

Statutory regulation of the pools industry

General overview

1. As part of our inquiry, we considered the regulatory background to the pools industry. The relevant regulatory environment is relevant to our investigations into possible barriers to market entry (see Appendix G, paragraphs 6 to 8) and to Sportech's future intention [✂] assuming the merger were to go ahead.
2. During the course of our inquiry the regulatory regime governing the pools industry changed. Until September 2007 it was governed by the BGLA. However, the Gambling Act 2005, which came into force in September 2007, repealed the BGLA in full. Pursuant to the Gambling Act 2005 regulation of the pools industry now falls within the remit of the recently-established Gambling Commission. For completeness, we discuss both statutes in turn. Assuming that the merger proceeds, the merged entity will of course be subject to the new regulatory regime.

BGLA

3. The most common forms of pools or pools competition in the UK are the football pools, the horse-racing tote and the totalizators at greyhound tracks. The same BGLA regulations applied to all such forms of pools betting in the past.

Premises in which football pools can be sold

4. Originally under the BGLA no premises could be used for retail pool competitions. However, section 56 of the National Lottery Act 1993 and a deregulation order in 1997 amended the BGLA by permitting pools competitions to be sold in retail premises. This allowance was only granted to football pools and it was intended to reduce the impact of the introduction of the National Lottery. The National Lottery Act 1993 also allowed for rollovers to operate in the pools for the first time.

Entry and registration as a pools promoter

5. Under the BGLA a 'Pools Promoter Registration' was required by any pools provider in order to run a pools competition. This registration allowed a person 'to carry on a pools betting business involving the giving and receiving of bets made by way of pool betting'. The annual fee for this registration was £464.
6. Under the BGLA regime, any prospective entrant to the pools business was bound to demonstrate compliance with the requirements for running a pools competition set out in detail in Schedule 2 of the BGLA. Enforcement of these provisions lay with the registering authority which was achieved (in the main) through the appointment of an accountant by the local authority. The pools promoter submitted to that accountant detailed information about each competition which shows the stakes, the proportion paid in winnings and the expenses apportioned to each competition.

Equal stake requirement

7. Section 13 of Schedule 2 of the BGLA constituted an important regulation for pools providers. It provided as follows:

13. Subject to paragraphs 14 to 19 of this Schedule, the pool betting business carried on by any registered pool promoter shall comply with the following requirements—

- (a) it shall take the form of the promotion of competitions for prizes for making forecasts as to sporting or other events, the bets being entries in the competitions and the winnings in respect of the bets being the prizes or shares in the prizes;
- (b) each bet shall be an entry in a particular competition;
- (c) the stakes and the winnings shall be wholly in money;
- (d) in each competition, the prizes shall be equally available for all the bets, and accordingly the question which bets qualify for, or for shares in, the prize or prizes and, save so far as it depends on the amounts staked, the amounts of the respective shares in the prizes, shall be determined solely by the relative success of the forecasts embodied in the respective bets;
- [(e) the total amount payable by way of winnings shall, in the case of each competition, be calculated in accordance with paragraph 13A of this Schedule;]¹
- (f) the rules applying to the competition shall be notified [to the Commissioners of Customs and Excise and] to the accountant before the first of the relevant sporting or other events takes place.

8. Under this regime any merged 'super pool' would need to ensure that the winnings payable to a Vernons or Sportech customer would be directly proportional to the amount paid for the winning bet. This is discussed in paragraph 3.7 in the context of the rationale for the merger. Sportech told us that its planned [~~SK~~] would operate in future in a way that was fully compatible with section 13 of the BGLA, although the BGLA is no longer in force.

Requirement to publish 'percentage used to cover expenses and commission'

9. Pursuant to section 21 of Schedule 2 to the BGLA all pools providers published the percentage used to cover their expenses and commission.² The relevant statutory obligation provided as follows:

21.—(1) Every registered pool promoter shall not more than twenty-one days after the events to which any of his competitions relate have taken place, send to every competitor in that competition a statement of the percentage (calculated to the nearest one-tenth of one per cent)

¹Use of square brackets in the text of the legislation is used to indicate that these provisions were inserted by the National Lottery Act 1993.

