

***Case No COMP/M.4256 -
XSTRATA /
FALCONBRIDGE***

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**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 13/07/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.07.2006

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sir/Madam,

**Subject: Case No COMP/M.4256 – Xstrata / Falconbridge
Notification of 08/06/2006 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 8 June 2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No. 139/2004, by which the undertaking Xstrata plc (“Xstrata”, Switzerland), controlled by Glencore International AG (“Glencore”, Switzerland), acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the undertaking Falconbridge Limited (“Falconbridge”, Canada) by way of public bid announced on 17 May 2006.

I. THE PARTIES

2. Xstrata is an international natural resources group of companies based in Zug, Switzerland, which is active in four main business areas: coal, copper, zinc and alloys and has additional exposures to gold, lead and silver.
3. Glencore holds a 15% shareholding in Xstrata and, due to a Total Return Swap arrangement with Credit Suisse First Boston (“CSFB”) holds a 38% economic interest in Xstrata. In addition, there are several commercial agreements granting Glencore the exclusive right to distribute part of Xstrata’s production and Glencore has the right to appoint several directors on Xstrata’s board. In view of the above, Xstrata submits that

¹ OJ L 24, 29.1.2004 p. 1.

Glencore controls Xstrata and that CSFB does not have sole or joint decisive control over Xstrata.

4. The Commission shares Xstrata's view that Glencore is in a position to exercise a decisive influence on Xstrata's strategy and operations and that Glencore controls Xstrata within the meaning of Article 3 of the Merger Regulation. The Commission has thus considered Glencore's activities in its assessment of the competitive impact of the proposed transaction
5. Glencore is a diversified natural resources trading company based in Switzerland which is active in three main business areas: metals and minerals (aluminium, zinc, copper, ferroalloys, and nickel), energy products (oil products and coal) and agricultural products. Glencore's trading activities are supported by several industrial investments and ownership interests in mining operations.
6. Falconbridge is a Canadian-based integrated copper and nickel producer with investments in zinc, aluminium, cobalt, lead and precious metals as well as sulphur products.

II. THE OPERATION

7. On 17 May 2006, Xstrata launched a public bid to acquire the entire share capital of Falconbridge that it does not already own². Xstrata's bid over Falconbridge has been rejected by the Board of Directors of Falconbridge.
8. The notified operation would confer Xstrata sole control over Falconbridge. It therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5,000 million³ (Xstrata EUR 6,470 million; Falconbridge EUR 6,550 million). Each of Xstrata and Falconbridge have a Community-wide turnover in excess of EUR 250 million (Xstrata EUR [...] million; Falconbridge EUR [...] 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.

V. RELEVANT MARKETS

10. The proposed operation concerns the mining, processing, marketing and trading of metals.

² Xstrata owns 19.8% of the share capital of Falconbridge, which it acquired in August 2005.

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).

11. Glencore / Xstrata and Falconbridge have overlapping activities in the production and supply of the following products: zinc, cobalt, nickel, copper, lead, gold, silver, alumina, aluminium, molybdenum and sulphuric acid. Other products produced and / or supplied by Glencore / Xstrata and Falconbridge are not further discussed in the present decision.

