

***Case No COMP/M.2891 -
CD & R FUND VI
LIMITED / BRAKE
BROS PLC***

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

Article 6(1)(b) NON-OPPOSITION
Date: 25/07/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25/07/2002

SG (2002) D/230920

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.2891 - CD & R Fund VI Limited / Brake Bros plc
Notification of 25/06/2002 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 25 June 2002, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No. 4064/89 by which the undertaking Clayton, Dubilier & Rice Fund VI Limited Partnership ("CD&R Fund VI") (US), ultimately controlled by Clayton, Dubilier & Rice, Inc. ("CD&R"), acquires sole control of Brake Bros plc ("Brake Bros") (UK), by way of public tender offer for shares announced on 25 June 2002.
2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation 4064/89 and that it does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

I. THE PARTIES

3. CD&R Fund VI is a private equity investment firm which is organised by and receives management assistance from CD&R, which has also organised and provides management assistance to other private investment funds, including Clayton & Dubilier Private Equity Fund IV Limited Partnership (“CD&R Fund IV”) and Clayton, Dubilier & Rice Fund V Limited Partnership (“CD&R Fund V”). The principals of CD&R ultimately control, CD&R Fund IV, CD&R Fund V, and CD&R Fund VI (collectively “the CD&R Funds”). The companies controlled by each of the CD&R Funds (the “Portfolio Companies”) are active in a broad range of economic sectors.
4. Brake Bros and its subsidiaries are specialised in wholesale distribution of foodstuffs to the catering industry (including hotels, pubs, restaurants, schools, hospitals, fast food outlets).

II. THE CONCENTRATION

5. The transaction is a public tender offer, whereby CD&R Fund VI indirectly via different subsidiaries will acquire sole control of Brake Bros. The acquisition therefore constitutes a concentration within the meaning of Article 3(1)(b) of Council Regulation 4064/89.

III. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than € 5 billion² (CD&R Fund VI: € 8,597.9 million; Brake Bros: € 2,234.4 million). Each of CD&R Fund VI and Brake Bros have a Community-wide turnover in excess of € 250 million (CD&R Fund VI: € 2,185.7 million; Brake Bros € 2,234.4 million), but they do not 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.

IV. COMPETITIVE ASSESSMENT

Relevant product market

7. The activities of Brake Bros can be characterised as the wholesale distribution of foodstuffs to the catering industry. In previous decisions relating to the wholesale food distribution sector, the Commission has tended to define the relevant product markets for food distribution by reference to food categories.³ The Parties identify various factors such as the specificity of storage, transport and logistics management required for the distribution of foodstuffs to the catering industry, which they consider point to the existence of a market for the wholesale distribution of food products to the catering industry which is separate from the wholesale distribution of food products.

² 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.

³ See for example, Case M.2078 *UBS Capital/Heiploeg Shellfish International*, Case M.1409 *Fyffes/Capespan*.

Alternatively, the Parties suggest that another possibility would be to divide the market into segments based on the temperature range in which the food products are stored and delivered (e.g., (i) frozen food products; (ii) chilled food products; (iii) ambient food products; and (iv) fresh food products). The Parties suggest a broader market consisting of the wholesale distribution of all food products to the catering industry.

8. However, for the purposes of the present decision, the question whether on the one hand, the relevant market is that of the wholesale distribution of food generally or to the catering industry and/or whether it is appropriate to divide the market based on temperature range can be left open since the concentration will not lead to the creation of a dominant position with any of the alternative market definitions.

Relevant geographic market

9. The Parties have suggested that the geographic scope of the market should be at least national or perhaps wider. This is on the basis that there is a trend toward competition on a national scale. The Commission notes that the main competitors identified by the Parties operate national distribution networks and that certain contracts are national in scope, although it appears that regional players are able to exercise a competitive constraint.
10. For the purposes of the present decision the question whether the relevant markets are regional, national or wider can be left open since with any alternative market definition the concentration will not lead to the creation of a dominant position.

Assessment

11. The Portfolio Companies are not active in any of the business areas in which Brake Bros operates. Consequently, the notified operation will not have any horizontal impact on any market.
12. The activities of the Portfolio Companies are also neither upstream nor downstream of the markets in which Brake Bros are active. Therefore, there is no vertical impact on any market as a result of the notified operation.
13. Consequently, the proposed concentration does not lead to the creation or strengthening of a dominant position as a result of which effective competition would be significantly impeded in the common market and the EEA or a substantial part thereof.

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

For the Commission

Signed by
Mario MONTI
Member of the Commission