

***Case No IV/M.1160 -  
GKN / BRAMBLES /  
SKP***

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 26/05/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.05.1998

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

**Subject : Case No IV/M.1160 - GKN/BRAMBLES/SKP**

Notification of 20 April 1998 pursuant to Article 4 of Council Regulation No. 4064/89

1. On 28. April 1998, GKN Plc (GKN) and Brambles Industries Limited (Brambles) notified to the Commission an operation by which they will acquire joint control of SKP Sanne, Kruse & Pape Unternehmensverwaltung AG & Co (SKP) and Sanne & Jörg GmbH & Co Grundstücksgesellschaft Tribsees (Tribsees).
2. After examination of the notification, the Commission has concluded that the notified operation falls under the scope of Council Regulation N° 4064/89 and does not raise any serious doubts with regard to its compatibility with the common market and the functioning of the EEA agreement.

**I. THE PARTIES**

3. GKN is an UK based international engineering group with activities mainly in design and production of automotive and engineering components as well as industrial services. Brambles is an Australian based company and its main activities constitute industrial services, equipment rental, transport services and waste treatment and disposal.
4. GKN and Brambles already operate a number of joint ventures of which two are related to waste management, the remaining joint ventures are not involved in this

business. Cleanaway is a UK based waste management company with activities in the areas of both non-hazardous and hazardous waste management services. Cleanaway Netherlands BV owns Leto Recycling and a 70% in Mirec BV. Leto Recycling is active in the hazardous waste management market in the Netherlands. Mirec is a waste management and recycling company, engaged in hazardous waste collection and treatment and metal and electronic scrap recovery in the Netherlands. Cleanaway Deutschland Holding GmbH operates MABEG Holding Gesellschaft für Entsorgungswirtschaft mbH (MABEG), active in the collection and sorting of DSD materials and trade waste, the collection and disposal of municipal solid waste, the construction and operation of transfer stations, landfill management and hazardous waste treatment. With the exception of the joint ventures, Brambles' waste related activities are conducted outside the EEA.

## **II. THE OPERATION**

5. GKN and Brambles will form, through their subsidiaries Auto Transmission Sales Limited and Brambles Investments Europe BV, a new joint venture named Madison Entsorgung GmbH (MADISON) to acquire 94% of SKP and Tribsees. Both parents will each hold directly 3% interest. SKP is a waste management company active mainly in the non-hazardous segment of activity in Germany, it has also some activity in the hazardous segment. Outside Germany it operates waste paper collection in the Netherlands and it has some other minor shareholdings in waste management companies in Austria, Denmark, the Baltic countries, Hungary and Singapore. Tribsees holds real state and has no other activities.

## **III. CONCENTRATION**

6. MADISON and through it SKP will be jointly controlled by GKN and Brambles as both have equal shares and there are no contractual arrangements which provide otherwise.
7. SKP Will continue to be operated as an independent company. It has the financial resources, staff and assets necessary to operate a business on a lasting basis, i.e. it performs all the functions of an autonomous economic entity.
8. There is no scope for co-ordination of the competitive behaviour of the parents between themselves and with the joint venture as GKN is not active in the market for waste management and Bramble's activities are conducted outside the EEA.
9. Therefore, the operation is a concentration in the meaning of article 3 of Regulation 4064/89.

## **IV. COMMUNITY DIMENSION**

10. The combined aggregate world-wide turnover of GKN (ECU 4,676.8 million) and Brambles (ECU 2,201 million) exceeds ECU 5,000 million. Both GKN and the Brambles have a Community-wide turnover in excess of ECU 250 million, but do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State.

11. The notified operation therefore has a Community dimension but does not constitute a co-operation case under the EEA Agreement Pursuant to Article 57 and Article 2 in Protocol 24 of that Agreement.

## **V. COMPATIBILITY WITH THE COMMON MARKET AND THE EEA**

### 1. The product market and the geographical market

12. The Commission has held in previous cases that the supply of waste management services for non-hazardous waste constitutes a market separate from waste management services for hazardous waste<sup>1</sup>. Hazardous waste requires complex disposal, treatment and recycling facilities, a different and more burdensome regulatory framework applies and the costs involved in treatment and disposal are substantially higher than for non-hazardous waste. In addition, it can be distinguished between various means by which hazardous or non-hazardous waste are treated, that is, storage, dumping, high temperature incineration or recycling which may be defined as separate markets<sup>2</sup>.
13. The parties claim that the geographical market for waste management services is essentially national which may overlap at the borders. As concerns the relevant geographical market for non-hazardous waste the Commission has already held that the relevant geographical markets are national or even local, for reasons of regulation, local custom and knowledge and transport costs. As concerns the geographical market for hazardous waste the definition of the precise geographical market can be left open as the operation does not raise any doubts as to the compatibility with the common market even on the basis of the narrowest market definition.

### 2. Competitive assessment

14. SKP and MABEG both have business activities in a number of the same states in Germany but because of the strongly localised nature of the waste industry there is no direct significant overlap. It is only in the state of Lower Saxony that both companies have a significant number of locations and revenue. However market shares are negligible. SKP has business activities in the following states where MABEG has no presence: Baden-Württemberg, Bayern, Hamburg, Schleswig-Holstein and Thüringen. MABEG has activities in Bremen where SKP is not active.
15. The estimated combined market share of SKP/MABEG of the overall private sector German waste management market is approximately 1.5%. The parties estimate that the respective shares of MABEG and SKP in non hazardous waste management in Germany are below 0.5% and 1.4% respectively. In hazardous waste management in Germany both parties have market shares in the region of 0.1%.
16. Germany is the largest waste management market in the Community. The majority of companies have a turnover of less than DM 10m. There are about 300-400 firms

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<sup>1</sup> Cases No; IV/M.283 - Waste Management International/S.A.E.; IV/M.868 - GKN/Brambles/Mabeg.

<sup>2</sup> Cases IV/M. 266 - Rhone-Poulenc Chimie/SITA; IV/M.295 - SITA-RPC/SCORI; IV/M.283 - Waste Management International/S.A.E.

<sup>3</sup> Case IV/M.283 Waste Management International; IV/M.868 - GKN/Brambles/Mabeg.

with revenues of DM 10-50m. About twenty firms have revenues of DM 100-500m. Only eleven companies have revenues in excess of DM 500. The transaction will create a stronger player in the German waste management market, but the combined entity will still be smaller than the top 10 players in that market.

17. Consequently, the concentration will not create or strengthen a dominant position as a result of which effective competition will be significantly impeded in the common market or in the EEA or in a substantial part of it.

## **VI. ANCILLARY RESTRAINTS**

18. § 10(2) of the Sale and Purchase Agreement contains a non-compete obligation on the vendors of SKP. This provisions prohibits the vendors for a period of three years activities in competition with SKP in the territory of the Federal Republic of Germany and with the existing SKP activities in the territories of Estonia, Lithuania, The Netherlands, Austria and Hungary. This provision is ancillary to the concentration as it is necessary to guarantee the transfer of the full value of the assets (which include both goodwill and know-how).

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 functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission,