

***Case No COMP/M.2382 -
USINOR / ARBED /
ACERALIA (see
ECSC.1351)***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 19/07/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels 19.07.2001

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Subject: Case No COMP/M.2382 – USINOR / ARBED / ACERALIA

Notification of 18.06.2001 pursuant to Article 4 of Council Regulation (EEC) No 4064/89 as amended¹ (hereinafter: “the Merger Regulation”); notice published in OJ No C 182 of 28.6.2001, p. 2

1. On 18.06.2001, the Commission received a notification, under Article 4 of the Council Regulation (EEC) n. 4064/89, of a proposed concentration whereby the undertakings ARBED S.A. (“ARBED”, Luxembourg), Aceralia Corporación Siderúrgica S.A. (“ACERALIA”, Spain), controlled by Arbed², and USINOR S.A. (“USINOR”, France) merge into a new entity, provisionally named Newco Steel (“Newco”, Luxembourg) by way of a public offer to exchange the shares of Aceralia, Arbed and Usinor with those of the new entity. In relation to ECSC products this concentration also falls to be considered under Article 66 of the ECSC Treaty³.

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).

² Cases No. IV/M.0980 and IV/ECSC.1237 - Arbed / Aceralia.

³ Case No. COMP/ECSC.1351- Usinor / Arbed / Aceralia.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation as amended and, as far as the non-ECSC products are concerned, 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. Aceralia is a company incorporated as a *sociedad anonima* under Spanish law. It is controlled by Arbed. It is the largest steel producer in Spain and manufactures and distributes flat steel products, long steel products and processed steel products. These activities fall under the ECSC Treaty. Further, Aceralia carries out activities falling under the EC Treaty, such as the manufacture of certain types of small carbon welded tubes and products for the construction industry, and it carries out transformation activities.
4. Arbed is a company incorporated as a *société anonyme* under the laws of Luxembourg. It is a major European steel producer with important operations in Belgium, Germany, Italy, Spain and the USA. In particular, its main activities are the production and distribution of steel products (including heavy and light long products, flat products and stainless steel products), the trade of scrap and the distribution of some raw materials for the steel industry (especially ferro-alloys and non-ferrous metal). Arbed has also certain other activities in the engineering sector. All these activities fall both under the ECSC Treaty and the EC Treaty.
5. Usinor is a company incorporated as a *société anonyme* under French law. It is one of the largest steel producers in the Union and has operations in Belgium, Germany, Italy, Spain and the USA. It manufactures, processes and distributes steel products (in particular, flat carbon steel products, stainless steel and other alloy steel products). These activities fall both under the ECSC Treaty and the EC Treaty.

II. THE OPERATION

6. The operation consists in a full legal merger with a complete amalgamation of all businesses of Aceralia, Arbed and Usinor. For this purpose, it will be created a new single corporate entity called Newco Steel (“Newco”), structured as a fully integrated group. Newco, which will be incorporated as a *société anonyme* under the laws of Luxembourg, has been established with the purpose of making an exchange offer of its shares for the entire issued share capital of each of the parties. It shall simultaneously launch three separate conditional exchange offers on all ordinary shares of Aceralia, Arbed and Usinor outstanding at the time of the offers. All three offers will be conditioned upon an acceptance of at least 75% of the issued shares in Aceralia, Arbed and Usinor. On completion of the offers, Aceralia's shareholders will hold approximately 20.1% of Newco, Arbed's 23.4% thereof and Usinor's shareholders will hold the remaining 56.5%.

III. CONCENTRATION

7. The notified operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

8. The combined aggregate world-wide turnover of Aceralia, Arbed and Usinor is in excess of EUR 5.000 million (Arbed/Aceralia, EUR 13.232 million and Usinor, EUR 15.733 million in 2000). Each of them has a Community-wide turnover of more than EUR 250 million (Arbed/Aceralia, EUR [...] million and Usinor, EUR [...] million in 2000) and they do not achieve more than two thirds of their aggregate Community-wide turnover within one and the same Member State⁴. The notified concentration therefore has a Community dimension under Article 1(2) of the Merger Regulation.

V. COMPATIBILITY WITH THE COMMON MARKET

A. THE RELEVANT PRODUCT MARKETS

9. For the markets concerned by the Merger Regulation, the parties' businesses overlap in the following sectors:
- Construction industry products: construction sheets (profiles) and sandwich panels
 - Tailor welded blanks
 - Steel tubes

Construction industry products

10. The notifying parties have identified two distinct relevant product markets within the sector of steel elements for construction:
- Construction sheets or profiles
 - Sandwich panels
11. Both types of products are used in the construction of industrial, agricultural, public and residential buildings. According to the parties, however, the following elements differentiate construction sheet profiles from sandwich panels: (1) technical characteristics: contrary to panels, profiles do not have thermic insulation properties; (2) average prices: the average price of profiles is two to three times lower than that of sandwich panels.
12. In previous decisions, the Commission has found that construction profiles and sandwich panels constitute separate product markets⁵. Furthermore, the Commission has made a distinction between two different stages: (1) the production of profiles and panels; and (2) the installation of these products⁶. Nevertheless, the activities of the parties do not overlap in the installation of steel elements for the building industry;

⁴ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ No C 66 of 2 March 1998, page 25).

