

Anticipated acquisition by Greene King plc of Spirit Pub Company plc

Notice under paragraph 2(4) of Schedule 10 to the Enterprise Act 2002 (the Act) – consultation on the proposed undertakings in lieu of reference pursuant to section 73 of the Act

Introduction

1. Greene King plc (**Greene King**) has agreed to acquire Spirit Pub Company plc (**Spirit**) (the **Merger**). Greene King and Spirit are together referred to as the **Parties**. On 11 May 2015, 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 CMA's decision is available on the CMA's web pages.¹
2. On 18 May 2015, Greene King offered an undertaking in lieu of reference to the CMA for the purposes of section 73(2) of the Act (the **UIL**). As required under section 73A(1) of the Act, Greene King made this offer within five working days beginning the working day after the CMA notified it of the SLC Decision under section 34ZA(1)(b) of the Act. The CMA gave notice to Greene King on 26 May 2015, pursuant to section 73A(2)(b) of the Act, that it considered that there were reasonable grounds for believing that the UIL offered, or a modified version of it, might be accepted by the CMA under section 73(2) of the Act and that it was considering Greene King's offer. A copy of that decision is available on the CMA's webpages.² As set out in the SLC Decision, the CMA believes that, in the absence of appropriate undertakings, it would be under a duty to refer the Merger for a phase 2 investigation.

¹ See [CMA case page](#).

² See [CMA case page](#).

The UIL offer

3. The Parties predominantly overlap in the operation of pubs in the UK. Pubs form part of the on-trade sector, which is comprised of premises which have a licence to serve alcoholic drinks for consumption on the premises. In the present case, the CMA found a realistic prospect of an SLC in relation to the overlaps between the Parties' pubs in 16 local areas.
4. Greene King has offered divestments of 16 pubs in these areas in order to address the competition concerns identified in the SLC Decision. These pubs will be divested as properties, together with the relevant pub name and, in the case of managed pubs, the transfer of pub-level Greene King/Spirit staff. In cases where a tenanted or leased pub is divested, the existing tenancy or lease agreement will be assigned to the buyer. The name and location of the 16 pubs that Greene King has offered to divest are listed in Annex 1 of the CMA's decision to consider undertakings offered.³ They are also listed in the Annex to the proposed undertaking that the CMA is now consulting on.
5. In relation to each of the 16 areas in which the SLC Decision identified competition concerns, Greene King has offered to divest either the increment caused by the Merger or the individual pub on which that particular catchment area was centred (referred to as the 'centroid' pub). For the reasons set out in the CMA's decision to consider undertakings offered,⁴ and in the circumstances of this case, the CMA considers that either the divestment of the increment caused by the Merger or the divestment of the centroid pub is capable of achieving as comprehensive a solution as is reasonable and practicable to the SLC identified.

Proposed decision and process going forward

6. For the reasons set out above, the CMA considers that the proposed undertaking offered by Greene King is, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision.
7. The CMA therefore gives notice that it proposes to accept this undertaking in lieu of a reference for a phase 2 investigation. The text of the proposed undertaking is available on the [CMA case page](#).

³ See [CMA case page](#).

⁴ See [CMA case page](#).

8. Before reaching a decision as to whether to accept the proposed undertaking, the CMA invites interested parties to make their views known.
9. 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. Representations should be made in writing to the CMA and be addressed to:

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Deadline for comments: 18 June 2015