

***Case No COMP/M.2481 -
BALLI / KLOCKNER (see
ECSC.1359)***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 27/09/2001

*Also available in the CELEX database
Document No 301M2481*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.09.2001

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party:

Dear Sir/Madam,

**Subject: Case No COMP/M.2481 – Balli/Klöckner
Notification of 28.08.2001 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 28 August 2001, the Commission received a notification of a proposed concentration by which the undertaking Balli Group (UK) acquires control of the whole of the undertaking Klöckner (Germany) by way of purchase of shares. The operation was also notified to the Commission pursuant to Article 66 of the Treaty of Paris (the ECSC Treaty), however, the present decision is only concerned with those products which fall within the jurisdiction of the EC Treaty.
2. It is the view of the Commission that Balli is not an undertaking covered by Article 80 of the ECSC Treaty because it is not engaged in steel distribution, cf. below. Distribution should be understood as entailing an infrastructure for stocking, sale and delivery of the products in question.
3. It follows that the concentration benefits from an exemption from the requirement of prior authorisation by the Commission, pursuant to Article 6, second indent, of the Commission decision 25/67/ECSC of 22 June 1967. That provision exempts concentrations between steel distribution undertakings and undertakings not coming

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).

within Article 80 of the ECSC Treaty. The consequence of the exemption is that the present concentration should be examined exclusively under the Merger Regulation.

4. After examining the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No.4064/89² and that it does not raise any serious doubts as to its compatibility with the common market and with the EEA agreement.

I. THE PARTIES

5. **Balli** is a global commodities trader of steel, steel raw materials, aluminium and other materials. It is based in London and has offices throughout North and South America, Europe, the CIS, the Middle East, North Africa and Asia. The company is not physically involved in production, processing or distribution of these products.
6. **Klöckner** is a multi metals distributor with 297 locations spread over 12 countries in Europe and North America. It distributes steel, aluminium, plastics, roof and wall, hardware, connection technology and sun protection systems. Klöckner purchases steel in large quantities and sells it/or customises to small customers by cutting, splitting and processing the products. Distribution and processing represents [...] of the company's activities. Steel distribution and processing represents approximately [...] of Klöckner revenues.

II. THE OPERATION

7. At present Balli is a wholly-owned subsidiary of Balli Stiftung. Balli Stiftung is the sole shareholder of a German corporation (Goliat). Balli Stiftung will through Goliat acquire 94.5 % of the shares of Klöckner. The remaining 5.5% of the Klöckner shares will be acquired by a third party.

III. CONCENTRATION

8. The present transaction constitutes an acquisition within the meaning of Article 3(1)(b) of the Council Regulation whereby Balli acquires sole control of Klöckner by way of purchase of shares.

IV. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion³[...]. Each of the undertakings concerned has a Community-wide turnover in excess of EUR 250 million [...], 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 pursuant to Article 1(2) of the Merger Regulation.

² 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).

³ 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, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

V. COMPETITIVE ASSESSMENT

10. With regard to non-ECSC products Balli is active in trading of steel tubes and aluminium. Klockner is active in distribution of steel tubes and aluminium. Consequently, only tubes and aluminium are relevant for the present decision.
11. The parties have submitted that there are no horizontally or vertically affected markets with regard to non-ECSC products.

A RELEVANT PRODUCT MARKETS

12. The parties have submitted that steel trading and steel distribution constitute separate relevant product markets and similarly that aluminium trading and distribution constitute separate product markets.
13. The parties have referred to previous Commission decisions where it has been considered that physical steel distribution falls into three categories; steel stockholding, steel service centres and “Streckengeschäft”. Stockholding consists of holding a wide variety of steel products at convenient locations to supply the needs, mainly but not exclusively of small and medium sized clients, with comparatively small quantities of steel that are not large enough to warrant dealing directly with the steel producers. Furthermore stockists have steel available for direct delivery and can therefore provide a service not available from steel producers. Steel service centres are a recent development. They purchase strip mill products from the steel producers and slit and cut the material to customers’ requirements. Their customers include, major consumers (such as the automobile and white goods manufacturers), other stockholders and customers of all sizes. “Streckengeschäft” involves the customer placing an order with the stockholder but the steel is delivered by the steel producers. These three activities constitute “steel distribution”⁴.
14. The parties have submitted that the trading and distribution of aluminium products constitute separate product markets.
15. However, it is not necessary to further delineate the relevant product markets because, in all alternative definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

B. RELEVANT GEOGRAPHIC MARKETS

16. The parties have submitted that the geographic scope of the market for steel trading (including tubes) is world-wide due to the fact that steel traders operate on a global basis.
17. In accordance with the previous Commission decisions the parties regard the market for steel distribution including steel tubes to be national.
18. In addition, the parties have submitted that the geographic scope is world-wide for the market for aluminium trading and national for the market for aluminium distribution.

⁴ Case DGIV/M.918 –Klöckner/ODS, ⁴ Case DGIV/M.971 –Klöckner/Comercial de Laminados,

19. However, it is not necessary to further delineate the relevant geographic markets because, in all alternative definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

C. ASSESSMENT

i) Steel tubes

20. The Commission has not had to make a distinction between steel trade and steel distribution in previous merger decisions. However, the Commission's investigation has broadly confirmed the markets suggested by the parties.
21. If steel trading and steel distribution were considered to constitute a single product market there would be an overlap between the activities of the parties with regard to steel tubes. However there is no horizontally affected market as the combined market share of the parties would be below [10%] on a European level and in the range of between [0-10%] on a national level in the relevant Member States. If trading of steel tubes and distribution of steel tubes were considered as separate product markets, there would be no horizontal overlap. However a vertical relationship would exist because Balli is active as a trader selling tubes to steel distributors. Balli accounts for a market share of less than [10%] of the trade of tubes on both a world-wide and a European level. In addition Klockner accounts for between [5-15%] of the distribution of tubes on the most narrow market, i.e. national markets in relevant Member States. If the distribution of steel tubes were divided according to the physical distribution channels (stockholding, services centres and "Streckengeschaft") the parties are of the opinion that the division of their sales follows the overall division of sales into the physical distribution channels. In conclusion, their market shares for the sales of steel tubes on the basis of the three physical distribution channels would be in the same range as for tubes in general. Consequently, there are no vertically affected markets with regard to tubes.

ii) Aluminium

22. With regard to aluminium products, Balli trades in so-called "primary" aluminium products such as ingots, as well as semi finished aluminium products such as coils and rods. Klöckner distributes flat products, extrusions and roof and wall. It has to be noted that the parties' activities in aluminium are insignificant and their sales data are generally not broken down into different product categories.
23. The Commission has not had to make a distinction in past merger decisions between aluminium trading and aluminium distribution. If aluminium trading and aluminium distribution were considered to constitute a single product market there would be an overlap between the activities of the parties. Nevertheless, there is no horizontally affected market as the combined market share is between [0-10%] in the relevant Member States. If aluminium trading and aluminium distribution were considered as separate products markets, there would be no horizontal overlap. However, there would be a vertical relationship as Balli accounts for a market share of below [10%] of the trade of aluminium on a national level and Klockner accounts for between [0-20%] of the distribution of aluminium on a national level. Also for aluminium the parties considered their market shares for aluminium distributed by the three different distribution channels to be in the same range as for their overall market shares for distribution of aluminium. Consequently, there are no vertically affected markets with regard to aluminium.

VI. 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) of Council Regulation (EEC) No 4064/89.

For the Commission

(signed)
Mario MONTI
Member of the Commission