

***Case No COMP/M.2793 -  
DMT / EPC / SAAR  
MONTAN***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 01/07/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, **01/07/2002**  
**SG(2002)D/230446**

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**Subject: Case No COMP/M.2793 – DMT/EPC/SAARMontan  
Notification of 28.05.2002 pursuant to Article 4 of Council Regulation  
No 4064/89<sup>1</sup>**

1. On 28 May 2002, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the French undertaking Société Anonyme d'Explosifs et de Produits Chimiques ("EPC") acquires, by way of purchases of shares, within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the German company SAARMontan Gesellschaft für bergbaubezogene Dienstleistungen mbH ("SAARMontan"), at present wholly owned by the German undertaking Deutsche Montan Technologie GmbH ("DMT").
2. After examination of the notification, the Commission has concluded that the proposed 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 EEA Agreement.
3. On 26 June 2002, the parties informed the Commission that EPC had formed another joint venture, with [...], on 18 June 2002. In this joint venture, which will continue [...] German business activities, EPC will hold a [...] % share. However, according to the parties, this operation has neither to be notified to the Commission nor to the

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<sup>1</sup> 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).

Bundeskartellamt. Therefore, the present decision does not extend to the joint venture of 18 June 2002.

## **I. THE PARTIES**

4. EPC is controlled by the French company E.J. Barbier. EPC's activities comprise manufacturing of explosives and chemical products, civil engineering, and mining. In the UK, EPC recently founded a production joint venture for packaged explosives with its main competitor, Orica.

DMT is controlled by RAG Aktiengesellschaft ("RAG"), a German conglomerate group, and provides engineering and other services in the automotive, energy, mining, civil engineering and industrial processing sectors.

SAARMontan has three main areas of business: services for the mining industry, surface drilling and blasting, and soil improvement/foundation works.

## **II. THE OPERATION**

5. SAARMontan is currently wholly owned by DMT. The proposed transaction consists of EPC acquiring 50 % of SAARMontan's shares.

## **III. CONCENTRATION**

6. As a result of the operation, DMT and EPC will jointly control SAARMontan. Each of them will name two members of SAARMontan's board, which takes its decisions with a simple majority and without any casting vote. Thus, both of them will have decisive influence over SAARMontan. The proposed operation therefore leads to a change of control and constitutes a concentration within the meaning of Article 3 (1) (b) of the Merger Regulation.

## **IV. COMMUNITY DIMENSION**

7. The notified concentration does not meet the thresholds laid down in Article 1(2) of Council Regulation (EC) No 4064/89, as RAG is the only undertaking concerned reaching a Community-wide turnover of more than EUR 250 million. However, the notified concentration has Community dimension pursuant to Article 1(3) of the Council Regulation. The combined aggregate world-wide turnover of the undertakings concerned is more than EUR 2,500 million (RAG EUR 14.791 billion, and EPC EUR 188.0 million). The combined aggregate turnover of the undertakings concerned exceeds EUR 100 million in at least three Member States (France, Italy and UK). Moreover, in each of these Member States the aggregate turnover of each of the undertakings concerned is more than EUR 25 million. The aggregate Community-wide turnover of each of the undertakings concerned is more than EUR 100 million (RAG EUR 11.726 billion, and EPC EUR 183.3 million) and only RAG achieves more than two-thirds of its aggregate Community-wide turnover within one and the same

Member State, namely in Germany. The notified operation therefore has a Community dimension. It does not constitute a co-operation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

