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Case No COMP/M.4178 - MAN FERROSTAAL / EUROTECNICA GROUP

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 31/01/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

Subject : Case No COMP/M.4178 – MAN FERROSTAAL / EUROTECNICA GROUP

1. On 18/12/2006, the Commission received a notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004 (the "Merger Regulation")[1] by which the undertaking MAN Ferrostaal AG ("Ferrostaal", Germany) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Eurotecnica Melamine S.A. ("Eurotecnica", Luxembourg), belonging to Eurotecnica Group SA, by way of purchase of shares.

I. THE PARTIES AND THE OPERATION

2. Ferrostaal is active in the design, engineering, procurement, and construction of industrial facilities. It also engages in the sale, distribution, and provision of after-sales services of machines used in manufacturing operations as well as for equipment and ships. In addition, Ferrostaal plans and carries out infrastructure projects and trades in both Germany and elsewhere in steel products and non-ferrous metals. Finally, it maintains centres providing logistics-based supply services to automobile manufacturers, and offers financial services facilitating investment in industrial and infrastructural projects.

3. Eurotecnica is a process engineering contractor providing engineering services in the fields of chemical, hydrocarbon refining and effluent treatment plants. In particular,

[1] OJ L 24, 29.1.2004 p. 1

it owns and licenses to third parties a technology for the production of melamine that is based on a high-pressure non-catalytic process.

4. The proposed concentration consists in the acquisition of the entire shareholding of Eurotecnica by Ferrostaal. Ferrostaal therefore will exercise sole control over Eurotecnica.

II. COMMUNITY DIMENSION

5. The notified concentration does not meet the turnover thresholds of Article 1(2) and 1(3) of the Merger Regulation. On 24 September 2006 the parties informed the Commission in a reasoned submission, that the transaction, which is a concentration within the meaning of Article 1 of the Merger Regulation and is capable of being reviewed under the national competition laws of at least three Member States, should be examined by the Commission. The Member States which according to the reasoned submission are competent to examine the concentration (Austria, Germany, Italy, Slovakia, and Slovenia) did not within 15 working days express their disagreement to the request of referral. The case was therefore deemed to have a Community dimension.

III. RELEVANT MARKETS

Relevant Product markets

Melamine

6. Melamine is a high-quality specialty chemical, which is used in a variety of applications, such as resins for surface applications, laminates, adhesives, binders, or flame retardants. According to the parties, melamine can be produced using either a high pressure technology process (HPT) or a low pressure technology process (LPT).

7. According to the parties, melamine is a relatively homogeneous product, whose purity can range between 99.6% and 99.9%. High-grade melamine has a purity level starting at 99.8%. Conversely, low-grade melamine has a purity comprised between 99.6% and 99.7%. The different degrees of purity can be of relevance for further processing by the producers of resins based on melamine. The parties submit that the production of melamine-based resins for surface applications (such as automotive coatings) or laminates requires high-grade melamine. In contrast, the melamine-based resins used for the production of adhesives (mainly for the furniture industry) or the usage of melamine as a binder or flame retardant only require low-grade melamine. According to the parties, melamine purity does not depend on the technology – HPT or LPT – used for its production. Consistent production of high-grade melamine mainly depends on the skills and the experience of the personnel running the melamine production plant. In this respect, LPT-based production plants are more difficult to run to produce consistently high-grade melamine.

8. The market investigation largely confirmed that the quality of the melamine produced is independent of the production technology, however some respondents mentioned that HPT plants seem to be more capable of producing high-grade melamine on a consistent basis. For the purpose of the present decision it can be left open whether the melamine market should be further subdivided according to quality criteria since the proposed transaction does not give raise to competitive concerns on any reasonable product market definition.

Licensing of technology for melamine production

9. A manufacturer of melamine needs access to a technology in order to produce melamine on an industrial scale. The parties submit that the most important world-wide producers of melamine, i.e., BASF, DSM, AMI and Nissan, are vertically integrated and have developed their own technologies for the production of melamine. Alternatively, a company wishing to enter the melamine production market may obtain a license of technology from a license holder.

10. In the production of melamine, one can distinguish between high-pressure and low-pressure production technologies. The parties submit that LPT were invented in the 1950's and currently the vast majority of melamine plants are based on LPT. Important producers such as BASF, DSM and AMI run melamine plants based on LPT, including some large plants located in Europe. LPT are operated at a pressure slightly above atmospheric pressure. A catalyst is employed to start the chemical reaction which transforms urea into melamine. Plants based on LPT are cheaper to build, although their operation may be less stable. Patents for LPT have for the most part expired and overseas licensors (such as the University of Beijing) have developed their own LPT which they make available for license to third parties, however mainly in China.

