

***Case No COMP/M.4441 -
EN+ / GLENCORE /
SUAL / UC RUSAL***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 01/02/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 01/02/2007

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.4441 - EN+/Glencore/Sual/UC Rusal
Notification of 19/12/2006 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 19 December 2006 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking UC Rusal Limited, a newly created subsidiary of EN+ Group Limited ("EN+", Jersey) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of certain assets and interests of Sual Partners Ltd ("Sual assets") and Glencore International ("Glencore assets") by way of contribution of shares and assets.
2. After examination of the notification, the Commission has concluded that the operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

I. THE PARTIES

3. EN+ is ultimately wholly owned by an individual of Russian nationality. In addition to its interest in Rusal, the EN+ group has interests in the energy, machinery, financial services and construction and development sectors.

¹ OJ L 24, 29.1.2004 p. 1.

4. **Rusal** is a vertically-integrated aluminium and alumina company. Its principal operations are in Russia, but it also has production assets in Ukraine, Guyana, Guinea, China, Italy and Australia. Rusal 's activities include selling products such as primary aluminium, primary wrought alloys, foundry alloys and wire rod². In Europe, Rusal's principal business is its aluminium business, which focuses mainly in the production of primary aluminium.
5. **Glencore** is a Swiss based company involved in the supply of metals, minerals, coal, crude oil and oil products, and agricultural products throughout the world. It is a privately held company owned by its management and employees. The Glencore Interests to be contributed to the enlarged Rusal Group comprise Glencore's Interests in certain Jamaican bauxite mines and various alumina refineries in Ireland, Jamaica and Italy, together with one aluminium smelter in Sweden.
6. **Sual** is an aluminium company involved in all stages of the production process. Sual's production plants are situated across nine Russian regions and in Ukraine. Sual's business has two specific divisions: upstream aluminium, which comprises bauxite, alumina and primary aluminium production and various downstream business units for the production of semi-finished and finished products. Sual is contributing all of its bauxite, alumina and aluminium smelting facilities and its aluminium foil businesses to the enlarged Rusal Group³.

II. THE OPERATION

7. UC Rusal Limited ("UC Rusal") will be inserted as an intermediate holding company between EN+ and its current wholly owned subsidiary Rusal. Certain aluminium, alumina, bauxite and related assets and interests will be contributed to UC Rusal by Sual and Glencore, through the contribution of the shares in the respective Sual and Glencore entities owning such assets.
8. The operation is constituted by a series of transactions which are all conditional upon and simultaneous with each other. The contribution to UC Rusal of the Sual assets will be simultaneous with and conditional on the contribution of the Glencore assets. Similarly, the contribution to UC Rusal of the Glencore assets will be simultaneous with and conditional on the acquisition of the Sual assets. Furthermore, the acquisition of the Sual and Glencore shares in UC Rusal is conditional on the contribution of the Sual and Glencore assets, respectively. EN+ will retain 100% of the issued capital of UC Rusal unless and until the Sual and Glencore assets are contributed. As such, the issue of shares in UC Rusal to Sual and Glencore is inextricably linked to those contributions. Similarly, Sual and Glencore would not contribute their respective interests without receiving their interests in UC Rusal in consideration. Both 'sides' of the proposed concentration are effected through a single agreement and will occur simultaneously, at closing.

² Rusal currently has certain downstream businesses involved in the production of final or semi-finished aluminium products (e.g. cans)but, with the exception of Rusal's aluminium foil business, these businesses will be transferred out of Rusal prior to the proposed transaction (although they will continue to be owned by EN+). Rusal's products are used in sectors such as the aerospace, construction, food, automobile, tools and machinery industries.

³ Sual will not be contributing its downstream businesses involved in the production of final or semi-finished aluminium products (e.g. cookware and rolled products).

9. Upon completion of the transaction, the ownership of the issued share capital of UC Rusal will be as follows: EN+ 66%, Sual 22% and Glencore 12%. Therefore, EN+ will maintain sole control of UC Rusal and, as a result of the transaction, through UC Rusal, will acquire sole control of the Sual assets and the Glencore assets.

III. CONCENTRATION

10. In light of the above, EN+ will acquire sole control of the Sual assets and the Glencore assets. The present transaction constitutes, thus, a concentration within the meaning of Article 3(1)(b) of the Council Regulation.

