

*Case No IV/M.1189 -
TEKSID / NORSK
HYDRO
PRODUKSJON /
MERIDIAN*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 17/07/1998

*Also available in the CELEX database
Document No 398M1189*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.07.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: **Case No IV/M.1189 - Teksid/Norsk Hydro Produksjon/Meridian**
Notification of 16.06.1998 pursuant to Article 4 of Council Regulation
(EEC) N° 4064/89

1. On 16 June 1998, the Commission received a notification of a proposed concentration pursuant to Article 4 of the Council Regulation (EEC) No 4064/89¹ by which the undertakings Teksid S.p.A. (Teksid) [belonging to the Fiat group] and Norsk Hydro Produksjon A.S. (Norsk Hydro Produksjon) [belonging to the Norsk Hydro A.S.A.group] acquire joint control of the Canadian undertaking Meridian Technologies Inc. (Meridian) by way of public bid announced on 28.05.1998.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89, and does not raise serious doubt as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

3. Teksid is a wholly-owned subsidiary of the Fiat Group. Teksid produces and markets metallurgical automotive metal components. In particular, Teksid produces castings mainly in cast iron and also aluminium, forged and extruded steel components and steel mechanic components.

¹ O.J. L 395, p.1; corrected version O.J. L 257 of 21.9.1990, p. 13; as last amended by Regulation (EC) No. 1310/97, O.J. L 180 of 9.7.1997, p. 1; corrigendum in O.J. L 40 of 13.2.1998, p. 17.

4. Hydro Produksjon is a wholly-owned subsidiary of Norsk Hydro A.S.A. (“Norsk Hydro”). Norsk Hydro’s activities are organised in four industry areas: agriculture, oil and gas, petrochemicals and light metals.
5. Meridian is a Canadian company engaged in the production of high pressure, magnesium and aluminium die-cast original equipment components for the automotive industry. Meridian is primarily active in North America and has a small presence in Europe.

II. THE OPERATION

6. The concentration involves the acquisition of joint control of Meridian by Teksid and Hydro Produksjon, by way of a joint public bid under the Toronto Stock Exchange Rules. Meridian is a publicly-owned corporation, incorporated under the laws of Canada whose shares are listed on the Toronto Stock Exchange.
7. Hydro Produksjon currently owns 26% and Teksid 30% of the issued and outstanding shares of Meridian; however, the two companies do not currently jointly control Meridian. On 28 May 1998 Teksid and Hydro Produksjon announced their joint public bid for the outstanding shares of Meridian. The bid is conditional on receiving at least 90% acceptances of shares not already held by the notifying parties. If the parties receive acceptances for more than 50% but less than 90% of the outstanding shares of Meridian by the first closing date, they will be able to waive the 90% condition and declare the offer unconditional as to acceptances. If Hydro Produksjon and Teksid do not obtain 100% of the remaining shares of Meridian under the public offer, they may resort to statutory procedures to “squeeze out” the minority shareholders. The effects of these procedures is that provided that the parties acquire 50% of the shares of Meridian within a certain period of the making the offer they can compulsorily acquire the shares of the minority. In the event that the public bid is unsuccessful and the parties were unable to acquire all of the outstanding shares of Meridian, they intend to enter into a shareholders’ agreement governing their voting rights in Meridian.

Joint Control

8. The parties have agreed to enter into a shareholders’ agreement. If the public bid is successful, Teksid and Hydro Produksjon will have acquired all of the outstanding shares and capital of Meridian which will be owned 51% by Teksid and 49% by Hydro Produksjon. Meridian will be managed by a Board of Directors to which each party will be entitled to appoint an equal number of directors. All strategic commercial decisions relating to the business of Meridian will require the unanimous approval of the members of the Board of Directors including the approval of the business plan, the acquisition of significant capital or assets, the incorporation or acquisition of any further businesses, the appointment of senior officers of the company.
9. On the basis of the above it is concluded that Hydro Produksjon and Teksid will exercise joint control over Meridian.

Full-function character

10. Meridian will retain its existing resources and necessary management to continue to produce magnesium and aluminium die-cast original equipment components for car

manufacturers. Norsk Hydro currently supplies between [...] %² of Meridian's magnesium requirements pursuant to a contractual agreement on arm's length basis. The arrangement reflects normal commercial arrangements on the market. In addition, Meridian obtains the remaining proportion of its magnesium requirements from other suppliers. Meridian obtains supplies of aluminium from several producers and does not have any supply contracts with Norsk Hydro. Substantial value is added by Meridian to supplies of magnesium from Norsk Hydro. Furthermore, Meridian will not be dependent upon its parents in relation to the sale of automotive components. Meridian supplies all the major car manufacturers in North America including Chrysler, Ford, General Motors. Through its Italian subsidiary Meridian supplies magnesium instrument panel beams to the Fiat group. However, these components account for [...] %³ of Meridian's total production. In the EEA, MPI also supplies third parties such as Gallino, Chrysler Eurostar and Lear Corporation. On the basis of all these elements it is concluded that Meridian is a full-function company engaged in the manufacture and sale of aluminium and magnesium die-casted automotive components.

11. The Commission therefore concludes that the operation constitutes a concentration within the meaning of Article 3.2 of the Council Regulation.

III. COMMUNITY DIMENSION

12. The combined aggregate world-wide turnover of Hydro Produksjon and Teksid in 1997 exceeded ECU 5,000 million, with turnovers respectively of ECU 12,000 and 46,400 million. The 1997 aggregate Community-turnover of each of the parties exceeded ECU 250 million, with turnovers respectively of ECU [...] ⁴ and [...] ⁵ million. The parties do not achieve more than two-thirds of their Community-turnover within one and the same Member State. Therefore, the proposed operation has a Community dimension.

IV. COMPATIBILITY WITH THE COMMON MARKET

Relevant product market

13. Meridian is a producer of high pressure, magnesium and aluminium die-cast original equipment components for the automotive industry, although the primary focus of this activity is the production of magnesium high pressure die-cast automotive components. In the EEA, Meridian, through its subsidiary MPI, produces the following die-cast magnesium interior parts for automobiles: instrument panel beams (structural components that support the instrument display panel), steering column brackets (structural components that are part of the steering system between the steering wheel and the vehicle wheels), seat frames (structural components for complete seats), steering wheels. Norsk Hydro makes bumpers, beams and systems, tubing for air conditioning systems and for liquid lines and seats. It also produces

² Business secret. Deleted for publication

³ Deleted for publication; less than 5%

⁴ Business secret. Deleted for publication

⁵ Business secret. Deleted for publication

intake manifolds, subframes and oil pans. Teksid currently manufactures cast iron and aluminium components, namely brake components, crankshafts, control arms, cylinder blocks, cylinder heads for trucks, knuckles. From aluminium they make transfer cases, cylinder heads and blocks and intake manifolds. In line with previous Commission's decisions in this sector⁶ the parties submit that each component produced by MPI constitutes a separate product market since there is no possible substitutability between components from the customers' perspective. In addition, the parties argue that although a limited amount of supply-side substitutability exists in respect of the manufacture of certain components, from the customer-side specific components or systems each constitute a separate product market since they have clearly defined and separate functions. A barrier to supply-side substitutability seems to be represented by the different technologies which are suitable for the production of these components. The further question would arise whether components manufactured out of different materials (namely aluminium, steel or magnesium) form part of the same product market or not. The parties consider that components manufactured out of the different materials and using different processes constitute the same product market because from the customers' point of view these components are substitutable. In the present case it is however not necessary to decide the precise product market definition since the operation does not lead to the creation or strengthening of a dominant position even on the narrowest product market definition.

Relevant geographic market

14. The general conclusion reached by the Commission in the previous above-mentioned decisions was that the relevant geographic market for these products is at least the EEA. Also the parties submit that the market EEA-wide on the basis of substantial cross border sales of components in the EEA, no barriers to cross-border trade within the EEA such as local brand names and governmental regulations, transport costs are relatively low within the EEA, all competitors are active in most Member States where a car industry exists, purchasers do not source on a purely national basis, competition for supply of contracts takes place on an EEA-wide basis.
15. Although there are some imports of components into the EEA, in general transportation of components over significant distances is relatively cost ineffective because they tend to be bulky products to transport and therefore have a very low value to volume ratio. To the extent that components are imported into the EEA, they tend to be imported from neighbouring East European countries. Components manufactured in North America are generally not sold on the EEA market.

