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***Case No COMP/M.2588 - RHEINBRAUN BRENNSTOFF / SSM COAL***

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

Article 6(1)(b) NON-OPPOSITION
Date: 17/09/2001

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To notifying party

Dear Sir/Madam,

**Subject:** **Case No COMP/M.2588 – Rheinbraun Brennstoff / SSM Coal**
**Notification of 02/05/2001 pursuant to Article 4 of Council Regulation No 4064/89**[1]

1. On 13.08.2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89[2] by which the undertaking Rheinbraun Brennstoff GmbH (DEU), controlled by RWE AG (DEU), acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking SSM Coal B.V. (NDL).

2. 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.

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[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] 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).

## I. THE PARTIES

3. Rheinbraun Brennstoff GmbH ("RBB"), which belongs to the RWE Group, is active in distribution of coal and other solid fuels. SSM Coal B.V("SSM") is a company with activities in trading of hard coal and petroleum coke("petcoke"). Apart from SSM, RBB has joint control in TCP, which is also active in petcoke trading.

## II. THE OPERATION

4. According to the Share Purchase Agreement dated 17/18 May 2001, RBB will acquire the remaining shares (50%) in SSM presently held by SHV Deelnemingen Maatschappij B.V. (NDL). In a second step, RWE Trading GmbH, Huyssenallee 2, D-45128 Essen, which is another wholly-owned subsidiary of RWE AG will acquire 100% of the equity in SSM from RBB. This latter Share Purchase Agreement entered into between RBB and RWE Trading GmbH of 21 May 2001 is an intra-group transaction with no relevance to merger control.

## III. CONCENTRATION

5. The operation consists of the acquisition by RBB of sole control in SSM by way of purchase of shares. Currently SSM is jointly controlled by RBB and SHV Deelnemingen Maatschappij B.V. It follows that the notified transaction is a concentration pursuant to Article 3 (2) of the Merger Regulation.

## IV. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[3] (RWE Group EUR 62 billion, SSM EUR 650 million). Each of the RWE Group and SSM have a Community-wide turnover in excess of EUR 250 million (RWE Group EUR 41,9 billion, SSM 398 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.

## V. COMPETITIVE ASSESSMENT

### 1. Relevant Product and Geographic Markets

7. SSM is active in the market for trading of fuel grade petroleum coke which is a solid residual by-product of the oil refining process. This solid usually contains between 5 to 20% volatile matter, 80 to 90% fixed carbon, about 1% ash and a varying percentage of sulfur. Petroleum coke has a substantial heating value and is predominantly used as a fuel in the cement, boiler/utility (electricity generation), lime producing and steel industry. In this application (fuel grade), petroleum coke is also referred to as "fuel grade" petcoke in the industry. As a solid fuel, petcoke is normally used in blends with other fuels such as hard coals. Substitution of coal with petcoke can typically go only as far as the relevant national environmental regulations on sulfur dioxide emission as well

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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.

as the individual sulfur filtering devices allow. Fuel grade petcoke can therefore not be regarded as a substitute for coal to a sufficient degree.

8. A processed degree of petroleum coke is referred to as "calcined" petroleum coke. Calcining is an industrial process whereby heat is applied to fuel grade material in order to drive off volatile matter. The remaining (calcined) material is a relatively pure source of raw carbon. Calcined petroleum coke is predominantly used by the primary metals industry for use in aluminium production and to a lesser extent also in the production of iron and steel. Calcined petcoke is substantially more expensive than fuel grade petcoke. The notifying party therefore suggests a separate market for the trading in calcined petcoke. SSM only resells very minor quantities of calcined petcoke TCP does not trade calcined petcoke at all. Hence, there is no overlap in this area. As the operation does not lead to the creation or strengthening of a dominant position in the trading of fuel grade petcoke, the potential inclusion of the trading of calcined petcoke, together with the trading of fuel grade petcoke, in a combined market for the trading of petcoke does not have to be discussed any further.

9. The notifying party submits that the market for the international trading of petroleum coke is a worldwide market both in terms of the supply side and in terms of the customer view. The vast majority (70 to 75%) of worldwide petcoke supplies originate from North America. About 10% of worldwide supplies are generated in South/Latin America, about the same amount in Asia and about 8% in Europe. Given that the vast majority of petroleum coke supplies originate from the United States and from South/Latin America, there are very significant international trade flows from the Americas to Europe but there are also imports from Asia into Europe. As a commodity petroleum coke is distributed on a worldwide basis by internationally active trading houses. In terms of the customer view, the parties estimate that the customers in Europe source about 80-85 % of their petcoke requirements from trading houses located outside the EEA.

10. The notifying party's view on the worldwide nature of the market for the trading in fuel grade petcoke has been broadly confirmed by the Commission's market investigation. This is notwithstanding the fact that according to some customers and competitors the market is not entirely homogenous, as there are differences in transport and logistic costs to different areas as well as differences in environmental regulations. However, for competitors having access to worldwide supplies barriers to entry into any more narrowly defined geographic market do not seem to be high. This is also shown by the fact that both competitors and customers have referred to a number of successful entries into the market, including in the EEA, over the past few years. In addition the Commission's market investigation has indicated that more localised, smaller traders appear to be capable of providing arbitrage between neighbouring geographic areas.

11. For the purpose of this decision the Commission will therefore regard the market for the trading in fuel grade petcoke as the relevant market. It is, however, not necessary to decide on the relevant geographic market as the operation proposed would not lead to the creation or strengthening of a dominant position in any geographic market smaller than worldwide. The market for the trading in fuel grade petcoke constitutes an affected market as the parties' combined market shares are above 15% both worldwide and within the EEA.

**2. Assessment**

12. SSM's and TCP's activities will not be combined into one company and the operation therefore does not reduce the number of competitors active in the market. The commercial interest of TCP's other parent company CITGO, active in oil refining, will be to maintain TCP as an independent competitor of SSM. The operation proposed therefore does not increase the risk of an alignment of behaviour between TCP and SSM.[4]

13. Even if, following the operation, such a risk of alignment would be increased, the operation would still not lead to the creation or strengthening of a dominant position for the following reasons.

14. As a solid by-product, fuel grade petcoke falls outside of the refinery's core marketing competence. For this reason a large number of petcoke producing refineries find it convenient to make long term contracts with specialist companies (such as TCP or SSM) for the disposal of their petcoke by-product. In addition to trading companies which have ongoing contractual relationships with a number of refineries there are speculative traders active in Europe, Asia and the US. Further there are several major American petcoke producing oil companies such as ExxonMobil, Tosco, Clark and Marathon which involve themselves on a regular basis in the direct sale of their own material to end-consumers worldwide. From time to time end-consumers such as Cemex (Mexico) will also resell surplus material that they have contracted.

15. The combined worldwide market share of TCP (14.6 %) and SSM (9.1 %) in fuel grade petcoke is 23.7%. Competitors' market shares have been estimated as being 8-14% (Oxbow Carbon, Koch Carbon), 5-9% (Aimcor), 2-4% (Cemex, Ovalar, Energy Coal, all being new market entrants). The remaining market shares (29% -48%) are split between a larger number of competitors. The Commission's market investigation has revealed that the customers of TCP and SSM responding view Oxbow, Koch and Aimcor as viable alternative sources of supply.

16. Under the hypothesis that the market were defined as EEA wide, TCP and SSM would have a joint market share of about 38% (TCP 22%, SSM 16%). However, the parties' main competitors, led by Koch Carbon (estimated market share 17 %) and Aimcor (estimated share 11 %), and followed by a number of other entities such as Oxbow, Ovalar and Energy Trading, and including furthermore European refineries (together about 34 %) would still have a substantial market share in the area, thus ensuring effective competition .

17. Considering the fact that the operation proposed does not have a significant impact on the competitive conditions in the market and the sufficient number of competitors, it can be concluded that the operation does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.

4 In this context the Commission also notes that currently interlocking memberships of the boards of TCP and SSM will be terminated.

## VI. CONCLUSION

18. 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)*