TAKEOVER APPEAL BOARD

LADBROKES PLC

DECISION OF THE TAKEOVER APPEAL BOARD

I Background

Parties

1. Ladbrokes plc ("Ladbrokes") is a well-known bookmaker. Its shares are admitted to trading on the Main Market of the London Stock Exchange, and it is subject to the Takeover Code ("the Code"). As at the close of business on November 24, 2015, Ladbrokes had a market capitalisation of approximately £1.12 billion.

2. Gala Coral Group Ltd ("Gala Coral") is one of Europe's largest betting and gaming groups. Gala Coral is privately owned and the shareholders of Gala Coral are the group's management and various alternative investment managers, including private equity funds Anchorage, Apollo, Cerberus and Saberasu Japan.

3. Playtech plc ("Playtech") is the world's largest online gaming software and services supplier, and is engaged in the development and licensing of software and the provision of ancillary services for the online and land-based gambling industries. Playtech's shares are admitted to trading on the Main Market of the London Stock Exchange. As at the close of business on November 24, 2015, Playtech had a market capitalisation of approximately £2.48 billion.

4. Mr Desmond is a businessman and financier. He owns approximately 2.72 per cent of the issued share capital of Ladbrokes.

Merger announcement

5. On June 22, 2015, in response to press speculation, Ladbrokes confirmed that it was in discussion with the board of Gala Coral regarding a possible merger of Ladbrokes and the Coral Group (which is the principal part of Gala Coral's group of companies and comprises three main operating divisions: Coral Retail, Eurobet Retail and Online).

6. The announcement stated that the enlarged company would be listed on the Official List of the UK Listing Authority ("UKLA") and that its shares would be admitted to trading on the Main Market of the London Stock Exchange. Shareholders were advised that there was no certainty that discussions between Ladbrokes and Gala Coral would lead to any agreement concerning a merger.

7. On July 24, 2015, Ladbrokes and Gala Coral announced that they had agreed the terms of a proposed recommended merger (the "Merger") between Ladbrokes and the Coral Group. To effect the Merger, Ladbrokes agreed to acquire the Coral Group from a subsidiary of Gala Coral, Gala Group Finance plc ("Coral"), in exchange for new shares in Ladbrokes representing approximately 48.25 per cent of the enlarged issued share capital of Ladbrokes at the time of the announcement of the Merger (the "Consideration Shares").

8. Existing Ladbrokes shareholders would own the balance of the enlarged group. The announcement stated that the Merger was classified as a reverse takeover of Ladbrokes under the Listing Rules of the UKLA, a division of the Financial Conduct Authority. It also stated that the issue of the Consideration Shares at completion of the Merger might, for technical reasons, require a waiver from the Takeover Panel ("Panel") relating to obligations that might otherwise be incurred by Coral and its concert parties to make a general offer under Rule 9.1 of the Code to all Ladbrokes shareholders. The announcement stated that, should such a waiver be granted by the Panel, it would require the passage by the independent shareholders of Ladbrokes of a resolution approving the waiver of the mandatory bid obligation under Rule 9.1 (the "Whitewash Resolution").

9. The Panel Executive (the "Executive") agreed that the obligation on Coral to make a general offer under Rule 9.1 of the Code to all Ladbrokes shareholders which would otherwise arise would be waived if independent shareholders of Ladbrokes voted in favour of the Whitewash Resolution.

The Placing

10. A few minutes after the announcement of the Merger, Ladbrokes also announced a non-pre-emptive placing of up to 92,378,680 new ordinary shares, representing up to approximately 9.99 per cent of Ladbrokes' then issued share capital, to existing and new institutional investors by means of an accelerated bookbuild process (the "Placing"). The announcement stated that the net proceeds of the Placing would

strengthen the balance sheet of the enlarged Ladbrokes and that the Placing would proceed irrespective of whether the Merger completed. The announcement also stated that Playtech was expected to take up to 22.9 per cent of the shares which were to be issued pursuant to the Placing.

11. Later on July 24, 2015 Ladbrokes announced that the Placing had been successfully completed and that 22.9 per cent of the shares issued pursuant to the Placing had been placed with Playtech.

Playtech Agreements

12. In March 2013, Ladbrokes entered into two commercial contracts with Playtech: (1) a marketing services agreement (the "MSA" or "Original MSA") under which Playtech agreed to provide marketing and advisory services to grow Ladbrokes' digital business; and (2) a software licence agreement (the "SLA") under which Playtech granted Ladbrokes access to software and services relating to online casino and other gaming activities. The MSA and the SLA together have throughout these proceedings been referred to as the "Original Agreements".

13. On July 23, 2015, the day prior to the announcement of the Merger, Ladbrokes and Playtech entered into two amendment agreements in respect of the Original Agreements:

    (1) an amendment agreement to the MSA (the "MSA Amendment Agreement") under which, from completion of the Merger, the existing terms and obligations under the MSA will be replaced with new terms (including (i) a payment by Ladbrokes to Playtech of £40 million upon completion of the Merger to be satisfied by the issue of new Ladbrokes shares and (ii) the payment to Playtech of a further guaranteed £35 million in cash payable upon delivery of key operational milestones, but, in any event, within 42 months from completion of the Merger); and

    (2) an amendment agreement to the SLA (the "SLA Amendment Agreement") pursuant to which revised fee arrangements will apply on completion of the Merger, break clause provisions relating to the SLA were agreed and certain other non-material amendments were made to the SLA.

    The MSA Amendment Agreement and the SLA Amendment Agreement together

are referred to as the "Amendment Agreements".

14. Playtech also separately agreed to use reasonable endeavours to procure that two Playtech consultants continue to support Ladbrokes' 2016 marketing plan after completion of the Merger.

Circular

15. On October 30, 2015 Ladbrokes announced the publication of a circular (the "Circular") which included (at page 120) the notice of a general meeting (the "General Meeting") which set out the necessary resolutions required to be passed by Ladbrokes shareholders to approve the Merger.

16. The Circular explained (pages 7-8; 16-18) that:

    (1) as Coral would hold more than 30 per cent of the voting rights of Ladbrokes at Completion, a mandatory offer would normally be required under Rule 9 of the Takeover Code, but that the Panel had agreed that, subject to the Whitewash Resolution being passed on a poll by the independent Ladbrokes shareholders at the General Meeting, the Panel would waive the requirement under Rule 9; and

    (2) the Executive had agreed that none of the ultimate shareholders of Gala Coral would be presumed to be acting in concert with Coral, with Gala Coral or with each other after the distribution of the Consideration Shares to the ultimate shareholders of Gala Coral and therefore that, after that time, no person or concert parties would be interested in over 30 per cent of the shares in Ladbrokes.

17. The resolutions were ordinary resolutions, were inter-conditional on each other and consisted of the following:

    (a) a resolution to approve the Merger;

    (b) a resolution to grant the directors authority to allot the Consideration Shares to Coral and further shares to Playtech pursuant to the July 23, 2015 contractual arrangements;

    (c) the Whitewash Resolution; and

(d) a resolution approving the waiver granted by the Executive of the obligations which might otherwise arise pursuant to Rule 9.1 of the Code for Coral and/or its concert parties to make a general offer to the shareholders of Ladbrokes as a result of any increase in their percentage shareholding in Ladbrokes as a result of the exercise by Ladbrokes of its existing share buy-back authority (the "Buy-Back Resolution").

18. Only Shareholders in Ladbrokes being "independent shareholders" for the purpose of Note 1 on the dispensations from Rule 9 were permitted to vote on the Whitewash Resolution and the Buy-Back Resolution.

19. In Section 3.1, on page 11, under the heading "An enhanced and integrated technology platform" the Circular stated:

> "To assist in providing the flexibility for the Enlarged Group to achieve integration and realise synergies from the combination of the Coral Group and Ladbrokes' digital businesses, Playtech has agreed with Ladbrokes to amend, conditional upon Completion, the existing Marketing Services Agreement with Ladbrokes.
>
> As part of this arrangement, Playtech and Ladbrokes have agreed to accelerate the determination of amounts due to Playtech under the Marketing Services Agreement. The sum agreed is £75 million, of which £40 million will be satisfied by way of the issue of shares in the Enlarged Group on Completion … and with a further £35 million in cash paid upon delivery by Playtech of key operational milestones but, in any event, within 42 months following Completion.
>
> This will accelerate the integration of the two companies' digital platforms and therefore the delivery of costs synergies. The additional benefits of this agreement are not reflected in the synergy estimate … and would reflect incremental value generation for the Enlarged Group."

20. In Section 13, on page 99 of the Circular, entitled "Material contracts", it was stated that "no contracts have been entered into (other than contracts entered into in the ordinary course of business) by any member of the Ladbrokes Group, either (a) within the two years immediately preceding the date of this Circular which are or may be material; or (b)... save as disclosed below". "Disclosed below" (on pages

102 and 103) were summaries of the MSA and the MSA Amendment Agreement and the SLA and the SLA Amendment Agreement.

21. The summary (page 103 of the Circular) explained that the MSA Amendment Agreement replaced existing provisions in the MSA with new provisions that provided for (i) a payment by Ladbrokes to Playtech of £40 million upon completion of the Merger to be satisfied by the issue of new Ladbrokes shares and (ii) the payment to Playtech of a further guaranteed £35 million in cash payable upon delivery of key operational milestones, but, in any event, within 42 months from completion of the Merger.

22. None of these agreements was published on a website on the date of publication of the Circular. But following a request made on behalf of Mr Desmond, the Amendment Agreements were published in full on the website on November 5, 2015. Mr Desmond was informed that this was not a matter of obligation but a gesture of goodwill.

23. Mr Desmond raised concerns regarding the Original Agreements and the Amendment Agreements with the Executive on November 16, 2015. On November 21, after a series of discussions on November 17 to 21 between the Executive, Ladbrokes and Mr John Bateson, acting on behalf of Mr Desmond, the Executive ruled that (1) the Original Agreements were not material contracts entered into by Ladbrokes in connection with the Merger which were required to be published on a website by Ladbrokes pursuant to Rule 26.3 of the Code and (2) the effect of the Amendment Agreements was capable of being understood without reference to the full text of the Original Agreements.

24. At 9.30am on November 24 the Ladbrokes General Meeting was convened. All resolutions were passed with over 94 per cent of the votes cast in favour of each resolution.

Hearings Committee rulings and appeals to the Takeover Appeal Board

25. Meanwhile, on November 21, 2015 Mr. Desmond had requested a review by the Hearings Committee of the rulings of the Executive that the Original Agreements were not material contracts and need not be published, and that the Amendment Agreements could be understood without reference to the full text of the Original Agreements.

26. A meeting of the Hearings Committee was convened on November 26 and on December 14 the Hearings Committee upheld the Executive's ruling.

27. On December 21 Mr. Desmond, submitted a notice of appeal to the Takeover Appeal Board in respect of the Hearings Committee's ruling.

28. On December 22 Jones Day, legal advisers acting on behalf of Mr. Desmond, wrote to the Executive setting out additional complaints relating to the Merger, alleging that: (1) the Circular contained material omissions and inaccuracies which rendered it misleading, so that Ladbrokes shareholders voted at the General Meeting on a false premise; and (2) the Original Agreements and/or the Amendment Agreements constituted a dealing arrangement consisting of an inducement to deal, for the purposes of Note 11(a) on the definition of "acting in concert" referred to in Rule 26.2(c).

29. Jones Day requested that (1) material new information omitted from the Circular be brought to the attention of Ladbrokes shareholders (including through the publication of the Original Agreements on a website); (2) a further general meeting of Ladbrokes be convened for shareholders to vote again on the resolutions required to approve the Merger; and (3) the Original Agreements be published on a website pursuant to Rule 26.2(c).

30. Following correspondence from Mr. Desmond to the Chairman of the Hearings Committee, on February 17, 2016 the Chairman of the Hearings Committee ruled that the proceedings and materials (both written and oral) produced before the Hearings Committee on November 26, 2015 should remain confidential (and on March 30, 2016 Mr. Desmond submitted a notice of appeal to the Takeover Appeal Board in respect of this ruling).

31. On March 7, 2016 the Executive ruled that: (1) no new information was required to be disclosed to Ladbrokes shareholders and a further general meeting of Ladbrokes should not be held in relation to the Whitewash Resolution and Buy Back Resolution; and (2) the Original Agreements and/or the Amendment Agreements did not constitute an inducement to deal.

32. Mr. Desmond then requested that this ruling be reviewed by the Hearings Committee. A meeting of the Hearings Committee was convened on April 12, 2016, and on April 20, 2016, the Hearings Committee upheld the Executive's

ruling.

33. On April 22, 2016 Mr. Desmond, submitted a notice of appeal to the Takeover Appeal Board in respect of the Hearings Committee's ruling, and on May 16, 2016 the Takeover Appeal Board, consisting of Lord Collins, Sir John Mummery and Mr Edward Walker-Arnott heard the three appeals. At the conclusion of the hearing the Board announced that the appeals would be dismissed, for reasons to be given later. Because some of the parties then indicated that they might wish to make submissions that confidential or commercially sensitive information should be redacted from the published decision pursuant to Rule 2.21 of the Rules of the Board, the decision was supplied to the parties in draft on June 6, 2016. As a result, some minor changes were made which do not affect the substance of the reasoning, which is set out below. The ruling of the Hearings Committee of December 14, 2015, the ruling of the Chairman of the Hearings Committee of February 17, 2016 and the ruling of the Hearings Committee dated April 20, 2016 are annexed hereto, as Annexures 1 to 3 respectively.

II Ruling of the Hearings Committee: December 14, 2015

34. The Hearings Committee decided as follows.

35. The Code was concerned to ensure that shareholders had the relevant information to be able to cast informed votes, but it was not concerned with the commercial rationale for an offer or merger. The essential fact that the £75 million payment had been negotiated and was to be made had been fully disclosed and there could be no reasonable difficulties in understanding it or asking about it. It would be improbable and unusual for agreements such as those in question to explain how or when the terms came to be agreed or the commercial rationale for them.

36. The shareholders of Ladbrokes appeared to have had no difficulty in forming their opinion on the Whitewash Resolution, and the Committee also accepted that neither the SLA nor the SLA Amendment Agreement was in any way even arguably material to this question.

37. The Committee acceded to the submission by the Executive, Ladbrokes and Playtech to deal with the question whether the Original Agreements or Amendment Agreements should have been disclosed as material contracts, although it did not strictly arise.

38. The Amendment Agreements were well within the two-year time limit in Rule 25.7(a), had to be included in summary in the Circular and published on a website in accordance with Rule 26.3(d) provided they were material (which was not in issue) and (i) were not entered into "in the ordinary course of business"; and (ii) were entered into "in connection" with the Merger.

39. The Amendment Agreements demonstrated the importance of the services and licences provided by Playtech to the online business of Ladbrokes, which was the business in question for the purposes of the Rule. The language used in publishing the summary in the Circular undoubtedly suggested that the Amendment Agreements were not made in the ordinary course of business.

40. On balance, the Committee was satisfied that the Amendment Agreements were properly to be described as ones made in the ordinary course of the business of Ladbrokes. That business included a significant and growing online business which required for its successful operation the services and technology of a company such as Playtech and the Amendment Agreements were designed to secure those services in the event that Gala Coral's online business came to form part of the merged business. The fact that the Agreements were negotiated with a party with whom Ladbrokes had a wider relationship did not alter the nature of the Amendment Agreements themselves. The commercial significance of the relevant agreement was not of itself or alone the test.

41. The Committee was also concerned that if the words "in connection with" were given a wider meaning they would potentially catch any material agreement which would be "occasioned by" an offer or merger, for example to reflect a new corporate structure, and to require publication in full of numerous agreements of no significance to voting shareholders. The words did not have the clarity which was the intention underlying their use in Rule 26.3(d) of the Code.

42. The Amendment Agreements were prepared and signed because of and in "anticipation" of the proposed Merger and the perceived need to amend the Original Agreements to meet the circumstances expected to arise if the Merger was successfully completed.

43. The relevant words of Rule 26.3(d) were ordinary English words and, in their normal meaning, one interpretation would be that the Amendment Agreements were entered into "in connection with" the Merger. But the purpose of the

requirement to publish such agreements was not directed at agreements which were simply "connected" to the offer or merger by reason of being required or impacted by it, but only those which were concerned with or directed to the implementation of the offer or merger itself, such as irrevocable undertakings to accept or approve the terms of an offer or merger.

44. That restricted construction was supported by the circumstances in which Rule 26.3(d) came to be included in the Code, following the view of the Code Committee that it was difficult to justify requiring copies of material contracts which were not related to the offer to be put on display in full.

45. Accordingly, the Amendment Agreements were not properly to be described as entered into in connection with the Merger.

46. Consequently, the Committee was not satisfied that the Amendment Agreements themselves were required to be published on a website by Ladbrokes in compliance with Rule 26.3(d), both because they were entered into the ordinary course of the business of Ladbrokes and because they were not entered into in connection with the terms of the Merger.

47. In view of the conclusions that publication of the Amendment Agreements was not required by Rule 26.3(d) of the Code, it was unnecessary to consider the submission that publication of the Original Agreements was required (wholly or at least in part) to discharge an obligation to publish the Amendment Agreements. If there had been a requirement to publish the full agreement between the parties, it would have sufficed to include in the publication only those terms of the Original Agreements which were to continue in force as part of the new agreements which became the Amendment Agreements.

