

**ACQUISITION BY PUNCH GROUP LIMITED OF THE UK RETAIL BUSINESS OF ALLIED
DOMECQ PLC**

**UNDERTAKINGS GIVEN TO THE SECRETARY OF STATE FOR TRADE AND INDUSTRY BY
PUNCH GROUP LIMITED PURSUANT TO SECTION 75G(1) OF THE FAIR TRADING ACT 1973**

WHEREAS:

- (1) Punch has acquired the UK retail business of Allied;
- (2) it accordingly appears to the Secretary of State that a merger situation qualifying for investigation has been created;
- (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 General:
 - (a) has made a recommendation to the Secretary of State that such a reference should be made; and
 - (b) has under section 75G(1)(c) 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 Punch appropriate to remedy or prevent the effects adverse to the public interest specified in the advice given by the Director General;

NOW THEREFORE Punch hereby gives to 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 General:

Limit on licensed premises held

1 Where immediately following and as a consequence of its acquisition of licensed premises from Allied it holds in any petty sessional division in England or Wales more than 25 per cent of the full publican on-licences, Punch will within 6 months of the date of these undertakings dispose of or free from tie as many licensed premises as is necessary in order to reduce its share of full publican on-licences in any petty sessional division to:

- (a) 25 per cent, or
- (b) (if higher) the share held by Punch or Allied immediately prior to the acquisition.

2 Punch will not as a condition of the purchase of any licensed premises of which it disposes under paragraph 1 above require that the purchaser acquires beer from Punch or any of its subsidiaries, provided that nothing in this paragraph shall prevent Punch or any of its subsidiaries from negotiating and entering into beer supply agreements in connection with any disposal.

Compliance

3 Punch will procure that each of its subsidiaries complies with these undertakings as if it had given them.

4 Punch will forthwith provide to the Director General such information as he may from time to time reasonably require for the purpose of monitoring compliance by Punch and its subsidiaries with these undertakings.

5 Punch will comply with such written directions as the Director General 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

For the purposes of these undertakings:

"the 1964 Act" means the Licensing Act 1964;

"the 1973 Act" means the Fair Trading Act 1973;

"Allied" means allied Domecq PLC;

"beer" has the meaning given in article 1(2) of the Supply of Beer (Tied Estate) Order 1989;

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

"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;

"licensed premises" has the meaning given in section 200 (1) of the 1964 Act;

"Punch" means Punch Group Limited; and

"the Secretary of State" means the Secretary of State for Trade and Industry.

On behalf of Punch Group Ltd:

Signed

(director)

(director/secretary)

Date

22/12/99

ACQUISITION BY BASS PLC FROM PUNCH GROUP LIMITED OF 550 PUBS FORMERLY PART OF THE UK RETAIL BUSINESS OF ALLIED DOMECQ PLC

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

WHEREAS:

- (1) Bass has acquired from Punch 550 public houses formerly part of the retail estate of Allied;
- (2) it accordingly appears to the Secretary of State that a merger situation qualifying for investigation has been created;
- (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 General:
 - (a) has made a recommendation to the Secretary of State that such a reference should be made; and
 - (b) has under section 75G(1)(c) 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 Bass appropriate to remedy or prevent the effects adverse to the public interest specified in the advice given by the Director General;

NOW THEREFORE Bass hereby gives to 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 General:

Limit on licensed premises held

1 Where immediately following and as a consequence of its acquisition of licensed premises from Punch it holds in any petty sessional division in England or Wales more than 25 per cent of the full publican on-licences, Bass will within 6 months of the date of these undertakings dispose of or free from tie as many licensed premises as is necessary in order to reduce its share of full publican on-licences in any petty sessional division to:

- (a) 25 per cent, or
- (b) (if higher) the share held by Bass immediately prior to the acquisition.

2 Bass will not as a condition of the purchase of any licensed premises of which it disposes under paragraph 1 above require that the purchaser acquires beer from Bass or any of its subsidiaries, provided that nothing in this paragraph shall prevent Bass or any of its subsidiaries from negotiating and entering into beer supply agreements in connection with any disposal.

Compliance

3 Bass will procure that each of its subsidiaries complies with these undertakings as if it had given them.

4 Bass will forthwith provide to the Director General such information as he may from time to time reasonably require for the purpose of monitoring compliance by Bass and its subsidiaries with these undertakings.

5 Bass will comply with such written directions as the Director General 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

For the purposes of these undertakings:

"the 1964 Act" means the Licensing Act 1964;

"the 1973 Act" means the Fair Trading Act 1973;

"Allied" means Allied Domecq PLC;

"Bass" means Bass plc;

"beer" has the meaning given in article 1(2) of the Supply of Beer (Tied Estate) Order 1989;

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

"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;

"licensed premises" has the meaning given in section 200 (1) of the 1964 Act;

"Punch" means Punch Group Limited; and

"the Secretary of State" means the Secretary of State for Trade and Industry.

On behalf of Bass plc:

Signed

(director)

(director/~~secretary~~)

Date

13th December 1999



Department of Trade and Industry

news release

P/99/1053

22 December 1999

KIM HOWELLS ACCEPTS UNDERTAKINGS FROM PUNCH AND BASS

Kim Howells, Competition and Consumer Affairs Minister, announced today that he has accepted satisfactory undertakings from Punch Group Limited and Bass plc, and that the acquisitions by Punch of the UK retail business of Allied Domecq plc, and by Bass of certain Allied Domecq pubs from Punch, will not therefore be referred to the Competition Commission. This decision is in accordance with the advice of the Director General of Fair Trading (DGFT).

The undertakings require Punch and Bass to dispose of or free from tie within 6 months such numbers of pubs in any Petty Sessional Divisions (PSDs) where their shares of pubs are more than 25%, as will reduce their shares in those PSDs to 25% or less. Where Punch's or Bass's shares of pubs were over 25% in any PSD before the merger, the undertakings require them to dispose of the increment. The undertakings also prevent Punch or Bass from requiring purchasers of the pubs they dispose of to buy beer from Punch or Bass (as the case may be) or any of their subsidiaries.

Dr Howells said:

"On 26 November 1999 I announced that I intended to refer these transactions to the Competition Commission unless satisfactory undertakings were received from Punch and Bass to remove the competition concerns identified by the DGFT. The DGFT advised me that these concerns could be addressed by undertakings from Punch and Bass to dispose or free from tie pubs in particular PSDs to reduce Punch and Bass's share of pubs to 25% or less. I published draft undertakings and asked interested parties to comment on them to the OFT. Following that consultation, the DGFT has advised me that the undertakings attached to this press notice are appropriate to remedy the adverse effects of the merger.

"I agree with the DGFT's advice and have therefore decided to accept the undertakings in lieu of a reference to the Competition Commission."

A copy of the signed undertakings by Punch and Bass and the DGFT's advice are attached to this press notice.

Notes for 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 that undertakings remedy the adverse effects of the merger specified by the DGFT which would otherwise have led him to make a reference to the Competition Commission.
2. On 26 November 1999 Dr Howells announced that he was asking the DGFT to seek undertakings from Punch and Bass in lieu of a reference to the Competition Commission and invited interested parties to comment on the text of the draft undertakings attached to that announcement (DTI Press Notice P 99/972 refers).
3. Copies of the undertakings signed by Punch and Bass, and of the DGFT's advice, are attached.

Press Enquiries: 0171-215 5964/69
(Out of Hours : 0171-215 5110/5600)
Public Enquiries: 0171-215 5000
Textphone (for people with hearing impairments): 0171-215 6740
<http://www.dti.gov.uk>



COPY NO:

TO: SECRETARY OF STATE FOR TRADE AND INDUSTRY

FROM: JOHN S BRIDGEMAN
DIRECTOR GENERAL OF FAIR TRADING

13 December 1999

ACQUISITION BY PUNCH GROUP LIMITED ("PUNCH") OF THE UK RETAIL BUSINESS OF ALLIED DOMECQ PLC ("ALLIED")

ACQUISITION BY BASS PLC ("BASS") FROM PUNCH GROUP LIMITED OF 550 ALLIED DOMECQ PUBS

1. In this submission I advise under section 75G(1)(c) of the Fair Trading Act 1973 on the particular effects adverse to the public interest which, in my opinion, these merger situations may have or might be expected to have. I recommend that, in lieu of reference to the Competition Commission, you accept undertakings from Punch and Bass in the form annexed and publish them together with this advice. These undertakings would, in my view, remedy the adverse effects of the mergers that I specify below.

TIMING

2. Urgent, these are both completed mergers for which your statutory power of reference will expire on 5 January 2000. Your decision, whether to accept these undertakings in lieu of reference, refer the mergers to the Competition Commission, or clear the mergers, should be made before that date.

BACKGROUND

3. On 26 November, you announced your decision, in accordance with my earlier advice, to refer these mergers to the Competition Commission unless suitable undertakings were obtained from Punch and Bass to address the adverse effects identified. Interested parties were invited to comment on the terms of the proposed undertakings.

4. The purpose of the undertakings was to address the competition concerns at the local level in the pub retailing market, that is where either merger created or enhanced a concentration of 25% or more of pubs in any petty sessional division (PSD). These concerns could be addressed if Punch and Bass both undertook to dispose of or free from tie such a number of pubs in those PSD areas as would reduce either's share of pubs in each PSD to 25% or less. Both Punch and Bass indicated that they were prepared to consider the provision of undertakings to that effect. The text of the proposed undertakings were published with your announcement on 26 November and interested parties were invited to comment by 6 December.



THE ADVERSE EFFECTS OF THE MERGERS

5. Under this transaction Punch acquired the UK retail business of Allied having earlier reached agreement with Bass for the on-sale of a number of Allied's managed pubs to Bass (in the event, 550). It has been contended that, for the purposes of this transaction, Punch and Bass should be considered to be "associated persons". I have considered very carefully the terms of this transaction as well as the transitional arrangements that were put in place following it. I have concluded, however, that while Punch and Bass could have been regarded as associated persons for the purposes of effecting the acquisition, this was, and was always intended to be, a short term arrangement (of only one or two days). This period has since ended. The two sets of assets – those to be retained by Punch and those to be acquired by Bass – were held separate from each other and, indeed, have since been transferred to the respective parties. It therefore appears to me appropriate to consider the two resulting mergers as separate and distinct.

6. As a result of the transaction, Punch acquired some 2,870 pubs from Allied and Bass has acquired 550. Punch also acquired Allied's 50% interest in First Quench, an off-licence joint venture with Whitbread. Punch has no activities in the off-licence market and so this aspect of the transaction raised no competition issues. Punch and Bass will also inherit certain beer supply obligations under an agreement between Allied and Carlsberg-Tetley. This might still allow Bass some scope to increase the throughput of Bass branded beers to the acquired pubs, however, the increment to market share would be small (0.2%) and does not raise any concern. It is only in the pub retailing market that the transaction raised any competition issues.

7. In the case of the **Punch/Allied** merger, the transaction increased Punch's pub estate to some 5,050 (including, also, the earlier acquisition by Punch of Inn Business). Nationally, this would be about 9% of all pubs in the UK. At the local level, in 13 PSD areas the merger created or enhanced a concentration of 25% or more in the ownership of pubs. To bring those levels of concentration down to 25% in each of those areas (subject to the limit of the increment arising from the merger) would require Punch to sell or free from tie some 40 pubs. The acquisition by Bass of 550 Allied pubs would again give rise to only a modest increment at the national level in the ownership of pubs, from 4% to 5%. At the local level, Bass's share of pubs would exceed 25% in 4 PSD areas. The number of pubs required to be sold or made free of tie in those areas would be about 20. I believe that, in each of these mergers, these levels of concentration raise sufficient concerns to justify reference to the Competition Commission.

8. In the context of my advice on a previous recent merger in this market (Scottish & Newcastle acquiring assets of the Greenalls Group ("the S&N merger")) I made reference to concerns expressed about market definition: the market being that for pubs and the local market being defined by the PSD area. The same issues arise in these two mergers. As with the S&N merger, however, I am satisfied that in considering the effects of a merger on retail concentration at the local level, it is reasonable to consider the market to be that for pubs (ie full publican on-licences) rather than all on-licences. Similarly, while there are some weaknesses in defining the local market by PSD areas, this is the best measure that we have available at this time.



THE PROPOSED UNDERTAKINGS

9. Following discussions with my officials, Punch and Bass have indicated that they are prepared to give the undertakings attached and, for convenience, have signed them. The scope of the undertakings is as envisaged in your announcement. In the PSD areas where the merger increases its share of pubs (as defined) to 25% or more Punch will, within 6 months of the undertakings, dispose of or free from tie as many pubs as is necessary in order to reduce its share to 25% (subject to the limit of the increment arising from the merger). Bass has given identical undertakings.

REPRESENTATIONS

10. I received no representations concerning the terms of the proposed undertakings to be sought from Punch and Bass. However, this was not unexpected since the draft undertakings were identical to those which it was proposed should be given in the S&N merger, which raised very similar issues concerning local concentration. Representations were received in that case and third parties might reasonably have assumed that the same comments would be taken to apply to any undertakings that might be requested in the case of these two merger situations. I can confirm that these undertakings reflect comments made in the context of the S&N merger.

RECOMMENDATION

11. Given the above, I recommend that you accept the undertakings offered by Punch and Bass as appropriate to remedy the adverse effects specified in this advice. The undertakings, if acceptable to you, should be published together with this advice as required by section 75H(1) of the Act.

JOHN S BRIDGEMAN
DIRECTOR GENERAL OF FAIR TRADING