

***Case No COMP/M.2404 -
ELKEM / SAPA***

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

Article 6(1)(b) NON-OPPOSITION
Date: 26/06/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.06.2001

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.2404 – Elkem/Sapa
Notification of 21.05.2001 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 21 May 2001, the Commission received notification regarding the acquisition of sole control by the Norwegian firm Elkem ASA (“Elkem”) over the Swedish company Sapa AB (“Sapa”) by way of purchase of shares.

I. THE PARTIES

2. Elkem is active in the production and marketing of various ferro-alloys, silicon metals, microsilica, carbon, energy and primary aluminium. Its activity in aluminium is carried out through a joint venture, Elkem Aluminium ANS, in which the American company Alcoa holds the other 50%. Alcoa is also the largest shareholder in Elkem with 35.2%. Elkem holds a 6% interest in a subsidiary of Alcoa active in cast aluminium parts for the automobile industry.
3. Despite its substantial shareholding Alcoa does not have control over Elkem. Alcoa has increased its shareholding from under 25% to 35.2% during the course of the past 12 months. At the last annual shareholders meeting (AGM) of Elkem held 10 May 2001 [...] of the issued voting shares in Elkem were present. Therefore, Alcoa did not have a simple majority required to determine the commercial strategy and business policy of Elkem. Moreover, there is a very active and influential second largest shareholder, the

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).

Norwegian company Orkla ASA. Orkla holds 32.8% of the shares in Elkem and is opposing board representation of Alcoa. Orkla's managing director and CEO elect is the chairman of the board of directors of Elkem. At the last AGM of Elkem, Orkla was able to vote for 39% of Elkem's issued voting shares due to proxies from other shareholders. As a consequence no Alcoa representative has been elected to the board of directors of Elkem. In addition, there are two funds which account for 4.9%, which have expressed their opposition to Alcoa. Therefore, Alcoa's current stake in Elkem is, both on the basis of current shareholder structure and past attendance at the AGM, not sufficient to exercise control over Elkem.²

4. Sapa's activities comprise aluminium soft alloy extrusions, aluminium flat rolled products and plastic components for the automotive industry. It was known under the name "Gränges" until 1998, when its then mother company Electrolux spun it off.

II. THE OPERATION

5. The notified operation concerns the acquisition of sole control by Elkem in Sapa through the acquisition of a minority stake in Sapa.
6. Elkem's strategy to diversify into complementary business sectors identified Sapa as a potential acquisition target. In order to determine the suitability of Sapa as an acquisition candidate Elkem pursued a step by step approach of acquiring non controlling share-holdings in Sapa. Between May 1998 and October 2000 Elkem acquired a 4.9% stake in Sapa. On 19 and 20 February 2001 Elkem bought via a broker 27.2% in Sapa, bringing its total shareholding to 32.1%. Further to this acquisition Elkem contacted Sapa to inform it of its acquisitions and future intentions for Sapa. Sapa considered that the stake of 32.1% was equivalent to a controlling interest in the company. Elkem disagreed with this view. In order to resolve this uncertainty over the control issue Elkem decided to bring its shareholding up to 35.6%. It proceeded to acquire another 3.5% shareholding in Sapa through its broker and a call option with a third party broker. Those agreements were concluded on 09.03.2001. The acquisition of this shareholding would - in Elkem's view - give them control over Sapa.

III. CONCENTRATION

7. Under Sapa's constitution strategic decisions require a simple majority of those present at general meetings. Since Elkem does not hold a majority of shares in Sapa it does not have control on a legal basis. However, its shareholding does give it de facto control on the basis of the attendance of previous general annual meetings.³ Attendance at the general annual meeting of the shareholders has never been higher than 56.2% at any of the four AGMs held since Sapa became independent and prior to the AGM of 2001. This means that a shareholding of 32.1% as a result of the transaction on 19./20.02.2001 is sufficient for de facto control.

² Commission notice on the concept of a concentration under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (OJ C 66, 2.3.1998, p.5), paragraph 14.

³ Commission notice on the concept of a concentration under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (OJ C 66, 2.3.1998, p.5), paragraph 14.

8. The purchase of shareholdings in Sapa on 19./20.02.2001 that raised Elkem's shares in Sapa to 32.1% therefore constitutes a concentration within the meaning of Article 3(1)(b) of Council Regulation (EEC) No 4064/89.

IV. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover in 2000 of more than EUR 2,500 million (Elkem 1,196 million EUR; Sapa 1,822 million EUR).⁴ The aggregate Community-wide turnover of each party exceeds EUR 100 million (Elkem [...] million EUR; Sapa [...] million EUR). In each of at least three Member States, namely France, Germany and the United Kingdom, each of the parties has a turnover in excess of EUR 25 million, and in each of those Member States the parties' combined aggregate turnover exceeds EUR 100 million. The undertakings concerned do not achieve more than two thirds of their aggregate Community-wide turnover in one and the same Member State. The notified operation therefore has a Community dimension.

