

Anticipated acquisition by The Original Bowling Company Ltd of Bowlplex Ltd

ME/6528/15

Background

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 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 webpages.¹
3. On 24 August 2015, TOBC offered an undertaking to the CMA for the purposes of section 73(2) of the Act. The CMA gave notice to TOBC on 1 September 2015, pursuant to section 73A(2)(b) of the Act, that it considered that there were 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 was considering TOBC's offer (**UIL Decision**). 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.

The undertaking offered

4. As set out in the SLC Decision, the CMA found that the Parties overlap in the supply of tenpin bowling facilities by national branded operators in the UK. The CMA found a realistic prospect of an SLC in relation to the overlaps between the Parties' sites in six local areas, namely Bristol, Bracknell, Cardiff, Dudley, Leeds/Castleford and Glasgow.

¹ See the [full text of the decision](#).

² See the [notice to consider undertakings offered](#).

5. To address the CMA's concerns TOBC offered to divest six sites (listed in the Annex to the final undertakings document), ie one in each of the local areas, together with the relevant leases, licences, assets and employees as permitted by law (**Divestment Business**).
6. TOBC also offered to enter into an agreement for the sale and purchase of the Divestment Business with a purchaser approved by the CMA before the CMA finally accepts the proposed undertaking. TOBC proposed Essenden Limited (**Essenden**), owner of Tenpin Limited (**Tenpin**), as the purchaser of the Divestment Business.

Consultation

7. On 7 October 2015, pursuant to paragraph 2(1) of Schedule 10 of the Act, the CMA published the proposed undertakings that it was minded to accept, inviting interested parties to give their views in relation to the proposed undertakings, including Essenden as purchaser of the Divestment Businesses. The relevant text from the consultation is set out at Annex 1 of this decision.³
8. The CMA received one submission during the consultation period highlighting concerns over job losses. The CMA notes that the submission did not relate to the substance of its competitive assessment nor the substance of the proposed undertaking offered to remedy, mitigate or prevent an SLC in the six 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.
9. The CMA subsequently notified TOBC that it had approved Essenden as the purchaser of the Divestment Businesses. TOBC has notified the CMA that it has entered into a sale and purchase agreement with Essenden to transfer the Divestment Business, conditional only upon acceptance by the CMA of the UIL.ⁱ
10. For the reasons set out in the UIL decision and consultation text (set out as Annex 1), the CMA considers that Essenden is a suitable purchaser of the Divestment Businesses and that the undertakings offered by TOBC are clear cut and appropriate to remedy, mitigate or prevent the competition concerns

³ The full consultation text was published on the CMA's website alongside the proposed undertakings. See the [case page](#).

identified in the SLC Decision. No third parties made any representations to the contrary.

Decision

11. The CMA found in its SLC Decision that the Merger would be referred for a phase 2 investigation if TOBC 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.
12. The CMA considers that the undertakings provided by TOBC are 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 undertakings offered by TOBC pursuant to section 73 of the Act, including Essenden as the purchaser of the Divestment Businesses. The Merger will therefore not be referred for a phase 2 investigation.
13. The undertakings, which have been signed by TOBC, will come into effect from today.

Sheldon Mills
Senior Director
Competition and Markets Authority
1 December 2015

Notice under paragraph 2(1) 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. 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 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 webpages.⁴
3. On 24 August 2015, TOBC offered an undertaking to the CMA for the purposes of section 73(2) of the Act. The CMA gave notice to TOBC on 1 September 2015, pursuant to section 73A(2)(b) of the Act, that it considered that there were 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 was considering TOBC's offer. A copy of that decision is available on the CMA's webpages.⁵ 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 proposed undertaking

4. The Parties overlap in the supply of tenpin 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, namely Bristol, Bracknell, Cardiff, Dudley, Leeds/Castleford and Glasgow.
5. TOBC has offered to divest six sites (listed in Annex to the proposed undertakings document), ie one in each of the local areas, together with the

⁴ See the [full text of the decision](#).

⁵ See the [notice to consider undertakings offered](#).

relevant leases, licences, assets and employees as permitted by law (**Divestment Business**). The list of divestment sites in Annex has one change from that originally offered by TOBC on 24 August 2015. In respect of the overlap in Dudley, TOBC is now offering to divest Bowlplex Dudley instead of TOBC Bentley Bridge. The CMA provisionally considers that divestment of Bowlplex Dudley would also restore competition to pre-merger levels.

