

Anticipated acquisition by Aldersgate Investments Limited of Arena Leisure plc

ME/5352/12

The OFT's decision on reference under section 33 given on 26 March 2012. Full text of decision published 2 April 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. **Aldersgate Investments Limited** (Aldersgate) is a company incorporated in the British Virgin Islands and is wholly owned by family trusts controlled by two individuals, David and Simon Reuben. Aldersgate owns **Northern Racing Limited** (Northern), an operator of 10 horse racecourses in the UK (it owns nine of these and manages the tenth, at Ffos Las in Wales). Northern owns two per cent of the horse racing broadcaster, Attheraces (comprising the television channel and the website).
2. **Arena Leisure plc** (Arena) owns and operates seven horse racecourses in the UK. It has a 45.85 per cent stake in Attheraces.¹ Moreover, Arena operates a catering and hospitality business, carries out property developments associated with racecourses, operates two golf courses and owns a hotel in Wolverhampton (and operates a second hotel at Lingfield Park).

TRANSACTION

3. On 13 January 2012 Aldersgate announced its offer (by way of a scheme of arrangement) to acquire all of the outstanding 70.2 per cent of shares in

¹ BSkyB also owns 45.85 per cent of Attheraces.

Arena that it does not already own. Apart from Aldersgate, the largest shareholders in Arena are Coatbridge Limited (with 11.19 per cent of shares) and Rumney Manor Limited (with 29.9 per cent of shares). Aldersgate has received irrevocable undertakings from these two shareholders to vote in favour of the scheme of arrangement so that Aldersgate will acquire full control of Arena.²

JURISDICTION

4. As a result of this transaction Aldersgate and Arena will cease to be distinct. Aldersgate already owns 29.8 per cent of Arena.³ The parties submitted that therefore Aldersgate can be presumed to have material influence over Arena (for example, it can block special resolutions). However, the parties also submitted that Aldersgate's shareholding does not confer on it any special rights. Therefore, the proposed transaction shifts it from having material influence to full control.
5. Arena's relevant turnover was around £72 million in the calendar year 2010 so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is satisfied.⁴
6. The OFT 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.

MARKET DEFINITION

Product scope

7. The parties overlap in the operation of racecourses in the UK. This comprises a number of possible markets including the provision of horseracing and the sale of media rights of horseracing (whether to be shown in licensed betting offices (LBOs) or via other channels).

² Statement by Aldersgate, 'Recommended cash offer by Aldersgate Investments Limited for Arena Leisure plc', 13 January 2012.

³ Via an affiliated company, Reuben Brothers Limited.

⁴ Comprising £62m from Arena itself and £10m from At The Races.

The provision of horseracing

8. The parties submitted that the appropriate frame of reference for this case is the operation of racecourses.
9. The OFT's market testing exercise revealed that most competing racecourse operators considered that racecourses do compete for racegoers to attend their course (although there may not be direct competition throughout the year). Further, these third parties generally thought that the fixtures offering was the key component in competing for racegoers. This includes whether a race is 'flat' racing (where the race is conducted on flat ground) or 'jump' racing (where horses are required to jump over hurdles or fences).⁵ Other components of competition between racecourses identified by these third parties were the quality of racing and the amount of prize money on offer.
10. The parties submitted that flat racing and jump racing can be considered to be different products. This is because jump racing is generally held in the winter months whereas flat racing is generally held in the summer months (and therefore at different times of the year there is little demand- or supply-side substitution between them), horses, trainers and jockeys generally specialise in either flat or jump racing and racecourses generally offer either flat only or jump only racing.⁶ Third parties generally agreed on the distinctions between flat and jump racing.
11. The OFT has little evidence that from the demand-side (from a racegoer's or punter's perspective) flat and jump racing are in different markets. However, one industry body told the OFT that there was little substitution by racegoers between jump and flat racing and, instead, a substantial number of racegoers are committed to a single code of racing. Another industry body told the OFT that there is strong anecdotal evidence that jump and flat racing attract different audiences.
12. Third party competitors agreed with these industry bodies. Almost all told the OFT that committed racegoers tend to have a preference for either jump or flat racing and there is little competition between them. Another

⁵ Jump racing is also known as National Hunt racing.

⁶ Although 15 of the 60 racecourses in Great Britain are dual purpose and therefore offer both flat and jump racing.

third party said the competition is most direct between racecourses when they offer racing of the same type.

13. A report by Deloitte, however, found that only around 30 per cent of racegoers attend flat or jump racing exclusively which indicates that there may be some demand-side substitution between the two codes of racing.⁷
14. Nevertheless, racecourses did tend to agree that when it came to other aspects of their offering, attracting sponsorships, corporate clients and customers using hospitality packages for example, the differences between flat and jump racing were less important. One third party said that in terms of attracting betting revenue there was little difference between jump and flat racing.
15. The OFT has not found it necessary to conclude on whether jump and flat racing are in the same or separate products markets. It has instead taken a cautious approach in this case and examined the proposed merger on the basis of flat racing being both in a separate market from jump racing and in the same market as jump racing in regard to competition for racegoers. In regard to other possible parameters of competition, such as for media or betting revenues, the OFT has not found it necessary to conclude on the product market in this regard and has not distinguished between jump and flat racing.
16. A further distinction made by the parties and third parties is between turf track racing and all weather ('AW') track racing. AW tracks are composed of a synthetic surface which allows racing to take place in all weather conditions including when there is frost and/or snow (which is not the case with turf racing) and it does not need the rest between race fixtures that turf tracks require. All jump racing is conducted on turf and so AW tracks only host flat racing. The parties submitted that racing on AW tracks is considered to be a lower grade of racing than flat racing at turf tracks, attendance at AW tracks is generally lower than that at turf tracks and that race attendees will generally have a preference for a turf or AW track. In addition, a substantial proportion of AW racing is held in the winter (when it has an advantage over turf racing) whereas turf flat racing takes place over the summer (and adjoining) months. AW racing takes place (among

⁷ Deloitte LLP, 'Racing for Change: Racing 2015 Key Findings', June 2011.

other times of the week) in the Monday – Wednesday periods of the week when, the OFT is told, turf racing is less likely to take place.

17. Third parties generally agreed that AW track racing did not compete strongly with turf track racing, especially for racegoers.
18. The OFT has not found it necessary to conclude on whether AW tracks are in the same market as turf tracks but instead has examined the merger on the basis of them being separate as well as together.

The sale of horseracing media rights

19. The parties submitted that the sale of horseracing media rights should be assessed on the basis of the sale of rights to LBOs and non-LBOs separately.
20. In 2004, in the context of a *Competition Act 1998* investigation, the OFT considered that the sale of media rights that are used to produce programming of British horseracing in the non-LBO channel was a distinct product market.⁸ However, when the OFT's case was challenged at the Competition Appeal Tribunal (CAT) the CAT did not find compelling the OFT's reasoning in its market definition assessment and ruled that the OFT was in error in identifying the narrow product market of non-LBO media rights.⁹
21. Nevertheless, in this case evidence from the parties, which was supported by third party competitors and media organisations, indicates that LBO and non-LBO media rights could be separate product markets. LBO and non-LBO rights are sold separately reflecting the fact that different broadcasters are involved. Satellite Information Services Limited (SIS) and Turf TV broadcast to LBOs whereas Attheraces Holdings Limited (ATR) and Racing UK Limited (Racing UK) broadcast via non-LBO channels.¹⁰

⁸ *Notification by Arena Leisure plc/Attheraces Holdings Limited/British Sky Broadcasting Group plc/Channel Four Television Corporation/The Racecourse Association Limited*, Decision of the Office of Fair Trading, Case CP/1442-01, 5 April 2004, paragraphs 162–164 and 172.

⁹ [2005] CAT 29, paragraph 150.

¹⁰ It is possible to contract with SIS indirectly by selling media rights to Bookmakers' Afternoon Greyhound Services Limited, an umbrella organisation for all UK bookmakers which purchases media rights to horseracing and greyhound racing.

22. Therefore, on the demand-side (broadcasters) if the price of LBO media rights increased by a small but significant amount, the relevant media buyers could not switch to non-LBO rights. However, there may be scope for supply-side substitution between the two channels.
23. Moreover, the parties submitted that the fact that one racecourse sells its media rights to a broadcaster does not prevent another racecourse from selling its media rights to that same broadcaster. As such there is little competition between racecourses and it may be the case that each racecourse is its own monopoly for the sale of media rights.
24. Nevertheless, the OFT has not found it necessary to conclude on the product market for media rights and has assessed this merger on the most cautious basis of LBO media rights and non-LBO media rights separately.

