

***Case No COMP/M.5093 -
DP WORLD / CONTI 7 /
RICKMERS / DP
WORLD BREAKBULK /
JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 18/11/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.11.2008
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5093 - DP World/ Conti 7 / Rickmers/ DP World Breakbulk
Notification of 14 October 2008 pursuant to Article 4 of Council Regulation No 139/2004¹**

1. On 14 October 2008, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the "Merger Regulation") by which the undertakings DP World NV ("DP World", Belgium), previously named P&O Ports Europe NV, controlled by Dubai World ("Dubai World", Dubai) and Conti 7 NV ("Conti 7", Belgium), controlled by the Brion family, and Rickmers 2.Terminal NV ("Rickmers 2.Terminal", Germany) controlled by Rickmers Holding GmbH & Cie KG ("Rickmers", Germany) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking DP World Breakbulk NV ("DP World Breakbulk", Belgium) by way of purchase of shares.

I. THE PARTIES

2. **DP World**, previously named P&O Ports Europe NV, is active in the terminal operations business, i.e. discharging and loading of vessels and all related activities such as handling of trucks/rail/barges, warehousing, container repair and container storage. DP World is controlled by Dubai World which is in turn owned by the Emirate of Dubai. Dubai World is active in real estate development, commodities, marine service and ports and free zones.

¹ OJ L 24, 29.1.2004 p. 1.

3. **Conti 7** is the holding company of all maritime or related activities of the Conti group. The Conti group is active in providing specialised services in the area of maritime transportation. It is controlled by the Brion family. The parties submit that the Brion family does not have any other activities in the relevant sectors.
4. **Rickmers** is a subsidiary of Rickmers Holding GmbH & Cie KG which is active in ship owning and ship management of container vessels, bulk and breakbulk vessels, shipping of breakbulk as well as services like ship broking, financing activities and investment in real estate. Rickmers holds a controlling participation in a breakbulk terminal in Hamburg.
5. **DP World Breakbulk (also referred to as the "JV")** was created by DP World in 2007. In 2008, DP World transferred to DP World Breakbulk its breakbulk business in Antwerp comprising concession rights, buildings and infrastructure, equipment, personnel and contracts. Currently, DP World holds directly or indirectly all shares in DP World Breakbulk.

II. THE OPERATION AND THE CONCENTRATION

6. Conditional upon merger control clearance by the European Commission a 20% shareholding in DP World Breakbulk will be transferred to Rickmers and another 20% to Conti 7. 60% of the shares will remain with DP World.
7. The parties will jointly control DP World Breakbulk. Pursuant to Article 3.2. of the Joint Venture Agreement ("JVA"), strategic decisions, in particular the approval of the business plan, the approval of the budget and the appointment of the day-to-day manager will be decided by the JV's Board of Directors. The Board of Directors will be composed of four members. DP World determines two members, Conti and Rickmers determine one member each. The strategic decisions mentioned in Article 3.2 of the JVA require the approval of all four board members. Furthermore, the shareholders' meeting of the JV cannot overrule the decisions on strategic matters taken by the Board of Directors. Also, specific provisions will prevent any attempt by DP World (based on its majority at the shareholder meeting) to modify the composition of the Board of Directors, thus guaranteeing the presence of one Director for each of Conti 7 and Rickmers. In view of this, the Commission considers that the parties control the JV jointly.
8. The proposed concentration is a concentration in the meaning of Article 3(1)(b), Article 3(4) of the Merger Regulation.

III. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (DP World/Dubai World: EUR [...] million, Conti 7: EUR [...] million, Rickmers: EUR [...] million). Two of them have a Community-wide turnover in excess of EUR 250 million ([...]: EUR [...] million, [...]: EUR [...] 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.

IV. COMPETITIVE ASSESSMENT

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).

1. Relevant product and geographic markets

10. The JV will be active in carrying out breakbulk terminal services including stevedoring services at the Antwerp port in Belgium. Apart from that, the shipping of breakbulk is vertically related to breakbulk terminal services.

