

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

Notice under paragraph 2(4) of Schedule 10 to the Enterprise Act 2002 (the Act) – consultation on modifications to proposed undertakings in lieu of reference pursuant to section 73 of the Act

ME/6656-16

Introduction

1. On 11 July 2017, the CMA issued a Notice of Consultation on the Proposed Undertakings to address the competition concerns identified in its SLC decision of 13 June 2017. The terms defined in the Notice of Consultation have the same meaning in this Notice.

The proposed modification

2. The CMA proposes to modify the Proposed Undertakings by adding an additional sentence to paragraph 2.1. of the Proposed Undertakings. The undertakings as modified are referred to as the **Modified Undertakings**. On 3 August 2017, Heineken told the CMA that a significant number of third parties have expressed an interest in purchasing the Divestment Businesses. While some of the potential purchasers have expressed an interest in acquiring several or all of the pubs that form part of the Divestment Business, a number of other potential purchasers have expressed an interest in acquiring only a single pub or a very small number of pubs.
3. The CMA notes that undertakings in lieu of reference are appropriate only where the remedies proposed to address any competition concerns raised by the merger are clear-cut and capable of ready implementation.¹ The CMA considers that the emerging possibility of a significant number of purchasers may, in the circumstances of this case, be inconsistent with this standard. Accordingly, to ensure that the Proposed Undertakings are clear-cut and

¹ Guidance on the exceptions to the duty to refer and undertakings in lieu, [OFT1122](#), paragraph 5.7

capable of ready implementation, Heineken has committed to divest the Divestment Businesses in no more than 4 packages.²

4. The text of the Modified Undertakings has now been published on the case page.

Proposed decision and next steps

5. For the reasons set in the Notice of Consultation of 11 July 2017, the CMA currently considers that the Modified Undertakings are, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and form as comprehensive a solution to these concerns as is reasonable and practicable.
6. The CMA therefore gives notice that it proposes to accept the Modified Undertakings in lieu of a reference of the Merger for a phase 2 investigation. The text of the Modified undertakings is available on the CMA web pages.³
7. Before reaching a decision as to whether to accept the Modified 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 Modified Undertakings as a result. If the CMA considers that any representation necessitates any material change to the Modified Undertakings, the CMA will give notice of the proposed modifications and publish a further consultation.⁴
8. 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

Deadline for comments: 15 August 2017

² See also the Guidance on the exceptions to the duty to refer and undertakings in lieu, [OFT1122](#), paragraph 5.8

³ See <https://www.gov.uk/cma-cases/heineken-punch-taverns-merger-inquiry>.

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