

## **ACQUISITION BY HEINEKEN UK LIMITED OF PUNCH TAVERNS HOLDCO (A) LIMITED**

### **Undertakings given by Heineken UK Limited to the Competition and Markets Authority pursuant to section 73 of the Enterprise Act 2002**

#### **Whereas:**

- (a) Heineken UK Limited (**HUK**) proposes to indirectly acquire the entire share capital of Punch Taverns Holdco (A) Limited (**Punch A**) from Vine Acquisitions Limited, pursuant to a sale and purchase agreement entered into on 15 December 2016 (the **Transaction**), such that HUK and Punch A will cease to be distinct for the purposes of the Enterprise Act 2002 (the **Act**);
- (b) Under section 22(1) of the Act the Competition and Markets Authority (**CMA**) has a duty to refer a relevant merger situation for a Phase 2 investigation where it believes that it is or may be the case that the creation of that merger situation has resulted or may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services;
- (c) Under section 73 of the Act the CMA may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate. In particular, the CMA shall have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
- (d) As set out in the CMA's decision of 13 June 2017 (the **Decision**), the CMA believes that, in the absence of appropriate undertakings, it would be under a duty to refer the Transaction for a Phase 2 investigation; and
- (e) The CMA considers that the undertakings given below by HUK are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which has or may have resulted from the Transaction, or may be expected to result from it, as specified in the Decision.

NOW THEREFORE HUK hereby gives to the CMA the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which has or may have resulted from it or may be expected to result from it.

## **1 EFFECTIVE DATE OF THE UNDERTAKINGS**

- 1.1 These undertakings shall take effect from the date that, having been signed by HUK, they are accepted by the CMA.

## **2 DIVESTMENT OF THE DIVESTMENT BUSINESSES**

- 2.1 HUK shall, using its best endeavours and acting in good faith, as soon as reasonably practicable, effect to the satisfaction of the CMA the divestment of the Divestment Businesses as a going concern by the end of the Divestment Period to a purchaser (or purchasers) approved by the CMA in accordance with the provisions of these undertakings. In undertaking the sale of the Divestment Businesses, HUK will sell the Divestment Businesses in no more than 4 packages, save as the CMA otherwise agrees or directs.

- 2.2 HUK shall be deemed to have complied with its obligations at paragraph 2.1 above if, as soon as reasonably practicable and in any event by the end of the Divestment Period, it has entered into a legally binding agreement (or agreements) with a purchaser (or purchasers) approved in advance by the CMA in writing pursuant to these undertakings (or a legally binding agreement (or agreements) conditional on such approval), provided that the completion of the divestment of the Divestment Businesses contemplated by such agreement (or agreements), if later than the end of the Divestment Period, takes place:

- (a) within a period not exceeding three months after the approval of the purchaser by the CMA (or within three months of the effective date of these undertakings, as set out in paragraph 1 above, whichever is later); or
- (b) within a period not exceeding 10 Working Days after all the necessary approvals and consents from third parties have been obtained,

whichever is later, provided that in any event, the completion of the divestment of the Divestment Businesses takes place within 6 months of the effective date of these undertakings (defined in paragraph 1.1 above).

- 2.3 Without prejudice to the generality of paragraph 2.1 above, HUK shall take the following measures to the extent they may be necessary in the opinion of

the CMA to effect the sale of the Divestment Businesses in accordance with the provisions of these undertakings:

- (a) the transfer or vesting of property, assets, rights, personnel, liabilities or obligations (including without prejudice any contracts, licences, authorisations, permits or consents);
- (b) the adjustment of contracts, whether by discharge or reduction or assignment of any liability or obligation or otherwise;
- (c) the creation, allotment, transfer, surrender or cancellation of any shares, stock or securities; and
- (d) the formation or winding up of a company.

