

***Case No COMP/M.5943 -
ABU DHABI MAR/
THYSSEN KRUPP
MARINE SYSTEMS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 31/08/2010

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Brussels, 31.08.2010

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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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.5943 – ABU DHABI MAR/ THYSSEN KRUPP
MARINE SYSTEMS
Notification of 28 July 2010 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 28 July 2010, the European Commission received a notification of a proposed concentration by which Abu Dhabi Mar LLC ("ADM", United Arab Emirates) acquires sole control of the civil ship business (the so-called "White Business") of ThyssenKrupp Marine Systems AG ("TKMS", Germany) and by which ADM and TKMS create a full-function joint venture for the naval ship business (the so-called "Grey Business"), excluding submarines which will stay with TKMS.

I. THE PARTIES

2. **ADM**, belonging to the Al-Bateen Investment LLC group, builds, repairs and reconstructs in particular civil ships. It has shipyards in Abu Dhabi as well as in Rendsburg and Kiel (Germany), the latter being part of Nobiskrug GmbH ("Nobiskrug"), which ADM controls through an [...] % shareholding.² Al-Bateen jointly controls ADM together with Privinvest, a partnership cooperation whose two partners

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

² Nobiskrug was initially owned by TKMS. It was sold by TKMS in 2008 to Eagle River Capital Deutschland GmbH ("Eagle River"). [...] % of Eagle River was transferred to a Cypriot company, ultimately controlled by a Russian individual. ADM gained its [...] % share in Nobiskrug through a capital increase in 2009. Due to the intermediate transactions, the acquisition of control over Nobiskrug by ADM does not fall under Article 5(2)2 of the Merger Regulation.

[...] of the shares in the shipyard Constructions Mécaniques de Normandie ("CMN") in Cherbourg (France).³

3. **ThyssenKrupp** ("TK") is active in steel materials, elevators, plant technology and components for the car, construction and engineering industry.
4. **TKMS**, a subsidiary of ThyssenKrupp, is active in the conception, design, engineering, construction and reconstruction of civil ships including mega yachts, of naval ships including frigates, corvettes and patrol boats as well as of submarines (the latter constituting the "Black Business", which is not part of the transaction). TKMS' civil and naval shipbuilding production facilities comprise in particular the "Blohm+Voss Shipyards GmbH" ("BVS"), which operates docks in Hamburg. Further shipyards are operated by the Howaldtswerke-Deutsche Werft GmbH in Kiel. TKMS also has shipyards in Sweden ("Kockums") and Greece ("Hellenic Shipyards"). In addition, TKMS (jointly with EADS) controls Atlas Elektronik ("Atlas"), a supplier of, amongst others, naval electronics products.

II. THE OPERATION

5. ADM acquires the "White Business" including the shipyards of TKMS which are pooled in the company BVS. The shipyards will also be used for the "Grey Business". Therewith, all of TKMS' shipbuilding capacity for civil and naval ships in Hamburg and Kiel (excluding those for submarine shipbuilding) will be transferred to ADM. Under the Share Purchase Agreement ("SPA") for the White Business, TKMS will exit the "White Business" and cede control to ADM over TKMS' companies active in this area.
6. Regarding the "Grey Business", TKMS will enter into a strategic partnership with ADM by establishing the Grey Business Joint Venture (the "JV"). The JV's task is to continue the former Blohm+Voss naval business ("BVN Old") and to additionally win [...] customers.
7. According to the closing conditions of both the White Business SPA and the Grey Business Joint Venture Agreement ("JVA"), the purchasing of the White Business and the setting up of the Grey Business Joint Venture are mutually conditional upon each other.

III. THE CONCENTRATION

8. The acquisition by ADM of 80 % of the shares in the White Business companies from TKMS and thereby the acquisition of sole control constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.
9. As regards the Grey Business, under the JVA, the JV will consist of three companies: Blohm+Voss Naval GmbH ("BVN New"), Blohm+Voss Marine Systems GmbH ("BVMS") and Blohm+Voss Naval International LLC ("BVNI").⁴ The JV's corporate structure will be as follows: [...].

³ For the purposes of this decision, CMN is therefore considered as part of the ADM group. Market shares for ADM thus include shares of CMN.

⁴ The Parties explain that the "Grey Business" had to be structured in three companies in order to allow TKMS (and potentially ADM) to provide the substantial financial guarantees required for shipbuilding activities without losing consolidation opportunities and thereby affecting financial ratings. According to

10. BVN New will combine the "core" of the naval assets, i.e. all the intellectual property, know-how and personnel (around [...] employees) necessary for the design, engineering, project management and procurement in connection with building naval ships. BVN New will be jointly controlled by TKMS and ADM.
11. BVMS and BVNI will carry out supporting marketing and distribution functions and will serve as general contractor vis-à-vis the customers. Both entities are expected to have around [...] employees. [...].
12. TKMS and BVN New each hold [...] % of the shares and voting rights in BVMS. ADM and BVN New each hold [...] % of the shares and voting rights in BVNI. Under the JVA, BVNI will have [...] management board members from ADM and [...] management board member from TKMS. Conversely, BVMS will have [...] management board members from TKMS and [...] management board member from ADM. Decisions will require simple majority only.
13. Any decisions in BVNI and BVMS going beyond the ordinary course of business (so-called "reserved matters") will require a vote by the shareholders committee which will be composed of [...] TKMS and [...] ADM members in both entities. The casting vote in BVNI will belong to ADM and in BVMS to TKMS.
14. Nevertheless, BVN New, BVMS and BVNI constitute one economic entity for the following main reasons: (i) They legally stand and fall together (the JVA for the three undertakings shall automatically be terminated if the BVMS JV agreement or the BVNI JV agreement terminates), (ii) ADM's and TKMS's shares in BVN New can only be transferred together with all BVMS or BVNI shares respectively, (iii) [...] and (iv) [...]
15. All these factors show that BVMS and BVNI depend on BVN New and on both parents. BVN New, BVMS and BVNI thus constitute a single economic entity⁵ which is jointly controlled by TKMS and ADM. Due to its sufficient resources and access to the markets, the Grey Business JV constitutes a full-function joint venture pursuant to Article 3(4) of the Merger Regulation.
16. In view of the above, ADM acquires sole control of the White Business and joint control over the Grey Business. Transactions involving the acquisition of sole control of one part of an undertaking and joint control of another part constitute "only one concentration if they are interdependent and if the undertaking acquiring sole control is also acquiring joint control".⁶ As already mentioned, the acquisition of the White and the Grey Businesses are interdependent under the closing conditions. The two transactions are thus interrelated.
17. Therefore, the acquisition of the White Business and the setting up of the Grey Business JV constitute one concentration.

the Parties, the economic feasibility of providing guarantees depends on the guarantors being able to consolidate BVMS and BVNI, respectively, [...].

⁵ In its Decision of 29 June 2001 in Case COMP/M.2478 – *IBM Italia / Business Solutions / JV*, the Commission treated three separate entities with different de jure control structures as single economic entity which was de facto jointly controlled by the parents. Indeed, in the present case, the above factors which make BVMS and BVNI dependent on BVN New and thus on both parents allow for the conclusion that BVMS and BVNI are de facto jointly controlled by TKMS and ADM.

⁶ Consolidated Jurisdictional Notice, para. 42.

IV. EU DIMENSION

18. Since the acquisition of the White Business and the setting up of the Grey Business JV constitute one concentration, ADM (turnover in 2009: EUR [...] million worldwide and EUR [...] million in the EU), the White Business (EUR [...] million worldwide and EUR [...] million in the EU) as well as TK (EUR 40,600 million worldwide and EUR [...] million in the EU) are the undertakings concerned.
19. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5,000 million.⁷ Two of them have an EU-wide turnover in excess of EUR 250 million, but do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension under Article 1(2) of the Merger Regulation.

V. COMPETITIVE ASSESSMENT

1. Relevant product markets

20. In its previous decisions the Commission has distinguished between commercial (civil) and military (naval) ships.⁸ Aside from this distinction, the Parties suggest sub-dividing each business into the construction and sale of new ships on the one hand and the repair including minor conversion activities on the other hand.⁹

1.1 Civil Ships

21. With regard to the *construction and sale* of civil ships, ADM is only active in the area of so-called mega yachts, which is thus the only area of a potential overlap.
22. In line with a previous Commission decision¹⁰, the Parties suggest that mega yachts are yachts with a length of 50 m and more. Within mega yachts, the Parties suggest differentiating between three sub-segments according to the length of the mega yachts: (i) up to 60 m, (ii) 60-90 m, and (iii) more than 90 m. This segmentation would be based on differences in the degree of customisation, the construction costs involved and the nature of competition.
23. The majority of the replies received in the market investigation confirmed the distinction between yachts and mega yachts and indicate that mega yachts can be considered as yachts which are longer than 50 m. However, the market investigation was not conclusive on a further sub-segmentation. Various market participants suggest different cut-off points in terms of length or customisation within the mega yacht market.

⁷ Turnover calculated in accordance with Article 5(1) of the Merger Regulation.

⁸ See, e.g., Commission Decision of 10 December 2004 in Case COMP/M.3596 – *ThyssenKrupp/HDW* para. 18 et seq. Since submarines are not part of this transaction, naval ships, for the purposes of this decision, mean naval surface ships.

⁹ While the repair business and minor conversions (which do not alter the frame of a ship) fall into one product market, the construction markets would accordingly include substantial reconstructions (which change the frame of a ship).

¹⁰ Commission decision of 25 April 2002 in Case No COMP/M. M.2772 – *HDW / Ferrostaal / Hellenic Shipyard*.

24. In any event, for the present case, the exact sub-segmentation of the mega yacht market can be left open, since the notified operation does not raise any competition concerns under any plausible market definition.
25. With regard to the question of a separate product market for the repair and minor conversion activities for civil ships, the market investigation points towards the existence of such separate market. As regards a further sub-segmentation of this market, some market participants replied that a further distinction might be made according to the type of the civil ship. However, at the same time, many respondents emphasise that there is a high degree of supply-side substitutability with regard to the repair and minor conversion of different types of civil ships. Therefore, for the purpose of this decision, the market for the repair and minor conversion of civil ships is not further sub-segmented.

1.2 Naval Ships

26. In a previous decision, the Commission has defined separate product markets for the construction and sale of naval ships on the one hand and the repair and minor conversion of such ships on the other hand.¹¹
27. With regard to the *construction and sale* of naval ships, the previous Commission practice has distinguished in particular between frigates and smaller naval ships (including corvettes and patrol boats).¹² Within the segment of smaller naval ships, the Parties propose to further differentiate between corvettes, patrol boats and supply ships. The market investigation largely confirmed the distinction between frigates and other smaller naval ships. However, it was not conclusive as regards a further sub-segmentation of the smaller naval ships.
28. In any event, for the present case, the exact sub-segmentation of the market for the construction and sale of naval ships can be left open, since the notified concentration does not raise any competition concerns under any plausible market definition.
29. With regards to the *repair and minor conversion for naval ships*, some participants in the market investigation indicated that the market may be further segmented according to the different types of naval ships. However, at the same time, many respondents emphasise that there is a high degree of supply-side substitutability with regard to the repair and minor conversion of different types of naval ships. Therefore, for the purpose of this decision, the market for the repair and minor conversion of naval ships is not further sub-segmented.

1.3 Input components

30. In addition to the horizontally overlapping activities, TKMS, through its subsidiary Blohm+Voss Industries GmbH ("BVI"), is active in the upstream product markets for ship components, of which the following are vertically affected: (i) transmission components, (ii) stabilisers, and (iii) oil-water-separators. Furthermore, TKMS, through

¹¹ Commission decision of 25 April 2002 in Case No COMP/M. M.2772 – *HDW / Ferrostaal / Hellenic Shipyard*, para. 29. See also Commission decision of 10 December 2004 in Case No COMP/M.3596 – *ThyssenKrupp / HDW*.

¹² Commission decision of 25 April 2002 in Case No COMP/M. M.2772 – *HDW / Ferrostaal / Hellenic Shipyard*, para. 17.

Atlas, its joint venture with EADS, is active in the supply of naval electronics, of which the following markets are affected: (i) sonar systems, and (ii) mine hunting systems.

