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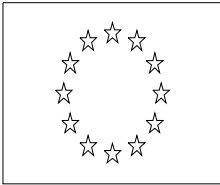
*Case No COMP/M.3141 -
CEMENTBOUW / ENCI /
JV*

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 01/08/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 01.08.2003

SG (2003) D/231149

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3141 – CEMENTBOUW / ENCI / joint venture**
Notification of 1 July 2003 pursuant to Article 4 of Council Regulation No 4064/89¹.

1. On 01/07/2003 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (Merger Regulation) by which the Dutch undertakings Cementbouw Betonmortel B.V. ("Cementbouw") and ENCI Holding N.V. ("ENCI"), acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of a newly created company constituting a joint venture by way of purchase of shares.
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 EEA Agreement.

I. THE PARTIES

3. Cementbouw and ENCI produce and trade building materials such as ready-mixed concrete, mortar, aggregates and related construction products. ENCI is ultimately controlled by the Heidelberg Cement group ("Heidelberg"), which is active in the production and sale of cement and cement related products. Cementbouw is controlled by CVC Capital Partners Group ("CVC"), an investment funds company.

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).

4. The Joint Venture to be established, will produce and sell aggregates for the concrete and asphalt industry.

II. THE OPERATION

5. The proposed transaction consists of Cementbouw acquiring from ENCI 50% of the shares in ENCI Zand en Grind B.V. The latter company will consequently be the holding company of a joint venture, to be created, which will comprise the aggregates business of ENCI.

Joint control

6. Cementbouw and ENCI will jointly control the joint venture, by means of their 50/50 shareholding in the JV's holding company, ENCI Zand en Grind BV. Pursuant to the Shareholder's Agreement, and given that each shareholder has equal voting rights and significant veto rights, the parties can be considered to have joint control over the joint venture.

Full function

7. Seen that the joint venture will consist mainly of the subsidiaries of ENCI Zand en Grind BV, an established company with its own management and sufficient resources, it can be considered as an ongoing business, performing all the functions of an autonomous economic entity on a lasting basis. It may therefore be concluded that the proposed transaction is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

Community dimension

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² in 2001 (CVC EUR 21,078 million, Heidelberg EUR 6,689 million, joint venture EUR [...]). The aggregate Community-wide turnover of the two undertakings concerned amounted to more than € 250 million in 2001 (CVC EUR [...], Heidelberg EUR [...]). The undertakings concerned did not achieve more than two-thirds of their EU turnover within one and the same member state. On the basis of the turnover figures of the parties, it can be concluded that the concentration has a Community dimension pursuant to the Article 1(2) of the Merger Regulation.

III. COMPETITIVE ASSESSMENT

9. The joint venture will act as a producer and trader of aggregates, which are sold to ready-mixed concrete companies and (road) construction companies in the Netherlands. The activities of the joint venture outside the Netherlands (in Belgium and Germany) are negligible. The transaction does not lead to significant horizontal overlaps but gives rise to a vertically affected market for ready-mixed concrete as both parents are active in this market with a combined share of more than 25%. Cementbouw and ENCI are also active on the cement and (non) constructive walls markets which are related to aggregates and ready-mixed concrete, although the joint venture itself will not be active in these markets.

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.

Relevant Markets

10. In a previous decision³, the Commission has already defined the relevant markets for aggregates and ready-mixed concrete.

A. Aggregates

11. The term aggregates refers to three primary raw materials in construction and civil engineering: gravel, crushed rock and sand. Despite the lack of substitutability between, on the one hand, gravel and crushed rock, and on the other hand, sand, the Commission has considered aggregates as a whole, rather than defining separate markets for each of gravel, crushed rock and sand. This position has been confirmed by the market investigation in the present case. In any case, the exact definition of the aggregates market(s) can be left open since the operation does not raise serious doubts as to its compatibility with the common market on the basis of alternative product markets. Separate markets can be defined for the production (extraction) of aggregates and the sale (trade) of these aggregates.
12. The Commission had previously considered the aggregates trade market as being local/regional or at most national in scope, in view of the significant transport costs. The parties consider that the aggregates trade market has a national dimension as the catchment areas of aggregates traders overlap. In the Netherlands, aggregates are directly transported from the extraction location to the customers. As such is generally (around 80%) done by ship, using trucks only where customers cannot be supplied by waterways⁴, the market investigation has considered the relevant geographical market to be the Netherlands. In any case, the exact geographical definition of the aggregates market(s) can be left open since the operation does not raise serious doubts as to its compatibility with the common market on the basis of alternative geographical markets. The market for the extraction of aggregates is at least national in scope.

