

***Case No COMP/M.3334 –
ARCELOR/
THYSSENKRUPP/
STEEL24-7***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 16/02/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.02.2004

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case No COMP/M.3334 Arcelor/Thyssenkrupp/Steel 24-7
Notification of 14 January 2004 pursuant to Article 4 of Council
Regulation No 4064/89**

1. On January 14, 2004, the Commission received a notification pursuant to Article 4 of Regulation (EEC) No 4064/89¹ as last amended by Regulation (EC) No 1310/97² (“the Merger Regulation”) of a proposed concentration by which ThyssenKrupp AG (“ThyssenKrupp”) acquires an additional 25% of the share capital in the existing Joint Venture Steel 24-7. After completion of the transaction, ThyssenKrupp and Arcelor SA (“Arcelor”) will each own 50% of the shares in Steel 24-7. The companies will have joint control over Steel 24-7 within the meaning of Article 3(1) (b) of the Merger Regulation.

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 180, 9. 7. 1997, p. 1; corrigendum OJ L 40, 13.2.1998, p. 17.

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. **ThyssenKrupp** is the ultimate parent company, based in Germany, of a group of undertakings active in the production, processing, recycling and disposal of steel and other basic materials as well as the extraction of other raw materials; developing, planning, production and distribution of machines, engine plants, components, systems, etc. for the car industry; trade, logistics, transport and other services. It is also active in the field of real estate.
4. **Arcelor** is the ultimate parent company, based in Luxembourg, of a group of undertakings active in the production and distribution of steel products. Its activities comprise the production of flat carbon steel, long carbon steel, and stainless steel as well as the distribution, transformation and trading of steel.
5. **Steel 24-7** is a Belgian company whose field of activity is the provision of B2B web-based sales and other services for the steel community. Steel 24-7 will provide the following services to its users: Transaction services (electronic catalogues, requests for quotes and forward auctions), Follow up services (for exchanging information regarding the execution of contracts between the parties of such contracts: Order Progress, Document handling) and Integration Services allowing participants to exchange electronic messages with the platform as well as third business counterparts, using Steel 24-7 as a communications hub as well as Internet consulting services upon request from a user. At least during the start-up period, the business of Steel 24-7 will focus on trade in flat carbon steel products.

II. THE OPERATION

6. Steel 24-7 is presently owned by ThyssenKrupp (25%), Arcelor (50%) and Corus (25%). According to its governance rules there is no sole or joint control of Steel 24-7 because the shareholders' agreement stipulated that all the three shareholders would have equal voting rights and the same number of representatives on the board and strategic decisions³ would be taken by simple majority.
7. According to an agreement reached in November 2003 ThyssenKrupp would acquire all of the shares in Steel 24-7 held by Corus. As a result, ThyssenKrupp and Arcelor will each hold 50% of the shares in Steel 24-7.

III. CONCENTRATION

³ Approval of the strategy and related business plans; approving the annual budget of the business units of the Joint Venture including the annual capital investment program.

Joint control

8. After the transaction Steel 24-7 will be jointly controlled by ThyssenKrupp and Arcelor. As mentioned above, each of the shareholders will hold 50% of the shares of Steel 24-7. Furthermore, the composition of the Board of Directors, according to the new shareholders' agreement, establishes joint control of the parties over the Joint Venture. [...] directors shall be appointed, [...] in respect of each party and [...] independent director(s). All decisions in the Board of Directors shall be taken by an [...] % majority.

Full functionality on a lasting basis

9. Steel 24-7 is set up on a permanent basis. It is anticipated that, after a start-up period, during which the Joint Venture will rely on its parents, at least 50% of its income will come from third parties. Steel 24-7 performs all other functions of an autonomous economic entity and has a management dedicated to its day-to-day operations and access to sufficient resources, including finance, staff and assets to conduct its business activities.
10. Accordingly, the transaction constitutes a concentration within the meaning of Article 3(1) (b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

11. The undertakings concerned have a combined aggregate world-wide turnover of more than 5 billion EURO⁴. Each of them have a Community-wide turnover in excess of 250 million EURO, 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

12. The parties have submitted that Steel 24-7 is exclusively active as a provider of B2B web-based sales and other services. The Joint Venture does not buy or sell steel products. Its business consists merely of the provision of B2B web-based services to its users. Thus, it does not operate in a market which is downstream or upstream of the markets where its parents operate.
13. However, the Commission considers, in line with previous practice, that Joint Ventures created to promote the distribution of the products of the parent companies are vertically integrated with the parent companies.⁵ Therefore, the vertically linked market for the production and sale of steel products will be dealt with in addition to the market for B2B web-based services.