Metal trading

12. Metals are commodities generally traded on open markets. Glencore has significant activities in commodity trading and a large share of the commodities sold by Glencore is commodities acquired from third parties rather than commodities produced using its own production assets. Neither Xstrata nor Falconbridge are involved in commodity trading.
13. Based upon previous Commission's decisions⁴, Xstrata considers that metal trading belongs to a distinct product market than the production and direct sale of metals. According to Xstrata the activities of metal traders and metal producers differ substantially and metal traders play a different role on the market. Xstrata further contends that the ability to acquire metals from producers and re-sell it on the markets does not give metal traders the same market power as metal producers and should not be translated into a market share that is relevant for a competitive analysis as metal traders depend to a large extent on metal producers. Furthermore, according to Xstrata, barriers to entry in metal trading activities are relatively low.
14. On the contrary, the Commission's market investigation has shown that the vast majority of end customers buy indifferently from metal traders and metal producers, which is not consistent with Xstrata's view of the relevant product markets. There is a broad range of sourcing policies among customers depending on the type of metals purchased, the quantities purchased and market conditions. Metal producers and traders therefore play either a complementary role or a competing role vis-à-vis customers.
15. It is however not necessary for the purposes of the present decision to decide on whether metal traders are active on the same relevant product market as metal producers, as the proposed transaction does not give rise to any competition concerns under both alternative market definitions. The Commission has therefore assessed the competitive impact of the proposed transaction on the markets for the supply of each metal, taking into account Glencore's metal trading activities, which constitutes the "worst case" scenario in the present case.

Zinc

16. In line with previous Commission decisions⁵, Xstrata considers that the market for the supply of zinc is a distinct product market due, in particular, to its different physical characteristics, its different usage and different price levels. Xstrata further considers that each of zinc concentrate and zinc metal constitutes separate product markets. The

⁴ Commission decisions of 20 July 1994 in Case IV/M.473 – PWT/Minemet and of 7 December 2000 in Case COMP/M.2196 -Enron/Bergmann/Hutzler.

⁵ Commission decisions of 29 August 1994 in Case IV/M.470 – Gencor/Shell, of 14 June 2001 in Case COMP/M.2413 – BHP/Billiton, and 1 August 2000 in Case COMP/M.2062 – Rio Tinto/North.

market investigation has confirmed that the supply of zinc concentrate and the supply of zinc metal constitute two distinct relevant product markets.

17. There are five grades of zinc metal, SHG (special high grade), CGG (continuous galvanising grade), DCA (die casting alloys), HG (high-grade) and GOB (good ordinary brand). It is estimated that 90% of the Western world zinc metal consumption is of SHG and SHG-based zinc metal (CGG and DCA). It is however not necessary for the purposes of the present decision to decide on whether each of these grades constitutes a separate relevant product market, as the proposed transaction does not give rise to any competitive concern under both alternative market definitions.
18. Xstrata submits that the geographic markets for each of zinc concentrate and zinc metal are worldwide in scope because both metals are traded on a global basis under long term contracts and their prices are tied to the prices quoted on the LME.
19. While the market investigation confirmed that zinc concentrates are extensively traded on a global basis, it appears that the geographic dimension of the market for the supply of zinc metal may have a narrower geographic dimension (EEA-wide). A number of zinc metal customers pointed that they purchased zinc metal predominantly from EEA-based producers due to non-insignificant transport costs and a 2.5% tariff on zinc metal imports into the EU. A number of respondents pointed out distinct competitive conditions in the EEA, where there is a deficit of zinc metal production, and other regions of the world. The results of the market investigation are in line with the conclusion of the Commission in a previous decision⁶ where it was found that the relevant geographic market was the EEA.
20. It is however not necessary for the purposes of the present decision to conclude on whether the market for the supply of zinc metal has a global or an EEA-wide dimension, as the proposed transaction does not give rise to any competition concerns under both alternative market definitions.

Cobalt

21. Cobalt is a metal generally produced as a co-product of the refining of nickel and copper. Xstrata submits that cobalt forms a distinct product market, due, in particular, to its different physical characteristics, its different usage and different price levels. The supply of cobalt intermediates (e.g. white alloy) and the supply of cobalt refined products belong to distinct relevant product markets in view of the lack of supply- and demand-side substitutability.
22. Cobalt is used in a range of end applications including metallic applications (super alloys, magnets, etc) and chemical applications (pigments, catalysts, batteries, etc.). In accordance with a previous Commission decision⁷, the supply of cobalt can be subdivided into several relevant product markets depending on the end applications because of the limited supply- and demand-side substitutability for cobalt products

⁶ Case No COMP/M.2348 -OUTOKUMPU /NORZINK

⁷ Case COMP/M.4000 Inco/Falconbridge.

used in different end applications. It is however not necessary for the purpose of the present decision to decide on whether the market for the supply of cobalt should be further segmented by end applications, as the proposed transaction does not give rise to any competition concerns under both alternative market definitions.

