

***Case No COMP/M.2777 -
CINVEN LIMITED /
ANGEL STREET
HOLDINGS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 08/05/2002

*Also available in the CELEX database
Document No 302M2777*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08/05/2002

SG (2002) D/ 229714

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.2777 – Cinven Ltd / Angel Street Holdings Ltd
Notification of 05.04.2002 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 05.04.2002, the Commission received a notification of a concentration pursuant to Article 4 of the Merger Regulation by which Cinven Limited (“Cinven”), a venture capital company belonging to the Cinven Group Limited, acquired control, within the meaning of Article 3(1)(b) of the Regulation, of the Voyager Pub Group (“Voyager”) and the Unique Pub Group (“Unique”) through the acquisition of the holding company Angel Street Holdings Limited (“the target”). The concentration has occurred by virtue of Cinven's controlling stake in a buying group which has purchased 100% of the target's shares from Nomura International plc.

I. Background

2. The transaction has already been consummated. A request for derogation from the suspension obligation in Article 7(1) of the Merger Regulation was granted by the Commission on 15 March 2002. The purpose of the derogation was to facilitate a bid for the purchase of assets the sale of which had to be completed unconditionally on or before 20 March 2002. The acquisition by the buyer group was completed on that date. As the proposed acquisition was notifiable under the Merger Regulation, the requesting

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).

parties would, in the absence of such a derogation, have effectively been excluded from the auction.

3. The target consists of two companies operating managed and tenanted pubs in the United Kingdom. The buyer group consists of three venture capital companies and Enterprise Inns. It was originally intended that Enterprise Inns, another operator of managed and tenanted pubs in the UK, should directly acquire the target from Nomura. However, Enterprise Inns was unable to finance the transaction at such short notice. The venture capital companies intend to hold the assets until Enterprise Inns has secured the necessary finance to acquire them. To that end, the venture capital companies have granted an option to Enterprise Inns to purchase their stake at a later date.

II. The parties and the transaction

The parties

The buyers: Cinven, Princes Gate, Legal & General Ventures and Enterprise Inns

4. Cinven, a wholly owned subsidiary of Cinven Group Limited, is a venture capital business engaged in the provision of investment management, advice and services to a number of investment funds (including pension funds and private equity funds). Cinven's world-wide turnover in 2000 exceeded €6.3 billion. Princes Gate, [...] of Morgan Stanley Dean Witter & Co, is a private equity fund engaged in principal investing activities. Morgan Stanley Dean Witter & Co.'s world-wide turnover for the year ended 30 November 2001 exceeded €24.4 billion. Legal & General Ventures, incorporated in England and Wales, a wholly owned subsidiary of Legal & General Group Plc., is engaged in the provision of financial services products to both retail and corporate investors. This includes the provision of investment management services. Legal and General's world-wide turnover for the year 2000 exceeded €12.8 billion.
5. Enterprise Inns is a public limited company whose shares are traded on the London Stock Exchange. Enterprise Inns is an independent leased and tenanted pub operator that owns approximately 3,500 pubs located across the United Kingdom. Its turnover for the year ended 30 September 2001 was approximately €395 million, solely derived from the UK.

The seller (Nomura) and the target (Angel Street Holdings)

6. Nomura International plc, a wholly owned subsidiary of Nomura Holdings Inc., is an integrated international securities and financial services business. Nomura owned Angel Street Holdings Ltd, the target of the proposed operation. Angel Street Holdings is composed of two subsidiaries, The Unique Pub Company Plc and The Voyager Pub Group. The turnover of Unique and Voyager is estimated to be approximately [...] solely derived from the United Kingdom.

The transaction

7. The acquisition by Cinven, Princes Gate, LGV and Enterprise Inns of 100% of the shares in the target was effected via the medium of a number of special purpose vehicles. The buyers have concluded an Investment and Shareholders Agreement

whereby it appears that Cinven has acquired sole control of the target within the meaning of Article 3 of the Regulation.

8. The issued share capital in the target is held as to 52.6% by Cinven, 17.2% by Princes Gate, 13.4% by LGV and 16.8% by Enterprise Inns. The Board of Directors will be composed of two directors appointed by Cinven, and one each by Princes Gate, LGV and Enterprise Inns. However, while Cinven cannot impose its will, it appears that only Cinven can exercise control over the target, by virtue of its sole veto right over a range of strategic decisions, including all major financial commitments, as well as the approval of the budget and business plan. It is the only shareholder with such veto rights and can, in being alone able to create a deadlock situation by blocking key decisions, exert decisive influence over the target² and therefore sole control within the meaning of the Regulation. The other shareholders have a single seat out of five on the target's board, and are unable to veto strategic decisions other than "investor-type" protections serving to ring-fence the target's value³.
9. Cinven, Princes Gate, LGV have furthermore granted a call option to Enterprise Inns to purchase their shares in the target at a later date, and at a pre-determined price. The exercise of this option, if and when it occurs, would constitute a distinct concentration.

III. Community dimension

10. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion. Each of the undertakings has a Community-wide turnover in excess of EUR 250 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. Assessment

Relevant market/s

11. The target is composed of one group (Voyager) which owns a portfolio of some 970 "managed" pubs across the UK, and another group (Unique) which owns approximately some 3250 "leased" pubs across the UK.
12. Cinven submits that the relevant product market is the market for the retailing through on-licensed premises of alcoholic and non-alcoholic beverages, or that it is, in any event, not any narrower than the market for the retailing through pubs⁴ of alcoholic and non-alcoholic beverages.

² cf. para. 39 of the Commission Notice on the concept of a concentration (OJ 1998 C66/5).

³ These are necessary to preserve the value of the call option for which Enterprise Inns has paid a large sum of money.

⁴ Cinven argues that "managed" (where a pub company owns and runs the pub), "leased" (where a pub company owns the pub, but leases it to a tenant who runs it) and "free house" (where the pub owner runs the pub) pubs all compete in the same market, as they are substitutable from a demand perspective: customers are generally indifferent to this aspect of a pub's status.

13. Cinven submits that the relevant product market is national in scope, arguing that pub ownership tends to be concentrated in estates with regional or national scope, that these estates are generally centrally managed, and that there is a chain of competition (price and non-price) between estates with different geographical concentrations. However, Cinven has provided market information based on the hypothesis that the market/s might be local - in this instance, based on pub licensing areas (i.e. on the basis of so-called "petty sessional districts")⁵.
14. The Commission has, to date, not had occasion to define markets for the retailing of alcoholic beverages in on-licensed premises. It is, in any event, not necessary to define the precise scope of the relevant market/s in this case as, even on the basis of the narrowest conceivable market definition, the transaction does not give rise to competition concerns.

Impact on competition in the relevant market/s

15. Only Cinven has acquired control of the target within the meaning of the Merger Regulation, and neither Cinven nor any of the companies in which it has a controlling interest is active in any of the same business sectors as the target. The concentration does not therefore give rise to concerns about a possible creation or strengthening of a dominant position as a result of which competition in the Community would be significantly impeded.

V. Conclusion

16. 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 by Mario MONTI
Member of the Commission

⁵ This is in line with the approach taken by the UK competition authorities in previous investigations toward geographic market definition in this sector.