

***Case No COMP/M.1707 -
GILDE BUY-OUT FUND
/ SYNBRA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 20/10/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20-10-99 * SG(99)D/8275

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M. 1707-GILDE BUY-OUT FUND / SYNBRA

Notification of 17.09.1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 17.09.1999 the Commission received the notification of a proposed operation by which the Dutch bank, Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. ("Rabobank") will acquire, together with Royal Ten Cate N.V. ("RTC"), control over the Dutch company Synbra B.V.
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 EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. Gilde Buy-Out Fund B.V. ("Gilde Buy-Out") is a specialised investment fund controlled by Gilde Investment Management ("Gilde"), a venture capital fund managing a variety of investment funds with different objectives and missions. Among other, its purpose is to make buy-outs and buy-ins of larger companies in Europe.
4. Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. ("Rabobank") is a Dutch bank and credit institution active in the financial services sector. It controls Gilde, which is its wholly owned subsidiary, in its turn controlling Gilde Buy-Out.
5. Royal Ten Cate N.V. ("RTC") is an industrial supplier of semi-manufactures and components in the field of high-grade textiles, plastics and rubber. It is and continues to be a holder of 50 % of the shares of Synbra B.V.
6. Synbra B.V. ("Synbra") manufactures and markets a range of plastic products made of expandable polystyrene ("EPS") and to a lesser extent compact polystyrene and polypropylene.
7. Shell Petroleum N.V. ("Shell") is a member of the international energy and petrochemicals group Royal Dutch Shell, and currently holds 50 % of the shares in Synbra.

8. The proposed concentration is an operation under which Rabobank, through Gilde Buy-Out, intends to acquire, directly or through a wholly-owned subsidiary created for that purpose, the 50 % of the issued and outstanding shares in Synbra currently held by Shell. The other 50 % of the shares remain to be held, directly or indirectly, by RTC.
9. Preceding the agreement for the acquisition of Shell's 50 % shareholding in Synbra by Gilde Buy-Out, Synbra entered into an agreement, dated 13th August 1999, with an affiliate of Shell, A/S DANSK SHELL, a company incorporated under the laws of Denmark, for the purchase of all issued and outstanding shares in Dansk Styropack A/S. The transfer of the shares in Dansk Styropack A/S is subject to and conditional upon unconditional completion of the sale of Shell's shareholding in Synbra to Gilde Buy-Out.
10. However, this operation related to Dansk Styropack has not been notified to the Commission and is not covered by the present Decision.

II. FULL FUNCTION JOINT VENTURE

11. The proposed concentration is an acquisition under which Rabo, in the place of Shell, and RTC will acquire joint control of Synbra. Both Rabobank and RTC will, in accordance with the share purchase agreement, enter into a new cooperation agreement along the lines of the existing agreement according to which shareholders have the right to appoint the same number of directors to the Management Board and the Supervisory Board of Synbra (at present both consisting of [...] members). According to those agreements Synbra's management will not take any major business decisions, such as [...], strategic investments in excess of Fl. [...], investments to an amount of more than Fl. [...] and adoption of [...] plans, without the approval of the Supervisory Board, which decides by simple majority. In addition, a number of strategic business decisions, including major investments, are subject to approval of both shareholders, who decide by simple majority of votes.
12. Synbra will on a lasting basis (continue to) perform all the functions of an autonomous economic entity.

III. CONCENTRATION OF A COMMUNITY DIMENSION

13. The combined aggregate world-wide turnover of the undertakings concerned is more than EUR¹ 5,000 million. [Rabobank-€ 16,946 million; RTC-€ 508 million; Synbra-€ [...] million].The aggregate Community-wide turnover of at least two of the undertakings is more than EUR 250 million [Rabobank-€15,250 million; RTC-€355 million and Synbra-€ [...] million] and the undertakings do not attain more than two- thirds of their aggregate Community-wide turnover in one and the same Member State. Hence the concentration has a Community-wide dimension.

¹ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

IV. ASSESSMENT

14. Synbra is active on a EEA wide scale in the market for production and sale of plastics products for the building and construction industry (mainly insulation materials), packaging materials for the food and other industries and horticultural products. Most of its products are made from expandable polystyrene (“EPS”) and to a lesser extent (compact) polystyrene and polypropylene used especially for horticulture and to a lesser extent for packaging products, and to a very limited extent of expandable polyethylene (EPE).
15. However, the Parties to the concentration state that no company directly or indirectly controlled by them is active on a market on which Synbra is active nor on any market that is upstream or downstream of the markets in which Synbra is active.
16. The Commission has not received any information contradicting the parties’ position on the issue of overlapping product markets. Under these circumstances, where there are no overlaps between the parties on any product market, for the purpose of this Decision the definition of the relevant product market can be left open. For the same reason, the geographic market need not to be defined. Hence it is considered that the proposed operation does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or the EEA or any substantial part of those.

V. ANCILLARY RESTRICTIONS

17. The parties request an assessment by the Commission of a non-competition clause in the Sale and Purchase Agreement with a duration of [.....] years whereby Seller (Shell) and its affiliates undertake not to engage in the conversion of EPS and / or the marketing of converted EPS products in [.....],[.....], [.....], and [.....] and during a period of [....] after the completion of the transaction engage, employ, solicit or contact with a view to hiring or engaging specifically listed key employees of Synbra. The parties consider these covenants to be of a protective nature necessary to transfer the full value of the 50% interest in Synbra.
18. Insofar as the agreements are necessary to grant the buyer the full value of the acquisition of its 50% shareholding in Synbra, these can be considered to be directly related to and necessary to the implementation of the concentration and thus ancillary in nature; however in absence of specific justification by the parties a non-compete clause with a duration of more than two years cannot be considered ancillary.

VI. CONCLUSION

19. 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 (EEC) No. 4064/89.

For the Commission,

Signed,
Mario MONTI
Member of the Commission