

***Case No COMP/M.3284 -
OUTOKUMPU /
BOLIDEN***

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

Article 6(1)(b) NON-OPPOSITION
Date: 08/12/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08/12/2003

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties via their legal representative

Dear Sir/Madam,

**Subject: Case No COMP/M.3284 - Boliden/Outokumpu
Notification of 5 November 2003 pursuant to Article 4 of Council
Regulation No 4064/89¹**

1. On November 5, 2003, the Commission received a notification pursuant to Article 4 of Regulation (EEC) No 4064/89 (“the Merger Regulation”) of a proposed concentration by which the Finnish undertaking Outokumpu Oyj (“Outokumpu”) acquires control within the meaning of Article 3(1)(b) of the Merger Regulation of the Swedish undertaking Boliden AB (“Boliden”).
2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation 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

3. Outokumpu is the holding company of the Finnish group Outokumpu (“the Outokumpu group”). Outokumpu is an international metal and technology group, specialising in stainless steel, higher value added products of copper, zinc metal as well as the development and sale of technology. Outokumpu is quoted on the Helsinki Stock Exchange in Finland.

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).

4. Boliden is a holding company of the Swedish group Boliden. Boliden is an international mining and metals group, which mines and smelts copper, zinc, lead, gold and silver. Boliden is also involved in exploration, technology sales and the manufacture of copper and brass products. Boliden is quoted on the Stockholm Stock Exchange in Sweden and the Toronto Stock Exchange in Canada.

II. THE OPERATION

5. The operation is a two-part transaction focusing on Boliden's activities in mining and metal and Outokumpu's high value metals and technology businesses. Outokumpu will sell its zinc and copper mining and smelting activities to Boliden. As part of the consideration Outokumpu will obtain new shares in Boliden equivalent to 49% of the enlarged share capital. As the number of votes cast at general meetings of Boliden has been between [...] % and [...] % in recent years, the acquisition by Outokumpu of 49% of Boliden's shares will give Outokumpu de facto sole control of Boliden.
6. Boliden will transfer its brass and copper business, including the development, marketing, sale and delivery of brass products and copper tubes, as well as its technology business, including the provision of technology services to the mining and metallurgical industry, to Outokumpu. In return, Boliden will receive 5 million shares, corresponding to 2.8% of all shares and votes in Outokumpu.

III. CONCENTRATION

7. As a result of the transaction, Outokumpu will acquire sole control over the entire activities of Boliden. The transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Council Regulation.

IV. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (Outokumpu: Euro 5,558 million; Boliden Euro 1,043 million). Each of the undertakings has a Community-wide turnover in excess of Euro 250 million (Outokumpu: Euro [...] million; Boliden: Euro [...] 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. COMPETITION ASSESSMENT

9. The parties' activities overlap in the following areas, which also constitute affected markets: (i) sanitary tubes, (ii) industrial tubes other than level wound coils and (iii) sulphuric acid.
10. The transaction also involves several other activities, which do not constitute affected markets due to the parties' insignificant presence and the lack of competition concerns.

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.

Moreover, no third parties have raised issues in relation to these activities. These markets are dealt with briefly below.

Non affected markets

Zinc Concentrate

11. Both parties produce zinc concentrate. The Commission has previously concluded³ that there is a separate relevant product market for zinc concentrate and that the geographical dimension of this market is worldwide. There are no reasons for departing from this assessment in the present case. The parties combined market share on the market for zinc concentrate is insignificant, approximately [0-10]% worldwide.

Copper Cathodes

12. Both parties supply copper cathodes. According to previous Commission decisions⁴, copper cathodes form a separate relevant product market which is world wide in scope. There are no reasons for departing from this assessment in the present case. The parties combined market share is approximately [0-10]% worldwide.

Lead Concentrate

13. Both Boliden and Outokumpu produce lead concentrate. In previous decisions⁵ the Commission concluded that lead is a product market in itself and that this market is worldwide. The parties have submitted that their combined market share world wide is negligible, approximately [0-10]%.

Gold

14. Both parties produce limited amounts of gold through their mining and smelting activities. The Commission has previously concluded that gold in itself constitutes a relevant product market, which is worldwide in scope.⁶ The Commission has found no reasons for departing from this conclusion in the present case. The parties combined market share on a world wide level is negligible, below [0-10]%.