Geographic scope

The provision of horseracing

25. The parties submitted that the geographic scope for the provision of horse racing for racegoers (irrespective of the type of racing) is best assessed on the basis of a 50-mile radius. The parties claimed that 50 miles represents approximately one hour's driving time which is the maximum amount of time that the majority of racegoers travel to get to a racecourse.
26. The parties submitted substantiating evidence for this. A survey commissioned by Arena in 2008 interviewed around 1,600 people across its seven racecourses (at an average of around 230 people per racecourse) in the summer of 2008.¹¹ The survey found that, overall, 75 per cent of racegoers travelled up to an hour to get to the racecourse. In all but two of Arena's racecourses, around 80 per cent of racegoers travelled up to a maximum of one hour. Of the two courses to which racegoers had a longer travel time – Southwell and Worcester – around half of racegoers travelled for more than an hour to get to the course.¹²

¹¹ Sample sizes per racecourse were Doncaster (355 people), Folkstone (157), Lingfield (277), Southwell (144), Windsor (254), Wolverhampton (208) and Worcester (210).

¹² For these racegoers the survey only recorded that they travelled for more than an hour, not how long they did travel for.

27. Third party racecourse operators generally agreed with the parties. Almost all thought one hour travel time was the best measure. Of the questionnaire responses that the OFT received, different respondents considered that this travel time translated into different distance measures, of 30, 35, 40 and 50 miles.
28. The OFT has not found it necessary to conclude on the geographic scope for racegoers. It has assessed the merger on the basis of a 40-, 50- and 60-mile radii. Where necessary, the OFT has also discussed local competition on the basis of a 30-mile radius.

The sale of media rights

29. The parties submitted that the sale of media rights (to LBOs and non-LBOs) can be assessed on the basis of either Great Britain or the UK plus the Republic of Ireland. Such an approach is consistent with a finding of the High Court (Chancery Division) in a case referred to as 'the Turf TV case'.¹³
30. Racecourse operators sell the media rights of their races in aggregate (not on a race-by-race or course-by-course basis) and these races are shown in LBOs or on television throughout Great Britain (and online).
31. Some third party media operators framed their responses to the OFT as UK wide media rights.
32. However, the OFT has not found it necessary to conclude on the geographic market for media rights and has examined the merger on the narrowest plausible basis of the sale of media rights in Great Britain (for both LBO and non-LBO rights).

¹³ *Bookmakers' Afternoon Greyhound Services Limited and Ors v Amalgamated Racing Limited and Ors*, [2008] EWHC 1978 (Ch).

HORIZONTAL ISSUES

The provision of horseracing

33. The parties overlap in the operation of horse racecourses providing jump and flat horseracing in Great Britain. The location of the parties' racecourses and the type of racing that each offers is shown in table 1.

Table 1: Parties' racecourses by type

<i>Racing type</i>	<i>Northern</i>	<i>Arena</i>
Flat	Bath Brighton Great Yarmouth	Royal Windsor
Jump	Fontwell Park Hereford Sedgefield Uttoxeter	Worcester
Flat & jump	Chepstow Ffos Las Newcastle	Doncaster Folkestone
AW flat		Lingfield Park Southwell Wolverhampton

Note: Northern manages but does not own Ffos Las.

Source: The parties.

34. On a local basis, the parties overlap in three areas: Lingfield Park/Brighton; Wolverhampton/Worcester/Uttoxeter; and Worcester/Hereford.

Lingfield Park

35. Lingfield Park (Arena) is within 40 miles of Brighton (Northern). Both offer flat racing although Lingfield Park is on an AW track and Brighton is a turf track.¹⁴

¹⁴ Lingfield Park also has a turf track but the parties submit that 70 per cent of racing is undertaken on its AW track.

