

ANTICIPATED ACQUISITION BY GREENE KING PLC OF SPIRIT PUB COMPANY PLC

ME/6501/14

Background

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**.
2. 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 SLC Decision is available on the CMA case page.¹
3. Under section 73 of the Act, the CMA may, instead of making a reference for a phase 2 investigation, 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 parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
4. 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 with 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 (the **UIL Decision**). A copy of the UIL Decision is available on the CMA case

¹ See [CMA case page](#).

page.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.

The UIL offered

5. As set out in the SLC Decision, the CMA found a realistic prospect of an SLC in relation to the overlaps between the Parties' pubs in 16 local areas.
6. To address the CMA's concerns, Greene King has offered divestments of 16 pubs (listed in the UIL Decision) 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.

Consultation

7. On 4 June 2015, pursuant to paragraph 2(1) of Schedule 10 to the Act, the CMA published the proposed UIL that it was minded to accept, inviting interested parties to give their views in relation to the proposed UIL. The relevant text from the consultation is set out at Annex 1 of this decision.
8. The CMA received one submission during the consultation period requesting that the undertakings be amended to regulate Greene King's corporate conduct post-merger in order to provide financial and contractual protections for landlords, publicans, tenants and employees. The CMA notes that the submission did not relate to the substance of its competitive assessment nor the substance of the proposed UIL offered to remedy, mitigate or prevent an SLC in the 16 local areas where the CMA identified concerns. Furthermore, it is not within the CMA's powers to regulate corporate behaviour where concerns are not founded as a result of a loss of competition in the UK. Accordingly, this third party submission did not cause the CMA to change its preliminary view that the UIL is likely to be acceptable.
9. For the reasons set out in the UIL Decision and the consultation text (re-produced at Annex 1), the CMA considers that the UIL offered by Greene King is clear cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision.

² See [CMA case page](#).

Decision

10. The CMA found in its SLC Decision that the Merger would be referred for a phase 2 investigation if Greene King failed to give suitable undertakings in lieu of reference pursuant to section 73 of the Act to address the competition concerns identified in the SLC Decision.
11. The CMA considers that the UIL provided by Greene King is clear cut and appropriate to 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 UIL offered by Greene King pursuant to section 73 of the Act. The Merger will therefore not be referred for a phase 2 investigation.
12. The undertakings, which have been signed by Greene King, will come into effect from today.

Sheldon Mills
Senior Director, Mergers
Competition and Markets Authority
22 June 2015

ANNEX 1

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

13. 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 case page.³
14. 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.⁴ 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.

The UIL offer

15. 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

³ See [CMA case page](#).

⁴ See [CMA case page](#).

present case, the CMA found a realistic prospect of an SLC in relation to the overlaps between the Parties' pubs in 16 local areas.

16. 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.⁵ They are also listed in the Annex to the proposed undertaking that the CMA is now consulting on.
17. 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,⁶ 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

18. 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.
19. 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](#).
20. Before reaching a decision as to whether to accept the proposed undertaking, the CMA invites interested parties to make their views known.
21. 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

⁵ See [CMA case page](#).

⁶ See [CMA case page](#).

change to the proposed undertakings, the CMA will give notice of the proposed modifications and publish a further consultation.