EN

Case No COMP/M.3778 - BÖHLER-UDDEHOLM / BUDERUS

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 30/06/2005

In electronic form on the EUR-Lex website under document number 32005M3778

Office for Official Publications of the European Communities
L-2985 Luxembourg

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.06.2005

SG-Greffe(2005) D/202867

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

Subject: Subject: Case No COMP/M.3778 – BÖHLER-UDDEHOLM / BUDERUS Notification of 26/05/2005 pursuant to Article 4 of Council Regulation 139/2004[1]

1. On 26 May 2005, the Commission received a notification of a proposed concentration pursuant to Article 4, following a referral request pursuant to Article 4(5) of Council Regulation (EC) No 139/2004 by which the undertaking Böhler-Uddeholm AG ("Böhler", Austria) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Edelstahlwerke Buderus AG ("Buderus", Germany) by way of purchase of shares.

2. After examination of the notification, the Commission has concluded that the operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

I. THE PARTIES

3. Böhler ("the notifying party") is a globally active speciality steel company organised into four core business divisions: high performance metals, welding consumables, precision strips and special forgings. It had a worldwide turnover of € 1,934 million in 2004. Böhler has specialty steel production facilities in Austria, Sweden and Brazil.

4. Buderus is a globally active speciality steel company with a worldwide turnover of € 405.55 million in 2004. Buderus' production facilities are mainly based in Germany and France.

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[1] OJ L 24, 29.1.2004 p. 1.

II. THE OPERATION

5. The proposed concentration concerns the acquisition by Böhler of the entire share capital of Buderus.

III. CONCENTRATION

6. On the basis of the above transaction, the notifying party will acquire sole control over Buderus in the sense of Article 3(1)(b) of Council Regulation 139/2004.

IV. COMMUNITY DIMENSION

7. The operation does not have Community dimension within the meaning of Article 1(2) and 1(3) of Council Regulation 139/2004. The undertakings concerned have a combined aggregate world-wide turnover of € 2,34 billion (€1.934 million for Böhler; €405 million for Buderus), which falls short of the minimal required €2,5 billion pursuant to Article 1(3).

8. Since the operation was reviewable under the national merger control laws of at least 3 Member States, including Austria, Germany and Spain, the notifying party submitted a Reasoned Submission in pursuance of Article 4(5) of Council Regulation No 139/2004 to ask a referral of the concentration to the Commission. The Member States were consulted and did not oppose the referral of the concentration to the Commission. On 21 April 2005, the Commission confirmed that the case was deemed to have a Community dimension and would have to be notified to the Commission.

V. COMPETITIVE ASSESSMENT

9. The proposed concentration leads to a number of possible horizontally affected markets (depending on the relevant product market definition) in the production of high speed and tool steel sector and in the distribution of specialty steel products.

10. Further, the vertical relationship between a particular segment of the hot rolled narrow strip steel market and a particular segment of the downstream market for cold rolled narrow strip steel has been considered.

Relevant product markets

11. According to the parties steel products can be divided into carbon steel, stainless steel and specialty steel. This is confirmed by Commission practice[2]. The parties are mainly active in specialty steels. Unlike carbon steel, specialty steel is a high quality product that is generally more expensive and designed for specific applications and performances.[3]

12. Specialty steel is generally split into engineering and bearing steels, high speed and tool steels and stainless steel[4].

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[2] Case ECSC 1351 Usinor /Arbed/Aceralia, par 13.

[3] Case ECSC 1351 Usinor /Arbed/Aceralia, par 33.

[4] Case M. 1080 Thyssen / Krupp, par 12

Tool steels

13. According to the notifying party, high speed and tool steels are used to manufacture tools which are capable of cutting metal at a high rate and retain their hardness even when the point of the tool is heated to a low red temperature. The Commission has stated in the past that high speed and tool steels have very similar metallurgic characteristics and are to a large extent produced in a similar way.[5] However, they differ with respect to the degree of operating surface temperature: high speed steels can bear higher temperatures than tool steels.

14. High speed steels normally contain various alloying elements and are widely used for the manufacture of taps, dies, twist drills, reamers, saw blades and other cutting tools.

