

Completed acquisition by Hilton Group plc, through Ladbroke Racing (Reading) Limited, of Jack Brown (Bookmaker) Limited

The OFT's decision on reference under section 22 given on 27 September 2005. Full text of decision published 5 October 2005.

Please note that square brackets indicate figures or text which have been replaced with a range at the request of the parties for reasons of commercial confidentiality.

PARTIES

1. **Ladbroke Racing (Reading) Limited (Ladbroke)** is part of the Hilton Group plc. It provides bookmaking services through 1,970 licensed betting offices (LBOs) in the United Kingdom as well as internet and a telephone bookmaking business.
2. **Jack Brown (Bookmaker) Limited (Jack Brown)** operates 141 LBOs predominantly in South Wales. Its turnover for the financial year ended 25 March 2004 was £170.2 million.

TRANSACTION

3. On 14 July 2005, Ladbroke agreed to acquire the entire issued share capital of Jack Brown. The parties completed the transaction on 15 July 2005.

JURISDICTION

4. As a result of this transaction Ladbrokes and Jack Brown have ceased to be distinct. The UK turnover of Jack Brown exceeds £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is satisfied. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

RELEVANT MARKET

Product scope

5. The parties overlap in the supply of betting services through LBOs and telephone betting services. Jack Brown provides only minimal telephone betting services (an

increment of 0.01 per cent). In the light of this and in the absence of third party concerns, telephone betting services are not considered further.

6. Previous investigations by UK competition authorities¹ have found betting to be a separate leisure activity which is not constrained by other forms of gambling or other leisure activities. The evidence available suggests that this conclusion remains valid.
7. On the demand side, previous UK decisions have identified separate markets for on-course and off-course betting. Again the evidence available indicates that this distinction remains valid.
8. On the supply-side, LBOs appear to focus their activities on horses, greyhounds and football although they also offer odds on specific events. While the skill involved in managing risk is common to all sales channels, there is no conclusive evidence to suggest ease of supply-side switching for telephone or internet betting suppliers into the LBO sector; indeed the evidence suggests that there remain significant barriers to entry to the LBO sector.
9. In the light of earlier decisions and in the absence of any compelling evidence to the contrary in this case, the OFT considers the relevant product scope to be the supply of betting services through LBOs.

Geographic scope

10. There are both national and local elements of competition in this market. Odds for starting prices (SPs), which account for the vast majority of bets, are set on a national level. In Ladbroke/Coral, the Monopolies and Mergers Commission (MMC) found evidence that LBOs compete on a national level (e.g. in terms of branding and overall business strategy).
11. In Grand Met/William Hill, the MMC identified local competition concerns where the merger removed competition on a 400m radius, which was in part influenced by local authorities' application of the 'demand test'² in their LBO licensing procedure. There is also evidence to suggest that punters are not prepared to travel far to place a bet with an LBO. An internal Ladbroke customer survey and the majority of third party responses considered a 400m radius to be an appropriate starting point for an assessment of local LBO competition.

¹ Grand Metropolitan Plc and William Hill Organisation Ltd (1989, Cm 776) (Grand Met/William Hill); Ladbroke Group Plc and the Coral betting business (1998, Cm 4030) (Ladbroke/Coral); the OFT's decision on the completed acquisition by William Hill plc of the licensed betting office business of Stanley plc (2 August 2005) (William Hill/Stanley).

² The Betting, Gaming and Lotteries 1963 requires that an assessment of demand is undertaken before new licences are granted or existing licences renewed; The Gaming Act 1968 requires the licensing authority to assess the existing supply of gaming facilities.

12. In Ladbroke/Coral, in addition to areas where competition was removed within 400m, the MMC also identified that there might be potential local competition concerns in those cases where the transaction would have reduced competition within 400m from three to two fascia or resulted in merger to monopoly on an 800m basis.
13. However, based on the evidence available in this case, the OFT considers that there is no reason to depart from the previous analysis of competition in this market. The effects of this transaction will therefore be considered at both the national and local level, with the local assessment considering isochrones on a 400m and 800m basis. The regional level will be considered for completeness.

HORIZONTAL ISSUES

The nature of competition

Price competition

14. Price competition in off-course betting falls into two broad categories: competition through the setting of odds and competition on the terms of betting.
15. It appears that price competition between LBOs through the setting of odds might be limited given the large proportion of bets which are made at SP odds, which reflect the on-course odds.
16. In Ladbroke/Coral, the MMC concluded that in general, price competition (in terms of betting odds) was subdued. This is supported by third party responses in this case which indicated that LBOs do not primarily compete on such prices. This might be expected to be less true of odds on events other than horse and dog races, but these other events represent a relatively small proportion of an LBO's business.

