

COMPLETED ACQUISITION BY GREENE KING PLC OF LAUREL PUB HOLDINGS LIMITED

UNDERTAKINGS GIVEN BY GREENE KING PLC TO THE OFFICE OF FAIR TRADING PURSUANT TO SECTION 73 OF THE ENTERPRISE ACT 2002

WHEREAS:

- (a) On 6 August 2004 Greene King acquired Laurel;
- (b) It appears to the OFT that as a consequence of that transaction a relevant merger situation has been created in the UK;
- (c) The OFT has a duty to refer a completed merger to the Competition Commission for further investigation where it believes that it is or may be the case that the merger situation in question has resulted, or may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services;
- (d) Under section 73 of the Act the OFT may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it, or may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate;
- (e) The OFT considers that, in the absence of appropriate undertakings, it would be under a duty to refer the transaction to the Competition Commission;
- (f) The OFT further considers that the undertakings given below by Greene King are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which has or may have resulted from it, or may be expected to result from it, as specified in its decision of 9 August 2004.

NOW THEREFORE Greene King hereby gives to the OFT the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which has or may have resulted from it or may be expected to result from it.

Effective date of undertakings

- 1.1 These undertakings shall take effect from the date that, having been signed by Greene King, they are accepted by the OFT.

Limit on Licensed Premises held

- 2.1 Paragraph 2.2 shall apply where Greene King holds in any petty sessional division more than 25 per cent of the Full Publican On-Licences immediately following and as a consequence of its acquisition of Laurel.
- 2.2 Greene King will, within 6 months of the date of these undertakings, or such later date as the OFT may specify, sell as many Licensed Premises as is necessary in order to reduce its share of Full Publican On-Licences in each of the relevant petty sessional divisions identified pursuant to paragraph 2.1 above to:
 - (a) 25 per cent. or less; or
 - (b) (if higher) the share held by Greene King or Laurel immediately prior to the acquisition in the relevant petty sessional division.
- 2.3 In paragraph 2.2 above and paragraph 2.5 below, the word "sell" shall include entering into an unconditional contract of sale for completion within 3 months of the date of such contract.
- 2.4 Where Greene King proposes to enter into an agreement to sell any Licensed Premises in accordance with its obligations under paragraph 2.2 above, it shall not sell to a proposed purchaser unless it has obtained the OFT's prior written approval in respect of the identity of the proposed purchaser in accordance with paragraph 3.1 below. Greene King shall notify the OFT of the identity of the proposed purchaser as soon as is reasonably practicable and in any event, at least 15 Working Days in advance of completion of the proposed sale.
- 2.5 In the event that Greene King fails to sell sufficient Licensed Premises to meet the thresholds specified in paragraph 2.2 above within the period of time specified in that paragraph (or by such later date as the OFT may specify), the OFT may require the appointment of a Trustee to carry out the Trustee Functions.
- 2.6 Greene King will not as a condition of the purchase of any Licensed Premises of which it disposes under paragraph 2.2 above require that the purchaser acquires Beer from Greene King or any of its Affiliates or members of the Group of Interconnected Bodies Corporate to which Greene King belongs.
- 2.7 Nothing in paragraph 2.6 shall prevent Greene King or any of its Affiliates or members of the Group of Interconnected Bodies Corporate to which Greene King belongs from separately negotiating and entering into Beer supply agreements with such purchaser independently of any purchase of Licensed Premises.

Purchaser Approval

- 3.1 A proposed purchaser for any Licensed Premises sold in accordance with these undertakings will need to satisfy the OFT that:
- (a) it is independent of and unconnected to Greene King and the Group of Interconnected Bodies Corporate to which Greene King belongs and any Associated Person or Affiliate of Greene King or such Group of Interconnected Bodies Corporate;
 - (b) it has the financial resources, expertise and incentive to maintain and develop the Licensed Premises as a viable and active business in competition with Greene King and other competitors; and
 - (c) it must reasonably be expected to obtain all necessary approvals and consents from any regulatory authority.
- 3.2 The OFT may require Greene King and/or a proposed purchaser to provide it with such information and documentation as it may reasonably require to demonstrate to the OFT that the proposed purchaser will fulfil the requirements set out in paragraph 3.1 above.

Interim Action

4. Pending the divestment of Licensed Premises in accordance with the provisions of these undertakings, Greene King shall ensure that:
- (a) without accepting any duty to make any substantial capital investment additional to investment arrangements in place at the time of the acquisition, the businesses at Greene King's Licensed Premises and Laurel's former Licensed Premises shall be maintained as a going concern;
 - (b) except with the prior written consent of the OFT the assets of the businesses at Greene King's Licensed Premises and Laurel's former Licensed Premises are maintained and preserved, including facilities and goodwill; and
 - (c) the nature, description, range and standard of goods and services currently supplied by Greene King and formerly supplied by Laurel at Licensed Premises are maintained and preserved.

Continued Separation

- 5.1 Following the sale of Licensed Premises pursuant to paragraph 2.2 or paragraph 8.1, Greene King will not directly or indirectly acquire any of those Licensed Premises or any interest in any of those Licensed Premises without the OFT's prior written consent if such reacquisition would increase its share of Full Publican On-Licences in any petty sessional division to:
- (a) more than 25 per cent.; or
 - (b) (if higher than 25 per cent.) a share greater than that held by Greene King or Laurel prior to Greene King's acquisition of Laurel in the relevant petty sessional division.
- 5.2 Where a reacquisition by Greene King of Licensed Premises is prohibited pursuant to paragraph 5.1 above, Greene King shall:
- (a) procure that no employee or director of Greene King or of any members of the Group of Interconnected Bodies Corporate to which Greene King belongs holds any managerial position in the relevant Licensed Premises or any directorship or managerial position in any company or other undertaking carrying on or having control of the relevant Licensed Premises without the OFT's written consent;
 - (b) not participate in the formulation of, or (other than in the ordinary course of business) influence or attempt to influence, the policy of the relevant Licensed Premises or of any company or other undertaking carrying on or having control of the relevant Licensed Premises; and
 - (c) not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any Associated Person or Affiliate of Greene King or of any member of the Group of Interconnected Bodies Corporate to which Greene King belongs directly or indirectly acquiring the relevant Licensed Premises or doing any of the things listed in sub-paragraphs (a) and (b) above.

Appointment of a Trustee

- 6.1 The provisions of paragraphs 6.2 to 6.7 below shall apply only as long as Greene King has not satisfied the requirement to sell Licensed Premises in accordance with paragraphs 2.2 and 2.3.
- 6.2 Within 15 Working Days of the OFT notifying Greene King that it must do so, Greene King shall propose to the OFT:

- (a) the names of at least two individuals to exercise the Trustee Functions; and
- (b) the full terms of a mandate in accordance with which the Trustee shall carry out the Trustee Functions.

6.3 The individuals nominated by Greene King pursuant to paragraph 6.2 shall meet the following requirements:

- (a) they shall each be EU nationals with the necessary qualifications to carry out their mandates, and employees or partners of an investment bank, bank, building society or law firm or accountancy firm with an established reputation either nationwide or in a substantial part of the UK or in another EU member state;
- (b) they shall each be independent of Greene King and of the Group of Interconnected Bodies Corporate to which Greene King belongs and of any Associated Person or Affiliate of Greene King or of such Group of Interconnected Bodies Corporate and of any proposed purchaser of the Licensed Premises to be sold pursuant to paragraph 2.2 above, and, in the opinion of Greene King, appropriate to be appointed as Trustee; and
- (c) they shall neither be nor become exposed, either directly or indirectly, to a conflict of interest that impairs or may be likely to impair their objectivity or independence in discharging the Trustee Functions.

6.4 Within 20 Working Days of the OFT approving, at its discretion, one or more of the persons nominated by Greene King pursuant to paragraph 6.2 above and their proposed mandates, and subject to any modifications the OFT deems necessary for the Trustee to carry out the Trustee Functions, Greene King shall use its best endeavours to appoint from the persons so approved one person to carry out the Trustee Functions in accordance with the mandate approved by the OFT pursuant to this paragraph.

6.5 In the event that:

- (a) Greene King fails to nominate any person or persons in accordance with the provisions of paragraph 6.2 above; or
- (b) none of the persons nominated by Greene King pursuant to paragraph 6.2 is approved by the OFT; or
- (c) Greene King is unable for any reason to conclude within the time limit stipulated in paragraph 6.4 the appointment of any such person following approval by the OFT;

Greene King shall use its best endeavours to appoint from persons nominated by the OFT one person to carry out the Trustee Functions on the terms of a mandate approved by the OFT. Greene King shall use its best endeavours to make such appointment within 7 Working Days of receiving the nominations from the OFT.

- 6.6 The appointment of the Trustee pursuant to paragraph 6.4 or 6.5 shall be irrevocable unless (a) a conflict of interest that impairs or may be likely to impair the objectivity or independence of the Trustee in discharging the Trustee Functions arises; (b) the Trustee ceases to perform its functions; or (c) the OFT is otherwise satisfied that there is good cause for the appointment to be terminated in advance of the satisfactory fulfilment of the Trustee Functions.
- 6.7 In the event that the appointment of the Trustee is terminated under paragraph 6.6 above, Greene King shall use its best endeavours to appoint from persons nominated by the OFT one person to carry out the Trustee Functions in accordance with such mandate as is approved by the OFT. Greene King shall use its best endeavours to make such appointment within 7 Working Days of receiving the nominations from the OFT. Where required by the OFT, the outgoing Trustee shall continue as Trustee until a new Trustee is in place and a full handover of all relevant information has taken place.

The Mandate

7. The terms of the mandate proposed by Greene King pursuant to paragraph 6.2 above shall, as a minimum, contain all provisions necessary to enable the Trustee to carry out the Trustee Functions including, without limitation to the generality of this paragraph:
- (a) an exclusive, irrevocable mandate to sell Licensed Premises as required by paragraph 8.1 below to a purchaser approved in advance in writing by the OFT at no minimum price and on such reasonable terms and conditions as the Trustee considers appropriate to effect an expedient sale;
 - (b) a comprehensive power of attorney to the Trustee (including the authority to grant sub-powers of attorney to the Trustee's officers, employees and agents) to enable it to take all steps reasonably necessary or appropriate to effect the sale of such Licensed Premises;
 - (c) a mandate to comply with any orders and directions given by the OFT; and
 - (d) a mandate to appoint at Greene King's expense such advisers as the Trustee considers necessary or appropriate in connection with the performance of the Trustee Functions.

Functions of Trustee

- 8.1 The Trustee shall procure within 6 months of its appointment taking effect, or within such other later period as may be specified by the OFT, the completion of the sale of the Licensed Premises identified pursuant to paragraph 8.2 or paragraph 8.3 below at no minimum price.
- 8.2 The Trustee shall, in consultation with Greene King, identify which Licensed Premises within the petty sessional divisions falling within paragraph 2.1 above are to be sold to meet the thresholds specified in paragraph 2.2 and shall inform the OFT in writing accordingly within 1 month of its appointment taking effect. In the event of a dispute between the Trustee and Greene King, the Trustee's decision shall be final.
- 8.3 If, having made all reasonable efforts, the Trustee considers that it is unlikely to effect the sale of any of the Licensed Premises identified pursuant to paragraph 8.2 above within the period specified under paragraph 8.1, the Trustee shall, in relation to each such Licensed Premises, identify another Licensed Premises within the relevant petty sessional division, in consultation with Greene King, and proceed to procure its sale in place of that originally identified. The Trustee shall inform the OFT in writing as soon as reasonably practicable in the event of any such change.
- 8.4 The provisions of paragraph 2.4 shall apply to any such sale by the Trustee as if these undertakings were given by the Trustee rather than Greene King.
- 8.5 The Trustee may give written directions to Greene King to take such steps within its competence as may be specified or described in the directions for the purpose of securing Greene King's compliance with its obligations under these undertakings or enabling the Trustee to carry out the Trustee Functions.
- 8.6 The Trustee shall provide to the OFT such information and reports in relation to the carrying out of the Trustee Functions as the OFT may require. The Trustee shall promptly report in writing to the OFT if the Trustee concludes on reasonable grounds that Greene King is failing to comply with any of its obligations under these undertakings.
- 8.7 For the purpose of fulfilling the Trustee Functions, the Trustee shall not be bound by instructions of Greene King nor shall the Trustee Functions be extended or varied in any way by Greene King save under the prior express written consent of the OFT.

Functions of Greene King following appointment of Trustee

- 9.1 Greene King shall not give any instruction or request to the Trustee which conflicts with the Trustee Functions.

- 9.2 Greene King shall take all such steps as are reasonably necessary to enable the Trustee to carry out the Trustee Functions, including but not limited to (a) complying with such written directions as the Trustee may from time to time give pursuant to paragraph 8.5, and (b) providing the Trustee with all such assistance and information, as it may reasonably require in carrying out the Trustee Functions.

Remuneration of Trustee

10. Greene King shall pay the Trustee a reasonable remuneration for the services it provides in carrying out the Trustee Functions, and shall pay the Trustee in a way that does not impede the independent and effective fulfilment of the Trustee Functions.

Compliance

- 11.1 Greene King shall comply with such written directions as the OFT may from time to time give:
- (a) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or
 - (b) to do or refrain from doing anything so specified or described which they might be required by these undertakings to do or to refrain from doing.
- 11.2 Greene King shall procure that any member of the same Group of Interconnected Bodies Corporate as Greene King complies with these undertakings as if it had given them.
- 11.3 Where any Affiliate of Greene King is not a member of the same Group of Interconnected Bodies Corporate as Greene King, Greene King shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.
- 11.4 Greene King shall furnish promptly to the OFT such information as the OFT considers necessary to monitor these undertakings.

Interpretation

- 12.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 12.2 For the purposes of these undertakings:
- “the Act”** means the Enterprise Act 2002;
 - “the 1964 Act”** means the Licensing Act 1964;

an **"Affiliate"** of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

"Associated Person" means a person or persons associated with Greene King within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons construed in accordance with section 129(1) of the Act;

"Beer" includes any beverage of an alcoholic strength exceeding 1.2 per cent. which is made with beer;

"Full Publican On-Licence" means a justices' on-licence within section 1(3)(a)(i) of the 1964 Act but excludes:

- (a) a seasonal licence within section 64(2) of the 1964 Act;
- (b) a Part IV licence within section 93(1) of the 1964 Act;
- (c) a licence authorising the sale of intoxicating liquor at any club premises, including club premises within section 39(6) of the 1964 Act; and
- (d) a licence authorising the sale of intoxicating liquor at any port, airport, railway station, theatre, cinema, town hall or village hall;

"Greene King" means Greene King Plc;

"Group of Interconnected Bodies Corporate" has the meaning given in section 129(2) of the Act;

"Laurel" means Laurel Pub Holdings Limited;

"Licensed Premises" has the meaning given in section 200(1) of the 1964 Act;

the **"OFT"** means the Office of Fair Trading;

"Subsidiary" shall be construed in accordance with section 736(1) of the Companies Act 1985 (as amended), unless otherwise stated;

"Trustee" means the person appointed pursuant to paragraph 6.4, 6.5 or 6.7 to carry out the Trustee Functions;

"Trustee Functions" means the functions set out in paragraphs 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, and 8.7;

the **“UK”** means the United Kingdom of Great Britain and Northern Ireland; and

“Working Days” mean any days of the week other than a Saturday, Sunday or any other day that is a public holiday in England.