

***Case No IV/M.674 -
DEMAG / KOMATSU***

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

Article 6(1)(b) NON-OPPOSITION
Date: 21/12/1995

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.12.1995

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b)DECISION

To the notifying parties

Dear Sirs,

Subject : **Case No IV/M.674 - DEMAG/KOMATSU**

Notification of a concentration pursuant to Article 4 of Council Regulation No 4064/89

1. On 21 November 1995, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 4064/89⁽¹⁾ by which the undertakings Mannesmann DEMAG AG (DEMAG) and KOMATSU Ltd. (KOMATSU) acquire within the meaning of Article 3 (1) b of the Council Regulation joint control of a new established 50:50 joint venture, called Demag KOMATSU GmbH (JV).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market and within the functioning of the EEA Agreement.

I. THE PARTIES

3. Mannesmann DEMAG AG (DEMAG) forms part of the German group Mannesmann AG. DEMAG is engaged in the development, engineering, production and sales of plants and machineries, especially in the field of metallurgical plants, construction equipment, mining equipment, compression equipment and plastics machinery.

⁽¹⁾ OJ No L 395 of 30.12.1989; Corrigendum OJ No L 257 of 21.09.1990, p.13.

4. Komatsu Ltd. (KOMATSU) is the ultimate parent company of a Japanese multinational group being active on a worldwide scale in the manufacture and sale of construction equipment, in the field of civil engineering and architectural construction contracting, mining equipment, industrial machinery and other products.

II. THE OPERATION

5. The JVC will develop, manufacture, and distribute large sized loading tools primarily for use in the mining and quarry industry. DEMAG will contribute its entire existing excavator business to an already existing subsidiary, the capital of which will be increased against contribution in kind by DEMAG consisting of the excavator business to be transferred. Subsequently, KOMATSU will acquire a 50 % interest in the JV.

III. CONCENTRATION

6. The operation is a concentration within the meaning of Article 3 of the Merger Regulation.
7. DEMAG and KOMATSU will jointly control the JV as they must reach a common understanding in determining its commercial policy. One half of the JV's Managing Directors shall be nominated by DEMAG and the other half by KOMATSU. All resolutions of the Board shall be adopted by the affirmative vote of all the Managing Directors present at such meeting. The presence of at least one DEMAG Director and one KOMATSU director will be necessary to constitute a quorum. In addition, the board of Managing Directors will have to obtain prior approval of a shareholders' committee for important strategic business decisions as the approval/modification of the JV's annual and long-term business plans, e.g. the sales plan, the development plan, the investment plan, the personnel plan and the finance plan. The shareholder's committee of the JV shall consist of six members; DEMAG and KOMATSU shall each appoint three members. All resolutions shall be adopted by unanimous vote.
8. The JV will perform on a lasting basis and will have all the functions of an autonomous economic entity on grounds of disposal of assets, staff and financial independence. The JV will operate independently in the market. It will develop, manufacture and sell its products on the market through its own sales force and will be free to operate with independent dealers.
9. Coordination between the parent companies can be excluded as DEMAG will transfer all its entire excavator business to the Joint Venture. [...] ⁽²⁾.

IV. COMMUNITY DIMENSION

10. The concentration has a Community dimension within the meaning of Article 1 of the Merger Regulation. Mannesmann AG and KOMATSU Ltd. have a combined worldwide turnover exceeding 5000 million ECU (Mannesmann Group 15.795 million ECU and Komatsu Group 7574 million ECU). Each of them has a Community-wide turnover exceeding 250 million ECU (Mannesmann Group 10.397 million ECU and Komatsu Group 485 million ECU), of which they do not achieve more than two thirds within one and the same Member State.

⁽²⁾ Business secrets.

V. COMPATIBILITY WITH THE COMMON MARKET

A. RELEVANT PRODUCT MARKETS

11. According to the parties, the relevant product market is the market of large-sized digging and loading tools primarily for use in the mining and quarry industry. The parties distinguish in this market three different types of machines which would be interchangeable from the customers' point of view:
 - Hydraulic excavators having a weight of more than 90 metric tons;
 - Rope shovels with a capacity of 15 cubic yards upwards;
 - Wheel loaders having an engine power exceeding 500 horse power.
12. The three systems identified by the parties as pertaining to a single product market can fulfil the main functions of digging (including loosening) as well as loading (including eventual transporting over a short distance) of certain materials such as minerals, coal, rock and overburden. The differing loading tools systems present largely identical physical and technical characteristics. The parties provide evidence of a significant number of mines and quarries which operate the three systems at the same time and of some mines which have replaced one system of digging and loading tools by another.
13. However, some significant differences notably on terms of the specific jobs to be done by the machines are apparent, especially with regard to wheel loaders. Wheel loaders are weaker in hard materials and working with unblasted rock compared with hydraulic excavators and rope shovels. They do not seem to be capable of digging at benches of more than 8 meter height and are less economical in combination with very large dumpers with more than 130 tons. By contrast with hydraulic excavators and rope shovels of the size mentioned above, the wheel loaders are more mobile and so capable to cover short distances to discharge the loaded bucket and are more suitable for specific auxiliary mining tasks such as cleaning the ground in the working area. Furthermore, Excavators can go deeper into the ground than wheel loaders. Therefore, on the one hand, all three types of products are partly interchangeable. On the other hand, in some areas they can hardly replace each other.
14. With respect to the three differing technical solutions each of them represented by one of the above mentioned types of machines, it also seems reasonable to regard large-sized hydraulic excavators as a separate market. In this case, Wheel loaders and Rope shovels are products of neighbour markets.
15. In any case, a decision is not necessary as, given the respective market positions of the parties in the activities concerned, it would not alter the outcome of this case.

B. RELEVANT GEOGRAPHIC MARKET

16. The parties contend that the business with loading tools of such size and capacity is worldwide. Several facts underlie a definition of the relevant geographical market as worldwide. There are worldwide only a few manufacturers which produce these machines and distribute them worldwide. The customers are well informed big mining and quarry companies which buy worldwide. The transportation costs (4 to 6%), in comparison with the product price, are low and thus do not hinder worldwide distribution. There are also no trade barriers or substantial price differences. EC-import tariffs for hydraulic excavators would amount to approximately 5.2% and those for wheel loaders to some

4'8% of the sales price. With regard to prices, the U.S. do have the highest price level, followed by Australia, Japan and Western Europe.

17. All customers and competitors of the parties contacted by the Commission shared the opinion of the notifying parties on the global nature of the market. However, given that the operation does not lead to a market dominant position neither european- nor worldwide, it is not necessary to define the precise relevant geographic market in the present case because at least the existence of national markets can be excluded.

C. ASSESSMENT

18. The parties underline that the operation has little effect in Europe and it is intended to strengthen their position outside the EEA territory aiming at better penetrating the mining and quarry market in North and South America, Australia, South Africa and Asia.
19. The parties' market shares depend on the relevant market definition. The following market shares are based on the information provided by the parties. However, the investigations of the Commissions have shown that they give a proper view of the market situation.
20. According to the information provided by the parties and taking the narrowest possible market definition, a European market for excavators having a weight of more than 90 metric tons, the average market share of the parties in the last three years is about [...] ⁽³⁾, but there is only a little overlap of the parties' activities (DEMAG about [...] ⁽⁴⁾ and KOMATSU about [...] ⁽⁵⁾). Taking a market for big-sized loading tools containing excavators, rope shovels and wheel loaders, the market shares of the parties decrease. European-wide they have a market share of about [...] ⁽⁶⁾ (DEMAG [...] ⁽⁷⁾ and KOMATSU [...] ⁽⁸⁾).
21. This figures show that the operation is of complementary character with relation to the relevant product market and the current geographic field of activities of the parties concerned as KOMATSU's presence in Europe is weak. KOMATSU's [...] ⁽⁹⁾ market share in the EC in the market of large sized digging and loading tools mentioned above can only be attained because of KOMATSU's sales in the field of wheel loaders. DEMAG did not sell any wheel loader machine in Europe in the last three years. According to the information provided by the parties, no rope shovels have been sold by any supplier in Europe in the last three years.
22. The new JVC will have three main competitors in Europe:
- the Swiss enterprise Liebherr (about [...] ⁽¹⁰⁾ for excavators and about [...] ⁽¹¹⁾ market share for loading tools).

⁽³⁾ Business secret: above 30%

⁽⁴⁾ Business secret: above 30%

⁽⁵⁾ Business secret: below 5%

⁽⁶⁾ Business secret: below 30%

⁽⁷⁾ Business secret: above 20%

⁽⁸⁾ Business secret: below 10%

⁽⁹⁾ Business secret: below 10%

⁽¹⁰⁾ Business secret: below 30%

⁽¹¹⁾ Business secret: below 20%

- the German enterprise O&K (about [...] ⁽¹²⁾ for excavators and about [...] ⁽¹³⁾ market share for loading tools),
 - the American enterprise Caterpillar (about [...] ⁽¹⁴⁾ for excavators and about [...] ⁽¹⁵⁾ market share for loading tools).
23. Therefore, also after the concentration independent and strong competitors exist on the European level, which limit the market power of the parties. The effects of the operation are insignificant also in terms of addition of market shares on the European market if the situation is analysed with regard to Wheel Loaders and Rope shovels. With regard to Hydraulic excavators having a weight of more than 90 tons KOMATSU did not sell in the EC area any unit in 1992, two in 1993 and only one in 1994 in relation with a market volume in units in 1994 of 46 Hydraulic excavators.
24. With regard to Hydraulic excavators having a weight of more than 90 metric tons, the market share of the parties is about [...] ⁽¹⁶⁾ worldwide (DEMAG about [...] ⁽¹⁷⁾ and KOMATSU about [...] ⁽¹⁸⁾). According to the information provided by the parties, the most important competitors on the world market are
- Hitachi (1992-1994 about [...] ⁽¹⁹⁾),
 - O&K (1992-1994 about [...] ⁽²⁰⁾),
 - Liebherr (1992-1994 about [...] ⁽²¹⁾),
 - Caterpillar (1992-1994 about [...] ⁽²²⁾).
- According to newspaper figures for 1990 to 1992, the situation has not changed very much in the last years (DEMAG [...] ⁽²³⁾ and KOMATSU [...] ⁽²⁴⁾). Hitachi had a market share of about [...] ⁽²⁵⁾, O&K of about [...] ⁽²⁶⁾, Liebherr of about [...] ⁽²⁷⁾ and Harnischfeger of about [...] ⁽²⁸⁾.
25. With regard to big-sized loading tools, the combined market share of the parties in the period 1992-1994 is about [...] ⁽²⁹⁾ worldwide (DEMAG [...] ⁽³⁰⁾ and KOMATSU [...] ⁽³¹⁾). The strongest competitor is Caterpillar with a market share of about [...] ⁽³²⁾.

(12) Business secret: above 30%

(13) Business secret: above 20%

(14) Business secret: below 5%

(15) Business secret: above 20%

(16) Business secret: above 35%

(17) Business secret: above 20%

(18) Business secret: above 10%

(19) Business secret: above 20%

(20) Business secret: above 20%

(21) Business secret: above 10%

(22) Business secret: below 5%

(23) Business secret: above 20%

(24) Business secret: above 10%

(25) Business secret: above 20%

(26) Business secret: above 15%

(27) Business secret: above 15%

(28) Business secret: below 5%

(29) Business secret: above 15%

(30) Business secret: above 5%

(31) Business secret: above 5%

(32) Business secret: above 25%

26. In the light of the above considerations, it is considered that there is neither creation nor strengthening of a dominant position in the market as a result of the present operation. In addition, if only Excavators are the relevant product market, one will have to take into account that there is also competition pressure from the two neighbour markets as the products are at least partly interchangeable.

VI. ANCILLARY RESTRAINTS

- 27.⁽³³⁾

VII. CONCLUSION

28. The proposed concentration therefore does not raise serious doubts as to its compatibility with the common market.
29. 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 N° 4064/89.

For the Commission,

⁽³³⁾ Business secret