

***Case No IV/M.239 -
AVESTA / BRITISH
STEEL / NCC / AGA /
AXEL JOHNSON***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 04.09.1992

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PUBLIC VERSION

MERGER PROCEDURE
Article 6(1)b decision

Registered with advice of
delivery

To : the notifying parties

Dear Sirs,

Subject: Case No. IV/M.239 - Avesta/British Steel/NCC/AGA/Axel Johnson
Your notification pursuant to Article 4 of Council Regulation
(EEC) No. 4064/89

1. The proposed concentration concerns a joint venture in the stainless steel sector, to be known as Avesta Sheffield AB (ASAB), between British Steel and three Swedish companies, NCC, AGA and Axel Johnson. The operation was notified to the Commission on the 4th August 1992 pursuant to Article 66 of the Treaty of Paris (the ECSC Treaty) and Article 4 of Council Regulation (EEC) No. 4064/89. This decision is only concerned with those products which fall within the jurisdiction of the EEC Treaty (and representing approximately 20% of the transaction)⁽¹⁾.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation, and that it does not raise serious doubts as to its compatibility with the common market.

THE PARTIES AND THE OPERATION

3. British Steel plc (BS) was created in 1988 by the privatisation of the British Steel Corporation whose business was vested in BS. BS is divided into four main business groupings: British Steel

⁽¹⁾ The products under the ECSC Treaty will be dealt with in a separate Commission decision pursuant to Article 66 of that Treaty.

General Steels, British Steel Strip Products and British Steel Stainless which manufactures steel products and sells both directly to customers and through British Steel Distribution, which also processes and distributes worldwide steel produced outside BS.

4. NCC AB (NCC) is the holding company for the NCC group which is principally involved in the contracting and real estate sector in Sweden. NCC is controlled by the Johnson family mainly through a family foundation.
5. Axel Johnson HAB (Axel Johnson) is a wholly owned subsidiary of Axel Johnson AB and acts as a holding company for the Group's shareholding in Avesta. Axel Johnson is principally involved in the supply of fast-moving consumer goods. It is in turn a wholly owned subsidiary of Axiom International AB the entire share capital of which is owned by Antonia Axson Johnson and her family.
6. AGA AB (AGA) is a Swedish company and parent company of the AGA Group whose core business is the supply of industrial and medical gases and related equipment and services. AGA is also a supplier of cold storage services.
7. Avesta AB (Avesta) is a Swedish company which is the operating parent of the Avesta Group. The business of Avesta is the manufacture and sale of stainless steel products. Avesta is currently under the control of NCC and Axel Johnson who together hold 54.7% of its shares. The other shareholders of the Avesta Group are AGA and the public with, respectively, 12.1% and 33.2% of the outstanding shares.
8. Prior to completion of the proposed operation, BS has concentrated the assets to be contributed to ASAB in British Steel Stainless Limited (the "hive down"). The actual transaction will be effected by the issue by Avesta to BS of such number of new shares as would result in BS holding 40% of the equity of the joint venture. Avesta will also issue loan stock to BS in exchange for substantially all of BS's stainless steel production and distribution activities.
9. After implementation of the proposed operation, the principal shareholders of ASAB will be BS (40%), NCC (25.1%), Axel Johnson (7.54%) and AGA (7.23%). They will conclude a Shareholders' Agreement which will regulate the relationship, rights and obligations between themselves.

I. COMMUNITY DIMENSION

10. The operation has a Community dimension. The worldwide turnover of all undertakings concerned amounts, in their respective last financial year, to more than ECU 5,000 million. The Community-wide turnover of each of BS, Avesta and AGA exceeds ECU 250 million. The undertakings involved do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State.

II. CONCENTRATION

Joint Control

11. BS will enter into a Shareholders' Agreement with NCC, Axel Johnson and AGA, who will between them have 39.9% of the shares in ASAB. The Shareholders Agreement provides for joint control of ASAB within the meaning of the Merger Regulation.
12. The Shareholders' Agreement provides that major decisions such as, inter alia, increases in share capital, the appointment and dismissal of the Managing Director, changes in the Articles/Statutes, acquisitions or disposals above a certain size, and the approval of annual operating budgets and business plans require the prior written consent of (a) BS and (b) NCC and at least one of Axel Johnson and AGA.

Full function JV

13. Avesta will continue its existing activities in the area of stainless steel and will take over those of BS. The company will, therefore, be a joint venture that will perform on a lasting basis all the functions of an autonomous entity. All the necessary tangible and intangible assets for it to act autonomously will be vested in ASAB for an indefinite period. Moreover, ASAB will be listed on the stock exchanges in Stockholm and London.

Absence of coordination of competitive behaviour

14. The Swedish Shareholders have no steel production or distribution business other than their holdings in Avesta. They will covenant not to compete with ASAB in the manufacture or sale of stainless steel in the EC, EFTA, USA, Canada and Mexico for a period of five years. There is, therefore, no possibility of coordination of competitive behaviour between ASAB and the Swedish shareholders nor between BS and the Swedish shareholders in the production of EC products.
15. BS will contribute almost all its stainless steel activities to ASAB. Only negligible stainless steel distribution and processing activities in the EC will remain with BS, where it is not feasible to separate out those activities of a wider business (see next paragraph).
16. BS gives the same non-compete covenant as the Swedish shareholders with certain exceptions concerning some of its subsidiaries. Three of them have minor sales within the EC. These subsidiaries, however, will only be entitled to sell stainless steel manufactured by third parties either in "de minimis" quantities as part of a package or where customers make a specific request as part of an order. "De minimus" activities of this kind do not give rise to any likelihood of coordination that could substantially alter the concentrative nature of a given notified operation. Furthermore, it would be commercially unreasonable for BS to re-enter the stainless steel production market later given the capital investment necessary to do so.

17. BS will remain active in other steel markets but this will not give rise to coordination of competitive behaviour under the Merger Regulation and in respect of EC products between BS and ASAB. Stainless steel is a different market from those in which BS will remain active, and the production process of stainless steel is different from that for other steels. There is only some degree of supply-side substitutability in limited circumstances, relating to certain intermediate processes. On the demand side, the product characteristics and end uses of stainless steel are substantially different from other types of steel.
18. The stainless steel manufacture by ASAB will not rely on BS's upstream activities. The main raw material is stainless steel scrap which is traded internationally as a commodity. There is no dependence on the carbon steel manufacturing activities of BS. So far as downstream activities are concerned, BS is placing its stainless stockholding activities in ASAB (except for the de minimis exceptions given above) so ASAB will rely upon its own distribution network of service centres and warehouses to supply the European stainless steel market.
19. In view of the above, there are no grounds to believe that the establishment of ASAB will result in coordination of competitive behaviour between the parents and the joint venture or between the parents themselves. Thus, the notified operation constitutes a concentration within the meaning of Article 3 of the Merger Regulation.

III. COMPATIBILITY WITH THE COMMON MARKET

Relevant Product Market

20. The joint venture company will be producing stainless steel which is an alloy containing 10.5% or more of chromium, with or without other alloy elements, and less than 1.2% of carbon. Its production will principally consist of flat products, both cold rolled and hot rolled, long products, semi-finished products and welded tubes. Only some of these products fall under the EC treaty and are thus covered by the Merger Regulation and the products with which this decision is concerned are restricted to cold rolled flat products (less than 500mm wide) and welded tubes.
21. All cold rolled flat products (sheet and coil) together can be considered as a separate product market because of the high degree of supply side substitution. Mills can roll widths of below 500mm (EC products) and above (ECSC products) and material of less than 500mm can be slit from wider coils.
22. As with cold-rolled flat products, there is a high degree of supply-side substitutability between different sizes and types of tube. Indeed, the market may in fact be wider and also include seamless stainless steel tubes (which neither BS nor Avesta make) although it can be left open whether seamless tubes are part of the market since to include them would not change the competition assessment. British Steel and Avesta do not manufacture stainless steel seamless tubes

although they do distribute small amounts. This market is distinguished from that for ordinary carbon steel welded tubes both by their specific technical and aesthetic properties and by price: welded stainless steel tubes cost 5-6 times more than welded carbon steel tubes (£ 1800-1900 as opposed to £ 300-400 per ton).

