

***Case No IV/M.874 -  
AMEC / FINANCIERE  
SPIE BATIGNOLLES /  
SPIE BATIGNOLLES***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 006/02/1997

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COMMISSION OF THE EUROPEAN COMMUNITIES

PUBLIC VERSION

MERGER PROCEDURE

ARTICLE 6(1)(b) DECISION

Brussels, 05.02.1997

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To the notifying parties:

Dear Sirs,

**Subject: Case No IV/M.874 AMEC PLC/ FINANCIERE SPIE  
BATIGNOLLES SCA / SPIE BATIGNOLLES SA  
Notification of 3 January 1997 pursuant to Article 4 of Council  
Regulation No 4064/89**

1. On 3 January.1997 the Commission received a notification of a proposed concentration by which the undertakings AMEC plc (AMEC) (United Kingdom) and Financière Spie Batignolles SCA (FSB) (France) acquire joint-control of Spie Batignolles SA (SPIE) (France).
2. After examination of the notification the Commission has concluded that the notified operation falls within the scope of the application of Council Regulation No.4064/89 and does not raise serious doubts as to its compatibility with the common market andwith the functioning of the EEA agreement.

**I THE PARTIES**

3. AMEC is the parent company of the AMEC corporate group, which is established in the United Kingdom and which operates in six major business categories: (i) building

construction engineering, design and project management; (ii) civil engineering design and project management; (iii) industrial and commercial mechanical and electrical design and project management; (iv) engineering design, fabrication and project management for the offshore process and energy industries; (v) design and manufacture of specialist building products, including structural steelwork, pre-cast concrete and building services equipment; and (vi) private house building.

4. FSB is a holding company incorporated, as part of the management-led buy-out of SPIE, for the exclusive purpose of holding the interests of the SPIE employees involved.
5. SPIE, a subsidiary of SCHNEIDER SA (France), is active in four major business categories: (i) building construction engineering, design and project management; (ii) civil engineering design and project management; (iii) industrial and commercial mechanical and electrical design and project management; and (iv) pipeline engineering design and project management.

## **II CONCENTRATION**

### **Introduction**

6. AMEC and FSB will purchase the entire share capital of SPIE. AMEC will hold 40 - 48.6 per cent of the shares and FSB will hold the balance (60 - 51.4 per cent)<sup>1</sup> . As a result AMEC and SPIE will acquire indirect control of the following subsidiaries (all France) of SPIE - SPIE CITRA, SPIE CAPAG, SPIE ENERTRANS, SPIE BATIGNOLLES TP and SGTE - and also the majority interest of SPIE in SPIE TRINDEL (France)<sup>2</sup> .

### **Joint control**

7. The board of directors of SPIE will be composed initially of seven representatives of FSB and five representatives of AMEC. However, various strategic decisions of the board can be vetoed by the AMEC representatives, including: (i) the appointment and dismissal of the president of the company; (ii) the approval of the annual capital expenditure program contained in the annual business plan to the extent that it exceeds ECU [...] <sup>3</sup> (iii) any material change in the overall strategy of the SPIE group or in the nature of its core business activities; (iv) the acquisition of companies for a consideration in excess of ECU [...] <sup>3</sup> per operation. In addition AMEC will be able as a member of the tender offer committee to veto tender submissions above ECU [...] <sup>3</sup>. Thus, although AMEC will be the minority shareholder, these veto rights will confer upon it the possibility of exercising a decisive influence over the investment policy and strategic commercial decisions of SPIE.
8. SPIE will therefore be subject to joint control by AMEC and FSB.

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<sup>1</sup> The exact shareholdings depend upon the number of shares in SPIE purchased by the employees.

<sup>2</sup> The minority interest will be held by Schneider

<sup>3</sup> Deleted for publication - These are relatively low thresholds for the industry

## **Full Function**

9. SPIE will retain all its present financial resources and assets together with a significant marketing and sales force. The parties will make an aggregate capital contribution of a maximum of ECU 24 million thus ensuring the necessary resources to perform on a lasting basis all the function of an autonomous economic entity engaged in the supplying construction services. SPIE will continue to provide its customers with a broad package of construction services. Agreements made between SPIE and AMEC will be on an arm's length commercial basis.

## **Absence of coordination**

10. Since FSB is a holding company which has been incorporated for the exclusive purpose of holding the interests of the employees it has no activities which could give rise to any coordination of its competitive behaviour with that of AMEC. None of the employees involved in the buy-out carries on any economic activities which would result in him being considered an undertaking.
11. There is thus no possibility of the coordination of the competitive behaviour of any member of the AMEC corporate group and SPIE or its employees as a result of the operation.