15. Tool steels include steels suitable for various types of cutting tools, press tools, hot and cold heading dies, moulds for plastic and die-casting, extrusion tools etc.

16. The notifying party submits that there are no separate markets for high speed steels and tool steel. In its decisions in Cases ECSC. 1278 - Thyssen /Krupp[6] and M. 1080 - Thyssen /Krupp[7] the Commission left the issue open. An overwhelming majority of the respondents to the Commission investigation consider however that tool steel and high speed steel constitute separate product markets for the following reasons: each of the products requires different equipment, high speed steel is produced by cold forming operation and tool steel is produced as forged material, moreover they are produced for different end user markets (High speed steel for consumable tools, tool steels for durable tools). Buderus is not active on the market for high speed steel.

17. As regards tool steel often a distinction is made between cold-work steels, hot-work steels and plastic mould steels. A majority of the respondents to the Commission investigation makes a similar distinction.

A) Hot work tool steel

18. Hot work tool steels are typically used for aluminium (and other light metal) extrusion, aluminium die casting and closed die forgings. End applications in aluminium extrusion cover a wide area of dies such as profiles for aluminium windows, body shells for trains (TGV) and large overhead traffic signs. As to aluminium die casting, end applications include dies for engines, washing machines and automotive components. End applications for close die forgings include automotive and aerospace components.

B) Cold work tool steels

19. Cold work steels are used in the production of blanking and deep drawing tools. Blanking equipment is used to manufacture a variety of metal products. Examples are

[5] Case M. 1080 – Thyssen / Krupp, par 13

[6] Case ECSC. 1278 Thyssen/Krupp, par. 12

[7] Case M. 1080 – Thyssen / Krupp, par 13

safety belt locks and seat components which are blanked out of strip steel. Deep drawing cold work steels are used to produce, for instance, saucepans and other metal household equipment. Cold work steels are also used for form rolling, e.g. for welded tube and motorway crash barriers manufacturing.

C) Plastic moulds tool steels

20. Plastic mould steels are used to produce the moulds in which a variety of plastic parts such as medical products, toys, plastic cutlery, plastic pens, covers for mobile phones, automotive components, garden furniture, garbage bins and other plastic consumer products are moulded. A significant part of the production of plastic moulds tool steel is of the so-called big blocks. These are blocks of steel with a thickness of over 500mm. In terms of weight, the segment typically referred to as big blocks starts at around 10 tons and could go up to 150 tons. Within the tool steel segment, big blocks are only required for plastic moulding steels.

21. The notifying party has underlined the high degree of supply side substitutability between the three identified segments of the tool steel industry. In a given dimensional range a producer of tool steels can produce almost all types of tool steels on the same production equipment. Switching production is relatively simple. As steels are classified by a specific number, the chemical composition of a specific tool steel product is public knowledge. Adjusting the mills is not necessary. Most suppliers are active in more than one of the identified tool steel segments.

22. In the present case the product market definition can be left open, since the transaction will not raise competition concerns on any of the alternative market definitions considered above.

Distribution of specialty steel products

23. According to the parties the distribution of specialty steel products is to be separated from the market for the production of these products. This separation of the production level and distribution level is in line with Commission practice[8]. The main characteristics of the distribution markets are: diversity of customers, small size of orders, ability to respond to special requirements, and local nature of business[9].

24. In previous decisions the Commission narrowed down the market for the distribution of steel products into separate markets for the distribution of the main types of steel products (carbon, stainless, etc)[10]. This distinction takes into account the specific characteristics of the distribution of these products (the distributors concentrate on one main type of steel) and the existence of a special group of customers. The distinction of a separate product market for the distribution of specialty steel products therefore follows the line set out in previous Commission Decisions.

25. The parties argue that a further narrowing of the distribution market for specialty steel products, according to the different types of specialty steel products (e.g. tool

[8] Case M. 484 – Krupp/Thyssen/Riva/Falck/Tadfin/AST, par 32

[9] Case ECSC. 1351 –USINOR/ARBED/ACERALIA par 74

[10] Case ECSC 1268 – USINOR/Cockerill Sambre, par 21

steels) is irrelevant, as customers regularly require the entire product range of specialty steel products. The parties have submitted stocking lists of a number of major distributors, which confirm that many of them sell the whole range of specialty steel products.

