

*Case No IV/M.503 -
British Steel / Svenskt
Stal / NSD*

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

Article 6(1)(b) NON-OPPOSITION
Date: 07/11/1994

*Also available in the CELEX database
Document No 394M0503*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 7.11.1994

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

Registered with advice of delivery

To the notifying parties.

Dear Sirs,

Subject :Case no IV/M.503 - British Steel/Svensk Stål/NSD

1. On 3 October 1994 British Steel plc (BS) and SSAB Svensk Stål AB (SSAB) notified a proposed concentration by which the two companies will acquire joint control of Norsk Stål A/S (NS). BS and SSAB already own 48% of the shares in NS (24% each) and will buy the remaining 52% (26% each) of the shares from Norsk Jern Holding A/S which company at present controls NS.
2. The operation was notified to the Commission pursuant to Article 66 of the Treaty of Paris (the ECSC Treaty) and Article 4 of Council Regulation (EEC) No. 4064/89. This decision is only concerned with those products which fall within the jurisdiction of the EEC Treaty (representing approximately 13% of the total value of the transaction).

After examination of the notification the Commission has concluded that the proposed operation falls within the scope of Council Regulation No 4064/89 and does not give rise to serious doubts as to its compatibility with the common market and the EEA Agreement.

I. The parties and the operation

3. BS is divided into three principal operating business groupings: British Steel Long Products and British Steel Flat Products which manufacture steel products and sell both directly to customers and through the third business group, British Steel Commercial and

Distribution; the last mentioned also processes and distributes steel products worldwide (including products produced outside BS).

4. SSAB is engaged primarily in the manufacture of steel sheet and plate through its two subsidiaries SSAB Tunnpått and SSAB Oxelösund. It also has finishing and coating operations and distributes steel, other metals and industrial supplies through its subsidiary Tibnor A.B.
5. NS is a Norwegian steel stockholding and service centre operation. NS itself is a stockholder in general steel products while its wholly owned subsidiary, Norsk Tynnplater A/S, is a strip products service centre.
6. The proposed operation consists of the acquisition of BS and SSAB of the remaining 52% of the share capital in NS which they do not currently own. By the operation BS and SSAB will become 50/50 shareholders in NS.

II. Community/EEA dimension

7. The worldwide turnover of the undertakings concerned amounts to more than 5.000 million Ecus. Community-wide turnover of each of BS and SSAB exceeds 250 million Ecus. The undertakings involved do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The operation thus has a Community dimension.
8. Because NS is the major steel stockholder in Norway it was necessary to investigate whether the operation was liable to create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the territories of the EFTA States or a substantial part thereof. Therefore, it was considered that the proposed concentration was a cooperation case according to Article 2(1)(c) of the EEA Agreement.

III. Concentration

Joint control

9. The parties have not entered a formal shareholders agreement but will have 50/50 shareholdings and corresponding voting rights to the joint venture. They will therefore have joint control over NS.

Full function joint venture

10. Steel stockholding in Norway is a trade market. There are several steel stockholding companies in Norway which own depots spread throughout the country and which are served by many different steel producers. Furthermore, the Commission has in previous cases held that steel stockholding constitutes a distinct product market (See the decisions in case No. IV/M. 073 - Usinor/ASD and case No. IV/M. 239 - Avesta/British Steel/NCC/AGA/Axel Johnson).
11. Stockholders perform the traditional wholesaling function of buying bulk orders from the manufacturers and reselling in smaller quantities. In addition, steel stockholders have developed their in-house processing facilities in order to add value and improve their

services to customers. Such processing includes cutting to length, slitting, shearing and polishing.

12. On the trade market for steel stockholding NS is an existing company with all the assets and resources necessary to enable it to perform all the functions of an autonomous economic entity, including depots and marketing resources. Moreover, NS is able to obtain supplies not only from its parents but also from other manufacturers of steel products: NS currently purchases [...] ⁽¹⁾ of its products from BS and SSAB and [...] ⁽²⁾ from other companies. It is the parents intention to continue the present practice of arm's length sales; for commercial reasons the parties do not expect the current extent of supplies from the parents to NS to change drastically because of the operation.
13. For the above mentioned reasons, NS can be regarded as a full-function joint venture operating on a trade market performing the functions normally carried out by other undertakings operating on the same market.

Absence of coordination of competitive behaviour

14. Coordination between BS and SSAB on the stockholding market as such can be excluded because neither of the parents play an active role on that market in Norway.
15. Given the particular characteristics of the steel industry it is relevant to examine potential coordination between the parents in the upstream market for EEC products in Norway as a result of their activities in the joint venture. However, given that there is no overlap in the EEC products they supply in Norway - whether through the joint venture, to other steel stockholders or directly to end users - any potential coordination between the parents in regard to these products can also be excluded.

IV. Compatibility with the common market

A. Relevant product market

16. The operation concerns the distribution of steel products to end users through steel stockholders and service centres. As mentioned above, steel stockholders perform the wholesale function of buying bulk from the manufacturers, reselling in smaller quantities and of processing the steel products.
17. The majority of steel stockholders carry most steel product groups and hence perform the same wholesale functions. Therefore, it seems reasonable to conclude that steel stockholding constitutes a single market rather than individual markets for each product (see the Commission decisions in the cases mentioned above in paragraph 10.)
18. For the purpose of an analysis under the Merger Regulation, only the stockholding of EEC products is, however, relevant. This operation concerns the following EEC products only: welded tubes, aluminium, cold rolled flat products (less than 500mm wide) and rectangular hollow sections.

