

***Case No COMP/M.2880 -
LEGAL & GENERAL
VENTURES / IWP (UK)
HOLDINGS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 03/09/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, **03/09/2002**

SG (2002) **D/231454/231455**

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties

Dear Sir/Madam,

**Subject: Case No COMP/M.2880 - Legal & General Ventures Limited/IWP (UK) Holdings Plc
Notification of 01.08.2002 pursuant to Article 4 of Council Regulation No 4064/89¹**

1. On 01.08.2002, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertakings Legal & General Ventures Limited (“LGV” – United Kingdom) belonging to the Legal & General Group plc and IWP (UK) Holdings (“IWP Holdings” – United Kingdom) belonging to the IWP International group acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking IWP Household Group (“IWP Household” – United Kingdom) by way of purchase of shares in a newly created company constituting a joint venture.

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).

2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No. 4064/89² and that it does not raise serious doubts as to its compatibility with the common market and with the EEA agreement.

I. THE PARTIES

3. Legal & General Ventures Limited (“LGV”) is a [...] subsidiary of Legal & General Group plc (“Legal & General”) and is incorporated in the United Kingdom. LGV’s principal business is the provision of venture capital investment management services. It should be noted that LGV already [...] the company CPL Industries (“CPL”) with an independent third party. CPL is active in the distribution of petroleum products for automotive, domestic heating, agricultural and industrial applications in the UK. It is also active in the distribution of charcoal, ignition products, fire logs and garden and leisure items. CPL manufactures solid smokeless fuels and operates a charcoal wholesaling business.
4. IWP Holdings is a wholly owned subsidiary of IWP International plc (“IWP International”) and is the holding company for its UK trading subsidiaries. IWP International is an Irish based manufacturer, distributor and marketer of consumer goods designed for the household cleaning and hygiene markets. The two subsidiaries of IWP Holdings, Tiger Tim Products Limited and De Toren B.V., are companies active in the supply of ignition products, barbecue products and related items. IWP Holdings is incorporated in England and Wales.

II. THE OPERATION

5. The proposed concentration relates to the formation by LGV and IWP Holdings of a joint venture (“Inhoco 2655 Limited”) which is to acquire the target companies that presently constitute the IWP Household Group (“IWP Household”).
6. IWP Holdings and LGV will have shareholding of [...] % and [...] % respectively in Inhoco 2655 Limited. The management will hold the remaining [...] %. The Shareholders’ Agreement grants both IWP Holdings and LGV [...]. Therefore IWP Holdings and LGV will have joint control over the newly created joint venture.
7. Inhoco 2655 Limited will be an autonomous economic entity with its own manufacturing and sales functions based on the existing activities of IWP Household. It will also have its own management team, [...]. The joint venture will be independently responsible for the finance, marketing and strategic management of the company. It can therefore be concluded from the above that Inhoco 2655 will be a full function joint venture within the meaning of Article 3(2) of the Merger Regulation.

² 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).

III. CONCENTRATION

8. The operation consists of LGV and IWP Holdings acquiring joint control of the joint venture Inhoco 2655 and thereby joint control of IWP Household business. Accordingly the operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion³ (Legal & General [...] and IWP International [...]). Each of the undertakings have a Community-wide turnover in excess of EUR 250 million (Legal & General [...] and IWP International [...]) 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.

V. COMPETITIVE ASSESSMENT

10. The parties are involved in the production, marketing and distribution of a wide range of household products and fuels. Their operations will overlap in the wholesale supply of charcoal, ignition products and fire logs. The parties will only have overlapping activities on the UK market for the wholesale supply of ignition products and fire logs. IWP Holdings activities in the supply of charcoal is limited [...] and CLP primarily supplies charcoal [...].

A Product market definitions

Charcoal

11. Charcoal is made by the controlled burning of wood, where there is insufficient air for complete combustion. The final product is a solid black residue which is primarily used as the main fuel source for barbecues, but which can also be used in a variety of industrial applications. Charcoal used for barbecues is sold bagged, as “instant lightning” charcoal or as disposable barbecues. The parties claim that all these shapes constitute one single product market.
12. CPL supplies bags of charcoal, together with “instant lightning” charcoal which does not require the use of an additional ignition product or other means to ignite the product. CPL also supplies disposable barbecues, which consist of “all in one” barbecues in foil trays which are only used once. Charcoal for barbecue applications can be supplied in different shapes/formats and different size bags.

³ 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.