- 2.4 Where HUK divests a Divestment Business over which it holds, or Punch A held, a freehold interest by way of the grant of a long lease on normal commercial terms of not less than 25 years duration to the purchaser, it shall in addition sell the freehold interest in the Divestment Businesses to a person independent of and unconnected to HUK and the Group of Interconnected Bodies Corporate to which HUK belongs and any Associated Person or Affiliate of HUK or such Group of Interconnected Bodies Corporate, within a period not exceeding three months from the date of the commencement of the lease.
- 2.5 HUK shall ensure that the sale and purchase agreement(s) entered into for the purposes of paragraph 2.1 and 2.2 above includes a warranty that the purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the Divestment Business as part of a viable and active business in competition with HUK and other competitors in the operation of pubs.
- 2.6 In the event that HUK fails to divest the Divestment Businesses in accordance with paragraphs 2.1, 2.2 and 2.4 above, the CMA may, whether or not initiating the Trustee Functions as set out in paragraph 4 below, require HUK to divest the Divestment Businesses as a going concern at no minimum price to a purchaser approved by the CMA.
- 2.7 HUK shall notify the CMA in writing of the identity of each proposed purchaser that makes an offer for the Divestment Businesses together with the value and terms of such offers as soon as reasonably practicable following the receipt of such offers and in any event within 5 Working Days of receipt of such offers.

### **3 APPROVAL OF PURCHASER AND TERMS OF DIVESTMENT**

3.1 For the purposes of the CMA approving a Proposed Purchaser of (one or more of) the Divestment Businesses in accordance with these undertakings, HUK shall, save as required or permitted by the CMA, satisfy the CMA that:

- (a) the acquisition by the Proposed Purchaser of the Divestment Business(es), on the terms set out above, remedies, mitigates or prevents the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it, or may be expected to result from it, in particular having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
- (b) the Proposed Purchaser is independent of and unconnected to HUK and the Group of Interconnected Bodies Corporate to which HUK belongs and any Associated Person or Affiliate of HUK or such Group of Interconnected Bodies Corporate;
- (c) the Proposed Purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the Divestment Business(es) as a viable and active business in competition with HUK and other competitors in the operation of pubs from the date of completion of the divestment of the Divestment Business(es);
- (d) the Proposed Purchaser is reasonably to be expected to obtain all necessary approvals, licences and consents from any regulatory or other authority, including (where applicable) landlord's consent to the transfer of any leasehold interest; and
- (e) the acquisition by the Proposed Purchaser of the Divestment Business(es) does not create a realistic prospect of a substantial lessening of competition within any market or markets in the UK.

3.2 The CMA may require HUK to provide it with such information and documentation as it may reasonably require to satisfy the CMA that the Proposed Purchaser(s) will fulfil the requirements in paragraph 3.1 above.

### **4 APPOINTMENT OF A TRUSTEE**

4.1 The provisions of paragraph 4.2 to paragraph 4.7 below shall apply only as long as HUK has not satisfied, or where the CMA has reasonable grounds

for believing that HUK will not satisfy, all or any part of the obligation to divest the Divestment Businesses in accordance with paragraph 2 above.

- 4.2 Within 5 Working Days of the CMA notifying HUK in writing that it must do so, HUK shall propose to the CMA for approval:
- (a) the names of at least two individuals to exercise the Trustee Functions; and
  - (b) the full terms of a mandate in accordance with which the Trustee shall carry out the Trustee Functions.
- 4.3 HUK and/or any individuals nominated pursuant to paragraph 4.2 shall satisfy the CMA that, save as required or permitted by the CMA:
- (a) such nominated individuals have the necessary qualifications to carry out their mandates, and are employees or partners of an investment bank, retail bank, commercial property agent, building society or law firm or accountancy firm with an established reputation either nationwide or in a substantial part of the UK or in another EU member state;
  - (b) such nominated individuals are each independent of HUK and of the Group of Interconnected Bodies Corporate to which HUK belongs and of any Associated Person or Affiliate of HUK or of such Group of Interconnected Bodies Corporate and of any Proposed Purchaser(s) of the Divestment Businesses to be sold pursuant to these undertakings, and, in the reasonable opinion of HUK, are appropriate to be appointed as Trustee; and
  - (c) such nominated individuals neither are, nor are likely to become, exposed, either directly or indirectly, to a conflict of interest that impairs or may be likely to impair their objectivity or independence in discharging the Trustee Functions.
- 4.4 Within 2 Working Days of the CMA approving, at its discretion, one or more of the persons nominated by HUK and their proposed mandates pursuant to paragraph 4.2 above, and subject to any modifications the CMA deems necessary for the Trustee to carry out the Trustee Functions, HUK shall use its best endeavours to appoint from the persons so approved one person to carry out the Trustee Functions in accordance with the mandate approved by the CMA pursuant to paragraph 4.2 above.

