

***Case No IV/M.1004 -
BLOHM + VOSS /
LISNAVE***

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

Article 6(1)(b) NON-OPPOSITION
Date: 18/06/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.06.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M.1004 - Blohm+Voss / LISNAVE

Notification of **03.04.1996** pursuant to Article 4 of Council Regulation (EEC) No 4064/89

1. On 3 April 1998, the Commission received a notification pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ (hereinafter: "the Merger Regulation"), as last amended by Regulation (EC) No 1310/97², of a proposed operation by which the German undertaking Thyssen Werften GmbH, Hamburg/D ("Thyssen Werften"), and the Portuguese undertaking Navivessel - Estudos e Projectos Navais S.A., Lisbon ("Navivessel"), intend to acquire joint control of Lisnave - Estaleiros Navais S.A., Lisbon ("Lisnave"), a company which was set up on 12 March 1997 by the Mello Group.
2. On 16 April 1998 the Commission informed the notifying parties that the notification did not meet the requirements of the Form CO relating to the notification of a concentration pursuant to the Merger Regulation and declared the notification incomplete. On 7 May 1998 and 13 May 1998 the Commission received the missing information and documents.
3. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of the Merger Regulation and does not

¹ OJ No L 395, 30.12.1989, corrected version: OJ L 257, 21.09.1990, p. 13.

² OJ No L 180, 9.07.1997, p. 1.

raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES

4. Thyssen Werften is the holding company of the Thyssen group in the fields of shipbuilding and shiprepair. Thyssen is set to fully merge its activities with the Krupp group.³ The Thyssen group achieved a total world-wide turnover of approximately ECU 20 745 million in 1996/97, of which ECU [...] million were achieved within the Community and ECU [...] million were achieved in the EFTA states.
5. Navivessel is a subsidiary of the José de Mello SGPS S.A. and is active in the fields of shipping studies and projects, investment projects in the shipping sector and associated activities. The Mello group achieved a total world-wide turnover of ECU [...] million in 1996, of which more than ECU [...] million were achieved within the Community and [...] turnover was achieved in the EFTA states.
6. Lisnave was set up on 12 March 1997 and currently is a fully-owned subsidiary of Navivessel. On 31 July 1997 the company took over the existing activities of Lisnave - Estaleiros Navais de Lisboa S.A. (hereinafter: "the old Lisnave") which until this date operated a shipyard located in Lisbon. Over the full year 1997 the business activities which have been transferred to Lisnave achieved a total world-wide turnover of ECU [...] million, of which ECU [...] million were achieved within the Community and the EFTA states

II. THE OPERATION

7. On 26 March 1997, the Mello group and Thyssen Werften entered into a "Basic Agreement" in which both parties agreed to co-operate in the shiprepair, offshore and major conversion markets through the newly created joint venture company Lisnave.
8. On 6 August 1997, the Mello group and Thyssen Werften concluded a Share Purchase Agreement according to which Thyssen Werften shall acquire from Navivessel a 20% interest in the share capital of Lisnave and shall have an option to call on Navivessel the transfer of an additional 5% of the share capital. The call-option may be exercised by Thyssen Werften until 31 December 2000. After the completion of the operation, the Mello group will hold an interest of 38% in Lisnave and the Government of Portugal will hold a 5% interest. The remaining 37% of the shares without voting rights will be offered to the minority shareholders of the old Lisnave in exchange for their shares in this company. Also on 6 August 1997, the parties concluded a Shareholders Agreement according to which Thyssen Werften shall be entitled to appoint two out of the nine members of the Board of Directors of Lisnave.

III. THE CONCENTRATION

³ See Case IV/M.1080 - Thyssen/Krupp, decision of 02.06.1998.

⁴ Deleted for publication (hereinafter indicated by [...]); market shares have been replaced by a range of market shares as indicated.

Joint control

9. The Shareholders Agreement provides that certain strategic commercial decisions of the Board of Directors require the favourable vote of both the Board members nominated by Navivessel and the Board members nominated by Thyssen Werften. Among these matters are in particular the establishment or closure of new business sites, entering into any contract or commitment resulting to the company a financial obligation above a certain amount, any business of extraordinary importance which is beyond the course of normal business and the approval of the terms of any corporate business plan or corporate budget. These veto rights are related to strategic commercial and financial decisions on the future joint venture's business policy and surpass the usual rights protecting the financial rights of minority shareholders.⁵ Thus, Thyssen Werften has rights within the meaning of Article 3 (3) of the Merger Regulation which confer the possibility of exercising decisive influence on the strategic behaviour of the joint venture. Therefore, the proposed joint venture will be jointly controlled by Navivessel and Thyssen Werften.