13. It could be argued whether the different forms of charcoal belong to the same product market. The use of bagged charcoal requires the use of an ignition product or paper in order to ignite contrary to instant lightning charcoal. Disposable barbecues consist of a barbecue and the necessary charcoal and are “ready to use”. Based on this the products differ in functionality.
14. However, it is not necessary for the purpose of this decision to define the relevant product market precisely, since whichever product market definition’s envisaged the transaction will not lead to any competitive concerns.

Ignition products

15. Ignition products are used to ignite indoor fires and barbecues. They are sold in different forms, gels, liquids, cubes and blocks, but are made from the same basic emulsion. These various products all perform the basic function of starting fires or barbecues. It should be mentioned that ignition products to a certain extent face competition from wood and paper.
16. The parties submit, that the price of the different ignition products tend to differ and reflects difference in the cost, quality and convenience offered by the different products. Firelighter blocks tend to be the cheapest product to produce and are based on standard kerosene. They require the consumer to physically break up the block prior to ignition. Firelighter cubes on the other hand are more expensive to produce since they are produced using N paraffin, which is odourless and cost around three times as much as standard kerosene. The products are provided in cubes and do not need to be broken up by the consumer. Firelighter gels tend to be more expensive than firelighter liquids because they are produced with odourless N paraffin as opposed to cheaper kerosene, and require more processing than firelighter liquids.
17. On the supply side the parties argue, that the manufacturing of ignition products shows a high degree of supply side substitutability between the different types of ignition products. The basic emulsion which is used for the production of blocks cubes and gels is the same. Different substances are then added in order to create the finished product.
18. In case COMP/M.1632 Reckitt & Colman/Benckiser⁴, the Commission recognised that all forms of ignition products were part of the same product market. The Commission’s market investigation has confirmed that customers and wholesalers regard ignition products as belonging to the same product market. Based on the above, it can be concluded, that ignition products constitute a separate product market.
19. The sale of ignition products under the retailers own-label brands constitute according to the parties the majority of the sales on the UK market. The parties estimate that around 90% of the ignition products sold in the UK are sold under retailer’s own-label brand. Around [70 - 80] % of CPL’s sales are made under retailer’s own brand and for IWP, the figure is between [70 - 100] %. According to the parties most major retailers in the UK have their own label ignition products. In the parties’ view, the market share of own-label products should be attributed to the party that is responsible for the branding, marketing, advertising, promotion and sale of the product. The manufacturers

⁴ Commission’s decision of 03.09.1999.

role is confined to that of a manufacturing sub-contractor process in which the manufacturer produces and packages a given ignition product to a customer's specifications. Given this, it is the parties' opinion that they have no responsibility or influence over the commercial exploitation of the ignition products that are sold to retailers as own label brand. Based on this, the parties submit, that the product market analysis and the market share calculations must ascribe own label market shares to the brand owner and not the manufacturer.

20. IWP Households is active in the manufacturing and wholesaling of ignition products, whereas CPL is only active in the wholesaling of these products. IWP Household supplies retailers directly and as well as wholesalers. However, it can be left open whether the market for the sale of ignition products should be split into a market based on sales directly from manufacturers or wholesalers to retailers, as this would not change the competitive assessment of the transaction.

Fire logs

21. IWP Household and CPL are only active in the wholesaling of fire logs and CPL's activities are limited to the UK market, whereas IWP Household also supplies fire logs outside the UK. Neither of the parties are active in the manufacture of fire logs, but base their wholesaling activities on imports.
22. Fire logs are "fake" logs, which are typically made of sawdust and blended wax, although they can also be produced using a wide variety of waste materials including coffee grounds, pecan shells and newspapers. Fire logs burn with a natural, wood-like charred and ashed appearance, and can be used in indoor fires to provide a decorative effect – they do not give out sufficient heat to effectively heat a room. The parties argue that the price of fire logs differs significantly from the price of other indoor fuels such as smokeless coal, real wood and smokeless indoor fuels. Accordingly the parties do not believe that fire logs compete directly with other indoor fuels which are primarily intended to provide heat for a room.
23. On the price difference the parties argue, that a pack of fire logs cost around €6.60 for a pack of three, which will burn for two hours each. The "cost per evening (6 hours)" equals €6.60. In comparison real wood in the UK will cost around €3.80 for a sack providing fuel for one evening. Coal will cost around €6.25 for a 25kg bag and will provide fuel for around three evenings - equating a "cost per evening" of around €2.10. Finally, smokeless indoor fuels in the UK will cost around €8-10 for around 25 kg. This will provide fuel for around 4-5 evenings equating to a "cost per evening" of around €1.60 - €2.50.
24. The market investigation has shown that wholesalers and retailers regard fire logs as a separate product market. However, third parties manufacturers argue that fire logs compete with other forms of solid fuels burned in open fireplaces such as smokeless fuels and natural wood. For the purpose of this decision, it can be left open whether fire logs constitute a separate product market from other types of indoor fuels.

