

***Case No COMP/M.4576 -
AVR / VAN
GANSEWINKEL***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 03/04/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 03.04.2007

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Party

Dear Sir/Madam,

**Subject: Case No. COMP/M.4576 – AVR/Van Gansewinkel
Notification of 27.02.2007 pursuant to Article 4 of Council Regulation
No 139/2004**

I. INTRODUCTION

1. On 27 February 2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004¹ by which the undertaking AVR Acquisitions B.V. (“AVR”), jointly controlled by CVC Capital Partners Group Sarl (“CVC Group”) and Kohlberg Kravis Roberts & Co. L.P. (“KKR Group”) acquires within the meaning of Article 3(1)(b) of the Council Regulation, sole control of the undertaking Van Gansewinkel Holding B.V. (“VGW”) by way of a purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EC) No 139/2004 (“the Merger Regulation”) and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

¹ OJ L 24, 29.1.2004 p. 1

II. THE PARTIES

3. The CVC Group and the KKR Group are private equity firms with interests in a range of different businesses.²
4. AVR is a provider of waste management services mainly in the Netherlands, Belgium and Luxemburg.
5. VGW is a provider of waste management services with its main activities in the Netherlands and Belgium. The company is also active in Luxemburg, Poland, France, the UK, Portugal and the Czech Republic.

III. THE OPERATION

6. According to a share purchase agreement of 22.01.2007, AVR will acquire the entire issued share capital in Van Gansewinkel Holding B.V. from Van Gansewinkel Beheer B.V.

IV. CONCENTRATION

7. The transaction constitutes a concentration within the meaning of Art. 3(1)(b) of the Merger Regulation.

V. COMMUNITY DIMENSION

8. Two of the undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion³ and each of the parties' Community-wide turnover is larger than €250 million⁴. AVR and VGW 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 pursuant to Article 1(2) of the Merger Regulation.

VI. RELEVANT MARKETS

A. RELEVANT PRODUCT MARKETS

9. The proposed transaction affects a number of markets in the area of waste management services. In previous decisions, the Commission has expressed the view that the supply of waste management services for non-hazardous waste is distinct from the supply of hazardous waste⁵. This distinction has been confirmed by the market investigation in this case. As regards hazardous waste, it is not necessary to delineate exactly the scope of the

² Commission decision COMP/M.4118 CVC/KKR/AVR.

³ CVC €21.5 billion, KKR €18.1 billion, AVR €499 million and VGW €609 million.

⁴ CVC €15.4 billion, KKR €8.4 billion, AVR €499 million and VGW €609 million.

⁵ Commission decisions M.295 SITA – RPC/SCORI, M.283 Waste management International/SAE, and M.448 GKN/Brambles/Leto Recycling.

relevant product markets, since the transaction does not lead to competition concerns under any plausible product market definition.⁶

10. As regards non-hazardous waste, the Commission has previously found that separate markets exist for the collection of non-hazardous waste and the treatment and disposal of non-hazardous waste.⁷ The Commission has also considered whether the collection of non-hazardous waste can be further subdivided into collection of non-hazardous household waste and collection of non-hazardous industrial and commercial waste. The market investigation in this case confirmed that such a distinction is appropriate given the differences on the demand side. For household waste a limited number of municipalities tenders large contracts for long durations while for industrial and commercial waste, numerous customers exist that generally only contract services for a short to medium term period.
11. As regards non-hazardous industrial and commercial waste, the Parties consider this to be one single product market. Most respondents to the Commission's market investigation tended to disagree with this contention. The market investigation rather suggests that (i.) commercial waste, (ii.) demolition waste and construction waste and (iii.) industrial waste are distinct waste flows that are sufficiently different (as regards mode and frequency of collection, treatment methods) to be considered as separate relevant product markets.⁸ In the present case it is however not necessary for the Commission to delineate exactly the scope of the relevant product markets, since the transaction does not lead to competition concerns under any alternative product market definition.
12. Non-hazardous waste is either incinerated or land-filled. According to the Parties, the incineration of non-hazardous waste is a market separate from the market for landfill of non-hazardous waste. This has been confirmed by the market investigation. In the Netherlands, waste may only be land-filled if it is proven that there is no incineration capacity available.
13. As regards glass, one may distinguish between the collection of plate glass⁹ and the collection of container glass¹⁰. The glass that has been collected is then recycled. Container glass and plate glass may be recycled in the same facility but most facilities are

⁶ No markets related to hazardous waste are affected by the proposed transaction.

