

Anticipated acquisition by Heineken UK Limited of Punch Taverns Holdco (A) Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6656-16

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 13 June 2017. Full text of the decision published on 11 July 2017.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges sat the request of the parties for reasons of commercial confidentiality.

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SUMMARY

1. Heineken UK Limited (**Heineken**) has agreed to acquire Punch Taverns Holdco (A) Limited (**Punch A**) (the **Merger**). Heineken and Punch A are together referred to as the Parties.

2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that the Parties will cease to be distinct as a result of the Merger, that the turnover test is met and that accordingly arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the operation of pubs in Great Britain (**GB**), with around 1,000 pubs overlapping locally. The CMA has adopted a frame of reference in line with its previous decision in *Greene King/Spirit*.¹ The CMA considers that the product frame of reference consists of the operation of pubs. There is some degree of differentiation between pubs that affects the competitive constraint imposed by certain pubs on others. In particular, while wet-led pubs (pubs that make little or no revenue from food) are constrained by all pubs, dry-led pubs (those that generate more than 30% revenue from food) are mainly constrained by other dry-led pubs. The CMA has not been presented with sufficient evidence that restaurants and/or other licensed outlets are sufficiently close substitutes to pubs to support a frame of reference wider than the operation of pubs.
4. In line with its decision in *Greene King/Spirit*, the CMA found that competition between pubs is local, with pubs in rural areas competing over a larger distance than pubs in urban areas, and city centre pubs competing over a small distance. The CMA also found that dry-led pubs compete over a larger distance than wet-led pubs, as consumers are willing to travel longer distances for a meal than for a drink. On the supply side, however, the CMA found that the competitive dynamics between pubs exhibit features that are wider in geographic scope. The CMA has therefore considered the impact of the Merger on both a local basis and a national basis.
5. The CMA considers that there are no horizontal competition concerns in relation to the operation of pubs at a national level as the Parties have a combined market share of less than 10%.
6. To conduct its local competition assessment, the CMA applied a primary filter which identified 73 local areas² where Parties would have at least 35% of the pubs with an increment of more than 5%, and where the Merger may give rise to *prima facie* competition concerns. The CMA excluded other areas from further assessment.

¹ [CMA decision in the anticipated acquisition by Greene King plc of Spirit Pub Company plc, ME/6501/14, 11 May 2015.](#)

² For the purposes of this Decision, when the CMA refers to local areas, it defines this as the catchment area around the 'centroid' pub, ie the individual Heineken and Punch A pubs on which a particular catchment area was centred. As such, local areas may overlap where pubs are close to each other.

7. For the purpose of applying this primary filter, the CMA considered what weight should be given to third party pubs that sell Heineken branded beverages. As these pubs are able to (and do in practice) switch supplier, the CMA considers that Heineken does not exercise material influence over those pubs. The CMA also considers that Heineken does not have an incentive to deteriorate price, quality, range or service (**PQRS**) at the Parties' pubs through margin recapture at third party pubs, because Heineken earns significantly higher margins at its own estate than at supplied third party pubs and any recapture would be uncertain because of the proportion of non-Heineken products sold in these pubs and the significant degree of churn in supply contracts to those pubs. The CMA therefore has treated these third party pubs as fully independent competitors within its primary filter.
8. The CMA then applied a secondary filter to the 73 local areas that did not pass the primary filter. The secondary filter reflects:
 - (a) the extent of competitive constraint exerted on dry-led pubs by wet-led pubs;
 - (b) the geographic proximity of the Parties' pubs in a given area and the presence of third party competitor pubs that customers can switch to;
 - (c) the application of a sensitivity flex to the size of catchment areas of the Parties' pubs located in 'City Centre' locations.
9. Both the primary and secondary filters followed the filtering methodology previously used by the CMA in *Greene King/Spirit* (subject to a small number of amendments to reflect the evidence available to the CMA in this case).
10. The process identified 33 local areas of concern in which the Parties will have a high share of pubs (over 35%), their pubs are within close geographic proximity, and other pubs in the local area will not exercise a sufficient constraint on the Parties' pubs post-Merger.
11. The CMA therefore considers that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in those 33 local areas.
12. Numerous third parties expressed concerns during the CMA's market testing that the Merger might: (i) result in Heineken's pubs reducing their purchases of drinks from Heineken's competitors upstream (ie customer foreclosure); and (ii) lead to a reduction in the choice of beers on a local level.
13. With respect to the customer foreclosure concerns, the CMA found that the Punch A estate only represents a small part of the pubs (4%) in Great Britain

(GB) and is therefore not an important route to the on-trade market. In addition, the CMA did not identify any brewers to whom Punch A was an important customer by share of sales (ie on average, sales to Punch A pubs amount to only around 3% of rival brewers' on-trade sales; only three brewers sold more than 5% of their total on-trade sales to Punch A pubs and only one brewer sold more than 10% - ie 12% - to Punch A pubs).

14. With respect to concerns over reduction in choice, the CMA believes that Heineken's incentive to change the range of drinks offered in Punch A pubs post-Merger is not clear-cut, mainly because it would depend on the importance of range for consumers at the local level and Heineken would only reduce the range at its pubs to the extent it would not affect the overall competitiveness of Punch A pubs. Furthermore, the effect of any potential impact on competition would not be substantial, because available evidence indicates that: (i) the range of beers and ciders available has only a limited impact on competition between pubs at the local level; (ii) any potential reduction in range is likely to be limited in practice (given the current stocking policies of the Punch A tenants and the choice of drinks available to Heineken-owned pubs).
15. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical foreclosure effects arising from the supply of beer by Heineken to Punch A pubs or as a result of a potential reduction in the range of drinks in Punch A pubs post-Merger.
16. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (**the Act**). The Parties have until 20 June 2017 to offer an undertaking that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

ASSESSMENT

Parties

17. The ultimate parent company of Heineken is Heineken N.V., a public company limited by shares listed on Euronext Amsterdam. Heineken N.V. is active as a brewer and owns numerous beer and cider brands, including Heineken, Fosters and Strongbow. Heineken is also active as a wholesale supplier for alcoholic and non-alcoholic beverages in the United Kingdom (**UK**) for both on- and off-trade. Star Pubs & Bars Ltd (**Star**) is a subsidiary of Heineken and operates a leased and tenanted pub business comprising of 1,047 pubs in GB. The turnover of Heineken in 2015 was around £1.2 billion in the UK.

18. Punch Taverns plc (**Punch**), a company listed on the LSE, is also active in the leased and tenanted pubs business. Punch's pub portfolio comprises of 3,276 pubs which are securitised in two different estates: the Securitisation A, which is owned by Punch A, and Securitisation B (**Punch B**). Punch A, which is a wholly-owned indirect subsidiary of Punch, comprises 1,895 pubs. The UK turnover of Punch A for the year ended 20 August 2016 was [above £70] million.

Transaction

19. The Merger is part of a larger transaction. Heineken and Patron Capital (**Patron**) have agreed to purchase Punch and to split the pub portfolio of Punch between them.³ A subsidiary of Patron, Vine, will acquire all the shares in Punch by a public bid. Heineken will then purchase all shares in Punch A after completion and Patron and/or Vine will operate the Punch B pubs portfolio.
20. The scope of the CMA's investigation, and of this decision, is Heineken's acquisition of Punch A pubs.

Jurisdiction

21. As a result of the Merger, Heineken will acquire all the shares in Punch A and, accordingly, Heineken and Punch A will cease to be distinct.
22. Punch A's UK turnover for the year ended 20 August 2016 was £[~~8~~] million and exceeded £70 million. Therefore, the turnover test contained in section 23(1)(b) of the Act is met.
23. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
24. The CMA commenced its investigation on 16 February 2017 following the referral of the case from the European Commission pursuant to Article 4(4) of Regulation 139/2004. The CMA extended the preliminary assessment period on 20 February 2017 and terminated the extension on 22 March 2017. Subsequently, the CMA extended the preliminary assessment period on 19 April 2017 and terminated the extension on 10 May 2017. The 45 working-day

³ Punch explained that, in 2014, as part of its financing, Punch issued debt in two tranches, each secured on a different part of its estate (Securitisation A or Securitisation B estates). Therefore, the way the Punch's estate was split into two separate parts is historical and unrelated to the current transaction. Punch also owns a number of outlets that were not in either of the Securitisation A or Securitisation B estates which are part of the Punch B estate.

statutory deadline for the CMA's decision under section 34A(2) of the Act is, therefore, 15 June 2017.

Counterfactual

25. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers, the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.⁴
26. In this case, there is no evidence supporting a different counterfactual, and the Parties and third parties have not put forward any arguments in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

Frame of reference

27. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.⁵
28. The Parties predominantly overlap in the operation of pubs in GB. The Parties also overlap to a limited extent in the provision of overnight accommodation. Heineken also has brewing activities and supplies drinks to the pubs that it operates, as well as wholesalers, pubs and other pub operators.

⁴ *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).

⁵ *Merger Assessment Guidelines*, paragraph 5.2.2.

Product scope

The operation of pubs

29. The CMA last considered the operation of pubs in its 2015 *Greene King/Spirit* merger investigation.⁶ In that case, the CMA considered the appropriate product scope to be the operation of pubs (ie premises operated under a full publican on-licence). This definition included bars and inns but excluded restaurants.

Heineken's views

30. Heineken submitted that the product frame of reference should be at least as wide as that used in *Greene King/Spirit*, but should also include restaurants and other licensed venues.
31. In this regard, Heineken stated that there has been an increase in competition between pubs and restaurants and submits that there has been a shift in the market towards pubs offering a more sophisticated “food-led” experience, with some pubs being in direct competition with branded restaurant chains. Heineken’s submissions also recognised, however, that the extent to which restaurants constrain pubs, as a general proposition, remains unclear.
32. Heineken also considered any dividing line between ‘wet’ and ‘dry’ pubs to be “*somewhat arbitrary*,” on the basis that all pubs compete with each other to some extent, and that there is a significant degree of supply-side substitutability between wet and dry-led pubs. Heineken also submitted, however, that the filter used in *Greene King/Spirit*, which gives a weight of 0.2 to wet-led pubs when competing against a dry-led pub, is a reasonable approach to reflect the more limited competitive constraint that wet-led pubs exercise on dry led pubs.
33. Finally, Heineken submitted that all pubs compete against each other irrespective of their mode of operation (ie whether managed, leased, tenanted, or independent) or ownership on the basis that customers will typically not know how a particular pub is owned and operated.

Third party views

34. As concerns the inclusion of restaurants within the frame of refence, the CMA received mixed evidence, on the demand side, about the competitive

⁶ CMA decision in the anticipated acquisition by Greene King plc of Spirit Pub Company plc, ME/6501/14, 11 May 2015.

constraint that restaurants exercise on pubs. All third parties that responded to the CMA's merger investigation said that restaurants do compete with dry-led pubs to some extent. Some respondents considered that pubs and restaurants form part of a broader set of competing activities, with two pub owners suggesting that all pubs compete with all leisure and amenities in an area. Four pub tenants, and one competitor in the operation of pubs, submitted that restaurants only compete to some extent with dry-led pubs (but not other types of pub). Other competitors to the Parties said that the strength of the constraint exercised by restaurants varied from case to case.

35. On the supply side, one third party submitted that investment in kitchens can significantly increase the costs of taking over a pub. The CMA notes that this suggests that switching operation from a wet-led to a dry-led pub may not be straightforward.
36. As concerns potential differences based on the mode of ownership and operation of pubs, third parties submitted that leased or tenanted pubs compete with branded, independent and non-branded managed pubs, just as they compete with each other.

Conclusion on product scope

37. The CMA believes that the appropriate frame of reference for the assessment of the Merger is the operation of pubs (without any distinction by mode of operation or ownership), excluding restaurants and other licensed outlets. As described above, the evidence available to the CMA does not support the inclusion of restaurants or other licensed outlets within the relevant frame of reference.
38. Consistent with its findings *in Greene King/Spirit*, the CMA believes that pubs can be differentiated to some extent (for example, by tailoring their offer to target a particular demographic) and that pubs in relative proximity that focus on different demographics or occasions – such as wet-led pubs (that focus their offering on drinks) and dry-led pubs (that focus their offering on food) – may constrain each other to a lesser extent.
39. The CMA considers, however, that the factors of differentiation described above reflect different parameters on which pubs compete and that such differentiation does not, based on the evidence available, give rise to separate product categories. In particular, the CMA has considered the differentiation between wet-led and dry-led pubs as part of the filtering methodology used within its competitive assessment (as described further below).

Brewing activities

40. The CMA also considered the appropriate frames of reference regarding Heineken's brewing activities for the assessment of possible vertical competition concerns arising from the Merger.
41. The CMA and its predecessor, the Office of Fair Trading (**OFT**), have found in previous decisions that the market for the supply of lager is separate from that of other types of beers.⁷⁸ The OFT has also found that this market can be further segmented between supply to pubs, bars and restaurants on the one hand (the 'on-trade') and supply to supermarkets and off-licences on the other (the 'off-trade').⁹
42. Heineken brews beer (including ale and lager) and cider and sells it to both on-trade customers¹⁰ and off-trade customers. Punch does not have any brewing activities but, as a downstream operator of pubs, is a purchaser of beer and cider. There is therefore a vertical relationship between the Parties' activities.
43. Consistent with the approach adopted in previous decisions, the CMA has assessed the Merger on the basis of separate frames of reference for the supply of beer (including separate segments for the supply of lager, ale and stout) and the supply of cider to on-trade customers.¹¹ The CMA considers that it is not necessary to conclude on the precise product frame of reference for brewing activities given that, for the reasons explained below, competition concerns arise in relation to these activities would not arise on any plausible basis.