4.5 In the event that:

- (a) HUK fails to propose any person or persons in accordance with paragraph 4.2 above; or
- (b) none of the persons proposed by HUK pursuant to paragraph 4.2 is approved by the CMA; or
- (c) HUK is unable for any reason to appoint within the time limit stipulated in paragraph 4.4 above any such person following approval by the CMA,

HUK shall use its best endeavours to appoint from persons nominated by the CMA one person to carry out the Trustee Functions on the terms of a mandate approved by the CMA. HUK shall use its best endeavours to make such appointment within 5 Working Days of receiving the nominations from the CMA.

4.6 The appointment of the Trustee pursuant to paragraph 4.4 or paragraph 4.5 above shall be irrevocable unless:

- (a) a conflict of interest that impairs or may be likely to impair the objectivity or independence of the Trustee in discharging the Trustee Functions arises;
- (b) the Trustee ceases to perform the Trustee Functions; or
- (c) the CMA is otherwise satisfied that there is good cause for the appointment to be terminated in advance of the satisfactory fulfilment of the Trustee Functions.

4.7 In the event that the appointment of the Trustee is terminated in accordance with paragraph 4.6 above, HUK shall, if requested to do so in writing by the CMA, use its best endeavours to appoint from persons nominated by the CMA one person to carry out the Trustee Functions in accordance with such mandate as is approved by the CMA. HUK shall use its best endeavours to make such appointment within seven Working Days of receiving the nominations from the CMA. Where required by the CMA, the outgoing Trustee shall continue as Trustee until a new Trustee is in place and a full handover of all relevant information has taken place.

## **5 THE MANDATE**

5.1 The terms of the mandate proposed by HUK pursuant to paragraph 4.2 above shall, as a minimum, contain all provisions necessary to enable the

Trustee to carry out the Trustee Functions including, without limitation to the generality of this paragraph:

- (a) an exclusive, irrevocable mandate to sell the Divestment Businesses as required by paragraph 6.1 below to a purchaser (or purchasers) as directed or approved in writing in advance by the CMA at no minimum price and on such reasonable terms and conditions as the Trustee considers appropriate to effect an expedient sale;
- (b) a mandate to take any other steps necessary for, or incidental to, the Trustee's mandate under sub-paragraph (a) above;
- (c) a comprehensive power of attorney to the Trustee (including the authority to grant sub-powers of attorney to the Trustee's officers, employees and agents) to enable it to take all steps necessary or appropriate to effect the sale of the Divestment Businesses;
- (d) a mandate to comply with any orders and/or directions given by the CMA; and
- (e) a mandate to appoint at HUK's expense such advisers as the CMA and/or the Trustee reasonably considers necessary or appropriate in connection with the performance of the Trustee Functions.

## **6 FUNCTIONS OF TRUSTEE**

6.1 The Trustee shall seek to procure, within such period as may be specified in writing by the CMA, the completion of the sale of the Divestment Businesses at no minimum price, to a purchaser or purchasers approved by the CMA in accordance with paragraph 6.3 below.

6.2 Without prejudice to the generality of paragraph 6.1 above, the Trustee shall take the following measures in relation to the Divestment Businesses to the extent to which such measures may be necessary to effect the divestment of the Divestment Businesses in accordance with the provisions of these undertakings:

- (a) the transfer or vesting of property, assets, rights, personnel, liabilities or obligations (including without prejudice any contracts, licences, authorisations, permits or consents);
- (b) the adjustment of contracts, whether by discharge or reduction or assignment of any liability or obligation or otherwise;