⁷ Commission decisions M.295 SITA – RPC/SCORI, M.283 Waste management International/SAE, and M.448 GKN/Brambles/Leto Recycling.

⁸ Commercial waste consists of mixed waste and certain specific waste flows (e.g. paper) generated by factories, offices, shops, etc. Commercial waste is generally collected in containers provided by waste collection companies. Construction and demolition waste consists of waste from various types of construction activities as well as waste from construction companies. 90% of this waste consists of debris. This type of waste is collected in open containers at building sites etc. Debris is mostly handled by the contractors themselves or by specialised demolition companies. The Parties' activities in this market are minimal. Industrial waste consists of specific waste flows generated by production industries, i.e. various types of sludge, agricultural waste etc. Most of these waste flows are handled by companies themselves or by specialised firms. VGW and AVR are not active in this market.

⁹ Plate glass (windowpanes, mirrors etc) are collected from industry by means of glass containers.

¹⁰ Container glass consists of jars and bottles collected through bottle banks, waste collecting centers, curbside collection and industrial collection.

dedicated to one type of glass. Finally, treated glass is sold to glass manufacturers. In the present case it is not necessary for the Commission to delineate exactly the scope of these relevant product markets, since the transaction does not lead to competition concerns under any plausible product market definition.

14. The Parties submit that the collection of paper and cardboard constitutes a relevant product market. In the present case it is not necessary for the Commission to delineate exactly the scope of this relevant product market, since the transaction does not lead to competition concerns under any alternative product market definition.

B. RELEVANT GEOGRAPHIC MARKETS

15. The parties submit that the relevant geographic market for the collection of non-hazardous waste is national. The market investigation has confirmed this definition in respect of household waste as well as commercial waste. Both markets have regional or even local dimensions. The collection of household waste is organised by municipalities and the demand for this service is local. For commercial waste demand varies from small shops that require a local service to large industrial customers that conclude national contracts for all their sites. However, larger waste collection firms normally operate throughout the Netherlands. The local collection markets are often interlinked on the demand side (joint tenders by several municipalities, the establishment of regional PPPs¹¹) as well as the supply side (even smaller collection companies tender for contracts outside their regions of origin). Entry barriers to local or regional markets must be regarded as low for collection companies active in other regions of the same country. Finally, the legal framework (environmental rules) is predominantly national in character. Most respondents have argued that these markets are national, primarily due to different competitive conditions in different countries. The Commission therefore concludes that the relevant geographic market for the collection of non-hazardous waste is national in scope.
16. The Parties submit that the market for the collection of cardboard and paper is national in scope. This market has local or regional dimensions similar to the markets described above. For similar reasons, the local or regional markets for the collection of cardboard and paper are interlinked to a wider, national market. The Commission concludes that the relevant geographic market for the collection of cardboard and paper is national in scope.
17. As regards the incineration of non-hazardous waste, the Commission has previously stated that geographic markets are regional, consisting of areas with a radius of 200 km from each incineration plant.¹² The Parties have submitted that the geographic market for incineration of non-hazardous waste in the present case is cross-border regional, consisting of the Netherlands, Belgium and northwest Germany. However, the Commission market investigation has not confirmed the market definition proposed by the Parties. Export impediments and capacity shortages in neighbouring countries lead to a situation where Dutch non-hazardous waste can only be incinerated in the Netherlands. This situation is unlikely to change in the near future. The Netherlands therefore constitute a separate geographic market for the incineration of non-hazardous waste.

