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Case No IV/M.1014 - BRITISH STEEL / EUROPIPE (See also M.501)

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 26/02/1998

Also available in the CELEX database
Document No 398M1014

Office for Official Publications of the European Communities
L-2985 Luxembourg

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.02.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sirs,

Subject : Case No IV/M.1014 - BRITISH STEEL/EUROPIPE
Notification of 23 January 1998 pursuant to Article 4 of Council Regulation N° 4064/89

1. On 23 January 1998 British Steel plc (BS), AG der Dillinger Hüttenwerke (DH) and Mannesmannröhren-Werke AG (MRW) notified a proposed operation to the Commission whereby BS would acquire 33% of the shares in, and joint control of, Europipe GmbH (Europipe). Europipe is currently a joint venture between DH and MRW.

I. THE PARTIES

2. British Steel was formed in 1988 by vesting the assets of the British Steel Corporation into British Steel plc under the British Steel Act. The shares were subsequently floated and BS is now a public company listed on the London and New York stock exchanges. Its main activities are the production and distribution of ECSC steel products. It has major production facilities in the United Kingdom, Germany, Sweden and the USA. In addition it manufactures and distributes a range of steel products including Large Diameter Longitudinally Welded Pipe (LDLWP) that are not covered by the ECSC Treaty.

3. DH is engaged in the production of steel, particularly heavy plate suitable for a number of purposes including ship building, pressure vessels, linepipe as well as general and special purpose steels. It has a wholly owned subsidiary GTS Industries based in Dunkerque which is also a heavy plate producer. It is owned by Usinor with 48.75% of its shares, the Land of Saar 48.75% (directly and indirectly through Saarstahl) and Arbed 2.5%.

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4. MRW, which is owned by Mannesmann AG (79%) and Thyssen (21%) was established in 1970 and is engaged in the production of steel tubes and pipes and of the feedstock for such products. It also has extensive trading and distribution activities in these and related sectors.

5. Europipe was set up in 1991 to take over the LDLWP interests of Mannesmann (through MRW) and the LDLWP and spiral welded pipe operations of Usinor (through DH and GTS). Its shares are currently held by Mannesmann (through MRW) and DH, these parent companies each have 50% of the shares and exercise joint control over Europipe. The creation of Europipe was authorised under the ECSC Treaty on 17 December 1990.

II. THE OPERATION

6. BS will contribute its LDLWP operations, two mills in North East England, and an agreed amount of working capital to Europipe in exchange for new shares in Europipe. BS will also buy approximately 5% of Europipe's shares from each of the existing share holders. As a result of these transactions each of the partners will have 33.3% of the shares. Joint control will be assured by a share holders' agreement. Europipe already operates as a full function joint venture.

III. COMMUNITY DIMENSION

7. The aggregate world-wide turnover of the parties exceeds ECU 5 000 million, (BS ECU 9 214 million, Mannesmann AG ECU 18 268 million and DH ECU 916 million). The aggregate Community wide turnover of each party exceeds ECU 250 million (BS ECU 6 618 million, Mannesmann AG ECU 12187 million and DH ECU 663 million)but they do not achieve two thirds of their aggregate Community turnover in one and the same Member State. For the purpose of establishing whether the case has a Community dimension in the sense of Council Regulation (CEE) N° 4064/89 it is therefore not necessary to consider the question of whether DH is controlled by Usinor and/or the Land of Saar as the operation has a Community dimension if only the turnover of DH is taken into account.

IV CONCENTRATIVE JOINT VENTURE

A. Joint control

8. BS, DH and MRW will jointly control the new joint venture. Enlarged Europipe will be established with an Executive Management and a Partners Committee. The Executive Management will consist of four managing directors responsible for the day to day management. Important matters require the prior approval of the Partners Committee.

9. Each of the parties will appoint an equal number (3 out of 9) of members of the Partners Committee of the new joint venture and modifications to the business plan must be approved unanimously by the parent companies. Similarly, the Shareholders Agreement lists a number of matters that require the unanimous agreement of the Partners Committee, including i) acquisitions or disposals above a certain size, ii) organisation of the executive management, iii) major financial decisions and iv) decisions falling outside the normal commercial setting.

Therefore, each party will have the possibility to exercise decisive influence over the new joint venture.

B. Full-function joint venture

10. Europipe is already an autonomous economic entity operating in its own right on the market. BS will transfer all of its LDLWP production and sales activities to Europipe. Enlarged Europipe will be of unlimited duration and will have all the necessary assets in terms of production facilities, financial resources, sales organisation etc. The joint venture will itself deal directly with either independent third-parties or with BS, MRW and DH on an arm's length basis.

11. Therefore, the Commission concludes from the above that the joint venture will operate on a lasting basis and that it will perform all the functions of an autonomous economic entity.

C. Absence of co-ordination

12. There is a theoretical overlap between the tubes produced by the parties and seamless tubes which can be manufactured in diameters up to 26". However, as only MRW produces seamless tubes and because they are in a different market (see point 24 below) no co-ordination can arise in relation to seamless tubes.

13. Similarly there is an overlap between the smaller diameter LDLWP and spiral welded pipes (diameters less than 26") that will be made by the enlarged Europipe and the larger diameter electric resistance weld (ERW) tubes (diameter greater than 16") made by BS, MRW and Usinor. LDLWP and spiral welded pipes are made in diameters from 16" upwards, ERW is made in diameters up to 26". The Commission considers that ERW dose not form part of the large diameter pipe market (see point 26 below). Furthermore only about 5% of enlarged Europipe's production is of pipes below 26" diameter.

14. MRW's Sümerbank spiral weld mill (production 40,000 tonnes a year) in Turkey will not be contributed to the joint venture. However as only MRW will remain on the market in which enlarged Europipe will be active there is no possibility of co-ordination between the parents.

Conclusion

15. The proposed operation will not lead to a risk of co-ordination of the behaviour of enlarged Europipe's parents through the joint venture.

COMPETITIVE ASSESSMENT

General Conditions on the market

16. Europipe produces and sells LDLWP and spiral welded pipes. These pipes are used predominantly for the transport of oil and gas under substantial pressures (typically up to 40 bars and 75 bars respectively). Smaller quantities are used for water and sewage and operate at lower pressures, up to 25 bars for district heating applications. LDLWP and spiral welded pipes are also used in construction and in industry

17. Contracts with the oil and gas industries account for approximately 75% of total sales of LDLWP and spiral welded pipes globally and nearly [...] of the sales of BS and Europipe. The 1996 sales of pipes in each category for BS and Europipe are set out in the table below.

Category	BS %	Europipe %	Enlarged Europipe %
Oil and Gas	[...][1]	[...]	[...]
Water and Sewage	[...]	[...]	[...]
Construction	[...]	[...]	[...]
Other	[...]	[...]	[...]

Totals may not add up to 100% due to rounding errors

18. Demand for LDLWP and spiral welded pipes is driven largely by the large projects of the international oil and gas companies. The bulk of sales are for very large tonnages with no particular geographical or temporal distribution pattern. Sales are closely related to the development of oil and gas fields around the world. For instance in 1995 Statoil the Norwegian state owned oil company has placed orders for over 1 million tonnes for various pipelines in the North Sea. Orders on this scale are not likely in Europe in the foreseeable future. The companies managing these very large projects are usually major multinationals, well informed about the potential suppliers all over the world and adept at securing the most favourable terms.

19. Their usual procedure for the purchase of these tubes is by international tender. Potential suppliers are frequently required to pre-qualify, that is to demonstrate that they have the ability and the capacity to produce tubes to the required quality standards and in sufficient quantity. The purchasers often keep two or more potential suppliers in play after the first round of tenders and frequently share contracts between suppliers.

20. Furthermore the European Public Procurement Directive[2] imposes non-discriminatory procedures including a call for tenders in respect of supply contracts in excess of 400 000 ECU, this represents approximately 1 000 tonnes of LDLWP pipes. This directive applies to EC gas and oil undertakings (whether state owned or operating under special or exclusive rights) and has significantly reduced the role of the state in the procurement of materials for these industries and in particular for large diameter pipes.

21. Producers of LDLWP and spiral welded pipes face considerable buyer power. A very large part of their sales are made to major oil and gas undertakings. These companies have turnovers much larger than the combined BS/Europipe will have and have the ability and the experience to source their requirements on a global basis. The other major customers include local authorities, major construction companies and tube distributors. These undertakings, too, have the resources to seek tenders on global level. The balance between buyer and seller is further tilted in the direction of the buyer by the extremely high levels of overcapacity.

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[1] Deleted. Business secrets.

[2] Directive 93/38 EEC, formerly Directive 90/351 EEC

22. The large diameter tube and pipe industry suffers from very high levels of over capacity. Current world capacity is estimated at some 24 million tonnes of which 19.5 million tonnes are considered to be competitive. Since 1990 demand has not exceeded 11 million tonnes (10.9 million tonnes in 1991) and is now about 6.5 million tonnes. Capacity utilisation is less than 35%. Due to the fluctuating nature of the large diameter tube business, a single large contract may require a producer to double output, producers have generally taken steps to employ at least part of their labour on short term contracts so they can easily respond to changes in their level of production.

