

Anticipated acquisition by CVC Capital Partners SICAV-FIS S.A. of Sky Bet

ME/6508-14

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 5 March 2015. Full text of the decision published on 31 March 2015.

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

SUMMARY

1. CVC Capital Partners SICAV-FIS S.A. (**CVC**) has agreed to acquire a majority stake in the Sky Bet division of Sky plc (**Sky Bet**) through its wholly owned subsidiary (a special purpose vehicle) Cyan Bidco Limited (the **Merger**).ⁱ CVC and Sky Bet are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) considers that the Parties will cease to be distinct as a result of the Merger, that the turnover test is met and that accordingly arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. Sky Bet is active in the provision of online gaming and betting services in the United Kingdom (**UK**).
4. CVC is a private equity firm which holds a controlling interest in a number of companies in various industries, including Skrill Limited (**Skrill**), an online payment solutions provider that currently provides online payment services to Sky Bet and other businesses. On 26 November 2014, Skrill entered into an agreement to acquire Smart Voucher Limited (trading as **Ukash**) which also provides online payment solutions to online betting and gaming service providers. The CMA has taken this proposed acquisition into account as part of its counterfactual.
5. Online betting and gaming service providers offer their customers a range of different payment methods including credit and debit card payments, bank transfers, payments with electronically stored money ('virtual purses' or 'e-

wallets') and voucher payment systems. Skrill and Ukash provide online payment services (Skrill through virtual purses and voucher payments, and Ukash through voucher payments) to merchant customers including to online betting and gaming service providers. Third party online betting and gaming service providers informed the CMA that payments through virtual purses and vouchers accounted for a very small proportion of overall payments in online betting and gaming in the UK.

6. As a result of the Merger, the merged entity will therefore be active upstream in the provision of online payment services to online betting and gaming service providers, and downstream in the provision of online betting and gaming services to betting and gaming customers. The CMA assessed the competitive effects of the Merger using these descriptions of the Parties' activities as the relevant product frames of reference. The CMA did not find it necessary to reach a conclusion on the product frame of reference as no competition concerns arise on any plausible basis.
7. The CMA assessed the Merger on a UK-wide basis whilst noting that online betting and gaming transactions, involving online payment services, can be international.

Competitive effects

8. There is no horizontal overlap between the Parties' commercial activities in the UK.
9. The CMA therefore assessed any vertical effects arising as a result of the Merger, considering specifically (a) input foreclosure of Sky Bet's rival online betting and gaming service providers, and (b) customer foreclosure of Skrill's/Ukash's rival payment service providers.

Input foreclosure

10. The CMA assessed whether the Parties would have the ability or incentive to foreclose Sky Bet's competitors from competing for customers that use online payment systems to bet or game. The CMA found that payments by virtual purses and vouchers constitute a very small proportion of the payments by and to online betting and gaming customers. The CMA also found that there are alternative providers of virtual purses, and other alternative payment solutions for betting and gaming customers. Therefore, the CMA considers that the Parties lack the ability to engage in input foreclosure.

Customer foreclosure

11. The CMA assessed whether the Parties would have the ability or incentive to foreclose Skrill's and Ukash's rivals through either lowering the prices Sky Bet pays to their rivals or by stopping using their payment services altogether.
12. Skrill and Ukash, and their competitors, provide virtual purses and voucher payments to a number of different merchants, including online betting and gaming service providers. The CMA received evidence that Skrill's and Ukash's rivals did not consider Sky Bet to be an important route to market because its custom only generated a low percentage of their overall revenue and they supply online payment services to a range of merchants. On this basis, the CMA found that the Parties lack the ability to engage in either partial or total customer foreclosure. As a result, the CMA considers that the Parties will not have the ability or the incentive to engage in customer foreclosure of Skrill and/or Ukash's competitors.
13. The CMA considers that these constraints, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of a substantial lessening of competition as a result of vertical effects.
14. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

15. The purchasing entity, Cyan Bidco Limited, is ultimately controlled by funds managed and/or advised by CVC. CVC holds controlling interests in a number of companies globally in various industries including Skrill, an online payment solutions provider that currently provides online payment services to online betting and gaming services. The turnover of Skrill in 2013 was around [X] worldwide and around [X] in the UK.
16. Sky Bet is a division of Sky plc and consists of Bonne Terre Limited, Hestview Limited, New Blue Limited and certain assets held by Sky plc. Sky Bet is active in the provision of online betting and gaming services in the EEA. The turnover of Sky Bet in 2013 was around [X] worldwide and around [X] in the UK.ⁱⁱ

Transaction

17. On 4 December 2014, CVC,ⁱⁱⁱ through Cyan Bidco Ltd, announced that it would acquire a 80% stake in Sky Bet from Sky plc by entering into a put and call option agreement for a consideration of around £750 million.

