EN

Case No COMP/M.4384 - HOMBERGH / DE PUNDERT / PIB / OVAKO

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 10/11/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.11.2006

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4384 - Hombergh/De Pundert/PIB/Ovako
Notification of 04/10/2006 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 01/10/2006, 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") by which the undertakings Hombergh Holdings B.V. ("Hombergh", the Netherlands), W.P. de Pundert Ventures B.V. ("De Pundert", The Netherlands) and Pampus Industrie Beteiligungen GmbH & Co. KG ("PIB", Germany) acquire joint control of the undertakings Oy Ovako AB and Ovako Svenska AB (together the "Ovako Business").

I. THE PARTIES

2. **Hombergh** is a holding company, with holdings in undertakings active in environmental products and services, the steel sector (through its interest in Nedri Spanstaal B.V. ("Nedri")) and the pre-stressed concrete sector.

3. **De Pundert** is a holding and investment company with holdings in the energy, the meat and the steel sectors. De Pundert has also an interest in Nedri.

[1] OJ L 24, 29.1.2004 p. 1.

4. **PIB** is a German holding company with holdings in several companies active in the steel sector, including in Westfäliche Drahtindustrie GmbH ("WDI"). WDI has an interest in Nedri.

5. Nedri is mainly active in pre-stressed concrete quality steel wire and **WDI** in wire products, free-cutting steels, mesh and ropes.

6. The Ovako Business is active in the steel sector as a producer of long special steels and processed steel and further processed steel products for the automotive and engineering industry. It produces low alloyed engineering steels and carbon steel.

II. THE OPERATION THE CONCENTRATION

7. The transaction concerns the acquisition of joint control by Hombergh, De Pundert and PIB of the assets and liabilities of the Ovako Businesses. This includes the assets and liabilities of Oy Ovako AB and of Ovako Svenska AB, together with the subsidiaries held by Ovako Svenska AB: Ovako Steel AB, Ovako Bright Bar AB, Ovako Bar AB, Ovako Wire Oy AB and Ovako Bar Oy AB.

III. THE CONCENTRATION

8. The Ovako Business is an existing independent joint venture[2] that is active on the market for long steel products. It is, and will continue to be, an autonomous economic entity and will operate on a lasting basis.

9. The Ovako Business will be controlled by Ovako Holdings BV which will itself be controlled by [The two recitals discuss the shareholding of Ovako Holdings BV and establish that Ovako Holdings BV is jointly controlled by Hombergh, De Pundert and PIB].y

10. […].

11. It follows from the above that Ovako Holdings BV will be jointly controlled by Hombergh, De Pundert and PIB and that the operation qualifies as a concentration under the terms of Article 3 (1) (b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

12. This operation does not have a Community dimension within the meaning of Article 1 of the Merger Regulation.

13. However, on 6 September 2006, the notifying party informed the Commission in a reasoned submission pursuant to Article 4(5) of the Merger Regulation that the concentration was capable of being reviewed under the national competition laws of at least five Member States, namely Germany, the Netherlands, Italy, Poland and Slovakia, and requested the Commission to examine it. None of the Member States competent to examine the concentration indicated its disagreement with the request for referral within the period laid down by the Merger Regulation.

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[2] The Ovako Business is controlled by Rautaruukki, Wärtsilä and SKF. The operation to create Ovako was approved by the Commission ,case M.3747 – Rautaruukki/Wärtsilä/SKF/JV

14. Therefore the concentration is deemed to have a Community dimension pursuant to Article 4(5) of the Merger Regulation.

V. THE RELEVANT MARKETS

Product markets

15. The proposed transaction involves a number of steel products. In previous decisions[3] the Commission has differentiated between the different types of steel, carbon steel (including low alloy steel), special or high alloy steel, stainless steel and electrical steel. In this case as the Ovako Business only produces carbon steel it is not necessary to consider the other grades of steel. It further distinguished between semi-finished products, flat rolled products and long rolled products. Finally it has identified downstream products such as drawn wire products, tubes and rings.

Semi-finished products

16. In this case only the Ovako Business is involved in the production of crude steel and carbon steel semi-finished products and none of the acquiring parties is a consumer of such products. Therefore semi finished products will not be further discussed.

Flat steel products

17. Of the parties to the concentration only WDI, a subsidiary of PIB, produces flat steel products (cold rolled flat steel). None of the other parties to the operation is active on a market upstream or downstream from cold rolled flats. Therefore, flat steel products will not be further discussed in this decision.

Long steel products

18. The production of long steel products involves different production equipment and processes. When producing long steel products, billets or blooms are initially re-heated and then passed repeatedly through pairs of rolls to obtain the exact shapes required. Among long steel products a number of different products may be distinguished: wire rod (the raw material for a number of wire products); merchant bars, reinforcing; sections (including light and heavy sections, mine shaft beams, rails and sheet piling).

19. The Ovako Business produces a range of hot rolled merchant bars and wire rod. These products are not manufactured by the acquiring parties but they are used by them as input raw materials for their production processes. These products and the downstream products manufactured from them are discussed below.

(1) Wire rod

20. Wire rod is produced by re-heating and rolling billets and is manufactured in a number of standard diameters ranging from 5.5 mm up to 16 mm. They are normally produced in coils. Wire rod may be distinguished from other long products by the type of mill used for its manufacture and its characteristics.

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[3] Most recently in M.4137 Mittal+/Arcelor

21. In previous cases[4], the Commission has not concluded on the exact definition of the relevant product market. The parties submit that wire rod constitutes a separate relevant product market and that, in light of the high degree of substitutability between the different types of wire rod, no further segmentation of this product market appears necessary. However, for the purposes of the present transaction, the precise definition of the market maybe left open since this would not affect the conclusions of the competitive assessment.

(2) *Merchant Bars*

22. Merchant bars, produced from billets on so-called bar or medium mills, may have round, square or hexagonal shape. Merchant bars are normally sold to fabricators, steel service centres and other manufacturers for cutting, bending and shaping into a variety of products.

23. In previous decisions, the Commission considered that merchant bars constitute a distinct relevant product market and did not segment the market further. In the present case the product market definition may be left open since the Ovako Business' market share for merchant bars is low ([5-10]% overall) and there are no indications that it has any significantly higher share for any possible sub-segment. In addition there is almost complete supply side substitutability between the different shapes of carbon steel merchant bars. In this situation a high market share for a given cross section (hexagonal for example would not give rise to any market power as other producers could easily increase their production of that particular shape.

(3) Drawn wire Products

24. Drawn wire products include bright bars, high carbon and low carbon wire, wire ropes, pre-stressed concrete quality wire and piano and PC strings. The question of whether these products belong to separate relevant product markets may be left open for the purposed of the present case since, on any reasonable definition of the relevant market, the parties' combined market share would not exceed [10-20]% except for pre-stressed concrete quality wire and even for this product the operation does not give rise to competition concerns.

Tubes and rings

25. Only the Ovako Business is active in the production of steel tubes in the EEA. These products are not purchased for their manufacturing processes by the acquiring parties nor are the acquiring parties active in markets upstream or down stream from tubes and rings. Therefore tubes and rings will not be further discussed in the present decision.

(4) Distribution

26. Steel products may also be sold through various distribution channels. In previous cases[5], the Commission defined separate relevant product markets for (1) steel service

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4 Rautarruky/Warstila*/SKF/JV and LNM/PHS,* Case M. 3747.

5 Usinor/Arbed/Aceralia, Case COMP/ECSC.1351.

centres for carbon steel flat products[6], (2) stockholding centres for carbon steel flat products,[7] (3) stockholding centres for carbon steel long products, and (4) oxycutting centres[8]. The Commission has found that the scope of the relevant product market for the distribution of long steel products was national or at most regional (i.e. larger than national)[9].

B. Relevant geographic markets

27. In line with previous Commission decisions[10], the parties have submitted that the geographic markets for wire rod, merchant bars and drawn wire products are at least EEA wide. However the precise geographic scope of the markets for the production and direct sale of these products may be left open as the competitive assessment is unchanged on any reasonable market definition.

VI. COMPETITIVE ASSESSMENT

28. The parties activities overlap in wire products and particularly in two segments pre-stressed concrete quality wire and bright drawn bars. Moreover the transaction would give rise to vertical relationships between wire rod and wire products and between steel production and distribution.

A. Horizontal markets

a) Drawn wire products

29. On the overall EEA market for drawn wire products the parties' combined 2005 share was less than [5-10]% and the operation would not give rise to competition problems at this level. The Commission also examined the effect of the proposed operation on the narrower markets. Only on the market for pre-stressed concrete quality wire did the parties' 2005 combined market share exceed [10-20]%. However it was less than [20-30]% and in the pre-stressed concrete quality wire market the parties will face competition from some twenty competitors based in the EEA including TYCSA, Trefil Europe (Arcelor Mittal) and Socritel with similar market shares.

B. Vertically related markets

a) Wire rod and merchant bars/drawn wire products

30. In 2005 the Ovako Business' EEA market shares for wire rod and merchant bars were both below [10-20]%. These low market shares would not allow the Ovako Business to foreclose the supply of these products to competing suppliers of drawn

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6 Steel service centres purchase from steel manufacturers strip mill products, which they then slit and cut to customers' requirements. Their customers include car manufacturers, white goods manufacturers, and stockholders. Long products are not sold through service centres.

7 Stockholding centres are active as wholesalers in the steel industry, purchasing steel products in bulk and re-selling in smaller quantities.

8 Oxy-cutting centres purchase from steel manufacturers quarto plate, which they then cut to particular sizes and shapes as required by customers using oxyhydrogen blowtorches. The traditional cutting technology is being replaced with lasers and water jets.

9 *Usinor/Arbed/Aceralia*, Case COMP/ECSC.1351.

10 *Rautaruukki Wartsila.SKF/JV*, Case COMP/M.3747 LNMPHS, Case COMP/M.3226.

wire products, particularly because there are many larger alternative suppliers including Mittal Arcelor, Saarstahl, Celsa and Corus.

b) Long products/distribution

31. Only Delta, a subsidiary of PIB, is active in the distribution of steel long products. It operates in Germany where it has a market share of less than [5-10]%. Given that the Ovako Business' share of the production of long products is also below [5-10]%, no competition problems will arise from the vertical relationship resulting from the proposed operation.

VII. CONCLUSION

32. 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