23. Xstrata considers that the relevant geographic market for cobalt is worldwide in scope because it is a commodity that is traded internationally. The market investigation has confirmed that, for most end applications, the market for the supply of cobalt is most likely global in scope.

Nickel

24. In line with previous Commission decisions⁸, Xstrata considers that the market for nickel is a distinct product market due, in particular, to its different physical characteristics, its different usage and different price levels. The supply of nickel intermediates (nickel matte, nickel sulphides, nickel carbonates) and the supply of refined nickel products belong to distinct relevant product markets in view of the lack of supply and demand side substitutability.

25. In accordance with a previous Commission decision⁹, the supply of refined nickel can be subdivided into several relevant product markets depending on the end applications because of the limited supply- and demand-side substitutability for nickel products used in different end applications. It is however not necessary for the purpose of the present decision to decide on whether the market for the supply of nickel should be further segmented by end applications, as the proposed transaction does not give rise to any competition concerns under both alternative market definitions.

26. Xstrata considers that the relevant geographic market for nickel is worldwide in scope because it is a commodity that is traded internationally. The market investigation has confirmed that, for most end applications, the market for the supply of nickel is most likely global in scope¹⁰.

Copper, lead, gold, silver, alumina and aluminium

27. The Commission has in previous decisions identified distinct product markets for copper¹¹, lead¹², silver¹³, gold¹⁴, alumina¹⁵ and aluminium¹⁶. These markets are distinct,

⁸ Commission decision of 29 August 1994 in Case IV/M.470 – Gencor/Shell.

⁹ Case COMP/ M.4000 Inco/Falconbridge.

¹⁰ For certain end applications, the geographic dimension of the market for the supply of nickel may be narrower (EEA-wide). See Case COMP/ M.4000 Inco/Falconbridge.

¹¹ Commission decisions of 14 June 2001 in Case COMP/M.2413 – BHP/Billiton, and of 8 December 2003 in Case COMP/M.3284 – Outokumpu/Boliden.

¹² Commission decision of 29 August 1994 in Case IV/M.470 – Gencor/Shell.

¹³ Commission decisions of 29 August 2003 in Case IV/M.470 – Gencor/Shell, of 7 December 1995 in Case IV/M.660 – CRA/RTZ and of 1 August 2000 in Case COMP/M.2062 – Rio Tinto/North.

¹⁴ Commission decisions of 29 August 2003 in Case IV/M.470 – Gencor/Shell, of 7 December 1995 in Case IV/M.660 – CRA/RTZ and of 1 August 2000 in Case COMP/M.2062 – Rio Tinto/North.

due in particular to the metals' different physical characteristics, their different usage and different price levels. Copper and lead consist of two main products markets, concentrate and metal. The relevant geographic market for each of these metals is worldwide in scope.

28. As the overlaps between Glencore / Xstrata and Falconbridge activities are minimal, the copper, lead, gold, silver, alumina and aluminium markets are not further discussed in the present decision.

Molybdenum

29. Molybdenum is a very hard metal which is usually obtained as a by-product from copper concentrate and is most frequently used as an alloying addition in alloy and stainless steel, electrodes and catalysts. According to Xstrata, molybdenum is not substitutable with other products and constitutes a separate relevant product market. It is not necessary for the purposes of the present decision to further define the market for the supply of molybdenum, as the proposed transaction does not give rise to any competition concerns under both alternative market definitions.
30. According to Xstrata, the geographic scope of the market for molybdenum is worldwide as it is sold on a worldwide basis and similar prices are charged in the USA and Europe. The market investigation suggests that the market for the supply of molybdenum is most likely global in scope.
31. As the overlap between Glencore / Xstrata and Falconbridge activities is minimal, the market for the supply of molybdenum is not further discussed in the present decision.

