

***Case No COMP/M.4085 -
ARCELOR / OYAK /
ERDEMIR***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 13/02/2006

***In electronic form on the EUR-Lex website under document
number 32006M4085***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.02.2006

SG-Greffe(2006) D/200673-200674

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

PUBLIC VERSION

To the notifying parties

Dear Sir/Madam,

Subject: Case No COMP/M.4085 – Arcelor / Oyak / Erdemir
Notification of 09/01/2006 pursuant to Article 4 of Council Regulation
No 139/2004¹

1. On 09/01/2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004² (the “Merger Regulation”) by which the undertakings Arcelor S.A. (“Arcelor”, Luxembourg) and Ordu Yardimlasma Kurumu (“Oyak”, Turkey) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking Eregli Demir ve Celik Fabrikalari T.A.S (“Erdemir”, Turkey) by way of purchase of shares.

I. THE PARTIES

2. Arcelor is a European steel producer, active mainly in four product categories, flat carbon steel, long carbon steel, stainless steel and steel related services. The group has been created through the merger of the three steel producers Aceralia, Arbed and Usinor in February 2002³.
3. Erdemir is the largest Turkish steel producer, active in the production and sale of various steel products and related services.

¹ OJ L 24, 29.1.2004 p. 1.

² OJ L 24, 29.1.2004 p. 1

³ Case No COMP/ECSD.1351 Usinor / Arbed / Aceralia

4. Oyak is the Turkish armed forces pension fund. It owns equity interests in companies active in various sectors, including financial services, cement, automotive, food processing, trade, logistics and technology.

II. THE OPERATION

5. On 6 April 2005⁴, the Turkish state decided to sell its 46.12% interest in Erdemir through a tender. In addition, a 3.17% share in Erdemir held by Türkiye Kalkınma Bankası (“TKB”), a Turkish bank, was offered for sale with the Turkish State’s interest. The auction was held on 4 October 2005 and Oyak was selected as the purchaser of Erdemir shares. The Turkish Competition Board and the Turkish High Council of the Privatization Administration approved Oyak’s offer respectively on 24 November 2005 and 6 December 2005⁵.
6. In parallel, on 17 November 2005, Oyak and Arcelor executed a Memorandum of Understanding, dealing with Arcelor’s participation in a Special Purpose Vehicle (“SPV”) set up by Oyak to acquire Erdemir shares. On 23 December 2005, Oyak and Arcelor executed the Shareholders’ Agreement and Share Purchase Agreement (“SPA”) relating to the SPV. Under these agreements, Arcelor will own a 41% stake in the SPV and Oyak the remaining 59%. The SPV will in turn own 49.29% of Erdemir shares directly. Erdemir owns 3.07% of its own shares whereas Arcelor has also acquired 5.07% of Erdemir’s share on the market. [...]⁶

III. CONCENTRATION

7. The notifying parties submit that the proposed transaction constitutes a concentration whereby Arcelor and Oyak will acquire joint control over Erdemir (through the SPV).
8. Given that Erdemir owns 3.07% of its own shares, the SPV will indeed acquire the majority of Erdemir’s share owned by third parties (50.9%), which will confer it sole control of Erdemir. This is irrespective of whether or not the 5.07% of Erdemir shares held directly by Arcelor are taken into account.
9. Arcelor will only have a 41% interest in the SPV and will legally not be entitled to veto any decisions relating to the strategic behaviour of the SPV or Erdemir. Joint control by Oyak and Arcelor of Erdemir can therefore not be established on a legal basis.
10. However there are strong common interests between OYAK and Arcelor to the effect that it can be expected that they are not going to act against each other in exercising their rights in relation to Erdemir. In line with the principles set out in the Notice on Concentration⁷, Oyak and Arcelor therefore jointly control Erdemir on a de facto basis.

⁴ Turkey Privatisation High Council’s decision 2005/47

⁵ Official Gazette dated 6 December 2005 (16015)

⁶ Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets.

⁷ See Commission Notice on the concept of concentration under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings, OJ C 66, 2 March 1998, page 5, paragraph 32 ff.

11. Arcelor is the only shareholder with a significant sector - specific knowledge, whereas Oyak is to be considered a pure financial investor. Therefore, there is a strong incentive for Oyak to take Arcelor's point of view into account in strategic decisions concerning the SPV and Erdemir. Arcelor's sector-specific know-how is an indispensable input for Erdemir in this respect.
12. In addition, Oyak and Arcelor have agreed on an industrial plan based on the integration of the commercial operations of Arcelor and Erdemir. According to the Shareholders' Agreement, [...]. This will clearly give Arcelor strong influence on the commercial policy of Erdemir. It also increases further the commonality of interests between Oyak and Arcelor and Oyak's incentive not to undertake any strategic action without Arcelor's approval.
13. Moreover Arcelor will also play an important role in the management of Erdemir. According to the Shareholders' Agreement, [...]. These provisions show that Erdemir is intended to be managed on the basis of equality between Arcelor and Oyak. Even if these rights do not amount to legal veto rights under the Merger Regulation, they give Arcelor considerable influence over Erdemir.
14. Given the above, Arcelor will also be in a position to exercise decisive influence over Erdemir. Thus, the proposed transaction will result in the acquisition of joint control by OYAK and Arcelor over Erdemir and, therefore, constitutes a concentration under the terms of the Merger Regulation.

IV. COMMUNITY DIMENSION

15. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion⁸ (Arcelor 30 176 million EURO; OYAK 6 371 million EURO; Erdemir 2 631 million EURO). Each of Arcelor and OYAK have a Community-wide turnover in excess of EUR 250 million (Arcelor [...]; OYAK [...]), 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. RELEVANT MARKETS

16. The operation deals with the production and direct sales of steel, the distribution of steel products and other related activities.
17. Oyak does not hold any interest in other companies active in the same markets, nor in vertically related or neighbouring markets to those in which Arcelor and Erdemir are active⁹.
18. The only identifiable vertical relationship results from the 49% interest that OYAK holds in OYAK Renault Otomobil Fabrikalari A.S ("Oyak Renault"), active in the production of motor vehicles. Oyak Renault is customer of Arcelor for various carbon steel flat products. The transaction is however not likely to raise any competitive

⁸ 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).

⁹ The remainder of OYAK's shares is held by Renault S.A.S.

concerns in this respect as Oyak Renault is already a long-standing customer of Arcelor and the supply agreement between Oyak Renault and Arcelor is part of European-wide arrangement between Renault and Arcelor.

19. Arcelor and Erdemir are both active in the distribution of steel products and the provision of logistic services in the steel sector. However, given that these markets are considered national or regional in scope, there is no overlap between the parties' activities, as Erdemir is not active in the distribution of steel products or in logistic services outside Turkey. Therefore these markets are not further analysed.

A. Relevant product markets

Carbon steel products, stainless steel and highly alloyed steel products, electrical steel

20. In previous decisions¹⁰ the Commission distinguished four broad categories of finished steel products: (i) carbon steel, (ii) stainless steel (iii) highly alloyed steel and (iv) electrical steel. Steel products in these four categories differ in term of chemical composition, price and end applications. Arcelor's and Erdemir's activities overlap only in the two categories of carbon steel products and electrical steel products.
21. In line with the Commission's practice, within electrical steel products, the following relevant product categories can be distinguished: non-grain oriented electrical sheets and grain oriented electrical steel sheets.¹¹ The parties' activities overlap to a minimal extent only in the production and direct sale of non-grain electrical steel sheet. However, in light of the de-minimis overlap¹² of the parties' activities in electrical steel products¹³, these markets will not be further discussed.

Semi-finished steel products

22. In accordance with previous Commission decisions, the following basic shapes of semi-finished steel products can be distinguished: (i) blooms, (ii) billets and (iii) slabs. There is no overlap between the parties on the merchant market for any of these semi-finished steel products as Erdemir is not active in the merchant market for the sale of slabs and Arcelor is not active in the merchant market for the sale of billets and blooms. Therefore the above mentioned product categories are not further discussed.

Flat carbon steel products, long carbon steel products

23. Within carbon steel products, the parties identify separate product markets for (i) flat steel products and (ii) long steel products. These two types of carbon steel products are manufactured in different rolling mills and are used in different end applications. The

¹⁰ Case No IV/ECSC.1268 Usinor / Cockerill Sambre and Case No COMP/ECSC.1351 Usinor / Arbed / Aceralia.

¹¹ Case No COMP/ECSC.1351 Usinor / Arbed / Aceralia

¹² All EEA/ EEA + Turkey market share data used in the decision have been provided by the parties and are calculated on the basis of Eurofer statistics (EU-25), customs' data and parties' best estimates.

¹³ The parties' combined market shares in non-grain oriented electrical steel sheets are [10-20%] in the EEA and [10-20%] in the EEA + Turkey, Erdemir's market shares being below 1% in both cases.

Commission has also defined separate relevant product markets for flat and long carbon steel products in its previous decision¹⁴.

24. Within long steel products, the following products categories can be further distinguished: rail tracks; wire rod; beams and sections and reinforcing bars (rebars). The parties' activities overlap only in the market for rebars and wire rods, on which Arcelor and Isdemir (a subsidiary of Erdemir) are active. However, given the limited scope of the parties' activities on these markets¹⁵, these markets are not further assessed.

