

***Case No COMP/M.2313 -  
TEKA / FINATLANTIS /  
HOLDIVAT***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 06/04/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 06/04/2001  
SG(2001)D/287577-287578

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.2313 - TEKA/FINATLANTIS/HOLDIVAT**

Notification of 26.02.2001 pursuant to Article 4 of Council Regulation No 4064/89

1. On 26.02.2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) N° 4064/89<sup>1</sup> consisting in the acquisition of joint control by Teka Industrial S.A. (Teka), by way of purchase of shares and contract of management, and the change in the quality of control by Finatlantis S.A. (Finatlantis), by way of sale of shares and contract of management, over Holdivat S.A (Holdivat). Presently, Holdivat is jointly controlled by Finatlantis and VIV N.V. Vlaamse Investeringsvennootschap (VIV).
2. On 19 March 2001 the Commission requested via two faxes the notifying parties to provide information necessary for the assessment of the concentration no later than 21 March 2001. Given that the notifying parties did not provide the information requested within the fixed period, the Commission required by decisions of 26 March 2001 pursuant to article 11(5) of the Merger Regulation the notifying parties to supply the information

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<sup>1</sup> 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).

requested by 2 April 2001. This information was transmitted by the parties to the Commission by two faxes dated 2 April 2001.

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

#### **I. THE PARTIES**

4. Teka is a Spanish corporation which belongs to the Teka group. The Teka group is currently formed by 60 companies operating in Western and central Europe, Latin America and Asia. The Teka group is headed by the Dutch corporation Teka B.V.. Its main business is the manufacture and sale of sinks, taps and kitchen appliances. The group also operates in the sector of manufacture and commercialisation of stainless steel beverage containers through its subsidiaries Portinox S.A. (Spain), Thielmann AG KG (Germany) and Yingkou Th. Liaohe, Ltd. (China).
5. Finatlantis is a wholly-owned subsidiary of Suez Industrie S.A., which is 100% owned by the Suez Lyonnaise des Eaux group. Suez Lyonnaise des Eaux is a French diversified industrial group active in a broad number of activities such as energy generation and distribution, water management and treatment, waste management services, telecommunications and public works and building activities. Suez Industrie S.A. is the private equity division of the Suez Lyonnaise des Eaux group, in charge of managing the group's equity portfolios and investment funds in Europe, Asia and the USA.
6. Holdivat is a Belgian holding company controlled by Finatlantis and VIV. Holdivat is the sole shareholder of Comet, N.V.(Belgium) and FSB Fassindustrie Gesellschaft m.b.H (Austria). These two enterprises are both engaged in the manufacture and commercialisation of stainless steel beverage containers.

#### **II. THE OPERATION**

7. The proposed concentration consists in the acquisition by Teka of 64% of the shares in the capital of Holdivat by means of an agreement with Finatlantis and VIV. Finatlantis and VIV will retain respectively 27% and 9% of the shares of Holdivat. In view of the rights and powers laid down in the shareholders agreement, Holdivat, which was jointly controlled by Finatlantis and VIV, will be jointly controlled by Teka and Finatlantis after the operation.
8. The operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

#### **III. COMMUNITY DIMENSION**

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (EUR 589 million Teka and EUR 31 460 Finatlantis (Suez Lyonnaises des Eaux)). Teka and Finatlantis have a Community-wide turnover in excess of EUR 250 million each (EUR [...] million Teka and EUR 25 160 460 Finatlantis (Suez Lyonnaises des Eaux)), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

#### IV. COMPETITIVE ASSESSMENT

##### Affected markets

##### The Relevant product market

10. The relevant product market affected by the concentration is the manufacture and sale of stainless steel beverage containers. This product is horizontally affected since both Teka and Holdivat are active in this sector.
11. The market of stainless steel beverage containers is characterised by the existence of relatively few manufacturers (eight in Europe,<sup>2</sup> one in the US<sup>3</sup> and two in Japan<sup>4</sup>).
12. It has been indicated by Teka and Franke that aluminium beverage containers, and plastic kegs may be substitutable and interchangeable with stainless steel containers from the customer's point of view and that for bulk dispensed soft drinks there is strong competition by one way (plastic) packaging. Moreover, Teka has pointed out that a project is currently being studied called "bag-in-box". It consists of inserting a plastic bag within a metallic recipient and to install a device in bars and restaurants. The bag (which would be disposable and hence re-usable) has a storage capacity for 2000 –3000 litres of beer. Nevertheless, according to the inquiry made, the Commission can conclude that, at this stage stainless steel beverage containers cannot be substituted by other products. As regards aluminium containers, the vast majority of breweries and soft drink producers use stainless steel containers only because of the negative impact of aluminium on the beer and its taste, safety being less guaranteed (bursting potential of the container), the need to replace regularly the internal coating as well as for health reasons. In addition the DIN norm 6647-1 expresses that all containers for beverages should be made of stainless steel. Aluminium kegs have nowadays only remained in small quantities in some markets (eg. the UK). As far as plastic containers are concerned, there is still some further technical development required in order to meet all the specific requirements of stainless steel beverage containers (hygiene, protection against gas permeability and pressure stability of the container). Finally the bag-in-box system can only be used for post-mix of soft drinks (transport of syrup without pressure) but not for beer and sparkling soft drinks and the system is less hygienic than stainless steel containers. Moreover, given the size of the bag-in-box system it can only be used in big bars and restaurants.
13. To conclude, aluminium beverage containers, and plastic kegs cannot be substitutable and interchangeable with stainless steel containers either from the demand-side or from the supply-side points of view. Accordingly, the relevant product market is the manufacture and supply of stainless steel beverage containers.

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<sup>2</sup> Teka; Holdivat; Franke; Schäffer (with one plant in the EEA and one plant in Eastern Europe); AEB; Maison Neuve; Metal Vries; and Supermonte (newcomer).

