

Anticipated acquisition by Stonegate Pub Company Limited of Ei Group plc

Decision that undertakings might be accepted

ME/6842/19

Introduction

1. Stonegate Pub Company Limited (**Stonegate**) has agreed to acquire the entire issued share capital of Ei Group plc (**Ei**) (the **Merger**). Stonegate and Ei are together referred to as the **Parties**.
2. On 6 December 2019, 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 the date of the SLC Decision, 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. Accordingly, on 13 December 2019, Stonegate offered undertakings to the CMA for the purposes of section 73(2) of the Act.
5. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to Stonegate 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

6. 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.
7. The Parties predominantly overlap in the operation of pubs in the UK. The SLC Decision found that the Merger gives rise to a realistic prospect of an SLC in relation to 51 local areas, specified in Annex 3 of the SLC Decision, as a result of horizontal unilateral effects.
8. In relation to each of the 51 catchment areas in which the SLC Decision identified competition concerns, the Parties have offered a structural divestment of either (i) the individual pub on which a particular catchment area was centred (the **centroid pub**) (26 instances); or (ii) the entire overlap of the other party (25 instances) (the **Proposed Undertakings**). In total, this would amount to the divestment of 42 sites to solve the realistic prospect of an SLC in 51 local areas. This means that, in some cases, to address the SLC identified by the CMA in a particular local area, Stonegate has 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. The proposed divestment will be made by way of asset transfers. The Parties would group multiple divestment sites into packages rather than selling them individually.
9. The financial data for two of the pubs ([§<] and The Elm Fulham) included in the list of pubs of the Proposed Undertakings raised doubts about their viability or attractiveness to purchasers:
 - (a) The [§<] was offered for divestment in relation to two centroid pubs where the increment caused by the Merger creates competition concerns, ie Three Tuns High Wycombe and Antelope High Wycombe. The [§<] has [§<]. The Parties submitted [§<]. Stonegate told the CMA that [§<]. As alternative pubs for divestment, the Parties offered to divest the centroid pubs in each of these two areas, ie Tuns High Wycombe and Antelope High Wycombe.

- (b) The Elm Fulham recorded [§<] as it has been closed since May 2019 for refurbishment. However, the Parties submitted that Ei is [§<]. Ei confirmed that [§<].
10. With respect to each pub offered for divestment, the comprehensive divestment package will comprise the following main elements (together with related undertakings):
- (a) the relevant property interest underlying the site (being a freehold or leasehold interest);
 - (b) with respect to tenanted sites, the underleases in situ (ie the operational leases to the tenants). The leases will continue to operate in the ordinary course and survive any divestment as the underlying property interest is transferred subject to these underleases;
 - (c) with respect to managed sites, the employees (including local managers) at each managed site;
 - (d) according to the specifics of the relevant site and as applicable, certain assets related to the operation of the business, such as stock, equipment, barware, fittings and fixtures, etc.

The CMA's provisional views

11. 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.¹
12. 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, for the following reasons.
13. The CMA currently believes that the Proposed Undertakings are capable of amounting to a sufficiently clear-cut and effective resolution of the CMA's competition concerns. The CMA also believes at this stage that the Proposed Undertakings may be capable of ready implementation, in particular in light of the evidence that the divestment pubs are stand-alone businesses that are

¹ [Mergers remedies \(CMA87\)](#), December 2018, Chapter 3 (in particular paragraphs 3.27, 3.28 and 3.30).

capable of being sold; and given that the Parties have provided evidence that there are several potential 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.

14. The CMA assessed whether each of the pubs that the Parties 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 the Parties proposed to divest were saleable and likely to continue in operation as a going concern.
15. As mentioned above in paragraph 9, one pub offered for divestment, the [X], has [X]. The CMA found, in principle, that the divestment of the [X] would not provide a sufficiently clear cut UIL to address the SLCs in the areas around Three Tuns High Wycombe and Antelope High Wycombe. [X]. The CMA found, in principle, that the divestment of the two alternative pubs offered by the Parties, Three Tuns High Wycombe and Antelope High Wycombe, would provide the required certainty with respect to the viability of those pubs and their suitability to remove the competition concerns in the relevant local areas.
16. The CMA is of the view that the 42 pubs listed in Annex 1 of this decision are saleable and address the competition concerns in the 51 local areas.
17. 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. The CMA considers that the pubs should be divested in a maximum of three packages, unless otherwise agreed in writing by the CMA.
18. 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.
19. The CMA's decision on whether ultimately to accept the Proposed Undertakings or refer the Merger for a Phase 2 investigation will be informed by, among other things, third party views on whether the Proposed Undertakings are suitable to address the competition concerns identified by the CMA.

Consultation process

20. 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.²

Decision

21. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertakings offered by the Parties, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 19 February 2020 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 April 2020 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.

Colin Raftery
Senior Director, Mergers
Competition and Markets Authority
20 December 2019

² [CMA2](#), paragraph 8.29.

Annex 1

	Pub	Postcode	Owner	Tenure
1	Old Ford Ash Vale	GU12 5QA	Ei	Freehold
2	Anchor Benfleet	SS7 1LS	Ei	Freehold
3	New Inn Erdington	B23 6UT	Ei	Freehold
4	Red Lion Erdington	B23 6UG	Ei	Freehold
5	Bay Horse Fulford	YO10 4PN	Ei	Freehold
6	Plough Fulford	YO10 4PX	Ei	Freehold
7	Rylston Fulham	SW6 7LW	Ei	Freehold
8	Barca Gosforth	NE3 1HD	Ei	Freehold
9	Blacksmith's Arms Gosforth	NE3 1HD	Ei	Freehold
10	Home Bar & Kitchen Ickenham	UB10 8LJ	Ei	Freehold
11	Hyde Arms Edmonton	N9 9BB	Ei	Freehold
12	Railway Tavern Edmonton	N9 0TZ	Ei	Leasehold
13	Fishermans Rest Bedwas	CF83 3RZ	Ei	Freehold
14	White Hart Tongham	GU10 1DH	Ei	Freehold
15	Clarence Fulham	W14 9PP	Ei	Freehold
16	Colton Arms West Kensington	W14 9SD	Ei	Leasehold
17	Cumberland Arms Hammersmith	W14 8SZ	Ei	Leasehold
18	Elm Fulham	W14 9NX	Ei	Freehold
19	Old Oak West Kensington	W14 9NX	Ei	Freehold
20	Bar Italia Uxbridge	UB8 1JT	Ei	Freehold
21	Beehive Hotel Birkenhead	CH42 0LH	Ei	Freehold
22	Beeswing Ale House York	YO10 3JP	Ei	Freehold
23	Caerphilly Cwtch Caerphilly	CF83 1HD	Ei	Freehold
24	Garden Farm Chester-Le-Street	DH2 3EH	Ei	Leasehold
25	Imperial Hotel Birkenhead	CH42 0LR	Ei	Freehold
26	Masons Arms Caerphilly	CF83 3FE	Ei	Freehold
27	Old Packet House Altrincham	WA14 1LW	Ei	Freehold
28	Prenton Park Birkenhead	CH42 9JG	Ei	Freehold
28	Station Inn Caerphilly	CF83 1AQ	Ei	Freehold
30	Swan Wickford	SS11 7AD	Ei	Freehold
31	Slug & Lettuce Beckenham	BR3 1EA	Stonegate	Leasehold
32	Antelope High Wycombe AND	HP11 2BN	Ei	Freehold
33	Three Tuns High Wycombe	HP11 2AG	Ei	Freehold
34	Chiltern Taps High Wycombe	HP11 2DN	Stonegate	Leasehold
35	Bull Barming	ME16 9HB	Stonegate	Leasehold
36	Occasional Half Palmers Green	N13 4TD	Stonegate	Leasehold
37	Bird in Hand Forest Hill	SE23 3HN	Stonegate	Leasehold
38	Gatehouse Tonbridge	TN9 1DL	Stonegate	Leasehold
39	Goose Fulham	SW6 1NL	Stonegate	Freehold
40	The Red Back (Slug) Fulham	SW6 5NH	Stonegate	Leasehold

41	Dam Inn	WF2 2QG	Stonegate	Freehold
42	Elmbridge Arms Weybridge	KT13 8AB	Stonegate	Leasehold