EN

Case No IV/M.184 - Grand Metropolitan / Cinzano

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 07/02/1992

Also available in the CELEX database
Document No 392M0184

Office for Official Publications of the European Communities
L-2985 Luxembourg

COMMISSION
OF THE EUROPEAN
COMMUNITIES

Brussels 7.02.1992

PUBLIC VERSION

*MERGER PROCEDURE -
ARTICLE 6(1)b DECISION*

To the notifying party

Dear Sirs,

*Subject : Case No IV/M.184 - Grand Metropolitan / Cinzano
Your notification pursuant to Article 4 of Council Regulation No 4064/89*

1. The proposed operation, notified on 6th January 1992, concerns the agreement whereby Grand Metropolitan plc will acquire all the remaining shares of Cinzano International S.A. (CISA); it already indirectly owns 25 % of these shares.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No 4064/89 and that it is compatible with the common market.

I. CONCENTRATION

3. Grand Metropolitan is a large international food, drinks and retailing group. The purchase will be carried out by its wholly-owned subsidiary International Distillers and Vintners Limited (IDV), which controls Grand Metropolitan's wines and spirits business worldwide.

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4. *At present, CISA is jointly controlled by the Marone family on the one hand (the A shareholders, with 50 % of the capital) and IDV and the IFINT group on the other hand (the B shareholders, each holding 25 % of the equity but having agreed to act jointly in CISA through three shell companies). The basic structure of CISA is a joint venture between the A and B shareholders, who have equal rights to appoint directors to the Board of CISA. The right to nominate the chairman and the general manager of CISA are conferred on the A and B shareholders respectively.*

5. *The acquisition, which will take place in several steps, will lead to the purchase by IDV of all the issued share capital of CISA which it does not already own (75 %), attaining thereby sole control of the latter.*

   This operation is therefore a concentration within the meaning of Article 3(1)(b) of Council Regulation No 4064/89.

II. COMMUNITY DIMENSION

6. *The proposed concentration has a Community dimension. In 1990 the aggregate worldwide turnover of Grand Metropolitan and CISA amounted to Ecu 13,428 million and Ecu 398 million respectively.*

   Each of the undertakings concerned achieved an aggregate Community-wide turnover of more than Ecu 250 million of which they did not achieve more two-thirds in one and the same Member State.

III. COMPATIBILITY WITH THE COMMON MARKET

The relevant product market

7. *Grand Metropolitan, through its subsidiary IDV, produces a wide range of wines and spirits (including whisky, gin, vodka, brandy and others) in the EC, US and other countries. CISA is mainly active in the production and distribution of vermouth in the Community and has only very marginal interests in other drinks (such as wine and port).*

8. *The abovementioned beverages comprise a multitude of different product categories. Each of them can be identified because of its primary products, manufacturing process, flavour and intended use (aperitif, digestif, etc.). Although a degree of substitutability could be found to exist between at least some of them, it is likely that in some cases individual product markets could be appropriate. Nevertheless, whatever the precise definition of the reference product market, the operation does not raise doubts as to its compatibility with the common market. Therefore, the question can be left open.*

The geographic reference market

9. *The markets for wines and spirits have traditionally been and in some cases remain mainly national, in particular because of the different consumers' preferences and distribution networks. However, although the analysis will focus on a country-by-country basis, there are no competition concerns at a national or wider level, so it is not necessary to decide on the precise delimitation of the geographic reference market.*

<u>The position of the parties on the market</u>

10. The narrowest product market where the operation could have an impact is the vermouth market. Vermouth is a blend of table wines to which aromatic herbs and spices are added, fortified with spirits, with around 16 % alcohol content. Its production is by far the most important activity of the Cinzano group, whose brand is in second position in most Member States after Martini. CISA accounted for a [ ]1 market share in Denmark in 1989 - a relatively small market in terms of total consumption - and market shares ranging from 28 % to 9 % in all the other EC countries, with the exception of France, where Pernod Ricard owns the Cinzano brand and manufactures and distributes Cinzano for its own account. CISA had a [ ]2 market share in the Community as a whole.

11. Cinzano faces the competition of the Martini brands in every Member State, which have a very strong position with market shares between 52 % and 90 %, and [ ]3 in the Community as a whole.

12. IDV does not produce vermouth. It distributes Cinzano vermouth in the United Kingdom and Ireland, as part of its already existing cooperation arrangement with the Cinzano group. The operation will thus not lead to any addition of market shares of the undertakings concerned in the vermouth market, with the exception of Greece, where IDV, through its Greek subsidiary Metaxa, is the exclusive distributor of Martini ([ ]4 market share) by virtue of an agreement entered into on 14th June 1990.

The acquisition would imply that IDV will control virtually the whole vermouth market in Greece at the level of distribution ([ ]5). However, IDV has informed the Commission that Metaxa will no longer distribute Martini products after 31st December 1992 and has for that purpose given notice to Martini to irrevocably terminate the abovementioned agreement with effect from 1st January 1993. It is understood that a more imminent termination would cause important commercial damage.

13. The operation does not produce any appreciable effects in any other of the abovementioned beverage sectors, whether analysing it from a narrow or a wider definition of the market. It will simply enable IDV to offer a wider range of brands than before.

IV. <u>ANCILLARY RESTRAINTS</u>

14. The acquisition agreement includes the following clauses :

- *IDV will have the exclusive right to the use of the trademark Marone Cinzano in all countries where it is registered, for a period of ... years from the date of closing, after which IDV will no longer use or renew the trademark.*
- *The "A" sellers (the Marone family) shall not directly or indirectly infringe any of the Cinzano trademarks in any country in relation to any food or beverage business that they might acquire or create in the future.*

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1 Between 30 % and 50 %.
2 Between 10 % and 20 %.
3 Around 70 %.
4 Less than 80 %.
5 More than 90 %.

These restrictions have to be considered ancillary to the concentration, since they are directly related and necessary to the implementation of the concentration.

V. CONCLUSION

15. Taking into account that the operation does not give rise to any addition of market shares and the strength of the market leader in the vermouth sector, together with the absence of any appreciable effect in relation to any of the other products, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.

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For the above reasons the Commission has decided not to oppose the notified concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission,