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EUROPEAN COMMISSION
DG Competition

Case M.7771 - PARCOM / PON / IMTECH MARINE

Only the English text is available and authentic.

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

Article 7(3)
Date: 04/09/2015



EUROPEAN COMMISSION

Brussels, 4.9.2015
C(2015) 6210 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

To the notifying parties:

Dear Sirs,

**Subject: Case M.7771 - PARCOM / PON / IMTECH MARINE / JV
Commission decision pursuant to Article 7 (3) of Council Regulation No. 139/2004¹ and Article 57 of the Agreement on the European Economic Area²
Request of derogation**

1. We refer to your application for a derogation from the suspension obligation provided for in Article 7(1) of Council Regulation (EC) No 139/2004 ("the Merger Regulation") with regard to the proposed acquisition by Parcom Capital Management B.V. ('Parcom') and Pon Holdings B.V. ('Pon') of Imtech Marine Group B.V. ('Imtech Marine') submitted pursuant to Article 7(3) of the Merger Regulation on 26 August 2015 and amended on 2 September 2015. Pon and Parcom are referred to as the 'Parties'.

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 OJ L 1, 3.1.1994, p.3 ("the EEA Agreement").

I. THE PARTIES AND THE OPERATION

2. Imtech Marine is active as full-service provider and system integrator of technology solutions for ships. It also provides systems and maintenance services and distributes components to third parties, such as shipbuilders. The Imtech Marine is a division of Royal Imtech N.V. ('Royal Imtech'). Royal Imtech offers a wide range of electrical and mechanical solutions and automation. In 2013 Royal Imtech faced its first financial problems and on 13 August 2015 was declared bankrupt. While Imtech Marine has not yet been declared bankrupt, as a result of its parent company's bankruptcy it lost access to financial resources, it is now making losses and its liquidity shortfall is increasing.
3. Parcom is a private equity fund holding investments in various markets including oil, gas and offshore industrial engineering and manufacturing as well as business services and food. Parcom focuses on mid-sized companies and is mainly active in the Benelux. Parcom is a subsidiary of NN Group N.V.
4. Pon is an international trading and service organisation focused on import, logistics, marketing, distribution, service and maintenance of products varying from passenger cars and commercial vehicles to material handling trucks, tyres, road construction and earthmoving equipment and power generation products. In addition Pon has two groups of subsidiaries active in the maritime sector: in the supply of engines for ships and in electrical engineering for the maritime sector.
5. After the bankruptcy of Royal Imtech shares of Imtech Marine, together with some other subsidiaries of Royal Imtech, were transferred through a warehousing transaction to an entity ultimately controlled by an independent foundation. This transaction was approved by the bankruptcy trustees of Royal Imtech and is aimed at "warehousing" Imtech Marine until it is sold.
6. An unconditional offer letter has been signed, which will be followed by a share purchase agreement. On the basis of this agreement Pon and Parcom will acquire all shares in capital of Imtech Marine from [...], which is the security agent and holder of right of pledge on shares of Imtech Marine, with the consent and cooperation of the bankruptcy trustees. On 12 August 2015, a Consortium Term Sheet was signed between Pon and Parcom, which provides for rules governing Pon and Parcom relations as shareholders of Imtech Marine and establishes their joint control over Imtech Marine³.

II. UNION DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (NN Group EUR 13 555 million, Pon EUR 5 958 million and Imtech Marine EUR 476 million). Each of them has a Union turnover in excess of EUR 250 million (NN Group EUR [...], Pon EUR [...] and Imtech Marine EUR [...]), and only NN Group and Pon achieve more than two-thirds of their aggregate Union turnover within one and the same Member State ([...]). The

³ On the basis of the Consortium Term Sheet (i) each of Parcom and Pon will appoint two out of five members of the Supervisory Board of Intech Marine and they will jointly appoint the fifth member; (ii) reserved matters such as – among others - approval and amendment of business plan require approval of the appointees of both Parcom and Pon. Parcom and Pon will thus have joint control over Imtech Marine.

proposed Transaction therefore has a Union dimension within the meaning of Article 1(2) of the Merger Regulation.

III. THE APPLICATION FOR DEROGATION

8. The Parties submit that the delay in the anticipated acquisition of Imtech Marine by Parcom and Pon, resulting from the standstill obligation contained in Article 7 (1) of the Merger Regulation, will cause serious damage to Imtech Marine, its employees, customers, suppliers, subcontractors, shareholders and to employment in general. The Parties further claim that [...] only the immediate implementation of the envisaged transaction would avoid a further grave deterioration of its situation and prevent a significant deterioration of the assets to be acquired.
9. To support their derogation request the Parties provide numerous examples of Imtech Marine's (i) suppliers demanding prepayments and threatening to terminate contracts if these demands are not met, (ii) customers requiring parent company or bank guarantees to back the proper performance of Imtech Marine's obligations, (iii) inability to gain new business because it does not meet standard tender requirements.
10. [Furthermore, the parties submit that a subsidiary of Imtech Marine is experiencing negative equity and may have to file for bankruptcy].

IV. THE CONDITIONS FOR DEROGATION PURSUANT TO ARTICLE 7(3) OF THE EC MERGER REGULATION

11. Pursuant to Article 7(1) of the Merger Regulation, a concentration falling under that Regulation shall not be implemented either before its notification or until it has been declared compatible with the common market. Pursuant to Article 7(3) of the Merger Regulation, the Commission may, on reasoned request, grant derogation from the obligation imposed in Article 7(1).
12. Article 7(3) of the Merger Regulation provides that, in deciding on the request, the Commission must take into account, *inter alia*, the effects of the suspension on one or more undertakings concerned by the concentration or on a third party and the threat to competition posed by the concentration.
13. Derogation from the obligation to suspend concentrations is granted only exceptionally, normally in circumstances where the suspension provided for in the Merger Regulation would cause serious damage to the undertakings concerned by a concentration, or to a third party.

(A) THE OPERATION FALLS UNDER THE SUSPENSION OBLIGATION PURSUANT TO ARTICLE 7(1) OF THE MERGER REGULATION

14. The proposed transaction constitutes a concentration within the meaning of Article 3 of the Merger Regulation and has a Union dimension according to Article 1 thereof. Hence the operation falls under the suspension obligation laid down in Article 7(1) of the Merger Regulation.

(B) THE EFFECTS OF THE SUSPENSION ON THE UNDERTAKINGS CONCERNED AND THIRD PARTIES

15. The Parties submit that Imtech Marine has no access to working capital at present [...]. It is estimated by Pon and Parcom that the weekly net cash needs of Imtech Marine amount to EUR [...].
16. The Parties claim that if the envisaged transaction is not completed rapidly, Imtech Marine will have to cease paying its creditors and is likely to be declared bankrupt shortly. [...]. Thus according to the Parties without access to fresh financial resources from Parcom and Pon Imtech Marine will be unable to continue its activities in the near future. This will cause significant harm towards Imtech Marine, its suppliers and customers.
17. According to the Parties, the bankruptcy trustees of Royal Imtech are in favour of a prompt transaction by which Parcom and Pon will acquire Imtech Marine because it guarantees the continuity of Imtech Marine's operations besides safeguarding the employment of employees.
18. The Commission considers, on the basis of information obtained from the Parties, that in the present case the standstill obligation leads to further deterioration of the already difficult financial situation of Imtech Marine and its potential insolvency. In order to maintain Imtech Marine as a going concern it needs to urgently receive funding and guarantess to strengthen its credibility vis-à-vis its suppliers and customers. It appears that the suspension obligation could threaten the survival of Imtech Marine and lead to a significant deterioration of the assets to be acquired.
19. Against this background, it is possible to conclude that the suspension obligation imposed by Article 7(1) could lead to serious harm to Imtech Marine. Furthermore, on the basis of the information submitted by Pon and Parcom, a derogation from the stand-still obligation would not have adverse effects on any third party.

(C) THE THREAT TO COMPETITION POSED BY THE CONCENTRATION

20. The Commission has not investigated the markets for electrical engineering for the maritime sector before.
21. The Parties proposed product and geographic market definitions on the basis of Commission's past decisions in neighbouring markets, in particular those concerning electrical engineering for onshore constructions (residential and non-residential). In light of these past Commission decisions, the Parties distinguish potential sub segments in the electrical engineering for the maritime sector depending on (i) type of business/customer group (i.e. naval, yachts, workboats/cargo, cruises/ferry, specials and offshore), (ii) type of work (i.e. system integration, installation ad well as maintenance and management) and (iii) type of services (i.e. propulsion, power systems, navigation and communication/integrated bridge solutions, automation, HVAC, water management, cable engineering installation and entertainment). The Parties claim that all of these markets are global in scope since the market for commercial ship building is also global in scope.
22. The Parties have provided market share estimates on the basis of data contained in a third party ([third party]) report, which was prepared at the request of Imtech Marine.

23. Three of Pon's subsidiaries have activities overlapping with those of Imtech Marine in the markets for electrical engineering for the maritime sector. On the basis of the Parties' estimates, in most of the potential markets the combined shares of Imtech Marine and Pon are below 20%. However on a potential worldwide market for cable engineering for ferries the estimated combined market share based on the [third party] report data amounts to [40-50]% (with an increment of [0-5]%), while on a potential worldwide market for cable engineering for ferries and cruises it amounts to [20-30]%⁴. However, the Parties claim that the market shares calculated on the basis of the [third party] report data are an incorrect representation of reality and overestimate the combined market shares on these two markets. The Parties provide alternative calculations which result in a combined share on a worldwide market for cable engineering for ferries of approximately [5-10]% and in the worldwide market for cable engineering for ferries and cruises of approximately [0-5]%. Parcom's subsidiary manufactures and refits custom-built sailing and motor yachts and as such is a potential customer of Imtech Marine. The Parties submit that this vertical link does not give rise to vertically affected markets.
24. On the basis of the information submitted by Pon and Parcom in most of the potential markets the horizontal overlaps are quite limited and the vertical relationships do not raise, *prima facie*, any issue of foreclosure.

Horizontal overlaps

25. The Parties have submitted to the Commission a draft short form notification on 27 August 2015.
26. In the potential overall market for the supply of electrical engineering services in the maritime sector the combined shares of Imtech Marine and Pon amounts to [0-5]% at the worldwide and [10-20]% at the EEA-wide level.
27. In the various potential markets for electrical engineering services divided by type of ship for which they are provided the combined shares of Imtech Marine and Pon are [between 5-10]% at the worldwide level. At the EEA-level the combined shares are [between 10-20]%.
28. In the potential markets for electrical engineering services divided by solution the combined shares of Imtech Marine and Pon are [between 10-20]% at the worldwide level and the Parties submit that they would not be different at the EEA-level.
29. On the basis of a potential segmentation of the overall market for electrical engineering services on the basis of a combination of solution and segment the combined shares of Imtech Marine and Pon are generally [between 10-20]% at the worldwide level and the Parties submit that they would not be different at the EEA-level. The only exceptions relate to cable engineering for ferries, special vessels and combination of ferries and cruises (as indicated in paragraph 22). However the Parties contest the reliability of the data on which these market shares are based and which were provided by [a third party]. The Parties submit alternative

⁴ On the basis of the [third party] report, combined market share estimates also exceed 20% on a potential worldwide market for cable engineering for special vessels. However, the estimated increment is [between 0-5]%.

calculations relating to the total value of these potential relevant markets, on the basis of which their combined shares drop to [between 5-10]% in the potential market for cable engineering for ferries. Furthermore the Parties argue that there are multiple other companies active in the electrical engineering for maritime industry, including the field of cable installation, such as Alewijnse, Croon, Eekels, Van der Leun and IHC D&A.

30. On the basis of the market share estimates calculated reflecting the [third party] report data, the increment on the markets where the market share exceeds 20% is limited. This is [between 0-5]% on the potential global market for cable engineering for special vessels and [between 0-5]% on the potential global market for cable engineering for combination of ferries and cruises. As regards the potential global market for cable engineering for ferries, the increment is also limited. Furthermore, the Parties submit in their draft short form notification that there are multiple other companies active in the electrical engineering for maritime industry, including the field of cable installation, such as Alewijnse, Croon, Eekels, Van der Leun and IHC D&A, which constitute actual or potential competitors in relation to this market.
31. At this stage and on the basis of the information provided by the Parties it can be concluded that the operation would not raise *prima facie* competition concerns in most potential markets, in particular in view of the low combined market shares and the minimal increase of the market share generated by the merger. As regards the potential global market for cable engineering for ferries, the arguments of the Parties concerning the underestimation of the size of the relevant market and thus overestimation of their combined share appear *prima facie* plausible.

Conclusion

32. Therefore, at this stage and on the basis of the information provided by the Parties it appears *prima facie* that the transaction is not likely to pose a threat to competition within the EEA.

(D) BALANCE OF INTERESTS

33. Based on the above, it appears that whilst the suspension obligation could seriously affect the financial situation of Imtech Marine, no threat to competition caused by the operation can currently be identified. In addition, the derogation does not appear to have adverse effects on one or more of the Parties or on any third party. Therefore the Commission finds that derogation can be granted in accordance with the application and to the extent specified below.

V. TERMS AND CONDITIONS

34. According to Article 7 (3), 4th sentence, of the Merger Regulation, a derogation from the suspension obligation laid down by Article 7 (1) thereof may be made subject to conditions and obligations in order to ensure effective competition.
35. In the present case since the suspension obligation could lead to significant deterioration of the assets to be acquired by Pon and Parcom, the derogation from the suspension obligation will be limited to what is necessary to ensure the continuation of the assets (which are to be acquired by the Parties) as a going concern.

36. Pon and Parcom committed themselves to submit a complete full form notification to the Commission by 15 September 2015. In addition the Parties committed themselves to take only those steps and measures in relation to Imtech Marine, which are necessary in order to avoid further deterioration of assets of Imtech Marine. To ensure that the conditions of this derogation are adhered to, a hold separate manager will be appointed by the Parties and the Parties will report to the Commission on the actions taken.
37. The Parties committed not to proceed with any measures implementing the merger until the Commission takes a final decision under the relevant provisions of the Merger Regulation, except those described in paragraph 36.
38. Based on the preceding considerations, the Commission has decided to grant a derogation from the suspension obligation with regard to the proposed concentration subject to the following conditions:
 - i. Pon and Parcom shall submit a complete full form notification to the Commission by 15 September 2015, in order to allow the assessment of the compatibility of the proposed concentration with the internal market.
 - ii. Pon and Parcom shall take only those steps and measures in relation to Imtech Marine, which are necessary in order to avoid further deterioration of its assets, in particular: provide corporate guarantees, make prepayments, provide any additional funding, communicate and negotiate with all suppliers, customers and other stakeholders of Imtech Marine to seek to restore the viability of Imtech Marine as a going concern. Pon and Parcom will not exercise any voting or other shareholder rights for any purpose other than those mentioned in the preceding sentence until the transaction has been declared compatible with the internal market.
 - iii. In order to ensure the orderly implementation of the measures under (ii) whilst maintaining Imtech Marine separate from Pon and Parcom businesses until clearance is eventually granted, Pon and Parcom shall appoint a hold-separate manager. In addition the Parties will report to the Commission on a weekly basis, and more often on Commission's request, on the actions taken.

The hold separate manager will be selected by Pon and Parcom from Imtech Marine's current employees after consulting the Commission. The hold separate manager will have the necessary expertise, capacity and lack of conflicting interest allowing him/her to implement the measures under (ii) and to ensure that Imtech Marine business is ring-fenced and run independently until the Commission has taken a final decision on the transaction.

VI. CONCLUSION

39. The Commission considers that the reasons given for derogation from the suspension obligations meet the requirements set out in Article 7(3) of the Merger Regulation.

40. Based on the above considerations and in accordance with Article 7(3) of the Merger Regulation and Article 57 of the EEA Agreement, Parcom and Pon are granted a derogation from the obligations imposed by Article 7(1) of the Merger Regulation in accordance with the foregoing terms and conditions until the acquisition has been declared compatible with the common market by means of a decision pursuant to Article 6(1)b or 8(2) or a presumption pursuant to Article 10(6).

For the Commission

(Signed)

Margrethe VESTAGER

Member of the Commission