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Case No COMP/M.2104 - MIG / CARLYLE / EUTECTIC AND CASTOLIN

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 12/09/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.09.2000

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: No COMP/M.2104 – MIG / CARLYLE / EUTECTIC AND CASTOLIN
Notification of 09.08.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 09.08.2000, the Commission received a notification of a proposed concentration by which Messer Industrie GmbH (Germany) and the investment fund Carlyle Europe Partners L.P. (Guernsey) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the Eutectic and Castolin Sale companies by a purchase of shares.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and that the concentration does not raise serious doubts as to its compatibility with the common market and with the EEA agreement.

I. THE PARTIES

3. **Messer Industrie GmbH** ("Messer") is a holding company that has sole control over Messer Cutting and Welding ("Cutting"), a company that is primarily engaged in the production and distribution of equipment and consumables for cutting, welding and brazing and other technical products. MIG and Aventis jointly control Messer Griesheim GmbH ("MGG"), which produces inter alia welding gases.

4. **Carlyle** is a European investment fund, which forms part of the Carlyle Group, a US-based investment fund with widespread business activities.

5. **Eutectic and Castolin** Sale Companies (Eutectic), now owned by Eutectic and Castolin Group Ltd, Bermuda, have subsidiaries in the Netherlands, the US and India

and mainly produce welding and brazing equipment and consumables. The companies subject to that transaction include Universal Technologies BV, Netherlands, Eutectic Corporation, USA, Eutectic South Africa Ltd, South Africa and EWAC Alloys Limited, India. These companies do not comprise Castolin SA. (Switzerland), a production plant.

II. THE OPERATION

6. The notified operation involves the acquisition of joint control of Eutectic by Carlyle ([…]%) and Messer ([…]%), the management will have the remaining […]% of the shares. According to the syndicate (shareholders) agreement ("Gesellschaftervereinbarung") decisions such as nomination of managers, budget, require a majority of three quarters of the shareholders, that is the approval of both Carlyle and Messer. The board of directors consists of 6 members (two Messer, two Carlyle and two from the workers representatives).

III. COMMUNITY DIMENSION

7. The combined aggregate worldwide turnover of the undertakings concerned exceeds EUR 5,000 million (Carlyle 10.971 million; Messer 1.179 million and Eutectic 195 million). The aggregate Community wide turnover of each party exceeds EUR 250 million (Carlyle 1,367 million; Messer 735 million and Eutectic 105 million). Only Messer achieves more than two-thirds of their Community-wide turnover in Germany. Carlyle and Eutectic do not achieve more than two-thirds of its Community-wide turnover in any one Member State. The operation has therefore a Community dimension.

IV. COMPETITIVE ASSESSMENT

Relevant product and geographic markets

8. In the decision M.829 Thyssen/Böhler-Uddeholm the Commission did not take a final decision about the market for welding consumables. However, on the most narrow market definition, the markets for welding consumables comprises the market for stick electrodes, solid wires, flux cored wire, welding powder, welding paste, welding gas and brazing materials. The parties followed that market definition and added a market for brazing. However it is not necessary to further delineate the relevant product markets because on the most narrow market definition no competitive concerns arise. The Commission found in a market investigation in the above mentioned case M.829 that the markets are EEA-wide and has no reason to change its conclusion.

9. Moreover the parties have identified markets for manual metal arc welding (MMA) equipment, gas-shielded metal arc welding (GMAW) and Tungsten-Inert-Gas welding (TIG) equipment, each of these markets is at least EEA-wide if not worldwide. However, it is not necessary to further delineate the relevant product markets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Competitive assessment

10. The parties' estimates of the market shares for the EEA- wide markets where there are overlaps are given in the tables below:

	Parties			Competitors		
Product	**Messer**	**Euritec**	**combined market share**	**ESAB**	**Air Liquide**	**Böhler/ Thyssen**
Welding consumables	[0-10]	[5-15]	[5-15]	[20-30]	[15-25]	[15-25]
stick electrodes	[0-10]	[5-15]	[5-15]	[20-30]	[15-25]	[15-25]
solid wires	[0-10]	[0-10]	[0-10]	[10-20]	[10-20]	[15-25]
flux cored wires	[0-10]	[5-15]	[5-15]	[15-25]	[15-25]	[10-20]
brazing market	[0-10]	[5-15]	[5-15]			[5-15]

These market shares also include the production of Castolin SA, a Swiss production plant which remains with the seller, but which will be run according to the services agreement by the notifying parties.

11. On the market for welding equipment based on electric arcs the market shares are the following

	Parties			Competitors		
Product	**Messer**	**Euritec**	**combined market share**	**ESAB**	**Selco**	**Fronius**
MCW welding equipment	[0-10]	[0-10]	[5-15]	[10-20]	[15-25]	[5-15]
GMAW welding equipment	[0-10]	[0-10]	[0-10]	[15-25]	[15-25]	[15-25]
TIG welding equipment	[0-10]	[0-10]	[0-10]	[15-25]	[15-25]	[15-25]

12. Even if the relevant geographic markets were national, the combined market shares of the parties would exceed 15% only for the market of brazing material in France. (Euritec […]% and Messer […]%, therefore the combined market share would be […]%). They face competition in that market from strong competitors such as CLAL Engelhard (20%), Degussa (20%) and Böhler-Thyssen (10%).

13. On the markets for welding gases Messer has a market share of 32% in Germany but faces competition from Linde/AGA (39%) among others. Moreover Eutectic is active in the market for thermal spray powders to enforce surfaces of metals and Messer in the market for oxifuel technology for cutting and welding by means of a mixture of oxygen and a fuel gas (argon or nitrogen) but market shares are far below 25%. Therefore the parties' market position will not be so strong as to give rise to competition concerns on conglomerate markets.

14. The concentration therefore does create or strengthen a dominant position in the market for welding and brazing equipment and consumables.

V. ANCILLARY RESTRAINTS

15. The parties submitted ancillary restraints including non-compete, non solicitation and confidentiality clauses, which shall ensure that the full value of the enterprise is transmitted to the buyers.

16. The parties request a non-compete clause under Item 10.1 of the sale and purchase agreement (SPA) for […] years, as the transaction comprises transfer of goodwill and know how. The Commission regards that clause - in line with chapter III of the Commission notice regarding ancillary restrictions[1] - as directly related and necessary to the implementation of the concentration.

17. The parties further request a non-solicitation clause for […] years under Item 10.2 of the SPA agreement which sets forth a prohibition to solicit or endeavour to entice away employees from Eutectic or its subsidiaries who were employed there prior […] to the completion date. The parties underline that this clause shall ensure that the buyer can profit from the full value from the operation. The Commission accepts these arguments and considers this restriction as directly as directly related and necessary to the implementation of the concentration.

18. Moreover the parties submitted a confidentiality clause under Item 10.3 of the SPA that members of the retained Euritec group shall not disclose trade secrets or confidential information of a technical character to third persons or their subsidiaries. The parties hold that these clauses shall ensure that the buyer can profit from the full value from the operation. The Commission accepts these arguments and considers these restrictions as directly as directly related and necessary to the implementation of the concentration as far as this clause does not exceed a time period of more than […] years.

19. Under Item 10.5 of the SPA the seller is obliged not to use neither the words “Eutectic” and “Castolin” or any confusingly similar word as name for the retained Group or any of its subsidiaries. Moreover the sellers have to cease within […] month of the completion date the use or display of any trade and service marks, trade or service names, domain names, registered designs and logos held by any of the Eutectic Sale Companies or their subsidiaries. In such circumstances the provision of the SPA agreement seems necessary to ensure the full value of the operation.

20. The parties request a “service agreement” under a “transitional service agreement” according to which they are granted the right to run and operate all the office, manufacturing and warehousing facilities at the production site of […] for a […] years term. The parties explain that the need to continuing this production site stems from the fact that […] of the […] was opposed […] of the whole production part to the parties. The parties maintain that the agreement serves to ensure the continuity of supply between the seller and the acquirer. The Commission accepts these arguments and considers these restrictions in line with chapter III. C of the Commission notice

[1] OJ 1990 No C 203, p5

regarding ancillary restrictions[2] - as directly related and necessary to the implementation of the concentration.

VI. CONCLUSION

21. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,
Mario MONTI
Member of the Commission

[2] OJ 1990 No C 203, p5