
Completed acquisition by Lightcatch Limited (trading as Betfred) of Tote (Successor Company) Limited

The OFT's decision on reference under section 22 given on 16 December 2011. Full text of decision published 19 January 2012.

Please note that the square brackets indicate 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.

PARTIES

1. **Lightcatch Limited ('Lightcatch')** is the parent company of Done Brothers (Cash Betting) Limited, a UK bookmaker trading under the name 'Betfred' (jointly, '**Betfred**'). Betfred provides fixed odds betting services in licensed betting offices ('**LBOs**'), by telephone, on the internet and on racecourses and gaming services in LBOs and on the internet. In 2010, the total amounts staked with Betfred were around £[] million with a gross win (the amounts staked with customers' winnings deducted) of around £[] million.
2. **Tote (Successor Company) Limited** (the '**Tote**') is a Crown-owned company that was established for the purposes of the merger in order to succeed to the property, rights and liabilities of the Horserace Totalisator Board. The Tote provided fixed odds betting services in LBOs (branded as 'totesport'), by telephone, on the internet and on racecourses and gaming services in LBOs and on the internet. It also provided pool betting services on horseracing. In 2010, the total amounts staked with the Tote were around £[] million with a gross win of around £[] million.

TRANSACTION

3. On 13 July 2011 Lightcatch acquired the Tote from the Secretary of State for Culture, Media and Sport (the '**Transaction**').

JURISDICTION

4. As a result of the Transaction Lightcatch and the Tote ceased to be distinct. The UK turnover of the Tote exceeds £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the 'Act') is met. Therefore, the OFT believes that it is or may be the case that the Transaction has resulted in the creation of a relevant merger situation.
5. The Transaction was completed on 13 July 2011. Following an extension under section 25(2) of the Act, the statutory deadline is 16 December 2011. The administrative deadline was 7 December 2011.

MARKET DEFINITION

6. The merged parties overlap in the provision of betting and gaming services in the United Kingdom, specifically fixed odds betting services in off-course LBOs, by telephone and on the internet; gaming services in off-course LBOs and on the internet; and to a limited extent, fixed odds on-course betting.¹
7. Before the Transaction, the Tote held the exclusive right to offer pool betting services on horseracing in the UK, which on the date of the Transaction was replaced by a seven-year exclusive licence issued by the Gambling Commission at the direction of the Secretary of State for Culture, Media and Sport. The Tote offers these pool betting services at racecourses, in its own LBOs, through Tote Direct terminals in competing bookmakers' LBOs, and via both its own and competing bookmakers' internet and telephone services.
8. Below the OFT has considered the markets that may be affected by the Transaction in order to provide a framework for the OFT's analysis of the Transaction's competitive effects. The OFT's starting point in market definition is to take the narrowest plausible candidate market in which the parties overlap, then to consider whether this may be widened through demand-side, and if appropriate supply-side, substitution. The OFT further notes that while market definition is a useful tool in its analysis, it is not an end in itself and the boundaries of the market as established below do not

¹ Both parties operate an LBO at Haydock Park racecourse on race days, in addition to the Tote's pool betting service at this racecourse.

determine the outcome of the OFT's competition analysis in any mechanistic way.²

Product market

9. The provision of betting and gaming services can be distinguished by product type and by distribution channel.

Product types

10. In previous cases the then Monopolies and Mergers Commission (the 'MMC') and the OFT concluded that betting is in a separate market to gaming and other gambling activities.³ In this case, this was supported by differences between betting and gaming in, for example, the development in recent years of gross win data provided by the merged parties.
11. Within betting, the MMC distinguished between fixed odds betting and pool betting.⁴ In most recent merger cases in this sector the OFT has not needed to consider this distinction,⁵ but this is different in this case given the Tote's exclusive pool betting licence. The OFT has therefore considered below whether this distinction is still appropriate.
12. As found by the MMC and confirmed by the OFT in this case, pool betting differs from fixed odds betting in that the winnings of a participant are paid out of the pool of total bets after deduction of a fixed percentage fee by the Tote, while participants in fixed odds betting are paid according to the particular odds (usually 'starting price' odds) at which the bet is placed, with the bookmaker running the risk of any loss. The MMC found that, while regular punters know at which odds it is more beneficial to place a pool bet rather than a fixed odds bet, many punters restricted themselves to one or the other out of preference or habit.
13. Betfred submitted that its own experience is consistent with a combined market for fixed odds betting and pool betting given the switching between

² *Merger Assessment Guidelines* (CC2 and OFT1254, September 2010), paragraphs 5.2.1-2 and 5.2.6-19.

³ MMC report in *Ladbroke Group plc/Coral betting business* (September 1998, paragraph 2.63); OFT decisions in, for example, *William Hill plc/licensed betting office business of Stanley plc* (2 August 2005, paragraph 9) and *Ladbrokes plc (through North West Bookmakers Limited)/McCartan Bookmakers* (1 August 2008, paragraph 8).

⁴ MMC report in *Ladbroke/Coral* (paragraph 2.65).

⁵ OFT decisions in, for example, *William Hill/St Stanley* (paragraph 9) and *Ladbrokes/McCartan* (paragraph 9).

these types of betting by regular punters, with reference to anecdotal evidence. However, there may be a significant group of customers that would not consider fixed odds and pool betting substitutes, as found by the MMC and in this case also suggested by a third party. Further, given the Tote's exclusive licence on pool betting, there is no supply-side substitutability between pool betting and fixed odds betting.

14. Third-party comments regarding product types were mixed, with varying views on the degree of demand-side substitutability between (different forms of) betting and gaming.
15. The OFT has therefore considered the Transaction in separate markets for betting and gaming. Further, on a cautious basis and taking into account that the OFT applies its analysis in the narrowest plausible markets (see paragraph 8 above), the OFT has distinguished fixed odds betting and pool betting as separate markets. It was not necessary in this case to consider whether narrower markets for specific types of betting or gaming (such as betting on specific sports or events) should be defined, as the OFT did not receive any evidence that the Transaction may have an impact in any such markets that is materially different from the impact in fixed odds and pool betting and gaming overall.

Distribution channels

16. As regards distribution channels, previous MMC and OFT decisions distinguished between on-course and off-course betting based on their geographically separate locations and the different nature of their activities, with the former being part of the overall package of attending a race meeting with the associated additional time and cost involved.⁶ Betfred submitted that this was still correct and the OFT did not receive any evidence to the contrary.
17. Within off-course betting, the MMC distinguished LBOs from telephone betting based on the national nature of telephone betting as opposed to local LBOs, as well as the different types of customers and the (larger) sizes of stakes involved in telephone betting. This was confirmed in subsequent OFT decisions, which found limited demand- and supply-side

⁶ MMC report in *Ladbroke/Coral* (paragraph 2.64) and OFT decisions in, for example, *William Hill/Stanley* (paragraphs 7-9) and *Ladbrokes/McCartan* (paragraphs 8-9).

switching.⁷ In this case, this is further supported by a third-party comment that for most consumers telephone betting is not a substitute for betting in an LBO because of the different experience offered by an LBO (such as the social element of an LBO visit and the possibility of cash betting and impulse bets). Another third party noted that gaming is available in LBOs but not by telephone.

18. On a similar basis as for telephone betting, previous OFT decisions also distinguished internet betting from betting in LBOs. Betfred submitted in this case there were still reasons for this distinction that internet betting operates within at least an EEA-wide market – as opposed to national and local markets for telephone betting and LBOs respectively – and has different suppliers. A third party stated that, for the same reasons as for telephone betting set out above, internet betting is not a substitute for betting in an LBO.
19. However, Betfred also stated that, conversely, the growth of internet betting has been at the expense of LBO and, in particular, telephone betting, which suggests a degree of competitive interaction between these channels. This coinciding of changes in demand has also been mentioned by one third party as evidence for a degree of substitutability between the channels, with one further third party agreeing that there was substitutability. However, the OFT does not have evidence to indicate that there is a causal link to explain this relationship between revenue figures. This applies in particular to the relationship between internet revenue growth and LBO revenue decline, which is not strong. Therefore, the OFT has not received sufficient evidence to enable it to draw conclusions on market definition from the diverging trends in growth of the different channels.
20. The OFT considers that, in this case, insufficient evidence has been provided to show that gambling in LBOs, by telephone and via the internet formed strong constraints on one or more of the other channels. The OFT was not provided with any survey evidence or other evidence which demonstrates that these channels are significant demand-side alternatives for consumers. On a cautious basis, and taking into account that the OFT applies its analysis in the narrowest plausible markets (see paragraph 8 above), the OFT has therefore considered the impact of the Transaction

⁷ MMC report in *Ladbroke/Coral* (paragraph 2.66) and OFT decisions in, for example, *William Hill/Stanley* (paragraphs 7-9) and *Ladbrokes/McCartan* (paragraph 10).

separately in each of the on-course, off-course LBO, telephone and internet channels. In its competitive analysis, the OFT has nevertheless also considered the extent of constraints from internet betting and gaming on competition between local LBOs (see paragraphs 81-82 below).⁸

Conclusion on product market

21. For the reasons set out above, taking a cautious approach, the OFT has considered the Transaction in separate markets for fixed odds betting, pool betting and gaming with separate channels for on-course (including on-course LBOs), off-course LBOs, telephone and internet.

Geographic market

Off-course LBOs – national and regional level

22. In previous decisions, the MMC and the OFT considered national, regional and local aspects of competition between off-course LBOs.⁹ Both Betfred and third parties submitted that the parameters of competition are, at least to a significant degree, set at the national level (see further from paragraph 46 below).

23. As to the regional level, while the OFT considered regional markets in some decisions it also noted that this did not appear to be the level at which competition took place.¹⁰ Betfred supported this and stated that a regional analysis could not raise any competition issues. However, one competitor stated that it set prices and odds to some extent at a regional level.

24. The OFT has therefore considered the impact of the Transaction on off-course LBOs at a national level as well as, on a cautious basis, at a regional level.

⁸ As noted in the *Merger Assessment Guidelines* (paragraph 5.2.2), the OFT may take constraints outside the relevant market into account in assessing the competition impact of a merger.

⁹ MMC report in *Ladbroke/Coral* (paragraph 2.113) and OFT decisions in, for example, *William Hill/Stanley* (paragraph 15) and *Ladbrokes/McCartan* (for example, paragraph 35).

¹⁰ See OFT decisions in *William Hill/Stanley* (paragraph 27), *Ladbroke Racing (Reading) Limited/Jack Brown (Bookmaker) Limited* (13 February 2006, paragraph 25) and *Ladbrokes/McCartan* (paragraph 21).

Off-course LBOs – local level

Introduction

25. In its 1989 report into the Grand Met/William Hill merger, at the local level, the MMC established a 400 metre radius around LBOs to assess the extent of local competition.¹¹ This was largely based on the fact that local licensing authorities used this radius to assess local demand and existing provision of gambling in deciding whether to grant an application for an LBO licence under the pre-2007 gambling legislation. The MMC sought divestments where the merger eliminated competition (that is, a 2:1 fascia reduction). In its 1998 report into the Ladbroke/Coral merger, the MMC, with reference to its 1989 *Grand Met/William Hill* report, again considered 2:1 fascia reductions in 400 meters as a concern, with additional support for the 400 metre radius from the merging parties' own market research and business strategy, but raised additional concerns where the fascia reduction was 3:2 within 400 metres or 2:1 within 800 metres.¹²
26. This MMC's 1989 approach to local analysis, as supplemented by its 1998 report, has been applied by the OFT in its subsequent decisions. However, in its *William Hill/Stanley* decision the OFT noted the arbitrary nature of the radii and in its *Ladbrokes/McCartan* decision it stated that this approach was only 'a starting point for competition analysis, rather than a safe harbour to be applied rigidly'.¹³ The OFT referred in the latter decision to the fact that this approach did not take into account, for example, factors such as population density (which can affect the catchment area) or areas greater than 800 metres where the LBO of one of the merging parties was still the geographically closest competitor for the LBO of the other merging party. As a result, in its *Ladbrokes/McCartan* decision the OFT considered the extent of competition between LBOs in Northern Ireland that were further than 800 metres apart, using evidence including a customer survey conducted in the relevant LBOs.¹⁴

¹¹ MMC report in *Grand Metropolitan plc/William Hill Organisation Limited* (August 1989, paragraphs 6.53-54). In this report, the MMC referred to a quarter of a mile, which in the *Ladbroke/Coral* was converted into 400 metres.

¹² MMC report in *Ladbroke/Coral* (paragraphs 2.118-120 and 2.151). The MMC did not actually seek divestments on this basis since it had concerns at the national level which could not be addressed by local divestments (paragraphs 2.202-203).

¹³ OFT decisions in *William Hill/Stanley* (paragraph 11) and *Ladbrokes/McCartan* (paragraph 7).

¹⁴ *Ladbrokes/McCartan* (paragraphs 17-18 and 22-28). See also *Commentary on retail mergers* (OFT1305/CC2 com 2, March 2011), for example paragraph 2.16.

27. In the present case, all competitors that responded to the OFT's request for comments stated that the 400 metre radius was arbitrary and inflexible. They suggested that the size of the area of competition depended on local factors such as population density and the presence of natural obstacles such as motorways and rivers. Two bookmakers further stated that in urban areas they considered 200/250 metres as the competitive area and in rural areas at least 800/1600 metres (see further at paragraph 32 below).¹⁵
28. The OFT notes that no survey evidence was submitted in the present case to assist with the OFT's assessment of the distance LBO customers would travel in order to provide a basis for assessing the appropriate local geographic area in which competition takes place. The OFT notes in this respect that its previous case experience suggests that competition between local retail outlets may be closely related to the physical distance between shops.¹⁶ As such, given that the OFT has stated in previous decisions that the MMC approach would only act as a starting point for an assessment, and given the varying comments from third parties with regard to the size of the area over which competition takes place for off-course LBO betting and gaming services, the OFT, on a cautious basis, sought to assess whether to flex the radii applicable in this case to 200 metres (a narrower geographic filter) and to 1600 metres (a more expansive filter).

Assessment

29. Betfred submitted that the MMC's approach in *Grand Met/William Hill* and *Ladbroke/Coral* should be considered by the OFT as the appropriate way in which to assess the Transaction. In relation to flexing the geographic filters applied in those cases, Betfred submitted that there was no basis to narrow the radius to 200 metres or widen it to 1600 metres. In summary, its reasons were as follows. First, it is not credible that consumers would not walk further than 200 metres to an LBO. Second, while accepting that the local licensing test based on demand no longer applies (see further paragraph 67 below), the MMC's approach reflected the industry's and licensing magistrates' experience of the distance that most consumers were prepared to walk to an LBO, which Betfred submitted has not

¹⁵ The catchment area may be different between urban and rural areas (*Commentary on retail mergers*, paragraph 2.21).

¹⁶ *Commentary on retail mergers*, paragraph 2.18.

changed. For these reasons, Betfred considered that the application of a 200 metre radius would not capture overlaps where LBOs do compete.

30. In addition, as evidence supporting a 400 metre radius, Betfred referred to internal documents regarding analysis of entry opportunities. []¹⁷ []¹⁸
31. Betfred further submitted that the 800 metre radius operates as a cautious filter and that it is unnecessary and unjustifiable to expand this to 1600 metres. It submitted that the OFT's approach in *Ladbrokes/McCartan*, where the OFT considered competition between LBOs further than 800 metres apart, should be limited to Northern Ireland, because the continued application of local authorities' demand test in Northern Ireland meant that an LBO was often the only LBO within 400 metres, while currently in the rest of the UK the nearest LBO is much more likely to be within 400 metres.
32. The OFT did not receive specific supporting evidence such as internal documents to corroborate competing bookmakers' statements that the geographic scope of competition was within 200/250 metres in urban areas and up to 1600 metres (a mile) in rural areas. However, one bookmaker referred to the practice of opening LBOs within 250 metres of one another, which the OFT notes – based on its analysis of the maps provided in this case – the major players including Betfred and the Tote all appear to apply.
33. Betfred submitted that there are reasons for close proximity of two or more LBOs belonging to the same bookmaker that have nothing to do with the geographic scope of competition. First, it noted that more premises allow bookmakers to introduce more gaming machines (known as 'Fixed Odds Betting Terminals' or FOBTs) into the local market, as licensing conditions permit a maximum of only four machines per LBO. Hence, it may be better to have two smaller LBOs (and eight FOBTs) rather than one much larger LBO (and only four FOBTs). Secondly, bookmakers can profitably open a new LBO where the capacity of existing LBOs is insufficient to meet local demand. Betfred provided examples of one bookmaker's LBOs next door or opposite to each other. Thirdly, Betfred referred to past acquisitions as an explanation, for example when Stanley LBOs were divested (to the Tote) after the OFT's *William Hill/Stanley* decision. However, the OFT considers

¹⁷ []

¹⁸ []

that it is not sufficiently clear that these general reasons, as submitted by Betfred, demonstrate that the close proximity of the same fascia, which appears to be a regular feature of this industry, is not indicative of a narrower geographic scope of competition, in particular given the third-party comments.

34. The only other evidence available in this case to the OFT regarding the geographic extent of local competition is a survey from 2006, which Ladbrokes submitted in the OFT's *Ladbrokes/McCartan* investigation.¹⁹ This survey, which was conducted in a sample of Ladbrokes' national LBO estate, found that just over 50 per cent of customers had travelled 400 metres or less and just over 70 per cent had travelled 800 metres or less. Although the OFT is cautious in drawing conclusions from this five-year old survey, the OFT notes that it provides some support for a catchment area of around 800 metres.²⁰

Conclusion

35. While the OFT remains of the view that the 400 and 800 metre radius approach is arbitrary,²¹ the evidence on the geographic scope of competition between local LBOs, as set out above, is mixed, consisting of a survey suggesting that LBO catchment areas may be 800 metres but also some internal documents submitted by Betfred suggesting that competition may mainly take place within 400 metres and comments from competitors suggesting a smaller area of around 200 metres in urban areas. On balance, the OFT considers that it remains appropriate in this particular case to use the 400 metre and 800 metre radii as a starting point for its assessment, in line with its previous decisions.
36. However, in the absence of specific survey evidence or strong evidence supporting Betfred's submissions that the existing approach is a sufficient basis for an assessment of local competition in the provision of off-course LBO betting and gaming services, the OFT has also, in light of evidence gained from its third-party investigation, as set out above, and taking into account the need, as a first phase authority, to take a cautious approach,

¹⁹ OFT decision in *Ladbrokes/McCartan* (paragraph 16).

²⁰ Since close to 80 per cent of LBO customers came from within that distance (see *Merger Assessment Guidelines*, paragraph 5.2.25, and *Commentary on retail mergers*, paragraph 2.14).

²¹ In its evaluation report of the *William Hill/Stanley* decision, Deloitte also noted that 'the justification of the intervention threshold is not entirely clear' (*Review of merger decisions under the Enterprise Act 2002*, 18 March 2009, pages 37 and 88 – see www.competition-commission.org.uk/our_role/analysis/review_merger_decisions.pdf).

considered the effect on competition of the Transaction in local areas taking a narrower (200 metres) catchment area, as further discussed below (see from paragraph 58). It was not necessary for the OFT in this particular case to consider a wider catchment area of 1600 metres in rural areas, as suggested by third-party comments, as there is no evidence that in this case there is a concern in such areas.

On-course, telephone and internet betting and gaming

37. Betfred submitted that competition for on-course betting takes place within the relevant racecourse. This was also suggested by previous MMC and OFT decisions (see also at paragraph 16 above).
38. Betfred further submitted that competition for telephone betting takes place on at least a national level, as telephone betting services are provided to the whole of the UK from centralised call centres without regional or local variations. This is consistent with the OFT's previous finding that telephone betting is a national market.²²
39. Competition for internet betting and gaming takes place, according to Betfred, on at least an EEA-wide, if not worldwide, level, as there are no barriers (regulatory or otherwise) to non-UK websites offering betting and gaming services to UK consumers and non-UK websites advertise to UK consumers and offer betting on UK sports. Equally, non-UK consumers can access UK-based betting and gaming websites.
40. The OFT has not received any evidence to suggest that Betfred's submissions on the geographic scope of on-course, telephone and internet betting and gaming, as summarised in this section, are incorrect and has considered the Transaction accordingly.

UNILATERAL EFFECTS

41. Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or reduce quality, range or service ('**PQRS**') on its own without needing to coordinate with rivals. The OFT has set out its approach to assessing unilateral effects in its

²² OFT decision in *Ladbroke's plc/Eastwood Bookmakers* (16 April 2008, paragraph 5).

Mergers Assessment Guidelines, and specifically its approach to local retail mergers in its *Commentary on retail mergers*.²³

42. In this section, the OFT assesses the unilateral effects of the Transaction in the following frames of reference:

- LBOs at a national level
- LBOs at a regional level
- LBOs at a local level
- on-course betting
- telephone betting, and
- internet betting and gaming.

UNILATERAL EFFECTS – LBOs at national level

43. Table 1 below shows the shares of supply of the merged parties and their main competitors in LBOs on a national level.

Table 1: Shares of supply in LBOs in the UK (2010)

Supplier	LBO shop count		LBO gross win	
	Shop count	Share (per cent)	Gross win (£m)	Share (per cent)
Betfred	840	9.3	[]	[0-10]
The Tote	517	5.7	[]	[0-5]
Combined	1,357	15.0	[]	[5-15]
William Hill	2,344	25.9	[]	[25-35]
Ladbrokes	2,082	23.0	[]	[20-30]
Coral	1,634	18.0	[]	[20-30]
Paddy Power	107	1.2	[]	[0-5]
Others	1541	17.0	[]	[5-15]

Source: Betfred.

44. This table shows that the merged parties' combined shares of supply are around 15 per cent by shop count and around [five-15] per cent by gross win, with an increment of around six and [0-five] per cent respectively.

²³ *Merger Assessment Guidelines*, section 5.4, and *Commentary on retail mergers*, for example at paragraph 1.6.

There are three competitors that have a more significant position in the market. The shares in Table 1 are similar if betting and gaming in LBOs are considered separately, as []. The parties' combined shares are not at a level that normally gives rise to competition concerns.²⁴ As also no third parties raised concerns in relation to the Transaction's impact on national LBO competition, the OFT considers that the Transaction does not give rise to competition concerns with regard to LBOs at a national level.

UNILATERAL EFFECTS – LBOs at regional level

45. Both Betfred and the Tote have LBOs throughout the UK. Betfred submitted that the greatest density of its and the Tote's LBO estate is in the north-west of England but that it did not expect their combined share in that region to be substantially greater than their national share, which is in any case relatively low. Betfred also noted that this region has a relatively high density of LBOs generally. No third parties raised any competition concerns on a regional level. The OFT therefore considers that the Transaction does not raise competition concerns with regard to LBOs at a regional level.

UNILATERAL EFFECTS – LBOs at local level

Extent of competition at local level

46. Betfred submitted that there are two elements of price competition in off-course betting: (i) through the setting of odds and (ii) on the terms of betting. Betfred also identified non-price elements of competition such as the quality of the LBO environment, opening hours and staffing levels. This is consistent with previous MMC and OFT decisions and third-party comments.²⁵
47. For horseracing, most betting takes place at 'starting prices', which are derived by independent bodies from the odds set by on-course bookmakers just before the start of the race.²⁶ Although some betting takes place at 'early prices', which are determined independently by each off-course bookmaker such as the merged parties, the large share of betting at starting prices means that the scope for competition through the setting of

²⁴ *Merger Assessment Guidelines*, paragraph 5.3.5.

²⁵ For example, MMC report in *Ladbroke/Coral* (paragraph 2.147/148) and OFT decisions in *William Hill/Stanley* (paragraphs 16-20) and *Ladbrokes/McCartan* (paragraph 19).

²⁶ These on-course bookmakers may include the merged parties, but there are generally several bookmakers, both national players and small independents, in racecourse betting rings and there is no indication that the merged parties can exercise strong influence on the starting prices.

odds for horseracing is limited. This is different for betting on other sports or events, where each bookmaker individually determines the odds.

48. Competition on the terms of betting takes the form of bonuses (for example, Betfred markets itself as the 'Bonus King'), multipliers applied to winning bets over and above the odds, etc. These terms are determined by individual bookmakers.
49. Betfred submitted that there is minimal potential for price effects in local markets because [].
50. The OFT notes that competition between retail outlets, including LBOs, can be across all elements of PQRS.²⁷ In relation to local price competition, whilst the OFT accepts that there is evidence in this case to support the fact that price may generally be set nationally, the investigation revealed that there are ways in which LBOs compete on price locally. Specifically, competing bookmakers, stated that there was scope for local price competition based on local competitive conditions, such as local promotions. The gross win ratio data submitted by Betfred (paragraph 78-79 below), although the OFT considers these must be treated with caution, also suggest the existence of some local price competition, as these data []. Further, an evaluation of the impact of the OFT's *William Hill/Stanley* decision by Deloitte reported third-party comments, although no direct evidence, that in areas where William Hill had faced competition from Stanley, offers of bonuses and concessions had been removed after the merger.²⁸ In addition to price competition, both Betfred and third parties stated that bookmakers also compete on non-price factors such as service and quality of the shop environment.
51. The OFT therefore considers that, although in some respects, and in particular for horseracing, the scope for local price competition may be limited, there is sufficient scope for local price and non-price competition between LBOs for certain local overlaps between the merged parties to result in a realistic prospect of a substantial lessening of competition ('**SLC**') in local areas.

²⁷ For example, *Commentary on retail mergers*, paragraph 3.1.

²⁸ Deloitte report, pages 36-7 (see footnote 21 above).

Local overlap analysis

52. In its analysis of the impact of the Transaction in local areas, the OFT took the approach applied by the MMC and OFT in previous decisions as its starting point. In *William Hill/Stanley* the OFT found that there was a realistic prospect of an SLC in areas where the merger removed competition (that is, where the merged parties had the only LBOs) within a 400 metre or 800 metre radius and in areas where the merger reduced competition to two fascias within a 400 metre radius.²⁹
53. Betfred informed the OFT about the areas that would fall within these filters in the present case. For each area it provided maps showing the locations of each LBO in the area. Betfred did not provide any evidence of switching between these areas, such as survey evidence or event analyses.

Local 2:1 overlaps within 400 metres

54. Betfred identified nine areas in which Betfred and the Tote have LBOs within 400 metres of each other and no competitors are present. It has not sought to dispute that the Transaction was likely to result in an SLC in these areas. Given the elimination of competition within these areas (that is, in the given area, these constitute a merger to monopoly), the OFT therefore considers that there are significant competition concerns such that there is a realistic prospect of an SLC in the following areas:
- a. Walton, Liverpool (Betfred LBOs at 70/72 County Road and 96 Hale Road, and Tote LBO at 146/148 County Road)
 - b. Hastings (Betfred LBO at 15/16 Queens Road and Tote LBO at 86 Queens Road)
 - c. Leigh (Betfred LBOs at 51 Chapel Street and 6/8 King Street, and Tote LBO at 92 Bradshaw Gate)
 - d. Cottingham, Hull (Betfred LBO at 151 Hallgate and Tote LBO at 68 King Street)
 - e. Seven Kings, Ilford (Betfred LBO at 12 Cameron Road and Tote LBOs at 695 High Road and 367 Green Lane)
 - f. Brownhills, Walsall (Betfred LBO at 57 High Street and Tote LBO at 38 High Street)

²⁹ *William Hill/Stanley*, for example paragraph 38.

- g. Pendlebury, Manchester (Betfred LBO at 582-583 Bolton Road and Tote LBO at 696-698 Bolton Road)
- h. Wythenshaw, Manchester (Betfred LBO at Unit C, Haletop Civic Centre and Tote LBO at 15 Haletop Civic Centre), and
- i. Rusholme, Manchester (Betfred LBO at 292-294 Claremont Road and Tote LBO at 353 Claremont Road).

Local 2:1 overlaps within 800 metres

55. Betfred submitted that there are no areas in which Betfred and the Tote have LBOs within 800 metres but not within 400 metres of each other and in which no competitors are present.

Local 3:2 overlaps within 400 metres

56. Betfred identified 12 areas in which Betfred and the Tote have LBOs within 400 metres of each other and one competitor is present. In mergers involving local retail overlaps, the OFT has generally found that a fascia reduction in a specific area from three to two gives rise to a realistic prospect of an SLC.³⁰ Specifically in relation to LBOs, the OFT found in *William Hill/Stanley* that there was a realistic prospect of an SLC in 3:2 areas within 400 metres. However, in this case, Betfred submitted that there are significant reasons for a different conclusion in this case, as further discussed below (see from paragraph 65).

57. These areas are the following:

- a. Pontefract (Betfred LBO at 15-17 Beastfair and Tote LBOs at 17 Shoemarket and 3 Market Place)
- b. Cosham, Portsmouth (Betfred LBO at 50 High Street and Tote LBO at 7 High Street)
- c. Kirkintilloch, Glasgow (Betfred LBO at Unit 2, Regent Centre and Tote LBO at 4 Catherine Street)
- d. Belle Vale, Liverpool (Betfred LBO at 11 Belle Vale Road and Tote LBO at Unit 9, Belle Vale Shopping Centre, Childwall Valley Road)

³⁰ See OFT decisions in *Travis Perkins plc of the BSS Group plc* (26 October 2010, for example paragraph 127) and *Carlyle Group/Palamon Capital Partners LP/Integrated Dental Holdings Group and Associated Dental Practices* (10 June 2011, for example paragraph 104).

- e. Blackpool (Betfred LBO at 83 Highfield Road and Tote LBO at 49 Highfield Road)
- f. Shanklin, Isle of Wight (Betfred LBO at 21 Regent Street and Tote LBO at 51 High Street)
- g. Kirkby, Liverpool (Betfred LBO at Unit 14, St Chads Parade, Kirkby Shopping Centre and Tote LBO at 1-3 Market Square)
- h. Truro (Betfred LBO at 4 Back Quay and Tote LBO at 4 Calenick Street)
- i. Waterloo, Liverpool (Betfred LBOs at 58 and 126-128 South Road, and Tote LBO at 3 Brighton Road)
- j. High Wycombe (Betfred LBO at 15 Queens Square and Tote LBO at 49/50 Oxford Street)
- k. Wolverhampton (Betfred LBO at 63 Victoria Street and Tote LBOs at 114 Salop Street and 4-5 Princess Street), and
- j. Lincoln (Betfred LBO at 350 High Street and Tote LBO at 11a St Mary's Street).

Other local areas of concern

58. As mentioned above, while the OFT has applied the local analysis that was previously used by the MMC and OFT as a starting point, that analysis does not have specific regard to two factors: the geographic proximity of the merging parties within an area and the location of the merged parties' LBOs within an area relative to the location of competing LBOs. In recent cases that have considered competition between local retail outlets, the OFT has sought to allow for geographic proximity in its consideration of the impact of the merger on competition in local areas. This recognised that the strength of the constraint lost by a merger will often be a function of how closely located the merging parties' stores are compared to competing stores.³¹
59. In the OFT's most recent LBO decision, *Ladbrokes/McCartan* (2008), the OFT used geographic proximity in its assessment by identifying a potential competition concern in an area that, as two of the merging parties' LBOs were around 900 metres apart, was not caught by the previously used analysis but where these LBOs were nevertheless the geographically

³¹ See, for example, OFT decisions in *Travis Perkins/BSS Group* (paragraph 120) and *Carlyle Group/Palamon Capital Partners LP/Integrated Dental Holdings Group and Associated Dental Practices* (paragraph 106). Also, *Commentary on retail mergers*, for example paragraph 4.7.

closest competitors. Based on the evidence relating to that particular area, including survey evidence, the OFT concluded that pre-merger competition between the LBOs in that area was limited.³² In the present case, the importance of geographic proximity when assessing the strength of competition between LBOs in specific areas was suggested by some competing bookmakers, who indicated that they would regard LBOs located within 200 or 250 metres from their own LBO as close competitors, particularly in urban areas, whereas LBOs located as far as 1600 metres away may be providing some competitive constraint on each other in rural areas (see paragraph 27 above).³³

60. In the absence of specific survey evidence in the present case and in the light of the factors set out at paragraphs 58 and 59 above, on a cautious basis the OFT has sought to take account of geographic proximity in the present case where within 200 metres of one of either of the parties' LBOs the other merged party's LBO is geographically closest and there is no other competing LBO within 200 metres (that is, 2:1 areas within 200 metres) or there is only one other competing LBO within 200 metres (that is, 3:2 areas within 200 metres).

Local 2:1 overlaps within 200 metres

61. The OFT has considered the maps of all overlap areas provided by Betfred to identify the 2:1 areas within 200 metres, also assisted by Betfred's identification of these areas. In addition to some of the areas listed above (paragraphs 54 and 57), these areas are the following:
- a. Epsom (Betfred LBO at 23 High Street and Tote LBO at 4/6 High Street)
 - b. Leicester (Betfred LBO at 11 Horsefair Street and Tote LBO at 16 Market Street), and
 - c. Levenshulme, Manchester (Betfred LBO at 843 Stockport Road and Tote LBO at 805 Stockport Road).
62. The OFT has considered the relevant maps of these areas to examine in more detail the location of the parties and any competitors that are further away than 200 metres. Taking into account the two factors referred to at paragraph 58 above, the OFT has concluded that it may be the case that in

³² *Ladbrokes/McCartan* (paragraphs 23-28).

³³ As noted above (paragraph 36), it was not necessary for the OFT in this particular case to consider a wider catchment area of 1600 metres in rural areas given the location of the merged parties' LBOs.

all three 2:1 areas the merged parties are particularly geographically close to each other such that the diversion ratio between their LBOs (or at least from the party's LBO that had no other competitors within 200 metres) would be significantly higher than that which might otherwise be expected in a local area that had at least two or more³⁴ competing LBOs remaining within 400 metres. In other words, the OFT would expect a relatively significant level of switching by consumers between these LBOs.³⁵ On this basis, the OFT considers that there are significant competition concerns resulting from the Transaction such that there is a realistic prospect of an SLC in these areas, at least on a 'may be the case' basis.

Local 3:2 overlaps within 200 metres

63. As noted at paragraph 60 above, the OFT has further considered the maps provided by Betfred to identify the 3:2 areas within 200 metres, also assisted by Betfred's identification of these areas. There are three such areas (in addition to some of the areas already listed at paragraphs 54 and 57 above).³⁶ In one of these areas there is an additional competing LBO just outside the 200 metre radius and in another of these areas there are two additional competing LBOs close to this radius, resulting in effectively a 4:3 and a 5:4 fascia reduction in just over 200 metres respectively. In the third area the closest competing LBO outside of the 200 metre radius is significantly further away. This area is Farnworth, Bolton (Betfred LBO at 124 Market Street and Tote LBO at 1a Slater Street).
64. Taking into account the two factors referred to at paragraph 58 above, the OFT has concluded that it may be the case that in Farnworth the merged parties are particularly geographically close to each other such that the diversion ratio between their LBOs would be significantly higher than that which might otherwise be expected in a local area that had at least two or more³⁷ competing LBOs remaining within 400 metres. As noted above in relation to 3:2 areas within 400 metres (paragraph 56), in past cases the OFT generally found a realistic prospect of an SLC in 3:2 areas. However,

³⁴ Note that if there are no competing LBOs or there is only one, the area would already be caught by the existing approach (as this catches all 2:1 and 3:2 fascia reductions within 400 metres).

³⁵ See further, for example, *Commentary on retail mergers*, from paragraph 4.7.

³⁶ The maps provided by Betfred showed a fourth area, but Betfred informed the OFT that a new LBO had opened in this area on 17 November 2011 such that this became a 4:3 area.

³⁷ See footnote 34.

the OFT has considered below Betfred's submissions that this does not apply in the present case.

Constraints from barriers to local entry and internet gambling

65. As noted above, Betfred accepted (and the OFT's investigation has confirmed) that there is a realistic prospect of an SLC in 2:1 areas within 400 metres. Betfred, however, did not consider that 3:2 areas within 400 metres should give rise to a realistic prospect of an SLC by reference mainly to the potential for supply-side responses to countervail the impact of the reduction in competition which a merger gives rise to.³⁸ The OFT has also considered Betfred's submissions to assess the realistic prospect of an SLC in the 3:2 area within 200 metres in which it has found competition concerns.³⁹
66. Betfred submitted that since the previous LBO decisions changes in the structure of the gambling industry have meant that there is now no longer a realistic prospect of an SLC in overlap areas with a 3:2 fascia reduction, because (a) local barriers to entry had been reduced following the entry into force in 2007 of the Gambling Act 2005 (the '**GA05**'), and (b) online services now provide an additional constraint on LBOs. These submissions are considered below, in addition to the remaining regulatory and non-regulatory entry barriers in the context of Betfred's submissions and the industry as a whole.

Barriers to local entry

Change in regulatory barriers

67. Before the GA05 came into force in 2007, the licensing regime applicable to new LBOs included a 'demand test', such that the local licensing authority could refuse an application for a licence based on insufficient unmet demand, taking account of the existing LBOs within a 400 metre area. According to Betfred, due to the scope for disagreement inherent in this test, this enabled local authorities to refuse an application even if the bookmaker believed there was a clear business case for entry. The GA05

³⁸ See *Merger Assessment Guidelines*, paragraph 5.8.1.

³⁹ Betfred had made its submissions on constraints only in relation to the 3:2 areas within 400 metres, as its position was (as set out earlier in this decision) that the OFT should not apply a 200 metre radius. However, as the OFT has found competition concerns in this radius, the OFT considers it appropriate to apply Betfred's submissions equally to the 3:2 area within 200 metres.

now expressly forbids local authorities from taking demand into account. Betfred submitted that, as a result, licence applications are now invariably granted (provided that the GA05's licensing objectives are met,⁴⁰ which Betfred submitted is the case for all established bookmakers).

68. Competing bookmakers have confirmed that licences are virtually always granted, albeit on occasion after appeal. An evaluation of the impact of the OFT's *William Hill/Stanley* decision by Deloitte, which took place in 2009 and hence after the GA05 came into force, also reported comments from stakeholders that the removal of the demand test had helped some bookmakers to expand.⁴¹ However, one competitor has stated that, despite the GA05, political considerations and local issues around how gambling is perceived can still make it difficult to open new LBOs. This is also suggested by some recent articles in the press,⁴² although Betfred submitted that these articles in fact highlight the ease with which bookmakers can and do open LBOs.
69. The OFT considers that the GA05, through the removal of the demand test, appears to have reduced the regulatory barriers to local entry, although it is not clear to what extent this change may be reversed in the future given the political considerations referred to above.⁴³ Below the OFT has assessed the available evidence on the impact of this change and the extent of remaining non-regulatory barriers to local entry.

Evidence for a change in barriers to local entry

70. Betfred referred to the continuing expansion of the national LBO estate in recent years as evidence for the increased likelihood of entry. However, the OFT notes that the number of LBOs in the UK in fact increased by only 1.4 per cent between April 2007 and December 2010 (from 8800 to 8927) and the number of LBOs even fell in the year between April 2009 and

⁴⁰ These objectives are: (i) preventing gambling from being a source of, or associated with, crime or disorder, or being used to support crime; (ii) ensuring that gambling is conducted in a fair and open way; and (iii) protecting children and other vulnerable persons from being harmed or exploited by gambling.

⁴¹ Deloitte (footnote 21 above), page 34.

⁴² See *The Mail on Sunday* of 14 August 2011, 'The bank's gone, but at least you can have a bet' (page 71-72), and the *Daily Telegraph* of 8 November 2011, 'Let us ban betting shops from high streets, urge councils'.

⁴³ Some third parties indicated that the GA05, while lowering the demand test, has in fact increased the barriers to entry for a new bookmaker (i.e. entry 'from scratch', rather than barriers to local entry by existing bookmakers). This is considered further from paragraph below.

March 2010.⁴⁴ The OFT therefore considers that the number of LBOs in fact suggests that the entry into force of the GA05 in 2007 has in general had only a very limited effect on the total number of LBOs.

71. Betfred submitted that the stability in the total number of LBOs disguises significant entry and exit. It noted that the ease of obtaining a new licence has made bookmakers more willing to give up a licence by exiting a local market. Betfred stated that this also resulted in a drop in the value of incumbent licensed LBOs, as shown, for example, by the drop in value for the Tote's LBOs as indicated by Betfred's purchase price in the Transaction compared with the value of Stanley's LBOs as indicated by William Hill's purchase price.⁴⁵
72. Betfred further obtained licensing information from the licensing authorities in 11 of the areas of potential concern listed above, which shows that they issued 205 new licences since the GA05 came into force (or since a date in 2008 for some of the licensing authorities). Although this is a significant number, the OFT considers that the evidentiary value of this number is limited as it relates to a period of three to four years. In addition, many of the relevant licensing authorities cover large urban areas such as Liverpool, Manchester and Wolverhampton with significant populations. Also, it is unclear to what extent these 'new' licences were in fact granted to existing LBOs relocating within the same area rather than to additional LBOs.
73. The OFT also considered the development of the merged parties' gross wins as a percentage of amounts staked (referred to below as the 'gross win ratio').⁴⁶ Based on Betfred's submission that barriers to local entry were reduced after the GA05 came into force in 2007, gross win ratios would be expected to fall from that year. [] The OFT considers that [] the impact of the GA05 was limited.⁴⁷ []

⁴⁴ Gambling Commission, Industry Statistics.

⁴⁵ William Hill acquired Stanley's 604 LBOs for £504 million in 2005, implying a value of just over £800,000 per LBO. Betfred acquired the Tote's 517 LBOs for £265 million, implying a value of just over £500,000 per LBO even if the value of the Tote's other activities such as its exclusive pool betting are ignored.

⁴⁶ This is sometimes referred to in the industry as 'gross win margin', but the OFT considers it does not equate to what is generally considered to be a firm's margin as it does not take any costs into account and the amount staked does not necessarily equate to price. To avoid confusion, the OFT has therefore instead used the term 'gross win ratio'.

⁴⁷ []

74. The OFT further considered whether, if the GA05 resulted in lower barriers to local entry and exit, all resulting new entry may have already occurred such that Betfred is in future unlikely to face the same competitive constraints from entry as in the past few years. However, Betfred disputed this, with reference to recent public statements by two of its main competitors on planned expansion as well as the expansion strategies of smaller firms such as Paddy Power.

Non-regulatory barriers

75. Betfred submitted that non-regulatory barriers to entry are also low. It estimated that the initial fixed costs of opening a new LBO are around £[], as illustrated by profit and loss statements for two proposed future Betfred LBOs provided to the OFT, and that these costs can be recovered within around [] years. It further estimated that it takes around [] months to open a new LBO. Competitor estimates of the cost and time involved in opening a new LBO range from £200,000 to £300,000 and a minimum of six months to an average of 12 to 18 months. The time needed to recover these costs was estimated at around three years by two competitors and between three and five years by another. Betfred noted that even the competitors' top estimate of 18 months to open a new LBO would generally be considered as timely by the OFT,⁴⁸ although the OFT notes that this estimate does not take into account the time involved in searching for new entry opportunities. Moreover, the OFT notes that these timescales have little bearing on whether entry within these periods would be likely, which, besides timeliness, is another factor considered by the OFT in assessing whether entry might prevent an SLC.⁴⁹

76. The OFT also notes that a significant part of the costs of opening a new LBO are sunk costs, which the entrant cannot recover when exiting from a local area. Betfred estimated that []. This is another factor affecting the likelihood of local entry.⁵⁰

77. Three competing bookmakers indicated that another hurdle to local expansion is the lack of vacant suitable properties, that is, properties in the right location and with the right size, rent, and preferably within the A2 planning category. One of these bookmakers specifically indicated several

⁴⁸ As it falls within the two-year period referred to in the *Merger Assessment Guidelines* (paragraph 5.8.11).

⁴⁹ *Idem*, paragraph 5.8.3.

⁵⁰ *Idem*, paragraph 5.8.12.

of the 3:2 areas in 400 metres where it identified this as a hurdle. Betfred submitted that in its experience in most local markets there are a number of suitable vacant properties that are in the required planning class for LBOs (A2), such as vacant properties previously used by banks. Even where such properties are not available, Betfred stated that in many cases it successfully applied for a change of use of a vacant property to A2 (which for A3 properties, such as pubs, is automatic) or has occasionally bought out an existing business or lease in order to obtain the right property, although the OFT notes that this is likely to be costly. Betfred further provided examples of one or more available properties in all 3:2 overlap areas in 400 metres, although in some of these areas the available properties in question are not classed as A2 or the use class is not known. However, given the comments from most of Betfred's main competitors, the OFT could not, on a cautious basis, reject the possibility that, at least in some of the relevant areas, finding a suitable vacant property may be a barrier to local entry.

Differences in LBO gross win ratios between areas with different levels of competition

78. Betfred also considered the gross win ratios (as noted above, gross win as a percentage of amount staked) of LBOs in the overlap areas and in monopoly areas (within 800 metres). [] Betfred submitted that [], which means that there is no risk of an SLC in 3:2 areas [].
79. However, the OFT considers that these data must be treated with caution given the relatively small share of the merged parties' LBO estate that is covered. The OFT also notes that the data do not capture non-price components of competition such as service levels and shop appearance, as they do not take account of fixed and variable costs. This is relevant in particular because non-price parameters of competition are relatively important in local competition (see from paragraph 46 above). Further, the analysis above takes no account of other factors that may influence local gross win ratios, such as local socio-demographic factors. In addition, it is possible that the latter may influence the number of competitors in an area, which is a factor that would need to be assessed to draw well-based inferences.
80. The gross win ratio data submitted by Betfred are therefore not enough to conclude that [].

Constraint from online betting services

81. Betfred submitted that, in addition to the low level of local entry barriers discussed above, online services now provide an additional constraint that was less strong when the OFT reached its SLC decision regarding 3:2 areas in 2005 (see paragraph 58 above). Betfred referred to the decline in revenues from LBOs, as well as telephone betting, in recent years compared to an increase in internet betting revenues. One third party also suggested that the internet channel is growing at the expense of the LBO channel and, in particular, the telephone channel.
82. However, as noted above (paragraph 18-19), the OFT does not have evidence to indicate that there is a causal link to explain this relationship between revenue figures. This applies in particular for the relationship between internet revenue growth and LBO revenue decline, which is not strong. The OFT also notes that for at least a substantial group of customers LBOs may offer a retail service that is different from the internet. The OFT therefore considers that it does not have sufficient evidence to rely on internet betting and gaming as a sufficient constraint on LBOs to conclude that there is not a realistic prospect of an SLC in 3:2 areas within 400 or 200 metres.

Conclusion regarding 3:2 overlaps

83. The OFT considers that the evidence discussed above suggests that the entry into force of the GA05 lowered barriers to expansion within or across local areas for existing bookmakers. This is shown by the fact that licences for new LBOs are now generally granted (albeit in some cases only after appeal) and the number of new licences that were issued in the licensing districts the OFT received information for. However, it is unclear to what extent local entry will continue to take place now that the GA05 has been in force for some time. The OFT also notes that there are some indications to suggest that non-regulatory barriers to local entry continue to exist, in particular the cost and time needed for opening new LBOs and the potential difficulties of finding suitable vacant properties. Further, it is not clear that the likelihood of entry is significant. Therefore, even if some new local entry can be expected and vacant suitable properties may exist in some local areas, the OFT considers that there is insufficient evidence that there is now sufficient prospect of timely and likely local entry to reject the possibility of a realistic prospect of an SLC in areas where only one competitor for the merged parties remains within a radius of 400 or 200

metres. This also applies to the limited extent of the constraint offered by internet gambling.

UNILATERAL EFFECTS – on-course betting

84. At the time of the Acquisition, Betfred had LBOs at two racecourses, Haydock Park and Kempton Park. The Tote had LBOs at several racecourses, including Haydock Park, but not at Kempton Park, in addition to its pool betting service at all racecourses. There is therefore an overlap between the merged parties for fixed odds betting services at Haydock Park. There is no overlap in gaming services, as Tote's LBO at Haydock Park did not offer these services.
85. Betfred submitted that there are several reasons why this overlap does not give rise to competition concerns:
- The merged parties' LBOs at Haydock Park face competition from several individual bookmakers in the betting ring, including their national competitors. These bookmakers focus on fixed odds betting for horseracing, but they also take non-horseracing bets.
 - Competition from ring bookmakers on non-horseracing betting may be limited, because for example they do not generally display the relevant odds. However, horseracing betting is such an important part of betting activities at racecourses (around 92 per cent of all betting at Haydock Park) that the fierce competition for horseracing bets drives all non-price aspects of competition in on-course LBOs.
 - The activities of bookmakers in on-course LBOs are constrained by the fact that the operator of on-course LBOs is determined by racecourse owners, who generally use a process of competitive tendering. This was confirmed by a third party. Betfred provided several examples of racecourses switching LBO providers. The racecourse owner is paid a percentage of all amounts staked so has an interest in maximising the volume of betting rather than the margins on betting.
86. In view of the reasons above and also taking into account that the OFT did not receive any third-party concerns regarding LBO competition at racecourses, the OFT does not consider that the Transaction gives rise to a realistic prospect of an SLC in this regard.

UNILATERAL EFFECTS – telephone betting

87. Table 2 below shows Betfred's estimates of the shares of supply of the merged parties and their main competitors in telephone betting.

Table 2: Shares of supply in telephone betting in the UK (2010)

Supplier	Gross win (£m)	Share (per cent)
Betfred	[]	[0-5]
The Tote	[]	[10-20]
Combined	[]	[10-20]
William Hill	[]	[30-40]
Ladbrokes	[]	[15-25]
Coral	[]	[10-20]
Paddy Power*	[]	[10-20]

Source: Betfred.

* Paddy Power's gross win includes Ireland. However, if its gross win in the UK only was taken, this would not significantly change the merged parties' shares. This was confirmed by information from Paddy Power.

88. This table shows that the merged parties' combined share of supply is around [10-20] per cent with an increment of only [0-five] per cent. There are four competitors that have a larger or similar position in the market. This was broadly confirmed by third parties. Betfred further submitted that these shares do not take into account telephone betting services provided by suppliers such as Bet365, Stan James and Blue Square.
89. The merged parties' combined share is not at a level that normally gives rise to competition concerns.⁵¹ As also no competition concerns were raised in relation to the Transaction's impact on telephone betting services, the OFT considers that the Transaction does not raise competition concerns in this regard.

UNILATERAL EFFECTS – internet betting and gaming

90. Table 3 below shows Betfred's estimates of the shares of supply of the merged parties and their main competitors in internet gambling services on a worldwide basis.

⁵¹ *Merger Assessment Guidelines*, paragraph 5.3.5.

Table 3: Shares of supply in internet betting and gaming in the UK (2010)

Supplier	Gross win (£m)	Share (per cent)
Betfred	[]	[0-5]
The Tote	[]	[0-5]
Combined	[]	[0-5]
Betfair	[]	[25-35]
William Hill	[]	[20-30]
Ladbrokes	[]	[10-20]
Coral	[]	[10-20]
Paddy Power	[]	[5-15]

Source: Betfred.

91. This table shows that the merged parties' combined share of supply on this basis is very small at around [0-five] per cent, and that there are several competitors that are significantly larger than the parties. Betfred noted that this is a conservative estimate, as it only takes into account sales by the major bookmakers with a UK presence in LBOs and UK-based online bookmaker Betfair. Betfred did not provide shares on an EEA-wide basis, but as the shares above only take UK-based bookmakers into account it is very unlikely that the merged parties' position would be significantly different on this basis. Betfred further provided conservative estimates of the merged parties' share when betting and gaming are considered separately, which are also at a low level.
92. The merged parties' combined shares are not at a level that normally gives rise to competition concerns. As also no competition concerns were raised in relation to the Transaction's impact on internet betting and gaming services, the OFT considers that the Transaction does not raise competition concerns in this regard.

BARRIERS TO ENTRY

93. As noted above, Betfred submitted that barriers to entry are low, in particular following the entry into force of the GA05. This applies in particular to expansion by existing bookmakers opening new LBOs, which is discussed in detail above. This section will discuss barriers to entry by new bookmakers (entry 'from scratch').

94. Some third parties indicated that barriers to entry for a new bookmaker have in fact increased since the GA05, in particular in the form of significantly higher overall licensing costs. This was also found by the evaluation of the impact of the OFT's *William Hill/Stanley* decision, which referred in particular to the significantly higher overall licensing costs, which presented a barrier in particular for small bookmakers because they have fewer LBOs over which to spread the cost of the operating licence.⁵²
95. Third parties further identified the following barriers to entry for new bookmakers:
- costs of a centralised trading infrastructure and internal bookmaking expertise
 - costs of regulatory and compliance burdens, including licensing, and
 - costs and time involved in establishing consumer trust in a brand.
96. The OFT did not receive evidence of recent significant entry by new operators of LBOs.
97. The OFT therefore considers that there is insufficient evidence that entry will be sufficiently timely, likely and sufficient to exert a significant competitive constraint on the merged firm.⁵³

VERTICAL ISSUES

98. The Transaction creates a vertical link between Betfred and its main competitors due to the Tote's exclusive seven-year licence on pool betting on horseracing (which before the Transaction was a statutory monopoly) (see further at paragraph 11 above). The Tote allows competing bookmakers to place bets on behalf of consumers into its pools via Tote Direct terminals that are present in virtually all LBOs, and via telephone and internet betting websites. The Tote further offers pool betting services on racecourses.
99. Betfred stated that liquidity is the single most important factor in the success of the Tote pool, because as more and larger bets are placed into the pool, the pool becomes more attractive to consumers due to the resulting increase in the size of the total payout. This was confirmed by a third party, which also noted that a larger pool would not always result in

⁵² Deloitte (footnote 28), page 34.

⁵³ See *Merger Assessment Guidelines*, paragraph 5.8.3.

larger individual payouts (because the total payout is likely to be shared between a larger number of winners), but does invariably achieve more stable payouts. The revenue from the pool is in the form of a fixed percentage (which varies depending on the type of pool bet), so Betfred stated that therefore its interest is to attract as much money as possible to the pool.

100. Betfred submitted that the Transaction has not changed competitive conditions or incentives with respect to pool betting, as both before and after the Transaction the bookmaker offering pool betting also operates LBOs as well as telephone and internet betting services. However, as a result of the Transaction the size of the merged firm's LBO estate has more than doubled and revenues from telephone and, in particular, internet betting services have also increased significantly compared to the position of the Tote pre-Transaction.

101. The OFT has therefore considered three possible concerns with regard to the Tote's pool betting services. To assess the risk of an SLC, for each concern the OFT has considered the following questions:⁵⁴

- Ability: would the merged firm have the ability to harm rivals?
- Incentive: would it find it profitable to do so?
- Effect: would the effect of any action by the merged firm be sufficient to reduce competition in the affected market such that there is a realistic prospect of an SLC?

Foreclosure of competing bookmakers

102. The first vertical concern considered by the OFT is that as a result of the Transaction, Betfred may stop offering the pool betting service through competing LBO bookmakers (via its Tote Direct terminals) or online bookmakers, or to offer this service at worse terms. Betfred submitted that none of the questions at paragraph 101 above can be answered in the affirmative and that therefore there is no risk of an SLC resulting from the Transaction in this respect.

103. According to Betfred, due to the nature of pool betting its incentive is to maximise the total size of the pool (see paragraph 99 above). As [] per cent of the pool bets placed through the Tote Direct terminals come from

⁵⁴ *Merger Assessment Guidelines*, paragraph 5.6.6.

competing LBO bookmakers and their internet sites and only [] per cent from Betfred, Betfred submitted that it is not credible that it could recover profits lost from denying access to one or more competitors through its own LBO estate. Betfred further stated that the Transaction has not resulted in a significant change in incentives given that the volume of Tote Direct pool bets generated by the Tote Direct operator itself (i.e., the Tote pre-Transaction and the merged firm post-Transaction) has remained very small. The same reasoning applies to internet bookmakers. Betfred further submitted that it does not have an incentive to raise the deduction it takes from the pool, as this would make the pool less attractive to punters.

104. As to ability to harm rivals, Betfred submitted that pool betting is such a small activity in LBOs compared to fixed odds betting that a withdrawal of Tote Direct access from competing LBOs could not affect their ability to compete effectively. It stated that the vast majority of consumer funds are placed on fixed odds bets and that, for example, []. Betfred further submitted that competing bookmakers' cost of Tote Direct terminals is extremely small compared to their LBO costs and is mainly related to the integration of Tote Direct into their own EPOS systems. Also, even if Betfred reduced the commissions paid to competing bookmakers on pool bets placed through these bookmakers, this would not be passed on to consumers as it would only affect the distribution of the deduction from the pool between Betfred and the relevant bookmaker.

105. Betfred also noted that the importance of the widest possible pool liquidity is shown by competing bookmakers' negotiating leverage, as evidenced by the fact that they retain the majority of the deduction from the pool. For example, [] currently retains between [] and [] per cent of the deduction depending on the type of pool bet. As a further [] per cent of the deduction goes to taxes and levies, Betfred retains only a small part of the deduction to cover its costs.

106. Finally, Betfred submitted that there would be no effect on competition between it and competing bookmakers even if it were to stop offering the Tote Direct pool betting service or to worsen the terms on which it makes this service available. It referred to the fact that it does not compete with other bookmakers to provide a pool betting service due to the exclusive licence, as well as to the lack of impact on LBO competition and on consumers as discussed above.

107. The OFT did not receive evidence that Betfred's submissions were incorrect in any material respect. As they focussed on the provision of Tote Direct terminals to Betfred's main competitors, the OFT also considered whether there could be a concern regarding the provision of these terminals to small, independent bookmakers. However, as the evidence shows that pool betting is a very small part of an LBO's offer, the OFT believes that Betfred in any case does not have the ability to significantly harm such bookmakers.

108. For the reasons set out above, the OFT does not consider that there is a realistic prospect of an SLC as a result of the Transaction in this respect.

Pool betting services at racecourses

109. The second possible vertical concern that was considered by the OFT is that Betfred may reduce its pool betting service at less profitable racecourses, for example by reducing the number of windows in order to reduce costs. The OFT considered whether on this basis the Transaction may significantly affect competition between racecourses.

110. Betfred submitted that the Transaction has not resulted in a change in its incentive, as this continues to be to match the capacity of the pool betting facilities at the racecourse with the estimated demand at the course on specific race days. Betfred also referred to its incentive to maximise the size of the pool and the risk of losing betting revenue to fixed odds bookmakers on racecourses if it reduces the availability of pool betting.

111. The OFT notes that before the Transaction the Tote was generally run for the benefit of racing while Betfred does not have this relationship with racing. However, the OFT does not consider that this change in relationship to racing is likely to result in a significant change in incentives, given that even before the Transaction the Tote would have considered the costs of providing pool betting services at individual racecourses at specific meetings. In addition, after the Transaction, under the terms of its exclusive licence [].

