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Case No COMP/M.2023 - BRAMBLES / ERMEWA / JV

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 04/08/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, **04/08/2000**
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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Madam/Sir,

Subject: Case No COMP/M.2023 – Brambles/Ermewa/JV

Notification of 30.06.2000 pursuant to Article 4 of Council Regulation N/ 4064/89

1. On 30.06.2000 the Commission received a joint notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 ("the Merger Regulation") by which Brambles France SAS ("Brambles") and Ermewa SA ("Ermewa") of France will create within the meaning of Article 3(1)(b) of the Merger Regulation a full function joint venture performing the leasing (and the management) of their tank container fleets previously carried out by the respective subsidiaries of the above-mentioned parent companies.

I THE PARTIES

2. Brambles is an indirect wholly-owned subsidiary of Brambles Industries Limited, an Australian based company, mainly active in rental services of specialised equipment, contract-based industrial services, waste management and the specialised transport of bulk raw materials as well as dangerous goods. Within the Brambles group, Eurotainer SA, a wholly owned subsidiary of Brambles, is a French company that runs a fleet of tank containers, which will be managed by the joint venture with Ermewa.

3. Ermewa is a French subsidiary of Ermewa Genève and owns a fleet of tank containers through CCR SA, its wholly owned subsidiary. This tank container fleet

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will be managed by the joint venture. Ermewa Genève is a Swiss based company mainly active in wagon leasing, wagon and container repair, forwarding operations, maritime transport and maritime terminals. Ermewa is jointly owned by a Swiss industrialist, Mr. Bory (55%), and the SNCF Group of France (45%).

II THE OPERATION

4. Both parties own large fleets of tank containers through respective subsidiaries. The parties have agreed that the joint venture will initially operate their existing tank container fleets on the basis of a management agreement and will gradually become the owner or lessee of additional equipment. The parties will therefore not transfer full ownership of their existing tanks to the joint venture but the joint venture will have full rights to manage the containers.

5. […] [A]s a corollary to the joint venture, Brambles will acquire 50% of the total ownership of Ermewa in […] the ITT Group […]. The ITT Group is specialised in the operating of tank containers for the transport of chemicals between North and South America (especially in Mexico, Colombia, Venezuela, Argentina and Brazil) and has no activities in Europe.

6. Given the strong linkage between the main joint venture transaction in the tank container leasing market, and the nested agreement between the parties over the development of their operating activities through the ITT Group, these two operations must be regarded as one single transaction for the purpose of the present case.

III THE CONCENTRATION

7. The concentration will actually result in the creation of two full-function joint ventures : a Management Joint Venture company ("MJV") and an Investment Joint Venture company ("IJV"). The MJV will manage the leasing of the existing tank container fleet and any future equipment which may be purchased or leased by the IJV. All investments made in new equipment will be carried out through the IJV[…] […]. The interests of both joint ventures will be deemed inextricable. […]

8. The joint venture will have its own staff and resources, and will operate its fleet on a lasting basis. The joint venture will also provide services that are related to the tank business such as fleet management, general tracking as well as general maintenance and repair programmes.

9. The seats on the Board of Directors of both the IJV and the MJV will be shared equally among the parties. The joint venture will be in charge of, among other things, the approval of the 5 years and annual investment plans, the approval of budgets, the approval of the strategic and financial plans as well as the extension of the scope of the joint venture.

10. As regard the operating activities to be developed under this joint venture, Brambles and Ermewa will […] control […] the ITT Group. […]

11. For the above reasons, all parts of the joint venture will be jointly controlled. The joint venture can therefore be considered as an autonomous full function joint

venture established on a lasting basis. The operation consequently constitutes a concentration within the meaning of Article 3 (1)(b) of the Merger Regulation.

IV COMMUNITY DIMENSION

12. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[1]. Each of Brambles and Ermewa have a Community-wide turnover in excess of EUR 250 million, but both do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

V RELEVANT MARKETS

13. The concentration will provide tank containers used to transport or store bulk liquids, liquefied gases and powders on an international basis to large industrial customers (mainly chemical industries), to operators (specialised logistics and transportation organisations) and, to a lesser degree, steamship lines.

THE SOURCING POSSIBILITIES :

14. The investigation conducted by the Commission confirmed that, from a demand perspective, the customers have at least three sourcing alternatives: (i) buying their own equipment; (ii) leasing transport equipment; and (iii) contracting with operators who provide equipment and transportation services. Given the different reasons for which they are exercised, these three options could be considered as three separate relevant markets. However, because these alternatives remain, to a certain extent, always available to the customer and are easily interchangeable according to the customer's preference rather than to specific competitive constraints, these three options might be seen as forming part of one single market. In any event, it is not necessary to finally decide on this question, since the operation will not create or strengthen a dominant position on even the narrowest possible market definition.

THE CATEGORIES OF EQUIPMENT :

15. The market might have to be further sub-divided according to categories of equipment. ISO tank containers[2] form the principal area of concentration in respect of the joint venture. Numerous other transport equipment types for purposes of

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1 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

2 An ISO tank container is a pressure vessel mounted in a frame. Standard frame dimensions comply with the International Standard Organisation recommendations. Tank containers can come in varying capacities from 9,000 litres to 34,000 litres. The unit is designed and constructed in accordance with strict international codes for the world-wide transportation of liquids, powders and liquefied gases on land or at sea.

transporting liquids, powders and liquefied gases (rail tank wagons, Intermediate Bulk Containers, drums and barrels, maritime or parcel tankers, flexi-tanks, swap bodies, …) are available to customers as long as the required equipment does not become too specific.

