COMMISSION DECISION

of 18 August 2006

declaring a concentration compatible with the common market and the functioning of the EEA Agreement

(Case COMP/M.3848 — Sea-Invest/EMO-EKOM)

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(Only the English text is authentic)

(Text with EEA relevance)

(2007/687/EC)

On 18 August 2006 the Commission adopted a Decision in a merger case under Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) ([1]), and in particular Article 8(2) of that Regulation. A non-confidential version of the full Decision can be found in the authentic language of the case on the website of the Directorate-General for Competition, at the following address: http://ec.europa.eu/comm/competiton/index_en.html

I. SUMMARY

(1) Sea-Invest NV (Sea-Invest) is a privately owned company providing terminal services in a number of ports in Belgium, France, Germany and South Africa. Its core business is the handling of dry bulk and other non-containerised cargo. Sea-Invest controls among others the following terminals handling coal, iron ore and other dry bulk: ABT in Antwerp, GCT and CBM in Ghent and Sea-Bulk in Dunkirk.

(2) Europees Massagoed-Overslagbedrijf BV and Erts- en Kolen Overslagbedrijf BV (EMO-EKOM) provides terminal services for coal and iron ore in Rotterdam. EMO is operating the terminal while EKOM owns the facilities. The existing shareholders in EMO-EKOM are ThyssenKrupp Veerhaven BV (TKV), RAG Logistic GmbH (RAG), HES Beheer NV (HES) and Manufrance BV (Manufrance).

(3) TKV is the seaport forwarder for ThyssenKrupp Steel for the ports of Amsterdam, Rotterdam and Antwerp. It operates push boat and barge services via the river Rhine to the group's blast furnaces in Duisburg. TKV also operates a coal and iron ore terminal in the port of Rotterdam, entirely dedicated to the ThyssenKrupp group.

(4) HES holds, apart from its shareholding in EMO-EKOM, stakes in other companies which handle dry bulk in the ports of Rotterdam, Amsterdam and Zeeland. Its subsidiary EBS handles coal, iron ore and other dry bulk in Rotterdam. It has also joint control in the RBT terminal for iron ore, coal and other dry bulk in Rotterdam and the OBA terminal handling coal and other dry bulk in Amsterdam. Further, it holds a non-controlling stake in the OVET terminal handling coal, iron ore and other dry bulk in Zeeland.

(5) Manufrance holds, apart from its shareholding in EMO-EKOM, controlling interests in OVET and OBA. It is a subsidiary of ATIC Services, a joint venture between the Total, EDF and Arcelor groups (however, none of these shareholders are controlling ATIC Services). ATIC Services holds interests in companies offering services related to coal trading, inland-waterways logistics, maritime transportation and quality control of coal and iron ore cargoes.

(6) Pursuant to the proposed transaction, Sea-Invest acquires joint control of EMO-EKOM by means of a purchase of shares in a pure holding company SNV from the current shareholder RAG. After the transaction, EMO-EKOM will be jointly controlled by Sea-Invest, TKV, HES and Manufrance.

(7) The Commission's market investigation has revealed that that the proposed concentration will not give raise to any competition concerns as a result of which effective competition would be significantly impeded in the Common Market or in a substantial part of it.

II. EXPLANATORY MEMORANDUM

1. *THE RELEVANT PRODUCT MARKETS*

(8) The Commission has in the past suggested that the market for terminal services (cargo handling and storage in ports) could be subdivided according to the three main types of cargo: (i) parcel goods (in particular containers), (ii) dry bulk goods and (iii) liquid bulk

([1]) OJ L 24, 29.1.2004, p. 1.

goods. A previous decision also suggested that the market for terminal services for dry bulk cargo could be further subdivided according to the type of commodity handled. Dry bulk is usually split into several categories: coal and iron ore, agri-bulk (e.g. grains or cereals) and other dry bulk [1]. Since terminals for agri-bulk do not compete, mainly due to food safety reasons, with terminals handling the two other types of dry bulk, the investigation focused on determining whether handling coal and iron ore on the one hand and other dry bulk on the other hand form separate product markets.

(9) Coal and iron ore are major bulk products handled in large quantities for which speed of discharging is crucial while handling and storage does not require special attention. Terminal companies are able to switch between handling coal and iron ore and many of them do handle both products with the same equipment. Both iron ore and coal are stored in the open air and basically in the same area, only in separate stockpiles. Further, the customers for handling coal and iron ore are in both cases usually the end users of these commodities, i.e. large steel companies and electricity companies. Both these commodities are also transported in larger sea-going vessels and the preferred means of inland transport are in particular barges and to a lower extent rail.

(10) On the other hand, other dry bulk commodities require a different handling as they are often more fragile than coal and iron ore, cannot be handled by the high-speed conveyor belts used for coal and iron ore and may sometimes require a covered storage. Other dry bulk is also transported and handled in significantly smaller volumes. Much smaller sea-going vessels are used for other dry bulk than for coal and iron ore which are able to enter into more draught restricted ports. As the volumes are smaller, the inland transportation of other dry bulk products is more flexible. Also the customers for other dry bulk are different and traders and logistics companies play a greater role.

(11) Even though some smaller terminals do switch between handling coal and iron ore on the one hand and other dry bulk on the other hand, there are substantial differences between handling these two categories of products which limit effective and immediate supply-side substitution. Important coal and iron ore customers also confirmed that they do not consider other dry bulk terminals as a viable alternative because of the lack of storage capacity and the inability to quickly load and unload large volumes of cargo.

(12) In view of the above, the decision concludes that handling of coal and iron ore represents a separate market from handling of other dry bulk.

(13) Further, the Commission has in the past distinguished between the markets for terminal services for hinterland traffic [2] on the one hand and transhipment traffic [3] on the other hand. This distinction was confirmed also in this case. Therefore, the decision defines the main affected product market as terminal services for hinterland traffic for coal and iron ore which are distinct from terminal services for transhipment traffic for coal and iron ore.

2. THE RELEVANT GEOGRAPHIC MARKETS

(14) In the Art 6(1)(c) decision the Commission stated that the relevant geographic market could either extend to all ports in the ARA range (i.e. Antwerp, Rotterdam, Amsterdam, including Zeeland) or could solely be limited to the port of Antwerp on the one hand and to the Dutch ports (Rotterdam, Amsterdam, Zeeland) on the other hand. The in-depth market investigation thus focused on the substitutability between the Sea-Invest's ABT terminal in Antwerp (as well as its terminals in Ghent and Dunkirk) and EMO-EKOM as well as other terminals in the Dutch ports.

(15) The coal and iron ore terminals have three main groups of customers: steel producers, electricity producers and traders. When deciding on the use of the terminal, the customer has to take into consideration the whole logistic chain in order to optimise the total logistic costs connected with importing coal and iron ore. The market investigation showed that this imposes significant constraints on its ultimate choice for a specific terminal. The most important cost elements of the logistic chain besides terminal handling and storage are sea freight and inland transport. Terminal handling and storage fees represent only around 10-15 % of the total logistic costs. The relatively low importance of terminal fees makes switching in response to 10 % or even 15 % increase in the terminal tariffs unlikely, as the selection of the port and terminal of discharge is driven rather by the more important cost elements — sea freight costs and inland transport costs — as well as other factors specific to each customer.

(16) The decision therefore first analyses the most important parts of the total logistic costs for importing coal and iron ore. Further, the decision summarises the results of the in-depth investigation as regards the possibilities of individual customers of Sea-Invest, EMO-EKOM and other terminals to switch between Antwerp (or even Ghent and Dunkirk) on the one hand and Rotterdam and other Dutch ports on the other hand.

[1] A wide range of various commodities such as zinc concentrates and other non-ferrous concentrates, cement clinkers, pig iron, kaolin, phosphates and other minerals, cokes, pet-cokes, anthracites, etc.

[2] I.e. from deep-sea ship directly to inland barge, train or truck.

[3] I.e. from deep-sea ship to relay/feeder vessel.

(17) The sea freight costs are for the majority of customers the most important factor influencing the choice of a particular terminal. It is in general more economical to use as large vessels as possible for the maritime leg of the transport of coal and even more so of iron ore. However, the choice for a vessel of a particular size is limited by the draught of the ports. The market investigation confirmed that Antwerp is more draught restricted than Rotterdam and other ports in the ARA range and that therefore large vessels (exceeding around 140 000 dwt) cannot enter the port of Antwerp fully loaded. To the contrary, these large vessels bring 79 % of coal and even 93 % of iron ore discharged in the port of Rotterdam. The quantitative analysis of the sea transport costs confirmed the importance of draught and the relative significance of the resulting cost disadvantage of the ABT terminal as compared to the EMO-EKOM terminal. In case of coal transported from non-draught restricted origins (representing more than 70 % of all coal discharged in the ARA range), the sea transport costs difference between Antwerp and Rotterdam amounts in average to around 50 % of the handling tariff. This in itself makes switching in reaction to a 10 % price increase unlikely.

