

***Case No COMP/M.2702 -
NORSK HYDRO / VAW***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 04/03/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 04/03/2002

SG (2002) D/228757

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.2702 – Norsk Hydro/VAW
Notification of 4 February 2002 pursuant to Article 4 of Council
Regulation No 4064/89¹**

1. On 4 February 2002, the Commission received a notification of a transaction pursuant to Article 4 of Council Regulation (EEC) No 4064/89² (the “Merger Regulation”) by which Norsk Hydro ASA (“Norsk Hydro”) acquires, within the meaning of Article 3(1)(b) of the Merger Regulation, sole control of VAW Aluminium AG (“VAW”), a wholly owned subsidiary of E.ON AG.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES

3. Norsk Hydro is a publicly listed company, incorporated in Norway, world-wide active in the following three core businesses: exploration, production and distribution of oil, gas and energy (via Hydro Oil and Energy), production and distribution of fertilisers and related chemicals (via Hydro Agri) and production and sale of aluminium (via Hydro Aluminium). Norsk Hydro is also involved in other activities, including

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).

petrochemicals and pharmaceuticals. In the field of aluminium, Norsk Hydro is involved in all aspects of the aluminium industry (bauxite mining, alumina refining, aluminium smelting, production and sale of casthouse products, extrusions, aluminium automotive components, and rolled products).

4. VAW is a European integrated aluminium company of German origin and involved in all aspects of the aluminium industry (alumina refining, aluminium refining, production of rolled products and extrusions, recycling, packaging). VAW has operations in various parts of the world.

II. THE OPERATION

5. VAW is currently directly and indirectly a wholly owned subsidiary of E.ON AG, a German multi-utility group. According to the share purchase agreement of 6 January 2002, Hydro Aluminium Holding Deutschland GmbH, an indirect, wholly-owned subsidiary of Norsk Hydro, acquires 100% of the share capital of VAW. As a result, Hydro will have sole control over VAW.

III. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion³ (Norsk Hydro: EUR 19,341 million, VAW: EUR 3,693 million). Each of Norsk Hydro and VAW have a Community-wide turnover in excess of EUR 250 million (Norsk Hydro: EUR 11,926 million, VAW: EUR 2,341 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.

IV. THE RELEVANT MARKETS

7. The operation creates horizontal overlaps in the following areas: primary aluminium products; aluminium flat rolled products in particular food can sheet and extrusions. Furthermore, the operation creates vertical relationships between primary aluminium, on the one hand, and flat rolled products and extrusions, on the other hand.

A. Primary Aluminium

8. Primary aluminium is produced by smelting alumina. The smelting process converts alumina in its two constituent elements, aluminium and oxygen. The separation of aluminium from oxygen is accomplished by high-temperature electrolysis. After the smelting process, aluminium must be put into a form that can be used by fabricators and end users. Aluminium can be shipped in its molten form in insulated ladles directly to a user's plant, or it can be cast into ingots (shapes for remelting), rolling slabs (rectangular), or billets (circular) of varying sizes and shapes, either in a pure form or alloyed with other metals (such as magnesium, silicon, manganese, copper or zinc). Primary aluminium in any form can be remelted in cast houses and recast in another shape depending on the customer's requirements. During the Commission's

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.

investigation, a third party suggested that billet, a specific form of primary aluminium, may constitute a market distinct from primary aluminium. However, in previous decisions, the Commission considered the market for primary aluminium as relevant product market and did not delineate separate markets for the different forms of primary aluminium.⁴In the present case, it can be left open whether separate markets for the different forms of primary aluminium exist since also while considering a separate market for primary aluminium in form of billets no competition problems would arise.

9. Primary aluminium, also formed as billets, is traded and transported throughout the world, the pricing of aluminium ingots is substantially uniform because of the link to the London Metal Exchange (LME). The EEA is a net importer of primary aluminium. This is also true for primary aluminium in the form of billets. In addition to considerable imports of extrusion billets, there are substantial trade flows and imports into the EEA of remelt ingots which are then remelted and converted into each and every form which allows customers for further processing (*inter alia*, into billets). In view of these characteristics and in line with previous decisions in this area, the geographical market for primary aluminium is world-wide. This would also apply to a separate market for billets.

B. Flat Rolled Products

10. Flat rolled products (“FRPs”) are semi-finished aluminium products that are manufactured in aluminium rolling mills. In particular, FRPs are produced from aluminium ingots, scrap or molten aluminium in a process which consists of two main stages: (i) the production of rerolls/cast coils; and (ii) the subsequent cold rolling process. FRPs comprise over fifteen categories of products used in a number of applications such as in packaging, engineering, automotive, aerospace 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 *Alcan/Alusuisse* decision,⁵ the Commission concluded that in spite of a certain degree of supply-side substitutability in the production of the standard FRPs categories – switching of production between the different types of standard FRPs can be done quickly and at little cost- at least this was not supported for lithographic sheet. Therefore, lithographic sheet was considered as a distinct relevant product market. In the present case, the activities of the parties overlap in food can sheet and in the standard FRPs categories (standard sheet, plates, foil stock, etc).
11. On the basis of the market investigation, there are indications that there is a high degree of supply-side substitutability between standard FRPs. Generally speaking, aluminium producers are able to produce the full range of standard FRPs and can switch production between the different types easily and at little cost simply by using slabs in a width according to the customers’ demand up to the maximum width of the mill. Therefore, the Commission considers that there is a distinct market for standard FRPs. This market contains all flat rolled products which do not form a distinct separate market within the field of FRPs.

⁴ COMP/M. 1161 – Alcoa/Alumax; COMP/M:2404 - Elkem/Sapa.

⁵ Commission Decision of 14 March 2000 in case COMP/M.1663 – Alcan/Alusuisse

12. The market investigation conducted by the Commission has also indicated that there exists a distinct market for aluminium food can sheet. Food can sheet is a type of flat product used in the manufacture of food cans. There are indications that either from the supply-side or from the demand-side, substitution is not possible. From the supply-side point of view, a substitution for food can sheet may require additional investment or qualification. From the demand-side, aluminium food can sheet has specific characteristics for particular categories of food, which are not substitutable and interchangeable with the other FRPs categories. With respect to other raw materials, it has to be noted that metal cans may be made of either aluminium or steel (tinplate). The market investigation has shown that there exist a specific demand for aluminium food can sheet. Aluminium cans have superior characteristics compared to steel cans.⁶ The parties do not contest the fact that aluminium and tinplate food can sheet should be treated as two separate markets. The market investigation concluded that aluminium food can sheet is not substitutable with tinplate food can sheet as a price increase of aluminium food can sheet of 5% to 10% would be profitable, as it would not necessarily induce can makers to switch to tinplate food can sheet. Therefore, on the basis of the foregoing, the Commission has reached the conclusion that there is a distinct market for aluminium food can sheet.
13. During the Commission's investigation, a third party suggested that paint sheet, a specific type of FRPs, may constitute a market distinct from the standard FRPs market. Paint sheet is a flat aluminium strip painted in order to add outer layer of protection against corrosion. Paint sheet is used for a variety of outdoor applications in the construction business or in the automobile industry. There are indications that there is a high degree of supply-side substitutability between standard FRPs. The aluminium sheets used as paint sheet are produced on the same equipment and with the same technology and production processes that are used for other type of standards FRPs. There are also indications that there is a high degree of demand-side substitutability. Paint sheet competes directly for many applications with painted steel and composite material consisting of a plastic core with painted steel or aluminium skins. However, it can be left open whether there is a distinct market for paint sheet or whether this is part of the broader market for standard FRPs. In any event, the proposed transaction would not raise serious doubts under whatever product market definition.
14. According to the market investigation the Commission concluded that the geographic markets for food can sheet, standard FRPs, and paint sheet are EEA-wide in scope. In particular imports of food can sheet into the EEA are limited due additional transportation costs and custom duties (7.5%). However, imports of standards FRPs into the EEA (mainly from Eastern European countries) have constantly increased in recent years and accounted for 12% of EEA-wide consumption in 2000. Imports of

⁶ Although steel is a cheaper material, aluminium allows a variety of can shapes and a final presentation quality, especially when printed, which cannot be achieved in steel cans. As aluminium does not corrode easily, it allows longer shelf life after filling. Exports of canned food are thus better made in aluminium cans. Aluminium cans have thus become established in certain, high value added segments of the food market, particularly for canned seafood, meat patés, delicatessen products, soups and similar aggressive substances. These cans are always printed and are supplied in a wide variety of round and non-round shapes and sizes to maximise their appeal to final consumers. Food can manufacturing may be a technically difficult process, in particular when marketing reasons require the can to be attractive to consumers. It may require maximum flexibility of the metal, to allow for instance deeper cans or sharp corners. Such flexibility is better provided by aluminium rather than by steel.

paint sheet into the EEA (mainly from Eastern European countries) has also significantly increased in recent years. The question whether the geographic market for standard FRPs and paint sheet is wider than the EEA may be left open for the purpose of the present case, as in any event the proposed transaction would not lead to serious doubts under any geographic market definition.

C. Extrusions

15. Extrusions are the second most important category of aluminium semi-finished products after FRPs. Extrusions are formed by pushing aluminium billets through a die. The production process of extrusions offers the possibility of giving aluminium various shapes (including rods, bars, and profiles) and can thus be used in a large variety of applications, such as building and constructions (for instance, window frames), transport, electrical engineering and so forth. In previous Commission decisions,⁷ two separate markets for aluminium extrusions have been identified: hard-alloy extrusions and soft alloy extrusions. Soft-alloy extrusions require a relatively small capital investment and are generally simple to manufacture whereas hard-alloy extrusions are more capital intensive involving heat treatment and continuous metallurgical tests. The market investigation in the present case has confirmed those product market definitions. As VAW does not produce hard-alloy extrusions, the activities of the parties overlap only in the area of soft-alloy extrusions.
16. In previous cases concerning aluminium soft-alloy extrusions, the Commission has defined the geographic market as being EEA-wide.⁸ Although in the Elkem/Sapa case⁹ the Commission considered some indications that the United Kingdom could possibly constitute a separate relevant market, the precise market definition can be left open in the present case since in all alternative market definitions no competition concerns would arise.

V. COMPETITIVE ASSESSMENT

Primary Aluminium

17. VAW is active in primary aluminium through its smelters in Neuss and Stade, Germany, and Kurri-Kurri, Australia. In 2001, VAW produced an estimated [...] kt of primary aluminium and sold an estimated [...] kt to third parties. At the same time, VAW bought [...] kt on the market and is, therefore, on balance, a net buyer. Norsk Hydro produced an estimated [...] kt of primary aluminium in 2001. As VAW is a net buyer of primary aluminium, the transaction will have no significant effect on the merchant market for primary aluminium. In terms of production capacity figures, the combined Norsk Hydro and VAW will have a share of around [0-10]% of world-wide capacity. They will be well behind the leading players Alcoa (with a [10-20]% world-wide production share) and Alcan (with a [0-10]% world-wide production share).

⁷ See COMP/M. 675 – Alcoa/Alumix; M.2111 – Alcoa/British/Aluminium; M. 2404 - Elkem/Sapa.

⁸ COMP/M. 675 – Alcoa/Alumix; M.2111 – Alcoa/British/Aluminium.

⁹ COMP/M. 2404 - Elkem/Sapa.

18. If a separate market for extrusion billets were considered, the combined Norsk Hydro and VAW would have a share of around [10-20]% of world-wide sales on the merchant market (Norsk Hydro: [...]%, VAW: [...]%). There are strong competitors, among which, Alcoa with an estimated market share of around [0-10]% and Alcan with a market share of around [0-10]%. The combined entity's market position do not therefore give rise to any competition concerns.

Standard FRPs

19. The parties' shares of sales for standard FRPs in the EEA in 2000 amounted to [10-20]% (Norsk Hydro: [...]%; VAW: [...]%). In light of these market shares and the presence of strong competitors (Alcan: [25-35]%; Pechiney: [10-20]%; Alcoa: [10-20]%, etc), the Commission considers that no competitive concerns would arise in that area. The parties market position and the competitive assessment would not change if paint stock would be considered as falling into the market for standard FRPs. Also under this market delineation no competitive concerns would arise in the market for standard FRPs. The parties' market position would even be weaker if the market for standard FRPs were considered to be wider than the EEA.

Paint sheet

20. If paint sheet were considered as a distinct market, market shares in 2000 at an EEA level would be in the order of [10-20]% for the combined entity (Norsk Hydro: [...]%; VAW: [...]%). Post-merger, there will be seven major competitors in the EEA with shares between [0-10]% and [20-30]% (Alcan ([20-30]%), Corus ([10-20]%), Pechiney ([5-15]%), Alcoa ([0-10]%), Elval ([0-10]%), and Garmco ([0-10]%). There is effective competition and as a consequence profit margins for paint sheet are low. Therefore any price increase will trigger increased output by the other competitors. Neither single dominance nor collective dominance issues would arise on a possible market for paint sheet, neither on an EEA-wide basis nor if such a market were considered to be wider than the EEA.

Aluminium food can sheet

21. In the market for aluminium food can sheet the market share of the combined entity would amount to [10-20]% (for the year 2001 VAW: [...], Norsk Hydro: [...]) on an EEA-wide basis. There are two other strong competitors in this area, Alcan with [40-50]%, and Pechiney with [20-30]% of the market. Other players are Alcoa with [0-10]% and Elval with [0-10]% in the year 2001. [...]. The market investigation has confirmed that VAW's market share has decreased from [...] in the year 2000 to [...] in the year 2001.
22. The Commission's investigation has concluded that the operation is not likely to lead either to single dominance or to collective dominance concerns. Apart from VAW's declining market share (see preceding paragraph), there are two very active competing players, that is Elval and Alcoa, that have increased their market shares by [45-55]% and [20-30]% respectively in the last 3 years and have on average over [10-20]% of available capacity. As a consequence, the proposed operation does not raise serious doubts as to the creation/strengthening of a single or an oligopolistic dominant position. This is also true if the geographic market for aluminium food can sheet were considered to be wider than the EEA as the parties market position would even decrease in such a market.

Soft-alloy extrusions

23. In the market for soft alloy extrusions VAW would only add a de minimis market share (less than [1%]) to Norsk Hydro's EEA market share (around [10-20]%, by value). No apparent problems are expected as a result of the proposed operation. If one were to consider the United Kingdom as separate geographic market for soft ally extrusions no competition concerns are risen, either, since VAW's share on such a market would also be de minimis.

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

Anna Diamantopoulou
Member of the Commission