16. The analysis conducted by the Commission shows that the substitutability of the different types of equipment used to transport liquids, powders and liquefied gases can become somewhat limited or even restricted. Depending on market conditions, product specifications and locations, regulatory, environmental and commercial considerations, it can indeed prove more desirable for customers to use one method over another.

17. As a result of the above, and for the purpose of this case, the different categories of equipment could constitute separate relevant product markets. However, it is again not necessary to finally decide on this question, since the operation will not create or strengthen a dominant position on even the narrowest possible product market definition.

GEOGRAPHIC DEFINITIONS OF THE MARKETS :

18. The Commission already considered this type of industry in a previous decision[3] and concluded that the relevant geographic market was global. The questioning of competitors and customers that was conducted for the purpose of this case clearly confirmed that the geographic market for leasing or operating equipment for liquid, gas and powder transportation is global as the equipment moves around without any barriers and leasing rates are determined on a global basis.

VI COMPETITIVE ASSESMENT

19. The tank container industry is relatively young. Brambles' tank container business was founded some 30 years as one of the first tank container leasing businesses. The tank container industry has developed as a result of both the need to transport liquids, powders and liquefied gases in bulk as well as the advantages offered by the containerisation.

20. The economic and environmental benefits of being able to handle and distribute bulk products in an ISO tank container door-to-door have improved the efficiency of existing distribution systems, and have created new markets and requirements for supply. International and domestic regulations covering the transportation of hazardous products have, to a greater extent, shaped the design, specification and usage of the tank container. Increasing harmonisation of these regulations over the past ten years has resulted in further standardisation of tank design.

21. A proven safety record and increasing environmental awareness relating to the global transportation and storage of chemicals has enhanced the demand for tank containers. The total fleet of tank containers has witnessed a growth rate of approximately 10% per year over the last decade. Although there has been a drop in the growth rate in 1998 and 1999 due to the Asian crisis and restructuring in the chemical industry, the industry is expected to significantly pick up again.

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3 See case COMP/M. 1020 GE Capital/Sea Containers, OJ 1998 C162/4.

22. Today, the total tank fleet comprises approximately 150,000 units operated world-wide and the market is still in expansion. The parties will only pool their tank container fleet which mainly includes ISO tank containers (and to a marginal extend swap bodies and US domestic tank chassis). As a result, the parties will jointly own and manage around 20,000 tanks (including liquid, gas, powder tanks and swap bodies). This represents a […] share [between 10% and 15%] of the total container sector. It can therefore be concluded that, as far as the relevant equipment market is concerned, the proposed transaction will not lead to the creation or strengthening of a dominant position.

23. However, it could seem more appropriate to assess the effects of the operation in the specific tank leasing sector since the parties will bring together their tank container leasing businesses. The current offer of tanks by tank container lessors represents approximately 51% of the total tank container fleet. The parties' estimated share of that market is […] [between 20% and 30%]. The joint venture will dispute the market leadership with Transamerica Leasing whose market share is [also] estimated [somewhere between 20% and 30%].

24. In principle a situation in which the top two players will capture around half of the market for tank container leasing may, in the absence of other sizeable competitors, raise the issue of a possible duopolistic dominant position. However, the present case does not give rise to competition concerns as this sector is characterised by extensive existing competition from smaller but numerous strong and credible potential competitors. Furthermore, tank container operators have recently become significant owners of equipment as ownership becomes more attractive due to falling equipment prices, the availability of low-cost financing and increasing standardisation of tank design and specification. As a result, the end-user segment of the industry that would have traditionally leased equipment has taken the opportunity to benefit from ownership and operators have as such become competitors to the parties rather than just customers.

25. Consequently, restricting the competitive assessment to the leasing sector alone can be artificial because ignoring the competitive pressures that exist between lessors, operators, manufacturers and other equipment providers. Relatively low entry barriers (only limited by various international and national safety compliance regulations) as well as strong buying power from customers also favour the decision that the operation will not lead to the creation or strengthening of a dominant position. The same conclusion applies to the concentration raised by the acquisition by Brambles of 50% of Ermewa's stake in the ITT Group.

VII ANCILLARY RESTRAINTS

26. The parties have agreed to a non-competition agreement as long as they retain a controlling share in the joint venture. In particular the agreement provides that Bramble and Ermewa are precluded from exercising activities that compete with those of the joint venture during its term. Moreover, the scope of the joint venture has been restricted to specifically exclude certain "niche" activities already performed by either one of the parties or any of their subsidiaries. The non-compete agreement reflects the parties' commitment to the preservation of the value of their investment in the joint venture, and is, as such, directly related and necessary to the implementation of the concentration.

VIII CONCLUSION

27. 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 (EEC) No. 4064/89.

For the Commission
(Signed)
Pedro SOLBES MIRA
(Member of the Commission)