

***Case No COMP/M.3379 -
P&O / ROYAL
NEDLLOYD / P&O
NEDLLOYD***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 29/03/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29/03/2004

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the Notifying Parties

Dear Sir/Madam,

**Subject: Case No COMP/M.3379 - P&O/Royal Nedlloyd/P&O Nedlloyd
Notification of 26.02.2004 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 26.02.2004, the Commission has received a notification of a proposed concentration, by which the undertaking Royal Nedlloyd N.V. ("Royal Nedlloyd") will acquire sole control over the company P&O Nedlloyd Container Line Ltd ("PONL").

I. THE PARTIES

2. Royal Nedlloyd is a publicly listed holding company incorporated under Dutch law. Royal Nedlloyd, through its 50% interest in PONL, is active in containerised liner shipping services world-wide. Royal Nedlloyd also holds a 50% interest in Martinair, a joint venture with the Dutch airline KLM, providing passenger and freight air transport services.
3. PONL, is a 50/50 joint venture, created in 1996 by Royal Nedlloyd and The Peninsular and Oriental Steam Navigation Company ("P&O"), bringing together the world-wide activities and assets of Royal Nedlloyd and P&O in containerised liner

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), hereafter referred to as "the Merger Regulation".

shipping services. That operation was approved by the Commission on 19 December 1996².

II. THE OPERATION

4. Through the proposed transaction, Royal Nedlloyd will acquire P&O's 50% share in PONL, thus holding 100% in PONL, and P&O will get as consideration cash and a 25% interest in Royal Nedlloyd. As a result, Royal Nedlloyd will consolidate PONL as a 100% subsidiary, and will subsequently change its name into "Royal P&O Nedlloyd".

III. THE CONCENTRATION

5. On the basis of the information available to the Commission at the time of the decision and considering the specific circumstances and contractual arrangements in the present case, there are not sufficient elements to establish that the acquisition of 25% by P&O in Royal Nedlloyd will give rise to a concentration under the Merger Regulation.
6. The acquisition of a 50% interest in PONL will allow Royal Nedlloyd to acquire sole control over PONL, which was previously jointly controlled by Royal Nedlloyd and P&O. The notified operation thus constitutes a concentration within the meaning of Article 3(1) b of the Merger Regulation.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion³. Each of Royal Nedlloyd and PONL has 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.

V. COMPATIBILITY WITH THE COMMON MARKET

Relevant product and geographic market

8. PONL and Royal Nedlloyd are both active in liner shipping services. Royal Nedlloyd operates in this market only through PONL, a JV created with P&O in 1996, to which both the parent companies transferred all their respective activities in containerised liner shipping services. Royal Nedlloyd does not offer any containerised liner shipping services outside the joint venture.

² See case Comp/M. 831-P&O/Royal Nedlloyd

³ 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.

9. PONL operates ocean liner shipping services for the transportation of containerised cargo on various ocean trades between Europe and other parts of the world.⁴ In its decision in case Comp/M.831-P&O/Royal Nedlloyd the Commission came to the conclusion that the relevant market is the provision of scheduled liner shipping services for the transportation of containerised cargo.
10. In the present case, the majority of market participants in the market test have confirmed this approach. Two competitors also mentioned that, on certain trades containerised liner shipping services are also competing with conventional reefer vessels service for the carriage of refrigerated cargo. However, for the purposes of the present decision, it is not necessary to ultimately define the relevant market given that even with a narrower market definition competition concerns will not arise as a result of the proposed transaction.

Limited impact of the proposed transaction resulting in a change from joint to sole control

11. The proposed operation will have only a minor impact on the competitive situation in liner shipping services because it will only result in a change from joint to sole control by Royal Nedlloyd over PONL and will therefore not significantly alter the competitive situation as it is today. Royal Nedlloyd already controls PONL since 1996 when it transferred all of its respective containerised liner shipping activities to the joint venture and does not have any containerised liner shipping activities outside its respective 50% stake in PONL.
12. In 1996 the Commission found that no dominant position would be created as a result of the acquisition of joint control over PONL by Royal Nedlloyd and P&O. Since the creation of the joint venture, Royal Nedlloyd has not re-started any activities in containerised liner shipping, and therefore no horizontal overlap will arise from the proposed transaction.

VI. CONCLUSION

13. 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

(Signed)

Neil KINNOCK

Member of the Commission

⁴ According to the information at the disposal of the Commission, PONL also carries a very small quantity of uncontainerised cargo and passengers on its containerised services to South Africa. However, Royal Nedlloyd has not any such activities.