

***Case No IV/M.884 -  
KNP BT / BUNZL /  
WILHELM SEILER***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 14/02/1997

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.02.1997

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject : Case No IV/M. 884 *KNP BT/Bunzl/Wilhelm Seiler*

Notification of 15.01.1997 pursuant to Article 4 of Council Regulation (EEC) No 4064/89

1. On **15.01.1997** , the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which NV Koninklijke KNP BT ("KNP BT") acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of Wilhelm Seiler GmbH ("Seiler Papier") and Bunzl Italia SpA ("Bunzl Italia") by way of purchase of shares from Bunzl plc.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) 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' ACTIVITIES AND THE OPERATION**

3. - KNP BT is one of the leading European producers of paper, board and packaging. KNP BT is active in three main areas:  
  
= distribution of graphic paper<sup>1</sup> and other office products;

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<sup>1</sup> Graphic paper is the common name for different kinds of coated and uncoated general printing and writing paper. This definition excludes newsprint.

- = the production of graphic paper; and
- = the production of packaging materials.

The paper merchanting operations of KNP BT originate in a merger of the paper, board and packaging producer NV Koninklijke KNP ("KNP") with Bührmann-Tetterode NV (BT) and VRG-group ("VRG") which both were active in paper merchanting, creating KNP BT. This merger was authorised by the Commission on 4. 5. 1997 (Case IV/M.291 - KNP/BT/VRG).

- Seiler Papier operates in Germany and Bunzl Italia operates in Italy and Slovenia as a paper merchant for Bunzl plc. The companies supply graphic paper produced by paper mills to the industries which use these products including printers, publishers, office machine distributors and large office paper users.
4. KNP BT will acquire all the shares in Seiler Papier from Bunzl International GmbH and all the shares in Bunzl Italia from Bunzl plc, which both belong to the Bunzl group, the parent company of which is Bunzl plc.
  5. The notified transaction is a concentration within the meaning of article 3(1)(b) of the Merger Regulation..

## **II. COMMUNITY DIMENSION**

6. The combined aggregate turnover of the undertakings concerned exceeds ECU 5,000 million (KNP BT ECU 7,162.93 million, Seiler Papier 238.42 million, Bunzl Italia ECU 65.26 million). The aggregate Community wide turnover of each party exceeds ECU 250 million (...)<sup>(2)</sup> They do not achieve more than two thirds of their turnover in one and the same Member State. The operation has therefore a Community dimension.

## **III. COMPETITIVE ASSESSMENT**

### **A. Relevant product market**

7. The notifying party states that the relevant product market is the sale and distribution of graphic paper. While KNP BT is active in the production of paper and packaging as well as in the distribution of graphic paper, the target companies are paper merchants and are in the business of distributing graphic paper.
8. Graphic paper is the common name for different kinds of coated and uncoated general printing and writing paper, except newsprint. Graphic paper can be sold on the market either directly from the paper manufacturer to customers (direct sales) or through merchants (wholesalers). Merchants can supply paper either out of their warehouses or via the 'indent' method, i.e. the customer's order is executed by the producer but is placed with the merchant, who takes care of the invoicing and receives a commission from the producer. Sales through agents of the paper manufacturers and other intermediaries on a commission basis also take place.

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<sup>(2)</sup> Deleted for publication

9. Merchants attract customers who need quick deliveries of small quantities and those who want a choice between a wide range of products. Producers attract customers who need bulk delivery at lower prices. While a previous Commission decision considered that distribution through merchants may be considered as a market distinct from direct sales by producers,<sup>(3)</sup> (...) this question does not have to be decided in the present case since in both market definitions considered, the assessment that effective competition would not be significantly impeded in the EEA or any substantial part of that area would not be affected.

## **B. Relevant geographic markets**

10. The notifying party states that the relevant geographic market is national. The target companies do not operate - except for cross border sales which are considered to be marginal - outside of Italy and Slovenia or Germany respectively. It appears that this is the case for many players in graphic paper distribution. The reasons for this appear to be the following:
- part of the service of a merchant is 'same day delivery', which necessitates a convenient geographic proximity to the customer;
  - varying trade practices and product presentational differences exist in different countries;

The relevant geographic markets in the present case therefore appear to be Italy, Germany and Slovenia. They may possibly be wider. However it is not necessary to further delineate the relevant geographic markets because, in all alternative geographic market definitions considered, the assessment that effective competition would not be significantly impeded in the EEA or any substantial part of that area would not be affected.

## **C. Impact of the concentration**

11. The paper merchanting market in Germany and in Italy is fragmented.

In Germany the largest paper merchant, Igepa, has a market share of ...<sup>2</sup>, the second one, Schneidersöhne, of ...<sup>3</sup> and the next ones, Papier Union and Classen, ...<sup>4</sup> each. KNP BT is already present on that market with the fifth largest paper merchant and a market share of ...<sup>5</sup> After the acquisition KNP BT will control ...<sup>6</sup> of the German paper merchanting market.

