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Case No COMP/M.3376 - DILLINGER HÜTTENWERKE / SAARSTAHL / COKERIE DE CARLING

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17/03/2004

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties via the legal representative

Dear Sir/Madam,

Subject: **Case No COMP/M.3376 - DILLINGER HÜTTENWERKE / SAARSTAHL / COKERIE DE CARLING**
Notification of 16.2.2004 pursuant to Article 4 of Council Regulation No 4064/89[1]

1. On 16.2.2004, the Commission received a notification of a proposed concentration whereby the undertakings Aktiengesellschaft der Dillinger Hüttenwerke, Germany ("DH") and Saarstahl AG, Germany ("SAG") acquire through their joint venture ROGESA Roheisengesellschaft Saar mbH, Germany ("ROGESA") joint control of the coke producing plant Cokerie de Carling, France ("Carling") by way of purchase assets from Houillères du Bassin de Lorraine, France ("HBL").

I. THE PARTIES

2. **SAG** is a producer of various long steel products. It belongs to the holding company **Struktur-Holding-Stahl GmbH & Co. KG a.A.** ("**SHS**") which itself is owned 100 % by Montan-Stiftung, a private-law foundation.

3. **DH** is engaged in the production of steel, in particular quarto plate. It is controlled by the holding company **DHS-Dillinger Hütte und Saarstahl AG** ("**DHS**"). SAG owns

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).

33.75 % of shares of DHS, SHS owns 15 % whereas the coke and steel producing company **Arcelor** S. A. ("Arcelor"), Luxembourg, owns 51.25 %.

4. According to the parties, this neither constitutes sole control over DHS by Arcelor nor joint control by Arcelor, SAG and SHS due to the majority rules for decisions and the German law "Montan-Mitbestimmungsgesetz" which limits the shareholders' influence on the supervisory board[2]. The question of whether Arcelor has any control over DH can be left open, however, since the assessment of the proposed merger does not change even if Arcelor's activities are included.

5. **ROGESA** is a non-full function joint venture of DH and SAG. It produces pig iron which is exclusively used for its parent companies' steel production. SAG and DH also jointly control the **Zentralkokerei Saar GmbH** ("**ZKS**") which produces coke exclusively for ROGESA's production of pig iron.

6. **Carling** is owned by HBL, France, itself part of the Charbonnages de France group and is active in the production of coke.

II. THE OPERATION

7. Under the proposed transaction, DH and SAG will together acquire the coke production facilities of HBL, Carling, through their joint venture ROGESA. ROGESA will acquire all the assets belonging to Carling including the coke ovens, all other facilities necessary to the production of cokes as well as contracts with customers and suppliers.

8. In absence of the proposed acquisition, Carling would be closed down in two stages by mid 2005.

III. CONCENTRATION

9. Through the present transaction, DH and SAG acquire joint control over the Cokerie de Carling. Under the purchase agreement, DH and SAG through ROGESA undertake to invest the amount required under French environmental legislation for the continued operation of the Cokerie de Carling. In addition, ROGESA, DH, DHS, SAG and SHS jointly undertake to continue operating the Cokerie de Carling for a minimum period of […] years. […]. Finally, DH and SAG will invest annually approximately €[…] million over the next five years in the repair and maintenance of the oven facilities of the Cokerie de Carling.

10. Furthermore, after its acquisition by SAG and DH, Cokerie de Carling will continue to be active on the merchant market, and to sell electrometallurgical coke to its current customer base as well as to potential new customers.

11. In conclusion, the transaction is a concentration under the meaning of paragraph 1 b) of the EC Merger Regulation.

IV. COMMUNITY DIMENSION

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[2] Half the members of the supervisory board are appointed by the employees or have to be independent ; a further two members, who have to be independent of shareholders, are elected on the basis of a proposal of the shareholders

12. The undertakings concerned, SAG and DH (including Arcelor's turnover on the basis of Article 5 (4) of the Merger Regulation) have a combined aggregate world-wide turnover of more than EUR 5 billion[3] and they have a Community-wide turnover in excess of EUR 250 million each.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.

V. COMPETITIVE ASSESSMENT

Product market definitions

13. The sector concerned is that of carbon coke. Coke is a combustible substance, produced in a coke oven by the dry distillation (i.e. gasification of undesirable components) of coal.

14. According to the parties coke can be categorised into four different forms. The main category is **blast furnace coke** which is used by iron and steel producers in the blast furnace to melt-reduce iron ore to pig iron. The second category is coke used by foundries in so-called cupola ovens for the production of cast iron, stone wool, zinc and lead (**foundry coke**). The third main category are **speciality coke products** which can be considered as by-products of standard coke production and are used for a number of specific applications, e.g. in electrode manufacturing, glass making and the chemical industry. The **electrometallurgical cokes**, which are used in the electrometallurgical industry, are the fourth category.

15. The parties state that due to high supply side substitutability the first three kinds of cokes have to be regarded as one product market since all of them are produced in the same type of coke oven (chamber oven). They are to be considered interchangeable as suppliers can easily switch their production from one kind of coke to the other. Electrometallurgical coke, by contrast is made in a different coke oven, such as the so-called rotary kiln (method used at Cokerie de Carling).

