

**ANTICIPATED ACQUISITION BY GREENE KING PLC OF
SPIRIT PUB COMPANY PLC**

**Proposed undertakings given by Greene King plc to the Competition and
Markets Authority pursuant to section 73 of the Enterprise Act 2002**

Whereas:

- (a) Greene King plc (**Greene King**), proposes to acquire the entire issued ordinary share capital of Spirit Pub Company plc (**Spirit**) by means of a Court-sanctioned scheme of arrangement under Part 26 of the Companies Act 2006 (as amended) (the **Transaction**) such that Greene King and Spirit ceased to be distinct for the purposes of the Enterprise Act 2002 (the **Act**);
- (b) Under section 22(1) of the Act the Competition and Markets Authority (**CMA**) has a duty to refer a relevant merger situation for a Phase 2 investigation where it believes that it is or may be the case that the creation of that merger situation has resulted or may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services;
- (c) Under section 73 of the Act the CMA may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate. In particular, the CMA shall have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
- (d) As set out in the CMA's decision of 11 May 2015 (the **Decision**), the CMA believes that, in the absence of appropriate undertakings, it would be under a duty to refer the Transaction for a Phase 2 investigation; and
- (e) The CMA considers that the undertakings given below by Greene King are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which has or may have resulted from the Transaction, or may be expected to result from the Transaction, as specified in the Decision.

NOW THEREFORE Greene King hereby gives to the CMA the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which has or may have resulted from it or may be expected to result from it.

1 EFFECTIVE DATE OF THE UNDERTAKINGS

- 1.1 These undertakings shall take effect from the date that, having been signed by Greene King, they are accepted by the CMA.

2 DIVESTMENT OF THE DIVESTMENT BUSINESS

- 2.1 Greene King shall, using its best endeavours and acting in good faith, as soon as reasonably practicable, effect to the satisfaction of the CMA the divestment of the Divestment Businesses as a going concern by the end of the Divestment Period to a purchaser approved by the CMA in accordance with the provisions of these undertakings.
- 2.2 Without prejudice to the generality of paragraph 2.1 above, Greene King shall use all reasonable endeavours to ensure the transfer of Key Staff with the divestment of the Divestment Businesses.
- 2.3 Greene King shall be deemed to have complied with its obligations at paragraph 2.1 above if, as soon as reasonably practicable and in any event by the end of the Divestment Period, it has entered into a legally binding agreement (or agreements) with a purchaser (or purchasers) approved in advance by the CMA in writing pursuant to these undertakings (or a legally binding agreement (or agreements) conditional on such approval), provided that the completion of the divestment of the Divestment Businesses contemplated by such agreement (or agreements), if later than the end of the Divestment Period, takes place:
- (a) within a period not exceeding three months after the approval of the purchaser by the CMA (or within three months of the effective date of these undertakings, as set out in clause 1 above, whichever is later); or
 - (b) within a period not exceeding 10 Working Days after all the necessary approvals and consents from third parties have been obtained,
- whichever is later.
- 2.4 Without prejudice to the generality of paragraph 2.1 above, Greene King shall take the following measures to the extent they may be necessary in the opinion of the CMA to effect the sale of the Divestment Business in accordance with the provisions of these undertakings:
- (a) the transfer or vesting of property, assets, rights, personnel, liabilities or obligations (including without prejudice any contracts, licences, authorisations, permits or consents);

- (b) the adjustment of contracts, whether by discharge or reduction or assignment of any liability or obligation or otherwise;
- (c) the creation, allotment, transfer, surrender or cancellation of any shares, stock or securities; and
- (d) the formation or winding up of a company.

2.5 Greene King shall ensure that the sale and purchase agreement entered into for the purposes of paragraph 2.1 and 2.3 above includes a warranty that the purchaser (or purchasers) has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the Divestment Businesses as part of a viable and active business in competition with Greene King and other competitors in the operation of pubs.

2.6 In the event that Greene King fails to divest the Divestment Businesses in accordance with paragraphs 2.1, 2.2 and 2.3 above, the CMA may, whether or not initiating the Trustee Functions as set out in clause 4 below, require Greene King to divest the Divestment Businesses as a going concern at no minimum price to a purchaser approved by the CMA.

