: bet365, William Hill, Paddy Power, Betfair, GVC/Ladbrokes Coral, Betway, Betfred and BetVictor.<sup>51</sup> Similarly, Flutter's internal documents indicate that it regularly monitors a range of operators, tracking the number of 'markets',<sup>52</sup> pricing and promotions being offered on certain events by players including bet365, Sky Bet, GVC/Ladbrokes Coral, William Hill, BetVictor, Betway, Betfred and BoyleSports.<sup>53</sup>

#### *Survey evidence*

89. The CMA considered survey evidence that is regularly produced and analysed by the Parties in relation to:
- (a) Customer switching (lapsed customers); and
  - (b) Multi-homing (customer cross-over and share of competitive wallet).

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<sup>51</sup> A few more competitors are monitored in the earliest market reports (eg Marathon Bet), but not in the latest reports. For example, see Stars internal document: [REDACTED].

<sup>52</sup> A betting market is a specific type or category of bet on a particular event.

<sup>53</sup> Flutter internal documents: [REDACTED].

90. Overall, the survey data confirms that each Party is among the other Party's close competitors but also confirms that the Parties compete closely with other large online betting operators, as set out below.
- *Customer switching*
91. Evidence analysed by the CMA indicates that the online betting market is characterised by relatively high levels of customer churn. This churn is driven by generous sign-up offers, which often mean customers face negative switching costs, the use of odds comparison sites and the ease (including speed) of opening new accounts with alternative providers. This dynamic enhances competitive rivalry between sportsbook operators as they must strive to acquire, retain and reacquire customers through promotional strategies, a strong product offering and website/app quality.
92. Switching data analysed by the CMA indicates that each Party faces strong constraints from competing online bookmakers, with bet365 being the preferred bookmaker of both Flutter's and Stars' lapsed customers, followed by each of the larger operators (including the other Party, William Hill and GVC/Ladbrokes Coral) who take a considerable share of these customers. The CMA identified some switching to competitors with a smaller presence in the UK, including Betway, Betfred and BetVictor, indicating some degree of competitive rivalry from numerous sportsbook operators.
- *Multi-homing*
93. The CMA assessed data provided by the Parties relating to multi-homing:
- (a) Cross-over data: Quarterly customer survey data analysed by the CMA shows the extent to which Paddy Power's, Betfair's and Sky Bet's customers use other online betting brands on a regular basis. This illustrates which other online betting brands are most used by customers of the Parties' brands,<sup>54</sup> and
  - (b) Share of wallet data: The consumer's share of wallet uses a customer's ranking of each competitor to determine the relative use of that brand as compared to competing brands. The resulting value provides an estimate of the percentage of total spend a customer is allocating to the brand in question. While this is a common approach used to estimate share of wallet across many sectors, the measure is based on brand usage rather than a customer's actual spend.<sup>55</sup>

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<sup>54</sup> Paragraphs 306-310 of the Merger Notice and corresponding Figures and Annexes.

<sup>55</sup> Footnote 185 of the Merger Notice.

94. Customer cross-over data measures when a consumer uses two or more brands, while share of wallet estimates how much of their total budget a consumer allocates to each brand.
95. The Parties' customer cross-over data and share of wallet data indicates that betting customers tend to multi-home across a wide range of online bookmakers. The evidence indicates that around [REDACTED] of Flutter's and Sky Bet's sportsbook revenues are generated from customers with more than one betting account. The CMA notes, however, that the prevalence of customers holding multiple accounts does not itself, necessarily indicate that customers are actively spending their money with several operators. Nonetheless, survey data on the use of other brands by Flutter's regular customers shows that bet365 and Sky Bet are their most used alternative brands, and that Ladbrokes, Coral and William Hill are also commonly used.

### *Innovation*

96. Online bookmakers that responded to the CMA's merger investigation indicated that innovation is one of the key competitive parameters in online sportsbook betting.<sup>56</sup>
97. The Parties listed a number of key innovations introduced in online betting in the last few years and, for each innovation, specified who was the first operator to pioneer it.<sup>57</sup> Examples of such innovations include in-play betting, live streaming and face ID login.
98. The CMA analysed this information on the number of new innovations introduced by online sportsbook operators in recent years. This analysis indicates that the Parties are not more innovative than other large operators. In particular, the analysis indicates that bet365 has introduced the most innovations to the market in recent years. The CMA also notes that innovations can be, and are, replicated quickly therefore limiting any first-mover advantage achieved by those who introduce them. Further, the CMA notes that the evidence shows that operators with a smaller presence in the UK also compete on innovation, often bringing out new products and features to bettors.

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<sup>56</sup> [REDACTED]. The other key competition parameters most valued by competitors were: website/app quality; promotions; brand; odds; and range of markets covered. The CMA notes that a number of competitors told the CMA that most brands have relatively similar odds and that having the best odds is not as important as in the past.

<sup>57</sup> Paragraphs 289-290 and Table 21.A of the Merger Notice.

99. The CMA considers that, given the trend of frequent innovation and its importance as a competitive parameter in the online betting market, innovation will continue to occur across the market.

#### *Advertising*

100. The CMA also gathered evidence from the Parties and competitors on their spend on advertising and on Google AdWords search terms. The CMA notes that views from online bookmakers provided to the CMA suggests that advertising may be particularly important, since brand trust and recognition is one of the key competitive parameters.<sup>58</sup>
101. The CMA looked at 2019 advertising expenditure by online sportsbook operators. The CMA found that the Parties' brands' advertising budgets are similar to each other's and to those of other large operators. Further, the CMA found that the Parties' Google AdWords spend is distributed across multiple operators and is not concentrated on each other more than on other large competitors. In addition, while, like Sky Bet, Flutter directs the majority of its spend to the other four main online betting groups, it also directs a portion of its Google AdWords spend to competitors with a smaller presence in the UK (including Betway, Betfred, BetVictor and others).