23. A second effect of the extremely high levels of over capacity is to encourage producers improve their capacity utilisation by taking orders at prices which are below their total costs but which make a contribution towards their fixed costs. The parties estimate that these fixed costs to be at least [...][3] ECU a tonne for large producers. As this figure is significantly in excess of the additional transport costs and tariffs, it may pay a producer to take orders at below total cost. This phenomenon has led to a reduction in the absolute ex-works prices of major community producers of between 14% and 44% over the last decade according to the parties' estimates.

24. The conditions of competition are similar through out the world. There is a limited number of easily identified potential suppliers, probably less than 50 and certainly less than 100. These companies produce products to defined international and national standards and norms. Therefore if a customer is not satisfied with the prices, terms and conditions available in his "local" or regional market he can comparatively easily seek alternative sources of supply. Furthermore the behaviour of the "local" market suppliers is constrained by the knowledge that suppliers in neighbouring areas could easily supply.

Relevant Product Markets

Seamless tubes

25. Seamless carbon steel have outside diameters range from 1" to 26 " with wall thicknesses of 2 mm and above. The parties estimate that it would cost at least 30% more than LDLWP to produce 20" diameter seamless pipe with a wall thickness of half an inch. In particular capital investment for a seamless tube mill is considerably higher than a welded tube mill. Seamless pipes therefore appear to constitute a separate relevant product market. In a previous decision[4] the Commission identified a separate seamless tubes market.

Stainless Tubes

26. In an earlier decision the Commission[5] considered stainless tubes as a distinct market. Stainless steel tubes and pipes cost at least four times the cost of comparable carbon

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[3] Deleted. Business secrets.

[4] IV/M.906 Mannesmann/Vallourec point 55

[5] IV/M.315 Mannesmann/Vallourec/Ilva.

steel tubes. For this reason they are specified only where the special characteristics of stainless steel, rust resistance, corrosion resistance and temperature resistance make them unavoidable. The Commission has no evidence which would justify changing its earlier conclusion.

Large Diameter Pipes

27. In a previous decisions[6] the Commission recognised that a separate relevant market exists for large diameter pipes. The results of the Commission's survey in the present case confirm this conclusion.

ERW

28. Although ERW is produced in diameters from 1" up to 26" it is primarily used for less arduous applications than LDLWP and spiral welded pipes particularly in the construction industry and in the low pressure distribution of gas and water. There are a number of factors which show that it belongs to a separate relevant product market. These include :

-the wall thickness of LDLWP and spiral welded pipes is usually in excess of 12.5 mm while ERW is usually below this,

-the production costs for ERW are considerably lower than for either LDLWP or spiral welded pipes of comparable dimensions,

-ERW is seldom a product specified in the large tonnage tenders which characterise the market situation for LDLWP and spiral welded pipes,

-except where the regional distribution of gas is carried out by the same entity as the long distance transmission the customers are usually different.

The Commission therefore concludes that ERW tubes do not form part of the same market as LDLWP and spiral welded pipe. This conclusion is supported by the large majority of customers who replied to the Commission's survey.

LDLWP and Spiral Welded Pipes

29. LDLWP is used mainly for the transmission of oil and gas, both onshore and offshore. It is manufactured from heavy steel plate and it is able to cope with low temperatures, sour service and high transmission pressures LDLWP outside diameters start from 16" (406 mm) with wall thicknesses from 5 to 50 mm (more usually 12.5mm to 50mm). It can carry very high volumes at pressures up to 140 atmospheres over distances up to 4 500 km. The LDLWP manufacturing process is almost universally the UEO process in which prepared heavy plate is first pressed into a "U" shape and then into an "O" shape and finally sealed by longitudinal submerged arc welding on both the inside and the outside of the pipe. There is also limited production by the three roll process.

30. Spiral welded pipe can be manufactured with outside diameters equivalent to LDLWP (over 16" to 118"). The wall thicknesses tend to be a lower range (in the main 5 to 20 mm) than LDLWP. It is manufactured by helically twisting a strip of hot-rolled coil and welding the edge of the strip continuously. Technically, because of the limitations on

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[6] IV/M.222 Mannesmann /Hoesch, Aid Decision C17/94, ILVA Lamiere e Tubi (OJ 1995 C319/4) and IV/M. 906 Mannesmann Vallourec.

wall thickness and complex stress systems induced by the spiral welding process, the product is interchangeable with LDLWP in applications where pressure and service conditions are less onerous.