¹¹ Public-Private Partnerships.

¹² Commission decision M.2760 Nehlsen/Rethmann/SWB/Bremerhavener Entsorgungswirtschaft.

18. The Commission has previously considered that the geographic scope of the market for treatment of hazardous waste may be EU-wide.¹³ This has been confirmed by the market investigation in this case. Due to insufficient treatment capacity, substantial volumes are treated outside the Netherlands (e.g. in Belgium, Denmark, France and Germany). There are currently no legal barriers preventing export/import of hazardous waste between Member States. Regulatory barriers to importing/exporting hazardous waste to/from the Netherlands were removed in 2005.¹⁴
19. The Parties submit that the geographic markets for the collection of plate glass and container glass respectively are national in scope. The Commission market investigation has confirmed the national character of these markets. Although demand must be regarded as local, collection schemes are set up, financed and operated at national level. Consequently, prices, subsidies, means of collection etc. vary from Member State to Member State. Moreover, the larger collection companies such as VGW and AVR are active all over the Netherlands.
20. As regards glass recycling, the Parties have submitted that each recycling facility has a catchment area of 400 km and that these markets are increasingly international in scope. However, the Parties recognise that prices and trading patterns remain predominantly national. Several competitors to the Parties indicate that the catchment areas are much smaller, consisting of radiuses of approximately 150 km around each facility. The exact geographic scope of the relevant markets may, however, be left open in the present case, since the transaction does not lead to competition concerns under any plausible geographic market definition.

VII. COMPETITIVE ASSESSMENT

21. Only those markets affected by the proposed transaction are assessed below.¹⁵ The markets related to hazardous waste, construction and demolition waste and industrial waste do not constitute affected markets.

A. THE MARKETS FOR THE COLLECTION OF NON-HAZARDOUS HOUSEHOLD WASTE AND COMMERCIAL WASTE

1) Horizontal aspects

(a) The Dutch market for the collection of non-hazardous household waste

22. The Dutch market for the collection of non-hazardous household waste is fragmented. A significant part of the market – approximately 18% - must be regarded as "captive".¹⁶ There are also semi-public operators in the form of PPPs. The largest part of the market is

¹³ Commission decision IV/M.295 SITA – RPC/Scori.

¹⁴ "The Future of Incineration of Specific Hazardous Waste", report by the Dutch Waste Management Council, July 2004.

¹⁵ Affected markets according to heading III, section 6, annex 1 to Implementing Regulation 802/2004.

¹⁶ The "captive" part of the market consists of municipalities that performs these services "in-house" and have never put out collection services for tender.

subject to competitive tenders in which private operators and public operators compete for contracts.

23. The combined market share of the merging parties in the non-captive part of the market was [15-25%] (VGW [10-20%] and AVR [5-15%]) in 2006. The largest competitors, SITA and Midwaste Group had market shares of some 15% respectively. There are numerous other competitors, all with market shares of less than 5%.
24. Barriers to entry must be regarded as relatively low as market entry requires few upfront investments and few sunk costs.
25. Given the moderate market share of the Parties, the existence of two relatively large competitors and the absence of high entry barriers, the proposed transaction will not significantly impede competition in the Dutch market for the collection of non-hazardous household waste.

(b) The Dutch market for the collection of non-hazardous commercial waste

26. The Parties have not been able to submit data on the market for commercial waste. Referring to the wider market for industrial, construction and commercial waste, the Parties have estimated their joint share of the market as 10-20%. A large competitor has indicated that in the Dutch market for the collection of commercial waste, VGW accounted for 11% and AVR for 5% in 2006, resulting in a post-merger market share of 16%. According to this estimate SITA's market share was 11% and Shanks accounted for 7% of the market in the same year.¹⁷
27. The Dutch market for the collection of non-hazardous commercial waste differs from the household waste market in so much as the municipalities have no special responsibilities to collect and dispose of the waste. Therefore, there are no "captive" market volumes and the entire market is subject to competition. Contracts are usually entered into for periods of 1-3 years. As for the collection of household waste, the entry barriers to the market must be regarded as relatively low.
28. Given the moderate market share of the Parties, the existence of two relatively large competitors and the absence of high entry barriers, the proposed transaction will not significantly impede competition in the Dutch market for the collection of non-hazardous commercial waste.

2) Vertical aspects

29. The proposed transaction creates a vertical link between the activities of AVR in the market for the incineration of non-hazardous waste and the activities of VGW and AVR in the market for the collection of non-hazardous household and commercial waste.
30. Household waste and commercial waste may either be incinerated or disposed of in a landfill. For environmental reasons, the requirements for landfill have become stricter during the last few years. In the Netherlands, waste may only be land-filled if it is proven that there is no incineration capacity available. Total demand for waste incineration in the

¹⁷ The Parties have been confronted with the competitor's estimates of the narrower market and have not refuted them.

Netherlands currently amounts to at least 7.7 million tons p.a., whereas current capacity is limited to 5.7 million tons p.a.¹⁸ Current incineration capacity thus caters for maximum 70% of total demand. Increased demand and the ensuing capacity shortage have led to price increases while companies offering incineration have increased their profit margins.¹⁹

31. AVR controls [30-40%] of the incineration capacity in the Netherlands. Apart from a small facility operated by SITA (1% of incineration capacity), AVR is the country's only private incinerator and incinerates all waste that it collects in its own incinerators. VGW is not active in incineration and has concluded a series of long term contracts with incinerators other than AVR. These contracts represent around [0-10%] of total incineration capacity.
32. Certain competitors of the merging Parties have stated that the proposed transaction would allow AVR to leverage its market power in the incineration market to strengthen its position in the collection market. After the merger, AVR would not only control its own incineration capacity but would also be able to block competitors' access to the capacity covered by long term contracts between VGW and other incinerators. [30-50%] of incineration capacity would thus be "controlled" by the merged entity.
33. The transaction would increase the incentives for the Parties to restrict competitors' access to incineration facilities in the Netherlands or to raise its prices. Despite the fact that VGW would be bound by long term contracts with specified volumes, the company could transfer volume to AVR's incinerators and re-sell the free capacity in other incinerators at a higher price. By raising its rivals' costs for incineration, the Parties would strengthen its position in the collection markets at the expense of its competitors. Due to the increase in incineration prices, final customers would be induced to switch to the Parties for collection. Foreclosure in the incineration market would raise barriers to entry in the collection market, since competing collectors would have difficulties gaining access to incineration. Even if they obtained access, market entrants would not be competitive in comparison to the Parties, because of the high price paid for incineration.
34. The Commission's market investigation has confirmed that incineration capacity is indeed scarce in the Netherlands (see above at paragraph 30). Additional incineration capacity is under construction but most of it will not be available before 2009 or 2010. AVR itself accounts for a substantial portion of this capacity increase. It is very difficult to predict if and when investments in additional incineration capacity will catch up with demand.²⁰ However, the Commission considers it likely that there will be a shortage in incineration capacity for the next two to three years. According to calculations based on information from the Dutch industry association Vereniging Afvalbedrijven - which only takes into

¹⁸ The size of the current incineration capacity in the Netherlands is not disputed. However, the merging parties and certain competitors disagree about total demand. One competitor refers to a study by the Dutch Government body Senter Novem of December 2006 and estimates the total amount of combustible waste to 9.9 million tons p.a. The Parties state that demand is limited to 7.7 million tons p.a.

¹⁹ [...]