B. Ready-mixed concrete

13. Ready-mixed concrete is used as a base for on-site moulded concrete constructions. In the Commission's Skanska/Scancem decision, ready-mixed concrete was considered to be a distinct market. As ready-mixed concrete is perishable, it can only be transported by mixer-trucks over short distances (covering about one hour), which makes the geographical market local/regional in scope. However, according to the parties, in the Netherlands the catchment areas of the 150 ready-mixed concrete production plants overlap to such extent that the equivalent conditions of competition throughout the Netherlands are reproduced. Such has been confirmed by the market investigation. In any case, the exact geographical definition of the Ready-mixed concrete can be left open since the operation does not raise serious doubts as to its compatibility with the common market on the basis of alternative geographical markets.

³ See Case No. IV/M.1157 – Skanska/Scancem, Commission Decision of 11 November 1998

⁴ In the Netherlands, most of the aggregates suppliers and ready-mixed concrete customers are located close to waterways.

Competition effects

A. Horizontal Effects

14. ENCI will transfer all its aggregates activities to the joint venture. For the production of aggregates, a market where Cementbouw has no presence, the joint venture will have a share of [0-5%] of the Dutch market and a lower market share if the market were to be considered wider than national. For aggregates trade, Cementbouw remains active in this market and has a [0-5%] market share in the Netherlands whilst the joint venture holds [0-5%], leading to a combined market share of [0-5%] on the Dutch market⁵. If regional markets were to be considered, the combined market share of Cementbouw and the joint venture would in any case remain below 10%. As such, the transaction does not lead to horizontally affected markets between the joint venture and its parents.

B. Vertical effects

15. Ready-mixed concrete is produced by mixing cement with aggregates and water. Aggregates account for approximately 25% of the total costs of raw materials used for ready-mixed concrete.

16. Cementbouw and ENCI have a combined share of [30-40%] (ENCI [20-30%] and Cementbouw [10-20%])⁶ on the Dutch ready-mixed concrete market. When assessed on the basis of regional markets, the joint venture's parents' combined market shares for ready mixed concrete would amount to [20-30%] in the North/East region, [40-50%] in the West region and [40-50%] in the South of the Netherlands.

17. As the combined market share of Cementbouw and the joint venture on the upstream aggregates trade market is [0-5%] on a national basis and below 10% on any other possible relevant geographical market, the parties cannot be considered to be in a position to foreclose their ready-mixed concrete competitors from access to aggregates. The market investigation has confirmed this, indicating that there are sufficient alternative aggregates suppliers and that customers, including ready-mixed concrete plants, can and do easily switch to other suppliers.

18. Also, it is unlikely that the operation would result in demand foreclosure. Currently, Cementbouw and ENCI use around [40-50%] of the joint venture's future output captively, and the parties submit that it is not to be expected that such would increase dramatically as the joint venture will operate at arms length from its parents. Aggregates trading competitors to the parties have confirmed that Cementbouw's and ENCI's aggregates needs significantly exceed the current output of the joint venture's aggregates output.

C. Co-ordination effects

19. The Commission has examined whether the operation would give rise to a risk of co-ordination between the joint venture's parents on the ready-mixed concrete market, the

⁵ With similar market shares for gravel, crushed rock and sand.

⁶ Market shares as provided by the parties and based on a participation based calculation, whereby sales of the ready-mixed concrete plants are attributed to the parties proportionally to the participation ratio, disregarding whether the companies concerned are fully, jointly or non-controlled. A control based calculation results in lower market shares.

cement markets and the (non) constructive walls markets, in accordance with Article 2 (4) of the Merger Regulation.

20. The Commission's investigation has not indicated concerns that the creation of the joint venture could lead to the co-ordination of its parent's market behaviour. Indeed, post-transaction, ENCI will no longer be active on the aggregates markets as it will transfer all its aggregates activities to the joint venture. As indicated above, the combined market share of Cementbouw and the JV on the aggregates trade market is only [0-5%].
21. [...] Cementbouw and ENCI have market shares in excess of 25% in the cement markets and markets for (non) constructive walls, which are respectively up-stream and remotely down stream of ready-mixed concrete. However, as the scope of the joint venture is limited to aggregates, it is unlikely that its creation could lead to co-ordination of competitive behaviour of undertakings that remain otherwise independent.

IV. CONCLUSION

22. In light of the above, the Commission has concluded that the proposed transaction is not likely to 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.
23. 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
Mario MONTI
Member of the Commission