Overnight accommodation

44. The Parties each operate a small number of pubs that offer overnight accommodation. The Parties submit that there is competition between different types of accommodation, eg B&Bs and hotels, and customers will switch between these types according to price and availability. The OFT has previously found that branded budget hotels competed with a range of other

⁷ [CMA decision in the anticipated acquisition by Greene King plc of Spirit Pub Company plc, ME/6501/14, 11 May 2015](#) and [OFT decision in the anticipated acquisition by Scottish Courage limited of the business and certain assets of Northern Clubs' Federation Brewery Ltd, ME/1072/04, 9 July 2004](#).

⁸ I.e. ale and stout. Cider has also been considered a separate market in previous decisions.

⁹ [Anticipated acquisition by Scottish Courage limited of the business and certain assets of Northern Clubs' Federation Brewery Ltd](#).

¹⁰ This includes its own pubs, other pub operators, such as Punch and vertically integrated brewers provided that there are reciprocal supply agreements in place.

¹¹ The off-trade supply of beer is not affected by the Merger and is therefore not considered further in this Decision.

accommodation in the UK, including budget hotels (2-star), mid-range hotels (3-star), upscale hotels (4-star), B&Bs and guesthouses.¹²

45. In the present case, it is not necessary for the CMA to conclude on the precise frame of reference for the provision of overnight accommodation since, on the basis of the limited overlap between the Parties, competition concerns in relation to these activities would not arise on any plausible basis.

Geographic scope

The operation of pubs

National assessment

46. Consistent with the approach adopted in *Greene King/Spirit*, the CMA considers that competition between pubs is local, on the demand side, as customers are generally only willing to travel short distances to visit a pub.
47. On the supply side, the CMA considers that there are some parameters of competition between pubs that are determined nationally rather than in response to the aggregation of local competitive interactions. The Parties compete over a number of parameters that are determined nationally, which include, *inter alia*, the beer supplied at the pubs (often negotiated on a national basis). The CMA has therefore considered the impact of the Merger on national aspects of competition.
48. Heineken has submitted estimates of the Parties' national share of supply in the operation of pubs based on data from the CGA database and their internal lists.¹³ The estimated combined share of the Parties on a national basis is 6.2%, with an increment of 2.2% brought about by the Merger, which is not significant enough to raise *prima facie* competition concerns.¹⁴ In addition, there are at least seven remaining national pub operators and the CMA believes that those competitors will continue to provide a sufficient constraint on the Parties post-Merger, with two of those operators having a larger pub

¹² [OFT decision in the completed acquisition by Spirit Amber Holdings plc of Scottish & Newcastle's retail pub estate, ME/1438/03, 15 December 2003.](#)

¹³ Parties' figures are based on the number of pubs from internal estate lists and competitor figures based on the CGA database.

¹⁴ The market shares of firms in the market, both in absolute terms and relative to each other, can give an indication of the potential extent of a firm's market power. The combined market shares of the merger merging firms, when compared with their respective pre-merger market shares, can provide an indication of the change in market power resulting from a merger, although the importance that can be attached to market shares for differentiated products, such as in the present case, may be limited (see [Merger Assessment Guidelines](#), paragraphs 5.3.2 and 5.3.4.).

portfolio than the combined Heineken and Punch A portfolio (the **Merged Entity**).

49. The CMA therefore does not find it necessary to consider the impact of the Merger on national parameters of competition further in this decision.

Local assessment

50. Heineken suggested analysing the Merger by reference to a catchment area analysis based on drive-time isochrones, following the approach in *Greene King/Spirit*. The CMA's investigation broadly confirmed that this was an appropriate approach to competitive analysis in this case, but did not support all of Heineken's submissions in relation to the appropriate drive-times that should be used for filtering purposes. This is discussed below.

Brewing activities

51. In previous decisions, the OFT and European Commission have considered the geographic scope to be national¹⁵ and Heineken submitted that its supply agreements for beer are concluded at a national level. Consistent with its decisional practice, the CMA assessed the impact of the Merger on brewing activities on the basis of a national frame of reference.

Overnight accommodation

52. The OFT has consistently found that the geographic frame of reference for the provision of hotel accommodation has national and local dimensions.¹⁶ The CMA has assessed the Merger on the basis of both a national and local frame of reference. It is not necessary to conclude on the appropriate geographic scope because competition concerns in relation to these activities do not arise on any plausible basis.

Conclusion on geographic scope

53. The CMA has therefore analysed the Merger on the basis of national competition between pub operators (see above) and on the basis of catchment areas (explained more in detail below in paragraphs 131-157).

¹⁵ Case M.6587 *Molson Coors/Starbev* of 6 June 2012; Case M.582 *Orkla/Volvo* of 20 September 1995; Case M.2044 *Interbrew/Bass* of 22 August 2000; Case M.4999 *Heineken/Scottish & Newcastle Assets* of 3 April 2008.

¹⁶ ME/1649/04 *Whitbread/Spirit Group Holdings*, 11 May 2004; ME/1608/05 *Whitbread/Marriott*, 28 April 2005.

Conclusion on frame of reference

54. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- (a) The operation of pubs on a national and on a local basis;
 - (b) The provision of overnight accommodation on a national and local basis; and
 - (c) Brewing activities on a national basis.

Competitive assessment

Horizontal unilateral effects

55. Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices on its own and without needing to coordinate with its rivals.¹⁷ Where products are differentiated, for example by branding or quality, unilateral effects are more likely where the merger firms' products compete closely.¹⁸ Given that pub offerings are highly differentiated in terms of, *inter alia*, products, price and quality, the CMA has assessed the closeness of competition between the Parties, and third party pub competitors, as relevant below.

Local competition assessment – Operation of pubs

56. The CMA has examined the possibility that, post-Merger, the Parties could unilaterally take actions that result in higher prices or some other deterioration of their pubs' competitive offering on a local basis.
57. A merger between two parties with sites (in the present case pubs) in a local area can affect the process of rivalry and lead to a worsening of some of the parameters of competition because it brings the sites under common ownership. In general, unilateral effects in local areas involve an increase in price, or a decrease in quality, at a site because a proportion of the customers lost would switch to a site belonging to the other merging party. As a result, instead of losing all of the profits associated with switching customers the merged entity now recaptures a percentage of this diversion, making a previously unprofitable price rise (or decrease in quality) profitable.

¹⁷ [Merger Assessment Guidelines](#), paragraph 5.4.1.

¹⁸ *Ibid.* 5.4.6.

58. Whether an SLC arises in a local area will be driven by two factors:
- a) The ability of the merged entity to alter competitive parameters at a site.
 - b) The incentive to increase price or degrade the offering at one site if the Merger leads to recapture of some switching consumers at another site, which will be dependent upon the relative margins at the sites and the diversion ratio between the sites.
59. The CMA has received a large number of representations from third parties, suggesting that brewers and pub operators may be able to influence the operation of pubs at a local level in a number of different ways because of the variety of arrangements that exist between brewers/pub operators and pubs.
60. Accordingly, in order to assess the competitive impact of the Merger at a local level, the CMA has (as set out in the following sections of this decision):
- (a) assessed whether the Parties have the ability and incentive to influence competitive offering at their own estate (ie the pubs that are leased or tenanted by the Parties to third parties);
 - (b) assessed whether Heineken has the ability and incentive to influence the competitive offering at third party pubs with which it has supply agreements;
 - (c) assessed the pubs (and other businesses) that should be included in the effective competitor set;
 - (d) assessed the appropriate catchment area categories for the Parties' pubs and identified all other competing pubs in that area;¹⁹
 - (e) applied the primary filter used in *Greene King/Spirit*, identifying areas in which the Parties have a combined share of more than 35% with an increment of more than 5%;
 - (f) applied the second stage filter consistent with the approach adopted in *Greene King/Spirit*, and
 - (g) considered whether competition concerns can be dismissed in any of the areas that failed to pass the primary or second stage filters.

¹⁹ In line with *GreeneKing/Spirit*, these area categories are called **urbanities**, see paragraph 92 of that decision.

The Parties' own estate (leased and tenanted pubs): the Parties' ability and incentive to influence the competitive offering at those pubs

61. Almost all pubs owned by the Parties (ie the Star estate and the Punch A estate) are leased or tenanted by the Parties to third parties. As described in paragraph 58 above, the CMA assessed whether the Parties have the ability and incentive to alter the parameters of competition at these pubs.
62. In particular, the CMA assessed whether the Parties may, where outlets are owned by one of the Parties but are not operated by them because they are leased to – or tenanted by – a third party, have a reduced ability and/or incentive to increase prices and/or ability to recapture margin, which would reduce the possibility of an SLC in that area. This is considered further below.
63. In *Greene King/Spirit*, the CMA considered three possible ways in which pub operators could influence the competitive offering of a leased/tenanted pub and therefore the competitiveness of that pub. These are by:
 - (a) increasing wholesale prices through unilateral price rises or alterations to the mix of drinks supplied under the beer tie;
 - (b) preventing or failing to support improvement to the premises; and
 - (c) reverting the pub back to the managed estate.

The Parties' tenancy agreements

64. The Parties have several different 'template' tenancy agreements. The two main types of agreements between the Parties and their 'tenanted estate' are leases and tenancies. Leases typically have a longer duration, whereas tenancies have a shorter duration. Within the Punch A estate, [the vast majority] of the pubs are leased and tenanted, with the remainder being managed.²⁰
65. Both Heineken and Punch operate a drinks tie, which is an obligation in their tenancy and lease agreements for the tenant/lessee to buy drinks from the pub company/landlord. The Punch and Star outlets purchase drinks from a list provided by the operator. Heineken stated that the product range on the price list it uses for its Star estate is [redacted]. In addition, discounts are negotiated on an individual basis.
66. Punch submitted evidence that its Punch A estate has different levels of exclusive purchase obligations, but that more than 80% of their estate is

²⁰ The Star estate is almost entirely operated under a leased and tenanted model.

obliged to buy ale, lager and cider from Punch as a wholesaler, which mean that most of Punch A pubs currently buy most of their beer and cider through Punch and are limited, to some extent, to Punch's list of drinks.

67. These agreements will remain in force post-Merger for a certain period, [X].
68. Star also operates a drinks tie and [X] of its outlets are obliged to purchase beer, cider and flavoured alcoholic beverages exclusively from Heineken as a wholesaler. Approximately [X] are also obliged to purchase soft drinks from Heineken.

The ability to influence the competitive offering at the leased/tenanted pubs

69. The Parties submitted that they do not control the day-to-day operation of leased/tenanted pubs, including in relation to pricing, opening hours, the choice of food and menus, and the choice of beer and other drinks purchased under the tie. The Parties noted that publicans in tenanted/leased pubs are self-employed and determine their own strategy and that while the tie requires tenants to purchase all various types of drinks from the landlord,²¹ tenants are otherwise free to select from a choice of beers and other drinks and to set their own retail prices.
70. The Parties also submitted that the Pubs Code etc Regulations 2016 (**Pubs Code**)²², which came into force in 2016, protects tenants from increases in the prices of tied drinks. In the event of a price increase, the tenant could invoke a market rent only (**MRO**) option and would then able to obtain its drinks free-of-tie.
71. As explained below, however, the CMA believes that the Parties have the ability to influence several aspects of the competitive offering at the pubs that they operate.

- *Ability to influence prices*

Wholesale price

72. The Parties control the wholesale prices to their leased/tenanted pubs, as the independent operators of such pubs do not have the option to purchase their tied drinks from elsewhere for the duration of the tenancy agreement. In addition, the CMA understands from the template agreements provided that

²¹ The Parties submitted that the tie can be released for a particular type of beverage and that this happens incidentally.

²² http://www.legislation.gov.uk/ukxi/2016/790/pdfs/ukxi_20160790_en.pdf

the Parties may make alterations to the types of drinks that are subject to the tie by changing the price list or by adding drinks to that list.²³ Punch is able to change the prices and ranges included in its price list unilaterally.

73. As concerns the MRO option that a tied tenant could invoke after a price increase, the CMA notes that there are several factors that make it unlikely that the Pubs Code would enable the tied tenants to prevent a price increase.
74. First, Heineken/Star is a vertically integrated brewer and is therefore entitled to impose a 'stocking requirement' on its tenants pursuant to sections 72 and 68 of the Small Business, Enterprise and Employment Act 2015 (the 2015 Act). A stocking requirement entails that Heineken/Star can require an outlet to stock its beer and cider at the outlet, although the outlet is free to purchase that beer and cider from any supplier.
75. On 3 March 2017, The Department for Business, Energy and Industrial Strategy (BEIS) issued a clarification note on the stocking requirement.²⁴ This note indicates that a stocking requirement is permitted within an MRO agreement under the Pubs Code.
76. Under Heineken's template MRO-compliant lease agreement, the stocking requirement entails that the tenant is obliged to purchase Heineken brands for [X]% of its draught beer and cider, [X]% of its cask ale and [X]% of its bottled beers (which third parties have suggested exerts a limited constraint on draught beer in any case).²⁵
77. Heineken's internal documents indicate that the impact of Pubs Code is expected to be limited in practice (in particular because a significant proportion of supply agreements containing a tie will remain intact): [X]²⁶
78. Second, several third parties have indicated that the Pubs Code is relatively new and that there remains significant uncertainty about the scope of the protections that it affords to tenants. These parties also queried the effectiveness of the Pubs Code.
79. Third, the Pubs Code offers the MRO option in certain specific circumstances – for example, where the price relating to a certain category of beverage is increased significantly.²⁷ The Parties would therefore have the ability to

²³ See for example clause [X] and [X].

²⁴ [Pubs Code: Stocking Requirement: Clarification Note by BEIS](#)

²⁵ See Schedule 5 of the Market Rent Option Lease template agreement provided by Heineken.

²⁶ See [X]

²⁷ A significant price increase for this purpose is where the increase is more than: 3% + annual Consumer Price Index change (CPI) for beer; 8% + annual CPI change for other alcoholic drinks; 20% + annual CPI change for other tied products; 20% + annual CPI change for other tied services.

increase beverage prices to tied tenants to a certain extent without triggering the MRO option (see above paragraph 70).

80. Finally, the Pubs Code is not applicable in Scotland and therefore offers no protection to tenants in Scotland.
81. Heineken submitted that the factors mentioned above do not mean that it has an unrestrained ability to raise prices and that it can deteriorate and/or has deteriorated PQRS on a pub-by-pub basis.
82. However, the CMA believes, for the reasons mentioned above, that Heineken may have the ability to raise prices. The agreements in place (described in paragraph 72) enable the Parties to do so, without the need to show that Heineken has adjusted PQRS on a pub-by-pub basis in the past to demonstrate the ability to adjust prices locally.
83. Accordingly, for the reasons described above, the CMA believes that the Parties have the ability to influence wholesale prices for leased/tenanted pubs at the local level. The CMA also believes that the Pubs Code will not significantly affect the Parties' ability to increase wholesale prices to tied tenants.

Retail prices

84. The CMA also received anecdotal evidence that Punch, through its development managers, may seek to influence directly the retail pricing of its tenants.²⁸
85. There are also a number of pubs where the Parties exercise an even higher degree of control over retail pricing: [REDACTED].
86. The CMA recognises that the Parties are not able to directly or indirectly influence the price of food in pubs, meaning that, in some pubs, raising the wholesale prices of tied drinks may have a limited effect on switching by end customers, even if such increases were passed on by the pub operator. This is particularly true where the customer's primary reason for visiting was to purchase a meal, since any increase in the price of drinks will typically make up a smaller proportion of the bill for these customers. However, most of the Parties' leased and tenanted sites are wet-led (both Punch A and Star's estate are [REDACTED]% wet-led) and this entails that most of the turnover in the Parties' outlets is generated from the sale of drinks.

²⁸ See for example the [REDACTED]

- *Ability to influence other parameters of competition*

87. The available evidence also indicates that price is not the only element of the competitive offering in pubs at the local level that the Parties may be able to influence.
88. While the Parties submitted that they are unlikely to be able to influence day-to-day operational parameters,²⁹ the CMA cannot exclude that the Parties can influence short-term PQRs decisions. Furthermore, they are able to influence other factors, such as the state of internal or external repairs, that would have a longer-term impact on the competitive offering in pubs.
89. The Parties submitted that the installation of new facilities at any tenanted or leased pub would need the permission of the pub company (to the extent that these are considered to be 'structural' alterations). Similarly, both Parties also retain the right to install, or to prohibit the tenant from installing, electronic devices such as satellite dishes.³⁰ The Parties noted that lessees/tenants are, however, free to make any non-'structural' alterations (which may include increasing seating, designating separate areas within their pubs and changing decoration, where such alterations do not give rise to structural changes) without their permission.
90. Several third parties explained that even if the lessees/tenants are, in principle, free to make any non-structural alterations, the Parties can and do influence refurbishment decisions of the lessees/tenants, including non-structural alterations, because the tenants are generally dependent on financial contributions from the Parties to make such alterations.
91. This is consistent with evidence from Heineken's internal documents, which suggests that Heineken is closely involved in refurbishment decisions and monitors the competitive landscape in which a leased and tenanted pub operates. For example, in certain of Heineken's 'Capex Approval Docs,' [REDACTED].³¹ Other Capex Approval Docs also mention whether competitors and/or other Star pubs in the local area had been subject to refurbishment.³²
92. The CMA therefore believes that a tenant or lessee would, in practice, typically not be able to unilaterally change key elements of the competitive offering of a pub, such as expanding kitchen facilities, the floor area of the pub

²⁹ Since the sites in question are operating under a tie pre-Merger, the only way in which the Parties could degrade their offering post-Merger would be to change the terms of the tie or restrict the number of drinks available under the tie.

³⁰ See [REDACTED]. The Parties mention that each tenant has the option to apply for a significantly discounted Sky or BT Sport subscription centrally purchased by Star. However, [REDACTED].

³¹ See for example the Capex Approval Doc for the [REDACTED], a wet-led rural pub.

³² See for example the Capex Approval Docs for the [REDACTED] and the [REDACTED].

or parking facilities, in order to respond to competition at the local level without support from its landlord (ie one of the Parties).

Conclusion on tenanted and leased pubs

93. For the reasons set out above, the CMA considers that the Parties have the ability to influence the competitive offering of their leased and tenanted pubs post-Merger (as well as the small number of managed pubs), and that its incentives will be changed by the Merger once it takes into account customers potentially switching to a pub of the other merging Party.
94. Accordingly, the CMA assessed whether the Merger may give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the local areas in which the Parties overlap in the operation of pubs through their tenanted and leased premises.

Heineken's supply agreements with non-leased and tenanted pubs

95. As noted above, in addition to its arrangements with leased and tenanted pubs, Heineken also has supply arrangements with third party pubs to which it supplies beer and cider, either directly as a brewer or, to a lesser extent, as a wholesaler. For the purposes of this decision, these third party pubs are referred to as third party Heineken-supplied pubs or **HTP pubs**.³³
96. A number of third parties submitted that Heineken is able to exert significant influence over the competitive offering in HTP pubs through its agreements with these pubs, in particular through restrictions in the use of Heineken-owned dispensing equipment for rival beer/cider or through exclusivity or minimum purchase obligations, including the provision of finance (eg loan or advance discount agreements).
97. The CMA has therefore assessed the extent to which Heineken could have the ability and incentive to influence the competitive offering in these pubs post-Transaction. In particular, in order to determine whether these pubs should be treated as fully independent competitors for the purpose of the CMA's filtering analysis, the CMA has considered both: (a) the ability and incentive of Heineken to degrade PQRS in HTP pubs in order to divert (at least some) trade to Heineken's own estate; and (b) the ability and incentive

³³ **HTP pubs** are pubs that have no tenancy or lease contract with, or are managed by Heineken and/or its subsidiaries, but currently have a supply agreement, and/or an advance discount agreement and/or any other supply agreement with a financial or exclusivity/quasi-exclusivity (ie agreements with a purchase obligation) component with Heineken.

of Heineken to degrade PQRS in its own estate to divert trade to HTP pubs (to the benefit of Heineken's upstream sales to HTP pubs).

Dispense equipment

98. Some third parties questioned whether Heineken could influence the brands of beers supplied in third party pubs through its agreements regarding the provision of dispense equipment technology and services (**CTS**) equipment, in particular Heineken's SmartDispense equipment.
99. Heineken submitted that it does not have the ability to compel a third-party pub to only sell beverages provided by Heineken through CTS equipment that is used in pubs and bars throughout the UK to dispense drinks at the bar from the cellar. Heineken also submitted that third-party pubs are permitted to use the CTS equipment regardless of their beer supplier: the equipment is brand neutral.
100. In particular, Heineken explained that its new SmartDispense equipment works with the same input supply as regular CTS equipment (kegs) and no changes or investment are necessary to use the SmartDispense system for beers from other suppliers. Heineken also stated that the use of brands on that system is negotiated at the outset of the agreement and usually dispensing a third party brand will carry a reasonable cost.
101. This was supported by submissions from third parties, which indicated that there are no material technical or financial barriers that would prevent the use of CTS equipment on kegs from different brewers.
102. The CMA therefore believes that the CTS equipment and SmartDispense equipment do not give Heineken the ability to prevent other beers/ciders from being sold in a third-party pub.³⁴

Supply agreements

103. The CMA has assessed whether Heineken has, through its supply agreements (in particular, supply agreements with a financial component), the ability and incentive to influence the competitive offering of HTP pubs.
104. Heineken has several different types of supply agreements in place with HTP pubs. In some cases, these agreements include the provision of financing to the HTP pub (in the form of either a loan or an advance discount) subject to

³⁴ As Heineken does not have the ability to affect the competitive offering in third party pubs through its dispense equipment, it is not necessary to consider whether it would have the incentive to pursue such a strategy.

that pub's adherence to a number of specified obligations. In some cases, these obligations include a requirement for the HTP to purchase a specific amount of beer and cider from Heineken for the duration of the agreement (typically around three to five years) – either through a minimum purchase obligation (**MPO**), which requires HTP pubs to buy a minimum amount of beer and cider from Heineken during the agreement period, or an exclusivity obligation. In some cases, the HTP pubs are incentivised not to terminate the agreements in the first three years because of [REDACTED].³⁵

105. Heineken submitted that its supply arrangements do not provide it with the ability to influence the competitive offering in HTP pubs. In particular, Heineken considers that any MPO arises out of a bilateral discussion about the level of purchases to which the pub is willing to commit (and therefore leaves that pub free to purchase from other brewers). Heineken stated that it does not have any visibility over the total purchases of HTP pubs and considered that an MPO would frequently be for a volume of purchases that is significantly lower than the pub's total purchases of drinks.
106. Heineken also stated some of the provisions in its templates agreements (in particular in relation to MPOs) were [REDACTED].
107. Heineken also submitted that it would not have the incentive to worsen the competitive offering at the acquired Punch A pubs to the benefit of its (upstream) sales to HTP pubs. In particular, Heineken submitted evidence showing that it makes a significantly higher margin on its beverage sales to its own pubs (the margin earned from sales of drinks to HTP pubs is only [REDACTED]% of the margin of sales at its own estate).³⁶

Ability

108. The available evidence indicates that while Heineken, as an upstream supplier, has some influence over beer and cider wholesale prices, it has very little ability to influence the competitive offering in HTP pubs in practice. In particular:
 - (a) Any influence exercised by Heineken is limited to the wholesale prices that it charges. The operator of the HTP pub therefore has control over all other aspects of the competitive offering, including the interior and image

³⁵ One agreement template stipulates that if the agreement is terminated in the first three years, the [REDACTED] Heineken [REDACTED];

Another agreement template stipulates that if the agreement is terminated in the first three years [REDACTED].

³⁶ When an approximate £[REDACTED]/HI of lost 'dry rent' is taken into account, a diverted sale to a HTP pub is only worth [REDACTED]%.

of the pub, the food offering and other services such as sports coverage or music events;

- (b) Heineken's influence over pricing is limited. It is typically unable to unilaterally change prices or existing discounts to individual HTP pubs during the period of an existing supply agreement;
- (c) In practice, HTP pubs have little financial dependence on Heineken, with the amounts of any loans and advance discounts being relatively modest. For example, in 2016, the loans extended by Heineken to HTP pubs amounted to only around £[redacted] per pub on average, with the average advance discount amounting to around £[redacted]; and
- (d) The supply of beer and cider to HTP pubs is subject to a significant degree of churn, which Heineken estimates at [redacted]% per year on average for its third party supply contracts. Evidence provided by Heineken and third parties indicates that pub customers party to supply agreements (including those with a financial component) can be 'poached' by other suppliers (who would effectively take over any existing debt where a loan or advance discount is in place). A number of third party suppliers confirmed that such 'poaching' occurs and/or that pub customers approach them to discuss whether they would be willing to switch a loan.

109. Accordingly, the CMA believes that the supply agreements in place between Heineken and HTP pubs do not provide Heineken ability to influence the competitive offering in HTP pubs for the purposes of competitive assessment in this case. The available evidence shows that Heineken would not be able to alter wholesale pricing in the short-term because of the terms of its existing agreements with HTP pubs. In the longer-term, the available evidence shows that HTP pubs would be able to switch to variety of alternative suppliers if Heineken were to seek to increase its wholesale prices.

Incentive

- 110. As explained above, the CMA believes that Heineken lacks the ability to influence the competitive offering in HTP pubs and it is therefore not necessary, for the purposes of this decision, to consider whether Heineken would have the incentive to do so.
- 111. The CMA notes, however, that Heineken does have the ability to influence the competitive offering within its own estate (for the reasons set out in paragraphs 72 to 92 above). The CMA has therefore considered whether Heineken would have the incentive to deteriorate PQRS at its own estate on the basis that it could recapture a significant part of the diversion to HTP pubs

(because of the margin on its upstream drinks sales to these pubs). If Heineken were to have the incentive to pursue such a strategy, the CMA believes that this would mean that it would not be appropriate to treat the HTP pubs as fully independent competitors to Heineken.³⁷

112. The available evidence indicates, however, that Heineken would not have the incentive to degrade the competitive offering in its own pubs to divert trade to HTP pubs. In particular:
- (a) Heineken makes a significantly higher margin on its beverage sales to its own pubs (the margin earned from sales of drinks to HTP pubs is only [X] % of the margin from sales to its own estate);
 - (b) This margin comparison alone underestimates the total potential loss to Heineken, because decreased footfall in the Heineken-owned pubs would also result in lost margins on other elements of the pub offering (e.g., food and fruit machines), which would affect the level of “dry rent” that Heineken would receive from the pub;³⁸
 - (c) Any diversion to HTP pubs would also be diluted by the presence of competing brands in HTP pubs. Data on the specific proportions of Heineken sold in HTP pubs are not available. Heineken estimates, however, that its share is unlikely to exceed 50% in the vast majority of cases (e.g., for the Punch A portfolio, Heineken currently supplies [X] % of volumes sold);
 - (d) The potential benefits of pursuing this kind of strategy would be highly uncertain given the significant levels of churn in the supply of beer to wholesale pubs. As noted in paragraph 108(d) above, Heineken estimates that its churn rate in 2016 was [X] % of its customer base, with third parties agreeing that such contracts are actively competed for an ongoing basis; and
 - (e) The Heineken business has no history of pursuing this kind of strategy (even though a similar incentive/ability to do so exists at present given the ownership of the Star pubs). Heineken submitted evidence that [X].
113. Accordingly, the CMA believes, for the purposes of competitive assessment in this case, that Heineken would not have the incentive to worsen the

³⁷ Post-Merger, the Merged Entity could either decide to deteriorate PQRS at one or more Punch A pub(s), at one or more Star pub(s) or at both estates in an area.