⁵ Case No. IV/M.0925 - Krupp Hoesch / Thyssen; Case No. IV/M.1329 - Usinor / Cockerill Sambre; Case No. IV/M.1595 - British Steel / Hoogovens.

⁶ Case No. IV/M.0925 - Krupp Hoesch / Thyssen; Case No. IV/M.1329 - Usinor / Cockerill Sambre.

therefore, the present decision will only address the markets for the production of either construction profiles and sandwich panels.

13. Further, according to the parties, steel products for the construction sector face competition from several other materials that may be used for the same applications and in the same conditions, such as aluminium, plastics, and composite materials. However, the Commission has rejected in the past the possibility of these materials being part of the same product market, inasmuch as there exist important price differences between them and because of the particular characteristics of the use of steel products in the building industry (flexibility of use, ease of replacements and maintenance)⁷. The market investigation in this case has largely confirmed this view. However, there is no need to take a final decision on the exact delimitation of the market, since it does not affect the competitive assessment of the case.

Construction sheets (profiles)

14. Construction sheets are flat steel products, galvanised and pre-coated. Profiles are used in the construction industry for cladding, roofing and decking. They are produced by passing coated strip through profiled rollers. Profiles can have various sections (corrugated, ribbed, etc) according to the type of profiled roller used in their production. As mentioned before, profiles do not have thermic insulation properties.
15. The parties submit that it is not necessary to further subdivide profiles according to the different existing sections. Indeed, the Commission has established in previous decisions that there is no great difference in price between different sections and that there is a high level of supply-side substitutability as the same basic equipment can make many different sections merely by changing the rolls⁸.

Sandwich panels

16. Sandwich panels are made of an insulating core, generally of polyurethane foam, covered by two steel facings. Like profiles, most of them are used in the construction industry as cladding or roofing.
17. In previous decisions, the Commission suggested that a distinction should be made between standard sandwich panels and refrigerating panels. Indeed, the latter, which are primarily used in the food and pharmaceutical industries, have specific properties (better insulation and resistance to fire, humidity and chemical agents) and are significantly more expensive than standard sandwich panels (classic panels)⁹. However, there is no need to take a final decision on the exact delimitation of the market, since it does not affect the competitive assessment of the case. The precise definition of the relevant market can therefore be left open.

⁷ Case No. IV/M.1329 - Usinor / Cockerill Sambre.

⁸ Case No. IV/M.1595 - British Steel / Hoogovens.

⁹ Case No. IV/M.1329 - Usinor / Cockerill Sambre; Case No. IV/M.1595 - British Steel / Hoogovens.

Tailor welded blanks

18. Tailor welded blanks are manufactured by cutting to size and welding together various individual cold rolled sheets, enabling complex shapes embodying steel of different thicknesses to be produced¹⁰. Tailor welded blanks are used exclusively in the automotive industry. The welding operation can be carried out either by electric resistance or by using a laser. However, the parties submit that, whatever the welding process used, tailored blanks constitute a single product market.
19. In previous decisions¹¹, the Commission found tailored blanks to constitute a product market separate from the markets of uncoated or coated cold rolled sheets. In particular, the use of tailored blanks is characterised by its flexibility, allowing the customer to produce single components rather than having to produce several components and weld them together. The value added in the manufacturing process averages more than 50% of the cost of the raw materials used. With regards to a possible further segmentation of the market according to the welding process used, it appears that both technologies mentioned above are readily available and there is demand-side substitutability between all tailor welded blanks.
20. On the basis of the above, the Commission considers tailor welded blankets as constituting a relevant separate product market.

Steel tubes

21. The parties propose, first, a segmentation of tubes by type of steel, namely between carbon tubes and stainless steel tubes. Secondly, carbon tubes are divided according to their size into small and large tubes. Thirdly, welded tubes are considered to be separate from seamless tubes. Fourthly, the parties distinguish, among small carbon welded tubes, between standard tubes and precision tubes. Lastly, standard or non-precision tubes (also known as trade and transport tubes) are further segmented, *inter alia*, into commercial tubes intended for heating and plumbing applications and structural and hollow section tubes.
22. In previous decisions¹², the Commission has already distinguished between carbon and alloy steel tubes, on the one hand, and stainless steel tubes, on the other. The distinction was based on the respective chemical composition and properties of carbon and stainless steel tubes. Stainless steel tubes have a high content of chromium (at least 13%), a low content of carbon and may contain non-ferrous metal such as nickel or titanium. Alloyed tubes have a chromium content under 13%. The percentage of chromium content determines the manufacturing process (extrusion press / rolling mills). Further, there are substantial price differences between welded tubes made from stainless steel and welded tubes made from alloyed tubes.
23. Likewise, the Commission has concluded that large-diameter tubes do not belong to the same product market as other line pipes, because of the differences in the production

¹⁰ Case No. IV/M.1595 - British Steel / Hoogovens.