²The relevant information relating to each pools game is published in the following Thursday's *Daily Mail*. The pools operators have continued to publish this information following the change in the regulatory regime in September 2007.

which the first of the amounts hereinafter mentioned bears to the second of those amounts, that is to say—

(a) the aggregate total stakes in that competition and all other competitions of that promoter which depend on those events or on other events taking place on the same day, [after making in respect of each of those competitions the deductions mentioned in sub-paragraph (1A) of this paragraph;]

(b) the said aggregate total stakes, without any such deduction,

unless he has secured all such publicity as is reasonably necessary for the said statement by means of a newspaper announcement or newspaper announcements published within the said twenty-one days.

[(1A) In relation to any competition, the deductions referred to are—

(a) a deduction of the aggregate of the total amount payable by way of winnings in the competition and any amount carried over from the competition in accordance with any provision made under paragraph 14A of this Schedule, less any amount carried over to the competition in accordance with any such provision, and

(b) a deduction of the amount of pool betting duty payable in respect of the competition.]³

(2) The statement aforesaid may take the following form, that is to say—

“Commission and expenses per cent”

with the addition (if in the context this is necessary) of words identifying the competition or competitions to which the statement relates.

Gambling Act 2005 and the Gambling Commission LCCP requirements

10. In September 2007 new operating licences for pools providers came into force governed by the Gambling Commission in accordance with its Licence Conditions and Codes of Practice (LCCP).

11. The Gambling Commission has told the CC that:

the major difference between the arrangements under the 1963 Act and the 2005 Act is that the 1963 Act is prescriptive in terms of setting out the manner in which betting occurs, whereas the 2005 Act is more concerned with ensuring the integrity and fairness of the overall arrangements. For that reason the Commission's LCCP document has very few requirements which are specific to football pools, and certainly nothing to mirror the level of detail in Schedule 2 of the 1963 Act.

12. In order to determine the level of fees payable for an operating licence, the Gambling Commission has maintained six categories of pool betting operators. The Gambling

³Use of square brackets in the legislation is used to indicate that these paragraphs were inserted by the National Lottery Act 1993.

Commission defines a small non-remote (category A) or remote (category F) pools betting operator as one with an annual gross gambling yield of less than £5 million.

13. The fees payable for such a licence represent an increase on what is payable under the BGLA regime.⁴ By way of example, with effect from September 2007 the smallest pools betting operators have had to meet the following costs: (a) non-remote application fee of £659 plus an annual fee of £2,121; and (b) remote application fee of £659 plus an annual fee of £1,500.⁵
14. The relevant sections of the BGLA applicable to football pools are not replicated in the LCCP. However, the Gambling Commission has told the CC that LCCP provisions 7 and 13, as set out below, are relevant to the pools industry.
15. Code provision 7 of the LCCP sets out the 'General Fair and Open Provisions' upon which the granting of operating licences will be dependent, inter alia. It provides as follows:

Licensees must satisfy themselves that the terms on which gambling is offered are not unfair under the Unfair Terms in Consumer Contracts Regulations 1999 and where applicable meet the reasonableness test under the Unfair Contract Terms Act 1977.

An accurate summary of the contractual terms on which gambling is offered must be made available to customers and set out in plain and intelligible language.

Customers must be notified of changes to terms before they come into effect.

16. In addition, provision 13 of the LCCP provides specifically (and only) in relation to licensed *football* pools providers that:

Licensees and any person they so authorise must produce and retain a record of the transactions relevant to each pool they offer. The record must be capable of identifying individual bets into the pool and relating these to the subsequent payment of winnings where applicable. Licensees must make this information available to the Commission on request.

17. Although section 13, Schedule 2, of the BGLA is not reproduced anywhere in the LCCP, it is arguable that any change to the 'equal stake equal winnings' requirement might raise general concerns relating to fairness under the above LCCP provisions.

⁴There is a further separate HM Revenue & Customs (HMRC) administrative requirement applicable to pools providers: prior to commencing a pool betting business, all pools providers must first obtain a permit from HMRC authorizing them to carry on a pool betting business. There is no charge for granting a permit and there is no renewal requirement.

⁵25 per cent reductions apply to the first annual fee. The complete table of fees payable for (a) an initial application and (b) an operating licence for both remote and non-remote football pools licences is set out on the Gambling Commission's website: www.gamblingcommission.gov.uk.