

*Case No IV/M.585 -  
Voest Alpine  
Industrieanlagenbau  
GmbH / Davy  
International Ltd*

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: 07/07/1995

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 07.07.1995

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

**Subject: Case No. IV/M.585 - Voest Alpine Industrieanlagenbau GmbH/Davy International Ltd**

Notification of 6 June 1995 pursuant to Article 4 of Council Regulation No. 4064/89 (Merger Regulation)

1. On 6 June 1995 Voest Alpine Industrieanlagenbau GmbH (VAI) and DAVY International Ltd (Davy) notified to the Commission their proposed creation in Austria of CONROLL Technology GmbH (CONROLL), a joint venture company which will supply engineering and construction management services in connection with the supply and construction of equipment for hot connect systems for steel manufacturing plants.
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 PARTIES**

3. VAI is a member of the Austrian corporate group controlled by VA Technologie AG. (VATech). The group acts as a systems supplier for large-scale industrial plants throughout the world, particularly in metallurgical technology, energy and environmental technology and general erection and technical services. VAI provides turnkey plants, engineering and contracting services, consulting services, research studies, know-how transfer, personnel training, operational assistance, spare parts and after-sales services in respect of a wide variety of steel production plants.
4. The ultimate parent of DAVY is Trafalgar House plc (United Kingdom). The Trafalgar House corporate group is engaged in engineering and construction, commercial and residential property, passenger shipping and hotels. DAVY provides engineering and contracting services including the design, supply, erection and construction of different types of steel production plant.

## **II. THE OPERATION**

### Object

5. A hot connect system is a complete system for the casting and rolling of steel slabs. The system covers the entire hot steel strip production process from ladle teeming to hot strip coiling and hot coil discharge, including all automation processes entailed therein. It therefore constitutes the entire plant and equipment necessary for hot strip steel production. The technology of a hot connect system involves two particular expertises - slab casting and rolling mills. VAI possesses the first of these expertises and DAVY the second. The combination of their specialities will enable CONROLL to supply the necessary services for hot connect systems.

### Joint control

6. VAI and DAVY will each hold 50 per cent of the issued shares in the CONROLL. The company will have an executive committee of six directors, three nominated by VAI and three by Davy. The nomination of the chairman will alternate annually between the parties; he will not have a casting vote. The executive committee will decide the broad policy of CONROLL. Implementation of the policy and management of the company will be under the control of the joint managing directors, one nominated by VAI and one by DAVY, who may by invitation attend but cannot vote at meetings of the executive committee. The agreement constituting the joint venture does not define broad policy; but the omission is unimportant, since any dispute between the managing directors can be referred to the executive committee. The quorum required for meetings of the shareholders and of the executive committee ensures that one party cannot outvote the other.
7. CONROLL will accordingly be subject to the joint control of VAI and DAVY.

#### Full-function

8. CONROLL will have its own management, accounting, secretarial and other staff. The parties will contribute to the company experienced personnel, the necessary exclusive royalty-free intellectual property licences and capital of [...] <sup>(1)</sup>. During its initial period CONROLL will receive from the parties whatever expertise and staff it requires. Unless [...] <sup>(1)</sup> Conroll will remain in existence for ten years and thereafter from year to year unless terminated by either party. This provision for earlier determination does not preclude the conclusion that the joint venture is established on a lasting basis.
9. CONROLL will accordingly perform on a lasting basis all the functions of an autonomous economic entity.

#### Absence of coordination

10. The parties will cease to operate in the field of activity of CONROLL. They agree not to supply major components to other suppliers of hot connect systems. The parties will not be active upstream or downstream of CONROLL. CONROLL will accordingly not be a supplier or a customer of the parties. Although VAI and DAVY remain active in other engineering fields (such as the erection of plants in the chemical, petro-chemical and power-generating industries), the technology involved in each of those markets and the potential customers are entirely distinct from those in the market for the supply of hot connect systems. The only specific overlap in the activities of the parties is in the field of iron and steel plant engineering; the most significant aspect of this activity, hot connect systems, will be performed by CONROLL to the exclusion of VATech and DAVY. Their participation in CONROLL does not appear likely to lead to the coordination of their other activities in iron and steel plant engineering.
11. The operation accordingly does not give rise to the coordination of competition between the parties or between them and CONROLL.

#### Conclusion

12. The operation accordingly constitutes a concentration within the meaning of article 3(1)b of the Regulation.

### **III. CONCENTRATION OF COMMUNITY DIMENSION**

13. The VATech and Trafalgar House groups have a combined aggregate worldwide turnover in excess of 5000 million ECU. Each group has a Community-wide turnover in excess of 250 million ECU, but neither of them achieves more than two-thirds of its aggregate Community-wide turnover within one Member State.
14. The operation therefore has a Community dimension within the meaning of Article 3(1)(b) of the Regulation.

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<sup>(1)</sup> Deleted; business secret.

#### **IV. COMPATIBILITY WITH THE COMMON MARKET**

##### **a) Relevant product market**

15. As described in paragraph 5, a hot connect system comprises all the equipment necessary for hot steel strip productions. Although it is possible to purchase the elements of a hot steel strip plant separately, it can be argued from the demand side that a hot connect system performs a unique function and that the relevant product market is the design and installation of such systems. Since however even on this narrowest definition no competition problem arises the definition of the product market can be left open.

##### **b) Geographic reference market**

16. The other companies which design and install hot connect systems are located in Germany, Italy, the United States of America, Japan and South Korea. They each design and install such systems for steel producers throughout the world. The geographic reference market is therefore global.

##### **c) Competitive assessment**

17. At present about [...] <sup>(1)</sup> of the global market for the design and installation of hot connect systems is held by Schloemann-Siemag AG (Germany). The proposed operation will accordingly not create or enhance a dominant position even on the narrowest definition of the product market. On the contrary the overall effect will be to enhance competition, since only by creating CONROLL can VAI and DAVY compete effectively in the market.

#### **V. ANCILLARY RESTRAINTS**

18. The parties have requested that certain restrictions be considered as ancillary to the concentration.
- The parties agree that for the duration of the joint venture they will not design, manufacture and install hot connect systems.
  - The parties will procure the grant to CONROLL of exclusive intellectual property rights necessary for its activities
  - Each of the parties and CONROLL will not use any know-how which it obtains from another party to design, use and sell plant other than hot connect systems and will not disclose the know-how.
  - The parties and CONROLL will not sub-license the design or manufacture of hot connect systems except for the purpose of the joint venture agreement and will not sub-license the design and manufacture of components without the approval of the executive committee.

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<sup>(2)</sup> Deleted; business secret: more than 40 per cent.

- The parties agree that, for the duration of the joint venture, they will not supply specified components to other companies which design, manufacture or supply hot connect systems.

19. Insofar as these provisions constitute restrictions the first four are directly related to and necessary for the successful implementation of the concentration. They can therefore be treated as ancillary to the concentration. The last provision is not necessary for the successful implementation of the concentration and therefore cannot be treated as ancillary to it.

## **VI CONCLUSION**

20. 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.

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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