Autonomous full function entity on a lasting basis

10. The proposed joint venture brings about a lasting change in the structure of the undertakings concerned. The shareholders agreement is of indefinite duration and the future joint venture constitutes an autonomous economic entity, as it will operate in the shiprepairing and conversion business, performing all the functions normally carried out by undertakings operating on these markets. According to the notifying parties, the joint venture will continue to carry out its activities with its own management and with access to sufficient resources, including finance, staff and assets at its Mitrena shipyard. As the Mello group does not retain any activities in the fields of shiprepairing and conversion business or in the neighbouring markets for shipbuilding, the future joint venture will not bring about a co-ordination of the competitive behaviour of independent undertakings.

Conclusion

11. For the above reasons the joint venture arising from the notified operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

12. The combined aggregate worldwide turnover of all the undertakings concerned exceeds ECU 5,000 million. Each of the undertakings has a Community-wide turnover in excess of ECU 250 million, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The Thyssen group achieved more than two-thirds of its Community-wide turnover in Germany, whereas the Mello group achieved more than two-thirds in Portugal. The notified operation therefore has a Community dimension according to Article 1(2) of the Merger Regulation. It does not qualify for cooperation with the EFTA surveillance Authority pursuant to the EEA Agreement.

V. COMPETITIVE ASSESSMENT

⁵ See Commission Decision of 11 August 1997 in Case IV/M.897 - Stinnes/Haniel Reederei, at paragraphs 7-17.

13. The proposed joint venture will be active in the fields of shiprepairing and conversion of offshore-units. The Thyssen group is engaged in shipbuilding, shiprepair and conversion business through its subsidiaries Blohm+Voss GmbH, Blohm+Voss Repair GmbH and Thyssen Nordseewerke GmbH. The Mello group has no activities in shiprepair and conversion business besides its participation in Lisnave; it has also no activities in the neighbouring markets for shipbuilding.

A. Relevant Product Markets

14. The proposed joint venture will be active in repairing of ships and in conversion of cargo-vessels and offshore-units (platforms, drillboats, floating production and storage units). According to the parties, both activities could be carried out by any shipyard. For extensive conversions of offshore-units however, shipyards with special knowledge, qualified personel and spezialized production sites are requird. In the present case it can be left open in the last analysis whether shiprepairing and conversion activities belong to one and the same product market or both activities constitute separate relevant product markets as in neither alternative the concentration would not lead to the creation or strengthening of a dominant position.

B. Relevant Geographic Markets

15. The notifying parties are of the opinion that the geographic scope of the markets for shiprepairing and conversion of offshore-units is world-wide. According to the parties, costs for taking a ship or an offshore-platform from Europe to shipyards in other parts of the world are not that much to be prohibitive. The parties estimate costs for such a transport to amount to between ECU 440,000 and ECU 1,300,000. In particular shipyards in Far East would be substantial competitors to the undertakings concerned as transport costs would be easily compensated by the comparatively low labour costs in those regions. Nevertheless the Commission considers that in the present case there is no need to decide whether the geographic scope of the relevant product markets is world-wide as even if the markets are assumed to be EEA-wide the concentration would not lead to the creation or strengthening of a dominant position.

C. Impact of the concentration

16. Lisnave is a former state-owned shiprepairer in Portugal. Since its restructuring and takeover by the Mello group in 1997, Lisnave has won several contracts in the conversion business, in particular a contract to convert the bulk/oil carrier "Coastal Golden" to a drillship and a contract to carry out major conversion work on a semi-submersible rig of Petrobas. Besides that, Lisnave will continue to carry out its traditional shiprepair work which largely will be sub-contracted to Gestnave. This company was created in the restructuring of Lisnave as a state-run labour pool to supply workers both to the Mitrena shipyard and to civil engineering infrastructure projects in Lisbon. According to the parties, the European Commission as well as the Government of Portugal will financially support the development of the Mitrena shipyard. The Thyssen group has special knowledge in the conversion business but was hindered to gain a significant market position in Europe due to high labour costs in Germany. This know-how will be made available to the future joint venture.
17. In 1997, the business activities transferred to Lisnave achieved a turnover of ECU [...] million in shiprepairing and of ECU [...] million in conversion business. The Thyssen group achieved a turnover of ECU [...] million in shipbuilding, ECU [...] million in shiprepairing and of ECU [...] million in conversion business.

18. According to the parties, on a world-wide level, their combined market share in shiprepairing is [$< 5\%$] and in conversion business is less than 1%. In the EEA, the combined market shares of the undertakings concerned will be less than 15% in all product markets considered. According to the parties, their major competitors within Europe are Lloyd Werft Bremerhaven GmbH (D), A&P Holdings Ltd. (UK), Verolme Botlek B.V. (NL), Amo Dunkerque (F) and Harland&Wolff Shiprepair and Marine Service Ltd. (UK).
19. In view of the small combined market shares of the undertakings concerned after the concentration, several important competitors within Europe and important potential competition from shipyards in other regions of the world, in particular in Far East, the notified concentration is unlikely to lead to the creation or strengthening of a dominant position.

VI. CONCLUSION

20. It follows from the above that the proposed concentration would not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.
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 EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission,