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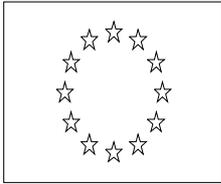
*Case No COMP/M.3082 -
PON / NIMBUS /
GEVEKE*

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 24/02/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.02.2003

(2003) D/228705/228706

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

Subject: **Case No. COMP/M.3082 –PON / NIMBUS / GEVEKE**
Notification of 24 January 2003 pursuant to Article 4 of Council Regulation No 4064/89¹.

1. On 24/01/2003 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (Merger Regulation) by which the Dutch undertakings Pon Holdings B.V. (“Pon”) and Nimbus Investment III B.V. (“Nimbus”) acquire, within the meaning of Article 3(1)(b) of the Council Regulation, joint control of a newly created company constituting a joint venture, Nimpon Trade & Services B.V. (“Nimpon”), which will acquire 100% of the shares of the division Trade and Service Group of the Dutch undertaking Geveke N.V. (“T&SG”).
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 TO THE OPERATION

3. Pon is a distributor of products related to transport and mobility, alongside financial services, industrial and telecommunication products. Nimbus is a capital investor and provides management advice and financing. The T&SG business comprises production machinery, industrial equipment, technical solutions and components, rotating and rolling equipment.

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).

4. Nimpon, the joint venture to be established, will own and control the T&SG business.

II. THE OPERATION

5. Previous to the creation of the joint venture, Pon made on 5 November 2002 a public offer for the whole of Geveke, including the T&SG business. This transaction, which was not of a community dimension, was notified to the Dutch Competition Authority (DCA)². The present transaction consists of Pon, having already acquired sole control over the whole of Geveke including the T&SG business, entering into a joint venture whereby it will jointly control the T&SG business together with Nimbus. The creation of Nimpon is therefore a separate transaction, which needs to be notified under the Merger Regulation.

Joint control

6. As a result of the transaction, Pon and Nimbus will hold respectively 40% and 60% of the shares. Pursuant to the Shareholder's Agreement, and given that important resolutions require prior approval by the shareholder's meeting and supervisory board, both Pon and Nimbus have [...]. It can therefore be concluded that Pon and Nimbus will have joint control over Nimpon.

Full function

7. Nimpon will perform, on a lasting basis, all the functions of an autonomous economic entity. It will have its own management and sufficient resources. The proposed transaction is therefore a full-function joint venture constituting a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

Community dimension

8. The combined worldwide turnover of all undertakings concerned is well in excess of EUR 2,500 million in 2001 (Pon EUR [...] million, Geveke –excluding the T&SG business- EUR [...] million, Nimbus EUR [...] million, T&SG business EUR [...] million). The combined aggregate turnover of all undertakings concerned exceeded EUR 100 million in [...]. In addition, the aggregate turnover of each of at least two of the undertakings concerned exceeded EUR 25 million in [...]. Finally, both Nimbus and T&SG did not achieve more than two-thirds of their EU turnover within one and the same member state. On the basis of the turnover figures of the parties, it can be concluded that the concentration has a Community dimension pursuant to the Article 1(3) of the Merger Regulation.

III. COMPETITIVE ASSESSMENT

9. The overlaps between Pon (including Geveke) and T&SG on the one hand and Nimbus on the other hand are limited to the sale of a variety of industrial equipment components including reciprocating pumps, industrial hydraulic equipment, pumps and filters for hydraulic equipment and temperature sensors. According to the parties, none of the overlaps lead to affected markets.

² Although the public offer was made subject to Pon being able to enter into a commitment concerning the (partial) sale of the T&SG business to a third party, the DCA considered that Pon would first acquire sole control over the whole of Geveke, including the T&SG business, and that only at a later stage the position of sole control over the T&SG business would evolve towards joint control together with Nimbus. As, in any case, the T&SG business would at least be jointly controlled by Pon, the DCA assessed any possible overlaps between Pon/Geveke and T&SG. The DCA subsequently cleared the transaction on 17/01/2003.

Relevant Product Market

10. In previous decisions, the Commission has already defined the relevant markets for the above mentioned industrial equipment. As such, the Commission has defined distinct markets for reciprocating pumps³, hydraulic components (whereby each of the components, including pumps and filters can be considered as a separate market on the basis of its functioning and application)⁴ and temperature sensors⁵.

Relevant geographic market

11. In previous decisions (as referred to above), the Commission has considered that for all above industrial equipment products the relevant geographical market is at least EEA-wide.

Competition effects

12. Nimbus is active in the above markets through the Belgian company Fluitronics. Pon and T&SG are present in these markets through respectively Motrac Hydrauliek and Geveke pompen. Fluitronics' products target specific applications and are generally not interchangeable with those of Pon. Even when the offering of the different parties would be considered as being part of the same markets, the overlaps are very small and would not lead to market shares above 10%. The combined market shares would be [0% - 10%] for reciprocating pumps (Nimbus < [0% - 5%]), below [0% - 10%] for the various hydraulic components (Nimbus < [0% - 5%]), and [0% - 10%] for temperature sensors (Nimbus [0% - 5%]). The concentration therefore does not lead to affected markets.
13. In conclusion, the operation does not raise any horizontal competitive issues or competition concerns regarding vertical issues

IV. CONCLUSION

14. In light of the above, the Commission has concluded that the proposed transaction is not likely to 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.
15. 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

Mario MONTI
Member of the Commission

³ See Case No IV/M.121 Ingersoll-Rand/Dresser, Commission Decision of 18/12/1991

⁴ See Case No IV/M.152 Volvo/Atlas, Commission Decision of 14/01/1992

⁵ See Case No IV/M.164 Mannesmann/VDO, Commission Decision of 13/12/1991