

*Case No COMP/M.2859 -
DEUTSCHE BAHN
CARGO / CONTSHIP
ITALIA / JV*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 15/07/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15/07/2002

SG (2002) D/230708-230709

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.2859 - Deutsche Bahn Cargo / Contship Italia / JV
Notification of 13/06/2002 pursuant to Article 4 of Council Regulation
No 4064/891**

1. On 13/6/02, the Commission received a notification of a proposed joint venture pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertakings DB Cargo AG (hereinafter: "DB Cargo"), belonging to Deutsche Bahn AG (hereinafter: "DB"), and Contship Italia S.p.A. (hereinafter: "CSI"), belonging to Eurokai Group, acquire within the meaning of Article 3(2) of the Council Regulation joint control of a newly created company constituting a joint venture (the "JV").

I. THE PARTIES

2. DB Cargo, being controlled by Deutsche Bahn AG ("DB"), is active in railway transport of freight and in the operation of inland container terminals in Germany. DB, the German rail incumbent, is active in railway services for passengers and goods. It owns and operates (through a subsidiary DB Netz) the German railway infrastructure.
3. CSI is a holding company, based in Italy, that is active, directly or through controlled companies, in the fields of transportation of containerised goods, in the operation of port as

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).

well as inland container terminals, maritime and inland transportation and logistic services. CSI is controlled by Eurokai KgaG which indirectly holds 100% of the shares of CSI.

II. THE OPERATION AND THE CONCENTRATION

4. The notified transaction concerns the creation of a full function joint venture, to be established and incorporated in Italy under Italian law.
5. The JV will be active as a full service provider of inter-modal transportation of maritime containers on inland routes between Italian seaports and cross-border destinations in Austria, Switzerland and Southern Germany (and vice versa). Neither of the parent companies is currently active in this type of service, nor will they become active after the creation of the proposed JV. The JV will purchase and organise transport and terminal services and will sell them as a complete package to final customers, such as shipping companies, freight forwarders and so forth.
6. The JV will initially offer these services on the following routes: La Spezia-Basel-Mannheim, Gioia Tauro-Basel-Mannheim and from 2003, Gioia Tauro-Munich and La Spezia-Munich. The JV will offer a seamless transport service consisting of the following segments of the transport chain: (i) port terminal services in Italy, (ii) rail transport from Italian port terminals to inland terminals in Italy, (iii) inland terminal services in Italy, (iv) railway transport from Italian inland terminals to inland terminals in Austria, Switzerland and Southern Germany, (v) inland terminal services in Austria, Switzerland and Southern Germany, (vi) transport to final destination.

The JV will use the port terminals operated by Contship (in Gioia Tauro and La Spezia) and buy inland terminal services from Sogemar, as subsidiary of Contship which offers intermodal transport services of maritime containers in Italy and operates several inland terminals and warehousing facilities in North Italy. The JV will also purchase from Sogemar capacity on trains acquired by Sogemar from Italian rail carriers. Rail transport in Germany will be purchased from DB Cargo. The JV will purchase all other required services from third parties. It will not operate transportation means of its own. The joint venture will be jointly controlled by its parent companies, who will each hold 50% of the share capital and the voting rights. The JV will be dotted with the sufficient financial, material and human resources to operate as an autonomous entity in the relevant markets. The notified transaction constitutes a concentration within the meaning of Article 3(2) of Council Regulation No 4064/89.

III. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregated turnover of more than 5 billion² (DB Cargo's parent company DB AG 15,722 billion €; CSI's parent company Eurokai 680 million €). Each of them have a Community-wide turn-over in excess of 250 million. DB AG achieves more than two-thirds of its turn-over in Germany, but Eurokai does not achieve more than two-thirds of its aggregated Community-turnover in any Member State. The notified operation therefore has a Community dimension.

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.

IV. THE RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

8. The parties suggest for the purposes of the assessment of the current transaction the relevant product and geographic market to be the organisation and sale of international intermodal transport services of maritime containers for the inland portions from Italian ports to destinations in Austria, Switzerland and Southern Germany (and vice versa).
9. In previous decisions the Commission found that Northern European ports are not substitutable for Mediterranean ports when it comes to the transport of containers to and from Southern Germany, Austria and Switzerland.³ However, for the purposes of the assessment of the present transaction, it is not necessary to delineate the geographic extent of the relevant market as, in any event, the proposed transaction does not raise serious doubts as to its compatibility with the common market under the narrowest possible product or geographic market definition.

V. COMPETITIVE ASSESSMENT

1. Horizontal aspects

10. The set-up of the JV will not lead to the combination of market shares as it will introduce a new service, which has not been provided by the parent companies so far.
11. The JV will become active in a market where it will face competition from existing providers of intermodal transport services, such as Hupac, a company operating a Europe-wide intermodal transport network; ECS Express Container Service, a company offering door-to-door container transport services; Intercontainer-Interfrigo, a pan-European network operator offering combined rail/truck transport services throughout Europe; and Alpe Adria. In addition, shipping companies such as Maersk Sealand or Hapag Lloyd are also active in this market through the organisation and sale of their own intermodal transportation services.
12. As a result of the preceding, the creation of the JV will not give rise to horizontal competition concerns.