Jurisdiction

18. The CMA considers that the majority stake that CVC^{iv} (through Cyan Bidco Limited) will acquire in Sky Bet, will give CVC a controlling interest in Sky Bet. Therefore, as a result of the Merger, the enterprises of CVC and Sky Bet will cease to be distinct.
19. The UK turnover of Sky Bet exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
20. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
21. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 15 January 2015 and the statutory 40 working day deadline for a decision is therefore 12 March 2015.

Counterfactual

22. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it considers that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.¹
23. On 26 November 2014, Skrill entered into an agreement to acquire the entire shareholding of Ukash, which provides online payment solutions to online betting and gaming service providers through a voucher payment system. The

¹ *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).

CMA considers that the acquisition by Skrill of Ukash is likely to occur and, therefore, the CMA has considered the acquisition of Ukash by Skrill as part of the counterfactual, notwithstanding that this acquisition has not yet completed.^{2,3}

24. In this case, there is no evidence supporting a different counterfactual and the Parties and third parties did not put forward any alternative counterfactual.
25. The CMA therefore adopts the prevailing conditions of competition, including Skrill's anticipated acquisition of Ukash, as the counterfactual against which to assess the impact of the Merger.

Frame of reference

26. The CMA considers that market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgment. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.⁴
27. The Parties are active upstream in the provision of online payment services and downstream in the provision of online betting and gaming services.

Product scope

Downstream provision of online betting and gaming services

28. The Parties submitted that Sky Bet is active in the provision of online betting and gaming services to individuals that use online payment services to send and receive funds. In Lightcatch/Tote, the Office of Fair Trading (**OFT**, one of the CMA's predecessors) distinguished fixed odds betting, pool betting and

² [Merger Assessment Guidelines](#), paragraphs 4.3.25-26.

³ The CMA would also normally assess the impact of a merger against the alternative counterfactual that a parallel transaction does not proceed ([Merger Assessment Guidelines](#), paragraph 4.3.26). However, in the present case the CMA considers that this alternative counterfactual would raise fewer concerns given the overlap in online payment solutions between Skrill and Ukash, and the CMA has therefore not considered this counterfactual further in this decision.

⁴ [Merger Assessment Guidelines](#), paragraph 5.2.2.

gaming with separate distribution channels, including betting and gaming through the internet.⁵

29. Sky Bet and third party online betting and gaming service providers employ a range of online payment solutions. Third party online payment solution providers informed the CMA that, although a degree of differentiation exists in payment services, the providers and services do not differ between different types of online betting and gaming.

Upstream provision of online payment services

30. Third party online betting and gaming service providers informed the CMA that they use a wide range of payment methods to send and receive money from their customers including (credit/debit) card payments, bank transfers and virtual purses and voucher payments.
31. Skrill (through its Paysafecard product) and Ukash both provide voucher payment solutions. Skrill also provides virtual purses that allow individuals to pay for goods and services with electronically stored money. This is an internet based alternative to traditional money transfer methods and enables merchants to accept online payments from individuals through major payments cards, Skrill's own virtual purse and other local payment methods. The CMA notes that, although Ukash does not provide this service, Ukash's vouchers can be used to transfer money to virtual purses.
32. As the relationship between the Parties in this case is vertical and the potential concerns resulting from the Merger primarily relate to input foreclosure in the downstream market for the provision of online betting and gaming services, the CMA does not consider it necessary to conclude on the precise upstream market definition. Nevertheless, the CMA considered evidence on whether there is a wider product market of online payment services or whether there are separate frames of reference for virtual purses and for vouchers.
33. The CMA received some responses from Sky Bet's competitors that they consider the range of payment methods to be differentiated products within the same market rather than separate markets, and that betting and gaming

⁵ OFT decision regarding the completed acquisition by [Lightcatch Limited \(trading as Betfred\)](#) of [Tote \(successor Company\) Limited](#) (16 December 2011, paragraph 9). The CMA also notes that in [The Rank Group Plc/Gala Coral Group](#) (final report of 19 February 2013 by the Competition Commission (CC) (one of the CMA's predecessors)), the CC concluded that online betting or gaming should not be included in the same market as the 'brick and mortar' casinos.

customers' choices for a particular payment option are commonly a matter of preference.