#### *Third party views*

102. The CMA gathered feedback from competing online bookmakers to determine the brands that are considered the closest competitors to the Parties' brands. Third parties indicated that, while Flutter and Stars are close competitors, bet365, William Hill and GVC/Ladbrokes Coral are also among both Parties' close competitors. Further, the feedback also suggested that players with a smaller presence in the UK, such as Betway and BetVictor, are competitors of the Parties, albeit they are considered more remote than bet365, GVC/Ladbrokes Coral and William Hill. Third parties also identified Betfred, Smarkets, Kindred and BoyleSports as competitors.

#### *Conclusion on closeness of competition*

103. Based on a range of evidence sources available to it, the CMA considers that, taking the evidence in the round, the Parties are close competitors but also compete closely with other large online bookmakers: bet365, GVC/Ladbrokes Coral and William Hill. In addition, the Parties compete, albeit less closely, with operators with a smaller presence in the UK, including Betway, Betfred

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<sup>58</sup> [REDACTED].

and BetVictor, who are regularly monitored by the Parties, are present in survey data and are actively competing on innovation.

### *Competitive constraints*

#### *Alternative suppliers*

104. Based on the Parties' internal documents, the CMA considers that there are a number of large online betting operators with whom the Parties compete closely. In particular, the Parties' internal documents refer regularly to bet365, William Hill, and GVC/Ladbrokes Coral. They also refer, albeit to a lesser extent, to operators with a smaller presence in the UK such as Betway, Betfred and BetVictor and to a long tail of other competitors.
105. Accordingly, the CMA assessed the constraint from:
- (a) bet365;
  - (b) GVC/Ladbrokes Coral;
  - (c) William Hill; and
  - (d) Other online bookmakers (including Betway, Betfred, BetVictor and others).
    - *bet365*
106. bet365 is currently the largest operator in the market (with a [20-30]% share of supply) and would become the second largest after the Merger, with Stars and Flutter having a combined share of [30-40]% (see Table 1 above).
107. The Parties' internal documents and survey data confirm that bet365 is seen by Sky Bet as its closest competitor and by Flutter as its closest competitor together with Sky Bet. In addition, bet365 is the most prominent innovator in the market and [§]. Third party responses also suggest that competitors consider bet365 to be Sky Bet's and Betfair's closest competitor and the second closest in the case of Paddy Power.
  - *GVC/Ladbrokes Coral*
108. GVC/Ladbrokes Coral is one of the five largest operators in the market and it will be one of the four largest after the Merger, with an estimated [10-20]% share (see Table 1 above).
109. The Parties' internal documents and survey data suggest that GVC/Ladbrokes Coral is viewed by each Party as one of its close competitors. Third party



evidence suggests that even though GVC's integration process following its acquisition of Ladbrokes Coral may have slowed its growth in the UK for a short period, GVC is expected to continue to grow in the online betting market in the UK now that it has completed the Ladbrokes Coral integration.<sup>59</sup> Further, feedback from the Parties' competitors indicates that GVC/Ladbrokes Coral is considered to be a close competitor of both Parties.

- *William Hill*

110. William Hill is one of the five largest operators on the market and it will be one of the four largest after the Merger, with an estimated [10-20]% share (see Table 1 above).
111. The Parties' internal documents and survey data indicate that William Hill is viewed by each Party as one of its close competitors and third party feedback also supports this view.
112. The CMA notes that William Hill's share of supply in the UK online sportsbook market has declined from 18% in 2014<sup>60</sup> to [10-20%] in 2019, and the constraint it poses on the Parties may therefore become more limited. However, William Hill has made public statements explaining that its UK online business maintained market share in 2019 and returned to growth, and that, going forward, it is focusing on strengthening the brand and enhancing its product offering.<sup>61</sup> Moreover, the Parties submitted that recent regulatory change, including in relation to maximum stakes on fixed odds betting terminals and increased know your customer checks, affected William Hill to a greater extent than other operators, but that now that these issues have been resolved, William Hill will continue to compete strongly.
113. William Hill told the CMA that [REDACTED].<sup>62</sup>
114. The Parties' survey evidence on customer multi-homing indicates that William Hill continues to pose a strong constraint on the Parties' brands. Further, based on evidence available from the Parties and third party feedback, the CMA believes that William Hill is a relatively innovative player and continues to have strong brand recognition. As such, the CMA considers that William Hill will continue to constitute a strong constraint on the Parties post-Merger.

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<sup>59</sup> [REDACTED].

<sup>60</sup> Regulus Partners' data provided by the Parties.

<sup>61</sup> [William Hill presentation '2019 final results'](#), 26 February 2020,

<sup>62</sup> [REDACTED].

- *Betway, Betfred and BetVictor*

115. Betway, Betfred and BetVictor each have an estimated share of [0-5]% in the online sportsbook betting market (see Table 1 above).<sup>63</sup>
116. The Parties' internal documents confirm that each Party frequently monitors the competitive activity of Betway, Betfred and BetVictor (see paragraph 88).<sup>64</sup> Further, survey evidence indicates that the Parties' customers multi-home with these players in addition to the larger sportsbook operators (albeit to a lesser extent), and that Betway, Betfred and BetVictor tend to take at least some portion of lapsed customers from the Parties' brands. Further, feedback from third parties indicated that these players are competitors of the Parties, although they are generally considered more remote than bet365, GVC/Ladbrokes Coral and William Hill.
117. The CMA notes that, given that odds are easily comparable, and customers can and do move between different operators quickly and easily, sportsbook operators offer competitive odds within a narrow range. Evidence provided by the Parties based on Oddschecker data indicates that operators with a smaller presence in the UK in particular tend to set aggressive pricing and offer some of the best odds of competing bookmakers on popular selections (eg major football and horse racing events).<sup>65</sup>
118. Finally, evidence based on app download data and Oddschecker data further indicates that Betway, Betfred and BetVictor represent a competitive constraint on the Parties, offering attractive app experiences and capturing a material proportion of app downloads, Oddschecker click share and registrations in recent years.<sup>66</sup>
119. As such, the CMA considers Betway, Betfred and BetVictor represent a competitive constraint on the Parties and will continue to do so post-Merger.

- *Other competitors*

120. The Parties submitted that a large number of smaller operators (including Kindred, 888, BoyleSports, MoPlay,<sup>67</sup> 10Bet, Fansbet, Virgin Bet and SportPesa) are active in the UK and can compete effectively with the Parties.

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<sup>63</sup> The CMA notes that Betfred has a growing retail presence in the UK with over 1600 shops and that Betway and BetVictor are global operators with significant activities outside of the UK.

<sup>64</sup> See also Flutter internal documents: [REDACTED].

<sup>65</sup> Paragraph 270-272 of the Merger Notice.

<sup>66</sup> Flutter internal document: [REDACTED]; Parties' Issues Meeting presentation.

<sup>67</sup> The CMA notes that MoPlay's license is currently suspended, see <https://secure.gamblingcommission.gov.uk/PublicRegister/Search/Detail/50970>.

121. These smaller operators together only account for around [10-20]% of the market (see Table 1 above);
122. The Parties' internal documents and survey data confirm that they monitor these smaller operators less frequently than the larger ones and that they are not among their closest competitors, but still constitute some degree of competitive constraint on the Parties. Third party evidence also indicates that smaller operators are relatively remote competitors of the Parties.

*Conclusion on alternative competitive constraints*

123. Based on this evidence, the CMA considers that:
  - (a) Both Parties compete closely with bet365 in the online sportsbook betting market and that bet365 will continue to constitute the strongest competitive constraint on the Merged Entity;
  - (b) Both Parties compete closely with GVC/Ladbrokes Coral and William Hill and that both competitors will constitute a strong competitive constraint on the Merged Entity;
  - (c) Betway, Betfred and BetVictor currently constitute a competitive constraint on the Parties, although this is not as strong as that of larger operators, and that they will continue to constitute a competitive constraint on the Merged Entity; and
  - (d) Smaller competitors are likely to constitute at least some constraint.

*Third party views regarding impact of the Merger on online sportsbook betting*

124. Some competitors raised concerns in relation to the large combined share of supply of the Parties, particularly with respect to recreational customers, potential increases in costs due to the Merged Entity's ability to price other players out of advertising opportunities and media packages, and the impact of the Merger on the ability of smaller betting operators to compete in an increasingly consolidated industry.<sup>68</sup>
125. In addition, one third party raised concerns that the Merger would lead to the Merged Entity gaining significant buyer power in relation to video and data feeds supplied to betting operators from racecourses and three consumers

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<sup>68</sup> [REDACTED].

submitted that the Merger could lead to a reduction in choice and/or a deterioration of quality or service levels.<sup>69</sup>

126. The CMA considered the concerns raised by third parties as part of its investigation. The CMA did not consider that, when viewed in the round, these concerns were consistent with the other sources of evidence available to it (including the Parties' internal documents and survey evidence).<sup>70</sup>

#### *Conclusion on horizontal unilateral effects in online sportsbook betting*

127. As set out above, the CMA considers that although the Parties are among each other's close competitors, they will continue to face competitive constraints from other large and closely competing online betting operators. Further, the CMA considers that operators with a smaller presence in the UK, including Betway, Betfred and BetVictor, among others, represent a more limited but material competitive constraint on the Parties.
128. Accordingly, the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of online betting services in the UK.

#### *Horizontal unilateral effects in the supply of online poker*

129. In assessing whether the Merger will lead to an SLC in relation to the supply of online poker, the CMA considered the following evidence in relation to the closeness of competition between the Parties and the degree of constraint from rivals:
- (a) The Parties' and Gambling Commission data in relation to shares of supply;
  - (b) The Parties' submissions;
  - (c) The Parties' internal documents; and
  - (d) Third party views.

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<sup>69</sup> Responses to the CMA's Invitation to comment.

<sup>70</sup> With regard specifically to the concern raised by one third party that the Merger would lead to the Merged Entity gaining significant buyer power in relation to video and data feeds supplied to betting operators from racecourses, the CMA found that the Merged Entity would have no ability to foreclose other bookmakers by demanding exclusive access to these services because (i) there are only two providers of such services, each holding significant market power ([§<]); and (ii) any threat by the Merged Entity to stop purchasing these services unless exclusivity was granted would not be credible as they are an important part of the Parties' competitive offering.

130. Table 2 below sets out the CMA's estimates of shares of supply based on 2018 Regulus Partners' data (provided by the Parties)<sup>71</sup> and 2018/19 Gambling Commission data.

**Table 2: Estimated shares of supply of online poker in the UK**

Provider	Share (Regulus Partners, 2018)	Share (Gambling Commission, 2018/19)
Stars	[40-50]%	[50-60]%
PokerStars	[30-40]%	
Full Tilt	[0-5]%	
Sky Poker	[5-10]%	
Flutter	[0-5]%	[0-5]%
Paddy Power	[0-5]%	
Betfair	[0-5]%	
<b>Merged entity</b>	<b>[40-50]%</b>	<b>[50-60]%</b>
GVC/Ladbrokes Coral	[20-30]%	[10-20]%
888	[10-20]%	[10-20]%
William Hill	[0-5]%	[0-5]%
bet365	[0-5]%	[0-5]%
Others	[5-10]%	[5-10]%
<b>Total</b>	<b>100%</b>	<b>100%</b>

Source: CMA analysis of Regulus Partners' (net gaming revenue) and Gambling Commission's data (gross gambling yield).

131. Stars is the largest operator in online poker, followed by GVC/Ladbrokes Coral and 888, and by long a tail of smaller competitors including William Hill, bet365 and others. Flutter only has a minor presence in online poker, with a share of supply of [0-5]%.<sup>72</sup>
132. The Parties submitted that the increment which would result from the Merger is *de minimis* ([0-5]%) with a negligible effect on competition, and that Flutter invests minimal resources in the online poker market.<sup>73</sup> Moreover, the Parties submitted that they do not compete closely in online poker, as evidenced by:
- (a) Their differentiated products - PokerStars offers significantly more poker variants and tournaments in the UK than Flutter and Sky Poker;<sup>74</sup>
  - (b) Their distinct customer bases - PokerStars tends to attract more 'serious' poker players who spend a greater share of wallet on poker;<sup>75</sup>

<sup>71</sup> Table 28 of the Merger Notice.

<sup>72</sup> In the following analysis, due to its very small market share, the CMA has considered Full Tilt as part of PokerStars.

<sup>73</sup> Paragraph 367 of the Merger Notice.

<sup>74</sup> Paragraph 376 of the Merger Notice.

<sup>75</sup> Paragraph 374 and Tables 31-32 of the Merger Notice.

- (c) The differences in customer acquisition channels - Flutter and Sky Poker acquire very few customers through poker, in contrast to PokerStars who acquires customers mainly through poker;<sup>76</sup>
- (d) The relatively limited overlap between the Parties' brands' customer bases.<sup>77</sup>
133. Additionally, the Parties submitted that there is a number of strong alternatives in the online poker market and barriers to entry and expansion are low.<sup>78</sup>
134. The CMA focused its assessment on the potential loss of competition between Flutter and Sky Poker, as the Parties appear to compete most closely in respect of these brands.
135. PokerStars' internal documents rarely (if at all) mention Flutter's brands as competitors, while they suggest that 888 and GVC/Ladbrokes Coral are PokerStars' closest competitors.<sup>79</sup> Sky Poker's internal documents suggest that it competes closely with 888 and GVC/Ladbrokes Coral.<sup>80</sup>
136. Market research and detailed customer reports on online poker are in general absent from Flutter's internal documents and it is often the case that its revenues from online poker, which are relatively minor compared to total gaming revenue, are pooled together with revenues from online casino and bingo in financial statements.<sup>81</sup> Assessed in the round, the Parties' internal documents indicate that Flutter has a minor presence in and limited focus on online poker, does not exert a strong competitive constraint in online poker generally, and is not a particularly close competitor of either of the Stars online poker brands.
137. Competitors in online poker that responded to the CMA's merger investigation generally confirmed that Flutter competes more closely with Sky Poker than PokerStars, noting significant differences in Flutter's and PokerStars' customer bases. Additionally, competitors' responses indicate that PokerStars competes more closely with GVC/Ladbrokes Coral and 888, who generally target more 'serious' poker players compared to the other operators.<sup>82</sup> Finally, it has been noted that Flutter and Sky Poker rely on cross-selling their poker

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<sup>76</sup> Paragraphs 385-386 and Table 33 of the Merger Notice.

<sup>77</sup> Paragraphs 387-392 of the Merger Notice.

<sup>78</sup> Paragraph 410 of the Merger Notice.

<sup>79</sup> See Stars internal document: [REDACTED].

<sup>80</sup> See Stars internal documents: [REDACTED].

<sup>81</sup> See Flutter internal document: [REDACTED].

<sup>82</sup> [REDACTED].

products to sportsbook betting customers, therefore they do not actively compete with each other in terms of new poker acquisitions.<sup>83</sup>

138. A small number of competitors told the CMA that the Merger could have adverse effects on the iPoker network,<sup>84</sup> which could reduce the ability of other online poker operators sharing the network to compete. These competitors submitted that such effects could arise either because the Merged Entity could withdraw from the network, reducing its customer liquidity, or because the Merged Entity could influence iPoker's pricing. With respect to these arguments, the CMA notes the following:
- (a) Only Flutter operates in the network (Stars does not) and its market share is small (both within the network and in the whole market).
  - (b) There are several other brands currently operating through iPoker, such as [redacted].
139. Therefore, the CMA considers that the Merger would not have a significant adverse effect on the iPoker network, or on the ability of users of the network to compete.

*Conclusion on horizontal unilateral effects in online poker*

140. The CMA found that Flutter has a minor presence in, and limited focus on, online poker, and that the Parties do not compete closely. Accordingly, the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to online poker in the UK.

***Non-horizontal effects - vertical effects***

141. Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between an upstream supplier and a downstream customer or downstream competitor of the supplier's customers.
142. Vertical mergers may be competitively benign or even efficiency-enhancing, but in certain circumstances can weaken rivalry, for example when they result in foreclosure of the merged firm's competitors. The CMA only regards such foreclosure to be anticompetitive where it results in an SLC in the foreclosed

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<sup>83</sup> [redacted].

<sup>84</sup> iPoker is a network shared by several online poker operators and operated by Playtech. The CMA notes that PokerStars and Sky Poker are not part of this network.

market(s), not merely where it disadvantages one or more competitors.<sup>85</sup> In the present case, the CMA has considered whether vertical effects may arise as a result of the Merger in relation to the supply of odds comparison services through Oddschecker and in relation to the supply of betting exchange data through Betfair Exchange.<sup>86</sup>

143. The CMA's approach to assessing vertical theories of harm is to analyse: (i) the ability of the merged entity to foreclose competitors; (ii) the incentive of it to do so; and (iii) the overall effect of the strategy on competition.<sup>87</sup> This is discussed below.

