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COMMISSION OF THE EUROPEAN COMMUNITIES

Commission Decision of 04/12/2000

authorising the merger between Outokumpu Steel and Avesta Sheffield (Case COMP/ECSC.1342 – Outokumpu/Avesta Sheffield)

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 the notification made by the parties on 31.10.2000 and to the information communicated subsequently,

Whereas:

1. The undertakings Outokumpu Oyj and Corus Group plc jointly notified on 31.10.2000 pursuant to Article 66(1) of the ECSC Treaty¹ their proposal to merge their respective subsidiaries Outokumpu Steel Oy (Outokumpu Steel) and Avesta Sheffield AB (“Avesta”) in order to form a new group, initially to be called “AvestaPolarit”.
2. After examining the notification, the Commission has come to the conclusion that the proposal falls within the scope of Article 66, read in conjunction with Article 80, of the ECSC Treaty. In so far as the proposal concerns products or markets which do not fall within the scope of the ECSC Treaty (stainless steel welded tubes, stainless steel tube fittings and ferrochrome), Council Regulation (EEC) No 4064/89² applies. The present Decision concerns only those parts of the proposed operation which fall within the scope of the ECSC Treaty.

I. THE PARTIES

3. Outokumpu Oyj is a metals group focussing on metals production and fabrication. It is engaged in mining metallurgy, global marketing of metals, fabricated products and related technologies. Its main interests are stainless steel, copper products and base metals production. Outokumpu Oyj is quoted on the Helsinki Stock Exchange. The Finnish State owns 40% and the Finnish Social Security Institution owns 12.3% of the shares of Outokumpu Oyj. Outokumpu Oyj achieved in 1999 a worldwide aggregate turnover of EUR 2 909 million.

¹ Treaty establishing the European Coal and Steel Community of 18 April 1952.

² OJ No L 395, 30.12.1989, p. 1; corrigendum: OJ No L 257, 21.9.1990, p. 13.

4. Corus Group plc is a European based steel and aluminium producer. It is quoted on the London, New York and Amsterdam Stock Exchanges. It is active in stainless steel through its 51.2% owned subsidiary, Avesta. Corus achieved a worldwide aggregate turnover in 1999 of EUR 7 406 million.
5. Outokumpu Steel is a 100% subsidiary of Outokumpu Oyj. All of Outokumpu Oyj's stainless steel and ferrochrome operations will be transferred to this company before the operation is completed.
6. Avesta is a producer and supplier of stainless steel. Its main production facilities are located in Sweden, the United Kingdom and the United States of America. The company is listed on the OM Stockholm Stock Exchange. Since 1995 Corus, or its predecessor, British Steel, has held 51.2% of Avesta's shares and has had sole control of the company.

II. THE PROPOSED TRANSACTION

7. The transaction involves a merger between Avesta and Outokumpu Steel. After the operation Outokumpu Oyj and Corus Group plc will have 55% and 23% of the shares in AvestaPolarit respectively. The remainder of the shares will be quoted on the Stockholm Stock Exchange. Outokumpu Oyj and Corus Group plc have entered into a shareholders' agreement whereby certain decisions (including the amendment of the agreed business plan, the amendment of the annual budget and the appointment or removal of the Chief Executive Officer), must be agreed unanimously by the directors appointed by Outokumpu and Corus.
8. The notified transaction will therefore result in the joint control of AvestaPolarit by Outokumpu Oyj and Corus plc in the sense of High Authority Decision N° 24-54³ constitutes a concentration within the meaning of Article 66(1) of the ECSC Treaty.
9. The operation is not exempt from the requirement of prior authorisation under High Authority Decision N° 25-67, as amended, because the combined steel production of the Corus Group and AvestaPolarit exceeds the 6 million tonne a year threshold for exemption.

III. ASSESSMENT UNDER ARTICLE 66(2)

10. The proposed merger shall 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.

³ OJ of the High Authority N° 9, 11.5.1954, p. 345; (Special Edition 1952-58n P 16).

