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*Case No IV/M.121 -
INGERSOLL-RAND /
DRESSER*

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

Article 6(1)(b) NON-OPPOSITION
Date: 18.12.1991

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Brussels 18.12.1991

MERGER PROCEDURE
Article 6(1)b) Decision

VERSION FOR THE PUBLIC

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To the notifying parties

Dear Sirs,

Re : Case No. IV/M121 - Ingersoll-Rand / Dresser
Notification of 19.11.1991 pursuant to Article 4 of Council
Regulation No. 4064/89 (Merger Regulation).

1. The above joint notification concerns the proposed setting up of a joint venture ("Newco") by two United States companies, Dresser Industries Inc. ("Dresser") and Ingersoll-Rand Co. ("Ingersoll-Rand"), ("the notifying parties") to which the parties intend to transfer all of their respective worldwide industrial pump business.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No. 4064/89, and that it does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

3. Dresser is a major worldwide supplier of products and services involved in petroleum and natural gas exploration and development, energy processing and conversion, engineering services, mining, industrial pumps, and other selected industrial activities.
4. Ingersoll-Rand manufactures and sells primarily non-electrical machinery and equipment. Its principal products include machinery for mining, pulp processing, road building, construction, aircraft-support, fluid-handling, food-processing, material handling, winches, forklifts, air compressors and pneumatic valves, precision engineering products, industrial pumps, and other industrial activities.
5. Both notifying parties are primarily active in the North American market, although they have substantial interests and production facilities worldwide.

II. COMMUNITY DIMENSION

6. The combined aggregate worldwide turnover of Dresser and Ingersoll-Rand in the last financial year was 6.4 billion Ecu. Both parties meet the requirements of Article 1(2)b), each having had an aggregate community wide turnover in excess of 250 million Ecu for the last financial year, neither party achieving two-thirds of this turnover within one Member State. The proposed concentration thus has community dimension.

III. CONCENTRATION.

7. The notifying parties intend to transfer, with two limited exceptions, the whole of their competing operations in the industrial pump sector to Newco. This joint venture will perform on a lasting basis all the functions of an autonomous economic entity, and will not give rise to coordination of the competitive behaviour of the parties amongst themselves or between them and the joint venture.

Joint Control

8. The organisation of Newco is set out in two agreements between the notifying parties, the "Organization Agreement" and the "Partnership Agreement". By these, Ingersoll-Rand will own a 51% interest in the partnership, and Dresser the remaining 49%. A 5-member Management Committee will be responsible for the day-to-day management of Newco, 3 of whose members will be Ingersoll-Rand appointees, one of which will be appointed Newco's CEO and Chairman of the said Committee. Dresser appoints the remaining members of the Management Committee. A number of decisions will be taken by simple majority. Certain strategic decisions, however, will require the written agreement of both parents. Amongst these, the most significant is the approval of, and any material changes to, the long term business plan and annual business plan of the venture. The annual business plan will set forth the joint venture's yearly operational plan, whereas the long-term business

plan will set forth its "strategic plan" over a 3-5 year period, reviewed annually. Both will address such matters as [...]. This means, in practice, that Dresser's consent is required in designating the commercial activities of the venture throughout the following and subsequent years, and to make any changes thereto.

[The foregoing contractual rights] give Dresser an influence on the day-to-day management of Newco going above and beyond those normally accorded to a minority shareholder, and lead to the conclusion that this venture will be jointly controlled by the two parent companies.

Absence of Coordination

9. With two exceptions, the transfer to Newco will comprise the whole of the notifying parties' operations in the industrial pump sector. Dresser will retain through the Mono group, a non-competing cavity displacement pump production line, for niche markets. The "Mono Group pump" has a rubber cavity containing a slow-moving elliptical bar, which is entirely different from the solid metal casing used in pumps to be transferred to Newco. Thus while the latter are designed to pump "clean" liquids in large quantities at high pressures, the former are used in such applications as moving slurries in mines and in food processing. Similarly, the pumping devices that Ingersoll-Rand produces and will retain, through its hand-tool manufacturing subsidiary the Aro Corporation, are small, low-volume, low-pressure, single piston and diaphragm pumps used in compressed air technology. Both of these production lines occupy their own niche markets, and do not fit into the general category of industrial pumps. They will neither compete with the activities of Newco, nor will they compete inter se.
10. This is reinforced by the presence in the agreement of **an** ancillary restraint in the form of a non-competition clause, binding for the duration of the parties' interest in the joint venture, and for one year thereafter. The parties can thus be said to be withdrawing from the joint venture's market. There exist other joint ventures between these two parties, but they are active in unrelated markets, and do not give rise to coordination of the competitive behaviour of the parties amongst themselves, or between them and the joint venture.
11. The joint venture is thus concentrative, within the meaning of Article 3 of the Merger Regulation.

IV. COMPATIBILITY WITH THE COMMON MARKET

Affected Product Market

12. The joint venture will comprise all of the respective "industrial pump" operations of the notifying parties. (The

value of this overall market within the Community was in 1990 ± 3.900 million ECU.) This general market definition can be further classified into three main markets :

- (a) Reciprocating Pumps (value in 1990: ± 460 million ECU) based on a piston cycle, which produces a pulsating flow of liquid, at high pressure and in small quantity.
- (b) Centrifugal Pumps (value in 1990: ± 1.900 million ECU) produces a higher quantity of liquid, at lower but more constant pressure. This category can be further sub-divided into, inter alia, single-stage and multi-stage centrifugal pumps, differing in the ratio of quantity to pressure that they produce.

These two classes of pumps comprise the bulk of the parents' product lines, and consequently those of Newco. Dresser alone is engaged in the manufacture of the third category, which will also be transferred to Newco :

- (c) Rotary Pumps (value in 1990: ± 370 million ECU) - operate on a gear or screw cycle, producing certain of the flow characteristics of the other two categories.

Classification of pumps according to end-use industries is also sometimes used (e.g. water and effluent treatment, chemical industries, oil and gas production, etc.).

- 13. In this case, the precise delimitation of the relevant product markets need not be specified because the parties concerned do not achieve significant market shares, even if one considers that the more narrowly-defined product markets ie. single-stage and multi-stage centrifugal pumps, constituted separate product markets.

Geographic Reference Market

- 14. The geographic reference market is the European Community. All major manufacturers on the industrial pump market are active in all Member States. Many have production facilities within the Community, and there is considerable reciprocal penetration between individual Member States.

Competitive Assessment

- 15. The concentration of the industrial pump operations of the notifying parties into one joint venture will not create or strengthen a dominant position within the common market.
- 16. The combined market share of the two notifying parties in the Community pump industry is under [1]1. In the market for centrifugal pumps alone, the share remains under [1]1, and if further subdivided into single-stage and multi-stage centrifugal pumps, the combined market shares do not exceed 10%. In both the reciprocating and rotary pump market the figure drops to around [2]. Thus the combination of the market shares of the parties would not lead to a dominant position in any of these markets.

1) Well below 10%.
2) Well below 10%.

17. This is reinforced by other characteristics of the market:

- There are at least twelve other major pump manufacturers active on the European market, some of whom are subsidiaries of non-European companies. Examples include KSB, Goulds Pumps, Sulzer Pump Division, Scanpump, and Weir Pumps. In 1989 there were 6 competitors with a higher share of the European market than that resulting from this concentration.

- The market is competitive, not only in relation to price, but also in relation to quality and innovation. Although the basic technology has changed little in recent years, pumps for industrial application represent a considerable investment for the companies concerned, resulting in pressure on the manufacturers to produce the most efficient and cost-effective pumps on the market. Furthermore, it appears that some of the competitors also have appreciable excess capacity.

- The purchasers of these pumps are generally large industrial customers, having themselves sophisticated engineering departments, whose knowledge contributes to the buying power of the company.

V. ANCILLARY RESTRAINTS

18. The draft Organization Agreement contains a non-competition covenant by which Dresser and Ingersoll-Rand are prohibited from directly or indirectly engaging or investing in any business in competition with the business of the venture for as long as they own any interest in the venture, and for a period of one year thereafter. The Commission finds the non-competition clause to be directly related and necessary to the implementation of the transaction, and is thus covered by the present decision.

VI. FINAL ASSESSMENT

19. In view of the above findings, the Commission has come to the conclusion that the proposed transaction does not raise serious doubts as to its compatibility with the common market.

* * *

20. For the above reasons the Commission has decided not to oppose the notified concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)b) of Council Regulation No. 4064/89.

For the Commission.

Please note that third parties showing a sufficient interest can obtain a copy of this decision. You are therefore invited to inform the Commission, within 7 days following notification of this decision, whether you consider that it contains business secrets which you wish to have deleted before distribution to third parties. You should give reasons for any such request which the Commission will evaluate before distributing copies of the decision to third parties. If the Commission does not receive a reasoned request within the stipulated period, it will consider that you agree to the distribution of the full text of the decision. Your request should be sent by registered letter or telefax to

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