Internet platforms

⁴ 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).

⁵ Cases No COMP M.2830 Global Freight Exchange/ Lufthansa Cargo/ Société Air France/British Airways JV, COMP M. 2747 Ondeo – Thames Water / Water portal and COMP M. 2197 Hilton Accor/Forte/Travel services JV.

A. Relevant product market

14. The parties have submitted that the relevant market on which Steel 24-7 operates is the market for the provision of e-commerce services via Internet platforms. They have based their submission on previous decisions in which the Commission accepted the existence of a market for B2B web-based services and the provision of an individual trading functionality to its customers.⁶ The provision of web-based services might be distinguished from those made by fax, telephone, e-mail or personal contact in view of their higher efficiency (speed, lower costs and multiple language options). The market could also be considered as narrower, i.e., covering a specific industry or product only, or wider. In the present case, it is not necessary to further define the market because the operation will not create or strengthen a dominant position under any possible market definition.

B. Relevant geographic market

15. The parties have submitted that the geographic market for B2B web-based services is at least EEA-wide, or wider, due to the reach of the Internet.
16. The Commission considers that the market is as least as wide as the geographic scope for the sale of steel products. However, for the purpose of the present decision, it is not necessary to further define the geographic market.

C. Competitive assessment

17. If we consider the narrowest possible market definition and we assume that there is a separate market for web-based services in respect of flat carbon steel products (the products to be sold via the Joint Venture in the start up business phase), ThyssenKrupp and Arcelor would, according to their own estimates, have market shares of [0-10]% and [20-30]% respectively on this very narrowly defined market. This is less than their shares of the overall market for steel products. The market share of Steel 24-7 is currently negligible. It is however expected to grow, at least partially, at the expense of the sales currently made via the parents proprietary web sites, as volumes sold via these sites will be transferred to the platform. In any case, the merger reduces the incentives of Corus to sell via the Joint Venture and reduces the risk of creation of a dominant position.
18. If the product market is defined as the overall market for B2B web-based sales services, the parties' market shares would be minimal, much less than 1%, on an EEA market or on any wider market.
19. Considering the preceding analysis, there are no concerns that the proposed transaction will cause the creation or strengthening of dominance for Steel 24-7, or raise other competition concerns, on any of the possible market definitions considered.

Steel products

⁶ Cases No COMP M.2096 – Bayer/Deutsche Telekom/Infraserv/JV, COMP/M.2138 – SAP/Siemens/JV, COMP/M.2172 – Babcock Borsig/MG Technologies/SAP markets/ec4ec and COMP/M.2027 – Deutsche bank/SAP/JV.

A. Relevant product market

20. Both parties are active on a number of markets which are upstream to the market on which the Joint Venture is active. These markets (defined according to previous Commission practice⁷) are: hot rolled flat carbon steel products (ThyssenKrupp [10-20]% market share and Arcelor [20-30]% market share), cold-rolled carbon steel flat products (ThyssenKrupp [10-20]% and Arcelor [30-40]%), galvanised steel products (ThyssenKrupp [10-20]% and Arcelor [40-50]%), organic coated carbon steel (ThyssenKrupp [10-20]% and Arcelor [30-40]%), electrical steel sheets (ThyssenKrupp [30-40]% and Arcelor [10-20]%), steel for packaging (ThyssenKrupp [10-20]% and Arcelor [30-40]%), cold rolled stainless steel products (ThyssenKrupp [20-30]% and Arcelor [30-40]%) and cold rolled stainless steel flat products (ThyssenKrupp [30-40]% and Arcelor [20-30]%).

B. Relevant geographic market

21. The Commission has previously considered that the markets for steel are at least EEA wide.⁸ In the present case, it is not necessary to further define the geographic scope of the markets as the competitive assessment of the present transaction, presented below, does not lead to competition concerns either in the EEA market or in a relevant part of it.

C. Competitive assessment

22. The parties have argued that, even if a linkage were to be found between the market on which Steel 24-7 is active and the markets on which ThyssenKrupp and Arcelor focus their economic activities, the parties believe that the notified transaction would not have any impact on any such markets. In particular, the transaction will not strengthen the positions of the parents on the various markets for steel products mentioned above.
23. The parties have also emphasised the importance of the neutrality of Steel 24-7 as an online marketplace. Steel 24-7 will only be successful if it is perceived by its users as a neutral forum for steel transactions.
24. Moreover, Steel 24-7 has carefully established Chinese walls that ensure that confidential information belonging to any of its users will not be made available to other users without the owner's consent. A security audit made by an independent firm ensures the full effectiveness of these arrangements. Steel 24-7 is currently implementing an Information Security Management System in compliance with security standard BS7799 and hopes to obtain relevant certification by the end of the year.
25. In addition they have indicated that even if it was possible to by pass the Chinese walls, the raw data about the details of a large number of individual transactions is not particularly useful to competitors for the purposes of co-ordination as there are a very large number of variables, price, quality, specification, dimensions, and destinations etc, which make it difficult to determine the sellers' commercial policy.

⁷ Cases No COMP/ECSC.1351 – Usinor/Arbed/Aceralia and COMP/ECSC.1310 British Steel/Hoogovens.

⁸ Cases No COMP/ECSC.1351 – Usinor/Arbed/Aceralia and COMP/ECSC.1310 British Steel/Hoogovens

26. Furthermore, the prices at which products are sold via the platform are market prices, determined by the highest bids made by prospective buyers. Thus, the parties have no possibilities to influence prices by imposing a minimum price. The possibility for small customers to buy directly from the parties via the auction system, rather than from traders or other intermediaries, might also result in lower prices for end-users.
27. Finally, the parties have submitted that only small customers, who were not able to trade directly with the producers before, could be forced to use Steel 24-7. Before the creation of the Joint Venture, these clients had no or limited possibilities of dealing directly with the parties. Following the transaction they will have more opportunities. Large customers, on the other hand, will continue to negotiate directly with the parties, who cannot force these customers to purchase via the platform.
28. In addition to the question of coordination dealt with above, some respondents to the Commission's market investigation also raised concerns that the high market shares of the parties as steel producers enable them to insist on customers purchasing via Steel 24-7. This would reduce the customers' ability to negotiate⁹ and would increase the possibility of co-coordinating prices and capacity. Having regard to the position of the parties in some markets, it would be impossible for all clients that do not want to use the parties' Internet platform to obtain supply at lower prices from other steel producers.
29. The Commission has concluded that the concentration, i.e., the acquisition of joint control following the withdrawal of Corus, will not cause the creation or strengthening of a dominant position on upstream markets and does not have as its object or effect the coordination of the competitive behaviour of the parent companies of Steel 24-7 on these markets. In fact, it should be noted that the concentration reduces the possibilities for coordination among steel makers since it is the result of a withdrawal of one of the three major steel producers from the Joint Venture.
30. The Commission's market investigation shows that larger customers negotiate directly with steel producers and will continue to do so. These customers have the advantage of having the possibility of using Steel 24-7 for Follow up services, Integration services and for purchases of smaller quantities of steel. The use of the Internet for Follow up services allows steel sellers to make important savings in administrative costs. Direct sales through the platform will in practice continue to be limited to smaller customers who will have the possibility of dealing directly with steel producers eliminating the traders' level.
31. It is foreseen that, also after the proposed transaction, less than [5-15]% of the parent companies' sales will be made via Steel 24-7. The concentration will not increase transparency and facilitate price coordination in respect of larger customers, since, as indicated above these customers do not purchase via the platform. Even if the site could be used to co-ordinate prices in respect of small customers, this would be an insufficient basis for general coordination of prices of carbon steel products. In addition, price coordination in respect of smaller customers is not apparent because

⁹ For example, as regards the functioning of the auction system, there appears to be a lack of feedback after a bid has been placed. It has been argued that it is impossible to know the reasons why a particular bid failed. Moreover, it is alleged that minimum prices are not communicated to potential customers and could be used by the parties to increase prices.

almost 100% of sales¹⁰ are based on an auction system implying that minimum prices are not communicated to potential customers.

32. Moreover, Steel 24-7's revenues from its parents in 2004 are expected to be in the range of [...] million EURO only.
33. Having regard to the above, it can be concluded that there are no reasons to believe that the risk of price coordination between ThyssenKrupp and Arcelor will be increased as a result of the concentration.

VI. CONCLUSION

34. 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

Philippe BUSQUIN
Member of the Commission

¹⁰ [...] % of Arcelor's and [...] % of ThyssenKrupp's Internet sales are auction sales. Only [...] % of Arcelor sales via Internet were based on request for quotes and it is not expected that these figures will change substantially in the future.