

***Case No IV/M.1134 -
TARMAC / BOVIS***

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

Article 6(1)(b) NON-OPPOSITION
Date: 24/03/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.03.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M. 1134: TARMAC/BOVIS

Notification of 27 February 1998 pursuant to Article 4 of Council Regulation N° 4064/89

1. On 27 February 1998, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertakings Tarmac Construction Ltd ('Tarmac') belonging to the Tarmac plc group and Bovis Ltd belonging to The Peninsular and Oriental Steam Navigation Company ('P & O') acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking CASTLEWYSE Ltd by way of purchase of shares in a newly created company constituting a joint venture.
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 EEA Agreement.

I. THE PARTIES' ACTIVITIES AND THE OPERATION

3. The business activities of the undertakings concerned are :
 - for Tarmac: building and civil engineering, construction and project management, contracting and consultancy services;
 - for Bovis: building and civil engineering, construction and project management;
 - for CASTELWYSE: supply of general plant and tools on hire, and sale of consumables,to
the UK construction industry.

The joint venture will combine all the general plant hire and consumables sales businesses of the parents. It will be jointly controlled by Bovis and Tarmac. Furthermore, the joint

venture will perform on a lasting basis all the functions of an autonomous economic entity and its creation will not give rise to coordination of the competitive behaviour of the parties.

II. COMMUNITY DIMENSION

4. Tarmac plc and P & O have a combined aggregate worldwide turnover in excess of ECU 5,000 million (Tarmac plc ECU 3,273 million; and P & O, ECU 8,711 million). Each of them has a Community-wide turnover in excess of ECU 250 million (Tarmac plc, ECU 2,719 million; and P & O, ECU [...] ¹ million), but they do not both 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. It does not constitute a cooperation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

III. COMPETITIVE ASSESSMENT

A. Relevant product markets

5. The notifying parties state that there are relevant product markets for the hire of general plant (eg, mixers, excavators, hoists, access equipment, power generation equipment, temporary accommodation etc) and tools to the construction industry and for the sale of 'consumables' (eg protective clothing, small tools, spare parts, stationery etc) to customers in that sector. However, 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 market

6. The notifying parties state that the relevant geographic market is the United Kingdom. However, it is not necessary to further delineate 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. Assessment

7. The parties' activities overlap in the supply by hire of general plant, and the sale of consumables, to the UK construction industry. The UK general construction plant hire sector is fragmented, with the largest competitor - Initial Plant Services - having a share of 8.9% by value in a total market valued at over £2,500m in 1996, according to information supplied by the parties. The parties' combined activities in this sector account for approximately 2.7% of the total by this measure (increment to Tarmac of 0.9%) which would rank the joint venture as the fourth or fifth largest competitor. The parties' shares in particular types of plant may in some instances be higher, but according to the parties would be well below 15%. The sale of consumables to the construction industry is highly fragmented; the parties estimate their share at less than 0.5%, and this activity accounts for only a small part of the total turnover of the businesses being combined in the joint venture.

¹ business secret

8. There are limits to the distance which certain of the heavier items of plant can be economically transported to the site on which they will be used. However, the larger plant hire suppliers have a national network of depots, from which they can cover the whole of the UK mainland. (The parties together have about 30 depots.) This suggests that geographic markets may be local or regional in scope, but that if so, they overlap to a considerable extent and could therefore be aggregated and regarded as effectively constituting a single UK (mainland) market. Moreover, the parties have indicated that they are not aware of any region or local area in which their share would exceed 15%.
9. The parents are currently major customers of the joint venture businesses, accounting for around [...] % in total of the combined turnover of the two businesses, according to the parties, although they have indicated that they intend to source more of their needs from third parties in future. There is no requirement on the parents to source any of their needs from the joint venture, or for the joint venture to supply them. Although the parties are among the leading UK construction companies, the industry is fragmented. According to information from the parties their combined share of all UK construction projects, by value, is about [...] %, and no competitor has more than 10%. The Commission's examination has not disclosed any evidence of separate markets for plant hire for projects of particular sizes or types, and plant hire costs generally account for less than 5% of the total cost of a construction project. This vertical link does not therefore present a significant risk to competition following the merger.

The joint venture agreement contains provisions requiring that the parents do not engage in or have interests in plant hire or consumables sales for [...], and a similar provision preventing the parents from using the joint venture brand-name[...]. These restrictions are covered by the present decision in so far as they simply express the withdrawal of the parents from the market of the joint venture. (Commission notice on restrictions ancillary to concentrations, paragraphs V A.)

- .10. In view of the foregoing, it appears that the notified operation will have only a minimal impact on competition in the EEA. 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.

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 EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,

² business secret

³ business secret; less than 10%

⁴ details deleted, business secret

⁵ details deleted, business secret