

# Anticipated joint venture between Carlsberg A/S and Marston's PLC

## Decision on relevant merger situation and substantial lessening of competition

ME/6898/20

### SUMMARY

1. Carlsberg A/S (**Carlsberg**) and Marston's PLC (**Marston's**) have entered into an agreement to create a joint venture (the **Merger**), formed by the amalgamation of each of their UK brewing, wholesaling and distribution businesses and some ancillary services. Carlsberg and Marston's are together referred to as the **Parties** and, for statements referring to the future, the Joint Venture (**JV**).
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of the Party's UK businesses that will form part of the JV, Carlsberg UK Holdings Limited and Marston's Trading Limited, is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the turnover test is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties' activities overlap in the brewing of a range of beer and cider brands. They are also the exclusive importers of certain international third party brands in the UK.<sup>1</sup> In this decision, these activities (ie both the brewing and the exclusive import) are included in the definition of brewing. The CMA has considered further segmentations of the brewing of beer between lager (standard and premium) and ale (standard and premium) as well as possible segmentations for craft beer and world beer. The CMA has considered the brewing of beer and cider to be sold in the on-trade (eg pubs and bars) and

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<sup>1</sup> Carlsberg's key brands include lager brands Carlsberg Pilsner and Carlsberg Export and ale brand Tetley's. Carlsberg is the exclusive importer of San Miguel and Mahou in the UK. Marston's key brands include ale brands Wainwright, Pedigree and Bombardier and Marston's is the exclusive importer of Estrella Damm in the UK.

off-trade (eg supermarkets) separately. The Parties also overlap in the wholesaling of beverages to on-trade customers, which includes the sale of third party brands as well as their own, and can also include portage services in respect of other third party products. Lastly, the Parties overlap in the supply of contract brewing services, meaning the outsourced brewing of beer for a retail customer or for another brewer according to its own product specification.

4. The Parties have a relatively limited presence in Northern Ireland, and therefore the CMA has considered the impact of the Merger with respect to the above products and services in Great Britain (**GB**), taking into account any regional differences in the competitive assessment. However, the CMA did not need to conclude on the product or geographic frame of reference because it identified no concerns on any basis.
5. In its competitive assessment, the CMA considered whether, as a result of horizontal unilateral effects, the Merger may lead to a substantial lessening of competition (**SLC**), focusing in particular on effects in the supply of beer and cider, wholesaling services to the on-trade, and contract brewing services.
6. In relation to the brewing of beer and cider, the CMA found that the Parties' combined share of supply is relatively low in any relevant frame of reference. The CMA also found, based on evidence from internal documents and third party evidence, that the Parties are not close competitors (particularly as Marston's focuses on ale whereas Carlsberg focuses on lager) and that there are a number of brewers who would continue to act as a strong constraint on the JV.
7. In relation to wholesaling of beverages to the on-trade, based on information and data gathered from the Parties and third parties, the CMA found that the Parties' combined share of supply is relatively low in any relevant frame of reference and that the Parties are not particularly close competitors in the supply of wholesale services. Further, the CMA found there are a number of wholesalers operating at a national and regional level who would continue to constrain the JV.
8. In relation to contract brewing, the CMA found that the Parties have a modest share of supply and, given their differentiated offerings, they are not particularly close competitors in contract brewing. The CMA also considers there to be a number of alternative suppliers who will act as a constraint on the JV (including brewers who may not currently be offering this service).
9. There are also vertical relationships between the Parties which may be affected by the JV. Firstly, Marston's owns over 1,300 pubs and restaurants

**(Marston's Pub Estate)** which will not form part of the JV and which operate downstream of the Parties' brewing and wholesale operations. Secondly, the JV will be formed by the Parties' brewing businesses, which will continue to operate upstream as a brewer and distributor of a range of brands, as well as the Parties' wholesaling businesses, which will continue to provide a wholesale offering comprised of a range of own and third party brands to on-trade customers downstream. Finally, Marston's supplies canning, bottling and packaging services as an input to rival brewers.

10. The CMA considered whether the Merger would lead to vertical effects in relation to the access of rival suppliers (ie brewers and distributors of beer and cider) to the wholesale channel, to the Marston's Pub Estate and to Marston's' canning and bottling services.
11. With respect to access to the wholesaling of beverages to the on-trade, the CMA found that the Parties would not have the ability to foreclose rivals, given the Parties' relatively low share of supply in the wholesaling of beverages to the on-trade and the presence of several competing wholesalers (both brewers and independent wholesalers). The CMA also considered whether the control of technical services equipment (**TSE**) in pubs would enable the JV to restrict competing brewers from accessing the on-trade. To assess this, the CMA considered the extent to which the JV is likely to be the lead brewer in independent free-trade outlets, as the lead brewer (ie the brewer with the most cooled keg lines on a bar) takes ownership and responsibility for that outlet's TSE. The CMA found that the Parties have relatively low combined shares of supply in wholesaling of beverages and that the Parties have only a limited number of exclusive stocking arrangements with independent on-trade customers not owned by other brewing companies. Based on this evidence, the CMA considers that the Parties are unlikely to have lead brewer status in a significant proportion of independent free-trade outlets and therefore the extent of the JV's control of TSE is likely to be limited. Accordingly, the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC as a result of vertical effects in the supply of wholesaling services.
12. With respect to access to the Marston's Pub Estate, the CMA found that the estate only represents a small proportion of pubs either on a GB-wide or on a regional basis. Further, the evidence indicated that the Marston's Pub Estate is not a particularly important route to market for competing brewers of beer and cider such that the JV would not have the ability to foreclose rivals through the Marston's Pub Estate on a GB or regional basis. Accordingly, the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC as a result of vertical effects in relation to the Marston's Pub Estate.

13. Finally, as Marston's provides canning and bottling services to rival brewers, the CMA considered whether the JV could foreclose competitors by restricting their access to such services. The CMA found that there are a large number of alternative suppliers of canning and bottling services from whom rival brewers can procure this service. Notwithstanding that, Marston's already provides this service to rival ale brewers. The CMA therefore found that the JV is unlikely to have the ability and incentive to engage in this foreclosure strategy. Accordingly, the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC as a result of vertical effects in the supply of canning and bottling services.
14. For these reasons, the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects or vertical effects in respect of any frame of reference.
15. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).