EN

Case No COMP/M.2196 - ENRON / BERGMANN / HUTZLER

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 07/12/2000

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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: Case No COMP/M. 2196 – ENRON/MG
Notification of 06.11.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 6.11.2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No. 4064/89 (the Merger Regulation), whereby Enron Corporation (Enron) - through its subsidiary MG Metall Recycling GmbH & Co. KG - (MGMR) - intends to purchase certain business units of W. & O. Bergmann GmbH & Co. KG (Bergmann) and all the assets of Walter Hutzer Metallhandel GmbH (Hutzler).

2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89[1] and that it does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

[1] OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

I. THE PARTIES

3. Enron is an energy and communications company primarily engaged in:

   – the marketing of gas, electricity, pulp and paper, bandwidth and weather derivatives and related risk management and financial services
   – the construction and operation of power plants, pipelines and other energy related assets
   – the transportation of natural gas via pipelines
   – the generation, transmission and distribution of electricity, and bandwidth services

4. MGMR is a subsidiary of Enron Metals within the Enron group. Entron Metals is the metal trading part of the Enron group. It trades non- ferrous scrap metals principally through MGMR. MGMR acts as broker for its clients in LME and COMEX contracts and is a market maker in LME, COMEX and over the counter contracts. In addition MG has world wide warehousing operations.

5. Hutzler is a 100% subsidiary of Bergmann. Both companies are active in trade in non-ferrous metals and metal scrap.

II. THE OPERATION

6. The acquisition will involve MGMR acquiring the following business units from Bergmann: [the major part of the non-ferrous metal and metal scrap trading activities of Bergmann]

7. The acquisition of the assets of Hutzler will comprise [all assets of Hutzler]

III. CONCENTRATION

8. The acquisition by Enron Group of sole control over certain assets of Bergmann and all the assets of Hutzler is a concentration within the meaning of Article 3.1.b of the Merger Regulation.

IV. COMMUNITY DIMENSION

9. The operation has a Community dimension pursuant to Article 1(2) of the Merger Regulation as the combined aggregated world wide turnover of the undertakings concerned exceeds € 5000 million (Enron/MGMR: € 42 842 million, Bergmann/Hutzler: […]. The aggregate Community wide turnover of each of the undertakings exceeds € 250 million (Enron/MGMR: […], Bergmann/Hutzler: […]) the parties do not achieve more than two-thirds of their turnover in one and the same Member State.

10. The operation does not qualify for co-operation with the EFTA Surveillance Authority pursuant to the EEA Agreement.

V. COMPETITIVE ASSESSMENT

(1) Product markets

11. The operation affects the markets of the trade in non-ferrous metals and non-ferrous metal scrap. Non-ferrous metals and scrap does - in contrast to ferrous products - not fall within the scope of Art. 66 of ECSC Treaty.

12. A distinction can be made between the trade in non-ferrous metals and the trade in non-ferrous scrap[2]. In addition it appears that the different metals such as copper, tin, lead or nickel constitute separate markets on the basis of their different prices and applications. However, a precise market-definition can be left open, as even on the narrowest possible markets - that is the markets for individual metals and for scrap individual metals - the proposed concentration would not create or strengthen a dominant position.

(2) Geographic markets

13. As regards trade in non-ferrous metals the parties suggest a world-wide market. Barriers to entry are low. Tariff as well as non- tariff barriers to trade do not exist. There are no substantial price differences, since prices for non-ferrous metals are based on the quotations of the London Metal Exchange (LME), which is the accepted world-wide basis platform for market prices. Moreover, transportation costs are negligible. According to the parties they account for 1 - 1,5% of the price of the commodity. Corresponding, undertakings active in the trade in non-ferrous metal are usually acting on an European or global basis. There are substantial import and export activities within the EU and between the Member states of the EU and third countries. Particularly France; Germany and The Netherlands import considerable amounts of their national consumption. As also on a narrower - EU-wide - market a dominant position would not be created or strengthened the precise market definition can be left open.

14. With regard to trade in non-ferrous scrap metal the parties suggest an at least EU-wide relevant market. Within the EU, there are no restriction on the transboundary transport of non-ferrous scrap metal. There are no substantial price differences between member states, since prices for non-ferrous scrap metals follow the quotations of the LME. Transportation costs account for only 2-3% of the price of the non-ferrous scrap metal. Finally, customers do not have a preference for suppliers of a certain nationality. For these reasons, undertakings active in the trade in non-ferrous scrap metal are usually act usually on an European or global basis. Furthermore, there are substantial import and export activities within the EU and between the Member States of the EU and third countries. For example, Germany - a large scrap consumer - imports scrap to a considerable amount from Eastern European countries such as Russia, Ukraine and Czech Republic.

15. The result of a market test has confirmed the above findings. The relevant geographic markets for non-ferrous metals and non-ferrous metal scrap respectively the different kinds of metal can therefore be defined as at least EU-wide[3].

C. Appraisal

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[2] M.849 ELG Haniel/Jewometaal, 25.11.1996; M.1146 - SHV Energy/Thyssen Klöckner Recycling, 19.05.1998, M.473 - Pechiney World Trade/Minemet, 20.7.1994

[3] In M.473 - Pechiney World Trade/Minemet, 20.7.1994 a world-wide market was defined for non-ferrous metal.

17. As no reliable data on the trade in the non-ferrous metals and non-ferrous metal scrap under consideration is available, the calculation of market shares is based on consumption data. This excludes the delivery of non-ferrous metals and non-ferrous metal scrap for other purposes as there are for example storage or export through other traders. The Commission takes the view that this approach reflects the parties position on the market of trade in an appropriate way. This is due to the fact, that on both the wholesale and the retail level, traders compete with other traders and producers. As the respective players are the same, the competitive situation on the retail level is also meaningful for the wholesale area respectively the parties market position in trade overall in non-ferrous metals and non-ferrous scrap metals.

18. The parties activities overlap in the field of trade in copper, aluminium, lead, nickel, tin and zinc and the respective scrap metals (with the exception of tin scrap where only Enron is active to a negligible extent.)

(1) copper

19. The volume of consumed copper in the EU-area amounted to about 3.7[4] million tonne in 1999. The combined market share of the parties will not exceed 15% (Enron/MGMR: []; Bergmann/Hutzler: []). Further strong competitors will be for example Glencore, Int AG, Switzerland, and Norddeutsche Affinerie AG, Germany. Besides that a number of competitors with smaller market shares are active in the market under consideration. Therefore, the concentration will not lead to create or strengthen a dominant position.

(2) nickel

20. The volume of consumed nickel in the EU-area amounted to 375 000 tonne in1999[5].The aggregate market share of the parties will amount to [<10%](Enron/MGMR: []; Bergmann/Hutzler:[]). There are a number of strong - partly larger - competitors active in the market such as Norimet Ltd, UK, Glencore Int AG, Switzerland and Mark Rich Investments AG, Switzerland. It can be excluded that - after the implementation of the proposed concentration - a dominant position will be created or strenghtened.

(3) tin

21. The volume of consumed tin in the EU-area amounted to 52 000 tonne in 1999[6]. The parties will reach a combined market share of [<10%] (Enron/MGMR: […]; Bergmann/Hutzler: […]) after the concentration. Larger players are for example Amalgamated Metal Corporation Ltd, UK, and RMT Metals Ltd, UK. The creation or strenghtening of a dominant position can be excluded.

(4) copper scrap

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[4] Figures taken from statistics of the World Bureau of Metal Statistics.

[5]See Fn.2.

[6] See FN 2

22. The volume of consumed copper scrap[7] in the EU-area amounted to 1.9 million tonne in 1999. The parties will held combined market shares of [<15%] (Enron/MGMR: […]; Bergmann/Hutzler: […]). Although, after the mergers the parties will hold the highest market shares on the relevant market this will not create or strenghten a dominant position. The parties will face competition from a number of competitive scrap dealers such as Siegfried Jacob Metallwerke, Germany, Dietiker AG für Rohmetalle, Germany, Malco SA, France, Mountstar Metal Corp. Ltd, UK, among others. Substantial deliveries are made from Eastern European countries.

(5) other non-ferrous metals and non-ferrous metal scrap

23. The combined EEA-Wide market shares of the parties with regard to in scrap, aluminium scrap, lead scrap, nickel scrap, aluminium, lead are below 5%. The combined EEA-wide market share of the parties with regard to zinc scrap is below 10%. A dominant position will neither be created nor strengthened for any to these products.

VII. CONCLUSION

24. 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) Council Regulation (EEC) No 4064/89 and Article 57 of the EEA Agreement.

VIII. Ancillary restraints

25. The parties have notified obligations which they wish to consider as ancillary restraints:

26. The asset purchase agreement between MGMR and Bergmann includes a non-compete covenant. According to this covenant Bergmann undertakes that for a period of […] after the Closing Date Bergmann or any affiliates shall not compete with the business activities conducted by Bergmann with regard to kind and territories before the Closing Date. For a period of […], neither Bergmann nor any of its affiliates shall knowingly seek out for employment of any employee who enters the employment of MGMR upon or within […]. A similar non-compete covenant is agreed upon between MGMR and Hutzler.

27. These restrictions are necessary to ensure the transfer to the acquirer of the full value of the assets transferred. They can therefore be considered as ancillary to the concentration.

For the Commission,
Mario MONTI
Member of the Commission

[7] See FN 2; figure includes production of refined copper from copper scrap plus direct use of copper scrap