- (c) the creation, allotment, transfer, surrender or cancellation of any shares, stock or securities; and
  - (d) the formation or winding up of a company.
- 6.3 The Trustee shall not sell or permit the divestment of the Divestment Businesses to a Proposed Purchaser unless it has been directed to do so by the CMA or has obtained the CMA's prior written approval in respect of the identity of that Proposed Purchaser. The Trustee shall notify the CMA of the identity of a Proposed Purchaser as soon as reasonably practicable prior to the signing of a legally enforceable agreement and in any event at least 20 Working Days in advance of the proposed completion of the proposed sale and purchase agreement in question.
- 6.4 Pending the divestment of the Divestment Businesses pursuant to paragraph 6.1 above, the Trustee shall monitor HUK's compliance with its obligations under paragraph 7.1 and paragraph 7.2 below and shall promptly take such measures as it considers necessary to ensure such compliance, as well as reporting in writing to the CMA, if the Trustee concludes on reasonable grounds that HUK is failing or will fail to comply with such obligations.
- 6.5 The Trustee may give written directions to HUK to take such steps as may be specified or described in the directions for the purpose of securing HUK's compliance with its obligations under these undertakings or enabling the Trustee to carry out the Trustee Functions. The Trustee may not require HUK to:
  - (a) offer any reverse premium or similar inducement to a purchaser; or
  - (b) accept any actual or contingent liability towards a purchaser or otherwise in connection with the divestment of the Divestment Businesses which would be unusual in scope, duration or financially, having regard to the price and usual market practice in relation to similar disposals.
- 6.6 The Trustee shall, as soon as reasonably practicable, comply at all times with any reasonable instructions or written directions made by the CMA for the purposes of carrying out or securing compliance with the undertakings (or any matter incidental thereto) and shall provide to the CMA such information and reports in relation to the carrying out of the Trustee Functions as the CMA may require. The Trustee shall promptly report in writing to the CMA if the Trustee concludes on reasonable grounds that HUK is failing or will fail to comply with any of its obligations under these undertakings.



6.7 For the purpose of fulfilling the Trustee Functions, the Trustee shall not be bound by instructions of HUK nor shall the Trustee Functions be extended or varied in any way by HUK save with the prior express written consent of the CMA.

## **7 OBLIGATIONS OF HUK FOLLOWING APPOINTMENT OF TRUSTEE**

7.1 HUK shall not give any instruction or request to the Trustee which conflicts with the Trustee Functions.

7.2 HUK shall take all such steps as are reasonably necessary to enable the Trustee to carry out the Trustee Functions, including but not limited to:

- (a) complying with such written directions as the Trustee may from time to time give pursuant to paragraph 6.6 above; and
- (b) providing the Trustee with all such assistance and information as it may reasonably require in carrying out the Trustee Functions.

## **8 REMUNERATION OF TRUSTEE**

8.1 HUK shall pay the Trustee a reasonable remuneration for the services it provides in carrying out the Trustee Functions, and shall pay the Trustee in a way that does not impede the independent and effective fulfilment of the Trustee Functions, which shall be set out in the Trustee's mandate referred to in paragraph 5 above.

## **9 INTERIM ACTION**

9.1 Pending the completion of the divestment of the Divestment Businesses to the satisfaction of the CMA in accordance with the provisions of these undertakings, to the extent that it is within the ability of HUK to control the relevant aspects of the Divestment Businesses and save as otherwise agreed in advance in writing by the CMA, HUK shall minimise as far as possible any risk of loss of competitive potential of the Divestment Businesses and in particular ensure that:

- (a) the Divestment Businesses are carried on separately from the HUK Business and the Divestment Businesses' separate sales or brand identity is maintained;
- (b) the Divestment Businesses and the HUK Business are maintained as a going concern and sufficient resources are made available for the development of the Divestment Businesses, on the basis of the merger parties' pre-existing plans as applicable to the Divestment Businesses

as at the effective date of these undertakings (as set out in paragraph 1 above);