26. Some of the respondents to the Commission investigation consider that a narrower product market, namely a market for the distribution of tool steels can be identified. They point to the specific characteristics of the products and the separate client base that would exist for this type of products. It is true that a number of especially regionally active distributors focus more on tool steels. However, it would go too far to deduce from this the existence of a separate market for the distribution of tool steels. In addition, there are no previous Commission decisions which would support such a further narrowing of the product market.

27. In the present case the question can be left open whether there is a distinct market for the distribution of tool steel, as opposed to a market for the distribution of specialty steel products, since the transaction will not raise competition concerns in any possible subdivision of the proposed product markets.

Hot rolled and cold rolled narrow strip steels

28. According to the parties, strip steels are mainly used as intermediate products for further applications and can be produced on hot rolled or cold rolled mills. The production process for hot rolled strip steel and cold rolled strip steels are different and it is impossible to switch the production of hot rolled steels to cold rolled steels on one and the same mill. Also cold rolled production is typically a downstream production compared to hot rolling. For these reasons the parties argue that they constitute distinct product markets. This is confirmed in earlier Commission decisions[11]. Böhler-Uddeholm does not produce hot rolled narrow strip steel. The only overlap between the parties concerns cold rolled strip steels.

29. With respect to strip steels the parties submit that it is industry standard to separate narrow strip steel (max. 600 mm) and wide strip. Narrow cold strip (or "precision strip") can be produced at a higher level of precision with regard to the tolerance limits compared to broad strip. The most common applications for narrow strip steel are precision blanking parts, saws blade strip, coater blades, rule dies, cutting, creasing and rotary rules, strip steel in very thin thickness for valves, razor blades, scalpels, needles, weave reed etc.

30. The largest part of the production of hot rolled narrow strip steel is used directly as input for the down stream cold rolled production process. The parties submit that a further segmentation of the market for hot rolled narrow strip steel is not meaningful in view of the high degree of supply side substitutability. It appears however from the Commission investigation that many respondents distinguish between carbon (often including low-alloyed strip steel), high alloyed and stainless hot rolled narrow strip steel.

31. Buderus is particularly strong in the production of one particular type of high alloyed hot rolled narrow strip steel, […]. In view of the high degree of supply side

[11] Case ECSC. 1243 Krupp Hoesch /Thyssen, par 13

substitutability such a further narrowing of the product market does not seem to be warranted.

32. Cold rolled narrow strip steel can similarly be subdivided into carbon (often including low alloyed strip steel), high alloyed and stainless cold rolled narrow strip steel. The most common applications for carbon steel products are automotive components, such as blanking parts (e.g. seat components, safety belt locks), flapper valves and precision stamps. For high alloyed steel the most common applications are steel for saws, coater blades, industrial knives, whereas for stainless steel the most common applications are cutlery, kitchen knives and razor blades.

33. In the present case the question can be left open whether the markets for hot and cold rolled narrow strip steel need to be divided into carbon (including low alloy strip steel), high alloyed and stainless segments, or even further, since the transaction will not raise competition concerns in any possible subdivision of the proposed product markets

Relevant geographic markets

Tool steels and hot and cold rolled narrow strip steel

34. The parties argue that the relevant geographic markets for tool steels and for narrow hot and cold rolled trip steels are at least EEA-wide. The parties argue that transportation costs, delivery time and quality issues do not prevent European steel customers from sourcing outside the EEA, including China, Russia and the Ukraine, which have made important investments to increase quality and capacity. Imports are increasing and, according to the parties, specialty steel products are not affected by quotas, tariffs, or non-tariff barriers.

35. It is in line with previous Commission Decisions to consider the geographic market for the above products to be at least EEA wide[12]. Most respondents to the Commission's market investigation agree with such a market definition. The large majority of the respondents was not convinced of the existence of a worldwide market. For the time being, they do not contemplate importing products from countries such as China, Russia and Ukraine in view of real or perceived differences in product quality. This differs only with respect to products produced in the USA, Japan and certain other Asian countries. In any event, most of the respondents see logistic difficulties, quality uncertainty and reduced price advantage in relation to imports from outside the EEA.