III Ruling of Chairman of Hearings Committee: February 17, 2016

48. Mr Desmond maintained that the Circular might also contravene certain of the Financial Conduct Authority's Listing Rules and Disclosure and Transparency Rules and wished information to be brought to the attention of the UKLA. A request to use the information in a submission to the UKLA was made by Jones Day to the Secretary to the Hearings Committee on December 23, 2015. The Secretary to the Hearings Committee replied on behalf of the Chairman on December 24, 2015 stating that "the proceedings and materials (written and oral)

produced before the Hearings Committee are and shall remain confidential (except to the extent otherwise lawfully in the public domain already), so may not be shared by Mr. Desmond with the UKLA and should remain confidential". The Chairman confirmed this, following further correspondence, on February 17, 2016.

49. Following further exchanges of correspondence between February 16 and March 14, 2016, the ruling of the Chairman was confirmed. The Chairman was prepared to allow disclosure to the UKLA, but only with the consent of each of the other parties to the Hearings Committee proceedings. That consent was not forthcoming.

IV Ruling of the Hearings Committee: April 20, 2016

50. In this ruling the Hearings Committee dealt with Mr Desmond's complaints that (1) the Circular contained material omissions and inaccuracies which rendered it misleading, so that Ladbrokes shareholders voted at the General Meeting on a false premise; and (2) the Original Agreements and/or the Amendment Agreements constituted a dealing arrangement as set out in Note 11(a) on the definition of "acting in concert".

51. The Committee accepted that no specific information was given in the Circular as to the basis of calculation of the figure of £75 million. But Ladbrokes had made available a figure for the estimated fair value at December 31, 2015 of the consideration which would be payable by Ladbrokes to Playtech under the terms of the Original Agreements if they continued in force without the merger being effected. That figure (now included in Ladbrokes' audited accounts) was £31.5 million and was expressly stated not to include the impact of the Amendment Agreements. Under the Original Agreements the figure depended on a projection of EBITDA to the end of the year 2017. Mr. Desmond did not accept this figure; and believed that the right figure might well be that nothing will be payable under the Original Agreements.

52. The Committee saw no reason to doubt that the figure had been prepared with proper care, or that the £75 million figure was negotiated in a commercial context in which the outcome under the Original Agreements, if applied after the Merger, could have exceeded that figure.

53. Mr. Desmond's criticisms of the information (or lack of it) provided in the Circular were (1) the justification for the £75 million figure should have been stated and, (2)

the "blunder" by Ladbrokes in entering into the Original Agreements without providing for an eventuality such as the Merger should have been exposed.

54. Although the Circular could reasonably have given more contextual information about the justification for the £75 million payment, the Committee did not consider that this would or could have resulted in any material difference to the outcome of the General Meeting. Any further information would have provided further justification for what was a negotiated figure, and to require a new vote to be held would serve no useful purpose and would be out of all proportion to the criticism made by Mr. Desmond.

55. Whether or not the drafting of the Original Agreements could fairly be described as mistaken (which the Committee had no grounds for believing to be the case) was in any event of no real relevance. If it was a mistake, it required to be rectified. If it was not, there was nothing in the point.

56. The shareholders had sufficient time and information to enable them properly to reach the decisions that they did at the General Meeting; any shortcomings in the information in the Circular were not significant to the outcome of the votes at the General Meeting; and information was equally available to all shareholders at the time of the General Meeting, which antedated the hearing before the Hearings Committee on November 26, 2015. The Committee accepted the submission of the Executive that the privacy attaching to that hearing, to the extent it was applicable, should take precedence over Rule 20.1.

57. As regards Note 11 and Rule 26.2, the Committee considered that reliance on Note 11 on the definition of "acting in concert" was misplaced. The Note (so far as potentially relevant) required the fulfilment of two conditions: (1) there must be an arrangement, agreement or understanding relating to relevant securities; and (2) that arrangement, agreement or understanding "may be an inducement to deal or refrain from dealing" in those securities. The Original Agreements contained nothing which related to "relevant securities". The only reference to the securities of Ladbrokes was as part or all of the consideration which might become payable to Playtech under the original MSA. Playtech held no shares in Ladbrokes at the time of the Original Agreements and had since bought and sold shares in the market. The Amendment Agreements were to apply if the Merger completed and were to ensure the continued provision of services essential to the combined business. They

contained no commitment by Playtech to buy or sell any shares in Ladbrokes or to vote in any way at the General Meeting. Whilst the Placing was agreed at the same time as the proposed Merger was announced, it was to be effective whether or not the Merger was completed.

58. Consequently, there was no basis (1) for requiring the publication by Ladbrokes of any further information relating to the Original Agreements or the Amendment Agreements or (2) for requiring Ladbrokes to call a further general meeting to vote on the resolutions which were before shareholders on November 24, 2015.

V Arguments before the Takeover Appeal Board

A Mr Desmond

59. Mr Desmond originally asked the Board for the following relief: (1) that Ladbrokes be required to display the Original Agreements; (2) that the Ladbrokes Board provide an explanation to shareholders for the modification of the Original Agreements governing the commercial relationship between Ladbrokes and Playtech, and in particular information regarding the primary purpose for the payment to Playtech; (3) that there be a further general meeting of Ladbrokes be convened at which the Shareholders, in possession of this new information, would have a second opportunity to vote on the resolutions voted on at the General Meeting of November 24, 2015; and (4) that the Board permits a submission to be made to the UKLA making use of verbal and written materials obtained before and during the Hearings Committee hearing held on November 26, 2015.

60. At the hearing before the Board, Mr Andrew Hunter QC for Mr Desmond asked for this modified version of relief: (1) a new vote on the Whitewash Resolution; (2) prior to the vote, disclosure supplemental to the Circular, of the true circumstances of the MSA Amendment Agreement, namely (a) what remuneration would have been due under the Original MSA, if it had not been amended and the merger had proceeded; (b), details of the link with the Placing; and (c) a statement that the real reason the MSA Amendment Agreement was made was to deal with a commercial impediment presented by the Original MSA, namely in effect, a statement along the lines of Ladbrokes' submissions to the Hearings Committee or the Board; and (3) that material which was before the Hearings Committee (transcripts and submissions from Ladbrokes and the Panel) should be permitted to be disclosed to

the UKLA.

61. Mr Hunter placed very little emphasis on the arguments previously maintained by Mr Desmond that the Original Agreements and Amendment Agreements amounted to an inducement to deal for the purposes of Note 11(a) on the definition of "acting in concert" referred to in Rule 26.2(c), and he relied on a more general arrangement with Playtech which included an inducement to take shares in the Placing.

62. The combined effect of Mr Desmond's Notices of Appeal and the written and oral submissions on his behalf to the Board is as follows.

63. The inadequacy of the payment provisions in the Original MSA would have resulted in a reward for Playtech for value created simply by the Merger rather than its performance, and would have led to a sum being payable to Playtech under the Original MSA which could have significantly exceeded £75 million. This potentially very significant liability for Ladbrokes, had the Merger proceeded but without the terms of the Original MSA being amended, would have, at the least, substantially changed the financial terms on which the Merger would have proceeded and, more likely could have rendered the Merger economically unsustainable.

64. The Ladbrokes' Board recognised that there was a commercial impediment to any proposed merger under the terms of the Original MSA and took steps to address it. As a result, and without Ladbrokes' shareholders being provided with information pertaining to the true reasons for it, Playtech and Ladbrokes reached an accommodation, overcoming these obstacles, whereby Playtech agreed to support the Merger. As a result of information which has emerged over the course of these proceedings, it is now clear that Ladbrokes secured this support by offering Playtech: (a) a financial incentive in the form of the payment pursuant to the MSA Amendment Agreement; and (b) an invitation to Playtech (as part of a very select group of investors), and no doubt related to entry into the Amendment Agreements, to buy additional shares in the Placing announced simultaneously with the announcement of the Merger which, together with additional market purchases during this period, saw Playtech increase its shareholding from less than 3 per cent to approximately 9.71 per cent by July 28, 2015, five days later, with Playtech being singled out as the only subscriber not subject to scaling down in the event of over-subscription (which, in the event, occurred).

65. Accordingly what was not explained in the Circular was (1) that the primary purpose and real rationale for the payment and the agreement of amendment terms with Playtech was to remove what would have otherwise been a substantial commercial impediment to the Merger; and (2) the real cost of procuring Playtech's support, which was not just the payment but permitting Playtech to participate in the placing and substantially increase its shareholding in Ladbrokes.

66. This information should have been disclosed to Ladbrokes' shareholders so that they could make a fully informed decision whether or not to support the Merger. That would have mattered to any reasonable shareholder because: (1) it would cause a reasonable shareholder to question both the independence of the Ladbrokes' Board on issues relating to the Merger and the transparency of the process as a whole. The true facts of the arrangement suggest that Playtech had what was virtually a roadblock against the Merger and that the Ladbrokes board was forced to cede substantial benefits to Playtech to gain its support - which it then presented as a *fait accompli* without revealing the true cost. Shareholders were entitled to know that so that they could appraise the extent to which their company's Board was truly independent with respect to the Merger and whether the deal struck with Playtech was really a good one; and (2) it would cause a reasonable shareholder to have real concerns as to whether Playtech has enjoyed too great an influence on the progress of the Merger, particularly when Playtech will have a material and potentially lucrative role in any future merged Ladbrokes/Gala Coral entity as a supplier. Shareholders must get the chance to decide whether or not Playtech's substantial influence over the Merger matters in full possession of the facts. This is particularly relevant in the light of Playtech's publicly stated position that it already has "significant influence over the financial and operational decision making of the Ladbrokes' digital business" (Note C to the financial statements contained in Playtech's Annual Report and Accounts for 2013 and 2014).

67. There was no attempt to convey to Ladbrokes' shareholders: (1) the critical influence Playtech possessed over whether or not the Merger could move forward at all; (2) the fact that Playtech was incentivised to support the Merger only once it had been promised a substantial guaranteed cash payment and further shares; and (3) the manner in which Playtech, a major driver in any merged Ladbrokes/Gala Coral entity, leveraged its position of significant power based upon Ladbrokes' incompetence in negotiating the terms of the Original MSA to its own commercial

benefit.

68. The omission was all the more serious given that: (1) Playtech will benefit substantially from the Merger. It is no answer to say that had Playtech not agreed to amend the terms of the Original MSA it could in fact have received an even greater benefit from the Merger, as the Merger might well have stalled from the outset without Playtech's agreement to amend the terms of the Original MSA. The Merger was not announced by Ladbrokes until the day after the Amendment Agreements were executed. If there was/is no Merger, Playtech currently stands to receive very little, if anything at all, by way of incentive payments under its contractual agreements with Ladbrokes; and (2) it was originally intended by Ladbrokes and Playtech that Playtech would be entitled to vote on the Resolutions, including to approve the Whitewash Resolution.

69. The Circular was also incomplete because it failed to explain: (1) what Playtech is likely be paid under the Original Agreements if the Merger fails to complete; and (2) what Playtech would have been paid if there had been a Merger but the Original Agreements had not been amended. That information was central to allowing a reasonable shareholder to assess the extent to which the Ladbrokes' Board had acted appropriately in striking the deal with Playtech.

70. One of the outcomes of the Merger is the crystallisation of the payment to Playtech. That payment is significant in the context of Ladbrokes' market capitalisation (amounting to between 6 and 7 per cent). In order for shareholders to fully understand whether or not the Merger was a good deal for Ladbrokes, the Circular should have made clear what Playtech would be paid by Ladbrokes were there to be no Merger. Without this crucial information, shareholders had no way of knowing whether or not the payment was a good deal for Ladbrokes. While the shareholders were not being asked to approve the terms of the Amendment Agreements, they were being asked to approve Resolutions required for the Merger, and one of the outcomes of the Merger would be the immediate trigger of the first £35 million of the payment and the guaranteed payment of the balance within 42 months.

71. The omissions amount to breaches of Rules 19.1, 19.2, 19.3, 23.1 and General Principle 4 of the Code.

72. At the time of the Placing, only Playtech knew of the terms of the MSA Amendment Agreement. This was market sensitive information paving the way for

the Merger to proceed, yet Playtech was included in and participated in the Placing knowing information which the rest of the market did not. Prima facie that was in disregard of Rule 20.1 of the Code.

73. The non-disclosures are material. It was Ladbrokes which considered that it was necessary to summarise the contractual relationship between Ladbrokes and Playtech in the Circular that was provided to Ladbrokes' shareholders prior to the vote on the Resolutions. Having made reference to the Amendment Agreements and the role of Playtech more generally, it was incumbent upon Ladbrokes to ensure that the picture presented on its relationship with Playtech was accurate, full and not misleading.

74. Regardless of whether the Merger is a transaction to which the Code applies, it is illogical that the shareholders of Ladbrokes would not have had in mind the Merger itself when deciding how to vote on the Resolutions. The suggestion that Ladbrokes' shareholders somehow divorced the Resolutions from the Merger, such that it did not matter that information pertaining to the Merger was inaccurate and misleading, is fanciful.

75. The Hearings Committee was wrong to rely in the Ruling upon preliminary results for Ladbrokes for the year ended December 31, 2015 which estimated the liability of Ladbrokes to Playtech under the Original MSA, absent the Merger, to be £31.5 million. The Committee took no notice of submissions made by Mr Desmond that on the basis of calculations his team had performed, the profit-based fee due to Playtech was likely to be nil. It is evident from Ladbrokes' own figures that the EBITDA for Ladbrokes' digital business declined between the date that the Original Agreements were signed and the end of 2015.

76. Ladbrokes and Playtech are over half way through the five-year performance period referenced at the outset of their agreement and there has been a large drop in digital EBITDA during that time, the likelihood of an incremental growth in EBITDA for the digital business between 2012 and 2017 is highly improbable, such that a performance payment under the Original MSA would never have been payable. Mr Desmond understands from speaking to analysts of Ladbrokes that the base figure for digital EBITDA in 2012 referred to by Playtech is in fact larger than £45.8 million and was over £50 million, reflecting adjustment for a number of non-recurring exceptional costs during 2012.

77. The Amendment Agreements are agreements relating to relevant securities of Ladbrokes and constitute a significant inducement for Playtech to deal in Ladbrokes securities. In particular, the Placing was not made available to all Ladbrokes shareholders but only to selected investors. At the time Playtech was invited by Ladbrokes to participate in the Placing and acquired its additional shares in the market, both Ladbrokes and Playtech were operating on the basis that Playtech would be entitled to vote on the Whitewash and other resolutions which were to be put to the Ladbrokes shareholders in connection with the Merger. Playtech has a significant financial and increased operational interest in the outcome of the Merger which is different from all other shareholders which induced it to acquire additional Ladbrokes securities.

78. The Amendment Agreements were always an inducement to deal in Ladbrokes' shares and the Original Agreements also became an inducement to deal in the context of the Merger as they must be viewed in order to fully understand the Amendment Agreements and the reasons why they were entered into in connection with the Merger. The Original Agreements had the effect of being an inducement to deal given the clear inter-relatedness of those agreements to: (1) the reason behind the requirement for the Amendment Agreements; (2) the offer to Playtech to participate in the placing on July 24, 2015 and (3) the Merger. It was the terms of the Original Agreements which led to the accommodations Ladbrokes offered to Playtech. The terms of the Original Agreements therefore induced Playtech to deal in Ladbrokes securities.

B Ladbrokes

79. As the Playtech software licence arrangements are an integral part of the business of Ladbrokes, it was important for Ladbrokes to make sure that the ordinary course of business arrangements between the enlarged Ladbrokes group and Playtech would work in a satisfactory manner after completion of the Merger. It is for this reason that the SLA Amendment was entered into by Ladbrokes and Playtech. It also became apparent at the time of negotiations between Ladbrokes and Gala Coral prior to the announcement of the Merger that the provisions of the MSA would also need to be amended if the transaction completed and Gala Coral were to form part of the larger Ladbrokes group. The MSA Amendment Agreement was therefore entered into by Ladbrokes and Playtech.

80. The benefit of the MSA Amendment Agreement is that it results in the acceleration of the determination of the amounts payable by Ladbrokes to Playtech under the MSA and ensures that Playtech is contractually obliged to assist Ladbrokes in achieving integration of the Ladbrokes and Gala Coral businesses and the associated realisation of synergies.

81. The new payment terms for Playtech which replace those which are being deleted from the MSA are set out in their entirety in the MSA Amendment Agreement. Details of the services to be provided by Playtech under the MSA after completion of the Merger are set out in their entirety in the MSA Amendment Agreement.

82. Other than in relation to the payment terms for Playtech and the services to be provided by Playtech, the deleted clauses do not result in Ladbrokes relinquishing any material benefits to which it was entitled under the MSA or assuming any material obligations which were not contained in the MSA.

83. All salient information, therefore, regarding the MSA Amendment Agreement is intelligible on its face. The agreement provides for the provision of services by Playtech and payment by Ladbrokes for those services.

84. The Merger itself is not a transaction to which the Takeover Code applies. It is only as a result of the mechanics of the issue and holding of the Consideration Shares by a member of the Gala Coral group prior to the subsequent transfer of those shares to the ultimate beneficial owners of Gala Coral that a waiver is required from the Executive and the Whitewash Resolution and Buyback Resolution were required to be voted on by the Ladbrokes shareholders.

85. The effect of Rule 26.3(d) and Rule 25.7(a) is that a material contract should only be required to be published on a website and made available for inspection if it meets three requirements: (1) the contract in question must have been entered into "in connection with the offer"; (2) the contract cannot be one which was "entered into in the ordinary course of business"; and (3) the contract must have been entered into "during the period beginning two years before the commencement of the offer period."

86. The Merger is taken to be the "offer". For the purposes of Ladbrokes' arguments, the offer period is deemed to have started on June 23, 2015.

