

***Case No COMP/M.3311 -  
VAN OORD / BHD /  
BAGGER HOLDING JV***

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: 11/12/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11-12-2003

SG (2003) D/233383-233384-233385

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3311 – Van Oord/BHD/ Bagger Holding JV  
Notification of 10 November 2003 pursuant to Article 4 of Council  
Regulation No 4064/89<sup>1</sup>**

1. On 10 November 2003, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89, as last amended by Regulation (EC) No 1310/97, by which the Dutch undertakings Koninklijke BAM Groep N.V. ("BAM"), MerweOord B.V. and NPM Capital N.V. acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of a newly created company, Bagger Holding, constituting a joint venture. BAM will contribute Ballast HAM Dredging B.V. ("BHD") to the JV, and MerweOord and NPM will contribute the jointly-owned Van Oord Groep N.V. ("Van Oord") to the JV.
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

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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).

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. BAM is an international construction group whose activities encompass the entire construction process. Through its BHD subsidiary, BAM carries out dredging and dredging related activities on both a national and a worldwide scale. Van Oord is a dredging only company, also operating on a national and international level. Van Oord is controlled by the Dutch undertakings MerweOord B.V., a family-owned holding company holding the majority of the shares in Van Oord, [...].

#### **II. CONCENTRATION**

4. Bagger Holding (the joint venture) will, as an autonomous economic entity, perform on a lasting basis all the functions of a dredging services company, with its own management and sufficient resources. It will be financed on a stand-alone basis, not being dependent on the parents for its business. 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 MerweOord, NPM Capital and BAM. Even though Bagger Holding (“JV”) will be owned for [...] by MerweOord, with BAM and NPM accounting for respectively [...] and [...],[...]. It can therefore be considered that all three parents 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 million<sup>2</sup> (BAM: € 8,221 million, Merweoord [...] and SHV/NPM € 9,845 million in 2002). The aggregate Community-wide turnover of two of the parties exceeds € 250 million (BAM: [...], Merweoord [...] and [...] in 2002). BAM and SHV/NPM 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.

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<sup>2</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).

## V. COMPATIBILITY WITH THE COMMON MARKET

### A. Relevant product and geographical markets

7. The JV's only activities are the dredging businesses of BAM and Van Oord and the JV will function independently from BAM's construction activities (Van Oord having only minor construction activities). As concluded previously by the Commission<sup>3</sup>, 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 previous merger cases<sup>4</sup>, which both involved BHD's predecessors, and these market definitions have been followed by 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(s).
10. 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. The small dredging projects are national in scope, because they require a relatively small financial and operational size and because it is uneconomical to move the smaller scale equipment used over long distances. In addition, a local operational presence and local knowledge (both of the geophysical circumstances and of the local procurement rules) are considered essential. The large projects require large sized capital intensive equipment which is moved from project to project as necessary. Large international projects are at least EEA-wide and probably wider in scope<sup>5</sup>. Indeed, for large projects, the location of suppliers on the market is irrelevant, as it is economically feasible to

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<sup>3</sup> Case COMP/M.1877 – Boskalis/HBG of 4 July 2000

<sup>4</sup> Cases No. COMP/M.2503 – HBG/Ballast Nedam/Baggeren JV of 3 August 2001 and COMP/M.1877 – Boskalis/HBG of 4 July 2000. The latter concentration was not executed because of certain issues that arose between the Parties after the Commission had cleared the transaction.

<sup>5</sup> Only part of the world wide market is at present accessible to every dredging operator. Major dredging markets like the USA, Japan, China, Taiwan, India and Indonesia are as yet generally only accessible for national operators.

transport the heavy equipment wherever services for large dredging projects are needed. The question whether the geographic market for large dredging projects is EEA-wide or wider can be left open for the purpose of the present case, as the operation does not raise concerns on the basis of any alternative market definition.

12. 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 market definition, effective competition would not be significantly impeded in the EEA or any substantial part of it.
13. 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. 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**

14. 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 market definition, effective competition would not be significantly impeded in the EEA or any substantial part of it.
15. Dredging related services have previously been considered by the Commission<sup>6</sup> 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**

16. 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.
17. The new entity will become the largest dredging group in the world (between [25% - 30%] and [30% - 35%] of the world-wide open market in recent years), followed by Dutch-based Boskalis ([20% - 25%]), the Belgian companies DEME ([15% - 20%]) and De Nul ([15% - 20%]), the Danish company Rohde Nielsen ([< 5%]) and the Dutch company De Boer ([< 5%]). Especially DEME, De Nul and Rohde Nielsen have increased their market shares over the past years, adding significant up to date dredging

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<sup>6</sup> Footnote 2 above.

capacity. In addition, suppliers originating from dredging markets that are closed to outside competition have gradually started competing on the free market. Companies such as Great Lakes (US), Hyundai, Daewoo and Samsung (South Korea) and Penta Ocean (Japan), are increasingly successfully tendering for large projects in both Europe and the Far East. If the market were to be restricted to large projects in the EEA, the combined entity's market would be below 25% (ranging between [15% - 20%] and [20% - 25%] in recent years).

18. For small projects, only in the Netherlands the combined entity has market shares that are over time consistently<sup>7</sup> in excess of 15% . In the Dutch market, the new combination will become the market leader with historical market shares between [30% - 35%] and [35% - 40%]. It will however continue to face strong competitors such as Boskalis ([30% - 35%]), DEME ([5% - 10%]), De Boer ([5% - 10%]) and Blankevoort ([< 5%]). An additional 30 medium to small companies, including players such as V.d. Herik and VOACZ, cover the remaining 20% of the market for small Dutch dredging projects.
19. For both the small and large dredging projects, the competitive conditions are determined by the open tendering (mostly public procurement) nature of these markets. Historic market presence may therefore not be a guarantee for winning tenders in the future. Since dredging is an asset-driven market where capacity-utilisation is key to profitability, and given that the world-wide dredging markets are in decline, there is increased price competition between a growing number of operators on the market. As indicated by the Commission's market investigation, in none of these markets have competitive conditions changed substantially since the Commission's previous decisions in this market.
20. 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.
21. Apart from the primary dredging markets, both BHD and Van Oord provide dredging related services. In none of the overlapping activities of the Parties belonging to the three (sub)-segments of dredging related activities, i.e. in (i) coastal defence and riverbank / riverbed protection, (ii) sand winning and supply and (iii) dry-earth moving, does their aggregate market share in the Netherlands exceed 15%. Therefore, in these possibly distinct markets or in the combined market for 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.
22. Other than its presence in the primary dredging markets, BAM has activities in construction and engineering. Apart from the fact that there appears to be no direct relation between dredging and these activities (indeed, important dredging companies such as Boskalis and Van Oord are not active in the construction markets), BAM does not have market shares in excess of 25% in any of the related construction markets where they are present.

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<sup>7</sup> On the basis of 2001 turnover figures, the Spanish market would be affected ([45% - 50%]) as well as the UK market ([15% - 20%]). The market investigation has indicated that these high market shares are linked to isolated one-off projects. In addition, only for the year 2001 overlaps occur.

23. 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**

24. 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

*Signed,*  
Mario MONTI  
Member of the Commission