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***Case No IV/M.472 -
Vesuvius / Wülfrath***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 05/09/1994

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 5.09.1994

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties.

Dear Sirs,

Subject : Case No IV/M.472 - VESUVIUS/WÜLFRATH

Notification of 01.07.1994 pursuant to Article 4 of Council Regulation No 4064/89

1. On 1 July 1994, Vesuvius Group Ltd ("VESUVIUS") of the UK and Dolomitwerke GmbH, of Germany ("WÜLFRATH") notified the concentration by which they intend to merge certain of their activities in the manufacture and distribution of consumable refractory products for the protection and control of the flow of molten steel in continuous casting into two new joint ventures.

I THE PARTIES

2. VESUVIUS, a British company controlled by the Cookson Group plc ("Cookson"), is active worldwide in the development, production and marketing of consumable refractory products, in particular of isostatical products.
3. WÜLFRATH is a German limited partnership controlled by Thyssen AG of Germany and is active worldwide in the development, production and marketing of refractory products, including consumable products, as well as bricks and linings related to its Dolomite limestone, lime products and clays business.

II THE OPERATION

4. Two joint ventures will be set up, the first a Dutch holding company Central European Advanced Refractory Technology B.V. ("Central European") with two operating subsidiaries in the Czech Republic and in Poland (VCT and CWS) and the second, a trading company under German law, Tradeco GmbH ("Tradeco").

CENTRAL EUROPEAN

5. Central European will be established as a 75/25 joint venture between VESUVIUS (which will hold the 75% stake) and WÜLFRATH (which will hold the 25% stake).

The parties will transfer to Central European their existing Czech, Slovakian and Polish interests. VESUVIUS will contribute its 60% stake in Vesuvius Czechoslovakia Stock Corp Trinec (VCT) and WÜLFRATH its 60% stake in Ceramika Wülfrath Skawina (CWS). The minority shareholders of VCT and CWS are Trinecke Zelezarny AS (with 15% shareholding in both subsidiaries of Central European), Huta Katowice SA (likewise with 15% shares) and Skawina Refractory Works Ltd (with 10% shareholdings in both VCT and CWS).

6. WÜLFRATH will also contribute its German manufacturing facilities for isostatic and Vapex-products to Central European. As a result, after the operation, the Thyssen Group will not retain any interests in the JVs' market for continuous casting refractories, whereas VESUVIUS will continue to be active.

TRADECO

7. TRADECO will also be established as a 75/25 joint venture between VESUVIUS (which will hold the 75% stake) and WÜLFRATH (which will hold the 25% stake). TRADECO will undertake the sales of Central European for the defined area in which the JVs will be active (Austria, Bulgaria, Czech Republic, Germany, Hungary, Ex-Yugoslavia, Poland, Rumania, Slovakia and the ex-USSR). Sales within the Czech and Slovak Republics on the one hand and Poland on the other hand, will be made directly by VCT and CWS respectively.
8. To the JV sales business will also belong some Vesuvius products (slide gate systems, accumetrix probe and fused silica products), which are not produced by the JV but which are necessary in order to provide a sufficient range of products to customers and which will be delivered by Vesuvius on the basis of a sales/purchase agreement.

III CONCENTRATION

Joint control

9. Although VESUVIUS will hold a 75 % and WÜLFRATH a 25 % share in each JV's share capital, the agreements provide that both Central European and Tradeco will be jointly controlled by VESUVIUS and WÜLFRATH.

In the case of Central European, VESUVIUS will assume overall responsibility for the day-to-day business of Central European as outlined in the six-party-agreement and in the articles of association of Central European. However, WÜLFRATH will have substantial veto

rights in both Central European and Tradeco. Unanimous instructions of VESUVIUS and WÜLFRATH shall be necessary for all major decisions, including approval of the annual financial statements, investment plans, any change of product lines and the conclusion of license agreements. WÜLFRATH will also have veto rights in respect of Central European's and Tradeco's management.

