

***Case No IV/M.1330 -
PECHINEY /
SAMANCOR***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 26/01/1999

*Also available in the CELEX database
Document No 399M1330*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.01.1999

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M. 1330 – PECHINEY / SAMANCOR

Notification of 14.12.1998 pursuant to Article 4 of Council Regulation No 4064/89

1. On 14.12.1998, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the French company Pechiney Electrometallurgie (“PEM”) and the South African company Samancor Ltd. (“Samancor”) notified their intention to set up a joint venture, into which each party will transfer its entire silicon metal business. The name of the joint venture will be [...].
2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89¹ and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES AND THE OPERATION

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

3. PEM is the wholly owned ferroalloys subsidiary of the Pechiney Group of France (“Pechiney Group”). Pechiney Group operates in two core businesses: the production of primary aluminium and aluminium products and the production of packaging materials. PEM manufactures ferroalloys designed to upgrade the performance of steel and cast iron; corindons for abrasives and refractories; and materials used in the production of silicones, light alloys and steel, such as silicon metal and magnesium.
4. Samancor, which is based in South Africa, is a member of the Billiton Group. It produces a number of minerals, such as chrome, manganese ores, ferrochrome and ferromanganese alloys, manganese and silicon metal. Samancor is the world’s largest producer of ferrochrome.
5. The operation consists of the notifying parties transferring their respective silicon metal businesses into a newly created joint venture, [...].

II. THE CONCENTRATION

Joint control

6. [...] of the shares in the joint venture will be issued to PEM and the remaining [...] to Samancor. PEM will have [...] members in the Supervisory Board and Samancor [...]. All decisions affecting the commercial strategy of the joint venture will require the consent of all [...] members. Matters requiring unanimous consent are the most important issues related to the running of the joint venture, such as the approval of the joint venture’s budget and business plan. [...]
7. In view of this, it is concluded that the joint venture will be jointly controlled by the parties.

Full function joint venture operating on a lasting basis

8. Based in France, the joint venture will produce and sell silicon metal. More precisely, the joint venture will be responsible for the sourcing of raw materials, coordinating production, setting prices and marketing the products.
9. The joint venture will be economically and financially self-sufficient. It will hold both the French and South African production facilities. The relevant intellectual property rights and know-how currently owned by the parties will be transferred to the joint venture. Each party will contribute all the personnel, finance and contracts of their respective silicon metal businesses into the joint venture.
10. On the basis of the above, the Commission draws the conclusion that the joint venture will perform on a lasting basis all the functions of an autonomous economic entity.

III. COMMUNITY DIMENSION

11. Pechiney Group and Billiton Group have a combined aggregate world-wide turnover in excess of EUR² 5,000 million (Pechiney Group: EUR 10,540 million, Billiton Group EUR 4,802 million). Each of them has a Community-wide turnover in excess of EUR 250 million (Pechiney Group EUR 5,795 million, Billiton Group EUR 1,267 million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension, but does not constitute a cooperation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

IV. COMPATIBILITY WITH THE COMMON MARKET

1. Relevant product market

12. The economic sector directly affected by the transaction is silicon metal containing less than 99.99% silicon. Based on the information provided by the parties, commercial grades of silicon generally contain at least 98% silicon, with specific maximum levels of iron, aluminium and calcium. In addition, there are products classified as silicon metal, which have a silicon content of between 96% and 98%. In the case of ferro-silicon, the silicon content is equal to or lower than 96%. Ferro-silicon with silicon content of more than 96% is not, according to the parties, normally classified as silicon metal.
13. Silicon metal is produced by smelting a number of raw materials, namely silica (i.e. quartz) and consumables (charcoal, petroleum coke) in an electric arc furnace. The output comprises a spectrum of different grades of silicon metal containing varying levels of impurities (e.g. iron, aluminium, and calcium). The levels of aluminium and calcium can be further altered during a refining process. Silicon metal is produced in liquid form and delivered to the customer in lumpy, coarse granular or powder form. The production of silicon metal is very power-intensive.
14. Silicon metal is used primarily in the chemical and metallurgical industries. In Europe, approximately 50-55% of silicon metal is for chemical use to produce silicones (e.g. sealants, coatings and cosmetics). The remaining silicon metal is sold mainly to primary and secondary aluminium manufacturers, who produce casting aluminium alloys mainly used in the automotive industry (e.g. pistons and wheel alloys). Silicon metal is used also to a lesser extent in the electronics industry to produce electronic semi-conductors and in refractory and steel production.
15. According to the parties silicon metal is frequently divided into three grades: (i) chemical, (ii) primary metallurgical and (iii) secondary metallurgical grades. By reference to the end user, chemical grade metal is sold to producers of silicones, while metallurgical grades are sold to primary and secondary aluminium manufacturers. The parties maintain, nevertheless, that to sub-divide the metal in a consistent way is difficult and, therefore, silicon metal should be regarded as one product containing a spectrum of grades.

² Figures calculated on the basis of average ECU exchange rates, in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover, to the extent that they include turnover for the period before 01.01.1999 and translated into EUR on a one-for-one basis.

Demand-side substitutability

16. The parties maintain that there are no substitutes for silicon metal in the production of either silicones or aluminium alloys in general. This has also been confirmed by the Commission investigation.
17. The parties argue that there is some demand-side substitutability for metallurgical grades. In particular, the parties claim that there is partial substitutability between primary and secondary grade metals, as many primary metal customers may use higher quality grade metal in their applications. The results from the Commission enquiry show that, in general terms, customers using secondary grade metal can switch to all other grades. However, third parties have indicated that substitutability for primary grade customers is more limited, as these customers could switch to chemical grade but not to secondary metallurgical grade. In any event, some third parties have pointed out that, in reality, substitution for metallurgical grades is limited due to the fact that higher quality grades tend to be more expensive. It is to be noted, however, that prices are negotiated individually for each grade with each customer and price lists do not exist.
18. As for chemical grade, the parties admit that the demand-side substitutability is somewhat limited. According to the parties, a chemical grade customer would not use uncustomised silicon from an unqualified supplier in normal conditions. The Commission enquiry has also confirmed that customers using chemical grade cannot, in general terms, switch either to primary or secondary metallurgical grades. On the basis of the information provided by the parties and comments obtained from third parties, it appears that chemical grade customers are more demanding in their requirements for product consistency than customers for metallurgical grades. Unlike metallurgical grades, chemical grade silicon metal is usually customised according to each buyer's specific requirements.
19. In the present case, the findings stated above and in particular the limited demand-side substitutability between chemical grade and metallurgical grades lead the Commission to conclude that chemical grade could be considered to form a distinct relevant product market from metallurgical grades from the demand-side point of view.

Supply-side substitutability

20. The parties base their claim for one single product market almost entirely on supply-side considerations.
21. The parties argue that silicon metal represents one relevant product market since there is a high degree of supply-side substitutability between the different grades of silicon metal and that most suppliers are able to produce various grades of silicon metal. The parties claim that, with the assistance of the customers, producers capable of producing metallurgical grades can move to producing chemical grade. Furthermore, the parties argue that it is relatively easy to switch to producing silicon metal from ferro-silicon, which is a neighbouring market to silicon.
22. The replies to the Commission enquiry show that, in general, it is relatively easy to switch production from chemical grade to metallurgical grades. However, to

switch from metallurgical grades to chemical grade is more difficult. Third parties have indicated that it would take up to 1 year to switch production from primary grade to chemical grade but already up to 3 years to switch production from secondary grade to chemical grade. Switching to the production of chemical grade may also require changes to the structure of the furnace together with considerable investment in refining and casting equipment and raw material. The parties admit themselves that the production of chemical grade requires consistency of production process, which can be achieved by a well-established and controlled process of refining and casting and careful quality-control.

23. With regard to the parties' claim that switching from producing ferro-silicon to silicon metal is relatively easy, third parties have indicated to the Commission that such a switch could take up to 2 years, with chemical grade requiring the longest switching time.
24. The Commission investigation has confirmed that customers facing a price increase would be willing to induce a new producer of chemical grade to the market. However, switching chemical grade supplier is not easy and takes time, as chemical grade customers typically require a lengthy qualification process from a new supplier, with trials and testing. According to customers of chemical grade this qualification process may take between 1 and 3 years, depending on the experience of the producer in the chemical grade field and the type of furnace.
25. On the basis of the above, the Commission concludes that, as for chemical grade, the supply response would not be immediate and, consequently, supply-side substitutability would be limited.

Conclusion

26. The findings stated above lead to believe that chemical grade could constitute a separate relevant product market, both from the demand-side and supply-side.
27. The parties argue that it is appropriate to consider silicon metal as one single product market, because such a definition would be consistent with its treatment by the Commission in its anti-dumping proceedings³ in the sector. The Commission has observed in an earlier case⁴ that the purpose of an anti-dumping proceeding and a merger proceeding is not the same. In this decision, the Commission noted that in an anti-dumping procedure, measures may only be taken in so far as it has been established that the product produced by the Community industry is a 'like product' to the imported product under consideration. In an investigation under Merger Regulation, a detailed assessment of, among other things, the applications of a product in the Community, customer groups or substitute products is given more attention. Therefore, the Commission concluded that this can lead to a wider or narrower definition of the relevant product market than would be the case under the anti-dumping legislation.

³ See Council Regulation (EC) No 2496/97 of 11 December 1997 imposing a definitive anti-dumping duty on imports of silicon metal originating in the People's Republic of China, OJ L 345, 16.12.1997, p. 1.

⁴ Commission Decision of 4 December 1996 declaring the concentration to be incompatible with the common market and the functioning of the EEA agreement (Case No IV/M.774 – Saint-Gobain/Wacker-Chemie/NOM) (Council Regulation (EEC) No 4064/89), OJ 247, 10.9.1997, p. 1.

28. It is not, however, necessary to define exactly the relevant product market in this case, because the assessment of the operation would not be materially affected, even if narrower product markets were considered, and effective competition would not be significantly impeded in the EEA or any substantial part of that area.

2. Relevant geographic market

29. The parties claim that silicon metal is a commodity, which is produced, sold and traded world-wide.
30. The parties argue that transport costs do not discourage global trade as they represent only a small proportion of total product cost. This, according to the parties, is particularly true for the high purity grades of silicon metal, which is a high value product. As far as the Community is concerned, the sole barrier to global trade are the anti-dumping duties, currently imposed upon Chinese imports. The anti-dumping duties have indeed reduced the levels of imports from China, but not prevented trade altogether.
31. In the EU, supply is insufficient to meet demand. By way of example, based on information supplied by the parties, in 1997 only about 129.000 tonnes of silicon metal were produced in the Member States, corresponding to some 43% of the total consumption of 296.400 tonnes for silicon metal during that year. The rest was imported, with significant quantities coming from Norway. Imports into the EU have typically been around 60% of the total demand during the past seven years. If the EEA were considered, imports represent about 30% of the total demand. These imports originate mostly from South Africa, Brazil, Canada and China. It is also to be noted that the anti-dumping duties, imposed in 1992 on Brazilian exporters, expired in February 1998 and direct imports from Brazil into the EU are therefore expected to increase. This is highly likely given the fact that after imposing the anti-dumping duties in 1992, imports of Brazilian silicon metal fell immediately more than 60%. It is therefore feasible to believe that the abolishment of the anti-dumping duties will lead to an increase in the Brazilian silicon metal imports.
32. Silicon metal is imported in different quantities, depending on the grade. Based on the information supplied by the parties, chemical and primary grade customers source their requirements to a large extent from the EEA suppliers. Nevertheless, by way of example, in 1995 about 12% of the total demand of primary grade silicon metal was imported, largely from Australia. These imports are likely to increase because of the abolition of the anti-dumping duties on Brazilian producers, as discussed above. The Chemical grade customers buy 25% of their demand from suppliers located in Canada, Brazil, South Africa and Australia. Around 30% of the total demand for secondary grade is imported into the EEA, especially from China and CIS.
33. The findings of the Commission investigation support the view that the relevant geographic scope of the market is wider than the EEA. In view of the above and for the purposes of this decision, the relevant geographic market is considered to be global.

V. ASSESSMENT

a) Silicon metal as a whole

34. The world-wide silicon metal sector is characterised by the presence of few large Western producers and many smaller players. Based on the market share information given by the parties, the largest producer of silicon metal is Elkem of Norway, accounting for about [10-20%] of the silicon metal production. Fesil/Globe is the second largest producer with approximately [10-20%] of the production. Pechiney has some [5-10%] of the production and Samancor is the next largest producer with a market share of [less than 5%]. The joint venture's market share for silicon metal as a whole would therefore be approximately [10-20%] in volume.
35. The above presented market shares lead to the conclusion that the world-wide supply of silicon metal as a whole remains competitive also after the operation.

b) Silicon metal by grade

36. If the market shares were to be examined by segments, the joint venture would achieve a stronger market position in both chemical grade and primary metallurgical grade world-wide. As regards chemical grade, the combined world-wide market share of the parties would be [10-20%] in volume (10-20% for Pechiney + [less than 5%] for Samancor). Based on the information provided by the parties, the largest producer of chemical grade would be Elkem with [20-30%] of the segment. The next largest competitors would be Fesil/Globe with [10-20%], SKW with [5-10%] and Simcala with [5-10%] share of the chemical grade segment. There are also a number of smaller producers in this segment with market shares between 2-6%.
37. On the basis of the foregoing it is concluded that the transaction would be unlikely to have adverse competitive consequences. Elkem would remain the clear leader in the chemical grade segment and the parties would face strong competition, in particular from Fesil/Globe.
38. The parties have been unable to provide their estimate of the competitors' market shares for primary and secondary metallurgical grades separately. According to the parties information is not normally broken down in this way. They have been able to provide estimates of their competitors' position for the metallurgical sector as a whole. According to this information, the parties and Fesil/Globe would have about 9% of the sector each and Elkem would account for 6%.
39. As regards primary metallurgical grade, the parties have provided estimates of the joint venture's world-wide market share, which would total [10-20%] ([10-20%] for Pechiney + [less than 5%] for Samancor). From a competition point of view, the transaction would appear unlikely to lead to competition problems in this segment as the joint venture would not significantly affect the concentration level, given in particular the marginal position of Samancor in primary metallurgical grade.
40. The global combined market share of the parties in secondary metallurgical grade would be only [5-10%] (Pechiney [less than 5%] + Samancor [less than 5%]).

Given the significance of imports of secondary metallurgical grade in particular from China and CIS, it appears unlikely that the operation would lead to strengthening of the parties' market position in the EEA in this grade either.

41. Third parties have, in general, confirmed the existence of strong competition and expressed no concern with regard to the impact of the operation in the EEA.
42. Given all the above factors, the Commission concludes that the proposed concentration does not give rise to the creation or strengthening of a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

VI. CONCLUSION

43. 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 EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission