
Completed acquisition by Gala Leisure Limited of County Properties and Development Ltd

The OFT's decision on reference under section 22 given on 25 May 2006. Full text published 8 June 2006.

Please note square brackets indicate information replaced by a range at the request of the parties for reasons of commercial confidentiality

PARTIES

1. **Gala Leisure Limited (Gala)** is part of the Gala Group, which is controlled by three private equity firms, namely Candover, Cinven and Permira. Gala is an operator of licensed bingo clubs in the UK; its activities in the wider leisure sector include the operation of casinos, licensed betting offices (LBOs) and Internet gaming.
2. **County Properties and Development Ltd (County)** was, prior to the acquisition, a family-owned business operating bingo clubs in Scotland. Its turnover in the last financial year was around £15 million.

TRANSACTION

3. On 9 January 2006, Gala acquired 100 per cent of the share capital of County. The statutory deadline expires on 26 May 2006.¹

JURISDICTION

4. As a result of this transaction Gala and County have ceased to be distinct. The parties overlap in the operation of licensed bingo clubs in Great Britain. Their combined share of supply (by admissions) is around 40 per cent, therefore the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

¹ Subject to extension by notice pursuant to section 25(4) of the Enterprise Act 2002.

RELEVANT MARKET

5. The parties both operate licensed bingo clubs in and around Glasgow.² Licensed bingo clubs offer various types of bingo games. They also provide gaming machines, hot and cold meals and snacks and soft and alcoholic drinks as well as some peripheral entertainment; these service offerings are incidental to the main activity (bingo) and will not be considered further in this case.
6. Bingo is a form of pari-mutuel gambling where players pay a game fee (stake) for each game and all stakes are returned as prizes (less a percentage that is retained by the operator).
7. Since 1986 licensed bingo clubs have operated a National Bingo Game (the National Game): a nationwide bingo game that is played once a day (twice on Saturdays). Since the game is played nationally, there are a greater number of players, which means the prize money is higher. The National Game therefore offers operators, in particular smaller operators, the opportunity to offer higher prize money than they could offer individually. Operators with the highest number of National Game ticket sales contribute more cash towards the prize money. As the largest licensed bingo operator in the country, Gala makes the highest contributions to the National Game. The impact of the merger on the National Game is considered below.
8. As mentioned above, Gala is also active in the operation of casinos, LBOs and Internet gaming. The OFT's decision on *Gala/Coral*³ refers to various OFT and Competition Commission (CC) precedents that indicate that, due to the lack of competitive interaction between operators of casinos, LBOs, bingo clubs and Internet gaming, separate frames of reference are appropriate for these activities. There is no overlap between the activities of the parties other than the operation of licensed bingo clubs. The impact of the merger on licensed bingo clubs is considered below.

² Gala has confirmed that Candover, Cinven and Permira do not have a material interest in any other company active in the operation of licensed bingo clubs in the UK.

³ OFT decision dated 10 January 2006 on the completed acquisition by Gala Group of Coral Eurobet Group.

Product market

9. We considered the appropriateness of several frames of reference in this case: licensed bingo clubs only; licensed and unlicensed bingo clubs;⁴ and licensed bingo clubs and online bingo.
10. In previous merger cases involving licensed bingo clubs,⁵ the relevant frame of reference was found to be licensed bingo clubs. In those cases, the OFT did not consider that there was sufficient evidence to suggest that amusement arcades, working men's clubs and other such venues provided a sufficient competitive constraint on licensed bingo clubs to be included in the product frame of reference. This was because these venues had very different product characteristics and did not offer the high prize money available through the National Game.
11. In this investigation a small number of third parties suggested that working men's clubs, miners' welfare institutes and other members' clubs do compete with licensed bingo clubs to some extent. However, there was no evidence that licensed bingo clubs (in particular larger clubs of the kind operated by Gala and County) monitor the behaviour of operators of unlicensed venues or respond to competition from them. Therefore, for the purpose of the current investigation we conclude that unlicensed clubs do not provide a sufficiently strong competitive constraint on licensed bingo clubs to be included in the product frame of reference.
12. Regarding online bingo, the parties and third parties who responded to our inquiries were of the view that, because online bingo is a recent phenomenon, it is too early to assess its effect on licensed bingo clubs. In our view the different product/service characteristics of the respective segments⁶ indicate that the extent of demand and supply-side substitution is limited and therefore online bingo does not currently exercise a sufficiently strong competitive constraint on licensed bingo clubs to be included in the product frame of reference.