Full function jv

10. Central European and Tradeco will have all tangible and intangible assets and resources necessary to enable them to perform the functions of an autonomous full-function entity, in particular with respect to the production and marketing of its products.
11. VESUVIUS will enter into supply agreements with CWS and VCT relating to the supply of certain semi-finished products (so called mixes and moulds) which are needed for manufacturing isostatical products but the JV remains free to buy on the open market to the extent that VESUVIUS has been unable to supply.
12. WÜLFRATH will sell to CWS the necessary equipment to start the production of isostatical and Vapex Refractories and VESUVIUS will grant to CWS and VCT know-how for the isostatical process. The parent companies also will grant the Vapex know-how to CWS.
13. The marketing of the refractories is organized regionally. TRADECO will sell outside Poland and the Czech and Slovakian Republics in the defined geographical area and CWS and VCT will sell the refractories in their country of origin (respectively Poland and the Czech and Slovakian Republics). This will be implemented by means of purchase agreements between each of VCT and CWS, and TRADECO.

Absence of coordination

14. By closing down WÜLFRATH's Bad Hönningen factory and selling and transferring its equipment and know-how to CWS, WÜLFRATH as well as Thyssen AG will transfer all its business in consumable refractories for continuous casting and exit the JV's market. The remaining bricks and linings business of WÜLFRATH is unlikely to give rise to any coordination of competitive behaviour with that of VESUVIUS and/or the joint venture given that bricks and linings are used for different applications than consumable refractories in both continuous casting and ingot casting. In addition, customers do not usually buy bricks and linings from the same suppliers as consumable refractories. Furthermore, the purchase cycles of the two products are very different since bricks and lining last for several months/years, while consumable refractories last only for some hours or days.
15. Thyssen-Stahl retains joint ownership (with the Sidermin Group) of a slide gate mechanism patent. Thyssen had already withdrawn from the slide gate mechanism market before this operation. Notwithstanding its presence on what might be termed the licencing market, joint ownership of the patent will not make it materially easier for Thyssen to re-enter this market since the main barrier is the capital investment in plant rather than technology which can be easily licensed.

Neither VESUVIUS nor any other Cookson company manufactures bricks and linings. VESUVIUS will remain active in the refractory business of the JV. However, as VESUVIUS will enjoy industrial leadership over the JV's, this will not give rise to any risk

of coordination of the competitive behaviour within the meaning of Article 3 of the Merger Regulation.

16. It results from the above that the proposed operation of VESUVIUS and WÜLFRATH will create a concentration within the meaning of Article 3 of the Merger Regulation.

IV COMMUNITY DIMENSION

17. The concentration will have a community dimension. The combined aggregate worldwide turnover of Cookson Group Plc and Thyssen Aktiengesellschaft in 1993 exceeded 5,000 MEcu. The aggregate Community wide turnover of each was also higher than 250 MEcu and the two companies did not achieve more than two-thirds of their respective Community-wide turnover in one and the same Member State.

V COMPATIBILITY WITH THE COMMON MARKET

Relevant product market

In the field of refractory products generally, two different product markets have to be distinguished from both the supply and the demand side :

18. Furnace bricks and linings for converters furnaces, ladles and tundishes are used to protect containers from the mass of molten metal. They last for about two years of steel casting. They can be manufactured using various manufacturing methods, but are in any case easier to manufacture than the consumable refractories. As a result, they are sold by the ton as a quasi commodity and their sales price per ton does not exceed 10 % of the price per ton of the JV's products. This market is served neither by VESUVIUS nor by the JV. It was and will continue to be served after the concentration by WÜLFRATH.
19. Consumable refractory products for continuous casting form a separate market. Refractories have to protect and control the flow of molten metal for about 15 hours. They require specific materials as well as manufacturing processes such as isostatical pressing and are produced in a range of qualities at significantly higher prices than bricks and linings. A number of different products, each having a specific function in the protection and control of the metal flow, belong to this market: ladle shrouds, tundish stoppers, subentry nozzles/shrouds, slide gate plates, inner and collector nozzles and Accumetrix tubes.
20. Consumable refractories used for continuous casting are not used in ingot casting with the exception of certain slide gates, and are also significantly different to consumable refractories for the casting of other metals than steel. Therefore the relevant product market is refractories for the protection and control of the flow of molten steel in the continuous casting process.
21. It is not necessary, however, to subdivide the refractories market further between the individual products listed in paragraph 19. Each steelmaker needs all these consumables (except Accumetrix products). The main suppliers produce and market most if not all of these products and certainly hold the necessary know-how and equipment to have the capacity to supply them.