## V. COMPETITIVE ASSESSMENT

### A. Relevant product markets

8. The parties submit that the relevant product markets are i) drilling and blasting at the surface, ii) specialised underground mining services, iii) subsoil improvement, and iv) high explosives.
9. **Surface drilling and blasting:** The parties consider drilling and blasting at the surface as part of one and the same market. These techniques appear to be complementary since blasting with explosives requires drilling of holes, into which the explosives can be charged. Furthermore, drilling and blasting are usually demanded and offered in combination. The parties also suggest that surface drilling and blasting is fundamentally different from underground drilling and blasting (*see infra*).
10. According to the parties, the surface drilling and blasting market comprises three different segments: (1) *General surface drilling (combined with blasting)* is mainly applied in quarries to drill (vertical) blast holes with hammer drill rigs, as opposed to large rotary drill rigs used in mines. For blasting, explosives are inserted into these drilled holes. (2) *Drilling and blasting in tunnels:* the drilling direction is mainly horizontal and particular machines and special know-how are required for the excavation of tunnels. (3) *“Directional drilling” for house connections* is a sophisticated drilling technique, which uses mini-drilling machines specially developed for trenchless laying of house connections.
11. **Underground drilling and blasting as part of the market for specialised underground mining services:** The parties submit that underground and surface drilling and blasting belong to different markets. They argue that underground work in coal mines has to be performed within a limited space, involves specific dangers such as unforeseen contact with gas and other hazards, and therefore workers need special training. Underground drilling also requires different machinery, which must be easy to disassemble for transport through narrow galleries and appropriate for drilling in horizontal direction and into the roof.
12. According to the parties, underground drilling and blasting are always performed in combination with other underground mining services, such as sinking of shafts, backfilling, driving and consolidation of galleries and channels, anchoring/bolting, and mine closure measures. Therefore they contend that underground drilling and blasting are part of the market for specialised mining services. They suggest that underground drilling and blasting for the extraction of raw material is not part of this market because these extraction activities answer different purposes and require different machines and special know-how.
13. **Subsoil improvement / foundation works:** The parties submit that subsoil improvement is part of the broad field of special civil engineering and consists of

foundation work with the aim to secure the stabilisation of the ground. It consists of drilling bore holes and injecting special suspensions (like cement-suspensions). Subsoil improvement includes underpinning buildings, site rehabilitation, and substrate sealing. Its fields of application are the construction of motorways and tunnels as well as the sealing of cavities in mining areas.

14. **High (detonating) chemical explosives:** There are two basic types of chemical explosives: low (deflagrating) and high (detonating) explosives. Only the latter are relevant for the assessment of the proposed operation. High explosives are commonly used as blasting agents for mining and excavating in quarries, mines and civil engineering. Blasting agents, or column charges, are the last element in a chain of three components required to undertake an explosive blast: the explosion of primer explosives, caused by detonators, triggers the detonation of column charge explosives, which provide the main explosive force. Examples of high explosives are nitro-glycerine-based explosives (e. g. dynamite), water gels, packaged explosives, and ANFO (ammonium nitrate and fuel oils). Water gels are mixtures of explosives that consist of gelatinizers, sometimes aluminium or other metallic fuels, and explosives. They combine the advantages of water resistance, plasticity, ease of handling and loading, and safety. ANFO is a very flexible explosive that can be air-blown into bore holes. Water gels, packaged explosives, and ANFO are all especially used in mines.
15. However, for the purpose of the present decision, the precise delimitation of the relevant product markets may be left open since on the basis of all possible market definitions the notified operation does not lead to competition concerns.

## **B. Relevant geographic markets**

16. The parties submit that all the relevant markets are national in scope. As to *surface drilling and blasting*, differences in national legislation in the area of explosives have prevented companies from expanding across borders. In each Member State, the competitors are different owing to the importance of national presence and local customer relationship. *Specialised underground mining services* require a specific authorisation in each Member State. Moreover, drilling machines are rarely removed, once they are installed underground. Concerning *explosives*, the parties submit that, despite a growing presence of major suppliers in several Member States, national safety regulations differ and require licensing at a national level, and traditional customer connections demand a local presence. Furthermore, shipping and transport of explosives are subject to strict regulations and therefore very expensive. However, the exact delimitation of the relevant geographic markets may be left open since even on the basis of the narrowest possible market definitions the notified operation does not create any competition concerns.

## **C. Compatibility with the common market**

### **Horizontal issues**

17. The proposed concentration does not lead to any horizontal overlap. DMT and its ultimate mother company RAG are only active in the relevant markets through SAARMontan. In the market of *surface drilling and blasting*, both EPC and

SAARMontan are active, but in different national markets. SAARMontan is active only in Germany and Luxembourg whereas EPC operates only in France, Belgium and the UK, and recently started activities in Italy and Portugal with *de minimis* market shares of less than [0-5] %. The parties estimate SAARMontan's market shares to be about [10-20] % in Luxembourg and well below [0-10] % in Germany. EPC's approximate market shares are less than [5-15] % in France, [5-15] % in the UK and [0-10] % in Belgium, respectively. Both SAARMontan and EPC compete with strong competitors on these national markets. On a European-wide level, the parties combined represent less than [5-10] % of all surface drilling and blasting activities. As to *tunnel drilling and blasting*, only EPC is active in this segment, with a *de minimis* market share of less than [0-5] % in France. Concerning *directional drilling*, only SAARMontan is active in this segment reaching a *de minimis* market share of well below [0-5] % in Germany.

18. In the market for *specialised underground mining services*, EPC has only minor activities in the segment of anchoring/bolting in France, Italy, and the UK with market shares of less than [0-5] % respectively. EPC is also active in underground drilling and blasting in France, with a market share below [0-5] %. SAARMontan has only minor activities in Germany, mostly within the RAG group, and a market share below [0-5] %. In France, SAARMontan realised a turnover of € [...] in France with mining services unrelated to underground drilling and blasting. Only SAARMontan is active in the market of *subsoil improvement services*, mostly within the RAG group. Its market share in Germany is well below [0-5] %.

#### **Vertical issues**

19. Under vertical aspects, the market of *high explosives*, and more particularly the segments of water gels, packaged explosives and ANFO, may be considered as upstream markets to the market of specialised underground mining services. These explosives are especially suited for use in mines because they are water resistant and meet higher safety standards in comparison to other explosives.
20. SAARMontan has no activities in the market of explosives. On a European-wide explosives market EPC has a market share of [10-20] %. On the basis of national markets, EPC's market share is [30-40] % in France, [40-50] % in the UK, [85-95] % in Ireland, [40-50] % in Italy, [20-30] % in Belgium, and [10-20] % in Portugal, respectively. However, since SAARMontan is not active in these markets, the proposed operation does not strengthen EPC's position. On an EU level, SAARMontan has a market share of much less than [0-5] % on the various downstream markets, respectively. The acquisition of joint control of SAARMontan by EPC will not therefore significantly increase EPC's tied outlets. This is also confirmed by SAARMontan's very small European-wide turnover of € [...] as compared to EPC's European-wide explosives sales of € 100 million.
21. Therefore, the Commission has no indications that the notified operation leads to the creation or strengthening of a dominant position on the relevant markets. Even in consideration of the parties' additional market power resulting from the joint venture between EPC and [...] mentioned in para 3, there do not appear any competition concerns. The business transferred by [...] to the EPC-[...] joint venture has been active only on the German market of surface drilling and blasting (general surface drilling and blasting as well as tunnelling). In contrast, it was active neither on the markets of specialised underground mining services, nor on the market of subsoil

improvement services, nor on the market of high explosives. According to the parties, [...] market share on the German surface drilling and blasting market is about [5-15] % (€ [...]). With SAARMontan's market share being well below [0-5] % on this market, the parties' combined market share would be well below [10-20] %. [...] market share on the German tunnelling market segment is below [0-5] % (€ [...]) with SAARMontan not being active in this segment. Thus, even in this scenario, there do not appear any indications for the creation or strengthening of a dominant position on any of the relevant markets.

## **VI. CONCLUSION**

22. 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 Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission