

*Case No IV/M.731 -
K V A E R N E R /
TRAFALGAR*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 15/04/1996

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.04.1996

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

Subject : Case No IV/M.731 - Kværner/Trafalgar

Notification of 11.03.1996 pursuant to Article 4 of Council Regulation No 4064/89

1. On 11.03.1996, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertaking Kværner a.s. will acquire within the meaning of Article 3(1)b of the Regulation control of Trafalgar House plc by way of a public bid announced on 4.3.1996. The bid is an agreed one.

I. THE PARTIES

2. Kværner a.s. is a Norwegian company, mainly active in shipbuilding, manufacture and supply of oil and gas extraction equipment and services, wood pulp process machinery manufacturing, mechanical engineering and a small amount of shipping.
3. Trafalgar House plc is a UK based company with activities in engineering services, construction, commercial and residential property and passenger shipping.

II. CONCENTRATION

4. The operation is a public takeover bid by Kværner for Trafalgar House which was launched on 4 March 1996. The offer is for all of the shares of Trafalgar House and amounts to an acquisition of sole control by Kværner within the meaning of Article 3 of the Merger Regulation.

5. Kværner made an unsuccessful bid for AMEC plc, a UK company which also has significant interests in the oil and gas construction sector in November 1995. This case was considered under the Merger Regulation and following the failure of the bid, the notification was withdrawn.
6. Kværner now has shares representing 23.87% of the voting rights of AMEC. Kværner has no board members of AMEC and has stated in this notification that its investment in AMEC is not of strategic interest in the new situation. During its investigation, the Commission has discovered that this level of voting rights would not be sufficient for Kværner to exercise control over AMEC. In any case, even if AMEC was not to be a full competitor in the future, there remains a sufficient number of other competitors in the market so the Commission is not concerned about Kværner's stake in AMEC, for the purpose of assessing the notified transaction.

III. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate worldwide turnover in excess of 5,000 million ECU. Each party has a Community-wide turnover in excess of 250 million ECU. The parties do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The operation therefore has a Community dimension.

IV. COMPATIBILITY WITH THE COMMON MARKET

1. Oil and gas installations in the North Sea

(a) Product Market

8. In their notification, Kværner identify only one relevant product market: oil and gas off-shore installations in the North Sea. Total annual expenditure in this market is estimated at 4,600 million ECU.
9. The market for the provision of oil and gas extraction equipment and services in the North Sea, is, according to the notifying parties, further divided into the following narrower categories :

(i) Design and engineering ("greenfield" work)	800 mECU/year in North Sea
(ii) Construction/ installation (fabrication)	1,800 mECU/year "
(iii) Operational and maintenance services ("brown field work")	2,000 mECU/year

For the purposes of this decision, the precise product market definition might be left open since under either approach, the merger does not lead to the creation or reinforcement of a dominant position (see assessment below).

10. Although differing in some technical aspects, oil and gas installations are considered in the notification to belong to the same product market. This product market is considered to be unified because the same companies tender for contracts for both types of installation and orders for oil installations come from the same set of customers that require gas installations. A similar rationale applies to standing and floating installations, the choice of which depends on technical aspects such as location of field and water depth.

(b) Geographical Market

11. Kværner define two relevant geographic markets: the Norwegian sector of the North Sea and the British sector of the North Sea. Historically, contracts have had a tendency to be awarded to "home market" contractors because of practical considerations such as the proximity of yards, technical back-up and labour. According to a minority of customers, there is evidence that the UK and Norwegian sectors in the North Sea are converging into one market but that, for the present, the UK and Norwegian sectors are separate markets. For the purposes of this case, however, as the operation does not create or strengthen a dominant position in either sector or the North Sea as a whole, the precise market definition can be left open.

(c) Assessment

12. The tables at Annex A, B and C provide the market shares of the main competitors as provided in the notification.
13. The operation will create the largest competitor in provision of oil and gas extraction equipment and services in the North Sea as a whole with an overall market share in the two sectors of []⁽¹⁾. In this market, there will be three players with approximately equal market shares: Kværner/Trafalgar House ([]⁽¹⁾); AMEC ([]⁽¹⁾) and Aker ([]⁽¹⁾). The remaining competitors all have market shares of []⁽²⁾ or below.
14. If the two markets are considered separately, as seems to be the case according to the majority of respondents consulted by the Commission during its investigation, the market position of the merged company appears to be weaker in the UK and Norwegian sectors individually. In the UK sector, the merged entity would be the second largest competitor behind AMEC ([]⁽¹⁾) and before Brown and Root ([]⁽¹⁾) and alongside AOC with []⁽¹⁾. In the Norwegian sector, Kværner will maintain its []⁽¹⁾ market share as Trafalgar House is not present in that sector. It has to be noticed as well, that as Trafalgar does not have a significant presence in the Norwegian sector and Kværner's activities in the UK sector are basically limited to design and engineering, the merger does not lead to significant reinforcement of pre-existing positions.
15. Contracts in the North Sea have traditionally been awarded on a piecemeal basis, with different contractors being engaged to perform different tasks. Some customers are beginning to consider awarding contracts on a turnkey basis, where one contractor takes responsibility for the entire project, and either carries out the work itself or subcontracts as appropriate. This is not a common manner of awarding contracts at present, but some oil companies are considering awarding contracts in this manner in future, with a view to reducing the total costs of a project. There is even the possibility that contractors will retain ownership of the installation and the oil company will lease it for the duration of the project.
16. According to information collected during the Commission's investigation, the combination of Kværner and Trafalgar House will create a contractor which will be large enough to be able to bid for turnkey contracts in the future. However, both Kværner and Trafalgar had a turnkey capability before the merger. The merged entity is, however, faced with competition from a number of other contractors in this sector including

⁽¹⁾ Deleted business secrets - below 25%.

⁽²⁾ Deleted business secrets - below 10%.

AMEC, Brown and Root and McDermott for the provision of turnkey solutions. Other companies may join to tender for turnkey projects. There are a large number of other companies who are able to compete in the individual product segments identified above. In addition, the possibility of other contractors currently active in other parts of the world entering the North Sea market as well as the buying power of the large oil companies who are the customers of Kværner and Trafalgar House in these markets, are two important sources of competitive pressure on the parties.

17. Some concern was expressed about the possible effects of the merger on the suppliers of Kværner and Trafalgar House as the combined company could exercise an increased buying power on these suppliers. Given the market position of the combined company as identified above, the extent of this buying power is unlikely to be great and in any case would not be anti-competitive as such and it would have benefits for the ultimate consumer in terms of lower costs.
18. Whatever the precise market definition for oil and gas installations in the North Sea, on the basis of the market shares and the other elements described above, the operation will not create or strengthen a dominant position in this market. In addition, the vertical integration of Kværner's and Trafalgar House's activities in this sector will not create a dominant position for the merged entity in the provision of turnkey contracts for oil and gas installations.

2. Manufacture of turbines

Relevant product market

19. Both Kværner and Trafalgar House are active in the manufacture of gas turbines used for electricity and heat generation; Kværner in aeroderivative gas turbines and Trafalgar House (through its subsidiary, John Brown Engineering Ltd) in heavy duty industrial gas turbines.
 - a) Gas turbines
20. Gas turbines burn natural gas to power the turbine. Gas turbines are typically chosen where natural gas is a readily available fuel source. This segment can be further subdivided into large, heavy duty gas turbines (>10MW) and small industrial gas turbines (0-10 MW).
21. Large, heavy duty gas turbines are used chiefly for power generation by utility plants, either in simple cycle or in combined cycle with steam turbine to maximize efficiency. Customers for large heavy-duty gas turbines also include large industrial companies requiring power alone or power plus heat. This customer segment has grown as industrials have obtained contracts to sell excess generated power to nearby utilities. Kværner builds heavy-duty gas turbines under a Business Associate Agreement with the General Electric Company (GE), USA. Trafalgar House also has a Business Associate Agreement with GE. By this agreement Trafalgar House manufactures, for sale to other corporations in the gas turbine industry, components and assemblies for gas turbines. It also assembles complete gas turbine units from the components it produces, its designs and certain high value, high tech components (e.g. rotor assembly, control panel) obtained from GE or its licensee. Trafalgar House supplies gas turbine plants for power generators and mechanical processors.

b) Aero-derivative gas turbines

22. Aero-derivative gas turbines combine an industrial version of an established aircraft engine with a power turbine which converts energy in the engine exhaust into shaft power. Aero-derivative gas turbines have a wide range of capacities, up to approximately 45 MW. Furthermore, they are more fuel efficient, lighter and more compact than equivalent small industrial and heavy-duty gas turbines. The initial cost for a aero-derivative gas turbine is higher than that of other gas turbines but this is partially compensated for, during the turbine's life cycle, by the aero-derivative's higher efficiency. Kværner supplies aero-derivative turbines under an OEM agreement. Trafalgar House does not produce aero-derivative gas turbines.

c) Substitutability

23. Heavy-duty and aero-derivative gas turbines can be substituted for one another at power outputs below 60 MW. The degree of substitution depends on unit size, fuel, environmental requirements and operating conditions. Heavy-duty gas turbines are preferred because of their lower cost or if the fuel quality is poor. Aero-derivatives are preferred if high simple cycle efficiencies are required and if weight/size is important, e.g. certain types of offshore platforms.

d) Technology in the turbines sector

24. Manufacture of turbines is based on worldwide known technology, but there are few competitors in each market who possess proprietary technology. Neither Kværner nor Trafalgar House possess proprietary technology. However, both Kværner and Trafalgar House have access to proprietary technology through the GE Business Associated Manufacturers' group. Furthermore, Kværner and Trafalgar House manufacture, package and sell gas turbines designed by GE.