16. In earlier decisions the Commission defined either a product market for coke or a market for hard coal products including hard coal briquettes, coking coal and coke. In the present case, and given the lack of supply side and demand side substitutability, it appears that electrometallurgical coke could be regarded as a distinct product market. However, the question whether the different kinds of coke should be treated as one or as several distinct markets can be left open for the purpose of the present decision, since no competition concerns may arise whatever the exact definition chosen.

17. Coke is notably used in the production process of steel products, where the notifying parties are active. The parties have explained that coke is only used at the very first step of iron-ore based steel production[4]. Coke is used in the blast furnace as a combustible substance to provide heat and gas required to produce pig iron and iron ore. According to the parties, coke does not therefore form part of the pig iron produced as a raw

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[3] 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).

[4] The four steps in the iron-ore process are: (i) use of raw materials for the production of pig iron, ii) from crude liquid steel to semi-finished products ; iii) transforming into finished products and iv) further refinement : cold rolling, coating and finishing.

material; its influence is of an indirect nature and could be compared to the use of electricity, gas or other energy input. Furthermore, they argue that coke has only very remote links with finished steel products. This would be illustrated notably by the fact that the cost of the coke only represents 10-15% of the total costs of even the least elaborate finished steel products such as quarto plates or hot-rolled sheets.

18. Nevertheless, the Commission considered possible downstream relevant markets to the production of coke, where the notifying parties are present. The production of pig iron requires coke as a direct input. ROGESA produces pig iron that is subsequently used by DH and SAG for their steel production. ROGESA only produces pig iron to supply its parent companies. No sales on the merchant market are made. Arcelor also uses blast furnace coke for its iron ore-based pig iron production, but the pig iron produced is used internally for the production of flat semi-finished products and is not sold on the market.

19. A by-product of pig iron production is the residue or slag, which can be used for the construction of roads or for cement and which is sold on the market. Slag is produced by ROGESA and by Arcelor. Slag can be subdivided into blast furnace slag and granulated sand, used for cement. According to the parties, blast furnace slag is not in itself a relevant market and is most probably part of a market for road stones, since it is fully substitutable with crushed stone, which is predominantly used for road constructions[5]. Slag sand is also according to the parties fully substitutable with other materials like clinker, fly ash and limestone, for the production of cement. In any case, the exact market definition can be left open as no competition concern may arise from this transaction.

20. The parties have also identified a possible market for semi-finished steel products (slabs, blooms or billets) resulting from the continuous casting of crude liquid steel, where the parties are present. According to the parties, this possible market would be the only market vertically related to coke production. However, it can be left open whether semi-finished steel products constitute separate relevant markets and/or whether other distinctions could be made, since no competition concerns would arise from the present transaction.

21. Further down in the production process of steel products, a number of finished steel products where the parties are involved have been considered as distinct relevant markets in previous Commission's decisions. DH is active in the production and distribution of hot-rolled carbon steel flat products. SAG produces and sells hot-rolled carbon steel long products. Arcelor offers a wide range of steel products, long and flat, carbon and stainless. These markets may have some vertical links –even if remotely- with the production of coke.

Geographic market definition

22. According to the parties, the geographic markets are worldwide or at least EEA-wide due to increasing imports into the EEA and increasing trade on a worldwide scale.

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[5] In Germany, for instance, the usage of blast furnace slag aggregates amount to only 2.5% of the overall filling material for road constructions.

23. In a previous decision[6], as a result of the German coal subsidy regime, the conditions on the German market for coal and coal products including coke were regarded as significantly different from those elsewhere in the Community. For the markets outside Germany, the definition was left open. Referring to this assessment, the Commission added in a later decision of 2002[7] that an integration of the German market into a wider international market could be envisaged. The exact market definition could be left open. Imports of coke into Germany have increased steadily over the past three years. This would point towards a broader market definition.

24. The Commission found in a previous decision that slag was sold on a regional basis, but the parties argue that the relevant geographic market is wider since ROGESA sells to France, Germany and the Benelux.

25. Previous decisions have retained that steel products were sold on an EEA-wide basis. The parties argue that the relevant geographic market definition may be wider, but suggest leaving the exact market definition open as no competition concerns may arise.

26. In conclusion, the Commission considers that the exact geographic market definition can be left open in this case, since under all alternative market definitions considered, no competition problem may arise from the notified transaction.

Competitive assessment

27. The operation should be generally viewed as pro-competitive as it will maintain coke production assets that would otherwise have disappeared. In the absence of the proposed transaction, Carling would have been partly closed down by the end of 2003 and completely closed by mid 2005. This closure would have been irrevocable since once a coke oven is switched off and cools below 800° C, the refractory material is destroyed and the coke oven can generally not be put back in operation.