<sup>3</sup> Spantanburg.

<sup>4</sup> Yasuda / Nas-Toa.

## Relevant geographic market

14. The notifying parties consider that the geographic scope of the affected market is world-wide. Nevertheless, the market investigation carried out by the Commission has shown that there are some imports from Eastern Europe into the EEA (from Schäfer's plant in the Czech Republic) but that there are no imports in Europe (EEA + Eastern Europe) from other parts of the world. On the other hand, EEA plants exports to the rest of the world represent 33% of their total sales and they serve almost 68% of non-EEA demand. This is due mainly to the fact that containers manufactured and sold in the US and Japan are more expensive than containers produced and sold in Europe (about 17,6% more expensive in the USA and about 33-43% more expensive in Japan). In particular, American and Asian manufacturing plants are known to be less automatised than European facilities and incur higher production costs (mainly labour costs). Non-EEA countries do not in general apply any trade quota to European containers and tariffs are reasonably low (with the exception of some Asian countries such as China and Japan).
15. Even if with the current installed capacity in Europe it would be possible to supply all the world demand, according to the parties, plants installed in third countries are necessary and will always exist in order to serve the so called "on the spot orders" (non programmed orders requiring urgent delivery).
16. Accordingly, imports from third countries into Europe do not take place because they would substantially increase the costs of European industries given that the prices they would have to pay would be substantially higher. Moreover, transport costs (2-5%) and the tariff applied by EEA countries (2,7%) and eastern European countries would be added to the extra costs mentioned above.
17. As regards intra European trade, transportation costs are not significant and do not go beyond 2% of total costs.
18. All European customers consulted during the market investigation agreed that the market is Europe-wide.
19. In these circumstances, it can be concluded that, the market is not larger than Europe-wide (EEA + Eastern Europe).

## Assessment

20. The Commission has examined the possible risk that the transaction could lead to the creation of oligopolistic dominance at the European level formed by three players: the merging parties (37,5%) (Teka: [15-25]%; Holdivat: ([15-20]%), Franke ([30-35]%), and Schäfer ([15-20]%)<sup>5</sup>; other fringe players being principally AEB ([0-5]%), Maison Neuve ([0-5]%), Metal Vries<sup>6</sup> ([0-5]%), and Supermonte ([0-5]%).
21. A number of factors appear to support this view:
  - The market would become highly concentrated as the three players will account for 90% market share at European level in terms of capacity.

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<sup>5</sup> Market shares measured in terms of capacity

<sup>6</sup> Note that during the last 2 years Metal Vries has not made any sale of stainless steel beverage containers.

- The product is essentially homogenous and technology mature as stainless steel beverage containers are perfectly substitutable commodities in terms of brand, quality or technology.
  - The market is highly declining (during the last years demand has declined by 15%). According to the market investigation, this is probably due to long lifetime of the containers,<sup>7</sup> market saturation and better keg management in the beverage industry. Other factors that explain the decline of the market are: diminution of beer consumption in bars and restaurants, price for draught beer being higher than for bottled or canned beer as well as consumer preferences.
  - The industry is characterised by large excess capacities as the average utilisation rate in Europe is 64%. In particular, Teka, Holdivat, Franke and Schäffer utilisation rates are currently of respectively [60-65]%, 50%, [...]%, and [...]%. Such large excess capacities could be a non-negligible tool in disciplining the oligopolists.
22. Despite the presence of these characteristics, the Commission has arrived to the conclusion that, due to the specific features of the market in question there are no grounds to believe that the operation will lead to the creation or strengthening of oligopolistic dominance because of the following reasons:
- There exists a high degree of customer concentration. The main customers can principally be divided into breweries, soft drink producers and bottlers. Teka, Holdivat, Franke, and Schäffer's top-five customers represented in 1999 respectively [...]%,<sup>8</sup> [...]%,<sup>9</sup> [...]%,<sup>10</sup> and [...]%,<sup>11</sup> of their respective total sales. This increasing trend to demand-side concentration is confirmed over the last five years. In this sense, customers are increasingly stronger. Coupled with the facts that the market is declining and that the industry exhibits large excess capacity, customers *de facto* appear to enjoy a non-negligible amount of bargaining power vis à vis container manufacturers that allow them to neutralize any anti-competitive parallel behaviour by the oligopolists.
  - Furthermore, for reasons of security of supply, many customers (including small customers) have developed a strategy of multiple-sourcing to prevent any potential price increase. This means that the merged firms cannot exercise price-discrimination between the bigger customers and the smaller ones. This has been confirmed by the market investigation (prices charged to big clients do not differ substantially from prices charged to small firms).
  - Some fringe suppliers would be able to challenge a potential co-ordinated behaviour of the oligopolists. Indeed, for instance, following a significant price increase by both Teka and Holdivat in 2001, a small supplier has been able to propose to one customer an offer for the required quantity at lower prices.

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<sup>7</sup> The average lifetime of a keg is 15 to 20 years.

<sup>8</sup> The largest Teka's customer represents [...]% of its total sales; the fifth, 5.2%.

<sup>9</sup> The largest Holdivat's customer represents 19.2% of its total sales; the fifth, 7.5%.

<sup>10</sup> The largest Franke's customer represents [...]% of its total sales; the fifth, 5.8%.

<sup>11</sup> The largest Schäffer's customer represents [...]% of its total sales; the fifth, 36%.

23. As regards reaction of third parties, fringe competitors did not show any concern in relation to the concentration. Small customers as well as large ones did not fear the creation or strengthening of a collective dominance in the market for stainless steel beverage containers.
24. In these circumstances, the concentration will not lead to the creation or strengthening of a dominant position

#### **V. CONCLUSION**

25. 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