

*Case No IV/M.1003 -
ALCOA / INESPAL*

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

Article 6(1)(b) NON-OPPOSITION
Date: 24/10/1997

*Also available in the CELEX database
Document No 397M1003*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.10.1997

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

Subject: Case No IV/M.1003 - ALCOA/INESPAL
Notification of 23.09.1997 pursuant to Article 4 of Council Regulation
N° 4064/89

- 1 On 23 September 1997 the US company Aluminium Company of America ("Alcoa") notified the Commission of its intention to acquire the stock of the Spanish firm Industria Española del Aluminio ("Inespal"). The operation is part of the privatisation programme of the Spanish government.
- 2 After examination of the notification the Commission has concluded that the notified operation falls within the scope of application of Council Regulation N° 4064/89 and does not raise serious doubts as to its compatibility with the common market or with the functioning of the EEA Agreement.

I. **THE PARTIES**

- 3 Alcoa is a vertically integrated aluminium company with world-wide activities including bauxite mining, alumina refining, smelting alumina into primary aluminium, fabricating flat rolled aluminium and extruded aluminium. In addition, Alcoa is active in the collection and recycling of used aluminium beverage cans. Alcoa is the world leader on the aluminium market.
- 4 Inespal, through its subsidiaries, is active in the refining of alumina, the production of primary aluminium and the manufacturing of semi-finished and finished aluminium products. Inespal also owns a [...] minority interest in a company engaged in bauxite

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mining (the raw material for aluminium) in Guinea and a [...] minority interest in a company engaged in the production and sale of fluorides and cryolite (not related to the aluminium sector).

- 5 Inespal is controlled by Sociedad Estatal de Participaciones Industriales (“SEPI”), a Spanish State-owned entity set up for the holding, management, acquisition and sale of participations in certain commercial companies. It is the owner of 99.66% of the authorised, issued and outstanding capital stock of Inespal and is selling those shares as part of the Spanish government’s privatisation programme.

II. THE OPERATION

- 6 The transaction, involving acquisition of sole control by Alcoa of parts of Inespal’s assets, is a concentration within the meaning of article 3(1) (b) of the Merger Regulation. The assets to be transferred relate to Inespal's alumina, primary aluminium, flat-rolled products and extruded products activities.

III. CONCENTRATION

- 7 Under the Acquisition Agreement dated July 29, 1997 among SEPI, Alcoa and two of Alcoa’s subsidiaries, Alcoa International Holdings Company and Alcoa Alumina & Chemicals, L.L.C., SEPI will sell all of its shares of Inespal. The latter is the parent company of Aluminium Española, S.A. (primary aluminium), Inespal Metal, S.A. (primary aluminium), Alumina Española, S.A. (alumina), Inespal Laminación, S.A. (flat rolled aluminium products) and Inespal Extrusión, S.A. (extruded aluminium products). However, the transaction excludes certain subsidiaries of Inespal, namely Inespal Conversión, S.A., Alufrance Services, S.A. and its subsidiary Alufrance Anodización S.A., and Ferroperfil, S.A.
- 8 Included in the notified transaction is a [...] minority interest which Alumina Española S.A. possesses in Halco Mining Company, a Delaware company engaged in bauxite mining in Guinea through Compagnie des Bauxites de Guinée, which is owned 51% by Halco and 49% by the Guinea Government. Also included in the transaction is Inespal’s [...]† minority interest in Derivados del Fluor, S.A. (“Derivados”), a company which manufactures and sells fluorides and cryolite. None of the acquisitions of the minority interests described above will give Alcoa control over Halco or Derivados, respectively. Thus, these aspects of the operation are not discussed further in this decision.

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IV. COMMUNITY DIMENSION

- 9 The combined aggregate world-wide turnover of the undertakings concerned in 1996 exceeded 5.000 million ECU (Alcoa: [...], Inespal: [...]⁶). The aggregate Community wide turnover of Alcoa and of Inespal's transferred assets in 1996 each exceeded 250 million ECU (Alcoa: [...], Inespal: [...]⁸). They do not achieve more than two-thirds of their turnover in one and the same Member State. The operation has therefore a Community dimension.

V. THE RELEVANT MARKETS

A. Relevant Product Markets

- 10 Alcoa and Inespal are active in the aluminium sector. Both are present in the markets for alumina, primary aluminium, flat rolled aluminium, extruded aluminium. Aluminium is used in a wide range of applications in sectors including transportation, building and construction, containers and packaging, and the electrical industry.
- 11 Primary aluminium is produced by refining bauxite to alumina and then converting alumina to aluminium metal. Primary aluminium is then processed into flat rolled products and/or extruded products.

