

Completed acquisition by Ladbrokes plc, through North West Bookmakers Ltd, of McCartan Bookmakers

ME/3627/08

The OFT's decision on reference under section 22(1) given on 1 August 2008. Full text of decision published 6 August 2008.

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

PARTIES

1. **North West Bookmakers Limited** is a subsidiary of Ladbrokes plc (Ladbrokes). Ladbrokes operates retail betting shops in the UK, the Channel Islands, Ireland and Belgium. Ladbrokes operates 2,170 licensed betting offices (LBOs) in the UK, offering a selection of betting services for sporting and non-sporting related activities. Ladbrokes also offers remote betting services through its telephone and internet services.
2. **McCartan Bookmakers** (McCartan) is a small family run business, operating six licensed betting offices in West Belfast, which together generated turnover (based on gross win) of £[] (for the 12 months to 31 December 2007) attributable to over-the-counter revenues, with a further £[] from poker machines. McCartan has no telephone or Internet betting business.

TRANSACTION

3. Ladbrokes acquired the business and relevant operating assets of McCartan through an Asset Purchase Agreement on 1 April 2008 and notified the transaction to the OFT on 18 April 2008.

4. The (extended) administrative deadline for the OFT's decision in this case is 1 August 2008, and the extended statutory deadline is 1 September 2008.

JURISDICTION

5. As a result of this transaction Ladbrokes and McCartan will cease to be distinct. The parties overlap in the supply of off-course betting services, and together Ladbrokes and McCartans will account for over 25 per cent by gross win of all off-course betting services in the UK. The share of supply test in section 23 of the Enterprise Act 2002 (the Act) is therefore met. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

MARKET DEFINITION

6. The parties overlap in the supply of off-course betting services, specifically in Belfast. The supply of off-course betting services in Northern Ireland was recently considered in *Ladbrokes/Eastwood*.¹ The approach to market definition in that case broadly followed previous decisions by the OFT and the Monopolies and Mergers Commission (MMC).² The market definition analysis below draws on the MMC's approach as a starting point.
7. By way of background comment, it should be noted that, partly as a result of the merger analysis in this case, the OFT considers the 400 and 800 metre radii thresholds discussed below to be a starting point for competition analysis, rather than a safe harbour to be applied rigidly. This means that for potential local overlap areas that pass these tests it is reasonable to regard there being a starting presumption that there is no realistic prospect of a substantial lessening of competition. However, such thresholds should not be regarded as definitive in their application, and the OFT may still wish to conduct further analysis in instances, such as this case, where there are potential overlaps outside these limits that might nevertheless be considered to give rise to competition concerns.

¹ OFT decision, *Completed acquisition by Ladbrokes Limited of Eastwood Bookmakers*, 16 April 2008.

² See in particular the OFT decision, *Completed acquisition by William Hill plc of the licensed betting office business of Stanley plc*, 1 August 2005 (William Hill/Stanley), *Completed acquisition by Hilton Group plc (through Ladbroke Racing (Reading) Ltd of Jack Brown (Bookmaker) Limited*, 27 September 2005 (Ladbrokes/Jack Brown) and the MMC decision, *Ladbrokes Group plc and the Coral Betting Business: A report on the merger situation*, CM4030, 24 September 1998 (*Ladbrokes/Coral*).