³⁸ When an approximate £[X]/HI of lost ‘dry rent’ is taken into account, a diverted sale to a HTP pub is only worth [X] %.

competitive offering at the acquired Punch A pubs to the benefit of its (upstream) sales to HTP pubs.

Conclusion on HTP pubs

114. For the reasons set out above, the CMA believes that the HTP pubs should be treated as fully independent competitors for the purpose of the CMA's competitive analysis in the present case.

- *The Punch B pubs*

115. Several third parties suggested to the CMA that the Punch B pubs should not be treated as fully independent competitors to the Parties. These third parties suggested that commercial links between Heineken and the Punch B pubs post-Merger would enable Heineken to influence the competitive offering in the Punch B pubs.

116. [REDACTED].

117. [REDACTED].

118. The CMA notes, however, that [REDACTED]. The Punch B estate will be operated independently from Heineken post-Merger and, notwithstanding any aspiration to increase supply from Heineken, can be expected to operate in its own commercial interests (and therefore to continue to manage its supply arrangements with all of its drinks suppliers on the basis of a range of commercial considerations including customer proposition, tenant preferences, pricing/profitability and the quality, variety and range of its suppliers' offerings).

119. Accordingly, for the same reasons as other HTP pubs (as explained in paragraphs 103-110 above), the CMA considers that Heineken will not have the ability to influence the competitive offering in the Punch B pubs post-Transaction (even if Heineken were to increase the volume of beer and cider that it supplies to Patron B pubs in line with the non-binding aspiration described above). These pubs have therefore been treated as fully independent competitors for the purpose of the CMA's filtering analysis.³⁹

³⁹ Nevertheless, for completeness, the CMA has also assessed the customer foreclosure concerns raised by the Merger (as described further in paragraphs 210 and 211 below) on the basis of scenario in which the Punch B pubs would not be available as a route to market for other brewers.

Primary filter

120. When analysing whether a merger may result in a realistic prospect of an SLC in cases involving a large number of local overlaps, the CMA may use a filtering methodology to screen out overlap areas where competition concerns are unlikely to arise.⁴⁰ The filtering methodology used in a given case is driven by the characteristics of the market at issue, based on the evidence available to the CMA.
121. Heineken submitted that the filtering methodology used in *Greene King/Spirit* should be used to assess the Merger. In that case, a centroid pub failed the filter if the share of the merging parties' pubs in a given local area was 35% or greater and the increment brought about by the Merger was 5% or greater.
122. The CMA has taken the approach adopted in *Greene King/Spirit* as the starting point for its assessment but has considered, as necessary, whether the available evidence indicates that aspects of the approach applied in that case should be adapted in the circumstances of the present case.

Effective competitor set

- *The constraint exercised by wet- and dry-led pubs*

123. The CMA has considered which types of businesses should be included in the effective competitor set. In particular, the CMA assessed whether wet-led pubs are constrained, to the same extent, by both wet- and dry-led pubs.⁴¹
124. On the basis of the evidence described above in relation to the product frame of reference, the CMA currently considers it appropriate to apply the primary filter separately to dry-led pubs and to wet-led pubs, excluding wet-led pubs from the competitor set of dry-led pubs. The CMA has factored the constraint that wet-led pubs exert on dry-led pubs in its second stage analysis (as described below).
125. The available evidence shows, however, that, consistent with the approach adopted in *Greene King/Spirit*, wet-led pubs are constrained by both wet-led pubs and dry-led pubs. The CMA has therefore not distinguished between wet-led pubs and dry-led pubs for the purposes of the primary and secondary filter when considering a wet-led centroid pub.

⁴⁰ See the [Retail Mergers Commentary](#), paragraph 3.2.

⁴¹ Dry-led pubs are defined in this decision as those categorised in the CGA Index as Branded Food-Led, Dry-Led and Circuit Bar – Traditional Town pubs.

The appropriate catchment areas for the purposes of the primary filter

126. As explained in the *Merger Assessment Guidelines*, when assessing mergers involving a large number of local geographic markets, the CMA may start by examining the geographic catchment area within which the great majority of the relevant site's custom is located.⁴²
127. For the purposes of its primary filter, the CMA considered the appropriate catchment area of the Parties' pub as a tool to assist the analysis of the competitive constraints that those pubs face.

Urbanities

128. Heineken submitted that, consistent with the approach adopted in *Greene King/Spirit* the catchment area of a pub differs depending on the urban classification of that pub (eg city centre, urban or rural). The CMA has not received any evidence in its merger investigation to suggest that an alternative classification would be more appropriate.
129. In *Greene King/Spirit*, the notifying parties used internal information for the classification of "city centre" areas. In the present case, the Parties submitted that [REDACTED]. The Parties therefore do not believe that [REDACTED]. Heineken proposed that Experian was the most appropriate dataset and classification system,⁴³ and this dataset has been used in the filtering analysis that it has submitted. The CMA has received no evidence to suggest that this is not a reasonable approach to the classification of "city centre" areas.
130. For the remaining two urbanities (rural and urban), Heineken, consistent with the approach in *Greene King/Spirit*, applied the ONS or NRS definitions.⁴⁴ Again, the CMA has received no evidence to suggest that a different approach would be more appropriate.

Catchment areas

131. Typically, catchment areas are constructed by analysing data on customer location to determine the area from which a firm draws 80% of its business. In the present case, the Parties do not hold information about the location of their customers,⁴⁵ and therefore catchment areas cannot be defined on this basis.

⁴² See 5.2.25 of the *Mergers Assessment Guidelines*.

⁴³ Given that it better identifies areas with larger daytime populations.

⁴⁴ ONS '2011 Urban Rural classifications of output areas England and Wales' was used for England and Wales and NRS 'Scottish Government Urban/Rural classification 2013-2014' for Scotland.

⁴⁵ Due to the leased and tenanted nature of their pubs.

132. The Parties submitted (largely following the approach adopted in *Greene King/Spirit*) that the following catchment areas should be used in the competitive assessment for both wet-led and dry-led pubs:
- (a) City Centre – 2-minute drive-time isochrones; and
 - (b) Urban – 10-minute drive-time isochrones; and
 - (c) Rural – 15-minute drive-time isochrones.
133. As a general matter, several third parties submitted that the use of drive-times is not appropriate, as the Parties' outlets are mainly wet-led and it is prohibited to drink alcohol and drive. These parties suggested that measurements based on walking time would be more appropriate.
134. As explained below, the CMA currently considers that the catchment area in city centres should be defined by reference to a straight-line distance. As concerns the other two isochrones, the CMA considers that using drive-times does not presuppose that people drink and drive, but is rather intended to reflect a certain geographical area within which customers are willing to travel to a pub.⁴⁶ In addition, the CMA notes that internal documents from the Parties suggest that, in rural areas, pubs are located outside residential areas and that customers are more likely to drive than to walk to those pubs.⁴⁷

City Centre catchment areas

135. The CMA considers that it is appropriate to use a 0.5 mile radius for pubs located in city centres. This reflects that these areas typically have a large daytime population (because of the presence of offices, shopping and other amenities) and that they are areas where customers generally walk between the locations that they visit (ie offices, shopping, and other amenities – including pubs). The CMA also considers that there is more traffic in city centres and that driving routes can be very different to walking routes within these catchment areas.⁴⁸
136. A number of the Parties' competitors submitted that they analysed competition in city centre areas by reference to straight-line distances, with the catchment areas used in practice ranging from a few hundred metres to 1 mile. Heineken's internal documents refer to the catchment area of [redacted] miles for town centres and community pubs,⁴⁹ and two competitors also specifically

⁴⁶ There are also alternative means to go to a pub in a vehicle, for example public transport, taxis or a designated driver.

⁴⁷ See [redacted], a wet-led pub in a rural area.

⁴⁸ Ie due to one-way systems and pedestrianised areas.

⁴⁹ [redacted].

noted that they used [~~3~~] miles as a catchment area in their day-to-day business.

137. Heineken suggested that it would be difficult, in practice, to calculate walking distances. In city centres, the CMA would expect there to be little difference between distance and walking time and has checked several marginal areas to see if the distance and walking time catchments areas would vary significantly (eg if there were any areas with major rivers or rail lines intersecting city centres). These checks revealed no areas in which significant variance arose.
138. In practice, there is likely to be little difference between the different possible approaches. For example, at 20 mph,⁵⁰ a two-minute drive-time catchment would equate to a driving distance of 0.66 miles (0.5 miles also equates to 10 walking minutes at 3mph average).
139. The CMA therefore considers that a catchment based on a 0.5 mile radius (rather than the two-minute drive-time used in *Greene King/Spirit*) is more appropriate for pubs in the city centre urbanicity.

The catchment areas for wet-led pubs

140. Heineken submitted that the same catchment areas should be used for dry-led and wet-led pubs, consistent with the approach adopted by the CMA in *Greene King/Spirit*.
141. Heineken noted, in particular, that that approach was based on an online survey conducted by the notifying parties in that case, the results of which remain “*sufficiently informative*” for the CMA’s assessment in this case. Heineken further submitted that there is no reason to consider that the dynamics of competition in relation to the pubs at issue in *Greene King/Spirit* differ to those in relation to the Heineken and Punch A pubs.
142. As noted above, the CMA has taken the approach adopted in *Greene King/Spirit* as the starting point in this case. The CMA has considered the weight that can be placed on the survey evidence from *Greene King/Spirit* for the purposes of the present case. The CMA has also considered all other available evidence in relation to the catchment areas of wet-led and dry-led pubs, including the Parties’ internal documents and the views of (and supporting evidence from) third parties. This is described further below.

⁵⁰ The Parties calculate that of the pubs used in the local area analysis the average drive speed was 19.8mph in city centre areas.

Survey evidence from Greene King/Spirit

143. *Greene King/Spirit* concerned two pub operators with primarily managed estates consisting of mostly dry-led pubs. In practice, this meant that the focus of the evidence-gathering in that case was on managed dry-led pubs. By contrast, in the present case, the Parties' estates are nearly entirely leased and tenanted and [the majority is] wet-led.
144. The survey in *Greene King/Spirit* was primarily used to determine whether customers of dry-led pubs would consider wet-led pubs as a substitute (but was also used, in conjunction with information on the location of customers from mailing lists, as evidence towards establishing catchment areas).
145. The vast majority of pubs that were surveyed in *Greene King/Spirit* were dry-led pubs. Moreover, as the CMA noted in its decision in that case, the average sample size for wet-led pubs was 'relatively low'.⁵¹ The CMA notes that survey responses with a relatively low sample size should be treated with caution. For that reason, the CMA considers that only limited weight can be placed on these results for the purpose of analysing the catchment area of wet-led pubs in the present case when conflicting with other relevant sources of evidence.⁵²

Third party evidence

146. In its merger investigation, the CMA has tested the appropriate catchment areas for wet-led pubs and dry-led pubs with a variety of third parties.
147. The CMA received six responses from competitors (including five of the eight largest pub operators, excluding the Parties), all of which consistently submitted that catchment areas for wet-led pubs are smaller than for dry-led pubs.⁵³ Five of those six competitors specifically explained that they use smaller wet-led catchments than dry-led catchments internally, eg when deciding which competitors to monitor, or when renovating pubs, evaluating pubs, or deciding at what distance to consider the demographic profile of customers. Some competitors provided the CMA with internal documentation, or internal data, that showed narrower catchments for wet-led pubs being used in practice.⁵⁴

⁵¹ [CMA decision in the anticipated acquisition by Greene King plc of Spirit Pub Company plc, ME/6501/14, 11 May 2015, paragraph 83.](#)

⁵² In particular, the survey in *Greene King/Spirit* did not focus on wet-led pubs and the sample size did not allow robust conclusions to be drawn about wet-led pubs in isolation.

⁵³ The CMA notes that this is also consistent with the views expressed by Punch in the *Greene King/Spirit* investigation, in which it stated that: [redacted]

⁵⁴ One competitor provided comprehensive data showing this, while another competitor provided a sample comparing two pubs in various areas, one which was more food-led than the other.

148. Third party competitors were asked to indicate catchment sizes for pubs in rural, urban and city centre areas, broken down by wet-led and dry-led pubs (being prompted to assess this question based on where they consider that 80% of customers came from). While there was some variation between the answers provided by competitors (which the CMA believes reflects the heterogeneous nature of pubs), even where they were based on data used in everyday business activities rather than estimates, the responses were consistent with a smaller catchment area for wet-led pubs.
149. Accordingly, in order to inform a filter to analyse a very large number of overlaps, the CMA calculated an average catchment for each urbanicity, separately for wet and dry-led pubs, using all received competitor responses.⁵⁵

Table 1: Average drive-times/ distances for dry-led and wet-led pubs based on pubco responses		
	Dry-led	Wet-led
Rural (drive-time minutes)	17.3	7.9
Urban (drive-time minutes)	14.9	4.2
City Centre (distance miles)	7.1	3.8

Source: Third party pubco responses
Notes: See footnote 55 which explains the assumptions used to create the averages.
Urban and rural are drive-times are displayed in minutes while city centres show distance in miles.

