

***Case No IV/M.1260 -  
EDON / ROVA / RECO***

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: 24/08/1998

*Also available in the CELEX database  
Document No 398M1260*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24/08/1998

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

**Subject: Case No IV/M. 1260 - EDON/ROVA/REKO**  
**Notification of 23.07.04.1998 pursuant to Article 4 of Council Regulation**  
**N/4064/89**

1. On 23.07.98, 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 the undertakings Hanze Milieu Onderneming N.V. ("Hanze", controlled by the EDON Group), ROVA Deelnemingen B.V. ("ROVA") and Reko B.V. ("Reko", ultimately controlled by DSM NV) acquire, within the meaning of Article 3(1)(b) of the Merger Regulation, joint control of a newly formed company, for the time being named Reko/Re-Use VOF ("the Partnership").
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

**I THE PARTIES**

3. Hanze is part of the Dutch EDON Group, which is active in energy and energy related services and, through Hanze, in waste collection, recycling and final processing of waste.
4. ROVA is a company owned, inter alia, by 23 Dutch municipalities and is mainly active in the disposal of domestic waste in part of The Netherlands. It also provides

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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.

consultancy with respect to re-use and recycling of various waste streams. Its activities are limited to The Netherlands.

5. Wavin Re-use B.V. is a Dutch recycling company, presently owned for 50 % by Hanze and for 50 % by ROVA; it is active in the (low density polyethylene low density polyethylene (LdPE).
6. DSM NV is a leading European producer of polyolefins, located in the Netherlands, with annual production of polymers of about 1 million tonnes. Through its subsidiary DSM Commercial Coordinations & Participations B.V. it is the ultimate the holding company of Reko.
7. Reko is a Dutch recycler of post-use polymer products, producing regranulate and regrind suitable for use as raw materials in the plastics converting industry. It concentrates on recycling applications for detergent bottles of high density polyethylene (HdPE), agricultural and packaging film; LdPE, bottle caps (polypropylene; PP), soft-drink bottles (polyethylene terephthalate; PET), compact discs (polycarbonate; PC) and coffee cups (polystyrene; PS).

## **II THE OPERATION**

8. The operation will be carried out in two stages. In the first stage Reko will acquire a 40 % interest and Wavin Re-Use a 60 % interest in a new entity having the legal form of a “Vennootschap onder Firma” (“Partnership”) under Dutch law. Both Reko and Wavin Re-Use will transfer the whole of their business activities to the Partnership. In the second stage, Wavin Re-Use will be divided in accordance with EC Directive 82/891, so that Hanze and ROVA will, each through a wholly owned subsidiary, have a 30 % interest each in the Partnership. Thus the Partnership will have three partners: Reko with 40 %, Hanze with 30 % and ROVA with 30 %.
9. The Partnership will be active in the mechanical recycling of industrial and post use consumer plastics to produce raw materials which can be used to replace part of the requirements of virgin material in certain applications.

## **III CONCENTRATION**

### **Joint Control**

10. The Partnership will have a Board of Control consisting of seven persons, three of which will be appointed by Reko and two each by Hanze and ROVA. The Board Control must decide unanimously on the appointment and dismissal of the members of the Managing Board and, inter alia, on the determination of the Partnership’s strategy, the adoption of its investment plans, business plans and budgets and on the approval of annual accounts.
10. The notified transaction will result in Reko, Hanze and ROVA, acquiring joint control of the Partnership and therefore the transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

### **Full-function character**

11. The parties will, on a lasting basis, transfer all their present business activities and assets in the field of the production and sale of mechanically recycled post-use consumer goods and production waste plastics to the Partnership and they will withdraw from these markets.
12. The Partnership will have all the necessary resources, including finance, personnel, to operate independently on the market.
13. Neither REKO nor Wavin Re-use purchase any waste from their parents as neither the EDON group nor ROVA are currently able to supply plastic waste to the required specifications. The Partnership will therefore source all its raw materials from third parties. According to the parties the Partnership will not supply regranulate or regrind to the DSM Group because the latter's production process requires virgin material.
14. Therefore it is concluded that the operation is a concentrative joint venture within the meaning of Article 3 of Council Regulation N° 4064/89.

## **IV COMMUNITY DIMENSION**

15. The undertakings concerned have a combined aggregate world wide turnover in excess of ECU 5,000 million; (DSM: ECU 6,587 million; ROVA ECU 73.2 million; EDON Group ECU 2,370.6 and two of these have more than ECU 250 million Community-wide turnover and they do not each 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. It does not constitute a co-operation case under the EEA Agreement.

## **V THE RELEVANT MARKETS**

### **Relevant product markets**

16. The only area of overlap resulting from the operation will be the combination of the parties activities in the field of recycling LdPE. It is not necessary to consider whether the recycling of other types of plastic form part of the relevant market or whether recycled plastics and virgin material form part of the relevant market because even on the narrowest possible relevant product market definition, recycled LdPE, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

### **Relevant geographic markets**

17. In cases concerning the virgin LdPE market (M.550 - Union Carbide/Enichem, 13.03.95 and M.1041 – BASF/Shell, 23.12.97) the Commission has held that the relevant market is Community-wide. In the present case its is not necessary to decide

on the relevant geographic market as even on national markets effective competition will not be significantly impeded.

## **VI ASSESSMENT**

18. The parties market shares of the national markets for mechanically recycled LdPE is [...]². The highest share is in Benelux where the parties share is [...]³. Figures are not available for the size of the three individual markets, however it is extremely unlikely that the market share exceeds 20% in any of them.

## **VII ANCILLARY RESTRAINTS**

19. Both the Partnership Agreement and the Joint Venture Agreement include non-compete clauses, to the effect that the parties are obliged to abstain from activities that compete, either directly or indirectly, with those of the Partnership. This obligation will continue for one year after a party has ceased to have control over the Partnership and extends to all companies in the parties' respective groups.
20. These covenants which express the parties' intention of making a permanent withdrawal from the market assigned to the Partnership are thus an integral part of the concentration.

## **VIII CONCLUSION**

21. In the light of the above considerations, it appears that the operation will not have any significant competitive effect. Therefore, 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 (EEC) No 4064/89.

For the Commission,

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<sup>2</sup> business secret: between 7 and 17 %

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