

Anticipated acquisition by The Original Bowling Company Ltd of Bowlplex Ltd

ME/6528/15

1. The Original Bowling Company Ltd (**TOBC**) has agreed to acquire Bowlplex Ltd (**Bowlplex**) (the **Merger**). TOBC and Bowlplex are together referred to as the **Parties**.
2. On 17 August 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 constitutes 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**).
3. On 24 August 2015, TOBC offered an undertaking to the CMA for the purposes of section 73(2) of the Act. As required under section 73A(1) of the Act, TOBC made this offer within five working days beginning with the day after the CMA notified it of the SLC decision under section 34ZA(1)(b) of the Act.
4. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to TOBC that it considers that there are reasonable grounds for believing that the undertaking offered, or a modified version of it, might be accepted by the CMA under section 73(2) of the Act and that it is considering the offer.

The undertaking offered

5. Under section 73 of the Act, the CMA may, instead of making a reference, 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 merger parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
6. The Parties overlap in the supply of ten-pin bowling facilities by national branded operators in the UK. In the present case, the CMA found a realistic

prospect of an SLC in relation to the overlaps between the Parties' sites in six local areas.

7. TOBC has offered to divest six sites (listed in Annex 1), ie, one in each of these local areas, to a specified third party or parties (the **Nominated Purchaser(s)**) together with the relevant leases, licences, assets and employees as permitted by law (**Proposed undertaking**).
8. TOBC has also offered to enter into the agreement for the sale and purchase of the sites with a Nominated Purchaser(s) approved by the CMA before the CMA finally accepts the Proposed Undertaking (**upfront purchaser condition**).

The CMA's provisional views

9. The CMA's aim when considering undertakings in lieu of reference is to seek an outcome that restores competition to the level that would have prevailed absent the merger.¹
10. The SLC Decision found that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in six local areas where the Parties' sites overlap, namely Bristol, Bracknell, Cardiff, Dudley, Leeds/Castleford and Glasgow.
11. The CMA considers that the Proposed Undertaking may provide a clear-cut solution to the SLC,² as it would enable a third party or parties to enter the local areas by purchasing the sites and to compete in the affected markets using those sites. This may result in the competitive constraint provided by Bowlplex that would otherwise be lost following the Merger being replaced, for the following reasons:
 - (a) The offer involves the divestment of the Bowlplex site in four of the six local areas.
 - (b) In two local areas TOBC has offered to divest TOBC sites, rather than the Bowlplex sites. The CMA's general approach will be to require divestment of the business that has been acquired.³ However, the CMA will also consider divestment of the buyer's existing business as an alternative where it is confident that divestment of that business will resolve the

¹ *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122)*, December 2010, paragraph 5.11. OFT1122 was adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)*, January 2014, Annex D).

² See OFT1122, paragraph 5.6.

³ See OFT1122, paragraph 5.22.

competition concerns. In this case, the TOBC sites to be divested are similar to the Bowlplex sites in terms of revenues, number of lanes, locality and offering. The evidence available to the CMA therefore indicates that a third party acquiring these sites would be able to compete at a level which would replace the competitive constraint provided by Bowlplex and which would be lost as a result of the Merger.

12. The CMA also believes at this stage that the Proposed Undertaking may be capable of ready implementation, in particular as:
 - (a) Each of the divestment sites are largely stand-alone businesses (that is, they operate relatively independently).
 - (b) TOBC has proposed to secure an upfront buyer for the divestment sites, which means that the CMA will only accept the Proposed Undertaking after TOBC has entered into a sale and purchase agreement with the Nominated Purchaser(s) that the CMA considers to be suitable.
 - (c) The location, offering and revenues of each of the TOBC sites offered suggests that they may also be suitable in terms of saleability.⁴
13. For these reasons, the CMA currently considers that there are reasonable grounds for believing that the Proposed Undertaking, or a modified version of it, might be accepted by the CMA under section 73(2) of the Act.
14. The upfront purchaser condition offered by the Parties also means that, before acceptance, the CMA will consult publicly on the suitability of the Nominated Purchaser(s), as well as other aspects of the proposed sale and purchase agreement.
15. The CMA's decision on whether to ultimately accept the Proposed Undertaking or refer the Merger for a phase 2 investigation will be informed by, among other things, third party views on whether the Proposed Undertaking is suitable to address the competition concerns identified by the CMA.

⁴ See [OFT1122](#), paragraph 5.22.

Consultation process

16. Full details of the undertaking offered will be published in due course when the CMA consults on the Proposed Undertaking as required by Schedule 10 of the Act.⁵

Decision

17. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertaking offered by TOBC, or a modified version of it, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 27 October 2015 pursuant to section 73A(3) of the Act to decide whether to accept the undertaking, with the possibility to extend this timeframe pursuant to section 73A(4) of the Act to 22 December 2015 if it considers that there are special reasons for doing so. If no undertaking is accepted, then the CMA will refer the Merger for a phase 2 investigation pursuant to sections 33(1) and 34ZA(2) of the Act.

Sheldon Mills

Competition and Markets Authority

1 September 2015

⁵ [CMA2](#), paragraph 8.29.

List of sites to be divested

1. The TOBC tenpin bowling facility located in Avonmeads, BS2 0SP (relating to the Bristol overlap);
2. The Bowlplex tenpin bowling facility located in Camberley, GU15 3PT (relating to the Bracknell overlap);
3. The Bowlplex tenpin bowling facility located in Nantgarw, CCF15 7QX (relating to the Cardiff overlap);
4. The TOBC tenpin bowling facility located in Bentley Bridge, WV11 1BP (relating to the Dudley overlap);
5. The Bowlplex tenpin bowling facility located in Castleford, WF10 4TA (relating to the Leeds/Castleford overlap); and
6. The Bowlplex tenpin bowling facility located at Braehead, PA4 8QX (relating to the Glasgow overlap).