87. The expression “in connection with the offer” requires some relationship between the subject matter of the contract and the implementation or execution of the offer, such as merger agreements, confidentiality agreements, implementation agreements, irrevocable undertakings etc. It is unlikely that the intention was for the Rule to capture the display of commercial contracts whose only nexus to the offer is that they were entered into to cater for changes to the nature of the business of the offeree if the offer completes and which are therefore conditional on completion of the offer occurring and the Executive confirmed in the hearing of the Hearings Committee on November 26, 2015 that this was not the intention of those who drafted the relevant provisions of the Code.

88. In applying the “ordinary course of business” test, one would consider the identity of the counterparty, the nature of its relationship with the company and the subject matter of the contract in question.

89. The earliest the “offer period” could be deemed to have started is June 23, 2015. Therefore a contract entered into prior to June 23, 2013 could not have been summarised in compliance with Rule 25.7(a) and so could not be required to be put on display.

90. Consequently the Original Agreements were not covered because they were not in connection with the Merger, were in the ordinary course of business and were entered into more than two years before the critical date.

91. The Amendment Agreements are on display, but in fact were (1) not made in connection with the offer as that expression should be understood; (2) were made in the ordinary course of business.

92. “In connection with the offer”: The coming into effect of the MSA Amendment Agreement is conditional upon completion of the Merger but that is for the obvious reason that Ladbrokes is happy with its arrangements with Playtech on a stand-alone basis – the changes would only be required if the Merger completes. Accordingly the inter-conditional nature of the resolutions does not mean that the MSA Amendment Agreement should be seen as being entered into in connection with the offer. Similarly there is nothing about the fact that the MSA Amendment Agreement was entered into shortly prior to the Merger being announced rather than post-announcement which means that the MSA Amendment Agreement was entered into in connection with the offer as that expression should be understood.

The only resolution which relates in any way to Playtech is resolution 2, which simply creates the headroom necessary for Ladbrokes to satisfy its contractual obligations under the Merger Agreement to allot the Consideration Shares and also to allot any shares to which Playtech might be entitled under its contractual arrangements with Ladbrokes. The Whitewash Resolution and the Buyback Resolution have no connection with the Amendment Agreements. Resolution 2 does not oblige Ladbrokes to issue any shares or do anything else. It does not approve the MSA Amendment Agreement. As is disclosed in the Circular, Playtech is entitled to receive a proportion of its remuneration under the MSA in the form of Ladbrokes shares. The need to create headroom to allot shares to Playtech is not a consequence of the MSA Amendment Agreement.

93. "Ordinary course of business": The MSA Amendment Agreement changed the nature of the services to be provided by Playtech and the remuneration it received in respect of the provision of those services under the MSA in order to cater for the possibility of a significant potential change in the corporate structure of Ladbrokes (the merger with the Coral Group). As the MSA was entered into in the ordinary course of business, amendments of this nature are also in the ordinary course of business.

94. There is no requirement for documentation to be made available to enable a reader to compare the merits of a document which is required to be put on display with one which is not. It would still not be necessary or appropriate to require the MSA to be published as it is not necessary to publish the MSA in order to understand the relevant provisions.

95. Note 11: The only reference in the Original Agreements to Ladbrokes securities was that all or part of the consideration payable to Playtech under the MSA would be payable in Ladbrokes shares. The Original Agreements otherwise have no relevance or relationship to Ladbrokes shares and were not entered into "in respect of relevant securities". The Original Agreements have no relationship with the Merger or the Placing and the Merger and Placing were not in contemplation when the Original Agreements were executed.

96. The Amendment Agreements are already on display. In any event, they do not constitute an inducement to deal for the purposes of Rule 26.2(c) and Note 11(a) on the definition of acting in concert. There was no intention on behalf of Ladbrokes to

induce Playtech to deal in Ladbrokes shares and there were no such discussions between Playtech and Ladbrokes at the time of negotiating the Amendment Agreements or at any other time. Playtech had indicated an interest in investing in Ladbrokes shares prior to Playtech becoming aware of the Merger. Over the period from 2013 to 2015, Playtech acquired and disposed of Ladbrokes shares. Following the Placing, Playtech acquired additional Ladbrokes shares in the market, which demonstrates that Playtech was a willing shareholder in Ladbrokes and was interested in increasing its stake in Ladbrokes. There was no commitment on Playtech's behalf to participate in the Placing.

97. The Placing, Merger and Amendment Agreements are not inextricably linked. The Amendment Agreements are effective only if the Merger occurs. Playtech has no control over whether or not the Merger occurs and that decision rests with the CMA. The Placing occurred in July 2015 and was not conditional on the Merger. Playtech did not sign a voting irrevocable committing to vote in favour of the Merger; and when the Executive indicated that it was minded to rule that Playtech could not vote on the Whitewash Resolution and Buyback Resolution, Ladbrokes accepted this ruling without challenge. This is because there were no discussions with Playtech as to its voting on the resolutions at the General Meeting at the time of negotiating the Amendment Agreements or at any other time.

98. All of the information in the Circular (including that in relation to the Playtech Agreements) is accurate and not misleading. Ladbrokes does not accept Mr. Desmond's contention that there was a "blunder" by Ladbrokes in entering into the Original Agreements without providing for an eventuality such as the Merger.

99. As regards the confidentiality issue, the Executive shares information with other regulators, but it is for the Executive to make that determination and share information when it considers it appropriate to do so.

100. Even if the Takeover Appeal Board were to disagree with any of the rulings of the Hearings Committee on substantive grounds, the Playtech Agreements and the information in the Circular in relation to the Playtech Agreements could not be considered sufficiently material to require Ladbrokes to convene a further general meeting. Ladbrokes supports the conclusion of the Hearings Committee that further disclosure in relation to the Playtech Agreements also would not be appropriate and would serve no useful purpose.

C Playtech

101. The SLA is a customary ordinary course agreement (for the purposes of Rule 25.7(a) of the Code) of the type entered into between a software supplier and its customer. Playtech has over 120 customers which have entered into an agreement of this type. Ladbrokes has a number of suppliers which provide it with gambling software. By way of example, Playtech does not provide Ladbrokes with its core sports betting platform which is licensed to it by Openbet (recently acquired by NYX Gaming). Ladbrokes also licenses a variety of gaming software from companies such as Net Entertainment Realistic Games, WMS and IGT. All of these companies are competitors of Playtech.

102. The purpose of the SLA Amendment Agreement is to align certain provisions of the software agreements between Playtech and each of Ladbrokes and Gala Coral and for no other reason. This is a standard process in circumstances where two customers of the same supplier merge or otherwise combine. Accordingly, the entry into the SLA Amendment Agreement was also an ordinary course contract for both Playtech and Ladbrokes.

103. The MSA is an ordinary course agreement of the type entered into between a services supplier and its customer. Playtech has numerous software customers to which its services division (the holding company of which is PT Turnkey Services Limited) provides a range of complementary services in tandem with Playtech's software offering.

104. The purpose of the MSA Amendment Agreement was to make certain amendments to the MSA and results in a fixed payment to PT Turnkey Services Limited which is conditional on completion of the Merger. The MSA Amendment Agreement is an ordinary course contract (as its purpose was to amend the MSA, itself an ordinary course contract).

105. The board of Ladbrokes, in conjunction with its professional advisers, has made an assessment of what information was required to be included in the Circular for the purposes of giving its shareholders sufficient information to make an informed assessment as to what actions they should take as regards the resolutions proposed to them at the General Meeting. In the Circular, the board of Ladbrokes states that it considers the Merger and the resolutions proposed at the General Meeting to be fair and reasonable and in the best interests of Ladbrokes and its shareholders, having

been so advised by UBS and Greenhill.

106. It was for the board of Ladbrokes to resolve, in the interests of all of its shareholders, whether or not to enter into the MSA Amendment Agreement and it was for Mr Desmond, as with any other Ladbrokes shareholder, to decide whether or not to vote in favour of the Merger at the General Meeting in the knowledge that this payment will fall to be made as outlined in the Circular.

107. Playtech's contracts with its customers are entered into in the expectation of confidentiality and contain extremely sensitive commercial and operational information in relation to both the business of Playtech and its customers, a number of which are listed companies. The parties are under strict contractual confidentiality obligations in this respect.

D Executive

108. The principal contents of the Amendment Agreements, and most notably the existence and terms of the £75 million payment to Playtech under the MSA Amendment Agreement, have been fully disclosed and the Amendment Agreements have been published on a website.

109. Certain terms of the original MSA were incorporated into the MSA Amendment Agreement by reference and these terms have therefore not been published on a website. The Executive has reviewed these surviving terms of the original MSA and has concluded that, in its opinion, these are all non-material provisions.

110. Ladbrokes' audited results for the year ended December 31, 2015, which were published in an RIS announcement entitled "Preliminary results for the year ended 31 December 2015" on February 23, 2016, estimated the liability to Playtech under the MSA, absent the Merger, at £31.5 million. As stated in the audited results, the actual payment could vary significantly (in either direction) depending on the performance of Ladbrokes' digital business in the future. The Executive therefore understands that, absent the Merger, Ladbrokes would by 2018 have been required to pay a significant (but as yet undetermined) sum to Playtech under the MSA.

111. In the Circular, Ladbrokes set out benefits which it will receive under the Amendment Agreements.

112. The Executive understands that, under the terms of the Original MSA, Ladbrokes

retained total freedom over its merger and acquisitions activity, including whether to enter into the Merger. Playtech, however, had the ability in respect of any such activity by Ladbrokes to elect whether or not any acquired digital business would be included within the perimeter of the business on which Playtech's performance would be measured and remuneration under the MSA calculated. Absent the MSA Amendment Agreement, Playtech would have had this ability in respect of Gala Coral's digital business which is to be acquired by Ladbrokes pursuant to the Merger. If Playtech had elected to include Gala Coral's digital business within this perimeter, its remuneration would have been subject to certain confidential adjustments designed to reflect the investment made by Ladbrokes in acquiring the relevant business. While the level of payment to Playtech under the Original MSA (if Gala Coral's digital business was included in this calculation) is inherently uncertain, both Playtech and Ladbrokes anticipated in negotiations that this sum could have significantly exceeded £75 million.

113. The £75 million payment under the MSA Amendment Agreement (which was the product of a negotiation between the parties) was therefore a number which was lower than the sum which Ladbrokes and Playtech both considered could have been paid had the Merger taken place and the Amendment Agreements not been entered into. The benefits were disclosed in the Circular by way of explanation as to why the Amendment Agreements were entered into.

114. The further benefit which Ladbrokes received from agreeing the £75 million figure, namely that it removed the possibility of Ladbrokes having to pay a potentially higher figure, was not disclosed. The Executive does not believe that this omission merits a further general meeting being required to be convened, given that a disclosure to that effect would, in the Executive's opinion, only have increased the likelihood of Ladbrokes shareholders voting in favour of the Whitewash Resolution and the Buy Back Resolution.

115. The Executive has determined that no useful purpose would be served by requiring disclosure of what, in effect, would be a further potential benefit accruing to Ladbrokes shareholders under the MSA Amendment Agreement, namely the avoidance of what Ladbrokes believed could be a higher payment to Playtech than £75 million.

116. The Original Agreements were entered into on March 10, 2013, and therefore,

absent the potential impact of the Amendment Agreements, there was clearly no requirement for a summary of the Original Agreements to be included in the Circular.

117. As regards the inducement/Note 11 contention, Note 11 on the definition of "acting in concert" requires that an agreement which amounts to an inducement to deal must be entered into "in respect of relevant securities". The subject matter of the Original Agreements does not directly relate to Ladbrokes securities.

118. The Original Agreements did not constitute an inducement to deal in Ladbrokes securities. Whilst it was possible at the time of entering into the Original Agreements that Playtech would benefit from subsequent M&A activity by Ladbrokes, there could have been no certainty at that time that Playtech would so benefit, nor that Playtech's acquisition of shares in Ladbrokes would necessarily help achieve such a benefit. There was also no certainty that any M&A activity by Ladbrokes would require a shareholder vote, or indeed that any M&A transaction would happen at all.

119. The basis of Mr. Desmond's contention that the Amendment Agreements constitute an inducement to deal, as described under Note 11 on the definition of "acting in concert", seems to be that, as a consequence of the MSA Amendment Agreement, Playtech would be in an economically better position than if the Merger had not occurred, and that Playtech was therefore incentivised to buy Ladbrokes shares in order to ensure that the Merger took place (presumably by voting in favour of the Merger at the Ladbrokes General Meeting).

120. The subject matter of the Amendment Agreements does not relate to Ladbrokes securities, but amends the terms of the Original Agreements, conditional on the Merger completing. In particular, the obligation on Playtech to provide marketing services ceases to apply and is replaced with new provisions which provide for delivery by Playtech of certain disclosed milestones. Playtech has also agreed to use reasonable endeavours to procure that two Playtech consultants continue to support Ladbrokes' 2016 marketing plan post completion of the Merger. There were good commercial reasons for entry by Ladbrokes into the Amendment Agreements.

121. Playtech's history of dealing in Ladbrokes shares commenced prior to it becoming aware of the discussions leading to the Merger. The Executive also attached considerable significance to the fact that it has been provided with an extract from

Playtech's board minutes from May 2015 which evidences that Playtech was at that time interested in acquiring additional Ladbrokes' shares, prior to it becoming aware of the Merger, and therefore prior to the commencement of the negotiation of the Amendment Agreements.

122. UBS, Ladbrokes' brokers, which was lead arranger in respect of the Placing, has confirmed to the Executive that Playtech was invited to participate in the Placing as a cornerstone investor to assist in building the book because its participation would be well received by the market. Playtech was not scaled back in the Placing, unlike other investors. UBS confirmed that this was because the level of Playtech's proposed participation had been announced at the launch of the Placing and, if Playtech did not receive the previously announced amount, there may have been confusion in the market about whether Playtech had in fact changed the level of its support for the Placing and, by implication, the Merger.

123. At the time of its ruling in November 2015, the Executive relied on certain submissions from Ladbrokes and its advisers confirming that the surviving provisions of the Original Agreements that had not been published on a website were immaterial or otherwise not of commercial significance, or were sufficiently commercially sensitive such that Ladbrokes would have requested the relevant clauses to have been redacted before being published on a website.

124. In the light of the further complaints received from Mr. Desmond following the hearing of the Hearings Committee in November, which focussed on the issues surrounding the payment of the £75 million under the MSA Amendment Agreement, the Executive reviewed all the surviving terms of the Original MSA and has concluded that, in its opinion, these are all non-material provisions.

VI Conclusions

125. As stated above, the Board indicated at the close of the hearing on May 16, 2016 that the appeals would be dismissed.

126. The Board will give its reasons under these heads: (1) whether the MSA Amendment Agreement was entered into in the ordinary course of business for the purposes of Rule 25.7(a); (2) whether it was made in connection with the Merger for the purposes of Rule 26.3(d); (3) whether the shareholders were given adequate information; (4) whether the MSA Amendment Agreement was an agreement

relating to Ladbrokes' shares which might be an inducement to deal for the purposes of Note 11(a) on the definition of "acting in concert" referred to in Rule 26.2(c); and (5) whether Mr Desmond is entitled to disclose to the UKLA information obtained in the course of these proceedings.

(1) Ordinary course of business

127. It was not in issue that the Amendment Agreements were material and were within the two-year time limit in Rule 25.7(a).

128. The expression "ordinary course of business" is used in many contexts, ranging from common contractual provisions to many statutory examples, especially in the field of taxation. They are ordinary words of the English language which must be interpreted in the light of the meaning which business people would give them in the particular context in which they are used. Here the context is the disclosure of information about contracts which fall outside the normal activity of the company.

129. The Original Agreements have not been seen by the Executive, the Hearings Committee or the Board. They are described in the Circular, at pages 102-103. Under the Original MSA, Playtech was "to provide marketing and advisory services, including sophisticated business intelligence and customer relationship management systems …. in order to grow Ladbrokes' digital business". The fees were to be calculated on "a success-fee basis linked to the growth in the EBITDA of Ladbrokes' digital business as between 31 December 2012 and 31 December 2017." "At least 25 per cent of the fees" would be settled by way of issue of Ladbrokes shares, but Playtech had the option of having up to 100 per cent so payable. The summary does not point conclusively to the characterisation of the Agreement as ordinary course particularly when read with the material from Ladbrokes' accounts, which were before the Board, showing that accounting standards treated the Agreement as a business combination and the success fees as "contingent consideration".

130. Nevertheless, even if it is assumed that the Original MSA was entered into in the ordinary course of business, that does not necessarily entail that any amending agreement has the same character. An amending agreement which involves the payment of an aggregate of £75 million unrelated to future performance or success and conditional only on implementation of the Merger is, in the view of the Board, and having regard to the size of Ladbrokes' business, its assets and its profitability,

plainly outside the normal activity of the company and hence outside the ordinary course of its business. Ladbrokes was therefore right to make the disclosure in the Circular and (subject to the point discussed in the next section) to publish the MSA Amendment Agreement on its website.

(2) In connection with the Merger

131. The words "in connection with the offer" in Rule 26.3(d) are also ordinary words of the English language and must be given a common sense interpretation.

132. The Executive produced a helpful account of the current version of the wording, which is reproduced in Appendix 2 to this decision.

133. So far as material, it shows that (1) until 2010 the Code required, broadly, that a circular should include a summary of the principal contents of each material contract (not being a contract entered into in the ordinary course of business) entered into by the offeree company or any of its subsidiaries during the period beginning two years before the commencement of the offer period, and that each such contract should be available for inspection; (2) when proposals were made for contracts to be made available on a website as well as available for inspection at a particular location, comments were received to the effect that commercially sensitive information would become more widely available.

