

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

## **COMMISSION OF THE EUROPEAN COMMUNITIES**

### **Commission Decision**

**of 04.02.2000**

**authorising Scholz AG and Loacker Recycling GmbH to acquire  
Saarländische Rohprodukten-Handelsgesellschaft Günter Sehn  
Gesellschaft mit beschränkter Haftung & Co. Kommanditgesellschaft**

(Case COMP/ECSC.1322 – SCHOLZ/LOACKER/SAARLÄNDISCHE  
ROHPRODUKTE)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 66(2) thereof,

Having regard to Decision No 24/54 of 6 May 1954 laying down in implementation of Article 66(1) of the Treaty a Regulation on what constitutes control of an undertaking,<sup>1</sup>

Having regard to the EEA Agreement and in particular Article 27 and Protocol 25 thereof,

Having regard to the notification submitted by the parties by letter dated 6 December 1999 and to subsequent information ,

Whereas:

1. On 3 January 2000, the Commission received a notification by Scholz AG (Scholz) and Loacker Recycling GmbH (Loacker) informing it that they intended to jointly acquire, through SRP Saarländische Rohprodukte GmbH (SRP), Saarländische Rohprodukten-Handelsgesellschaft Günter Sehn Gesellschaft mit beschränkter Haftung & Co. Kommanditgesellschaft (SRPH).

---

<sup>1</sup> OJ of the High Authority No 9, 11.5.1954, p. 345.

## **I. THE PARTIES**

2. Scholz trades in ferrous and non-ferrous scrap, and processes and recycles industrial waste. It is also involved in demolition work. It is based in Germany and in 1998 it had a turnover of €71 million.
3. Loacker is active in the collection, preparation, sorting and separating of different types of waste. It is based in Austria and in 1998 it had a turnover of €48 million.
4. SRPH is involved in wholesale and retail trade in ferrous and non-ferrous scrap, base metals, new steel and in demolition. It is based in Germany. In 1998, Saarländische Rohprodukten-Handelsgesellschaft, had a turnover of €70 million.

## **II. THE TRANSACTION**

5. The operation consists of the acquisition by Scholz and Loacker, through SRP, a joint venture company set up for the purpose, of all the shares held by Günther Sehn GmbH, Philipp Sehn and Caroline Sehn in Saarländische Rohprodukten-Handelsgesellschaft Günther Sehn Gesellschaft mit beschränkter Haftung & Co. Kommanditgesellschaft. Both Scholz and Loacker will hold 50 % of the shares of the joint venture and thus acquire joint control of SRPH. Both Scholz and Loacker will remain in the scrap handling business.

## **III. THE CONCENTRATION**

6. As a result of its involvement in the trade of ferrous scrap, Scholz is an ECSC undertaking within the meaning of Article 80 of the ECSC Treaty. Loacker is, by virtue of its involvement in the trade with ferrous metal scrap, also an ECSC undertaking within the meaning of Article 80 of the ECSC Treaty. SRPH is active in the wholesale and retail trade with scrap and is therefore also an ECSC undertaking within the meaning of Article 80 of the ECSC Treaty.
7. The notified transaction therefore constitutes an acquisition by Scholz and Loacker of joint control over SRPH within the meaning of Article 1 of High Authority Decision No 24/54 of 6 May 1954 and, accordingly, brings about a concentration within the meaning of Article 66(1) of the ECSC Treaty.
8. The combined tonnages of steel scrap handled by the parties exceeds the limits set out in Articles 5.2 and 7 of Decision 25/67<sup>2</sup> as amended. The total annual volume of business, [3-5] million tonnes a year, exceeds 750,000 tonnes a year (Article 5.2(a)) and the capacity added by the SRPH, [200,000-400,00] tonnes a year, exceeds the limit of 250,000 tonnes (Article 5.2(b)). Therefore the operation is not exempted from the requirement of prior authorisation.

---

<sup>2</sup> High Authority Decision 25/67 of 22 June 1967 (OJ 154 14.7.67, p.11 (Special Edition 1967, p.186)) laying down in implementation of Article 66 of the Treaty a Regulation concerning exemption from prior authorisation, amended by Commission Decision N° 2495/78/ECSC of 20 October 1978 (OJ L300, 27.10.78, p. 2) and Commission Decision N° 3654/91/ECSC of 13 December 1991 (OJ L348, 17.12.91, p.12)

#### IV. ASSESSMENT UNDER ARTICLE 66(2)

9. The proposed merger may be authorised under Article 66(2) of the ECSC Treaty if it does not give the undertakings concerned the power:

- to determine prices, to control or restrict production or distribution or to hinder effective competition in a substantial part of the market for these products; or
- to evade the rules of competition instituted under the Treaty, in particular by establishing an artificially privileged position involving a substantial advantage in access to supplies or markets.