Whilst each manufacturer may use a slightly different production technique or product mix when producing consumable refractories for continuous casting, the Commission's inquiries confirmed that from the customer's point of view, the products manufactured and marketed by the suppliers are interchangeable

Relevant geographic market

22. The relevant geographic market for refractories is considered to include at least the EEA market for the reasons outlined below.
23. No legal or other barriers to trade exist within the EEA. The transportation costs in this area have been described as insignificant by the parties as well as the competitors. Although for historical reasons, national manufacturers may enjoy higher market shares in their home country, significant inter-state trade exist as shown by the market shares achieved by non-national manufacturers in most member States.
24. The parties have suggested that the geographical market might be wider. They pointed out that Japanese suppliers are shipping to Europe; that European companies are active in American and Asian markets; and that on the demand side, customers are big companies with sophisticated purchase departments. Therefore, competitive conditions worldwide are relatively homogenous for the main globally active manufacturers of refractories. However, imports into the EEA are still below 5% and according to the parties only relate to sales achieved by a few Japanese companies. In reply to the Commission's inquiries, customers stated on the one hand that were prices to rise, they were aware of alternative sources of supply outside Europe (in particular Japan and the USA) to which they could turn, whilst on the other hand stating that such suppliers do not offer the same technical support and order lead-time as their European counterparts, although some customers already source from outside Europe. Given the uncertainty over whether supplies from outside Europe could match the service of European suppliers, the Commission has assessed this operation on the basis of the more restrictive EEA definition, whilst leaving open the precise extent of the relevant geographic market.

Effects of the concentration

25. The operation will not lead to the creation or the strengthening of a dominant position in the common market or in a substantial part of it.
26. The relevant European market for consumable refractories for continuous casting represents a sales volume of about 180 MEcu in 1993 and results in the following structure of market shares based on value:

<u>Undertaking</u>	<u>Group</u>	<u>%⁽¹⁾</u>
VESUVIUS	Cookson	35-40
WÜLFRATH	Thyssen	< 5

Joint Venture		40-45
DIDIER WERKE AG	Viag	15-20
FLOGATE	Hinckley	5-10
NKK	NKK Steel	5-10
FOSECO	Burma Castrol	5-10
Other (> 15)		15-20

		100 %
		====

27. While the parties will achieve a 40-45 %⁽¹⁾ market share by value, they will face competition from a large number of competitors. Many are small, it is true, but the JV will also face competition from larger firms. Foremost among these is Didier-Werke AG group of companies which is itself part of the Viag group. It has a market share of 15-20 %⁽¹⁾, a full range of continuous casting refractory products and according to one competitor, is in possession of good technology and has low production costs. NKK is likewise a subsidiary of NKK Steel of Japan although its European sales are sourced in Europe. Flogate is part of the UK Hinkley Group, is a licensee for proprietary US technology and is particularly strong in the UK, while Foseco is part of Burma Castrol.
28. Over 99% of the parties' sales are to a small number of steelmakers belonging to the major European steel groups and which consequently enjoy a large amount of buyer power. Furthermore, both customers and suppliers agreed that there was little room for refractory manufacturers to increase prices given the pressure steel manufacturers are under as they face weak demand and low-price competition in their own markets.
29. As discussed earlier, most customers are in any case aware of alternative sources of supply outside Europe, and whilst the possibility of logistical difficulties in terms of the length of the supply line for just-in-time deliveries and the level of back-up support was sufficient for the Commission to restrict the geographic market to the EEA, it is clear that the potential for competition from suppliers outside the EEA will act as an additional constraint on the JV's prices. Some customers already source their refractory need from outside Europe.

VI CONCLUSION

30. Although the market share of the new group will exceed 40 % in the EEA after the concentration, it will face competition from a number of significant companies and from a large number of smaller and often specialised competitors with particular strengths in particular products. The Commission considers that this, together with the countervailing

⁽¹⁾ The ranges were inserted for publication (business secret)

power of the steel producers and the possibility to source outside Europe, albeit perhaps with certain drawbacks, will be sufficient to ensure effective competition in this market.

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31. For the above reasons the Commission has decided not to oppose the notified concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)b of Council Regulation No 4064/89.

For the Commission