31. For the present case, it is not necessary to exactly delineate the relevant component markets, since the notified operation does not raise any competition concerns under any plausible market definition.

2. Relevant geographic markets

2.1 Civil Ships

32. In a previous case, the Commission's market investigations indicated that the markets for the construction and sale of mega yachts (i.e. yachts above 50 m) as well as for the repair and minor conversion of civil ships are worldwide.¹³ This was largely confirmed by the market investigation in this case.
33. In any event, for the present case, the exact geographic market definition can be left, open since the notified operation is unlikely to raise any competition concerns under any possible market definition.

2.2 Naval Ships

34. With regard to the construction and sale as well as the repair and minor conversion of naval vessels, the Commission has previously distinguished between national markets for those Member States which have a national supplier with its own systems competence and/or shipbuilding capacities and the rest as the open world market.¹⁴ The market investigation has broadly confirmed this distinction.
35. In addition to Germany, for the purposes of this case, Sweden and Greece could constitute national markets, since they have ordered their naval ships from shipyards in their respective country. The market investigation has indeed confirmed that in Germany, Sweden and Greece, naval ships are still only sourced from a supplier which has a systems competence and/or shipbuilding capacities in the respective country.
36. In any event, for the present case, the exact geographic market definitions can be left open, since the notified operation is unlikely to raise any competition concerns on the assumption of national or broader markets for the construction and sale as well as for the repair and minor conversion of naval ships.

2.3 Components

37. With regard to the production and sale of upstream ship component markets supplied by TKMS (i.e. transmission components, stabilisers and oil-water-separators), the Parties

¹³ Commission decision of 25 April 2002 in Case No COMP/M. M.2772 – *HDW / Ferrostaal / Hellenic Shipyard*, para. 40.

¹⁴ Commission decision of 25 April 2002 in Case No COMP/M. M.2772 – *HDW / Ferrostaal / Hellenic Shipyard*, paras. 30-32. The Commission held that defence markets are national in geographic scope, if domestic producers exist and are able to meet the national demand. There is a national market as governments wish to support national supplies and thereby the country's military independence. However, a market can only be considered as entirely national (i.e. not open for competition from suppliers from other countries) if the national producer has the ability to design and produce himself products satisfying actual and future demand.

submit that these markets are global in scope, but also provide data on the basis of an EEA-wide market. With regard to the production and sale of naval electronics components supplied by Atlas (i.e. sonar systems and mine hunting systems), the Parties acknowledge that these markets are national, if and where a supplier in the respective country with a systems competence exists.

38. In any event, for the present case, the exact geographic market definitions can be left open, since the notified operation is unlikely to raise any competition concerns under any plausible market definition.

3. Competitive Assessment

3.1 Horizontal overlaps

39. On the basis of the market segmentation suggested by the Parties, there would be no overlaps in *civil shipbuilding*, since in the last five years TKMS has not built a mega yacht below 90 m, while ADM has not built a yacht above 90 m. As mentioned above, however, the market investigation has not confirmed these market definitions.
40. With regard to an overall market for the construction of mega yachts (i.e. all yachts above 50 m), the combined market share of the Parties in the last five years (2005-2009) was approximately [5-10] % (ADM: [0-5] %, TKMS: [0-5] %) in terms of value ([...] out of 70 mega yachts in total). The strongest competitors were Lürssen ([20-30] % in value), Feadship ([20-30] % in value) and Oceanco ([5-10] % in value).
41. On an overall market for the repair and minor conversion of civil ships, the Parties' combined market share on a worldwide level was below [5-10] % throughout the last five years. On an EEA-wide level, the combined shares were not higher than [5-10] % in this period.
42. With regard to *naval ships*, only TKMS is active in the market for the construction and sale of frigates. There is thus no overlap in this market.
43. In the open world market for smaller (than frigates) naval ships, TKMS, in particular due to the sale of corvettes, had an estimated market share of [10-20] % in terms of value in the last five years. ADM had a share of [0-5] % in terms of value. Competitors in all segments include BVT, Damen/Schelde, DCNS, Lürssen, Fassmer, Navantia and Fincantieri.
44. With regard to the national markets for the construction and sale of naval ships, the Parties have confirmed that ADM has not been and is not active in Germany, Sweden or Greece, where TKMS is active and has very strong positions. According to the Parties' information, there is thus no overlap in these markets.
45. The only overlap in the markets for the *repair and minor conversion of naval ships* occurs in Germany, where the Parties' combined market share in 2008/9 has been around [5-10] % (in terms of value) due to the acquisition of Nobiskrug by ADM.
46. Therefore, the transaction does not lead to any overlap which would give rise to horizontally affected markets. In the market investigation, none of the respondents raised competition concerns.
47. However, in relation to civil ships one competitor states that the transaction would lead to the loss of knowledge and technologies in Europe post transaction and to an alleged unfair