(18) The inland transport costs may have a significant effect as well on the choice of a particular terminal, depending on the location of the customers. The comparison of average inland transport costs for different regions from Antwerp and Rotterdam shows that Antwerp is significantly cheaper in particular for Belgium and to some extent for Northern France. Rotterdam, on the other hand, is cheaper for Germany — Ruhrgebiet, Germany — Saarland, Southern Germany and to some extent for the Netherlands. The cost difference between Antwerp and Rotterdam for these regions ranges between 20 % and 50 % of the average terminal fee. This limits the economic incentive of customers to switch between Antwerp and Rotterdam in reaction to a 10 % increase in the terminal fee. It is also in line with statements of Sea-Invest and respondents in the investigation that Antwerp and Rotterdam to a large extent serve different hinterlands and that the choice of a terminal is significantly predetermined by the location of the customer.

(19) Further, the decision analyses the prices of terminal services at ABT and EMO-EKOM that are paid by customers located in different geographic areas. This showed both for ABT and EMO-EKOM that there are no specific regions where customers pay significantly lower or higher prices as compared to other regions. This seems to indicate that there are no particular regions where the competitive pressure between terminals would be particularly strong. The analysis of terminal prices also showed that prices differ significantly between individual customers of both ABT and EMO-EKOM.

(20) As to the specific situation for each of the customer groups identified above, the decision summarises the terminals used by individual groups of customers located in different areas and their real possibilities to switch between terminals. This analysis is based on replies of the customers to detailed questionnaires as well as on interviews conducted with a number of customers. All customers emphasised that their choice of the terminal is very much determined by the sea freight costs and the inland transport costs. Further, there are many other factors determining and limiting the choice of the terminals for each customer, such as the participation in part cargo services [1], additional services and storage capacity of terminals, risk of congestions, the number and location of the customer's plants, accessibility to and suitability of barge or train connection, the security of supply (e.g. in the periods of low water in the river Rhine) or the existence of long-term contracts with the providers of the inland transport.

(21) This analysis confirmed that the scope for substitution between the ABT terminal and the EMO-EKOM terminal is very limited. Based on the market investigation, the decision quantifies the actual possibilities of substitution: the volumes for which ABT can substitute EMO-EKOM are marginal in relation to EMO-EKOM's total volume (less than 5 %). These volumes do not put competitive pressure on EMO-EKOM, in particular as the most important customers do not intend to switch. The volumes for which EMO-EKOM can substitute ABT are also small in relation to ABT's volume (less than 10 %). These volumes only put very limited competitive pressure on ABT, in particular because ABT's most important customers do not intend to switch.

(22) All this supports the conclusion that Rotterdam/Amsterdam/Zeeland is a separate geographic market from Antwerp/Ghent/Dunkirk [2]. Conditions of competition are not the same in these two areas. However, there is some limited fringe competition between these geographic markets. This fringe competition mainly targets volumes of traders.

(23) On the other hand, as regards the transhipment traffic for coal and iron ore, the relevant geographic would be broader, covering all main deep-sea ports in the Gothenburg — Le Havre range including UK and Irish deep-sea ports.

[1] Also called 'parcel services'. A part cargo service carries cargo of several customers who do not import sufficient quantities to make it economical to charter a vessel independently.

[2] It can be left open whether the ports of Ghent and Dunkirk are in the same geographic market as Antwerp or form a separate market (which is in any case different to the Dutch ports). Under both alternatives, the transaction does not lead to competition concerns.

3. *COMPETITIVE ASSESSMENT*

1. ***Terminals services for hinterland traffic for coal and iron ore***

(a) **Unilateral effects**

(i) *Strengthening of ABT's dominance in Antwerp*

(24) ABT is dominant on the Antwerp market (market share 100 %) for terminal services for hinterland traffic for coal and iron ore [1] where it is only facing fringe competition. The decision analyses whether Sea-Invest may have the possibilities and incentives to use its joint control in EMO-EKOM to restrict or eliminate this fringe competition. This joint control in EMO-EKOM will provide Sea-Invest it with a possibility to veto (but not actively determine) strategic decisions, in particular concerning the business plan and budget, appointment of management or major investments. Its participation in the board also provides it with some general information about EMO-EKOM's business policy and strategic planning.

(25) However, these powers cannot strengthen Sea-Invest's position because the fringe customers can switch to alternative terminals. The in-depth investigation confirmed that none of the fringe customers of ABT would solely depend on EMO-EKOM. On the contrary, most of these customers identified other terminals, e.g. OBA and Rietlanden in Amsterdam and RBT in Rotterdam, as the best possible alternatives to ABT. Similarly, the fringe customers which are able to switch volumes from EMO-EKOM to ABT confirmed to have more and better alternatives, in particular other terminals in Rotterdam and Amsterdam. Given the limited volumes of the fringe customers, these terminals would also have necessary available capacities to absorb their tonnages.

(26) Further, the investigation showed that Sea-Invest would not have any incentive to use its veto powers to block important decisions in order to try to further decrease the limited competitive pressure from EMO-EKOM. Considering the limited volumes of fringe customers and focus of EMO-EKOM on the increasing coal imports to Germany, the costs of such veto for Sea-Invest would not be outweighed by its benefits.

(ii) *Unilateral price increase of EMO-EKOM*

(27) Another possible theory of harm concerns the unilateral effect of the transaction which might provide EMO-EKOM with the ability and incentive to increase prices. Such unilateral effect would be possible if pre-merger (i) Sea-Invest represented competitive constraints for EMO-EKOM preventing it from increasing its prices and (ii) the concentration eliminated or substantially weakened these competitive constraints on EMO-EKOM. The in-depth market investigation demonstrated that none of these two conditions is fulfilled.

(28) First, EMO-EKOM and Sea-Invest are in different geographic markets and any possible constraints exercised by Sea-Invest terminals on EMO-EKOM are limited only to the less than 5 % of the total volumes handled by EMO-EKOM. Further, customers of EMO-EKOM identified most often as possible substitutes other terminals in Rotterdam or Amsterdam, in particular OBA or Rietlanden. Second, even if there were any competitive constraints by Sea-Invest terminals on EMO-EKOM, it is highly unlikely that the acquisition of a co-controlling stake would substantially weaken these constraints. Sea-Invest would have no incentive to relax ABT's competition vis-à-vis EMO-EKOM as it will need to attract tonnages to Antwerp as it will not, contrary to Rotterdam, profit in any significant way from the increased imports of coal to Germany.

(29) The transaction thus does not lead to any competition concerns due to unilateral effects strengthening the dominance of Sea-Invest or enabling a price increase by EMO-EKOM.

(b) **Coordinated effects**

(30) The Art 6(1)(c) decision identified as a possible competition concern also the coordination of behaviour between Sea-Invest and EMO-EKOM as well as other terminals (OBA, EBS, RBT, OVET) controlled by the shareholders of EMO-EKOM due to the structural links created between Sea-Invest and EMO-EKOM, HES and Manufrance. However, taking into account the geographic markets defined above, terminals controlled by Sea-Invest on the one hand, and EMO-EKOM and other terminals controlled by HES and Manufrance on the other hand are active on separate markets. Therefore, anti-competitive coordination of their behaviour due to the transaction is unlikely considering the limited competitive constraints between them.

(31) To the extent that there is some fringe competition between ABT and other terminals in the ARA range, the in-depth investigation brought no evidence that the transaction might lead to coordinated effects. The investigation showed that the management of the terminals is rather independent in the operational running of terminals, including pricing policy for individual customers or expansion plans. Any coordination is also

[1] Sea-Invest is also dominant if the ports of Ghent and Dunkirk were included in the geographic market as the terminals handling coal and iron ore for non-captive customers are controlled by Sea-Invest. The following analysis would be the same if Ghent and Dunkirk were in the same market as Antwerp.

less likely due to the fact that the shareholders of EMO-EKOM would still be rather heterogeneous as regards their scope of activities and vertical integration. The transparency of the market as regard price conditions agreed upon in negotiations with individual customers is limited. Due to particularities of each customer in particular as regards its geographic location, the terminal services cannot be regarded as homogenous. Further, the in-depth investigation did not provide any evidence of a credible deterrent mechanism. Finally, both other competitors (in particular Rietlanden) as well as large customers represent important constraints able to jeopardise the outcome expected form the coordination.

(32) Taking into account the above, the transaction does not lead to competition concerns due to coordinated effects between Sea-Invest, EMO-EKOM, HES and Manufrance.

(c) **Article 2(4)**

(33) The market investigation also confirmed that the transaction will not lead to any coordination between Sea-Invest, HES and Manufrance in the market for terminal services for other dry bulk. There are no indications that the entry of Sea-Invest as a shareholder in the coal and iron ore terminal EMO-EKOM could lead to coordination with HES and Manufrance in other dry bulk. Further, there are a number of independent terminals handling other dry bulk in the ARA range.

2. ***Terminals services for transhipment traffic for coal and iron ore***

(34) The decision concludes that the transaction does not lead to any competition concerns in the market for terminal services for transhipment traffic for coal and iron ore considering the limited transhipment volumes of Sea-Invest and EMO-EKOM and the presence of multiple alternatives terminals.

4. *CONCLUSION*

(35) The Decision concludes that the proposed concentration will not give rise to any competition concerns as a result of which effective competition would be significantly impeded in the Common Market or in a substantial part of it.

(36) Consequently, the Commission declares the notified transaction compatible with the Common Market and the EEA Agreement, in accordance with Article 8(1) of the Merger Regulation and Article 57 of the EEA Agreement.