

*Case No IV/M.648 -
McDermott / ETPM*

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

Article 6(1)(b) NON-OPPOSITION
Date: 27/11/1995

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.11.1995

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)b DECISION

To the notifying parties

Dear Sirs,

Subject: Case N° IV/M.0648-McDERMOTT/ETPM

1. On 23 October 1995 ETPM S.A. and J. Ray McDermott International notified a joint venture for the provision of certain marine construction services to the offshore oil and gas industries.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation N° 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. The parties are J. Ray McDermott Contractors Inc. (McDermott) a Panamanian company, controlled by J. Ray Mc Dermott International Inc. and J. Ray McDermott S.A. (J.R.) ultimately controlled by McDermott International Inc., and ETPM International SAS (ETPM) a French company, controlled by ETPM SA and the GTM-Entrepose Group ultimately controlled by Lyonnaise des Eaux.
4. McDermott is active in the marine construction services for the offshore oil and gas industry notably pipelay, fabrication and installation.

5. ETPM is a member of the GTM-Entrepose Group. The GTM-Entrepose Group is a diversified construction group which through its subsidiaries is engaged worldwide in most contracting fields.ETPM has for many years been engaged in the design, engineering, construction, fabrication, installation and maintenance of, and in other work for, offshore projects and facilities associated with the exploration for, and the production, transportation, refining and distribution of, hydrocarbons. Nowadays, ETPM SA retains no activities in the relevant marine construction sector, save for automatic welding, data processing and project management.
6. In 1989 the parties combined certain of their activities in the provision of marine construction services to the Middle East, Europe, the North Sea and Mediterranean, Africa and South America. This Joint Venture was reorganised in 1991 into three subsidiaries : "McDermott-ETPM WEST" (operating in the North Sea, West Africa and South America), "McDermott-ETPM EAST" (operating in middle East and India) and "McDermott-ETPM Main Office" (the administrative centre for an executive Committee formed by the parties). On 1 April 1995, the parties agreed to further changes to the structure and scope of their Joint Venture activities.This agreement rearranges the corporate structure of these subsidiaries. This element of the 1 April 1995 Agreement does not give rise to a concentration within the meaning of article 3 of Council Regulation 4064/89, since there is no change in control in respect of the existing joint venture business.

II THE OPERATION

7. Also under the 1 April 1995 agreement, the parties agreed that J Ray's subsidiary undertaking marine construction business in the Far East should become part of the joint venture. This is a concentration under the Council Regulation, for the reason given below. The name of this new operational Joint Venture is McDermott-ETPM Far East Inc. and it will be active in the business of fabrication and installation services related to the oil and gas industry, petrochemical facilities and other industrial projects in the Far East zone as described in the 1995 agreement between the parties.The parties have undertaken to withdraw from the relevant business in the Far East Zone. In fact only McDermott had significant activities in the Far East region.

III CONCENTRATION

JOINT CONTROL

8. McDermott-ETPM Far East Inc.forms part of the Joint Venture as it has been organized under the 1995 Agreement between the parties which includes four basic joint venture entities (McDermott-ETPM Inc. Main Office,McDermott-ETPM West Inc., McDermott-ETPM Mid East Inc. and McDermott-ETPM Far East Inc.). Article IV and in particular articles 4.1(a),(b), and (f), of this Agreement provide for control of the Joint Venture activities, including those of McDermott-ETPM Far East, through an executive committee composed of equal numbers from each party and all decisions of the executive committee requiring unanimity.

FULL FUNCTION

9. In as much as McDermott-ETPM Far East forms part of the Joint Venture organized in the 1995 Agreement, it will have, according to article V of this Agreement, control of its main assets and equipment, because the parent companies have chartered into it various vessels, equipment and facilities and lease certain facilities (fabrication yards and related assets) on a long term basis.
10. Moreover, appendices 2,a,b,c of the Agreement referred to above, set out a number of Management Services Agreements which establish that the parent companies will provide staff to the Joint Venture, including ETPM-Far East, although this staff would not be employed by the JV as such. However, McDermott and ETPM undertake through these Management Services Agreements to provide their employees on a continuing basis to allow the Joint Venture to accomplish its functions.
11. ETPM-Far East is financially independent of its parents (Article VI of the Agreement) and it bills customers separately from the parents and receives all revenues directly.
12. Therefore, it can be concluded that ETPM-Far East performs, on a lasting basis, all the functions of an autonomous economic entity for the relevant marine construction sector on grounds of disposal of assets, staff and financial independence.

ABSENCE OF SCOPE FOR COORDINATION OF COMPETITIVE BEHAVIOUR

13. ETPM SA has withdrawn from the Joint Venture Business, defined in article II of the 1995 Agreement as business of fabrication and installation services related to the oil and gas industry, petrochemical facilities and other industrial projects in the territory of the Joint Venture which includes the Far East Zone . ETPM International retains no fabrication interests outside the Joint Venture. Indeed, according to the parties ETPM never had any relevant activity in the Far East area.
14. McDermott remains in the market in certain areas outside the Joint Venture Territory defined in article II of the 1995 Agreement as (i) the Middle East which shall include all countries along the coast from Tanzania to Bangladesh, (ii) Western consisting of a number of countries in Europe bordering the Mediterranean Sea and the North Sea, South America and the Western coast of Africa and (iii) the Far East consisting of all countries from Myanmar to Korea. McDermott operates a large fleet of marine construction equipment in the United States and a fabrication yard in Morgan City in Louisiana. McDermott International is involved in projects related to marine construction services in the former Soviet Union as well. Thus, it is clear that McDermott has withdrawn from the market in the far East Zone in favour of ETPM-Far East.

