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***Case No COMP/M.4476 -
NORILSK NICKEL / OMG
NICKEL***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 06/02/2007

***In electronic form on the EUR-Lex website under document
number 32007M4476***



Brussels, 06.02.2007

SG-Greffe(2007) D/200546

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4476 - Norilsk Nickel / OMG Nickel

Notification of 22.12.2006 pursuant to Article 4 of Council Regulation No 139/2004¹ (the “Merger Regulation”)

1. On 22/12/2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Open Joint Stock Company Mining and Metallurgical Company Norilsk Nickel (“Norilsk Nickel”, Russia) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the nickel activities of the undertaking OM Group Inc. (“OMG”, United States) by way of purchase of shares.

I. THE PARTIES AND THE CONCENTRATION

2. Norilsk Nickel is a Russian group active in the exploration, mining, processing and refining of minerals and marketing and sale of non-ferrous and precious metals, in particular nickel.
3. OMG is active in mining, processing and refining of nickel and in the production and marketing of value-added nickel, cobalt and other metal-based specialty chemicals and materials.

¹ OJ L24, 29.1.2004 p.1.

4. Under the proposed transaction, Norilsk Nickel will acquire OMG's nickel business, which includes OMG's nickel refinery in Finland, OMG's Cawse nickel mine and minority interests in three small nickel exploration and mining companies (together "OMG Nickel"). Norilsk Nickel will acquire sole control over OMG Nickel and the proposed operation thus constitutes a concentration.
5. In the context of the proposed transaction, the parties [...] into a number of agreements relating to the supply to OMG of cobalt products. The parties have submitted that one of these agreements, which covers the supply by Norilsk Nickel, for a period of [...] years], of the cobalt intermediates produced as a by-product of nickel refining by OMG Nickel is directly related and necessary to the proposed concentration.
6. The parties have also submitted that two other agreements concerning the supply, over a period of [...] years], of cobalt [...] produced by Norilsk Nickel to OMG, are not ancillary to the concentration. These other agreements do not relate to cobalt [...] currently produced by OMG Nickel and [...]. The Commission considers that these agreements are indeed not directly related and necessary to the concentration. Their compatibility with the EC competition rules is therefore not assessed in the present decision.

II. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (Norilsk Nickel EUR [...] million, OMG Nickel EUR [...] million). Each of the undertakings has a Community-wide turnover in excess of EUR 250 million (Norilsk Nickel EUR [...], OMG EUR [...], 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.

III. RELEVANT MARKETS

A. Relevant product markets

8. Norilsk Nickel and OMG Nickel are both active in the production and sales of various nickel products. The impact of the proposed transaction on the markets for the supply of nickel products is discussed below.
9. As regards cobalt, the proposed concentration will not impact to a meaningful extent the structure of the cobalt markets. The cobalt intermediates production of OMG Nickel is very limited (around [0-5]% of the global cobalt intermediates production) and Norilsk only sells marginal quantities of cobalt intermediates on the merchant market (around [0-5]% global market share). The impact of the proposed transaction on the cobalt markets is thus not further discussed in this decision.

(i) *Introduction*

Nickel processing

10. Nickel is mined mainly in the form of sulphide, oxide and silicate minerals. Nickel mines are essentially located in Australia, Canada, Russia, Cuba, New Caledonia, Brazil and China. Mined nickel ore is further processed and refined to obtain finished nickel products in various forms.
11. Several technologies are used in the treatment of nickel ores. Typically, nickel ores are first concentrated to obtain nickel concentrate, which is then processed by smelting (pyrometallurgical) or leaching (hydrometallurgical). The raw ores are generally not transported over long distances from the mines to the first stages of processing to avoid transportation costs of large volumes of ores. However, processed ore is generally transported over long distances to be refined.
12. Refining of processed nickel is the final processing stage. Nickel refineries are generally large plants processing various types of intermediate products through various refining processes. There are five principal ways to refine nickel: (a) ladle refining to obtain ferronickel, (b) reduction and roasting, (c) electrolytic refining, (d) hydrogen reduction and precipitation and (e) carbonyl refining. They differ essentially in terms of purity and shape of the refined nickel products.
13. The output of these various processing and refining stages of nickel ore is commonly called “primary nickel”. However, nickel may also be obtained from scrap or recycled sources (so-called “secondary nickel”). Because of its lower level of purity, secondary nickel is extensively used in certain end applications while it is not used at all for some others that are more demanding in terms of nickel purity.

