

*Case No COMP/M.1935 -
RABOBANK / GILDE /
NORIT*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 05/05/2000

*Also available in the CELEX database
Document No 300M1935*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 05. 05. 2000

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 COMP/M. 1935 - RABOBANK/GILDE/NORIT

Notification of 30.03.2000 pursuant to Article 4 of Council Regulation No 4064/89.

1. On 30.03.2000, the Commission received the notification of a proposed operation by which the Dutch bank, Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. ("Rabobank") will acquire, through its wholly owned subsidiary Gilde Investment Management, all shares in Norit N.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

3. Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. ("Rabobank") is a Dutch bank and credit institution active in the financial services sector. Its core activities are financial, insurance and asset management. More specifically, it is active in retail and corporate banking, financial services and provision of mortgages.
4. Gilde Investment Management ("Gilde") is a venture capital fund managing a variety of investment funds with different objectives and missions. Among others, its purpose is to provide venture capital. Gilde is wholly owned by Rabobank.
5. Norit N.V. ("Norit") manufactures and markets activated carbon products made for the food, chemical and pharmaceutical industries as well for water, air and gas purification. It is also active in the field of process technology, i.e. development of innovative technologies and products for treatment and processing of process flows in the drinks,

food, dairy and pharmaceutical industry and manufactures personal care products (cosmetics) mainly for third parties.

II. THE OPERATION AND CONCENTRATION

6. The proposed concentration is an operation under which Rabobank, through Gilde's wholly-owned subsidiary created specifically for that purpose, Gilde Purification Holding B.V., intends to acquire, through a public bid published on 29.03.2000, the issued and outstanding shares in Norit which are currently held by the public. As a result, Rabobank will acquire sole control over the whole of a previously independent undertaking. The operation therefore constitutes a concentration within the meaning of article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

7. The combined aggregate world-wide turnover of the undertakings concerned is more than €¹ 2,500 million. [Rabobank €22,900 million; Norit €251 million]. The aggregate Community-wide turnover of at least two of the undertakings is more than € 100 million [Rabobank € [...million]; Norit € [...] million]. The combined aggregate turnover of the Parties is more than €100 million in each of three Member States; the aggregate turnover of each of the Parties concerned is more than €25 million in these same Member States 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.

IV. ASSESSMENT

8. The relevant economic sectors in which Norit is active, according to the Parties (who do not intend to use this information in order to define product market(s)), are:
 - (a) Activated carbon used in the following industries : water treatment for industrial purposes; water treatment for municipal purposes: air and gas purification; motor car exhaust gas purification; food industry; pharmaceutical industry; chemical industry; and catalysts.
 - (b) Process technology : the development of innovative technologies and products for the treatment and processing of process flows in the water, drinks, food, dairy and pharmaceutical industries.
 - (c) Personal care, namely body care products; skin care products, and hair care products.
9. The Parties submit that no company directly or indirectly controlled by Rabobank is active on a product market in which Norit is active nor on any product market which is upstream or downstream of any product market in which Norit is active, and that as a result there are no affected markets.

¹ Turnover calculated in accordance with Article 5(1), and for Rabobank, Article 5(3) 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.

10. The Commission has not received any information contradicting the parties' position on the issue of overlapping activities or 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 needs 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

11. In case the Commission would be of the opinion that the clauses set out below do have a certain restrictive effect, the following are submitted by the Parties.

The [...] stipulates that:

"During [...] after the Closing, [...]."

Furthermore, in the [...] Agreement, clauses [...] read:

"Each Party (i.e. Gilde, Norit and Norit's Board members) agrees that it shall not without the prior written approval of the other Parties:

(a) [...];

(b) [...]."

12. The notifying Party claims that in particular during the start up of the concentration, it is important that Gilde's commitment especially is ensured. Therefore, clause [...] has a duration of [...]. The [...] Agreement remains valid for an indefinite period of time, and clauses [...] therefore also. The parties remain free to act as long as the other party has given prior written approval to this.
13. Within the meaning of the Merger Regulation, the above clauses cannot be considered to be restrictions directly related to and necessary to the implementation of the concentration and thus ancillary in nature. Therefore these clauses are not covered by the present Decision.

VI. CONCLUSION

14. 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 (EEC) No. 4064/89.

For the Commission,