11. According to the parties, HPT were first invented by Allied Signal in the 1960's and subsequently developed by Montedison in the 1970's. Among the large melamine producers using HPT are AMI and Pulawy, both with HPT plants in Europe. Eurotecnica is the most important licensor for HPT. HPT use high temperature and pressure to start the transformation of urea into melamine. No catalyst is needed for the reaction. Plants based on HPT are more expensive to build, due to the more sophisticated technologies which they employ. However, their operation can be more stable. This differentiation was largely confirmed by the market investigation.

12. For the purpose of the present decision it can be left open whether the market for the licensing of melamine production technology should be further subdivided into HPT and LPT, since the proposed transaction does not give raise to competitive concerns on any reasonable product market definition.

The market for the construction of petrochemical plants

13. In the current case it is not necessary to decide whether the market for the construction of petrochemical plants is part of a larger relevant market including other types of chemical and engineering construction as the operation will not raise competition problems on any reasonable market definition.

Relevant geographic markets

Melamine

14. In its State Aid Decision concerning Germany, Agrolinz Melamine Germany GmbH[2], the Commission considered the relevant geographic market to be EEA-wide. It based its assessment on the fact that imports into the EEA amounted to about 20% to 25% of melamine consumption, while exports from the EEA were less significant.

2 JOCE C/058/2003.

15. The parties submit that this is no longer the case and that that the market for melamine is probably world-wide as approximately 29% of the melamine sold in the EEA is imported, mainly from Asia. The market investigation has confirmed that melamine imported from Asia exerts a growing competitive pressure on European producers, even though some respondents to the market investigation indicated that not all melamine produced in Asia satisfies the quality requirements of the EEA market.

16. For the purpose of the present decision it can be left open whether the market for melamine is global or EEA wide since the proposed transaction does not give raise to competitive concerns even on the narrowest product market definition.

Licensing of technology for melamine production

17. According to the parties, the market for the licensing of technology for melamine production has a global dimension. License-holders – such as Eurotecnica – offer their technologies on a world-wide basis. There are no geographic constraints of any sort to the granting by a license-holder of a license to a melamine manufacturer in a distant location.

18. The Commission has so far not defined the relevant geographic market for the licensing of technology for melamine production but it appears that a world-wide market is the more appropriate definition. This has been largely confirmed in the market investigation.

The market for the construction of petrochemical plants

19. The parties submit that the market for the erection of petrochemical plants is world-wide in scope. The geographic market definition for the construction of petrochemical plants can be left open since no competition concerns arise on this market.

IV. COMPETITIVE ASSESSMENT

Assessment

Horizontal overlaps

20. The proposed concentration does not lead to horizontal overlaps between the parties' activities.

Vertical issues

21. Eurotecnica is not active in the production of melamine. Ferrostaal only holds a non-controlling minority shareholding of […] % for a petrochemical complex under construction in Trinidad consisting of an ammonia, an urea ammonium nitrate and melamine plants […] where it also is the general contractor. The Trinidad complex will consist of seven plants, including two melamine trains. Ferrostaal has entered into license and engineering contracts with […] different companies, one of them Eurotecnica, in order to be able to supply this complex. Ferrostaal does not own shares in any other melamine producing facility. The planned melamine output of this plant would represent 5.6 % of a hypothetical geographic market limited to Europe and less than 4.4% of the global market for melamine.

22. On the market for the licensing of melamine technology, the parties submit that new capacity built using Eurotecnica's HPT accounts for about [10-20]% of all new melamine production capacity that started production during the 1996-2005

reference period, and [40-50]% of all new HPT melamine production capacity that started production during the same period. Ferrostaal is not active on this market.

23. While Eurotecnica probably remains the only non-integrated licensor of HPT, the present transaction would not lead to vertical integration. It therefore seems unlikely that the merged entity would have the ability and the incentive to refuse to license non-integrated melamine producers since neither Eurotecnica nor Ferrostaal (with the exception of its minority non-controlling interest in MHTL) competes on the downstream market for melamine. The parties submitted a price formula that has been the basis for discussions of the purchase price between Ferrostaal and Eurotecnica. This underpins the parties' submission that the acquisition of Eurotecnica will only pay off as an investment if Eurotecnica continues its normal course of business. In conclusion, the transaction is unlikely to lead to vertical foreclosure of melamine producers.

24. On the global market for the construction of petrochemical plants, Ferrostaal has a share of ca. [<5]%. Eurotecnica is not active on this market. In consequence, there is no overlap on this market. Furthermore no vertical issues arise due to small market share of Ferrostaal.

IV. CONCLUSION

25. 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
Neelie KROES
Member of the Commission