B Geographic market definitions

Charcoal

25. According to the parties the geographic market for the wholesale supply of charcoal is national. As a matter of fact, [75 - 100] % CPL's sales are made within the UK. More broadly, the parties are not aware of any UK retailers purchasing bagged charcoal from non-UK suppliers. Furthermore, the transport costs associated with the supply of bagged charcoal are significant. CPL has supplied a [...] customer with charcoal and the transport cost represents approximately [...] %. The cost of importing bagged charcoal into the UK is expected to be similarly high. Charcoal is imported from a variety of countries in bulk form. The bagged product purchased by UK customers is bulky and low value.
26. It is not necessary for the purpose of this decision to define the geographic market, since based on the most narrow market definition (i.e. on a national basis), the transaction will not create any competition concerns nor would any competition concerns arise on an EEA-wide basis.

Ignition products

27. As mentioned above, IWP Household manufactures ignition products and acts as a wholesaler whereas CPL is only active as a wholesaler of ignition products on the UK market. As regards the manufacturing level, the parties consider the market for the manufacture of ignition products to be at least EEA-wide. This is based on the fact that IWP Household exports up to [60 - 80] % of its ignition products produced in UK to mainland Europe. Based on information from the parties, Standard Brands, a manufacturer based in Ireland makes [70 - 100] % of its sales outside Ireland and the British producer Euroliter makes [50 - 80] % of its sales outside the UK. IWP Household is a manufacturer of ignition products whereas CPL is only a wholesaler of ignition products on the UK market. However, as CPL is not active in the manufacture of ignition products, the geographic market definition for the manufacture of ignition products can be left open.
28. No submission is made in the notification with respect to the geographic dimension of the wholesale market of ignition products, as this market is said to be part of a wider distribution market, where wholesalers compete with manufacturers of ignition products.
29. On the UK market three manufacturers are active in the wholesale of ignition products. The manufacturers are the UK based IWP Household and Euroliter and the Irish based Standard Brands. Of these three manufacturers two of these supply directly to a limited number of retailers and all three supply other wholesalers on the market. Since IWP Household and CPL only have overlapping activities on the UK wholesale market for the supply of ignition products the only competitive concerns could arise on a national basis in the UK. Even based on a worst case scenario, i.e. based on a national market definition, the transaction is not likely to create any significant competition concerns. Therefore, the geographic scope of the market can be left open.

Fire logs

30. The only country in which both parties supply fire logs is in the UK. The parties believe that their wholesaling of these products is likely to be essentially national. This is based on the fact that CPL does not supply fire logs outside the UK and whilst IWP Household supplies fire logs outside the UK, these sales are ancillary to its established non-UK wholesaling business, whereby fire logs are sold as a part of a product range including IWP Household's core business.
31. The parties argue that the wholesalers of fire logs face competition from manufacturers of fire logs, which may supply customers directly. Manufacturers of fire logs could deliver directly to the major multiple supermarkets central warehouses. The supermarket itself could then arrange distribution to its individual retail premises. A third party manufacturer of fire logs has informed the Commission, that most major multiple retailers do not desire to purchase the product directly from the manufacturer. Most retailers require that fire logs are supplied by an established wholesaler who is already delivering various related and unrelated products to the retail distribution centre or directly to the retail store location. The manufacturer also said that sales via established wholesalers are necessary in the UK market because the logistics of delivering only manufactured fire logs and firelighters directly to thousands of points-of-sale would not be economically feasible. Only one manufacturer is believed to make direct sales to retailers while the rest rely on importers or wholesalers to distribute the fire logs. Based on this it can be concluded that the geographic scope of the market for the wholesaling of fire logs is national.

C Assessment

Charcoal

32. Neither of the parties are active as a manufacturer of charcoal but they are only active in wholesale supply. As mentioned above CPL distributes charcoal, instant lightning charcoal and disposable barbecues on the UK market. CPL's market share on the wholesale supply market in the UK is estimated to be between [30 - 50] %. CPL also makes minimal sales of charcoal in Norway, Malta and Belgium. IWP Household makes through its subsidiaries Tiger Tim and De Toren limited sales of charcoal [...].
33. Although both parties are active in the wholesale supply of charcoal, the transaction will not create any horizontal overlap on the basis of national markets. If the market were to be defined as the EEA, the combined market share of IWP Household and CPL would be below [10 - 30] %. In neither case do competition concerns arise.

