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PUBLIC VERSION

COMMISSION OF THE EUROPEAN COMMUNITIES

Commission Decision of 10.04.2000

authorising the acquisition by European Metal Recycling Limited

of Mayer Parry Recycling (Holdings) Limited

(Case COMP/ECSC.1325 – EMR / MPRH)

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,¹

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

Having regard to the notification received on 8 March 2000 and to subsequent information,

Whereas

1. On 8 March 2000, the Commission received a notification by European Metal Recycling Limited (“EMR”) informing it that EMR intended to acquire the entire share capital of Mayer Parry Recycling (Holdings) Limited (MPRH).

I. THE PARTIES

2. EMR is engaged in the reclamation, processing, brokerage and trading of both ferrous and non-ferrous scrap metals. It also has related activities in haulage, wharf operating, stevedoring, ship broking and chartering.
3. MPRH is active in processing and trading both ferrous and non-ferrous scrap metals, predominantly in the South East of England.

¹ OJ of the High Authority No 9, 11.5.1954, p. 345.

II. THE TRANSACTION

4. EMR intends to acquire the entire share capital of MPRH.

III. THE CONCENTRATION

5. EMR and MPRH are undertakings within the meaning of Article 80 of the ECSC Treaty by virtue of their production and distribution of ECSC products as defined in Annex 1 of the Treaty.
6. After EMR has acquired the share capital of MPRH it will exercise control over MPRH within the meaning of Article 1 of High Authority Decision 24-54 and the operation will therefore be a concentration in the sense of Article 66(1) of the ECSC Treaty.
7. EMR is based in the United Kingdom and in 1998 had a total turnover of €16 million of which €[...] million related to ferrous scrap. MPRH's turnover in 1998 was €79 million of which €[...] million was generated by sales of ferrous scrap.
8. The combined tonnage of steel scrap handled by the parties exceeds the limits set out in Articles 5.2 and 7 of Decision 25/67² as amended. The total annual volume of business, [3-4] million tonnes a year, exceeds 750,000 tonnes a year (Article 5.2(a)) and the capacity added by MPRH, [0.9-1.3] million 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.

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.

Relevant Product Markets

10. The activities of EMR and MPRH 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 e.g., old buildings, vehicles or equipment.

² 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)

12. The industry operates with a pyramid structure. There are many small local merchants who collect scrap and who then cut and sort it before selling to middle tier merchants who in turn supply top tier merchants. Lower and middle merchants compete predominantly in specific regional or local areas for the purchase and supply of scrap. Local dealers do not normally shred or further process the scrap - these functions are generally carried out by the middle and larger-tier merchants. Middle tier merchants sell directly to final consumers, but they also sell to top tier dealers, who in turn sell directly to final consumers.
13. In its previous decisions³ involving undertakings active in this field, the Commission has concluded that the relevant market is the trade in ferrous scrap. This trade could be subdivided into (i) the sale of processed ferrous scrap and (ii) the collection and sale of unprocessed ferrous scrap. However, in this case it is not necessary to decide whether there exist separate relevant markets for these functions since, even when examined on the basis of separate relevant markets, the transaction does not raise any competition concerns.

Relevant Geographic Markets

Sale of processed ferrous scrap

14. Processed 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 EU and the EEA is substantial, accounting for about 30% of consumption in 1998, according to Eurostat figures (excluding recirculating steelworks and foundry scrap). The price for ferrous metal scrap is broadly the same in all EU member states and may even be influenced by the prices of exports from the USA. In addition, customers for ferrous scrap are generally large steel producers with the capability to procure scrap on an EU-wide or global basis.
15. These facts combine to suggest that the relevant geographic market for the sale of processed ferrous scrap is at least the area of the European Union. This view has been supported in the Commission's market investigation. However, it is not necessary to define where the precise boundaries of the geographic market lie, since however it is assessed, the transaction does not raise any competition concerns.

Purchase of unprocessed ferrous scrap

16. In relation to unprocessed ferrous scrap, middle and top-tier ferrous scrap dealers purchase such scrap from the local dealers before processing it prior to sale to final customers. Given that the local dealers generally do not have access to the infrastructure that would enable them to trade on a wider basis, the unprocessed scrap is delivered by local dealers within relatively short distances to middle and top tier dealers for processing. The relevant geographic markets for the sale and purchase of unprocessed scrap are therefore significantly smaller than for the sale of processed ferrous scrap, and could be national or regional.

³ Case N° ECSC.1124 – CFF/Ferrero; Case N° ECSC.1322 – Scholz/Loacker/Saarländische Rohprodukte

17. For the purposes of this decision, it is not necessary to decide upon the precise geographic dimension of the markets, since even on the narrower, regional, definition, the transaction does not raise competition concerns.

Impact of the concentration

Sale of processed ferrous scrap

18. The EU consumption of ferrous scrap is approximately 60 million tonnes per year, excluding recirculating ferrous scrap. EMR has a [<5]% share of the sale of ferrous metal scrap in the EU; MPRH has a [<5]% share. The combined entity venture would therefore have an EU market share of about [<10]%. There are numerous competitors on the relevant market, including the large European steel groups. At least three of these competitors would have larger market shares (Hansa Recycling GmbH [5-15]%, Thyssen Sonnenberg [5-15]%, CFF [0-10]%). The proposed operation would therefore not give rise to problems with regard to the sale of ferrous metal scrap at an EU level.

Purchase of unprocessed ferrous scrap

19. The parties estimate that their combined national market share in the UK will be [30-40]%, with an increment of [5-15]%. On the reasonable assumption that purchases of unprocessed scrap are proportional to the subsequent sales of the processed metals, the parties' combined share of purchases will also be in the order of [30-40]%. Following the proposed concentration between Philips Services Europe and Simsmetal UK Holdings there will be three other top tier players active in the UK, at least one of which will have an estimated market share of over 20%. In addition the parties have stated that there are between 20 and 25 middle tier players who actively compete for supplies of scrap metal.
20. On the basis of a national relevant market, the combined entity will have to compete with these other companies for the supplies of unprocessed ferrous scrap from the local merchants. The combined entity will therefore not be able to foreclose supplies to its competitors, nor will it be in a monopsonistic position with regard to the suppliers of unprocessed ferrous scrap.
21. On the basis of regional markets, there would be very limited overlap between the parties as a result of the proposed concentration. EMR has 27 yards in the North of England and the south Midlands, together with four units in London. MPRH has 16 sites in the South-East of England, six of which are in London. Even if London were to be considered as a separate relevant geographic market, there are a number of significant middle tier operators that also compete in London. In addition, MPRH's operation is based on fragmentising and processing scrap bought from specific clients, for example, breaking train carriages for London Underground. MPRH therefore purchases only limited amounts of unprocessed ferrous scrap from the smaller merchant collectors. Even on the narrowest possible geographic market definition (i.e. London), the concentration would therefore only have a very limited effect on the number of potential outlets for unprocessed ferrous scrap and would not raise concerns about its effect on competition.
22. Whether assessed on a national, or a regional basis, the proposed concentration raises no doubts as to its effects on competition in the market for the purchase of unprocessed ferrous scrap.

V. CONCLUSION

23. In the light of the above considerations, the Commission has reached the conclusion that the proposed merger would not give EMR 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.
24. 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

European Metal Recycling Limited is authorised, under Article 66.2 of the ECSC Treaty, to acquire control of Mayer Parry Recycling (Holdings) Limited by the purchase of its entire share capital.

Article 2

This Decision is addressed to:

European Metal Recycling Limited
Clarendon House
Liverpool Street
Salford
Greater Manchester
M5 4ER

Done at Brussels,

For the Commission