

***Case No IV/M.448 -
GKN / Brambles / Leto
Recycling***

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

Article 6(1)(b) NON-OPPOSITION

Date: 7/6/ 1994

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 7.6.1994

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

Registered with advice of delivery

To the notifying parties

Dear Sirs,

Subject : Case No IV/M.448 - GKN/Brambles/Leto Recycling

Notification of 2.5.1994 pursuant to Article 4 of Council Regulation No 4064/89

1. On 2. May 1994 GKN plc (GKN) and Brambles Industries Ltd (Brambles) notified a proposed operation by which they will acquire jointly through Leto Holding BV (Leto Holding) 50% of the shares in Leto Recycling BV (Leto Recycling), a company active in the business of hazardous waste management services. The remaining shares in Leto Recycling are owned by Ecotechniek BV (Ecotechniek).
2. After examination of the notification the Commission has concluded that the proposed operation falls within the scope of Council Regulation No 4064/89 and does not raise serious doubts as to the compatibility with the common market and the EEA agreement.

I. The parties

3. GKN is an UK based international engineering group with activities mainly in production of automotive and engineering components. Brambles is an Australian based international company, whose major activities include equipment services, materials handling and specialised transport services. Brambles and GKN together are involved in a number of joint ventures operating in several countries, of which only one - Cleanaway Holdings Limited (Cleanaway) is related to waste management. Cleanaway is an UK-based waste management company with activities in the areas of both nonhazardous and hazardous waste management services.

Ecotechniek is active in certain highly specialised hazardous waste management services. Ecotechniek is a wholly owned subsidiary of Koninklijke Volker Stevin NV (KVS), which is a construction company largely confined to the Netherlands.

Leto Recycling's business is to offer commercialised technical solutions for small amounts of highly toxic waste, normally including recycling and recovery of reversible products. Leto Recycling has been operating a plant in Almelo in the Netherlands since 1986 (total turnover in 1993 approximately 15 million ecus).

II. The operation

4. GKN and Brambles will each (in each case through a wholly owned subsidiary) acquire 50% of the issued share capital of Leto Holding BV (Leto Holding) from Leto AB (a company belonging to the Swedish Euroc group). Leto Holding does not have any trading interest and the sole purpose of this operation is to acquire the 50% shareholding in Leto Recycling owned by Leto Holding. The other 50% of Leto Recycling's shares are held by Ecotechniek.

III. Concentration

5. By the operation Leto Recycling will be jointly controlled one the one hand by GKN and Brambles through Leto Holding and, on the other hand by Ecotechniek. GKN/Brambles and Ecotechniek each hold a 50% share and corresponding voting rights. Certain important financial decisions are reserved to the shareholders and taken at a majority of votes. These include approval of the budget and of investments over a level of £80.000.
6. Leto Recycling has been in operation since 1986. The joint venture has all the assets and resources necessary to enable it to perform all the functions of an autonomous economic entity, including production, marketing and the necessary patents and know-how.
7. Cleanaway's principal activity in hazardous waste management services is the incineration of chemical waste, which takes place at its incineration plant in Ellesmere Port. A small proportion of the waste produced for this business is sourced from outside the United Kingdom, none of which, however, comes from the Netherlands.

Ecotechniek's activities are largely confined to the Netherlands where it carries out certain specialist hazardous waste services including small chemical collection, soil purification, engineering consultancy and waste water treatment.

As a result there is no geographical overlap between the parents' activities and the services themselves are essentially different in nature.

8. In conclusion, the operation is a concentration within the meaning of Article 3 of the Merger Regulation, because the joint venture between Leto Holding (the notifying parties) and Ecotechniek will perform on a lasting basis all functions of an autonomous economic entity and there is no scope for coordination of the competitive behaviour of the parents between themselves and with the joint venture.

IV. Community/EEA dimension

9. The concentration has a Community dimension. The combined aggregate worldwide turnover of GKN, Brambles and KSV in 1993 exceeded 5.000 million ecus. The aggregate Community-wide turnover of each of at least two of the undertaking was more than 250 million ecus. In addition the parties did not achieve more than two-thirds of their Community-wide turnover in one and the same Member State.
10. The concentration is not an EEA "cooperation" case. The combined turnover of the undertakings concerned in the territory of the EFTA States does not equal 25% or more of their total turnover in the EEA territory. None of the undertakings concerned have turnover exceeding 250 million ecus in the territory of the EFTA States.

V. Compatibility with the common market

11. Leto Recycling is active in the provision of the following hazardous waste management services : solvent distillation (in the Netherlands, those parts of other countries within 250 km of the Almelo plant), alkaline treatment (in the Netherlands only), paint waste collection and recycling services (in the Netherlands only), small chemicals collection (in the Netherlands only) and teflon catalyst recycling (one customer only).
12. Cleanaway is active in both non-hazardous and hazardous waste management services, the latter being a minority of its overall business. As stated above the majority of its hazardous waste turnover is derived from incineration of chemical waste at its Ellesmere Port plant, some of which is derived from outside the UK, but none from the Netherlands.
13. The Commission has in previous cases held that the supply of waste management service for hazardous waste constitutes a market separate from the supply of waste management services for non-hazardous waste⁽¹⁾. Specifically, because of the toxic chemical composition of hazardous waste, waste management companies have to use entirely different disposal and recycling technology and facilities for the treatment of hazardous waste; and the costs involved in the treatment and disposal are thus substantially higher. In addition, a different regulatory framework applies to hazardous waste. The Commission has also distinguished between various means by which hazardous waste may be treated, that is, storage, dumping, high temperature incineration or recycling and has therefore defined them as separate markets. In addition it may even be possible to divide further the recycling business into various specialist services for special products.
14. On this basis, therefore, the activities of Cleanaway and Leto Recycling are in different product markets.

⁽¹⁾ Cases Nos IV/M.283 - Waste Management International plc/SAG; IV/M.266 - Rhône-Poulenc Chimie/SITA; IV/M.295 - SITA-RPC/SCORI.

15. The parties consider the geographic market for hazardous waste in general to be national if not regional for the same reasons as given by the Commission in the Waste Management case (Case No IV/M.283) concerning non-hazardous waste management for reasons of regulation, local custom and knowledge, transport costs and the particular legal regime pertaining to third party liability in the case of waste. At the same time, however, the parties recognize that in certain very specialised areas of hazardous waste management (e.g. teflon catalyst recycling), where it is not economically justifiable to build small plants in every country, the market tends to be international. In addition there are certain international trade flows in the incineration business.

However, since the operation does not raise serious doubts as to the compatibility with the common market even on the basis of the narrowest market definition the question of the precise relevant geographic market can be left open.

16. On the basis of the above there is no product or geographic overlap in the hazardous waste management businesses of the joint venture and Cleanaway. In addition, the proposed concentration does not create any significant vertical or conglomerate links between the parents and the joint venture, in particular because of the small scale of the joint venture's business.
17. The concentration will not therefore create or strengthen a dominant position as a result of which effective competition will be significantly impeded in the common market or in a substantial part of it.

VI. Ancillary restraints

18. The Sale and Purchase Agreement for Leto Holding includes a non-competition clause concerning the Benelux countries and Germany under which Euroc - during the period of two years after sale - must not carry on or be engaged in hazardous waste management services. These provisions appear to be reasonable, and as such are ancillary to the concentration.

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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 No 4064/89.

For the Commission,