

***Case No COMP/M.3483 -
VOESTALPINE AG /
NEDCON GROEP N.V.***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 10/08/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10-VIII-2004
SG-Greffe (2004) D/203461

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party

**Subject : Case COMP/M.3483 – Voestalpine / Nedcon GROEP N.V.
Notification of 08.07.2004 subsequent to Reasoned submission pursuant to article 4(5) of Regulation No 139/2004**

Dear Sir/Madam,

1. On 08.07.2004, the Commission received a notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004 by which voestalpine AG (“Voestalpine, Austria) acquires within the meaning of Article 3(1)(b) control of the whole of Nedcon Groep N.V. (“Nedcon”, the Netherlands) by way of public offer announced on Friday, 16 July 2004.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No 139/2004 and does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. Voestalpine manufactures and markets converted (flat) steel products such as railway systems, custom roll form and profile steel products and automotive structures. Through its Krems Finaltechnik division (“Krems”), Voestalpine produces and markets steel storage systems. Nedcon designs, manufactures and installs (components for) steel storage systems for industrial applications.

4. The operation concerns a public offer by Voestalpine for all depository receipts and all shares in Nedcon for cash, which, if successful, will result in the acquisition by Voestalpine of the majority of voting rights, thus conferring sole control of Nedcon to Voestalpine.

II. COMMUNITY DIMENSION

5. On 9 June 2004 the parties to the proposed operation informed the Commission that the concentration, capable of being reviewed under the national competition laws of more than three Member States, should be examined by the Commission pursuant to Article 4(5)¹. The Commission transmitted this submission to all Member States on the same day. None of the Member States competent to examine the concentration expressed their disagreement to the request of referral. The case is therefore deemed to have a Community dimension.

III. RELEVANT MARKETS

The relevant product market

6. This case concerns storage solutions, and more precisely steel static storage systems, also referred to as ‘racking and shelving’ systems for storing goods, as used in large warehouses and distribution centres. Modern storage systems are all made from steel and are modular, consisting of vertical and horizontal components (like beams and shelves). These components are usually referred to as “profiles”, which differ in thickness, depending on the load of stored items. Systems for storing pallets or palletized goods are referred to as “pallet racks or “racks” and those for storage of small loads and smaller goods are referred to as “shelving”.
7. The activities of the parties overlap in the field of production and sales of (components for) steel static storage systems only. The parties also provide assembly and installation services, but generally this is subcontracted to an installation company. As a steel producer, Voestalpine is also active upstream of this market with the supply of pre-formed steel parts.
8. In previous cases², the Commission has looked at these markets before and considered steel static storage systems for commercial use on the one hand and industrial use on the other hand as forming distinct markets. The Constructor/Dexion decision considered that for industrial steel static storage systems a further segmentation could be made according to the end use of the system, distinguishing between pallet racks on the one hand and shelving on the other hand. Although the parties submit that such distinction is highly artificial, they have followed this market definition approach in order to allow the Commission to make a worst case analysis.

¹ This operation does not have Community dimension within the meaning of Article 1 of the new Merger Regulation, in view of, inter alia, Nedcon’s aggregate worldwide turnover of € 74 million. According to the parties the operation would have been reviewable under the national merger control laws of 5 Member States, namely Austria, Germany, Italy, Slovenia and Slovakia.

² Case IV/M. 1318 : Constructor / Dexion, Decision of 30.10.1998

9. However, for the purpose of this decision the precise definition of the product market can be left open, since in no alternative product market the proposed operation will significantly impede effective competition in the common market or a substantial part of it in particular as a result of the creation or strengthening of a dominant position.

The relevant geographic market

10. On the basis of the relative low level of transport costs, comparable price levels, the multinational presence of all major competitors and the absence of local presence as a prerequisite to compete in this market, the parties consider the industrial steel static storage systems market, including the pallet racks and shelving segments, to be EEA-wide. In Constructor/Dexion, the Commission has followed this approach, without however ruling out the possibility of national markets.
11. More than [...] % of the turnover in the products of each of the Parties is made up of exports, with over [...] % of turnover consisting of exports to the USA.
12. However, for the purpose of this decision the precise definition of the scope of the geographic market can be left open, since in no alternative market the proposed operation will significantly impede effective competition in the common market or a substantial part of it in particular as a result of the creation or strengthening of a dominant position.

IV. COMPETITIVE ASSESSMENT

13. On an EEA scale, the parties' year 2003 combined share does not exceed 15% on either an industrial static steel storage systems market (combined market share of [5-15]%) or the more narrowly defined markets for pallet racks (combined market share of [5-15]%) and shelving (combined market share of [0-10%]). The parties have no significant presence on the market for commercial systems.
14. When these markets would be considered on a national level, the parties' year 2003 combined share exceeds the 15% mark for industrial static steel storage systems market in Belgium (combined market share of [10-20]%) and the Netherlands (combined market share of [20-30]%). For pallet racks, the new entity would have a combined market share of [20-30]% in the Netherlands. For shelving the new entity would have relatively high combined market shares of [40-50]% in Belgium and [20-30]% in the Netherlands. Market shares in these markets fluctuate considerably over the years. The Parties also argue the bidding nature of the market. It is however to be noted that Krems currently does not have a presence on any of these markets in Belgium and the Netherlands. As the new entity's market share in these Member States can be attributed in full to Nedcon and thus does not change as a result of the operation, the transaction is not likely to have an appreciable impact on competition.
15. The Parties argue that there are a manifold (more than 100) of suppliers in Europe. In addition, some of the most important EU competitors of the new entity have market (segment) shares (for 2003) greater than or equal to the Parties' combined shares. For steel static storage systems combined, Schäfer (Germany) has [5-15]%, Mecalux (Spain) [5-15]%, Esmena (Spain) [5-15]%, Stow (Belgium) [0-10]% and Galler (Germany) [0-10]%

16. For pallets racks, Schäfer has a share of [5-15]%, Mecalux [5-15]%, Esmena [5-15]%; Stow [5-15]% and Galler [0-10]%. In the shelving segment, Mecalux has a share of [5-15]%, Schäfer [0-10]%, Tegometall (Germany) [0-10]%, Esmena [0-10]% and Bito (Germany) [0-10]%. (All market shares as estimated by the parties).
17. Considering the position of the parties in these markets and the strength and number of competitors present therein, it can be concluded that the notified operation will have no significant impact on the market.

Vertical relationships

18. The vast majority of the components for industrial static steel storage systems are made of hot rolled flat carbon steel and metallic coated carbon steel, of which Voestalpine (but not Nedcon) is a manufacturer. On the basis of the market definitions established in previous Commission decisions³, Voestalpine accounts for respectively [0-10]% of hot rolled flat carbon steel EEA production and [0-10]% of metallic coated carbon steel EEA production. Therefore, the concentration does not lead to vertically affected markets upstream of industrial static steel storage.

V. CONCLUSION

19. It can therefore be concluded that the concentration will not significantly impede effective competition in the common market or in a significant part of it, in particular as a result of the creation or strengthening of a dominant position.
20. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission,
(Signed)
Poul Nielson
Member of the Commission

³ COMP/ESC. 1351 Usinor / Arbed / Aceralia