### ***Vertical effects in the supply of odds comparison services***

144. As explained in paragraph 62 above, Stars owns Oddschecker, an odds comparison website allowing consumers to compare odds and promotions for different betting events and multiple sports across a wide range of online bookmakers. Users can click through from Oddschecker to place a bet with a particular bookmaker (or go to the bookmaker directly). Oddschecker is free-to-use for individual consumers.
145. Oddschecker has contractual arrangements in place with each online betting operator listed on its platform. It generates revenue by charging operators a fee for each customer that clicks through from Oddschecker and opens an account with that operator (a "cost per acquisition"), as well as through revenue share agreements with the operators. Oddschecker charges operators a tenancy fee for being listed on the platform, which can vary according to the operator's placement on the Oddschecker grid (eg an operator might pay a higher fee for a more prominent position). Oddschecker also generates revenue from betting operators through the sale of advertising on the platform.<sup>88</sup>
146. The CMA considered vertical effects arising from the foreclosure by the Merged Entity of competing online bookmakers through Oddschecker.<sup>89</sup> In

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<sup>85</sup> In relation to this theory of harm 'foreclosure' means either foreclosure of a rival or to substantially competitively weaken a rival.

<sup>86</sup> The CMA notes that the Parties also have vertically-related activities in the provision of affiliate digital marketing services, horse racing and football data, and gaming development services. Given the Parties' limited presence in the supply of these services, and the availability of alternatives, the CMA did not find evidence of competition concerns in relation to these gambling-related services.

<sup>87</sup> [Merger Assessment Guidelines](#), paragraph 5.6.6.

<sup>88</sup> Paragraph 433 of the Merger Notice.

<sup>89</sup> The CMA also considered vertical effects arising from the foreclosure by the Merged Entity of competing odds comparison services (for example, by not providing them with the Parties' odds and promotions data or by lowering or refusing to pay their fees). However, based on evidence from the Parties and third parties, the CMA found that the potential gain from engaging in such a strategy to foreclose competing odds comparison websites in order to attract customers to Oddschecker would be significantly outweighed by potential losses in the online betting market. Therefore, the CMA does not consider that vertical competition concerns arise from the Merger in relation to foreclosure of odds comparison websites and this is not considered further in this decision.



particular, the CMA considered: (i) the ability of the Merged Entity to engage in such a strategy; and (ii) its incentive to do so.

### *Ability*

147. The CMA considered whether the Merged Entity would have the ability to foreclose competing online bookmakers either by delisting them from Oddschecker (total foreclosure), or by showing them less prominently and/or by raising Oddschecker's fees (partial foreclosure). In doing so, the CMA has considered:

- (a) The importance of Oddschecker for online bookmakers; and
- (b) Whether Oddschecker has market power in relation to the provision of odds comparison services.

#### *The importance of Oddschecker for online bookmakers*

148. Third party evidence received by the CMA during its merger investigation indicated that the proportion of new customers acquired through odds comparison websites can vary from [0-5]% to [5-10]% of all customer acquisitions and the proportion of revenues made from these customers can vary from [0-5]% to [20-30]%.<sup>90</sup> In addition, third parties told the CMA that customers acquired through odds comparison websites are not particularly profitable, as they are likely to multi-home and switch betting provider frequently.<sup>91</sup> Nonetheless, odds comparison websites are viewed by online bookmakers as an important channel through which online bookmakers (particularly smaller operators) can promote their brand, promotions and odds, and are an important advertising channel.<sup>92</sup>

149. Similarly, third party evidence received by the CMA during its merger investigation indicated that the importance of Oddschecker, in particular as a customer acquisition tool, can vary significantly between online bookmakers, with the proportion of new customers acquired through Oddschecker ranging from [0-5]% to [5-10]% of all customer acquisitions and the proportion of revenues ranging from [0-5]% to [20-30]%.<sup>93</sup>

150. Third parties that responded to the CMA's merger investigation confirmed that Oddschecker is the largest and most important odds comparison website in

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<sup>90</sup> Third party responses to CMA questionnaire.

<sup>91</sup> [REDACTED].

<sup>92</sup> [REDACTED].

<sup>93</sup> Third party responses to CMA questionnaire.

the UK and that being listed on this platform offers visibility and a degree of legitimacy to bookmakers generally, and particularly for smaller operators focused on building brand recognition.<sup>94</sup>

151. The CMA notes that, notwithstanding third-party views above, the majority of UK bettors do not visit Oddschecker regularly, based on the number of Oddschecker visitors recorded from February 2019 and January 2020.<sup>95</sup>
152. The majority of online bookmakers that responded to the CMA's merger investigation explained that, should the Merged Entity delist them from the Oddschecker platform, this would have a negative impact on their business, given the importance of Oddschecker for the reasons outlined above. Some competitors raised concerns about the Merged Entity's ability to delist them from the platform, or to give preferential treatment to its own brands.<sup>96</sup>

*Oddschecker's market power in the provision of odds comparison services*

153. The Parties submitted that there are a number of strong alternative odds comparison websites that compete with Oddschecker.<sup>97</sup> The Parties also submitted share of supply estimates based on page visits by consumers. The Parties submitted that this data shows that Oddschecker's share of supply for UK odds comparison websites is below that of Racing Post, At The Races and Flash Score, and that there is a long tail of smaller odds comparison websites. The CMA does not consider these estimates to be reliable. First, the CMA considers that the total page visits of odds comparison websites identified by the Parties as competitors is unlikely to reflect their importance as a provider of odds comparison services because odds comparison is a small part of the overall offering of many of these websites. Further, Racing Post and At The Races only offer odds comparison for horse racing, and several websites identified by the Parties as competitors are in fact matched betting websites. The CMA has therefore placed limited weight on this data. While third party evidence from online bookmakers and odds comparison websites confirmed the existence of several competing odds comparison websites (including most notably Racing Post), it also indicated that Oddschecker is the market leader. One bookmaker noted that Oddschecker accounts for the large majority ([80-90]%) of all the stakes derived from odds comparison websites.<sup>98</sup> Competing odds comparison websites also told the

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<sup>94</sup> [REDACTED].