36. In the present case the question can be left open whether the geographic market is at least EEA-wide, or worldwide, since the transaction will not raise competition concerns in either case.

Distribution of specialty steel products

37. The parties consider that the market for the distribution of specialty steel products is national in scope. According to the parties steel traders primarily act on a regional level and operate close to their customers. This is confirmed by previous Commission

[12] Cf. Case M. 1080 – Thyssen Krupp, par 12

Decisions[13]. The Commission's market investigation in the present case has confirmed that the market is national in scope although in some cases (e.g. Iberian Peninsula, UK/Ireland) it may comprise more than one country.

Assessment

Horizontal aspects

High speed and tool steels

38. On the basis of the information provided in the notification a market comprising high speed and tools steel can be distinguished from other specialty steels. On this market the parties have a combined share of [15-25]% (Böhler [10-20]%, Buderus [0-10]%), both in the EEA and in the world. The most important competitors are EWK ([20-30]% in the EEA), Industeel [0-10]%), Erasteel [0-10]%, and Lucchini [0-10]%).

39. If the market is further segmented and a separate market for tool steels only is considered, the parties have a combined EEA market share of [10-20]% (Böhler [5-15]%, Buderus [0-10]%) and a combined worldwide market share of [15-25]% (Böhler [10-20]%, Buderus [0-10]%). The most important competitors are EWK ([15-25]% market share in the EEA), Industeel [0-10]%, and Lucchini [0-10]%.

40. As regards high speed steels there is no overlap between the parties' activities.

41. If one would split up the market for tool steels into cold work, hot work and plastic mould steels the following picture emerges.

42. On the market for hot work tool steels the parties have a combined EEA market share of [15-25]% (Böhler [10-20]%, Buderus [0-10]%). The most important competitors are EWK [20-30]%, BGH [0-10]%, Gröditz [0-10]%, Kind [0-10]% and DSS Dnjeprostezstal [0-10]%.

43. On the market for cold work steel the parties have a combined EEA market share of 15-25% (Böhler [15-25]%, Buderus, [0-10]%) The most important competitors are EWK [10-20]%, Metal Ravne [5-15]%, BGH [0-10]%, Cogne [0-10]%) and DSS Dnjeprostezstal [0-10]%.

44. Finally, on the market for plastic moulding steel the parties have a combined EEA market share of [10-20]% (Böhler [0-10]%, Buderus, [0-10]%) The most important competitors are EWK [10-20]%, Industeel [5-15]%, Lucchini [0-10]% Saarschmiede [0-10]% Gröditz [0-10]%).

45. It follows from the above data that the proposed transaction will not significantly impede effective competition, irrespective whether the market for tool steel is split into hot work, cold work and plastic mould steel. Apart from the supply side substitutability, reference can also be made to the complementary nature of the parties' product portfolio, particularly in the fields of hot work and plastic mould tool steels. Böhler has a strong focus on […] corrosion-resistant plastic-mould tool steel, whereas Buderus only produces standard plastic-mould tool steels. Furthermore, Böhler produces most of its big blocks used for the manufacture of plastic moulds in

[13] Case M. 503 – British Steel/Svensk Stal/NSD, par 20

the category up to 10 tons […], whereas Buderus is particularly strong in the category of big blocks of more than 10 tons […]. A similar situation of product complementarities exists with respect to hot work steel.

The distribution of specialty steel

46. On the basis of national markets for the distribution of specialty steel products, the parties have overlapping activities only in The Netherlands, Germany and France. Their combined market shares in these countries are: The Netherlands [10-20]% (Böhler [5-15]%, Buderus [0-10]%, Germany [5-15]% (Böhler [10-20]%, Buderus [0-10]% and France [0-10]% (Böhler [0-10]%, Buderus [0-10]%).

