

Completed acquisition by Novo Invest GmbH acting through Novomatic UK Ltd of Talarius Limited

Decision that undertakings might be accepted

ME/6637/16

Introduction

1. On 24 June 2016, Novomatic UK Ltd (**Novomatic**) acquired Talarius Limited (**Talarius**) (the **Merger**).
2. On 28 October 2016, the Competition and Markets Authority (**CMA**) decided under section 22(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger constitutes a relevant merger situation that has resulted or may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**).
3. On the date of the SLC Decision, the CMA gave notice pursuant to section 34ZA(1)(b) of the Act to Novomatic of the SLC Decision. However, the CMA did not refer the Merger for a phase 2 investigation pursuant to section 22(3)(b) on the date of the SLC Decision in order to allow Novomatic the opportunity to offer undertakings to the CMA in lieu of such reference for the purposes of section 73(2) of the Act.
4. Pursuant to section 73A(1) of the Act, if a party wishes to offer undertakings for the purposes of section 73(2) of the Act, it must do so within the five working day period specified in section 73A(1)(a) of the Act. Accordingly, on 4 November, Novomatic offered undertakings to the CMA for the purposes of section 73(2) of the Act.
5. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to Novomatic that it considers that there are reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it is considering the offer.

The undertakings offered

6. Under section 73 of the Act, the CMA may, instead of making a reference, and for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the merger parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
7. The SLC Decision found that the Merger gives rise to a realistic prospect of an SLC in relation to the supply of gaming products to consumers through Adult Gaming Centres (**AGC**) in five local areas: Chesterfield, Clapham, Dartford, Darlington (Northgate) and Grimsby (Freeman Street). For further detail see Annex 1. To address the SLC, Novomatic has offered to give undertakings in lieu of a reference to divest either the Talarius AGC in Chesterfield, Dartford and Grimsby (Freeman Street) and the Novomatic AGCs in Clapham and Darlington (Northgate) or to divest the Talarius AGC in each of the five SLC local areas (the **Proposed Undertakings**). Under the Proposed Undertakings, Novomatic also offered to enter into a purchase agreement with a buyer approved by the CMA before the CMA finally accepts the Proposed Undertakings (**Upfront Buyer Condition**).

The CMA's provisional views

8. The CMA considers that undertakings in lieu of a reference are appropriate when they are clear-cut and capable of ready implementation. The CMA's starting point when assessing undertakings is to seek an outcome that restores competition to the level that would have prevailed absent the merger.¹
9. The CMA believes that the Proposed Undertakings, or a modified version of them, might be acceptable as a suitable remedy to the SLC identified by the CMA, given that this represents a clear-cut, effective structural remedy of the SLC concern identified in the five SLC local areas, resulting in the replacement of the competitive constraint provided by Talarius that would otherwise be lost following the Merger. In particular the CMA considers that the offer to divest all the Talarius AGCs in the five SLC areas or a mix and match remedy where either the whole of the Novomatic Estate in the 400 metre SLC overlap area or the Talarius AGCs are divested as acceptable in principle.

¹ *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122)*, December 2010, Chapter 5 (in particular paragraphs 5.7–5.8 and 5.11). This guidance was adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)*, January 2014, Annex D).

10. The CMA believes that the Proposed Undertakings are capable of amounting to a sufficiently clear-cut and effective resolution of the CMA's competition concerns. The CMA also believes at this stage that the Proposed Undertakings may be capable of ready implementation and that an Upfront Buyer Condition is not required in this case, since the divestment businesses are stand-alone businesses that are capable of being sold, and Novomatic has provided evidence that there are several potential suitable purchasers.
11. For these reasons, the CMA thinks that there are reasonable grounds for believing that the Proposed Undertakings, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act.
12. The CMA's decision on whether ultimately to accept the Proposed Undertakings or refer the Merger for a phase 2 investigation will be informed by, among other things, third party views on whether the Proposed Undertakings are suitable to address the competition concerns identified by the CMA.

Consultation process

13. Full details of the undertakings offered will be published in due course when the CMA consults on the undertakings offered as required by Schedule 10 to the Act.²

Decision

14. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertakings offered by Novomatic, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 11 January 2017 pursuant to section 73A(3) of the Act to decide whether to accept the undertakings, with the possibility to extend this time frame pursuant to section 73A(4) of the Act to 8 March 2017 if it decides that there are special reasons for doing so. If no undertakings are accepted, the CMA will refer the Merger for a phase 2 investigation pursuant to sections 22(1) and 34ZA(2) of the Act.

Sheldon Mills
Senior Director, Mergers
Competition and Markets Authority
10 November 2016

² [CMA2](#), paragraph 8.29.

Annex 1: Adult Gaming Centres in the five SLC local areas

Location	Address
Grimsby (Freeman Street)	Admiral (Novomatic) – 118-120 Freeman Street DN32 7AJ Quicksilver (Talarius) – 86 Freeman St DN32 7AG
Dartford	Admiral (Novomatic) – 25 High Street DA1 1DT Quicksilver (Talarius) – 9a Lowfield Street DA1 1EN
Darlington (Northgate)	Admiral (Novomatic) – 2 Tubwell Row DL1 1NU Admiral (Novomatic) – 11 Northgate DL1 1TL Quicksilver (Talarius) – 2-4 Crown Street DL1 1LU
Clapham	Admiral (Novomatic) – 27-29 St John's Rd SW11 1QN Quicksilver (Talarius) – 1-1A St Johns Hill SW11 1TN
Chesterfield	Admiral (Novomatic) – 27 Packers Row S40 1RE Quicksilver (Talarius) – 8-10 Central Pavement S40 1PQ