



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 05/10/2001
SG(2001)D/291683

In the published version of this decision, some information relating to business secrets and other confidential information has been omitted. 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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
ARTICLE 66 ECSC DECISION

COMMISSION OF THE EUROPEAN COMMUNITIES

Commission Decision

of 05.10.2001

**authorising Scholz AG and ALBA AG & Co. KG
to acquire joint control over ELSA GmbH**

(Case COMP/ECSC.1358 – SCHOLZ / ALBA / JV)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 66(2) thereof,

Having regard to Decision No 24/54 of 6 May 1954 laying down in implementation of Article 66(1) of the Treaty a Regulation on what constitutes control of an undertaking,¹

Having regard to the notification submitted by the parties dated 4 September 2001 and to subsequent information,

Whereas:

1. On 4 September 2000, Scholz AG (“Scholz”) and ALBA AG & Co. KG (“ALBA”) notified to the Commission under Article 66(1) of the ECSC Treaty that they intended to acquire joint control of ELSA GmbH, (“ELSA”), currently a subsidiary of ALBA.

¹ OJ of the High Authority No 9, 11.5.1954, p. 345.

2. After examination of the notification, the Commission has concluded that the proposed joint venture falls into the range of application of the Article 66 in connection with Article 80 of the ECSC Treaty. The present decision therefore concerns only those parts of the project which fall under the scope of the ECSC Treaty.

I. THE PARTIES

3. The German based Scholz is engaged *inter alia* in the collecting, processing, and trading of ferrous scrap. ALBA is also a German based company active in the business of processing and trading both ferrous and non-ferrous scrap.
4. ELSA is currently a 100% subsidiary of ALBA, and it operates two ferrous scrap yards in Halle and Coswig.

II. THE TRANSACTION

5. Scholz and ALBA intend to combine their ferrous and non-ferrous scrap activities in the area Magdeburg-Leipzig-Halle-Dassau. This will be achieved by the transfer of the six scrap yards which Scholz currently owns, the two scrap yards which ALBA currently owns and the three scrap yards currently jointly controlled by Scholz and Alba to ELSA, a company in which each of Scholz and ALBA will hold 50% of the shares.

III. THE CONCENTRATION

6. As a result of its involvement in the production and distribution of ferrous metal products within the European Union, Scholz and ALBA are both ECSC undertakings within the meaning of Article 80 of the ECSC Treaty.
7. By each having a 50 % shareholding in ELSA, Scholz and ALBA will be able to exercise joint control over that company. The notified transaction therefore constitutes an acquisition, by Scholz and ALBA, of joint control over ELSA within the meaning of Article 1 of High Authority Decision No 24-54 of 6 May 1954 and, accordingly, brings about a concentration within the meaning of Article 66(1) of the ECSC Treaty.
8. The combined tonnage of steel scrap handled by the parties exceeds the limits set out in Articles 5.2 and 7 of Decision 25/67² as amended. The proposed concentration therefore requires prior authorisation according to Articles 4 and 7 of High Authority Decision No 25-67 of 22 June 1967 laying down in implementation of Article 66(3) of the Treaty a regulation concerning exemption from prior authorisation,³ as amended by Commission Decision No 3654/91/ECSC of 13 December 1991.⁴

² High Authority Decision 25/67 of 22 June 1967 (OJ 154 14.7.67, p.11 (Special Edition 1967, p.186)) laying down in implementation of Article 66 of the Treaty a Regulation concerning exemption from prior authorisation, amended by Commission Decision N° 2495/78/ECSC of 20 October 1978 (OJ L300, 27.10.78, p. 2) and Commission Decision N° 3654/91/ECSC of 13 December 1991 (OJ L348, 17.12.91, p.12)

³ OJ No 154, 14.7.1967, p. 11.

⁴ OJ L 348, 17.12.1991, p. 12.