<sup>95</sup> CMA analysis based on the Parties' response to RFI 10. Oddschecker had an average of [REDACTED] unique UK-based visitors each month over this time period, equating to approximately [10-20]% of UK online bettors.

<sup>96</sup> [REDACTED].

<sup>97</sup> Paragraph 428 of the Merger Notice.

<sup>98</sup> [REDACTED].

CMA that Oddschecker represents the most significant competitive constraint on their businesses.<sup>99</sup>

154. Lastly, the CMA notes that Oddschecker [§]. However, the CMA also notes that Oddschecker has not delisted any online bookmakers from its platform in the last five years, except where that bookmaker was unable to pay fees, exited the market, or did not accept a commercial agreement.<sup>100</sup>

*Conclusion on the Merged Entity's ability to foreclose competing online bookmakers through Oddschecker*

155. In the round, the CMA considers that Oddschecker has a considerable degree of market power in the provision of odds comparison services and may have the ability to harm competing online bookmakers by foreclosing them through Oddschecker, owing to the importance of Oddschecker to their business.

*Incentive*

156. The CMA has considered the Merged Entity's incentive to engage in a total or partial foreclosure strategy through Oddschecker in order to harm competing online bookmakers.

*Total foreclosure*

157. The CMA considers that the act of delisting one or more online bookmakers from Oddschecker would reduce the revenues that the Merged Entity would otherwise earn from providing odds comparison services. The Merged Entity would lose tenancy fees and risk a potential reduction in traffic to the Oddschecker website.
158. The Parties submitted that Oddschecker needs to display the odds and promotions of a wide range of bookmakers to attract bettors to the site, and in particular that delisting one of the main online bookmakers would undermine Oddschecker's credibility for providing market-wide transparency, reducing consumer use of the website.<sup>101</sup>
159. Competing odds comparison websites that responded to the CMA's merger investigation confirmed that these odds comparison websites have an incentive to display all the main online bookmakers in order to attract web-traffic, and that delisting two or more main brands would have a materially

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<sup>99</sup> [§].

<sup>100</sup> Parties' response to RFI 5.

<sup>101</sup> Parties' response to RFI 10.

negative impact on an odds comparison business. The CMA received mixed evidence in relation to whether the loss of only one main bookmaker would have a material impact on odds comparison websites.<sup>102</sup>

160. The CMA considers that the feasibility of a foreclosure strategy by the Merged Entity may differ depending on whether large or smaller operators were the target. In particular, the CMA expects that the extent of customer diversion to the Parties' brands if the Merged Entity delisted one of the main online bookmakers would be higher than if it were to delist a smaller player. However, by contrast, the CMA considers that the potential loss to Oddschecker in customer traffic and associated revenues from delisting a main brand can be expected to be greater than for a smaller brand. The Parties submitted that the reduction in web-traffic to Oddschecker caused by delisting smaller brands would be material, as these competitors often offer attractive odds and made up approximately 30% of Oddschecker's click-throughs in 2019.
161. The CMA notes that, in this case, it has not been possible to predict the exact extent of customer diversion to the Parties' brands that could result from a foreclosure strategy. However, based on click share data submitted by the Parties, the CMA considers that the potential revenue gain for the Merged Entity from diverting some online betting customers to the Parties' brands is likely to be outweighed by the risk of losses caused by the reduced consumer traffic and the reduction in associated revenues made by Oddschecker.
162. Considering the available evidence set out above in the round, the CMA considers that the Merged Entity would have no incentive to engage in a total foreclosure strategy by delisting a competing online bookmaker from Oddschecker because there is a risk that the significant losses associated with such a strategy would be likely to outweigh any potential gain.

#### *Partial foreclosure*

163. The CMA considered whether the Merged Entity would have an incentive to engage in a partial foreclosure strategy to harm competing online bookmakers by increasing Oddschecker's fees or displaying the Parties' brands more prominently than their rivals.
164. The CMA notes that a majority of UK bettors do not use Oddschecker regularly<sup>103</sup> and competing bookmakers' views indicated that these bettors are low value customers to online betting brands by virtue of their limited brand

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<sup>102</sup> Third party responses to CMA questionnaire.

<sup>103</sup> Based on CMA analysis of Stars' data.

loyalty. Therefore, while being listed on the Oddschecker platform is important for brand recognition, the CMA considers that most competitors are unlikely to be materially impacted by selective fee increases or less prominent positioning. The CMA further notes that if the Merged Entity were to raise fees or position rivals less prominently, there would be a risk that online bookmakers would terminate their agreement with Oddschecker, resulting in potentially significant loss of customer traffic and associated revenues. A partial foreclosure strategy is therefore likely to lead to less diversion to the Merged Entity's betting brands than a full foreclosure strategy while risking the same negative impacts on revenues and traffic.

165. For these reasons, the CMA considers that the Merged Entity would have no incentive to engage in a partial foreclosure strategy through degrading the Oddschecker offer to rival online bookmakers.

#### *Conclusion on vertical effects in the supply of odds comparison services*

166. For the reasons set out above, the CMA considers that the Merged Entity will have no incentive to foreclose competing online bookmakers through Oddschecker. As the CMA considers that there is no incentive to foreclose, the CMA did not consider the effect of foreclosure.
167. Accordingly, the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC as a result of vertical effects in relation to odds comparison services in the UK.