Product scope

8. The OFT did not receive evidence to suggest that it should depart from its conclusions in *Ladbrokes/Eastwood* regarding the product scope. The frame of reference in that case was the supply of betting services through LBOs. The MMC has previously concluded that betting is a separate market from other forms of gambling and leisure activities, as the terms on which betting is undertaken are not closely constrained by other forms of gambling or leisure activities.³ Further, on- and off-course betting were each separate markets as they were carried out at geographically separate locations and constituted different activities (that is, on-course betting is part of attending a race with its associated extra costs).⁴
9. Third parties in this case agreed with the MMC approach, which has been confirmed and applied by the OFT in more recent cases. One noted that there are few gambling alternatives in Northern Ireland to visiting an LBO and the prevalence of horse racing and football as the dominant betting products means that LBOs have a significant position with respect to gambling activities. Another third party agreed that on-course and off-course betting were distinct offerings (while noting that LBOs rely on the on-course bookmakers to provide the starting price), while a further third party considered that on-course betting might only be interchangeable with off-course betting in racecourse towns (on race meeting days).
10. The MMC also found that off-course betting through an LBO is not in the same market as telephone betting. Telephone betting was found to attract a different type of consumer accustomed to betting much higher stakes, often with a credit facility. Telephone betting services can also remain open twenty four hours a day, seven days a week, unlike LBOs. In the *William Hill/Stanley* decision, the OFT found no evidence to suggest that customers switched from LBO to telephone betting. Third parties generally agreed with this view. While one third party believed that recent growth in telephone betting had limited increases in LBO turnover, another considered that a large proportion of customers rely solely on LBOs.

³ *Ladbrokes/Coral*, Para 2.63.

⁴ *Ibid.*, Para 2.64.

11. The OFT considers that the investigation in this case and responses by third parties do not provide any reason to depart from the approach to the product market taken in previous cases and so for the purposes of this assessment the relevant product market is the supply of off-course betting services through LBOs.

Geographic market

12. In *Ladbrokes/Coral* the MMC considered that there were national and local elements of competition with regards to the activities of LBOs. For the purposes of assessing any loss of competition at the local level, the MMC stated that a 400 metre radius was a reasonable distance within which to consider 'local' competition, supplemented by a finding that competition concerns could arise if a transaction removed all competition within a radius of 800 meters. Further to this, the OFT also considered regional elements in the *Ladbrokes/Jack Brown* decision. Ladbrokes submitted that there were local and national elements to competition between LBOs but that there was no regional element, as prices were not set regionally and LBOs were not chosen by consumers on a regional basis.
13. In *Ladbrokes/Eastwood*, the OFT did not consider that any evidence obtained during its investigation warranted a change to its previous approach to the geographic market. For the purposes of its assessment in that case, the OFT took into account national, regional and local markets, the latter based on a 400 metre radius around each LBO with an 800 metre radius used as a sensitivity check. However, the OFT was not required to conclude on the continued relevance of the various radii for the purposes of analysing local markets. The LBOs acquired in that case were not geographically close to the existing Ladbrokes stores, fell well outside the radii proposed in *Ladbrokes/Coral*, and the OFT did not receive any evidence to suggest that individual Ladbrokes and Eastwood LBOs outside these radii competed with each other.
14. In the current case, in respect of some of the acquired LBOs, the existing Ladbrokes LBOs fell only just outside the radii tests set in *Ladbrokes/Coral*. The OFT therefore considered more closely whether the established local market tests continued to be appropriate, particularly for Northern Ireland where the entry requirements are different to the rest of the United Kingdom.

15. Some third parties submitted that the exact distance a customer would travel would depend to a large extent on the particular area being considered. One third party gave an example of a large reduction in their trade at one of their LBOs in Northern Ireland when a competing LBO opened almost a mile away while another gave an example of a licence for a new LBO premise being refused under the demand test (see paragraph 29) even though the nearest competitor was almost a mile away.⁵ The continued use of such a demand test in Northern Ireland for applications for LBO licences may suggest that it will not be usual for there to be a large number of alternatives within an 800 metre radius of any one LBO, other than, perhaps, in very urban town centre areas.
16. Ladbrokes provided survey evidence it had commissioned in 2006 regarding the distance customers were prepared to travel to an LBO.⁶ The survey showed that the distance a customer was prepared to travel had increased slightly since a similar survey in 2001, where [70–80] per cent travelled less than 0.5 miles (approximately 805 metres) compared with [70–80] per cent in the 2006 survey. In previous local market cases, the OFT has tended to consider as local markets an area that would catch at least 80 per cent of the store's customers.⁷
17. Given the above, the OFT considers that it is appropriate to continue to use the radii established by the MMC, but only as a starting point from which to consider the analysis. The OFT will also consider, on a store-by-store basis, whether there are elements that may suggest the possibility of competitive effects from stores located outside the 800 metre radius. These factors are likely to include where the merging parties are, although more than 800 metres apart, the geographically closest competitors for at least one of the merging LBOs, or where the OFT receives specific evidence to suggest that a store outside 800 metres is nevertheless regarded as an alternative for a significant proportion of customers.
18. This case-specific approach to local market conditions allows a more granular and area-specific analysis of competitive constraints, in evidentiary terms, this is superior to an analysis based more heavily on, for example,

⁵ This was however unsubstantiated.

