

***Case No COMP/M.4225 -
CELSA / FUNDIA***

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

Article 6(1)(b) NON-OPPOSITION
Date: 28/07/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.07.2006

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case No COMP/M.4225 – Celsa / Fundia
Notification of 22.06.2006 pursuant to Article 4 of Council Regulation
No 139/2004¹**

I. INTRODUCTION

1. On 22.06.2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation² by which the undertaking Steel Management Services S.L. (“Steel Management Services”), ultimately owned by the Celsa Group (“Celsa”), acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of the undertaking Fundia Reinforcing AS (“Fundia”) by way of purchase of shares by Bosian Time Norway AS (“Bosian Time Norway”), a wholly-owned subsidiary of Bosian Time S.L. (“Bosian Time”), and of a management agreement between Bosian Time and Steel Management Services.

¹ OJ L 24, 29.1.2004 p. 1.

² Council Regulation (EC) No 139/2004

2. After examination of the notification, the Commission has concluded that the operation does not raise serious doubts as to its compatibility with the Common Market and the EEA agreement.

II. THE PARTIES AND THE OPERATION

The parties

3. **Steel Management Services S.L.**³ is ultimately controlled by the privately-owned Celsa Group (as described below). The Celsa Group is mainly active in the production of steel products, with plants located in Poland, Spain, and the United Kingdom (the “UK”). Its steel processing business is limited to electro-welded mesh, carried out in a plant in Barcelona and sold to customers in Spain and Portugal. Steel Management Services S.L. is part of the Celsa Group (“**CELSA**”) which consists of a group of undertakings active in the steel business in several European countries. CELSA is ultimately jointly controlled by two brothers (Mr. Francisco Rubiralta Vilaseca and Mr. José María Rubiralta Vilaseca). The son of the first of these brothers, Mr. Francesc Rubiralta Rubió, has sole control over a newly created Spanish limited liability company, Bosian Time S.L (“**Bosian Time**”) and its wholly-owned Norwegian subsidiary, BT Norway AS⁴ that is to acquire the shares of Fundia Reinforcing AS.
4. Fundia Reinforcing AS (“**Fundia**”) is a wholly-owned subsidiary of Fundia AB, which belongs to the Finnish Rautaruukki Group (“Ruukki”). Fundia constitutes the steel reinforcing division of Ruukki. Fundia produces and processes steel reinforcing products. Its production facility is located in Norway and its processing and distribution facilities are located in Norway, Sweden, Finland and Denmark.
5. Bosian Time is independently incorporated and separately financed by CELSA.

The operation

6. The envisaged transaction concerns the acquisition by Celsa of sole control of Fundia (“Fundia”), by way of contractual assignment by the legal owner (Bosian Time) of the right to manage the company. The assignment will be effected through an “irrevocable management agreement” whereby decisive influence over Fundia will be conferred by the owner, “Bosian Time” upon CELSA. Under the Agreement, CELSA will have the possibility to solely decide on, *inter alia*, Fundia’s business plan, budget and market behaviour.⁵ Furthermore, CELSA will solely appoint Fundia’s management team and outline the general policy to be followed by the management.

³ A limited company duly incorporated and existing under the laws of Spain with the Tax identification nr: B-84.610.922, registered with the Madrid Business Registrar folio 15, volume 22,453 and sheet M-40,1125. Formerly registered under the name GADINET CONSULT, S.L.

⁴ A limited liability company duly incorporated and existing under the laws of Norway with the registration nr: 989 528 157. Formerly registered under the name Startfase 204 AS.

⁵ In addition, by virtue of the Agreement, CELSA (through Steel Management Services S.L) is granted a call option on BT Norway AS’s shares.

7. Pursuant to a sale and purchase agreement entered into on 24 April 2006, and a long-term irrevocable management arrangement entered into on 21 April 2006, CELSA will, through Steel Management Services S.L, acquire sole control over Fundia. The Transaction amounts to a concentration within the meaning of Article 3 of the EC Merger Regulation insofar as control over Fundia will be transferred, on a lasting basis, from Ruukki to CELSA pursuant to the acquisition of Fundia's shares and the irrevocable management arrangement.

