

# Anticipated acquisition by Stonegate Pub Company Limited of Ei Group plc

## Decision on acceptance of undertakings in lieu of reference

**ME/6842/19**

The CMA's decision to accept undertakings in lieu of reference under section 73(2) of the Enterprise Act 2002 given on 14 February 2020. Full text of the decision published on 21 February 2020.

### 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**). The text of the SLC Decision is available on the CMA webpages.<sup>1</sup>
3. On 13 December 2019, Stonegate offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act (the **Proposed Undertakings**).
4. On 20 December 2019, the CMA gave notice to Stonegate, pursuant to section 73A(2)(b) of the Act, that it considers 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 and that it

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<sup>1</sup> See <https://www.gov.uk/cma-cases/stonegate-pub-company-ei-group-plc-merger-inquiry>.

is considering Stonegate's offer (the **UILs Provisional Acceptance Decision**).

5. On 21 January, the CMA issued a notice of consultation on the Proposed Undertakings (the **Notice of Consultation**), set out in Annex 1 below. The Notice of Consultation stated that the CMA would have regard to any representations received, and Stonegate may need to make modifications to the Proposed Undertakings as a result of those representations.
6. The text of the SLC Decision, the UILs Provisional Acceptance Decision and the Notice of Consultation (including the Proposed Undertakings) are available on the CMA webpages.<sup>2</sup>

### **The undertakings offered**

7. As set out in the SLC Decision, the CMA found 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. As set out in the UIL Provisional Acceptance Decision, to address the SLC identified by the CMA, Stonegate has offered Proposed Undertakings comprising 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) in the particular catchment area. In total, this would amount to the divestment of 42 sites to solve the realistic prospect of an SLC in 51 local areas. The proposed divestment will be made by way of asset transfers. Stonegate will group multiple divestment sites into packages rather than selling them individually, ie Stonegate will sell the divestment sites in no more than three packages, save as the CMA otherwise agrees. The text of the undertakings is available on the CMA webpage.<sup>3</sup>
9. As set out at paragraph 17 of the UILs Provisional Acceptance Decision, the CMA does not consider it appropriate to seek an upfront buyer in respect of the Proposed Undertakings.

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<sup>2</sup> See <https://www.gov.uk/cma-cases/stonegate-pub-company-ei-group-plc-merger-inquiry>.

<sup>3</sup> See <https://www.gov.uk/cma-cases/stonegate-pub-company-ei-group-plc-merger-inquiry>.

## Consultation

10. On 21 January 2020, pursuant to paragraph 2(1) of Schedule 10 to the Act, the CMA published the Proposed Undertakings, inviting interested parties to give their views on the Proposed Undertakings. The relevant text from the consultation is set out at Annex 1 of this decision.<sup>4</sup> For the reasons set out in the consultation, the CMA's preliminary view was that the Proposed Undertakings 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 Proposed Undertakings or concerns about their implementation.<sup>5</sup>
11. The CMA did not receive any third-party submissions during the consultation period regarding the substance or scope of the Proposed Undertakings.
12. The CMA did receive a small number of third-party submissions from current managers and/or tenants of pubs listed as proposed divestment pubs who wished to make offers to acquire the freehold or leasehold interest of the pub they operated. These third parties were concerned that they would not be considered as potential purchasers for these pubs because of the limitation on the total number of divestment packages.<sup>6</sup>
13. The CMA informed these third parties, and Stonegate, that a manager/tenant wishing to buy the property that they are currently operating would constitute one of the circumstances in which the CMA would consider giving written consent to Stonegate to sell the pubs in more than three divestment packages. Therefore, if Stonegate made reasoned submissions regarding the need for additional packages to accommodate sales to existing managers/tenants, the CMA would be minded to agree to increase the total number of divestment packages.
14. Accordingly, these third-party submissions did not cause the CMA to change its preliminary view that the Proposed Undertakings would be acceptable.
15. The CMA therefore considers that the Proposed Undertakings by Stonegate are clear-cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision.
16. For the reasons set out above, the CMA considers that the Proposed

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<sup>4</sup> The full consultation text was published on <https://www.gov.uk/cma-cases/stonegate-pub-company-ei-group-plc-merger-inquiry>.

<sup>5</sup> *Merger remedies*, (CMA87), December 2018, Chapter 3, in particular paragraphs 3.27, 3.28 and 3.30.

<sup>6</sup> Pursuant to paragraph 2.1 of the text of the Proposed [Undertakings](#), Stonegate has to sell the proposed divestment pubs in no more than three packages unless otherwise agreed in writing by the CMA.

Undertakings provided by Stonegate 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 Proposed Undertakings offered by Stonegate pursuant to section 73 of the Act. The Merger will therefore not be referred for a phase 2 investigation.

17. The undertakings, which have been signed by Stonegate and will be published on the CMA webpages,<sup>7</sup> will come into effect from the date of this decision.



**Colin Raftery**  
**Senior Director, Mergers**  
**Competition and Markets Authority**  
**14 February 2020**

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<sup>7</sup> See <https://www.gov.uk/cma-cases/stonegate-pub-company-ei-group-plc-merger-inquiry>.

## Annex 1

### Anticipated acquisition by Stonegate Pub Company Limited of Ei Group plc

### 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/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**). The text of the SLC Decision is available on the CMA webpage.<sup>8</sup>
3. On 13 December 2019, Stonegate offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.
4. On 20 December 2019, the CMA gave notice to Stonegate, 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 Stonegate's offer (the **UIL Provisional Acceptance Decision**).