31. According to the parties spiral welded pipe competes with LDLWP in almost all tenders (at least 90%) let for on-shore applications. In off-shore applications the use of spiral welded pipes remains low, however the parties anticipate increased use in the future.

Conclusion

32. These factors indicate that the relevant product market may include both LDLWP and spiral welded pipes. However in the final analysis it is not necessary to determine whether LDLWP and spiral weld pipes form part of the same relevant market or are separate relevant markets as whichever market definition is chosen no competition problems would arise from the completion of the proposed operation..

Relevant Geographic Market

33. In its Forward Programme for Steel for the second half of 1997 the Commission noted in relation to large welded steel tubes that,

> "*The rise in the dollar makes the Community industry competitive on a market that is almost exclusively international*"

This view is supported by a large majority of customers and competitors who responded to the Commission's questionnaires.

34. According to the parties approximately 25% of demand is internationally traded that is traded between regions such as Western Europe, the Americas, the Middle East etc.. The replies to the Commission's indicate that all major producers sell the a substantial proportion of their production outside the country of its manufacture and European producers sell over 40% of their production outside Western Europe. Imports into Western Europe were 19% in 1996.

35. According to the parties there has been a considerable convergence of prices in different regions of the world. Ten years ago the ratio between the most highest priced country (France)and the lowest (CIS) was over 2:1. In 1997 he ratio between the USA (highest) and CIS (lowest) was 1.3:1.

36. Transport costs do not appear to be a significant bar to effective competition. These range up to about 9% of cif prices for Japanese produced pipes sold in Europe or European produced pipes sold in the Far East. However, Japanese, Brazilian and Mexican suppliers have been successful in obtaining orders in Europe and European producers have obtained contracts in all parts of the world. This indicates that producers are prepared to absorb the additional transport costs involved in supplying distant markets by reducing their margins.

37. It may be possible to make a distinction between a world market for the large tonnages purchased through international tenders usually of high specification material and a "local" market for lower specification material purchased in much smaller quantities. In this "local" market buyers might not consider it worthwhile to obtain offers from a wide

selection of potential suppliers world -wide and suppliers would be less willing to make offers for small quantities in distant markets.

38. Even among Community customers falling into the "local" category only one has suggested that the relevant geographic market might be smaller than Western Europe. In addition the price convergence mentioned above at point 34 is even more pronounced between the major European producing countries Germany, France and UK over the last 10 years.

39. Trade within Western Europe in LDLWP and spiral welded pipes amounted to over 30 % of production in 1997 according the Commission's surveys.

Conclusion

40. There are factors that suggest that the relevant geographic market for LDLWP and spiral welded pipes is world-wide. It is certainly no smaller than Western Europe. With regard to the possible distinction between an international tenders market and a "local" market, by definition if an international tenders market exists it is world-wide; in the case of "local" market it must be at least Western Europe. It is not however necessary to make a final determination of the relevant geographic market as no competition problems would arise which ever of the definitions was to be used.

Compatibility - World market

41. On the basis of the parties' representations that the relevant product market is for LDLWP and spiral welded pipe and that the relevant geographic market is global, the parties market shares were [...][7] for Europipe and [...][8] for BS in 1996 a total of 17% (rounding up). This market share confers no power and will not create a dominant position in the market for LDLWP and spiral welded pipes.

42. If the product market were to be differentiated into separate markets for LDLWP and spiral welded pipes enlarged Europipe would still not enjoy a dominant position. In the world market for spiral welded tubes the situation would be unchanged as BS does not make this product. While on a separate market for LDLWP the market share of enlarged Europipe would be about [...][9] , again insufficient to create a dominant position .

43. Furthermore at the global level the tube making sector suffers from extremely high levels of overcapacity. The parties estimate that for LDLWP (LDLWP+spiral welded+ERW>16") capacity utilisation was only 36% excluding over 4 million tonnes of capacity that is believed to be uncompetitive.

44. The operation will create the largest producer of LDLWP and spiral welded tubes in the world, however they will face competition from ILVA which has a world market share

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[7] Deleted. Business secrets. < 15%.

[8] Deleted. Business secrets. < 5%.

[9] Deleted. Business secrets. <25%.

of about 7%, the major Japanese steel companies who together have 22% and from Eastern European producers whose share of production has fallen drastically in recent years but who had combined market shares of over 35% as recently as 1993.

Compatibility - Western Europe market

45. According to the parties the market share of Europipe on the market for LDLWP and spiral welded pipes in Western Europe was [...][10] in 1996, [...][11] for Europipe and [...][12] for BS (rounding up). The results of the Commission's survey [...][13] gave enlarged Europipe a [...][14] share. On this market they will face competition from ILVA (10%-20%), the independent German producers (5%-15%) and Nippon Steel (5%-15%).

46. If only the LDLWP market in Western Europe is considered the enlarged Europipe will have a market share of [...][15] according to the Commission's incomplete survey. The actual figure is lower as all of Europipe's sales are counted in the calculation but the overall size of the market is underestimated. As above the competition will include ILVA, Nippon Steel and the independent German producers.

47. These market shares are high. However the Commission does not consider that the enlarged Europipe would enjoy a dominant position as there is significant competition from both indigenous producers (ILVA 10%-20%, independent German producers 5%-15%) and from imports which accounted for over 20% of Western European consumption in 1996 according to the Commission's survey (Nippon Steel 5%-15%, Chelyabinsk <10%, Sumitomo <10%, NKK <10%). Furthermore there is significant over capacity in Western Europe as in other regions of the world which would allow competitors to easily and at a low cost increase their output if enlarged Europipe attempted exercise its power in the market. Finally producers in other geographic markets would exercise a restraining influence, particularly as neither transport costs nor tariffs appear to inhibit international trade.

Tender/Local markets

48. The parties estimate of a split 75% for a global tendering market and 25% for a "local" purchases market for supplies of large diameter pipe in total. Both BS and Europipe's sales are biased towards sales by international tender. In their last available financial years both companies sold about [...][13] of their pipe production to the oil and gas industry which makes up the bulk of the tendering market. On this basis enlarged

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10 Deleted. Business secrets. < 35%.

11 Deleted. Business secrets. < 25%.

12 Deleted. Business secrets. < 15%.

13 Deleted. Business secrets.

14 Deleted. Business secrets. < 40%

15 Deleted. Business secrets. < 45%.

Europipe's market share in the global tendering market would increase to about [...][13] for a combined LDLWP and spiral welded pipe market (less than [...][13] for LDLWP alone). As the remaining demand is essentially local there is no need to consider the effect on the remainder of the market at the world level.

49. However it is necessary to examine the situation at the Western European level. assuming that overall 25% of the purchases are carried out at this level then Europipe's market share would be about [...][16] for LDLWP and spiral weld together and [...][17] for LDLWP alone. As the proposed operation does not involve any addition of market shares for spiral weld pipe it is not necessary to consider this market.

Conclusion

50. The proposed operation would not create or strengthen a dominant position on any of the market definitions considered, that is

a world market for LDLWP and spiral welded pipes,
a world market for LDLWP,
a world market for international tenders for LDLWP and spiral welded pipes
a world market for international tenders for LDLWP
a Western European market for LDLWP and spiral welded pipes
a Western European market for LDLWP
a "local" Western European market for LDLWP and spiral welded pipes, and
a "local" Western European market for LDLWP

IV ANCILLARY RESTRAINTS

51. The parties have notified two obligations which they wish to consider as ancillary restraints: these are discussed below.

52. The master agreement requires that the pipe activities of BS pipe and Europipe shall be carried on as they are presently carried on in all material respects until completion of the joint venture. Thus the businesses being contributed to Enlarged Europipe are restricted from entering any new product markets pending completion. This restriction is of a limited duration (latest possible completion day is [...][18] , if the operation has not been completed by this date the agreement no longer has force) and is directly related to the acquisition by BS of a part of Enlarged Europipe is necessary to guarantee the transfer to BS of the full value of the assets purchased or is otherwise directly related to and necessary for the successful implementation of the concentration

53. The master agreement provides also that each of BS, DH and MRW will not manufacture products which compete with the new entity. This clause is of unlimited duration for as long as each of its parents, directly or indirectly, has shares in Enlarged Europipe and for a period of five years thereafter. This non-competition obligation

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16 Deleted. Business secrets. <20%.

17 Deleted. Business secrets. <20%.

18 Deleted. Business secrets.

reflects the permanent withdrawal, at least during the life of the joint venture, of the parents from the market(s) assigned to the joint venture.

54. Both clauses can therefore be considered as ancillary to the concentration

VI THE ECSC TREATY

55. [...][19] .

56. The vertical integration between suppliers and consumers of steel products covered by the ECSC Treaty must be examined under Article 66 of the ECSC Treaty. These matters are not dealt with in this decision which deals only with the aspects of the proposed operation falling under Council Regulation No 4064/89.

VII. CONCLUSION

57. 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.

For the Commission,

[19] Deleted. Business secrets.