1.1. Breakbulk Terminal Services

11. The parties submit that the relevant product market is the market for breakbulk terminal services, comprising loading and unloading, lashing, securing and storing of breakbulk.
12. The parties consider that port terminals can be distinguished according to the kind of cargo to be loaded and unloaded, i.e. 1) container cargo, 2) roll-on/roll-off cargo (mostly cars), 3) breakbulk (e.g. tobacco, coffee, sugar, wood, steel etc) and 4) bulk (goods which are either fluid such as gas and oil or dry such as minerals). Each of these cargoes requires specific tools, equipment and storage facilities at the terminal. In particular, a breakbulk terminal requires all-round cranes that enable loading, carrying and unloading of a wide variety of goods, warehouses for the storage of products that require protection from rain and wind, and a large open space to store specific goods like for instance iron coils or turbines.
13. In the past, the Commission has dealt with stevedoring services for deep sea container vessels³. The Commission stated that vessels carrying non-containerised cargoes and short sea vessels have other requirements with regard to services and facilities than deep-sea vessels⁴. Concerning terminal services for container vessels, a further distinction was made between 'hinterland traffic' which concerns containers transported directly onto or from a deep-sea container vessel to or from the hinterland and transshipment traffic.
14. The parties consider that for breakbulk there is no distinction between terminal services for the hinterland traffic and terminal services for transshipment services as there is no difference in the handling of the cargo. In any event, only a small portion of the cargo handled at the Antwerp terminals would be transshipment cargo. The majority of the breakbulk cargo treated in the Antwerp port would come from the European hinterland.
15. The Commission's market investigation confirmed that breakbulk terminal services can be distinguished from container cargo, roll-on/roll-off cargo (mostly cars), and bulk. The parties submit that a further delineation according to the type of breakbulk is not warranted since all breakbulk terminal service providers are, in principle, able to handle all types of breakbulk. This view has been confirmed by many respondents to the Commission's market investigation. Concerning the potential distinction between hinterland and transshipment services, the result of the market investigation were mixed. However, several respondents indicated that in both situations the same equipment is used to carry out the breakbulk terminal services and that in many instances it would not be known to the service provider whether the goods are coming from the hinterland or via transshipment. In any event, the precise market definition can be left open in the present case since the transaction will not lead to competition concerns under any potential market definition.

³ COMP/JV.55 Hutchinson/RCPM/ECT; COMP/JV:56 Hutchinson /ECT; COMP/M.3576 ECT/PONL/EUROMAX; COMP/M.3829 MAERSK/PONL.

⁴ COMP/JV.55 Hutchinson/RCPM/ECT, para 25.

16. The activities of the JV relate to quays 466 to 484 at the 7th port dock at the Antwerp port, Belgium⁵. The parties consider that the relevant geographic market is the Hamburg-Le Havre range comprising the port of Antwerp. However, the parties also provide information on the basis of the port of Antwerp as narrowest potential geographic market.
17. The market investigation indicated that the breakbulk terminals within the Hamburg-Le Havre area serve the same hinterland. However, prices for breakbulk terminal services seem to differ substantially within the area. In any event, the exact geographic market definition can be left open since the transaction will not lead to adverse competition effects under any market definition.

1.2. Shipping of breakbulk

18. Two of the parties, namely Conti 7 and Rickmers are active in breakbulk cargo shipping which is vertically related to the activities of the JV. The parties consider that the relevant product market is the market for breakbulk shipping including all types of breakbulk and all types of vessels. Also, the parties consider that no distinction should be made between shipping in 'tramp services' by chartered vessels or in 'liner services' which are transport services that are regularly scheduled.
19. The Commission's market investigation indicates that breakbulk shipping providers are in general capable of transporting all types of breakbulk. The market investigation did not lead to a clear view on whether not a distinction between tramp services or liner services is merited. The precise product market definition can however be left open since the transaction will not lead to adverse competition effects under any market definition.
20. As to the geographic market definition the parties submit that the market is global. At least the market would comprise Northern Europe since the products would originate from Northern European countries. Given the available road and rail infrastructure to all ports in Northern Europe the parties consider that all Northern European ports are substitutable from a customer perspective.
21. The Commission considers that the exact geographic market definition can be left open since the transaction will not lead to adverse competition effects under any market definition.

⁵ Former activities of DP World at quays 256 to 314 at the 6th dock of the Antwerp port were transferred to Sea Invest ABT.