##### A. Relevant Product Markets

10. The activities of Scholz, Loacker and SRPH overlap in the trade in ferrous metal scrap. This trade involves the purchasing, sorting, processing and sale of ferrous scrap.

11. Ferrous scrap is obtained from three main sources:

- internal arisings from steel production (such scrap is not generally traded)
- new production scrap produced as a result of industrial manufacturing processes
- obsolete scrap produced as a result of reclamation from eg., old buildings, vehicles or equipment.

12. As internal arisings are not traded but are constantly recycled as part of the production process they cannot be considered to be part of the free/ competitive market. This transaction concerns only the market for the collection, preparation and sale of scrap arising outside the steelworks and foundries.

13. As a result of its different sources, ferrous scrap may vary in its grade and purity. However, these different grades of ferrous scrap are in general substitutes, and ferrous scrap is a largely homogeneous bulk material. In its previous decisions (for example Case N° ECSC.1124 – CFF/Ferrero) involving undertakings active in this field, the Commission has therefore found the relevant market to be the trade in ferrous scrap.

14. There are no reasons why the previous product market definition should be changed.

##### B. Relevant Geographic Markets

15. Ferrous scrap is an internationally traded commodity which is not affected by any tariff or non-tariff barriers. Cross-border trade in ferrous scrap within the EEA is substantial (about 30% of the trade in ferrous scrap (excluding recirculating steelworks and foundry scrap) in 1998, according to Eurostat figures)).

16. As ferrous scrap is an internationally traded commodity, prices for ferrous scrap on the EEA market have a significant effect on prices in individual member states. As a consequence, the price for ferrous metal scrap is roughly the same in all EU member states.

17. Customers for ferrous scrap are generally large steel producers with the capability to procure scrap on an EU-wide or global basis.
18. These facts suggest that the relevant geographic market for the trade with non-ferrous scrap is at least the area of the European Union. However, it is not necessary in this case to define the relevant geographic market any further, since even on the narrowest definition, that is the European Union, the transaction does not raise any competition concerns.

C. Impact of the Concentration

19. The EU consumption of ferrous scrap is 60 million tonnes per year. The table below shows the volume, value and market share of the parties to the transaction in the EU-wide market for the trade with ferrous metal scrap.

<b>Sales of Ferrous Scrap</b>	<b>Million (Eur)</b>	<b>Tonnes (metric)</b>	<b>Market Shares (%)</b>
Scholz	[...]	<b>3,600,000</b>	<b>[0-10]</b>
Loacker	[...]	<b>112,000</b>	<b>0.2[&lt;5]</b>
SRPH	[...]	<b>300,000</b>	<b>[&lt;5]</b>
<b>Total</b>	[...]	<b>4,012,000</b>	<b>[0-10]</b>

20. There are numerous competitors on the relevant market, including the large European steel groups. At least three of these competitors will have larger market shares (Hansa Recycling GmbH [5-015]%, Thyssen Sonnenberg [5-15] %, CFF [0-10]%). Two of these competitors are based in Germany and one is, unlike the parties, vertically integrated into steel making.
21. Even when taking the narrowest market definition, that is the market for trade in ferrous metal scrap in the European Union, the proposed transaction would therefore not give the combined entity the power:
  - to determine prices, to control or restrict production or distribution, or to hinder effective competition in the trade of ferrous scrap within the EEA or a substantial part thereof; or
  - to evade the rules of competition instituted under the ECSC Treaty and the EEA Agreement, in particular by establishing an artificially privileged position involving a substantial advantage in access to supplies or markets.

V. **CONCLUSION**

22. In the light of the above considerations, the Commission has reached the conclusion that the proposed merger would not give Scholz or Loacker the power to hinder effective competition, or to evade the rules of competition instituted under the

ECSC Treaty and the EEA Agreement, in particular by establishing an artificially privileged position involving a substantial advantage in access to supplies or markets.

23. Since the requirements of Article 66(2) of the ECSC Treaty and Article 2(2) of Protocol 25 of the EEA Agreement are thus met, the proposed merger may be authorised,

**HAS ADOPTED THIS DECISION:**

Article 1

The acquisition by Scholz AG and Loacker Recycling GmbH of joint control through SRP Saarländische Rohprodukte GmbH of Saarländische Rohprodukten-Handelsgesellschaft Günter Sehn Gesellschaft mit beschränkter Haftung & Co. Kommanditgesellschaft is hereby authorised under Article 66(2) of the ECSC Treaty.

Article 2

This Decision is addressed to:

Scholz AG  
Am Bahnhof 1 - 20  
D - 73457 Essingen/Aalen

and

Loacker Recycling GmbH  
Lustenauerstraße 33  
A -6840 Götzis/Bregenz

Done at Brussels,

For the Commission