

***Case No COMP/M.4596 -
WÄRTSILÄ
TECHNOLOGY /
HYUNDAI HEAVY
INDUSTRIES / JV***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 13/06/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.VI.2007

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party

Dear Sir/Madam,

**Subject: Case No COMP/M.4596 – Wärtsilä Technology / Hyundai Heavy Industries / JV
Notification of 03/05/2007 pursuant to Article 4 of Council Regulation No 139/2004¹**

1. On 03 May 2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004² (the "Merger Regulation") by which the undertakings Wärtsilä Technology Oy ("Wärtsilä", Finland) and Hyundai Heavy Industries Co ("HHI", Korea) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the newly created full function joint venture, Wärtsilä Hyundai Engine Company Ltd ("the JV", US), by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the operation falls within the scope of the Merger Regulation but does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

¹ OJ L 24, 29.1.2004 p. 1.

I. THE PARTIES

3. **WÄRTSILÄ** is a Finnish company active in the production and sale of a variety of ship propulsion and power plant solutions. Also active in engine services, the company's products fall in the market segments of seaborne transportation, offshore oil exploration and support to cruise, ferry naval, governmental and special vessels with customers comprised of shipyards and ship owners.
4. **HHI** is a Korean shipyard. It is one of the worlds' largest shipbuilders and active in several other heavy industry products, including engines.

II. THE OPERATION

5. The operation consists of the acquisition of joint control by Wärtsilä and HHI over a newly created joint venture. Such joint venture will have sufficient resources at its disposal and will operate fully and independently on a long-lasting basis. Thus, it is considered to be a full function joint venture within the meaning of Article 3(4) of the Merger Regulation.

III. CONCENTRATION

6. In light of the above the operation constitutes a concentration under the terms of the Merger Regulation.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (Wärtsilä €3,190 million; HHI €10,370 million)³. Each of them has a Community-wide turnover in excess of EUR 250 million (Wärtsilä € [...] million; HHI [€...] 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. COMPETITIVE ASSESSMENT

A. Relevant product markets

i) The Joint Venture – Ship Propulsion Main Engines

8. The joint venture will be solely active in the production of Wärtsilä 50DF dual fuel engines for the Korean, Japanese, Chinese and Taiwanese shipbuilding markets. Wärtsilä's Trieste factory in Italy will continue to manufacture Wärtsilä 50DF dual fuel engines for the marine markets outside East Asia and the growing power-plant market.
9. Dual fuel engines are a relatively new technology introduced by Wärtsilä.⁴ These engines, used for both ship propulsion and power generation, can burn three fuels;

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).

⁴ The Wärtsilä 50DF is a lean-burn dual-fuel engine with a high power concentration of 950 kW/cylinder at synchronous speeds of 500 or 514 rpm. When running on natural gas, the engine operates in a lean-burn Otto cycle. In the diesel mode, the engines run on liquid fuel oil such as heavy fuel oil or marine diesel oil

natural gas, marine diesel oil and heavy fuel oil. Consequently, these engines are particularly useful and suited for LNG carriers since it is possible to use part of the gas transported by the ship as a fuel.

10. Ship propulsion engines can be distinguished, according to the parties, according to their end use. In particular Wärtsilä's 50 DF engines are especially suited for LNG carriers and the joint venture shall manufacture them primarily for that use.⁵The parties to the transaction propose that the product market to which the Wärtsilä 50DF dual fuel engine belongs comprises dual fuel engines and those engines which are substitutable for LNG carriers and other marine installations.⁶ In addition to the Wärtsilä 50DF, the parties submit that these engines comprise i) boiler and steam turbine machinery, ii) 2-stroke diesel engines with a reliquefaction system, iii) gas turbines and iv) 2-stroke diesel engines. These engines and machinery fall within the larger product category of "ship propulsion main engines".
11. The results of the market investigation support the definition as proposed.

ii) Vertically related markets- Servicing and maintenance

12. The only market which is vertically related to the ship propulsion main engines market and on which the parties would have a market share exceeding 25% is the EEA- market for servicing and maintenance. This activity consists of providing after-sale maintenance and other services to ship-owners.

B. Relevant geographic markets

i) Ship Propulsion Main Engines

13. The parties submit that the relevant geographic markets are worldwide. This is in line with a prior Commission decision⁷ concerning diesel engines, where the market investigation supported a worldwide market. The results of this market investigation are inconclusive in this respect.. In any case, the ultimate definition of the relevant geographic market may be left open since, as further explained below, this would not alter the conclusions of the competitive assessment.

ii) Servicing and maintenance

14. The parties submit that the geographic scope of the servicing and maintenance market is world-wide. However the ultimate definition of the relevant geographic market may be left open given that the proposed operation would not impact the conclusions of the competitive assessment on any reasonable geographic market definition.

as a conventional diesel engine. The engines can switch from gas to back-up liquid fuel instantly and automatically should the gas supply be interrupted. It is then possible to switch back to gas mode.

⁵ To date, [..].

⁶ This is a narrower market segment than a market for medium speed engines.