IV. COMMUNITY DIMENSION

11. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (EN+ EURO [...]; Sual assets EURO [...], Glencore assets EURO [...])⁴. Each of them have a Community-wide turnover in excess of EUR 250 million (EN+ EURO [...]; Sual assets EURO [...], Glencore assets 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' activities overlap on the markets for the supply of: bauxite, commodity hydrate, alumina, aluminium, aluminium foil and gallium. However only some of the markets for the supply of alumina and aluminium would be horizontally affected by the proposed transaction. The vertical relationships among these markets will also be discussed below.

A. Relevant markets

(i) Bauxite

13. Bauxite is the principal ore from which alumina is extracted. In line with a precedent Commission's decision⁵, the parties submit that the supply of bauxite constitutes a separate market, which is global in scope. The respondents to the Commission's market investigation confirmed the parties' submissions in relation to both relevant product and geographic markets.

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 Gencor/Shell, Case IV/ M. 470.

(ii) *Alumina*

Commodity hydrate

14. Alumina is a white powder made from refined bauxite which is principally (around 90%) used in smelters to produce aluminium. Alumina is generally produced from bauxite ore using five stages: crushing/grinding, digestion, clarification, precipitation and calcination.
15. The product produced following precipitation can then be removed and sold as aluminium hydroxide or alumina hydrate. Alumina hydrate may be used in chemical applications. Such alumina hydrate is often referred to as commodity hydrate. In a previous decision⁶, the Commission found that commodity hydrate constitutes a separate product market. The majority of the respondents to the Commission's market investigation has confirmed the existence of a separate product market for commodity hydrate.
16. The Commission has previously defined the geographic scope of the commodity hydrate market as being not wider than the EEA. The parties submit that due to the increasing trade flows between the EEA and other regions of the world, the geographic dimension of this market should be wider than the EEA. This view is shared by some of the respondents to the market investigation.
17. However the ultimate definition of both relevant product and geographic markets may be left open since, as further explained below, the transaction is not likely to create competitive concerns on any alternative definition of the relevant markets.

Smelter Grade Alumina and Chemical Grade Alumina

18. The product produced following calcination is a white powder known as calcined metallurgical grade alumina. More than 90% of this alumina produced will be used in the smelting of aluminium metal (called smelter-grade alumina ("SGA")). The remainder is used in chemical applications (called chemical-grade alumina ("CGA")).
19. In a previous case⁷, the Commission found that, considering both demand-side and supply-side, there is no substitution between SGA and CGA and that, therefore, these two products constitute two separate product markets. The parties, in light of the similarities of the technical characteristics and of the production process of the two products, claim that SGA and CGA belong to the same product market. Some of the respondents to the Commission's market investigation agree with the larger definition of the relevant product market proposed by the parties. However, it does not appear necessary for the purposes of the present case to conclude on the exact definition of the relevant product market since the transaction is not likely to create competitive concerns on any reasonable product market definition.

⁶ *Alcoa/Reynolds*, Case COMP. M.1693

⁷ *Ibid.*

20. In the same case⁸, the Commission considered the relevant geographic market as constituted only by the sales of the Western refineries. The parties submit that today the relevant geographic market is world-wide due to the significant trade flows between the different regions of the world. The majority of the respondents to the Commission's market investigation considers the geographic dimension of this market to be world-wide. However, the ultimate definition of the relevant geographic market can be left open since this would not alter the conclusions of the competitive assessment.

(iii) White fused alumina

21. White fused alumina (WFA) is produced from calcined alumina. Alumina needs to be heated (or fused) in a furnace to produce WFA. WFA is used in various refractory, abrasives (for example, sand paper), ceramics and other applications. The parties claim that with respect to certain of its applications (in particular, abrasives) WFA competes with brown fused alumina. For the case at hand, the precise product market definition can be left open since the parties do not produce brown fused alumina and the proposed transaction does not give rise to competition concerns under all alternative product market definitions.

22. Respondents to the market investigation have indicated that WFA is traded at a global level. For the case at hand, the precise geographic market definition can be left open since only Rusal produces WFA and the proposed transaction does not give rise to competition concerns in terms of vertical relationships both at global and EEA levels.

(iv) Primary aluminium

23. Aluminium is produced by the smelting of alumina. In its previous decisions, the Commission has distinguished between primary aluminium (produced by smelting alumina) and secondary aluminium, which is produced by re-melting and reconverting used aluminium products⁹. The parties note that secondary aluminium competes with primary aluminium in many end use applications, and that consumption of secondary aluminium has also increased significantly in the recent years. As a consequence they propose to consider primary and secondary aluminium as part of the same market. The relevant data have been provided, however, for each segment. In any event, given that only Rusal is active in secondary aluminium, there is no need to consider the secondary aluminium market any further. Rusal is only a very minor player on the secondary market with a global share of [below 5]%.