2. Vertical aspects

13. The JV will be vertically integrated, as DB owns the German railway infrastructure and still holds a very significant market share of the German cargo rail transport market whereas Eurokai/Contship operates port and inland container terminals in Italy. The Commission investigated whether or not this vertical relationship might allow the JV the possibility to foreclose the market.

³ TACA and JV.55 - ECT/Hutchinson/Port of Rotterdam

a. Port terminals in Italy

14. Contship has controlling shares in Italian port terminals, namely in Gioia Tauro, La Spezia and Livorno, and will sell such terminal services to the JV. Terminals may constitute bottlenecks in the transport chain management. The Commission has explored whether competing providers of intermodal transport services have sufficient access alternatives to the terminals operated by the parent company of the JV.
15. Gioia Tauro is one of two hub terminals in South Italy, the second one being Taranto. La Spezia and Livorno are main ports in Northern Italy which alongside Genoa and Trieste constitute the preferred ports to be called by ships carrying freight destined to cross-border destinations.
16. The market investigation has shown that the controlling stake of one of the parent companies of the JV in the above mentioned three port terminals could not enable it to foreclose the market, as there exist alternative port terminals available to competing transport service providers. La Spezia and Livorno are constrained by the ports of Genoa and of Trieste. All of these ports are called at by ships carrying containers destined to Austria and Southern Germany. The capacity and capacity utilisation of these ports is outlined in the following table (figures for 2001):

Ports	Capacity (in 000 TEU⁴)	Capacity utilisation rate (in %)
Genoa	2000	[70-80]
La Spezia ⁵	1.000	[...]
Livorno	1.300	[30-40]
Trieste	480	[40-50]

Source: Mediterranean Container Ports and shipping, Drewry Shipping consultants Ltd

17. It can be shown from the above table that the alternative North Italian ports do not suffer from capacity constraints and can thus constrain any possible exclusionary behaviour of the JV in relation to the ports in which it has controlling stakes. As a result, competing service providers are not dependent on Italian port terminals controlled by the JV parents when it comes to the transport of goods from Italian ports to Germany, Switzerland and Austria.
18. Furthermore, the market investigation has shown that the port terminal of Gioia Tauro in South Italy is also constrained by alternative ports, such as in particular the port of Taranto.
19. It must be also noted that the JV will face competition from existing vertically integrated competitors such as Hupac which is already serving the connections envisaged by the JV and is holding interests in port terminals in Genoa and La Spezia.

⁴ TEU= Twenty foot equivalent unit. It is the standard way of counting of maritime containers. TEU is applied because many of them are 20 feet long (but a lot of others are 40 feet long).

⁵ La Spezia Container Terminal (LSCT) where Contship Italia has a 60% share in, has commissioned capacity extensions from 800 000 TEU to 1 500 000 TEU which will come on stream within the next two years.

20. It follows from the above, that Contship/Eurokai's vertical integration with port terminals will not allow the JV to foreclose the market to other competing providers of the same services.

b. Rail infrastructure and freight transport services in Germany

21. As part of the value chain of the transport service it will organise and sell, the JV will offer international container transport by rail. The transaction does not raise any vertical concerns as far as points of arrival or destination in Italy, Switzerland and Austria are concerned. Indeed, in order to serve these geographic areas, the JV will contract the rail services of the respective available railway companies. Such companies are unrelated to the JV or to its parents.

22. As far as points of arrival or destination in Southern Germany are concerned, however, the JV can rely on the rail services of one of the parent companies, namely DB Cargo (i.e., for the traction) and of a sister company, namely DB Netz (i.e., for the infrastructure). The Commission has thus investigated whether this vertical relationship might allow the JV the possibility to foreclose the market to competing providers of the same services, for instance through a refusal to deal or through discriminatory treatment having as a result to raise rivals' costs.

23. Existing competitors of the JV on the routes under investigation also provide the transport services from Italian ports to inland terminals (and vice versa) by rail, through the purchase of rail services from DB Cargo and/or DB Netz. However, the market investigation has confirmed that competing service providers as well as customers (e.g., shipping companies, freight forwarders and so forth) still consider road transport as constituting a viable alternative that is able to constrain rail transport when it comes to the provision of transport services from Italian ports to destinations in Southern Germany, and vice-versa.

24. Considering the preceding analysis, it can be concluded that the proposed transaction will not enable the JV to foreclose the Southern German leg of the transport chain under consideration as a result of its vertical integration into rail services.

VI. CONCLUSION

25. 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 Articles 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission