

*Case No IV/M.535 -  
Mannesmann Demag /  
Delaval Stork*

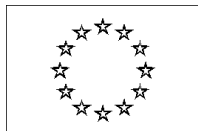
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**REGULATION (EEC) No 4064/89  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 21/12/1994

*Also available in the CELEX database  
Document No 394M0535*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.12.1994

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject : Case No IV/M.535 - Mannesmann Demag/Delaval Stork  
Notification of 18.11.1994 pursuant to Article 4 of Council Regulation No 4064/89

1. The above mentioned notification concerns the planned acquisition by Mannesmann Demag AG (Mannesmann) of all the turbo machinery activities of the U.S. company, Imo Industries Inc., (Imo) consisting of the Delaval turbine and turbocare Division, and its 50% stake in Delaval Stork V.O.F. (Delaval), a company at present owned by Imo Industries Inc. and Stork NV.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE OPERATION AND THE PARTIES

3. Mannesmann is active in the development, engineering, production and sales of plants and machinery, especially in the field of metallurgical plants, construction equipment, compression equipment and plastic machinery.
4. Stork is a Dutch group mainly active in the fields of systems for textile and paper finishing, printing form manufacturing, food and beverage industries, meat and poultry processing and industrial services, including mechanical and electrical contracting, manufacturing, maintenance and engineering.
5. Delaval is a Dutch company jointly owned by Imo and Stork mainly active in the manufacturing, sale and maintenance of turbo machinery equipment (compressors and steam turbines).

6. Mannesmann through its American subsidiary and Imo have concluded an Asset Purchase Agreement on 4 November 1994 whereby Imo will transfer its Delaval Turbine Division, its Turbocare Division and its wholly-owned subsidiary Deltex Services, Inc to Mannesmann. This constitutes a separate operation without Community dimension.
7. By conclusion of a separate new Joint Venture Agreement signed 16 November 1994, Imo is also selling its 50% share in Delaval to Mannesmann's Dutch affiliate, Mannesmann Beheer B.V.. Delaval will then be controlled jointly by Mannesmann and Stork. These agreements will bring about a lasting change in the structure of Delaval. Stork has the right to put for sale at any time after 4 years its shares in DeLaval, and Mannesmann have reserved an option to buy. Stork does not have a corresponding right to demand or to be granted the right to acquire Mannesmann's share holding in DeLaval.

## II. CONCENTRATION

8. The Commission cleared the former cooperative structure of Delaval by decisions under Art. 85(3) of EEC Treaty (OJ No L 215 of 23.08.1977 and renewal OJ No C 255 of 25.09.1987). Turbomachinery equipment manufactured by Delaval was technically equivalent with Imo's US made products and the parents were considered to be "actual or at least potential competitors". The structure of the joint venture has been changed as described below.

### a) Joint control

9. The financing of the joint venture and the share of the profits and losses is to be on equal basis. The parties have agreed to integrate the business policy of the new entity into Mannesmann's global strategies and organisation for turbo machinery activities. The general manager of Delaval will be obliged to report continuously to the chairman of Mannesmann's turbo machinery division. Furthermore, the management of Delaval will be subject to binding directives and guidelines from Mannesmann's turbo machinery division. These will concern day to day management and business, including personnel. Stork is prohibited in the Agreement from acting inconsistently with these guidelines.
10. The election, suspension and dismissal of the members of the board of Delaval will be proposed by Mannesmann, subject to the agreement of Stork. The internal rules of the managing Board have to be approved by both shareholders. Under the Agreement, both parents shall be represented equally within the Partner's Meeting by three representatives, and each parent has the veto power to block actions concerning annual business plans, capital investments, and the strategic commercial behaviour of Delaval. Each shareholder thus retains the possibility of exercising a decisive influence. It follows that Delaval will be operating under the joint control of Mannesmann and Stork.

### b) Concentration

11. Delaval is to be an independent enterprise, with sufficient financial and other resources to operate on a lasting basis as an autonomous economic entity. It will continue to benefit from the former Imo's know how and technology which is being transferred to Mannesmann. DeLaval will further benefit from synergy effects in the fields of development, design, manufacture, marketing, sales and after sales activities which will allow it to remain competitive in the market.

12. The activities of the joint venture are production, sale, and maintenance of compressors and steam turbines. Stork NV and its subsidiaries are not active in these fields. It would be costly and commercially unreasonable for Stork to re-enter the market. The acquisition of turbomachinery products by Stork, only so far as is necessary for other engineering projects or general contracting, can be regarded as insignificant. Mannesmann, the new shareholder, is active in the production and sale of turbomachinery. Since Stork has abandoned activities in this area, the joint venture cannot be used as an instrument for producing any coordination between the parents. It is therefore not the object or effect of the concentration to coordinate the competitive behaviour of the parents.
13. Thus the notified operation constitutes a concentration within the meaning of Article 3(1)(b) of the Regulation.

### III. COMMUNITY DIMENSION

14. The undertakings concerned have a combined aggregate worldwide turnover in excess of 5.000 million ECU. Both Mannesmann and Stork have a Community-wide turnover in excess of 250 million ECU but 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. COMPATIBILITY WITH THE COMMON MARKET

#### a) the relevant product market

15. Process gas compressors are mainly used in special industrial applications where a variety of basic and compound gases have to be compressed for processing or transmission purposes. The difference between process gas compressors and standard type compressors is that process gas compressors are engineered and produced individually according to customer specifications. Standard type compressors are made according to manufacturer specifications for a preselected application range. Such compressors only have a limited overlap with process compressors.
16. There are two types of process gas compressors: positive displacement and turbo compressors. The parties mainly manufacture turbo compressors. The question of whether positive displacement and turbo compressors constitute separate product markets could be left open since, even on the basis of a narrower definition, the operation does not raise serious doubts as to its compatibility with the common market.
17. Mannesmann and Delaval furnish specialised after sales services for process gas compressors. As compressors are technically sophisticated, customers purchase after sales services from the manufacturer. There is no market for third party repair services and market shares would be parallel to the market shares in the field of manufacture and sales of process gas compressors. Delaval is also active in the manufacture of steam turbines. Mannesmann is not active in this business.

#### b) the geographic reference market

18. Despite the fact that the bulk of compressors is sold in the continent where they are produced, approximately 20% of the production is exported to other continents. Such trade flows go both directions, as the technical skills of US, European and Japanese based

producers are on a comparable level. Main customers of process compressors are internationally acting engineering companies and general contractors as well as international oil and gas producers, chemical industry and steel manufacturing. A distribution network is not required in this business as quotations and supplies are directly performed between manufacturer and purchaser.

19. As a result geographical markets seem at present to be mainly West European and even worldwide. The precise delimitation of the relevant geographic market does not need to be further defined in the present case because even on the basis of a narrower definition, the operation does not raise serious doubts as to its compatibility with the common market.

## V. COMPETITIVE ASSESSMENT

20. Aggregate West European market shares for the new entity will be under [...]<sup>(1)</sup>, taking into account only the turbo process compressors segment. Worldwide market share will be about [...]<sup>(1)</sup>. This includes the activities of the parties in the USA. The effect of vertical integration (manufacturing of turbines in the case of Delaval) is not of material importance for the assessment of this case because Delaval is a minor player in the turbines market.
21. Potential market entries are likely as most manufacturers of other turbomachinery products are in a position to enter the market. The flexibility of producers (of for instance gas turbines) to expand or shift their production to compressors is to be regarded as high. Technical or regulatory barriers do not exist. The competitors with higher market shares in Europe are Nuovo Pignone (General Electric Group) and Sulzer. Other competitors which are technically and financially strong include MAN, Atlas Copco, Hitachi, Kawasaki, and Dresser Rand. Thus, the proposed concentration will not create or strengthen a dominant position in the affected market.

## VI. ANCILLARY RESTRAINTS

22. The parties to the Delaval Joint Venture Agreement have agreed that companies of the Stork Group must not compete with Delaval for the running time of the joint venture and a subsequent period of 3 years. This clause reflects the permanent withdrawal of Stork from the market. A period of three years is recognised as appropriate and the present decision covers the non-competition clause for such a period.

## VI. CONCLUSION

23. For the foregoing reasons the proposed concentration does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

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 functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission

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(1) Business secret.