24. The parties consider that there are three relevant product markets with respect to primary aluminium, namely: (i) low-purity aluminium, (with an aluminium content below 99.5%); (ii) standard primary aluminium (with an aluminium purity of 99.5 % to 99.9%); and (iii) high-purity aluminium (with a purity of above 99.9%, and generally above 99.96%).

8 Gencor/Shell, Case IV/M.470

9 Gencor/Shell, Case IV/M.470 Alcoa/Inespa, Case IV/M.1003 and Norsk Hydro/VAW, Case COMP/M. 2702.

25. The market investigation has broadly confirmed the segmentation proposed by the parties. However, in a previous decision¹⁰ the Commission found that high-purity aluminium P0404 (with an aluminium purity of approximately 99.92%) constitutes a distinct and separate product market. For the case at hand, the question whether high-purity aluminium should be segmented into different separate markets can be left open since the parties' activities overlap only on standard primary aluminium.
26. Standard primary aluminium can be further segmented in the following principal sub-categories: (a) standard ingots/T-bars, (b) extrusion billets, supplied to extruders to create lengths of aluminium used mainly in the building and mass transport industries; (c) rolling slabs, typically used by rolling mills to produce sheet plate and foil; (d) wire rod, used for the manufacture of cable, generally for the electricity industry; or in the steel industry as a deoxidising material; and (e) foundry alloys, supplied to foundries for use in the machinery, tool and automobile industries.
27. The parties believe that, in light of the demand-side and supply-side substitutability between the various forms of aluminium, there is a single market for standard primary aluminium covering all the forms in which aluminium is delivered. For the case at hand, the question whether the various forms of standard primary aluminium mentioned above constitute separate markets can be left open since the proposed transaction does not give rise to competition concerns under any alternative product market definition.
28. In line with previous Commission's decisions, the parties consider the relevant geographic markets for primary aluminium to be global¹¹. This has been confirmed by the respondents to the market investigation.

(v) *Aluminium Foil*

29. In the case *Alcan/Pechiney*¹² the Commission stated that aluminium foil is primarily an intermediate product used in manufacturing a variety of packaging products, such as semi-rigid containers, flexible packaging, industrial products or as an end use product for domestic use. The Commission categorised aluminium foil into four main applications: (i) container foil, (ii) converter/conversion foil, (iii) household foil and (iv) industrial foil.¹³ However it left open the question of whether or not the above mentioned products constituted different product markets.

¹⁰ Alcoa/Reynolds, Case COMP/M.1693.

¹¹ *Gencor/Shell*, Case IV/M.470; *Alcoa/Inespal*, Case IV/M.1003, *Alcoa/Reynolds* Case COMP/M.1693 and *Norsk Hydro/VAW*, Case COMP/M.2702.

¹² *Alcan/Pechiney*, Case COMP/M. 3225

¹³ A container foil is a heavy gauge foil product used for the production of semi-rigid aluminium containers which are primarily used in the food industry; converter/conversion foils if further processed, can be used for the production of flexible packaging for numerous products such as food, pharmaceuticals and tobacco. Household foil is a light gauge rolled product, used primarily for multi-purpose, short-life wrapping in the domestic and commercial preparation and preservation of food products; and industrial foil is a semi-finished foil used for various industrial end-use applications including electronic components, cable wrapping, insulation and heat exchangers for the automotive and construction industries.

30. The parties believe that all the different products are included in the same product market. However, for the case at hand, the precise product market definition can be left open since the proposed transaction does not give rise to competition concerns under any alternative product market definition.
31. In line with the above mentioned Commission's decision, the parties submit that the relevant geographic market for aluminium foil is at least EEA-wide¹⁴. For the case at hand, the precise geographic market definition can be left open since the proposed transaction does not give rise to competition concerns on either a global or an EEA geographic market definition.

(v) *Gallium*

32. Gallium is found and extracted as a trace component in sources such as bauxite (which represents the main source of gallium) and zinc. Gallium is used in applications such as automotive and other lighting, cellular telephones, signage and HD-DVDs. High-purity gallium, of the purity required for the commercial uses mentioned above, can be produced by refining either primary (or crude) gallium or secondary (or recycled) gallium.
33. The parties consider that there exists one single market for unrefined gallium including both primary and secondary gallium since the same quality grades of gallium are produced from both primary and secondary gallium. This has been confirmed by the respondents to the market investigation. For the case at hand, the question whether primary and secondary gallium belong to the same product market can be left open since only Rusal sells unrefined gallium and the proposed transaction does not give rise to competition concerns in terms of vertical relationships.
34. As to refined gallium the parties mention three types of this product: (i) 6N gallium (99.9999 per cent purity), (ii) 7N gallium (99.99999 per cent purity), (iii) Epitaxy grade gallium (purity higher than 7N). The parties consider that these three types of refined gallium belong to the same product market. However, for the case at hand, the precise product market definition can be left open since only the Sual assets produce and sell refined gallium.
35. The parties consider that the geographic scope of both the unrefined gallium and the refined gallium markets is worldwide. Indeed, both Rusal and the Sual assets supply gallium globally. In 2005, Rusal supplied unrefined gallium produced at its Nikolaev refinery in the Ukraine to customers in the USA, Japan, Germany and Slovakia. The Sual assets supplied refined gallium produced at the Pikalevo refinery in Russia to the USA, the Netherlands, Germany and Russia. For the case at hand, the precise geographic market definition can be left open since the parties' activities do not overlap and the proposed transaction does not give rise to competition concerns in terms of vertical relationships.

¹⁴ Alcan/Pechiney, Case COMP/M. 3225

B. Competitive Assessment

Horizontal aspects

36. The parties' sales overlap on the markets for bauxite, SGA, commodity hydrate and primary standard aluminium. However, they have a combined market share above 15% only on the markets for (i) SGA and (ii) primary standard aluminium at EEA level, which are the only markets to be horizontally affected by the present transaction¹⁵.

(i) Alumina

SGA and CGA

37. The parties' activities do not overlap on the EEA CGA market, where only Rusal is active, and overlap only to a minor extent on the world-wide CGA market, on which their combined market share would be below 5%.

38. On the SGA market, at EEA level,¹⁶ the parties would have a combined share of [25-35]% of the total production and of around [25-35]% of the merchant market (EN+ [below 5]%; Rusal [5-10]%; Glencore assets [25-35]%¹⁷). However the merchant market share in the EEA will be considerably lower (and could in principle decrease to around [5-10]%) after the operation as the new entity will internalise some of Glencore's merchant sales.¹⁸

39. Based on the parties' estimate, the combined entity's share of total global production of SGA would be [15-20]% (Rusal [5-10]%; Sual assets [below 5]%; Glencore assets [5-10]%; EN+ [below 5]%) and its market share on the global merchant market would be [15-20]% (Sual assets [below 5]%; Glencore assets [15-20]%; EN+ [below 5]%). However, the actual market share of the merged entity will be lower (around [10-15]%) due to the fact that a portion of the sales of the Glencore assets on the merchant market will become captive, i.e. the SGA surplus of the Glencore assets will be absorbed to some extent by Rusal's SGA deficit.

¹⁵ The parties have a combined market share of [5-10]% on the worldwide bauxite market. The parties have a combined market share of [10-15]% and [5-10]% on the EEA and world-wide market for commodity hydrate respectively.

¹⁶ If the market was considered to be, as in Alcoa/Reynolds, the area constituted by the sales of the Western refineries, the parties would have a combined share of [10-15]% of the alumina produced in this area.

¹⁷ Sual interests do not make any sales to third parties in the EEA.

¹⁸ Rusal's market share includes the sales generated by the company Eural, in which Rusal acquired [...]. Such sales will be to a large extent internalised by the merged group. Similarly Rusal is likely to source the largest part of the SGA demand of its Russian production facilities from Glencore. Thus, the amount of sales which Eural and Rusal realise on the EEA merchant market will considerably decrease. The current global SGA deficit of the Rusal group is equal to [1-1.5] million tonnes. If this deficit were to be completely met by Sual's and Glencore's production, the merged entity would only be selling [500,000-1000000] tonnes of SGA in the EEA and would thus have only around [5-10]% of the EEA SGA alumina market. While it is unlikely that the future market share will be as low, it is to be noted that, given that the rationale of the entire transaction is to provide Rusal with alumina supplies, the sales of the merged entity on the merchant market will decrease considerably.

40. Moreover due to (i) the presence of other significant competitors in the global SGA market such as the market leader Alcoa ([20-25]%), Chalco ([20-25]%) as well as of a number of smaller multinational players (inter alia BHP Billiton, Rio Tinto, CVRD, Sherwin), (ii) the limited increment brought about by the transaction, (iii) the competitors' plans of capacity expansion; (iv) the fact that the customer base in this market is highly concentrated (with the 10 main customers accounting for [45-55]% and [90-100] global and EEA demand respectively), highly sophisticated and well informed and has significant bargaining power and (v) the absence of complaints during the market investigation the proposed transaction is not likely to create any competition concerns on the world-wide market for SGA.

