

***Case No IV/M.868 -  
GKN / BRAMBLES /  
MABEG***

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 20/12/1996

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.12.1996

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

**Subject : Case No IV/M.868 GKN/BRAMBLES/MABEG  
Notification of 22 November 1996 pursuant to Council Regulation (EC) No.  
4064/89**

1. On 22. November 1996, GKN Plc (GKN) and Brambles Industries Limited (Brambles) notified to the Commission an operation by which they will acquire jointly Mabeg Holdings Gesellschaft für Entsorgungswirtschaft mbH und Co. KG (Mabeg).
2. After examination of the notification, the Commission has concluded that the notified operation falls under the scope of Council Regulation N° 4064/89 and does not raise any serious doubts with regard to its compatibility with the common market and the functioning of the EEA agreement.

**I. THE PARTIES**

3. GKN is an UK based international engineering group with activities mainly in design and production of automotive and engineering components as well as industrial services. Brambles is an Australian based company and its main activities constitute industrial services, equipment rental, transport services and waste treatment and disposal.
4. GKN and Brambles already operate a number of joint ventures of which two are related to waste management, the remaining joint ventures are not involved in this business. Cleanaway is a UK based waste management company with activities in the areas of both

non-hazardous and hazardous waste management services. Leto Recycling is active in the hazardous waste management market in the Netherlands. With the exception of the joint ventures, Brambles' waste related activities are conducted outside the EEA.

Mabeg provides a range of waste management services in Germany including municipal and industrial waste collection, landfill management, the operation of waste transfer stations, waste sorting and recycling, composting and treatment of hazardous waste.

## **II. THE OPERATION**

5. GKN and Brambles will each through their wholly owned subsidiaries GKN Industries Limited and Brambles Investments Europe BV acquire 50 % of Medusa Beteiligungsverwaltungsgesellschaft Nr. 29 mbH. This company does not have any trading interests and its sole purpose is to acquire 100 % of the equity of Mabeg Holdings Gesellschaft für Entsorgungswirtschaft mbH und Co. KG from its current owners, Deutag AG, a subsidiary of Strabag AG, and Heitkamp GmbH. Strabag AG and Heitkamp AG are both major German construction companies.

## **III. CONCENTRATION**

6. Mabeg will be jointly controlled by GKN and Brambles as both have equal shares and there are no contractual arrangements which provide otherwise.
7. Mabeg is already operating since 1968. It has the financial resources, staff and assets necessary to operate a business on a lasting basis, i.e. it performs all the functions of an autonomous economic entity.
8. There is no scope for coordination of the competitive behaviour of the parents between themselves and with the joint venture as GKN is not active in the market for waste management and Bramble's activities are conducted outside the EEA.
9. Therefore, the operation is a concentration in the meaning of article 3 of Regulation 4064/89.

## **IV. COMMUNITY DIMENSION**

10. The combined aggregate worldwide turnover of GKN (ECU 3.987 million) and Brambles (ECU 1.741 million) exceeds ECU 5.000 million. Both GKN and the Brambles have a Community-wide turnover in excess of ECU 250 million, but do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State.
11. The notified operation therefore has a Community dimension but does not constitute a cooperation case under the EEA Agreement Pursuant to Article 57 and Article 2 in Protocol 24 of that Agreement.

## **V. COMPATIBILITY WITH THE COMMON MARKET AND THE EEA**

1. The product market and the geographical market
12. The Commission has held in previous cases that the supply of waste management services for non-hazardous waste constitutes a market separate from waste management services for

hazardous waste<sup>1</sup>. Hazardous waste requires complex disposal, treatment and recycling facilities, a different and more burdensome regulatory framework applies and the costs involved in treatment and disposal are substantially higher than for non-hazardous waste. In addition, it can be distinguished between various means by which hazardous or non-hazardous waste are treated, that is, storage, dumping, high temperature incineration or recycling which may be defined as separate markets<sup>2</sup>.