V. COMPETITIVE ASSESSMENT

10. The notified operation concerns the markets for primary aluminium, where Elkem is active, as well as for soft alloy aluminium extrusions and aluminium flat rolled products, where Sapa is active.

1. The relevant product markets

11. **Primary aluminium** is produced by smelting alumina. The smelting process converts alumina into its two constituent elements, aluminium and oxygen. The separation of aluminium from oxygen is accomplished by high-temperature electrolysis. Aluminium can be shipped in its molten form in road tankers directly to a user's plant, or it can be cast into ingots (rectangular), rolling slab (rectangular), or billets (cylinder) of varying sizes and shapes, either in pure form or alloyed with other metals (e.g. manganese, magnesium, copper, zinc or iron).
12. **Extrusions** are formed by pushing aluminium billets through a die. The process of extrusion offers the possibility of giving aluminium various shapes and can thus be used in a large variety of applications, such as building and construction (for instance, window frames), transport, electrical engineering and so forth. In previous Commission decisions,⁵ two separate markets for aluminium extrusions have been identified: **hard-alloy extrusions** and **soft-alloy extrusions**. The market investigation in the present case confirmed those product market definitions.
13. **Flat rolled products** ("FRPs") are produced in a number of steps in hot and cold rolling mills, which can begin with aluminium ingot, scrap or molten aluminium. FRPs are used in a number of applications, such as in packaging,⁶ engineering, automotive, aerospace

⁴ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p 25).

⁵ See case M.675 Alcoa/Alumix. The most recent example is case M.2111 Alcoa/British Aluminium 27.10.2000

⁶ Ranging from beverage can body sheet to foil stock material used to make aluminium household foil.

industries and so forth. Rolling mills may be configured in such a way as to produce various types of FRPs depending on the final application (the so-called 'product mix'). In its decision in the case COMP/M.1663 – Alcan/Alusuisse,⁷ the Commission concluded that, in spite of a certain degree of supply-side substitutability in the production of FRPs, at least lithographic sheet could stand alone as separate product market. Sapa produces just one type of FRPs, brazing sheet for the use in heat exchangers. However, the precise product market can be left open since in all alternative market definitions considered there are no competition concerns.

2. *The relevant geographic market*

14. In line with the Commission's previous cases in this area,⁸ the geographical market for **primary aluminium** is world-wide and for **FRPs** EEA-wide.
15. With regard to **aluminium soft-alloy extrusions** the Commission has defined the geographical market as being EEA-wide in previous cases (see footnote 4). While there are some indications that the United Kingdom could constitute a separate relevant geographic market the precise definition can be left open in this case since in all alternative market definitions considered no competition concerns arise.

3. *Competitive Assessment*

16. Elkem's activity in the aluminium industry is confined to the market for primary aluminium. Sapa does not have a smelter at all. Therefore, no horizontal overlaps between Elkem and Sapa exist.
17. A vertical link exists between Elkem's primary aluminium activities on the upstream and Sapa's soft alloy extrusions and flat rolled products downstream.
18. On the basis of the geographic market definitions on which previous Commission decisions are based, as outlined above, the parties' market shares are as follows: Elkem has a world-wide market share of around [0-5%] for primary aluminium. Sapa's market share in the downstream activity of soft alloy extrusions in the EEA is [5-10%]. Sapa's market share for the downstream activity of FRPs is [0-5%] in the EEA. These market positions do not give rise to competition concerns.
19. If, on the basis of the same geographic market definitions, brazing sheet for the use in heat exchangers were to be considered a separate market, Sapa would have a market share of [30-35%] in the EEA. Given that Elkem has just [0-5%] of the upstream market for primary aluminium, which is a world market, there is no issue of foreclosure.
20. If one were to consider the United Kingdom as a separate geographic market for soft alloy extrusions, the market share of Sapa in the United Kingdom would amount to [15-20%]. In the light of the market position of Elkem in the upstream market for primary aluminium this would not give rise to the creation of a dominant position.

⁷ Commission Decision of 14 March 2000 pursuant to Article 8(2) of Council Regulation (EEC) No 4064/89

⁸ see Case M.1663 Alcan/Alusuisse

21. As described above, there are structural links between Alcoa and Elkem, which do not amount to control of Alcoa in Elkem. The market shares of Alcoa can, therefore, not be added to those of Elkem/Sapa in the market for soft alloy extrusions in which both Alcoa and Sapa are strong players. The Commission has nevertheless examined the possibilities to what extent competition between Alcoa and Elkem/Sapa may be affected by these structural links. The examination has shown that competitive behaviour will not be negatively affected by the transaction.

VI. CONCLUSION

22. 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