36. When considering just flat racing, then competing racecourses within 40 miles of Lingfield Park include Sandown Park (flat and jump racing), Epsom Downs (flat racing) and Kempton Park (AW flat racing). By widening the area to 50 miles, Ascot (flat and jump racing) also comes into the catchment area and widening further to 60 miles brings in Goodwood (flat racing). If jump racing is considered to compete with flat racing then Plumpton racecourse is included in the local area (it is situated between Brighton and Lingfield Park). Plumpton and Ascot are independently owned while The Jockey Club owns Epsom, Sandown Park and Kempton Park.
37. By attendances on 50 miles, Arena accounts for 19 per cent and Northern three per cent. On a 40-mile measure Lingfield Park (Arena) accounts for 21 per cent of attendances and Brighton (Northern) accounts for six per cent.
38. On a narrower measure of 30 miles the parties do not overlap. However, they do overlap on a 35-mile measure. Within a 35-mile radius of Lingfield Park, Kempton Park is no longer in the radius but the other courses present within a 40-mile radius are.
39. If assessing this local area on the basis of flat racing alone, Plumpton racecourse can no longer be considered to be a constraint on the merger parties. On a 50-mile radius around Lingfield Park the parties account for 22 per cent of flat racing attendees (an increment of three per cent) and around 29 per cent of attendances (increment of around six per cent) on a 40-mile measure. If the catchment area is re-centred on Brighton racecourse, the parties will account for around 31 per cent of attendances on a 50-mile measure (increment of seven per cent) and 42 per cent (increment nine per cent) on a 40-mile measure (where Goodwood is the only other racecourse).
40. In considering the Lingfield Park/Brighton local area the OFT has been conscious of third party comment that AW track racing is only a weak constraint on turf racing. Moreover, the shares of supply of attendees attributable to the parties are not especially high and the accretion to those shares resulting from the merger are always small.
41. The OFT does not consider that the merger raises a realistic prospect of a substantial lessening of competition in the local area around Lingfield Park.

Wolverhampton

42. Wolverhampton overlaps with Uttoxeter on a 40-mile measure. By type of racing there is no overlap between the parties since Wolverhampton offers AW flat racing and Uttoxeter offer turf jump racing.
43. Arena's Worcester course is within 40 miles of the Wolverhampton course (and therefore it falls within the radius measure). Worcester offers jump racing on a turf course and therefore may not be a strong alternative to Wolverhampton's AW flat racing. While both Uttoxeter and Worcester offer turf jump racing, they are 67 miles apart and the parties submitted that because of this they are not direct competitors for attendances.
44. No third party concerns were received for this local area.
45. Given the evidence (supported by third parties) that AW flat racing is likely to be only a weak substitute for turf jump racing and that the distance between the two jump racecourses in the radius is almost 70 miles, the OFT does not consider that the merger raises a realistic prospect of a substantial lessening of competition in the local area around Wolverhampton.

Worcester

46. Arena's Worcester course is within 40 miles of Northern's Hereford course. Both offer jump racing.
47. Other courses on a 40-mile basis are Warwick, Ludlow, Stratford and Cheltenham. The Jockey Club owns Cheltenham and Warwick while Ludlow and Stratford are independently owned. All courses in the area offer jump racing although Warwick is a dual purpose course offering both flat and jump racing.
48. The parties submit that Worcester is prone to flooding in the winter months and therefore schedules the bulk of its jump racing in the summer months (unusually for a jump course). Hereford, however, schedules the bulk of its racing in the winter months (which is more orthodox for jump racing). As such, the parties say that the courses do not compete directly. One competitor concurred and said that the parties did not compete in the local area.