A. RELEVANT PRODUCT MARKETS

11. The parties ECSC activities overlap in the production of hot rolled strip and sheet, and of cold rolled strip and sheet. In addition Avesta, Outokumpu Steel and Corus (to a very minor extent) are involved in the distribution of stainless steel products.
12. Stainless steel can be distinguished from other types of steel by its physical and chemical characteristics, particularly by its resistance to corrosion and high temperatures. This makes it uniquely suitable for certain applications in process engineering, automobile engineering, hygiene products and cutlery among others.
13. In a previous decision⁴ the Commission has identified separate relevant product markets for
 - hot rolled stainless flat products,
 - cold rolled stainless flat products, and
 - the distribution of stainless steel products.

i) Hot-rolled flat products

14. Hot rolled stainless steel products are ECSC products and are produced in the form of coil or plate for sale to third parties or further processing. Typical third-party purchasers include re-rollers, capital goods manufacturers, tube makers and process engineers.
15. Hot-rolled flat products include hot-rolled strip and sheet, quarto plates (individually hot rolled plate) and universal plates. Quarto plate is plate made on special quarto plate mills with four rolls (four high mills) which, because of its thickness, cannot be coiled. Universal plates are hot-rolled flat products cut into pieces between 150 and 1 250 mm wide and more than 4 mm thick.
16. The question arises as to whether the hot rolled products constitute a single relevant product market or whether there are a number of individual relevant product markets. In previous decisions the Commission has not considered the narrower markets⁵. However, this question can be left open for two main reasons. Firstly because Outokumpu does not in produce quarto or universal plate so there is no aggregation for these products. Secondly even on the narrow definition of stainless steel hot rolled strip and sheet, the proposed merger raises no doubts from a competition point of view.

ii) Cold-rolled flat products

17. Cold rolled flat products (strip and sheet) are made by cold rolling hot-rolled strip. They constitute a separate relevant product market because they differ from hot-rolled flat products in terms of product characteristics (particularly the surface finish), uses and price.
18. Cold rolled strip below 500 mm falls under the EC Treaty while cold strip above 500 mm falls under the ECSC Treaty. This distinction is no longer meaningful as modern

⁴ Case N° IV/M.239 Avesta I, Case N° IV/M.484 Krupp/Thyssen/Riva/Falck/Tadfin/AST

⁵ Case N° IV/M.239 Avesta I, Case N° M.484 Krupp/Thyssen/Riva/Falck/Tadfin/AST

cold rolling mills are capable of producing a wide range of widths both above and below 500 mm. Furthermore narrower widths can be obtained by slitting wider material. In a previous decision⁶ the Commission considered that the distinction is artificial and that all cold rolled strip belongs to a single market. This decision therefore deals with a cold rolled flat products market that includes all widths of strip.

iii) Distribution of Stainless steel products

19. The Commission has decided on a number of occasions⁷ that trade in stainless steel products constitutes a separate relevant market distinct from the production of such products. This conclusion has been confirmed by the replies to the Commission's enquiries.

iv) conclusion on product markets

20. The Commission's investigations have in general confirmed the Commission's findings in previous decisions. In conclusion, for the purposes of the present decision the following product markets will be examined, i) hot rolled stainless steel strip and sheet, ii) cold rolled stainless steel flat products iii) stainless steel distribution.

B. RELEVANT GEOGRAPHIC MARKET

i) Hot-rolled flat products

21. In a previous decision the Commission found that the relevant geographic market for hot-rolled flat products comprised at least Western Europe.⁸ The enquiries in the present case have confirmed this view. Transport costs within the Community are not significant and there are few customer preferences for these commodity type products. Furthermore there is a high level of intra-Community trade. In 1999 imports from other Community countries accounted for between 32% and 100% of consumption in the various member States. Finally it should be noted that price levels are broadly the same throughout the area.

ii) Cold-rolled flat products

22. On the basis of price similarity and a high level of intra-Community trade the Commission has in earlier decisions⁹ considered that the relevant geographic market for cold rolled flat products was Western Europe. The Commission's investigations have confirmed the high level of intra-Community trade (more than 30% of overall consumption) and similar price levels throughout the area. To these considerations should be added the low level of transport costs (less than 5%).

⁶ Case N° IV/M.484 – Krupp/Thyssen/Riva/Falck/Tadfin/AST

⁷ Case N° IV/M.073 Usinor/ASD, Case N° IV/M.239 Avesta I, Case N° M.484 Krupp/Thyssen/Riva/Falck/Tadfin/AST

⁸ Cases N° IV/ECSC.969 - Fried. Krupp AG/Hoesch AG, 1243 Krupp/Thyssen and 1268 Usinor/Cockerill Sambre.

