

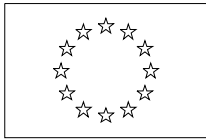
***Case No COMP/M.2737 -
ROYAL BANK PRIVATE
EQUITY / CINVEN /
CHELWOOD GROUP***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 13/03/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.03.2002

SG (2002) D/228886

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sir/Madam,

**Subject: Case No COMP/M. 2724 – Royal Bank Private Equity/Cinven/Ambion
Case No COMP/M. 2737 – Royal Bank Private Equity/Cinven/Chelwood
Notifications of 12.02.2002 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 12 February 2002, the Commission received a notification of a proposed concentration by which the UK-based undertakings Royal Bank Private Equity Limited (“RBPE”), belonging to The Royal Bank of Scotland PLC Group (“RBSG”), and Cinven Limited (“Cinven”), controlled by Cinven Group Limited (“Cinven Group”), acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the UK-based undertaking Ambion Brick Company Limited (“Ambion”), currently controlled by RBPE, by way of purchase of shares in a newly created company constituting a joint venture, Galileo Brick Limited (“Galileo”).
2. Moreover, on 12 February 2002, the Commission received a notification of a proposed concentration by which RBPE and Cinven, acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the UK-based undertaking Chelwood Group Limited (“Chelwood”), currently controlled by Cinven, by way of purchase of shares in Galileo.

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

3. The Commission has concluded that the two notified operations constitute one single concentration, which falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

4. RBPE is part of a division within RBSG providing an integrated range of banking, financial and finance-related products and services to mid sized, large corporate and institutional customers in the UK and internationally.
5. Cinven is the main trading company within a group of companies involved in the provision of investment management services to a number of investment funds, such as pension and private equity funds.
6. Ambion and Chelwood are UK-based manufacturers of bricks for use in the construction of buildings, both residential and commercial/industrial. Both companies provide a broad range of bricks, primarily facing and engineering bricks.
7. Galileo is the vehicle company through which the acquisition of joint control over Ambion and Chelwood will take place. Ambion and Chelwood will be active in the UK brick manufacturing business via Galileo.

II. THE OPERATION AND THE CONCENTRATION

8. Within the framework of the planned operation, RBPE and Cinven will create a new company, Galileo, which will be controlled by the two parent companies. As a second step, RBPE's current stake in Ambion, as well as Cinven's current stake in Chelwood, will be transferred to Galileo and therefore RBPE and Cinven will acquire, through this newly incorporated joint venture, ultimate control over the target companies.
9. This operation, although notified as two separate transactions, constitutes one concentration within the meaning of Article 3(1)(b) of the Regulation, since these transactions will be carried out simultaneously and are mutually interdependent: the transfers of Ambion and Chelwood to Galileo are conditioned to each other so that one cannot proceed without the other. RBPE and Cinven share the same objective to jointly control Ambion and Chelwood through Galileo, with the aim to reinforce their activities in the manufacturing and supply of bricks.
10. RBPE and Cinven will combine their respective activities in the brick manufacturing business under Galileo, which will operate as an autonomous economic entity in the market concerned.

Joint control

11. As a result of the proposed operation RBPE will hold approximately [...] and Cinven [...] of the share capital in Galileo.
12. According to the Shareholders' Agreement ("the Agreement") entered into by the parent companies, Galileo's board of directors will consist of [...] members, with RBPE and Cinven being entitled to appoint up to [...] each. The approval of decisive issues concerning Galileo's commercial behaviour will require the consent of (i) both Cinven

and RBPE-appointed directors (which means that these two companies will jointly control Galileo through the holding of veto rights on strategic decisions of the latter); or (ii) the agreement of the so-called Investor Majority - shareholders owning more than [...] share capital -, which leads to the same conclusion on joint control by the notifying parties, since RBPR's and Cinven's combined share in Galileo's capital exceeds the required voting majority.

Full functionality

13. Following the present operation, RBPE's current stake in Ambion and Cinven's current stake in Chelwood will be transferred to Galileo, as well as all assets and employees of both companies. Ambion and Chelwood will be present in the UK brick manufacturing business through the newly-created joint venture, which will be of unlimited duration and will dispose of all necessary resources in order for it to operate as an independent player on the market concerned.
14. It can therefore be concluded that Galileo will thus perform, on a lasting basis, all the functions of an autonomous economic entity.

III. COMMUNITY DIMENSION

15. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (RBPE € 36,433 million, Cinven € 37,719 million). Each of RBPE and Cinven have a Community-wide turnover in excess of EUR 250 million (RBPR € [...] million; Cinven [...] € million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

IV. COMPETITIVE ASSESSMENT

The relevant markets

16. The notifying parties have identified a single relevant product market for the purposes of the present case, i.e. the manufacturing and supply of bricks. In defining the market concerned by the planned operation, RBPE and Cinven refer to previous Commission's decisions, the first of which³, in the context of an Article 81 (3) proceeding, identified three categories of bricks (facing, common and engineering bricks) and considered the general market for bricks to be the relevant product market. In a subsequent decision⁴, the Commission did not conclude on the definition of the relevant product market/s, although appeared to implicitly assume a double typology of bricks (facing and engineering).

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

³ Case IV/34.456 - Stichting Baksteen, Commission's decision of 29 April 1994 (OJ L 131).

⁴ Case IV/M. 1423 – CRH/Ibstock, Commission's decision of 1 March 1999.

17. In the present case, RBPE and Cinven claim there is no meaningful distinction between facing and engineering bricks, since there exists (i) supply-side substitutability in the market: the two kinds of bricks can be manufactured in the same plant and it is possible to switch the production between both on the basis of demand requirements; and (ii) some degree of demand-side substitutability: there is no functional difference between facing and engineering bricks, with each category being suitable for any possible application. Demand patterns for both types of bricks are basically the same and their relative prices tend to remain invariable.
18. As to the geographic scope of the relevant product market as defined by the notifying parties, RBPE and Cinven consider it to be at least national (Great Britain-wide), since (i) conditions of demand are similar all over GB; (ii) bricks are transported throughout GB; (iii) most customers operate in various regions, with national sourcing deals being a normal practice as a result of the consolidation process taken place in the last years.
19. On the basis of the figures provided in the Form CO, the notifying parties suggest that the geographical dimension of the overall bricks market could be wider, comprising in that respect the all-Ireland market (Northern Ireland + Eire). According to the parties' estimates (year 2000), imports from GB into all-Ireland would account for over 50% of the size of the Irish market, whilst it can be concluded from the figures contained in the Form CO that trade from all-Ireland to GB would just represent some 1% of the British market size. The figures for the GB/all-Ireland trade would not have materially changed over the last few years, according to RBPE and Cinven.
20. The Commission's market investigation has substantially confirmed the parties' views. On the basis of the replies received, it could be concluded with regard to the relevant product market that there exist a single market for bricks in general. From a supply-side view, (i) production methods are basically the same, with the clay type, clay mix or the applied finish producing the difference between facing and engineering bricks; (ii) both kinds of bricks can be generally produced at the same plants, provided the suitable process technology and clay are available; (iii) in this context, it is feasible for some manufacturers to switch production according to requirements of demand and to price evolutions of the respective types of bricks.
21. As to the demand side, most of the respondents consider that end users can, in many instances, choose either facing bricks or engineering bricks for the same use, subject to satisfying the required technical specifications. Irrespective of differences in prices and aesthetics characteristics, from a functional standpoint facing bricks may meet the engineering criteria and engineering bricks may be used for facing purposes (cheap facing bricks) in many cases.
22. Furthermore, according to the parties' internal estimates for the year 2000, the sales of facing bricks account for c. 92% of all bricks sales. [...]. As to the year 2001, the figures provided by the Brick Development Association (BDA) show that 82.6% of bricks despatched in Great Britain were facing bricks. It transpires from these figures that sales of engineering bricks would not therefore represent a significant proportion of the total sales of bricks in Great Britain and/or all-Ireland.
23. For the purpose of the present case the distinction between facing and engineering bricks and the question on how to exactly define the relevant product market/s can be left open, since irrespective of the market definition chosen, the proposed operation does not raise serious doubts as to its compatibility with the common market.

24. With regard to the relevant geographic market, the results of the Commission investigation largely support the parties' definition. Although some regional preferences and variances would exist, the respondents consider the relevant market to be national (Great Britain) in scope, and their replies confirm the allegations submitted by Cinven and RBPE (see paragraph 16).
25. As to the possibility of defining a wider-than-national market, pointed out by the parties, some third parties are of the opinion that the all-Ireland market would be included. It must be noted in this respect that, despite the relatively high proportion that transportation costs appears to represent vis-à-vis the final price of the product, exports from Great Britain into all Ireland account for 46.56% of total sales of all bricks in the Irish market, according to the figures provided by the BDA for the year 2001.
26. Irrespective of the above, since the planned operation does not raise serious doubts as to its compatibility with the common market it is not necessary to precisely conclude on the definition of the relevant geographic market.

Assessment

27. On an all bricks basis, the proposed operation would not lead to any horizontally affected market since, according to the figures provided by the parties for the year 2001, the combined market shares (volume) of Chelwood and Ambion account for some [10-15%] in the Great Britain market and [10-15%] if a wider market (Great Britain + all Ireland) is taken into account, therefore not exceeding the 15% threshold in any of the two scenarios.
28. A scenario where facing and engineering bricks are considered to constitute distinct product markets would neither raise serious doubts as to the compatibility of the proposed operation with the common market. Again on the basis of the figures submitted by the parties in relation to the year 2001, the joint position of Chelwood and Ambion would not exceed 15% of the markets concerned: a) facing bricks: [10-15%] on a Great Britain base; [10-15%] in Great Britain + Irish market; b) engineering bricks, [10-15%] in Great Britain; [10-15%] if all Ireland is included.
29. Furthermore, the Commission's market investigation has revealed the absence of significant impact of the present operation on both the business of competitors and the competitive structure of the market/s. Irrespective of the present cyclic declining phase (which appears to remain in the next years), the UK brick manufacturing is considered to be fiercely competitive in terms of price and customer choice. The results of the investigation confirm the existence of various alternative players, with some of them being better positioned than Chelwood and Ambion. In this respect, the data provided by the BDA show that currently some 66% of the brick business would be in the hands of two major manufacturers, Hanson Brick and Ibstock Brick. Moreover, the respondents note the existence of a significant buying power resulting from the consolidation process already referred to, with a scenario where national deals allow customers, operating in different regions, to reach global sourcing deals.
30. After the planned acquisition the market/s will still be competitive both at national and regional level, with two large companies (Hanson and Ibstock) followed by one relatively large player (Chelwood and Ambion, through Galileo) and a number of medium and small firms ensuring sufficient price competition and customer choice.

V. CONCLUSION

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

For the Commission
(Signed)
Mario MONTI
Member of the Commission