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Case No COMP/M.3170 - SAPA / REMI CLAEYS ALUMINIUM

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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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.3170 – SAPA/REMI CLAEYS ALUMINIUM
Notification of 12 May 2003 pursuant to Article 4 of Council Regulation No 4064/89[1]

1. On 12 May 2003, the Commission received notification of a proposed concentration by which the Swedish company Sapa AB ("Sapa"), controlled by Elkem ASA ("Elkem"), intends to acquire sole control over the Belgian company Remi Claeys Aluminium NV ("RCA").

2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and that does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

3. RCA is a European industrial group that manufactures and sells welded aluminium tubes and soft-alloy extruded aluminium profiles.

4. Sapa is a Swedish industrial group listed on the Stockholm Stock Exchange, essentially active in the fields of soft-alloy extruded aluminium profiles and flat rolled products made of aluminium.

[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).

5. Sapa's parent company Elkem is one of the world's leading suppliers of metals and materials. Its activity in aluminium is carried out through a joint venture, Elkem Aluminium ANS ("Elkem Aluminium"), in which it holds 50% stake and the American company Alcoa Inc. ("Alcoa") holds the other 50%. Elkem is a public limited company, of which no single party or concerted group exercises control, either directly or indirectly. Among its major shareholders there is Alcoa, with a stake of just over 46%. In previous cases the Commission has already enquired the issue of whether Alcoa could be considered as having joint control over Elkem. In particular in Case No. COMP/M.2404 - Elkem/Sapa of 26 June 2001 relating to the acquisition by Elkem of Sapa, the Commission came to the conclusion that Alcoa's then stake in Elkem was not, on the basis of either current shareholder structure or past attendance at annual shareholders' meetings, sufficient to exercise control over Elkem. In particular, at the time of the Commission's decision in the mentioned case Alcoa had 35.2% shareholding in Elkem. In its decision, the Commission noted that there was a very active and influential second largest shareholder, the Norwegian company Orkla, holding 32.8% of the shares in Elkem and with its managing director and CEO acting as Chairman of the Board of Directors of Elkem. The Commission also noted that Orkla opposed board representation of Alcoa and had been able at the May 2001 Annual General Meeting of Elkem to vote for 39% of Elkem's issued voting shares (due to proxies from other shareholders). In addition, the Commission noted that two funds, which together accounted for 4.9% of Elkem's shares, had also expressed their opposition to Alcoa.

6. Compared with the situation assessed at that time, there have been further developments. Alcoa has further increased its stake, reaching as said a participation of over 46%. However, also the opposing shareholders have increased their shares, as a result of which the situation is as follows :

Shareholder	**Stake in percentage of total number of shares (%)**
Alcoa (held through Chase Manhattan)	46.53
Orkla	39.44
Folketrygdfondet	7.88
Storebrand	1.36
Den Norske Bank	0.93
Nordstjernen Holding	0.40
Others	3.46

7. Each of Orkla, Folketrygdfondet and Den Norske Bank have members on the 15 member Corporate Assembly of Elkem (in fact, Orkla has two members). Alcoa has one member on the Corporate Assembly. Under Norwegian corporate law, the Corporate Assembly appoints the directors to the Board of Directors, acting by simple majority. The Chairman of Elkem is an Orkla nominee. In addition, Orkla and Storebrand each have representatives on the Board of Directors. Alcoa has no members on Elkem's Board of Directors. Alcoa has twice sought representation on Elkem's Board of Directors (in May and October 2000) and has on both occasions failed. The Orkla, Folketrygdfondet and Storebrand representatives each voted against Alcoa on both of those occasions (since

that time, the Storebrand representative has moved from the Corporate Assembly to the Board of Directors of Elkem).

8. In terms of shareholder meetings, the position today is that Orkla and Folketrygdfondet together can outvote Alcoa (together they hold 47.32% of Elkem shares), as therefore can Orkla, Folketrygdfondet, Storebrand and Den Norske Bank. Orkla, Folketrygdfondet, Storebrand and Den Norske Bank each voted at the 2001 and 2002 Elkem shareholder meetings, and on each occasion they voted shares in excess of the total number of shares then held by Alcoa. In the Annual General Meeting held on 14 May 2003 this situation has not changed. The above companies togeter with Nordstjernen Holding voted in concert and both the previous representatives in the Corporate Assemby as well as the previous Board of Directors were re-elected.

9. Accordingly, the Commission's conclusion in Case No. COMP/M.2404 - Elkem/Sapa that Alcoa's current stake in Elkem is not, on the basis of either current shareholder structure or past attendance at Elkem Annual General Meetings, sufficient to exercise control over Elkem, remains true today.

II. THE OPERATION

10. The proposed concentration concerns the acquisition of 56% of the shares in RCA from the Sapa's majority shareholder, the Desimpel Family. A subsequent public bid for the remaining outstanding shares will be launched, since according to the Belgian securities law, the acquisition of a controlling share interest in a listed company requires the buyer to launch a public bid for the remaining outstanding shares upon closing of the private transaction. The operation will result in Sapa acquiring sole control over RCA, constituting a concentration within the meaning of Article 3(1)(b) of the Council Regulation.

III. COMMUNITY DIMENSION

11. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2,5 billion2. In each of at least three Member States the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million, and the aggregate turnover of each of at least two of the undertakings concerned is more than EUR 25 million. Each of Sapa and RCA have a Community-wide turnover in excess of EUR 100 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. COMPETITIVE ASSESSMENT

Relevant product market

12. The parties to the proposed transaction are active in the following markets: i) soft-alloy extruded aluminium profiles; ii) flat rolled aluminium products (FRPs); and iii) welded

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[2] 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.

aluminium tubes. In addition, Sapa's parent company Elkem is active in the production and marketing of primary aluminium, various ferro-alloys, silicon metals, microsilica, carbon and energy. The only overlapping market is the one for soft-alloy extruded aluminium profiles, where both parties are active.

13. The production of soft-alloy extruded aluminium profiles takes place using the extrusion technique. This technique enables complex shapes in aluminium to be produced in a single movement by pushing aluminium billets through a die. The term "extrusion" is usually applied to both the process of pushing a hot cylindrical billet of aluminium through a shaped die, and the product obtained. The resulting section can be used in long lengths or cut into short parts for use in various applications, including transport, construction or components

14. The fundamental features of the process are as follows. A heated billet cut from a Direct Chill semi-continuous cast log (or, for small diameters, from a larger extruded bar) is located in a heated container, usually around 450°C - 500°C. At these temperatures, the flow stress of the aluminium alloys is very low, and when pressure is applied by means of a ram to one end of the billet, the metal flows through the steel die located at the other end of the container to produce a section whose cross-sectional shape is defined by the shape of the die.

15. Press load capacities range from a few hundred tonnes to as high as 20,000 tonnes, although the majority range between 1,000 and 3,000 tonnes. Billet sizes cover the range from 50 mm to 500 mm diameter, with length usually about 2-4 times diameter

16. In previous decisions[3] the Commission concluded that the market for soft-alloy extruded profiles constitutes a single relevant product markets and that should not be further divided into segments relating to end-uses. In their submission the parties maintain this position, mainly based on the argument that it is relatively easy for most extruders to offer a wide range of soft-alloy extruded profiles for use in many applications.

17. In this case, the Commission has investigated whether it is sensible to identify some sub-markets as regards the diameter of the profiles. According to the parties, large profiles extrusions need dies of a diameter bigger than 450 mm, for which presses with high load capacity has to be used and for which the supply-side substitutability is not so easy as with smaller diameters.

18. The parties submit that the supply-side substitutability argument remains valid since not only extruders with large and high-pressure presses can produce large diameter profiles. In fact, presses with load capacities lower than 4.000 ton can , when properly equipped, extrude profiles with diameters bigger than 450 mm, and the industry has developed a process whereby two or more extruded profiles can be welded together. The resulting physical properties, such as stiffness, surface finish and complexity of section shape, are the same as those of large profiles produced in a single step using large and high-pressure presses. This process enables producers lacking large presses to offer large diameter profiles.

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[3] Case No COMP/M.2404 – Elkem/Sapa of 26 June 2001.

19. The evidence collected in the course of the investigation is mixed. Some players in the industry contend that large diameter extruded profiles could constitute a separate product market, given the difficulties to produce such extruded profiles via the welding process or through low load capacity presses. Other operators are instead in favour of a comprehensive market for extruded profiles irrespective of the diameter. However, for the purpose of this decision the exact definition of the relevant product market can be left open as the present concentration does not give rise to competition concerns under any of the possible market definitions.

Relevant Geographic market

20. According to the Commission previous cases[4], the geographic market for soft-alloy extrusion profiles is EEA-wide. However, in Case No COMP/M.2404 – Elkem/Sapa, the Commission considered whether the UK might constitute a separate geographic market for soft-alloy extrusion profiles due to price's differences. However, for the purpose of this decision the exact definition of the relevant geographic market can be left open as the present concentration does not give rise to competition concerns under any of the possible market definitions.

Assessment

21. The acquisition of RCA will bring to Sapa a negligible market share accretion. Taking the EEA market for soft-alloy extruded profiles as a whole, the parties combined market shares would be [5-15]% (Sapa [5-15]% and RCA [<5]%) based on capacity, and [5-15]% (Sapa [5-15]% and RCA [<5]%) based on sales. In this market Alcoa is one of the leading suppliers with an estimated EEA market share, based on capacity, of [5-15]%, plus other competitors such as Norsk Hydro ([5-15]%), Alcan ([5-15]%) and Pechiney ([<5]%).

22. Should the UK be considered a separate market, the merging entity would reach a combined market share of roughly [15-25]% (Sapa [15-25]% and RCA [<5]%), with again a negligible market share increase, whereas Alcoa's market share is below [15-25]%.

23. If the segment of large diameter profiles were to be considered a separate market, there would be no direct overlap as Sapa is not present in this segment, while RCA has a market share of around [5-15]%. Alcoa is not active in this segment either.

24. Finally, as regards possible vertical issues because of the presence of Elkem in the upstream market, Elkem's activity in the aluminium industry is confined to the market for primary aluminium, where it has a negligible share of about [<5]% of the world-wide market.

[4] Case No COMP/M.675 – Alcoa/Alumix of 21 December 1996.

25. As described above, there is an important shareholding of Alcoa in Elkem, which does not amount to control. The Commission has nonetheless examined the extent to which competition between Alcoa and Elkem/Sapa may be affected by these structural links. However, given the small accretion of market shares brought about by the concentration, competition will not be adversely affected as a result of this transaction.

V. CONCLUSION

26. 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