

Anticipated acquisition by Evolution Gaming Group AB of NetEnt AB

Decision on relevant merger situation and substantial lessening of competition

ME/6894/20

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 announced on 16 November 2020. Full text of the decision published on 8 December 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. On 24 June 2020, Evolution Gaming Group AB (**Evolution**) launched a public offer to acquire the entire share capital of NetEnt AB (**NetEnt**) (the **Merger**). Evolution and NetEnt are together referred to as the **Parties** and for statements referring to the future, as the **Merged Entity**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Evolution and NetEnt is an enterprise, that these enterprises will cease to be distinct as a result of the Merger, and that the share of supply 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 primary overlap between the Parties in the UK is the supply of online 'live' casino games (namely, online gaming content from a live studio generally presented by a live dealer) to gambling operators on a 'B2B' basis. The CMA has therefore assessed the impact of the Merger in the supply in the UK of online live casino games to gambling operators.
4. While the Merged Entity will have a relatively high share of supply, the increment arising from the Merger would be very small. The CMA considers

that NetEnt has a minor presence in the market and that, based on evidence from the Parties and third parties, NetEnt does not impose a material competitive constraint on Evolution. The Merged Entity will also face a strong constraint from other suppliers, particularly Playtech, post-Merger.

5. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the supply in the UK of online live casino games to gambling operators.
6. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

7. Evolution, a listed Swedish company, is active worldwide in the supply of online gambling software, including in particular, live casino games. It supplies these games to gambling operators who then on-sell the games to consumers (ie gameplayers) worldwide, including in the UK. Evolution's worldwide turnover in 2019 was £321.1 million, with £43.8 million attributable to the UK.
8. NetEnt, a listed Swedish company, is also active worldwide in the supply of online gambling software with a focus on random number generator (**RNG**) slots and table games. It supplies these games to online gambling operators and ultimately, to consumers including in the UK. NetEnt's worldwide turnover in 2019 was £164 million, with £31 million attributable to the UK.

Transaction

9. On 24 June 2020, Evolution launched a public offer to acquire the entire issued share capital of NetEnt. The offer values NetEnt at approximately £1.68 billion.
10. The Merger was notified to the competition authority in Curaçao and was subject to review by the Maltese competition authority, which cleared the transaction on 29 September 2020.

Jurisdiction

11. The Act requires the CMA to assess whether arrangements are in progress or in contemplation which, if carried into effect, will result in enterprises ceasing to be distinct and that either the turnover of the target exceeds £70 million (the

turnover test) or the merger results in a combined share of supply or acquisition of goods or services of any description of 25% or more (the share of supply test).

Enterprises ceasing to be distinct

12. Each of Evolution and NetEnt is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.

The turnover test

13. The Merger does not satisfy the turnover test in section 23(1)(b) of the Act, since NetEnt's UK turnover did not exceed £70 million in the UK in 2019.

The share of supply test

14. The Mergers Guidance on the CMA's jurisdiction and procedure sets out that the share of supply test is satisfied if the merged enterprises both either supply or acquire goods or services of a particular description, and will, after the merger, supply or acquire 25% or more of those goods or services, in the UK as a whole or in a substantial part of it.¹
15. The Parties submitted that the share of supply test is not satisfied as the Parties' direct contractual customers, being gambling operators, are mostly domiciled outside the UK and take procurement decisions outside the UK (such that the Parties supply direct services to operators in the UK to only a limited extent).² The Parties also submitted, however, that they considered the CMA could take a different view if the characteristic action of the B2B contract between the Parties and non-UK domiciled gambling operators was the gaming activity of the consumer (ie, as opposed to the integration of the Parties' software onto gambling operators' platforms), such that the share of supply test would be met.
16. The CMA believes, for the reasons set out below, that the share of supply test is met.

¹ *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, paragraph 4.53.

² Final Merger Notice submitted by the Parties on 16 September (**FMN**), paragraph 33.