⁷ Case M.1015 *Cummins/Wärtsilä*

C. Competitive Assessment

i) The Joint Venture – Ship Propulsion Main Engines

15. The parties' activities overlap in the wider market for 'ship propulsion main engines' with combined market shares for the past three years averaging between [5-10%] and [10-20%], with an increment of [0-5%] to [5-10%] on a worldwide market.⁸ Kawasaki, which produces steam turbines and boilers, is the market leader with a market share of 80%. However a number of other competitors are active in this market: CSIC, Hudong Heavy Industries, Doosan, which sell two-stroke diesel engines, Hamworthy and Cryostar, which produce reliquefaction plants for two-stroke diesel engines.
16. On the narrowest segment for the production of dual fuel engines, Wärtsilä has been the only producer of these engines. However MAN B&W is a recent entrant in this market and has recently started production.
17. The proposed transaction allows the parties to manufacture dual fuel engines close to shipyards in the Far East and particularly in Korea where they will be used, thus avoiding the need to ship engines made in Wärtsilä's facilities in Trieste, Italy. It would increase the production capacity of Wärtsilä but would not significantly change the market structure in the worldwide or EEA market given the limited scope of its activities and that all other current players would remain active.

ii) Vertical issues

Servicing and maintenance

18. Wärtsilä is active in servicing and maintenance of ships, holding a market share of about [20-30%] worldwide or [30-40%] within the EEA. HHI provides a limited amount of engine servicing and maintenance in the EEA through its sales offices. It has a market share of [<5%] at both worldwide and EEA level.
19. A third party has voiced the concern that the creation of the joint venture will create or strengthen Wärtsilä's dominant position on the servicing and maintenance market by increasing its incentives and abilities to foreclose independent traders active in medium speed engines.
20. In this respect, it is noted that Wärtsilä does not have a dominant position on the servicing and maintenance market at either EEA or worldwide level and that the increment of [<5%] brought about by the transaction does not change the situation.⁹ Moreover, other players are active in this market. In particular, other OEMs have about 40% of the market worldwide, or 35% within the EEA. Independent service providers also perform a large percentage of ship engines servicing (35% worldwide or 25% EEA) and service shops, whether independent or associated are able to obtain spare parts from a variety of sources. Finally, the servicing and maintenance market is organised on the basis of one-off orders with limited demand for long term servicing agreements.

⁸ There has been no overlap between the parties within the EEA in ship propulsion main engines for the last three years. In 2006 the parties' combined market share was [10-20%] (Wärtsilä [5-10%]; HHI [5-10%]).

⁹ Combined shares of [20-30%] worldwide, [30-40%] EEA with [<5%] increment.

21. Thus, the creation of the JV, also taking into account the limited scope of its activities, does not increase the risk of foreclosure of independent spare parts traders.
22. As mentioned above, there are no further vertical relationships between the parties, since neither party is engaged in business activities in a product market, which is upstream or downstream of a product market in which any other party to the concentration is engaged, and in which any of their individual or combined market shares at either level is 25% or more.

iii) Outside the JV

23. Outside of the proposed joint venture, Wärtsilä and HHI have overlapping business activities mostly outside the EEA in i) 4-stroke medium-speed engines, ii) ship propulsion auxiliary engines, iii) fixed pitch propulsors, iv) ship propulsion servicing and maintenance services and v) engines for terrestrial power plant use. In addition, HHI is a customer to Wärtsilä in the vi) licensing of 2-stroke low speed diesel engines and vii) ship propulsion main engines.
24. Their combined market share worldwide for 4-Stroke engines for 2006 is [50-60%] (Wärtsilä [40-50%]; HHI [10-20%]) and in the last three years average [40-50%] with an increment of [10-20%]. For auxiliary engines, combined market shares for these years average [20-30%] with an increment of about [5-10%] (in 2006 Wärtsilä [5-10%]; HHI [10-20%]).¹⁰ For fixed pitch propulsors, the parties combined market shares worldwide average [10-20%] for the last three years with an average increment of [5-10%] (in 2006 Wärtsilä [10-20%]; HHI [10-20%]). There is no overlap between the parties within the EEA for any of these segments.
25. As regards engines for terrestrial power plant use¹¹, the parties combined sales for 2006 were [30-40%] in the HFO segment with an increment of [<5%] worldwide.¹² On the EEA market, they hold [10-20%] with an increment of [<5%].
26. In the Commission's view, it is unlikely that the parties would choose to co-ordinate commercial strategy with regard to 4-Stroke engines, auxiliary engines, fixed pitch propulsors or engines for terrestrial power plant use through a small joint venture located in Korea operating in dual fuel engines.
27. Vertically, Wärtsilä is active in licensing of 2-stroke low speed diesel engines, a market upstream of HHI's shipbuilding activities. In 2006, Wärtsilä held [10-20%] worldwide of this particular market, or [20-30%] within the EEA. In the last three years, HHI held an average of [5-10%] of the worldwide shipbuilding market. It is not likely that the joint venture will have an effect on any of these markets.

¹⁰ Neither party had sales of auxiliary engines in 2004.

¹¹ Other than engines for terrestrial power plant use and servicing & maintenance, where the increment within the EEA is about [<5%].

¹² No overlap between the parties in the gas segment;

VI. CONCLUSION

28. 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 (EC) No 139/2004.

For the Commission
signed
Neelie KROES
Member of the Commission