(ii) Primary aluminium

41. There is no material overlap in the parties' activities with respect to low-purity and high-purity aluminium. The only technically affected market would be the EEA market for the supply of primary standard aluminium, on which the combined entity would be the leading player with a market share of [25-35]% (Rusal [15-20]%; Sual assets [10-15]% Glencore assets [below 5]%).

42. However the market for standard primary aluminium is, according to the results of the market investigation, global in scope and the parties have a combined share of [10-15]% (EN+ [below 5]%; Rusal [5-10]%; Sual assets [below 5]% and Glencore assets [below 5]%) in terms of global production and of [15-20]% (EN+ [below 5]%; Rusal [5-10]%; Sual assets [below 5]% and Glencore assets [below 5]%) in terms of global sales. With respect to the principal sub-categories of standard primary aluminium, the parties' combined global share is above 15% on the segments of ingots/Tbars ([15-20]%) and foundry alloys ([15-20]%).

43. Post-transaction, the new entity will continue to face two main competitors (Alcoa and Alcan), having a global position broadly similar to that of the parties, and a number of other multinational companies (including Norsk Hydro; BHP Billiton Group, Chalco and Rio Tinto).

44. In the light of the above, the notified transaction does not raise competition concerns.

Vertical aspects

45. The parties have a market share in excess of the 25% threshold on the markets for (i) SGA and (ii) primary standard aluminium at EEA level. Therefore the notified transaction gives rise to technically vertically affected markets between: (a) the supply of bauxite and the supply of SGA; (b) the supply of SGA and the supply of primary standard aluminium; (c) the supply of SGA and the supply of WFA; (d) the supply of primary standard aluminium and the supply of aluminium foil.

Bauxite and SGA

46. The bauxite market is upstream from the SGA market. On the market for bauxite, the parties have a combined market share of [5-10]% worldwide and of less than [below 5]% in the EEA. On the market for SGA their combined market share is of [15-20]% worldwide and of [25-35]% in the EEA.

47. Given the parties' positions, in particular on the worldwide or EEA markets for bauxite, where their market share is low ([5-10]% and [below 5]% respectively), the transaction does not give rise to any competition concerns with respect to vertical relationships between bauxite and SGA.

SGA and primary standard aluminium

48. The SGA market is upstream from the primary standard market. As mentioned above, on the market for SGA the parties have a combined market share of [15-20]% worldwide and of [25-35]% in the EEA. On the worldwide market for primary standard aluminium, they have a combined market share of [10-15]% worldwide and of [25-35]% in the EEA.

49. As already mentioned, the actual market share of the merged entity on the SGA worldwide or EEA market will be lower (around [10-15]% for the world-wide market and not significantly above [5-10]% for the EEA-wide market) due to the fact that a portion of the sales of the Glencore assets on the merchant market will become captive, i.e. the SGA surplus of the Glencore assets will be absorbed to some extent by Rusal's SGA deficit.

50. Therefore the transaction does not give rise to any competition concerns with respect to vertical relationships between SGA and primary standard aluminium.

SGA and WFA

51. The SGA market is also upstream from the WFA market. Only Rusal is active on the WFA market with a market share of [10-15]% worldwide and of about [5-10]% in the EEA.

52. Therefore the transaction does not give rise to any competition concerns with respect to vertical relationships between SGA and WFA.

Primary standard aluminium and aluminium foil

53. The primary standard aluminium market is upstream from the aluminium foil market. As mentioned above, on the market for primary standard aluminium the parties have a combined market share of [10-15]% worldwide and of [25-35]% in the EEA. On the market for aluminium foil, they have a combined market share of [below 5]% worldwide and of [below 5]% in the EEA.

54. Therefore the transaction does not give rise to any competition concerns with respect to vertical relationships between primary standard aluminium and aluminium foil.

Coordinated effects

55. Although it will not exercise a control over the new entity, Glencore will have one representative in its board.

56. Some of Glencore's aluminium assets, located in Jamaica and in the USA, will not be contributed to the new entity and will be therefore retained by Glencore. Thus, via its retained activities, Glencore will continue to be active on the markets for (i) bauxite and (ii) commodity hydrate. However, Glencore's retained assets sell none of both products in the EEA, and their worldwide market share is well below 5% on

each of these two markets. Moreover, the assets contributed to the new entity by Rusal, Glencore and Sual have a combined market share well below 15% on each of these two markets.

57. Therefore Glencore and the new entity are unlikely to adopt a coordinated behaviour that would restrict competition on the markets for (i) bauxite and (ii) commodity hydrate.

VI. CONCLUSION

58. 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