

***Case No COMP/M.2503 -
HBG / BALLAST
NEDAM / BAGGEREN
JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 03/08/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 03/08/2001

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Madam, Dear Sir,

**Subject: Case No COMP/M.2503-HBG/Ballast Nedam/Baggeren JV
Notification of 02.07.2001 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 02 July 2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the two Dutch based companies Hollandsche Beton Groep N.V. ("HBG") and Ballast Nedam N.V. ("BN") intend to create a full-function joint venture (JV), named Ballast HAM Baggeren B.V. ("BHB"). This JV will comprise the activities of the aforementioned mother companies' dredging subsidiaries.
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 serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. HBG and BN are internationally operating construction groups whose activities encompass the entire construction process. Both HBG and BNB also carry out dredging and dredging related activities on a world wide scale. The JV will combine the parents' dredging operations presently carried out by their respective subsidiaries, Hollandsche Aanneming Maatschappij B.V. ("HAM") and Ballast Nedam Baggeren B.V. ("BNB").

II. CONCENTRATION

4. BHB as an autonomous economic entity will on a lasting basis perform all the functions of a dredging services company, with its own management and sufficient resources. It will be

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

financed on a stand-alone basis, being independent from sales to the parents. The proposed transaction is therefore a full-function joint venture constituting a concentration within the meaning of Article 3 (2).

III. JOINT CONTROL

5. The Joint Venture will be jointly controlled by HBG and BN. Even though BHB will be owned for 66 2/3% by HBG and 33 1/3% by BN, pursuant to the JV agreements both parent companies must reach agreement on major business decisions (such as *inter alia* any medium-term business plan or long-term investment plan of BHB and its subsidiaries, appointment and dismissal of the management). Both Parties therefore jointly have the possibility to exercise decisive influence over the JV.

IV. COMMUNITY DIMENSION

6. The combined aggregate world wide turnover of the undertakings concerned exceeds € 5000 million² (HBG: € 5,397 million and BN € 2,098 million in 2000). The aggregate Community-wide turnover of each party exceeds € 250 million (HBG: € [...] and BN € [...] in 2000). The Parties do not achieve more than two-thirds of their aggregate Community-wide turnover within in one and the same Member State. The notified operation, therefore, has a Community dimension according to Article 1(2) of the Merger Regulation.

V. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product markets

7. The JV's only activities are the dredging businesses of HBG and BN and the JV will function independently from the construction activities that remain with the parent companies. Construction activities are neither horizontally nor vertically directly related to dredging.

Dredging

8. Dredging is the activity whereby soil or other materials is removed from the bottom of the sea or inland waters (such as rivers, lakes or ports etc.) and transported for storage, land reclamation or other use. It comprises, among others; construction and maintenance of ports and waterways, land reclamation, trenching for marine pipelines and immersed tunnels and removal of surface layers. The main types of equipment used are: trailing suction hopper dredgers (self-loading cargo vessels, using suction pipes), cutter suction dredgers (using teeth equipped rotating cutters) for use on harder soils, and backhoes, using a bucket equipped crane and mainly used for excavation.
9. The dredging markets have already been defined in a recent merger case, which also involved HBG³, and these market definitions have been followed by the Parties.

² 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.

³ Case COMP/M.1877–BOSKALIS/HBG, decision of 04.07.2000. By this decision the merger between the two leading Dutch dredging companies was cleared. However, the merger itself was not executed because of certain issues that subsequently arose between the Parties.

Accordingly, two relevant product markets can be distinguished for dredging projects in Europe, each requiring different types of contractors and dredging equipment without supply-side substitutability. Market investigation by the Commission has confirmed that in this respect, the market conditions have not materially changed since the previous Decision.

10. As such, a distinction is made between *large international projects* and *small national projects* on the basis of the value of the projects. Although the dividing line between both markets is subject to a dynamic appreciation based on market variables, such as availability of the right equipment, distance between the project site and equipment, time between projects, "hunger for work " and the occupancy rate of the equipment, it can be determined at a project value of approximately € 5 Million.
11. In the market for small projects, it is possible to distinguish small maritime works from inland waterways dredging, since the equipment for the latter is not suitable for marine works (with respect to design criteria for dredging equipment such as sea-worthiness, longitudinal strength, wave attack, cutting force, etc.). In any event, for the present case it is not necessary to further define the relevant product market for small projects as even on the basis of the narrowest possible definition or any alternative product market definition, effective competition would not be significantly impeded in the EEA or any substantial part of it.
12. In general, dredging services are considered to be homogenous, commodity type services as the market does not consider it useful to distinguish on the basis of soil characteristics, equipment or the type of customers and operators. Also, no distinction was found between capital dredging and maintenance dredging as the competitive conditions are identical. From the demand side, it can be concluded that demand is not structural. The market is irregular and "lumpy" and procurement is organised through public tendering or bidding procedures.

Dredging related services

13. Dredging related activities consist of coastal defence, river-bank and-bed protection, dry earth moving, sand-winning and –supply, off-shore stone dumping, marine contracting, channel widening and renovation, environmental works. These market segments are complementary rather than distinct, as dredgers with over-capacity will engage in these markets through equipment modification or re-allocation of production capacity. In any event, for the present case it is not necessary to conclude on the relevant product market for dredging related services as, even on the basis of the narrowest possible or any alternative product market definition, effective competition would not be significantly impeded in the EEA or any substantial part of it.

