

***Case No IV/M.1318 -
CONSTRUCTOR /
DEXION***

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

Article 6(1)(b) NON-OPPOSITION
Date: 30/10/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.10.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Subject: Case No IV/M. 1318 – CONSTRUCTOR / DEXION

Notification of 29.9.1998 pursuant to Article 4 of Council Regulation N/ 4064/89

1. On 29.9.1998, the Commission received the notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which Aker RGI ASA (“Aker”) and Apax Partners & Co Ventures, Ltd (“Apax”) will merge their respective storage and handling businesses by setting up a joint venture, Constructor Dexion, plc (“Constructor Dexion”).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No. 4064/89 and does not raise any serious doubts as to its compatibility with the common market and the functioning of the EEA agreement.

I. THE PARTIES

3. Aker, an industrial holding company, is one of the largest industrial groups in Norway, mainly active in cement and building materials, oil and gas technology, and seafood. It is also active in storage and materials handling systems through its wholly owned subsidiary, Constructor Group, A.S. (“Constructor”), a holding company with subsidiaries in this sector in Europe, North America and the Far East.
4. Apax operates internationally in private equity and fund management. It manages five diversified funds: healthcare, biotechnology and pharmaceutical; IT/computing; speciality

retailing; telecommunications and media. Apax is active in storage and materials handling systems through Dexion Group, Ltd. (“Dexion”), in which it has a controlling interest.

II. THE OPERATION

Autonomous Joint Venture

5. Aker and Apax will transfer all of their storage and material handling businesses to the new joint venture company, Constructor Dexion. Aker will hold 50% of the shares of the joint venture, Apax 42% and the remaining 8% will be held by the management of Apax. The shareholders agreement setting up the joint venture requires that all major decisions, including the approval of the budget and business plan and the appointment of the Chief Executive Officer, have the approval of both parents. In this context, the new company will have a Shareholder Board, consisting of two members from Aker and two from Apax, which will have as its main task to consider the financial results and to supervise the strategy of Constructor Dexion.

III. COMMUNITY DIMENSION

6. The parties do not meet the thresholds set out in Article 1.2. of the Merger Regulation. However, the thresholds set out in Article 1.3. are met. Aker and Apax, have a combined aggregate world-wide turnover in excess of ECU 2 500 million (Aker ECU 3 190 million, Apax ECU 1 227 million). Aker’s Community-wide turnover is ECU 637 million and that of Apax ECU 1 039 million. The turnovers of both Aker and Apax exceed ECU 25 million in France, Germany and the United Kingdom. In these three member states the parties’ combined turnover also exceeds ECU 100 million. Aker and Apax do not each achieve more than two-thirds of its Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension. It constitutes a co-operation case under the EEA Agreement, pursuant to Article 57 of that Agreement, and thus the case is assessed by the Commission in co-operation with the EFTA Surveillance Authority, in accordance with Article 58 and Protocol 24 of the EEA Agreement.

IV. COMPATIBILITY WITH THE COMMON MARKET

A. The Relevant Product Markets

7. The activities concerned in the operation comprise broadly storage and materials handling systems which are composed of a large variety of products ranging from simple shelving and filing cabinets for use in small offices, to fully automated warehouses. The products concerned can be subdivided into two groups, i.e. commercial systems, mainly intended for the storage of documents, and industrial systems, mainly used for the storage of goods, in particular in the manufacturing, distribution and retail sectors. Commercial systems consist of filing cabinets, shelving, archiving and office interiors. Industrial systems comprise storage machines, cranes, conveyors or integrated systems which are automated, and pallet racks and shelving.

Affected Markets

8. While Constructor and Dexion are both present in commercial and industrial systems, both are not active in every product which these systems comprise, e.g. in commercial systems, Constructor is active in filing cabinets and archiving, whereas Dexion is active in shelving and office interiors, and in industrial systems Dexion is not active in cranes, while Constructor is not active in conveyor systems. Furthermore, in those products in which the parties activities do overlap, they are not always present in the same EEA countries with the particular products concerned. Thus, only pallet racks and shelving have been identified as affected markets in this case.
9. While the manufacturers and distributors are the same for both pallet racks and shelving, their end use is different, as pallet racks are used specifically for storing pallets or palletised goods, while shelving is typically used for storing smaller goods, and the Commission's market investigation has confirmed that these two products constitute separate product markets.

B. The Relevant Geographic Markets

10. The parties have contended that different geographic markets, i.e. national or EEA-wide, or even regional, could be considered for storage and materials handling systems, depending on the product group concerned and even on the size of order concerned for a particular product. In this last respect they indicated that the larger and more complex the order, the wider the geographic market, as European players compete to win these orders through bidding procedures. With regard to the scope of the geographic market for both pallet racks and industrial shelving, the Commission's market enquiry has largely confirmed this view of the parties.
11. One of the features characterising the markets for pallet racks and industrial shelving, as confirmed in the Commission's enquiry, is the need for the manufacturer to have a national presence, whether through an own commercial subsidiary or a distributor, and indeed competitors with a European dimension operate through either one or the other, or both, in the different countries in which they are present. However, both competitors and customers have confirmed the participation of the manufacturer itself in the price negotiation and supply of large contracts, often through bidding procedures (in the case of large customers and public sector customers), while distributors, acting as retailers, serve the smaller orders directly from their own stock. Furthermore, this need for a local presence at a national level does not seem to create any significant barrier to entry, as evidenced by the presence, through distributors or own subsidiaries, of many players in several countries of the EEA, whether at a regional or wider level. Moreover, the Commission's enquiry has confirmed the relatively low level of transport costs, i.e. in the region of 2 to 5% of price, for these products. This fact allows players operating from plants in Italy and Spain to supply customers as far north as Finland and Iceland, and to compete there alongside national or regional players. Furthermore, the Commission has had no evidence of any significant difference in price levels in the different EEA countries or the existence of any customer preferences or regulatory barriers.
12. Given all the above-described market conditions, the Commission considers that, despite the need for a local presence at national level, all the other elements weigh heavily in favour of considering that competition for pallet racks and shelving takes place at a wider than national level, possibly the EEA, even if some players may have national or regional strengths. However, given that the present operation does not give rise to serious concerns, whether at a national or wider geographic level, the

exact scope of the geographic market for pallet racks and industrial shelving can be left open in the present case.

V. ASSESSMENT

Market Shares

13. As has already been mentioned above under Relevant Product Markets, the parties do not always coincide with their materials handling and storage activities in the same countries of the EEA, nor do they have the same strength in those countries in which they are both present. In the case of pallet racks and shelving, Constructor is strong throughout the Nordic countries, while Dexion has a very limited presence, with the exception of Iceland. Contrarywise, Dexion's presence in Belgium and the U.K. is appreciably stronger than that of Constructor.

Pallet racks

14. With regard to the parties' market shares for pallet racks, the countries in which the parties estimate their combined market share to have been 15% or more in 1997 are: Iceland, Finland, Sweden and Norway, in all of which the parties estimate their combined share in 1997 to have been over [...]¹, except Iceland where it just surpassed [...]², and the U.K., Belgium and Denmark where their combined share is [...]³. In all countries, the increment due to the operation is small; in the case of the Nordic countries, with the exception of Iceland where Dexion has had a more important presence than in the other Nordic countries, the market share added by Dexion is [...]⁴. However, it is to be noted that the combined market share of the parties in Iceland in the two preceding years was substantially lower, in the region of [...]⁵ and that a significant increase of the type achieved in 1997 can, in a country of the reduced size of Iceland, be the result of the adjudication of large orders in a given year.
15. At the level of the Nordic countries as a whole (including Iceland), the operation leads to a combined market share in pallet racks of approximately [...]⁶, but the increment in market share is only in the region of [...]⁷, due to the very small presence of Dexion in this part of the EEA. The parties' combined market in the EEA overall falls below 15%.

Shelving

1 Business secret: between 55 and 65 %

2 Business secret: between 65 and 75 %

3 Business secret: between 25 and 45 %

4 Business secret: between 0,5 and 3 %

5 Business secret: between 40 and 50 %

6 Business secret: between 45 and 55 %

7 Business secret: between 0,5 and 2,5 %

16. In the case of industrial shelving, the parties estimate their combined 1997 market share at 15% or more in the following countries: Finland, approximately [...]⁸, Iceland, approximately [...] ⁹, Denmark and Belgium, in the region of [...] ¹⁰ each, Ireland and the U.K., in the region of [...] ¹¹ each. It is noted that in Finland the increment brought by Dexion's less than [...] ¹² share is very small. In Iceland, due to Dexion's [...] ¹³ share, the overlap with Constructor is more substantial.
17. At the level of the Nordic countries, the combined market share of the parties is in the region of [...] ¹⁴, as in pallet racks, but once again with a negligible increment due to Dexion's limited presence in the Nordic countries overall. As in the case of pallet racks, there is no affected market at EEA level.

Assessment

18. The market investigation of the Commission has confirmed, despite the high market share of the parties, potential and actual competitors act or are able to act as a counterweight. In particular, several players of regional (e.g. Constructor and Dexion) or European (e.g. Metalsistem, Italy; Mecalux, Spain; Link 51, U.K.) importance are present, whether through an own commercial subsidiary or a local distributor; such manufacturers participate in the negotiation and supply of large contracts, and there are no barriers to entry at the level of local preferences, transport costs or significant price differences.
19. Furthermore, as regards Iceland, it is to be noted that there is no local manufacturer of the products concerned in Iceland. All the foregoing elements lead the Commission to considering that, in the case of Iceland, the relevant geographic market is most probably wider than national, and possibly EEA-wide. In addition, the Commission considers that the parties' market position in 1997 has to be seen in the context of the inherent volatility of market shares in a country of the size of Iceland, demonstrated by the parties' market share evolution as well as the presence of competition from the products of several important competitors mentioned above. Indeed distributors representing the main competitors have confirmed the existence of strong competition and expressed no significant concerns with regard to the impact of the operation in Iceland.

Conclusion

20. Given all the above factors, the Commission considers that the proposed concentration does not give rise to the creation or strengthening of a dominant position as a result of

⁸ Business secret: between 65 and 75 %

⁹ Business secret: between 35 and 45 %

¹⁰ Business secret: between 20 and 30 %

¹¹ Business secret: between 15 and 25 %

¹² Business secret: between 0,5 and 2 %

¹³ Business secret: between 5 and 15 %

¹⁴ Business secret: between 45 and 55 %

which effective competition would be significantly impeded in the EEA or any substantial part of that area.

VI. CONCLUSION

21. 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 EEA Agreement. This decision is adopted in application of Council Regulation (EEC) No. 4064/89.

For the Commission,