49. On a cautious basis assuming that the parties' racecourses did compete directly, Worcester accounts for only five per cent of attendances in the area (on a 50-mile measure) and Hereford two per cent. Cheltenham accounts for two-thirds of attendances. The shares do not change on a 40-mile measure. Moreover, the OFT is mindful that the evidence suggests that the catchment area for Worcester racecourse is more than an hour (paragraph 26) and therefore it may be the case that the catchment area is wider than 40 or 50 miles from the racecourse.
50. One third party raised concerns about this local area since if the catchment area radius is re-centred on Hereford the parties would have 42 per cent of attendances on a 40-mile measure. However, the third party did concede that there is no direct competition between the parties in the summer and winter months – not only because the fixtures are run at different points of the year, but also because very few horses run in both summer and winter months. Nevertheless, the third party is concerned about the loss of competition in the autumn and spring months.
51. The British Horseracing Authority (BHA) 2012 fixture list allocates 18 fixtures to Hereford and 17 to Worcester. The first race at Worcester takes place on 13 May and the last on 24 October. Hereford racecourse will host 12 of its 18 fixtures in the January to April and November to December periods. Moreover, there is no racing at Hereford in October or July (months when there is racing in Worcester).
52. As for the remaining six fixtures scheduled for Hereford, they are spread across dates in May, June, August and September (there is racing in Worcester in all of those months). There are only four instances when the parties' fixtures are within a week of each other at these courses: mid-May (one fixture), late June (one fixture), late August (one fixture) and early September (one fixture).
53. In mid-May there is also racing in Stratford, Ludlow and Warwick around that time. In late-June there is racing in Warwick. In late August there is racing in Stratford and Warwick (Hereford's racing at this time is in the evening whereas Worcester's is in the day time). Finally, in early September there is also racing in Stratford.

54. Overall, the evidence suggests that the parties compete in the local area in only a small number of instances and that competing racecourses offer jump racing around the same time. Further, the increment to the parties' share of racegoers is small.
55. The OFT does not consider that the merger raises a realistic prospect of a substantial lessening of competition in the local area around Worcester.

The sale of media rights

56. No third party media rights buyers were concerned about the proposed merger.
57. The parties submitted that media rights account for [] per cent of all revenue for Northern and [] per cent for Arena.
58. For LBO rights, both merger parties contract with SIS. For non-LBO rights, both parties use ATR.
59. The parties submitted that there is no competition between them for the sale of media rights (that is, each racecourse is its own monopoly) and that both of their LBO rights contracts have several years left to run (the OFT understands another [] years) and the non-LBO rights expire in []. The parties submitted that in the appeal of the Turf TV case (at the Court of Appeal) the court said that 'racecourses do not compete with each other as regards LBO rights' since '... the respective courses' LBO media rights are not substitutable for each other'.¹⁵
60. One third party pointed out to the OFT that an important calculation in selling of LBO media rights is the price at which the LBOs are willing to pay for the broadcast of racing. The merged entity would not have the incentive to increase the cost of media rights to such a level that the broadcasters could not afford to broadcast to the LBOs. This third party considered such external constraints were likely to impart a greater (downward) pressure on pricing than any additional negotiating power gained by the merged entity through the merger.

¹⁵ *Bookmakers' Afternoon Greyhound Services Limited and Ors v Amalgamated Racing Limited and Ors*, [2009] EWCA Civ 750.

61. One third party competitor was concerned about the merger's effect on media rights. It alleged that the parties account for around 80 per cent of SIS' content and that the merger may marginalise those courses providing the remaining 20 per cent since once SIS has the merged entity's contract it would have reduced incentive to vigorously compete for the remainder (although it may nevertheless bid).
62. The OFT does not consider this to be merger specific in that SIS can already contract with the two merger parties before deciding whether to expand its schedule by bidding for races at other race tracks. Moreover, the value (to SIS) of broadcasting races from a particular racecourse does not depend on the races that the broadcaster is already entitled to show but rather it depends on the value to the LBOs of having those races broadcast.
63. Another third party was concerned that the merged entity would have around 80 per cent of core AW track racing and that the merged entity would be in a stronger financial position to acquire a larger amount of AW fixtures. In that scenario, if SIS were to have an increased number of AW fixtures for broadcast it may affect competition in the related market of horserace broadcasting.
64. In this regard the OFT notes that there is no overlap in AW racing between the parties and it is not at all clear that Arena could not expand its AW racing offer without the merger. After the merger The Jockey Club – which contracts with Turf TV – will still compete in AW fixtures.
65. Similarly, a further third party told the OFT that the merger could reduce competition in the market for non-LBO media rights if the merged entity were to switch from ATR to Racing UK. This third party considered that such a move would result in reduced competition between ATR and Racing UK and reduced prize money available to racing.
66. As with the sale of LBO media rights the OFT does not consider this concern to be merger specific. Either party could contract with Racing UK without the merger and, in any case, the OFT does not consider that racecourses switching broadcasters would result in a lessening of competition. The parties submitted that switching, in any case, would be unlikely. Arena owns 45.85 per cent of ATR and therefore has an incentive to contract with ATR. Likewise, other racecourses (such as the Jockey

Club Racecourses) part own Racecourse Media Group Limited (RMG), the owner of Racing UK. The parties submitted that 18 racecourse owners (representing 30 racecourses) are shareholders in RMG and all contract with Racing UK.

