



EUROPEAN COMMISSION

DG Competition

Case M.9492 - STONEGATE PUB COMPANY / EI GROUP

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERCER PROCEDURE**

Article 4(4)

Date: 11/10/2019



EUROPEAN COMMISSION

Brussels, 10.10.2019
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PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

**To the notifying party
To the British Competition
Authority**

Subject: Case M.9492 – Stonegate Pub Company/Ei Group
Commission decision following a reasoned submission pursuant to Article 4(4) of Regulation No 139/2004¹ for referral of the case to the United Kingdom and Article 57 of the Agreement on the European Economic Area².

Date of filing: 06.09.2019

Legal deadline for response of Member States: 27.09.2019

Legal deadline for the Commission decision under Article 4(4): 11.10.2019

Dear Sir or Madam,

1. INTRODUCTION

- (1) On 6 September 2019, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation (the “**Reasoned Submission**”) with respect to the proposed acquisition by Stonegate Pub Company Limited (“**Stonegate**”, United Kingdom) of Ei Group plc (“**Ei**”, United

¹ OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

² OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

Kingdom) within the meaning of Article 3(1)(b) of the Merger Regulation (the “**Transaction**”).

- (2) According to Article 4(4) of the Merger Regulation, before a formal notification is made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition and which presents all the characteristics of a distinct market.
- (3) Stonegate and Ei have requested that the Transaction should be examined in its entirety by the competent authorities of the United Kingdom.
- (4) On 6 September 2019, the Commission transmitted a copy of the Reasoned Submission to all Member States.
- (5) On 12 September 2019, the Competition and Markets Authority (“**CMA**”) as the competent authority of the United Kingdom informed the Commission that the United Kingdom agreed with the proposed referral.

2. THE PARTIES

- (6) **Stonegate** is a company incorporated in England and Wales. Stonegate operates pubs and has more than 765 outlets across the United Kingdom within a wide variety of formats such as community and high street pubs, branded bars, country inns and late night venues. All of Stonegate’s revenues are achieved in the UK. Stonegate is owned and controlled by TDR Capital LLP (“**TDR Capital**”) through investment funds. TDR Capital is the sole controlling entity of Stonegate.
- (7) **Ei** is a company incorporated in England and Wales. Ei is a pub company with more than 4,000 operating sites across England and Wales, predominantly run as leased and tenanted pubs. Ei is headquartered in Solihull, West Midlands. It is listed on the London Stock Exchange and achieves all of its revenues in the UK.
- (8) Ei and Stonegate are referred to collectively as the “**Parties**”.

3. THE OPERATION AND CONCENTRATION

- (9) The proposed concentration (the “**Transaction**”) concerns the acquisition of sole control of Ei by Stonegate within the meaning of Article 3(1)(b) of the EU Merger Regulation.
- (10) The Parties entered into a cooperation agreement on 18 July 2019 and a public announcement was made (under the UK Takeover Code) on the same day. The Transaction shall be implemented by means of a Court-sanctioned scheme of arrangement under Part 26 of the Companies Act (UK).
- (11) After completion of the Transaction, Stonegate will own all the shares of Ei. Stonegate will therefore exercise sole control of Ei.
- (12) It follows that the Transaction would result in a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

4. EU DIMENSION

- (13) The Parties have a combined aggregate worldwide turnover of more than EUR 5 000 million³. Stonegate and TDR Capital had a worldwide turnover of EUR [...] for FY 2018. Ei had a worldwide turnover of EUR 785 million for FY 2018. Each of the Parties had an EU-wide turnover in excess of EUR 250 million (Stonegate/TDR Capital: EUR [...]; Ei: EUR 785 million for FY 2018). Last, the undertakings concerned do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
- (14) The Transaction therefore has an EU dimension within Article 1(2) of the Merger Regulation.