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<sup>8</sup> See <https://www.gov.uk/cma-cases/stonegate-pub-company-ei-group-plc-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 51 local areas, specified in Annex 3 of the SLC Decision and Annex 1 of this Notice, as a result of horizontal unilateral effects.
6. As set out in the UIL Provisional Acceptance Decision, to address the SLC identified by the CMA Stonegate has 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) individually (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. The proposed divestment will be made by way of asset transfers. Stonegate would group multiple divestment sites into packages rather than selling them individually. The text of the undertakings is available on the CMA webpage.<sup>9</sup>
7. As set out at paragraph 17 of the UIL Provisional Acceptance Decision, the CMA does not consider it appropriate to seek an upfront buyer in respect of the Proposed Undertakings based on evidence provided by Stonegate 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.

## 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 the CMA currently does not have material doubts about the overall effectiveness of the Proposed Undertakings or concerns about their implementation.<sup>10</sup> The proposed structural divestments are intended to replace the competitive constraint provided by Ei on Stonegate that would otherwise be lost following the Merger in each of the 51 local areas. The name and location of the 42 pubs that Stonegate has offered to divest are listed in the Appendix A to the proposed undertaking that the CMA is now consulting on and in Annex 2 of this Notice.

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<sup>9</sup> See <https://www.gov.uk/cma-cases/stonegate-pub-company-ei-group-plc-merger-inquiry>.

<sup>10</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).

9. The CMA also considers that the Proposed Undertakings would be capable of ready implementation, because the divestment pubs are stand-alone businesses that are capable of being sold 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 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>11</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>12</sup>
13. Representations should be made in writing to the CMA and be addressed to:

Egle Pazeraite  
Mergers Group  
Competition and Markets Authority  
The Cabot  
25 Cabot Square  
London  
E14 4QZ

Email: [Egle.Pazeraite@cma.gov.uk](mailto:Egle.Pazeraite@cma.gov.uk)  
Telephone: +44 131 515 2192

**Deadline for comments: 5 February 2020**

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<sup>11</sup> See <https://www.gov.uk/cma-cases/stonegate-pub-company-ei-group-plc-merger-inquiry>.

<sup>12</sup> Under paragraph 2(4) of Schedule 10 to the Act.

## Annex A – List of catchment areas that result in a realistic prospect of an SLC

	Owner	Name	Postcode
1	Stonegate	Bird in Hand Forest Hill London	SE23 3HN
2	Stonegate	Goose Fulham	SW6 1NL
3	Stonegate	The Slug Fulham	SW6 5NH
4	Stonegate	Coach & Horses Ickenham	UB10 8LJ
5	Stonegate	Famous Three Kings Fulham	W14 9NL
6	Stonegate	Navigation Hotel Altrincham	WA14 4PY
7	Stonegate	The Dam Inn Wakefield	WF2 6QG
8	Stonegate	Charles XII York	YO10 5EA
9	Stonegate	Kings Arms Caerphilly	CF83 1JQ
10	Stonegate	Swan Birmingham	B23 6SA
11	Stonegate	Lamb Edmonton London	N9 9PA
12	Stonegate	Occasional Half Palmers Green London	N13 4TD
13	Stonegate	Chiltern Taps High Wycombe	HP11 2ND
14	Stonegate	Slug and Lettuce Beckenham	BR3 1EA
15	Stonegate	The Gatehouse Tonbridge	TN9 1DL
16	Stonegate	Gosforth Hotel Newcastle Upon Tyne	NE3 1HQ
17	Stonegate	Whitehills Chester Le Street	DH2 3AB
18	Stonegate	Sportsmans Arms Birkenhead	CH42 7LQ
19	Stonegate	The Elmbridge Arms Weybridge	KT13 8AB
20	Ei	Garden Farm Chester-Le-Street	DH2 3EH
21	Ei	Blacksmith's Arms Gosforth	NE3 1HD
22	Ei	Barca Gosforth	NE3 1HD
23	Ei	Fox and Hounds Newmillerdam	WF2 6QQ
24	Ei	Prenton Park Birkenhead	CH42 9JG
25	Ei	Bird in Hand Palmers Green	N13 6DG
26	Ei	Hill Forest Hill	SE23 3HN
27	Ei	Fulham Mitre Fulham London	SW6 7DU
28	Ei	Cherry Tree Maidstone	ME16 8NJ
28	Ei	Railway Tavern Edmonton	N9 0TZ
30	Ei	Anchor Benfleet	SS7 1LS
31	Ei	Antelope High Wycombe	HP11 2BN
32	Ei	Home Bar and Kitchen Ickenham	UB10 8LJ
33	Ei	Chequers Tonbridge	TN9 1AS
34	Ei	Clarence Fulham	W14 9PP
35	Ei	Elm Fulham	W14 9NX
36	Ei	Three Tuns High Wycombe	HP11 2AG
37	Ei	Hyde Arms Edmonton	N9 9BB
38	Ei	Lillie Langtry Fulham	SW6 1UE
39	Ei	Bar Italia Uxbridge	UB8 1JT
40	Ei	Old Ford Ash Vale	GU12 5QA
41	Ei	The Signal Forest Hill	SE23 3HE
42	Ei	Redstart Barming	ME16 9HF
43	Ei	Swan Wickford	SS11 7AD



44	Ei	White Hart Tongham	GU10 1DH
45	Ei	Man of Kent Tonbridge	TN9 1HG
46	Ei	New Inn Erdington	B23 6UT
47	Ei	Old Oak West Kensington	W14 9NX
48	Ei	Red Lion Erdington	B23 6UG
49	Ei	Coach and Horses Beckenham	BR3 3LA
50	Ei	Lazy Fox Fulham	SW6 1PP
51	Ei	Queens Head Weybridge	KT13 8XS

## Annex B – List of the proposed divestment pubs

	<b>Pub</b>	<b>Postcode</b>	<b>Owner</b>	<b>Tenure</b>
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	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