Non-price competition

17. It appears that competition between LBOs takes place mainly on factors other than price. In Ladbroke/Coral, the MMC identified the following forms of non-price competition: branding, quality of outlet, and product range. Third parties in this case agree that LBOs mainly compete on these non-price elements.

National issues

Shares of supply

18. Table 1 below provides the parties' market shares by shop count and by gross win.³

Table 1: UK share of supply for LBOs by shop count (2005) and gross win (2004)

	LBOs Shop Count		LBOs (gross win £m)	
	Shop count	Share of supply per cent	Gross win £m	Share of supply per cent
Ladbroke	1970	22.5	[600-700]	[20-30]
Jack Brown	141	1.6	[0-100]	[<5]
Combined	2111	24.1	[650-750]	[20-30]
William Hill*	2110	24.1	[650-750]	20-30]
Coral	1130	12.9	[400-500]	[15-25]
Dones	500	5.7	[150-250]	[5-15]
Tote	485	5.5	[100-200]	[0-10]
Others	2414	27.6	[450-550]	[15-25]
Pre HHI (ex others)	-	1319	-	[1650-1750]
Post HHI (ex others)	-	1391	-	[1700-1800]

Source: Ladbroke

* Following the William Hill/Stanley merger William Hill is due to divest 80 LBOs which may alter the share of supply data slightly.

19. By shop count, Ladbroke has a post-merger share of supply of 24.1 per cent (increment 1.6 per cent). The HHI of 1391 and increment of 72 indicate that the market is concentrated. By gross win, Ladbroke has a post-merger share of supply of [20-30] per cent (increment [less than 5] per cent). The HHI of [1700-1800] and increment of [45-55] also illustrates a concentrated sector.
20. A number of third parties have raised concerns that further consolidation in the market at the national level may cause potential concerns in the future. Some third parties also note that national and local aspects of competition are interlinked – business decisions on a national level translate into enhanced local rivalry, while constant monitoring of local competition shapes an LBO business' national strategy.
21. In this case, Jack Brown was only active in Wales and the West Midlands and did not have a national presence. There is no evidence in this case that the loss of Jack Brown has resulted in a substantial lessening of competition (in terms of either price or non-price competition) at the national level.

³ Ladbroke submits that turnover figures are no longer readily available.

Coordinated effects

22. In Ladbroke/Coral, the MMC noted that there was evidence of co-operative activity typical of an oligopolistic structure.⁴ This was seen in examples of parallel behaviour between the big three (e.g. in relation to competition on the terms of betting, and in smaller firms' willingness to follow the leaders in price and other matters).
23. Ladbroke notes that the merger results in a minimal increment to the combined market share of the big three. It also notes that the main examples of parallel behaviour cited by the MMC in its report, namely involvement in various commercial operations⁵ is not relevant in the context of this acquisition.
24. There is no evidence in this case to suggest that coordination between the parties has become any more likely as a result of the merger.

Regional issues

25. The regional level is considered for completeness. The only areas of regional overlap are Wales and the West Midlands. The combined share of supply for Wales is 34.1 per cent (increment 6.5 per cent) and for the West Midlands is 23.4 per cent (increment 3.4 per cent). Ladbroke maintains that prices are not set on a regional basis and customers do not choose between suppliers on a regional basis. This is consistent with other evidence received by the OFT. On this basis the regional analysis does not appear to raise any additional issues.

Local issues

26. In order to analyse the local competition effects of this merger, we have applied the methodology developed by the MMC in Grand Met/William Hill and expanded in Ladbroke/Coral. In the former case, the MMC required divestments in all localities where the parties remained the only LBO within a 400m radius. In the latter case, the transaction was prohibited on the basis of national competition concerns; however, the MMC considered (but did not conclude on) the local impact where the merger removed or reduced (from three to two fascias) choice on a 400m basis and also where the merger removed choice on an 800m isochrone basis.
27. In order to apply the Ladbroke/Coral methodology in this case, the parties have provided detailed maps for the localities which fall within each category. Table 2 below provides a summary.

⁴ Paragraph 2.188.

⁵ Jack Brown does not own an interest in, for example, Satellite Information Services Limited or Bookmaker's Afternoon Greyhound Service.