#### ***Vertical effects in the supply of exchange data***

168. Flutter provides exchange data to other betting operators for odds compilation and risk management activities via its Betfair brand.<sup>104</sup>
169. The CMA considered whether the Merged Entity would have the ability to foreclose competing online bookmakers either by refusing to supply Betfair's exchange data (total foreclosure), or by raising the price of such data (partial foreclosure).

#### *Ability*

170. In *Paddy Power/Betfair*, the CMA found that although Betfair's exchange data appeared to be of particular value due to its liquidity, there were other sources

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<sup>104</sup> Exchange data refers to pricing and volume data generated on a betting exchange, which is used to assist bookmakers with their own sportsbook pricing and customer risk management.

of information available to betting operators for the management of their sportsbook, such as from odds comparison websites or third party odds providers, and that large betting operators traded and offered competitive odds without Betfair's exchange data.<sup>105</sup>

171. The Parties submitted that there have been no material changes since *Paddy Power/Betfair*. In particular, the Parties submitted that there are various alternative sources of information to assist with pricing, and that even if a sportsbook operator wishes to purchase exchange data there are several other exchanges from which to obtain this data, including Betdaq, Matchbook and Smarkets. The Parties further submitted that several operators are not currently purchasing Betfair's exchange data.<sup>106</sup>
172. Third party evidence and internal documents indicated that Betfair's data is superior to that of alternative betting exchanges. However, the CMA found that [REDACTED]. Evidence provided to the CMA by competing online bookmakers indicated that there are a number of alternative sources of data available, including third party odds data providers, the Asian betting markets and other betting exchanges.<sup>107</sup>
173. The CMA also found that [REDACTED]. The CMA notes that these customers diverted to, or have since relied more on, other sources of data.<sup>108</sup>
174. For these reasons, the CMA considers that there are alternative means by which competing online bookmakers can, and do, get odds data and therefore the Merged Entity will have no ability to foreclose competing online bookmakers by foreclosing access to Betfair's exchange data.

#### *Conclusion on vertical effects in the supply of exchange data*

175. The CMA considers that the Merged Entity will not have the ability to foreclose competing online bookmakers as a result of vertical effects in the supply of exchange data. As the CMA considers that there is no ability to foreclose, the CMA did not consider the incentive or effect of this foreclosure strategy.
176. Accordingly, the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC as a result of vertical effects in relation to the supply of exchange data in the UK.

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<sup>105</sup> *Paddy Power/Betfair* (2015), paragraphs 67-82.

<sup>106</sup> Paragraph 478-479 of the Merger Notice.

<sup>107</sup> Third party responses to CMA questionnaire.

<sup>108</sup> The CMA also notes that [REDACTED].

## ***Non-horizontal effects in related markets - foreclosure of matched betting websites***

177. Non-horizontal effects may arise when a merger has an effect on a market related to those in which the merging entities are active. Non-horizontal mergers may be competitively benign, but in certain circumstances they can weaken rivalry in a related market or result in the possible foreclosure of the merging firms' competitors or firms in upstream or downstream markets.<sup>109</sup> In the present case, the CMA has considered whether the Merged Entity would have the ability or incentive to foreclose matched betting websites by terminating Betfair Exchange's partnerships with, or by removing some of the Merged Entity's sportsbook brands from, matched betting websites.
178. The CMA's approach to assessing non-horizontal theories of harm is to analyse: (i) the ability of the merged entity to foreclose; (ii) the incentive of it to do so; and (iii) the overall effect of the strategy on competition.<sup>110</sup> This is discussed below.
179. As explained in paragraph 63 above, matched betting websites are websites that use their own software and tools to source 'matched bets', ie bets from different bookmakers whereby bettors cannot lose as they bet on both outcomes of an event, but they still make profits. Matched bets often also involve taking advantage of free bets and other bookmakers' offers. Consumers normally pay monthly or yearly subscription fees to use matched betting websites.
180. There is generally no contractual relationship between online sportsbooks and matched betting websites. However, there are partnerships between matched betting websites and betting exchanges (eg Betfair Exchange). Betting exchanges often provide matched betting websites with their odds data via an application programming interface<sup>111</sup> and pay fees/commissions to matched betting websites for the customers acquired through them.

### ***Ability***

181. The CMA considered whether the Merged Entity would have the ability to foreclose matched betting websites by engaging in either of two strategies:

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<sup>109</sup> [Merger Assessment Guidelines](#), paragraphs 4.1.6 and 5.6.1.

<sup>110</sup> [Merger Assessment Guidelines](#), paragraph 5.6.6.

<sup>111</sup> A set of functions and procedures allowing the creation of applications that access the features or data of an operating system, application, or other service.

- (a) Terminating Betfair Exchange's partnerships with matched betting websites (and the associated fees/commissions); or
- (b) Negotiating the removal of some of its sportsbook brands (including Paddy Power and Sky Bet) from matched betting websites by threatening to terminate Betfair Exchange's partnerships with such sites.

*Terminating Betfair Exchange's partnerships with matched betting websites*

- 182. The Parties told the CMA that Betfair Exchange is not an essential source of revenues for matched betting websites, which have partnerships with other exchanges and receive subscription revenues from customers.<sup>112</sup>
- 183. However, the CMA found that the proportion of matched betting websites' revenues represented by Betfair Exchange's fees ranges between [5-10]% and [20-30]%. Moreover, the CMA found that the loss of Betfair Exchange's revenues would substantially reduce matched betting websites' profits (up to around [50-60]%) [REDACTED]. Further, while matched betting websites indicated a number of options may exist to compensate for the loss of Betfair Exchange's fees (eg an increase in the fees paid by consumers and/or other betting exchanges, and cost and/or personnel reduction), these options would not be sufficient to cover the loss entirely and/or would cause a material reduction in the quality of the matched betting product offered to consumers.<sup>113</sup>
- 184. For these reasons, the CMA considers that the Merged Entity would have the ability to foreclose matched betting websites through a total withdrawal strategy.