134. After a review, the Code Committee continued to recommend that Rule 26 should be amended to require that documents made available for inspection should be published on a website, but the list of documents required to be made available for inspection should be amended so as to include, *inter alia*, only material contracts if they were entered into in connection with the offer and were summarised or referred to in the offer document or offeree board circular (as the case may be) pursuant to what are now Rules 24.3(a), 24.3(b) or 25.7(a).

135. The rationale was that it was possible to justify a higher standard of disclosure in relation to matters that had a direct bearing on an offer (for example, an implementation agreement or irrevocable commitments to accept the offer obtained by an offeror), but it was more difficult to justify requiring copies of material contracts that were not related to the offer to be put on display. As a result, the Code Committee proposed that Rule 26.3 should require only that material contracts entered into in connection with the offer should be published on a website.

The amendments were introduced with effect from January 25, 2010.

136. In the view of the Board, only limited assistance can be gained from this history, and the ordinary meaning of the words is the paramount consideration.

137. The Board accepts the view of the Hearings Committee that if the words "in connection with" were given too wide meaning they would potentially catch any material agreement which would be "occasioned by" an offer or merger, for example to reflect a new corporate structure, and to require publication in full of numerous agreements of no significance to voting shareholders.

138. But in the present case the MSA Amendment Agreement was intimately connected with the Merger and designed to avoid the impact of the Merger on prior commercial agreements, being an impact of very considerable importance. If the question is asked, was the MSA Amendment Agreement made in connection with the Merger, the answer must be yes. Its rationale was to avoid certain significant consequences of the Original MSA Agreement which would have been caused by the Merger had it not been amended. This is very different from the run-of-the-mill adjustments to commercial agreements occasioned by the enlargement of a group.

(3) Adequacy of disclosure

139. For convenience the Board repeats what was said in the Circular about the MSA Amendment Agreement. In Section 3.1, on page 11, under the heading "An enhanced and integrated technology platform" the Circular stated:

"To assist in providing the flexibility for the Enlarged Group to achieve integration and realise synergies from the combination of the Coral Group and Ladbrokes' digital businesses, Playtech has agreed with Ladbrokes to amend, conditional upon Completion, the existing Marketing Services Agreement with Ladbrokes.

As part of this arrangement, Playtech and Ladbrokes have agreed to accelerate the determination of amounts due to Playtech under the Marketing Services Agreement. The sum agreed is £75 million, of which £40 million will be satisfied by way of the issue of shares in the Enlarged Group on Completion … and with a further £35 million in cash paid upon delivery by Playtech of key operational milestones but, in any event, within 42 months following Completion.

This will accelerate the integration of the two companies' digital platforms and

therefore the delivery of costs synergies. The additional benefits of this agreement are not reflected in the synergy estimate … and would reflect incremental value generation for the Enlarged Group."

140. A fuller explanation was given by Ladbrokes in the course of these proceedings. In the course of written and oral submissions to the Hearings Committee it became clear that under the Original MSA Playtech's remuneration would have been calculated by reference to the enlarged group and consequently it would have been rewarded for factors which were not due to its performance. As it was put in Ladbrokes' written submission to the Board: "The MSA Amendment was entered into by the parties to ensure that Playtech's remuneration under the MSA would not be linked to factors unrelated to its performance. The key purpose of the MSA is to reward Playtech for any increase in the profits of Ladbrokes which are generated by the marketing efforts of Playtech. Due to the way in which these provisions were drafted, Playtech could have been rewarded for value created by [Ladbrokes] as a result of the Merger rather than as a result of any marketing efforts undertaken by Playtech."

141. The essential fact is that the amount payable under the MSA Amendment Agreement was disclosed and nothing has been put forward by Mr Desmond which suggests that the reason for the MSA Amendment Agreement could have been a material matter for the purposes of the Whitewash Resolution. The Board agrees with the Hearings Committee (in its ruling of April 20, 2016, para 6.4) that the Circular could have given more contextual information about the justification for the £75 million payment, but it also agrees that if there had been fuller disclosure, there is no rational basis for concluding that the outcome of the shareholders meeting could have been different.

(4) Note 11(a) on the definition of "acting in concert" referred to in Rule 26.2(c)

142. Mr Desmond's Notice of Appeal indicated that he sought to satisfy the Takeover Appeal Board that the Original Agreements and the Amendment Agreements "together constitute arrangements of the type contemplated by Note 11 of the Notes of Acting in Concert and should therefore be displayed by Ladbrokes pursuant to Rule 26.6 of the Code".

143. So far as material Note 11(a) refers to "any agreement … relating to relevant

securities which may be an inducement to deal …"

144. The argument presented to the Executive and the Hearings Committee and rejected by both appears to have been along these lines: (1) A Whitewash Resolution was required because the Merger involved (albeit for a short time) a change of control within the meaning of the Code. (2) There was a concert party to achieve this change of control. (3) Until the Executive ruled that Playtech was not independent and so could not vote on the Whitewash Resolution, both Playtech and Ladbrokes expected that Playtech could use the votes attaching to the shares acquired under the Placing to support the whitewash and enable the change of control. (4) Playtech were induced by the Amendment Agreements to participate in the Placing and acquire the shares. (5) The Amendment Agreements were, accordingly, required to be displayed. (6) The Original Agreements then themselves became an inducement as they needed to be viewed in order for the Amendment Agreements to be fully understood.

145. The Board does not need to analyse in detail this chain of reasoning or any of the grounds given by the Executive and the Hearings Committee for rejecting it or those given by Mr Desmond in his Notice of Appeal for upholding it, since, at the hearing, Mr Andrew Hunter QC virtually abandoned any reliance on it as a narrow concert party disclosure point, and treated it simply as supportive of the main argument for more explanation from Ladbrokes, relying on the "inducement" as part of his core argument that there was an overall arrangement (with the MSA Amendment Agreement an inducement to the Placing) which gave Playtech a crucial and determinative role in the settling of the terms of the merger, so that a new circular and a further general meeting were required. In any event the Board is entirely unable to see how the Original Agreements could on even the widest interpretation of the Note be characterised as an inducement to deal.

(5) Confidentiality

146. Mr Desmond has maintained before the Board his contention that material which was before the Hearings Committee (transcripts and submissions from Ladbrokes and the Panel) should be permitted to be disclosed to the UKLA.

147. The Chairman of the Hearings Committee ruled that the proceedings and materials (written and oral) produced before the Hearings Committee were confidential (except to the extent otherwise lawfully in the public domain already), and so could

not be shared by Mr. Desmond with the UKLA except with the consent of all parties to the proceedings.

148. The proceedings before the Hearings Committee were in private: Rule 2.9. Mr Desmond made a request that the hearing before the Board should be in public but this request was refused on May 5, 2015 by the Chairman, having regard to Rule 2.12 of the Rules of the Board (which provides that hearings will generally be in private), and to the fact that to hold the hearing in public would result in the public disclosure of the information the confidentiality of which was the subject of the appeals.

149. Mr Desmond wishes to disclose those part of the transcripts and of Ladbrokes' submissions to the Hearings Committee and the Board which elaborate on the reasons for the MSA Amendment Agreement.

150. The Rules of Procedure of the Hearings Committee (Rule 2.9) and the Rules of the Board (Rule 2.12) provide that hearings will generally be in private. In the view of the Board, it is implicit in these provisions that material which comes to the knowledge of the parties for the purposes of those hearings is confidential and may not be disclosed to third parties without the consent of the Hearings Committee or the Board, or of all other parties, except to the extent it is contained in a published Ruling or Decision.

151. Accordingly Mr Desmond's request is refused.

15 June 2016

APPENDIX 1: PRINCIPAL RELEVANT CODE PROVISIONS

1. The principal provisions which have been under discussion are these:

(1) General Principle 2:

> "The holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid…"

(2) General Principle 4:

> "False markets must not be created in the securities of the offeree company, of the offeror company or of any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted."

(3) Rule 9.1:

> "Except with the consent of the Panel, when:
>
> (a) any person acquires, whether by a series of transactions over a period of time or not, an interest in shares which (taken together with shares in which persons acting in concert with him are interested) carry 30% or more of the voting rights of a company; or
>
> (b) any person, together with persons acting in concert with him, is interested in shares which in the aggregate carry not less than 30% of the voting rights of a company but does not hold shares carrying more than 50% of such voting rights and such person, or any person acting in concert with him, acquires an interest in any other shares which increases the percentage of shares carrying voting rights in which he is interested, such person shall extend offers, on the basis set out in Rules 9.3, 9.4 and 9.5, to the holders of any class of equity share capital whether voting or non-voting and also to the holders of any other class of transferable securities carrying voting rights. Offers for different classes of equity share capital must be comparable; the Panel should be consulted in advance in such cases.

An offer will not be required under this Rule where control of the offeree company is acquired as a result of a voluntary offer made in accordance with the Code to all the holders of voting equity share capital and other transferable securities carrying voting rights."

(4) Rule 19.1:

> "Each document, announcement or other information published, or statement made, during the course of an offer must be prepared with the highest standards of care and accuracy. The language used must clearly and concisely reflect the position being described and the information given must be adequately and fairly presented…"

(5) Rule 19.2:

> "Each document or advertisement published in connection with an offer by, or on behalf of, the offeror or the offeree company, must state that the directors of the offeror and/or, where appropriate, the offeree company accept responsibility for the information contained in the document or advertisement and that, to the best of their knowledge and belief (having taken all reasonable care to ensure that such is the case), the information contained in the document or advertisement is in accordance with the facts and, where appropriate, that it does not omit anything likely to affect the import of such information…"

(6) Rule 19.3:

> "Parties to an offer and their advisers must take care not to make statements which, while not factually inaccurate, may be misleading or may create uncertainty…"

(7) Rule 20.1:

> "Information about parties to an offer must be made equally available to all offeree company shareholders and persons with information rights as nearly as possible at the same time and in the same manner."

(8) Rule 23.1:

> "Shareholders must be given sufficient information and advice to enable

them to reach a properly informed decision as to the merits or demerits of an offer. Such information must be available to shareholders early enough to enable them to make a decision in good time. No relevant information should be withheld from them…"

(9) Note 1 of the Notes on Dispensations from Rule 9 states that:

"when the issue of new securities as consideration for an acquisition or a cash subscription would otherwise result in an obligation to make a general offer under this Rule, the Panel will normally waive the obligation if there is an independent vote at a shareholders' meeting."

This is referred to as a "whitewash". Note 1 on the Notes of Dispensations from Rule 9 refers to the Guidance Note contained in Appendix 1 of the Code.

(10) The Whitewash Guidance Note – Appendix 1 of the Code: Section 1(b) of Appendix 1 explains that:

"Where the word "offeror" is used in a particular Rule, it should be taken in the context of a whitewash as a reference to the potential controllers. Similarly, the phrase "offeree company" should be taken as a reference to the company which is to issue the new securities and in which the actual or potential controlling position will arise."

(11) Section 4 of Appendix 1 sets out the provisions of the Code which must be addressed in a whitewash circular. It provides, *inter alia*, as follows:

"The circular must contain the following information and statements and comply appropriately with the Rules of the Code as set out below:

…

(n) Rule 25.7 (other information);

(o) Rule 26 (documents to be published on a website); and

…".

(12) Rule 25.7:

"The offeree board circular must contain:

(a) a summary of the principal contents of each material contract (not being a contract entered into in the ordinary course of business) entered into by the offeree company or any of its subsidiaries during the period beginning two years before the commencement of the offer period, including particulars of dates, parties, terms and conditions and any consideration passing to or from the offeree company or any of its subsidiaries [*emphasis added*];

…

(d) a list of the documents which the offeree company has published on a website in accordance with Rules 26.2 and 26.3 and the address of the website on which the documents are published;

…".

(13) Rule 26.2:

"The following documents must be published on a website by no later than 12 noon on the business day following the announcement of a firm intention to make an offer (or, if later, the date of the relevant document):

…

(c) any agreement or arrangements, or if not reduced to writing, a memorandum of the terms of such agreements or arrangements, of the kind referred to in Note 11 on the definition of acting in concert."

Note 11(a) refers to "dealing arrangement[s]" which includes:

"any indemnity or option arrangements, and any agreement or understanding, formal or informal, of whatever nature, relating to relevant securities which may be an inducement to deal or refrain from dealing."

(14) Rule 26.3:

"The following documents must be published on a website from the time the offer document or offeree board circular, as appropriate, is published (or, if later, the date of the relevant document):

…

(d) any material contract entered into by an offeror or the offeree company, or any of their respective subsidiaries, in connection with the offer [*emphasis added*] that is:

(i) described in the offer document or offeree board circular (as appropriate) in compliance with Rule 24.3(a), Rule 24.3(b) or Rule 25.7(a); or

(ii) entered into after the publication of the offer document or offeree board circular (as appropriate);

…".

APPENDIX 2: THE EXECUTIVE'S ACCOUNT OF THE BACKGROUND TO RULES 25.7(A) AND 26.3(D)

1. Until 2010, the Code required, broadly, that:

   (1) an offeree board circular should include a summary of the principal contents of each material contract (not being a contract entered into in the ordinary course of business) entered into by the offeree company or any of its subsidiaries during the period beginning two years before the commencement of the offer period;

   (2) such material contracts, and certain other documents as set out in Rule 26, should be made available for inspection from the time of publication of the offeree board circular at a place in the City of London, or such other place as the Panel may agree, specified in the offeree board circular; and

   (3) on request, a copy of all documents made available for inspection had to be made available by an offeror or the offeree company to the other party to the offer and to any competing offeror or potential offeror (but not to any other person).

2. In PCP 2008/3 on "Electronic Communications, Website and Information Rights", published in July 2008, the Code Committee proposed, among other things, amendments to the Code to facilitate and require a wider use of websites by parties to an offer. These amendments included proposals to require that copies of all documents made available for inspection under Rule 26 should also be published on a website.

3. These proposals raised a number of comments from respondents, including that: (1) the proposals would fundamentally change the means by which display documents could be reviewed; (2) commercially sensitive information would become more widely available; and (3) the Code would be inconsistent with equivalent provisions of the Prospectus Rules of the Financial Services Authority (the "FSA").

4. The Code Committee explained in RS 2008/3 that it did not agree with certain of the points raised by respondents, including that the proposals would lead to commercially sensitive information becoming more widely available. In addition, the Code Committee explained that it understood that the Executive "has permitted some degree of redaction of information in display documents for matters which are

of a commercially sensitive nature (for example, an offeror disclosing in its financing documents the level to which its offer could potentially be raised) but that the Executive would decide whether particular information should be permitted to be redacted in the light of all available facts.". The Code Committee further explained that it understood that "this is likely to continue to be the case in the future" (paragraph 10.8 of RS 2008/3).

5. Nevertheless, in view of the responses received on this subject, the Code Committee decided in RS 2008/3 to defer implementing the proposal that all of the documents made available for inspection under Rule 26 should be published on a website in order to enable it to undertake a review of whether the list of documents to be made available for inspection under Rule 26 remained appropriate.

6. The Code Committee set out the outcome of that review in PCP 2009/2 on "Miscellaneous Code Amendments", published in July 2009. In summary, this PCP proposed that, although Rule 26 should be amended to require that documents made available for inspection should be published on a website, the list of documents required to be made available for inspection under Rule 26 should be amended so as to include, *inter alia*, only material contracts entered into by an offeror or the offeree company, or any of their respective subsidiaries, if they were entered into in connection with the offer and were summarised or referred to in the offer document or offeree board circular (as the case may be) pursuant to what are now Rules 24.3(a), 24.3(b) or 25.7(a).

7. The Code Committee reached this conclusion based on the following analysis:

   (1) in July 2005, the FSA introduced changes to the listing regime to implement the provisions of the Prospectus Directive. One of these changes was the removal of the requirement to put a copy of material contracts of an issuer on display with the publication of the prospectus (although a summary of each material contract entered into by the issuer or a member of its group in the preceding two years (other than those entered into in the ordinary course of business) was still required to be included in the prospectus);

   (2) in view of this change, an investor in a company incorporated in the United Kingdom could acquire new shares issued by the company in reliance on information set out in a prospectus which would include a summary of each material contract entered into by the company or a member of its group in

the preceding two years (other than a material contract entered into in the ordinary course of business), but without the issuer being required to put a copy of the relevant documents on display. As such, a potential investor would not have the benefit of being able to review a copy of each such material contract in full in making an investment decision in relation to acquiring the shares; and

(3) accordingly, absent Rule 26 being amended, if the company was to become subject to a takeover offer, in deciding whether to accept the offer in respect of their shares, offeree company shareholders would, in effect, be provided with more information in relation to material contracts of the offeree company than when the shares were first acquired and "… whilst it may be possible to justify a higher standard of disclosure in relation to matters that have a direct bearing on an offer (for example, it may be important for a shareholder to be able to review in full a copy of an implementation agreement or irrevocable commitments to accept the offer obtained by an offeror), it is more difficult to justify requiring copies of material contracts that are not related to the offer … to be put on display in full …" (paragraph 4.25 of PCP 2009/2).

8. As a result, the Code Committee proposed in PCP 2009/2 that, although Rule 25.7 should continue to require the offeree board circular to include a summary of the principal terms of each material contract entered into in the two years prior to the commencement of the offer period, Rule 26.3 should require only that material contracts entered into in connection with the offer should be published on a website. Following the publication of RS 2009/2, these amendments were introduced with effect from January 25, 2010.