²⁰ In addition to the usual economic considerations, the realisation of construction projects for incineration depends on a large number of parameters which are beyond the control of the companies wishing to construct, e.g. environmental permits, judicial proceedings aimed at blocking new construction, etc.

account projects for the construction of incineration capacity which are deemed likely to be realised – the capacity share of AVR may be expected to decrease from [30-40%] in 2007 to [30-40%] in 2008 and 2009.²¹

35. However, this capacity shortage would exist also in the absence of the planned merger (i.e., it is not merger-specific) and for several reasons vertical foreclosure appears unlikely in the case at hand.
36. First, given the shortage in incineration capacity the current spot price for incineration already tends to be close to the lowest prices charged for landfill. Since the price for landfill functions as a price ceiling²², there is little scope for additional price increases post-merger. The current prices for new contracts and for spot deliveries already reflect the fact that all operators of incinerators, including AVR, have market power due to the fundamental imbalance between supply and demand. By raising prices further above the profit maximising level, the Parties would have to forego revenue in the profitable market for incineration in order to gain market power in the more competitive collection markets. They are unlikely to do so, given that profit margins for incineration are substantially higher than for collection.²³
37. Second, VGW has signed long-term contracts with its incinerators.²⁴ [...] ²⁵. The capacity which VGW has contracted with these incinerators was not available for other collectors prior to the proposed transaction and will not become available to them any time soon. Economically, it also makes no difference if the Parties sell capacity at AVR's incinerators to third parties or if they switch VGW's waste to AVR incinerators in order to then sell the capacity which VGW has contracted with other incinerators to third parties. The price that the Parties would charge for either alternative would reflect the scarcity of incineration capacity.
38. Third, the parties' low combined market shares in the downstream collection markets ([10-20%] for commercial waste and [15-25%] for household waste) limit their incentive to foreclose competitors.
39. In the market for commercial waste, the customer base is extremely dispersed²⁶, which means that the Parties would not be able to substantially increase their market share downstream by winning a small number of tenders.
40. As regards household waste, customers are larger but vertical foreclosure is even less likely than for commercial waste. It is the municipalities which decide on the incinerator

²¹ "Nieuwsflits februari 2007", publication by the Vereniging Afvalbedrijven.

²² Under conditions of incineration capacity shortage, see paragraph 30.

²³ AVR's average profit margin for incineration was [significantly higher than for] the collection of commercial waste.

²⁴ [...]

²⁵ [...]

²⁶ VGW has [...] commercial waste customers and AVR [...]. Their largest commercial waste customers only generate a turnover of approximately €[...] each.

service by way of an open tender and they do so separately from the tender for the collection service; contract periods for both services vary substantially (3-5 years for collection, 10-15 years for incineration). It would therefore not be possible for the Parties to increase their rivals' cost in the collection market by increasing the price for incineration. Their ability to bundle these services together must also be regarded as limited due to the differences in contract periods and due to the fact that municipalities lack incentives to procure both services simultaneously.²⁷ The different contract periods follow from very different economic conditions (for collection a relatively "contestable" market with low entry barriers and few sunk costs, for incineration high entry barriers due to high upfront investment costs and the existence of sunk costs) and are likely to remain different also in the future.

41. Bearing the above considerations in mind, the Commission considers that the Parties would post-merger not have the incentive to foreclose their competitors in the markets for collection services through a strategy of raising rivals' costs.
42. The proposed transaction will therefore not significantly impede effective competition by means of vertical foreclosure in the markets concerned.

B. THE MARKETS FOR THE COLLECTION AND RECYCLING OF GLASS

1) Horizontal aspects

(a) The markets for collection of plate glass and container glass

43. According to the Parties, approximately 52% of all plate glass in the Netherlands is collected by the Stichting Vlakglas Recycling Nederland ("VRN").²⁸ VGW has recently won a public tender according to which the company will transport plate glass from collection points to the recycling facilities for a period of three years. Since AVR is not active in this market and since the outsourcing agreement between VRN and VGW existed pre-merger and is not affected by it, the existence of any anti-competitive horizontal effects caused by the proposed transaction may be excluded.
44. As regards container glass, VGW accounted for [25-35%] of collected container glass in the Netherlands and AVR accounted for [0-10%], resulting in a combined market share of [30-40%]. The largest competitors are VAOP with a market share of approximately 9% and AVU with a share of some 6%.
45. Barriers to entry must be regarded as relatively low. Entry must be regarded as relatively easy for firms active in other geographic markets or in other collection markets (e.g. for

²⁷ Were they to do so, municipalities would disqualify all competition from companies that do not own incinerators themselves.

²⁸ Certain types of glass such as greenhouse glass are collected by other operators than VRN. The parties estimate that the total market for the collection of plate glass in the Netherlands to approximately 125 Ktons p.a. of which 65 Ktons are collected by VRN. The remainder stems from greenhouses, renovation projects, vehicles, mirrors, blank float and coated glass.

non-hazardous waste, cardboard and paper) in the Netherlands. Glass collection requires few upfront investments and few sunk costs.

46. The proposed transaction will not significantly impede competition in the Dutch market for the collection of container glass, given the combined market share of the Parties and due to the absence of substantial entry barriers and the presence of several competitors.

(b) The market for the recycling of glass

47. Through its subsidiary Maltha, VGW accounts for [70-80%] of all glass recycling in the Netherlands.²⁹ There is one competitor – Van Tuijl – accounting for the remainder. AVR does not recycle glass in the Netherlands.³⁰ If the geographic market was confined to the Netherlands, the proposed transaction would thus not lead to any horizontal effects.
48. The Parties have also provided market share information for an assumed supra-national market constructed on the basis of regional, cross-border catchment areas with a radius of 400 km from each recycling facility. In such a market – consisting of the Netherlands, Belgium and parts of France and Germany, VGW's market share for recycling of plate glass in 2006 would have amounted to approximately [5-15%] and AVR's share to less than [0-5%], resulting in a joint market share of some [5-15%].³¹ As regards container glass, VGW would account for approximately [15-25%] and AVR less than [0-5%] resulting in a joint market share of some [15-25%]. However, respondents to the Commission's market investigation considered a catchment area of 400 km too large, indicating a radius of 150 km from each facility as more plausible. On the basis of such assumed markets, the parties combined shares would vary between [10-20%] and [55-65%] depending on the respective geographic markets (catchment areas) and on glass type.³²
49. Regardless of the geographic market definition used, the increment in market shares added by AVR's limited capacity would be small. Joining the recycling capacities of VGW and AVR is therefore unlikely to change the competitive conditions in the market. In addition, regardless of the exact geographic scope of the market, there is at least one major competitor present in the market (Van Tuijl) and additional capacity exists in neighbouring regions (in France and Germany in particular).
50. Bearing these circumstances in mind, the Commission concludes that the proposed concentration will not lead to a significant impediment to effective competition in the market(s) for glass recycling.

²⁹ According to the Notification, VGW accounted for 79% (volume) of all recycling of container glass in the Netherlands in 2006.

³⁰ AVR operates a small glass recycling plant in Belgium which recycles [10-20] Ktons of glass from the Netherlands ([0-10] Ktons of plate glass originating from greenhouses and [0-10] Ktons of container glass). The total volume of Dutch container glass recycled in 2006 was 420 Ktons.

³¹ The figures for plate glass and container glass respectively are estimates made by the parties, since they are unable to assess which parts of their capacity deal with plate and container glass.

³² Using 150 km radiuses the catchment areas of the parties' facilities would not always overlap.

2) Vertical aspects

51. Certain competitors of AVR and VGW have argued that VGW's allegedly dominant position in glass recycling has enabled the company to acquire a strong position also in glass collection. According to these competitors, VGW now collects all plate glass in the Netherlands due to its winning bid for the VRN tender, giving the company a temporary monopoly³³. The proposed merger would allow the Parties to further strengthen their position in glass recycling because glass collected by AVR would be redirected to VGW and the plate glass collected by VRN and VGW would in all likelihood be recycled exclusively by VGW. The merger would create new incentives for input foreclosure by leveraging VGW's dominant position in glass recycling to strengthen the merged firm's position in the collection markets. The Parties would be able to raise the recycling tariffs for its rivals in the collection market and by keeping its own collection tariffs constant, the merged firm would be able to squeeze its competitors. The potential gains of such a strategy would be greater post-merger as a result of the increased market share in the collection market.
52. For the following reasons, the Commission considers vertical foreclosure effects as a direct consequence of the proposed transaction unlikely:
53. First, if the scope of the geographic market were confined to the Netherlands, the only change caused by the merger would be the increase of market share for the collection of container glass. Although the parties' combined market share is relatively high ([30-40%]), the increment ([0-10] percentage points) is moderate and is unlikely to change the incentives and ability of the Parties to engage in a foreclosure strategy.
54. Second, the fact that VGW has won the tender for transporting plate glass collected by VRN is not related to the merger. The particular structure of this collection market makes it unlikely that the Parties would be able to leverage market power from recycling of plate glass to collection of plate glass. VRN remains the owner of the plate glass collected and has tendered the recycling of plate glass independently of collection. Not all plate glass will therefore be recycled by VGW.
55. Third, there are no indications of a capacity shortage in the Dutch market for glass recycling. On the contrary, there is spare capacity and in relative terms, the smaller competitor, Van Tuijl, has more spare capacity than VGW.³⁴ It therefore seems likely that Van Tuijl would be able to respond to a price increase by VGW by increasing capacity.
56. Fourth, exports of collected glass to neighbouring countries (Belgium, Germany and France) is feasible and occurs at least to a limited extent, although transport costs limit the distance over which glass may be economically transported. If the Parties would raise

³³ See, however, paragraph 43 in conjunction with fn. 29 (only 45-55%).

³⁴ According to the Notification, the total capacity for the recycling of container glass in the Netherlands was 450 Ktons in 2006 of which 420 Ktons were utilised. VGW's capacity utilisation ratio was [90-100%] ([...] Ktons used out of a capacity of [...] Ktons in 2006) and Van Tuijl's ratio was 90% (out of a capacity of 100 Ktons in 2006, the company used 90 Ktons). The spare capacity of Van Tuijl comprises approximately [0-5%] % of total recycling capacity in the Netherlands. None of the respondents to the Commission questionnaire have indicated the existence of a capacity shortage for glass recycling. The situation is likely to be similar as regards plate glass. Both Maltha and Van Tuijl recycle plate glass as well as container glass in the same facility.

their prices for glass recycling, if Van Tuijl would follow suit or if Van Tuijl would no longer have any spare capacity (due to "migration" following a price increase by the dominant player), competitors in the Dutch market for the collection of glass would be able to export at least parts of their volumes. There are no indications of a capacity shortage in neighbouring countries.³⁵

57. Given these circumstances, it seems unlikely that the combined entity would have the incentive post-merger to foreclose its competitors in the markets for collection services through a strategy of raising rivals' costs. The Commission therefore concludes that the proposed transaction is unlikely to give rise to merger-specific anti-competitive effects in the markets for the collection and recycling of glass in the Netherlands. This assessment would be valid also in the case of a wider geographic market (comprising not only the Netherlands but also parts of Belgium and Germany) since more capacity would then be available in the market itself, thereby making it more difficult for the merged firm to raise its recycling prices post-merger.
58. The proposed transaction will therefore not significantly impede effective competition by means of vertical foreclosure in the markets concerned.

C. RECYCLING OF PAPER AND CARDBOARD

59. The combined market share of the Parties will be approximately [10-20%]. The Dutch market for the collection of paper and cardboard is a very fragmented market (more than 90 companies are active in the collection of paper and card board). Public tenders are frequent, the contracts have relatively short duration and entry barriers must be regarded as very low.
60. The proposed transaction does therefore not significantly impede effective competition in the market for recycling of paper and cardboard.

VIII. CONCLUSION

61. 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 (EC) No 139/2004.

For the Commission
signed
Leonard ORBAN
Member of the Commission

³⁵ A German firm active in glass recycling (indicated by the parties as a competitor in a wider supra-national market) stated in the response to the Commission questionnaire that its capacity utilisation ratio was 70% in 2006.