

***Case No IV/M.1020 -
GE CAPITAL / SEA
CONTAINERS***

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

Article 6(1)(b) NON-OPPOSITION

Date: 28/04/1998

Also available in the CELEX database

Document No 398M1020



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.04.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M.1020 - Ge Capital/Sea Containers

Notification of 26.03.1998 pursuant to Article 4 of Council Regulation N° 4064/89

1. On 26.03.1998 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 ("the Merger Regulation") by which General Electric Capital Corporation ("GE Capital") of the United States of America and Sea Containers Ltd ("Sea Containers") acquires within the meaning of Article 3(1)(b) of the Merger Regulation joint control of a new joint venture company GE SeaCo SRL ("GE SeaCo").

I THE PARTIES

2. GE Capital is a subsidiary of the General Electric Company of the United States of America. GE Capital is a diversified financial services company, providing equipment management, specialised financing, speciality insurance and a variety of consumer services, such as car leasing, home mortgages, and credit cards. One of GE Capital's businesses is marine container operating leasing, which it conducts solely through its subsidiary Genstar Container Corporation ("Genstar").

3. Sea Containers is engaged in three main business activities: marine container operating leasing; ferry, rail and port operations; leisure industry activities. Furthermore, Sea Containers also manufactures containers, and operates storage depots and servicing operations for repairing, servicing and storing marine containers for itself and third parties.

II THE OPERATION

4. The proposed operation is a concentrative joint venture between GE Capital and Sea Containers and will be accomplished by the creation of a new joint venture entity (“GE SeaCo”). The entirety of the marine container operating leasing business of each of the parties is being contributed to the joint venture and the parent companies will effectively withdraw from the marine container operating lease business. In particular the operation will result in the parties’ marine container operating leasing infrastructure being combined in GE SeaCo by the transfer into the latter of the office premises and equipment, including the computerised tracking systems, contracts, containers, human resources and related business assets.

III THE CONCENTRATION

Joint control

5. The parties have agreed that the annual budget of GE SeaCo must be approved by the Board. Furthermore, it is provided that no significant transaction shall be undertaken by GE SeaCo or any of its subsidiaries without the approval of the Board of Managers. A detailed list of significant transactions covered by these provisions are annexed to the Omnibus Agreement between the parties and include items such as:
 - Any incurrence of indebtedness for borrowed money at any time outstanding in excess of USD 100,000 per occurrence
 - any adoption of, or material amendment to, the annual capital and operating budgets
 - any adoption of or revision of any policy with respect to customer credit, risk management, financial accounting, public relations or business ethics and integrity.
 - any commencement or participation in any business other than the shipping container business, or making any investment in, loan to, or guarantee of the obligations of, any other person, or creating any subsidiary of GE SeaCo
 - Any acquisition or establishment of manufacturing, depot or repair facilities other than as approved in the annual budget
6. Ge Capital and Sea Containers will each appoint half of the eight person Board of Managers, and there will be no casting vote. Furthermore, the Board can only decide by majority. Therefore, one party will always be able to block any significant transaction. Consequently, GE SeaCo will be jointly controlled by GE Capital and Sea Containers.

Autonomous full function joint venture on a lasting basis

7. GE SeaCo will be a full market participant competing with other marine container operating leasing companies. It will have its own staff and other resources, which will make it a full function joint venture, which is able to operate on a lasting basis.
8. GE SeaCo will initially operate a fleet of approximately 1165000 TEU's (twenty foot equivalent units, see section V below). It will only be the owner of a small fraction of these containers. Most of its containers will be leased from the parent companies. However, the fact that GE SeaCo leases its container fleet from the parent companies does not affect the autonomous full function nature of the joint venture, since GE SeaCo will have full disposal of the containers without interference from the parent companies. In any case, in the future GE SeaCo will itself purchase new containers. It is, therefore, foreseen that the proportion of containers owned by GE SeaCo will increase over time as the containers leased from the parent companies are being phased out and new ones are acquired directly by GE SeaCo.
9. GE Capital does not currently own any depots or repair facilities for containers. Instead GE Capital contracts with third parties. Sea Containers operate a number of depots and repair facilities for containers. Sea Containers currently service both its own as well as third party containers. However, the number of facilities are not sufficient to meet the needs of Sea Containers. As is customary in the industry, the company, therefore, also contracts with a number of third parties for the supply of these services. Sea Containers will continue to operate a number of depots and repair facilities, which will service GE SeaCo as well as third parties. GE SeaCo will be supplied these services at rates customary to third parties. Furthermore, GE SeaCo will also have to contract with third parties for these services. The fact that GE SeaCo will purchase a part of its needs for storage and repair facilities from Sea Containers, therefore, does not affect the full function nature of the joint venture.
10. Sea Containers manufactures containers and will continue to do so in the future. The containers manufactured are mainly more specialised containers, often with patented designs. GE SeaCo has agreed to source containers from Sea Containers. However, these containers will only constitute a small percentage of the total amount of containers needed by GE SeaCo. These purchases will not, therefore, affect the full function nature of the joint venture.