ANNEXURE 1

RULING OF THE HEARINGS COMMITTEE OF DECEMBER 14, 2015

THE TAKEOVER PANEL
HEARINGS COMMITTEE

LADBROKES PLC ("LADBROKES")

RULING OF THE HEARINGS COMMITTEE (THE "COMMITTEE")

1. INTRODUCTION

1.1 On 24 July 2015, Ladbrokes plc ("Ladbrokes") and Gala Coral Group Limited ("Gala Coral") announced that they had agreed the terms of a proposed recommended merger (the "Merger") between Ladbrokes and certain businesses of Gala Coral, being Coral Retail, Eurobet Retail and Gala Coral's online businesses (the "Coral Group"). To effect the Merger, Ladbrokes agreed to acquire the Coral Group from a subsidiary of Gala Coral called Gala Group Finance plc ("Coral") in exchange for new shares in Ladbrokes representing 48.25 per cent. of the enlarged issued share capital of Ladbrokes at the time of the announcement of the Merger (the "Consideration Shares").

1.2 As a result of the issue of the Consideration Shares to Coral, Coral intends to hold over 30 per cent. of the voting rights of Ladbrokes for a short period of time (expected to be around 10 business days) before the Consideration Shares are distributed to Gala Coral's ultimate shareholders. The Panel Executive (the "Executive") has agreed that the obligation on Coral to make a general offer under Rule 9.1 of the Takeover Code (the "Code") to all Ladbrokes shareholders that would otherwise arise will be waived if independent shareholders of Ladbrokes vote in favour of a resolution approving the waiver of the mandatory bid obligation under Rule 9.1 (the "Whitewash Resolution").

1.3 In March 2013, Ladbrokes entered into two commercial contracts with members of the Playtech group of companies ("Playtech"):

1.3.1 a marketing services agreement (the "MSA") under which Playtech agreed to provide marketing and advisory services to grow Ladbrokes' digital business; and

1.3.2 a software licence agreement (the "SLA") under which Playtech granted Ladbrokes access to software and services relating to online casino and other gaming activities.

1.4 The MSA and SLA together are referred to as the "Original Agreements". Neither has been seen by the Executive or the Committee.

1.5 On 23 July 2015, the day prior to the announcement of the Merger, Ladbrokes and Playtech entered into two amendment agreements in respect of the Original Agreements:

1.5.1 an amendment agreement to the MSA (the "MSA Amendment Agreement") under which the existing payment terms and obligations under the MSA were replaced with new terms, including (i) a payment by Ladbrokes to Playtech of £40 million upon completion of the Merger to be satisfied by the issue of new Ladbrokes shares and (ii) the payment to Playtech of a further guaranteed £35 million in cash payable upon delivery of key operational milestones, but, in any event, within 42 months from completion of the Merger; and

1.5.2 an amendment agreement to the SLA (the "SLA Amendment Agreement") pursuant to which revised fee arrangements will apply on completion of the Merger and break clause provisions relating to the SLA were agreed, together with certain other non-material amendments.

1.6 The MSA Amendment Agreement and the SLA Amendment Agreement together are referred to as the "Amendment Agreements".

1.7 On 20 November, after discussion between the Executive, Ladbrokes and Mr John Bateson, acting on behalf of Mr Dermot Desmond, a significant shareholder in Ladbrokes, the Executive ruled that (i) the Original Agreements were not material contracts entered into by Ladbrokes in connection with the Merger which were required to be published on a website by Ladbrokes pursuant to Rule 26.3 of the Code and (ii) the effect of the Amendment Agreements was capable of being understood without reference to the full text of the Original Agreements. Mr Desmond requested that this ruling by the Executive be reviewed by the Committee and a hearing was convened for 26 November 2015 for this purpose

(the "Hearing").

1.8 The principal question to be considered by the Committee at the Hearing was the application of Rule 26.3(d) of the Code to the Amendment Agreements. As the Hearing progressed, however, as will be seen below, the issue narrowed to the consideration of the commercial rationale for the amendments to the MSA providing for the payment of a total of £75 million to Playtech.

2. THE HEARING

2.1 The Committee heard the matter on the morning of Thursday 26 November 2015. The Committee was constituted by those Hearings Committee members who are identified in Appendix 1 to this Ruling.

2.2 The spokesman for the Executive at the Hearing was its Director General, Mr Crispin Wright, and Mr Desmond was represented by himself and by Mr John Bateson. Ladbrokes, Gala Coral and Playtech, as interested persons, also attended the Hearing. Each party, except Gala Coral (which endorsed the submission of Ladbrokes), made written submissions to the Committee by midday on Wednesday 25 November as directed by the Chairman of the Committee. The Hearing was transcribed and held in private in accordance with Rule 2.9 of the Committee's Rules of Procedure.

3. THE PARTIES

(a) Ladbrokes

3.1 Ladbrokes is a bookmaker which provides betting and gaming services across multiple channels. Ladbrokes is registered in England and Wales and its shares are admitted to trading on the Main Market of the London Stock Exchange. Accordingly, Ladbrokes is a company which is subject to the Code in accordance with section 3(a)(i) of the Introduction to the Code. As at the close of business on 24 November 2015, Ladbrokes had a market capitalisation of approximately £1.12 billion.

3.2 Ladbrokes is advised by UBS, Greenhill and Slaughter and May. Deutsche Bank is broker to Ladbrokes. Mr Mark Zerdin of Slaughter and May acted as Ladbrokes' spokesman at the Hearing.

(b) Gala Coral

3.3 Gala Coral is one of Europe's largest betting and gaming groups with an established presence in the United Kingdom and Italy. The Coral Group is the principal part of Gala Coral's group of companies and comprises three main operating divisions: Coral Retail, Eurobet Retail and Online.

3.4 Gala Coral is privately owned and the shareholders of Gala Coral are the group's management and various alternative investment managers, including private equity funds Anchorage, Apollo, Cerberus and Saberasu Japan.

3.5 Gala Coral is advised by Morgan Stanley, Goldman Sachs and Ashurst. Mr Dominic Ross of Ashurst acted as Gala Coral's spokesman at the Hearing.

(c) Playtech

3.6 Playtech was founded by Mr Teddy Sagi in 1999. Mr Sagi owns approximately 33.6 per cent. of Playtech. Playtech is the world's largest online gaming software and services supplier. Playtech is engaged in the development and licensing of software and the provision of ancillary services for the online and land-based gambling industries. Playtech's licensees include several established and well-known online operators, sportsbooks and entertainment brands. Playtech's shares are admitted to trading on the Main Market of the London Stock Exchange. As at the close of business on 24 November 2015, Playtech had a market capitalisation of approximately £2.48 billion.

3.7 Playtech is registered in the Isle of Man.

3.8 Playtech is advised by Berwin Leighton Paisner ("BLP") and its spokesman at the Hearing was Mr Alex Latner of BLP. Mr David McLeish of Playtech answered questions on behalf of Playtech.

(d) Mr Dermot Desmond

3.9 Mr Desmond is a businessman and financier. He owns 2.72 per cent. of the issued share capital of Ladbrokes.

3.10 The spokesman for Mr Desmond at the Hearing was Mr John Bateson of International Investment and Underwriting, part of Mr Desmond's group of

companies, as well as Mr Desmond himself.

4 RELEVANT CODE PROVISIONS

4.1 **General Principle 2** of the Code states:

> **"The holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid….".**

4.2 **General Principle 3** of the Code states:

> **"The board of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid.".**

Note 1 of the Notes on Dispensations from Rule 9

4.3 Note 1 of the Notes on Dispensations from Rule 9 states that:

> **"When the issue of new securities as consideration for an acquisition or a cash subscription would otherwise result in an obligation to make a general offer under this Rule, the Panel will normally waive the obligation if there is an independent vote at a shareholders' meeting.".**

This is referred to as a "whitewash". Note 1 on the Notes of Dispensations from Rule 9 refers to the Guidance Note contained in Appendix 1 of the Code.

The Whitewash Guidance Note - Appendix 1 of the Code

4.4 Appendix 1 of the Code sets out the manner in which the Code is applied in relation to whitewashes. Section 1(b) of Appendix 1 explains that:

> **"Where the word "offeror" is used in a particular Rule, it should be taken in the context of a whitewash as a reference to the potential controllers. Similarly, the phrase "offeree company" should be taken as a reference to the company which is to issue the new securities and in which the actual or potential controlling position will arise.".**

4.5 Section 4 of Appendix 1 sets out the provisions of the Code which must be

addressed in a whitewash circular. It provides, inter alia, as follows:

> **"The circular must contain the following information and statements and comply appropriately with the Rules of the Code as set out below:**
>
> **…**
>
> **(n) Rule 25.7 (other information);**
>
> **(o) Rule 26 (documents to be published on a website); and**
>
> **…;".**

4.6 Rule 25.7 of the Code specifies certain information which must be included by the offeree company in an offeree board circular or, by virtue of Section 4 of Appendix 1, for a whitewash transaction in a whitewash circular and provides that:

> **"The offeree board circular must contain:**
>
> **(a) a summary of the principal contents of each material contract <u>(not being a contract entered into in the ordinary course of business)</u> entered into by the offeree company or any of its subsidiaries <u>during the period beginning two years before the commencement of the offer period,</u> including particulars of dates, parties, terms and conditions and any consideration passing to or from the offeree company or any of its subsidiaries [*emphases added*];**
>
> **…**
>
> **(d) a list of the documents which the offeree company has published on a website in accordance with Rules 26.2 and 26.3 and the address of the website on which the documents are published;**
>
> **…"**.

4.7 In the case of a whitewash transaction, the two year period referred to in Rule 25.7 is treated as applying for the two years prior to the publication of the whitewash circular.

4.8 Rule 26 of the Code sets out the documents which are required to be published on a website. It is split into three separate rules. This is on the basis that, in the

context of an offer, certain documents are required to be published on a website on the business day following the date of the relevant document (as set out in Rule 26.1), certain documents are required to be published on a website on the business day following the announcement of a firm intention to make an offer (as set out in Rule 26.2) and certain documents are required to be published on a website from the time that the offer document or offeree board circular is published (as set out in Rule 26.3).

4.9 Rule 26.3 provides as follows:

> **"The following documents must be published on a website from the time the offer document or offeree board circular, as appropriate, is published (or, if later, the date of the relevant document):**
>
> **…**
>
> **(d) any material contract entered into by an offeror or the offeree company, or any of their respective subsidiaries, <u>in connection with the offer</u> [*emphasis added*] that is:**
>
> **(i) described in the offer document or offeree board circular (as appropriate) in compliance with Rule 24.3(a), Rule 24.3(b) or Rule 25.7(a); or**
>
> **(ii) entered into after the publication of the offer document or offeree board circular (as appropriate);**
>
> **…".**

4.10 In the case of a whitewash transaction, all the documents specified in Rule 26 are required to be published on a website from the time of publication of the whitewash circular until the conclusion of the general meeting to approve the Rule 9 waiver resolution.

5. CHRONOLOGY

5.1 The chronology of key events in relation to the Merger which follows is largely derived from the written submission of the Executive and is substantially undisputed.

5.2 On 22 June 2015, in response to press speculation, Ladbrokes confirmed that it was in discussions with the board of Gala Coral regarding a possible merger of Ladbrokes and the Coral Group. This announcement stated that the enlarged company would be listed on the Official List of the UK Listing Authority and that its shares would be admitted to trading on the Main Market of the London Stock Exchange. Shareholders were advised that there was no certainty that discussions between Ladbrokes and Gala Coral would lead to any agreement concerning a merger.

5.3 On 24 July, Ladbrokes and Gala Coral made a joint announcement that the two companies had agreed the terms of a recommended merger of Ladbrokes with the Coral Group.

5.4 To effect the Merger, Ladbrokes agreed to acquire the Coral Group in exchange for the issue of Consideration Shares to Coral which would represent 48.25 per cent. of the issued share capital of the enlarged Ladbrokes group (prior to a 9.99 per cent. equity placing announced the same day by Ladbrokes – see paragraph 5.6 below). Existing Ladbrokes shareholders would own the balance of the enlarged group. This announcement stated that the Merger was classified as a reverse takeover of Ladbrokes under the Listing Rules of the Financial Conduct Authority (the "FCA"). It also stated that the issue of the Consideration Shares at completion of the Merger might, for technical reasons, require a waiver from the Panel relating to obligations that might otherwise be incurred by Coral and its concert parties to make a general offer under Rule 9.1 of the Code to all Ladbrokes shareholders. The announcement explained that, should such a waiver be granted by the Panel, it would require the approval by the independent shareholders of Ladbrokes of the Whitewash Resolution.

5.5 Subsequently Coral stated that it would hold the Consideration Shares for a period of approximately 10 business days following completion of the Merger and would then arrange for the distribution of the Consideration Shares to the ultimate shareholders of Gala Coral. The Circular also explained that the Executive had agreed that none of the ultimate shareholders of Gala Coral would be presumed to be acting in concert with Coral, with Gala Coral or with each other after the distribution of the Consideration Shares to the ultimate shareholders of Gala Coral and therefore that, after that time, no person or concert parties would be interested

in over 30 per cent. of the shares in Ladbrokes.

5.6 Also on 24 July, Ladbrokes announced a non pre-emptive placing of up to 92,378,680 new ordinary shares, representing up to approximately 9.99 per cent. of Ladbrokes' issued share capital at that time, to existing and new institutional investors by means of an accelerated bookbuild process (the "Placing"). The announcement stated that the net proceeds of the Placing would strengthen the balance sheet of the enlarged Ladbrokes and that the Placing would proceed irrespective of whether the Merger completed. The announcement also stated that Playtech was expected to take up to 22.9 per cent. of the shares that were to be issued pursuant to the Placing.

5.7 Later on 24 July, Ladbrokes announced the successful completion of the Placing and that 22.9 per cent. of the shares issued pursuant to the Placing had been placed with Playtech.

5.8 On 30 October, Ladbrokes announced the publication of a circular (the "Circular") which included the notice of a general meeting which set out the necessary resolutions required to be passed by Ladbrokes shareholders to approve the Merger. The resolutions were ordinary resolutions, were interconditional on each other and consisted of the following:

(a) a resolution to approve the Merger as a reverse takeover under the Listing Rules of the FCA;

(b) a resolution to grant the directors authority to allot the Consideration Shares to Gala Group Finance plc and further shares to Playtech pursuant to the terms of the MSA Amendment Agreement (as set out in paragraph 1.5.1 of this Ruling);

(c) the Whitewash Resolution; and

(d) a resolution approving the waiver granted by the Executive of the obligations which may otherwise arise pursuant to Rule 9.1 of the Code for Coral and/or its concert parties to make a general offer to the shareholders of Ladbrokes as a result of any increase in their percentage shareholding in Ladbrokes as a result of the exercise by Ladbrokes of its existing share buy-

back authority (the “Buy-Back Resolution”).

5.9 The letter from the Chairman of Ladbrokes contained in the Circular set out the "principal terms" of the Merger; the reason why a relationship agreement was required between Ladbrokes and Coral (in the third paragraph on page 6); the fact that completion of the Merger was conditional on the approval of Ladbrokes' shareholders at a General Meeting to be held on 24 November 2015 (on page 7); the need and reason for a Whitewash Resolution (also on page 7); and the reason for the Buy-Back Resolution (on page 8).

5.10 Page 11 referred to the realisation of the synergies from the combination of Ladbrokes and Coral and the MSA Amendment Agreement in that context. The £75 million payment to Playtech was disclosed.

5.11 Pages 16 to 18 set out accurately the relevant provisions of the Code which underlay the Whitewash and Buy-Back Resolutions.

5.12 In Section 13, on page 99 of the Circular, entitled "Material contracts", it was stated, in the first paragraph, that "no contracts have been entered into (other than contracts entered into in the ordinary course of business) by any member of the Ladbrokes Group, either (a) within the two years immediately preceding the date of this Circular which are or may be material; or (b)... save as disclosed below:". "Disclosed below" (on pages 102 and 103) were the summaries of the MSA and the MSA Amendment Agreement and the SLA and the SLA Amendment Agreement.

5.13 As explained in the summary on page 103 of the Circular, the MSA Amendment Agreement replaced existing provisions in the MSA with new provisions that provided for (i) a payment by Ladbrokes to Playtech of £40 million upon completion of the Merger to be satisfied by the issue of new Ladbrokes shares and (ii) the payment to Playtech of a further guaranteed £35 million in cash payable upon delivery of key operational milestones, but, in any event, within 42 months from completion of the Merger.

5.14 Following a request from Mr Bateson, the Amendment Agreements were published in full on the website. Mr Desmond was informed that this was not a matter of obligation but a gesture of goodwill.

5.15 Following a telephone conversation between Mr Bateson, on behalf of Mr Desmond, and the Executive on 13 November, Mr Desmond sent the Executive a letter on 16 November which requested that the Panel consider (i) compelling Ladbrokes to make fully available for inspection all material contracts listed as such in the Circular and (ii) ruling that Playtech was not independent of the proposed transactions and was therefore precluded from voting on all four resolutions which were proposed at Ladbrokes' general meeting to be held on 24 November. Mr Desmond wrote that the Amendment Agreements were "practically unintelligible" without the Original Agreements, but Ladbrokes had responded that "having taken advice" they did not believe they were "under any obligation" to disclose them.

5.16 The Executive sought Mr Bateson's consent to raise these issues with Ladbrokes and, later on 16 November, Ladbrokes' advisers were notified of these requests.

5.17 On 17 November, Mr Desmond published a presentation on a website explaining the reasons why he considered that Ladbrokes shareholders should vote against the Merger. A letter from Mr Desmond to Ladbrokes shareholders was also published the same day.

5.18 During the course of 17 to 19 November, the Executive discussed the matter extensively with Ladbrokes' advisers and Mr Bateson. On 19 November, the Executive informed each of Ladbrokes and Mr Bateson of its initial views which were as follows: (i) the Original Agreements were not material contracts entered into by Ladbrokes in connection with the Merger which were required to be published on a website by Ladbrokes pursuant to Rule 26.3, (ii) the effect of the Amendment Agreements was capable of being understood without reference to the full text of the Original Agreements and (iii) Playtech should not be considered to be independent for the purposes of the Whitewash Resolution and the Buy-Back Resolution (with the result that Playtech should not be permitted to vote on those two resolutions). The Executive also asked both parties to make their final representations on these points by the end of 19 November so as to enable the Executive to make a ruling on the matter by 20 November, given that the Ladbrokes general meeting was scheduled to take place at 9.30 am on 24 November.

5.19 On 19 November, Ladbrokes announced an update to the Merger. This noted Mr Desmond's letter of 17 November, reiterated the board's recommendation to shareholders to vote in favour of the resolutions to be proposed at the general meeting on 24 November and confirmed that Playtech was not considered to be independent for the purposes of the Whitewash Resolution and the Buy-Back Resolution.

5.20 The Executive sought and received certain written assurances from Ladbrokes and its advisers in relation to the MSA Amendment Agreement as follows:

(i) the introduction of the new payment terms with Playtech conditional on completion of the Merger, summarised on page 103 of the Circular, and set out in full in the Annex to the MSA Amendment Agreement and published by Ladbrokes on a website, were set out in their entirety in the MSA Amendment Agreement;

(ii) the establishment of milestones which Playtech must achieve to receive further fees summarised on page 103 of the Circular were set out in the Annex to the MSA Amendment Agreement (published on a website); and

(iii) the services to be provided by Playtech under the MSA at completion of the Merger were set out in their entirety in the MSA Amendment Agreement.

5.21 Clauses 4 and 5 of the MSA Amendment Agreement made certain other amendments to the MSA as to which:

(i) all of the clauses in the MSA which were deleted by the MSA Amendment Agreement either (i) related to the original payment terms for Playtech, (ii) related to changes to the services to be provided by Playtech under the MSA to reflect the changed requirements of the enlarged Ladbrokes post-completion or (iii) were not of commercial significance, or were immaterial or were boilerplate clauses;

(ii) other than in relation to the payment terms for Playtech and the services to be provided to Ladbrokes by Playtech, the deleted clauses did not result in Ladbrokes relinquishing any material benefits to which it was entitled under the MSA or assuming any material obligations which were not contained in

the original MSA;

(iii) all of the other amendments in the MSA Amendment Agreement to the clauses in the MSA which survived the MSA Amendment Agreement coming into effect were either not commercially significant, or were immaterial or were boilerplate clauses; and

(iv) all of the clauses in the MSA which survived the MSA Amendment Agreement coming into effect without being amended were either (i) not commercially significant, or were immaterial or were boilerplate clauses or (ii) were clauses which Ladbrokes would have requested to be redacted prior to publishing the MSA on a website if it were ever required to publish such agreement on a website.

5.22 In relation to the SLA Amendment Agreement, the summary on page 103 of the Circular stated that, if completion of the Merger occurs, "*the existing break clause in the [SLA] will terminate and cease to apply and will be replaced with a new break clause which entitles Ladbrokes International to terminate the [SLA] on the date that is the later of: (i) 54 months from Completion, and (ii) 31 December 2020. Ladbrokes also has agreed revised fee arrangements to apply following Completion*".

5.23 The Executive received written confirmation from UBS and Greenhill that the SLA Amendment Agreement "*does not provide for any additional payments and does not deal with any matters which could be considered to be outside the ordinary course of business. It simply makes consequential amendments to an existing contract which was entered into in the ordinary course of business in order to reflect the fact that the enlarged Ladbrokes group will be materially different post-Completion*". Additionally, the terms of the new break clause were set out in the SLA Amendment Agreement (which had been published on a website).

5.24 The Executive was also informed by UBS and Greenhill on behalf of Ladbrokes that the Original Agreements contained highly sensitive and commercially confidential information which, in the opinion of Ladbrokes, would significantly damage its and Playtech's commercial interests if the contracts were to be

disclosed in full.

5.25 The Executive was also informed by Ladbrokes that it had received legal advice that Ladbrokes would be committing an infringement of both the EU's and the United Kingdom's competition rules were it voluntarily to disclose the "*highly sensitive and commercially confidential information*" contained in the Original Agreements.

6. THE EXECUTIVE'S RULING

6.1 On 20 November, the Executive informed Ladbrokes and Mr Desmond of its ruling that (i) the Original Agreements were not material contracts entered into by Ladbrokes in connection with the Merger which were required to be published on a website by Ladbrokes pursuant to Rule 26.3 and (ii) the effect of the Amendment Agreements was capable of being understood without reference to the full text of the Original Agreements. Ladbrokes agreed to ensure that Gala Coral and Playtech were informed of this ruling of the Executive.

6.2 Later on 20 November, Mr Bateson notified the Executive that Mr Desmond had requested that this ruling should be reviewed by the Committee.

6.3 The Executive noted in its submission that it would normally consider permitting commercially sensitive information to be redacted from documents published on a website. The Executive's normal practice was to decide whether particular information should be permitted to be redacted in the light of all available facts. Where disclosure would otherwise result in a breach of competition laws or significant proprietary commercially sensitive information becoming publicly available, it would be appropriate to permit redaction of the relevant sections of the contract. In the light of the Executive's view that there was no requirement for Ladbrokes to publish the Original Agreements on a website, the Executive had not engaged in a detailed review of which information in the Original Agreements it would permit to be redacted, but it would need to undertake this exercise if there were an obligation on Ladbrokes to publish the Original Agreements on a website.

7. THE LADBROKES GENERAL MEETING

7.1 The Ladbrokes general meeting was convened at 9.30am on 24 November. All resolutions (including the Whitewash Resolution and the Buy-Back Resolution)

were passed, in each case with over 94 per cent. of the votes cast in favour of each resolution.

8. THE SUBMISSIONS TO THE COMMITTEE

(a) The Submissions of the Executive

8.1 Rule 25.7(a) of the Code read with Section 4 of Appendix 1, in the context of a whitewash, states that the whitewash circular must contain:

> "**a summary of the principal contents of each material contract (not being a contract entered into in the ordinary course of business) entered into by the offeree company or any of its subsidiaries during the period beginning two years before the commencement of the offer period …**".

8.2 Rule 26.3(d) states that the following documents must be published on a website from the time that the offeree board circular, or, by virtue of Section 4 of Appendix 1, in the context of a whitewash, the whitewash circular, is published:

> "**any material contract entered into by an offeror or the offeree company, or any of their respective subsidiaries, in connection with the offer that is:**
>
> **(i) described in the offer document or offeree board circular (as appropriate) in compliance with Rule... or Rule 25.7(a);**
>
> **…**".

8.3 Rule 26 therefore requires a subset of the material contracts referred to in Rule 25.7 to be published on a website – namely those material contracts which were entered into <u>in connection with the offer</u>.

8.4 The Merger was announced by the boards of Ladbrokes and Gala Coral on 24 July 2015. In the case of a whitewash transaction, the two year period is treated as applying for the two years prior to the publication of the whitewash circular. In this case, the Circular was published on 30 October 2015. Therefore, the date falling two years before the date of publication of the Circular was 30 October 2013.

8.5 The Original Agreements were entered into on 10 March 2013; therefore, absent the potential impact of the Amendment Agreements, there was no requirement for a summary of the Original Agreements to be included in the Circular.

8.6 Additionally, the Executive had considered whether the Original Agreements were entered into in the “ordinary course of business”.

8.7 The Executive’s usual practice when dealing with the question of whether a particular contract had been entered into “in the ordinary course of business” was to pay particular attention to the views of the relevant party to the offer and its professional advisers, due to their expertise and familiarity with the nature of the business in question.

8.8 Ladbrokes submitted that the Original Agreements were entered into in the ordinary course of business. The Executive had, however, noted the disclosure of the summaries of the Original Agreements in the “Material contracts” section on pages 102-3 of the Circular and the introductory language to the “Material contracts” section on page 99 of the Circular referred to above in paragraph 5.12.

8.9 Therefore, whilst the Executive "had considerable sympathy" for Ladbrokes’ argument that the Original Agreements were entered into in the ordinary course of Ladbrokes’ business, the submission was made on the basis that this was not the case. However, it was clear that, given the period of time that had elapsed between the entry into the Original Agreements and the announcement of the Merger, the Original Agreements were not entered into in connection with the Merger.

8.10 Accordingly, whilst they appeared to have been summarised in the Circular, the Executive considered that, absent the Amendment Agreements, the publication obligations under Rule 26.3(d) would not apply to the Original Agreements.

8.11 Given that the Amendment Agreements had been summarised in the Circular as material contracts and published on a website, the Executive's submission was written on the basis that they were to be treated as being material contracts entered into in connection with the Merger.

8.12 The key question was whether the effect of the Amendment Agreements was capable of being understood without reference to the full text of the Original Agreements.

8.13 In considering this question, the Executive had considered the nature of the amendments made by each of the Amendment Agreements to the terms of the

relevant Original Agreements.

8.14 In relation to the MSA Amendment Agreement, the Executive accepted the submissions of Ladbrokes and its advisers that the amendments were:

(i) the introduction of new payment terms with Playtech conditional on completion of the Merger. These terms were summarised on page 103 of the Circular and were set out in full in the Annex to the MSA Amendment Agreement (which has been published by Ladbrokes on a website). Slaughter and May, on behalf of Ladbrokes, had also confirmed to the Executive in writing that these arrangements were set out in their entirety in the MSA Amendment Agreement;

(ii) the establishment of milestones which Playtech must achieve to receive further fees. These milestones were summarised on page 103 of the Circular and were set out in the Annex to the MSA Amendment Agreement (which had been published by Ladbrokes on a website);

(iii) Slaughter and May, on behalf of Ladbrokes, had confirmed to the Executive in writing that the services to be provided by Playtech under the MSA at completion of the Merger were set out in their entirety in the MSA Amendment Agreement; and

(iv) clauses 4 and 5 of the MSA Amendment Agreement made certain other amendments to the MSA. The Executive had received written confirmation from Slaughter and May, on behalf of Ladbrokes, in relation to these amendments in the terms set out in paragraph 5.21 above.

8.15 In relation to the SLA Amendment Agreement, the Executive had received written confirmation from UBS and Greenhill (also on behalf of Ladbrokes) in the terms set out in paragraph 5.23 above.

8.16 In the opinion of the Executive, the Original Agreements should not be required to be published on a website under Rule 26.3 because:

(i) the Original Agreements were entered into prior to 30 October 2013 (being the date falling two years before the date of publication of the Circular) and were not entered into in connection with the Merger;

(ii) the effect of the Amendment Agreements was capable of being understood without reference to the full text of the Original Agreements on the basis that:

(a) the clauses in the Original Agreements which were deleted pursuant to the Amendment Agreements ceased to be relevant at completion of the Merger;

(b) the terms of the material matters which were referred to in paragraphs 8.14(i) and 8.14(ii) above and the terms of the new break clause under the SLA were set out in the relevant Amendment Agreement;

(c) save in respect of the matters referred to in (b) above, Slaughter and May on behalf of Ladbrokes had confirmed that the deleted clauses of the MSA were not of commercial significance, were immaterial or were boilerplate clauses; and

(d) Slaughter and May on behalf of Ladbrokes had confirmed that, in respect of the MSA, the other clauses which were amended pursuant to the MSA Amendment Agreements were not commercially significant, were immaterial or were boilerplate clauses and that, in respect of the SLA, UBS and Greenhill had confirmed that the SLA Amendment Agreement did not provide for any additional payments and contained only consequential amendments to reflect the fact that Ladbrokes would be materially different post completion of the Merger; and

(iii) were the Original Agreements required to be published on a website, the Executive's view was that, where disclosure would otherwise result in the breach of competition laws, or significant proprietary commercially sensitive information becoming publicly available, it would normally be appropriate to permit redaction of the relevant sections of the contract.

(b) The Submissions of Mr Desmond

8.17 The non-disclosure of the Original Agreements meant that General Principles 2 and 3 of the Code had been breached. Ladbrokes shareholders were being asked to

vote on a significant transaction without knowing "the true reasons for the payment" of £75 million to Playtech of which £40 million was to be satisfied by the issue of Ladbrokes shares. The submission suggests, for a number of reasons, that the Amendment Agreements were entered into contrary to the interests of Ladbrokes shareholders.

8.18 It is accepted that the Original Agreements as such did not require to be published because of the "two year rule", and that they were not connected with the Merger which was not in contemplation at the time they were agreed.

8.19 It was not in the ordinary course of Ladbrokes' business "to give a supplier a significant percentage of (the) company, operational control over a key business division and ... a pre-agreement with a payment attached in return for support for the Merger".

8.20 The Amendment Agreements "brought the (Original Agreements) into play as material contracts". "… contract amendments must be read in conjunction with the original contract.". The Amendment Agreements do not in themselves "comprise the full contract" entered into on 23 July.

8.21 There were concerns that Ladbrokes, Gala Coral and Playtech were acting in concert in relation to the Merger but Mr Desmond readily accepted that, if that was to be pursued, the Hearing was not the occasion to do so.

8.22 In the course of the Hearing it was made clear that Mr Desmond was not concerned with "commercial sensitivities such as hourly rates, maintenance charges, the code, the design" and "matters like that" which could be redacted from any disclosure. "Our only interest is understanding the £75 million payment to Playtech and that is currently impossible.". This was emphasised on a number of occasions. Mr Bateson, in his closing remarks, did suggest that the need to see the Original Agreements was wider, but that was also directed to commercial matters supposedly to be derived from those Agreements.

(c) The Submissions of Ladbrokes and Gala Coral

8.23 Ladbrokes (supported by Gala Coral) submitted that:

(i) The Amendment Agreements were made publicly available on 5 November

voluntarily.

(ii) A requirement to publish contract(s) subject to Rule 26.3(d) arose only because completion of the proposed Merger required a Rule 9 whitewash. The Merger itself did not require sanction from the Panel.

(iii) Rule 26.3(d) required publication only if the contract(s) were entered into "in connection with the offer [i.e. merger]" and were summarised in the circular required by Rule 25.7(a).

(iv) Rule 25.7(a) required a summary of a contract to be published only if the contracts were not entered into in "the ordinary course of business" and were entered into during the period beginning two years before the commencement of the offer period.

(v) None of the Original Agreements or Amendment Agreements met the three criteria: (i) they were not entered into in connection with the Merger, (ii) they were entered into in the ordinary course of business and (iii) (in the case of the Original Agreements) they were entered into more than two years before commencement of the offer period.

(vi) Even if (wrongly, as Ladbrokes contended) the Amendment Agreements were required to be published, it did not follow that the Original Agreements must be published.

(vii) The Original Agreements were "highly commercially sensitive" and voluntary disclosure would breach EU and UK competition law. They had not even been shared with Gala Coral during the merger negotiations. The Circular contained all material information required for the purposes of the general meeting and for shareholders to make an informed decision, which they had done.

(d) The Submissions of Playtech

8.24 The Original Agreements and Amendment Agreements were "ordinary course" agreements.

8.25 The Original Agreements contained "extremely sensitive commercial and operational information" that, if disclosed to competitors or customers, "would be

contrary to established competition law" and "would have dire consequences for Playtech's business …".

8.26 The purpose of the SLA Amendment Agreement was to make amendments to the SLA but it was capable of review on a standalone basis and so should not lead to the publication of the SLA. Neither of the Original Agreements had any relevance to the £75 million payment.

8.27 It was important to keep in mind that it was not the Amendment Agreements which were to be or even required to be the subject of a shareholder vote but the proposed whitewash to which the terms of the Merger gave rise if the Merger was to be implemented. The Amendment Agreements were subject to the Listing Rules which required only a summary of the provisions to be published, a requirement which had been met in full.

9. RULING OF THE COMMITTEE

The £75 million question

9.1 As has been noted above, during the Hearing Mr Desmond's concern was expressed to be that, as he believed, shareholders of Ladbrokes had insufficient explanation or justification for the agreement recorded in both the Circular and the MSA Amendment Agreement that, if the Merger were to be completed, Ladbrokes would pay Playtech the sum of £75 million to be discharged as to £40 million in shares and the balance by way of a guaranteed payment. The submission was that the answers would be found in or at least could be deduced from the Original Agreements or at least the MSA. It was in this context that emphasis was placed on General Principles 2 and 3 of the Code.

9.2 The Committee rejects this submission. The Code is concerned to ensure that shareholders have the relevant information to be able to cast informed votes. But it is expressly not concerned with the commercial rationale for an offer or merger as paragraph 2(a) of the Introduction to the Code makes clear.

9.3 The essential fact that the £75 million payment had been negotiated and was to be made has been fully disclosed and there can be no reasonable difficulties in understanding it or asking about it. The Committee accepts that it would be improbable and unusual for agreements such as those in question to explain how or

when the terms came to be agreed or the commercial rationale for them and accepts that the Agreements do not in fact do so.

9.4 It should be noted that in the event the shareholders of Ladbrokes appear to have had no difficulty in forming their opinion on the Whitewash Resolution. The Committee also accepts that neither the SLA nor the SLA Amendment Agreement is in any way even arguably material to this question.

Other issues

9.5 Granted that it is the £75 million question which is the foundation of Mr Desmond's request to the Committee to overturn the ruling of the Executive, the Committee has considered carefully whether or not it should proceed nonetheless to address the other issues which have been debated in the submissions and at the Hearing which would arise on whether or not Rule 26.3 applied to the Original Agreements.

9.6 The Committee was encouraged to do so by the Executive, Ladbrokes and Playtech on the basis that the issues were important ones of general concern whilst acknowledging that any conclusion in a particular case would inevitably depend on the particular circumstances of that case. The Committee will do so, especially because it has not found the issues which arise easy to address or resolve and considers that they are appropriate for consideration by the Code Committee of the Panel to assess whether or not some amendments or clarifications are required as indicated below.

9.7 The Amendment Agreements were agreed well within the two-year time limit in Rule 25.7(a) of the Code. They, unlike the Original Agreements as such, therefore had to be included in summary in the Circular and published on a website in accordance with Rule 26.3(d) provided they were material (which is not in issue) and

(i) were not entered into "in the ordinary course of business"; and

(ii) were entered into "in connection" with the Merger.

9.8 If the Amendment Agreements were required to be published on a website, the further question arises as to whether or not publication had to include the Original

Agreements in full also, or only those terms which were still applicable, or not at all (the "incorporation issue").

9.9 Confidentiality issues would also need to be addressed if they arose as a result of the rulings on the above issues.

Ordinary course of business

9.10 It is the submission of Ladbrokes, Gala Coral and Playtech that, granted that the Amendment Agreements are "material", these words are intended to distinguish between material agreements which are directed to the conduct of the ordinary business of the company in question and agreements for some extraordinary purpose.

9.11 The Amendment Agreements undoubtedly demonstrate the importance of the services and licences provided by Playtech to the online business of Ladbrokes, which is the "business" in question for the purposes of the Rule. Further, the language used in publishing the summary in the Circular undoubtedly suggests that the Amendment Agreements were not made in the ordinary course of business.

9.12 Nonetheless, and on balance, the Committee is satisfied that the Amendment Agreements are properly to be described as ones made in the ordinary course of the business of Ladbrokes. That business includes a significant and growing online business which requires for its successful operation the services and technology of a company such as Playtech and the Amendment Agreements were designed to secure those services in the event that Gala Coral's online business comes to form part of the merged business. The Original Agreements secured those services for the existing business in 2013 and there were earlier agreements in and after 2008, including agreements with other companies.

9.13 The fact that the Agreements were negotiated with a party with whom Ladbrokes had a wider relationship does not, in the view of the Committee, alter the nature of the Amendment Agreements themselves. Granted that the Rule applies only to material agreements, the commercial significance of the relevant agreement is not of itself or alone the test.

9.14 The Committee was also concerned that if the words (or "in connection with") were given a wider meaning they would potentially catch any material agreement

which would be "occasioned by" an offer or merger, for example to reflect a new corporate structure, and to require publication in full of numerous agreements of no significance to voting shareholders.

"In connection with" the Merger

9.15 The Committee considers that these words do not have the clarity which they are satisfied was the intention underlying their use in Rule 26.3(d) of the Code.

9.16 There can be no doubt that the Amendment Agreements were prepared and signed because of and in "anticipation" of the proposed Merger and the perceived need to amend the Original Agreements to meet the circumstances expected to arise if the Merger was successfully completed. The relevant words of Rule 26.3(d) are ordinary English words and, in their normal meaning, one interpretation would be that the Amendment Agreements were entered into "in connection with" the Merger.

9.17 On the other hand, the Committee also considered and is satisfied that the purpose of the requirement to publish such agreements was not directed at agreements which are simply "connected" to the offer or merger by reason of being required or impacted by it, but only those which are concerned with or directed to the implementation of the offer or merger itself, such as irrevocable undertakings to accept or approve the terms of an offer or merger.

9.18 That restricted construction is supported by the circumstances in which Rule 26.3(d) came to be included in the Code which are set out in paragraphs 3.9 to 3.16 of the written submission of the Executive.

9.19 The Committee has therefore concluded that in the sense in which the words are used, and should be read, the Amendment Agreements are not properly to be described as entered into in connection with the Merger.

Conclusions

9.20 It follows that, after careful consideration, the Committee has concluded that it is not satisfied that the Amendment Agreements themselves were required to be published on a website by Ladbrokes in compliance with Rule 26.3(d), both because they were entered into the ordinary course of the business of Ladbrokes

and because they were not entered into in connection with the terms of the Merger.

9.21 The Committee wishes to record that, whilst Ladbrokes emphasised in submissions that publication of the Amendment Agreements was "voluntary" and Mr Desmond was so informed, no such statement was made publicly to shareholders and the circumstances in which the publications were made might reasonably have led to readers drawing the opposite conclusion.

9.22 Further, the Committee repeats that the matters which it has addressed in these conclusions should be brought to the attention of the Code Committee of the Panel for its consideration.

Incorporation

9.23 In view of the previous conclusions that publication of the Amendment Agreements was not required by Rule 26.3(d) of the Code, it is unnecessary to consider the submission that publication of the Original Agreements was required (wholly or at least in part) to discharge an obligation to publish the Amendment Agreements. Nonetheless the Committee wishes to comment on a matter which may be of some general importance.

9.24 It was important to the ruling of the Executive that the Amendment Agreements were capable of being understood without reference to the Original Agreements. Whilst the Committee considers that it is probable that this conclusion was accurate, it also notes that Rule 26.3(d) requires that a material contract subject to its provisions must be published on a website and not merely a summary of its principal contents which was the requirement of Rule 25.7(a). Again, the Committee is concerned that the Code Committee should consider this possible anomaly.

9.25 The Amendment Agreements are a good illustration of these problems. They contain various cross-references to the Original Agreements by way of incorporating provisions of those Agreements into the Amendment Agreements. The Committee has no reason to doubt and, like the Executive, accepts the assurances given by Ladbrokes about the nature of these provisions. If there were a requirement to publish the full agreement between the parties, it would, in the view of the Committee, have sufficed to include in the publication only those

terms of the Original Agreements which were to continue in force as part of the new agreements which became the Amendment Agreements. For example, the Committee was told that the terms incorporated by reference into the Amendment Agreements addressed "boilerplate" provisions such as governing law and notices and the like which were to apply equally to the Amendment Agreements. It may seem curious that it would necessitate preparing a further agreement to comply with the Rule or to publish the Original Agreements redacted as appropriate, but that would appear to the Committee to be what the Rule would require if it applied.

Confidentiality

9.26 Nothing in this Ruling or the Reasons is intended to reflect any criticism of the approach of the Executive to issues of confidentiality and redaction for that reason of terms of agreements which are required to be published.

10. RULING

10.1 For the reasons expressed above, the Committee rejects the request of Mr Desmond and upholds the ruling of the Executive that the Original Agreements did not and do not require to be published on a website.

11. APPEAL

11.1 If any party wants to appeal this Ruling to the Takeover Appeal Board ("TAB"), it should notify its intention to do so in accordance with the Rules of TAB as set out on its website (www.thetakeoverappealboard.org.uk) by 5pm on 21 December 2015.

14 December 2015

APPENDIX 1
HEARINGS COMMITTEE MEMBERS

The members of the Hearings Committee who constituted the Committee for the purpose of the Hearing were:

Present:	Sir Gordon Langley	Chairman
	David Challen	Deputy Chairman
	Baroness Hogg	
	Sir David Lees	
	Lord Morris of Handsworth	
British Bankers' Association	Simon Croxford	Barclays Bank PLC
National Association of Pension Funds	Martin Mannion	John Lewis Partnership
Quoted Companies Alliance	Tim Ward	
Secretary to the Committee	Charles Penney	Addleshaw Goddard LLP

ANNEXURE 2

RULING OF THE CHAIRMAN OF THE HEARINGS COMMITTEE OF FEBRUARY 17, 2016

1. The following ruling was provided by email to Mr Bateson, adviser to Mr Desmond, on February 17, 2016

   "The Chairman is of the opinion that the position set out in [the Secretary to the Hearings Committee's] email to Daniel Travers of Jones Day on 24 December at 10:09 a.m. remains unchanged. As set out in that email, the proceedings and materials (written and oral) produced before the Hearings Committee are and shall remain confidential. This obligation shall apply regardless of the status of the intended recipient of such information."

2. The email to Daniel Travers of Jones Day on 24 December at 10:09 a.m. referred to above included the following:

   "In terms of your question on the possibility of Mr Desmond sharing the information with the UKLA, the proceedings and materials (written and oral) produced before the Hearings Committee are and remain confidential (except to the extent otherwise lawfully in the public domain already), so may not be shared by Mr Desmond with the UKLA and should remain confidential."

ANNEXURE 3

RULING OF THE HEARINGS COMMITTEE (THE "COMMITTEE")

THE TAKEOVER PANEL
HEARINGS COMMITTEE

LADBROKES PLC ("LADBROKES")

RULING OF THE HEARINGS COMMITTEE (THE "COMMITTEE")

1 INTRODUCTION

1.1 The context in which the issues the subject of this Ruling arise is largely taken from the written submission of the Takeover Panel Executive (the "Executive") dated 8 April 2016 and is substantially agreed.

1.2 On 24 July 2015, Ladbrokes plc ("Ladbrokes") and Gala Coral Group Limited ("Gala Coral") announced that they had agreed the terms of a proposed recommended merger (the "Merger") between Ladbrokes and certain businesses of Gala Coral, being Coral Retail, Eurobet Retail and Gala Coral's online businesses (the "Coral Group"). To effect the Merger, Ladbrokes agreed to acquire the Coral Group from a subsidiary of Gala Coral called Gala Group Finance plc ("Coral") in exchange for new shares in Ladbrokes representing 48.25 per cent. of the enlarged issued share capital of Ladbrokes at the time of the announcement of the Merger (the "Consideration Shares").

1.3 As a result of the issue of the Consideration Shares to Coral, Coral intends to hold over 30 per cent. of the voting rights of Ladbrokes for a short period of time (currently expected to be around 10 business days) before the Consideration Shares are distributed to Gala Coral's ultimate shareholders. The Executive agreed that the obligation on Coral to make a general offer under Rule 9.1 of the Takeover Code (the "Code") to all Ladbrokes shareholders that would otherwise arise would be waived if independent shareholders of Ladbrokes voted in favour of a resolution approving the waiver of the mandatory offer obligation under Rule 9.1 (the "Whitewash Resolution").

1.4 In March 2013, Ladbrokes had entered into two commercial contracts with members of the Playtech group of companies ("Playtech"):

1.4.1 a marketing services agreement (the "MSA") under which Playtech agreed to provide marketing and advisory services to grow Ladbrokes' digital business; and

1.4.2 a software licence agreement (the "SLA") under which Playtech granted Ladbrokes access to software and services relating to online casino and other gaming activities.

1.5 The MSA and the SLA together are referred to as the "Original Agreements".

1.6 On 23 July 2015, the day prior to the announcement of the Merger, Ladbrokes and Playtech entered into two amendment agreements in respect of the Original Agreements:

1.6.1 an amendment agreement to the MSA (the "MSA Amendment Agreement") under which, from completion of the Merger, the existing terms and obligations under the MSA will be replaced with new terms (including (i) a payment by Ladbrokes to Playtech of £40 million upon completion of the Merger to be satisfied by the issue of new Ladbrokes shares and (ii) the payment to Playtech of a further guaranteed £35 million in cash payable upon delivery of key operational milestones, but, in any event, within 42 months from completion of the Merger); and

1.6.2 an amendment agreement to the SLA (the "SLA Amendment Agreement") pursuant to which revised fee arrangements will apply on completion of the Merger, break clause provisions relating to the SLA were agreed and certain other non-material amendments were made to the SLA.

Playtech has also separately agreed to use reasonable endeavours to procure that two Playtech consultants continue to support Ladbrokes' 2016 marketing plan post completion of the Merger.

1.7 The MSA Amendment Agreement and the SLA Amendment Agreement together are referred to as the "Amendment Agreements".

1.8 At 7.03am on 24 July, the Merger was announced and, at 7.06am on the same day, Ladbrokes announced a proposed non-pre-emptive placing (the "Placing") by way of an accelerated bookbuild of approximately 9.99 per cent. of Ladbrokes' then issued share capital. In the announcement of the Placing, Ladbrokes said that it expected Playtech to take up to 22.9 per cent. of the Placing shares as a demonstration of support for the Merger. At 1.33pm on 24 July, Ladbrokes announced the results of the Placing and confirmed that 9.99 per cent. of Ladbrokes' share capital had been issued to placees to raise £115.5 million (before expenses) and that Playtech had subscribed for 22.9 per cent. of the Placing shares. Playtech is presently the holder of 9.71% of the share capital of Ladbrokes, having bought further shares in the market.

1.9 At 4.58pm on 30 October 2015, Ladbrokes announced the publication of a circular (the "Circular") which included the notice of a general meeting (the

"General Meeting") which set out the necessary resolutions required to be passed by Ladbrokes shareholders to approve the Merger. The resolutions were ordinary resolutions, were interconditional on each other and consisted of the following:

1.9.1 a resolution to approve the Merger as a reverse takeover under the Listing Rules of the Financial Conduct Authority (the "FCA");

1.9.2 a resolution to grant the directors authority to allot the Consideration Shares and further shares to Playtech pursuant to the terms of the MSA Amendment Agreement (as set out in paragraph 1.6.1);

1.9.3 the Whitewash Resolution; and

1.9.4 a resolution to approve the waiver granted by the Executive of the obligations which might otherwise arise pursuant to Rule 9.1 of the Code for Coral and/or persons acting in concert with it to make a general offer to the shareholders in Ladbrokes as a result of any increase in their percentage shareholding in Ladbrokes as a result of the exercise by Ladbrokes of its existing share buy back authority (the "Buy Back Resolution").

All shareholders were able to vote on the resolutions referred to in paragraphs 1.9.1 and 1.9.2. Independent Ladbrokes shareholders (which excluded Playtech) only were able to vote on the Whitewash Resolution and the Buy Back Resolution (together, the "Resolutions").

1.10 The Circular also included summaries of (i) the Original Agreements (see pages 11 and 102/103 of the Circular) and (ii) the Amendment Agreements (see pages 11 and 103 of the Circular). None of these agreements were published on a website on the date of publication of the Circular. However, following discussions between Mr. Dermot Desmond, a significant shareholder in Ladbrokes, and Ladbrokes, the Amendment Agreements (but not the Original Agreements) were published on a website by Ladbrokes on 5 November 2015.

1.11 Mr. Desmond raised certain concerns regarding the Original Agreements and the Amendment Agreements with the Executive on 16 November 2015. On 21 November, after a series of discussions between the Executive, Ladbrokes and Mr. John Bateson, acting on behalf of Mr. Desmond, which took place on 17 to 21 November, the Executive ruled that (i) the Original Agreements were not material contracts entered into by Ladbrokes in connection with the Merger which were required to be published on a website by Ladbrokes pursuant to Rule 26.3 of the Code and (ii) the effect of the Amendment Agreements was capable of being understood without reference to the full text of the Original Agreements.

1.12 On 21 November, Mr. Desmond requested that these rulings be reviewed by the

Hearings Committee.

1.13 At 9.30am on 24 November 2015, the Ladbrokes General Meeting was convened. All resolutions were passed with over 94 per cent. of the votes cast in favour of each resolution.

1.14 A meeting of the Hearings Committee was convened on 26 November 2015. Following that meeting, on 14 December, the Hearings Committee upheld the Executive's ruling that the Original Agreements were not and are not required to be published on a website.

1.15 On 21 December, Mr. Desmond submitted a notice of appeal to the Takeover Appeal Board ("TAB") in respect of the Hearings Committee's ruling. The appeal is currently expected to be heard on 4 May 2016.

1.16 On 22 December 2015, Jones Day, legal advisers acting on behalf of Mr. Desmond, submitted a letter to the Executive setting out additional complaints relating to the Merger. These further complaints alleged that:

1.16.1 the Circular contained material omissions and inaccuracies which rendered it misleading, so that Ladbrokes shareholders voted at the general meeting on a false premise; and

1.16.2 the Original Agreements and/or the Amendment Agreements constituted a dealing arrangement as set out in Note 11 on the definition of "Acting in concert".

1.17 The letter of 22 December requested the following remedies:

1.17.1 that material new information omitted from the Circular be brought to the attention of Ladbrokes shareholders (including the publication of the Original Agreements on a website);

1.17.2 that a further general meeting of Ladbrokes be convened for shareholders to vote again on the resolutions required to approve the Merger; and

1.17.3 that the Original Agreements be published on a website pursuant to Rule 26.2(c).

1.18 During the course of January and February 2016, the Executive conducted interviews with representatives of Mr. Desmond and his advisers, Ladbrokes and its advisers, Playtech and its advisers and Gala Coral and its advisers. The Executive also reviewed board minutes and papers which it requested from Ladbrokes which related to the entry into the Original Agreements, the Placing and the Merger, including the entry into the Amendment Agreements. The

Executive also reviewed extracts of board minutes provided to it by Playtech.

1.19 Following the conclusion of its investigations, the Executive provided all interested parties with a document explaining how it was minded to rule, and considered all parties' comments on that document. On 7 March 2016, the Executive ruled that:

1.19.1 no new information was required to be disclosed to Ladbrokes shareholders and that no further extraordinary general meeting of Ladbrokes was required to be held in relation to the Whitewash Resolution and the Buy Back Resolution; and

1.19.2 the Original Agreements and/or the Amendment Agreements did not constitute an inducement to deal, as described in Note 11 on the definition of "Acting in concert".

2 BACKGROUND

(a) Ladbrokes

2.1 Ladbrokes is a bookmaker which provides betting and gaming services across multiple channels. Ladbrokes is registered in England and Wales and its shares are admitted to trading on the Main Market of the London Stock Exchange. Accordingly, Ladbrokes is a company which is subject to the Code in accordance with section 3(a)(i) of the Introduction to the Code. At the close of business on 7 April 2016, Ladbrokes had a market capitalisation of approximately £1.2 billion.