Silver

15. The Commission has previously identified silver as a separate product market and as a world wide market geographically.⁷ There are no reasons for departing from this assessment in the present case. The parties combined market share worldwide in the market for silver is [0-10]%.

³ See Case COMP/M.2062, *Rio Tinto/North*.

⁴ See Case COMP/M.2413, *BHP/Billiton*.

⁵ See Case COMP/M.2413, *BHP/Billiton*.

⁶ See Case COMP/M.660 RTZ/CRA, Case COMP/M.2062, *Rio Tinto/North*. and Case COMP/M.2413, *BHP/Billiton*.

⁷ See Case No. M.470, *Gencor/Shell*, and Case COMP/M.2413, *BHP/Billiton*

Selenium

16. Both parties produce crude selenium. The parties have submitted that the relevant product market is selenium in itself or even a wider product market. By analogy to Rio Tinto/North⁸, where the Commission held that metals, such as copper, gold and zinc constitute product market in themselves on the basis of the particular characteristics of the metal concerned, it seems reasonable to conclude that selenium constitutes a product market in itself. Selenium is, like other metals and minerals, traded on a global basis and the relevant geographic market is probably worldwide. The parties combined market share worldwide is [0-10]%.

Crude nickel sulphate

17. Both parties produce crude nickel sulphate. They have submitted that crude nickel sulphate constitutes a product market in itself. Crude nickel sulphate can be refined for use in the chemical or plating industries or as a source of nickel metal. Outokumpu and Boliden together sell crude nickel sulphate containing some [...] tonnes a year of nickel metal. This represents less than [0-10]% of EU production of nickel. It is clear that no competition problems would arise in relation to nickel sulphate as even at the European level.

Brass

18. Both parties are producing brass wire, otherwise their activities in brass are complementary and there are no other overlaps. The Commission has not in earlier decisions considered whether brass constitutes a separate market and whether this market can be further subdivided into relevant markets for wire, flat products, tubes etc. However, on the basis of its particular technical characteristics, it seems reasonable that brass can be distinguished from other metals. There seems to be no reason to suppose that the relevant geographic is not worldwide. In any case, it is not necessary to decide on the exact product and geographic scope of this market, since under the narrow market for brass wire in the EEA, the parties combined market share is [0-10]% and under any wider market definition there is no competition concern likely to arise.

Technology

19. Both parties are involved in engineering and technology for the metal industry. However Boliden's business, which is largely complementary to Outokumpu's, is small with sales of less than € [...] and its shares of the various markets or market segments in which it operates are less than [0-10]% and in most areas much less than [0-10]%. The operation will not give rise to competition problems in relation to engineering and technology.

Affected markets

Sanitary tubes

A. Relevant product market

⁸ See Case COMP/M.2062, *Rio Tinto/North*

20. Sanitary tubes are used for the distribution of water and energy inside a building. Sanitary tubes can be made of various materials: copper, plastic, multi-layer (plastic and aluminium), steel and stainless steel. Plastic sanitary tubes can be made for example of polybutelene, polyethylene, polypropylene and polyvinyl chloride. Multi-layer tubes are made from various types of plastic with an aluminium layer inside.
21. Both Outokumpu and Boliden produce sanitary tubes out of copper. Outokumpu also makes small amounts of stainless steel tubes.
22. The parties have submitted that the relevant product market is wider than copper sanitary tubes and includes sanitary tubes made of various other materials as indicated above. According to the parties, architects and installation designers decide which material will be selected and will consider different materials as an option to implement the distribution of energy and water inside a building. The parties therefore argue that for most applications, copper tubes are substitutable from the purchaser's perspective with tubes made of other materials.
23. The parties have also submitted that environmental issues play a role in choosing the plumbing materials. In this respect, the parties have argued that concerns about the use of copper plumbing tubes in drinking water applications e.g. in Germany and Sweden have led to gain in market share for alternative materials to copper.
24. As regards plastic sanitary tubes, [...] that a number of factors have contributed to the success of plastic. [...] that plastic tubes are easy and fast to install because they are sold as an integrated system; they are cheaper than copper tubes per metre and are not subject to metal price fluctuations; and distributors and wholesalers benefit from higher margins for plastic systems than for copper tubes. [...] that the actual installation cost is broadly similar for copper and plastic systems.
25. With regard to stainless steel, the parties have argued that stainless steel is widely used in sanitary and heating applications all over Europe and is gaining market share due to improved installation techniques.
26. As to the question whether copper sanitary tubes and industrial tubes should be considered to belong to the same relevant product market, the parties have argued that this is not the case mainly because sanitary tubes are commodity goods whereas industrial tubes are tailor-made products sold to original equipment manufacturers. More specifically, industrial tubes are produced in smaller quantities and with tailor-made tools; industrial tubes are less sensitive to competition from other materials because customers have made the initial choice to use copper as material; and the business is less price sensitive compared to sanitary tubes.

