

***Case No COMP/M.6819 -
RATOS/ FERD/ AIBEL
GROUP***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 04/04/2013

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EUROPEAN COMMISSION

Brussels, 04/04/2013
C(2013)2026

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**Subject: Case No COMP/M.6819 – RATOS/ FERD/ AIBEL GROUP
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

1. On 25 February 2013, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Ratos AB (publ) ("Ratos", Sweden) and Ferd Aibel Holding AS ("Ferd Aibel Holding", Norway), ultimately controlled by Ferd AS ("Ferd", Norway) acquire within the meaning of Article 3(1)(b) of the Merger Regulation indirect joint control of the Aibel Group ("Aibel", [...])* by way of purchase of shares². (Ratos and Ferd are designated hereinafter as the "notifying 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.

I. THE PARTIES

3. **Ratos** is a Swedish private equity conglomerate, listed on Nasdaq OMX (Stockholm). Its business model is focused on achieving the highest possible return through active sector-neutral ownership in a number of selected portfolio companies.

¹ 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.

* Should read: Norway.

² Publication in the Official Journal of the European Union No C 064, 05.03.2013, p. 13.

4. **Ferd** is a family owned Norwegian industrial and financial group. Ferd has industrial activities in the form of active and long-term ownership of financially strong companies, with international potential and financial activities carried out through investments in a broad range of asset classes. Ferd's activities are divided into two main business areas: industrial investments (Ferd Capital) and financial investments. Under the latter, Ferd invests in a broad range of financial assets through the business areas Ferd Invest, Ferd Industrial Investments and Ferd Real Estate.
5. **The Aibel Group** is a Norwegian undertaking providing complete solutions in engineering, procurement, construction and installation to the upstream offshore and onshore oil and gas industry on the Norwegian Continental Shelf ("**NCS**") and in other locations around the world, as well as to the renewable energy sectors. The core business of the Aibel Group is based on engineering, building, maintaining and modifying of oil and gas production facilities, mainly on the NCS. The Aibel Group has four core business areas: (i) maintenance, (ii) modification, (iii) field development and (iv) offshore wind.

II. THE OPERATION

6. Although initially the Parties claimed that Aibel was not controlled by any entity, this information was updated two days after notification. According to this update (which does not alter the notified transaction nor the competitive assessment thereof), the Aibel Group is owned, before the proposed transaction, through an intermediate company, Bidco Holding AS ("**Bidco**"), by Ferd Aibel Holding (48,59%), Herkules Private Equity Fund II (26,9%) and SVP Herkules II L.P. (17.54%)³. The remaining 6.97% of the shares are held by other financial investors and management. The Aibel Group is currently jointly controlled by Herkules Private Equity Fund II and Ferd Aibel Holding AS on the basis of a Shareholders' Agreement regarding Bidco, according to which both Herkules Private Equity Fund II and Ferd Aibel Holding's approval is needed concerning the appointment of management and the decision making process of the company.
7. The proposed transaction consists in a series of transactions and agreements ultimately leading to the acquisition of joint control by Bidco (parent of Aibel), with Ferd retaining joint control over Aibel.
8. More specifically, the current shareholders of Bidco shall sell all the shares in Bidco to the company Start Up 248 AS ("**Buyco**"). All shares and votes in Buyco are held by Startup 262 AS ("**Holdco**")⁴, and all shares and votes in Holdco are in turn held by Goldcup 8333 AB ("**Goldcup**"), which is currently wholly owned by Ratos⁵. Upon the closing of the transaction, Ferd Aibel Holding will re-invest an amount equal to the amount invested in Holdco by Goldcup. Holdco (as well as its subsidiaries Buyco and Bidco, and, hence, the Aibel Group) will consequently be owned 50/50 by Ferd Aibel Holding and Goldcup.

³ SPV Herkules II L.P. ("SPV") is a financial investor in Bidco Holding AS, and does not have representation on the Board of Bidco Holding AS, veto rights or any of the other specific rights that Ferd Aibel Holding AS and Herkules Private Equity Fund II have.

⁴ Holdco's business is confined, pursuant to a shareholder's agreement, to the owning of the shares in BidCo AS.

⁵ Prior to the closing, the Sixth AP Fund ("**AP6**"), which manages part of the Swedish public pension funds, ultimately controlled by the Swedish state) shall acquire up to 36% of the shares in Goldcup by way of a share capital increase. Thus, through Goldcup, Ratos and AP6 shall own respectively 32% and 18% of Holdco. However, Ratos shall ultimately control Goldcup alone. Indeed, pursuant to a Shareholder's Agreement between Ratos and AP6, AP6 shall only have veto rights which do not go beyond those normally accorded to minority shareholders in order to protect their financial interests as investors.

9. In connection to the closing of the transaction, the management of the Aibel Group shall subscribe for a number of shares in a not yet incorporated Norwegian company ("Mgmtco"). The net proceeds received by Mgmtco will be invested in Holdco by subscription of new shares, thus diluting the ownership of Ferd and Goldcup proportionally. According to the Parties, the dilution percentage is not yet decided but will however not result in any changes in control over Holdco. However, as this can currently not be verified, the dilution of ownership over Holdco shall not be considered for the purposes of the current case.
10. Holdco will be managed by a Board of Directors, where Goldcup and Ferd will each appoint three directors (out of a total of seven), and will jointly appoint a chair who will not have a casting vote. Strategic business decisions, including the appointment of the CEO and changes to business plans or business strategy, will require approval of both Goldcup and Ferd. Therefore, Holdco as well as its subsidiaries (including Aibel) shall be jointly controlled by Ratos (through Goldcup) and Ferd.

III. CONCENTRATION

11. In light of the above, the proposed transaction thus concerns the indirect acquisition by Ratos and Ferd of joint control over the Aibel Group and constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. EU DIMENSION

12. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁶ (Ratos: EUR 2 721 million; Ferd: 1 452 million; Aibel Group: 1 101 million). Both Ratos and Ferd have an EU-wide turnover in excess of EUR 250 million (Ratos: EUR 1 926; Ferd: EUR 620 million). None of the undertakings concerned achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
13. Therefore, the notified operation has an EU dimension pursuant to article 1(2) of the Merger Regulation.

V. COMPETITIVE ASSESSMENT

1. Market definition

14. The Aibel Group is active in engineering services and solutions to the offshore and onshore oil, gas and renewable energy industry.
15. The Commission has previously considered a separate market for oil and gas offshore construction (including engineering, procurement, construction and installation ("EPCI")), based on the fact that many companies tender for contracts for both types of installations and the orders derive from the same set of customers⁷. The Commission has left open whether the geographic scope of the market is global or regional (e.g. the North Sea or the Norwegian Shelf)⁸.

⁶ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

⁷ See case COMP/M.2842 Saipem/Bouygues Offshore, §9.

⁸ Idem, §12.

16. The Commission has also previously considered a separate market for onshore construction, involving EPCI of oil and gas pipelines, terminals and pipelines. The exact product market definition was left open. The exact geographic scope of the market, while a global scope was considered, was ultimately left open⁹.
17. One of the subsidiaries of Ratos, GS-Hydro, is active in the supply of non-welded hydraulic piping solutions. In previous decisions, the Commission has left open whether, on a possible market for pipes, there would be separate markets of pipes systems according to different end applications¹⁰. Similarly, the Commission has left open whether national markets should be considered regarding the geographic scope of the markets¹¹.
18. In the absence of potential competition concerns under any alternative market definition, the exact scope of the relevant product and geographic markets can be left open for the purposes of this decision.

2. Assessment

19. The transaction does not give rise to any horizontal overlap between the Parties to the concentration.
20. As regards vertical relationships, according to the Parties, only one vertical link arises between the (upstream) non-welded hydraulic piping solutions activities where Ratos' subsidiary GS-Hydro is active, and the (downstream) EPCI for offshore and onshore activities of the Aibel Group. This vertical relationship does however not give rise to an affected market even on the narrowest possible geographic market level (Norway or the Norwegian Continental Shelf), as indicated in the table below.

Market shares in value in 2012

	Piping solutions for hydraulic applications to <u>offshore</u> construction (GS-Hydro)¹²	Piping solutions for hydraulic applications to <u>onshore</u> construction (GS-Hydro)	<u>Offshore</u> construction (Aibel)	<u>Onshore</u> construction (Aibel)
Worldwide	[0-5%]	[0-5%]	< 1%	<1%
EEA	[10-20%]	[0-5%]	<5%	<1%
NCS	[20-30%]	<i>not applicable</i>	approx. 15%	<i>not applicable</i>
Norway	<i>not applicable</i>	[10-20%]	<i>not applicable</i>	approx. 15%

21. The Parties claim that no other vertical and/or horizontal links exist between them.
22. For these reasons, the Commission concludes that the concentration will not lead to a significant impediment of competition in those markets.

Spill-over effects

23. Furthermore, spill-over effects in the meaning of Article 2(4) of the Merger Regulation as a result of the proposed transaction are unlikely.

⁹ Idem, §11 (product market definition) and §12 (geographic market definition).

¹⁰ See case COMP/M.6563 – Mexichem SIH/WAVIN, §23 et seq.

¹¹ Idem, §14.

¹² GS-Hydro's market share in the non-welded piping market segment worldwide in 2012 was approx. 20%.

24. Several vertical and horizontal links exist between activities of companies controlled by Ferd and Ratos, which are only related to the activities of the parents (i.e. unrelated to Aibel's activities).
25. Mestergruppen AS, a Norwegian company controlled by Ferd, is active in construction and the supply of building material. Among its activities, the wholesale of fireplaces and stoves in Norway might be considered as vertically (downstream) linked to the (upstream) activity of Jøtul, a manufacturer of stoves and fireplaces controlled by Ratos¹³. On a national basis (Norway), the Parties activities result in a vertical overlap (Mestergruppen AS: less than 5% in 2011; Jøtul: approx. [30-40%] in 2011)¹⁴. However, given the degree of difference among the activities of Mestergruppen and Jøtul on the one hand and the Aibel Group, on the other, any spillover effects can be excluded. The minor increment (less than 5%) also points towards the absence of vertical effects. This is also supported by the fact that the proposed transaction is a private equity investment of a purely financial character and the fact that Ferd and Ratos are separate and independent entities, whose stake in Aibel will be managed as a portfolio company stake, separately from other Ferd or Ratos holdings.
26. Hence, it is unlikely that coordination between independent undertakings that restricts competition within the meaning of Article 101(1) of the TFEU will occur.

CONCLUSION

27. 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

¹³ It should be noted that other activities in Norway of the Ferd-controlled Mestergruppen (wholesale of (i) windows – 12% market share in 2011; (ii) doors – 11% in 2011; of (iii) fireplaces/stoves – 5% in 2011 and (iv) bathrooms <1% in 2011) overlap with activities of Ratos' controlled companies (Hafa Bathroom Group, market share of 5% in 2011 in the segment of bathroom interior design; Inwido, 10% market share in 2012 in the segment of manufacturing of windows and exterior doors). None of these overlaps, however, gives rise to a horizontally or vertically affected market.

¹⁴ According to the Parties there have not been any major changes in the market shares since 2011.