

## Anticipated acquisition by Greene King plc of Hardys and Hansons plc

The OFT's decision on reference under section 33 given on 18 July 2006. Full text published 25 July 2006.

---

**Please note that the square brackets indicate figures or text which have been deleted or replaced with a range at the request of the parties for reasons of commercial confidentiality.**

### **PARTIES**

1. **Greene King Acquisitions (No. 3) Limited** is a subsidiary of Greene King plc (Greene King). Greene King is a brewer of traditional British beers, a beer distributor (of both its own beers and third parties' beers) and a pub company.<sup>1</sup>
2. **Hardys and Hansons Plc (H&H)** is a brewer, a drinks distributor (of both its own beers and third parties' drinks including beers, wines, spirits and soft drinks) and a pub company.<sup>2</sup>

### **TRANSACTION**

3. Greene King Acquisitions (No. 3) Limited proposes to acquire all of the issued and to be issued ordinary shares of H&H as well as the whole of the issued deferred ordinary share capital of H&H, currently owned by Hardys and Hansons Holdings Limited.
4. The transactions were notified to the Office of Fair Trading (OFT) via a merger notice. The OFT's statutory deadline is 19 July 2006.

---

<sup>1</sup> Greene King owns over 2,400 pubs in the UK, of which 1,564 are tenanted or leased and 840 are managed.

<sup>2</sup> H&H owns 263 pubs in the UK of which 185 are leased and 78 are managed.

## **JURISDICTION**

5. The OFT is satisfied that arrangements are sufficiently in progress which will lead the enterprises, Greene King and H&H, ceasing to be distinct.
6. H&H's turnover generated in the UK was over £70 million in 2005. Consequently, the turnover test set out in section 23 of the Enterprise Act 2002 (the Act) is met.
7. Therefore, the OFT considers that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

## **RELEVANT MARKET**

8. The parties overlap in brewing, beer distribution and the operation of pubs.

### **Product scope – brewing**

9. Greene King considers the relevant product market is the supply of beer as it regards different beers (standard lager, premium lager, standard ale, premium ale and stout) to be substitutable.
10. In previous cases, the OFT and the Competition Commission (CC) have considered the relevant frame of reference to be the supply of beer by brewers.<sup>3</sup> This approach has been adopted for the current case.

### **Geographic scope – brewing**

11. Greene King submitted that the appropriate geographic frame of reference for the supply of beer is Great Britain since it is common for a brewer to sell its beer in any part of Great Britain (even if it operates just one brewery).

---

<sup>3</sup> For example, the OFT merger reports: Anticipated acquisition by Greene King plc of Belhaven Group plc (22 September 2005); and Anticipated acquisition by Scottish Courage Limited of the business and certain assets of Northern Clubs' Federation Brewery Limited (9 July 2004). See also the Competition Commission, Interbrew SA and Bass plc: a report on the acquisition by Interbrew SA of the brewing interests of Bass plc, Cm 5014, January 2001.

12. The OFT and CC have not previously concluded on the geographic scope of brewing and have rather examined mergers on a regional basis as well as for Great Britain as a whole. In the current case it is not necessary to conclude on the geographic scope as the outcome of the competition assessment is the same whichever approach is used.

**Product scope – the distribution of beer**

13. Both parties wholesale and distribute their own beers as well as beers from third parties. Greene King submitted that the appropriate frame of reference is beer distribution to: (a) on trade retailers; and (b) off trade retailers. This segmentation has been used by the OFT and CC previously.<sup>4</sup>
14. In the current case it is not necessary to conclude on the product scope for distribution as the outcome of the competition assessment is the same whichever approach is used.

**Geographic scope – the distribution of beer**

15. Greene King considered the geographic scope for the distribution of beer to be Great Britain since, it suggested, competition for beer distribution takes place at this level.
16. In the previous cases mentioned above, the competition assessment was undertaken at both the Great Britain and regional levels. In the current case the OFT has not found it necessary to conclude on the geographic scope as the outcome of the competition assessment is the same whichever approach is used.

**Product scope – the operation of pubs**

17. In previous cases the OFT has considered the appropriate product scope to be the operation of pubs (i.e. premises operated under a full publican on-licence).<sup>5</sup> This definition incorporated bars and inns but excluded restaurants.<sup>6</sup>

---

<sup>4</sup> See footnote 3 for the case references.

<sup>5</sup> For example: Completed acquisition by Punch Taverns plc of Spirit Group Holdings Limited (19 May 2006); Completed acquisition by Yates Wine Lodges Limited of assets of the SFI Group Limited (11 October 2005); Completed acquisition by Greene King plc of Laurel Pub Holdings Limited (9 August 2004); Completed acquisition by Punch Taverns plc of Pubmaster Limited (25 February 2004); and Anticipated acquisition by Greene King plc of Belhaven Group plc (22 September 2005).

<sup>6</sup> In November 2005 the liquor licensing laws were changed in England and Wales. Now there is only one type of licence for selling alcohol for consumption on premises.