23. Only a third of EC production of stainless steel products is sold directly by mills to end consumers, the majority being distributed to end users through stockholders and service centres which perform the traditional wholesaling function of taking bulk orders from the manufacturer and selling on in smaller quantities. In recent years stockholders have developed their in-house processing facilities in order to add value and improve their service to customers. Such processing includes cutting to length, slitting, shearing and polishing. Both Avesta's pre-existing business and BS's stainless steel business have developed a distribution network of service centres and warehouses. This downstream distribution and service activity constitutes a separate market, the relevant product market being the stockholding of all stainless steel products rather than individual markets for each product. Whilst there is a degree of specialisation in stockholding, the majority of stainless steel stockholders carry most stainless steel product groups and it is reasonable therefore to consider the overall market for the distribution of stainless steel products⁽¹⁾. For the purposes of this analysis under the Merger Regulation, only the distribution of EC products is, however, relevant.

Relevant geographic Market

24. From an economic point of view, the relevant geographic market for stainless steel products appears to be Western Europe (including both EC and EFTA Member States). However, the competition analysis is not changed if the EC market only is taken and the following assessment is based on the EC market. The market for stainless steel products is said to be substantially homogeneous, a condition which is assured by the extensive trade in stainless steel between the countries of Western Europe. For example, the share of imports from other EC Member States in the UK's consumption of cold-rolled flat products is 41%, and the equivalent figures for Germany and France are 40% and 47% respectively. A similar degree of intra-EC trade exists in stainless steel welded tubes. Despite the relatively high market share enjoyed by the major steel producers in their own national market, the ability of stainless steel producers to sell their products throughout the Community leads to the conclusion that the relevant geographic market is at least Community-wide.
25. The relevant geographic market for stainless steel distribution and service activities must be considered on two levels. BS and most of the stainless steel producers in

⁽¹⁾ See the decision of 29.04.1991 in case No. IV/M.073 - Usinor/ASD

the Community have developed their own distribution networks both within and beyond their national markets. In evaluating the implications of this vertical integration for competition between stockholders it is necessary to consider the supply of stainless steel products to stockholders at a Community level. However, stockholding is a local service and the geographic area serviced by an individual depot will be determined by transport costs and delivery times. For stainless steel transport costs are less important than for carbon steel because of the higher value of the product. The geographical market in which a depot operates will also be determined by the location of competing stockholders' depots and in addition stockholders compete to some extent with direct sales from the producing mills. Hence the effect of the concentration in relation to this activity needs also be assessed at a regional level. BS suggested that it is national rather than regional markets which are relevant for the distribution of stainless steel products, but as is shown below the competition analysis is unaltered if the stricter market definition is used.

Assessment

26. Cold rolled flat products account for approximately 53% of stainless steel consumption in Western Europe. A split of the market between material under 500mm and over 500mm is not practicable, primarily because it is an artificial division relating to a production technology at the time of the Treaty of Paris (1951) which has since been largely replaced by rolling wide and slitting to narrower widths but also because a significant amount of slitting of wide coil to narrow is carried out at service centres as well as at the producing mill. However, it is estimated that some 25% of all mill deliveries to Europe in 1991 were narrower than 500mm. In the case of Avesta some 20% of total deliveries to Europe were ultimately sold in widths less than 500mm.
27. On the basis of the parties' market shares in 1991 the joint venture would have a combined market share of 12% of the cold rolled flat products market in the Community. The remainder of the market is supplied by about seven major competitors.
28. Welded and seamless tubes account for 6% of stainless steel consumption in Western Europe. ASAB's combined market share for welded tubes in the Community would be 15% (Avesta 12% and BS 3%) on the basis of 1991's figures. Approximately half of the market is estimated to be accounted for by the four largest competitors (including ASAB).
29. The parties estimate that 69% of total EC demand for stainless steel products in 1991 was met by stockholders. Of this demand, 13% was supplied by stockholders owned by BS or Avesta. The parties' stockholding operations overlap in only three areas of the EC: the West Midlands in the UK (Avesta has a service centre in Birmingham and there are British Steel-owned service centres at Wednesfield and West Bromwich), the Ruhr (Avesta has a service centre at Willich and BS has a service centre at Hilden and a warehouse at Ratingen) and possibly the Parisian region (Avesta has a

warehouse at Arras and BS one at Senlis). Warehouses provide a simple distribution service ex-stock whilst service centres process (cutting/slitting/ polishing) material as well as selling from stock. In all three areas there are numerous competing stockholders, even if the area of operation is considered to be regional rather than national (in the West Midlands of the UK there are nearly 70 competitors, at least 11 in the Paris region and over two dozen in the Ruhr). Barriers to entry to stockholding are, in any case, low requiring only warehouse space, working capital and materials handling equipment (although certain specific types of value-added processing may require greater investment).

30. Despite ASAB's vertical integration downstream into stockholding there is little incentive for it to refuse to stock other steel producers' products because most producers have their own distribution network and secondly because of the large number of independent stockholders. Such exclusive supply arrangements would be more likely to reduce Avesta's share of the stockholding market than harm its competitors. It is in any case questionable whether the concentration would result in any change in the competitive situation of the market in this respect. Should ASAB refuse to supply other stockholders, these stockholders would have little difficulty in finding alternative sources of supply in the EC.
31. In view of the market shares of the proposed joint venture company and the structure of the stainless steel stockholding market, the concentration will not create or strengthen a dominant position such as to significantly impede effective competition with regard to the products which come within the jurisdiction of the Merger Regulation.

IV. ANCILLARY RESTRAINTS

32. The Master Agreement provides for certain supply and services agreements between British Steel and ASAB post-completion which are authorised on completion for a maximum of two years since they are interim arrangements intended to ensure continuity of supply for ASAB (and BS) until longer-term arrangements can be made for new in-house or external provision:
 - BS will continue to provide to the joint venture certain management and corporate services including international affairs, energy and general supplies purchasing, research and development and hire rolling and processing. The joint venture's UK operation will continue to provide to BS alloy and mineral purchasing services. The services agreements are to be to a maximum of 2 years.
 - BS has further agreed to act as an agent for the UK-based operations of ASAB, selling all goods manufactured, or procured for export, to British Steel Export Ltd. and also to forward, as a UK agent for ASAB, certain goods sold by British Steel Export Ltd. These agreements equally are to be limited to two years.

33. BS is to grant to ASAB a non-exclusive, royalty-free licence to use existing and future patents and know-how related to improvements in the production and processing of stainless steel. ASAB will agree to keep the know-how confidential for the duration of the agreement plus five years. BS will allow ASAB non-exclusive use of certain of its registered trademarks provided the requisite quality levels are met. These restrictions are necessary to allow the transfer of the full value of BS's assets to ASAB.
34. As mentioned earlier, BS and the main shareholders of Avesta will enter into a five-year non-competition agreement. This restriction expresses the parties' intention to concentrate their future activities in ASAB.
35. These agreements are directly related and necessary to the implementation of the concentration and are, therefore, ancillary within the meaning of the Regulation.

V. FINAL ASSESSMENT

36. Based on the above findings, the Commission has come to the conclusion that the proposed concentration does not raise serious doubts as to its compatibility with the common market.

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

For the Commission,