⁹ Case N° IV/M.239 Avesta I, Case N° IV/M.484 Krupp/Thyssen/Riva/Falck/Tadfin/AST

iii) Steel distribution

23. In past cases¹⁰, the Commission has determined that the relevant geographic market for the distribution of stainless steel by stockholders and service centres is regional. The Avesta and Outokumpu's stainless steel distribution activities overlap only Sweden and Germany. The precise definition of the relevant geographic market can be left open in the present case because, even on the basis of national markets, the proposed operation raises no doubts from a competition point of view.

iv) Conclusion on geographic markets

24. The Commission's investigations have in general confirmed the Commission's findings in previous decisions. In conclusion, for the purposes of the present decision the following geographic markets will be examined, i) Western Europe for hot rolled stainless steel strip and sheet, ii) Western Europe for cold rolled stainless steel flat products iii) Germany and Sweden for stainless steel distribution.

C. IMPACT OF THE MERGER

25. The effect of the operation must be examined on two levels to see whether 1) after the operation AvestaPolarit would be able to determine prices or prevent effective competition on its own, and 2) to see whether the operation would create conditions which would make tacit collusion between the limited number of European stainless steel producers possible and effective.

1) AvestaPolarit alone

i) Hot-rolled flat products

26. The table below gives the shares of an EEA market for hot rolled strip and sheet. On this basis the parties combined market shares was [25-35%] in 1999. They would face competition from ALZ ([20-30%]), KTS ([15-20%]) and Acerinox and Ugine ([5-15%] each). Imports account for some [0-10%] of sales. Although the parties will become the market leader with a share of [25-35%] they will continue to face competition from a number of comparable producers. In this situation the possibility that the proposed merger would enable the parties to determine prices or prevent effective competition can be ruled out.

Company	Hot rolled strip %
<i>Avesta (Sw, UK)</i>	<i>[15-25]</i>
<i>Outokumpu (Fin)</i>	<i>[5-15]</i>
<i>Avesta Polarit (Fin, Sw, UK)</i>	<i>[25-35]</i>
ALZ (Belgium)	[20-30]
Krupp Thyssen Stainless (Ger, It)	[15-25]
Acerinox (Sp)	[5-15]
Ugine (Fr)	[5-15]
Imports	[5-15]

¹⁰ Case N° IV/M.484 Krupp/Thyssen/Rival/Falck/Tafdin/AST

ii) Cold-rolled flat products

27. The parties and their competitors shares of the EEA market for cold rolled flat products are given in the table below. The parties' combined share was about [15-25]% (well behind KTS which has a share of about [30-40]%). They would also face competition from Ugine and Acerinox ([10-20]% and [10-20]% respectively). The level of imports is about 5%. Similarly the market shares and the existence of strong competitors rule out the possibility that AvestaPolarit would be able to determine prices or prevent effective competition.

Company	Cold rolled strip %
<i>Avesta (Sw, UK)</i>	<i>[5-15]</i>
<i>Outokumpu (Fin)</i>	<i>[10-20]</i>
<i>Avesta Polarit (Fin, Sw, UK)</i>	<i>[15-25]</i>
ALZ (Belgium)	[5-15]
Krupp Thyssen Stainless (Ger, It)	[30-40]
Acerinox (Sp)	[10-20]
Ugine (Fr)	[10-20]
Imports	[0-10]

iii) Steel distribution

28. Outokumpu has only limited distribution operations in Sweden and Germany. The operation would not give rise to competition problems in either country (Sweden [25-35%], Germany [5-15%]) and would not therefore cause problems on any wider regional market. Corus's very limited distribution of stainless steel is in Norway and therefore has no effect on the countries where Avesta's and Outokumpu's distribution activities overlap.

2) Tacit Collusion in Hot and Cold Rolled Flat Products.

29. However, after completion of the operation there will only be five suppliers of stainless steel hot and cold rolled flat products. There are many more suppliers of tubes and tube and tube fittings so that the question does not arise in relation to these products.

30. The concentrated market structure is shown in the table below. The top two players having [50-60]% and [55-65]% of the EEA market for hot and cold rolled sheet and strip respectively.

