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***Case No IV/M.517 -
KKR / Borden***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 24/11/1994

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24th November 1994

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No. IV/M.517 KKR/BORDEN

Your notification of 21.10.1994 pursuant to Article 4 of Council Regulation No. 4064/89.

1. The proposed operation concerns the acquisition by Kohlberg Kravis Roberts & co of 100% of the shareholding of Borden Inc by way of an exchange of shares. The operation was notified to the Commission on 21 October 1994 pursuant to Article 4 of Council Regulation (EEC) No 4064/89.
2. After examination of the notification the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I- THE OPERATION

3. The proposed operation results in an exchange of shares. KKR is offering, to the Borden's shareholders, to exchange shares of RJR Nabisco against their Borden shares, at an agreed exchange ratio. KKR currently holds, through Whitehall, a US General Partnership of which KKR is the general partner, 49% of the issued shares of RJR Nabisco. Following the operation, the shareholding of KKR in RJR Nabisco will be less than 20%.

II- THE PARTIES

4. Both KKR and Borden are US conglomerates active in a large variety of food and non-food products at both production and retail level.

5. In Europe, KKR is active in food products through RJR Nabisco which produces and markets only salted snacks. As far as non-food products are concerned, KKR is active in Europe in glass packaging through its subsidiary Owens Inc.
6. Borden, is active in Europe in bakery products, grocery, fruit juice, dairy, pasta and sauces. As far as non-food products are concerned, Borden is mainly involved in glue, plastic packaging and wall covering.

III- CONCENTRATION

7. As a result of the operation described above, KKR will hold a 100% stake in Borden.
8. Thus the operation results in the acquisition by KKR of sole control of Borden and constitutes therefore a concentration within the meaning of Article 3 of the Merger Regulation.

IV- COMMUNITY DIMENSION

9. The operation has a Community dimension. The worldwide turnover of all undertakings concerned amounts, in their respective last financial year, to more than 5,000 million ECU. The Community wide turnover of each of KKR and Borden exceeds 250 million ECU. The undertakings concerned do not achieve more than two thirds of their aggregate Community wide turnover within one and the same Member State.

V- COMPATIBILITY WITH THE COMMON MARKET

Relevant markets

i) food products

10. The Commission defines the relevant product markets mainly from the point of view of demand side substitutability. However, as the parties' respective activities do not belong to the same product groups, even if supply side substitutability were taken into account, the activities of KKR and Borden would not overlap. Thus, the precise definition of both the geographical and the product relevant market can be left open.

i) non-food products

11. Borden is active in a number of non-food product in Europe (ie: plastic films, glue and wall covering) none of which overlaps with the glass packaging activity (bottles) of KKR. Thus, the precise definition of the relevant product market can be left open.
12. As regards the geographical relevant market, while on the one hand, the Commission found indications in previous decisions that plastic products, and in particular the engineering plastic markets (of which plastic films is one) were West European wide; on the other hand, there are some indications that the markets for glass packaging could be narrower as these products face high transportation costs.

Assessment

Horizontal assessment

13. The operation will not lead to any horizontal overlap neither for the food products nor for the non food products.

As far as food products are concerned, both KKR and Borden are involved in this sector only if it is assumed that KKR will continue to have control over RJR Nabisco following the operation. However, even in such case, the operation would not lead to any horizontal effect.

It results that the concentration will not lead to any horizontal effect as a result of which a dominant position would be created or strengthened in the common market.

Vertical assessment

14. The operation will not lead to any vertical integration which could lead to the creation or the strengthening of a dominant position. RJR Nabisco does not use plastic films to pack the food products it markets within the EEA. Borden represents much less than 10% of the sales of food products packed in glass packaging while KKR represents less than 10% of the glass packaging sales in Europe.

Conglomerational assessment

15. KKR market share does not exceed 25% in any of the markets in which it is involved. Borden's market share only exceeds 25% in plastic films where it holds a 33.8% market share in the EEA . KKR is not involved in any market neighbouring to plastic films. Thus, the operation will not lead to any conglomerational effect which could lead to the creation or the strengthening of a dominant position.
16. It results that the proposed concentration does not raise serious doubts as to its compatibility with the common market.

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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. The application of Regulation (EEC) 4064/89 is without prejudice to the applicability of the provisions of Articles 92 to 94 of the Treaty.

For the Commission