13. The parties claim that the geographical market for waste management services is essentially national which may overlap at the borders. As concerns the relevant geographical market for non-hazardous waste the Commission<sup>3</sup> has already held that the relevant geographical markets are national or even local, for reasons of regulation, local custom and knowledge and transport costs. As concerns the geographical market for hazardous waste the definition of the precise geographical market can be left open as the operation does not raise any doubts as to the compatibility with the common market even on the basis of the narrowest market definition.

## 2. Competitive assessment

14. Mabeg's business is operated through six wholly owned subsidiaries, the first four operating on a regional basis, the latter two dealing with engineering and hazardous waste management. The regional activities comprise composting, dry waste collection of domestic and industrial waste and of used packaging. It also operates transfer, sorting and processing stations for non-hazardous waste. Mabeg operates one hazardous waste treatment plant. Mabeg's only EEA activities outside Germany concern a joint venture in Spain where it has a 50 % participation in a company which shall manage a planned landfill site. Mabeg is a medium sized operator in the German market, which despite a certain trend to concentration is still largely fragmented. Its market share in the area of non-hazardous waste management is less than 15 % in relation to each of its activities within each of the regions except in relation to its waste transfer activities in the Nord region (45-55 %). As concerns hazardous waste its market share in Germany is below 1 %.
15. Cleanaway is active in both non-hazardous and hazardous waste management services, the latter being a minority of its overall business. The non-hazardous waste activities are only conducted in the UK. The activities concerning hazardous waste include: liquid hazardous waste collection and disposal (in the UK only), acid/alkaline treatment (in the UK only), solvent distillation (in the UK only), high temperature incineration of liquid and solid hazardous waste (from the UK and other parts of Europe). The hazardous waste activities are performed by incineration at its Ellesmere Port plant, at the solvent distillation plant at Preston and at the acid/alkaline treatment plant at Sheffield.
16. Leto Recycling is active in the provision of the following hazardous waste management services: distillation of contaminated solvents at a plant in Almelo (from the Netherlands and those parts of other countries within a distance of 250 km), 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), electronic waste collection and recycling.

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<sup>1</sup> Cases No; IV/M.283 - Waste Management International/S.A.E.; IV/M.448 - GKN/Brambles/Leto Recycling.

<sup>2</sup> Cases IV/M. 266 - Rhone-Poulenc Chimie/SITA; IV/M.295 - SITA-RPC/SCORI; IV/M.283 - Waste Management International/S.A.E.

<sup>3</sup> Case IV/M.283 Waste Management International; IV/M.448 - GKN/Brambles/Leto Recycling

17. There is no geographic overlap in the non-hazardous waste management service as Cleanaway and Mabeg are only active in their respective national markets.
18. As concerns the market for hazardous waste Mabeg's activities overlap with those of Leto's and Cleanaway's activities in the following areas: The hazardous waste collected and treated by Mabeg (turnover less than ECU 2,5 million) could also be processed at Leto's distillation plant at Almelo. Cleanaway processes a very small amount of chemical waste from Germany in its incineration plant in Ellesmere port (value less than ECU 16.000 in 3 years). Mabeg is not active in the market for hazardous waste outside Germany.
19. This overlap is not substantial and given the insignificant market share of Mabeg will not materially lead to any increase of the market position of the parties. In addition, the operation 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.
20. Consequently, the concentration will not create or strengthen a dominant position as a result of which effective competition will be significantly impeded in the common market or in the EEA or in a substantial part of it.

#### **VI. ANCILLARY RESTRAINTS**

21. § 17 of the Sale and Purchase Agreement contains a non-compete obligation on the vendors of Mabeg. This provisions prohibits the vendors for a period of five years activities in competition with Mabeg in the territory of the Federal Republic of Germany. This provision is ancillary to the concentration as it is necessary to guarantee the transfer of the full value of the assets (which include both goodwill and know-how).

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,