Supply of online live casino games (through integration of their software with gambling operators’) to consumers in the UK

Reasonable description of goods and services

17. Both Evolution and NetEnt supply live casino games which, through integration of their software with gambling operators, are ultimately supplied to consumers in the UK. While gambling operators will choose which games suppliers to host on their sites, operators tend to offer a wide range of games from various suppliers (who earn a commission only when consumers play their games).³ Gambling operators told the CMA that they seek to offer games in the UK that are attractive to UK consumers, by tailoring their offerings to meet consumer preferences.⁴
18. While there is no direct contractual relationship between the Parties and consumers, the CMA believes that the evidence indicates that competition between the Parties and their competitors is driven by competition for consumers, and that it is therefore reasonable to describe them as supplying their games (through integration of their software with gambling operators’) to consumers:
 - (a) Evolution’s contracts with gambling operators show that it seeks to obtain terms that [REDACTED].⁵ Similarly, third parties that responded to the CMA’s merger investigation stated that games suppliers such as the Parties compete to obtain preferential positioning on operators’ platforms to maximise access to consumers, and that this is important in order for a game to succeed.⁶
 - (b) The Parties’ decision-making is influenced by consumer behaviour and feedback (and specifically, UK consumers’ behaviour, as noted further at paragraph 40 below). Evolution submitted that it measures the competitiveness of its games by the opinion and preferences of consumers, and improves its games based on: [REDACTED].⁷ Several third

³ In other words, the more popular the Parties’ games are with consumers, the more gross gaming revenue (**GGR**) an operator is likely to receive from those games. GGR refers to the total gaming revenue generated by games, which is then shared between the gambling operator (ie the Parties’ direct contractual customer) and the original gaming software and software supplier (ie the Parties). As a result, the software supplier is more likely to receive more commission where consumers choose its games over those of its competitors.

⁴ [REDACTED]; [REDACTED].

⁵ [REDACTED]; [REDACTED].

⁶ [REDACTED]; [REDACTED].

⁷ Note of a Teach-In with the Parties.

parties also stated that games suppliers tailor their live casino offering to meet consumer preferences.⁸

(c) Relatedly, the Parties (rather than the gambling operators) are solely responsible for the design and outcomes of their games to attract consumers.⁹

19. The CMA further notes that the Parties and their competitors are required to comply with regulatory requirements specifically relating to the ultimate provision of their products to consumers. In the UK, the Parties and their competitors are required to hold gambling licences in order to be able to supply their games to UK consumers.¹⁰
20. For the reasons set out above, the CMA therefore believes that both Evolution and NetEnt supply online live casino games (through integration of their software with gambling operators') to consumers, which the CMA believes is a reasonable description of goods or services.¹¹

UK nexus

21. The CMA believes that the Parties' submission noted above at paragraph 15 as to the location of the gambling operator, of their procurement decisions and/or of where the Parties' software is integrated into a gambling operator's platform is not relevant for the purposes of determining the geographic nexus of the Parties' supply to consumers (given these are unrelated to the location(s) at which the games will be provided to consumers / commission ultimately generated by the games supplier). Rather, the UK nexus of the Parties' supply to consumers is determined (and satisfied, in this case as noted further below) by the location of the customer (namely, of the IP address from which they play the Parties' online live casino games). As noted further below at paragraph 40, the Parties also specifically tailor their monitoring to target consumers in the UK specifically, in light of the UK being a region of strategic commercial importance.

⁸ [REDACTED]; [REDACTED]; [REDACTED]

⁹ The outcome of a game is referred to as 'Return to Player' (that is, a percentage of the stakes a game returns to players and which is generally accepted as a guide to how a game will perform). FMN, paragraph 125.

¹⁰ The Parties are required to comply with regulations specific to Great Britain and separately, Northern Ireland, and all games must be certified by the Gambling Commission (see further paragraph 41 below).

¹¹ For the substantive assessment of the Merger, the CMA has applied an economic assessment consistent with its established practice (ie to consider the competitive interaction between the Parties within the framework of the Parties' supply in the UK to their direct customers (namely, gambling operators)). The CMA notes for completeness that the share of supply test is not an economic assessment of the type used in the CMA's substantive assessment and need not amount to a relevant economic market (*Mergers: Guidance on the CMA's Jurisdiction and Procedure* (CMA2) January 2014, paragraph 4.56).

Calculation of the 25% threshold

22. Based on available data from the Parties and their competitors on the GGR generated from UK consumers for 2019, the CMA estimates that the Parties have a combined share of supply of [50-60]% (with an increment of [0-5]% by GGR in the UK.¹²

Conclusion

23. For the reasons set out above, the CMA believes that it is or may be the case that the share of supply test in section 23 of the Act is met. Therefore, the CMA believes that there are or may be arrangements in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
24. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 22 September 2020 and the statutory 40 working day deadline for a decision is therefore 16 November 2020.

