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***Case No IV/M.1315 -  
ENW / EASTERN***

Only the English text is available and authentic.

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

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Article 6(1)(a) INAPPLICABILITY  
Date: 15/10/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.10.1998

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(a) DECISION

To the notifying parties

Dear Sirs,

**Subject:**        **Case No IV/M. 1315-ENW/Eastern**  
Notification pursuant to Article 4 of Council Regulation No 4064/89

1. On 14 September 1998 the Commission received a notification concerning the establishment of a new joint venture company, Compass Energy B.V. ("Compass") between Energie Noord West N.V. ("ENW") and Eastern Group plc ("Eastern"), which will each subscribe to 50% of the joint venture's shares.
2. After examination of the notification the Commission has concluded that the notified operation falls outside the scope of application of Council Regulation No 4064/89.

I.        **THE PARTIES AND THE OPERATION**

3. ENW is one of the largest energy distribution companies in the Netherlands with its supply area in North Holland. ENW's principal activities are the purchase, sale and distribution of electricity, natural gas and heat, decentralised production of energy and additional services.
4. Eastern is one of the leading integrated electricity and natural gas groups in the UK. Its main activities are the generation, supply and distribution of electricity and natural gas, and telecommunications.
5. Compass will initially supply natural gas and associated customer services to large industrial users, power stations and distributors in the Netherlands. This activity is currently subject to no legal restriction. In due course the joint venture may supply gas to smaller industrial users (this activity will be liberalised as of 2002) and commercial customers and households (liberalisation as of 2007) in the Netherlands. The joint venture may in the future also sell gas outside the Netherlands. The joint venture's business plan is focused on gas. The parties have not decided yet whether Compass will be active in the electricity supply market.

II.       **COMMUNITY DIMENSION**

6. The combined aggregate world-wide turnover of the undertakings concerned exceeds ECU 5 000 million. The aggregate Community wide turnover of each party exceeds ECU 250 million. They do not achieve more than two-thirds of their turnover in one and the same Member State. The operation has therefore a Community dimension.

### III. CONCENTRATION

7. The transaction, involving the establishment of Compass, is not a concentration within the meaning of article 3(1) (b) of the Merger Regulation since Compass will not be a full function joint venture. The joint venture does not have access to sufficient resources including finance, staff, and assets in order to conduct on a lasting basis its business activities. In particular, Compass will have limited financial autonomy. [...]
8. [...]²
9. Another element suggesting that the joint venture will lack autonomy from the parents is that its staff (initially 3 people and over the next 5 years approximately 7-10 people) will be mainly seconded from the parents. In addition, pursuant to the shareholders' agreement, the parties will provide or secure the provision of a number of services to the joint venture, such as marketing, tendering, information technology, metering and financial support. In connection with the last point, the parties have expressly agreed that if parental support is requested by trading counterparties those counterparties may seek the parents' guarantees to support Compass's payment obligations.

### IV. CONCLUSION

10. For the above reasons, the Commission has concluded that the notified operation does not constitute a concentration within the meaning of Article 3(2) of Council Regulation (EEC) No 4064/89 and consequently does not fall within the scope of that Regulation. This decision is adopted in application of Article 6(1) (a) of Council Regulation 4064/89.
11. The Commission will treat the notification pursuant to Article 5 of Commission Regulation No 447/98 as an application within the meaning of Article 2 or a notification under Article 4 of Council Regulation 17 as requested by the parties in their notification.

For the Commission,

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<sup>1</sup> Deleted, business secret.

<sup>2</sup> Deleted, business secret.