COMPLETED ACQUISITION BY GREENE KING PLC OF LAUREL PUB HOLDINGS LIMITED

ORDER OF THE OFFICE OF FAIR TRADING PURSUANT TO SECTION 75 OF THE ENTERPRISE ACT 2002

WHEREAS:

(a) On 6 August 2004 Greene King acquired Laurel (the transaction);

(b) It appeared to the OFT that as a consequence of that transaction a relevant merger situation had been created in the UK;

(c) The OFT has a duty to refer a completed merger to the Competition Commission for further investigation where it believes that it is or may be the case that the merger situation in question has resulted, or may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services;

(d) The OFT considered that it may be the case that the transaction may be expected to result in a substantial lessening of competition in the operation of pubs in seven Petty Sessional Divisions (PSDs) and that in the absence of appropriate undertakings, it would be under a duty to refer the Transaction to the Competition Commission;

(e) Under section 73 of the Act the OFT may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it, or may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate;

(f) On 6 October 2004 the OFT accepted undertakings (the Undertakings) from Greene King which it considered were appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which has or may have resulted from it, or may be expected to result from it, as specified in its decision of 9 August 2004;

(g) Pursuant to the Undertakings, Greene King agreed to divest 13 pubs in seven PSDs to a buyer or buyers to be approved by the OFT by 5 April 2005;

(h) Greene King has disposed of all but one of the pubs within the deadline provided in the Undertakings, the outstanding divestment being the disposal of one pub in the Oxford PSD;

(i) Despite extensions to the original deadline, Greene King has not yet divested the remaining pub in the Oxford PSD, as required by paragraph 2.1 of the undertakings;
Where the OFT considers that an undertaking accepted by it under section 73 has not been, is not being or will not be fulfilled, it may make an order pursuant to section 75 and schedule 8 of the Act;

Given that Greene King has not complied with paragraph 2.2 of the Undertakings, despite extensions being granted by the OFT to enable Greene King to do so, the OFT considers it appropriate to make an order requiring Greene King’s compliance with the Undertakings;

The order only replaces the Undertakings in so far as they relate to the Oxford PSD.

NOW THEREFORE the OFT in exercise of the powers conferred on it by section 75 and schedule 8 of the Act and for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which has or may have resulted from it or may be expected to result from it, hereby makes the following order:-

Citation and Commencement

1.1 This order may be cited as the “Greene King order”.

1.2 The date of commencement of this order shall be 30 June 2006, when the provisions of this order shall come into force;

Limit on Licensed Premises held

2.1 Greene King will, within 3 months of the date of this order, or such later date as the OFT may specify, sell any licensed premises necessary, in order to reduce its share of full publican on-licences in the Oxford PSD to:

   (a) 25 per cent. or less; or

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

2.2 In paragraph 2.1 above and paragraph 2.3 below, the word “sell” shall include entering into an unconditional contract of sale for completion within 3 months of the date of such contract.

2.3 Where Greene King proposes to enter into an agreement to sell any licensed premises in accordance with its obligations under paragraph 2.1 above, it shall not sell to a proposed purchaser unless it has obtained the OFT’s prior written approval in respect of the identity of the proposed purchaser in accordance with paragraph 3.1 below. Greene King shall notify the OFT 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.
2.5 Greene King will not as a condition of the purchase of any licensed premises which it disposes under paragraph 2.1 above, require that the purchaser acquires beer from Greene King or any of its affiliates or members of the group of interconnected bodies corporate to which Greene King belongs.

2.6 Nothing in paragraph 2.5 shall prevent Greene King or any of its affiliates or members of the group of interconnected bodies corporate to which Greene King belongs from separately negotiating and entering into beer supply agreements with such purchaser independently of any purchase of licensed premises.

Purchaser Approval

3.1 A proposed purchaser for any licensed premises sold in accordance with this order shall satisfy the OFT that:

(a) it is independent of and unconnected to Greene King and the group of interconnected bodies corporate to which Greene King belongs and any associated person or affiliate of Greene King or such group of interconnected bodies corporate;

(b) it has the financial resources, expertise and incentive to maintain and develop the licensed premises as a viable and active business in competition with Greene King and other competitors; and

(c) it must reasonably be expected to obtain all necessary approvals and consents from any regulatory authority.

3.2 Greene King and/or a proposed purchaser shall provide to the OFT such information and documentation as the OFT may reasonably require to demonstrate to it that the proposed purchaser will fulfil the requirements set out in paragraph 3.1 above.

Continued Separation

4 Following the sale of licensed premises pursuant to paragraph 2.1, Greene King will not directly or indirectly acquire those licensed premises or any interest in those licensed premises without the OFT’s prior written consent.

Compliance

5.1 Greene King shall comply with such written directions as the OFT may from time to time give:

(a) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this order; or
(b) to do or refrain from doing anything so specified or described which they might be required by this order to do or to refrain from doing.

5.2 Greene King shall procure that any member of the same group of interconnected bodies corporate as Greene King complies with this order.

5.3 Where any affiliate of Greene King is not a member of the same group of interconnected bodies corporate as Greene King, Greene King shall use its best endeavours to procure that any such affiliate shall comply with this order.

5.4 Greene King shall furnish promptly to the OFT such information as the OFT considers necessary to monitor compliance with this order.

Interpretation

6.1 The Interpretation Act 1978 shall apply to this order as it does to Acts of Parliament.

6.2 For the purposes of this order:

“the Act” means the Enterprise Act 2002;

“the 1964 Act” means the Licensing Act 1964;

an “affiliate” of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

“associated person” means a person or persons associated with Greene King within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons construed in accordance with section 129(1) of the Act;

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

“full publican on-licence” means a justices’ on-licence within section 1(3)(a)(i) of the 1964 Act in issue at the time of the transaction 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;

“Greene King” means Greene King Plc;

“group of interconnected bodies corporate” has the meaning given in section 129(2) of the Act;

“Laurel” means Laurel Pub Holdings Limited;

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

the “OFT” means the Office of Fair Trading;

“Petty Sessional Division” or “PSD” means the area in England and Wales over which a Magistrates’ Court had jurisdiction, at the time of the transaction, over (amongst other things) the regulation and licensing of premises selling alcoholic drinks.

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

the “UK” means the United Kingdom of Great Britain and Northern Ireland; 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.

Signed:

Vincent Smith
Director of Competition Enforcement

JUNE 2006