



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.12.1997

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sirs,

**Subject: Case No IV/M. 1054 - LGV/BTR**  
**Notification of 11.11.1997 pursuant to Article 4 of Council Regulation N/ 4064/89**

1. On 11.11.1997 the Commission received a notification of an operation whereby Legal & General Ventures Ltd ("LGV") acquires control of certain parts of the business of BTR Plc, that is the polymer products group and part of the building products group of BTR.
2. After examination of the notification the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA agreement.

**I. The Parties**

3. LGV is a wholly-owned subsidiary of Legal & General Group plc ("Legal & General") and is incorporated in Great Britain. Its principal activity is the provision of venture capital management services.
4. LGAS is a wholly-owned subsidiary of Legal & General, incorporated in Great Britain. Its principal activity is life insurance and pensions business, as well as the provision of investment management services.
5. E7 is a limited partnership. Under UK law, a limited partnership is set up and used as a vehicle for funds held for the purpose of investment in venture capital. E7 is composed of LGAS (55%) plus a number of institutional investors, including merchant banks, pension funds and other financial trusts. Its role within

the structure of Unipoly is a purely fund-raising one. E7 will be wholly controlled and managed by LGV.

6. The other institutional investors include three financial trusts, whose investment in the transaction will be managed by LGV.

## **II. The operation**

7. The operation results from a management buy-out of the polymers and part of the building product groups of BTR (“the Business”).
8. In order to obtain financial support for the completion of the transaction, the management participating in the buy-out (“the Management”) has had recourse to LGV. After completion, the Management, along with Legal & General Assurance Society Ltd (“LGAS”), the LGV 1997 Private Equity Limited Partnership (“E7”) and certain other institutional investors, which are all controlled by LGV, will be the shareholders of Unipoly SA, the acquisition vehicle for the operation.

## **III. Control**

9. The Management will have 18% of the shares in Unipoly, while the rest will be controlled by LGV. According to the shareholders’ agreement, LGV will have the power to exercise strategic and commercial veto rights, whereas it will have full discretionary authority to make and manage the investments of the institutional investors. The minority Management shareholders will have only a limited investor protection and no veto rights over the conduct of Unipoly business. Accordingly, LGV will have sole control of Unipoly.

## **IV. Concentration**

10. In certain management buy-outs the duration of the participation of financial investors in a new company is limited in time, as not to qualify as a concentration within the meaning of Article 3(1)(b) of the Merger Regulation<sup>1</sup>.
11. However, in this case, the subscription and shareholders’ agreement records the parties’ intention “to work towards a sale or listing within five years of completion”, and recognises that such an event may take place at a later time, depending upon the Business’s financial requirements. Given the long time period of the parties’ participation in the capital of Unipoly and the structural and long-lasting change of control, the operation can be regarded as a concentration within the meaning of Article 3(1)(b) of the Merger Regulation<sup>2</sup>.

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<sup>1</sup> In case IV/M.722-Teneo/Merrill Lynch/Bankers Trust, the Commission supported that the existence of transaction vehicles and the holding of the assets acquired for a time period of three years could not confer to the joint-venture a long-lasting character within the meaning of Article 3(2) of the Merger Regulation, and consequently adopted a 6(1)(a) decision.

<sup>2</sup> In case IV/M.395 - CWB/Goldman Sachs/Tarkett, the Commission accepted that in a management buy-out, the participation of companies managing the investment funds taking part in the transaction resulted in a concentration, in which the financial investors, and not the management, were in fact those acquiring control.

## **V. Community dimension**

12. The combined aggregate world-wide turnover of the undertakings concerned exceeded 5,000 million ECU in 1996. The aggregate Community-wide turnover of the undertakings concerned each exceeded 250 million ECU in 1996. LGV achieves more than two thirds of its Community-wide turnover in the UK. However, The Business does not achieve two-thirds of its turnover in the UK or in any other Member State. The operation has therefore a Community dimension.

## **VI. Assessment**

13. The economic activity of The Business is focused on the polymer products and building products sectors (i.e. fluidhandling, belting, fenestration products and various composite products). The principal activity of Legal & General is life and pensions business, general insurance business and the provision of investment management services. None of the Legal & General group companies or the investee companies is active in any market in which the Business is active or in any market upstream or downstream of or neighbouring such markets. Therefore, the proposed operation does not raise any competition concern.

## **VII. Ancillary restraints**

14. The operation is supplemented by a number of agreements which have been evaluated under the ancillary restraints test. These are intellectual property licence agreements (trade mark and technology licences) and a non-compete covenant agreement between BTR and Unipoly, whereby BTR agrees not to carry out certain activities which compete with the Business for a period of three years from the date of the agreement.
15. The intellectual property licence agreements fall within section III.B. of the Commission notice regarding restrictions ancillary to concentrations. In addition, in so far as the transfer includes both goodwill and know-how, the non-competition agreement does not exceed what is reasonably necessary to ensure the transfer of the full value of the Business. Therefore these clauses are directly related to and necessary for the implementation of the concentration. As far as restricting competition, they can be regarded ancillary to the concentration.

## **VIII. 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 No 4064/89.

For the Commission,