Counterfactual

25. 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.¹³
26. The Parties submitted that the counterfactual for the Merger should be the prevailing conditions of competition.¹⁴

¹² See the CMA's estimates of the Parties' shares of supply for 2019 in Table 1 below. The CMA has used GGR as the basis for its share of supply estimates as it considers this to be a more direct measure of the popularity of the Parties' gaming content with consumers than the commission charged by the Parties to gambling operators as a percentage of the overall GGR. The CMA therefore considers that GGR is a reasonable and appropriate basis on which to calculate whether the share of supply test threshold set out in section 23 of the Act is met.

¹³ [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).

¹⁴ FMN, paragraph 47.

27. Evidence provided by the Parties¹⁵ and third parties¹⁶ shows that the relative positions of the Parties and their competitors in the supply of live casino games in the UK have been broadly stable in recent years. However, since 2019, NetEnt has begun implementing plans to improve its live casino offering.¹⁷ Similarly, several third parties indicated plans to improve their offerings and/or expand into new product areas.¹⁸
28. In light of the above, the CMA believes that the prevailing conditions of competition involve an environment where the Parties and their competitors would have continued their growth path absent the Merger. The implications of this are considered below in the competitive assessment, where relevant.

Frame of reference

29. 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.¹⁹

Product scope

30. The primary overlap between the Parties is in the supply in the UK of online live casino games to gambling operators.²⁰ Online live casino games have historically focused on Blackjack, Roulette and Baccarat (typically known as **table** games), although in recent years suppliers have developed new formats such as ‘Game Show’ live games and live games with an increased use of the characteristics of RNG games (**hybrid** games).
31. The CMA has previously considered segmentation within online games to consumers (ie, on a B2C as opposed to B2B basis in *Flutter/Stars*²¹,

¹⁵ [REDACTED]; [REDACTED].

¹⁶ [REDACTED] and [REDACTED].

¹⁷ [REDACTED]; and Competitive Assessment below.

¹⁸ [REDACTED]; [REDACTED].

¹⁹ [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, paragraph 5.2.2.

²⁰ The Parties also overlap to a limited extent in the supply of RNG casino games in the UK. However, given the Parties’ overlap in RNG casino games (specifically, in RNG table games) is limited, the CMA does not go onto to discuss this overlap further in this decision. The CMA notes for completeness that while NetEnt is active in the UK in the supply of RNG slots games, Evolution does not offer RNG slots games.

²¹ [ME/6865/19 Flutter Entertainment Plc/The Stars Group \(2020\)](#).

*Stars/SkyBet*²²). In these decisions, the CMA considered that the relevant product frame of reference for the supply of online games could be segmented between casino, peer to peer poker and bingo based on consumer preferences. The CMA has not previously considered a merger between suppliers of online casino games to gambling operators at the B2B level.²³

32. The Parties submitted that the narrowest frame of reference encompasses the supply of all online casino games to gambling operators, which includes games with either a live or RNG element, but excludes peer to peer poker and bingo (in line with the CMA's decisional precedent on segmentation within online gaming at the B2C level, as noted above), on the basis that:²⁴

(a) There is significant demand-side substitutability between live and RNG gaming products from the perspective of both consumers and gambling operators, as both game types have similar elements with little distinction for players.²⁵

(b) Whilst there are some supply-side differences between live and RNG games, most significant suppliers provide both and the cost differences between live and RNG are not substantial. To supply live casino games, suppliers are required to have studio space and trained staff to act as dealers and presenters, whereas for RNG games, the main cost is the development of new game.²⁶

33. The CMA has taken the Parties' core overlap in online live casino games as the starting point for its assessment of the product frame of reference and considered below whether this definition should be widened to include other types of online casino games in which the Parties overlap, namely RNG casino games.

Online live casino games

34. The CMA believes there is strong evidence which indicates limited substitutability between online live casino games²⁷ and online RNG casino games.

²² [ME/6758/18 The Stars Group/Sky Bet \(2018\)](#).

²³ With the exception of [ME/6824/19 Inspired/Novomatic \(2019\)](#), but this focused on the supply of gaming machines rather than gambling software.

²⁴ FMN, paragraphs 67 & 68.

²⁵ FMN, paragraph 83 (and for example, see Evolution's 'Deal or No Deal' or 'Lightning Roulette').

²⁶ FMN, paragraph 85.

²⁷ For the avoidance of doubt, the CMA considers that online live casino games includes hybrid games, on the basis that (i) on the demand side, hybrid games are bought as part of the online live portfolio; and (ii) on the

35. As regards demand-side substitutability:

- (a) A majority of gambling operators told the CMA they considered live casino and RNG casino games are generally not substitutable for consumers, or for themselves. Notably, these gambling operators explained that live casino games target and attract different groups of consumer players than RNG casino games.²⁸ One third party that submitted a reasoned submission in relation to the Merger explained that the consumer experience offered by live casino games is different to that of RNG, as it includes a higher entertainment value, with the option of interacting with the host and with other players in a chat room.²⁹
- (b) A majority of gambling operators also indicated that they procure live casino and RNG casino games separately,³⁰ with, for example, one gambling operator noting that a consumer base will be either more RNG or more live focussed.³¹ This is consistent with the practice of [REDACTED] the Parties [REDACTED] to set out separate schedules and different terms for live and RNG casino games in their contracts with gambling operators;³² and
- (c) The Parties' commission rates are substantially higher for live than RNG casino games.³³ Several third parties stated that live casino games are sold at a higher commission rate than RNG casino games.³⁴

36. As regards supply-side substitutability:

- (a) Several of the Parties' internal documents distinguish between live and RNG casino games. For example, [REDACTED] considers competition between [REDACTED] to be indirect, relative to direct competition between [REDACTED];³⁵
- (b) The evidence indicates that to be supplied effectively, live casino games require a dedicated studio and employees, whereas RNG only require software developers. For example one third party noted that there are '*significant costs involved in establishing and running a live casino studio*';³⁶ another third party that submitted a reasoned submission in

supply side, hybrid games also require costs of having a live presenter, which is common with online live casino games.

²⁸ [REDACTED]; [REDACTED]; [REDACTED].

²⁹ Submission to the CMA from [REDACTED].

³⁰ [REDACTED]; [REDACTED] and [REDACTED].

³¹ [REDACTED].

³² [REDACTED].

³³ NetEnt's commission rate is [REDACTED] for live casino games, compared with [REDACTED] for RNG. Evolution's live casino game commission rate is [REDACTED], compared with [REDACTED] for RNG.

³⁴ [REDACTED]; [REDACTED].

³⁵ [REDACTED].

³⁶ [REDACTED]. [REDACTED].

relation to the Merger stated that supplying live games requires physical premises for studios as well as technology and equipment to enable the live broadcasts, neither of which are required to offer RNG casino games. One gambling operator explained that it approached negotiations with suppliers of live casino games differently to suppliers of RNG, given it has to cover additional costs associated with the requirements of live casino games (ie dedicated studios and employees).³⁷

- (c) The set of suppliers of live casino games is much narrower than that of RNG. Five suppliers offer live casino games in the UK (the Parties, Playtech, Authentic and Pragmatic), whereas there are more than ten suppliers of RNG casino games who do not offer live casino games.³⁸ This indicates that the competitive conditions between live and RNG casino games are likely to be very different.³⁹

37. The CMA therefore considers that the evidence does not support widening the product frame of reference for online live casino games to include RNG casino games, and that the supply of online live casino games is the appropriate product frame of reference.⁴⁰

Geographic scope

38. Previous CMA cases regarding the supply of online casino games to consumers at the B2C level have all concluded that a UK-wide geographic frame of reference was appropriate on the basis that different regulatory requirements exist across jurisdictions and gambling operators in Great Britain require a licence from the Gambling Commission.⁴¹

³⁷ [REDACTED]. [REDACTED].

³⁸ Response to RFI1, Part I, Q12, Table 1; and Response to RFI1, Part I, Contact Details.

³⁹ In line with the principle set out in the *Merger Assessment Guidelines*, paragraph 5.2.17, which indicates that CMA may consider a wider frame of reference on the basis of supply-side substitutability in cases where, among other conditions, the same firms compete to supply different products and the conditions of competition between the firms are the same for each product.

⁴⁰ In light of the Parties' limited overlap in RNG games (as noted above at footnote 20), the CMA did not consider it necessary to investigate whether any frame of reference including online RNG casino games needed to be further segmented eg by type of RNG game (ie slots and table games). The CMA considered whether conglomerate effects would arise as a result of the Merger through the bundling or tying of Evolution's online live casino games with NetEnt's online RNG casino games, thereby foreclosing the Merged Entity's competitors in the supply of RNG casino games (in particular, RNG slots games). However, given NetEnt's modest share of supply of online RNG casino games and any segmentations therein, and the fragmented nature of competition and large number of competitors present in RNG casino games, the CMA did not believe such a tying or bundling strategy would result in anticompetitive effects in the supply in the UK to gambling operators of online RNG casino games or any segmentations therein.

⁴¹ [ME/6758/18 The Stars Group/Sky Bet \(2018\)](#); [ME/6865/19 Flutter Entertainment Plc/The Stars Group \(2020\)](#); [ME/6728-17 GVC/Ladbrokes Coral \(2017\)](#).