Number of Producers	Hot rolled strip %	Cold rolled strip %
Top 2	[50-60]	[55-65]
Top 3	[70-80]	[70-80]
Top 5	[85-95]	[90-100]

31. A number of other factors also appear to be conducive to effective tacit collusion between stainless steel producers:

- hot and cold rolled stainless steel flat products are commodity products in the sense that there are no brands and for the large majority of suppliers, including all the European ones, there are no differences in quality,
- the two markets for hot and cold rolled sheet and strip are closely related, hot rolled is the feedstock for cold rolled,
- the market is comparatively transparent as customers provide a feedback mechanism for competitors prices, and
- entry barriers are high. The cost of optimum sized plant for each production stage, steel making, hot rolling and cold rolling is several hundred million Euros.

32. The Commission's investigation has identified a number of market characteristics that point in the other direction.

- in contrast to almost all other sectors in the steel industry, stainless steel flat products enjoy a growth rate of over [0-10%]. This rate of increase is expected to continue for at least the next four years.
- as a result of this growth capacity utilisation rates are high. The European average in 2000 is expected to exceed [85-95%] and on the basis of the expansion plans currently announced the rate of capacity utilisation will increase steadily until at least 2004.
- while it is possible to increase capacity by de-bottlenecking operations these possibilities are becoming rarer and new plant is required to meet demand. This gives a problem of scale. In general the optimum size of new plant is large compared to the installed capacity. The optimum size of a new steel plant is [...] to [...] on tonnes of stainless steel a year, 10 to 15% of the installed capacity. A hot rolling mill would have a minimum capacity of [...] tonnes about [5-15] % of European installed capacity.
- The companies have very different cost structures. An independent source quotes variations of up to [35-45%] in the conversion costs between the most and least efficient producers. The Commission's investigations show differences of at least [20-30%]. These differences are due to differences in the structure of production and logistics. For example Outokumpu and Acerinox have single site operations of which the plant sizes approaching the optimum size. Other companies which have inherited older smaller facilities as the result of consolidation in the industry. For instance Avesta produces steel in Sheffield (UK) sends the semi-finished products to Germany to be hot rolled and cold rolled in Wales.
- Different producers concentrate on different products, for instance ALZ has a share of capacity [10-20%] of hot rolled capacity but supplies [20-30%] of hot sales to third parties. On the other hand KTS supplies only [15-25%] of hot rolled although it has a share of [30-35%] of the hot rolled capacity.

33. Although there is a relatively transparent market high capacity utilisation rates make it difficult for competitors to retaliate against a producer who breaks any tacitly agreed rules. The producer has no spare capacity to attack the offender's market. To

mount such an attack would reduce his profits, as he would have to divert material from other more profitable sales.

34. The fact that new capacity comes onto market in large packages means that any equilibrium between the producers is disturbed by the arrival of additional capacity for one or other producer. The need to fill his new capacity gives the producer concerned different priorities to his competitors. This difference is temporary as in time he will fill this capacity and one of his competitors will take his place needing to fill a large new facility.
35. The fact that the producers have very significantly different cost structures for what is essentially a commodity product means that the different producers have commercial incentives that mitigate against collusion tacit or otherwise. The different cost structures also create disequilibrium in the ability of the producers to retaliate. High cost producers are more restricted in the action they could take to punish price reductions by their competitors.
36. A further disequilibrium is introduced by the differences between various producers share of sales and their shares of capacity. These differences are more marked in the case of hot rolled stainless steel strip than for cold rolled. They do, however, reflect the different incentives of the different producers and their possibilities for retaliation.
37. For all of these reasons it can be concluded that the proposed operation will not result in conditions which would enable stainless steel producers to effectively collaborate tacitly. A further constraint is on the behaviour of the Community producers is the existence of credible competitors in the USA, the Far East, South Africa and Slovenia.

IV. CONCLUSION

38. For the above reasons it must be concluded that the notified transaction will not give the parties the power to hinder effective competition or to evade the rules of competition instituted under the ECSC Treaty.
39. In as much as the requirements of Article 66(2) of the ECSC Treaty are thus fulfilled, the notified transaction may be authorised,

HAS ADOPTED THIS DECISION:

Article 1

The notified concentration between Outokumpu Oyj and Avesta Sheffield is authorised under Article 66(2) of the ECSC Treaty.

Article 2

This Decision is addressed to:

The notifying parties

Done at Brussels, 4/12/2000

For the Commission,

Mario Monti,
Member of the Commission