Alumina

- 12 Alumina is produced by refining bauxite. The refining consists of a four stages thermo-chemical process, including digestion, clarification, precipitation and calcination. Currently, alumina is the only available intermediate raw material for the production of primary aluminium. It should be noted that there is a distinct market for this raw material. Therefore, alumina may be considered as being a separate relevant product market for the purposes of the assessment of the concentration.

Primary aluminium

- 13 Primary aluminium is produced by smelting alumina. The smelting process converts alumina into its two constituent elements, aluminium and oxygen. The separation of aluminium from oxygen is accomplished by high-temperature electrolysis. Aluminium can be shipped in its molten form in insulated ladles directly to a user's plant, or it can be cast into ingots (rectangular), rolling slab (rectangular), or billets (cylinder) of varying sizes and shapes, either in pure form or alloyed with other metals (e.g. manganese, magnesium, copper, zinc or iron). Primary aluminium is regarded by customers as a distinct product market by reason of its characteristics, price and end use. Accordingly, and in line with previous decisions in this area,

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⁹ Case IV/M.723 Norsk Alcoa / Elkem; case IV/M. 470 Gencor /Shell et al.

primary aluminium is a relevant product market for the purposes of the assessment of the concentration

Flat rolled products (FRP)

- 14 FRP include a variety of flat aluminium products ranging from foil stock to industrial aluminium plate, and account for 62% of the demand for primary aluminium. FRP are produced in a number of steps in hot and cold rolling mills, which can begin with aluminium ingot, scrap or molten aluminium, which may be mixed with alloying materials to achieve particular characteristics e.g. strength, formability, machinability, weight, corrosion resistance, hardness. The finishing process used will depend on the customer's criteria for appearance and performance. The amount of waste generated in the manufacturing process can account for 25-40% of primary aluminium used. This waste is normally remelted in a cast house and run through the rolling process again.
- 15 FRPs are produced in an extremely wide variety of shapes, sizes and compositions depending on the customer's specifications. Examples include plate, sheet, strip, foil, circles, rigid container stock (such as can stock) blanks and slugs.
- 16 The parties submitted that most major aluminium producers can produce a full range of FRPs and that FRP producers can switch production among many types of FRPs easily and with very little cost by adjusting the width of the mill and the space between rollers. The minimum order size for FRPs is equivalent to only one slab of primary aluminium, which illustrates the easiness of switching production. Moreover, the European Aluminium Association publishes estimates of market size only for the total FRP market.
- 17 As a result of this extensive supply-side substitutability, for the purposes of the assessment of the concentration, the relevant product market is the FRP market as a whole.

Extruded aluminium products

- 18 An extrusion is a product formed by pushing material through a die. About 25 % of primary aluminium production is typically used to manufacture extruded products. Extruded products are used in a wide range of applications, including aerospace, building and construction, and industrial uses. The products also come in a variety of shapes, including rods, bars, profiles and forging stock.
- 19 In particular, extruded products can be divided into soft alloy extrusions and hard alloy extrusions. As previously stated in case IV/M.675 - Alcoa/Alumix, soft alloy extrusions and hard alloy extrusions constitute separate product markets for the following reasons.
- 20 Soft alloy extrusions require a relatively small capital investment and are generally simple to manufacture. They are produced by extruding aluminium relatively quickly and require an extrusion press capable of exerting pressure of 60 Kilograms per square millimetre.
- 21 By contrast, hard alloy extrusions are manufactured in a more capital and labour intensive process involving heat treatment and continuous metallurgical tests. They are

extruded slowly and require an extrusion press capable of exerting pressure of 90 kilograms per square millimetre.

- 22 In addition, soft alloy products are generally used in less demanding applications than hard alloy products. For example, soft alloy products are used in windows and doors and in consumer products, while hard alloy products are used in bridges and for military, aerospace and other applications demanding high strength and durability. It has to be noted, however, that although Alcoa manufactures both types of alloy, Inespal produces only soft alloy extrusions.