B. Relevant geographic market

14. Regarding the relevant geographic market, in line with the Boskalis/HBG decision, the market for *small dredging projects* should be considered to be national in scope and the market for *large international dredging projects* should be considered world wide or at least EU-wide. A particularity of the world wide market is that at present only around 50% of this market is accessible to every dredging operator. Major dredging markets like the USA, Japan, China, Taiwan, India and Indonesia are only accessible for national operators.

15. For small projects, a local operational presence and local knowledge (both of the geophysical circumstances and of the local rules of procurement) combined with having small equipment and staff near the location of the work site is essential for avoiding transportation costs. Small projects are therefore referred to in the market as being served in 'home markets'. For large projects, the location of suppliers on the market is irrelevant, as it is economically feasible to transport the heavy equipment wherever services for large dredging projects are needed. Large projects are therefore also known as 'hit and run' projects.
16. Dredging related services have previously been considered by the Commission⁴ to be national in scope. For the purpose of the present notification, it can be left open whether the market could be wider than national, as even under any wider definition of the market, competition would not be significantly impeded in the EEA or any substantial part of it.

VI. ASSESSMENT

17. The Parties have identified two product markets where their activities overlap and which constitute affected markets with aggregate market shares of over 15%: the world wide market (or at least the EU -wide market) for large dredging projects and the Dutch market for small dredging projects.

The EEA market for large dredging projects

18. Benelux dredging companies are well positioned in the market for large dredging projects. On the open part of the world market, Dutch-based Boskalis is the largest dredging group in the world (20% - 30% of the market) followed by the new entity BHB (20% -- 30% aggregate share, resulting from HBG's 10% - 20% and BNB's 0% - 10%), the Belgian companies DEME (10% - 20%) and De Nul (10% - 20%) and the Dutch company Van Oord (0% - 10%). On the basis of figures submitted by the Parties for the EU (EEA figures not being available), the new entity will have a combined share of 10% - 20% (HBG 10% - 20% and BNB 0% - 10%), where Boskalis would have 20% - 20%. Other competitors are DEME with 10% - 20%, De Nul with 10% - 20%, Van Oord with 0% - 10%, Dragados 0% - 10%, Blankevoort 0% - 10%, Rohde Nielsen 0% - 10% and others 10% - 20%. (Estimates by the Parties, all based on value). Especially DEME, De Nul and De Boer have increased their market shares over the past years with significant up to date dredging capacity. In addition, suppliers originating from dredging markets that are closed to competition by foreign companies are now starting to compete on the free market.

The Dutch market for small dredging projects

19. For small projects, only the Dutch market would be affected by the transaction, where the new combination will become the market leader with 10% - 20% (HBG 10% - 20% and BNB 0% - 10%). BHB will however face strong competitors such as Boskalis (10% - 20%), DEME (0% - 10%) and Van Oord (0% - 10%). Barriers to entry or expansion in this market are limited as proven by the fact that half of the market for small Dutch dredging projects is serviced by more than 30 companies.

⁴ Footnote 2 above.

The markets for large and small dredging projects

20. For both the markets for small dredging projects and the market for large dredging projects, the competitive conditions are determined by the open tendering (mostly public procurement) nature of these markets. It can be concluded that this concentration will result in a strong dredging company that is on equal footing with its main competitors on both the national and international markets. As indicated by the Commission's market investigation, in none of these markets have competitive conditions changed substantially since the Commission's Boskalis/HBG decision.
21. Under these circumstances, it can be concluded that neither in the market for small dredging projects nor in the market for large dredging projects will the concentration create or strengthen a dominant position as a result of which competition would be significantly impeded in the EEA or in a substantial part of that area.

The possible market for dredging related services

22. Apart from the primary dredging markets, both HAM and BNB provide dredging related services. The Parties' activities only overlap in (i) coastal defence and riverbank / riverbed protection, (ii) sand winning and supply and (iii) dry-earth moving, and in none of these three (sub)-segments of dredging related activities does their aggregate market share in the Netherlands exceed 10% - 15%. For the (sub)-segments of dredging related activities where there are no overlaps, HAM or BNB has market shares in the Netherlands below 5% - 10%. Therefore, in this possibly distinct market of dredging related services, the operation will not lead to a situation where competition will be significantly impeded in the EEA or a significant part thereof.
23. As to the conglomerate aspects of this case, it is to be noted that the parent companies of BHB, like some of the dredging competitors, have related activities in construction and engineering. Each of the parents' dredging activities constitutes less than 10% - 15% of the total business turnover. Apart from the fact that there appears to be no direct relation between dredging and these activities even for "wet" projects (indeed, the most important dredging company, Boskalis, is not active in these markets), the combined market share of HBG and BN does not exceed 5% - 10% in any of the national markets (building construction, civil engineering, consultancy and engineering) where they are present. Thus, there are no vertically affected markets in the present case.
24. In view of the foregoing, it can be concluded that the proposed operation would not, in any of the markets considered, create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

VII. CONCLUSION

25. 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 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
Frits Bolkestein
Member of the Commission