39. The Parties submitted that the appropriate geographic frame of reference for the supply of online casino games to gambling operators could be wider than the UK and potentially, even global because (i) the Parties and their competitors provide games to gambling operators who are active globally and are headquartered in various countries inside and outside Europe; and (ii) the games provided, contractual terms and pricing do not differ materially from country to country.⁴²
40. However, the CMA believes that the evidence indicates that the frame of reference should be no wider than the UK. [REDACTED], both Parties specifically identify the UK as a market of interest and monitor it separately. [REDACTED].⁴³ Similarly, one gambling operator noted that the Parties' offerings are tailored to meet UK consumer preferences specifically, and are well placed to supply the UK, given that most of their offerings are tailored to English speaking players.⁴⁴ As well as consumer preferences, the market conditions in the UK appear to be distinct. For example, the Gambling Commission told the CMA that the market conditions in the UK support games with a high return to player.⁴⁵
41. The CMA notes that within the UK, Great Britain has a distinct regulatory regime for the Parties and their competitors as Northern Ireland is legislated separately under the Betting, Gaming, Lotteries & Amusements (NI) Order 1985 rather than the Gambling Act 2005 applicable to Great Britain. However, the CMA did not consider it appropriate to distinguish separate geographic frames of reference between Great Britain and Northern Ireland as evidence from third parties indicates there are limited practical differences between the operations of the licensing regimes in Northern Ireland and the rest of the UK.⁴⁶
42. Therefore, the CMA believes that the UK is the appropriate geographic frame of reference.

Conclusion on frame of reference

43. The CMA has therefore considered the impact of the Merger in the supply in the UK of online live casino games to gambling operators.

⁴² FMN, paragraph 90.

⁴³ [REDACTED]; [REDACTED].

⁴⁴ [REDACTED]; [REDACTED]; [REDACTED].

⁴⁵ Note of a call with the Gambling Commission, paragraph 16.

⁴⁶ [REDACTED]; [REDACTED]; [REDACTED].

Competitive assessment

Horizontal unilateral effects in the supply in the UK of online live casino games to gambling operators

44. The CMA has assessed whether the Merger would give rise to horizontal unilateral effects in the supply in the UK of online live casino games to gambling operators. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm to raise prices profitably or to degrade quality on its own and without needing to coordinate with its rivals.⁴⁷ Horizontal unilateral effects are more likely when the merging parties are close competitors.
45. In order to assess this, the CMA has considered the Parties' shares of supply, the closeness of competition between the Parties, and the competitive constraints on the Merged Entity.

Shares of supply

46. The Parties submitted shares of supply based on their estimates of live casino game GGR generated from UK consumers using external reports⁴⁸ and their own data. The CMA considers that the accuracy of these estimates is limited as they are based on attributing to the UK a proportion of the total GGR generated in Europe from live casino games, which does not account for actual GGR of competitors and potential differences in competitor set and strength across different countries.
47. The CMA collected data from all online live gaming suppliers present in the UK⁴⁹ on commission earned from gambling operators and on GGR generated from UK consumers for their online live casino games for both 2019 and the first half of 2020.⁵⁰ Table 1 below summarises the CMA's estimates of the shares of supply calculated on this basis (which the CMA believes to be more accurate than the Parties' estimates, based as they are on actual data from the Parties and their competitors).

⁴⁷ [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 5.4.1.

⁴⁸ H2 Gambling Capital data and Gambling Commission Industry Statistics.

⁴⁹ Based on evidence from the Parties, their competitors and gambling operators, the CMA is not aware of any other live casino games suppliers active in the UK, although notes it is possible that there are other, very small suppliers active, the exclusion of which is unlikely to materially affect the shares of supply calculated in Table 1.

⁵⁰ Aggregators act as intermediaries between direct online live gaming suppliers and gambling operators. The relevant figures for GGR that passes through intermediaries is included in the figures for suppliers capable of direct supply.