Nickel end applications

14. The parties submit that the relevant product markets are the markets for the supply of finished nickel products by end applications². This is consistent with the approach taken by the Commission in a previous decision³, which considered that it was relevant to define the relevant product markets for finished nickel products by end applications because of the lack of demand-side substitutability between the nickel products used in different end applications. Supply-side substitutability is also constrained by the production processes of nickel suppliers, which produce nickel products that cannot be used in all end-applications.

² Although there may be a distinct product market for the supply of nickel intermediates no further consideration is given to these markets in this decision as neither party is active in sales of nickel intermediates to third parties.

³ Case COMP/M.4000 – Inco/Falconbridge.

The Commission also identified distinct product markets for the supply of nickel for plating and electroforming and the supply of nickel for super alloys in its previous decision⁴.

15. More precisely, in the present case, the parties have identified separate relevant product markets for: i) nickel for stainless steel applications, ii) nickel for standard melting applications other than stainless steel and super-alloy production, iii) nickel for super alloys, iv) nickel for plating and electroforming and v) nickel for specialty applications.

(ii) Nickel for Stainless Steel Applications

16. The parties' activities overlap mainly with regard to the market for the supply of nickel for stainless steel applications. Stainless steel is the main application of nickel and represents approximately 60-65% of total nickel consumption. It is the least demanding end application of nickel in terms of technical requirements. Primary nickel accounts for only half of the nickel used in this industry, the other half being secondary nickel obtained from scrap. Ferronickel which contains a high concentration in iron may also be used for the production of stainless steel.
17. The parties submit that it is not necessary to distinguish primary and secondary nickel for stainless steel applications and claim that secondary nickel and ferronickel are part of the same relevant product market as other refined nickel products used for the production of stainless steel. The market investigation has confirmed that secondary nickel can substitute primary nickel to a large extent for stainless steel applications.
18. It is however not necessary to define the exact scope of the relevant product market for the purposes of the present decision since the proposed transaction is not likely to impede effective competition in any alternative.

(iii) Nickel for Standard Melting Application, other than Stainless Steel and Super-Alloy Production

19. Nickel is used in a wide range of melting applications other than stainless steel and super alloys: non ferrous alloys, foundry applications and alloy steels (standard melting applications), which represent together about 20-25% of total nickel consumption. Secondary nickel plays a much more limited role for these end applications than for stainless steel.
20. The market investigation has broadly confirmed that the supply of nickel to melting applications excluding stainless steel and super alloys constitute a relevant product market⁵. The question of whether this market should be further segmented into nickel for foundry,

⁴ In Inco/Falconbridge, the Commission found it possible that nickel used in the production of super alloys used in safety critical parts, for which quality requirements are even stricter, could constitute a narrower, distinct product market.

⁵ See replies to Questions 5-9 of the Questionnaire to Customers and Questions 6-9 of the Questionnaire to Competitors.

nickel for alloy steel and nickel for non-ferrous alloys can be left open for the purposes of this decision since it does not modify the impact of the proposed transaction.

(iv) *Nickel for Super-Alloy Applications and Nickel for Plating and Electroforming*⁶

21. The Commission has previously considered the supply of nickel products for super alloys and for plating and electroforming as two separate relevant product markets in a previous decision. Since there is no overlap between the parties' activities in these markets, no further consideration will be given to nickel for super alloys and plating and electroforming within this decision.

(v) *Nickel for Specialty Applications*

22. Finally, nickel can be processed to produce a variety of specialty nickel products such as powders, foams, oxides, coated powders and flakes that are used in a wide range of products such as batteries. These specialty nickel products account for 5% of nickel consumption. These applications do not use secondary nickel.
23. The parties submit that there is very limited demand and supply-side substitutability between the different nickel products for specialty applications and the relevant product markets have to be defined narrowly. As an example, the parties submit that the granular size of nickel powders is relevant in terms of the specialty end applications in which nickel powders are used. The results of the market investigation have supported this view and confirmed that the granular size of a nickel powder is important and that a nickel powder with a certain granular size may not be substitutable with a nickel powder with another granular size⁷.
24. The supply of nickel for specialty applications thus needs to be segmented in several relevant product markets, based on the chemical composition of the nickel products, their shape and their end applications. The precise sub-segmentation of the relevant product markets in this field is however not necessary for the purposes of this decision as it does not modify the competitive assessment.