5. ASSESSMENT

- (15) The Parties operate pub outlets only in the United Kingdom. The Transaction therefore concerns the operation of pubs in the United Kingdom.
- (16) Regarding the operation of pubs, the Transaction would have an impact on a number of distinct markets that are entirely within the United Kingdom. More precisely, the Transaction would give rise to horizontally affected markets in a number of local areas in the United Kingdom, sometimes with potentially very high market shares. For example, the Parties would have combined market shares of [90-100]% in the local areas of Railway Tavern Edmonton, Hyde Park Edmonton and Fox and Hounds Newmillerdam.
- (17) The Transaction does not give rise to any vertical relationships between the Parties.

5.1. Relevant product markets

- (18) The Commission has recently considered a product market for the operation of pubs in Case M.8322 – *Heineken UK/Punch Taverns Securitisation*⁴, although it ultimately left the relevant market definition open.
- (19) The Parties consider that the appropriate relevant market may be wider than the operation of pubs as pubs face considerable competitive constraints from other on-trade premises, such as hotel bars, clubs and restaurants.
- (20) However, the Parties also submit that the exact product market definition can ultimately be left open as the outcome of the assessment of the referral request would not be different under any plausible market definition.

5.2. Relevant geographic market

- (21) In *Heineken UK / Punch Taverns Securitisation*, the Commission concluded that the relevant geographic market related to the operation of pubs was not wider than national, although it ultimately left the relevant market definition open. The

³ Turnover calculated in accordance with Article 5 of the Merger Regulation.

⁴ See case M.8322 – *Heineken UK/Punch Taverns Securitisation* (which related to an application for referral under Article 4(4) of the Merger Regulation)

Commission referred to the decisions of the CMA, in particular, *Greene King/Spirit*, where the CMA found that demand for pub was primarily local.⁵

- (22) In a prior decision, the Commission considered the market for the retailing of alcoholic beverages in on-licensed premises to be potentially national but did not exclude a local dimension⁶.
- (23) The Parties agree with the CMA's established approach to cases in this sector, and the Commission's previous decisional practice, that the relevant geographic markets "*appear to be not wider than national*"⁷.

5.3. Assessment of the referral request

5.3.1. Legal requirements

- (24) According to the Commission Notice on case referral⁸, in order for a referral to be made by the Commission to one or more Member States pursuant to Article 4(4), the following two legal requirements must be fulfilled:
 - a) there must be indications that the concentration may significantly affect competition in a market or markets, and
 - b) the market(s) in question must be within a Member State and present all the characteristics of a distinct market.⁹
- (25) Pursuant to point 17 of the Commission Notice on case referral, for there to be indications that the concentration may significantly affect competition in a market or markets, the Parties are in essence required to demonstrate that the Transaction is liable to have a potential impact on competition on a distinct market in a Member State, which may prove to be significant, thus deserving close scrutiny. While the Parties are not required to demonstrate that the effect on competition is likely to be an adverse one, they should point to indicators which are generally suggestive of the existence of some competitive effects stemming from the Transaction. In this context, the existence of 'affected markets' within the meaning of the Form RS is generally considered sufficient to meet the requirements of Article 4(4) of the Merger Regulation.¹⁰
- (26) Furthermore, pursuant to point 20 on the Commission Notice on case referral, concentrations the effects of which are likely to be confined to, or have their main economic impact in a single Member State, are the most appropriate candidate cases for referral to that Member State.
- (27) Concerning the second legal requirement set out in paragraph **Error! Reference source not found.** above, for the purpose of assessing the Reasoned Submission, it can be left open whether the product market includes pubs only or also other on-trade premises and whether the geographic market is local or national. The broadest plausible geographic market definition is national and therefore limited to the United

⁵ Case M. 8322 – *Heineken UK/Punch Taverns Securitisation*, at para. 24.

⁶ Case M. 2777 - *Cinven Limited / Angel Street Holdings*

⁷ M.8322 – *Heineken UK / Punch Taverns Securitisation*, para 29 and 35.

⁸ Commission Notice on Case Referral in respect of concentrations, OJ C 56, 5.3.2005, p. 2.

⁹ Further developed in point 18 of the Commission Notice on Case Referrals.

¹⁰ Footnote 21 of the Commission Notice on case referral.