112. Betfred further submitted that a reduction in pool betting services at a racecourse is unlikely significantly to affect attendance at that course, since the on-course offering of pool betting services is not an important factor in a punter's decision to visit a racecourse. Betfred also noted that in any case competition between racecourses is limited, as there are only rare

occasions where racecourses in a particular area hold race meetings on a given day, and that Betfred does not determine the racing schedule. In addition, Betfred does not have any ownership interests in racecourses, so even if it could distort competition between racecourses, it is very unlikely that the only resulting benefit, in increased betting revenues from specific racecourses, would be sufficient for it to engage in a reduction in pool betting services.

113. For the reasons set out above, the OFT does not consider that Betfred's limited ability to reduce pool betting services at specific racecourses after the Transaction gives it a significant ability or incentive to harm its competitors, nor that there is a realistic prospect that this results in an SLC in relation to racing or bookmakers.

Competitive advantage due to insight in competing LBOs' business

114. The third vertical concern considered by the OFT was raised by a competing bookmaker. This concern was that Betfred has gained a competitive advantage through its ability to deduce how busy competing LBOs are by the number and size of pool bets placed through the Tote Direct terminals in those LBOs. The concern was that Betfred may use this information to target expansion at the busiest areas.

115. However, Betfred stated that its major competitors provide only coded information via Tote Direct and that Betfred cannot identify the location of the LBOs that specific pool bets are placed from. This was not denied by the bookmaker that identified the concern. Although this does not apply to around 450 small independent LBOs, where Betfred can identify which LBOs bets come from, Betfred submitted that the resulting benefit is minimal due to the small size of pool betting revenues in LBOs and the fact that bookmakers can and do employ other methods to research how busy individual LBOs are, such as regular visits. Betfred also stated that even if this information would give a significant advantage to Betfred, this is not a substantial change resulting from the Transaction (as the Tote also had LBOs pre-Transaction) and would in fact be pro- rather than anti-competitive.

116. Therefore, the OFT does not believe that the Transaction gives Betfred the ability to significantly harm its competitors or that there is a realistic prospect that this results in an SLC.

THIRD-PARTY VIEWS

117. Third-party views have been discussed above where relevant. The OFT received only limited concerns about the Transaction and no concerns were raised about the impact on LBO competition in any specific local areas.

ASSESSMENT

118. The merged parties overlap in the provision of betting and gaming services in the UK, specifically fixed odds betting services in off-course LBOs, by telephone and on the internet; gaming services in off-course LBOs and on the internet; and to a limited extent, fixed odds on-course betting through Betfred's and the Tote's LBOs at Haydock Park racecourse, in addition to the Tote's pool betting service at this racecourse.

119. The merged parties have a relatively small share of betting and gaming in LBOs at a national level, and there is no reason to believe this is different in specific regions. On a local level, using the MMC and OFT approach following in previous decisions as a starting point, the OFT considered the number of competitors present in radii of 400 and 800 metres around one of the parties' LBOs. In a radius of 400 metres, the Transaction results in a reduction from two to one in the number of competing LBO fascias in nine areas, listed at paragraph 54 above, and a reduction of three to two in a further 12 areas, listed at paragraph 57 above, where the OFT considers there are significant competition concerns. There are no two to one reductions in a radius of 800 metres.

120. However, the previously used MMC and OFT approach does not have specific regard to geographic proximity between the merged parties' LBOs. In recent cases that have considered competition between local retail outlets, the OFT has sought to allow for geographic proximity in its consideration of the impact of the merger on competition in local areas because the strength of the constraint lost by a merger will often be a function of how closely located the merging parties' stores are to each other and compared to competing stores.

121. In the present case, the importance of geographic proximity when assessing the strength of competition between LBOs in specific areas was suggested by some competing bookmakers, who indicated that they would regard LBOs located within 200 or 250 metres from their own LBO as close competitors, particularly in urban areas. In the absence of specific

survey evidence or strong evidence supporting Betfred's submissions that the previously used approach is a sufficient basis for an assessment of local competition, and taking these third-party comments into account, on a cautious basis the OFT has sought to take account of geographic proximity in the present case where within 200 metres of one of either of the parties' LBOs the other merged party's LBO is geographically closest. In this radius of 200 metres, the Transaction results in a reduction from two to one in the number of competing LBO fascias in three additional areas, listed at paragraph 61 above, and a reduction of three to two in one further area, set out at paragraph 63 above, where the OFT considers there are significant competition concerns.

122. The entry into force of the GA05 has reduced some of the barriers to entry into local areas because it removed the ability of local authorities to refuse licence applications for new LBOs if, in their view, demand in the local areas was already met by the existing LBOs in that area. As a result, these licences are now almost invariably granted. However, the OFT considers that there is insufficient evidence that non-regulatory barriers to local entry, such as the cost and time needed to open new LBOs and the potential difficulties of finding suitable vacant properties in at least some areas, are so low as to remove competition concerns where no or only one competitor remains present in a specific area after the Transaction. In addition, the OFT further considers that the GA05 is likely to have increased barriers to entry for new bookmakers, as licensing costs appear to have increased significantly.
123. The merged parties' shares of supply in telephone betting services and internet betting and gaming services were relatively low and there was no indication that the Transaction gives rise to competition concerns in this respect. The Transaction also did not raise concerns in relation to the overlap between the merged parties' LBOs at Haydock Park racecourse.
124. The OFT also considered vertical issues resulting from the Tote's exclusive licence for pool betting services, but it did not find that after the Transaction the merged firm would have either the ability or incentive to harm rivals to the extent that it could give rise to significant competition concerns.
125. 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 as a

result of the reduction in competing LBO fascia in the 25 local areas noted above.

UNDERTAKINGS IN LIEU

126. Where the duty to make a reference under section 22(1) of the Act applies, pursuant to section 73(2) of the Act the OFT may, instead of making such a reference, and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the parties concerned undertakings as it considers appropriate.
127. The OFT has therefore considered whether there might be undertakings in lieu of reference ('UILs') that would address the competition concerns outlined above. The OFT's guidance states that undertakings in lieu of reference are appropriate only where the remedies offered to address the competition concerns are clear cut and are capable of ready implementation.⁵⁵
128. Betfred offered to divest either the Betfred or the Tote LBO in each of the 25 local areas in which the OFT has identified competition concerns (as listed at paragraphs 54, 57, 61 and 63 above). As a structural remedy that will, in each local area, remove the overlap between the parties, the OFT considers that the proposed UILs are sufficient in principle to act as a clear-cut and comprehensive remedy to the competition concerns identified by the OFT.
129. In terms of whether the UILs are readily implementable, the OFT is concerned that the number of possible buyers could be low. As such, the OFT has considered whether an up-front buyer requirement is necessary in this case.
130. An up-front buyer requirement means that the proposed divestment purchasers will have committed contractually, subject to formal OFT approval of the UILs, to acquiring the relevant divestment businesses before the OFT accepts the UILs. This means that the OFT will accept UILs only where a provisional sale in the upfront buyer areas has been agreed, thereby demonstrating that a sale to a suitable purchaser is achievable. It

⁵⁵ *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance* (OFT1122, December 2010), paragraph 5.7.

also means that the OFT will consult publicly on the suitability of the proposed divestment purchasers, as well as any other aspects of the draft undertakings, during the public consultation period. The OFT's guidance states that it will seek an up-front buyer where the risk profile of the remedy requires it, for example where the OFT has reasonable doubts with regard to the ongoing viability of the divestment package and/or there exists only a small number of candidate suitable purchasers.⁵⁶

131. Betfred submitted that it has already received unsolicited approaches from [] candidate purchasers. However, [], the OFT has sufficient residual concerns to seek an up-front buyer on a cautious basis. The OFT considers that it is reasonable and proportionate for it to seek an up-front buyer in respect of all 25 of the LBOs to be divested. The OFT has therefore decided that any UILs that it accepts should include an up-front buyer provision.

132. In particular given the OFT's view that it will require Betfred to identify buyers for all the local areas on the basis of an up-front buyer, the OFT considers it reasonable to leave to Betfred the initial choice as to whether it divested the Betfred or the Tote LBO in each area.

DECISION

133. The OFT's duty to refer the completed merger between Betfred and the Tote to the Competition Commission pursuant to section 22 of the Act is suspended because the OFT is considering whether to accept undertakings in lieu of reference under section 73 of the Act.

⁵⁶ *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance*, paragraphs 5.31–5.37.