

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

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

ME/6656-16

### 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**). The text of the SLC Decision is available on the CMA webpages.<sup>1</sup>
3. On 20 June 2017, Heineken offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.
4. On 27 June 2017, the CMA gave notice to Heineken, pursuant to section 73A(2)(b) of the Act, 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 Heineken's offer (the **UIL Provisional Acceptance Decision**).

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<sup>1</sup> See <https://www.gov.uk/cma-cases/heineken-punch-taverns-merger-inquiry>.

## The undertakings offered

5. As set out in the SLC Decision, the CMA found a realistic prospect of an SLC in relation to the operation of pubs as a result of horizontal unilateral effects in 33 local areas.
6. As set out in the UIL Provisional Acceptance Decision, to address the SLCs in the 33 local areas identified by the CMA, Heineken has offered divestments of 30 pubs in these areas in order to address the competition concerns identified in the SLC Decision (the **Divestment Business**). The text of the undertakings is available on the CMA webpages (the **Proposed Undertakings**).<sup>2</sup>
7. As set out at paragraphs 23 to 29 of the UIL Provisional Acceptance Decision, the CMA does not consider it appropriate to seek an upfront buyer in respect of the Divestment Business.

## CMA assessment

8. The CMA currently considers that, subject to responses to the consultation required by Schedule 10 of the Act, the Proposed Undertakings will resolve the SLC identified in the SLC Decision in a clear-cut manner, ie for the reasons set out in the UIL Provisional Acceptance Decision, the CMA, currently does not have material doubts about the overall effectiveness of the Proposed Undertakings or concerns about their implementation.<sup>3</sup> This is because the proposed structural divestments are intended to replace the competitive constraint provided by Punch A on Heineken that would otherwise be lost following the Merger in each of the 33 local areas. The name and location of the 30 pubs that Heineken has offered to divest are listed in Annex 1 of the CMA's decision to consider undertakings offered.<sup>4</sup> They are also listed in the Annex to the proposed undertaking that the CMA is now consulting on.
9. The CMA also considers that the Proposed Undertakings would be capable of ready implementation, because each of the divestment sites are largely stand-alone businesses (that is, they operate relatively independently), are saleable and likely to continue in operation as a going concern.

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<sup>2</sup> See <https://www.gov.uk/cma-cases/heineken-punch-taverns-merger-inquiry>.

<sup>3</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).

<sup>4</sup> See <https://www.gov.uk/cma-cases/heineken-punch-taverns-merger-inquiry>.

## Proposed decision and next steps

10. For the reasons set out above, the CMA currently considers that the Proposed Undertakings are, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and form as comprehensive a solution to these concerns as is reasonable and practicable.
11. The CMA therefore gives notice that it proposes to accept the Proposed Undertakings in lieu of a reference of the Merger for a phase 2 investigation. The text of the proposed undertaking is available on the CMA web pages.<sup>5</sup>
12. Before reaching a decision as to whether to accept the Proposed Undertakings, the CMA invites interested parties to make their views known to it. The CMA will have regard to any representations made in response to this consultation and may make modifications to the Proposed Undertakings as a result. If the CMA considers that any representation necessitates any material change to the Proposed Undertakings, the CMA will give notice of the proposed modifications and publish a further consultation.<sup>6</sup>
13. Representations should be made in writing to the CMA and be addressed to:

Lasse Burmester  
Mergers Group  
Competition and Markets Authority  
Victoria House  
37 Southampton Row  
London  
WC1B 4AD

Email: [lasse.burmester@cma.gsi.gov.uk](mailto:lasse.burmester@cma.gsi.gov.uk)

**Deadline for comments: 26 July 2017**

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<sup>5</sup> See <https://www.gov.uk/cma-cases/heineken-punch-taverns-merger-inquiry..>

<sup>6</sup> Under paragraph 2(4) of Schedule 10 to the Act.