

*Case No IV/M.1437 -  
CVC / WMO - WAVIN*

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 26/02/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.02.1999

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying parties

Dear Sir/Madam,

**Subject: Case No IV/M.1437 – CVC/WMO/Wavin**

Notification of 25.01.1999 pursuant to Article 4 of Council Regulation  
N/ 4064/89

1. On 25 January 1999 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89<sup>1</sup> by which CVC European Equity II Limited acquires, within the meaning of Article 3 (1) (b), of the Council Regulation, joint control of the Wavin group.
2. After examination of the notification the Commission has concluded that the notified operation falls within the scope of application of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market or with the functioning of the EEA agreement.

**I THE PARTIES AND THE OPERATION**

3. CVC European Equity II Limited, a subsidiary company of CVC Capital Partners Europe Limited and a member of the CVC Capital Partners Group of companies, provides management, advisory and consultancy services to investment funds.

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<sup>1</sup> OJ L 395, 30.12.1989 p.1 ; corrected version OJ L 257 of 21.9.1990, p.13, as last amended by Regulation (EC) No 1310/97, OJ L 180, 9.7.1997, p.1, corrigendum in OJ L 40, 13.2.1998, p.17.

WMO is a water utility principally active in the province of Overijssel, the Netherlands.

4. The Wavin Group of companies produces and sells plastic pipe systems for gas, water, sewage, drainage, cable ducting and construction purposes, as well as plastic fittings for such systems. The whole of the Wavin group will be subject to the concentration. Wavin is currently jointly controlled by Shell Petroleum NV (50%) and WMO (50%).
5. The transaction will be carried out in two steps: first, Kleurenpracht Holding BV, a 100% subsidiary of CVC set up by CVC as an acquisition vehicle, purchases the 50% shares in Wavin held by Shell. WMO then transfers its shares in Wavin to Kleurenpracht and Kleurenpracht changes its name to Beheermaatschappij Wavin BV.
6. In the second step, Beheermaatschappij Wavin issues new voting rights, which will be acquired by Stichting Management Participatie, a vehicle controlled by WMO and set up to allow the participation of the management of Wavin, two non-controlling financial investors and WMO. As a result, CVC European Equity Partners II LP and CVC European Equity Partners II (Jersey) will control [more than 30%] of the voting rights in Wavin. [...] will be controlled by further investors. WMO will control [more than 50%].
7. CVC European Equity Partners II L.P. and CVC European Equity Partners II (Jersey) L.P. are investment funds organised as limited partnerships. CVC European Equity II Limited has been appointed general partner to these partnerships on a permanent basis. In this capacity, CVC European Equity II Limited has full control over the affairs of the partnerships as well as sole and discretionary authority to take investment decisions on their behalf. In particular, CVC European Equity II Limited will exercise the partnerships' voting rights in Beheermaatschappij Wavin BV, exercising decisive influence over the Wavin Group.
8. The shareholders of Wavin must approve all major strategic investments and acquisitions as well as the budget, financial plan and two-year business plan with a 75% majority, CVC and Wavin therefore each have a veto right on any such decision. Accordingly, CVC and WMO will have joint control of Wavin within the meaning of Article 3 of the Merger Regulation.

## **II COMMUNITY DIMENSION**

9. The undertakings concerned and have a combined aggregate world-wide turnover in excess of EUR 5,000 million [...]. The Community-wide turnover of each of two of them exceeds 250 million [...], but they do not achieve more than two-thirds of Community-wide turnover in any one EC Member State. The notified operation therefore has a Community dimension.

### **III ASSESSMENT**

10. While WMO is a monopoly in respect to the supply of drinking water and Wavin is an important player in the sector for plastic pipe systems and fittings, the acquiring companies, CVC group, as financial institutions, are not active in any of Wavin's or WMO's markets. Furthermore, no investment controlled by the CVC-group is active in any of the sectors concerned. Thus, their respective market positions do not change as a result of the proposed concentration.
11. Consequently the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

### **IV ANCILLARY RESTRICTIONS**

12. The parties have submitted a number of contractual obligations they wish to be cleared as ancillary restrictions. These contractual obligations include non-competition clauses in the sense of Chapter III.A. of the Commission Notice on restrictions ancillary to concentrations ("Notice")<sup>2</sup>, non-solicitations clauses with regard to senior employees and a PVC Supply Framework Agreement. These obligations are contained in the sale and purchase agreement for Wavin.
13. The non-competition clause contained in the sale and purchase agreement relating to the sale of Wavin and the obligation not to solicit employees from the transferred business are both covered by this decision only to the extent that their duration does not exceed three years in line with the Notice. With the purchase of the 50% shares in Wavin from Shell, which is the object of this notification, CVC group acquires both know-how and goodwill.
14. The PVC Supply Framework Agreement with [...] covers [more than 40%] of Wavin's requirements for PVC and it is not exclusive. However, it cannot be covered by this decision, since it could not convincingly be shown that such an agreement is objectively necessary to protect Wavin from an immediate disruption of its [...] procurement for PVC.

### **V CONCLUSION**

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

For the Commission,

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<sup>2</sup> OJ C 203, 14.8.1990, p.5.