⁶ The surveys were carried out at locations throughout the UK, so only general assumptions as to distances travelled can be made.

quantitative screens based on generalised industry findings.⁸ Such evidence may mean that the OFT identifies competition concerns even where the merging parties' stores fall outside the Ladbroke/Coral radii. However, it is also possible that specific evidence may demonstrate that stores falling within the radii do not compete sufficiently for the merger to create a realistic prospect of a substantial lessening of competition.

HORIZONTAL ISSUES

19. Evidence received by the MMC and the OFT to date has indicated that competition between bookmakers is mainly focused on non-price factors such as promotions or bonuses. Prices (in the form of betting 'odds') used by LBOs are generally set on a national basis – for example, Starting Prices for horse races are derived from those set from on-course bookmakers (often amalgamated and posted by independent bodies). Third parties generally agreed that promotions are the key form of this competition, such as enhanced odds, payout bonuses, double results,⁹ enhanced lottery odds and betting without a favourite. Parameters of non-price competition would include customer services, general atmosphere and convenience. Thus any theory of harm relates primarily to a reduction of the number or quality of promotions and bonuses, and a reduction in various service quality factors.

Market shares

National issues

20. At a national (UK) level, Ladbrokes and McCartan combined have a market share of [20–30] per cent (based on shop count), with a marginal increment of significantly less than 1 per cent.¹⁰ The merged entity faces competition from several other national LBOs, including one with a higher

⁷ Based on the findings of the Competition Commission in *Somerfield plc and Wm Morrison Supermarkets plc: A report on the acquisition by Somerfield plc of 115 stores from Wm Morrison Supermarkets plc*, September 2005.

⁸ See, for example, *Completed acquisition by Tesco plc of five stores (Thurso, Bedlington, Little Lever, Ramsbottom and North Hykeham) from Somerfield plc*, 4 December 2007 and *Completed acquisition by Home Retail Group plc of 27 leasehold properties from Focus (DIY) Ltd*, 15 April 2008.

⁹ In the event of a stewards enquiry and the disqualification of the winning horse, LBOs will pay out on both that horse and the official winner.

¹⁰ For the avoidance of confusion, it should be noted that this share is based on shop count, and is not the same as the share of supply mentioned in paragraph 5, which was based on gross win for the purposes of the jurisdiction test.

market share, William Hill. Given the small increment and the competition provided by other national LBOs, the OFT considers that there is not a realistic prospect of a substantial lessening of competition at this level.

Regional issues

21. Ladbrokes remains the largest LBO operator in Northern Ireland, with a market share of [20–30] per cent (based on shop count), an increment of [<2] per cent. Ladbrokes will continue to face competition from a number of operators in Northern Ireland, two of which (William Hill and McLean) have shares of supply at a regional level of over 10 per cent. In addition, 38 per cent share of supply at this level is accounted for by small chains and individual LBOs. Given the modest increment arising from the merger and the continuing competition it will face from existing competitors across Northern Ireland, the OFT does not believe that there is a realistic prospect that the merger will result in a substantial lessening of competition at this regional level.

Local issues – store by store analysis

22. The primary focus of the investigation was on the particular overlap with regards to the stores at and around Norglen Gardens. The evidence before the OFT regarding the other stores being acquired (Mountview Street, Oldpark Road, Falls Road, Shaws Road, and Andersonstown road) indicated no competition concerns requiring further analysis beyond the MMC thresholds.
23. Norglen Gardens: There is one Sean Graham LBO located near Glen Road within the 800 metre radius to the east of the acquired store. No existing Ladbrokes LBO is located within the 800 metre radius. However, the acquired LBO is the geographically closest LBO to an existing Ladbrokes approximately 900 metres to the north of Norglen Gardens (which also has a different Sean Graham LBO about 1km to the east at the other end of Whiterock Road). The OFT considered whether this geographic proximity meant a proportion of customers viewed the Norglen Gardens site and the existing Ladbrokes LBO as the closest alternatives such that there could be said to be a lessening of competition brought about by the merger.
24. At the request of the OFT, the parties conducted a customer survey at both the acquired LBO and the existing Ladbrokes LBO to determine the

extent to which the two LBOs were seen by customers as alternatives to one another (essentially an estimate of the diversion ratio). The key questions were asking customers at each LBO what they would have done if their chosen shop was closed, what LBO they had considered visiting that day, and what LBOs they had visited over the previous two weeks.¹¹

25. The survey showed that the proportion of customers that would switch between the merging parties' stores in the event their chosen LBO was closed was [20–30] per cent. These diversion ratios are sufficiently high to give rise to the possibility of prima facie concerns. The parties argue that these data over-estimate the level of competition between the two stores, and contend that they could simply be the effect of customers being in the area of the other LBO for some social event and so betting at the nearest LBO to that social event. The OFT accepts this is one possibility, it also notes that in response to a question concerning their activity before going to the LBO, a significant number of customers responded 'At home' (although this itself may overlook the fact that this response would apply even if they were in the area ultimately for another activity). In any case, it is not clear that such visits should be excluded from consideration.

26. By way of additional evidence, the OFT notes that both the existing and acquired LBOs are located within a largely residential area, each serving a different housing estate. The parties have argued that the residents of each estate tend not to cross over into the other area. The postcode data from the survey responses tends to support this explanation and indicates that the vast majority of respondents were found to use the LBO nearest to their home: only [< 5] per cent of customers using the Norglen Gardens LBO came from the Whiterock estate, and only [< 15] per cent of customers using the Ladbrokes LBO on Whiterock Road came from the Norglen Gardens estate. This evidence suggests that the LBOs may, notwithstanding the apparent diversion ratios from the survey, have been largely serving different groups of customers pre-merger.

¹¹ Customers were not asked about their likely response to a five to ten per cent increase in price, as the specificity of this question did not appear appropriate in the context of betting activities at LBOs.

27. The OFT examined other evidence to determine to what extent there could be said to be material levels of competition between the two LBOs pre-merger. In this respect, the OFT notes that neither McCartans nor the Norglen Gardens LBO itself monitored the existing Ladbrokes LBO, or indeed any of the other LBOs in the area. In addition, there is no evidence of any reaction at the Norglen Gardens LBO to the acquisition by Ladbrokes of the Whiterock Road LBO from Eastwood Bookmakers earlier this year. To the extent that the Whiterock Road LBO could be said to have been materially constraining the Norglen Gardens LBO, it would have been expected that the acquisition by Ladbrokes ([]) would have triggered some reaction from Norglen Gardens LBO. However, this was not apparently the case.
28. As a result of the above evidence, the OFT considers that any pre-merger competition between the two sites was limited in scope and that any lessening in this competition arising from the merger will therefore not be substantial. In addition, the OFT would expect that, to the extent that some local competition existed pre-merger, limited competition will continue to be provided from the two Sean Graham LBOs post-merger. In particular, the Sean Graham LBO at the other end of Whiterock Road was considered the second choice in the survey for 20 to 30 per cent of customers at the Ladbrokes LBO on Whiterock Road (ahead of Norglen Gardens), and for customers at Norglen Gardens.