34. Third parties noted that payments through virtual purses mainly differ from debit or credit card payments and bank transfers in that they can act as an intermediary payment method by betting and gaming customers who do not want to use a bank account or payment card directly for betting or gaming related transactions.
35. With respect to voucher based payment solutions, third parties noted that vouchers, for instance in conjunction with virtual purses, are a means of payment for those betting and gaming customers who cannot use a bank account ('un-banked') or payment card ('under-banked'). The vouchers can be purchased using cash in such places as convenience stores and petrol stations and redeemed online to pay for goods or services, or to fund a virtual purse.

Conclusion on product frame of reference

36. The CMA assessed the product scope of the frame of reference upstream as the provision of online payment services employed by online betting and gaming service providers and, on a cautious basis, the CMA focused its assessment on the provision of virtual purses and voucher based payment solutions given that these are the services offered by Skrill and Ukash. The CMA did not consider it necessary to reach a conclusion on the precise upstream frame of reference, since, as set out below, no competition concerns arise on any plausible basis.
37. The CMA examined the potential effects of the Merger using a downstream product frame of reference of online betting and gaming services. The CMA did not consider it necessary to reach a conclusion on the precise downstream frame of reference since, as set out below, no competition concerns arise on any plausible basis.

Geographic scope

Upstream provision of online payment services

38. The Parties submitted that the geographic scope for the provision of online payment services is at least national in scope, and could be wider.
39. Online payment service providers commonly allow merchants and individuals to send and receive payments internationally. For instance, Skrill offers a worldwide payment network, enabling international transactions.

40. The CMA notes that e-money institutions active in the UK and authorised in another EEA state are not obliged to register with the Financial Conduct Authority.
41. On a cautious basis, the CMA assessed the relevant geographical scope in relation to the upstream provision of online payment services to be those that are providing services to UK betting and gaming customers.

Downstream provision of online betting and gaming services

42. The Parties submitted that the geographic scope for the provision of online betting and gaming services is at least national in scope, and possibly worldwide.
43. The European Commission (EC) previously assessed the relevant geographical scope of betting or gaming markets as national because of the differences in demand and in national regulatory and concession systems.⁶ The OFT previously considered internet betting as at least EEA wide, though it did not conclude on the exact geographical scope.⁷
44. The CMA notes that the Gambling (Licensing and Advertising) Act 2014 provides that only gambling operators licensed by the UK Gambling Commission (including offshore operators) are able to advertise gambling services to consumers in Great Britain or provide them with remote gambling facilities.⁸
45. On a cautious basis, the CMA has assessed the relevant geographical scope in relation to the downstream provision of online betting and gaming services to be those that are providing services to UK betting and gaming customers.

Conclusion on geographic frame of reference

46. For the reasons set out above, on a cautious basis, the CMA examined the potential effects of the Merger using the UK as the geographic frame of reference. However, it was not necessary for the CMA to reach a conclusion on the geographic frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

⁶ Case No COMP/M.4114 – Lottomatica/GTECH, EC decision of 19 May 2006.

⁷ [Lightcatch/Tote](#), paragraphs 37 to 40.

⁸ A separate regulatory scheme is in place in Northern Ireland.

Conclusion on frame of reference

47. For the reasons set out above, the CMA examined the potential effects of the Merger using the following frames of reference:
- (a) The upstream provision of online payment services to UK betting and gaming customers.
 - (b) The downstream provision of online betting and gaming services to UK betting and gaming customers.

Competitive assessment

Horizontal unilateral effects

48. There are no horizontal overlaps between the Parties' activities. The CMA considers therefore that the Merger does not give rise to competition concerns in relation to horizontal unilateral effects.

Vertical effects

49. Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between an upstream supplier and a downstream customer.
50. Vertical mergers may be competitively benign or even efficiency-enhancing, but in certain circumstances can weaken rivalry, for example when they result in foreclosure of the merged firm's competitors. The CMA only regards such foreclosure to be anti-competitive where it results in a substantial lessening of competition (**SLC**) in the foreclosed market(s), not merely where it disadvantages one or more competitors.⁹ In the present case, the CMA considers whether the Parties could conduct partial or total input foreclosure and partial or total customer foreclosure.
51. The CMA's approach to assessing vertical theories of harm is to analyse (a) the ability of the merged entity to foreclose competitors, (b) the incentive of it to do so, and (c) the overall effect of the strategy on competition.¹⁰ This is discussed below.

⁹ In relation to this theory of harm 'foreclosure' means either foreclosure of a rival or to substantially competitively weaken a rival.

¹⁰ [Merger Assessment Guidelines](#), paragraph 5.6.6.

Input foreclosure

52. The CMA examined whether the Parties could reduce competition to Sky Bet downstream by increasing the prices Skrill and/or Ukash charge for the provision of their services to Sky Bet's rival online betting and gaming service providers (partial input foreclosure) or by stopping supplying these rivals altogether (total input foreclosure).

Ability

53. The Parties submitted that [X] of all payments by value received from or sent to Sky Bet's betting and gaming customers were processed by debit/credit card and only [X] of Sky Bet's total payments received or sent was processed by Skrill. Sky Bet does not currently use Ukash at all.
54. Third party online betting and gaming service providers reported that Skrill and Ukash together processed between [X]% and [X]% of payments received from or sent to online betting and gaming customers in the UK in 2013. However, they informed the CMA that Skrill's Paysafecard and Ukash's voucher payment systems make up a small proportion of these payments.
55. The Parties estimated that Skrill and Ukash together have less than a 5% share in the provision of online payment services, but noted that there is a lack of reliable market data.
56. Third party online betting and gaming service providers informed the CMA that their customers use a number of alternative virtual purse providers, such as PayPal. Many of Sky Bet's competitors perceived online betting and gaming customers' choice of payment option as a matter of personal preference. In addition, they reported that online betting and gaming customers who use virtual purses and voucher payments are able to switch to a number of alternative payment methods, such as debit/credit cards, bank transfers and pre-payment cards.
57. Two competitors of Sky Bet told the CMA that Ukash and Skrill's Paysafecard was the only voucher based payment method they currently used. They were concerned that the group of 'un-banked' and 'under-banked' individuals, who make up a small proportion of total voucher users, may not be able to switch to other means of payment, as would be the case for other customers, so any foreclosure by Skrill and Ukash would reduce their ability to compete with Sky Bet for these customers. The CMA therefore considered whether the merger may raise concerns specifically for these customers. In this regard, the CMA did not receive any evidence to suggest that voucher payment services providers are able to price discriminate between different customer groups in

a way that would allow them to specifically target ‘un-banked’ or ‘under-banked’ customers. In addition, third party online betting and gaming providers informed the CMA that alternative payment methods for the ‘un-banked’ and ‘under-banked’ individuals who currently use voucher payments include pre-paid payment cards and the ‘PayPoint’ infrastructure. The CMA also notes that one online betting and gaming service provider has an in-house voucher payment scheme in the UK.

- *Conclusion on ability*

58. Based on the evidence set out above, the CMA considers that the Parties do not have the ability to engage in input foreclosure of online payment solutions to Sky Bet’s competitors as there are alternative virtual purse providers and alternative methods of online payments available to online gaming and betting providers and their customers. In addition, the CMA notes that, even if there were foreclosure in this way, Sky Bet’s competitors would still be able to compete for the vast majority of customers who do not use virtual purses or vouchers.

Incentive

59. In assessing whether the Parties have any incentive to foreclose competitors, the CMA considered:
- (a) the loss upstream to Skrill and Ukash from other online gaming and betting providers, or their customers, switching to alternative payment service providers if the Parties increase the price¹¹ of Skrill’s and Ukash’s services or cease to supply these services to other online betting and gaming providers; and
 - (b) the downstream gain to Sky Bet from customers switching to Sky Bet from other online gaming and betting services.
60. As set out above, Skrill and Ukash are two of many online payment services available to online betting and gaming service providers, and together they have an estimated share of less than 5% in the total provision of these services. The CMA therefore considers that the gain to Sky Bet from customers switching from other online gaming and betting services as a result of the input foreclosure would be limited. Moreover, the CMA notes that Sky Bet does not currently provide Ukash services to its customers.

¹¹ In the form of an increased transaction fee to merchant customers or a fee levied on online betting and gaming customers.

61. However, as the CMA does not consider the Parties to have the ability to engage in input foreclosure strategies, it has not found it necessary to conclude on whether they have the incentive to do so.

Effect

62. As the CMA does not consider the Parties to have the ability to engage in input foreclosure strategies, it has not found it necessary to analyse the effects of these strategies.

Conclusion on input foreclosure

63. For the reasons set out above, the CMA considers that the Parties have no ability to foreclose competition in the downstream online betting and gaming market. The CMA therefore finds that the Merger does not give rise to a realistic prospect of an SLC in relation to input foreclosure.

Customer foreclosure

64. The CMA examined whether the Parties could reduce competition to Skrill and Ukash upstream by Sky Bet lowering the prices it pays Skrill's and Ukash's rivals for the provision of payment services to Sky Bet (partial customer foreclosure), or by stopping using Skrill's and Ukash's rival payment services altogether (total customer foreclosure).¹²

Ability

65. The CMA considered whether Sky Bet is an important route to market for virtual purse and voucher payment providers. Skrill's virtual purse and voucher payment competitors supply online payment services to a range of merchants, not solely online betting and gaming service providers. As discussed above, Sky Bet estimated that it has a [5–10]% share in the online betting and gaming market and third party online payment providers told the CMA they did not consider Sky Bet as an important customer. For these reasons, the CMA concludes that Sky Bet is not an important route to market for Skrill's and Ukash's competitors.
66. Third parties did not raise concerns in relation to any possible customer foreclosure strategy by the Parties.

¹² [Merger Assessment Guidelines](#), paragraph 5.6.13 (second bullet point).

67. For these reasons, the CMA considers that the Parties have no ability to foreclose Skril's and Ukash's rivals from accessing online betting and gaming service providers.

Incentive and effect

68. As discussed above, the CMA considers the Parties to have no ability to implement customer foreclosure strategies. Therefore, the CMA does not find it necessary to conclude on the incentive or effect of such strategies.

Conclusion

69. For the reasons outlined above, the CMA considers that the Parties do not have the ability to engage in (partial or total) customer foreclosure of Skril's and Ukash's rivals. The CMA therefore finds that the Merger does not give rise to a realistic prospect of an SLC in relation to customer foreclosure.

Conclusion on vertical effects

70. On the basis of the evidence and reasoning set out above, the CMA considers that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects in relation to (a) the upstream provision of online payment services to UK betting and gaming customers or (b) the downstream provision of online betting and gaming services to UK betting and gaming customers.

Commercially sensitive information

71. The CMA also assessed whether the Merger, which results in the vertical integration of the Parties, may allow the Parties to gain access to commercially sensitive information about the activities of non-integrated online betting and gaming rivals, allowing it unilaterally to compete less aggressively in the market for online betting and gaming services or otherwise to put competitors at a competitive disadvantage.¹³ Two online betting and gaming service providers raised this concern.
72. The Parties submitted that disclosure by Skril and Ukash of transaction data to Sky Bet would only give Sky Bet limited, if any, insight into commercially relevant information (ie not into profits or margins). Further, Skril and Ukash users represent only a [] proportion of the customers of online betting and gaming providers (see paragraph 53 above).

¹³ [Merger Assessment Guidelines](#), paragraph 5.6.13 (fifth bullet point).

73. In addition, the Parties submitted that there are contractual protections for merchant customers, certain Financial Conduct Authority regulations and the Data Protection Act 1998 which limit or exclude the use of sensitive information, including between Sky Bet and Skrill/Ukash.
74. For these reasons, the CMA considers that the Merger will not result in the Parties (including Ukash) gaining access to, or being able to use, sensitive information that gives material insight into their competitors' businesses such that it could give rise to a realistic prospect of an SLC in the downstream online betting and gaming market.

Barriers to entry and expansion

75. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient.¹⁴
76. The Parties submitted that barriers to entry and expansion into online betting and gaming are relatively low and that entry using a 'white label' product has successfully occurred in the market. In addition, there would be low switching costs for betting and gaming customers and 'multi-homing' among customers is common (ie using more than one betting or gaming service).
77. Third parties told the CMA that the market for online payment services is relatively young and is characterised by a high degree of innovation and a large number of providers.
78. The Parties also submitted that the market for online payment services is characterised by fast growth and strong competition. In addition, e-money issuers licensed in any EEA state can offer their services across the region without needing to obtain any other authorisations.
79. The CMA notes this evidence but has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

Third party views

80. The CMA received responses from a variety of third parties, including competitors involved in the upstream provision of online payment services to

¹⁴ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

UK betting and gaming customers, and competitors involved in the downstream provision of online betting and gaming services to UK betting and gaming customers.

81. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

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

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

Andrew Wright
Director, Mergers Unit
Competition and Markets Authority
5 March 2015

ⁱ The parties noted that CVC agreed to acquire sole control of Sky Bet through a special purpose vehicle owned by certain funds managed and advised by CVC, Cyan Bidco Limited. Therefore, references to CVC acquiring Sky Bet should instead be to these CVC funds acquiring Sky Bet.

ⁱⁱ The parties note that the turnover figures included in this paragraph are in respect of Sky Bet's financial year ended 30 June 2014.

ⁱⁱⁱ Please see end note i above.

^{iv} Please see end note i above.