2.7 Greene King shall notify the CMA in writing of the identity of each Proposed Purchaser that makes an offer for the Divestment Businesses together with the value and terms of such offers as soon as reasonably practicable following the receipt of such offers and in any event within 5 Working Days of receipt of such offers.

3 APPROVAL OF PURCHASER AND TERMS OF DIVESTMENT

3.1 For the purposes of the CMA approving a Proposed Purchaser of (one or more of) the Divestment Businesses in accordance with these undertakings, Greene King shall, save as required or permitted by the CMA, satisfy the CMA that:

- (a) the acquisition by the Proposed Purchaser of the Divestment Businesses, on the terms set out above, remedies, mitigates or prevents the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it, or may be expected to result from it, in particular having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;

- (b) the Proposed Purchaser is independent of and unconnected to Greene King and the Group of Interconnected Bodies Corporate to which Greene King belongs and any Associated Person or Affiliate of Greene King or such Group of Interconnected Bodies Corporate;
- (c) the Proposed Purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the Divestment Businesses as viable and active businesses in competition with Greene King and other competitors in the operation of pubs from the date of completion of the divestment of the relevant Divestment Businesses;
- (d) the Proposed Purchaser is reasonably to be expected to obtain all necessary approvals, licences and consents from any regulatory or other authority, including (where applicable) landlord's consent to the transfer of any leasehold interest; and
- (e) the acquisition by the Proposed Purchaser of the Divestment Businesses does not create a realistic prospect of a substantial lessening of competition within any market or markets in the UK.

3.2 The CMA may require Greene King to provide it with such information and documentation as it may reasonably require to satisfy the CMA that the Proposed Purchaser(s) will fulfil the requirements in paragraph 3.1 above.

4 APPOINTMENT OF A TRUSTEE

4.1 The provisions of paragraph 4.2 to paragraph 4.7 below shall apply only as long as Greene King has not satisfied, or where the CMA has reasonable grounds for believing that Greene King will not satisfy, all or any part of the obligation to divest the Divestment Business in accordance with clause 2 above.

4.2 Within 5 Working Days of the CMA notifying Greene King in writing that it must do so, Greene King shall propose to the CMA for approval:

- (a) the names of at least two individuals to exercise the Trustee Functions; and
- (b) the full terms of a mandate in accordance with which the Trustee shall carry out the Trustee Functions.

4.3 Greene King and/or any individuals nominated pursuant to paragraph 4.2 shall satisfy the CMA that, save as required or permitted by the CMA:

- (a) such nominated individuals have the necessary qualifications to carry out their mandates, and are employees or partners of an investment bank, retail bank, commercial property agent, building society or law firm or accountancy firm with an established reputation either nationwide or in a substantial part of the UK or in another EU member state;
- (b) such nominated individuals are each independent of Greene King and of the Group of Interconnected Bodies Corporate to which Greene King belongs and of any Associated Person or Affiliate of Greene King or of such Group of Interconnected Bodies Corporate and of any Proposed Purchaser of the Divestment Business to be sold pursuant to these undertakings, and, in the reasonable opinion of Greene King, are appropriate to be appointed as Trustee; and
- (c) such nominated individuals neither are, nor are likely to become, exposed, either directly or indirectly, to a conflict of interest that impairs or may be likely to impair their objectivity or independence in discharging the Trustee Functions.

4.4 Within 2 Working Days of the CMA approving, at its discretion, one or more of the persons nominated by Greene King and their proposed mandates pursuant to paragraph 4.2 above, and subject to any modifications the CMA deems necessary for the Trustee to carry out the Trustee Functions, Greene King shall use its best endeavours to appoint from the persons so approved one person to carry out the Trustee Functions in accordance with the mandate approved by the CMA pursuant to paragraph 4.2 above.

4.5 In the event that:

- (a) Greene King fails to propose any person or persons in accordance with paragraph 4.2 above; or
- (b) none of the persons proposed by Greene King pursuant to paragraph 4.2 is approved by the CMA; or
- (c) Greene King is unable for any reason to appoint within the time limit stipulated in paragraph 4.4 above any such person following approval by the CMA,

Greene King shall use its best endeavours to appoint from persons nominated by the CMA one person to carry out the Trustee Functions on the terms of a mandate approved by the CMA. Greene King shall use its best endeavours to make such appointment within 5 Working Days of receiving the nominations from the CMA.

- 4.6 The appointment of the Trustee pursuant to paragraph 4.4 or paragraph 4.5 above shall be irrevocable unless:
- (a) a conflict of interest that impairs or may be likely to impair the objectivity or independence of the Trustee in discharging the Trustee Functions arises;
 - (b) the Trustee ceases to perform the Trustee Functions; or
 - (c) the CMA is otherwise satisfied that there is good cause for the appointment to be terminated in advance of the satisfactory fulfilment of the Trustee Functions.
- 4.7 In the event that the appointment of the Trustee is terminated in accordance with paragraph 4.6 above, Greene King shall, if requested to do so in writing by the CMA, use its best endeavours to appoint from persons nominated by the CMA one person to carry out the Trustee Functions in accordance with such mandate as is approved by the CMA. Greene King shall use its best endeavours to make such appointment within seven Working Days of receiving the nominations from the CMA. Where required by the CMA, the outgoing Trustee shall continue as Trustee until a new Trustee is in place and a full handover of all relevant information has taken place.

5 THE MANDATE

- 5.1 The terms of the mandate proposed by Greene King pursuant to paragraph 4.2 above shall, as a minimum, contain all provisions necessary to enable the Trustee to carry out the Trustee Functions including, without limitation to the generality of this paragraph:
- (a) an exclusive, irrevocable mandate to sell the Divestment Businesses as required by paragraph 6.1 below to a purchaser (or purchasers) as directed or approved in writing in advance by the CMA at no minimum price and on such reasonable terms and conditions as the Trustee considers appropriate to effect an expedient sale;
 - (b) a mandate to take any other steps necessary for, or incidental to, the Trustee's mandate under sub-paragraph (a) above;
 - (c) a comprehensive power of attorney to the Trustee (including the authority to grant sub-powers of attorney to the Trustee's officers, employees and agents) to enable it to take all steps necessary or appropriate to effect the sale of the Divestment Businesses;

- (d) a mandate to comply with any orders and/or directions given by the CMA; and
- (e) a mandate to appoint at Greene King's expense such advisers as the CMA and/or the Trustee reasonably considers necessary or appropriate in connection with the performance of the Trustee Functions.

6 FUNCTIONS OF TRUSTEE

- 6.1 The Trustee shall seek to procure, within such period as may be specified in writing by the CMA, the completion of the sale of the Divestment Businesses at no minimum price, to a purchaser or purchasers approved by the CMA in accordance with paragraph 6.3 below.
- 6.2 Without prejudice to the generality of paragraph 6.1 above, the Trustee shall take any of the measures set out in paragraph 2.4 above in relation to the Divestment Businesses to the extent to which such measures may be necessary to effect the divestment of the Divestment Businesses in accordance with that provision.
- 6.3 The Trustee shall not sell or permit the divestment of the Divestment Businesses to a Proposed Purchaser unless it has been directed to do so by the CMA or has obtained the CMA's prior written approval in respect of the identity of that Proposed Purchaser. The Trustee shall notify the CMA of the identity of a Proposed Purchaser as soon as reasonably practicable prior to the signing of a legally enforceable agreement and in any event at least 20 Working Days in advance of the proposed completion of the proposed sale and purchase agreement in question.
- 6.4 Pending the divestment of the Divestment Businesses pursuant to paragraph 6.1 above, the Trustee shall monitor Greene King's compliance with its obligations under paragraph 7.1 and paragraph 7.2 below and shall promptly take such measures as it considers necessary to ensure such compliance, as well as reporting in writing to the CMA, if the Trustee concludes on reasonable grounds that Greene King is failing or will fail to comply with such obligations.
- 6.5 The Trustee may give written directions to Greene King to take such steps as may be specified or described in the directions for the purpose of securing Greene King's compliance with its obligations under these undertakings or enabling the Trustee to carry out the Trustee Functions. The Trustee may not require Greene King to:
 - (a) offer any reverse premium or similar inducement to a purchaser; or

- (b) accept any actual or contingent liability towards a purchaser or otherwise in connection with the divestment of the Divestment Businesses which would be unusual in scope, duration or financially, having regard to the price and usual market practice in relation to similar disposals.