B. Relevant geographic markets

25. The parties submit that the markets for the supply of nickel are global in scope, except potentially for the supply of nickel for plating and electroforming, which could be regional in scope.
26. The parties submit that nickel is traded across the world and shipped extensively since the transport costs generally represent a relatively small proportion of the final price⁸.

⁶ Super Alloys are defined to mean nickel-based alloys with a 50% to 80% nickel content.

⁷ See replies to Question 7 of the Questionnaire to Customers and replies to Question 19 of the Questionnaire to Competitors.

⁸ Transport costs represented less than 0.5% of the average nickel price quoted on the London Metal Exchange (LME) in 2005.

Furthermore according to the parties, nickel is sold globally with a reference to the London Metal Exchange (LME) nickel price and average invoiced prices are very similar across the world.

27. This view is consistent with the approach of the Commission in a previous case. In that case, the market investigation showed that most nickel products are commodities traded on a global basis, except potentially nickel for plating and electroforming, where demand patterns differ in distinct regions of the world and for which distributors play an important role. The global dimension of the markets for the supply of nickel products (except for the supply of nickel to the plating and electroforming industry) has been validated by the market investigation in the present case⁹.
28. In view of the above, the geographic scope of the relevant product markets for the supply of nickel for stainless steel, standard melting applications other than stainless steel and super-alloy production, and specialty end applications will be considered as world-wide for the purposes of this decision. It is however not necessary to define the geographic scope of the other relevant product markets in the field of nickel since there is no overlap between the parties' activities.

IV. COMPETITIVE ASSESSMENT

29. The proposed transaction does not lead to a significant structural change on the nickel markets due to the limited addition market shares of OMG Nickel and the weak competitive constraint exercised by OMG Nickel pre-transaction.
30. Both parties are active in the supply of nickel for a broad range of applications except for the sale of nickel for super alloys (where Norilsk Nickel sales are minimal and OMG is not active) and nickel for plating and electroforming (where Norilsk Nickel's sales are minimal). The impact of the proposed transaction on the markets for supply of nickel for stainless steel applications, standard melting applications (other than stainless steel and super alloys) and specialty applications is further discussed below.

(i) Nickel for Stainless Steel Applications

31. Norilsk Nickel is a leading supplier of stainless steel with a global market share of [10-20]% of the market for the supply of nickel to the stainless steel sector if secondary nickel is included and a global market share of [20-30]%¹⁰ if secondary nickel is not included. Norilsk sells [...] % of its nickel production in stainless steel. OMG is a smaller player and its global market share of nickel for stainless steel is estimated at [0-5]%. OMG Nickel sells only [...] % of its nickel production in stainless steel.

⁹ See replies to questions 18-21 of Questionnaire to Customers and replies to questions 20-23 of questionnaire to Questionnaire to Competitors.

¹⁰ It is difficult for the parties to evaluate precisely in which end applications their nickel products are sold, in particular when they are sold on the LME or through traders / distributors.

32. The competitors of the parties for the supply of nickel for stainless steel are (i) large diversified mining groups such as BHP Billiton (15% market share for primary nickel for stainless steel), Xstrata¹¹ (15% market share) and CVRD Inco¹² (11% market share), (ii) medium-size diversified or focused mining companies, such as Eramet (6% market share), Pamco (5% market share) and Cuba nickel (5% market share) and (iii) a diversified base of scrap suppliers (secondary nickel).
33. The proposed concentration does not raise serious doubts as to its compatibility with the common market as regards the market for the supply of nickel for stainless steel applications since the aggregation of market share is limited and secondary nickel exercises a competitive constraint on primary nickel for stainless steel, as confirmed by the market investigation¹³. Post-transaction, stainless steel producers will still have the choice between a number of large ferronickel and finished nickel producers.