12. In Italy the situation is similar. The largest competitor, AWA, has a market share of ...<sup>7</sup>, the second one, Burgo, of ...<sup>8</sup> and the Bunzl Italia is the third largest with ...<sup>9</sup> KNP BT

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(3) Commission decision of 4 May 1993 (Case IV/M.291 - KNP/BT/VRG)

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(6) Deleted for publication; the figure is between 5% and 15%.

(7) Deleted for publication; the figure is between 5% and 15%.

(8) Deleted for publication; the figure is between 15% and 25%.

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(10) Deleted for publication; the figure is between 10% and 20%.

will control ...<sup>10</sup> of the Italian market after the acquisition. The rest of the market is held by a number of small and medium size merchants.

13. It has been suggested that Burgo, Italy's largest paper producer is actually not active in paper distribution, but just sells its paper direct and therefore the market share of AWA and KNP BT in paper distribution is larger than indicated. Burgo is not a member of the Italian paper distribution association, the Associazione Nazionale Distributori Carta, and does not have an independent merchanting arm. It does however sell to the same kind of clients and provides similar services as paper distributors. Whether Burgo can be considered to be a paper distributor or has to be seen as a paper producer making direct sales can remain open. Even if one were to disregard Burgo's activities for the purposes of calculating the market shares for paper distribution, the market shares of the KNP BT in Italy would not lead to the creation or strengthening of a dominant position: Strong competitive pressures from direct sales of the paper manufacturers particularly in the area of indent business would prevent the two largest competitors from exercising market power. Italy has a large number of smaller paper producers and only a relatively small (estim. 23%-30%) share of graphic paper is sold through merchants.
14. The vertical link between paper manufacturing and paper distribution within KNP BT will not enable it to exercise market power in a dominant position either since paper production is characterised by a number of larger paper producers which operate internationally and are available to supply competitors.

On the basis of the information provided in the notification the acquisition will therefore not create or strengthen a dominant position.

#### **IV. ANCILLARY RESTRICTIONS**

15. The parties have notified a non-competition clause which prohibits Bunzl for a period of ...<sup>11</sup> to:
  - be engaged or economically interested in any capacity whatsoever in the business of the sale or distribution of graphic paper for a period of ...<sup>12</sup> in Italy, Germany or Slovenia;
  - solicit or entice away from KNP BT and its subsidiaries the custom for such graphic paper in Italy, Germany or Slovenia;
  - solicit or entice away from employment any senior employees.
16. The share purchase agreement specifies that this clause does not prevent Bunzl from being the holder of shares in the businesses described but limits this shareholding to those

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(14) Deleted for publication; the period is not more than two years.

that do not confer more than <sup>13</sup> of the votes that would normally be cast in a general meeting of that company.

17. Contractual prohibitions on competition which are imposed on the vendor in the context of a concentration achieved by the transfer of an undertaking are acceptable<sup>(1)</sup> if they do not exceed the period of two years in the case of a transfer of good will<sup>(1)</sup>, are limited in their scope to the area where the vendor had established the products and services before the transfer<sup>(1)</sup> and to the products and services which form the economic activity of the undertaking concerned.<sup>(1)</sup>
18. The prohibition to solicit or entice away from employment is directly related to the concentration and necessary for its implementation.<sup>(1)</sup>
19. A prohibition for the vendor to be engaged or economically interested in any capacity in the business sector where the transferred businesses are active can not be considered necessary to achieve the legitimate end pursued with a non-competition clause, if it prevents the vendor from holding or acquiring shareholdings above<sup>9</sup> and the vendor holds or acquires those shares for investment purposes only and does not exercise, directly or indirectly, any management function in the company concerned or any material influence in that company.<sup>(1)</sup>
20. Therefore the above restrictions are covered by the present decision to the extent described above.

## V. CONCLUSION

21. 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 (EEC) No 4064/89.

For the Commission,

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<sup>(15)</sup> Deleted for publication; the figure is less than 10%.

<sup>(16)</sup> Commission notice regarding restrictions ancillary to concentration (OJ C 203, 14. 8. 1990, p.5) pt. III.A.1

<sup>(17)</sup> Commission notice regarding restrictions ancillary to concentration (OJ C 203, 14. 8. 1990, p.5) pt. III.A.2

<sup>(18)</sup> Commission notice regarding restrictions ancillary to concentration (OJ C 203, 14. 8. 1990, p.5) pt. III.A.3

<sup>(19)</sup> Commission notice regarding restrictions ancillary to concentration (OJ C 203, 14. 8. 1990, p.5) pt. III.A.4.

<sup>(20)</sup> See Commission decisions IV/M.182 - Inchcape/IEP, 21 January 1992; IV/M.197 - Solvay/LaPonte-nterox, 30 April 1992; IV/M.304 - Volkswagen AG/VAG (UK) Ltd., 24 February 1993.

<sup>(21)</sup> Deleted for publication; the figure is less than 10%.

<sup>(22)</sup> Case no. IV/M.301 - Tesco Ltd./Catteau SA; there the Commission considered a prohibition to limit shareholdings to 10% as being unnecessary.