

*Case No IV/M.1154 -
MC DERMOTT /
ETPM
(DECONCENTRATIO
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**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 004/06/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 04.06.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M. 1154 - McDERMOTT/ETPM

Notification of 29.04.1998 pursuant to Article 4 of Council Regulation N° 4064/89

1. On 29 April 1998, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the notifying undertaking ETPM SA (ETPM), which belongs to the Suez-Lyonnaise des Eaux group, has agreed to demerge the world-wide joint venture with J. Ray McDermott SA (J. Ray) and acquire one part of the JV's divided assets.
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.

THE PARTIES' ACTIVITIES AND THE OPERATION

3. The world-wide joint venture between ETPM and J. Ray provides for certain marine construction services to the offshore oil and gas industries in various parts of the world. This joint venture is a result of an agreement, which was signed in 1989, reorganised in 1991 and further structured in April 1995. This last agreement of April 1995 was notified to the Commission under the Merger Regulation and the related concentration was authorised by decision on 27.11.1995.
4. The world-wide joint venture is a result of a Joint Venture Agreement, and of two Joint Ownership Agreements as part of the Joint Venture Agreement. According to the Joint Venture Agreement, four entities, namely JV East, JV Far East, JV West and JV Main Office constitute the operating divisions of the world-wide

joint venture, whereas, in relation to the Joint Ownership Agreements, J. Ray takes over 1/3 of the shareholding in ETPMI and ETPM 1/3 of the shareholding in MSCL. In addition to that, ETPMI becomes the managing company of JV West, and MSCL, a subsea constructor operating according to the agreed principles, constitutes an integral part of the joint venture. Consequently, the world-wide joint venture operates as a single economic entity, and its parents' decision to terminate the related Agreement, will result in the termination of the Joint Ownership Agreements too.

5. ETPM is a company incorporated under the laws of France, ultimately controlled by Suez-Lyonnaise des Eaux through the GTM Entrepouse group, a diversified construction company. ETPM retains no activities in the marine construction sector other than through the joint venture.
6. J. Ray is a company incorporated under the laws of Panama, ultimately controlled by McDermott International company. It is active in construction services, including marine construction services.
7. The parent companies, ETPM and J. Ray, following a Memorandum of Understanding, which was entered into on 20.02.1998, agreed to break-up their world wide joint venture and divide the entire assets between themselves, through a "Global Solution".
8. As a result, on the one hand, ETPM acquires sole control over ETPM International SAS (ETPMI), McDermott Subsea Constructors Ltd. (MSCL) and the McDermott/ETPM West Inc. (West), and, on the other hand, J. Ray acquires sole control over the McDermott/ETPM East Inc., McDermott/ETPM Far East Inc. and the McDermott/ETPM Inc. Main Office.
9. The division of the world-wide joint venture between ETPM and J. Ray involves a change from joint control to sole control over the divided assets. It, further, represents, two separate concentrations, within the meaning of Article 3 of the Merger Regulation, one by ETPM and one by J. Ray.

COMMUNITY DIMENSION

10. The notified ETPM concentration has a combined aggregate world-wide turnover in excess of ECU 5,000 million (the Lyonnaise des Eaux group: ECU 26,677 million, and the acquired part of the world wide joint venture : MSCL+ETPMI+West ECU [...] million). Each of them has an aggregate Community-wide turnover in excess of ECU 250 million (ECU [...] million and ECU [...]³ million respectively) but 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, meeting the thresholds of the Merger Regulation, as laid down in Article 1(2), but does not

¹ Business secret - deleted for publication

² Business secret - deleted for publication

³ Business secret - deleted for publication

constitute a co-operation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

11. The J. Ray concentration does not have a community dimension, since the activities of its acquired assets are outside Europe and has no EU turnover to meet the thresholds of the Merger Regulation.

COMPETITIVE ASSESSMENT

Relevant product markets

12. The notifying party states that there are two relevant product markets, where the acquired subsidiaries operate, one for large pipelays, linking offshore oil and gas fields to the shore as well as interconnections within and between offshore fields and a second for integrated subsea services. The notifying party, thus, is not engaged in those sectors other than through the JV. 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.

Relevant geographic market

13. The notifying party states that, in principle, the geographic markets for large pipelay and for integrated subsea services are world-wide markets, with services performed wherever there are related oil and gas fields. Besides, in reference to the large pipelay market, it points towards the existence of separate markets due to differences in the nature and scale of work and the harsh climatic conditions in certain zones, such as in the North Sea.
14. However 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.

Assessment

15. In relation to the proposed market for large scale pipelay in the North Sea, the JV has had a market share of approximately [...] % and it has been facing strong competition from other competitors, such as EMC and Allseas. In relation to the world-wide market for integrated subsea services, the JV has had a market share of approximately [...] % and it has been also facing strong competition from other competitors, such as Coflexip Stena, Stolt Comex Seaway (SCS), DSND, Rockwater. However, it must be pointed out that the notifying party's market share, after the deconcentration, will be lower than that of the JV, since the deconcentration itself involves the re-entry of ETPM and J. Ray as fully independent competitors in the relevant activities, increasing, thus, the number of players in those activities. In addition to that, the notifying party, ETPM, is not

⁴ Deleted for publication - between 25 & 35%

⁵ Deleted for publication - between 10 & 20%

engaged in marine construction services other than through the JV and as a result, no combination of market shares will occur.

16. Therefore, it appears that the notified operation will have no restrictive impact on competition in the EEA and the proposed concentration will 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.

CONCLUSION

17. 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,