6. TOBC has also offered to enter into an agreement for the sale and purchase of the Divestment Business with a purchaser approved by the CMA before the CMA finally accepts the proposed undertaking.
7. The CMA considers that the proposed undertaking would provide a clear-cut solution to the SLC,⁶ as it would enable a third party to enter and compete in the local areas by purchasing the sites. This would result in the competitive constraint provided by Bowlplex that would otherwise be lost following the Merger being replaced.

Proposed purchaser for the Divestment Businesses

8. TOBC has proposed Essenden Limited (**Essenden**), owner of Tenpin Limited (**Tenpin**), as the purchaser of the Divestment Business. The sale and purchase agreement between TOBC and Essenden will be conditional on acceptance by the CMA of the proposed undertaking, including approval of Essenden as the purchaser of the Divestment Businesses.

Suitability of the proposed purchaser

9. In approving a purchaser, the CMA's starting position is that it must be confident without undertaking a detailed investigation that the proposed purchaser will restore pre-merger levels of competition.⁷ The CMA therefore seeks to ensure that:
 - (a) the acquisition by the purchaser remedies, mitigates or prevents the SLC concerned;

⁶ See [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance \(OFT1122\)](#), paragraph 5.6.

⁷ [OFT1122](#), paragraph 5.11. The *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance* has been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2\)](#), Annex D).

- (b) the proposed buyer is independent of and unconnected to the merged parties;
 - (c) the proposed purchaser has the necessary expertise, financial resources, incentive and intention to maintain and operate the Divested Business as an effective competitor in the marketplace;
 - (d) the proposed purchaser is reasonably expected to obtain all necessary approvals, licences and consents from any regulatory or other authority; and
 - (e) the acquisition by the proposed purchaser does not itself create an SLC within any market or markets in the UK.⁸
10. Essenden has been operating bowling centres in the UK through its subsidiary Tenpin since 2003. It is one of the largest bowling centre operators in the UK with thirty sites. Tenpin holds a place on the executive committee of the Tenpin Bowling Proprietors Association of Great Britain and regularly advises on industry developments. Essenden also submitted a detailed business plan in relation to the Divestment Business, which the CMA has examined and is satisfied that the plan evidences Essenden's intention to effectively operate the sites.
 11. In relation to financial resources, Essenden submitted that it intends to fund the acquisition cost of the Divestment Business through a combination of debt and equity. The ongoing operation of the Divestment Business will be financed from internal resources and cash generated from the acquired sites.
 12. The CMA is therefore confident that Essenden has the necessary expertise, incentive and intention to operate the Divestment Business as part of a viable and active business in competition with the Parties and other competitors in the market.
 13. With respect to the independence of Essenden, the CMA notes that Essenden has no equity interest in or interest in any debt of TOBC or Bowlplex and there are no contractual relationships between them.
 14. The CMA also notes that no consents or approvals are required to complete the acquisition and commence trading.
 15. Finally, Essenden's acquisition of the Divestment Business would not in itself create an SLC within any market or markets in the UK as, although

⁸ OFT1122, paragraphs 5.25–5.30.

Essenden's sites provide a comparable service, they are sufficiently geographically distant from the Divestment Business sites and therefore do not exert a substantial constraint on these sites.

16. Therefore, subject to the outcome of this consultation, the CMA considers Essenden to be a suitable purchaser of the Divestment Business.

Proposed decision and process going forward

17. For the reasons set out above, the CMA considers that the proposed undertaking and the purchase of the Divestment Business by Essenden is, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision.
18. 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](#).
19. Before reaching a decision as to whether to accept the proposed undertaking, the CMA invites interested parties to make their views known.
20. The CMA will have regard to any representations made in response to this consultation and may make modifications to the proposed undertaking as a result. If the CMA considers that any representation necessitates any material change to the proposed undertaking, the CMA will give notice of the proposed modifications and publish a further consultation.

ⁱ The Parties have clarified that one site, TOBC Avonmeads (Bristol), will be transferred pursuant to a sale and purchase agreement between a TOBC subsidiary and Essenden, four sites (Bowlplex Camberley, Bowlplex Nantgarw, Bowlplex Dudley, Bowlplex Castleford) will be transferred pursuant to a sale and purchase agreement between a Bowlplex subsidiary and Essenden, and the business assets of one site, Bowlplex Braehead (Glasgow), will be transferred directly to Essenden by a Bowlplex subsidiary.