Sulphuric acid

32. Sulphuric acid is a corrosive chemical mainly used in the chemical and fertiliser industries. It can also be used in the manufacture of pulp and paper, paints and pigments, explosives, plastics, detergents and a variety of specialty chemicals. It is also used for processing mineral ores, metal refining, petrochemical processing and water treatment. Xstrata considers that the market for sulphuric acid constitutes a distinct product market. It is not necessary for the purposes of the present decision to further define the market for the supply of sulphuric acid, as the proposed transaction does not give rise to any competition concerns under both alternative market definitions.
33. Xstrata considers that the relevant geographic market is no more than EEA-wide in scope due to uneconomic transport costs. Some respondents to the market investigation have however indicated that the market for the supply of sulphuric acid may be global in scope. It is however not necessary for the purposes of the present decision to decide on whether the market for the supply for sulphuric acid is EEA-

¹⁵ There are several grades of alumina (smelter grade alumina, hydrate alumina and alumina concentrate, etc.), which may constitute distinct relevant product markets.

¹⁶ Commission decisions of 28 May 1998 in Case COMP/M.1161–Alcoa/Alumax, and 26 June 2001 in Case COMP/M.2404 – Elkem/Sapa. In the case COMP/M.1693, Alcoa/Reynolds, the Commission identified a separate relevant product market for high purity primary aluminium.

wide or global in scope, as the proposed transaction does not give rise to any competition concerns under both alternative market definitions.

34. Falconbridge does not sell sulphuric acid in the EEA. Accordingly, there is no overlap between the parties in the EEA if the market is EEA-wide. If the market for the supply of sulphuric acid were to be global in scope, the overlap between Glencore / Xstrata and Falconbridge activities would be minimal. The market for the supply of sulphuric acid is thus not further discussed in the present decision.

VI. COMPETITIVE ASSESSMENT

35. In the metal industry, Glencore is mainly active as a trader while Xstrata and Falconbridge are both producers, but with a focus on different metals. The proposed transaction only gives rise to three affected markets in zinc metal, cobalt and nickel.
36. The proposed transaction does not give rise to any vertically-affected market.

Zinc

37. Each of Xstrata, Glencore and Falconbridge are active in the production and sale of zinc concentrate and zinc metal.
38. In 2005, Xstrata, Glencore and Falconbridge had respective worldwide market shares of approximately [0-10]%, [0-10]¹⁷ and [0-10]% of the world production of zinc in concentrate respectively¹⁸. The parties' combined worldwide market share for the production of zinc concentrate was therefore approximately [10-20]%. In 2005, Xstrata estimates¹⁹ that Xstrata, Glencore and Falconbridge had worldwide market shares of approximately [0-10]%, [0-10]% and [0-10]% of the global market for the supply of zinc concentrate respectively. The parties' combined worldwide market share for the supply of zinc concentrate was therefore approximately [10-20]%. According to Xstrata, Teck Cominco and Zinifex were the two largest suppliers of zinc concentrate to third parties in 2005.
39. As regards zinc metal, Xstrata, Glencore and Falconbridge had respective worldwide market shares of approximately [0-10]%, [10-20]% and [0-10]% of the world production of zinc in concentrate respectively. The parties' combined worldwide market share for the production of zinc metal was therefore approximately [10-20]%.
40. If a narrower geographic scope is considered for the market for the supply of zinc metal (EEA geographic market), Xstrata and Glencore market shares were respectively [10-20]% and [20-30]% in the EEA in 2005 while Falconbridge had minimal sales of zinc metal in the EEA (less than 1%). Falconbridge has no zinc metal production facility in the EEA. In view of the minimal overlap, the proposed

¹⁷ As explained above (see 15), Glencore's metal trading activities have been included in Glencore's market share for the purpose of the present decision.

¹⁸ All market shares figures provided in the decision are Xstrata estimates. These data are not materially different from those provided by Falconbridge.

¹⁹ Xstrata estimated the quantities of zinc concentrates traded between third parties based on publicly available information (Brook Hunt) and the mining and smelting activities of each of the zinc producers.

concentration will therefore not materially affect the market for the supply of zinc metal.

41. As regards the different grades of zinc metal, overlaps between the parties only exist for the supply of the SHG and CGG grades. The combined global market shares of the parties were [0-10]% on the CGG market, [10-20]% on the SHG market and [10-20]% on a market including SHG and SHG-based zinc metal.
42. The proposed transaction is unlikely to create competition concerns in the different relevant zinc markets as a number of effective competitors will remain active on the markets, both at the global level (e.g. Korea Zinc, Teck Cominco, Zinifex) and at the EEA level (e.g. New Boliden, Umicore, Zinifex). Furthermore, Falconbridge has a negligible presence in zinc metal in the EEA.

Cobalt

43. Xstrata does not have any cobalt operations and Falconbridge is not active in the supply of cobalt intermediates. The only overlap brought about by the proposed transaction thus concerns Glencore's and Falconbridge's activities in refined cobalt.
44. In 2005, Glencore and Falconbridge had worldwide market shares of approximately [10-20]% and [0-10]% for the worldwide supply of cobalt respectively. The parties' combined worldwide market share was therefore approximately [10-20]%.
45. As regards the breakdown by end applications, Glencore sells a broad range of cobalt products (cobalt metal and chemicals) to customers active in different industries (batteries, super alloys, catalysts, magnets, etc.). Glencore's two largest cobalt customers are [...] and [...], two of the largest cobalt producers, selling into a broad range of end applications. Glencore is thus not in a position to provide a detailed breakdown of its cobalt sales by end applications. Falconbridge only produces metal cobalt, a significant share of which is sold to super alloys customers.
46. As regards high purity cobalt, Glencore does not produce high purity cobalt but trades third-party high purity cobalt. As regards the highest purity of cobalt for use in the most demanding super alloy applications, Falconbridge and Inco are the only [...] producers.
47. The proposed transaction is unlikely to create competition concerns in the different relevant cobalt markets as a number of effective competitors will remain active on the market for each end application (e.g., OMG, Norilsk, Jinchuan). In particular, as regards high purity cobalt, Glencore is only a trader and not a major market player, and it will only take over Falconbridge's position, so that the merged entity will continue to face competitive constraint from Inco. The market investigation did not raise any specific competition concerns as regards cobalt supply.

Nickel

48. Xstrata does not have any nickel operations and Falconbridge is not active in the supply of nickel intermediates. The only overlap brought about by the proposed transaction thus concerns Glencore's and Falconbridge's activities in refined nickel.
49. In 2005, Glencore and Falconbridge had market shares of approximately [0-10]% and [0-10]% of the world production of refined nickel respectively. Their combined worldwide share was therefore approximately [10-20]%.
50. As regards the breakdown by end applications, Glencore's sales of nickel are mainly to the stainless industry ([...] % of Glencore's nickel sales in 2005), while a significant share of Falconbridge's nickel sales are in non-ferrous alloys industry (including high purity nickel for super alloys producers). On the basis of a narrower product market for the supply of nickel to the stainless steel industry, Xstrata and Falconbridge had respectively global market shares of [10-20]% and [0-10%] in 2005, resulting in a combined market of [15-25%]. On the basis of narrower product markets for the supply of high purity nickel, there is no overlap between Glencore's and Falconbridge's activities since Glencore does not produce or trade high purity nickel of a suitable quality for end applications requiring high purity nickel.
51. The proposed transaction is unlikely to create competition concerns in the different relevant nickel markets due to the presence of a number of alternative producers and suppliers (e.g., Norilsk, Inco, BHP Billiton) and the absence of overlap between Glencore and Falconbridge for the supply of high purity nickel.

VII. CONCLUSION

52. 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