Flat carbon steel products: Hot-rolled, cold-rolled and coated flat carbon steel products

25. There are three stages in the production process of flat carbon steel products: (i) hot-rolling, (ii) cold-rolling and (iii) coating. The finished products may be sold at the end of each of those three stages, which supports the distinction between three categories of flat carbon steel products. According to the parties, the technical characteristics of hot-rolled, cold-rolled and coated products differ from one another. In particular, hot-rolled and cold-rolled products lack the surface qualities and the resistance to corrosion that characterize coated products. Price levels are also different for those three carbon steel flat product categories. The respondents to the Commission's market investigation largely confirmed the parties' approach. In light of the above, it is to be concluded that the above mentioned products do not exercise competitive constraint upon each other.

Hot rolled carbon steel flat products

26. Hot-rolled wide strips are produced from steel semi finished products (slabs) in automated hot rolled strip mills and rolled into coils or produced flat into quarto mills. Narrow strips, including slit strips are produced either directly or by slitting hot-rolled wide strips.
27. In line with the previous Commission's practice¹⁶, the parties have identified two separate product markets within hot-rolled carbon steel flat products: (i) hot-rolled flat products excluding quarto plates and (ii) quarto plates. The latter are non-coiled products with very different dimensions, in particular in term of thickness, from other hot-rolled flat products. Quarto plates are made on special quarto plate mills, have specific physical properties and are used in applications that differ from those for thin flat steel products.
28. The respondents to the Commission's market investigation confirmed that quarto plates constitute a separate product market within hot-rolled flat products. Thus, for the purposes of this case (i) hot-rolled flat products excluding quarto plates and (ii) quarto plates will be considered as two distinct relevant product markets.

¹⁴ Case IV/ESCS.1351 Usinor / Arbed / Aceralia Case IV/ESCS.1328 Salgitzer/ HSP

¹⁵ The parties' combined market shares are respectively [0-10%] in the EEA and in the EEA + Turkey for wire rods and around [10-20%] and [0-10%] for rebars, Erdemir's market shares being below 1% in both cases for both products.

¹⁶ Case No COMP/ECSC.1351 Usinor / Arbed / Aceralia

Cold rolled carbon steel flat products

29. Cold-rolling is a further processing stage undergone by hot-rolled carbon steel flat products that affects their basic properties by reducing their thickness, improving their profile and finishing their surface.
30. The parties consider that all cold-rolled flat products belong to the same relevant product markets, in line with previous Commission decisions¹⁷. The results of the Commission's market investigation largely confirmed the previous Commission's findings. Thus, for the purposes of this case all cold-rolled flat products will be considered as belonging to the same relevant product market.

Coated carbon steel flat products

31. The corrosion resistance of flat carbon steel can be increased by coating it with zinc or another metal (metallic coating) and / or by applying an organic topcoat (organic coating). According to the parties, metallic coated and organically coated steel products belong to separate relevant product markets as the latter have different characteristics and significantly higher prices. Organically coated products are not further assessed as Erdemir is not active in this field. In any case the question of whether organically coated and metallic coated steel products belong to the same relevant product market can be left open for the purposes of this case as there is no competition concern under any product market definition.
32. The parties submit that metallic coated products can be further sub-divided into two different broad classes: (i) steel for packaging and (ii) galvanised steel. Steel for packaging is essentially used in the beverage and food industry while galvanised steel is widely used in the automotive, construction and engineering industries.
33. The parties further consider that there are two distinct types of steel for packaging: (i) steel for beverage packaging and (ii) steel for non beverage packaging. The precise delineation of the relevant product market was left open by the Commission in previous decision¹⁸. The question of whether steel for beverage packaging and non-beverage packaging belong to the same relevant product market may be left open in this case since it does not modify the competitive assessment.
34. Galvanised steel may be obtained by two production processes: (i) hot-dip ("HD") and (ii) electro-galvanised ("ELO"). The parties submit that the two types of galvanized steel are largely substitutable from a customer's perspective and that they belong to the same relevant product market. In previous decisions, the Commission left this question open. However it is not necessary to conclude on whether HD and ELO galvanized steel belong to the same relevant product market as it does not modify the competitive assessment.

B. Relevant geographic markets

¹⁷ Case No IV/ECSC.1268 Usinor / Cockerill Sambre

¹⁸ Case No COMP/ECSC.1351 Usinor / Arbed / Aceralia

35. The parties emphasise that flat carbon steel markets are characterized by extensive trade flows at the worldwide level. They submit that the relevant product markets for flat carbon steel are therefore at least EEA-wide in scope. In addition, they consider that Turkey also belongs to the EEA-wide geographic market due to (i) large European imports into Turkey, (ii) homogeneous price levels, (iii) homogeneous conditions of competition and (iv) low transport costs and the (v) absence of tariffs or other barriers to trade in the EEA + Turkey area.
36. In previous decisions the Commission considered the markets for hot rolled carbon steel flat products (including quarto plates) and cold rolled flat products to be at least Community-wide. In particular, as regards cold rolled flat products the Commission noted in the previous case *Arcelor*¹⁹ that the respondents to the market investigation considered the market to be not wider than Western Europe, i.e. an area encompassing the EU 15 and the EFTA States. However the definition of the relevant geographic market was ultimately left open.
37. The respondents to the market investigation conducted by the Commission in the present case confirmed that the market for hot rolled carbon steel flat products (including quarto plates) and the one for cold rolled flat products are at least EEA-wide (EU 25 + Norway, Lichtenstein and Iceland). The market investigation did not however provide clear indication as to whether Turkey also belongs to the same relevant geographic market, as claimed by the parties. In particular, while imports from the EEA into Turkey are sizeable, the trade flows in the opposite direction, i.e. from Turkey to the EEA, are very limited and fluctuating. However the precise geographic scope of the markets for the production and direct sale of hot rolled carbon steel products, quarto plates and cold rolled carbon steel flat products may be left open as it does not modify the competitive assessment.
38. In previous decisions the Commission considered the markets for steel for packaging and coated steel products to be not wider than the Community. The results of the market investigation in this case point towards an at least EEA-wide dimension for these markets. However the precise geographic scope of the markets for the production and direct sale of steel for packaging and coated steel products may be left open as it does not modify the competitive assessment.

VI. COMPETITIVE ASSESSMENT

39. The proposed operation results in affected markets for the direct sale and supply of the following carbon steel flat products: (i) hot-rolled flat carbon steel products, (ii) quarto plates, (iii) cold-rolled carbon steel flat products, (iv) steel for packaging and (v) galvanised steel.
40. While Arcelor is an important player in some of these product markets, the transaction gives rise to very limited additions of market shares at an EEA level (given that Erdemir's sales in the EEA are negligible for carbon steel flat products). On an EEA + Turkey geographic market, the accretions in market share are limited. . In any case, the market investigation confirmed that European carbon steel flat products customers did not consider that Erdemir exercised a competitive constraint on those markets in the EEA.

¹⁹ Case No COMP/ECSC.1351 Usinor / Arbed / Aceralia

Hot-rolled flat products

41. In the EEA-market for hot rolled flat products (excluding quarto plates), the parties' combined market share will be [20-30%] with a minimal increment of less than 1%. Moreover, the transaction will not create any overlap in the market for quarto plates since Erdemir is not active on this market in the EEA. If an EEA + Turkey market is considered, Erdemir's market share is still below 5% for hot rolled flat products and below 1% for quarto plates.

Cold-rolled products

42. Arcelor has a market share of [20-30%] on the EEA market for cold rolled flat products whereas Erdemir's market share is below 1%. Thus the transaction is not likely to create any competition issues in this market since the changes to the market structure brought by the transaction are minimal.
43. If an EEA + Turkey market is considered, Arcelor's market share reaches [20-30%] and Erdemir's market share is [0-10%] for cold rolled flat products. Respondents to the market investigation however confirmed that the integration of Erdemir's was not likely to modify Arcelor's market position from the perspective of EEA customers of those products.

Steel for packaging

44. The proposed transaction will not create competition concerns on the market for steel for packaging in light of the minimal overlap in the parties' activities. Arcelor's market share for the production and sale of steel for packaging is [30-40%], but Erdemir's market share for the production and sale of steel for packaging in the EEA are below 1%. Under an alternative product market definition, namely if two distinct product markets were deemed to exist for (i) steel for beverage packaging and (ii) steel for non-beverage packaging, the transaction is unlikely to significantly impede effective competition as Erdemir is not active in steel for beverage packaging and both Arcelor's and Erdemir's market shares for steel for non-beverage packaging are not materially different from those for the overall market for steel for packaging.
45. If an EEA + Turkey market is considered, Arcelor market shares amounts to [30-40%] and Erdemir's market share is around [less than 5%] for steel for packaging. However the respondents to the market investigation confirmed that the transaction is not likely to create competitive issues even on this wider market definition.

Galvanised steel

46. Although Arcelor enjoys a strong market position in the EEA area ([30-40%]), Erdemir's market share in the EEA is well below 1% and is around 1% in the EEA + Turkey area. Thus the transaction would not have any impact on the competitive conditions for the production and sale of galvanised steel products in the EEA.

VII. CONCLUSION

47. 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 (EC) No 139/2004.

For the Commission,
signed,
Jan FIGEL
Member of the Commission