28. The Commission's investigation confirmed that Carling's closure had been decided in 2002 and that the decision had been publicised[8]. It also confirmed that the customers of Carling were fully informed about the prospective closure and that they had sufficient time to adjust their sourcing policy, especially since most customers appear to use multiple sources of coke supply.

29. In addition, it appears that there are no horizontally affected markets. In what regards the market for electrometallurgical cokes, Carling will continue to sell electrometallurgical cokes on the merchant market as an autonomous economic entity. Neither DH nor SAG nor Arcelor are active in the production of this type of coke. In consequence, no market shares are added.

30. For the other possible coke markets, no addition of market shares occurs, since Carling will only produce for the internal use of ROGESA and will withdraw from the merchant market. DH/SAG are not active in the merchant market for coke and produce blast

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6 ECSC.1252 – RAG/Saarbergwerke/Preussag Anthrazit

7 ECSC.1350 – RAG/Saarbergwerke/Preussag Anthrazit II

8 : Agence France Presse news of 16/10/2002; Républicain Lorrain news of 17/10/2002; Annual Report HBL 2002, page 22

furnace coke only for captive use. Arcelor produces coke mainly for captive use and sells minimal amounts on the merchant market. Consequently, the operation will bring no overlap on the merchant market for coke and no market is horizontally affected by the transaction.

31. The merger corresponds to the vertical integration of a coke producer (Carling) into a pig iron production facility (ROGESA) to supply DH and SAG. The Commission thus examined in its investigation, whether some markets may be vertically affected. Neither Arcelor's nor DH's nor SAG's sell pig iron on the merchant market; pig iron is not a vertically affected market. Regarding slags, ROGESA's market share is well below 15% even on the basis of a national geographic market for Germany, France and the Benelux respectively and around [0-5]% on an EU-wide basis. Even if Arcelor was considered as having some control over DH, the transaction would have no competitive impact on the possible market for slag, since it is only a by-product of the pig iron production process with a very limited commercial significance[9], and with a high degree of substitutability with other products.

32. Regarding semi-finished flat products, DH and SAG have a very limited presence; they have around [0-5]% market shares on a EEA-wide basis. Arcelor is also active in this market with limited activities and a market share of around [5-10]% on a EEA-wide basis. Semi-finished flat products are therefore not vertically affected by the transaction.

33. Regarding finished products, it is arguable that there is a close enough vertical link between these products and coke, to identify vertically affected markets. However, even though neither DH nor SAG has market shares over 25% in any finished steel product market. It is only if Arcelor was considered as having at least joint-control of DH, that there may formally be vertically affected markets.

34. However, the operation does not raise the possibility of any restriction in access to coke for other pig iron / slag and steel producers. Carling's market share on the market for coke is less than [5-10]% on a worldwide and on an EEA-wide merchant market[10]. When distinguishing by type of cokes, Carling would represent [0-5]% market shares for blast furnace coke, [10-15]% for foundry coke, [20-25]% for specialty coke and around [50-55]% for electrometallurgical coke. Since Carling will still continue to provide electrometallurgical coke on the market, and since neither ROGESA nor its parents do consume electrometallurgical coke, the transaction has no vertical impact on this hypothetical market. More generally, coke supply would not be significantly decreased due to the merger, especially since ROGESA did not supply from Carling, which means that it will free up some sources of supply in the merchant market by using Carling's coke exclusively. In addition, there are on the EEA market several other suppliers like Deutsche Steinkohle, Corus, Carsid and Italiana coke. About 75 % of the coke sold in the EEA market is imported.

9 for instance, in 2003 ROGESA's revenues from the sale of slag was less than 0.4% of the total revenues of DH/SAG

10 The electrometallurgical coke is only a small portion of the total volume of coke traded. Therefore, the statistical data for coke traded might be used as an approximation for the sum of blast furnace coke, foundry coke and speciality coke.

35. On a hypothetical German market for coke, the operation has virtually no impact since Carling's customer base was primarily in France. In a German market of around 7 Mio tons, with circ. 5 Mio imports and supply from DSK/Prosper of circ. 2 Mio tons, Carling may have sold around 0.1 Mio tons coke in Germany. Carling's withdrawal from the market will therefore not lead to a restriction of access to coke and was in any case foreseen by the expected closure of the plant.

36. In addition, there is no risk that other producers of coke would be foreclosed from the market. Arcelor currently buys around […]% of its coke supply from the merchant market for a total of […] million tons. Carling is currently supplying around […] million tons to Arcelor of a total production of […] million tons. The operation will therefore shift a maximum of another […] tons of Carling output to the Arcelor group, which however will still have to buy […] million tons on the merchant market. The amounts concerned are therefore fairly limited in relation to the total consumption of Arcelor and do not have any substantial impact on the functioning of the market. Other coke producers will still have opportunities to supply coke to Arcelor. DH/SAG actually also foresee to continue buying coke from the merchant market, despite their acquisition of Carling.

37. Even though there may be a theoretical possibility that some markets are vertically affected by the operation, the acquisition of Carling by SAG and DH will therefore not lead to any competition concern.

VI. CONCLUSION

38. 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, signed
Mario MONTI
Member of the Commission