Assessment

25. There is an overlap on the heavy-duty gas turbines market only. Both Kværner and Trafalgar House have Business Associate Agreements with GE. It is estimated that GEC's own worldwide market share in gas turbines is approximately []⁽³⁾ and that the share of GEC technology (ie GE plus its licensees) is around []⁽³⁾.
26. Both Kværner and Trafalgar House's main competitors in the gas turbine market are ABB, Siemens, GEC and Westinghouse. Moreover, there is strong competition, purely on price, from other GEC licensees such as EGT (which has companies in France, Germany and UK), Hitachi and Thomassen.
27. In the light of the above information, the operation will not create or strengthen a dominant position in the gas turbine sector, neither for heavy duty nor for aero-derivative turbines.

⁽³⁾ Deleted business secrets.

3. Other markets

28. The operation also has effects on certain other markets. These are covered as follows.

In the hydro power turbine sector, Kværner are present as a provider of mechanical equipment which typically accounts for []⁽⁴⁾ of the project and Trafalgar House are present on the civil construction side which typically account for []⁽⁴⁾ of a project's value. In addition, a Trafalgar House company also supplies a Kværner company with water turbine units. The operation will enable the combined entity to offer joint tenders for turnkey contracts covering both the civil and mechanical equipment aspects of hydro power projects. This is the combination of complementary activities where there are many other competitors who can provide some or all of the services required in this sector.

29. Kværner provides sub-sea equipment for offshore activities to Trafalgar House as well as to other main contractors and to oil companies. There is no overlap in this market and Kværner has a number of competitors which will prevent Kværner from creating or strengthening a dominant position on any market.
30. Both Kværner and Trafalgar House are active manufacturers of processing equipment. Kværner is active on the upstream processing equipment market, whilst Trafalgar House is primarily active downstream in onshore pressure vessels.
31. Trafalgar House owns the Cunard Line which operates 8 passenger ships and provides luxury cruises worldwide. Kværner obtains 43% of its operating revenues from shipbuilding and it has approximately []⁽⁵⁾ of the worldwide cruise vessel building market. Given this position of the parties in these vertically related markets, the proposed concentration is not likely to result in any foreclosure effect.
32. In the manufacture of chemical pulp, there is a small percentage of the cost of the machinery which is accounted for by pollution control equipment. Both Kværner and Trafalgar House are active in this market primarily supplying hoses and gas tanks for the destruction of gases produced by the pulp production process. After the operation, the two companies will have a market share of []⁽⁶⁾ worldwide. However, there are powerful competitors on the market, the entry barriers to the industry are low as the technology for the products is comparatively simple and the majority of equipment is accounted for by in-house production. The free production represents a small proportion of the total amount of activity in this area.
33. In the light of the above information, the operation does not create or strengthen a dominant position on any market. Accordingly, it can be declared compatible with the common market and the functioning of the EEA agreement.

⁽⁴⁾ Deleted business secrets.

⁽⁵⁾ Deleted business secrets - less than 30%.

⁽⁶⁾ Deleted business secrets - less than 35%.

34. 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 functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission,

Market share last 3 years

Geographical Sector: UK				
	Design	Fabrication	Services	Weighted total
AMEC	[]	[]	[]	[]
Brown & Root	[]	[]	[]	[]
AOC	[]	[]	[]	[]
Trafalgar	[]	[]	[]	[]
Wood Group	[]	[]	[]	[]
SLP	[]	[]	[]	[]
Barmac	[]	[]	[]	[]
Kværner	[]	[]	[]	[]
Kværner + Trafalgar House	[]	[]	[]	[]
V a l u e (MNOK/yr)	[]	[]	[]	[]

Geographical Sector: Norway				
	Design	Fabrication	Services	Weighted total
Aker	[]	[]	[]	[]
Kværner	[]	[]	[]	[]
Haugesund	[]	[]	[]	[]
AMEC	[]	[]	[]	[]
ABB	[]	[]	[]	[]
Westamarin	[]	[]	[]	[]
Other	[]	[]	[]	[]
V a l u e (MNOK/yr)	[]	[]	[]	[]

Geographical Sector: Combined				
	Design	Fabrication	Services	Weighted total
Aker	[]	[]	[]	[]
AMEC	[]	[]	[]	[]
Kværner	[]	[]	[]	[]
Brown & Root	[]	[]	[]	[]
Haugesund	[]	[]	[]	[]
AOC	[]	[]	[]	[]
Trafalgar	[]	[]	[]	[]
Wood Group	[]	[]	[]	[]
Kværner + Trafalgar	[]	[]	[]	[]
V a l u e (MNOK/yr)	[]	[]	[]	[]