

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

## Decision that undertakings might be accepted

**ME/6656-16**

The CMA's decision under section 73A(2) of the Enterprise Act 2002 that undertakings might be accepted, given on 27 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 at the request of the parties for reasons of commercial confidentiality.**

### Introduction

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. On 13 June 2017, the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger consists of arrangements that are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, and that this may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**).
3. On 13 June 2017, the CMA gave notice pursuant to section 34ZA(1)(b) of the Act to the Parties of the SLC Decision. However, the CMA did not refer the Merger for a phase 2 investigation pursuant to section 33(3)(b) on the date of the SLC Decision in order to allow the Parties the opportunity to offer undertakings to the CMA in lieu of such reference for the purposes of section 73(2) of the Act.
4. Pursuant to section 73A(1) of the Act, if a party wishes to offer undertakings for the purposes of section 73(2) of the Act, it must do so within the five working day period specified in section 73A(1)(a) of the Act.

5. On 20 June 2015, Heineken offered undertakings to the CMA for the purposes of section 73(2) of the Act. As required under section 73A(1) of the Act, Heineken made this offer within five working days beginning the working day after the CMA notified it of the SLC decision under section 34ZA(1)(b) of the Act.
6. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to Heineken that it considers that there are reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it is considering the offer.

## The undertakings offered

7. Under section 73 of the Act, the CMA may, instead of making a reference, and for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the merger parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
8. The Parties predominantly overlap in the operation of pubs in the UK. Pubs form part of the on-trade sector, which is comprised of premises which have a licence to serve alcoholic drinks for consumption on the premises.
9. The SLC Decision found that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) in relation to 33 local areas, specified in Annex 2 of the SLC Decision as a result of horizontal unilateral effects.
10. In relation to each of the 33 catchment areas in which the SLC Decision identified competition concerns (see Annex 2 of the SLC Decision), Heineken has offered to either divest certain pubs to address the increment caused by the Merger, or to divest the individual pub on which a particular catchment area was centred (referred to as the “centroid” pub) (the **Proposed Undertakings**). This means that, in some cases, to address the SLC identified by the CMA in a particular local area, Heineken offered to divest more than one pub. The divestment of one pub or a set of pubs may also address the SLC identified in more than one area.
11. The financial data of [X] pubs<sup>1</sup> included in Heineken’s preferred offer raised doubts about their saleability. However, Heineken offered alternative pubs for

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<sup>1</sup> [X].

divestment (ie if a centroid pub was initially offered for divestment, the pubs that were offered to be divested in the alternative addressed the increment or vice versa).

12. The divestment will occur by way of an asset transfer. Each pub is made up of two key assets that Heineken will divest: (i) the freehold/long leasehold interest in the property; and (ii) Heineken's interest in the tenancy arrangement in place with the publican (which includes any drinks tie).

### ***Identification of the pubs to be divested***

13. The CMA will only accept undertakings that are capable of ready implementation. The CMA's guidance states that "the CMA will normally seek an upfront buyer where the divestiture package is not an existing standalone business." In the present case, the CMA considers that the individual pubs to be divested constitute standalone businesses, capable of being run as such by a purchaser.
14. The SLC Decision found that the Merger gives rise to a realistic prospect of an SLC in 33 local areas. The CMA identified these local catchment areas by centring on each of the Heineken and Punch A pubs which overlapped. In relation to each of the 33 catchment areas in which the SLC Decision identified competition concerns, Heineken has offered to either divest certain pubs to address the increment caused by the Merger, or to divest the individual pub on which a particular catchment area was centred.
15. In relation to the proposed divestment of the increment, the CMA considers that this restores competition to the level that would have prevailed absent the Merger and therefore comprehensively remedies the SLC identified in the SLC Decision in the relevant local area.
16. In relation to the proposed divestment of the centroid pub, the CMA considers that this does not restore the pre-merger situation in all areas since it does not necessarily represent a divestment of the entire increment in the local area. However, the Parties submitted that the CMA should take account of the need for a proportionate remedy in a sector where the Parties have large numbers of pubs in several local areas.
17. The CMA notes that, in *Greene King/Spirit*<sup>2</sup> and in *Travis Perkins/BSS Group*<sup>3</sup>, divestment of the centroid was accepted by the CMA and the Office

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<sup>2</sup> ME/6501/14 Anticipated acquisition by Greene King of Spirit pubs, [Notice to consider undertakings offered](#), 26 May 2015.

<sup>3</sup> ME/4609/10 Anticipated acquisition by Travis Perkins Plc of the BSS Group Plc, October 2010, paragraph 236.

of Fair Trading (**OFT**). In these cases, the analysis of competition was centred on the target stores, and each of the stores was subject to its own independent analysis. The CMA found that to the extent that there were other target stores within an area around a target store that gave rise to concerns, these did not necessarily need to be divested since they had been the subject of their own individual analysis.

18. In this case, the CMA centred its assessment of local competition on every pub which overlapped. This approach therefore can be expected to comprehensively assess the level of competition faced by any particular centroid pub. The CMA therefore considers it is appropriate to apply the same approach in this case as in the two cases mentioned above.

### **The CMA's provisional views**

19. The CMA considers that undertakings in lieu of a reference are appropriate when they are clear-cut and capable of ready implementation. The CMA's starting point when assessing undertakings is to seek an outcome that restores competition to the level that would have prevailed absent the merger.<sup>4</sup>
20. The CMA believes that the Proposed Undertakings, or a modified version of them, might be acceptable as a suitable remedy to the SLC identified by the CMA, given the following reasons.
21. The proposed structural divestments are intended to remove the overlaps that resulted in the SLC finding in each of the 33 local areas. Following completion of the divestments, the disposed pubs will trade under new ownership. For the reasons set out above (paragraphs 15 to 18), and in the circumstances of this case, the CMA considers that either the divestment of the increment caused by the Merger, or the divestment of the pub by reference to which the CMA found an SLC in its catchment area (the centroid pub), is capable of achieving as comprehensive a solution as is reasonable and practicable to the SLC identified.
22. For these reasons, the CMA currently thinks that there are reasonable grounds for believing that the Proposed Undertakings, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act.