67. The OFT does not consider that the merger would result in a realistic prospect of a substantial lessening of competition in the sale of LBO or non-LBO media rights.

Barriers to entry and expansion

68. Given the outcome of its competition assessment the OFT has not found it necessary to discuss barriers to entry and expansion in the operation of racecourses in Great Britain.

THIRD PARTY VIEWS

69. During the course of its investigation the OFT contacted a number of third parties including rival racecourse operators, various industry bodies and media groups involved in horseracing. In all, the OFT heard from 17 third parties in this case.
70. [] is not opposed to the merger.
71. Third party views on the proposed merger with respect to competition for racegoers and the sale of media rights have been discussed above. However, some third parties also raised other concerns with the OFT which are discussed below. The categories of complaints that the OFT received were the effect of the merger on the allocation of fixtures, prize money, betting money and industry governance.

Fixtures

72. The OFT received concerns from some third parties that the merged entity would account for sufficient races that it could influence the allocation of fixtures. Moreover, fixtures can be reallocated between racecourses within the same ownership group with the agreement of the BHA. One third party raised as a concern the possibility that the merged entity would redistribute fixtures internally which may affect competition for horses and jockeys.

73. Fixtures are allocated by the BHA. Factors taken into account by the BHA are the appeal of each race to the public, whether a particular race is synonymous with a particular track at a particular point of the racing calendar, the range of different types of racing available and the management and standards of the courses. The parties submitted that the racecourses have a limited role in how fixtures are allocated.
74. In addition, some third parties told the OFT that for turf courses there are restrictions in place on how many race fixtures can be held on the track (since the turf requires a period of rest between race fixtures) which limits the scope for fixtures moving between courses.¹⁶
75. The parties submit that at the national level they focus on different types of racing. Northern does not offer AW racing whereas Arena does. Of Arena's other courses, they all focus on flat racing apart from Worcester. In comparison, Northern has four jump courses. As such, the parties argued, there is little direct competition between them for fixtures (flat and jump racing is typically held at different points in the racing calendar), horses and jockeys.
76. For 2012 the parties together will account for 29 per cent of jump racing and 31 per cent of turf flat racing by fixtures in Great Britain. The Jockey Club will offer 23 per cent of fixtures in both types of racing.
77. By attendances, the parties accounted for 21 per cent in 2010 (with an increment of nine per cent).
78. [] submitted to the OFT that the parties' fixtures are largely complementary rather than in direct competition (with Arena focussed on AW flat racing and Northern on turf jump racing) and that the parties account for a disproportionately low share of overall attendances.
79. On a Great Britain wide basis the OFT considers that the parties would have a limited scope to switch fixtures between them given the range of racecourses that they operate and the points in the racing calendar that they operate. Further, the OFT has not found competition concerns at the

¹⁶ The parties submitted that turf racecourses stage around 20 fixtures a year whereas AW racecourses host many more, over 100 in some instances.

local level and therefore the OFT does not consider that the parties will significantly affect competition at the local level by softening competition for horseracing fixtures since the merged entity will continue to face competition where they overlap locally.

80. The OFT does not believe that the merger raises a realistic prospect of a substantial lessening of competition with respect to horseracing fixtures.

