

***Case No COMP/M.6315 -  
HOCHTIEF/ GEOSEA/  
BELUGA HOCHTIEF  
OFFSHORE JV***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 30/08/2011

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EUROPEAN COMMISSION

Brussels, 30.8.2011  
C(2011) 6266 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**To the notifying parties**

Dear Sirs,

**Subject: Case No COMP/M.6315 - HOCHTIEF/ GEOSEA/ BELUGA HOCHTIEF OFFSHORE JV  
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004<sup>1</sup>**

1. On 25 July 2011, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which HOCHTIEF Solutions AG (Germany) belonging to the HOCHTIEF group ('HOCHTIEF') and GeoSea N.V. ('GeoSea', Belgium) belonging to the DEME group acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the undertaking Beluga HOCHTIEF Offshore GmbH & Co. KG ('BHO', Germany) by way of purchase of shares.<sup>2</sup> (GeoSea and HOCHTIEF are designated hereinafter as the "notifying parties" or the "parties").
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

<sup>2</sup> Publication in the Official Journal of the European Union No C 225, 30.7.2011, p. 41.

## **I. THE PARTIES**

3. HOCHTIEF is active in construction, concessions, real estate, facility and energy management.
4. GeoSea is a Belgian specialised company for offshore works, focused on drilling or hammering of large diameter piles, installation of offshore structures, and site investigations at sea. GeoSea is part of the Belgian dredging and marine infrastructure group DEME (Dredging Environmental & Marine Engineering NV) whose activities covers dredging and land reclamation, hydraulic engineering, environmental services, extraction and processing and supply of marine aggregates for the construction industry.
5. DEME, in turn, is jointly owned by Ackermans & Van Haaren ('AVH') and CFE. AVH is a Belgian holding company focused on five key sectors (i) contracting, dredging and concessions; (ii) real estate; (iii) financial services; (iv) private equity; and (v) energy and materials. CFE is a Belgian multidisciplinary group, active in Public Private Partnership (or "PPP") concessions, construction, real estate, multi-technical and marine engineering sectors. VINCI, the French concession and construction group owns 46.84% of CFE and exercises de facto control over CFE in view in particular of the widely dispersed nature of the remaining shareholders in CFE. DEME is therefore directly controlled by AVH and indirectly controlled by VINCI.
6. BHO will rent specialised vessels to the offshore industry for use in the repair, maintenance and operation of offshore facilities.

## **II. THE OPERATION AND THE CONCENTRATION**

7. BHO was created in 2009 by HOCHTIEF (then named "HOCHTIEF Construction AG", a company part of the HOCHTIEF Group) and Beluga Offshore GmbH (a company part of the Beluga Group) as a limited partnership company ("Kommanditgesellschaft"). BHO has issued two limited partnership shares. At the time of its creation, HOCHTIEF and Beluga Offshore GmbH each held one limited partnership share in BHO.
8. In March 2011, several companies belonging to the Beluga group filed for insolvency (but not Beluga Offshore GmbH, which held the limited partnership share in BHO). In this context, the management of Beluga decided to end its engagement in the offshore field and sell its limited partnership share in BHO to HOCHTIEF. HOCHTIEF acquired Beluga Offshore GmbH's limited partnership share, and hence sole control over BHO, on 26 May 2011.<sup>3</sup>
9. The notified operation arises out of a share purchase agreement of 1 June 2011 by which HOCHTIEF has sold to GeoSea the one partnership limited share in BHO previously acquired from Beluga Offshore GmbH. On the same date, the parties entered into a partnership agreement detailing the scope BHO's activities and the nature of their control over BHO.

### ***Joint Control***

10. As a result of the transaction, each parent will hold one limited partnership share in JV and an equal number of votes. All partners' resolutions at the partners' meetings will

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<sup>3</sup> The creation of the BHO in 2009, as well as the acquisition by HOCHTIEF of sole control of BHO of 26 May 2011 was not notified to the Commission as the thresholds of Article 1 of the EC Merger Regulation were not fulfilled. The second transaction (i.e. the acquisition by HOCHTIEF of sole control over BHO) was approved by the German Bundeskartellamt on 21 June 2011.

need to be adopted unanimously. Each of the limited partners appoints one managing director and each will have veto rights over decisions which are essential for the strategic behaviour of BHO.<sup>4</sup> BHO will therefore be jointly controlled by HOCHTIEF and GeoSea.

