

***Case No COMP/M.2930 -
KKR / DEMAG
HOLDING / SIEMENS
BUSINESSES***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 09/09/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 09.09.2002
SG(2002)D/231522

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the Notifying party

Dear Sir/Madam,

**Subject: Case N° COMP/M.2930 - KKR / Demag Holding / Siemens Businesses
Notification of 27/06/02 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 07.08.2002, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertaking Demag Holding S.à.r.l. (Lux) controlled by KKR European Fund L.P. (Canada) and KKR 1996 Fund (Overseas) L.P. (Canada), which are ultimately controlled by Kohlberg Kravis & Roberts Co. L.P. (USA) ("KKR") acquires within the meaning of Article 3(1)(b) of the Council Regulation control of a number of subsidiaries and business activities ("the target businesses") of Siemens Aktiengesellschaft ("Siemens", Germany), namely of the subsidiaries Demag Cranes Components GmbH & Co. KG ("DCC"), Gottwald Port Technology GmbH & Co. KG ("Gottwald"), Mannesmann Plastics Machinery AG, ("MPM") and Stabilius GmbH ("Stabilius"), all incorporated in Germany, and of the three Siemens business units "Ceramics", "SENS" and "Metering" by way of purchase of shares and assets. On 09.08.2002 and 13.08.2002 the Commission received supplementary information on the activities of Stabilius and KKR's portfolio company Wincor Nixdorf Holding GmbH ("Wincor").

¹ 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).

I. THE PARTIES

2. KKR is an investment fund. The target businesses are active in the design of cranes and crane related components (DCC), of harbour logistic solutions comprising mobile harbour cranes and automated transport equipment (Gottwald), plastics machinery (MPM), gas springs and hydraulic dampers (Stabilius), technical ceramics such as catalysts (Ceramics) design, implementation of company-wide data networks (SENS) and electricity and heat meters (Metering).

II. CONCENTRATION

3. The operation consists of KKR acquiring sole control of the target businesses by owning 81% of the shares in an acquisition vehicle, Demag Holding, which acquires 100% of the shares and assets of these businesses. The remaining 19% in Demag Holding will be held by Siemens. Accordingly, the transaction is a concentration within the meaning of article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

4. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (KKR: €[...] million; the target businesses: €[...] million). Each of them have a Community-wide turnover in excess of EUR 250 million (KKR: €[...] million; the target businesses: €[...]million), 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.

IV. COMPETITIVE ASSESSMENT

A- RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

5. There is no horizontal overlap in any of the above business areas except, potentially, data network management between KKR's activities and those of the target businesses in any conceivable product market. Both the exact product market definition and the geographic market definition can therefore be left open in these areas.
6. In the area of data network management the activities of SENS and of KKR's portfolio company Tenovis are geographically complementary so that an overlap of activities could only arise on the assumption of EEA-wide markets. However the products and the service activities of both businesses within this field are largely complementary. SENS designs, implements and manages company wide (non-voice) *data* networks whereas Tenovis is active in *voice* communication systems. The area of overlap is therefore limited to the *integration* of data communication services with voice networks or vice versa. These activities constitute merely [0-5]% (for SENS) and [0-5]% (for Tenovis) of the businesses' turnover in 2001 (representing a value of €[...] million and €[...] million respectively).
7. The notifying party submits that data communication and voice communication constitute separate product markets and that there is therefore no overlap of activities. Even on the

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25).

hypothetical assumption of a broader EEA-wide market including *all data network communication services and all voice communication services* KKR's and the target business' combined market share would only be around [0-10]%. On the equally hypothetical assumption of a narrower market for the provision of *integrated data-plus-voice* communication services the parties' combined EEA-wide market share would be around [5-15]%. The operation therefore does not give rise to affected markets on any of these assumptions.

8. There is a minor potential overlap of KKR's portfolio company, KKF.net with SENS's activities in regard to large intranet/intra company network communication services, although both businesses use substantially different technologies (owned or leased lines vs. virtual private networks). Again, only on an EEA-wide scale such an overlap could arise. However, even on the "worst case" assumption of a separate EEA-wide market for such services the market position of the acquired business would remain virtually unchanged due to the insignificant size of KKR.net (turnover: €[...] million). The operation would not lead to any market share above [10-15]%.³
9. There are no vertically affected markets except in the area of gas springs⁴, in which Stabilius is active. Gas springs are used in automatic telling machines ("ATM") as produced by KKR's portfolio company Wincor. Gas springs are also used in a number of other applications such as automotive applications, in overhead lockers in aircraft, medical equipment, leisure equipment and office equipment. The parties submit that the markets for gas springs are world wide, but it can be left open for the assessment whether these affected markets are world-wide or EEA wide.

B- ASSESSMENT

10. As there is no vertical or horizontal overlap with any of KKR's portfolio companies except as in data network management and gas springs for use in ATM, the market position of all target businesses in other areas remains unchanged. The operation therefore does not does present any competition issues in these areas.
11. In the area of network communication there is no overlap on the assumption of national markets. On the assumption of EEA-wide markets the combined market share is small on any conceivable product market and the operation does not give rise to any affected markets.
12. The only vertically affected markets are the production of gas springs (in which Stabilius is active) for use in ATM (as produced by KKR's portfolio company Wincor). The gas springs are used to move the plastic cover screen of the ATM up and down, so that the customer who wishes to withdraw money from the ATM can have access to the ATM's keyboard. Stabilius has a share of above [35-45]% world wide of such products and of approximately [65-75]% EEA wide. Wincor has a market share of less than [20-30]% EEA wide for the retail and financial workstation business.
13. The use of gas springs for ATM constitutes only a very small percentage of the sales of gas springs. The volume of gas springs sold by Stabilius to Wincor e.g. represents less than

³ [...]

⁴ [...]

[0-2]% of Stabilus' total EU-wide sale of gas springs. Wincor's competitors could source their supplies with other producers of gas springs, such as Suspa, Airax, Gain and Bansbach, which together have around [20-30]% EEA market share. Furthermore, the cost of a gas spring (€[...]) is only a marginal input cost of ATM, which are sold for approximately €[...]. Therefore no foreclosure of competitors can arise as a consequence of the proposed concentration.

V. CONCLUSION

14. 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

(signed)
Mario MONTI
Member of the Commission