2. Assessment

2.1 Breakbulk Terminal Services

22. The parties submit that according to statistics published by the Rotterdam Port Authority, the main ports in the Le Havre-Hamburg range handled a total of 51.7 million tons of breakbulk cargo in 2007. The total value of the breakbulk handled in the Hamburg-Le Havre area is estimated by the parties at approximately EUR 829 million. In 2007, the port of Antwerp handled a total breakbulk tonnage of around 19.8 million tonnes. The total value of the breakbulk handled at the port of Antwerp is estimated by the parties to EUR 273 million.
23. The breakbulk terminal operated by DP World Breakbulk in Antwerp has a total capacity of [1-3] million tons depending on the kind of good handled. In 2007, the assets that were transferred to DP World Breakbulk handled ca. [1-3] million tons of breakbulk amounting to revenues of around EUR [...] million. For the year 2008, the parties expect the sales to increase since Rickmers has become a new customer of DP World Breakbulk with additional volumes of [400,000 - 600,000] tons leading to an expected volume of [1-3] million tons and an expected turnover of ca. EUR [...] million.
24. Apart from that, Rickmers jointly controls the so-called 'Wallmann' terminal at the Hamburg port. The 'Wallmann' terminal has a total annual capacity of ca. [500,000 - 700,000] tons. The breakbulk handled at the Wallmann terminal in 2007 amounted to [300,000 - 500,000] tons and revenues of ca. EUR [...] million in 2007. Apart from this activity, neither Rickmers nor Conti 7 are active in breakbulk terminal services.
25. The parties will therefore have less than a [5-10]% share of the total breakbulk capacity in the Hamburg-Le Havre range. At the port of Antwerp, DP World Breakbulk possesses around [10-15]% of the capacity. However, in Antwerp there is no addition of market- or capacity share due to the transaction since neither Conti 7 nor Rickmers are active in providing breakbulk terminal services in Antwerp and DP World transferred all its activities to the JV.
26. In terms of revenues, the parties achieve a combined market share in the Hamburg-Le Havre area of up to [5-10] % (value and volume). At the port of Antwerp the market share of DP World Breakbulk is around [10-15]% (value and volume). The market shares remain clearly below 15% even if so-called hinterland services and transshipment services are regarded separately. The market shares in themselves therefore do not indicate any competition concerns. Also it has to be noted that at the port of Antwerp the transaction does not lead to the addition of market shares. Concerning the Hamburg-Le Havre area account needs to be taken of the fact that Rickmers' activities in breakbulk terminal services in Hamburg represent only about [0-5]% of the total market.
27. In addition, it should be noted that at the Antwerp port the proposed transaction will not lead to any addition of market shares since neither Conti 7 nor Rickmers are active in breakbulk services in Antwerp. In the Hamburg-Le Havre area the transaction will only lead to a small addition of market shares due to Rickmer's activities in Hamburg.
28. There are many competitors active at the Antwerp port as well as in the Hamburg-Le Havre area. At the port of Antwerp the most important competitors are NHS Nova HesseNoordnatie Stevedoring with an estimated market share of [20-30]% at Antwerp,

Westerlund ([20-30]%) and ABES ([10-20]%). In addition, there is spare capacity at the many breakbulk terminals in the Hamburg-Le Havre area.

29. In view of all this, the transaction does not lead to any competition concerns in the market for breakbulk terminal services in Antwerp or in the Hamburg-Le Havre area or on any narrower geographic market definition.

2.2. Shipping of breakbulk

30. Conti 7 and Rickmers are active in breakbulk cargo shipping which is vertically related to breakbulk terminal services. The services provided by the parties are so-called liner services. In 2007, Rickmers and Conti 7 loaded/unloaded respectively [400,000 - 600,000] tons and [600,000 - 800,000] tons of breakbulk cargo in Antwerp representing about [5-10]% of the total breakbulk cargo handled in Antwerp (19.8 million tons).
31. The parties estimate the worldwide market for breakbulk shipping measured by capacity available at ca. 35 million DWT ('deadweight tonnes' - which is a measure for transport capacity of merchant ships). Rickmers operates fleets with a total capacity of [400,000 - 600,000] DWT, Conti 7's fleet has a capacity of [400,000 - 600,000] DWT giving the parties a market share of less than [0-5] %. The parties' market shares remain low even if liner services are considered separately.
32. The market shares for breakbulk shipments to and from Antwerp are equally low. The total amount of breakbulk handled at the port of Antwerp in 2007 was around 19.8 million tons. The combined shipments of Conti 7 and Rickmers in Antwerp amounted to around [...] million tons ([600,000 - 800,000] tons by Conti 7 and [400,000 - 600,000] tons by Rickmers). The combined market share is thus about [5-10]%.
33. Due to the parties' low market shares on the market for breakbulk shipping as well as on the market for breakbulk terminal services the ability to foreclose can be excluded and the transaction will not lead to any competition concerns.

V. CONCLUSION

34. 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