47. On a possible separate product market for the distribution of tool steels the overlap concerns the same three countries. In The Netherlands, the parties' combined market share would be [10-20]% (Böhler [5-15]%, Buderus [0-10]%). The most important competitors on the Dutch market are Thyssen Krupp [15-25]%, Telmastaal [5-15]%, Hersbach [5-15]% O.B. Gereedschapsstaal [0-10]% and Kontur [0-10]%). In Germany, the parties would have a combined market share of [25-35]% (Böhler [15-25]%, Buderus [5-15]%). Their most important competitors are EWK/Schmolz & Bickenbach [15-25]%, Wilhelm Oberste-Beulmann [5-15]%, Dörrenberg Edelstahl [0-10]%, BGH [0-10]% and WSM [0-10]%. Finally, in France the parties would have a combined market share of [15-25]% (Böhler [0-10]%, Buderus [5-15]%. The most important competitors are: Thyssen Krupp [20-30]%, Aubert et Duval [20-30]%, Lugand [5-15]% Secusar [5-15]% and Cogne [5-15]%.

48. It therefore appears from the above, that even if one would consider that the market for the distribution of specialty steels would have to be split in a narrower market for the distribution of tool steels, the transaction will not significantly impede effective competition, considering the presence of strong competitors on each of the three national markets concerned.

Vertical aspects

Hot rolled narrow strip steel and cold rolled narrow strip steel

49. There is a vertical relationship between the upstream market of hot rolled narrow strip steels and the downstream market of cold rolled narrow strip steels. Hot rolled narrow strips are often used as input for cold rolled narrow strips.

50. In the overall upstream market consisting of all hot rolled narrow strip steels only Buderus is active. It has an EEA market share of around [0-10]%. In the three segments of hot rolled narrow strip steel which can be distinguished it has the following EEA market shares: high-alloyed [15-25]%, carbon (including low alloyed) [0-10]% and stainless [0-10]%.

51. In the segment in which Buderus is strongest, i.e. the segment for high-alloyed hot rolled narrow strip steel it is facing strong competitors: Hoesch Hohenlimburg [15-25]%, Corus [15-25%], AB Sandvik Materia [10-20]%, ISG Riverdale [0-10]%, WCI Warren Consolidated Industries [0-10]% and Daido[0-10]%.

52. Within the segment of high-alloyed hot rolled narrow strip steel Buderus is particularly successful with one product: high alloyed hot rolled narrow strip steel for band saw, which is used as input for the production of cold rolled high alloyed strip steel for band saw. For this particular hot rolled product Buderus has an EEA market share of [60-

80]%. It sells [3.000-8.000] tons of its total production of [20.000-30.000] tons of hot rolled high alloyed strip steel for saw band […] to Böhler. The rest goes to Böhler's competitors, since Buderus is not active in the high-alloyed segment of the market for cold rolled narrow strip steel.

53. On the market for cold rolled narrow strip steels Böhler and Buderus have a combined market share in the EEA of [0-10]% (Böhler [0-10]%, Buderus [0-10]%). In relation to the sub-segments which can be distinguished the parties have the following combined market shares: carbon [5-15]% (Böhler [0-10]%, Buderus [0-10]%) low alloyed [0-10]% (Böhler [0-10]%, Buderus [0-10]%) high alloyed [0-10]% (Böhler [0-10]%, Buderus is not active in this segment), stainless [0-10]% (Böhler [0-10]%, Buderus [0-10]%.

54. The parties submit that the above situation does not create a risk of market foreclosure with respect to hot and cold rolled high alloyed strip steel for the production of band saw. They refer in particular to the supply side substitutability which exists at the level of hot and cold rolled narrow strip steel. High alloyed, carbon and stainless strip steel can be produced to a large extent on the same rolling mill, provided it is designed for hot or cold rolling. Further, all of Buderus' competitors on the market for hot rolled narrow strip steel actually produce the entire range of hot rolled strip steels, which demonstrates the high degree of substitutability.

55. In addition, the Commission's market investigation showed that neither Buderus' competitors, nor its customers expressed concerns about possible foreclosure effects with respect to the situation concerning high alloyed hot rolled narrow strip steel as used for saw bands.

56. In view of the above, it is considered that the proposed transaction will not significantly impede effective competition.

VI. CONCLUSION

57. 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 (EC) No 139/2004.

For the Commission
(signed)
Neelie KROES
Member of the Commission