*Negotiating the removal of some of its sportsbook brands*

- 185. One matched betting website told the CMA that it had concerns that the Merged Entity would have the ability to degrade the services it was able to provide by negotiating the removal of some of its sportsbook brands (including Paddy Power and Sky Bet) from matched betting websites by threatening to terminate Betfair Exchange's partnerships with such sites. Moreover, the CMA found that [REDACTED].<sup>114</sup>
- 186. The CMA notes that, even if such negotiations were to succeed, it has not found any evidence that such a strategy would reduce competition between

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<sup>112</sup> Parties' Issues Meeting presentation.

<sup>113</sup> [REDACTED].

<sup>114</sup> [REDACTED].



matched betting websites (even if each site was only able to offer a reduced service as a result of the removal of certain brands).

187. Further, the CMA considers that a threat to terminate Betfair Exchange's partnerships with matched betting websites if they did not remove the Merged Entity's sportsbook brands is not credible because the Merged Entity would have no ability to stop matched betting websites from listing the Parties' online sportsbooks. Matched betting websites already obtain online sportsbooks' odds and promotions data via web-scraping and would continue to be able to do so post-Merger.<sup>115</sup>
188. For these reasons, the CMA considers that the Merged Entity would have no ability to foreclose matched betting websites through negotiating the removal of its sportsbook brands from matched betting websites.

### *Incentive*

189. The CMA considered the incentive of the Merged Entity to terminate Betfair Exchange's partnerships with matched betting websites.
190. One third party told the CMA that sportsbook providers do not benefit from being included on matched betting websites because matched betting customers are loss-making for sportsbooks (as they take advantage of misaligned odds and heavily use free bets and other promotions).<sup>116</sup> By contrast, betting exchanges benefit from being included on matched betting websites as they earn commissions on every bet placed by matched betting customers acquired through these websites. [REDACTED].<sup>117</sup>
191. The Parties submitted estimates of the revenues and losses made on matched betting customers by Betfair Exchange and by their online sportsbook brands.<sup>118</sup>
192. Flutter estimated that:
- (a) The net revenues made on customers that click through from matched betting websites to Betfair Exchange and Betfair Sportsbook were around £[REDACTED] in 2019, but the total revenues from all matched betting customers (including matched bettors who place their bets on Betfair Exchange without clicking through a matched betting website) were around £[REDACTED];

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<sup>115</sup> Parties' Issues Meeting presentation. [REDACTED].

<sup>116</sup> [REDACTED].

<sup>117</sup> Parties' response to RFI 8.

<sup>118</sup> Parties' responses to RFI 8, RFI 9 and RFI 11.

(b) The losses made by Paddy Power on matched betting customers were around £[REDACTED].

193. Stars submitted that the losses made by Sky Bet on matched betting customers were likely to be £[REDACTED] or more.
194. The CMA considers that the lack of exact data means that it is difficult to assess the overall impact of matched betting customers on the Parties' total revenues pre-Merger and on the Merged Entity's total revenues after the Merger. However, the figures indicate that matched betting websites are a valuable source of customers and revenues for Betfair Exchange.<sup>119</sup> These findings are confirmed by an internal document dated June 2017, which shows that Flutter estimated that Betfair Exchange's revenues from matched betting customers were £[REDACTED] but noted that the exact revenues were difficult to estimate.<sup>120</sup>
195. Flutter also submitted that at least [5-10]% of Betfair Exchange's customers are acquired through matched betting websites.<sup>121</sup> The CMA considers that, as third parties submitted that liquidity is a key competition parameter for betting exchanges, losing partnerships with matched betting websites could affect Betfair Exchange's overall competitiveness beyond the direct loss of revenues.
196. Finally, Flutter submitted that the fact that Betfair Exchange values its partnerships with matched betting websites is also demonstrated by its recent promotions run with [REDACTED] (two matched betting websites).<sup>122</sup>
197. In light of the above evidence, the CMA considers that the material and likely risk of such a strategy outweighs the more modest and considerably less certain gains that could be made by terminating Betfair Exchange's partnerships with matched betting websites.

#### *Conclusion on non-horizontal effects in relation to matched betting websites*

198. For the reasons set out above, the CMA considers that the Merged Entity will not have the ability or incentive to foreclose matched betting websites. As the CMA considers that there is no ability or incentive to foreclose, the CMA did not consider the competitive effect of foreclosure.

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<sup>119</sup> The CMA also notes that the Merged Entity could not prevent losses on its sportsbooks because, as noted in paragraph 187 above, matched betting websites can web-scrape bookmakers' odds and promotions without their consent.

<sup>120</sup> Parties' internal document: [REDACTED].

<sup>121</sup> Parties' response to RFI 10.

<sup>122</sup> Parties' internal document: [REDACTED].

199. Accordingly, the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC as a result of non-horizontal effects in relation to matched betting websites in the UK.

### ***Barriers to entry and expansion***

200. Entry, or expansion of existing firms, can mitigate the initial effect of the acquisition on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient.<sup>123</sup> However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

### **Third party views**

201. The CMA contacted the Parties' competitors and customers of exchange data. The CMA also contacted odds comparison websites and matched betting websites. Third party comments have been taken into account and have been set out where appropriate in the competitive assessment above.

### **Decision**

202. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the UK.

203. The Merger will therefore **not be referred** under section 33(1) of the Act.

**Andrea Gomes da Silva**  
**Executive Director, Markets and Mergers**  
**Competition and Markets Authority**  
**31 March 2020**

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<sup>123</sup> [Merger Assessment Guidelines](#), paragraph 5.8.3.