¹¹ Case No. IV/M.0925 - Krupp Hoesch / Thyssen; Case No IV/M.1329 - Usinor / Cockerill Sambre.

¹² Case No IV/M.0315 - Mannesmann / Vallourec / Ilva; Case No IV/M.0484 - Krupp / Thyssen / Riva / Tadfin / AST.

techniques and fields of application¹³. Welded and seamless tubes are also to be considered as belonging to separate markets¹⁴. Welded tubes are made from hot rolled strip which is curved into a tube and continuously welded, whereas seamless tubes are made from tube rounds or ingots/billets which are pierced and rolled; the two production techniques are totally distinct and require different machinery and equipment. Further, seamless tubes are in general more expensive than welded tubes.

24. Furthermore, within the sector of welded carbon steel tubes, the Commission has generally made a distinction between precision tubes and commodity tubes (standard or non-precision tubes)¹⁵. Precision steel tubes can be distinguished from non-precision steel tubes primarily through their dimensional accuracy and other product characteristics, as well as through the production processes, the fields of application and prices.
25. Finally, the Commission has specified as well that, within commodity tubes, it is also possible to distinguish several categories of tubes, in particular, commercial tubes, mechanical tubes and structural tubes, on the basis of their characteristics, distribution systems, prices and end-uses.
26. Notwithstanding the above, it is not necessary to reach a definitive conclusion on all the relevant product markets, since on no possible definition would the operation threaten to create or strengthen a dominant position.

B. THE RELEVANT GEOGRAPHIC MARKETS

Construction sheets (profiles)

27. The parties have identified several national and regional markets, while pointing out that it could be possible as well to argue for the existence of a Community wide market. In particular, they consider as affected markets for the purposes of this decision:
 - the Benelux;
 - Spain;
 - Portugal;
 - France; and
 - Germany
28. In previous decisions, the Commission has found that the relevant geographic market for profiles can be considered as national in scope¹⁶. In particular, the Commission has found that France and Germany constitute two distinct geographic markets on the

¹³ Case No. IV/M.0222 - Mannesmann / Hoesch.

¹⁴ Case No IV/M.0484 - Krupp / Thyssen / Riva / Tadfin / AST; Case No IV/M.0906 - Mannesmann / Vallourec; Case No. IV/M.1595 - British Steel / Hoogovens

¹⁵ Case No IV/M.0906 - Mannesmann / Vallourec; Case No. IV/M.1595 - British Steel / Hoogovens.

¹⁶ Case No. IV/M.1329 - Usinor / Cockerill Sambre; Case No. IV/M.1595 - British Steel / Hoogovens.

grounds of, *inter alia*, the importance of the very short delivery times required, in particular for small and medium sized construction projects, the low level of imports into these countries, price differences between Member States and, finally, the existence of national standards and regulations¹⁷.

29. However, the Commission has not distinguished in the past between the Benelux countries, as there are significant trade flows between Belgium, Luxembourg and the Netherlands (around 30% of the consumption in each of these countries is imported), transport costs are not significant within the Benelux, there are no significant price differences between the three countries and national standards are similar¹⁸.
30. In sum, the Commission considers that the relevant geographic markets for the assessment of this operation are of a national dimension, with the exception of the Benelux, which will be considered as a single market.

Sandwich panels

31. The parties consider the geographic market for sandwich panels to be Community-wide, in particular for the following reasons: (1) there is a high level of intra-EU trade flows in panels, representing approximately a third in total EU consumption, (2) there is a high degree of standardisation of the product; (3) there are no significant price differences within the EU; and (4) transport costs are low [...].
32. The delimitation of the geographic market as Community-wide is in line with previous Commission's decisions¹⁹ and has been largely confirmed by the market investigation.

Tailor welded blanks

33. The parties submit that the relevant geographic market for tailor welded blanks is at least EU-wide, on the basis of the following arguments: (1) tailored blanks are used exclusively in the automotive industry, whose major operators purchase on an international basis; (2) transportation costs represent a marginal proportion of the value of the end product, especially given the high added value that results from the welding process; and (3) there is significant cross-border trade and prices are similar throughout the EU.
34. The parties' submission is in line with previous Commission decisions, where the market for tailored blanks was considered to be Community-wide in scope²⁰.

¹⁷ Case No. IV/M.1329 - Usinor / Cockerill Sambre.

¹⁸ Case No. IV/M.1595 - British Steel / Hoogovens.

¹⁹ Case No. IV/M.0925 - Krupp Hoesch / Thyssen; Case No. IV/M.1329 - Usinor / Cockerill Sambre; Case No. IV/M.1595 - British Steel / Hoogovens.

²⁰ Case No. IV/M.0925 - Krupp Hoesch / Thyssen; Case No. IV/M.1329 - Usinor / Cockerill Sambre; Case No. IV/M.1595 - British Steel / Hoogovens.

Steel tubes

35. The parties submit that the geographic market for standard and precision tubes is at least Community-wide, if not EEA-wide. Indeed, transport costs are not significant relative to the value of the products. Further, European markets are characterised by a high level of mutual market penetration as well as by the absence of significant price differences. However, the exact definition of the relevant geographic markets can be left open, since it does not affect the assessment of the proposed concentration.

C. COMPETITIVE ASSESSMENT

Construction sheets (profiles)

36. The operation will bring about high market shares in several markets. In France, the parties' combined market share in 2000 was [35-45]% ([35-45]% in 1999). Nevertheless, it should be noted that the aggregation will be very small, since Arbed/Aceralia's market share was [<5]% in 2000 ([<5]% in 1999). On the other hand, Newco will face competition from competitors such as Corus ([20-30]% market share in 1999), Isocab ([5-15]%) and Profilage de l'Ouest ([5-15]%). The operation, therefore, will have no significant impact on the French market for profiles.
37. In the Benelux, the parties' combined market share in 2000 was [30-40]% ([30-40]% in 1999) with an aggregation of [10-20]%. However, after the merger the parties will face competition from strong operators such as Corus, whose market share in 1999 amounted to [30-40]%, and Thyssen, with a market share of [5-15]% in 1999. Non-integrated producers, which represent over [20-30]% of the market, seem to be another effective and viable alternative. Lastly, it should be noted that the cost of entry on the market is relatively low.
38. In the rest of the affected countries the parties' combined market share will be below [25-35]%.
39. On the basis of the above, the proposed operation, therefore, does not modify the competitive position of the parties in the French market for profiles and, likewise, does not give rise to serious competition concerns in the remaining affected markets for construction sheets.

Sandwich panels

40. The parties' combined market shares in 2000 for sandwich panels (including both classic and refrigerating panels) was [15-25]% in the EU ([15-25]% in 1999). If we were to further segregate the market, the parties' combined market share in 2000 would be [15-25]% for classic panels, while the operation would lead to no significant overlap in refrigerating panels, where Usinor presence is not particularly strong and Arbed/Aceralia had only insignificant sales. Further, there are a number of important competitors in the market such as Metecno ([15-25]%), Kingspan (10-20)%, Corus [10-20]%) and Thyssen ([10-20]%)²¹.
41. Therefore, the operation is not likely to lead to the creation of a dominant position on this market.

²¹ Market shares for sandwich panels (both classic and refrigerating) in the EU in 1999.

Tailor welded blanks

42. The combined market share of the parties in the EU was below [20-30]% in 2000 and in the previous years. The European market for tailor welded blanks is clearly dominated by Thyssen, whose market share in 1999 amounted to [40-50]% ([50-60]% in 1998). Other competitors are Voest-Alpine ([5-15]% in 1999), Corus ([<10]%) and Salzgitter ([<10]%). In addition to these steel producers, some automotive manufacturers appear to have significant in-house capacity for the production of tailored blanks.
43. On the basis of the above, the operation is not likely to lead to the creation of a dominant position on this market.

Steel tubes

44. On the basis of the definitions provided above, the activities of the parties overlap only in the market for small welded carbon tubes or, alternatively, on the markets for (a) precision tubes, and (b) standard tubes, including the categories of commercial tubes and structural and hollow section tubes.
45. Under any of these markets definitions, the parties' combined market shares are below [20-30]% in 2000 in the EU. The only exception are structural and hollow section tubes, where their combined market share in 2000 amounts to [25-35]%. In this last segment, however, the aggregation brought about by the operation is not significant, inasmuch as Arbed/Aceralia's market share amounted to only [<5]% in 2000. Further, the parties face competition from strong players like Corus ([15-25]% market share in 1999), Mannesmann ([10-20]%), Marcegaglia ([5-15]%), Rautaruukki ([5-15]%) and Voest Alpine ([<10]%).
46. Therefore, the operation is not likely to lead to the creation of a dominant position on any of the markets for steel tubes.

VI. CONCLUSION

47. For all the above reasons, the Commission finds that the notified concentration, as far as EC products are concerned, does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,