- (c) the nature, description, range and quality of goods and/or services supplied in the UK by each of the Divestment Businesses and the HUK Business are maintained and preserved, to the extent that it is within the ability of HUK to do so;
- (d) except in the ordinary course of business for the separate operation of the Divestment Businesses and the HUK Business:
  - (i) all of the assets of the Divestment Businesses and the HUK Business are maintained and preserved, including facilities and goodwill;
  - (ii) none of the assets of the Divestment Businesses or the HUK Business are disposed of; and
  - (iii) no interest in the assets of the Divestment Businesses or the HUK Business is created or disposed of;
- (e) there is no integration of the information technology of the Divestment Businesses or HUK Business, and the software and hardware platforms of the Divestment Businesses shall remain essentially unchanged, except for routine changes and maintenance;
- (f) in relation to the HUK Business, the customer and supplier lists, and in relation to the Divestment Businesses, the supplier lists, shall be operated and updated separately and any negotiations with any existing or potential suppliers in relation to the Divestment Businesses will be carried out by the Divestment Businesses alone and for the avoidance of doubt the HUK Business will not negotiate on behalf of the Divestment Businesses (and vice versa) or enter into any joint agreements with the Divestment Businesses (and vice versa);
- (g) all existing contracts of the Divestment Businesses and the HUK Business continue to be serviced by the business to which they were awarded; and
- (h) no Confidential Information relating to either of the Divestment Businesses or the HUK Business shall pass, directly or indirectly, from the Divestment Businesses (or any of its employees, directors, agents or affiliates) to the HUK Business (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (for example, where required for

compliance with external regulatory and/or accounting obligations), or where required to ensure the continued operation of the Divestment Businesses or any steps necessary in order for HUK to comply with these undertakings, including the transfer of information necessary for the divestment process, provided that, upon divestment of the Divestment Businesses, any records or copies (electronic or otherwise) of Confidential Information held by HUK in relation to the Divestment Businesses (or vice versa) shall be returned to the relevant business and any copies destroyed (except as may be necessary for the purposes of compliance with the obligations above).

- 9.2 At all times, HUK will actively keep the CMA informed of any material developments relating to the Divestment Businesses of which HUK is or becomes aware, which includes, but is not limited to:
- (a) any interruption of the HUK Business or the Divestment Businesses (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
  - (b) all substantial customer volumes lost by the Divestment Businesses; and
  - (c) substantial changes in the HUK Business's or the Divestment Businesses' contractual arrangements or relationships with key suppliers.

## **10 CONTINUED SEPARATION**

- 10.1 Except with the prior written consent of the CMA, for a period of 10 years following the divestment of the Divestment Businesses pursuant to these undertakings, HUK, or any member of the Group of Interconnected bodies Corporate to which HUK belongs:
- (a) shall not, directly or indirectly, hold, acquire, re-acquire or use:
    - (i) an Interest in the Divestment Businesses other than (a) any freehold interest in the property associated with the Divestment Business pending divestment of that freehold proprietary interest pursuant to paragraph 2.4 above; or
    - (ii) any Interest in any company carrying on or having Control of the Divestment Businesses (other than any investments made in the ordinary course of the operation of any of the employee benefit and pension schemes of HUK or of any members of the Group of

Interconnected Bodies Corporate to which HUK belongs of not more than three per cent in aggregate of the issued equity share capital in any such company, whose shares are listed or dealt with on any recognised investment exchange, which carries no more than three per cent of the voting rights exercisable at meetings of such company); or

- (iii) other than in the normal course of business, any of the assets of the Divestment Businesses;
- (b) shall procure that no employee or director of HUK or any member of the Group of Interconnected Bodies Corporate to which HUK belongs for as long as they are an employee or director of HUK or any member of the Group of Interconnected Bodies Corporate to which HUK belongs holds or is nominated to any directorship or managerial position in the Divestment Businesses or directorship or managerial position in any company or other undertaking carrying on or having control of the Divestment Businesses without the CMA's prior written consent;
- (c) shall not participate in the formulation of, or (other than in the ordinary course of business) influence or attempt to influence, the policy of the Divestment Businesses or any company or other undertaking carrying on or having control of that Divestment Businesses; and
- (d) shall not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any Associated Person or Affiliate of HUK or of any member of the Group of Interconnected Bodies Corporate to which HUK belongs directly or indirectly acquiring the Divestment Businesses or doing any of the things listed in sub-paragraphs 10.1(a), 10.1(b) and 10.1(c) above.