Prize money

81. Some third parties complained to the OFT that the merger could affect the prize money on offer from the parties' races. One complainant pointed out that given the merged entity would own and/or manage 17 of Great Britain's 60 racecourses and account for around a third of the fixtures, it would be difficult for racehorse owners to avoid the parties' races. The third party said that it would be especially difficult for the lower grade (grades 5 and 6) of racing which, the third party submitted, the parties' races are prevalent. Indeed, the complainant estimated that the parties account for almost a half of grade 5 and 6 flat racing during the summer months in Great Britain. Another third party was concerned about the merger's effect on the allocation of prize money among racecourses on the Welsh borders (that, around Hereford) although the extent to which Hereford and Worcester are an alternative for the same horses is limited by their different racing seasons. Others had more general concerns about the merger's effect on prize money.
82. The OFT considers that even if the merger affected the amount of prize money on offer it is not clear how that amounts to a competition concern. Indeed, the concern is centred on how much money will be transferred from the merger parties' racecourses to racehorse owners after the merger.
83. It may be the case (as submitted to the OFT by the complainant) that an increased pool of prize money would improve the quality of racing. However, data on the average prize money for grade 5 and 6 flat racing shows that the parties already offer a lower prize pool than other racecourses (including those owned by The Jockey Club). Therefore, in prize money terms, it is not clear what is lost by the merger in the investment in racing overall.

84. In further regard to this complaint, the OFT notes that:

- The parties do not have an incentive to substantially reduce the supply of horses in its races through lower prize money. For example, a third party told the OFT that bookmakers, a significant source of revenue for the parties, will not accept 'each way' bets on races with fewer than eight horses.¹⁷ The parties currently average 9.5 horses (Arena) and 8.8 horses (Northern) per race.
- It considers that the parties will face sufficient competition after the merger for attendances from competing racecourses and there is little evidence to suggest that this competitive constraint would not extend to prize money. This is especially the case since the OFT has not received any evidence showing that investment in the quality of racing is targeted at lower grade flat racing.
- The OFT received some third party comments that horses and trainers travel further than racegoers to get to a race meeting and therefore they have a wider catchment area.¹⁸ Thus lower prize money may cause better horses (within a grade of racing) to switch to other racecourses or may make the fixtures less attractive to racegoers who would have the option to attend other racecourses, possibly featuring higher grade or different code racing.
- It is not clear how offering lower prize money would indeed detrimentally impact on consumers. Indeed, it may be the case that a racecourse facing lower costs would pass on those lower costs to racegoers in the form of lower admission pricing (for example).

85. The OFT does not consider that the proposed merger would lead to a realistic prospect of a substantial lessening of competition with regard to prize money.

¹⁷ Betting revenue derived from the Horseracing Betting Levy Board accounts for around a third of the parties' total revenue.

¹⁸ With the more prize money being on offer the wider the catchment area.

Betting money

86. The allocation of the contribution made by the betting industry (both from on-course betting and off-course betting at LBOs) to racecourses is decided upon by the Horseracing Betting Levy Board (HBLB) based on betting received by LBOs.
87. Competition for racegoers has been discussed above. The parties together accounted for 30 per cent (increment 13 per cent) of racecourse betting in Great Britain in 2010, as did The Jockey Club. The OFT does not consider that the proposed merger will lead to a realistic prospect of a substantial lessening of competition for racegoers. The analysis for betting revenue received from racegoers is similar. Further, the overall shares of betting money received from racegoers is not such to raise competition concerns.
88. Therefore, the OFT does not consider that the proposed merger will lead to a realistic prospect of a substantial lessening of competition for betting money from racegoers.
89. As for HBLB money, the HBLB is an independent body from the racecourses. It has seven people on its board. The Chairman, Deputy Chairman and one other member of the HBLB board are selected by the Secretary of State for Culture, Media and Sport. The Bookmakers' Committee also has a seat on the board and The Jockey Club is able to nominate the remaining three members (although in practice this power is delegated to the BHA). Currently these three seats are held by the BHA, the Racecourse Association (RCA) and the Horsemen's Group.¹⁹
90. Betting money from the HBLB is determined by its published Levy Scheme at the beginning of each year.
91. The parties and [] told the OFT that the merger will not affect the composition of the HBLB board or its decision making with respect to the betting Levy Scheme.

¹⁹ The Horsemen's Group represents horse owners, jockeys and trainers. Its constituent bodies are the Racehorse Owners Association, National Trainers Federation, Professional Jockeys Association, National Association of Stable Staff and Thoroughbred Breeders Association.

92. The OFT does not consider that the proposed merger will lead to a realistic prospect of a substantial lessening of competition for betting money from the HBLB.

Industry governance

93. Some third parties submitted to the OFT that the merger would give the merged entity undue influence over the RCA. The RCA is the industry body representing racecourse operators. It is controlled by seven racecourse representatives and two independent members. The parties each have one representative on the RCA board. The RCA has a seat on the board of the HBLB and it nominates one board member of the BHA.

94. Concerned third parties are worried that after the merger the parties will have a 28 per cent share of RCA votes, giving it negative control (or material influence) over the RCA. Some were concerned that such influence over the RCA may feed into the HBLB given RCA's role in nominating HBLB board members.

95. The RCA told the OFT that its Board will automatically reduce from nine members to eight post merger (since Arena and Northern will no longer be two bodies but one with one allocated seat). The RCA made other points to the OFT:

- Post-merger, the merger parties will have reduced voting power. That is because they almost always vote the same way currently with two out of nine directors (22 per cent). After the merger they will have 12.5 per cent of the Board vote.
- In terms of RCA membership (as opposed to Board representation) the merged entity will have 27 per cent of racecourses hence 27 per cent of the general membership vote. However, this is not significantly different from the Jockey Club which has 23.3 per cent of the vote. A further six racecourses are chaired by members of the Jockey Club.
- There are no decision making issues where the merger would cause competition problems via RCA voting. Special resolutions are only required for changing the RCA constitution and other exceptional matters (for example, divesting of RCA property). Even if the merged

entity did block such special resolutions it could not leverage that power into its own commercial advantage. The RCA is not involved in any commercial matters relating to racecourses.

- The merger will have no effect on the RCA's membership or voting on the HBLB or the BHA (and, in any case, the RCA only has a minority voice in those bodies).

96. The OFT does not consider that the proposed merger raises a realistic prospect of a substantial lessening of competition with regard to industry governance.

ASSESSMENT

97. The parties to this merger overlap in the operation of horse racecourses in Great Britain.

98. The OFT has examined the merger's effect on racegoers and those watching broadcasted racing.

Racegoers

99. For racegoers, the OFT has assessed the merger on the basis of flat racing being separate from jump racing, as well as these two codes of racing being substitutable. The OFT has also taken due regard of the differences between turf and AW track racing. Competition for racegoers has been assessed by the OFT at the local level (using 40-, 50- and 60-mile radii).

100. The parties' racecourses overlap in three local areas. In **Lingfield Park** the OFT's investigation found that the parties accounted for a low share of attendances and that Arena's AW track at Lingfield Park was only a weak constraint on Northern's turf track at Brighton. In **Wolverhampton** the parties do not overlap by type of racing (one offers AW flat racing and the other jump racing). However, on the basis of flat and jump racing together, the OFT notes that no third parties raised concerns about the local area, the parties are likely, at best, to offer a weak constraint to each other and that Arena's Worcester course (which also offers jump racing) is located almost 70 miles from Uttoxeter. In the **Worcester** local area the OFT did receive a third party complaint. However, the OFT found that Worcester and Hereford host racing at mostly different times of the year and have

aces on around the same time in only a small number of instances. Further the increment of their shares of racegoers is small and sufficient competing racecourses will continue to offer competition against the parties after the merger.

101. Therefore, the OFT did not find any competition concerns for racegoers at the local level.

Media rights

102. For broadcasters, the OFT has examined the merger on the most cautious basis of LBO and non-LBO rights being separate from each other in Great Britain.

103. No third party broadcasters were concerned about the merger.

104. The OFT found little competition between the parties before the merger in respect to the sale of their media rights. This is partly because the fixture list means that there is little, if any, direct head-to-head competition between racecourses which would impact on race broadcasting. It is also partly because the parties both use ATR for non-LBO media rights and SIS for LBO media rights and that the parties submitted that this will not change after the merger.

105. The OFT received some complaints from competitors with regard to media rights but the OFT did not consider them merger-specific for the reasons set out in paragraphs 61 to 66.

Other concerns

106. During the course of its investigation the OFT received a number of concerns covering different topics. These relate to how fixtures are allocated across racecourses, the offering of prize money by racecourses, the allocation of betting money to racecourses and how the industry (especially the RCA) is governed. For the reasons set out above the OFT does not consider these to be competition related concerns. As such the OFT decision on this merger does not depend on them.

107. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

108. This merger will therefore **not be referred** to the Competition Commission under section 33(1) of the Act.