Ignition products

34. As mentioned above, it can be left open whether the sale of ignition products should be split into the sales from manufacturers directly to retailers and the sales through wholesalers or grouped into a single distribution market. IWP Household sells [60 - 80] % of its UK sales of ignition products directly to retailers. These sales represent around [20 - 40] % of the total sale of ignition products in the UK (both branded and own label products). Standard Brands, a competing manufacturer of ignition products, makes around [60 - 80] % of its sale through a number of appointed distributors giving Standard Brand a total market share of around [20 - 40] % of the total sale of ignition products in the UK. The manufacturer Euroliters makes approximately [50 - 70] % of

its sales of ignition products directly, rather than via independent wholesalers. These sales represent around [5 - 15] % of all ignition products sold in the UK.

35. On a distribution market, IWP Household would hold a market share of [20 - 30] % based on the value of sales of ignition products. CPL would add approximately [5 - 15] % based on value of the sales. The parties combined market share would accordingly be [30 - 40] %. The major competitor on the wholesale market is Standard Brand with a market share of approximately [20 - 40] % based on value. Euroliters has [5 - 15] % based on value. The remaining market is split between a number of smaller wholesalers with a market share between [0 - 10] %.
36. The majority, around 90% according to the parties, of ignition products are sold under retailers or wholesalers own label brands. Own label products will restrain the ability of ignition product manufacturers to raise prices as the retailer can easily change supplier.
37. Today, CPL [...]. This indicates that the competitive impact of the transaction is likely to be insignificant, as CPL's sales are already primarily based on supplies from IWP Household. Based on a combined market share of [30 - 40] % and taking into account the wide use of own label brands, it can be concluded, that the transaction will not lead to the creation or strengthening of a dominant position as a result of which effective competition would be significantly impeded on the markets for the sale of ignition products on any UK markets.

Fire logs

38. The market for the sale of fire logs in the UK is very limited. The parties estimate the total market to be approximately [...]. Both parties are active in the wholesale supply of fire logs but none of them are active in the manufacturing of fire logs. IWP Household is the largest wholesale supplier with a market share of around [40 - 60] %. CPL entered the market for fire logs [...] and is marginally active in the wholesale supply of fire logs. CPL's sales of fire logs were only [...] in 2001 representing a market share of [0 - 10] %.
39. If smokeless indoor fuels were included in the product market definition CPL's market share of would remain about [40 - 60] %, and IWP Household sale of fire logs would add an additional [0 - 10] %. On the wider market i.e. fire logs, smokeless fuels and real wood logs, the parties market share would be much lower because CPL's market share of real wood logs is not more than [0 - 10] % and IWP does not sell real wood logs.
40. The market investigation has shown, that a large number of competitive wholesalers exist on the UK market, which would be able to compete with the parties, ensuring that manufacturers of fire logs would have continued access to the market. Due to the low value of total sales of fire logs in the UK and the very low value of the parties' sales, the parties are not able to estimate the market shares of the competitors, but have instead identified a number of manufacturers supplying wholesalers on the market. The parties have identified the American company Duraflame and the Irish based manufacturer Bord na Mona Fuels as supplying wholesalers. Furthermore the parties mention the fire log manufacturers [...] of Australia and [...] of Norway which the parties believe supplies UK customers.

41. It can be concluded that the overlap of the parties' activities on the wholesale market for fire logs is only [30 - 50] % of the market. In addition a number of manufacturers of fire logs supply other wholesalers on the UK market competing with the parties in distributing fire logs to the retailers. Furthermore, a number of wholesalers could expand into the supply of fire logs, and the parties are therefore faced with both existing competitors and potential competitors on the wholesale market for fire logs. Combined with the possible competition from other kind of indoor fuels such as wood, peat briquettes and smokeless fuels, it can be concluded, that the transaction will not lead to the creation or strengthening of a dominant position on the UK market for fire logs.

Co-ordination between the parents (Article 2(4))

42. The creation of the joint venture will not allow the parent companies to co-ordinate their competitive behaviour based on the establishment of the joint venture. The only overlapping activities are three products identified in the above description. Besides this, the parent companies do not have overlapping activities enabling a co-ordination of the competitive behaviour.
43. Based on the above mentioned, it can be concluded, that the proposed concentration will not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or a substantial part of this area.

VI. CONCLUSION

44. 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