

*Case No COMP/M. 2683 –  
Aker Maritime / Kvaerner  
(II)*

Only the English text is available and authentic.

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

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Article 9

Date: 23/01/2002



Brussels, 23.01.2002

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 9(3) DECISION

**Decision relating to the referral of part of the case No COMP/M. 2683 – Aker Maritime / Kvaerner (II) to the competent Norwegian Authorities, pursuant to Article 9 of Regulation 4064/89**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Protocol 24 to the EEA Agreement, and in particular article 6 thereof,

Having regard to Council Regulation (EEC) No. 4064/89 of 21 December 1989, on the control of concentrations between undertakings<sup>1</sup>, as amended by Council Regulation (EC) No 1310/97 of 30 June 1997<sup>2</sup> (together, ‘the Merger Regulation’), and in particular article 9(3) thereof,

Having regard to the notification made by Aker Maritime ASA on 14 December 2001, pursuant to article 4 of the said Regulation,

Having regard to the request of the Norwegian Royal Ministry of Labour and Governmental Administration of 13 December 2001,

Whereas:

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<sup>1</sup> OJ L 395, 30.12.1989, p.1; corrected version OJ L 257, 21.9.1990, p.13

<sup>2</sup> OJ L 180, 9.7.1997, p.1; corrigendum OJ L 40, 13.12.1998, p.17

1. On 14 December 2001 the Commission received a notification of a proposed concentration by which the undertaking Aker Maritime ASA (AMA, Norway) acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of Kvaerner (Norway) by way of purchase of shares.
2. By a letter from the Norwegian Ministry of Labour and Government Administration, received on 14 December 2001, the Norwegian Government requested a referral of the part of the transaction that concerns the parties' oil and gas activities. The referral request has been made pursuant to Article 6 of Protocol 24 of the EEA Agreement and according to Article 9 of the Merger Regulation. Article 6 of Protocol 24 allows the Commission to refer a case to an EFTA State where a concentration threatens to create or strengthen a dominant position on a market within that State.
3. The Norwegian Government considers that the planned combination of the parties' oil and gas activities will mainly raise competition issues related to the Norwegian Market, more precisely the product market for new oil and gas installations (EPC contracts) and the market for maintenance and modifications of platforms (MMO). On this basis, the Norwegian Government has requested that this part of the transaction is referred to the competent Norwegian competition authorities with a view to assessing it under Norwegian national competition law, pursuant to Article 6 of Protocol 24 of the EEA Agreement and Article 9(2)(a) of the Merger Regulation ("the request").
4. On 18 December 2001, the parties were informed by the Commission about the request on behalf of the Norwegian Competition Authority.
5. The referral request makes reference to a previous transaction involving the same companies, and which was notified to the Commission in 2000. On 12 July 2000 AMA entered into several agreements resulting in the acquisition of 26.72% of the shares in Kvaerner. The Commission's investigation showed AMA, through this amount of shares had acquired de facto control over Kvaerner. The transaction was found liable to create or strengthen a dominant position on two Norwegian markets, and on 7 December 2000 the Commission issued an Article 6(1)(c) decision in Case No. COMP/M.2117-Aker Maritime/Kvaerner (I). However, AMA withdrew the notification and as part of the withdrawal AMA undertook to sell parts of its shareholding. By May 2001 AMA had completed a sell down process and as a result retained 17.8 % of the shares in Kvaerner.

## **I THE PARTIES**

6. AMA, which is controlled by Aker RGI Holding ASA, is a provider of products and services for offshore exploration, development and production of oil and gas and is also active in shipbuilding.
7. Kvaerner is an Anglo-Norwegian engineering and construction group, with significant activities in the same areas as AMA. In addition, its activities encompass other engineering & construction activities, as well as services to the pulping industry. In these latter areas there is, however, no overlap with any activity of Aker RGI Holding ASA.

