

***Case No COMP/M.2823 -  
BANK ONE  
CORPORATION /  
HOWALDTSWERKE-  
DEUTSCHE WERFT AG  
(HDW)***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 30/05/2002

*Also available in the CELEX database  
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COMMISSION OF THE EUROPEAN COMMUNITIES

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 30.05.2002  
SG (2002) D/230011

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.2823 - Bank One Corporation/Howaldswerke-Deutsche Werft AG**  
**Notification of 28.04.2002 pursuant to Article 4 of Council Regulation No 4064/89<sup>1</sup>**

1. On the 25.04.2002 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89<sup>2</sup> by which the American undertaking Bank One Corporation ("Bank One"), acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the German undertaking Howaldtswerke-Deutsche Werft AG ("HDW"), by way of purchase of shares.
2. After examining the notification, the Commission has concluded that the notified operation falls within the 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**

3. Bank One is a multi bank holding company, which provides retail banking, finance and credit card services to the domestic market in the US. Bank One also provides world-wide commercial banking services as well as trust and investment management services. Furthermore, Bank One offers a number of financial services related to banking and finance. Bank One controls through its investment and venture capital entities other companies involved in the following activities:

- metal and mineral wholesale and metal activities;

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<sup>1</sup> OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

<sup>2</sup> OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

- instrument manufacturing for measuring and testing electricity and electrical signals;
  - rubber working machinery and equipment;
  - manufacture of household and person weighing scales; and
  - provision of temporary help services.
4. HDW is active in the field of construction of conventionally powered submarines and naval surface vessels (frigates, mine counter measure vessels (MCMV) and small naval vessels). HDW is also active in commercial shipbuilding and repairs and conversion of such vessels.

## **II. THE OPERATION**

5. Bank One will through its wholly owned subsidiary HDW Holding GmbH (“HDWH”) acquire 75% minus one share in HDW. The present shareholders of HDW are Babcock Borsig AG (50% plus 1 share), Preussag AG (30%) and BayernFinanz (20% minus 1 share). As a preparatory step Preussag AG will acquire from BayernFinanz its shareholding of 20% minus one share in HDW.
6. Subsequently, HDWH will acquire a shareholding of 50% minus one share in HDW from Preussag AG and a shareholding of 25 % from Babcock Borsig AG. After the transaction Babcock Borsig AG will hold the remaining 25% plus one share. Babcock Borsig AG will be granted a put option right, allowing the undertaking to require HDWH to purchase and accept the transfer of its 25% plus one share in HDW. After the completion of the present transaction Bank One will control HDW through its subsidiary HDWH.

## **III. CONCENTRATION**

7. The transaction involves the acquisition of sole control by Bank One through HDWH of HDW constituting an acquisition of control within the meaning of Article 3(1)(b) of the Council Regulation.

## **IV. COMMUNITY DIMENSION**

8. The undertakings concerned have a combined aggregate world-wide turnover of more than €5 billion (Bank One €27,680 million and HDW €460.789 million). Each of the undertakings have a Community-wide turnover in excess of €250 million (Bank One €[...] million and HDW €[...] million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State.
9. The notified operation therefore has a Community dimension. It does not constitute a co-operation case under the EEA Agreement pursuant to Article 57 of that Agreement.

## **V. PRODUCT MARKET AND GEOGRAPHICAL DEFINITIONS**

10. HDW is active on the market for conventionally powered submarines, frigates, MCMV and small naval vessels. HDW is also active in the market for conversion and repairs of both submarines and naval vessels. Furthermore, HDW is manufacturing ferries, containerships, yards, cruising ships and supplies conversions and repairs of merchant vessels.

11. However, for the purpose of this decision, the precise product market and geographical market definitions can be left open, since in all alternative market definitions considered, effective competition would not, due to no horizontal overlaps, be significantly impeded in the EEA or any substantial part of that area.

## **VI. COMPETITIVE ASSESSMENT**

12. The transaction does not give rise to any affected markets since none of the parties are engaged in business activities in the same product and geographical markets or in any product market which is upstream or downstream of a product market in which any other party to the concentration is engaged.
13. In this respect, the Commission has investigated whether there were any other third parties involved in the operation with activities in the markets for submarines.
14. Based on a request from the Commission, the parties have clarified that offers were proposed to Ferrostaal and Thyssen Krupp. According to the parties Bank One has offered Ferrostaal AG and ThyssenKrupp Technologies AG to purchase and accept the transfer of 15% each in the shareholding of a new Dutch company "Holdco" still to be formed to hold all the share of HDWH and into which HDW may be merged at a later date. These options have not yet been exercised and are therefore not subject to the current assessment.
15. Based on the Commissions inquiry, the parties have confirmed that apart from the above-mentioned options, no agreements exist between Bank One and any third parties concerning the purchase of HDW. One shareholder, Mr. James Crown, is both a director of Bank One and the American defence group General Dynamics. He holds a shareholding below 1% of the shares in Bank One and he represents 3.9% of the shares in General Dynamics. However, no arrangement between Bank One and General Dynamics exist with respect to Bank One's acquisition of HDW. Furthermore, there is no indication, that Bank One has received financial support from other third parties relating to the current transaction. One Equity Partners "OEP LLC" is the private equity division of Bank One. OEP LLC has currently invested or committed from Bank One for investments approximately USD [...] billion, of which only €[...] million will be used to fund the investment in HDW.
16. Based on the above, the transaction will not give rise to any competition concerns.

## **VII. 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.
18. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission  
Mario MONTI  
Member of the Commission