

Dept.Trade&Industry

Merger Update

Dept Trade & Industry
23 September 2002

JOHNSON GIVES GO-AHEAD TO ACQUISITION BY ENTERPRISE INNS PLC OF THE
LAUREL PUB
GROUP LTD

Competition Minister Melanie Johnson announced today that she has decided not to refer the acquisition by Enterprise Inns plc ('Enterprise') of the Laurel Pub Group Ltd ('Laurel') to the Competition Commission, after accepting signed undertakings from Enterprise to remedy adverse effects of the merger.

This decision is in accordance with the advice of the Director General of Fair Trading (DGFT).

Miss Johnson said:

'The DGFT has advised that this acquisition gives rise to competition concerns in respect of the market for pub retailing, as there are a number of Petty Sessional Divisions (PSDs) in which Enterprise will own more than 25% of pubs. He has advised that undertakings signed by Enterprise will remedy the adverse effects of the merger. I accept his analysis and recommendation, and, as Enterprise have signed the undertakings, no reference to the Competition Commission is necessary'.

The undertakings require Enterprise to sell, within 9 months, as many pubs as is necessary to reduce their share of pubs in any PSD to 25% or less (or, if either Enterprise or Laurel held more than 25% in any PSD prior to the acquisition, to sell as many pubs as is necessary to reduce their share back down to that

level).

Notes to Editors

1 Section 75G of the Fair Trading Act 1973 (inserted by section 147 of the Companies Act 1989 and amended by the Deregulation and Contracting Out Act 1994)

enables the Secretary of State to accept undertakings as an alternative to making a merger reference to the Competition Commission. The Secretary of State must consider whether such undertakings would remedy specific adverse effects of the merger identified by the DGFT which would otherwise have led her to make a reference to the Commission.

2 A full text of the undertakings is attached. DGFT's advice will be available on the OFT's website (www.oft.gov.uk) in due course. For non-media enquiries, please contact Ian Lomas, Consumer and Competition Policy Directorate, DTI (Telephone 020 7215 5009, fax 020 7215 6565, email Ian.Lomas@dti.gsi.gov.uk). Media copies are available from the DTI newsroom on 020 7215 2345).

UNDERTAKINGS GIVEN TO THE SECRETARY OF STATE FOR TRADE AND INDUSTRY BY ENTERPRISE INNS PLC PURSUANT TO SECTION 75G(1) OF THE FAIR TRADING ACT 1973

WHEREAS:

(1) Enterprise has acquired Laurel;

(2) it accordingly appears to the Secretary of State that arrangements have taken place which result in the creation of a merger situation qualifying for investigation;

(3) the Secretary of State has power under section 64 (1) of the 1973 Act to make a merger reference to the Competition Commission;

(4) the Director:

(a) has made a recommendation to the Secretary of State that such a reference should be made; and

(b) has under section 75G (1) of the 1973 Act given advice to the Secretary of State specifying particular effects adverse to the public interest which in his opinion the merger situation qualifying for investigation may have or might be expected to have; and

(5) the Secretary of State considers the undertakings given below by Enterprise appropriate to remedy or prevent the effects adverse to the public interest specified in the advice given by the Director.

Enterprise therefore gives the Secretary of State the following undertakings for the purpose of remedying or preventing the effects adverse to the public interest specified in the advice given by the Director.

Limit on Licensed Premises held

1.1 Paragraph 1.2 shall apply where Enterprise holds in any petty sessional division in England and Wales more than 25 per cent of the Full Publican On-Licences immediately following and as a consequence of its acquisition of Laurel.

1.2 Enterprise will, within 9 months of the date of these undertakings, or such later date as the Director may specify, sell as many Licensed Premises as is necessary in order to reduce its share of Full Publican On-Licences in each of the relevant petty sessional divisions identified pursuant to paragraph 1.1 above to:

(a) 25 per cent. or less; or

(b) (if higher) the share held by Enterprise or Laurel immediately prior to the acquisition in the relevant petty sessional division.

1.3 In paragraph 1.2 above and paragraph 1.5 below, the word 'sell' shall include entering into an unconditional contract of sale for completion within 3 months of the date of such contract.

1.4 Where Enterprise proposes to enter into an agreement to sell any Licensed Premises in accordance with its obligations under paragraph 1.2 above, it shall notify the Director of the identity of the proposed purchaser as soon as is reasonably practicable and in any event, at least 15 Working Days in advance of completion of the proposed sale.

1.5 In the event that Enterprise fails to sell sufficient Licensed Premises to meet the thresholds specified in paragraph 1.2 above within the period of time specified in that paragraph (or by such later date as the Director may specify), the Trustee shall carry out the Trustee Functions.

1.6 Enterprise will not as a condition of the purchase of any Licensed Premises of which it disposes under paragraph 1.2 above require that the purchaser acquires Beer from Enterprise or any of its Subsidiaries, provided that nothing in this paragraph shall prevent Enterprise or any of its Subsidiaries from separately negotiating and entering into Beer supply agreements with such purchaser.