⁴ Part II of the Gaming Act 1968 (to be superseded in September 2007 by the new Gaming Act 2005), provides that a licence is required for any premises or club the principal purpose of which is the playing of bingo, whether for commercial profit or otherwise; licences are granted by local licensing Magistrates in England and Wales and by the Licensing Board in Scotland. A certificate of consent from the Gambling Commission must first be obtained before the licence application is made. Exceptions to the licensing/consent requirements apply in prescribed circumstances to private members' clubs, social clubs and playing of bingo in pubs. Source: www.gamblingcommission.gov.uk.

⁵ OFT review of the acquisition by Gala Group Limited of Riva Clubs Limited; see DTI press releases dated 21 July 2000 (Kim Howells seeks undertakings from Gala Group) and 17 August 2000 (Alan Johnson accepts undertakings from Gala Group).

⁶ See *Gala/Coral* (referenced above), paragraph 8.

13. Therefore, based on the foregoing factors, the appropriate product frame of reference for assessing this merger is the supply of bingo games in licensed bingo clubs.⁷

Geographic market

14. In previous merger cases in the sector (*Rank/Mecca*,⁸ *Gala/Ritz*⁹ and *Gala/Riva*¹⁰) the OFT found that bingo was a regular local activity and that people tended to travel relatively short distances to attend. In those cases the OFT considered that a catchment area of between three and six miles was the appropriate geographic scope. In the current investigation the parties, as well as third parties, confirmed that competition between bingo clubs takes place at a local level, with managers of clubs monitoring and reacting to their local competitors' prices, prizes and promotions.
15. In our analysis of the appropriate geographic scope in this case, we considered various factors. Gala put it to us that the local market consists of an area measured by a (linear) radius of 5.2 miles centered on each of the acquired County clubs. In support of this Gala submitted evidence that, on average, [the majority] of the players at a Gala club live within a 5.2 mile radius of the club, with the remaining [players] coming from a wider geographic area. Most third parties (competitors) who responded to our inquiries submitted that bingo-goers will travel approximately five miles to a bingo club, perhaps further if traveling by car. Across the Scottish Gala clubs, approximately 63 per cent of customers travel by car.¹¹
16. Consistent with this evidence and the approach in previous cases in this sector, we used a five mile radius centred on the acquired County club as a starting point to identify overlaps that could potentially raise competition concerns. Four such local areas were identified, namely: Glenrothes (Fife), Maryhill (Glasgow), Govan (Glasgow) and Pollok (Glasgow). Given the limited number of areas where the parties' clubs are geographically close to each other, we were able to carry out a qualitative analysis of the competitive constraints facing the merged entity (and the strength of competition between the relevant Gala and County clubs pre-

⁷ In the remainder of the decision, bingo, bingo clubs and bingo operators refers to the *licensed* activity.

⁸ Proposed acquisition by Rank Organisation plc of Mecca Leisure Group plc, 2 October 1990, DTI press release P/90/576.

⁹ Completed acquisition by Gala Clubs Limited of Ritz Clubs Limited, 14 September 1998, DTI press release P/98/689.

¹⁰ Proposed acquisition by Gala Group Limited of Riva Clubs Limited, 21 July 2000, DTI press release P/2000/518.