(ii) *Nickel for Standard Melting Applications (other than Stainless Steel and Super Alloys)*

34. The parties combined market shares for the supply of standard melting applications globally amount to about [10-20]%, with an increment of [0-5]%. If a sub-segmentation of the relevant product markets is considered, the majority of OMG Nickel supply into standard melting application goes to [...], whereas the vast majority of Norilsk Nickel's supply of nickel is used for [...]. While it is difficult for the parties to identify precisely in which category of standard melting applications their nickel products are sold, it appears that Norilsk Nickel and OMG Nickel are complementary in terms of sales in these sub-segments.

Worldwide Sales of Nickel for Standard Melting Applications (other than Stainless Steel and Super Alloys) (2005) –			
	Norilsk Nickel	OMG Nickel	Combined Share
Standard Melting Applications other than stainless steel and super alloys	[10-20%]	[0-5%]	[10-20%]
Non-Ferrous Alloys	[20-30%]	[0%]	[20-30%]
Alloy Steels	[0-5%]	[10-20%]	[10-20%]
Foundry	[<1%]	[0-5%]	[0-5%]

¹¹ Xstrata significantly increased its position in the nickel sector through the recent acquisition of Falconbridge (see Case COMP/M.4256 Xstrata Falconbridge).

¹² CVRD significantly increased its position in the nickel sector through the recent acquisition of Inco (See Case COMP/M.4374 CVRD/Inco).

¹³ See replies to questions 10-12 of Questionnaire to Customers

35. The proposed concentration does not raise serious doubts as to its compatibility with the common market as regards the market for the supply of nickel for standard melting applications, in particular due to the limited market position of the parties and since a number of credible alternative supplier will remain on the market.

(iii) Nickel for Specialty Applications

36. Both Norilsk Nickel and OMG are active in supplying nickel products for various specialty end applications. The main specialty end applications in which the parties are active are batteries, catalysts & chemicals and powder metallurgy & pigment and ceramic.

37. If the supply of nickel for all specialty end applications is considered as a single relevant product market (which is not supported by the market investigation), the parties would have a combined market share of [10-20]%.

38. If the supply of nickel for specialty end applications is further segmented by end applications, the overlap between the parties' activities only occurs in the potential markets for the supply of nickel for batteries, and catalysts and chemicals.

39. In the field of batteries, Norilsk Nickel and OMG are specialized in distinct applications (Norilsk Nickel: nickel powder for accumulator batteries and OMG: nickel salts and oxides for computer batteries) and their combined market share would be minimal if all nickel products for batteries (below [0-5]%) were deemed to constitute a single relevant product market.

40. As regards, catalysts and chemicals, there are two market levels: (i) nickel metal and nickel powders which are processed by manufacturers of catalysts for use in catalysts and chemical applications and (ii) nickel salts or solution, which can be directly used in the production process.

41. At the first level, Norilsk Nickel supplies nickel powders to catalysts manufacturers while OMG Nickel supplies nickel metals. Although the parties estimate that they have a combined market share of [25-35]% if the supply of nickel metals and powders for processing into nickel catalysts and chemicals constitute a single relevant product market, the parties would not be close substitutes on that market since the processing of nickel powders and metal involves different processing stages. The leading supplier of nickel powders will remain CVRD Inco. If, on the contrary, the supply of nickel metals and powders for processing into nickel catalysts and chemicals is distinguished, there would be no horizontal overlap between the parties' activities.

42. As regards the second market level, only OMG Nickel is active in the supply of nickel salts, with a market share of [20-30]%. The market investigation¹⁴ has however confirmed that this vertical relationship does not give raise to competition concerns given the moderate

¹⁴ See replies to questions 37 of the Questionnaire to Customers and questions 39 of Questionnaire to Competitors.

levels of market shares and the presence of CVRD Inco as the largest global supplier of nickel powders.

43. In view of the above, the concentration does not raise serious doubts as to its compatibility with the common market as regards the markets for the supply of nickel for specialty applications.

V. CONCLUSION

44. 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 the Merger Regulation.

For the Commission,
signed
Neelie KROES
Member of the Commission