Continued Separation

2.1 Following the sale of Licensed Premises pursuant to paragraph 1.2 or paragraph 5.1, Enterprise will not directly or indirectly acquire any of those Licensed Premises without the Director's prior written consent if such reacquisition would increase its share of Full Publican On-Licences in any petty sessional division in England and Wales to:

(a) more than 25 per cent.; or

(b) (if higher than 25 per cent.) a share greater than that held by Enterprise or Laurel prior to Enterprise's acquisition of Laurel in the relevant petty sessional division.

2.2 Where a reacquisition by Enterprise of Licensed Premises is prohibited pursuant to paragraph 2.1 above, Enterprise shall:

(a) procure that no employee or director of Enterprise or any of its Subsidiaries holds any managerial position in the relevant Licensed Premises or any directorship or managerial position in any company or other undertaking carrying on or having control of the relevant Licensed Premises without the Director's written consent;

(b) not participate in the formulation or making of or (other than in the ordinary course of business) influence or attempt to influence the policy with respect to the relevant Licensed Premises of any company or other undertaking carrying on or having control of the relevant Licensed Premises; and

(c) 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 of Enterprise or its Subsidiaries directly or indirectly acquiring the relevant Licensed Premises or doing any of the things listed in sub-paragraphs (a) and (b) above.

Appointment of a Trustee

3.1 Within 6 months from the date of these undertakings, or within such other later period as may be specified by the Director, Enterprise shall propose to the Director:

(a) the names of at least two persons to exercise the Trustee Functions; and

(b) the terms of a mandate in accordance with which the Trustee shall carry out the Trustee Functions.

3.2 The persons nominated by Enterprise pursuant to paragraph 3.1 shall meet the following requirements:

(a) they shall each be an investment bank, bank, building society, law firm or accountancy firm with a positive reputation either nationwide or in a substantial part of the United Kingdom or in another EU Member State; and

(b) they shall each be independent from Enterprise and, in the reasonable opinion of Enterprise, have the necessary qualifications and expertise to carry out the Trustee Functions on the terms of a mandate approved by the Director.

3.3 Within 20 Working Days of the Director approving, at his discretion, one or more of the persons nominated by Enterprise pursuant to paragraph 3.1 above (or such later period as the Director may specify), Enterprise shall use all reasonable endeavours to appoint from the persons so approved one person to carry out the Trustee Functions on the terms of a mandate approved by the Director.

3.4 In the event that either (i) none of the persons nominated by Enterprise pursuant to paragraph 3.1 are approved by the Director or (ii) Enterprise is unable for any reason to conclude within the time limit stipulated in paragraph 3.3 the appointment of any such person following approval by the Director, Enterprise shall use all reasonable endeavours to appoint from persons nominated by the Director one person to carry out the Trustee Functions on the terms of a mandate approved by the Director. Enterprise shall use all reasonable endeavours to make such appointment within 7 Working Days of receiving the nominations from the Director, or such later period as the Director may specify.

3.5 The appointment of the Trustee pursuant to paragraph 3.3 or 3.4 shall take effect no later than the first Working Day after the expiry of the period specified in paragraph 1.2 above, and shall be irrevocable unless the

Director is satisfied that there is good cause for the appointment to be terminated in advance of the satisfactory fulfilment of the Trustee Functions.

3.6 In the event that the appointment of the Trustee is terminated under paragraph 3.5, Enterprise shall within 10 Working Days of such termination (or such later period as the Director may specify) appoint another person approved by the Director to carry out the Trustee Functions on the terms of a mandate approved by the Director.

The Mandate

4.1 The terms of the mandate proposed by Enterprise pursuant to paragraph 3.1 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 Licensed Premises as required by paragraph 5.1 below at any reasonable price and on such reasonable terms and conditions as the Trustee considers appropriate to effect an expedient sale;

(b) 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 reasonably necessary or appropriate to effect the sale of such Licensed Premises;

(c) a mandate to comply with any orders and directions given by the Director;

(d) a mandate to appoint at Enterprise's expense such advisers as the Trustee considers necessary or appropriate in connection with the performance of the Trustee Functions;

(e) an indemnity for the Trustee and its officers, employees and agents (each an 'Indemnified Party') against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Trustee Functions save to the extent that such losses, claims, damages, liabilities or

expenses result from an Indemnified Party's wilful default, recklessness, negligence or bad faith.

Functions of Trustee

5.1 The Trustee shall procure within 6 months of its appointment taking effect, or within such other later period as may be specified by the Director, the completion of the sale of the Licensed Premises identified pursuant to paragraph 5.2 or paragraph 5.3 below at any reasonable price.

5.2 The Trustee shall, in consultation with Enterprise, identify which Licensed Premises within the petty sessional divisions falling within paragraph 1.1 above are to be sold to meet the thresholds specified in paragraph 1.2 and shall inform the Director in writing accordingly within 1 month of its appointment taking effect. In the event of a dispute between the Trustee and Enterprise, the Trustee's decision shall be final.

5.3 If, having made all reasonable efforts, the Trustee considers that it is unlikely to effect the sale of any of the Licensed Premises identified pursuant to paragraph 5.2 above within the period specified under paragraph 5.1, the Trustee shall, in relation to each such Licensed Premises, identify another Licensed Premises within the relevant petty sessional division, in consultation with Enterprise, and proceed to procure its sale in place of that originally identified. The Trustee shall inform the Director in writing as soon as reasonably practicable in the event of any such change.

5.4 The provisions of paragraph 1.4 shall apply to any such sale by the Trustee as if these undertakings were given by the Trustee rather than Enterprise.

5.5 The Trustee may give written directions to Enterprise to take such reasonable steps within its competence as may be specified or described in the directions for the purpose of securing Enterprise's compliance with its obligations under these undertakings or enabling the Trustee to carry out the Trustee Functions.

5.6 Once a month, the Trustee shall provide to the Director (with a simultaneous, non-confidential copy to Enterprise) a written report concerning the carrying out of the Trustee Functions and shall provide to the Director such other information and reports as the Director may from time to time require. The Trustee shall promptly report in writing to the Director if the Trustee concludes on reasonable grounds that Enterprise is failing to comply with any of its obligations under these undertakings.

5.7 For the purpose of fulfilling the Trustee Functions, the Trustee shall not be bound by instructions of Enterprise nor shall the Trustee Functions be extended or varied in any way by Enterprise save under the express written consent of the Director.

Functions of Enterprise following appointment of Trustee

6.1 Enterprise will not give any instruction or request to the Trustee which conflicts with the Trustee Functions.

6.2 Enterprise shall take all such steps as are reasonably necessary to enable the Trustee to carry out the Trustee Functions, including complying with such written directions as the Trustee may from time to time give pursuant to paragraph 5.4, and providing the Trustee with all such assistance and information as it may reasonably require in carrying out the Trustee Functions, including, without limitation to the generality of this paragraph:

- (a) copies of all relevant documents;
- (b) reasonable use of Enterprise's office facilities;
- (c) access to Enterprise's Licensed Premises; and
- (d) managerial and administrative support.

Remuneration of Trustee

7.1 Enterprise shall pay the Trustee a reasonable remuneration for the services it provides in carrying out the Trustee Functions, provided always that such remuneration does not impede the independence and effectiveness of the Trustee in carrying out the Trustee Functions.

Compliance

8.1 Enterprise will procure that each of the Subsidiaries complies with these undertakings as if it had given them.

8.2 Enterprise will forthwith provided to the Director such information as he may from time to time reasonably require for the purpose of monitoring compliance by Enterprise and its Subsidiaries with these undertakings or performing any of his functions under section 88 of the 1973 Act.

8.3 Enterprise will comply with such written directions as the Director may from time to time reasonably give to take such steps within its power as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings.

Interpretation

9.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.

9.2 For the purposes of these undertakings:

'the 1964 Act' means the Licensing Act 1964;

'the 1973 Act' means the Fair Trading Act 1973;

'Associated Person' means a person or person associated with Enterprise or its Subsidiaries within the meaning of 77(4) of the Act and includes any subsidiary of such a person construed in accordance with section 75(4K) of the 1973 Act;

'Beer' includes any beverage of an alcoholic strength exceeding 1.2 per cent. which is made with beer;

'the Director' means the Director General of Fair Trading;

'Enterprise' means Enterprise Inns plc;

'Full Publican On-Licence' means a justices' on-licence within section 1(3)(a) (i) of the 1964 Act but excludes:

(a) a seasonal licence within section 64(2) of the 1964 Act;

(b) a Part IV licence within section 93(1) of the 1964 Act;

(c) a licence authorising the sale of intoxicating liquor at any club premises, including club premises within section 39(6) of the 1964 Act; and.

(d) a licence authorising the sale of intoxicating liquor at any port, airport, railway station, theatre, cinema, town hall or village hall;

'Laurel' means The Laurel Pub Group Limited

'Licensed Premises' has the meaning given in section 200(1) of the 1964 Act;

'the Secretary of State' means the Secretary of State for Trade and Industry;

'Subsidiary' shall be construed in accordance with section 736(1) of the Companies Act 1985 (as amended), unless otherwise stated;

'Trustee' means the person appointed pursuant to paragraph 3.3, 3.4 or 3.6 to carry out the Trustee Functions;

'Trustee Functions' means the functions set out in paragraphs 5.1, 5.2, 5.3, 5.4, 5.5, 5.6 and 5.7; and

'Working Days' mean any days of the week other than a Saturday, Sunday or any other day that is a public holiday in England.