## **11 NEW DIVESTMENT IF HUK OBTAINS POSSESSION OF A DIVESTMENT BUSINESS PROPERTY**

- 11.1 In the event that, following divestment of a Divestment Business in a manner that has involved HUK assigning an existing lease or granting a sub-lease to the purchaser of the Divestment Business, HUK benefits from or becomes subject to an Occupation Interest (so long as HUK so benefits or becomes

so subject during the term of the lease assigned or sub-lease granted by HUK as part of such divestment), HUK shall:

- (a) within 10 Working Days of becoming aware that it is so benefitting or is so subject inform the CMA in writing of that fact; and
- (b) using its best endeavours and acting in good faith comply with such written directions as the CMA may give to HUK to effect a new divestment of the Occupation Interest to a new purchaser approved by the CMA in accordance with the provisions of these undertakings, provided always that such written directions must be of a similar nature to those contained in these undertakings with regard to the original divestment of the Divestment Business.

11.2 In determining, for the purposes of sub-paragraph 11.1(b) above, whether to require HUK to effect a new divestment of the Occupation Interest to a new purchaser approved by the CMA in accordance with the provisions of these undertakings, the CMA may have regard to any change of circumstances since the Decision.

11.3 In the event that HUK fails to divest the Occupation Interest in accordance with paragraph 11.1 above, the CMA may, whether or not initiating the Trustee Functions set out in these undertakings, require HUK to divest the Occupation Interest at no minimum price to a purchaser approved by the CMA.

11.4 HUK shall notify the CMA in writing of the identity of each proposed purchaser that makes an offer for the Occupation Interest together with the value and terms of such offers as soon as reasonably practicable following the receipt of such offers and in any event within 10 Working Days of receipt of such offers.

11.5 In the event that the CMA gives written directions under paragraph 11.1 above for HUK to effect a new divestment of the Occupation Interest, paragraphs 3, 4, 5, 6, 7, 8 and 9 shall apply to the new divestment in the same way that they applied to the original divestment obligation save that references to 'Divestment Business' in those paragraphs shall be construed as references to 'Occupation Interest'.

## **12 COMPLIANCE**

- 12.1 HUK shall comply promptly with such written directions as the CMA may from time to time give:
- (a) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or
  - (b) to do or refrain from doing anything so specified or described which it might be required by these undertakings to do or to refrain from doing.
- 12.2 HUK shall co-operate fully with the CMA when the CMA is:
- (a) monitoring compliance with the provisions of these undertakings; and
  - (b) investigating potential breaches of the provisions of these undertakings.
- 12.3 HUK shall procure that any member of the same Group of Interconnected Bodies Corporate as HUK complies with these undertakings as if it had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as HUK shall be attributed to HUK for the purposes of these undertakings.
- 12.4 Where any Affiliate of HUK is not a member of the same Group of Interconnected Bodies Corporate as HUK, HUK shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

## **13 PROVISION OF INFORMATION**

- 13.1 HUK shall furnish promptly to the CMA such information as the CMA considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any Confidential Information.

## **14 EXTENSION OF TIME LIMITS**

- 14.1 The CMA may, in response to a written request from HUK, or otherwise at its own discretion, grant an extension to any time period referred to in these undertakings.