Barriers to entry and expansion

29. LBOs in Northern Ireland are still subject to the demand test laid out in the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 under which licences for new LBOs are granted only if the applicant can prove unmet demand in the area in which they wish to enter. Third parties generally agreed that this is the main barrier to entry and has resulted in a number of single-LBO locations. One third party argued that the legislation was set up to restrict new shops, making it difficult to enter the Northern Ireland market. Other third parties noted that the test adds to the costs involved in setting up a new LBO as licences have to be purchased and applications are likely to be contested in the County and High Courts.
30. One third party estimated that there were approximately three to four new LBO licences granted every year, equivalent to one per cent of the total

- number of LBOs in Northern Ireland. The main entry/expansion in the past five years has been through acquisition (by William Hill and Ladbrokes),
31. with the prices for acquisition being high due to the lack of new licences available.¹² This suggests that barriers to entry in Northern Ireland are rather higher than the rest of the UK, where a similar demand test was in place prior to 2005.
 32. It would appear therefore that barriers to entry to the LBO market in Northern Ireland are high in terms of being granted a new licence, and that entry is only possible to any great extent through acquisition. Such entry will not however increase the number of LBOs or add capacity, and will be unlikely to affect the competitive situation in the local market around Norglen Gardens.
 33. That the demand test limits the prospect of new entry, in addition to increasing the likelihood of locations with only a single betting shop, increases the likelihood that local betting markets in Northern Ireland may be larger than the 400 metre radius identified by the MMC or, indeed, larger than 800 metres. This evidence provides additional weight in this case to the other factors discussed by the OFT for considering the MMC tests as a starting point rather than as conclusive rules.

THIRD PARTY VIEWS

34. Third party comments received by the OFT were mixed. Two out of four competitors raised concerns, however these were not merger specific and related to the size of Ladbrokes and its ability to fund promotions. Other third parties were unconcerned.

ASSESSMENT

35. The parties overlap in the supply of off-course betting services in the UK. In accordance with previous cases, the OFT has considered the effect on competition at national, regional and local levels. At both national and regional levels, Ladbrokes' share, on the basis of shop count, remains less than 25 per cent, with increments of less than one and two per cent respectively. Ladbrokes will also continue to face competition from other

¹² *Completed acquisition by Ladbrokes Ltd of Eastwood Bookmakers*, OFT decision 16 April 2008.

large chains (one with a higher national share) at the national and regional levels, and from a substantial number of small chains and independents at the regional level. Consequently the OFT does not have any competition concerns regarding national and regional competition.

36. With regards to local competition, none of the acquisitions in this case involved instances where the parties' LBOs overlapped within the 400 metre and 800 metre radii established previously by the MMC in *Ladbrokes/Coral*. However, some of the evidence in this case indicates that, within Northern Ireland in particular, there is potential for LBOs that are further than 800 metres apart to provide some competitive constraint on each other. In addition, other survey evidence presented to the OFT shows that the percentage of customers travelling less than 800 metres to an LBO was below the 80 per cent mark normally considered by the OFT to delineate a local market. The OFT therefore considered the specific effect on local competition of each location, using the 400 and 800 metre radii as a starting point for analysis rather than any form of safe harbour.
37. In this case, the OFT did not consider that the available evidence regarding the acquisition of LBOs on Mountview Street, Oldpark Road, Falls Road, Shaws Road, and Andersonstown Road indicated competition concerns.
38. However, in the case of Norglen Gardens, the presence of a Ladbrokes LBO (Whiterock Road) just outside the 800 metre radius, in particular the fact that Norglen Gardens was the geographically closest LBO to the Whiterock Road LBO, indicated the potential for a reduction in competition. The data obtained from a customer survey at both sites indicated that there might be some competition between the two stores and that a number of customers (between [20–30] percent) from each would regard the other as the second choice in the event that their chosen LBO were to close. However, there was little evidence to suggest a significant level of competition existing pre-merger, given the propensity of customers to stick to the LBO seen as servicing their housing estate, the absence of any competitor monitoring by the Norglen Gardens LBO and its lack of a competitive response to the takeover by Ladbrokes of the Whiterock Road LBO. The presence of two Sean Graham LBOs in the area will continue to provide limited competition materially to the same level to that which existed pre-merger. As such, any reduction in competition would be limited in scope.

39. Consequently, the OFT does not believe 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.

DECISION

40. This merger will therefore not be referred to the Competition Commission under section 22(1) of the Act.