Third parties' views

27. Third parties in their replies to the Commission's questionnaires have indicated that plastic, multi-layer, steel and stainless steel can technically substitute copper in various applications. The investigation shows that multi-layer tubes are a relatively new development on the sanitary tube market. Stainless steel can in principle replace copper tubes for all applications, but the investigation shows that the use of stainless steel is limited mainly due to the high price. Steel is an old material the use of which appears to be declining in a number of applications. As a consequence, steel and stainless steel should be seen as remote substitutes to copper for sanitary tubes.

28. According to third parties, there are no significant differences between the types of housing where sanitary tubes made of different materials can be used. Only stainless steel tubes appear to be used somewhat more often in industrial buildings and hospitals compared to residential or office buildings.
29. With regard to specific applications, the investigation shows that mainly plastic and multi-layer sanitary tubes are used as an alternative for copper in water piping. Plastic is considered [by some third parties] to be a good alternative to copper because of the absence of heavy metal residues and due to good corrosion resistance. Several third parties in different EEA Member States have confirmed the parties' submission that copper tubes can only be used for drinking water with certain pH level because of danger of corrosion. Also the European Drinking Water Directive⁹ sets a limit for copper residues in potable water. In certain regions, such as Stockholm in Sweden and some areas in Germany, the use of copper tubes is regulated due to the unfavourable water quality. On the other hand, the investigation shows that copper tubes prevent the occurrence of the Legionella bacterium and are therefore preferably used in certain areas, such as hotels.
30. With regard to heating, third parties have indicated that copper can be substituted by all materials. However, for very high temperatures and gas installations copper appears to be the favoured alternative, although steel pipes can also be used. In some EEA Member States, such as Portugal, the use of copper tubes for gas installation is required by law.
31. The investigation confirms the parties' view that the share of plastic and multi-layer tubes is slowly increasing. This increase however occurs at a different pace in each Member State since construction habits appear to bring some inertia against the move from one material to another. According to third parties, the reasons for this are that the installation of these pipes is somewhat quicker and requires less specialist knowledge compared to copper tubes. The total installation cost is also said to be competitive compared to copper tubes and maintenance cost is lower.
32. All third parties have confirmed the parties' submission that sanitary tubes and industrial tubes constitute separate relevant product markets for the reasons outlined by the parties.

Conclusion

33. On the basis of the foregoing, while the Commission acknowledges that there appears to be a certain amount of competitive pressure arising from sanitary tubes made especially of plastic or multi-layer, this competitive pressure varies from one application to the other and also between areas in the EEA. While it appears that in particular plastic and multi-layer sanitary tubes are gaining some market share on the sanitary tubes market, this trend seems to be relatively slow.
34. The Commission considers that there is not sufficient evidence to support the parties' argument that one single product market for all types of sanitary tubes should be defined, since the competitive pressure from other materials would not be sufficient to

⁹ Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption *Official Journal L 330*, 05/12/1998 P. 0032 - 0054

completely offset negative impacts such price increases on the copper sanitary tubes market. However, the Commission recognises certain competitive pressure arising from other materials, insofar that, should the parties raise the price of copper sanitary tubes post-merger, it appears likely that there would be a limited switch from copper tubes to plastic and multi-layer..

35. Therefore, for the purposes of this decision, copper sanitary tubes are considered to constitute a relevant product market.

B. Relevant geographic market

36. The parties have submitted that the relevant geographic market for copper sanitary tubes is at least EEA-wide. The parties have argued that this market definition is supported by the following factors: most producers sell across Europe; the transport costs are negligible and below 5%; there are significant trade flows between Member States; the prices are fairly similar within Europe; there are no barriers to entry or expansion in Europe from manufacturing or distribution perspective; and customers are able to seek alternative sources of supplies.
37. The investigation confirms the parties' submission that manufacturers of copper sanitary tubes supply customers largely across the EEA. With regard to continental Europe, customers have typically several suppliers. The investigation also shows that these customers source copper tubes at a wider than national level. Customers have also indicated that they would not have any problems of finding alternative suppliers outside their national borders. Some imports are made even from China. Therefore, as regards continental Europe, the relevant market appears to be at least regional.
38. As concerns the Nordic region and especially Sweden, Norway and Finland, the investigation shows that several customers source from outside this region and more particularly from Great Britain, Belgium and Germany. Some Nordic customers have indicated in their replies that, for historic reasons, they have tended to source from national or regional suppliers. However, as will be discussed below, there is both actual and potential competition which suggests that the market is wider than the Nordic region.

Conclusion

39. For the purposes of this decision, the Commission considers that the geographic markets are at least regional for the continental Europe and wider than regional for the Nordic countries. The exact market definition can however be left open because in all alternative market definitions considered, there are no serious doubts that a dominant market position would be created or strengthened.

C. Competitive assessment

40. According to the parties, the total market for copper sanitary tubes in the EEA amounted to some 328,000 tonnes in 2002. The size of the market has decreased gradually from 370,000 tonnes in 2000.
41. Based on the EEA-wide market definition, the combined market share of the parties in copper sanitary tubes would be [20-30]% (Outokumpu: [5-15]%, Boliden [5-15]).

The market leader would be SMI¹⁰ with [25-35]%. Mueller Europe Ltd. ("Mueller", a subsidiary of Mueller Industries Inc.) and Wieland Werke AG ("Wieland") would each have some [5-15]% of the market and a number of other competitors (e.g. Silmet S.p.A, Feinrohren S.p.A, Halcor S.A.) around [0-10]% and below.

42. If narrower market definitions are considered, no competition concerns would be likely to arise. With regard to continental Europe, the parties' combined market shares at the national level would be the highest in Portugal and in Spain ([40-50]% in Portugal with an increment of [10-20]% and [35-45]% in Spain with an increment of [0-10]%) but in both these Member States customers have confirmed that they already source copper sanitary tubes on a wider than national basis. Moreover, customers have also confirmed that, following the transaction, they would not have problems to switch to alternative suppliers outside the national boundaries. Neither customers nor competitors have raised any concerns about the transaction on these markets.
43. With regard to the Nordic countries, the parties' traditional stronghold, the parties' combined market share would be according to their own estimate [75-85]% in Sweden (Outokumpu: [40-50]%, Boliden [30-40]%), [75-85]% in Norway (Outokumpu: [45-55]%, Boliden [25-35]%) and [60-70]% in Finland (Outokumpu: [45-55]%, Boliden [15-25]%). If considering Finland, Sweden and Norway as a whole, the parties' combined market share would be around [75-85]%. However, the Commission considers that the parties' market position will not lead to the creation or the strengthening of a dominant position, because the geographic market is considered wider than the Nordic region and because there is sufficient actual and potential competition in the region.
44. First, the investigation shows that all the main competitors are active in this region: Wieland has subsidiaries in Denmark, Sweden and Finland; Mueller is active in Sweden and is currently seeking approvals in Finland; and SMI is present in Denmark, Finland, Norway and Sweden. In Sweden, SMI has a sales office and a warehouse facility in Gothenburg. The parties have submitted that SMI is the strongest competitor in the Nordic region with [30-40]% in Finland, [20-30]% in Norway and some [15-25]% in Sweden. The market investigation has largely confirmed the relative market positions of the competitors.
45. Second, although the parties have a strong market position in their traditional home markets, the Commission considers that, in addition to actual competition, there is sufficient potential competition to offset any price increase the new entity might impose on its copper tubes in the region. More particularly, the market investigation shows that while several customers already source outside the Nordic region, the parties' Nordic customers, who for historic reasons have tended to source within the region, would also be able to switch to suppliers outside the Nordic region, should the prices of copper sanitary tubes rise to anticompetitive levels post-merger. In fact, several customers who are relying on the parties for the supplies already regularly check the prices with continental suppliers. Most customers have also emphasised the importance to have at least two independent suppliers in order to be able to negotiate prices.

¹⁰ Società Metallurgica Italiana ("SMI") is an Italian holding company which controls several major copper tube producers: KME Europa Metall ("KME"), Europa Metall, Tréfimétaux and IMI Plc.