IV. ASSESSMENT UNDER ARTICLE 66(2)

9. The proposed merger shall be authorised under Article 66(2) of the ECSC Treaty if it does not give the undertakings concerned the power:
- to determine prices, to control or restrict production or distribution or to hinder effective competition in a substantial part of the market for these products; or
 - to evade the rules of competition instituted under the Treaty, in particular by establishing an artificially privileged position involving a substantial advantage in access to supplies or markets.
10. The business activities of the parties overlap in the area of ferrous metal scrap.
- A. Relevant Product Markets
11. In its previous decisions⁵ involving undertakings active in this field, the Commission has concluded that the relevant market is the trade in ferrous scrap. This trade could be sub-divided into (i) the sale of processed ferrous scrap and (ii) the collection of unprocessed ferrous scrap. However, in this case it is not necessary to decide whether there exist separate relevant markets for these functions since, even when examined on the basis of separate relevant markets, the transaction does not raise any competition concerns.
- B. Relevant Geographic Markets
- i Sale of processed ferrous scrap*
12. In previous decisions the Commission concluded that processed ferrous scrap is an internationally traded commodity which is not affected by any tariff or non-tariff barriers. Cross-border trade in ferrous scrap within the EU and the EEA is substantial. The price for ferrous metal scrap is broadly the same in all EU member states and may even be influenced by the prices of exports from the USA. In addition, customers for ferrous scrap are generally large steel producers with the capability to procure scrap on an EU-wide or global basis.
13. These factors combine to suggest that the relevant geographic market for the sale of processed ferrous scrap is at least the area of the European Union. There are currently no reasons to reassess this view of the geographic market, however, it is not necessary to define where the precise boundaries of the geographic market lie, since however it is assessed, the transaction does not raise any competition concerns.
- ii Collection of unprocessed ferrous scrap*
14. Generally, scrap dealers act also as scrap collectors. The industry operates with a pyramid structure. There are many small local merchants who collect scrap and who then cut and sort it, before selling to middle tier merchants who - in turn - supply top tier merchants. The scrap is sourced from industrial producers and consumers.

⁵ for example: ECSC.1124 - CFF/Ferrero; COMP/ECSC.1322 - Scholz/Loacker/Saarlaendische, 4.2.2000; COMP/ECSC.1325 - EMR/MPRH, 10.4.2000; and COMP/ECSC.1355 - Interseroh/Hansa, 27.07.2001.

Medium and large collectors normally concentrate on industrial producers and buy further scrap metal from small and local dealers, who collect the scrap from smaller undertakings or consumers. Given that the local dealers generally do not have access to the infrastructure that would enable them to trade on a wider basis, the unprocessed scrap is delivered by local dealers within relatively short distances to middle and top tier dealers for processing. The relevant geographic markets for the sale and purchase of unprocessed scrap are therefore smaller than for the sale of processed ferrous scrap, and could be national or regional.

15. For the purposes of this decision, it is not necessary to decide upon the precise geographic dimension of the markets, since even on the narrower, regional, definition, the transaction does not raise competition concerns.

C. Impact of the concentration

i Sale of processed ferrous scrap

16. On a relevant geographic market that covers at least the European Union, the combined market shares of the parties is [5-10]% (Scholz: [5-10]%; ALBA: [1-5]%). There remain a large number of competitors, among them large European steel manufacturers. Comparable strong competitors are Thyssen Sonnenberg Recycling GmbH & CO KG, Germany (“Thyssen”), CFF - Cie Francaise de Ferrailles, France and European Metal Recycling Ltd (“EMR”), Great Britain, all of whom have estimated market shares between 5% and 10%. Furthermore, unlike some of their larger competitors, the parties to the concentration are not vertically integrated.
17. On a national basis, in Germany the parties will have a combined share of [20-30]% and would face competition from Thyssen (33%) and Interseroh/Hansa (17%).
18. In view of this competitive position, the proposed concentration does not give rise to competitive concerns on any market for the sale of processed ferrous scrap.

ii Collection of unprocessed ferrous scrap

19. On a German market for the purchase of unprocessed ferrous scrap on which the parties are predominantly active, the parties estimate that they have a market share of approximately [10-20]% (Scholz [10-20]%; ALBA [1-5]%). On the basis of a regional market, it is necessary to consider the effects of the concentration in the region of the former GDR region. In this region, the parties would have a combined market share of [30-40]% (Scholz [20-30]%; ALBA [5-10]%). Whether the market is considered as regional or national, the combined entity will face competition from major steel companies such as Thyssen and Interseroh/Hansa, which have national market shares of 22% and 12% respectively, among others. The proposed transaction therefore gives rise to no competitive concerns.

V. CONCLUSION

20. In the light of the above considerations, the Commission has reached the conclusion that the proposed merger would not give rise to competition problems and that in particular it would not give Scholz and ALBA the power:
 - to determine prices, to control or restrict production or distribution or to hinder effective competition in a substantial part of the market for these products; or

- to evade the rules of competition instituted under the Treaty, in particular by establishing an artificially privileged position involving a substantial advantage in access to supplies or markets.

21. Since the requirements of Article 66(2) of the ECSC Treaty are thus met, the proposed merger shall be authorised.

HAS ADOPTED THIS DECISION:

Article 1

The acquisition by Scholz AG and ALBA AG & Co. KG of joint control of ELSA GmbH is hereby authorised under Article 66(2) of the ECSC Treaty.

Article 2

This Decision is addressed to:

Scholz AG
Am Bahnhof 1-20
D-73457 Essingen/Aalen

and

ALBA AG & Co. KG
Franz-Josef-Schweitzer-Platz 1
16727 Velten bei Berlin

Done at Brussels,

For the Commission