2.2 Ladbrokes is advised by UBS, Greenhill and Slaughter and May. Deutsche Bank is broker to Ladbrokes.

(b) Gala Coral

2.3 Gala Coral is one of Europe's largest betting and gaming groups with an established presence in the United Kingdom and Italy. The Coral Group is the principal part of Gala Coral's group of companies and comprises three main operating divisions: Coral Retail, Eurobet Retail and Online.

2.4 Gala Coral is registered in England and Wales and is privately owned. The shareholders of Gala Coral are the group's management and various alternative investment managers, including private equity funds Anchorage, Apollo, Cerberus and Saberasu Japan.

2.5 Gala Coral is advised by Morgan Stanley, Goldman Sachs and Ashurst.

(c) Playtech

2.6 Playtech was founded by Mr. Teddy Sagi in 1999. Mr. Sagi owns approximately

33.6 per cent. of Playtech. Playtech is the world's largest online gaming software and services supplier. Playtech is engaged in the development and licensing of software and the provision of ancillary services for the online and land-based gambling industries. Playtech's licensees include established online operators, sportsbooks and entertainment brands looking to upgrade or diversify their offering, including bet365, Betfair, Caliente, Gala Coral, Ladbrokes, Paddy Power, Sisal, Sky, SNAI, Titan, William Hill and Winner.

2.7 Playtech is registered in the Isle of Man. Playtech's shares are admitted to trading on the Main Market of the London Stock Exchange. At the close of business on 7 April 2016, Playtech had a market capitalisation of approximately £2.7 billion.

2.8 Playtech is advised by Berwin Leighton Paisner ("BLP").

(d) Mr. Dermot Desmond

2.9 Mr. Desmond is a businessman and financier. He owns approximately 2.7 per cent. of the issued share capital of Ladbrokes.

2.10 Mr. Desmond is advised by Jones Day. The Executive has also liaised with Mr. Bateson, Mr. Desmond's in-house adviser, in relation to the subject matter of this Hearing.

3 THE HEARING

3.1 The Hearing took place at the offices of The Panel on Takeovers and Mergers on Tuesday 12 April 2016. The Hearing was transcribed. Each Party, except Gala Coral, had provided a written submission on 8 April 2016 as requested by the Chairman of the Hearings Committee. At the Hearing the principal spokespersons for the parties were Mr. Crispin Wright, the Director General of the Executive, and Mr. Leon Ferera of Jones Day for Mr. Desmond. Mr. Mark Zerdin of Slaughter and May for Ladbrokes, Mr. Dominic Ross of Ashurst for Gala Coral and Mr. Alex Latner of BLP for Playtech were the principal spokespersons for the other interested parties.

3.2 The Hearing commenced at 10am and concluded at 11.20am. The Committee then considered its Ruling. The members of the Committee are listed in Appendix 1.

4 RELEVANT CODE PROVISIONS

(a) General Principle 2

4.1 General Principle 2 states that:

> "**The holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly**

informed decision on the bid; …".

(b) General Principle 4

4.2 General Principle 4 states that:

> **"False markets must not be created in the securities of the offeree company, of the offeror company or of any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted.".**

(c) Rule 19.1 – standards of care

4.3 Rule 19.1 sets out the standards of care required for the preparation of a document, announcement or statement made during the course of an offer and states that:

> "**Each document, announcement or other information published, or statement made, during the course of an offer must be prepared with the highest standards of care and accuracy. The language used must clearly and concisely reflect the position being described and the information given must be adequately and fairly presented. ...**".

(d) Rule 19.2 – responsibility

4.4 Rule 19.2(a) sets out the requirements for a responsibility statement from an offeror or offeree company, as appropriate, to be included in each document published in connection with an offer and states that:

> "**Each document or advertisement published in connection with an offer by, or on behalf of, the offeror or the offeree company, must state that the directors of the offeror and/or, where appropriate, the offeree company accept responsibility for the information contained in the document or advertisement and that, to the best of their knowledge and belief (having taken all reasonable care to ensure that such is the case), the information contained in the document or advertisement is in accordance with the facts and, where appropriate, that it does not omit anything likely to affect the import of such information. …**".

(e) Rule 19.3 – unacceptable statements

4.5 Rule 19.3 states that:

> "**Parties to an offer and their advisers must take care not to make statements which, while not factually inaccurate, may be misleading or**

may create uncertainty. … ".

(f) Rule 20.1 – equality of information

4.6 Rule 20.1 requires that equality of information is provided to shareholders of an offeree company and states that:

> "**Information about parties to an offer must be made equally available to all offeree company shareholders and persons with information rights as nearly as possible at the same time and in the same manner.**".

(g) Rule 23.1 – sufficient information

4.7 Rule 23.1 sets out the general obligations as to the provision of information to shareholders in respect of an offer and states that:

> "**Shareholders must be given sufficient information and advice to enable them to reach a properly informed decision as to the merits or demerits of an offer. Such information must be available to shareholders early enough to enable them to make a decision in good time. No relevant information should be withheld from them. …**".

(h) Rule 26.2(c) – documents to be published on a website and Note 11 on the definition of "Acting in concert"

4.8 Rule 26.2 describes certain documents which must be published on a website by no later than 12 noon on the business day following the announcement of a firm intention to make an offer. Rule 26.2(c) requires that the following documents must be published on a website:

> "**any agreements or arrangements, or, if not reduced to writing, a memorandum of the terms of such agreements or arrangements, of the kind referred to in Note 11 on the definition of acting in concert;**".

4.9 Note 11 on the definition of "Acting in concert" states that:

> *"(a) For the purpose of this Note, a dealing arrangement includes any indemnity or option arrangements, and any agreement or understanding, formal or informal, of whatever nature, relating to relevant securities which may be an inducement to deal or refrain from dealing. … ".*

5 SUMMARY OF SUBMISSIONS TO THE COMMITTEE

(a) The Executive

5.1 The principal contents of the Amendment Agreements, including the existence and terms of the £75 million payment, had been fully disclosed and published on

a website.

5.2 On 23 February 2016 preliminary results for Ladbrokes for the year ended 31 December 2015 (now audited) had been published which estimated the liability of Ladbrokes to Playtech under the MSA, absent the Merger, to be £31.5 million.

5.3 The Circular (at pages 11 and 103) referred to additional benefits which would be received by Ladbrokes under the Amended Agreements, including a cap on the exposure to Playtech which existed under the Original Agreements.

5.4 The Executive had noted that, while the level of payments to Playtech under the MSA if Gala Coral's digital business was included was uncertain, both Ladbrokes and Playtech had anticipated whilst negotiating the terms of the Amendment Agreements that it could have significantly exceeded £75 million which was a "negotiated number". Whilst that had not been disclosed, it would only have disclosed a potential further benefit to Ladbrokes from the Amended Agreements.

5.5 In those circumstances, and in view of the overwhelming vote in favour of the Merger, no useful purpose would be served by requiring further disclosure nor a further vote on the Resolutions.

5.6 As to equality of information, the submissions of Mr. Desmond that he had, as a result of the Hearing on 26 November 2015, become party to information not available to other shareholders was irrelevant as, even if such information was material, it had not been available to him at the time (24 November) of the voting on the Resolutions when all shareholders had the same information. Moreover, where it arose, the need to protect the privacy of the Hearing should take precedence over Rule 20.1.

5.7 There was no "false market" (see paragraph 5.1 above).

5.8 As to Note 11 on the definition of "Acting in concert" and Rule 26.2, there was some uncertainty as to whether or not Mr. Desmond was seeking to apply this to the Original Agreements alone or the Amendment Agreements (which had been fully published) as well. The Original Agreements did not relate to securities in Ladbrokes but were commercial agreements made in the ordinary course of the business of Ladbrokes and had no connection to any M&A activity at the time they were agreed, let alone to the Merger which was not then in contemplation. Playtech had first acquired shares in Ladbrokes in October 2013 and since then had bought and sold shares in the market, as it had in others of its customers, and the Executive had seen evidence of the interest of Playtech in acquiring additional Ladbrokes shares prior to Playtech becoming aware of the Merger and so prior to the negotiations which led to the Amendment Agreements.

5.9 As to the Amendment Agreements, they also did not relate to Ladbrokes securities but were commercial agreements providing for services which the business of Ladbrokes would require if the Merger completed. Playtech had a history of investing in gaming stocks, including shares in Ladbrokes, prior to any knowledge of the Merger and the Amendment Agreements were fully justified by good commercial reasons. The Placing was effective whether or not the Merger completed and nothing in the Amendment Agreements committed Playtech to the purchase of any shares or to voting in favour of the Merger.

(b) Mr. Desmond

5.10 Mr. Desmond seeks two outcomes from the present Hearing: (1) the disclosure of "new information" relating to the Merger to the shareholders of Ladbrokes and the holding of a general meeting of the shareholders to consider and vote again on the four resolutions which were passed at the meeting held on 24 November 2015; and (2) that copies of the two Original Agreements should be published on a website in accordance with Rule 26.2(c) of the Code on the basis that they are agreements of the kind referred to in Note 11 on the definition of "Acting in concert" as "relating to relevant securities which may be an inducement to deal or refrain from dealing".

5.11 As regards the first of these matters, the "new information" is said in particular to be that, as was stated on behalf of Ladbrokes at the hearing on 24 November, the "primary purpose" of the Amendment Agreements was to ensure that the remuneration of Playtech under the Original Agreements would not depend on factors unrelated to their performance. Under the MSA Playtech was to be rewarded for any increase in the profits of Ladbrokes generated by the market efforts of Playtech, whereas as a result of the Merger the rewards could be augmented by the merged business of Gala Coral.

5.12 It is Mr. Desmond's submission that the Circular was inaccurate and misleading (and in breach of Rules 19.1, 19.2, 19.3, 20.1 and 23.1 and General Principle 4 of the Code) in not spelling this out with the result that the shareholders of Ladbrokes were "misled" and "voted on a false premise" on 24 November. The gravity of that omission is said to be compounded by the size of the payment, the lack of any commercial justification for it save as "a ransom payment" to Playtech, the critical importance of Playtech to the business of Ladbrokes and the Merger, and the incompetence of the Board of Directors of Ladbrokes in making the "serious mistake" of agreeing to the terms of the Original Agreements which did not address the consequences of such a Merger.

5.13 As regards Rule 26.2 and Note 11, the £75 million was a "huge incentive to vote in favour of the Merger" and so the Original Agreements should be published to enable a full understanding of the terms of the Amendment Agreements to be

achieved.

(c) Ladbrokes

5.14 The Merger itself was not a transaction to which the Code applied and it was only the mechanics of the proposed transaction which required the Resolutions to be voted upon by the shareholders of Ladbrokes.

5.15 Ladbrokes had had external professional advice on the terms of the Original Agreements. The Merger would be a "transformative transaction" and it would not be unusual for such an eventuality not to be catered for in such agreements.

5.16 The information in the Circular in relation to the agreements with Playtech was accurate and not misleading nor in conflict with or contradicted by anything put before the Hearings Committee at the previous Hearing. The Circular fully set out the terms of the proposed Merger which was what shareholders were to vote and did vote upon.

5.17 The "remedies" sought by Mr. Desmond were in any event inappropriate given that the Agreements did not themselves require shareholder approval and had no bearing on the Resolutions.

5.18 There was nothing in the Agreements which constituted an inducement to deal in the shares of Ladbrokes within Note 11 on the definition of "Acting in concert" in the Code. That was not the intention nor any part of the commercial negotiation. The Placing imposed no obligation on Playtech to support the Merger and was effective regardless of whether or not the Merger completed.

(d) Playtech

5.19 Playtech made short written submissions stating that it was "comfortable" with the statements insofar as they related to Playtech in the ruling of the Executive on disclosure of information and the relevance of a further general meeting of Ladbrokes and considered as regards "inducement to deal" that the Executive had "accurately reflected the position".

(e) Gala Coral

5.20 Gala Coral agreed with and supported the submissions of Ladbrokes.

6 DECISION AND REASONING OF THE COMMITTEE

(a) The Circular

6.1 The explanations given in the Circular for the Amendment Agreements (which were so far as material published in full on a website) are to be found on pages 11 and 102-3 of the Circular. They were "to assist in providing the flexibility for the

Enlarged Group to achieve integration and realise synergies from the combination" of the Coral and Ladbrokes digital businesses, to "accelerate the determination of amounts due to Playtech under" the Original MSA and to "accelerate the integration of the two companies digital platforms and therefore the delivery of costs synergies". The Amendment Agreements were only to come into force if the Merger was completed.

6.2 No specific information was given as to the basis of calculation of the figure of £75 million. However, there is now available a figure for the estimated fair value at 31 December 2015 of the consideration which will be payable by Ladbrokes to Playtech under the terms of the Original Agreements if they continue in force. That figure (now included in Ladbrokes' audited accounts) is £31.5 million and is expressly stated not to include the impact of the Amendment Agreements. Under the Original Agreements the figure depends on a projection of EBITDA to the end of the year 2017. Mr. Desmond does not accept this figure; indeed, he believes that the right figure may well be that nothing will be payable under the Original Agreements. However the Committee sees no reason to doubt that this figure has been prepared with proper care. Nor does the Committee see any reason to doubt the submissions of the Executive that the £75 million figure was negotiated in a commercial context in which the outcome under the Original Agreements, if applied after the Merger, could have exceeded that figure.

6.3 Mr. Desmond's criticisms of the information (or lack of it) provided in the Circular are in substance two-fold. First, that the justification for the £75 million figure (or, as he would say, the lack of justification for it) should have been stated and, secondly, that the "blunder" by Ladbrokes in entering into the Original Agreements without providing for an eventuality such as the Merger should have been exposed.

6.4 Whilst the Committee considers that the Circular could reasonably have given more contextual information about the justification for the £75 million payment, the Committee cannot see that this would or could have resulted in any material difference to the outcome of the General Meeting of Ladbrokes held on 24 November 2015. Indeed, accepting, as the Committee does, that any further information would have provided further justification for what was a negotiated figure, to require a new vote to be held would serve no useful purpose and would be out of all proportion to the criticism made by Mr. Desmond.

6.5 Whether or not the drafting of the Original Agreements can fairly be described as mistaken (which the Committee has no grounds for believing to be the case) is, in the assessment of the Committee, in any event of no real relevance. If it was a mistake, it required to be rectified. If it was not, there is nothing in the point.

6.6 As regards the specific provisions of the Code on which Mr. Desmond relies, the

Committee has concluded that:

6.6.1 shareholders had sufficient time and information to enable them properly to reach the decisions that they did at the General Meeting;

6.6.2 any shortcomings in the information in the Circular were not significant to the outcome of the votes at the General Meeting; and

6.6.3 information was equally available to all shareholders at the time of the General Meeting which antedated the Hearing before the Hearings Committee on 26 November 2015. The Committee also accepts the submission of the Executive that the privacy attaching to that Hearing, to the extent it is applicable, should take precedence over Rule 20.1.

(b) Note 11 and Rule 26.2

6.7 The reference to Note 11 on the definition of "Acting in concert" is, in the view of the Committee, misplaced. The Note (so far as potentially relevant) requires the fulfilment of two conditions: (1) there must be an arrangement, agreement or understanding relating to relevant securities and (2) that arrangement, agreement or understanding "may be an inducement to deal or refrain from dealing" in those securities.

6.8 The Original Agreements contained nothing which related to "relevant securities". The only reference to the securities of Ladbrokes was as part or all of the consideration which might become payable to Playtech under the original MSA. In fact Playtech held no shares in Ladbrokes at the time of the Original Agreements and has since bought and sold shares in the market. The Amendment Agreements were to apply if the Merger completed and were to ensure the continued provision of services essential to the combined business. They contained no commitment by Playtech to buy or sell any shares in Ladbrokes or to vote in any way at the General Meeting.

6.9 Whilst the Placing was agreed at the same time as the proposed Merger was announced, it was and is effective whether or not the Merger is completed.

6.10 There is an obvious overlap as regards this issue with the earlier Ruling of the Committee dated 14 December 2015. But however the issue is expressed once it has been, as it has, concluded that there is no justification for a further General Meeting to vote on the same Resolutions as were voted upon on 24 November 2015, there is, as the Executive submitted, no sensible basis on which to require any further disclosure even if it was (which it is not) otherwise thought to be appropriate.

7 CONCLUSIONS AND RULING

7.1 For the reasons expressed above, the Committee has concluded and rules that (1) there is no basis for requiring the publication by Ladbrokes of any further information relating to the Original Agreements or the Amendment Agreements and (2) there is also no basis for requiring Ladbrokes to call a further General Meeting to vote on the resolutions which were before shareholders on 24 November 2015.

8 APPEAL

8.1 As stated at the Hearing, if any party wants to appeal this Ruling to TAB, it should notify its intention to do so in accordance with the Rules of TAB as set out on its website (www.thetakeoverappealboard.org.uk). Any notice of appeal shall be lodged by 5pm on 22 April 2016.

20 April 2016

APPENDIX 1
HEARINGS COMMITTEE MEMBERS

The members of the Hearings Committee who constituted the Committee for the purpose of the Hearing were:

Present:	Sir Gordon Langley	Chairman
	David Challen	Deputy Chairman
	Philip Remnant	Deputy Chairman
	Sir David Lees	
	Lord Morris of Handsworth	
Association for Financial Markets in Europe Securities Trading Committee	John Crompton	HSBC Bank
Quoted Companies Alliance	Tim Ward	
Wealth Management Association	Tim Ingram	Greencoat UK Wind
Secretary to the Hearings Committee	Charles Penney	Addleshaw Goddard