6.6 The Trustee shall, as soon as reasonably practicable, comply at all times with any reasonable instructions or written directions made by the CMA for the purposes of carrying out or securing compliance with the undertakings (or any matter incidental thereto) and shall provide to the CMA such information and reports in relation to the carrying out of the Trustee Functions as the CMA may require. The Trustee shall promptly report in writing to the CMA if the Trustee concludes on reasonable grounds that Greene King is failing or will fail to comply with any of its obligations under these undertakings.

6.7 For the purpose of fulfilling the Trustee Functions, the Trustee shall not be bound by instructions of Greene King nor shall the Trustee Functions be extended or varied in any way by Greene King save with the prior express written consent of the CMA.

7 OBLIGATIONS OF GREENE KING FOLLOWING APPOINTMENT OF TRUSTEE

7.1 Greene King shall not give any instruction or request to the Trustee which conflicts with the Trustee Functions.

7.2 Greene King shall take all such steps as are reasonably necessary to enable the Trustee to carry out the Trustee Functions, including but not limited to:

- (a) complying with such written directions as the Trustee may from time to time give pursuant to paragraph 6.6 above; and
- (b) providing the Trustee with all such assistance and information as it may reasonably require in carrying out the Trustee Functions.

8 REMUNERATION OF TRUSTEE

8.1 Greene King shall pay the Trustee a reasonable remuneration for the services it provides in carrying out the Trustee Functions, and shall pay the Trustee in a way that does not impede the independent and effective

fulfilment of the Trustee Functions, which shall be set out in the Trustee's mandate referred to in clause 4.2 above.

9 INTERIM ACTION

- 9.1 Pending the completion of the divestment of the Divestment Businesses to the satisfaction of the CMA in accordance with the provisions of these undertakings, to the extent that it is within the ability of Greene King to control the relevant aspects of the Divestments Businesses and save as otherwise agreed in advance in writing by the CMA, Greene King shall minimise as far as possible any risk of loss of competitive potential of the Divestment Businesses and in particular ensure that:
- (a) the Divestment Businesses are carried on separately from the Greene King Business and the Divestment Businesses' separate sales or brand identity is maintained, save that Greene King shall be permitted to take such decisions as are necessary to ensure the continued effective operation of the Divestment Businesses, where such decisions also apply to all of the retained pubs within the Greene King Business, or to all of the retained pubs within a specific brand/ concept or business division;
 - (b) the Divestment Businesses are maintained as a going concern and sufficient resources are made available for the development of the Divestment Businesses, on the basis of the Parties' pre-existing plans as applicable to the Divestment Businesses at the date of these undertakings;
 - (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the Divestment Businesses;
 - (d) the nature, description, range and quality of goods and/or services supplied in the UK by each of the Divestment Businesses are maintained and preserved;
 - (e) except in the ordinary course of business for the separate operation of the Divestment Businesses and the Greene King Business:
 - (i) all of the assets of the Divestment Businesses are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the Divestment Businesses are disposed of;
and

- (iii) no interest in the assets of the Divestment Business is created or disposed of;
- (f) all existing contracts of the Divestment Businesses continue to be serviced by the business to which they were awarded, save that contract transfers shall be permitted to ensure effective continued operation of the Divestment Businesses where such transfers are also made in respect of all of the retained pubs within the Greene King Business or to all of the retained pubs within a specific brand/ concept or business division;
- (g) no changes are made to Key Staff of the Divestment Businesses;
- (h) no Key Staff are transferred between the Divestment Businesses and the Greene King Business;
- (i) all reasonable steps are taken to encourage all Key Staff to remain with the Divestment Businesses; and
- (j) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature (**Confidential Information**) relating to either of the Divestment Businesses or the Greene King Business shall pass, directly or indirectly, from the Divestment Businesses (or any of its employees, directors, agents or affiliates) to the Greene King Business (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (for example, where required for compliance with external regulatory and/or accounting obligations), or where required to ensure the continued operation of the Divestment Businesses or any steps necessary in order for Greene King to comply with these undertakings, including the transfer of information necessary for the divestment process, provided that, upon divestment of the Divestment Businesses, any records or copies (electronic or otherwise) of Confidential Information held by Greene King in relation to the Divestment Businesses (or vice versa) shall be returned to the relevant business and any copies destroyed (except as may be necessary for the purposes of compliance with the obligations above).

9.2 At all times, Greene King will actively keep the CMA informed of any material developments as far as it has or must have knowledge in relation to the Divestment Businesses, which includes, but is not limited to:

- (a) details of Key Staff who leave the Divestment Businesses;

- (b) any interruption of one or more of the Divestment Businesses (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
- (c) all substantial customer volumes lost by the Divestment Businesses;
and
- (d) substantial changes in the Divestment Businesses' contractual arrangements or relationships with key suppliers.

10 CONTINUED SEPARATION

10.1 Except with the prior written consent of the CMA, for a period of 10 years following the divestment of the Divestment Business pursuant to these undertakings, Greene King, or any member of the Group of Interconnected bodies Corporate to which Greene King belongs:

- (a) shall not, directly or indirectly, hold, acquire, re-acquire or use:
 - (i) an Interest in the Divestment Business;
 - (ii) any Interest in any company carrying on or having Control of the Divestment Businesses (other than any investments made in the ordinary course of the operation of any of the employee benefit and pension schemes of Greene King or of any members of the Group of Interconnected Bodies Corporate to which Greene King belongs of not more than three per cent in aggregate of the issued equity share capital in any such company, whose shares are listed or dealt with on any recognised investment exchange, which carries no more than three per cent of the voting rights exercisable at meetings of such company); or
 - (iii) other than in the normal course of business, any of the assets of the Divestment Businesses;
- (b) shall procure that no employee or director of Greene King or any member of the Group of Interconnected Bodies Corporate to which Greene King belongs for as long as they are an employee or director of Greene King or any member of the Group of Interconnected Bodies Corporate to which Greene King belongs holds or is nominated to any directorship or managerial position in the Divestment Businesses or directorship or managerial position in any company or other undertaking carrying on or having control of the Divestment Businesses without the CMA's prior written consent;

- (c) shall not participate in the formulation of, or (other than in the ordinary course of business) influence or attempt to influence, the policy of the Divestment Businesses or any company or other undertaking carrying on or having control of those Divestment Businesses; and
- (d) shall not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any Associated Person or Affiliate of Greene King or of any member of the Group of Interconnected Bodies Corporate to which Greene King belongs directly or indirectly acquiring the Divestment Businesses or doing any of the things listed in sub-paragraphs 10.1(a), 10.1(b) and 10.1(c) above.

11 NEW DIVESTMENT IF GREENE KING OBTAINS POSSESSION OF A DIVESTMENT BUSINESS PROPERTY

- 11.1 In the event that, following divestment of a Divestment Business in a manner that has involved Greene King assigning an existing lease or granting a sub-lease to the purchaser of the Divestment Business, Greene King benefits from or becomes subject to an Occupation Interest (so long as Greene King so benefits or becomes so subject during the term of the lease assigned or sub-lease granted by Greene King as part of such divestment), Greene King shall:
- (a) within 10 Working Days of becoming aware that it is so benefitting or is so subject inform the CMA in writing of that fact; and
 - (b) using its best endeavours and acting in good faith comply with such written directions as the CMA may give to Greene King to effect a new divestment of the Occupation Interest to a new purchaser approved by the CMA in accordance with the provisions of these undertakings, provided always that such written directions must be of a similar nature to those contained in these undertakings with regard to the original divestment of the Divestment Business.
- 11.2 In determining, for the purposes of sub-paragraph 11.1(b) above, whether to require Greene King to effect a new divestment of the Occupation Interest to a new purchaser approved by the CMA in accordance with the provisions of these undertakings, the CMA may have regard to any change of circumstances since the Decision.
- 11.3 In the event that Greene King fails to divest the Occupation Interest in accordance with paragraph 11.1 above, the CMA may, whether or not initiating the Trustee Functions set out in these undertakings, require Greene

King to divest the Occupation Interest at no minimum price to a purchaser approved by the CMA.

- 11.4 Greene King shall notify the CMA in writing of the identity of each proposed purchaser that makes an offer for the Occupation Interest together with the value and terms of such offers as soon as reasonably practicable following the receipt of such offers and in any event within 10 Working Days of receipt of such offers.
- 11.5 In the event that the CMA gives written directions under paragraph 11.1 above for Greene King to effect a new divestment of the Occupation Interest, paragraphs 3, 4, 5, 6, 7, 8 and 9 shall apply to the new divestment in the same way that they applied to the original divestment obligation save that references to 'Divestment Business' in those paragraphs shall be construed as references to 'Occupation Interest'.

12 COMPLIANCE

- 12.1 Greene King shall comply promptly with such written directions as the CMA may from time to time give:
- (a) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or
 - (b) to do or refrain from doing anything so specified or described which it might be required by these undertakings to do or to refrain from doing.
- 12.2 Greene King shall co-operate fully with the CMA when the CMA is:
- (a) monitoring compliance with the provisions of these undertakings; and
 - (b) investigating potential breaches of the provisions of these undertakings.
- 12.3 Greene King shall procure that any member of the same Group of Interconnected Bodies Corporate as Greene King complies with these undertakings as if it had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as Greene King shall be attributed to Greene King for the purposes of these undertakings.
- 12.4 Where any Affiliate of Greene King is not a member of the same Group of Interconnected Bodies Corporate as Greene King, Greene King shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

13 PROVISION OF INFORMATION

- 13.1 Greene King shall furnish promptly to the CMA such information as the CMA considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any Confidential Information.

14 EXTENSION OF TIME LIMITS

- 14.1 The CMA may, in response to a written request from Greene King, or otherwise at its own discretion, grant an extension to any time period referred to in these undertakings.

15 SERVICE

- 15.1 Greene King hereby authorizes Linklaters LLP, whose address for service is One Silk Street, London, EC2Y 8HQ, to accept service on its behalf of all documents connected with these undertakings (including any document of any kind which falls to be served on or sent to Greene King, or any of its Subsidiaries in connection with any proceedings in Courts in the UK, orders, requests, notifications or other communications connected with these undertakings).
- 15.2 Unless Greene King inform the CMA in writing that Linklaters LLP has ceased to have authority to accept and acknowledge service on its or any of its Subsidiaries' behalf, any document, order, request, notification or other communication shall be validly served on Greene King if it is served on Linklaters LLP; and service shall be deemed to have been acknowledged by Greene King if it is acknowledged by Linklaters LLP or such other nominee.
- 15.3 Paragraph 15.2 above has effect irrespective of whether, as between Greene King and Linklaters LLP or other nominees, Linklaters LLP or other nominees has or continues to have any authority to accept and acknowledge service on Greene King's or any of its respective Subsidiaries' behalf.
- 15.4 No failure or mistake by Linklaters LLP or other nominees (including a failure to notify Greene King of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these undertakings including any proceedings or judgment.
- 15.5 Any communication from Greene King to the CMA under these undertakings shall be addressed to Manager, Market and Mergers Remedies Monitoring, Competition and Markets Authority, Victoria House, Southampton Row,

London WC1B 4AD or such other person or address as the CMA may direct in writing.

16 EFFECT OF INVALIDITY

- 16.1 Should any provision of these undertakings be contrary to law or invalid for any reason, Greene King undertake to continue to observe the remaining provisions.

17 GOVERNING LAW

- 17.1 Greene King recognizes and acknowledges that these undertakings shall be governed and construed in all respects in accordance with English law.
- 17.2 In the event that a dispute arises concerning these undertakings, Greene King undertakes to submit to the courts of England and Wales.

18 TERMINATION

- 18.1 Greene King recognizes and acknowledges that these undertakings shall be in force until such time as they are varied, released or superseded under the Act.
- 18.2 Greene King recognizes and acknowledges that the variation, release or supersession of these undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

19 INTERPRETATION

- 19.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 19.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.
- 19.3 In these undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.
- 19.4 For the purposes of these undertakings:

“the Act” means the Enterprise Act 2002;

“Affiliate” of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

“Associated Person” means a person or persons associated with Greene King within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons;

“business” has the meaning given by section 129(1) and (3) of the Act;

“CMA” means the Competition and Markets Authority or any successor body;

“Confidential Information” means any business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;

“Control” shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

“Decision” means the CMA’s decision under section 22 of the Act dated 11 May 2015 in connection with the Transaction;

“Divestment Business” means each of the pubs listed in the "Pubs to be divested" column in the Annex comprising solely, in respect of such pub, of the freehold title (except for Fairham Hotel and Ladygrove which are held under long leasehold title), pub name and in the case of managed pubs, pub level employees subject to transfer under TUPE;

“Divestment Period” means the period of time determined by the CMA and notified in writing to Greene King by the CMA;

“Greene King” means Greene King plc;

“Greene King Business” means the business of Greene King and its Group of Interconnected Bodies Corporate carried on as at the effective date of these undertakings; during the period before completion of the

Transaction, “Greene King Business” includes the business of Spirit and its Group of Interconnected Bodies Corporate for those Divestment Businesses that are listed as Spirit pubs in the Annex;

“Group of Interconnected Bodies Corporate” has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

“Interest” includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders’ meetings but does not include a contract to acquire shares in the future; and for this purpose “an interest in shares” includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

“Key Staff” means Greene King or Spirit staff employed on a salaried basis within the Divestment Businesses who have positions of executive or managerial responsibility and whose performance affects the viability of the Divestment Businesses, which includes pub manager(s) and assistant managers;

“Occupation Interest” means an interest in the Divestment Business Property by virtue of which Greene King enjoys an unconditional right or is under an unconditional obligation to occupy the Divestment Business Property provided always that: (i) the original purchaser (or its successor) is not in occupation of the Divestment Business Property; and/or (ii) before such interest in the Divestment Business Property arose, the most recent use to which the Divestment Business Property had been put was that of carrying on operation of pubs;

“Proposed Purchaser” means any proposed purchaser or purchasers for some or all of the Divestment Businesses;

“Subsidiary” shall be construed in accordance with section 1159 of the Companies Act 2006 (as amended), unless otherwise stated;

“the Transaction” means the anticipated acquisition by Greene King of the entire issued ordinary share capital of Spirit;

“Trustee” means the person appointed pursuant to paragraph 4.4, paragraph 4.5 or paragraph 4.7 to carry out the Trustee Functions;

“Trustee Functions” means the functions set out in clause 6;

“UK” means the United Kingdom of Great Britain and Northern Ireland;

“Working Day” means any day of the week other than a Saturday or a Sunday or any day that is a public holiday in England and Wales;

“Spirit” means Spirit Pub Company plc; and

unless the context requires otherwise, the singular shall include the plural and vice versa.

FOR AND ON BEHALF OF GREENE KING

Signature

Name

Title

Date

Annex - Divestment Businesses

Divestment Business	Address	Tenure
Brewery Tap - Greene King	40-42 Ock Street, Abingdon, Oxfordshire, OX14 5BZ	FH*
Fox Inn – Spirit	Fox Lane, Boars Hill, Oxford, Oxfordshire, OX1 5DR	FH
Fish - Greene King	4 Appleford Road, Sutton Courtenay, Abingdon, Oxfordshire, OX14 4NQ	FH
Ladygrove - Greene King	23 Cow Lane, Didcot, Oxfordshire, OX11 7SZ	LLH**
Fox – Greene King	29 High Street, Steventon, Abingdon, Oxfordshire, OX13 6RZ	FH
Packhorse – Greene King	Milton Hill, Steventon, Abingdon, OX13 6AG	FH
Plough Inn – Spirit	Portsmouth Road, Bursledon, Southampton, SO31 8BT	FH
Crusader - Greene King	Hartness Road, Nottingham, Nottinghamshire, NG11 8SG	FH
Coach & Horses - Spirit	The Green, Castle Bromwich, B36 9AR	FH
Fairham Hotel - Spirit	Farnborough Road, Clifton, Nottingham, Nottinghamshire, NG11 8LT	LLH
Gedling Inn - Spirit	50 Main Road, Gedling, Nottingham, NG4 3HL	FH
Sunnyside – Greene King	Boughton Green Road, Northampton, Northamptonshire, NN2 7AG	FH
Old Colonial - Spirit	West Bridgford, Compton Acres, Nottingham, NG2 7RS	FH
Raven - Spirit	Hodge Hill Road, Birmingham, B34 6DR	FH
Hare - Greene King	Reading Road, West Hendred, Wantage, Oxfordshire, OX12 8RH	FH
Plough - Greene King	Orchard Lane, East Hendred, Wantage, Oxfordshire, OX12 8JW	FH

*FH – Freehold property

**LLH – Long Leasehold property