Competitive assessment

16. Meridian through its Italian subsidiary MPI is active in the EEA in the production and sale of high pressure, magnesium die-cast original equipment components for the automotive industry. MPI's share of sales in any of the single components it supplies in the EEA is [...]%.⁷ Even in relation to the supply of magnesium die-cast components within any of these components in the EEA MPI has a market share of

⁶ For example, Case IV/M.164 Mannesmann/VDO, Case IV/M.139 Viag/EB Brühl, Case IV/M.536 Torrington/NSK, Case IV/M.666 Johnson Controls/Roth Frères, Case IV/M.861 Textron/Kautex.

⁷ Deleted for publication; less than 5%

[...] %⁸. The only overlap between the activities of the parties arises for intake manifolds. However, all of Teksid production of this component is sold to the Fiat group, whilst Hydro's market share for these products in the EEA is [...] %⁹ (and they are just aluminium-made). Furthermore, these products are manufactured by Norsk Hydro and Teksid using different technologies, Norsk Hydro by semi-permanent mould casting, Teksid by lost foam processing. From a more general point of view, it is worth noting that different are the focus of activities of the parties. Norsk Hydro is a manufacturer of aluminium mainly structural components produced by more traditional production processes. Teksid produces mainly cast iron components, which are predominantly engine components and some components from aluminium and steel.

17. On the basis of the above mentioned considerations, in particular of the very small presence of Meridian in the market in general and on the possible separate relevant product markets, the limited presence of the parents on the same possible relevant product markets and the difference in the parties' and Meridian's focus activity it is concluded the proposed operation will not lead to the creation or strengthening of a dominant position in the common market.
18. The Commission has checked the effect of the proposed operation in the market for supply of magnesium. Primary magnesium is divided in two categories, pure and alloy. Alloy magnesium (in the form of an alloy of magnesium and aluminium) is used as raw material for i.a. the production of automotive components. All main producers of magnesium can produce both forms of magnesium (pure and alloy) and the equipment to produce alloy magnesium is very simple. The investigation carried out has shown that both forms of magnesium are traded world-wide. In the world market, Norsk Hydro is the market leader with [...] %¹⁰ of the market. Other major competitors include Dow [...] %¹¹, the MagCorp [...] %¹², North West Alloys - Alcoa- and PEM -Pechiney- [...] %¹³. Sales of magnesium currently account for 90% of the global production capacity which is around 364,000 tons. However, demand is expected to increase because of, in particular, increased demand from the automotive sector. This is the reason why new production initiatives by other large corporate entities are under way or under review. For example, Dead Sea Magnesium (which is [...] %¹⁴ owned by Volkswagen and is intended to supply magnesium to Volkswagen for automotive component production in the EEA) began producing magnesium at a new 30,000 tonnes plant in Israel; Noranda has announced the construction of a 58,000 tonnes facility in Quebec, which is due to come to an end in 2000; Australian Magnesium Corporation is currently constructing a large pilot facility which is expected to be at full capacity by 2003 producing [...] %¹⁵ tonnes per annum (Ford has

⁸ Deleted for publication; less than 10%

⁹ Deleted for publication; less than 5%

¹⁰ Deleted for publication; less than 25%

¹¹ Deleted for publication; less than 20%

¹² Deleted for publication; less than 20%

¹³ Deleted for publication; less than 10%

¹⁴ Business secret. Deleted for publication

¹⁵ Business secret. Deleted for publication

contributed to the project), Norsk Hydro itself intends to increase its production capacity by [...] ¹⁶ by the year 2001.

19. In view of all the above elements and taking into account that Meridian's current total magnesium requirements are equal to [...] ¹⁷ tonnes (which is around [...] % ¹⁸ of Norsk Hydro's sales of magnesium) it is not expected that the proposed operation will lead to any major foreclosure effect in the common market, even assuming that Meridian's magnesium requirements would increase to a certain extent. This conclusion is confirmed by the market investigation which the Commission has carried out in this respect.

V. ANCILLARY RESTRAINTS

20. The parties have agreed a non-compete clause not to compete with the Meridian business. This clause expresses the lasting withdrawal of the parties from the market of the joint venture and as such it is covered by the present decision.

VI. CONCLUSION

21. It follows from the above that the proposed concentration would not create or strengthen a dominant position as a result of which competition would be significantly impeded in the common market or in a substantial part of it.
22. For the above reasons, the Commission decides not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6 (1) (b) of Council Regulation (EEC) No 4064/89.

For the Commission,

¹⁶ Business secret. Deleted for publication

¹⁷ Business secret. Deleted for publication

¹⁸ Business secret. Deleted for publication