⁽¹⁾ Deleted as a business secret - between 20 and 40 %

⁽²⁾ Deleted as a business secret - between 40 and 80 %

B. Relevant geographic market

19. According to the parties, the geographic market for steel stockholding is regional and, because of its elongated coastal geography, stockholders in Norway tend to be more regional than in most other countries. The Commission has in previous cases held that stockholding is a local or regional service (see the Commission decisions mentioned above in paragraph 10). This view is supported by the structure of distribution in Norway where depots are spread over the country. According to the parties, the maximum radius covered from depots to end users is approximately 200 km.
20. Consequently, it appears that the geographical market for steel stockholding is regional or local where the geographical area serviced by an individual depot will be determined by transport costs or delivery times. However, since neither of the parents are active players on the market for steel stockholding in Norway the operation will not add to NS' market shares. Consequently, it is not necessary to reach an exact geographic market definition.

C. Assessment

i) Stockholding of EEC and ECSC products

21. In 1993 the total supply of steel products (EEC and ECSC products) in Norway amounted to 1370Kt of which approximately 40% was sold by stockholders. There are more than 10 stockholders in Norway distributing a typical range of stockholding products. NS is the major steel stockholder in Norway with a share of [...] ⁽³⁾ by value. Three stockholders have shares of [...] ⁽⁴⁾; the rest have shares below 5%.
22. In order to guarantee reasonable delivery times even for smaller quantities and to reduce transport costs it is necessary for stockholders which operate on a national basis to have depots spread throughout the country. NS operates across the country from 11 depots; two other stockholders operate across the country from seven and five depots respectively. Other stockholders cover only parts of Norway with two or three depots while the rest operate on a local basis.
23. The barriers to entry are low: in particular, entry into general steel stockholding on a regional basis is relatively easy. Entry on a national basis is more difficult because of the need to invest in several depots to cover the whole territory.

ii) Stockholding of EEC products

24. The operation concerns the following EEC products only: welded tubes, aluminium, rectangular hollow sections and cold rolled flat products (less than 500mm wide). As to the last mentioned products, the Commission has in a previous case (Case No. IV/M.239 - Avesta/British Steel/NCC/AGA/Axel Johnson) held that cold rolled flat products less than 500mm wide (EEC products) cannot be separated from cold rolled flat products

⁽³⁾ Deleted as a business secret - less than 40 %

⁽⁴⁾ Deleted as a business secret - less than 20 %

above 500mm wide (ECSC products) because of the high degree of supply side substitutability. The split between material under 500mm and over 500mm is an artificial division relating to a production technology of the time of the Treaty of Paris (1951). Today, mills can roll widths of below 500mm and above and material of less than 500mm can be slit from wider coils. Consequently, assessing the market shares in this case, cold rolled flat products above 500mm wide will be considered as belonging to the market of stockholding of EEC products. On that basis, NS' share of the market for EEC products in Norway is [...]⁽⁵⁾.

iii) Stockholding of individual EEC products

25. As mentioned above, in this case the relevant product market is steel stockholding rather than the individual products. However, an analysis based on a more narrow product market definition will not significantly change NS' market position. As to the distribution of cold rolled flat products (both EEC and ECSC) NS' estimated market share in Norway is [...]⁽⁶⁾. In welded tubes NS has a share of [...]⁽⁷⁾ of which the market share of rectangular hollow sections can be estimated to [...]⁽⁸⁾. In aluminium products the market share is [...]⁽⁹⁾.

iv) Vertical and horizontal aspects

26. Both parents are as manufacturers of steel products active in the upstream market of steel stockholding. However, there seems to be little incentive either for the joint venture to cease selling the products of other steel producers or for the parents to cease to supply to other stockholders in Norway. In the first case steel producers would still have access to competing stockholding outlets while in the second case stockholders would have access to alternative suppliers. The market for steel products is at least Western Europe in scope and stockholders, including NS, purchase steel products at competitive conditions on a European basis. Consequently, any such practice would be more likely to reduce NS' share of the stockholding market than to harm its competitors.
27. SSAB, through its subsidiary Tibnor, holds a relatively strong position on the Swedish market for steel stockholding with several depots spread over Sweden. Because the geographic market for steel stockholding is regional in scope it is not likely that SSAB's horizontal integration into steel stockholding in Norway will give rise to competition problems. However, on the basis of a maximum radius of 200km for deliveries from steel stockholders' depots there is in an area in South-West Sweden overlap between some of NS' Norwegian depots and Tibnor's Swedish depots. The overlap is limited and it is not likely that it will give rise to competition problems because of the existence of several competitors in this area. In addition, as mentioned above, there are low barriers to entry, especially on a regional basis.

⁽⁵⁾ Deleted as a business secret - less than 20 %

⁽⁶⁾ Deleted as a business secret - approximately 40 %

⁽⁷⁾ Deleted as a business secret - approximately 25 %

⁽⁸⁾ Deleted as a business secret - less than 50 %

⁽⁹⁾ Deleted as a business secret - less than 20 %

V. Conclusion

28. In view of the fact that the operation will not add to NS' market shares, and taking into account the structure of the Norwegian steel stockholding market with several competitors and low barriers to entry, the transaction will not create or strengthen a dominant position such as to significantly impede effective competition with regard to steel products falling within the scope of the EEC Treaty.

VI. Ancillary restraints

29. According to the Share Purchase Agreement, Norsk Jern Holding A/S and any subsidiary company in which it owns more than 50% agrees, for a period of two years after Closing Day, to refrain from directly or indirectly conducting any business that will compete with NS. This provision seems to be reasonable and necessary to the implementation of the concentration and is, therefore, ancillary within the meaning of the Merger Regulation.

For the above reasons, the Commission has decided not to oppose the notified concentration 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 No. 4064/89 and Article 57 of the EEA Agreement.

For the Commission,