46. Competing producers of copper sanitary tubes have expressed an interest in expanding or entering altogether the Nordic region, should demand for their products increase following the transaction. The investigation shows that, following the announcement of the notified operation, Nordic customers who for historic reasons are not currently sourcing outside the Nordic region have already actively contacted copper tube suppliers e.g. in Germany and Greece in search for alternative suppliers.
47. With regard to Norway, strict national standards regarding the wall thickness of copper sanitary tubes were applied only until very recently, thereby effectively limiting the number of copper tube suppliers active on the market. These national standards have now been abolished, allowing competitors to enter the Norwegian market with tubes in conformity with the European standards.
48. Finally, as discussed above, all respondents to the Commission's investigation have said that in particular plastic and multi-layer sanitary tubes can be used for nearly all the applications where copper sanitary tubes are used. Therefore, the Commission considers it possible that any sustained increase in the price of copper could lead to market demand shifting to some extent to plastic and multi-layer tubes.
49. No major concerns have been raised either by competitors or customers concerning the transaction. Also those few customers, who expressed some concerns over the fact that they will be supplied by one entity instead of two as it is today, have expressed confidence in finding alternative sources of supply.
50. On the basis of the first phase investigation the market for copper sanitary tubes does not appear to possess characteristics necessary for collective dominance such as a sufficient degree of market transparency. However, in any event the market structure does not give rise to concerns about collective dominance in this case.

Conclusion

51. On the basis of the foregoing, the Commission concludes that there are no serious doubts that the transaction as notified would lead to the creation or strengthening of a dominant position in the copper sanitary tubes market in the EEA.

Industrial copper tubes

A. Relevant product market

52. Industrial copper tubes are used for various industrial applications such as air-conditioning and refrigeration (“ACR”), heating, ventilation, electric and telecom applications, fittings, etc. They are supplied to original equipment manufacturers or parts manufacturers and to refrigeration merchants. As indicated in point 32, third parties have confirmed the parties’ submission that sanitary tubes and industrial tubes constitute separate relevant markets.
53. According to the parties, industrial copper tubes include two main categories of products: level wound coils (“LWC”) and other industrial tubes.
54. The parties claim that LWC are mainly used in the ACR sector for automated manufacturing lines of air-conditioning producers. They require specific coiling

equipment that not all manufacturers own and a particular know-how in order to get thin walls. LWC are characterised by conformity, cleanliness, the absence of defects and a high automation level in feeding customers' lines.

55. To the contrary of LWC, other industrial tubes such as defined by the parties are supplied in straight length or pancake coils. They are tailored products which are individually finished for a multitude of industrial applications.
56. Both Outokumpu and Boliden produce industrial copper tubes. However Boliden does not produce LWC, while Outokumpu produces both LWC and other industrial tubes.

Third parties' views

57. Third parties in their replies to the Commission's questionnaires confirmed that LWC should be distinguished from other industrial tubes.
58. From a supply side perspective, LWC and other industrial tubes are produced from the same mother tubes. However LWC have smaller diameter and thinner walls than other industrial tubes and require a higher degree of cleanliness. Therefore, manufacturing of LWC requires additional machinery for cleaning and winding and additional tooling. These machinery and tooling are more sophisticated than those used for other industrial tubes and require a higher level of monitoring and care. Furthermore, the know-how to produce LWC is significantly higher than the one required for other industrial tubes. One manufacturer estimated that a minimum of five years was necessary to produce adequate quality LWC. As a consequence of the investment in the machinery and know-how required to produce LWC, not all European producers of industrial copper tubes produce LWC.
59. From a demand side perspective, LWC and other industrial tubes are generally considered as complements: LWC have smaller diameters and wall thicknesses compared to other industrial tubes. There are several reasons to distinguish LWC from other industrial tubes. First, LWC necessitate automated reels to unwind them that are not required by other industrial tubes. Therefore LWC is used in large series production lines, whereas other industrial tubes are generally tailored for customers and used for small series and distribution. Second, a large majority of customers contacted indicated that LWC are used for certain applications only: air conditioning, refrigeration and water heating, whereas other industrial tubes are used in all sorts of applications. As a consequence, some customers never purchase LWC.
60. As far as other industrial tubes are concerned, some customers active in the refrigeration industry have indicated that a special grade of other industrial tubes is necessary in their production process since it requires uncontaminated finished tubes. This special grade would differ from others by its specifications and packaging. However manufacturers consider that no distinction should be drawn between all other industrial tubes, since they can produce all types of other industrial tubes.

Conclusion

61. The Commission considers that LWC and other industrial tubes should be regarded as being part of separate relevant product markets, since they are neither substitutable from a supply side perspective nor from a demand side perspective. Since the parties'

activities overlap only on the other industrial tubes market, the competitive impact of the concentration on the LWC market does not need to be assessed.

62. The Commission also considers that all other industrial tubes are part of the same relevant product market since they are substitutable for a supply-side perspective.
63. Therefore, for the purposes of this decision, other industrial tubes are considered to constitute a relevant product market.

B. Relevant geographic market

64. The parties have submitted that the relevant geographic market for other industrial tubes is Europe-wide or at least EEA-wide. The parties put forward the following arguments to support their assertion:
 - most producers sell across Europe and most customers buy from several manufacturers located in different countries; the transport costs are negligible and below 5%;
 - there are significant trade flows between Member States: in all EEA countries imports represent more than 50% of internal demand;
 - and there are no barriers to entry or expansion in Europe from a manufacturing or distribution perspective since obtaining national standards approval only takes a few months.
65. The investigation confirms the parties' submission that manufacturers of other industrial tubes supply customers largely across the EEA. Customers of other industrial tubes have typically two to three suppliers located in various EEA countries and have indicated that they can easily purchase from several suppliers located in the EEA. Some imports occur from Eastern Europe and even some minor imports are made from the Far East and Northern America. Transport costs of other industrial tubes are usually estimated to be in the range of 2 to 5 % of the total cost of these products.

Conclusion

66. For the purposes of this decision, the Commission considers that the relevant geographic market definition for other industrial tubes is at least EEA-wide but can be left open since there are no serious doubts that a dominant market position would be created or strengthened under any geographic market definition considered.

C. Competitive assessment

67. According to the parties, the total market for other industrial tubes in the EEA amounted to some 81.000 tonnes in 2002. The size of the market has decreased gradually from 91.000 tonnes in 2000.
68. Based on the EEA-wide market definition, the combined market share of the parties in other industrial tubes would be [15-25]% (Outokumpu: [15-25]%, Boliden [0-10]%). The market leader would be SMI with [25-35]%. Wieland would have [15-25]%, Halcor S.A. [10-20] % and a number of other competitors (e.g. Müller, Tubo Tecnico Europeo S.L., Feinrohen, Silmet and MKM/Hettstedt) around [0-10]% and below.

69. This increment of market shares could not give rise to the creation or the strengthening of a dominant position given the leadership of SMI, the existence of competitors of comparable size like Wieland and Halcor and the nearly marginal position held by Boliden on this market. In addition, the vast majority of customers have indicated that they purchase other industrial tubes from at least two suppliers so that they can organise competition between their suppliers and avoid relying on a single supplier. Some customers however indicated that changing supplier could take up to one year and be relatively costly since they need tubes tailored for their own production needs and since they need to adapt new suppliers to their supply chain management. However, none of these customers estimated that these difficulties in switching were such that the envisaged concentration will impact their conditions of purchase of other industrial tubes.
70. On the basis of the first phase investigation the market for other industrial tubes does not appear to possess characteristics necessary for collective dominance such as a sufficient degree of market transparency. However, in any event the market structure does not give rise to concerns about collective dominance in this case.

Conclusion

71. On the basis of the foregoing, the Commission concludes that there are no serious doubts that the transaction as notified would lead to the creation or strengthening of a dominant position in the other industrial tubes market in the EEA.

Sulphuric acid

A. Relevant product market

72. Sulphuric acid is a corrosive chemical, used mainly in the fertiliser and chemical industries. It can also be used in the manufacture of pulp and paper, in gasoline refining and as a cleaning agent for iron and steel prior to plating. Sulphuric acid can be produced by burning elemental sulphur or roasting iron pyrite (“chemical production”). It can also be produced as a by-product of the waste sulphur gases produced during the smelting process of various metals, including zinc, copper, nickel and lead (“smelter production”). These two production methods account respectively for 60 and 40 % of the total EEA market for sulphuric acid.
73. It should be noted that smelters can produce both liquid sulphur dioxide and sulphuric acid from their waste sulphur gases. Liquid sulphur dioxide can also be produced by burning elemental sulphur or roasting iron pyrite. There is therefore a high level of supply side substitutability between these two products. However the market for liquid sulphur dioxide is small compared to the market for sulphuric acid since it represents about [0-10]% of the sulphuric acid market in volume and [5-15] % in value. Therefore were the products to be considered as part of a single relevant product market, market shares for sulphuric acid would be meaningful for a competitive analysis. If on the contrary the two products are considered as being part of two separate relevant product markets, it has to be noted that both Outokumpu and Boliden sell their sulphur dioxide only to [...] (a chemical company) [...]. Therefore the concentration will not affect sulphur dioxide since [...] is [...] the only customer of the parties and will continue to market all the sulphur dioxide produced by the parties. Sulphur dioxide will therefore not be examined further in this decision.

74. According to the parties, for metal smelters, sulphuric acid is a function of the smelting process and not of demand for the product itself. Due to environmental and safety concerns, and since storage is difficult and costly, metal smelters do not stock large quantities of sulphuric acid and therefore place it on the market as price-takers, even in times of significant oversupply.
75. In Akzo Nobel/ Courthaulds¹¹ the Commission left open the possibility that sulphuric acid is part of a wider product market. Waste acids and carbon dioxide can substitute sulphuric acid in the pulp and paper industry. The parties do not produce any of these chemicals.
76. The Commission market investigation has overwhelmingly confirmed that the relevant product market for sulphuric acid comprises at least sulphuric acid and should not distinguish between the production methods of sulphuric acid.

Conclusion

77. Since no competition concerns are likely to arise even on any relevant product market definition, the Commission considers that the relevant product market is at least sulphuric acid. However the definition of the relevant product market can be left open for the purpose of the present case.

B. Relevant geographic market

78. The parties have submitted that the relevant geographic market for sulphuric acid is EEA-wide. The Commission did not come to any definitive conclusion in the Akzo Nobel/Courthaulds case.
79. The parties argue that since the cost of transporting sulphuric acid is much less significant than storing it and bearing the risk of being forced to stop smelting, smelters do not take into account transport costs in their marketing decision and simply look for customers to get rid of their sulphuric acid. In order to further support their assertions for the geographic market definition, the parties argue that there are significant trade flows in the EEA, that customers and suppliers are present throughout the EEA and that price differentials are not such as to separate national territories from each other.
80. However, since [...] % of the sales of Outokumpu and Boliden are achieved within the North-West Europe area (Finland, Sweden, Norway, Denmark, Germany, Poland, Benelux, the United Kingdom and France), since trade flows appear to be significantly higher within this region and since pricing within this area is based on a single North-West Europe reference price (the CFR Antwerp price), the parties have provided market shares on the basis of this North-West Europe Area.
81. The Commission market investigation has confirmed that the market for sulphuric acid was at least North-West European, since all suppliers and customers located in this area operate in this whole area, if not on a wider basis. None of the main assertions submitted by the parties has been contradicted by the market investigation.

¹¹ Case COMP/M.1182 Akzo Nobel/Courthaulds

Conclusion

82. For the purposes of this decision, the Commission considers that the relevant geographic market definition for sulphuric acid is at least North-West Europe wide but can be left open since a dominant market position would neither be created nor strengthened under any geographic market definition considered.

C. Competitive assessment

83. According to the parties, the total market for traded sulphuric acid in North-West Europe (i.e. excluding captive use) amounted to some 5.6 million tonnes in 2002. The parties have very limited internal use of sulphuric acid and therefore no assessment of the market including non-captive uses is necessary.
84. Based on the North-West Europe market definition, the combined market share of the parties in sulphuric acid would be [10-20]% (Outokumpu: [5-15]%, Boliden [0-10]%). The main competitors are Norddeutsche Affinerie with [10-20]% and Umicore with [10-20]%, and a number of other competitors (e.g. KGHM, Pasminco Budel Zink, Borregaard, Grillo Werke) with market shares comprised between [5-15]% and [0-10]%.
85. Such a combination is not likely to give rise to any competitive concern. The new entity will have less than [15-25]% of the market and at least two competitors have similar market positions. Customers can easily change of supplier for sulphuric acid that is actively traded within North-West Europe and usually have a strong bargaining position since they are often upward integrated in the production of sulphuric acid and therefore can exert pressure on suppliers with the spare production capacity of their own facilities.

Conclusion

86. On the basis of the foregoing, the Commission concludes that there are no serious doubts that the transaction as notified would lead to the creation or strengthening of a dominant position in the sulphuric acid markets in the EEA.

VI. CONCLUSION

87. 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 by,
Franz FISCHLER
Member of the Commission