Table 1: Share of supply estimates in the supply in the UK of online live casino games to gambling operators⁵¹

Company	2019 GGR (volume) share	2020 GGR (volume) share⁵²	2019 Commission (value)
Evolution	[50-60]%	[50-60]%	[60-70]%
NetEnt	[0-5]%	[0-5]%	[0-5]%
Combined	[50-60]%	[50-60]%	[60-70]%
Playtech	[40-50]%	[40-50]%	[30-40]%
Pragmatic	[0-5]%	[0-5]%	[0-5]%
Authentic	[0-5]%	[0-5]%	[0-5]%
Total market size	[<]	[<]	[<]

Source: CMA estimates based on the Parties and competitor data

48. Post-Merger, Evolution will remain the largest supplier of live casino games with a combined share of supply in the UK of [50-60]% by GGR (for both 2019 and the first half of 2020) and of [60-70]% by commission for 2019. Playtech also holds a material share of [40-50]% by GGR for 2019 and 2020, and [30-40]% by commission in 2010. NetEnt is currently a much smaller supplier than either Evolution or Playtech with a share of only [0-5]% (both by GGR and commission for both 2019 and 2020). Accordingly, the increment resulting from the Merger is very limited. Pragmatic and Authentic similarly have a relatively small presence in the UK.

Closeness of competition between the Parties

49. The CMA has examined the closeness of competition between the Parties by reference to (i) the Parties' product propositions, (ii) the Parties' internal documents, and (iii) third party views on closeness of competition.

⁵¹ As noted above at footnote 12, the CMA believes GGR is a more direct measure of the popularity of the Parties' gaming content with consumers than the commission charged by the Parties to gambling operators. The CMA has nevertheless included the value of the commission charged as a percentage of the overall GGR in Table 1 (as this relates directly to the revenue generated by the Parties and their competitors from their gambling operator customers).

⁵² Annualised estimates [<].

Product propositions of the Parties

50. The Parties submitted that in the context of the supply of online live casino games, they are not each other's closest competitors as the focus of each Party's business is different (with Evolution focusing on live casino games and NetEnt focusing on RNG casino games, particularly slots games).⁵³ However, the CMA does not consider this to be relevant to its assessment of closeness between the Parties within the online live casino market since, for the reasons set out at above in the frame of reference, the CMA does not consider online live and RNG casino games to form part of the same market.
51. Within the online live casino games market, the CMA notes that the Parties offer relatively different propositions. Evolution offers a wide range of live casino games to gambling operators, including traditional games such as blackjack and roulette, and hybrid games such as game show games (eg Monopoly live).⁵⁴ By contrast, the offerings of NetEnt (and in addition, of Pragmatic and Authentic) are more limited to traditional games.
52. In relation to pricing, the CMA calculated average commission rates charged by online live gaming suppliers to gambling operators based on the Parties' and competitors' data. These calculations show that the Parties do not compete particularly closely on price, with NetEnt [redacted] charging [redacted] than Evolution, [redacted].⁵⁵
53. In addition, the Parties' offerings do not compete closely on product quality. Most gambling operators submitted that the quality of Evolution's offering was the best in the market, and significantly better than that of NetEnt. Gambling operators specifically singled out Evolution for having superior quality in terms of the range of games, strong and innovative game design, and a user interface that were better than that of other online live gaming suppliers, including NetEnt. NetEnt's internal documents indicate that it has ongoing plans to improve its live casino offering, [redacted].⁵⁶ However, notwithstanding these plans for quality improvements, the CMA notes that NetEnt's relative scale remains very small compared to Evolution (and in addition, Playtech), and that NetEnt still poses a correspondingly small constraint with respect to product quality.

⁵³ FMN, paragraph 4.

⁵⁴ Evolution Internal Document, [redacted].

⁵⁵ The CMA calculated that NetEnt had an average commission rate of [redacted] in the UK, whereas Evolution had a rate of [redacted].

⁵⁶ [redacted].

54. For the reasons set out above, the CMA considers that the Parties' product offerings do not compete closely based on the differentiation between their product range, pricing and quality.

Internal documents

55. The CMA believes that the Parties' internal documents indicate that they are among each other's competitors, but that they also compete with other online live casino games suppliers (in particular, Playtech) and that the constraint posed by the Parties on each other is asymmetric (with Evolution being seen as a stronger competitor to NetEnt than vice versa). This is commensurate with the Parties' shares of supply (wherein Evolution has a much larger share than NetEnt on both a commission and GGR basis, as noted in Table 1).
56. Evolution's internal documents show that while it monitors NetEnt as a competitor ([REDACTED]), it does so less extensively than it monitors [REDACTED], which it considers its closest competitor. Examples of Evolution's competitor monitoring include:

(a) [REDACTED].⁵⁷

(b) [REDACTED].⁵⁸

57. NetEnt's internal documents show that it monitors [REDACTED] Evolution and [REDACTED], and to a lesser extent, other [REDACTED]. For example:

(a) [REDACTED].⁵⁹

(b) [REDACTED].⁶⁰

Third party views

58. Most third-party respondents to the CMA's market testing stated that Evolution is the strongest supplier in the supply of online live casino games and that NetEnt is a weak alternative. As noted further below at paragraph 59, third parties also identified Playtech as the main significant alternative to Evolution.
59. The CMA asked gambling operators to identify suppliers of online live casino games and provide ratings on their strength. Most gambling operators identified Evolution and gave it the highest ratings. By contrast, gambling

⁵⁷ [REDACTED].

⁵⁸ [REDACTED].

⁵⁹ [REDACTED].

⁶⁰ [REDACTED].

operators either did not mention NetEnt as a viable supplier or gave it a relatively low rating. Most gambling operators mentioned Playtech as the only significant alternative to Evolution.

60. All of the Parties' competitors viewed NetEnt as a competitor to themselves, albeit weaker than Evolution and Playtech. For example, one competitor noted that Evolution is a large supplier with multiple studios, whilst NetEnt only has a single studio.⁶¹ Another competitor considered NetEnt to be a closer competitor to itself than Evolution, based on them both having a smaller scale than Evolution.⁶²
61. Overall, the CMA considers that third parties consistently take the view that the Parties do not compete closely, and that Evolution is the strongest supplier followed by Playtech and that NetEnt is, along with other smaller online live casino gaming suppliers, a distant competitor by a significant margin.

Conclusion on closeness of competition

62. Based on the evidence set out above, the CMA believes that, taking the evidence in the round, the Parties are not close competitors. Evolution is a strong supplier that competes to a much greater extent with Playtech than with NetEnt, which poses a limited constraint. Conversely, while Evolution poses a stronger constraint on NetEnt than *vice versa*, the latter also faces a strong constraint from Playtech and, as discussed further below, from other smaller online live gaming suppliers.

Competitive constraints

63. The Parties submitted that the supply of online live casino games to gambling operators is a competitive industry and that Playtech in particular provides a significant constraint on the Parties through its scale, vertical integration and ability to provide gambling operators with a full suite of betting and gaming software.⁶³ The Parties also submitted that in their customer negotiations, gambling operators reference [REDACTED] as alternatives to the Parties.⁶⁴

⁶¹ [REDACTED].

⁶² [REDACTED].

⁶³ FMN, paragraph 4.

⁶⁴ FMN, page 46.

Playtech

64. Playtech is one of the world's largest online gaming software suppliers.⁶⁵ In 2019 Playtech generated €554 (c.£486) million from providing products to gambling operators. In the UK it offers a wide range of products related to gambling.⁶⁶
65. Playtech's is the second largest supplier following Evolution in the supply in the UK of online live casino games to gambling operators based on the shares of supply. As noted above at Table 1, Playtech currently supplies around [40-50]% of live casino games by GGR, and its share is stable between 2019 and 2020. Its significant position as the second largest player is also applicable when its share is measured by commission ([X]).
66. The evidence indicates that Playtech competes particularly closely with Evolution and will pose a strong constraint on the Merged Entity. Specifically:
- (a) Its product proposition poses a strong constraint on Evolution's in particular. It is currently the only supplier, other than Evolution, who has started to offer hybrid games, and [X].
 - (b) Playtech is monitored [X] by both of the Parties [X] and was frequently identified by third parties as the best alternative to Evolution.^{67,68}

Other competitors

67. Pragmatic and Authentic are the only other two online live gaming suppliers that are active in the supply in the UK of online live casino games to gambling operators in addition to the Parties and Playtech.⁶⁹ Pragmatic and Authentic both operate internationally but are currently relatively small, with each having a similar share of supply in the range of [0-5]% in the UK (both by GGR (for both 2019 and the first half of 2020) and by commission for 2019).
68. The evidence indicates that Pragmatic and Authentic pose some degree of competitive constraint on the Parties (in particular, on NetEnt):

⁶⁵ See, <https://www.playtech.com/about-us>.

⁶⁶ Playtech Annual Report 2019.

⁶⁷ [X].

⁶⁸ [X].

⁶⁹ Pragmatic and Authentic were the only two smaller competitors identified by the market testing as well as the CMA's own research - see footnote 49.

- (a) Pragmatic has a similar range of games to NetEnt's traditional games offering in the UK; Authentic also offers a traditional range, albeit one currently focused on roulette in the UK.
- (b) As discussed in paragraphs 55 and 56, the Parties' internal documents confirm that they do monitor [REDACTED].
- (c) Third party evidence also indicates Pragmatic, in particular, is viewed as competitor to the Parties.⁷⁰ Many gambling operators identified Pragmatic as an alternative to the Parties, with most of these gambling operators seeing Pragmatic's offer as superior or equal to that of NetEnt.

Entry and Self-Supply

- 69. The CMA considered whether there were additional competitive constraints on the Parties aside from the alternative online live casino gaming suppliers discussed above. The CMA did not receive any evidence to indicate that any online live casino suppliers active outside the UK, or any UK suppliers of RNG casino games, had plans to enter the supply of live casino games in the UK.
- 70. In relation to self-supply, the Parties submitted that only one large gambling operator (Genting Group), which recently purchased the live casino gaming supplier Authentic, is currently able to self-supply live casino games. In line with this, all other gambling operators that responded to the CMA stated they do not currently self-supply live casino games, with some of them explaining that it is not feasible to self-supply as the costs and effort involved are significant.⁷¹

Conclusion on competitive constraints

- 71. Based on the evidence, the CMA believes that:
 - (a) Both Parties and in particular, Evolution, compete with Playtech which will continue to represent a significant constraint on the Merged Entity; and
 - (b) Although the competitive constraint imposed by Pragmatic and Authentic on the Parties is less strong than that posed by Playtech, they will continue to pose a competitive constraint on the Merged Entity.

⁷⁰ Although all competitors ([REDACTED]) mentioned Pragmatic as a competitor, only one competitor, [REDACTED], mentioned Authentic as a competitor whilst noting it to be a very distant one mainly focused on live streaming from land-based casinos rather than offering live casino games from dedicated studios.

⁷¹ [REDACTED].

Conclusion on horizontal unilateral effects

72. For the reasons set out above, the CMA believes that the Parties do not compete closely, that NetEnt poses a limited competitive constraint on Evolution, and that they will continue to face competitive constraints from Playtech and to a lesser extent, Pragmatic and Authentic. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply in the UK of online live casino games to gambling operators.

Barriers to entry and expansion

73. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.⁷²
74. 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

75. The CMA contacted the Parties' competitors and customers of online live casino games in the UK. Third party comments have been considered and set out where appropriate in the competitive assessment above. The CMA received a reasoned submission from a third party that pointed to concerns about Evolution's current conduct in the market, along with the concerns outlined below.⁷³ The CMA received some general comments from third parties that were not specific to the theory of harm assessed above, which are also set out further below.
76. With respect to third party views on the effect of the Merger generally, some gambling operators identified positive effects of the Merger, such as the creation of a 'one-stop-shop' across a range of casino games, which would simplify integration and commercial arrangements. Several third parties also highlighted that the ability of the Merged Entity to supply both live and RNG casino games post-Merger would allow the Parties to compete more effectively with Playtech, which is already able to offer both live and RNG casino games.

⁷² [Merger Assessment Guidelines](#), (OFT1254/CC2), September 2010, paragraph 5.8.1.

⁷³ Submission to the CMA from [redacted].

77. Some third parties (including in particular, the third party that submitted a reasoned submission as referenced above at paragraph 75 ([§])) expressed concerns that post-Merger, the Parties may have the potential to bundle their live casino games with their RNG casino games (in particular slots games), based on the Parties' relative pre-Merger strengths, such that the Merged Entity's competitors in RNG casino games would be foreclosed. However, for the reasons outlined at footnote 40 (namely, the fragmented and multitudinous nature of competition in RNG casino games and segmentations therein), the CMA does not consider that conglomerate effects would arise in RNG casino games and/or any segmentations therein as a result of the Merger through the bundling or tying of Evolution's online live casino games with NetEnt's online RNG casino games.
78. Some third parties (again, in particular the third party that submitted a reasoned submission as referenced above at paragraph 75 ([§])) also submitted that post-Merger, the Parties could engage in exclusivity arrangements (or other preferential commercial arrangements) either within live casino games, or across both live and RNG casino games, thereby reducing their competitors' ability to compete in supplying RNG casino games. Although the CMA observed some evidence indicating that Evolution is currently able to [§],⁷⁴ the CMA notes that Evolution's ability to engage in such conduct exists pre-Merger (and that the acquisition of NetEnt would not, for the reasons outlined in the competitive assessment, materially increase Evolution's ability to engage in such conduct).

Decision

79. 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 United Kingdom.
80. The Merger will therefore **not be referred** under section 33(1) of the Act.

Sorcha O'Carroll
Director
Competition and Markets Authority
16 November 2020

⁷⁴ [§]. Third parties [§], [§].