## **Conclusion**

12. The operation accordingly constitutes a concentration within the meaning of article 3(1)(b) of the Regulation.

## **III COMMUNITY DIMENSION**

13. The combined aggregate worldwide turnover of the parties exceeds ECU 5,000 million (AMEC - ECU 2,957 million, SPIE : ECU 2,877 million) The aggregate Community-wide turnover of AMEC and of SPIE exceeds ECU 250 million (AMEC - ECU 2,413 million, SPIE - ECU 2,082 million). Each of the parties achieves more than two-thirds of its Community-wide turnover in its country of incorporation.
14. The operation therefore has a Community dimension within the meaning of article 1 of the Regulation.

## **IV COMPETITIVE ASSESSMENT**

### **Relevant product market**

15. The operation concerns the construction industry. The Commission's assessment of it will concentrate on the activities within the industry carried on by both AMEC and SPIE - building construction, civil engineering and mechanical and electrical services.
  - **Building construction:** This activity comprises all services in relation to the construction and the commercial development of office buildings, retail shops, warehouses, factories, research laboratories, property development projects, etc. Private house building (but not institutional house building) is excluded. From the demand side a distinction can be made between the construction services required by public and commercial clients on the one hand and private clients on the other

hand. Public and commercial clients generally put out contracts for tender with the aim of choosing the offer which is economically most advantageous. Private clients normally establish contact with various building construction companies requesting the submission of tenders and make a general cost/quality assessment before selecting the most advantageous proposal.

- **Civil engineering:** This activity relates to a wide range of works in relation to (i) earth works and road construction (construction and maintenance of dykes, sewerage systems, roads and highways); and (ii) water-engineering works (building and maintenance of viaducts, tunnels, embankments, etc). The main clients are public authorities whose capacity of contracting is usually subject to regulations derived from the European Union public procurement directives.
- **Mechanical and electrical services:** This activity relates to the provision of both mechanical and electrical design and management services and the provision of technical equipment for every type of industrial and commercial project, including lighting and air conditioning resources, power transmission and distribution, commercial lifts, escalators, moving walkways, etc. The supply and demand side structure is similar to that for building construction.

16. These market descriptions have been put forward by the notifying parties. On the basis of the Commission's investigation in the present case and the enquiries which it has made of competitors and clients of AMEC and SPIE the descriptions appear to be generally accepted in the industry and appropriate for the assessment.

### **Geographic reference market**

17. The provision of the services described above is by nature an on-site activity. As a result only large and complex projects allow foreign companies to compete effectively with local contractors. For example AMEC's activities are confined mainly to the United Kingdom, where it generates [...] <sup>4</sup> per cent of its the European Union turnover; similarly SPIE generates [...] <sup>4</sup> per cent of its the European Union turnover in France. Despite European Union legislation such as public procurement directives which seek to open up national markets, numerous national regulations continue to apply to construction services, such as land use and planning controls, building regulations and standards, building inspection, registration of contractors and professions, regulated fee rates and the liability and guarantees of the contractor which constrain the activity of foreign undertakings, unless perhaps they participate in a joint venture with a local partner who knows the local conditions and regulatory systems.
18. Since on the narrowest possible definitions the combined market shares of the parties are not significant the precise definitions of the geographical reference market can be left open.

### **Impact of concentration**

19. AMEC and SPIE estimate their combined share of the segment for building construction as below [...] <sup>5</sup> per cent in the European Union and in the main countries

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<sup>4</sup> Deleted for publication

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where they are active except the United Kingdom (AMEC - [...]5 per cent); for civil engineering as below [...]5 per cent in the European Union and in the main countries where they operate except the United Kingdom (AMEC - [...]5 per cent) and France (SPIE - [...]5 per cent); and for mechanical and electrical services as [...]5 per cent in the European Union and below [...]5 per cent in each member States except the United Kingdom ([...]6 per cent) and France ([...]5 per cent). AMEC and SPIE are essentially active in different member States with the exception of Germany and the United Kingdom where there are negligible overlaps in civil engineering and mechanical and electrical services respectively.

20. Consequently the operation does not create or strengthen a dominant position in the common market or the EEA territory or a substantial part of either of them.

## **V ANCILLARY RESTRAINTS**

21. The notifying parties have requested that the provision of the agreements constituting the operation whereby AMEC undertakes not to compete in France in fields in which SPIE is engaged, if it amounts to a restriction, be considered as ancillary to the concentration. This provision expresses AMEC's lasting withdrawal from the activities assigned to the joint venture. It is therefore an integral part of the concentration.<sup>7</sup>
22. AMEC and SPIE will enter into a commercial cooperation agreement [...]8 . This agreement will involve no exclusive relationships. This provision concerns future arrangements which are not directly related to the concentration and it is therefore not covered by the present decision.

## **VI CONCLUSION**

23. For the above reasons the proposed concentration does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

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,

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<sup>6</sup> Deleted for publication: 6-10

<sup>7</sup> See the Commission notice regarding restrictions ancillary to the concentration, section V

<sup>8</sup> Deleted for publication