

*Case No IV/M.452 -
AVESTA (II)*

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**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 09.06.1994

*Also available in the CELEX database
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 09.06.1994

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No. IV/M.0452 AVESTA (II)

Your notification of 4.5.1994 pursuant to Article 4 of Council Regulation No. 4064/89.

1. The proposed operation concerns the sale by one of the major shareholders in Avesta Sheffield AB (ASAB) of its shareholding. The operation was notified to the Commission on 4 May 1994 pursuant to Article 4 of Council Regulation (EEC) No 4064/89.
2. After examination of the notification the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market.

THE PARTIES AND THE OPERATION

3. On 4 August 1992, British Steel plc (BS), NCC AB (NCC), Axel Johnson HAB and AGA AB (AGA) notified an operation to the Commission by which they formed a joint venture, Avesta Sheffield AB from the stainless steel manufacturing activities of Avesta AB, whose major shareholders were NCC, Axel Johnson and AGA, and British Steel.
4. The shareholdings in ASAB on the completion of the operation were:

British Steel	40.00%
NCC	25.10%
Axel Johnson	7.54%
AGA	7.23%

The remainder of the shareholding was widely dispersed.

5. A Shareholders' Agreement was drawn up between the four major shareholders which provided for joint control of ASAB within the meaning of the Merger Regulation. The Shareholders' Agreement set out a super majority requirement for a number of major decisions. This requirement was that prior written consent from British Steel, NCC and one of Axel Johnson or AGA was required to take such major decisions. The Shareholders' Agreement also stated that if any shareholder obtained 45% of the equity, then it would be obliged to bid for all the remaining shares.
6. On 4 May 1994, BS, NCC and AGA notified to the Commission the operation by which Axel Johnson disposed of its shareholding. The Axel Johnson shares will be placed with Swedish investors.
7. BS is a British steel manufacturer created in 1988 by the privatisation of the British Steel Corporation. NCC is principally involved in the contracting and real estate sector in Sweden. AGA is a Swedish company involved in the supply of industrial and medical gases. ASAB is engaged in the production and distribution of stainless steel products.

CONCENTRATION

Joint control

8. The existing Shareholders' Agreement will continue in operation following the exit of Axel Johnson. Consequently, the agreement of all of British Steel, NCC and AGA will now be required for major decisions. Therefore, AGA will have its position in ASAB changed significantly by the exit of Axel Johnson as it will gain the ability to exercise a negative veto right.

Full function JV not leading to co-ordination of competitive behaviour

9. The exit of Axel Johnson will not change the position of ASAB on the market. Moreover, as Axel Johnson will sell its shares for cash, there will be no effect on the assets of ASAB. Therefore for the reasons outlined in the 1992 decision the joint venture will remain a full function entity not leading to the co-ordination of competitive behaviour.
10. Thus the notified operation constitutes a concentration within the meaning of Article 3 of the Merger Regulation.

COMMUNITY DIMENSION

11. The operation has a Community dimension. The worldwide turnover of all undertakings concerned amounts, in their respective last financial year, to more than 5,000 million ECU. The Community wide turnover of each of BS, ASAB and AGA exceeds 250 million ECU. The undertakings concerned do not achieve more than two thirds of their aggregate Community wide turnover within one and the same Member State.

COMPATIBILITY WITH THE COMMON MARKET

Relevant product and geographical markets

12. In its previous decision, the Commission defined the relevant product markets as the market for stainless steel products and the market for the distribution of those products. Only those products covered by the Treaty of Rome (which in the case of ASAB were cold rolled flat products less than 500 mm wide and welded tubes) were covered by that decision. As far as the geographical market is concerned, the Commission stated that the former market was at least Community wide and it left open the precise definition as to whether the latter market was national or regional as the competition analysis was unaltered even if a stricter market definition was used.

Assessment

13. There will be no change in the structure of the company or its market share as a result of the sale of the Axel Johnson shareholding. Therefore the concentration will not strengthen or create a dominant position in EEA territory or a substantial part of it.

CONCLUSION

14. For the above reasons the proposed concentration does not raise serious doubts as to its compatibility with the common market.

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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 functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No. 4064/89. The application of Regulation (EEC) 4064/89 is without prejudice to the applicability of the provisions of Articles 92 to 94 of the Treaty.

For the Commission