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*Case No. COMP/M.3955
– Southern Cross
Healthcare / Cannon
Capital (Ashbourne
Healthcare).*

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 4 (4)
Date: 24/10/2005



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.10.2005

SG-Greffe(2005) D/205892

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 4 (4) DECISION

To the Notifying Party
To the Office of Fair Trading (UK Competition Authority)

Dear Sir/Madam,

**Subject: Case No COMP/M.3955 – Southern Cross Healthcare/ Cannon Capital (Ashbourne Healthcare)
Reasoned submission pursuant to article 4(4) of Regulation No 139/2004 for referral of the case to the United Kingdom.**

1. On 19.09.2005, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Council Regulation (EC) No 139/2004 (“EC Merger Regulation”) with respect to the transaction cited above. A copy of this submission was transmitted to Member States on 20.09.2005.
2. In support of their referral request, the submitting parties have mentioned in the Reasoned Submission that the geographic focus of the proposed concentration is on the territory of the United Kingdom.
3. By fax of 11.10.2005, the Office of Fair Trading (“OFT”) informed the Commission that it agrees to the request to refer the case to the UK. The OFT states that the parties do not achieve any turnover outside the UK. Moreover, the OFT points out that this authority has previously considered the care homes market as local in scope. The OFT considers that the proposed concentration may significantly affect competition in several markets which present all the characteristics of a distinct market. The OFT therefore agrees that it is appropriate for the transaction to be referred to the UK in its entirety for a fuller examination of its impact under UK competition law.

I. THE PARTIES

4. Southern Cross Healthcare Group Limited (“SX”) is ultimately owned and controlled by the US private equity company the Blackstone Group (“Blackstone”). SX operates a portfolio of care homes for elderly and younger people within the United Kingdom. Through its affiliate NHP1, SX also owns a portfolio of care homes. SX is active exclusively within the United Kingdom.
5. Cannon Capital Ventures Limited (“Cannon Capital”) operates a portfolio of care homes in the United Kingdom, primarily through its Ashbourne Healthcare business (“Ashbourne”). Cannon Capital also has a small business supplying dry consumables (e.g. towels, linen, crockery etc.) to care homes (principally to Ashbourne’s care homes). Cannon Capital is active exclusively in the United Kingdom.

II. THE OPERATION. CONCENTRATION

6. The proposed concentration concerns the acquisition by SX of sole control over Cannon Capital by way of purchase of shares. The transaction therefore is a concentration within the meaning of Article 3(1)(b) of the EC Merger Regulation..

III. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion². Each of them has a Community-wide turnover in excess of EUR 250 million. While Cannon Capital achieved more than two-thirds of their Community-wide turnover in the UK, Blackstone did not. The notified operation therefore has a Community dimension.

IV. ASSESSMENT

A. Relevant product markets

8. On the basis of the information submitted in the Reasoned Submission, the relevant market is the provision of care home services. The parties submit that this market could be further sub-divided in various segments such as (i) residential, (ii) nursing and (iii) elderly mentally infirm (“EMI”) care.

B. Relevant geographic market

9. According to the parties, the care home service market is local in scope and that an area corresponding to a 15-20 minute drive time should be the appropriate frame of reference (which corresponds to a 3 to 10 mile radius, depending on the area).

¹ Blackstone recently acquired NHP (Case COMP/M. 3669, notified on 9 December 2004 and referred back to the United Kingdom under Article 9 of EC Merger Regulation).

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).

C. Assessment

10. On the basis of the information submitted in the Reasoned Submission, the parties' activities overlap in several segments within the UK care home market. In particular, the proposed concentration gives rise to several horizontally affected markets in the UK in the segments for the provision of residential, nursing and EMI care.
11. On the basis of number of beds, the parties' combined market share in the overall care home market would exceed 25% in the areas of Basildon and South Gloucestershire. In the *prima facie* affected segment for nursing care the parties' combined market share would range from 25% to [40-50]% in fifteen local areas. On the *prima facie* affected segment for residential care, the combined market share of the parties would exceed 25% in two local areas. Furthermore, on the *prima facie* affected segment for EMI care, the parties' combined market share would exceed 25% in six local markets. Additionally, on the basis of number of homes, the combined market share in the *prima facie* affected segment for nursing care would range from 25% to [40-50]% in thirteen local areas; for EMI care, the parties' combined market share would exceed 25% in one local area.

V. REFERRAL

12. On the basis of the information provided by the parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the EC Merger Regulation in that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market. The Commission notice on case referral in respect of concentrations³ (point 17) indicates that, in seeking a referral under Article 4(4), "*the merging parties are ... required to demonstrate that the transaction is liable to have a potential impact on competition in a distinct market within a Member State, which may prove to be significant, thus deserving close scrutiny*", and that "*such indications may be no more than preliminary in nature...*". The Commission considers, on the basis of the information submitted in the Reasoned Submission, that the principal impact on competition, if any, of the concentration is liable to take place on distinct markets in the UK, and that the requested referral would be consistent with point 20 of the notice.

VI. CONCLUSION

13. For the above reasons, and given that the UK has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by the UK. This decision is adopted in application of Article 4(4) of Council Regulation (EC) No 139/2004.

For the Commission
(signed)
Neelie KROES
Member of the Commission

³ http://europa.eu.int/comm/competition/mergers/legislation/consultation/case_allocation_tru.pdf