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<sup>4</sup> *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122)*, December 2010, Chapter 5 (in particular paragraphs 5.7–5.8 and 5.11). This guidance was adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)*, January 2014, Annex D).

## Upfront buyer

23. The CMA will only accept undertakings that are capable of ready implementation.<sup>5</sup> The CMA's guidance states that "the CMA will normally seek an upfront buyer where the divestiture package is not an existing standalone business."<sup>6</sup> In the present case the CMA considers that the individual pubs to be divested constitute standalone businesses, capable of being run as such by a purchaser.
24. The CMA has carefully assessed whether an upfront buyer provision would be appropriate in the present case.
25. Each of the divestment sites are largely stand-alone businesses (that is, they operate relatively independently). The CMA has also been provided with evidence of a number of potentially suitable purchasers who have expressed an interest in purchasing the Parties' pubs. The CMA also notes that there are many pub divestments annually in the UK.
26. The CMA assessed whether each of the pubs that Heineken proposed to divest was saleable and likely to continue in operation after the divestment. In particular, the CMA reviewed and placed reliance on evidence, including financial information (eg past, current and estimated revenues and profitability), indicating that the pubs that Heineken proposed to divest were saleable and likely to continue in operation as a going concern.
27. Having regard to the information above, the CMA found that, for [X] of the [X] pubs mentioned above in paragraph 11, only the pubs offered by Heineken in the alternative provided the CMA the required certainty as to their saleability.
28. The CMA is of the view that the pubs listed in Annex 1 of this decision are saleable and address the competition concerns in the 33 local areas.
29. For these reasons the CMA considers that, if it were to accept an undertaking, it does not need to include an upfront buyer provision for the pubs listed in Annex 1.

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<sup>5</sup> *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance*, paragraph 5.7.

<sup>6</sup> *Mergers: Guidance on the CMA's jurisdiction and procedure*, paragraph 8.34.

## **Consultation process**

30. Full details of the undertakings offered will be published in due course when the CMA consults on the undertakings offered as required by Schedule 10 of the Act.<sup>7</sup>

## **Decision**

31. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertakings offered by Heineken, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 22 August 2017 pursuant to section 73A(3) of the Act to decide whether to accept the undertakings, with the possibility to extend this timeframe pursuant to section 73A(4) of the Act to 17 October 2017 if it considers that there are special reasons for doing so. If no undertakings are accepted, the CMA will refer the Merger for a phase 2 investigation pursuant to sections 33(1) and 34ZA(2) of the Act.

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

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<sup>7</sup> [CMA2](#), paragraph 8.29.

## Annex 1

**Table 1 – Divestment Pubs**

<b>Name of pub to be divested</b>	<b>Postcode</b>	<b>Owner</b>	<b>SLC Area</b>
Anvil Inn Bonnyrigg	EH19 2DA	Heineken	Waverley Hotel and Royal Oak (Bonnyrigg)
Thornton Arms Burnley	BB10 3JS	Heineken	Thornton Arms
Bells Bar Glasgow	G32 8UP	Heineken	Bells Bar
Bird	NE37 2AL	Punch A	Bird, New Tavern Washington
Bulls Head East Leake	LE12 6PG	Heineken	Bulls Head
Bush Silverdale	ST5 6JZ	Heineken	Bush Silverdale and Vine Inn
Coach & Horses	NE46 1PQ	Punch A	Coach & Horses, Globe Inn
County Hotel	NE46 1PS	Punch A	Globe Inn
Falcon	NE42 5DN	Punch A	Lambs Arms Crawcrook, Falcon
Fleece	LS29 0LY	Punch A	Ilkley Moore Vaults
Fox & Hounds Inn	NE40 4TR	Punch A	Lambs Arms
Grapes Inn	PR3 2BH	Punch A	Grapes Inn
Kimberley Glasgow	G32 8HB	Heineken	Kimberley
Nags Head	LE12 6PG	Punch A	Nags Head
Navigation Inn Loughborough	LE12 8LQ	Heineken	Navigation Inn
Plungington Preston	PR2 3AR	Heineken	Plungington
Poynters Arms	LU5 4SJ	Punch A	Poynters Arms
Red Lion	GU24 8RG	Punch A	Red Lion
Royal Oak	CV8 3HR	Punch A	Roseycombe Coventry
Royal Oak Nelson	CF46 6DY	Heineken	Dynevor Arms
1314 Inn Stirling	FK7 0LJ	Heineken	1314 Inn, Anchor Bar
Strathspey Bar	G32 8UN	Punch A	Strathspey Bar
Sync Bar Pinner	HA5 3TE	Heineken	Oddfellow Arms
Goblin Ha Hotel	EH41 4QH	Punch A	Tyneside Tavern
Mercat Hotel	EH41 3EP	Punch A	Mercat Hotel, Tyneside Tavern
Plough Tavern	EH41 3DS	Punch A	Tyneside Tavern
Weavers Bar Kirkcaldy	KY2 5JZ	Heineken	Steadings
Riccarton Inn Currie	EH14 5NX	Heineken	Riccarton Inn, Woodhall Arms
Kinleith Mill Edinburgh	EH14 5EN	Heineken	Kinleith Mill, Woodhall Arms
Malleny Arms Balerno	EH14 7EQ	Heineken	Woodhall Arms