15. Therefore it can be concluded that there is no risk of coordination of the competitive behaviour between the parent companies through this operation.

IV COMMUNITY/EEA DIMENSION

16. The undertakings concerned have a combined aggregate worldwide turnover in excess of 5,000 million ECU (Lyonnaise des Eaux: 15,186 million ECU and McDermott International: 2,483 million ECU, following their latest reports and accounts).
17. The aggregate Community-wide turnover of Lyonnaise des Eaux is of [.....]¹ million ECU.
18. According to the figures provided by the parties, the aggregate Community-wide turnover of McDermott International is [.....]² ECU. In this turnover [.....]³ ECU, which correspond to a half of the turnover of McDermott-ETPM West Inc., has been included. Taking into account article 5.5.(b) of Council Regulation N^o 4064/89 and the Commission Notice on calculation of turnover (94/C 385/04) notably its paragraph 40, half of the turnover of McDermott-ETPM West Inc in Europe should be attributed to McDermott. In conclusion, it must be considered that McDermott has an aggregate Community-wide turnover of more than 250 million ECU.
19. In addition, according to the parties, more than two thirds of Lyonnaise des Eaux turnover is achieved in France and McDermott has more than two thirds of its aggregate Community-wide turnover within UK. Thus, the undertakings concerned do not both achieve more than two-thirds of its aggregate Community-wide turnover within one and the same Member State.
20. Therefore, the operation has a Community dimension.

V COMPATIBILITY WITH THE COMMON MARKET

Product and geographic market

21. The activities of McDermott-ETPM Far East involve various marine construction services and products ranging from pipelay and derrick work to the fabrication of some of the structures involved in the Far East Zone defined by the parties as the area covering all countries from Myanmar to Korea including Japan, Taiwan, Indonesia, Philippines, Brunei, Papua New Guinea, New Guinea, New Zealand, New Caledonia, Malaysia, Thailand, Vietnam, Singapore, and Australia and the Pacific Islands.
22. The main construction activities are:

¹More than ECU 250 million.

²More than ECU 250 million.

³Deleted; business secret.

fabrication (of steel jackets, decks, modules and related steelwork such as piles, bridges, subsea templates and manifolds);

pipelay (to link offshore production platforms to receiving facilities onshore or to link separate offshore structures together);

installation (lifting of various components of offshore platforms or decks into place offshore and the setting of subsea manifolds and templates; as well as installation of offshore jackets by pile-driving so as to secure the jackets to the seabed); and

subsea (the subsea structure which is placed on the sea bed to control the wellhead is then linked by pipeline to processing capabilities either installed on a fixed platform, or alternatively linked to a floating production unit).

23. It is not necessary in the present case to decide if these segments of marine construction services constitute distinct product markets within the meaning of the Regulation, as the operation currently analysed does not have any impact in the EEA/EU area.
24. With regard to geographic markets the parties contend that the market is global. However, the precise definition of geographic markets can be left open since the concentration does not raise serious doubts in relation to its compatibility with the common market as McDermott-ETPM Far East has no economic activities in the common market [or EEA].
25. The concentration will not create or strengthen a dominant position in the common market [or EEA] or a substantial part of it as McDermott-ETPM's Far East activities have no ramifications for competition within the EEA/EU.

VI ANCILLARY RESTRICTIONS

26. The Joint Venture involves non-competition obligations on the parties to the Joint Venture (J. Ray McDermott Contractors Inc and ETPM International) and the undertakings of the groups they belong to withdraw from the Joint Venture Business in favour exclusively of the Joint Venture (Articles 3.1 and 3.2 of the 1995 Agreement).
27. These non-competition obligations reflects the lasting withdrawal of the parents from the market assigned to the Joint Venture, and they can be, therefore, regarded as an integral part of the concentration.
28. The parties have also notified as an ancillary restraint some arrangement between the parties relating to the sub-sea market. McDermott Subsea, a subsidiary of McDermott, has vessels capable of laying flexible pipelines and small-diameter rigid pipelines. There is thus a limited degree of potential overlap between the rigid pipelaying which the Joint Venture is capable of carrying out at the lower end of the market and the small-diameter rigid pipelaying which McDermott Subsea can carry out. The 1995 Agreement contains provisions indicating how pipelaying work will be done by the Joint Venture and McDermott Subsea. These provisions reflect the division of tasks within the group of undertakings controlled by one of the parties to the Joint Venture. However, in so far as they could be

regarded as restrictive they are an integral part of the concentration and must be considered ancillary.

VII CONCLUSION

29. Based upon the above considerations, the Commission has concluded that the notified operation does not raise serious doubts as to its compatibility with the common market. This decision is adopted in application of article 6 (1) (b) of Council Regulation N° 4064/89.

For the Commission