Conclusion

11. For the above reasons GE SeaCo is an autonomous full function joint venture established on a lasting basis. The operation thus constitutes a concentration within the meaning of Article 3 (1)(b) of the Merger Regulation.

IV COMMUNITY DIMENSION

12. The undertakings concerned have a combined aggregate world-wide turnover of more than 5000 million ECU. Each of the undertakings has a Community-wide turnover in excess of 250 million ECU 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 according to Article 1(2) of the Merger Regulation. It does not constitute a co-operation case under the EEA Agreement.

V. RELEVANT MARKETS

A. Relevant product markets

13. Marine containers are built to precise international standards, which allows standardised handling and transportation of containers. Containers are basically available as 20 and 40 foot units. For purposes of analysis, the marine container industry uses as a standard of measurement a twenty foot equivalent unit (“TEU”), which represents the length and width of a standard 20 foot long container.
14. The principal categories of containers are:
 - Dry freight standard
 - Dry freight specials
 - Refrigerated containers (reefers)
 - Tanks

The standard container is the dry freight standard category. It is estimated that this category accounts for about 87% of all containers in the global container fleet, whereas the three other categories consist of more specialised containers, which account for the balance. Dry freight special containers are thus characterised by having for example different loading doors. Reefers are used to transport perishable goods, and tanks to transport liquids.

15. The Commission questioning of competitors and customers indicated that the above four categories of containers could be separate relevant product markets. However, it is not necessary to finally decide this question for the purpose of the present case, since the operation will not create or strengthen a dominant position on even the narrowest possible product market definition.

B. Relevant geographic markets

16. According to the parties the geographic market for marine container operating leasing is global. The customers and competitors questioned by the Commission agreed with this view. Containers are moving around globally without any barriers, leasing rates are quoted in USD, and basically reflects the length of the lease. Furthermore, several customers and competitors in particular emphasised that the marine container operating leasing business required a global presence of a company. The scope of the relevant geographic market is, therefore, global.

VI COMPATIBILITY WITH THE COMMON MARKET

17. The fleets of the suppliers of marine container operating leases for each of the four categories of containers are set out in the table below. In principle these figures are indications of the shares of the capacity available in the marine

container operating lease industry. However, no market share data in the traditional sense are available, and the capacity figures in the table below can be used as approximations for market shares.

Market shares (proportion of fleet), 1996

	<i>Dry freight standard</i>	<i>Dry freight special</i>	<i>Reefers</i>	<i>Tanks</i>	<i>Total</i>
Genstar	16	6	25	0	16
Sea Containers	4	25	11	6	5
Total parties	20	31	36	6	21
Transamerica	21	33	25	20	22
Textainer	10	2	0	0	9
Triton	9	2	12	0	9
Florens	8	3	12	0	8
Interpool	8	2	0	0	7
Cronos	7	2	7	3	7
Others	17	25	8	71	17
Total	100	100	100	100	100

Note: The data does not include the container fleets owned by shipping lines, except to the extent they are active in marine container operating leasing.

18. As can be seen from the table, Transamerica is currently the market leader in all categories. After the operation GE SeaCo will become the market leader in reefers, whereas on the basis of the total market Transamerica and GE SeaCo will be the largest operators of a comparable size with some 20% each of the overall market.
19. Important competitors exist to the parties and Transamerica in all categories with the exception of dry freight special containers. In this category GE SeaCo and Transamerica will have a share of more than 60% of the market following the operation. In principle such a market concentration, in the absence of other sizeable competitors, could give rise to a duopolistically dominant position. However, in the present industry this is not the case, since important operators exist in the other container categories. These companies are strong and credible potential competitors, who could relatively easily create an important container capacity for the dry freight special containers. Consequently the operation will not lead to the creation or strengthening of a dominant position.

VII ANCILLARY RESTRAINTS

20. The parties have agreed to a non-competition agreement. In particular the agreement provides that GE Capital and Sea Containers are precluded from entering the business areas of the joint venture as long as they own 20% of the class A securities of GE SeaCo and for a period of two years thereafter. The non-

compete agreement reflects the lasting withdrawal of the parents from the markets of the joint venture, and is, therefore, covered by the present decision as long as the joint venture exist. As far as the extension of the non-compete clause to the two years following a possible termination of the joint venture is concerned, it is noted that the extension relates to a possible future operation, which is not part of the current transaction. This two year extension of the non-compete clause is, therefore, not covered by the present decision.

VIII 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