

COMPLETED ACQUISITION BY NOVO INVEST GmbH ACTING THROUGH NOVOMATIC UK LTD OF TALARIUS LIMITED

Decision on acceptance of undertakings in lieu of reference

ME/6637/16

The CMA's decision to accept undertakings in lieu of reference under section 73(2) of the Enterprise Act 2002 given on 11 January 2017. Full text of the decision published on 13 January 2017.

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 4 November 2016, Novomatic offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act. The CMA gave notice to Novomatic on 10 November 2016, pursuant to section 73A(2)(b) of the Act, that it considered that there were 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 was considering Novomatic's offer (the **UIL Provisional Acceptance Decision**).
4. The text of the SLC Decision and the UIL Provisional Acceptance Decision are available on the CMA webpages.¹

¹ See [novomatic-talarius-merger-inquiry](#).

The undertakings offered

5. As set out in the SLC Decision, the CMA found a realistic prospect of an SLC in relation to the supply of gaming products through Adult Gaming Centres (AGC) in five local areas: Chesterfield, Clapham, Dartford, Darlington (Northgate) and Grimsby (Freeman Street).
6. As set out in the the UIL Provisional Acceptance Decision, Novomatic has offered 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 **Divestment Businesses**), as set out in the text of the consultation in Annex 1 below (the **UILs**).

Consultation

7. On 5 December 2016, pursuant to paragraph 2(1) of Schedule 10 to the Act, the CMA published the UILs, inviting interested parties to give their views on the UILs. The relevant text from the consultation is set out at Annex 1 of this decision.² For the reasons set out in the consultation, the CMA's preliminary view was that the UILs would resolve the SLC identified in the SLC decision in a clear-cut manner, ie without giving rise to material doubts about the overall effectiveness of the UILs or concerns about their implementation.³
8. The CMA received no submissions during the consultation period. Accordingly, no third-party views caused the CMA to change its preliminary view that the UILs would be acceptable.
9. The CMA therefore considers that the UILs offered by Novomatic are clear-cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision.

Decision

10. For the reasons set out above, the CMA considers that the UILs provided by Novomatic are as comprehensive a solution as is reasonable and practicable and remedy, mitigate or prevent the SLC identified in the SLC Decision and any adverse effects resulting from it. The CMA has therefore decided to accept the UILs offered by Novomatic pursuant to section 73 of the Act. The

² The full consultation text was published on [novomatic-talarius-merger-inquiry](#).

³ *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).

Merger will therefore not be referred for a phase 2 investigation.

11. The undertakings, which have been signed by Novo Invest GmbH and Novomatic will be published on the CMA webpages,⁴ and will come into effect from the date of this decision.

Sheldon Mills
Senior Director, Mergers
Competition and Markets Authority
11 January 2017

⁴ See [novomatic-talarius-merger-inquiry](#).

Annex 1

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

Notice under paragraph 2(1) of Schedule 10 to the Enterprise Act 2002 (the Act) – consultation on the proposed undertakings in lieu of reference pursuant to section 73 of the Act

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 4 November 2016, Novomatic offered undertakings to the CMA for the purposes of section 73(2) of the Act.
4. The CMA gave notice to Novomatic, pursuant to section 73A(2)(b) of the Act, on 10 November 2016, that it considers that there were 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 was considering Novomatic's offer (the **UIL Provisional Acceptance Decision**).
5. The text of the SLC Decision is available on the CMA webpages.⁵

The undertakings offered

6. As set out in the SLC Decision, the CMA found 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).

⁵ See [novomatic-talarius-merger-inquiry](#).

7. As set out in the UIL Provisional Acceptance Decision, to address the SLC identified by the CMA, Novomatic offered undertakings 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 **Divestment Businesses**). The text of the undertakings is available on the CMA webpages (the **Proposed Undertakings**).⁶
8. As set out at paragraph 10 of the UIL Provisional Acceptance Decision, the CMA does not consider it necessary to seek an upfront buyer in respect of the Divestment Business.

CMA assessment

9. The CMA currently considers, subject to responses to the consultation required by Schedule 10 of the Act that the Proposed Undertakings will resolve the SLC identified in the SLC Decision in a clear-cut manner, ie the CMA currently does not have material doubts about the overall effectiveness of the Proposed Undertakings or concerns about their implementation.⁷ This is because the divestments will remove the overlap between Novomatic and Talarius in the operation of AGCs in the five local areas, and will replace the competitive constraint provided by Talarius that would otherwise have been lost following the Merger.
10. The CMA also considers that the Proposed Undertakings would be capable of ready implementation, because the Divestment Businesses are viable businesses and Novomatic have provided evidence of a number of potential purchasers that have shown an interest in acquiring these AGCs.

Proposed decision and next steps

11. For the reasons set out above, the CMA currently considers that the Proposed Undertakings are, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and form as comprehensive a solution to these concerns as is reasonable and practicable.

⁶ See [novomatic-talarius-merger-inquiry](#).

⁷ *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).

12. The CMA therefore gives notice that it proposes to accept the Proposed Undertakings in lieu of a reference of the Merger for a phase 2 investigation. The text of the proposed undertaking is available on the CMA case page.⁸
13. Before reaching a decision as to whether to accept the Proposed Undertakings, the CMA invites interested parties to make their views known to it. The CMA will have regard to any representations made in response to this consultation and may make modifications to the Proposed Undertakings as a result. If the CMA considers that any representation necessitates any material change to the Proposed Undertakings, the CMA will give notice of the proposed modifications and publish a further consultation.⁹
14. Representations should be made in writing to the CMA and be addressed to:

Maria Duarte
Mergers Group
Competition and Markets Authority
Victoria House
37 Southampton Row
London
WC1B 4AD
Email: maria.duarte@cma.gsi.gov.uk

Telephone: 020 3738 6572

Deadline for comments: 20 December 2016

⁸ See www.gov.uk/cma-cases/novomatic-talarius-merger-inquiry.

⁹ Under paragraph 2(4) of Schedule 10 to the Act.