

*Case No IV/M.322 -
ALCAN / INESPAL /
PALCO*

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

Article 6(1)(b) NON-OPPOSITION
Date: 14.04.1993

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Brussels, 14.04.1993

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1) (b) DECISION

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To the notifying parties

Dear Sirs,

Subject: Case No. IV/M.322 - Alcan/Inespal/Palco
Notification of 11.03.1993 pursuant to Article 4 of Council Regulation No. 4064/89

1. The above operation concerns the acquisition by Alcan Aluminium Ltd. Canada (Alcan) or its subsidiary Alcan Deutschland GmbH of a 50% interest in Productos Aluminio de Consumo, S.A. Spain (Palco), currently wholly owned by Industria Española del Aluminio, S.A. Spain (Inespal).
2. After examination of the notified operation, the Commission has concluded that it falls within the scope of application of Council Regulation No. 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

3. Inespal is a subsidiary of the Spanish state holding INI. It manufactures, converts and markets aluminium including aluminium foils. In the market for aluminium foil containers, Inespal is active only via Palco.
4. Alcan is the parent company of a multinational industrial group engaged in all aspects of the aluminium business. Through subsidiaries and related companies, the activities of Alcan include bauxite mining, alumina refining, aluminium smelting, manufacturing, sales and recycling. Alcan also manufactures aluminium foils which are used for the production of foil containers. Through its subsidiary, Alcan Deutschland GmbH, Alcan is also a significant aluminium container manufacturer in Europe.

5. Palco produces semi-rigid aluminium foil containers with corrugated and smooth walls for industrial and consumer use in the food sector. Palco is active on the Spanish and Portuguese markets where it is the leading supplier of aluminium containers. Palco is currently wholly owned by Inespal.

II. CONCENTRATION

Joint control

6. After completion of the operation, both Alcan and Inespal will have 50% of the shares in Palco. The board of directors of Palco will comprise six members, three appointed by Alcan and three by Inespal. The board's decisions shall be unanimous. As a result, Palco will be jointly controlled by Alcan and Inespal.

Full function joint venture

7. Palco will continue its existing activities in the area of aluminium foil containers and will take over the respective activities of Alcan in Spain. The company will therefore be a joint venture that will perform all the functions of an autonomous entity on a lasting basis.

Absence of co-ordination of competitive behaviour

8. Inespal is currently active in the aluminium container market exclusively via Palco. After completion, Inespal will have no other interest in the market for aluminium foil containers except through its shareholding in the joint venture. Given Inespal's small interest (about 5% of Inespal's foil production) in the supply needs of Palco - which is shown by a supply agreement for aluminium foils subject to competitive prices - it is not likely, on commercial grounds, for Inespal to seek to re-enter the market for aluminium foil containers.
9. Alcan will remain active in the product market of the joint venture outside Spain. It is one of the leading companies in that market both via wholly owned subsidiaries as well as via a joint venture (Alcan EKCO Packaging Ltd., UK) with the Tenneco group of companies.
10. The different nature of Inespal's interests in the foil container market compared to Alcan, which will retain a substantial interest in this market, is reflected in the General Agreement between Inespal and Alcan. According to this agreement:

[...]^(*)

11. Alcan and Inespal are both active in markets which are upstream of the aluminium foil container market. Both undertakings produce primary aluminium and aluminium foils which are used for the production of foil containers. Nevertheless, it is unlikely that the concentration will have an impact on competition in these upstream markets. The common interest of both parent companies indicated by the total demand on their joint venture for aluminium foils - is only about 1% of their total

^(*) Business secret

production of aluminium foils and with regard to existing overcapacities in that market is not significant.

12. The acquisition by Alcan of joint control of Palco does not therefore have as its object or effect the co-ordination of the competitive behaviour of undertakings which remain independent. The proposed creation of a joint venture is thus a concentration within the meaning of Article 3 of the Merger Regulation.

III. COMMUNITY DIMENSION

13. The aggregate worldwide turnover of Alcan Ltd. and the INI group in their last financial year amounts to more than 5,000 million ECU. Their Community-wide turnover each exceeds 250 million ECU. The parties did not achieve more than two-thirds of their Community-wide turnover in one and the same Member State. The operation therefore has a Community dimension within the meaning of Article 1(2) of the Regulation.

IV. COMPATIBILITY WITH THE COMMON MARKET

1. The relevant product market

14. Palco is engaged in the manufacture and marketing of semi-rigid aluminium foil containers primarily for use in the food industry. In Spain, these containers are used in particular in the poultry industry, wholesaling, the bakery sector and aviation. The parties have submitted that the relevant product market comprises:

- coated and uncoated aluminium containers; and
- containers manufactured from:
 - synthetic (plastic) materials,
 - (metallic) papers and cardboard, and
 - sheet metal.

15. Although there might be some substitutability between containers of different materials for the same purpose, there are also significant indications, eg technical characteristics such as heat resistance, airtightness and suitability for recycling as well as price differences between aluminium containers and containers made from other materials, which might lead to the assumption of distinct product markets with regard to the material used. In this case, however, the precise delimitation of the relevant product market need not be specified because even on the basis of a narrow market definition, ie coated and uncoated, semi-rigid aluminium foil containers, the operation does not raise serious doubts.

2. The geographic reference market

16. In the EC the supply side of the market seems to be characterised by some large and vertically integrated companies such as Alcan, Alusuisse and Reynolds and a number of small and medium sized competitors mainly active on their national markets. This seems to be particularly true for Spain where national producers (amongst them Palco) have a significant market share.

17. On the other hand, the nature and characteristics of the product do not allow the assumption that there might exist national consumer preferences or other important barriers to entry such as transport costs. Furthermore, there seem to be no appreciable price differences and there are some large industrial clients act on a Community-wide basis. These are strong indications of the existence of an EC-wide market for aluminium foil containers.
18. For the purposes of this decision, however, it is not necessary to decide whether there is a Community or national market for aluminium foil containers because even in the latter alternative the operation does not raise serious doubts as to its compatibility within the common market.

3. Competition assessment

19. In the EC, Alcan, including its joint venture Alcan-EKCO, seems to be the market leader with a share of about one third of the market followed by Alusuisse with a market share of less than 20%. Taking into account the small addition of market shares of Palco with less than 2% in the EC, it is not expected that the concentration will create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market.
20. In Spain (market value below 20 million ECU), Alcan/Palco, due to the concentration, achieve a joint market share of well above 40% on the market for aluminium foil containers. On the Spanish market, there are important actual competitors such as Fedinsa and Endal. Furthermore, due to the narrowest possible market definition described above, the joint venture to a certain extent faces competition from other European aluminium container manufacturers, eg Alusuisse and Pechiney, and competition from containers made from materials other than aluminium. In addition, it has to be considered that the market for aluminium containers is clearly growing. Thus, it is likely that the parties behaviour in the market will be controlled to an appreciable extent by their competitors.

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For the above reasons, the Commission has decided not to oppose the notified concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)(b) of Council Regulation No. 4064/89.

For the Commission