150. Other views submitted by third parties also suggested that the catchment area for wet-led pubs is smaller than that for dry-led pubs. For example, one third party suggested that dry-led pubs are generally more ‘destinational’ and customers may be willing to travel further for a meal than for a drink in a pub.⁵⁶ Another third party submitted that going for a meal was usually more expensive than going for a drink and therefore customers would spend more time and money getting to a pub for a meal than for a drink.
151. On this basis, the CMA considers that third party views are broadly consistent with wet-led catchment areas of 10 minutes for rural areas and 5 minutes for urban areas. These catchments areas are slightly above the average (mean) catchment area estimates based on the competitor responses in Table 1.

⁵⁵ Some third parties responded to this question in drive-time, some responded in distance (miles or km). To convert all answers to drive-times, the case team used assumptions on the average speed that a customer would travel in each rural, urban and city centre urbanities. These were based on submissions from the Parties (where they had taken the average speed travelled when calculating the drive-times between pubs in the local area analysis).

⁵⁶ A third party stated that Mainstream/premium ‘destinational’ pubs are primarily food-led pubs with a mid to high price point with high grade facilities and more restaurant style formats.

152. For city centres, third party responses indicate that the catchment areas for all pubs are very large, based solely on customers' home addresses. This is likely because customers commute to work and then go to local pubs in the city centre. The CMA therefore does not consider this evidence very reliable for determining a city centre catchment area (ie the set of pubs that customers would consider to be alternatives) because third party competitors indicated that they only monitor city centre pubs at a far shorter distance. Consistent with the approach in *Greene King/Spirit*, the CMA has therefore (as described in paragraphs 135-139 above) used a distance that more accurately reflects the choice set consumers are expected to consider.

Internal documents

153. The Parties were also asked to provide internal documents to support their position that the catchment areas for wet-led and dry-led pubs should be the same.⁵⁷ For the most part, these documents do not provide any meaningful insight on appropriate catchment areas (for any type of pub).

154. However, to the extent that any individual internal document is relevant to the assessment of pub catchment areas, the available evidence tends to be consistent with a narrower catchment area for wet-led pubs. In particular, some emails and reports provided by the Parties suggested very small catchment areas for wet-led pubs. For example:

(a) [redacted], states: "*As a wet let community site this pub will only really draw from the immediate community*". On this basis, a pub located $\frac{3}{4}$ miles (a 3-minute drive-time) away [redacted] was not regarded as a competitor.

(b) [redacted], states that the [redacted], which is 1.5 miles away, is probably not a competitor, as Star's customers would not travel that far.

(c) [redacted] indicate that [redacted]."⁵⁸ This document also states that relevant demographic catchment areas are a [redacted]-minute drive-time for destination pubs, [redacted] miles for town centres and community pubs, and [redacted] miles for rural and village inns.

155. While the CMA has placed only limited weight on this evidence, the CMA considers that the available evidence from internal documents is more consistent with a narrower catchment area for wet-led pubs.

⁵⁷ These included CAPEX reports for renovations, area manager emails, visit reports, business reports and mosaic analysis.

⁵⁸ According to a third party, the latter are primarily wet-led.

Other evidence

156. Heineken provided an analysis of internal Wi-Fi data,⁵⁹ which it suggested showed no difference between the average catchment areas of wet and dry-pubs. Heineken recognised, however, that the probative value of this data had “*significant limitations*”. Heineken noted, in particular, that: (1) it could not verify that customers used genuine postcodes; (2) a large number of tourists visited the pubs; (3) Wi-Fi data was only available from certain pubs; and (4) there was no distinction possible between individual and multiple visits. The CMA therefore agrees with Heineken that the probative value of this data is very limited.

Conclusion on the catchment area for wet-led pubs

157. For the reasons set out above, the CMA considers that the available evidence supports the use of different catchment areas for dry-led and wet-led pubs. The CMA has therefore analysed the local effects of the Merger against catchment areas based on the following isochrones:

- (a) City Centre – 0.5 miles for both wet-led and dry-led pubs;
- (b) Urban – 5 minute drive-time for wet-led pubs and 10 minute drive-time for dry-led pubs; and
- (c) Rural – 10 minute drive-time for wet-led pubs and 15 minute drive-time for dry-led pubs.

Application of the primary filter

158. Heineken submitted that the “share of pubs” threshold applied in *Greene King/Spirit* remains appropriate for use in a primary filter. The CMA’s merger investigation has not provided any basis to suggest that the thresholds used in *Greene King/Spirit* are not appropriate for the purposes of the present case.

159. In the present case, the primary filter identifies 73 local areas in which: (a) the Parties overlap (ie there is one or more pub from one Party in the catchment area of a pub owned by the other Party); and (b) the Parties’ combined share of pubs equals or exceeds 35% and the Merger results in an increment in excess of 5%.⁶⁰ On the basis that the 35% combined share of pubs takes account of evidence on closeness of competition between pub classifications as well as out of segment constraints (ie constraints of dry-led pubs on wet-

⁵⁹ This data relates to pubs where customers must submit their postcode for free Wi-Fi access provided by the pub.

⁶⁰ These are listed in Annex 1.

led pubs), the CMA considers that these 73 areas are considered to raise *prima facie* competition concerns. The CMA has therefore applied the second stage analysis described below within each of these areas.

Second Stage Analysis

160. Consistent with the approach adopted in *Greene King/Spirit*, the CMA has conducted a second stage analysis within each of the 73 local areas that fail the primary filter. This secondary stage is based on evidence in relation to:
- (a) the extent of competitive constraint exerted on dry-led pubs by wet-led pubs (with wet-led pubs included in the effective competitor set but given a weighting of 0.2 of a dry-led pub);⁶¹
 - (b) the relative geographic proximity of the Parties' pubs in a given area;⁶² and
 - (c) the application of a drive-time sensitivity in City Centre locations;⁶³
161. The CMA's merger investigation has not provided any basis to suggest that the secondary stage analysis used in *Greene King/Spirit* is not appropriate for the purposes of the present case, or that these factors are not appropriate to build into a systematic filter.
162. Following the application of this secondary filter to the 73 pubs that failed the primary filter, there remain 43 local areas that raise *prima facie* competition concerns.

"Sensitivity" analysis

163. Heineken conducted a "sensitivity" analysis based on increasing and decreasing the catchment area for wet-led pubs by 20% in urban and rural catchment areas. Heineken submitted that this sensitivity should be used as a filter (the "**secondary urban/rural wet-led drive-time flex**"), being consistent with the application of a "City Centre drive-time sensitivity" by the CMA in

⁶¹ In *Greene King/Spirit*, this was based on using the survey data to establish what weight would need to be applied for the survey diversion to match the expected diversion if all pubs were equal constraints.

⁶² Pubs were cleared where the parties' pubs were over half the relevant isochrone's drive-time from each other and at least two competitor pubs were closer to the centroid pub.

⁶³ In this case, this involved flexing the city centre catchment by 0.1 mile (20%) up and down, to reflect the fact that a strict catchment area may not adequately reflect the geographic scope of competition in city centres. This is consistent with the approach taken in *Greene King/Spirit*, with the difference that *Greene King/Spirit* flexed a drive-time up and down by 30 seconds.

Greene King/Spirit, and that any pubs that passed the primary filter based on the “flexed” catchment areas should be cleared.⁶⁴

164. If this “sensitivity” analysis were to be applied, the Parties’ share of supply would fall below the 35% threshold in 19 areas.⁶⁵ Heineken submitted further evidence in relation to these areas (eg maps with locations of the Parties’ pubs and competitors’ pubs) intended to show that competition concerns did not arise.
165. The CMA considers that sensitivities are a good method for checking the effects of small changes to a filtering methodology on the results produced (in particular where there is some uncertainty around the different measures used in a filter). The CMA recognised that the catchment areas for wet-led pubs are narrower than those used in *Greene King/Spirit*, and that there was some variability in the catchment area sizes submitted by third parties. The CMA therefore agreed with Heineken that a sensitivity check was appropriate in these circumstances.
166. However, based on an individual analysis of the 19 areas that would fall below the 35% threshold when this filter is applied, the CMA considers that *prima facie* competition concerns may arise in some of these areas.⁶⁶ The CMA therefore considers that a filter incorporating this sensitivity cannot be used as a robust and reliable basis to screen out non-problematic areas.
167. Notwithstanding the CMA’s view that the secondary urban/rural wet-led drive-time flex described above cannot be used as a screening filter, the CMA considered whether the information submitted by Heineken to support the proposed sensitivity across these 19 areas could provide a reliable basis to systematically identify areas in which the *prima facie* competition concerns identified could be dismissed.
168. In its submission to support the application of the secondary urban/rural wet-led drive-time flex, Heineken submitted that competition concerns do not arise within those 19 areas for one or more of the following reasons:

⁶⁴ The CMA notes that the Parties only applied a 20% urban and rural wet-led catchment sensitivity to those pubs that failed the secondary filter. The CMA does not consider that this is the appropriate use of sensitivity analysis because: (a) applying this only to the secondary filter means that different catchments are being used for overlaps and competitors; and (b) if it is used to simply clear areas without further analysis this is equivalent to suggesting that the correct catchment is wider, eg 6 minutes not 5 minutes.

⁶⁵ The Thornton Arms in Burnley, the Poynters Arms Dunstable, the Bells Bar Glasgow, the Drum Bar Glasgow, the Kimberley Glasgow, the Strathspey Bar Glasgow, the Tyneside Tavern Haddington, the Coach & Horses Hexham, the Steadings Kirkcaldy, the Bulls Head Loughborough (East Leake), the Nags Head Loughborough, the Oddfellows Arms Pinner, the Crown & Anchor Plymouth, the Dolphin Plymouth, the Grapes Inn, Preston, the Plungington Preston, the 1314 Inn Stirling, the Anchor Bar Stirling and the Dynevor Arms Treharris

⁶⁶ For example, the Coach & Horses, Tyneside Tavern and the Oddfellow Arms.

- (a) Proximity: Heineken suggested that additional pubs are “*likely to exercise an effective competitive constraint on the centroid pub*” because they are located just outside the catchment area of the centroid pub or are located close to other pubs that are within the catchment area of the centroid pub. However, Heineken’s submissions did not provide any evidence that pubs of this type would be expected to effectively constrain the centroid pub (but merely noted the location of the pubs).
- (b) Transport links: Heineken suggested that additional pubs are likely to exercise an effective competitive constraint on the centroid pub because they are located on “*the main transport routes running through the catchment areas.*”⁶⁷ However, Heineken’s submissions – which mainly consisted of listing a major road upon which the additional pub is located – did not provide any evidence that being located on such a transport route enables a pub to compete across a broader catchment (and therefore to effectively constrain the centroid pub). The CMA notes, in addition, that any advantages in being located on a major road should, at least to some extent, already be reflected within the calculation of drive-times.
- (c) Asymmetric constraint: Heineken noted that some centroid pubs are located in sparsely populated rural areas that lie close to a town/village. In those circumstances, Heineken submitted that “*it is arguable that*” the pubs within that town/village should be included as effective competitors on the basis that they asymmetrically constrain the centroid pub because customers “*may have a greater propensity to travel into urban areas.*” Again, Heineken’s submissions provide no further evidence in relation to the broader constraint that could be exercised by pubs in the town/village in such circumstances. In addition, the urbanicity of the area in which the centroid pub is located is already taken into account in the catchment area (ie for wet-led pubs in rural areas, a drive-time that is double the size of that in urban areas has been used).
- (d) Traffic systems: Heineken suggested that traffic systems (eg one-way systems) could result in additional pubs that exercise an effective competitive constraint on the centroid pub being excluded from the catchment area. Heineken submitted that these pubs would constrain the centroid pub because of their ‘*geographic proximity*’ (notwithstanding that the drive-times are longer). Again, however, Heineken’s submissions provided no further evidence (eg in relation to walking times or other

⁶⁷ See, eg, the 1314 Inn in Stirling and the Dynevor Arms in Treharris.

evidence showing that such pubs are viable alternatives for the customers of the centroid pub in this type of situation) to support this position.

169. The CMA therefore considers that it is not possible to the *prima facie* competition concerns that arise within these areas for any of the reasons above.
170. Notwithstanding the limited weight that can be placed on the evidence provided in Heineken's submissions (for the reasons described above), the CMA considers that competition concerns can be dismissed, in some cases, on the basis of the absolute and relative distances between the centroid pub and (a) Parties' pubs and (b) competitor pubs.
171. The CMA notes that the available evidence shows that distance is a key parameter of competition (in contrast to the factors described in paragraph 168 above, which are not sufficiently supported by the evidence). More specifically, in a number of cases, the CMA found that pubs were "clustered" in certain smaller areas within the catchment area, and therefore that pubs from outside the "cluster" would likely be more remote competitive constraints.
172. On this basis, the CMA currently believes that there is no realistic prospect of an SLC in relation to the following three centroid pubs:
 - (a) Drum Bar (Glasgow).
 - (b) The Crown and Anchor (Plymouth).
 - (c) The Dolphin (Plymouth).

Conclusion

173. Accordingly, the CMA considers that the additional information provided by Heineken in relation to proposed application of a 'secondary urban/rural wet-led drive-time flex' in the 19 areas does not support the use of such a sensitivity analysis. The CMA has also considered whether the information provided could provide a reliable basis to systematically identify areas in which the *prima facie* competition concerns identified could be dismissed. On this basis, the CMA has been able to dismiss competition concerns in three areas (on the basis of the absolute and relative distance between the Parties' pubs and competitor pubs).⁶⁸ The CMA believes that there is a realistic prospect of an SLC within each of the remaining 16 areas.

⁶⁸ Drum Bar (Glasgow), The Crown and Anchor (Plymouth), The Dolphin (Plymouth), Grapes Inn (Preston).

Remaining areas that did not pass the filter

174. Heineken made two further submissions on the remaining 24 areas that did not pass any filter (including Heineken's proposed 'secondary urban/rural wet-led drive-time flex'). In these submissions, Heineken noted certain factual inaccuracies, identified a number of additional competitors, and set out a wide variety of additional factors that it considered show that the Parties' pubs are not close competitors within various local areas.
175. The CMA notes that the threshold for including additional competitors in a local area is high in a phase 1 investigation. Additional competitors (whether additional fasciae or sites outside the catchment area used for a primary filter) are only likely to be included where clear and convincing evidence, relating to a set of objectively-defined criteria, can be provided to support their inclusion.⁶⁹
176. There is limited time available within a phase 1 investigation to conduct a detailed competitive assessment of a large number of local areas and/or to verify the submissions made by the merging parties in relation to these areas, particularly given the number of pubs acquired in this case.⁷⁰
177. The CMA notes that competitive assessment will typically be based on an assessment of factors (the relevance of which is sufficiently established by the available evidence) that can be systematically applied across all local areas, rather than an in-depth assessment of the varied indicators of competition (such as those put forward by the Parties in this case) on an area-by-area basis. The CMA is also of the view that it would not be appropriate to consider systematic factors of competition, such as those submitted by Heineken and referred to in paragraph 168, where these could undermine the initial filters used by the CMA. In this case, the CMA has used two initial filters (supported by relevant evidence) to dismiss competition concerns. The CMA is unable to assess whether competition concerns would arise within these areas (or differently calibrated areas) if the additional parameters suggested by Heineken were to be applied across all areas (because these parameters have only been considered within the areas that failed the initial filtering). The CMA will therefore typically be unable to take such parameters into account

⁶⁹ In *Co-operative / David Sands* (one of the few such cases), the OFT noted that: "*The OFT has assessed the additional competitors on the following characteristics: geographical proximity to the parties' stores, product offering, store size (net sales area), opening hours, parking availability and association with a multi-store operator (such as a regional chain of stores). The parties provided a range of documentary evidence to inform the OFT's assessment of competing fascia in these six local areas based on the above criteria.*" OFT decision in the [Anticipated Acquisition by Co-Operative Group Limited of David Sands Limited](#), ME/5317/12, February 2012, Paragraph 49.

⁷⁰ The CMA acknowledges that this approach deviates to a certain extent from the second stage approach in *Greene King/Spirit*, in particular the factor mentioned under (e) in paragraph 119 of that decision.

where their application has not been considered across all local areas (leaving aside whether such parameters are supported by the evidence available to the CMA).

178. In relation to non-systematic factors submitted by the Parties, the CMA has not received sufficient evidence to support the relevance of such factors to competitive assessment. In this regard, Heineken has provided extensive examples of differentiation between the Parties' pub offerings (eg the provision of quiz nights or live music events, the availability of outdoor seating or off-road parking facilities, whether a pub is 'well-lit' or 'dimly-lit', whether a pub is 'dog-friendly', the availability of facilities for disabled customers *etc.*). However, Heineken has not explained why such factors are relevant to competitive assessment.

179. Accordingly, for the remaining 24 areas that did not pass the filters applied, the CMA has only been able to dismiss competitive concerns where clear evidence has been provided to correct factual inaccuracies that had originally resulted in the filter being failed. These inaccuracies, and the basis upon which competition concerns can be dismissed when these inaccuracies are corrected, are described below.

- *Incorrect categorisation in the CGA database*

180. Heineken submitted that the CGA had incorrectly classified the Butcher Shop Bar & Grill in Glasgow as a pub and that it should be treated as a restaurant. On that basis, the Gallery Bar (owned by Punch) area would be cleared because there would be no overlap between the Parties (given that the Butcher Shop Bar & Grill is the only Star pub in the catchment area of the Gallery Bar).

181. Following verification of the additional evidence provided by the Parties, the CMA believes that there is no realistic prospect of an SLC in this area.

- *Incorrect postcode*

182. Heineken suggested that certain pubs would pass the primary filter following the correction of postcode location that was incorrect in the outlet database or CGA Index. Heineken submitted that the following areas would pass the primary filter on this basis:

- (a) The Gaer Inn in Newport, because there would be no overlap between the Parties; and
- (b) The Royal Oak in Treharris, because there would be an additional competitor within the centroid pub's catchment area (The Quaker's Yard

Inn), which would mean that the Parties' combined share of supply would fall below [35]%).

183. Following verification of the additional evidence provided by the Parties, the CMA believes that there is no realistic prospect of an SLC in these two areas.

- *Incorrect exclusion from CGA database*

184. Heineken had, on a conservative basis, initially excluded third party pubs that had not been surveyed by CGA in the last 18 months from the filtering analysis. Heineken submitted that the following pubs had been excluded from the CGA database in error and continued to operate as effective competitors to the Parties' pubs:

(a) The Golf Tavern which should be included in the catchment area of the Plough Tavern in Haddington;

(b) The Manor Arms which should be included in the catchment area of the Farmers Boy in Walsall;

185. Following verification of the additional evidence provided by the Parties, the CMA believes that there is no realistic prospect of an SLC in these two areas.

- *The sale or surrender of one of the Parties' pubs*

186. Heineken stated that it intends to sell or surrender certain pubs that fall within the catchment area of a centroid pub (and that the centroid pub would pass the primary filter following such a sale/surrender). Heineken states that it currently intends to sell/surrender the following pubs:

(a) *The White Hart*: Heineken submitted evidence showing that it gave notice to the landlord to surrender the headlease of this pub on November 2017. Following the surrender of the headlease, there will be no overlap between the Parties in the local area of the Railway Tavern, London and this local area will also no longer fail the secondary filter (ie the geographic proximity test). The CMA therefore currently considers that there is no realistic prospect of an SLC in this local area.

(b) *The Abbey Granary*: Heineken submitted that is currently marketing and intends to sell the Abbey Granary pub in the local area of the Waverley Hotel pub in Bonnyrigg. As [REDACTED], the CMA considers that it is unable to conclude with sufficient certainty that this pub will be sold. The CMA therefore currently considers that there is a realistic prospect of an SLC in this local area.

Conclusion

187. Accordingly, following the consideration of the arguments and evidence provided in relation to the above areas, the CMA considers that, from the 40 local areas that fail the primary or secondary filtering, competition concerns would not arise within seven of those areas (the Gaer Inn in Newport, the Royal Oak in Treharris, the Gallery Bar in Glasgow, the White Hart and the Railway Tavern in London, the Plough Tavern in Haddington and the Farmers Boy in Walsall). However, the CMA believes that there is a realistic prospect of an SLC within the remaining 33 areas.

188. For the reasons explained above, the CMA believes that there is a realistic prospect of an SLC in the 33 areas listed in Annex 2.

Provision of overnight accommodation

189. The Parties each operate several pubs that offer overnight accommodation.

190. At the national level, the Parties' combined share of supply in overnight accommodation is very small, estimated at less than [0-5]%. The CMA considers that this is at a level at which competition concerns are very unlikely to arise.

191. At the local level, there are no Star pubs with 10 or more rooms within a five-mile radius of a Punch pub with 10 or more rooms.

192. For these reasons the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the market for the provision of overnight accommodation on either a national or local basis.

Conclusion on horizontal unilateral effects

193. For the reasons set out above, the CMA finds that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the operation of pubs in the 33 local areas listed in Annex 2. The Merger does not give rise to an SLC in the provision of overnight services due to the small combined share of supply and the limited overlap of the Parties' pubs with regard to 10 or more rooms on a local level.

Vertical effects

194. Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between an upstream supplier and a downstream customer.

Brewing activities

195. Heineken brews beer (ale, lager and stout) and cider and sells it to both on-trade customers (including its own pubs and other pub operators) and off-trade retailers. Heineken supplies Punch A with around [✂] barrels of beer annually.
196. The CMA therefore considered whether vertical effects in the supply of beer may arise as a result of the Merger. Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between an upstream supplier and a downstream customer or a downstream competitor of the supplier's customers.
197. To assess vertical theories of harm, competition authorities typically consider:⁷¹
- (a) The ability of the merged firm to harm rivals (eg by raising prices or refusing to supply them);
 - (b) The incentive of the merged firm to do so (ie whether it would be profitable to do so); and
 - (c) Whether the effect of any action by the merged firm would be sufficient to reduce competition in the affected market to the extent that it gives rise to an SLC.
198. A large number of third parties (over 1,200 in total) have raised concerns that the Merger could lead to a reduction in choice of beers and cider, in particular those produced by smaller breweries, at the local level. Many third parties also suggested that the Merger could make it difficult for small brewers to find pubs that would sell their beer and/or cider. Third parties considered that such concerns could be exacerbated by the possibility that the Merger could trigger a wave of consolidation and vertical integration in the operation of pubs, with large brewing companies seeking to regain a large market share in the operation of pubs (as they had held before the Beer Orders).
199. The CMA has assessed whether the Merger gives rise to vertical competition through potential input foreclosure, customer foreclosure, or the potential degradation of the Parties' service offering downstream (though a reduction in the choice of beer and cider available in certain Punch pubs).

⁷¹ [Merger Assessment Guidelines](#) (OFT1254/CC2), paragraph 5.6.6.

Input foreclosure

200. The CMA investigated whether the Merger would give rise to input foreclosure concerns on the basis that Heineken would no longer supply rival pubs or pub chains, or supply them on worse terms, with the intention of driving customers to Heineken's own pubs post-Merger.
201. Heineken submitted that it has never previously pursued a strategy of limiting or restricting supply to competitor non-Star pubs and has never considered such a strategy (which it said would be uncommercial and impossible to implement). Such a selective strategy would require detailed monitoring of local markets and knowledge of the competitive dynamics in each local area and so would present practical challenges. In any event, Heineken could not prevent non-Star pubs from obtaining and selling Heineken brands because in addition to acquiring Heineken brands directly from Heineken, pubs have other sources of supply, for example wholesalers such as Matthew Clarke.
202. No third party raised concerns about potential input foreclosure.
203. In the present case, Heineken's national share of the supply of beer is moderate: Heineken has around [20-30]%(by value) of all supply to on-trade, and a similar proportion ([20-30]%(by value)) for supply to off-trade. If lager and ale/stout are considered separately, Heineken's national share of lager is around [20-30]%(by value) for the supply to on-trade and [20-30]%(by value) to off-trade, while for ale and stout its national share is approximately [10-20]%(by value) for the supply to on-trade and [10-20]%(by value) for the supply to off-trade. For cider, Heineken's national share is higher with [40-50]%(by value) for the supply to on-trade and [30-40]%(by value) for the supply to off-trade.
204. The CMA therefore considers that Heineken would lack the ability to foreclose other pubs from access to beer and cider, in particular because of its modest share, its inability to stop pubs from purchasing Heineken drinks through other channels, and the wide range of other beer and cider products available from alternative suppliers.
205. As the CMA has concluded that Heineken would have no ability to foreclose, there has been no need to assess whether Heineken would have the incentive to foreclose its competitors or the effects of a foreclosure strategy on competition.
206. The CMA therefore believes that the Merger will not give rise to realistic prospect of an SLC as a result of input foreclosure.

Customer foreclosure

207. The CMA investigated whether the Merger would give rise to customer foreclosure concerns on the basis that Heineken could seek to limit the volumes of beer or cider supplied by other brewers in Punch A pubs post-Merger (or could even stop stocking rivals' products altogether). As explained further in paragraph 115 above, some third parties also suggested that the arrangements in place between Heineken and Patron would limit the extent to which competing brewers would continue to be able to supply beer to the Punch B pubs.
208. Competition concerns in relation to customer foreclosure can only arise where the Merged Entity would have the ability to foreclose access to downstream markets (ie because the Merger affects an important route to market). The available evidence shows, however, that Heineken would not have the ability to foreclose rival brewers post-Merger, in particular because brewers have a broad range of alternatives to sell their products.
209. The Merged Entity's share of pubs amounts to only around 6% on a national basis (with an increment of 4% brought about through the acquisition of Punch A pubs). The Merged Entity will therefore not be a key route to market (ie of such scale and importance as to effectively foreclose access to the on-trade market).
210. Some third parties suggested that Punch is a more important route to market than its share of pubs indicates because the supply to a significant proportion of the market is not contestable (because the pubs are vertically integrated or are party to long-term exclusive supply arrangements with brewers). However, even if these pubs (and the Punch B pubs) were to be excluded from the contestable market,⁷² the CMA estimates that around two-thirds of the market (around 31,000 pubs) will remain open to brewers post-Merger.⁷³ The CMA therefore considers that, while the Merger would be commercially unattractive for some brewers currently supplying the Punch A estate, customer foreclosure concerns do not arise even where such pubs are not considered to be contestable for independent brewers.
211. Notwithstanding Punch A's limited presence in the downstream market, the CMA has further investigated the importance of Punch A as a route to market

⁷² As explained above, the available evidence indicates that supply contracts are characterised by a significant level of churn, suggesting that these contracts should, in practice, be considered to be contestable.

⁷³ This estimate is based on CMA analysis of evidence provided by large brewers in relation to their exclusive supply agreements, the CGA index, and the Parties' assessment of how many pubs on the CGA are currently active.

(in particular for smaller brewers) by analysing the current supply position to the Punch A pubs.⁷⁴ This analysis shows that:

- (a) On average, sales to Punch A pubs amount to only around 3% of rival brewers' on-trade sales; only three brewers sold more than 5% of their total on-trade sales to Punch A pubs and only one brewer sold more than 10% of its on-trade output (12%) to Punch A pubs;⁷⁵
- (b) Even when looking at sales to the whole Punch estate (i.e., the Punch A and Punch B pubs), sales to Punch exceed 20% of all on-trade sales for only one brewer and exceed 10% of all on-trade sales for only a further two brewers. Accordingly, for the vast majority of respondents, sales to Punch amount to less than 10% of all off-trade sales.
- (c) The most significant suppliers to Punch A are large national or multinational brewers. The top 5 suppliers of Punch A pubs (which are all large national or multinational brewers) represent around [60-70]% of the total drinks supplied to these pubs. As noted above, sales to Punch A amount to only a modest proportion of these suppliers' on-trade sales of beer/cider in the UK; and
- (d) Smaller local brewers operating on a regional or local basis therefore represent a smaller proportion of the total purchases by Punch A. Nevertheless, the evidence submitted by the brewers that responded to the CMA's investigation again shows that these brewers sell a relatively limited proportion of their total output to the Punch A pubs.

212. This analysis is therefore consistent with the position that the Merger does not affect an important route to market for brewers.
213. As Heineken would lack the ability to foreclose rival brewers, the CMA has not considered Heineken's incentive to foreclose rivals or the effect that such a strategy (if it would have been possible) would have on upstream competition in relation to brewing.
214. The CMA therefore believes that the Merger will not give rise to a realistic prospect of an SLC as a result of customer foreclosure, because the Punch A pubs account for only a small proportion of all GB pubs and are therefore not an important route to market.

⁷⁴ More than 25 small and large brewers responded to the CMA's merger investigation.

⁷⁵ The CMA estimated these figures by taking customers' sales to the entire Punch estate and multiplying it by 0.58 (which is the proportion of Punch pubs that Heineken are purchasing).

215. The CMA's analysis in this regard is, of course, limited to the Merger at issue and therefore does not take any possible future consolidation or vertical integration into account.⁷⁶ Changes to the market structure brought about by the Merger would be reflected in the counterfactual against which any subsequent transactions within this sector that fall under the CMA's jurisdiction would be assessed.

Reduction of range in Punch A and Star pubs

216. The CMA also investigated whether the relationship of Heineken as a vertically integrated brewer, wholesaler and pub owner could lead to a vertical concern in relation to the potential degradation of Punch's commercial offering within certain local areas.

217. Punch A pubs are not currently vertically integrated with a brewer. A large number of third parties submitted that the range of drinks that the Punch A pubs are currently able to offer is far wider than the range of drinks available to Star pubs (eg in terms of local cask ale or lager) and raised concerns that the Merger will lead to a reduction in choice of beers and cider, in particular from small local breweries.

218. Therefore, such effects result from the position of Heineken, as the supplier of drinks to the pubs that form part of its group (ie the Star pubs at present), and the position of certain Punch pubs that it will own after the Merger. More specifically, the CMA has assessed whether, as a result of the Merger, Heineken will have the ability and incentive to reduce the range of drinks in the Punch A estate in order to maximise Heineken brand sales (as it does in Star pubs) and, if so, whether this could have a harmful effect on competition within these local areas.⁷⁷

219. Any potential concerns relating to a reduction in choice in the local areas in which an overlap between the Parties is brought about through the Merger are addressed in the horizontal unilateral effects analysis above. Accordingly, the concerns investigated in this section are limited to areas in which Punch A alone is active (and has a large share of pubs), which will become vertically integrated with Heineken's brewing activities as a result of the Merger.⁷⁸

⁷⁶ The CMA's statutory duty under part 3 of the Act is to assess the effects of a specific merger and not general trends in a certain industry.

⁷⁷ In assessing the competition effects of a merger, the CMA considers all aspects of PQRS, and not just price.

⁷⁸ Local areas in which there is only a single Punch A pub are also not considered further within this theory of harm, which is based on a loss of range across at least two Punch A pubs.

Reduction of range across Punch A pubs in some local areas

220. Competition concerns in vertical mergers typically arise as a result of foreclosure. However, competition concerns can also arise where a non-horizontal merger changes the ability and incentive of the merging companies to compete in other ways that cause harm to consumers.
221. The CMA investigated whether Heineken will have the ability and incentive to reduce the range of drinks available in Punch A pubs (by offering these pubs less choice) post-Merger. The CMA considered whether a realistic prospect of an SLC could arise within certain local markets because:
- (a) The overall range of drinks available in an area could decrease, because Punch A pubs will have to choose from a smaller range of beer and cider. Punch A pubs may also be less able to differentiate themselves to the same degree post-Merger (including against other Punch A pubs, with which they currently “compete” to some extent based on the choice of beers and ciders that they stock); and
 - (b) Third party pubs that currently compete with Punch A pubs to attract customers who value a variety of drinks will perceive less competition, which may lead them to compete less strongly on range (or other aspects of PQRS).

Ability to change the range of drinks offered in Punch A pubs post-Merger

222. While there are currently some supply agreements in place between Punch A and other brewers (either directly or via wholesalers), the CMA’s investigation indicates that Heineken will be able to introduce more of its own brands at the expense of other brands over time. As explained above (see paragraphs 69-92), the Parties’ lease and tenancy agreements allow them to change the list of drinks offered and any purchasing obligations.
223. The CMA therefore believes that the Merged Entity would have the ability to change the range of drinks offered in Punch A pubs after the Merger.

Incentive to change the range of drinks offered in Punch A pubs post-Merger

224. The CMA notes that Heineken has, in principle, a strong incentive to increase the sales of its own products to Punch A pubs post-Merger because of the higher upstream margin earned on these products relative to third party drinks ([X] % for all Heineken brands compared with [X] % for all non-Heineken brands). This is consistent with the position expressed in Heineken’s internal

documents,⁷⁹ which suggest that it aims to increase the volumes of Heineken drinks sold in the Punch A pubs.

225. On this basis, Heineken would have the incentive to offer a narrower choice of beers to tenants than Punch does at present, or to otherwise provide an incentive to Pub operators to sell the Heineken brands on which it receives a higher margin. The available evidence shows that Heineken already pursues such a strategy in the Star estate, aiming to selling [X]% of Heineken products in the pubs it owns.
226. The CMA notes, however, that Heineken also has a strong incentive not to pursue commercial policies that are liable to reduce the competitiveness (and therefore the revenues) of its downstream pubs.
227. In support of this position, Heineken submitted that its commercial rationale for the Merger is based on plans for significant and sustained investment within the acquired estate (which Heineken considers would be inconsistent with any plans to degrade the competitive offering at any of the acquired pubs). To this end, Heineken submitted evidence showing that it intends to invest on average £[X] per Punch A pub over a [X]-year period (a figure greater than Punch's planned investment absent the Merger).
228. The CMA considers that the available evidence in relation to whether Heineken would have the incentive to take actions that would reduce the range of drinks offered in certain Punch A pubs post-Merger is not clear-cut. Heineken has an incentive to maximise sales of Heineken branded-product, but this should be weighed against the profits that could be lost downstream in pubs where range is an important component of competition. Heineken, therefore, is only likely to have a clear incentive to reduce the range of drinks at Punch A pubs where doing so would not significantly affect the overall competitiveness of Punch A pubs.
229. In any case, the CMA has not been required to conclude on whether Heineken would have the incentive to adopt such a strategy because, for the reasons described below, such a strategy would not have a substantial effect on competition at the local level.

⁷⁹ See [X] and [X]

Effect on competition in the operation of pubs

- *The competitive significance of the range of beer and cider*

230. In assessing the effect on competition that a strategy to change the range of drinks offered in Punch A pubs post-Merger would have, the CMA has assessed the importance of range (of beer and cider) as a parameter of competition within the operation of pubs.
231. Almost all third-party pub operators that responded to the CMA's investigation stated that the range of drinks offered is a relevant parameter of competition between pubs (with several of those responses emphasising that range is a key parameter of competition).
232. This is consistent with evidence submitted by Heineken showing that the number of taps and different beers available in an average pub had increased (in part due to increased demand of consumers for local and regional craft beers).
233. Some industry reports also highlight the importance of range. For example, a report by Mintel suggests that "*most operators are also now responding to the increasing range of drinks in the off-trade by broadening their ranges.*"⁸⁰
234. Evidence submitted by Heineken also shows, however, that range is one of many parameters of competition and, in particular, that beer and cider range is not a key criterion on which customers choose pubs. Accordingly, Heineken submits that any assessment of range should not only encompass beer and cider, but also other drinks, food and other offerings such as live music events.
235. Heineken referred to two consumer surveys to support this position. These two consumer survey reports were a Mintel report (2016) and survey by Cardinal (2015). According to Heineken, the Mintel report shows that range is not important because the range of drinks offered in a pub was not even considered as an option to present to respondents asked to indicate the factors that are likely to drive their decision-making in choosing a pub/bar. According to Heineken, the Cardinal survey shows that the drinks range or presence of specific brands is not a top three drivers of choice of pub/bar. Location was by far the most important driver (identified by 68% of respondents), followed by atmosphere and décor (31%), and then good staff and service (27%).

⁸⁰ P10, Mintel Report 'Pub Visiting UK May 2016', Appendix 10(6)

236. The CMA considers that these surveys generally support Heineken's submissions that range is typically not one of the most important parameters of competition between pubs at the local level.⁸¹
237. Heineken also submitted that if tenants felt that range was important and they were no longer able to compete as well on range, then they would adjust PQRS in some other way to remain competitive.
238. The CMA agrees that the different parameters of competition should not be considered in isolation. In the local areas where range is an important factor to customers, the incentive to deteriorate the overall offer in Heineken pubs post-Merger would be lower because tenants (and Heineken) will lose customers to other pubs. In the local areas in which range is a less important factor, any changes in range would typically not have a significant effect on competition.
239. Accordingly, on the basis of the available evidence, the CMA believes that the range of beer and cider is an important part of a pub's competitive offering, but is ultimately only one of several parameters upon which pubs compete at a local level (many of which are just as important, or more important, to consumer decision-making). Any potential reduction in range could therefore only have a relatively limited impact on competition overall at the local level.
- *The scale of any possible reduction in range*
240. The CMA has also assessed the likely scale of any reduction in range that consumers would experience as a result of a strategy to change the range of drinks offered in Punch A pubs post-Merger.
241. A number of third parties submitted that, in general, the range of beers (in particular cask beer) offered in Punch pubs is broader than the range of beers offered at Star pubs. One third party, in particular, submitted that a current Pub tenant has access to a cask beer range that is 156% larger than that of a Star tenant and that a Punch tenant is able to opt in the SIBA Beerflex scheme, which provides access to over 3,500 draught and bottled beers.

⁸¹ It is not clear to the CMA why 'range' was not included amongst these options. In addition, a third party submitted survey evidence which is intended to capture the views of Punch tenants and a small number of other pub owners. More than 80% of the respondents indicated that Punch's wide stocking policy was very important to running their business and more than 90% of respondents were of the view that a reduction of choice would damage their business. More than 80% of respondents were of the view that Heineken taking over the Punch A estate would cause them to lose customers, inter alia because of a reduction in the choice of beer and cider that they would be able to offer. The CMA has concerns about the robustness of the survey and therefore was only able to put limited weight on these findings.

242. This is consistent with data provided to the CMA by the Parties,⁸² which indicate that the range of beers available to pubs in the Star estate is smaller than that currently available to the pubs in the Punch estate.
243. Heineken submits that its beer tie does not prevent effective range competition. In particular, Heineken notes that it already [X] to ensure its pubs have access to a wide range of beer and cider and expects this commercial policy to apply equally to the Punch A estate (eg Heineken UK forecasts that it will only achieve a [X]% level of Heineken brand penetration in the Punch A estate over [X]).
244. This is particularly the case in relation to ales, where only [X]% of ale sold in Star pubs was Heineken product (compared with nearly [X]% overall beer and cider).⁸³ Heineken suggested that this was consistent with its current intention to conclude a supply agreement with SIBA in order to provide local ales for its Star estate.⁸⁴
245. The available evidence also indicates that a comparison between the ranges of beer available to Star and Punch A tenants may overstate the significance of differences in range. [The vast majority] of lager currently sold to the Punch A estate is supplied by the four major brewers. As regards beers supplied to Punch A tenants by SIBA, only [X] ([30-40]%) of the 3,500 brands of draught and bottled beer available to Punch A tenants were purchased by Punch A tenants in the last year for which data are available, with only [X] ([10-20]%) of those brands being bought in volumes greater than 1Hl.
246. Moreover, notwithstanding the long list of drinks offered by Punch to its tenants, the CMA recognises that Heineken has a wide range of beers that will enables it to fill different pubs with different sets of beers. The CMA notes, in this regard, that Heineken is considered to be particularly strong in lager (in relation to which [the vast majority]% of total volumes currently supplied to the Punch A estate is supplied by the four major brewers), but less strong in ale (where, as noted above in paragraph 244, it tends to make more third party products available).