use of possible public subsidies in the United Arab Emirates.¹⁵ This competitor alleges that the financial strength of the merged entity would allow it to engage in predatory pricing.

48. The Commission has carefully considered the issues raised by the competitor. However, these concerns – to the extent they fall into the scope of the assessment under the Merger Regulation – do not raise serious doubts in respect of the current transaction: First, the combined market shares of the merged entity are limited and do not lead to any affected market. Furthermore, there is no evidence that the merged entity would have access to subsidised finance. According to information provided, ADM has so far received financing for its shipping projects at regular market conditions. Abu Dhabi does not have a state aid regime in place to support the shipbuilding industry. In addition, neither ADM nor TKMS has a historic track record of low pricing. Therefore, it is unlikely that the merged entity will engage in any predatory pricing strategy.

3.2 Vertical links

49. The concentration dissolves the vertical integration of TKMS as supplier of components and supplier of ships in the civil ship business. In the naval ship area, it reduces TKMS' share in its downstream naval ship business. Furthermore, there are no significant increments in the naval shipbuilding business. Therefore, the concentration overall already from the outset is likely to decrease TKMS' and Atlas' incentives to engage in input foreclosure.
50. As regards ship components, the estimated EEA market share of TKMS' subsidiary BVI in 2009 for *transmission components* was [50-60] %. BVI faces competition by Wärtsila ([30-40] %) and Kobelco Eagle Marine Engineering ([10-20] %).
51. For *stabilisers*, BVI had a market share of [20-30] %, facing competition in particular by Fincantieri ([40-50]%) and Rolls Royce ([20-30] %).
52. For *oil-water-separators*, BVI's share was [60-70] %. It faces competition by in particular by RWO ([20-30] %).
53. The vertical links have been extensively investigated by the Commission in its market investigation. Respondents in the market investigation have confirmed that they would have, on an EEA level and even more on a worldwide level, sufficient choice due to competition in all three components markets.
54. Furthermore, according to information submitted by the Parties, the share of the captive sales for all three components was very low (in 2009 around [0-5] % for transmission components, [0-5] % for stabilisers and [0-5] % for oil-water-separators).
55. Accordingly, the Parties have no incentive to engage in input foreclosure post-merger with regard to these three products.
56. In the naval electronics area, Atlas, TKMS's JV with EADS, had a share of [10-20] % on an EEA-wide market for *sonar systems* (and [90-100] % in Germany). On an EEA level, it faced in particular competition by Thales Underwater Systems ([60-70] %) and Ultra Electronics ([10-20] %).

¹⁵ Reply of 14 August 2010 to the Questionnaire to competitors in the civil ship business of 4 August 2010.

57. For *mine hunting systems*, the EEA market share of Atlas was [40-50] % in 2009 ([90-100] % in Germany). Again, it faced competition in particular by Thales ([30-40] %).
58. Also with regard to sonar systems and mine hunting systems, respondents in the market investigation have confirmed that they would have, on an EEA level and even more on a worldwide level, sufficient choice for both products. In addition, the national authority in charge of procuring naval ships may also influence the choice of components. Furthermore, [...].¹⁶ Atlas generated only [...] % of its turnover with mine hunting systems with sales to TKMS. Finally, it has to be taken into account that TK has only a [...] % stake in Atlas. Thus there is no risk of input foreclosure with regard to naval electronics products post-merger.
59. Therefore, the new vertical links does not give rise to foreclosure concerns.

VI. CONCLUSION

60. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission,
(*signed*)
Joaquín ALMUNIA
Vice-President of the Commission

¹⁶ [...].