

*Case No IV/M.896 -
TENNECO / KNP BT*

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

Article 6(1)(b) NON-OPPOSITION
Date: 30/04/1997

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30/04/1997

PUBLIC VERSION

MERGER PROCEDURE

ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sirs,

Subject : Case No IV/M. 896 - TENNECO/KNP BT

Notification of 24.03.97 pursuant to Article 4 of Council Regulation (EEC) No 4064/89

1. On 24.03.97, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertaking Tenneco Inc. (US) ("Tenneco") acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the Protective Packaging and Flexible Packaging Divisions of N. V. Koninklijke KNP BT (NL) ("KNP BT/Packaging Divisions") principally by way of purchase of shares.
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. Tenneco is a publicly traded US undertaking, which has two operating divisions:
 - Tenneco Automotive, active in producing automotive exhaust-systems and ride control (shock absorption) systems, and
 - Tenneco Packaging, active in producing plastic, molded fibre and aluminium packaging products for use principally as packaging for food products.

4. KNP BT/Packaging Divisions manufacture and sell plastic and paper fibre products for use as protective packaging and flexible packaging.
5. The proposed concentration consists of the acquisition by Tenneco of all of the shares and other equity interests held by KNP BT in the 18 companies that constitute its Packaging Divisions, except that the transaction will involve the transfer to two Tenneco subsidiaries of the assets of one KNP BT/Packaging Divisions company: Astro-Valcour Inc. (US).

II. COMMUNITY DIMENSION

6. Tenneco and KNP BT/ Packaging Divisions have a combined aggregate worldwide turnover in excess of ECU 5,000 million (Tenneco: ECU 5,200 million; and KNP BT/ Packaging Divisions: ECU 430 million). Each of them has a Community-wide turnover in excess of ECU 250 million (Tenneco: ECU 936 million; and KNP BT/ Packaging Divisions: ECU 269 million), and they 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, pursuant to Article 57 of that Agreement.

III. COMPETITIVE ASSESSMENT

A. Relevant product markets

7. Both parties are active in the packaging sector:
 - Tenneco manufactures and sells plastic, molded fiber and aluminium packaging products for use principally as packaging for retail fresh food products and ready-to-eat food in convenience outlets, as biscuit/confectionery assortment trays, and as easy-open food portion-packs. As an ancillary to these products, Tenneco also manufactures polyvinyl chloride in sheet form which it sells to food producers for use in the form, fill and seal packaging of their products.
 - KNP BT/ Packaging Divisions manufacture and sell plastic and paper fiber products for use as protective packaging (protective postal packaging products, foam cushioning blocks and molded products, in-box protective packaging), as well as products made from plastic and/or paper for use as flexible packaging (food packaging, hygienic packaging, techno-chemical packaging and medical packaging).

The only overlap appears to be in the area of plastic film and sheet used for the form, fill and seal packaging of food products, where both parties are active. However, for the purpose of the assessment of the present case, it is not necessary to further delineate the relevant product markets, because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

B. Relevant geographic markets

8. The notifying party states that the relevant geographic market for the packaging products described above is the EEA. The Commission's market inquiries among

competitors and customers seem to confirm this. It is not necessary to further delineate the relevant geographic markets, because, in all alternative geographic market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

C. Impact of the concentration

9. The parties' aggregate market share in the area of overlap is approximately 2% at EEA level. In view of this market position, it appears that the notified operation will have no impact on competition in the EEA. The Commission's market inquiries among competitors and customers seem to confirm this. Consequently, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

IV. ANCILLARY RESTRICTIONS

10. The Purchase Agreement which will be entered into by Tenneco and KNP BT in connection with the proposed concentration includes a covenant (section 6.10) on the part of KNP BT not to compete with the current businesses of the KNP BT/Packaging Divisions for a period of five years. The parties have explained in detail that KNP BT/Packaging Divisions possess relatively few significant patents and that a substantial part of the value of their business is comprised of know-how. Therefore, the covenant not to compete is directly related and necessary to this concentration as it is intended to guarantee the transfer to Tenneco of the full value of the assets transferred, and shall be considered as ancillary to the concentration, in conformity with paragraph III(A)(1) and (2) of the Commission Notice regarding restrictions ancillary to concentrations¹.

V. CONCLUSION

11. 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,

¹ OJ n. C 203/90, 14.8.1990, p.5