

Completed acquisition by Admiral Taverns of Hawthorn Leisure Topco Limited

Decision on acceptance of undertakings in lieu of reference

ME/6934/21

The CMA's decision under section 73(2) of the Enterprise Act 2002 to accept undertakings in lieu of reference, given on 7 January 2022. Full text of the decision published on 18 January 2022.

Introduction

1. On 20 August 2021, AT Brady Bidco Limited, a wholly owned subsidiary of AT Brady Holdings Limited (**Admiral**), acquired a portfolio consisting of 687 leased and tenanted, operator managed and one fully managed pub (the **Hawthorn** pub portfolio) from NewRiver REIT plc (together with Admiral, **the Parties**) (**the Transaction**). Both Parties are active in the operation of pubs in the UK.
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 3 November 2021, Admiral offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act (the **Proposed UILs**).
5. On 5 November 2021, the CMA gave notice to Admiral, pursuant to section 73A(2)(b) of the Act, that it considered that there are reasonable grounds for

believing that the Proposed UILs, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it was considering the offer (the **UILs Provisional Acceptance Decision**).

6. On 16 November, the CMA issued a notice of consultation on the Proposed UILs (the **Notice of Consultation**), set out in Annex 2 below. The Notice of Consultation stated that the CMA would have regard to any representations received, and Admiral may need to make modifications to the Proposed UILs as a result of those representations.
7. The text of the SLC Decision, the UILs Provisional Acceptance Decision, and the Notice of Consultation (including the Proposed UILs) are available on the CMA webpages.¹

The undertakings offered

8. As set out in the SLC Decision, the CMA found a realistic prospect of an SLC in relation to the operation of pubs in seven local catchment areas as a result of horizontal unilateral effects (the **SLC Areas**, with each area being an **SLC Area**, see Annex 1 to this decision for further details of the SLC Areas).
9. As set out in the UILs Provisional Acceptance Decision, to address the SLCs identified by the CMA, Admiral offered to divest the pubs on which the SLC Areas were centred (the “centroid” pub) to a suitable purchaser or purchasers.
10. As set out at paragraph 16 of the UILs Provisional Acceptance Decision, the CMA did not consider it appropriate to seek an upfront buyer in respect of the Proposed UILs.

Consultation

11. On 16 November 2021, pursuant to paragraph 2(1) of Schedule 10 of the Act, the CMA published the Proposed UILs, inviting interested parties to give their views on the Proposed UILs. The relevant text from the consultation is set out at Annex 2 to this decision.² For the reasons set out in the consultation, the CMA’s preliminary view was that the Proposed UILs would resolve the SLCs identified in the SLC decision in a clear-cut manner, ie without giving rise to

¹ See [Admiral Taverns / Hampden Pub Estate merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk).

² The full consultation text was published on [Admiral Taverns / Hampden Pub Estate merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk).

material doubts about the overall effectiveness of the Proposed UILs or concerns about their implementation.³

12. The CMA did not receive any submissions in response to its consultation. Accordingly, third-party submissions have not caused the CMA to change its preliminary view that the Proposed UILs would be acceptable
13. The CMA therefore considers that the Proposed UILs offered by Admiral are clear-cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision.

Decision

14. For the reasons set out above, the CMA considers that the Proposed UILs provided by Admiral 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 UILs offered by Admiral pursuant to 73 of the Act. The Merger will therefore not be referred for a phase 2 investigation.
15. The undertakings, which have been signed by Admiral and will be published on the CMA webpages,⁴ will come into effect from the date of this decision.

Colin Raftery
Senior Director, Mergers
Competition and Markets Authority
7 January 2022

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

⁴ See [Admiral Taverns / Hampden Pub Estate merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk).

ANNEX 1 – SLC Areas and Divestment Sites

	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

Completed acquisition by Admiral Taverns of Hawthorn Leisure Topco Limited

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/6934/21

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**). Admiral and Hawthorn are together referred to as the **Parties**.
2. On 27 October 2021, the Competition and Markets Authority (**CMA**) decided under section 22(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Transaction constitutes a relevant merger situation⁵ that 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**). The text of the SLC Decision is available on the CMA webpages.⁶
3. On 3 November 2021, Admiral offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.
4. On 5 November 2021, the CMA gave notice to Admiral, 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 Admiral's offer (the **UIL Provisional Acceptance Decision**).

⁵ Pursuant to section 25(4) of the Act the four-month period mentioned in section 24 of the Act is extended while the CMA is seeking undertakings in lieu of reference.

⁶ See [Admiral Taverns / Hampden Pub Estate merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/admiral-taverns-hampden-pub-estate-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 the operation of pubs in seven local catchment areas as a result of horizontal unilateral effects (the **SLC Areas**, with each area being an **SLC Area**).
6. As set out in the UIL Provisional Acceptance Decision, Admiral has offered structural divestments of individual pubs in each SLC Area (the **Divestment Pubs**, with each pub being a **Divestment Pub**, see Annex 1). The text of the undertakings is available on the CMA webpages (the **Proposed Undertakings**).⁷
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 Divestment Pubs based on evidence provided by the Parties 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.⁸ The proposed structural divestments are intended to replace the competitive constraint provided by Hawthorn on Admiral that would otherwise be lost following the Transaction in each of the seven local areas. The CMA also currently considers that the Proposed Undertakings would be capable of ready implementation based on evidence submitted by the Parties, including financial information, indicating that the Divestment Pubs are saleable and likely to continue in operation as a going concern.

Proposed decision and next steps

9. 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

⁷ See [Admiral Taverns / Hampden Pub Estate merger inquiry - GOV.UK \(www.gov.uk\)](#).

⁸ [Mergers remedies \(CMA87\)](#), December 2018, Chapter 3 (in particular paragraphs 3.27, 3.28 and 3.30).

and form as comprehensive a solution to these concerns as is reasonable and practicable.

10. The CMA therefore gives notice that it proposes to accept the Proposed Undertakings in lieu of a reference of the Transaction for a phase 2 investigation. The text of the proposed undertaking is available on the CMA web pages.⁹
11. 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.¹⁰
12. Representations should be made in writing to the CMA and be addressed to:

Rafia Saif
Mergers Group
Competition and Markets Authority
The Cabot
25 Cabot Square
London
E14 4QZ

Email: rafia.saif@cma.gov.uk
Telephone: 020 3738 6932

Deadline for comments: 30 November 2021

⁹ See [Admiral Taverns / Hampden Pub Estate merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

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