B. Relevant Geographic Market

Alumina

- 23 Alumina is transported throughout the world. Its pricing is often linked to prices of Aluminium traded and published by the London Metal Exchange (LME). According to current industrial practice, the LME-related pricing of alumina is now the most widely-used form of alumina pricing. Moreover, the EEA is a net importer of alumina, from the main producing regions, that is Australia and South America. Finally, imports in the EU are not subject to custom duties. Alumina possesses all the features of a world market, both from a supply and a demand perspective.

Primary aluminium

- 24 Aluminium ingot is traded and transported throughout the world. The EEA is a net importer of primary aluminium. Following the dissolution of the Soviet Union, the CIS has become a major exporter of primary aluminium. Besides, the pricing of aluminium ingot is substantially uniform because of the link to the LME. In view of all that and in line with the Commission's previous cases in this area¹⁰, the geographical market for primary aluminium is world-wide.

Flat rolled products (FRP)

- 25 There are no barriers to trade between Member States for FRP, and there are significant trade flows between Member States. Imports from EFTA countries are exempted of import duties. The conventional rate of duty in 1997 is 8,5 % and will be reduced to 8.0 % in 1998 and 7.5 % in 1999. In view of these trade flows and the absence of barriers to entry, and in line with the conclusions of the previous case IV.M.675 - Alcoa/Alumix, the relevant geographic market for all FRP (sheets and strips/standard plates, circles and blanks) is at least the EEA

Extruded products (hard alloy extrusions and soft alloy extrusions)

- 26 There are no barriers to trade between Member States for extruded products. Trade flows between Member States, although less extensive when compared to FRP, have significantly increased over the last years. The relevant geographic market for all extruded products (soft and hard alloys) is the EEA.

¹⁰ Case IV/M.723 - Norsk Alcoa / Elkem

V. ASSESSMENT

Alumina

- 27 Inespal operates an alumina refinery with a capacity of approximately [...] metric tons per year, which represents approximately [...] of total capacity world-wide. Alcoa does not have any alumina refineries in the EEA. However, it does operate refineries elsewhere in the world which have total capacity of approximately [...] metric tons, representing [...] of total capacity world wide. The combined world-wide capacity of the new entity will therefore be [...] of the total market.
- 28 Other competitors include Alcan (with approximately [...] of capacity), Reynolds ([...]¹⁷), Kaiser ([...]¹⁸) Pechiney ([...]¹⁹), Gencor ([...]²⁰), Comalco ([...]²¹) and Nalco ([...]²²). In addition, approximately [...] is attributed to Russia/CIS and about [...] to China.
- 29 In view of the above, and particularly the existence of a significant number of competitors and the small addition of market shares, the proposed concentration will not create or strengthen a dominant position in the alumina market.

Primary aluminium

- 30 Alcoa is the world's largest primary aluminium producer. Its consolidated production capacity is of approximately [...] metric tons in fifteen plants located throughout the world. Alcoa accounts for approximately [...] of world capacity.
- 31 Alcoa's production of primary aluminium in the EEA amounts to [...] metric tons per year, which represents [...] of EEA-wide capacity. Alcoa's production facilities

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are located in Norway, where it has a 50% interest in Elkem Aluminium ANS' (case IV/M.723 - Alcoa/Elkem) and in Italy, where it acquired Alumix's smelting operations (case IV.M.675 - Alcoa/Alumix).

- 32 Inespal's smelting operations are located in Spain. Their total production capacity is [...]²⁹ metric tons per year, which represents [...]³⁰ of EEA-wide capacity.
- 33 The combined market share of the parties at world-wide level will be of [...]³¹ ([...]³² from Alcoa and [...]³³ from Inespal). The competitors on this market include the integrated aluminium producers Alcan ([...]³⁴ of world capacity), Reynolds ([...]³⁵), Gencor/Billiton ([...]³⁶), Pechiney ([...]³⁷), Alumax ([...]³⁸), Hydro Aluminium ([...]³⁹), Kaiser ([...]⁴⁰), Comalco ([...]⁴¹) and VAW ([...]⁴²). There are also a large number of smaller competitors, for a total of approximately 75 primary aluminium manufacturers world-wide.
- 34 Given the small competitive overlap and the existence of strong competitors as described above, the operation will not create or strengthen a dominant position in the primary aluminium market.

FRP

- 35 The FRP segment in the EEA is composed of 43 rolling mills, with a capacity of about 3.83 million metric tons per year. The sector is characterised by over-capacity. In effect, in 1996, EEA-wide production was approximately 3.05 million tons, while consumption was estimated to be approximately 2.66 million metric tons.
- 36 Inespal's rolling operations are located in Spain. Their production capacity is [...]⁴³ metric tons per year, representing [...]⁴⁴ of the EEA market. Alcoa's rolling operations

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are located in the Netherlands, in the United Kingdom and in Italy. Their production capacity is [...] ⁴⁵ metric tons per year, representing [...] ⁴⁶ of the EEA market.

- 37 In the FRP market, the EEA-wide combined market share of the parties will be [...] ⁴⁷. Competitors in this market are Alcan ([...] ⁴⁸ of EEA-wide capacity), Pechiney ([...] ⁴⁹), VAW ([...] ⁵⁰), Alusuisse ([...] ⁵¹) and Hoogovens ([...] ⁵²).
- 38 The operation will not create or strengthen a dominant position in the area of flat rolled aluminium products, particularly in view of the strong competitors present in this sector.

Extruded products

Hard Alloys

- 39 Alcoa has eight extrusion mills in the EEA. They are located in the Netherlands, Spain, the UK, Italy and Germany. Four of these plants produce soft alloys, another two produce hard alloys and the other two produce both soft and hard alloys. Alcoa's hard alloy extrusion production amounted to approximately [...] ⁵³ metric tons in 1996, representing a market share of [...] ⁵⁴. However, Inespal's extrusion operations do not produce hard alloys, therefore the concentration will not lead to a horizontal overlap in this market.

Soft Alloys

- 40 Inespal's extrusion operations produce soft alloy and are located in two production facilities in Spain. Their production volume in 1996 was [...] ⁵⁵ metric tons, which represented [...] ⁵⁶ of the soft alloy market in the EEA. Alcoa's soft alloy extrusion production volume in 1996 was [...] ⁵⁷ metric tons, which represented [...] ⁵⁸ of the soft alloy market in the EEA.

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- 41 The parties' combined market shares will be of approximately [...] ⁵⁹ Competitors in this market include Hydro Aluminium ([...] ⁶⁰), Graenges ([...] ⁶¹), Reynolds, Alcan, Alusuisse, Pechiney (less than 5%).
- 42 Accordingly, the operation will not create or strengthen a dominant position on the market for soft alloy aluminium extruded products.

VI. ANCILLARY RESTRICTIONS

- 43 The parties intend to cause Inespal Extrusión S.A. and its wholly-owned subsidiary Perfialsa S.A. to conclude a die supply agreement with Ferroperfil S.A., one of Inespal's subsidiaries which is not included in the concentration, whereby Ferroperfil will supply an average of [...] ⁶² of the dies required at two of Inespal's extrusion facilities on market terms and conditions for a limited period. Furthermore, the parties intend to cause Inespal Laminación S.A. ("Laminación") to enter into a foil supply agreement with Inespal Conversión S.A. ("Conversión"), one of Inespal's subsidiaries which is not included in the concentration, whereby Laminación will agree to supply to Conversión, on market terms and conditions, up to [...] ⁶³ metric tons of foil per year for a limited period. These agreements can be considered necessary to ensure the continuity of supply of dies and foil to the extrusion operations and to Conversión, respectively, during a limited transition period (i.e. two years for the agreement between Inespal Extrusión and Ferroperfil and four years for the agreement between Laminación and Conversión) and may therefore be considered ancillary to the notified operation.
- 44 Moreover, SEPI agreed for a period of three years that SEPI, its affiliates, the subsidiaries of Inespal that were excluded from the transaction and their affiliates would not compete in the EU with Inespal companies acquired by Alcoa in the current lines of business of those companies. This restriction would not apply to any purchasers of the two excluded subsidiaries, Ferroperfil and Conversión. These arrangements may also be considered to be ancillary to notified concentration as they are necessary to ensure that the full value of the assets transferred, including goodwill and know-how, and to protect the legitimate business interests of the purchaser after the sale.
- 45 However the arrangements whereby Alcoa agreed that, for a period of three years, Inespal and all Alcoa affiliates would not compete in Spain with Conversión and Ferroperfil in their current lines of business cannot be regarded as ancillary to the notified operation because they protect the vendor rather than the purchaser and are not directly related and necessary to the implementation of the concentration.

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VII. CONCLUSION

- 46 For the above reasons, the Commission decides not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.
- 47 This decision is without prejudice to any decision which the Commission will adopt under State aid procedures regarding Inespal.

For the Commission,