Kingdom. On that basis, even on the widest plausible product or geographic market definition (i.e. the national market of the UK), the Transaction would not affect any market outside the United Kingdom. This conclusion is further supported by the fact that all of the areas where the Parties operate pubs are located in the United Kingdom. The activities of the Parties are limited to the United Kingdom and there are no indications that the Transaction will have significant effects outside the United Kingdom.

- (28) On this basis, the Commission considers that the second requirement set forth by Article 4(4) of the Merger Regulation is met.
- (29) Concerning the first legal requirement set out in paragraph (24) above, based on the information submitted in the Reasoned Submission, if the geographic market is defined as local, the Transaction would give rise to several affected markets. The Parties have identified [...] areas of local overlap which could give rise to a 35% or higher combined market share with an increment of 5% or more and a number of local areas which could give rise to high combined market shares¹¹, in particular:
- (a) Railway Tavern Edmonton (Ei): in this local area, Ei's Railway Tavern Edmonton is the central pub and there [...] and [...]. There are [...] competitor pubs in the local area and the combined market share of the Parties would be [90-100]% with an increment of [30-40]%.
 - (b) Hyde Park Edmonton (Ei): in this local area, Ei's Hyde Park Edmonton is the central pub and there are [...] in the area [...] and [...]. There are [...] competitor pubs in the local area and the combined market share of the Parties would be [90-100]% with an increment of [20-30]%.
 - (c) Fox and Hounds Newmillerdam (Ei): in this local area, Ei's Fox and Hounds Newmillerdam is the central pub and there are [...] in the area and [...]. There are [...] competitor pubs in the local area and the combined market share of the Parties would be [90-100]% with an increment of [50-60]%.
- (30) Since it is plausible that the geographic market for the operation of pubs is local in scope, and the transaction would give rise to "affected" local markets on this basis, the Commission considers that this is sufficient to fulfil the criteria of Article 4(4) EUMR on the basis that the transaction "*may significantly affect competition*" on these local markets within the UK.
- (31) Therefore, the Commission considers that the first legal requirement for a case referral is met, given that the Transaction may significantly affect competition within a Member State.

5.3.2. *Additional factors*

- (32) As an additional factor supporting the referral, the Commission has considered the fact that the CMA would be best placed to examine the effects of the Transaction,

¹¹ See paragraphs 77, 78 and 84 of the Form RS. The Parties used a primary filter applied by the CMA in previous cases. On that basis, they have identified [...] areas of overlap which would constitute affected markets where the share of the Parties' pubs in a given local area would be 35% or greater with an increment of 5% or greater. Furthermore, the Transaction would give rise to 80 local areas which would fail the CMA's primary filter, where combined market shares might be significantly higher than 35%.

since it has extensive and specific expertise in examining the markets at hand. By way of example, the CMA has already dealt with similar cases in the past, in particular in Case M. 8322 – *Heineken UK / Punch Taverns Securitisation*, which was referred to the CMA following a request pursuant to Article 4(4) of the Merger Regulation¹²;

5.3.3. *Conclusion on referral*

- (33) In light of the information provided by the Parties in the Reasoned Submission, and on the basis of the above considerations, the Commission concludes that the present case meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the Transaction may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market. Furthermore, the requested referral would be consistent with paragraphs 19-23 of the Commission Notice on case referrals, in particular because the CMA appears to be the most appropriate authority to examine the Transaction.

6. CONCLUSION

- (34) For the above reasons, and given that the United Kingdom has expressed its agreement, the Commission has decided to refer the Transaction in its entirety to be examined by the United Kingdom. This decision is adopted in application of Article 4(4) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Cecilio MADERO VILLAREJO
Acting Director-General

¹² See, also *Greene King plc/Belhaven Group plc*, ME/1936/05; *Yates Wine Lodges/the SFI Group*, ME/192605; *Punch Taverns plc/Spirit Group Holdings*, ME/2191/06; *Greene King plc/Hardys and Hansons plc*, ME/2497/06; *Greene King / Spirit Pub Company*, ME/6501/14; *Heineken UK Limited / Punch Taverns*, ME/6656-16.