18. Greene King submitted that pubs face competition from other on-licensed venues such as clubs, restaurants and hotels. In particular, Greene King submitted that pubs have widened their product and service offer to include food, a broader range of drinks, entertainment and accommodation.
19. Pubs and other on-licensed outlets, particularly restaurants, have become less distinct over the years. Pubs increasingly compete on a number of factors which include location, food and ambience. On some of these factors some pubs may compete with other on-licensed premises. For example, 'gastro pubs' may be in closer competition with some restaurants than pubs with less emphasis on food.
20. The OFT has considered alternate product market scopes but does not believe that it currently has enough evidence to justify departing from the approach adopted in previous cases.

#### **Geographic scope – the operation of pubs**

21. The OFT considers that on the demand side competition between pubs is local as customers are generally only willing to travel short distances. On the supply side, however, the OFT considers that competition between pubs exhibit some wider (perhaps Great Britain wide) characteristics. For example, in relation to certain pub companies beer supply agreements are negotiated on a Great Britain wide basis and other factors of competition such as advertising, promotions, pub themes and opening hours are determined either at this geographic level or at least wider than local areas (perhaps regionally).
22. In the past the OFT has analysed pub mergers on a local basis using Petty Sessional Divisions (PSDs) as proxies for local areas of competition. This was because licences were awarded on a PSD by PSD basis. However, under the licensing reforms of November 2005, licences in England and Wales are now awarded on a Local Authority Area (LAA) basis. Because of this, Greene King told the OFT that it considers the most appropriate proxy for assessing local competition is now LAAs. Greene King also considers that there are national elements to competition. In particular, pub companies determine nationally their beer supply agreements, range of products and pricing.
23. In the current case the OFT has not found it necessary to conclude on the relevant geographic scope as the outcome of the competition assessment is the same regardless of whether Great Britain, PSDs or LAAs are used as the geographic area.

## **HORIZONTAL ISSUES**

### **Brewing**

24. For Great Britain as a whole the parties' combined share of supply is less than [1-5] per cent (increment less than [0-5] per cent). Greene King submitted that the parties face competition from several large and well established brewers, namely Inbev, Carlsberg, Scottish Courage, Diageo and Coors.
25. On a regional level the parties overlap in the television regions of Central, Granada and Yorkshire.<sup>7</sup> The most significant overlap is in the Central region, where the parties' combined share is [1-5] per cent (increment of around [0-5] per cent).

### **The distribution of beer**

26. In 2005 the parties together distributed around [1-5] per cent (by volume) of the total beer distributed within Great Britain. By segmenting distribution by type of retailer, the parties' combined shares were less than [1-5] per cent of beer distribution to on-trade retailers (and [ ] of this went to their own outlets) and less than [1-5] per cent to off-trade retailers. Neither party distributes any third party beer to the off-trade retailing segment.
27. Although the OFT has been unable to acquire data on distribution by region, no concerns in relation to the parties' distribution of beer on a regional basis were raised. In light of this, and given the parties' small share in brewing on a regional basis and their small shares in beer distribution in Great Britain, the OFT does not consider that the merger gives rise to concerns in relation to the distribution of beer on a regional level.

### **The operation of pubs**

28. The parties together have less than a [1-5] per cent share of pubs in Great Britain.<sup>8</sup>
29. On a local basis, in past cases the OFT has analysed pub mergers by applying a rule of thumb that no pub owner should own more than 25 per cent of the pubs in any one PSD.<sup>9</sup>

---

<sup>7</sup> The CC employed television regions in its analysis of Interbrew / Bass (2001).

<sup>8</sup> Based on both Bar Track data and Scottish Executive and Department for Culture, Media and Sport data.

<sup>9</sup> For example, Punch Taverns / Spirit Group (May 2006).

30. The parties overlap in some 31 PSDs across England. In no PSD area does the parties' combined share of pubs exceed 25 per cent. In Nottingham County their combined share is [15-25] per cent (with an increment of less than [0-5] per cent).
31. By LAAs, the parties overlap in 28 areas across England. As is the case with PSDs, in no LAA area does the parties' combined share of pubs exceed 25 per cent.

### **THIRD PARTY VIEWS**

32. All the customers who responded to the OFT request for information were unconcerned about the merger. One third party competitor did express concern that the merger would lessen competition in the operation of pubs by increasing the number of pubs owned by Greene King (a large brewery). However, this third party did consider that the 25 per cent rule should be adhered to.

### **ASSESSMENT**

33. The proposed merger does not raise competition concerns in brewing or the distribution of beer. In both of these activities the parties' share of supply is very small (however measured) and the merger will not substantially increase the market power of the merged entity. Likewise, in the operation of pubs the proposed merged does not raise any concerns at the Great Britain level. On a local level (however measured), in no area does the merger increase the parties' combined share of pubs above 25 per cent.
34. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

### **DECISION**

35. This merger will therefore not be referred to the Competition Commission under section 33(1) of the Act.