¹¹ Source: Gala.

merger) in each individual overlap area.¹² Market definition is not an end in itself, but a framework for analysing the competitive pressures faced by the merged entity. Therefore the local analysis, focusing on the evidence of competitive pressures, renders precise delineation of the geographic market unnecessary in this case. Indeed it would be unhelpful in this particular case, given the small number of overlaps, to reach a more generalized conclusion on the scope of the geographic market applicable across the bingo sector; such a finding would necessarily be more generic than an effects-based analysis that is attuned to localized conditions of competition.

17. As noted above, the parties both offer for sale tickets for the National Game. The effect of the acquisition on this aspect of competition has been considered on a national basis.

HORIZONTAL ISSUES

The National Game

18. The National Game is run by the National Bingo Game Association (NBGA) under a certificate of approval by the Gaming Board. The National Game is the largest linked bingo game in Great Britain, i.e. it links the greatest number of clubs (around 540-550 out of a total of 700).¹³ Currently, prize money offered by the National Game on most evenings is around £100,000 (£50,000 on Tuesdays and Saturdays). On Sunday night it is around £200,000. By offering the National Game, clubs can offer their customers higher prizes. In effect, it serves as a marketing tool for both small and large clubs to attract bingo players who are interested in higher prize money.
19. Two third parties who responded to our inquiries raised concerns that the share of National Game ticket sales made by Gala is so high that it could withdraw from the National Game and substitute its own linked game. In their view, this would affect the level of prize money the remaining participants in the National Game could offer (as Gala's contribution accounts for a substantial proportion of the prize money offered) and therefore their ability to compete effectively with the larger clubs (particularly Gala).

¹² In this case, use was made of isodistances rather than isochrones because the data submitted by Gala was based on distance rather than drivetime.

¹³ Other multiple games are organised by Meeron (under the auspices of NBGA) for both Gala and smaller independent operators. Mecca has its own linked game. The maximum number of games of multiple bingo that may be played at any licensed bingo club in any 24 hour period is five (Gaming Clubs (Multiple Bingo) (Amendment) Regulations 2002).

20. Gala's yearly average share of National Game ticket sales was 40.35 per cent in 2005. County's yearly average share was 2.38 per cent. Post-merger, Gala and County's combined monthly share of ticket sales was 43.75 per cent, 42.90 per cent and 43.65 per cent in January, February and March 2006 respectively. Gala noted that, on this basis, the prize money it could offer post-merger would consist of only 43 per cent of the current prize, compared to 57 per cent for the remaining clubs. They also stated that if they withdrew from the National Game they would cease to benefit from the considerable investment in advertising that has taken place since its introduction in 1986.
21. Given that the parties' post-merger share of ticket sales is less than 50 per cent and the merger results in a small increment (between 2-3 per cent) to Gala's share of sales, we conclude that the merger does not materially affect Gala's incentive to withdraw from the National Game. Therefore the merger does not lessen competition in the national market for provision of bingo in licensed bingo clubs.

Local markets

22. In respect of the four local overlap areas identified above, our analysis has taken into account not only structural indicators of competition (such as shares of supply and change in the number of fascias), but we have also carried out a qualitative analysis of the strength of competition pre and post-merger.
23. In this context we have considered evidence submitted by Gala relating to differentiating characteristics of competing clubs, such as the distance between clubs; the size of clubs (as measured by their average weekly admissions and maximum seating capacity); whether clubs are ex-cinemas/traditional or new build/flat floor venues; the utilization rate for each club (measured by the ratio of average weekly admissions to the club's maximum capacity) and other characteristics such as the availability of car park facilities and accessibility of the club by public transport. Where available, we have considered the percentage reduction (forecast and/or actual) in the number of admissions at a Gala club following the opening of a new club in the vicinity. We have also taken into account the views of third parties and evidence submitted by Gala and third parties of the competitive interaction between clubs in terms of promotions and advertising and the provision of subsidized transport. Each of the local overlap areas has been considered on the basis of the evidence described in this paragraph; our findings are outlined below.
24. In Govan, there are three Gala clubs (Gala Possil Park, Gala Darnley and Gala Clydebank) within a five mile radius of the acquired County club (County Govan). However, the closest Gala club to County Govan (Gala Possil Park) is around five road miles away. Post-merger there are two competing clubs (Mecca Quay and