## **15 SERVICE**

- 15.1 HUK hereby authorises DLA Piper UK LLP, whose address for service is 3 Noble Street, London, EC2V 7EE (c/o Sam Szlezinger), to accept service on its behalf of all documents connected with these undertakings (including any document of any kind which falls to be served on or sent to HUK, or any of its Subsidiaries in connection with any proceedings in Courts in the UK, orders, requests, notifications or other communications connected with these undertakings).
- 15.2 Unless HUK inform the CMA in writing that DLA Piper UK LLP has ceased to have authority to accept and acknowledge service on its or any of its Subsidiaries' behalf, any document, order, request, notification or other communication shall be validly served on HUK if it is served on DLA Piper UK LLP; and service shall be deemed to have been acknowledged by HUK if it is acknowledged by DLA Piper UK LLP or such other nominee.
- 15.3 Paragraph 15.2 above has effect irrespective of whether, as between HUK and DLA Piper UK LLP or other nominees, DLA Piper UK LLP or other nominees has or continues to have any authority to accept and acknowledge service on HUK's or any of its respective Subsidiaries' behalf.
- 15.4 No failure or mistake by DLA Piper UK LLP or other nominees (including a failure to notify HUK of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these undertakings including any proceedings or judgment.
- 15.5 Any communication from HUK to the CMA under these undertakings shall be addressed to Manager, Market and Mergers Remedies Monitoring, Competition and Markets Authority, Victoria House, Southampton Row, London WC1B 4AD or such other person or address as the CMA may direct in writing.

## **16 EFFECT OF INVALIDITY**

- 16.1 Should any provision of these undertakings be contrary to law or invalid for any reason, HUK undertake to continue to observe the remaining provisions.

## **17 GOVERNING LAW**

- 17.1 HUK recognises and acknowledges that these undertakings shall be governed and construed in all respects in accordance with English law.
- 17.2 In the event that a dispute arises concerning these undertakings, HUK undertakes to submit to the courts of England and Wales.

## **18 TERMINATION**

- 18.1 HUK recognises and acknowledges that these undertakings shall be in force until such time as they are varied, released or superseded under the Act.
- 18.2 HUK recognises and acknowledges that the variation, release or supersession of these undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

## **19 INTERPRETATION**

- 19.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 19.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.
- 19.3 In these undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.
- 19.4 For the purposes of these undertakings:

**“the Act”** means the Enterprise Act 2002;

**“Affiliate”** a person is an affiliate of another person if they or their respective enterprises would be regarded as being under common control for the purposes of section 26 of the Act;

**“Associated Person”** means a person or persons associated with HUK within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons;

**“business”** has the meaning given by section 129(1) and (3) of the Act;

**“CMA”** means the Competition and Markets Authority or any successor body;

**“Confidential Information”** means any business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;



**“Control”** shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

**“Decision”** means the CMA’s decision under section 22 of the Act dated 13 June 2017 in connection with the Transaction;

**“Divestment Business”** means each of the pubs listed in Appendix A (together the **“Divestment Businesses”**);

**“Divestment Business Properties”** means the relevant property associated with the Divestment Business as at the date of these undertakings;

**“Divestment Period”** means the period of time determined by the CMA and notified in writing to HUK by the CMA;

**“enterprise”** has the meaning given in section 129(1) of the Act;

**“Group of Interconnected Bodies Corporate”** has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

**“HUK”** means Heineken UK Limited, a company incorporated under the laws of Scotland with company number SC065527 and whose registered office is at 3-4 Broadway Park, South Gyle Broadway, Edinburgh, EH12 9JZ;

**“HUK Business”** means the business of HUK and its Group of Interconnected Bodies Corporate carried on as at the effective date of these undertakings (as set out in paragraph 1 above);

**“Interest”** includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders’ meetings but does not include a contract to acquire shares in the future; and for this purpose "an interest in shares" includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

**“Punch A”** means Punch Taverns Holdco (A) Limited, a company incorporated under the laws of England and Wales with company number

09233812 and whose registered address is Jubilee House, Second Avenue, Burton-On-Trent, Staffordshire, DE14 2WF;

**“Occupation Interest”** means an interest in a Divestment Business Property by virtue of which HUK enjoys an unconditional right or is under an unconditional obligation to occupy the Divestment Business Property provided always that: (i) the original purchaser, ie the purchaser of the Divestment Business Property, (or its successor) is not in occupation of the Divestment Business Property; and/or (ii) before such interest in the Divestment Business Property arose, the most recent use to which the Divestment Business Property had been put was that of operating a pub;

**“Proposed Purchaser”** means any proposed purchaser for one or more of the Divestment Businesses;

**“Star”** means Star Pubs & Bars Limited, a company incorporated under the laws of Scotland with company number SC250925 and whose registered office is at 3-4 Broadway Park, South Gyle Broadway, Edinburgh, EH12 9JZ a wholly-owned subsidiary of HUK, through which HUK operates its leased and tenanted pub business;

