

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

Decision on acceptance of undertakings in lieu of reference

ME/6656-16

The CMA's decision on reference under section 73(2) of the Enterprise Act 2002 given on 18 August 2017. Full text of the decision published on 23 August 2017.

Please note that [✂] 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 20 June 2017, Heineken offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act. The CMA gave notice to Heineken on 27 June 2017, pursuant to section 73A(2)(b) of the Act, that it considered that there were 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 was considering Heineken's offer (the **UILs Provisional Acceptance Decision**).

4. The text of the SLC Decision and the UILs Provisional Acceptance Decision are available on the CMA webpages.¹

The undertakings offered

5. As set out in the SLC Decision, the CMA found a realistic prospect of an SLC in relation to 33 local areas, specified in Annex 2 of the SLC Decision as a result of horizontal unilateral effects.
6. As set out in the UIL Provisional Acceptance Decision, Heineken has offered either to 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 **Divestment Business**), as set out in the text of the consultation on the CMA webpages² (the **UILs**).

Consultation

7. On 11 July 2017, pursuant to paragraph 2(1) of Schedule 10 to the Act, the CMA published the UILs, inviting interested parties to give their views on the UILs. The relevant text from the consultation is set out at Annex 1 of this decision.³ For the reasons set out in the consultation, the CMA's preliminary view was that the UILs would resolve the SLC identified in the SLC decision in a clear-cut manner, ie without giving rise to material doubts about the overall effectiveness of the UILs or concerns about their implementation.⁴
8. On 8 August 2017, pursuant to paragraph 2(4) of Schedule 10 to the Act, the CMA published a modified version of the UILs inviting interested parties to give their views. The relevant text from the consultation is set out at Annex 2 of this decision.⁵
9. The CMA received one response during the first consultation period and none during the second. That response suggested that the sale of Riccarton Inn, the Kinleith Mill and the Malleny Arms, all located in the Currie and Balerno suburbs southwest of the city centre of Edinburgh to a single purchaser would lead to a 'monopoly' in that area. The response suggested that this would also

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

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

³ The full consultation text was published on <https://www.gov.uk/cma-cases/heineken-punch-taverns-merger-inquiry>.

⁴ *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).

⁵ The full consultation text was published on <https://www.gov.uk/cma-cases/heineken-punch-taverns-merger-inquiry>.

leave Heineken, which would continue to hold the Colinton Inn and Spylaw Tavern, with a 'monopoly' in the neighbouring Colinton area.

10. The CMA notes that one of the criteria that will be taken into account in its process for the approval of the purchaser(s) of the divestment pubs is whether the sale of a pub or certain pubs to a given purchaser could give rise to competition concerns. The CMA notes that the Riccarton Inn, the Kinleith Mill and the Malleny Arms together account for a share of pubs of more than 35% within the relevant catchment area and therefore that it is unlikely that a single purchaser would be able to satisfy the CMA's purchaser approval requirements for all of these pubs. Nevertheless, as it is envisaged that the Divestment Business will be sold to more than one purchaser, the CMA does not consider that this raises material doubts about the overall effectiveness of the UILs or concerns about their implementation. The CMA found no competition concerns with regard to the Colinton Inn and the Spylaw Tavern, as there are sufficient competitors in the catchment areas of those two pubs. Accordingly, this third party submission did not cause the CMA to change its preliminary view that the UILs would be acceptable.
11. The CMA therefore considers that the UILs offered by Heineken are clear-cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision.

Decision

12. For the reasons set out above, the CMA considers that the UILs provided by Heineken are as comprehensive a solution as is reasonable and practicable and remedy, mitigate or prevent the SLC identified in the SLC Decision and any adverse effects resulting from it. The CMA has therefore decided to accept the UILs offered by Heineken pursuant to section 73 of the Act. The Merger will therefore not be referred for a phase 2 investigation.
13. The undertakings, which have been signed by Heineken and will be published on the CMA webpages,⁶ will come into effect from the date of this decision.

Andrea Coscelli
Chief Executive Officer
Competition and Markets Authority
18 August 2017

⁶ See <https://www.gov.uk/cma-cases/heineken-punch-taverns-merger-inquiry>.

Annex 1

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

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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.⁷
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**).

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.

⁷ See <https://www.gov.uk/cma-cases/heineken-punch-taverns-merger-inquiry>.

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**).⁸
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.⁹ 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.¹⁰ 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.

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

⁸ See <https://www.gov.uk/cma-cases/heineken-punch-taverns-merger-inquiry>.

⁹ *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).

¹⁰ See <https://www.gov.uk/cma-cases/heineken-punch-taverns-merger-inquiry>.

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.¹¹
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.¹²
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

¹¹ See <https://www.gov.uk/cma-cases/heineken-punch-taverns-merger-inquiry..>

¹² Under paragraph 2(4) of Schedule 10 to the Act.

Annex 2

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

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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.¹³ 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 capable of ready implementation, Heineken has committed to divest the Divestment Businesses in no more than 4 packages.¹⁴

¹³ Guidance on the exceptions to the duty to refer and undertakings in lieu, [OFT1122](#), paragraph 5.7

¹⁴ See also the Guidance on the exceptions to the duty to refer and undertakings in lieu, [OFT1122](#), paragraph 5.8

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.¹⁵
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.¹⁶
8. Representations should be made in writing to the CMA and be addressed to:

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¹⁵ See <https://www.gov.uk/cma-cases/heineken-punch-taverns-merger-inquiry>.

¹⁶ Under paragraph 2(4) of Schedule 10 to the Act.