III. COMMUNITY DIMENSION

8. This operation does not have Community dimension within the meaning of Article 1 of the Merger Regulation as Fundia's total Community turnover is only EUR [...] million.. On 23.05.2006 the parties informed the Commission in a reasoned submission, that the transaction was capable of being reviewed under the national competition laws of four Member States. The Commission transmitted this submission to all Member States on 23.05.2006. The Member States competent to examine the concentration did not within 15 working days express their disagreement to the request of referral. The case is therefore deemed to have a Community dimension under Article 4(5) of the Merger Regulation.

IV. PRODUCT MARKETS

9. According to the parties, the steel reinforcing business can be considered as divided into (i) the production level and (ii) the processing/distribution level.

The market for production of reinforcing steel products

10. The parties have overlapping activities with respect to only one type of steel product, namely products that are used to reinforce (strengthen) concrete, i.e. reinforcing steel. Concrete strengthened with this particular type of steel product (i.e. reinforcing steel) is suitable to bear loads and is used in construction structures such as columns, floors, roofs, etc...
11. The steel business can be divided into many different relevant product markets.⁶ Reinforcing steel constitutes one of many subcategories of finished long carbon steel products. In two previous decisions⁷, the Commission concluded that long carbon steel products could constitute a separate relevant market from flat steel products, and that long products could be further subdivided into sections and steel beams, permanent way material, merchant bars and wide rods. However, the exact scope of the market was left open.
12. Based in particular on the specific physical properties and technical requirements imposed by construction, reinforcing products are generally distinguished from other long carbon steel products. The parties have additionally argued that the three

⁶ See e.g. case ECSC 1351 Usinor /Arbed/Aceralia.

⁷ Case ECSC 1351 Usinor /Arbed/Aceralia, case M.3326 LNM / PHS.

different types of reinforcing products, ie Rebars, coils and Mesh Wire Rods (MWR) are all used for “*one and the same purpose namely to reinforce concrete and that therefore they should constitute one and the same product market*”.

13. On the basis of the market investigation, it is confirmed that reinforcing products are different from other steel products. Additionally, there is a clear distinction between MWR on the one-side, rebars and coils on the other. As for rebars and coils, they are to a large extent substitutable. This distinction reflects the different physical properties and uses of the different products. MWR is used largely for manufactured reinforced building components which are subsequently used on a construction site, or are directly exploited in the context of prefabricated constructions. Rebars and coils have similar physical characteristics, but for certain uses, because of the larger cross-section rebars may have, they are not readily substitutable.
14. In any case, the Commission may leave open the question whether the relevant product market is an overall market for reinforcing products, or should be further delineated into reinforcing bars, reinforcing coils and mesh wire rods, on the grounds that the transaction will not significantly impede effective competition regardless of how the relevant product market is defined.

The market for processing/distributing of reinforcing steel products

15. Typical customers of rebars, coils and MWR are fabricators processing and customizing Rebars, Coils and MWR into various end-products. Such customizing consists of cutting and bending (Rebars and Coils) and drawing and machine processing (MWR). After having processed Rebars, Coils and MWR into end-products, the fabricators sell and deliver their end-products to contractors and building companies carrying out construction work.
16. Processing and distribution of reinforcing products can be distinguished from the production and direct sales of reinforcing products, based on the differences between customers served directly, and via a distribution channel, and the demand on processors/distributors to respond rapidly to customer requirements ; this was confirmed by the investigation.
17. There are no indications that distribution of reinforcing products should be differentiated based on the different products, as the same players are involved for all products, and provide similar services.

VI. GEOGRAPHIC MARKET DEFINITION

The market for production of reinforcing steel products

18. In a number of previous decisions⁸, the Commission has taken the view that the geographic market for the production of steel is EEA-wide. On steel tubes, in case Usinor/Arbed/Aceralia, the Commission noted “*transport costs were not significant relative to the value of the products. Further, European markets are characterised by a high level of mutual market penetration as well as by the absence of significant price differences*”. In the end the Commission left open the exact geographic scope.

⁸ Case ECSC 1351 Usinor /Arbed/Aceralia, case M.1329 Usinor / Cockerill Sambre.

19. As evidenced by the market investigation, there are national differences in terms of consumption patterns for reinforcing products⁹, resulting from climate¹⁰ and labour cost differences¹¹ in particular. There are also different national safety regulations. However, the transportation costs are limited, certification processes are not costly, products with varying specifications can be manufactured in the same plant and there are limited price differences between countries. Consequently, there is no indication that the conclusion reached in previous Commission decisions that the production market is EEA wide would be put into question.

The market for processing/distributing of reinforcing steel products

20. The distribution market for reinforcing products is geographically narrower in scope than the production market as distributors generally serve customers within a limited distance from their location. Such proximity to end-customers is essential as customers of distributors require the provision of accessory services and the ability to promptly meet unpredictable delivery requests. The volumes that the individual end-customers purchase and the frequency of individual purchases do not justify the transport and logistics costs associated with international deliveries. This has been confirmed by the market investigation. On that basis, and in keeping with prior Commission decisions¹², the geographic market for the distribution of steel is national.

VII. COMPETITIVE ANALYSIS

The market for production of reinforcing steel products

21. Large players such as Riva, Feralpi and Mittal, as well as a number of smaller players, are active in the production of reinforcing products. The market investigation points to sustained price competition, and readiness and ability to switch by consumers in case of an increase in price.
22. On an overall market for reinforcing products, Riva is the market leader with [5-15]%, the nine largest players (prior to the transaction) representing [50-60]% of the market. Most operators are present in all market segments. Post merger, the parties'

⁹ Across the EEA, Spain is the highest consumer of Reinforcing Products (7 m tons), followed by Italy (6m), both having substantially higher overall consumption than Germany (3.9m) and France (1.4m) see Annual Report of the Eurofer rebars committee, Milan, 4th May 2006, Appendix 5, Form CO

¹⁰ As explained by the parties, “Due to differences in climate, in Northern Europe, concrete is more often (than in southern part of Europe) “prefabricated”; meaning that it is reinforced with Reinforcing Products on a plant prior to being transported to the construction site. Prefab concrete is traditionally made with MWR. As it is more common to reinforce concrete on the constructions sites in southern parts of Europe, the MWR consumption is lower there. “

¹¹ As provided by the parties, “On a construction site, processed Rebars or Coils need to be tied together with wires, an exercise which is labour intensive. Processed MWR, on the other hand, has the form of a net where the steel is welded together. Accordingly, there is no need to undertake a tying exercise on the construction site when using processed MWR. By using processed MWR, the end-customers save significant man-hour and reduce their labour costs. As labour costs traditionally have been much higher in Northern Europe than in southern part of Europe, the end-customers in Northern Europe are much more inclined to substitute MWR for Coils or Rebars.”

¹² Case ECSC 1351 Usinor /Arbed/Aceralia, case M.3747 Rautaruukki/Wärtsilä/SKF, case M.1329 Usinor /Cockerill Sambre, case ECSC 1340 Riva / SAM.

combined share remains in any case limited, be it in an overall market for all reinforcing products, ([5-15]%) or in the separate market segments for rebars ([5-15]%), coils ([15-25]%) or MWR ([0-10]%).

The market for processing/distributing of reinforcing steel products

23. The parties do not have overlapping activities with respect to the national or regional markets for processing/distributing reinforcing steel. CELSA's processing activities take place in Spain and its customized products are sold in Spain and Portugal. Fundia's processing/distribution activities are limited to Norway, Sweden, Denmark, Finland, Germany and the Netherlands. The highest market share of Celsa at the distribution level, in Sweden, is [25-35]%.

VI. CONCLUSION

24. 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
Joaquin ALMUNIA
Member of the Commission