Table 2: Summary of local overlaps

	Category	Number of LBOs
A	(2-1 400m) Ladbroke and Jack Brown have LBOs within 400m of each other and there are no other competitors present within the isochrone	3
B	(3-2 400m) Ladbroke and Jack Brown have LBOs within 400m of each other and there is a competing bookmaker within the isochrone	0
C	(2-1 800m) Ladbroke and Jack Brown have LBOs within 800m of each other and there are no other competitors present within the isochrone	1
TOTAL		4

28. The merger therefore raises potential competition concerns in four local areas where the merger reduces the number of competing fascia from two to one.
29. In Ladbroke/Coral, the MMC stated that the preservation of consumer choice at the local level was important. As national chains become more influential and market concentration increases in the provision of LBO services, competition between sites in individual localities becomes increasingly important.
30. The evidence in this case confirms that competition between LBOs exists at the local level. Virtually all bookmakers, including Ladbroke and Jack Brown, monitor local competition and react to local changes.
31. In William Hill/Stanley, the OFT examined the availability of bonuses as a proxy for price competition. The evidence in that case pointed to a positive correlation between the number of competing LBOs in an area and the availability of bonuses. In this case, Ladbroke confirms that Jack Brown offered bonuses at a local level and across its estate. However, the parties do not have any store-by-store analysis or data of any bonuses offered against the number and/or identity of competitors.
32. Third parties confirmed that all LBOs compete strongly on non-price elements: location, quality of outlet, staff, pricing and promotions, service, product range, atmosphere and branding. It appears that Ladbroke refurbishment decisions take into account the local environment. For example, in one of the overlap areas, Ladbroke carried some minor improvements to its LBO as a result of Jack Brown's licence application.
33. Given that barriers to entry are relatively high, there is a realistic prospect that the reduction in the number of bookmakers from two to one will lead to a substantial lessening of competition in the four local areas identified, due to the reduction in choice and potential reduction in price and non-price competition.

Barriers to entry and expansion

34. The main barrier to entry into the LBO sector is the requirement to obtain a licence. Applications for a licence are granted on the basis that there is sufficient demand. The Gambling Act 2005, which removes the 'demand criterion', is due to be implemented in 2007 and is expected to make it easier for new entry in local markets as an incumbent would no longer be able to object to entry on the basis of a lack of demand.
35. However the new Gambling Commission is still to issue additional guidance which might contain additional conditions restricting entry. Moreover, a new entrant would have to find suitable premises and carry out considerable investment to build up a national brand.
36. There is no evidence of substantial new entry within the last five years, although there has been some expansion by existing players.
37. On balance, barriers to entry appear to be lower than previously identified by the MMC in Ladbroke/Coral but still appear to remain relatively high. Barriers to expansion appear to be less substantial.

VERTICAL ISSUES

38. Ladbroke submits that this merger raises no vertical issues. No third parties raised any concerns about this issue.

THIRD PARTY VIEWS

39. It has not been possible to get any customer views because no consumer body exists. However the Racing Post, the British Horseracing Board, the Racecourse Association, the Greyhound Racing board and the Department of Culture have all been contacted.
40. Overall, third parties expressed concerns in relation to the local competition aspects of the merger. No national competition concerns were raised except for general issues regarding the further consolidation in the market.

ASSESSMENT

41. The parties overlap primarily in the supply of betting services through LBOs.
42. At a national level, the merger creates a combined share of 24.1 per cent (increment 1.6 per cent) by shop count and [20-30] per cent (increment [less than 5] per cent) by gross win. Jack Brown is only active in Wales and West Midlands and does not have a national presence. Moreover, there is no evidence that the loss of Jack Brown has resulted in a substantial lessening of competition at the national level.

43. At the local level, the transaction has been assessed on the basis of 400m and 800m isochrones. In the light of the MMC's report in Ladbroke/Coral and the available evidence in this case, the transaction is considered to raise the realistic prospect of a substantial lessening of competition in the four localities where the merger removes competition within a 400m or 800m isochrone.
44. The evidence in this case confirms that competition between LBOs exists at the local level, and therefore, any reduction in the number of bookmakers in a local area is a potential cause for concern.
45. Barriers to entry seem to be lower than those previously identified by the MMC but the impact of the removal of the demand test is questionable. There is little likelihood of buyer power.
46. Consequently the OFT believes that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

UNDERTAKINGS IN LIEU

47. Where the duty to make a reference under section 22(1) of the Act is met, pursuant to section 73(2) of the Act the OFT may, instead of making such a reference, accept from such of the parties concerned undertakings as it considers appropriate for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which has or may result from it.
48. The OFT has therefore considered whether there might be undertakings in lieu of reference which would address the competition concerns outlined above. The OFT's guidance on undertakings in lieu of reference state that, 'undertakings in lieu of reference are appropriate only where the competition concerns raised by the merger and the remedies proposed to address them are clear cut' (Mergers – substantive assessment guidance, para 8.3).
49. Ladbroke has offered to divest LBOs in each of the four local areas in which the OFT believes competition concerns are raised. Such a remedy would address the concerns outlined above.

DECISION

50. Therefore, the OFT is not referring the completed acquisition by Ladbroke of Jack Brown to the Competition Commission on the information currently available to it because it is considering whether, instead of making a reference, to accept appropriate undertakings from Ladbroke to address the competition concerns arising from the merger.