

***Case No COMP/M.2688 -
ODS / IHC HOLLAND /
METALIX JV***

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

Article 6(1)(b) NON-OPPOSITION
Date: 20/03/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 20.03.2002
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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sir/Madam,

Subject: Case No COMP/M.2688-ODS/IHC Holland/Metalix JV

1. On 19/02/2002, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 ("the Merger Regulation") by which the undertakings ODS B.V. ("ODS"), belonging to Klöckner & Co. AG (part of the Balli Group) and IHC HOLLAND N.V. ("IHC"), belonging to the IHC Caland Group, acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of a newly created company constituting a joint venture Metalix B.V. ('Metalix').
2. As the Balli Group is active in the steel distribution sector and Metalix may also be active in steel distribution (it plans to sell small quantities of steel from stock), the Commission has to consider whether the operation falls within the scope of the ECSC Treaty. However, even if all turnover of Metalix were to be regarded as derived from ECSC activities (which is not the case), as a result of the limited turnover of Metalix, the concentration would benefit from an exemption from the requirement of prior authorization by the Commission, pursuant to Article 7 read in conjunction with Article 5.1.b of Commission Decision 25/67 ECSC of 22 June 1967.
3. The consequence of the exemption is that the present concentration should be examined exclusively under the Merger Regulation. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES

4. The Dutch IHC Holland (NL) is a wholly-owned subsidiary of the IHC Caland Group. The IHC Caland Group designs and supplies high-value, technologically-advanced products and services for the dredging industry, the construction of tunnels, alluvial mining construction and the pile-driver industry, both on- and offshore. IHC is active in the design and building of standard and customized dredging material. These activities include the design and production of dredging parts, complete dredging installations, and hydraulic installations, as well as instrumental and atomisation activities. IHC also

constructs high-value foundation machines and tunnel construction machines for use in soft subsoils.

5. ODS is a Dutch wholly-owned subsidiary of Klöckner & Co. AG (“Klöckner”). Klöckner distributes steel, aluminium, plastics, roofs and walls, hardware, connection technology, and sun protection systems. Klöckner was recently acquired by the Balli Group, a commodities trading house that trades globally in steel, steel raw materials, aluminium, and other materials. (*See Balli / Klöckner*, Case No. COMP/M.2481).

II. THE OPERATION

6. The operation concerns the creation of a Netherlands based joint venture, Metalix, to which IHC and ODS will transfer certain assets presently forming part of their respective businesses. Metalix will be active in processing hot-rolled flat steel by cutting it into shapes based on designs provided by customers in the shipbuilding, machine building, and construction industries. It will also provide to its customers other value-added services, such as CAD (Computer Aided Design) and CAM (Computer Aided Manufacturing) services, work preparation, and production information services. A small part of its activities (around [...]%) will consist of processing aluminium. The parents will transfer certain assets, (such as equipment, machinery and know how), especially for steel processing for the machinery and construction industries (ODS) and know how for processing of steel for the shipbuilding industry (IHC) and activities to Metalix.

III. CONCENTRATION

7. IHC will hold 60% of Metalix's shares and ODS will hold 40%. All key business decisions, notably the adoption of the annual business plans, will require the consent of both shareholders. Metalix will be active in highly specialized steel processing as an independent legal entity and for an unlimited duration.
8. In the light of the above, the joint venture will be jointly controlled by the parents, and will perform, on a lasting basis, all the functions of an autonomous economic entity. It will operate on a stand-alone basis, having its own machinery, premises, and financial and manpower resources. It follows that the notified transaction is a concentration pursuant to Article 3 of the Merger Regulation.

IV. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion¹ (IHC €[...] million, Balli Group, €[...] million). Each of IHC and Balli have a Community-wide turnover in excess of EUR 250 million (IHC €[...] million, Balli Group €[...] million), but they do not each 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.

¹ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

V. COMPETITIVE ASSESSMENT

10. The following assessment applies to the concentration only insofar as it relates to activities falling outside the scope of application of Article 66 of the ECSC Treaty.

1. Relevant markets

a) Relevant product markets

11. The parties submit that the relevant product market in this case is the market for processing services of carbon steel products, especially of hot-rolled flat products (sheets and quarto plates), as distinct from steel distribution. On the market for processing of aluminium products, which will account for about [...]% of the Metalix' activities, the activities of the parties do not overlap. The processing activities consist of cutting product into shapes specified by and based on designs provided by the customers. However, since Metalix will keep in stock a (small) amount of steel, and since it will to some extent compete with steel service centres, it is not excluded that some of its activities are part of the steel distribution or steel service centres market, as described in previous Commission decisions².
12. In any case, for the purpose of the present decision the exact delimitation of the market can be left open, since on the basis of any alternative market definition, the operation will not give rise to competitive concerns.

b) Relevant geographical markets

13. The parties submit that the relevant geographic market, by analogy with the Usinor/Arbed/Aceralia case (Case No. COMP/ECSC.1351), would be the Benelux and the north western part of Germany. However, they submit market information also on a national basis, that is, for the Netherlands.
14. For the purposes of the present decision, however, it is not necessary to decide on the exact delimitation on the market since on the basis of both possible market definitions the concentration does not create competition concerns.

2. Compatibility with the common market

a) Horizontal effects

15. With regard to the processing of several steel products (carbon hot-rolled flat steel, carbon hot-rolled sheets and quarto plates) and based on sales within the Netherlands, where Metalix will be initially active, the Commission has concluded that the combined market share of the parties will be less than 15% in any of these products (respectively, about [...]%, about [...]%, and about [...]). Therefore, the horizontal effects of the concentration do not lead to any affected markets, regardless of the exact delimitation of the markets.
16. Consequently, it can be concluded that the horizontal aspect of the concentration raises no competitive issues as a result of which effective competition would be significantly impeded.

² Most recently in Case No COMP/M.2481-Balli/Klöckner, decision of 27.09.2001.

b) Vertical effects

17. The modest scale of Metalix's operations (with a turnover of about € [...] million) excludes the possibility of any foreclosure effects in markets in which the parents are operating. Furthermore, there are a substantial number of companies capable of furnishing products and services similar to those furnished by Metalix to competitors of the parents.
18. Consequently, it can be concluded that the concentration will not raise any competitive concerns with regard to any market upstream or downstream from the market in which Metalix is active.

VI. CONCLUSION

19. 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
Mario MONTI
Member of the Commission