

***Case No COMP/M.3326 -
LNM / PHS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 05/02/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 05/02/2004

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party:

Dear Sir/Madam,

**Subject: Case No COMP/M.3326 - LNM/PHS
Notification of 23 December 2003 pursuant to Article 4 of Council
Regulation No 4064/89¹**

1. On 23 December 2003, the Commission received a notification of a proposed concentration by which the undertaking LNM Holding NV ("LNM", Dutch Antilles) acquires within the meaning of Article 3 (2) of the Council Regulation 4064/89, as last amended by Regulation (EC) No 1310/97, sole control of the Polish joint stock company Polskie Huty Stali SA ("PHS").
2. After examining the concentration, 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. LNM forms part of the LNM Group, which is active worldwide in the manufacture of semi-finished and finished steel and iron ore production. LNM operates integrated steel

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).

plants in Algeria, Kazakhstan, Romania and the Czech Republic. The LNM Group is controlled Mr Lakshmi N. Mittal and his family.

4. PHS is a Polish State-owned joint stock company which resulted from the consolidation of four Polish steel companies. PHS is active in manufacture and sale of semi-finished and finished steel.

II. THE OPERATION

5. The proposed concentration is an acquisition by LNM of a sole control over PHS. This transaction comes as a result of the Restructuring Programme for the Polish Iron and Steel Industry adopted by the Polish government in advance of the Poland's accession to the EU. Pursuant to this Programme, PHS was formed as a joint stock company on June 6, 2002 by consolidation of four Polish steel companies, namely, Huta Katowice S.A., Huta T. Sendzimira S.A., Huta Florian S.A. and Huta Cedler S.A.
6. Under the terms of the agreement between LNM and Polish State Treasury, LNM will acquire approximately 62.2% of PHS's shares outright and will have the right to vote approximately 69% of the shares. The Polish State will maintain a 25% stake in PHS, which it can sell to LNM before 2007. In absence of any sale prior to 2007, LNM will have a call option to purchase this shareholding from the State in 2007. In addition, the Polish State will maintain ownership of 6% of shares, which will be reserved for purchase by PHS employees pursuant to the Polish Privatisation Act.

III. CONCENTRATION

7. As a result of the transaction, LNM will acquire sole control over the entire activities of PHS. 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. Each of LNM and PHS have a Community-wide turnover in excess of EUR 250 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

9. On the basis of the previous Commission's decision³, the steel market can be segmented into carbon steel, special or high alloyed steel and stainless steel. In the present case, the parties' activities overlap only in the carbon steel segment.

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.

³ Cf. ECSC.1351 Unisor/Arbed/Aceralia

10. The parties submit that the relevant product market in the present case should be defined as semi-finished steel and finished steel products, in which LNM's and PHS's activities overlap. According to the Commission, semi-finished steel products could possibly be further subdivided into: (i) slabs and (ii) bloom and billets⁴. Likewise, finished steel products can be further subdivided into flat products and long steel products⁵. Flat products include: (i) hot-rolled carbon steel flat products, (ii) all uncoated cold-rolled carbon steel flat products, (iii) galvanized plates, sheets and coils, including hot-dip galvanized and electro-galvanized, (iv) commodity small diameter (less than 508mm) welded carbon and alloy steel tubes. Long steel products include: (i) rail tracks, (ii) carbon steel wire rod, (iii) beams and sections for mines, and sections and beams for other uses.
11. However, it appears that the exact product market definitions may be left open in the present case, since in all alternative market definitions, the operation does not raise competition concerns. Therefore the relevant product markets that are considered are carbon steel segment semi-finished and finished products and all their possible sub-segmentations.
12. According to the parties, the geographical scope of all of the markets concerned in this transaction is EU-wide or wider. Such geographic markets definitions are in line with the past decisions of the Commission in the steel sector⁶. However, it appears that the exact geographic market definition may be left open in the present case, since in all alternative market definitions, the operation does not raise competition concerns. Therefore the relevant geographic markets that are considered are the EU ones.

Semi-finished steel products

13. The Commission has dealt with semi-finished steel products in the previous case, ECSC.1310 British Steel / Hoogovens, where the final segmentation of the semi-finished steel into slabs and bloom and billets has been left open due to the very small size of these segments. However, irrespectively of the final product definition, the parties combined market shares will remain relatively small, with an exception of billets and blooms, where it will become the largest European supplier. However, the parties will also face to a strong competition from firms like Riva, Corus and Voest Alpine.
14. The parties combined market share for semi-finished carbon steel products would amount to approximately [5-15%] by volume (LNM [0-10%] and PHS [0-10%]). The market leader would be Riva with a market share of [20-30%]. Other competitors in the market include Voest Alpine with a [5-15%] of the market, Corus with [5-15%] and Thyssen Krupp with [5-15%] of the market.
15. In the market for slabs, the parties' combined market share by volume would amount to approximately [0-10%] (LNM [<1%] and PHS [0-10%]). The market leader would

⁴ Cf. ECSC. 1310 British Steel/Hoogovens, indicating a possible subdivision within semi-finished steel products

⁵ Cf. ECSC.1351 Unisor/Arbed/Aceralia

⁶ Cf. ECSC.1351 Unisor/Arbed/Aceralia ; ECSC. 1310 British Steel/Hoogovens

be Riva with [20-30%] of the market followed by Voest Alpine ([5-15%]) and Arcelor ([5-15%]).

16. In the market for billets and blooms, the combined market share in volume would amount to [15-25%] (LNM [10-20%] and PHS [5-15%]) thus, making the LNM/PHS the largest supplier of billets and blooms in the EU. However, the parties would still face up to a strong competition from Riva with [15-25%] of the market, Corus ([5-15%]) and Saarstahl ([5-15%]).

Finished Steel products

17. The Parties activities overlap in the following markets: hot-rolled flat carbon steel (combined market share [0-10%], LNM [0-10%] and PHS [<1%]), uncoated cold-rolled flat carbon steel (combined market share [0-10%], LNM [0-10%] and PHS [<1%]), galvanised plates, sheets and coils, including hot-dip galvanised and electro-galvanised (combined market share less than 1%, LNM [<1%] and PHS [<1%]), commodity non-large diameter welded carbon and alloy steel tubes (combined market share less than 1%, LNM [<1%] and PHS [<1%]), carbon steel wire rod (combined market share [10-20%], LNM [10-20%] and PHS [<1%]), beams and sections for mines (combined market share [5-15%], LNM [5-15%] and PHS [0-10%]), heavy sections beams (combined market share [5-15%], LNM [0-10%] and PHS [0-10%]), and rails (combined market share [0-10%], LNM <0.1% and PHS [0-10%]).
18. LNM is also active upstream in selling direct reduced iron ore, pig iron and coking coal, as well as downstream in wire processing. However, for none of these activities does LNM's market share exceed 25%.
19. In light of the above, the transaction does not give rise to the creation or strengthening of a dominant position on any of the alternative market definitions considered.

VI. CONCLUSION

20. 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
Mario MONTI
Member of the Commission