⁸² See, in particular, Annex 14(1) (Star's drinks price list) and Annexes 14(15)-14(16) (drinks supplied to Punch) of the Merger Notice.

⁸³ To support its submission Heineken provided [information showing that the number of third party ales sold in Starr pubs is significantly higher than the number of standard Ales sold in those pubs.].

⁸⁴ SIBA is the Society for Independent Brewers and which represents more than 800 regional and local brewers in the UK, which account for about half of all brewers in the UK that produce less than 200,000hl but around 90% of the volume. Overall, SIBA's members account for about 7% of all beer in the UK, but this number would be substantially higher if only considering cask ale.

247. Accordingly, on the basis of the available evidence, the CMA believes that any potential reduction in the range of beer and cider available to Punch A pubs post-Merger is likely to be limited.

Conclusion

248. For the reasons explained above, the CMA considers that the Heineken's incentive to change the range of drinks offered in Punch A pubs post-Merger is not clear-cut (notwithstanding its upstream activities in brewing). In particular, while Heineken has an incentive to maximise sales of Heineken branded-product, this has to be weighed against the profits that could be lost downstream in pubs where range is an important component of competition.

249. In any case, the evidence available to the CMA indicates that any potential effect on competition would not be substantial, in particular because: (i) the range of beers and ciders available has only a limited impact on competition between pubs at the local level; (ii) any potential reduction in range is likely to be limited in practice (given the current stocking policies of the Punch A tenants and the choice of drinks available to Star tenants).

250. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC as a result of a potential reduction in the range of drinks in Punch A pubs post-Merger.

COUNTERVAILING CONSTRAINTS

Barriers to Entry and expansion

251. Entry, or expansion of existing firms, can mitigate the initial effect of the acquisition on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.⁸⁵ In terms of timeliness, the CMA's guidelines set out that the CMA will look for entry to occur within two years.⁸⁶

252. The Parties submit that entry barriers for pub operations are not significant, when ownership of an existing pub is transferred and a tied pub could be opened with an investment of £5,000. According to Heineken, a new build pub

⁸⁵ [Merger Assessment Guidelines](#), paragraph 5.8.3

⁸⁶ [Merger Assessment Guidelines](#), paragraph 5.8.11

would cost around £2.5 million and would take around 2 years to open, which is in line with what third parties indicated in *Greene King/Spirit*.⁸⁷

253. The CMA has not been provided with sufficient evidence that entry or expansion is likely to occur in a specific local area where competition concerns arise. Therefore, the CMA considers that entry or expansion would not be sufficient to prevent a realistic prospect of an SLC as a result of the Merger.

Decision

254. Consequently, the CMA believes that it is or may be the case that the Merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.
255. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised⁸⁸ whilst the CMA is considering whether to accept undertakings⁸⁹ instead of making such a reference. The Parties have until 20 June 2017⁹⁰ to offer an undertaking to the CMA.⁹¹ The CMA will refer the Merger for a phase 2 investigation⁹² if the Parties do not offer an undertaking by this date; if the Parties indicate before this date that they do not wish to offer an undertaking; or if the CMA decides⁹³ by 27 June 2017 that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it.

Andrea Coscelli
Acting Chief Executive of the CMA
Competition and Markets Authority
13 June 2017

⁸⁷ See *Greene King/Spirit*, paragraph 169.

⁸⁸ Section 33(3)(b) of the Act.

⁸⁹ Section 73 of the Act.

⁹⁰ Section 73A(1) of the Act.

⁹¹ Section 73(2) of the Act.

⁹² Sections 33(1) and 34ZA(2) of the Act.

⁹³ Section 73A(2) of the Act.

ANNEX 1 – List of pubs that fail the primary filter

CGA Indent	Name	Town	Postcode	Owner	Urban	Type
2492	Trident	Birmingham	B34 7EN	Punch	Urban	Wet
19659	Dynevor Arms	Treharris	CF46 6NF	Punch	Urban	Wet
27154	Lord Nelson Inn	Warwick	CV34 5QE	Punch	Urban	Wet
34710	Wheatsheaf	Brigg	DN20 9EB	Punch	Rural	Dry
40195	Spylaw Tavern	Edinburgh	EH13 0JT	Punch	Urban	Wet
40238	Woodhall Arms	Currie	EH14 5NZ	Punch	Urban	Wet
40251	Colinton Inn	Edinburgh	EH13 0LQ	Punch	Urban	Wet
40354	Polton Inn	Lasswade	EH18 1BS	Punch	Urban	Wet
40367	Waverley Hotel	Bonnyrigg	EH19 3BB	Punch	Urban	Wet
40369	Royal Oak	Bonnyrigg	EH19 3DE	Punch	Urban	Wet
40911	Queens Retreat	South Queensferry	EH30 9PH	Punch	Rural	Wet
40916	Inchcolm Inn	South Queensferry	EH30 9RE	Punch	Rural	Wet
41113	Mercat Hotel	Haddington	EH41 3EP	Punch	Rural	Wet
41666	Port Oleith	Edinburgh	EH6 6RS	Punch	City Centre	Dry
45252	Anchor Bar	Stirling	FK7 0PA	Punch	Urban	Wet
48089	Gallery Bar	Glasgow	G3 8LX	Punch	City Centre	Dry
48186	Drum Bar	Glasgow	G32 7PE	Punch	Urban	Wet
48205	Strathspey Bar	Glasgow	G32 8UN	Punch	Urban	Wet
51906	Red Lion	Woking	GU24 8RG	Punch	Urban	Wet
52912	Oddfellows Arms	Pinner	HA5 3EN	Punch	Urban	Wet
59970	Chieftain Hotel	Inverness	IV2 3PS	Punch	Urban	Wet
63163	Steadings	Kirkcaldy	KY2 5RB	Punch	Urban	Wet
68421	Nags Head	Loughborough	LE12 6PG	Punch	Rural	Wet
68477	Three Crowns	Loughborough	LE12 8JS	Punch	Urban	Wet
74121	New Inn	Leeds	LS26 8AX	Punch	Urban	Wet
75034	Poynters Arms	Dunstable	LU5 4SJ	Punch	Urban	Wet
83609	Bird	Washington	NE37 2AL	Punch	Urban	Wet
83674	Bute Arms	Rowlands Gill	NE39 2BD	Punch	Rural	Wet
83780	Falcon	Prudhoe	NE42 5DN	Punch	Urban	Wet
83849	Coach & Horses	Hexham	NE46 1PQ	Punch	Urban	Wet
84969	Cuckoo Bush	Nottingham	NG11 0JL	Punch	Rural	Wet
85876	Boot & Shoe	Newark	NG23 5LA	Punch	Rural	Wet
89544	Gaer Inn	Newport	NP20 3GY	Punch	Urban	Wet
97142	Hagg Bar	Johnstone	PA5 8QY	Punch	Urban	Wet
100632	Dolphin	Plymouth	PL1 2LS	Punch	Urban	Wet
105245	Grapes Inn	Preston	PR3 2BH	Punch	Rural	Wet
116269	Railway Tavern	London	SE27 9BW	Punch	City Centre	Wet

125880	Vine Inn	Newcastle	ST5 6LX	Punch	Urban	Wet
137412	Masham	Stockton-on-tees	TS18 5DR	Punch	Urban	Wet
147565	Farmers Boy	Walsall	WS4 1HH	Punch	Urban	Wet
206973	Plough Tavern	Haddington	EH41 3DS	Punch	Rural	Wet
6005	Thornton Arms	Burnley	BB10 3JS	Star	Urban	Wet
12932	Ancient Mariner	Hove	BN3 5FE	Star	City Centre	Dry
19653	Royal Oak Nelson	Treharris	CF46 6DY	Star	Urban	Wet
26789	Roseycombe	Coventry	CV3 2AY	Star	Urban	Wet
30572	Bull & Bush Mackworth Estate	Derby	DE22 4JG	Star	Urban	Wet
40233	Kinleith Mill Edinburgh	Juniper Green	EH14 5EN	Star	Urban	Wet
40237	Riccarton Inn	Currie	EH14 5NX	Star	Urban	Wet
41130	Tyneside Tavern	Haddington	EH41 4DA	Star	Rural	Wet
41661	Kings Wark	Edinburgh	EH6 6QU	Star	City Centre	Dry
45278	1314 Inn	Stirling	FK7 0LJ	Star	Urban	Wet
48073	Butcher Shop Bar/grill	Glasgow	G3 7UD	Star	City Centre	Dry
48197	Kimberley	Glasgow	G32 8HB	Star	Urban	Wet
48206	Bells Bar	Glasgow	G32 8UP	Star	Urban	Wet
48217	Woodend Bar	Glasgow	G32 9QW	Star	Urban	Wet
52918	Sync Bar	Pinner	HA5 3TE	Star	Urban	Wet
68420	Bulls Head East Leake	Loughborough	LE12 6PG	Star	Rural	Wet
68480	Navigation Inn	Loughborough	LE12 8LQ	Star	Urban	Wet
74038	Gaping Goose	Leeds	LS25 1LR	Star	Urban	Wet
74384	Ilkley Moor Vaults	Ilkley	LS29 9HD	Star	Urban	Dry
83607	New Tavern	Washington	NE37 2AL	Star	Urban	Wet
83761	Lambs Arms Crawcrook	Ryton	NE40 4HJ	Star	Urban	Wet
83836	Globe Inn	Hexham	NE46 1BA	Star	Urban	Wet
84929	Wilsthorpe Tavern Long Eaton	Nottingham	NG10 3LJ	Star	Urban	Wet
85390	Kingsway Kirkby In Ashfield	Nottingham	NG17 7FN	Star	Urban	Wet
93861	Gate Inn	Oldham	OL3 5PQ	Star	Urban	Wet
105123	Plungington	Preston	PR2 3AR	Star	Urban	Wet
116268	White Hart	London	SE27 9BQ	Star	City Centre	Wet
119189	Crown Inn Cookham	Maidenhead	SL6 9SB	Star	Urban	Wet
125878	Bush Silverdale	Newcastle	ST5 6JZ	Star	Urban	Wet
137462	Penny Black	Stockton-on-Tees	TS18 5PU	Star	Urban	Wet
215534	Ship Inn	Wylam	NE41 8AQ	Star	Rural	Wet
248845	Crown & Anchor	Plymouth	PL1 2LS	Star	Urban	Wet

ANNEX 2 – List of pubs that fail the secondary filter

CGA Indent	Name	Town	Postcode	Owner	Urban	Type
19659	Dynevor Arms	Treharris	CF46 6NF	Punch	Urban	Wet
40238	Woodhall Arms	Currie	EH14 5NZ	Punch	Urban	Wet
40367	Waverley Hotel	Bonnyrigg	EH19 3BB	Punch	Urban	Wet
41113	Mercat Hotel	Haddington	EH41 3EP	Punch	Rural	Wet
45252	Anchor Bar	Stirling	FK7 0PA	Punch	Urban	Wet
48205	Strathspey Bar	Glasgow	G32 8UN	Punch	Urban	Wet
51906	Red Lion	Woking	GU24 8RG	Punch	Urban	Wet
52912	Oddfellows Arms	Pinner	HA5 3EN	Punch	Urban	Wet
63163	Steadings	Kirkcaldy	KY2 5RB	Punch	Urban	Wet
68421	Nags Head	Loughborough	LE12 6PG	Punch	Rural	Wet
75034	Poynters Arms	Dunstable	LU5 4SJ	Punch	Urban	Wet
83609	Bird	Washington	NE37 2AL	Punch	Urban	Wet
83780	Falcon	Prudhoe	NE42 5DN	Punch	Urban	Wet
83849	Coach & Horses	Hexham	NE46 1PQ	Punch	Urban	Wet
105245	Grapes Inn	Preston	PR3 2BH	Punch	Rural	Wet
125880	Vine Inn	Newcastle	ST5 6LX	Punch	Urban	Wet
6005	Thornton Arms	Burnley	BB10 3JS	Star	Urban	Wet
40369	Royal Oak	Bonnyrigg	EH19 3DE	Punch	Urban	Wet
26789	Roseycombe	Coventry	CV3 2AY	Star	Urban	Wet
40233	Kinleith Mill Edinburgh	Juniper Green	EH14 5EN	Star	Urban	Wet
40237	Riccarton Inn	Currie	EH14 5NX	Star	Urban	Wet
41130	Tyneside Tavern	Haddington	EH41 4DA	Star	Rural	Wet
45278	1314 Inn	Stirling	FK7 0LJ	Star	Urban	Wet
48197	Kimberley	Glasgow	G32 8HB	Star	Urban	Wet
48206	Bells Bar	Glasgow	G32 8UP	Star	Urban	Wet
68420	Bulls Head East Leake	Loughborough	LE12 6PG	Star	Rural	Wet
68480	Navigation Inn	Loughborough	LE12 8LQ	Star	Urban	Wet
74384	Ilkley Moor Vaults	Ilkley	LS29 9HD	Star	Urban	Dry
83607	New Tavern	Washington	NE37 2AL	Star	Urban	Wet
83761	Lambs Arms Crawcrook	Ryton	NE40 4HJ	Star	Urban	Wet
83836	Globe Inn	Hexham	NE46 1BA	Star	Urban	Wet
105123	Plungington	Preston	PR2 3AR	Star	Urban	Wet
125878	Bush Silverdale	Newcastle	ST5 6JZ	Star	Urban	Wet