

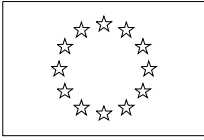
***Case No COMP/M.1674 -
MAERSK / ECT***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 27/09/1999

*Also available in the CELEX database
Document No 399M1674*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.09.1999

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M.1674 – Maersk/ECT

Notification of 26.08.1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 26 August 1999, the undertakings Maersk and ECT International B.V notified their intention to acquire joint control of an undertaking which will have as its purpose the operation of a container terminal in Port Said, Egypt.

I THE PARTIES AND THE OPERATION

2. Maersk is part of the A.P. Møller group, which has interests, amongst others, in the exploration and production of oil and gas, aviation, information technology industrial production, retailing shipping and the operation of container terminals. These last two activities are carried out through its wholly owned subsidiary Maersk.
3. ECT International is a subsidiary of Europe Combined Terminals B.V. (hereinafter jointly referred to as 'ECT'). ECT operates container terminals in the port of Rotterdam, but also has interests in other container terminal facilities such as in Trieste, Italy.
4. The concentration being notified consists of the setting up of an undertaking which has as its purpose the construction and operation of a container terminal in the port of Port Said, Egypt. The corporate structure will be as follows: a new joint venture named Egyptian International Container Terminal S.A. will be formed in which Maersk and ECT will have equal interests. This company, in turn, will have controlling interest in a newly formed Egyptian subsidiary, in which other shareholders have minority interests. (The other investors are the Suez Canal Authority, the National Bank of Egypt and certain private investors.)

II CONCENTRATION

5. The above Egyptian subsidiary does not constitute a joint venture with the other minority shareholders, because the Maersk/ECT joint venture will obtain sole control of this subsidiary. Therefore, in spite of the fact that two legal entities will be created, the operation will *de facto* lead to the setting up of a joint undertaking between Maersk and ECT and can hence be treated as a single concentration for the assessment under the Merger Regulation.

Joint Control

6. The Shareholders Agreement between Maersk and ECT provides that the joint venture shall be owned and financed on an equal basis. The board of directors shall consist of four members, two of which will be nominated by each of the parties. Neither party shall have casting vote. Therefore, the structure of the joint venture between Maersk and ECT is one of joint control. The minority shareholders in the Egyptian subsidiary will have no casting votes or veto rights. Therefore, Maersk and ECT will be able to exercise joint control over the Egyptian undertaking.

Autonomous full function entity operating on a lasting basis

7. The new undertaking will have adequate resources to carry out its business. Assets will be contributed by the parties to a total of approximately USD 36 million, of which 33 million will be injected in the Egyptian subsidiary. Together with the said subsidiary, the joint venture will have adequate staff to design, build and operate on a daily basis the container terminal involved. The joint venture agreement between Maersk and ECT stipulates a duration of thirty years, which is the term of the concession being granted by the Egyptian government. Therefore, the jointly controlled subsidiary will be able to operate on a lasting basis as a full function entity.

III COMMUNITY DIMENSION

8. The combined aggregate worldwide turnover of the undertakings concerned exceeds EUR 5 000 million (Maersk [...] million, ECT 329 million). The aggregate Community-wide turnover of each party exceeds EUR 250 million (Maersk [...] million, ECT 329 million). They do not achieve more than two-thirds of their turnover in one and the same Member State. Therefore, the concentration has Community dimension.

IV THE RELEVANT MARKETS

Definition of the services

9. According to the parties, the relevant product market is that of the provision of container terminal services, i.e. loading and unloading, storing, etc. These services may also be referred to as stevedoring services. Deep-sea container ships transport goods between continents, whereas smaller short sea vessels are generally used for transport over shorter distances (short-sea traffic) and for transshipping containers from and to deep-sea ports ('feeder' traffic). Given the different berthing and landside equipment facilities needed for deep-sea and short-sea vessels, a distinction for stevedoring services may be made according to the size of the vessels which require handling, i.e. deep-sea or short-sea vessels. Furthermore, container traffic may be related to a particular *hinterland* that is connected to the port of origin or final destination. ('hinterland traffic'), but traffic may also be brought to a port for further sea transportation to and from other ports ('transshipment traffic'). Although the ability to attract a particular kind of traffic may be relevant to determine the particular competitive strengths of a container terminal, it is considered that different markets for hinterland- and transshipment traffic of containers do not exist, given that demand and supply involves the same players and the same equipment and processes. In any event, the exact definition of the product market may be left aside because in all alternative product definitions considered, the merger will not lead to the creation or reinforcement of a dominant position. .

Geographic aspects

10. As stated, ports serve a particular hinterland or serve as hub ports for smaller transshipment ports. The geographic area that they generally serve determines the geographic scope related to their services. One can therefore determine the geographic ranges (or catchment areas) which are served from a particular group of ports. For example, all deep sea container ports in Northern Europe are considered to belong to a single geographic market, due to the routes undertaken by shipping lines (see the Commission decision in P&O/Royal Nedlloyd¹.) In that case the Commission came to the conclusion that substitution between Northern European and Mediterranean ports does not take place to any considerable degree, because of their different catchment areas.
11. In this case, the new Port Said terminal is mainly to serve Egypt for hinterland traffic and the eastern part of the Mediterranean Sea and the Black Sea area for transshipment purposes (also referred to as the 'EastMed/Black Sea range'). This is generally recognised by the industry as a separate geographic area for container terminal services.² The port range involved, according to the parties, is that of Alexandria-Port Piraeus, and therefore includes Greece. Independent sources also include ports on the East Coast of Italy in the market.³ This indicates that the market possibly extends to a larger amount of ports in the

¹ Decision of 19.12.1996 in case IV/M. 831 P&O/Nedlloyd, OJ C 110, 9.4.1997, p.7.

² See amongst others the report by Ocean Shipping Consultants '*The European Container Market – prospects to 2008*'.

³ See amongst others the report by Ocean Shipping Consultants '*The European Container Market – prospects to 2008*'

Eastern Mediterranean area. However, the question of what range constitutes the exact relevant geographic area can be left aside, because the operation will not create or strengthen a dominant position in the Community or the EEA, as demonstrated below.

V ASSESSMENT

12. In case the market to consider is the range of the eastern part of the Mediterranean Sea and the Black Sea excluding Italian ports, the merger will not lead to any addition in market shares, neither Maersk nor ECT being active in this area. In any event, the market share which the new entity may attain over the next five years on the basis of its planned capacity will not surpass some [*between 10 - 20 %*] (figures based on the overall capacity currently available in that range and an expected 1 million TEU⁴ capacity at Port Said). Much of the traffic handled at the terminal is expected to consist of transshipment traffic. In the transshipment segment in the Eastmed/Black Sea range, according to the business plan, the new entity is expected to achieve a share of transshipment of some [*between 25 - 35 %*] by the year 2005.
13. If Italian ports on the East Coast of Italy are included in the market, account should be taken of a container terminal in Trieste, in which ECT has a controlling interest. However, Maersk has no activities in this range, so also on this wider market definition there is no effect on competition relating to an overlap of activities of Maersk and ECT. In any event, if the capacity of ECT in Trieste is added to the planned capacity of the new Port Said terminal, the share of capacity attributable to ECT/Maersk is expected not attain more than [*between 15 - 25 %*] in the EastMed/Black Sea range until 2005.
14. Given the above data, the merger will not lead to the creation or strengthening of a dominant position on any of the alternative markets considered.

VI CONCLUSION

15. For the above reasons, the Commission decides 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 Article 6(1)(b) of Council Regulation (EEC) No 4064/89 and Article 57 of the EEA Agreement.

For the Commission,

⁴ Twenty Foot Equivalent Unit, a standard industry measure.