

Completed acquisition by Admiral Taverns of Hawthorn Leisure Topco Limited

Decision that undertakings might be accepted

ME/6934/21

The CMA's decision under section 73A(2) of the Enterprise Act 2002 that undertakings might be accepted, given on 5 November 2021. Full text of the decision published on 16 November 2021.

Please note that [X] 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. On 20 August 2021, AT Brady Holdings Limited (**Admiral**) acquired Hawthorn Leisure Topco Limited (**Hawthorn**), a company that owned a portfolio of 687 pubs (the **Transaction**). Both Parties are active in the operation of pubs in the UK. Admiral and Hawthorn are together referred to as the **Parties**.
2. The Parties accepted that the test for reference was met and requested that the case be fast tracked to the consideration of undertakings in lieu of a reference (**UILs**). As part of the request, the Parties agreed to waive their procedural rights to challenge the position that the test for reference is met during a Phase 1 investigation. The Competition and Markets Authority (**CMA**) therefore agreed to proceed with an accelerated Phase 1 timetable, reaching a decision ahead of its 40 working day deadline.
3. On 27 October 2021, the CMA decided under section 22(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Transaction has resulted or may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**).
4. 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 Transaction for a phase 2 investigation pursuant to section 22(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.

5. 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 3 November 2021, the Parties offered undertakings to the CMA for the purposes of section 73(2) of the Act.
6. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to the Parties 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

7. 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.
8. The Parties predominantly overlap in the operation of pubs in the UK. The SLC Decision found that the Transaction gives rise to a realistic prospect of an SLC in relation to the operation of pubs in seven local catchment areas as specified in Annex 1 of this decision as a result of horizontal unilateral effects (the **SLC Areas**, with each area being an **SLC Area**).
9. To address these concerns, Admiral has offered structural divestments of individual pubs in each SLC Area (the **Divestment Pubs**, with each pub to be divested being a **Divestment Pub**). In relation to all seven SLC Areas, Admiral has offered to divest the pub on which the catchment area was centred (the centroid pub). The financial data submitted for the Divestment Pubs did not raise any doubts as regards their viability or attractiveness to purchasers.
10. The divestment will occur by way of asset transfer. Each Divestment Pub is made up of two key assets that Admiral will divest, (i) the freehold/leasehold interest in the property, and (ii) Admiral's or Hampden's interest in the tenancy arrangement in place with the publican (which includes any drinks tie) (the **Proposed Undertakings**).

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 However, it is open to the parties to persuade the CMA that a proposed remedy that does not directly restore competition to pre-merger levels nevertheless clearly and comprehensively removes the SLC identified.²
12. The CMA believes that the Proposed Undertakings, or a modified version of them, might be 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 because the Divestment Pubs are standalone businesses that can be sold, and the Parties have provided evidence in relation to purchasers who have expressed an interest in purchasing these pubs. The CMA also notes that there are regularly pub divestments in the UK.
14. The CMA assessed whether each of the Divestment Pubs was saleable and likely to continue in operation after the divestment. In particular, the CMA has been provided with evidence, including financial information (eg past, current and estimated revenues and profitability), indicating that the pubs that Admiral proposes to divest are saleable and likely to continue in operation as a going concern.
15. The CMA is of the view that the seven pubs listed in Annex 1 of this decision are saleable and address the competition concerns in the seven local areas.
16. 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.
17. For these reasons, the CMA currently thinks there are reasonable grounds for believing the Proposed Undertakings, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act.

¹ *Mergers remedies (CMA87), December 2018*, Chapter 3 (in particular paragraphs 3.27, 3.28 and 3.30).

² *Mergers remedies (CMA87), December 2018*, Chapter 3 (in particular paragraph 3.30).

18. The CMA's decision on whether to ultimately accept the Proposed Undertakings or refer the Transaction 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

19. 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.³

Decision

20. 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 10 January 2022 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 7 March 2022 if it considers that there are special reasons for doing so. If no undertakings are accepted, the CMA will refer the Transaction for a phase 2 investigation pursuant to sections 22(1) and 34ZA(2) of the Act.

Colin Raftery
Senior Director, Mergers
Competition and Markets Authority
5 November 2021

³ [CMA87](#), paragraph 4.27

ANNEX 1

	Pub	Owner	Postcode
1	Blue Bell	Admiral	WN4 0QF
2	Rose & Crown	Admiral	PE15 0JA
3	Stag	Hawthorn	WN4 0SD
4	Glade	Hawthorn	CV3 3FB
5	Swan	Admiral	IP31 1DN
6	Swiss Bell	Admiral	CM7 9UL
7	The Lady Jane	Hawthorn	LE67 5PH