Carlton Partick) that are geographically closer to County Govan than the Gala clubs and which, on the available evidence, are stronger competitors than Gala. Within a three mile radius of County Govan, the merger gives rise to a reduction in fascia from five to four; within a 5.2 mile radius the fascia change is six to five. In light of all of the evidence (outlined in paragraph 23 and cited in this paragraph) we conclude that any lessening of competition brought about by the merger is insubstantial and therefore competition concerns do not arise in this area.

25. In Maryhill, there are two Gala clubs (Gala Possil Park and Gala Clydebank) within a five mile radius of the acquired County club (County Maryhill). The closest Gala club to County Maryhill (Gala Possil Park) is around two road miles away. Post-merger one competing club (Carlton Partick) is also approximately two miles from County Maryhill; on the available evidence this club competes strongly with the merged entity. Within a three mile radius of County Maryhill the merger results in a reduction in fascia from four to three; within a 5.2 mile radius the fascia change is six to five. In light of all of the evidence (outlined in paragraph 23 and cited in this paragraph) we conclude that any lessening of competition arising from the merger is insubstantial and therefore competition concerns do not arise in this area.

26. In Pollok, there are two Gala clubs (Gala Darnley and Gala Paisley) within a five mile radius of the acquired County club (County Pollok). The parties are each other's closest competitors purely in terms of distance (Gala Darnley is around 1.5 road miles from County Pollok). However, the combination of the following considerations alleviates competition concerns in this area:

- a. we note that the Gala club at Darnley has a very low admissions to capacity ratio, which indicates that it may not be a highly attractive venue for bingo players;
- b. we expect that the Mecca club at Quay (located just outside the three mile radius and around four road miles from County Pollok) will exercise a strong competitive constraint since it is located on the same public transport route and has a high admissions to capacity ratio. The evidence submitted by the parties indicates that they monitor and react to promotions by Mecca Quay;
- c. we understand that the new Mecca club at Paisley (also located just outside the three mile radius and around four road miles from the acquired club) will open this summer. Evidence submitted by the parties indicates that they consider the new club a competitive threat to which they intend to respond by way of an extensive promotional campaign; and

- d. there are two further independent competitors within a 5.2 mile radius of County Pollok (both around five road miles from the acquired club); within this radius the merger leads to a fascia reduction from five to four. In light of all of the evidence (outlined in paragraph 23 and cited in this paragraph), we conclude that any lessening of competition brought about by the merger is insubstantial and therefore competition concerns do not arise in this area.
27. In respect of local overlaps in Govan, Maryhill and Pollok we therefore conclude that the merger may not be expected to give rise to a substantial lessening of competition. In each instance, significant competition remains post-merger, indicating that price increases and/or a deterioration of product offering by the merged entity will not be profitable.
28. In Glenrothes, the acquired County club is approximately one road mile from the Gala club. The parties are each other's closest competitors in terms of distance, but their product offering is differentiated in terms of size of club and utilization ratio. A number of third parties noted that pre-merger the parties competed strongly in Glenrothes. There is some evidence that post-merger the parties will be constrained by the presence of two clubs in the Kirkcaldy area, operated by KE Entertainments. However these clubs are located around six road miles from the acquired club and they have low utilization rates. The competitive constraint exercised by these clubs may be insufficient to prevent a post-merger price increase/deterioration of product offering. Gala argued that the bingo club opened by Carlton in Dunfermline in August 2005 also constrains the Gala and County clubs in Glenrothes. Having considered all of the available evidence, in particular the percentage decline in admissions at the Gala club in Glenrothes following the opening of Carlton Dunfermline (around []), and the road distance between the club at Dunfermline and the acquired club (around 16 miles), we were not satisfied that the competitive constraint of Carlton Dunfermline club (either on its own or in conjunction with the clubs in Kirkcaldy) would be capable of sustaining sufficient levels of post-merger rivalry in the Glenrothes area.
29. In respect of the local overlap in Glenrothes on the basis of all of the evidence (outlined in paragraphs 23 and 28), we therefore conclude that there is a realistic prospect that the merger will result in a substantial lessening of competition.

Barriers to entry and expansion

30. We have identified two potential entry barriers in the operation of licensed bingo clubs: regulatory barriers that arise from the Gaming Act 1968 (as amended) and barriers arising from difficulties in obtaining premises/sites of suitable size and location (including planning/development consents).

31. In terms of regulatory barriers, evidence available to us indicates that in practice the consents and licences required under the Gaming Act 1968 do not act as a barrier to entry since the vast majority of applications are granted and the associated costs are not significant. This is in accord with views expressed by third parties.
32. A number of competitors who responded suggested that the difficulties of finding suitable sites and competition for those sites with other potential acquirers may act as a barrier to entry. Generally, bingo halls are large flat floor sites with car parking space. However, Gala argued that finding suitable sites is not a major barrier to entry.
33. In our view, barriers to entry are not particularly high in this sector (although there may be barriers that are specific to individual areas not considered in this case), but we have not identified any entry that would be sufficiently timely, likely and sufficient in scope to remove the competition concerns that arise from the merger in Glenrothes.

Countervailing buyer power

34. Customers of the parties are individual bingo players. We do not believe that these customers are able to exercise countervailing buyer power because their ability to switch between clubs/operators depends critically on the alternatives that are available to them in a particular area.

VERTICAL ISSUES

35. This merger does not give rise to vertical competition issues.

THIRD PARTY VIEWS

36. The views of third parties have been referenced in the relevant sections of this decision.

ASSESSMENT

37. The parties overlap in the operation of licensed bingo clubs in Great Britain. There are four areas where, given the proximity of the parties' clubs, the merger could potentially give rise to competition concerns.
38. In respect of three of these areas we have concluded that the merged entity faces sufficient competition to render a post-merger price increase/deterioration in product offering unprofitable.
39. In respect of Glenrothes, we concluded that the parties were each other's closest competitors before the merger and that it is not expected that the remaining competitors in Kirkcaldy and Dunfermline and/or new entry (or the threat of new entry) would be able to deter or defeat any attempts by the merged entity to capitalise on the loss of rivalry brought about by the merger (for example by raising prices). Therefore the OFT has identified substantive concerns about the loss of competition in Glenrothes.
40. Consequently, the OFT believes that it is or may be the case that the merger may be expected to result in a substantial lessening of competition (SLC) within a market or markets in the United Kingdom.

UNDERTAKINGS IN LIEU

41. Where the duty to make a reference under section 22(1) of the Act is met, pursuant to section 73(2) of the Act the OFT may, instead of making such a reference to the CC, accept from the parties concerned such undertakings as it considers appropriate for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which has or may result from it.
42. The OFT's guidance on undertakings in lieu of reference states that undertakings in lieu of reference are appropriate only where the competition concerns raised by the merger and the remedies proposed to address them are clear cut.¹⁴
43. In lieu of a reference to the CC, Gala has indicated that it is willing to offer a number of divestments, including one bingo club (as a going concern) in Glenrothes. In our view, the divestment of one bingo club in Glenrothes would in principle remedy the SLC identified in respect of the overlap in this area.
44. Accordingly, the OFT has decided to exercise its discretion under section 73(2) of the Act to consider whether to accept undertakings in lieu of a reference.

DECISION

45. Therefore, on the basis of the information currently available to it, the OFT has decided not to refer the completed acquisition by Gala of County to the CC because it is considering whether, instead of making a reference, to accept appropriate divestment undertakings from Gala to address the competition concerns arising from the merger.

¹⁴ Mergers – substantive assessment guidance, paragraph 8.3.