**“Subsidiary”** shall be construed in accordance with section 1159 of the Companies Act 2006 (as amended), unless otherwise stated;

**“the Transaction”** means the proposed indirect acquisition by HUK of the entire issued share capital of Punch A, by way of sale and purchase agreement made between Vine Acquisitions Limited and HUK dated 15 December 2016;

**“Trustee”** means the person appointed pursuant to paragraph 4.4, paragraph 4.5 or paragraph 4.7 to carry out the Trustee Functions;

**“Trustee Functions”** means the functions set out in paragraph 6;

**“UK”** means the United Kingdom of Great Britain and Northern Ireland; and

**“Working Day”** means any day of the week other than a Saturday or a Sunday or any day that is a public holiday in England and Wales or Scotland;

unless the context requires otherwise, the singular shall include the plural and vice versa.

**FOR AND ON BEHALF OF HEINEKEN UK LIMITED**

Signature

Name

Title

Date

**DATE ACCEPTED BY THE CMA:**

## APPENDIX A

### THE DIVESTMENT BUSINESS

The Divestment Businesses shall consist of the following pubs:

<b>Pub</b>	<b>Postcode</b>	<b>Owner</b>	<b>Tenure</b>
1314 Stirling	FK7 0LJ	Star Pubs & Bars	FH
Anvil Inn Bonnyrigg	EH19 2DA	Star Pubs & Bars	FH
Bells Bar Glasgow	G32 8UP	Star Pubs & Bars	FH
Bird	NE37 2AL	Punch Pub Company: Securitisation A	FH
Bulls Head East Leake	LE12 6PG	Star Pubs & Bars	FH
Bush Silverdale	ST5 6JZ	Star Pubs & Bars	FH
Coach & Horses	NE46 1PQ	Punch Pub Company: Securitisation A	FH
County Hotel	NE46 1PS	Punch Pub Company: Securitisation A	FH
Falcon	NE42 5DN	Punch Pub Company: Securitisation A	FH
Fleece	LS29 0LY	Punch Pub Company: Securitisation A	FH
Fox & Hounds Inn	NE40 4TR	Punch Pub Company: Securitisation A	FH
Goblin Ha Hotel	EH41 4QH	Punch Pub Company: Securitisation A	FH
Grapes Inn	PR3 2BH	Punch Pub Company: Securitisation A	FH
Kimberley Glasgow	G32 8HB	Star Pubs & Bars	FH
Kinleith Mill Edinburgh	EH14 5EN	Star Pubs & Bars	FH
Malleny Arms Balerno	EH14 7EQ	Star Pubs & Bars	FH
Mercat Hotel	EH41 3EP	Punch Pub Company: Securitisation A	FH
Nags Head	LE12 6PG	Punch Pub Company: Securitisation A	FH
Navigation Inn Loughborough	LE12 8LQ	Star Pubs & Bars	FH
Plough Tavern	EH41 3DS	Punch Pub Company: Securitisation A	FH
Plungington Preston	PR2 3AR	Star Pubs & Bars	FH
Poynters Arms	LU5 4SJ	Punch Pub Company: Securitisation A	FH
Red Lion	GU24 8RG	Punch Pub Company: Securitisation A	FH

<b>Pub</b>	<b>Postcode</b>	<b>Owner</b>	<b>Tenure</b>
Riccarton Inn Currie	EH14 5NX	Star Pubs & Bars	FH
Royal Oak	CV8 3HR	Punch Pub Company: Securitisation A	FH
Royal Oak Nelson	CF46 6DY	Star Pubs & Bars	FH
Strathspey Bar	G32 8UN	Punch Pub Company: Securitisation A	FH
Sync Bar Pinner	HA5 3TE	Star Pubs & Bars	FH
Thornton Arms Burnley	BB10 3JS	Star Pubs & Bars	FH
Weavers Bar Kirkcaldy	KY2 5JZ	Star Pubs & Bars	FH

\*FH = Freehold property