## **II THE OPERATION**

8. Kvaerner has suffered a financial crisis in the second half of 2001. Against this background the boards of AMA and Kvaerner have entered into a Rescue Agreement regarding a comprehensive industrial and financial solution for Kvaerner. As a result of the agreement, AMA will acquire sole control over Kvaerner, and subsequently merge the oil and gas businesses of the two companies.

## **III CONCENTRATION**

9. The proposed concentration is an acquisition of sole control for the purposes of article 3(1)(b) of the Merger Regulation, whereby Aker Maritime acquires sole control of Kvaerner by way of purchase of shares.

## **IV COMMUNITY DIMENSION**

10. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>3</sup>. Each of them have a Community-wide turnover in excess of EUR 250 million, but they 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. The operation constitutes a co-operation case with the EFTA Surveillance Authority under Article 57 of the EEA Agreement in conjunction with Article 2(1)(c) of Protocol 24 to that Agreement.

## **V RELEVANT MARKETS**

11. The activities of AMA and Kvaerner overlap in two main areas; 1) the ship building industry, and 2) the provision of services to the off shore oil and gas industry.

### **Product Markets**

12. The request from the Norwegian Government for a partial referral of the case to the Norwegian Competition authority relates to the parties' oil and gas activities. In particular the referral concerns the parts of the case that relates to the impact the transaction would have on the product market for 1) new oil and gas installations (EPC contracts) and 2) the market for maintenance and modifications of platforms (MMO) respectively.
13. In its previous Aker/Kvaerner (I) -6(1)(c) decision the Commission basically shared the view that these would be the relevant markets and found that the effects of the operation should be examined at the level of EPC(I) contracts and MMO services.

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<sup>3</sup> 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.

### **Geographic markets**

14. In its referral request the Norwegian Government has come to the preliminary conclusion that the markets for EPC contracts and MMO are national in scope, i.e. the Norwegian Continental Shelf.
15. In its previous Aker/Kvaerner (I) decision the Commission found that the effects of the operation with regard to the EPC(I) contracts and MMO services should be examined at the level of the Norwegian Continental Shelf. The geographic market therefore presents pursuant to Article 9(2)(a) all the characteristics of a distinct market.

### **VI COMPETITION ASSESSMENT**

16. As already mentioned above, the Norwegian Government has made the referral request only regarding the oil and gas activities within which the parties have their main overlaps and has referred to the Commission's previous decision Aker/Kvaerner (I). In its decision, the Commission concluded that the transaction could create or strengthen a dominant position in the following two markets concerning oil and gas activities: 1) engineering, construction and procurement contracts (EPC-I) and 2) maintenance, modification and operation services (MMO). For both markets, such concerns were only found on the Norwegian Continental Shelf.
17. According to the referral request made to the Commission, the Norwegian Government is not aware of any significant market developments in the past year that might suggest a different conclusion of the assessment of geographic scope of the relevant markets. This conclusion is in line with the parties' assessment in the notification made on 14 December 2001, which is also based on relevant markets not extending beyond the Norwegian continental Shelf.

## VII CONCLUSION

18. From the above it follows that the conditions to request a partial referral under article 9(2)(a) are met. The Commission also considers that, given the scope of the markets for EPC contracts and MMO services, the Norwegian national competition authorities are better placed to carry out a thorough investigation of the case, and that it is therefore appropriate for the Commission to exercise its discretion under article 9(3)(b) so as to grant the partial referral request.
19. Accordingly, the Commission has decided as follows:

### **Sole Article**

The notified concentration resulting in the acquisition of sole control by Aker Maritime of Kværner is, as far as it relates to the markets for EPC contracts and MMO services, referred to the Norwegian competition authorities, pursuant to Article 6 of Protocol 24 of the EEA Agreement and Article 9(3)(b) of Regulation 4064/89.

Done at Brussels, 23.01.2002

For the Commission

*(Signed)*

Mario MONTI  
Member of the Commission