

*Case No IV/M.699 -  
Tomkins / Gates*

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 04/03/1996

*Also available in the CELEX database  
Document No 396M0699*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 4.3.1996

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.699 - TOMKINS / GATES

Notification of **05.02.1996** pursuant to Article 4 of Council Regulation No 4064/89

1. On 5.2. 1996 the Commission received a notification of a proposed concentration by which Tomkins PLC ("Tomkins") acquires control of the whole of The Gates Corporation ("Gates").
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 and with the functioning of the EEA Agreement.

I. THE PARTIES

3. Tomkins is a UK company with diverse interests in industrial, leisure and food products. Gates is a US company which manufactures automotive and industrial rubber products.

II. THE OPERATION

4. The concentration is an acquisition by Tomkins of sole control of Gates.

The concentration is being effected through the Exchange Agreement between Gates, Tomkins and the existing Gates shareholders. The Exchange Agreement provides for

Tomkins to acquire 100% of the equity of Gates through an exchange of shares whereby the existing Gates shareholders receive preference shares in Tomkins.

### III. CONCENTRATION

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

### IV. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate worldwide turnover in excess of 5,000 million ECU. Each party has a Community-wide turnover in excess of 250 million ECU, but 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, but does not constitute a cooperation case under the EEA Agreement.

### V. COMPATIBILITY WITH THE COMMON MARKET

7. There is no material horizontal overlap between the products manufactured by Tomkins and Gates. A Tomkins subsidiary manufactures some rubber-based products such as components for braking systems, but there is no overlap with the Gates product range. Again, both Tomkins and Gates have minor activities in the manufacture of rubber and industrial footwear, but their combined EU market share would be "de minimis".

As far as vertical links are concerned, Tomkins does, and will probably continue to, purchase some Gates products, such as rubber belts and hoses, for its machinery products, but again such links are minor and do not occur in markets in which either Tomkins or Gates has significant market shares.

### VI. ANCILLARY RESTRAINTS

8. The stock of Gates is currently owned by a number of trusts, under which Mr. C.C. Gates is a beneficiary; he is also currently the chairman of the Board of Directors, President of and Chief Executive Officer of Gates. After completion Mr. Gates will act as a director of, and consultant to, Tomkins.

For the 5 years following completion Mr. Gates agrees not to compete with, solicit customers of, disclose proprietary information of, or solicit employees of, the acquired Gates business, nor to hold an interest greater than 2% in, be employed by or have any relationship with, a company which competes with or solicits customers or employees of the acquired Gates business.

These agreements are directly related and necessary to the implementation of the concentration, in order to protect the value of the assets transferred.

## VII. CONCLUSION

9. It follows from the above that the proposed concentration would not create or strengthen a dominant position as a result of which competition would be significantly impeded in the common, market or in a substantial part of it.

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,