### ***Full functionality***

11. According to the parties, BHO already performs on a lasting basis all the functions of an autonomous entity and the transaction will have no impact on its full functionality.
12. Paragraph 94 of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings ("the Notice") states that "*full function character essentially means that a joint venture must operate on a market, performing the functions normally carried out by undertakings operating on the same market*".
13. The Notice further lists four factors that can be taken into account when assessing the full functionality of a JV: (i) sufficient resources to operate independently on the market; (ii) activities beyond one specific function for the parents; (iii) sale/purchase relations with the parents; (iv) operation on a lasting basis.<sup>5</sup>
14. As regards the first criterion, the parties submit that BHO already has, and will continue to have its own management dedicated to its day-to-day operations and its own staff<sup>6</sup>, as well as the necessary financial recourses to conduct its activities. Although in the current initial phase of the company's development, BHO is funded by its shareholders, as from July 2012 BHO will create its own turnover/funding by renting out its first vessel "Innovation". BHO has secured a EUR [...] to finance this vessel's construction.
15. Secondly, BHO will carry out all the commercial and operational activities linked to the renting of vessels to the offshore industry. Thirdly, the BHO will contract with third parties other than its parents.<sup>7</sup> In addition, BHO's purpose is to rent its vessels to any player of the offshore industry. Finally, BHO has been active and will continue to be active on the market for an indefinite period.

### ***Conclusion***

16. As a result of the transaction, each parent will hold one limited partnership share in BHO and will have veto rights over decisions which are essential for its strategic behaviour. BHO will therefore be jointly controlled by HOCHTIEF and GeoSea. Moreover, BHO will perform on a lasting basis all the functions of an autonomous economic entity. The proposed operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

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<sup>4</sup> These decisions include the business plan and budget, the appointment and dismissal of senior management, and transactions outside the approved budget exceeding EUR [...] (the Partnership Agreement, paragraphs 5; 7.1 and 7.2).

<sup>5</sup> OJ C 95, 16.4.2008, p. 1, recitals 94-105.

<sup>6</sup> [...].

<sup>7</sup> [...].

### III. EU DIMENSION

17. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>8</sup> (HOCHTIEF: EUR 20 160 million; GeoSea: EUR [...]; BHO EUR [...]<sup>9</sup>). Two of them have an EU-wide turnover in excess of EUR 250 million (GeoSea: EUR [...]; HOCHTIEF: EUR [...]), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

### IV. COMPETITIVE ASSESSMENT

#### 1. Market definition

18. BHO will be active on the market for the renting of vessels for the offshore industry in connection with the installation, repair, maintenance and operation of offshore facilities (wind, oil, gas, etc.)<sup>10</sup>. [...]<sup>11</sup>
19. Both HOCHTIEF and GeoSea own vessels that might be used for construction works. GeoSea only uses its vessels to carry out its own activities<sup>12</sup> whereas HOCHTIEF does occasionally rent out some of its installation vessels to third parties.<sup>13</sup>
20. The proposed transaction therefore gives rise to a horizontal overlap between BHO's future activities and HOCHTIEF's current activities for the renting of installation vessels to the offshore industry.
21. In addition, there is a potential vertical link between BHO's activities in the renting out of specialised vessels and the activities of GeoSea and HOCHTIEF on the downstream market for the Engineering, Procurement, Construction and Installation ('EPCI') of offshore facilities such as wind farms.

#### *Relevant product markets*

22. The parties submit that the relevant product market on which BHO will be active consists of the renting of specialised vessels to the offshore industry. This rental business is driven by construction firms' need to free up capital and avoid paying for expensive assets which are not used. These vessels are used in connection with the installation, repair, maintenance and operation of offshore facilities (wind, oil, gas, etc.). They are specifically designed for the transportation and lifting of heavy structures. As such, they are not substitutable with any other type of vessels.

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<sup>8</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.4.2008, p. 1).

<sup>9</sup> The turnover data for GeoSea relates to 2009 as the 2010 figures are not yet available according to the Parties. The Parties confirm that this would not affect the Commission's jurisdiction. [...].

<sup>10</sup> The BHO will also perform other activities as components of the renting of special vessels, but such activities will only be performed internally and not be offered to third parties on the market as such (e.g. special vessels let by BHO will first have to be built. In that context, BHO will act as a shipbuilding manager of its own future vessels).

<sup>11</sup> [...].

<sup>12</sup> [...].

<sup>13</sup> [...].

23. However, according to the parties, all installation vessels can be used for the purposes of transportation and heavy lifting of structures in the context of the construction, repair, maintenance and operation of any type of offshore facility (wind, oil, gas, etc.) and are thus substitutable.
24. According to the parties, the EPCI of offshore wind farms entails a number of successive stages, which broadly involve: (i) hydrographical survey and offshore soil investigation; (ii) seabed preparation (dredging, if gravity based foundations are used, and stone dumping); (iii) the laying of deep foundations; (iv) the procurement of the structure; (v) the heavy lifting, transportation and placement of the structure offshore; (vi) sub-sea cable-laying; and (vii) installation of the turbines.
25. The Commission in its practice has not so far elaborated on the market for the ECPI of wind farms.<sup>14</sup> The parties thus submit, by analogy with the market for the EPCI of gas and oil platforms,<sup>15</sup> that a separate market for the ECPI of wind farms should be distinguished. In addition, in order to reflect market reality (in particular in light of the fact that ECPI contracts are typically awarded on a turnkey basis, with one contractor responsible for the entire project), the relevant product market should be defined as comprising all activities involved in the EPCI of offshore wind farms.
26. Alternatively, the parties submit that the following hypothetical segments might be considered (reflecting the parts of the EPCI of offshore wind farms services executed separately if the EPCI is not awarded on a turnkey basis):
- *procurement and installation of the foundations*: the construction of specialist foundations encompasses a variety of subterranean construction techniques aimed at creating the necessary basis for offshore wind farms.
  - *electrical works*: connection of an offshore wind farm to the continental grid requires the installation of a subsea HT-cable and a substation.
  - *procurement of the turbines*: where an EPCI services provider is not active in the supply of wind turbines but it may be commissioned to procure wind turbines for a customer in the context of its construction of an offshore wind farm.
  - *installation of the turbines*: the installation of wind turbines requires relevant technical expertise in marine transportation and heavy lifting services.

### ***Relevant geographic markets***

27. The parties submit that the product market for the renting of vessels to the offshore industry is worldwide in scope, as (i) the customers are located across the world, and so are the infrastructures for the construction of which the installation vessels are rented; and (ii) the

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<sup>14</sup> On 6 June 2011 the Commission adopted a decision in Case No COMP/M.6155 - GEM / DEME / ELECTRAWINDS OFFSHORE / SRIWE / ZKRACHT / POWER@SEA / RENT A PORT ENERGY/ SOCOFE / JV, where some Parties were engaged in the activities in the EPCI for wind farms. The decision was adopted under the simplified procedure and thus no conclusion regarding the relevant product market was reached.

<sup>15</sup> The Commission has considered a separate product market for EPCI of gas and oil platforms in Case No COMP/M.2842-Saipem/Bouygues offshore but ultimately left the market definition open.

companies letting installation vessels offer their services on a worldwide basis, and there are no particular barriers preventing them from being active in any geographic area.<sup>16</sup>

28. The parties further submit that the market for the EPCI of offshore wind farms, however defined, is at least EEA-wide if not global in scope as contracts are awarded on the basis of worldwide tenders. The parties note that they, as well as their competitors, have in the past executed projects in number of various countries within the EEA, or even internationally.

### *Conclusion on market definitions*

29. As the proposed transaction does not raise serious doubts under any alternative definition, the precise delineation of the relevant product and geographic markets can be left open for the purposes of this decision.

## **2. Assessment**

30. The overlap between the activities of GeoSea, HOCHTIEF and BHO in relation to renting of specialised vessels for the offshore industry does not result in a combined market share of 15% or more under any potential market definition. Furthermore, GeoSea and HOCHTIEF do not have an individual or combined market share at either level of 25% or more in a potential product market which is upstream or downstream of a product market in which BHO is engaged.
31. For these reasons, the Commission concludes that the concentration will not lead to a significant impediment of competition in those markets.
32. Furthermore, spill-over effects in the meaning of Article 2(4) of the Merger Regulation as a result of the proposed transaction can be excluded.
33. As mentioned above, GeoSea is part of the Belgian dredging and marine infrastructure group DEME, which is in turn indirectly controlled by the French construction and concessions group VINCI (and directly by AVH). HOCHTIEF, the other parent of BHO, is also active in construction, concessions, and other related areas. There are thus areas where the activities of both groups, i.e. DEME/Vinci on the one side and HOCHTIEF on the other side overlap.<sup>17</sup>

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<sup>16</sup> Whilst the Parties do not rule out that certain types of activities may be excluded in certain jurisdictions (in particular, the United States), they are not aware of any specific restrictions that would prevent any company, whatever its location, from renting vessels for offshore activities within the EEA. It is therefore submitted that specialized vessels currently let under contract to offshore players on a worldwide basis could perform their activities within the EEA.

<sup>17</sup> HOCHTIEF's activities include: construction of roads, tunnels, bridges, rail lines, rail stations, airports and harbour facilities, full spectrum of services for the construction of power plants and facilities, water and sewage treatment plants, and mine operations; planning and construction of healthcare properties, as well as development and construction of nursing and senior home properties; integrated development management and operation of residential, commercial and industrial real estate; concessions of highways, roads and parking areas; planning and development of special facilities for sports, cultural, and events centres (as well as event logistics and management), shopping and hotel properties; social infrastructure (military bases, city halls, educational facilities etc).

The VINCI Group is active in: the design, development, construction and operation of airports, roads and motorways, parking facilities, bridges and tunnels, public facilities and railway infrastructures, retail and industrial facilities, public offices such as hospitals, schools and leisure facilities; design, construction and maintenance of energy networks, traffic lights and urban lighting; design, construction and maintenance of energy and telecommunications infrastructures; concessions of highways and roads, airports, parking facilities, stadiums, bridges and tunnels, and rail infrastructures.

34. According to Article 2(5) of the ECMR, for the purposes of the analysis of potential spill over effects arising out of a concentration, "*the Commission shall take into account in particular whether two or more parent companies retain, to a significant extent, activities in the same market as the joint venture or in a market which is downstream or upstream from that of the joint venture or in a neighbouring market closely related to this market*). Consequently, the parties submit that spill over effects can be ruled out if the parents are not currently active or potential competitors in any such markets.
35. In this respect, the only market in which such spill over may hypothetically occur is the market for the Engineering, Procurement, Construction and Installation (EPCI) of offshore wind farms which is vertically related to the market for the renting of special vessels to the offshore industry on which BHO will be active (this is indeed the only market in which (i) Vinci/DEME and (ii) the HOCHTIEF Group will remain active after the transaction, and which is "*in the same market as the joint venture or in a market which is upstream or downstream market from that of the joint venture or in a neighbouring market closely related to this market*").
36. The Commission has noted in previous decisions that the parent companies of a JV are unlikely to have a material incentive to coordinate if the joint venture is relatively unimportant when compared to their retained activities.<sup>18</sup> In this regard, it is to be noted that BHO's expected turnover for each of the next three years represents only a minor fraction of the 2010 turnover of its parents.<sup>19</sup> In addition, DEME's and HOCHTIEF's turnover generated through their activities on the market for the Engineering, Procurement, Construction and Installation (EPCI) of offshore wind farms also represents a minor proportion of their respective overall turnover.<sup>20</sup>
37. In light of these elements any coordination between independent undertakings that restricts competition within the meaning of Article 101(1) of the TFEU is highly unlikely.

## VI. CONCLUSION

38. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission*

*Signed*

*Joaquín ALMUNIA*

*Vice-President*

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DEME's activities are dredging and land reclamation; hydraulic engineering; environmental services; extraction, processing and supply of marine aggregates for the construction industry; and EPCI services.

<sup>18</sup> Commission decision of 15 November 2004 in Case COMP/M.3464 - *KESKO / ICA / JV*; Commission decision of 14 August 2008 in Case COMP/M.5154 - *CASC JV*.

<sup>19</sup> The 2010 EPCI turnover of HOCHTIEF ([...]) amounts to [0-5]% of its total 2010 turnover (EUR 20,160 million). The 2010 EPCI turnover of DEME ([...]) amounts to [5-10]% of its 2010 turnover ([...]).

<sup>20</sup> [...].