

***Case No COMP/M.4742 -
OXBOW / SSM***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 07-08-2007

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case No COMP/M.4742 - OXBOW/ SSM
Notification of 10.07.2007 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 10/07/2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the "Merger Regulation"), by which the undertaking Oxbow Carbon & Minerals LLC ("OCM"), a part of Oxbow Group ("Oxbow", US) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the undertaking SSM Coal B.V. ("SSM", Netherlands) currently owned by SSM Coal Holding B.V., by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified 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 functioning of the EEA Agreement.

I. THE PARTIES

3. Oxbow is a US-based company primarily engaged in the global mining, production, marketing and distribution of a range of solid fuel and other carbon-related products including coal, calcined coke and fuel grade petroleum coke ("petcoke"). Oxbow generates the majority of its revenue in North America.
4. OCM is a wholly owned subsidiary of Oxbow Carbon LLC ("Oxbow Carbon"). Oxbow Carbon is jointly controlled by the Oxbow Group and certain minority financial investors [...] [whose] controlled affiliates have invested in a variety of businesses, all of which are unrelated to the business of Oxbow or SSM.

¹ OJL 24, 29.1.2004 p. 1.

5. SSM is a Dutch company active principally in the sourcing, shipping, terminalling, upgrading, marketing and distribution of a range of solid fuel and other carbon-related products including coal and fuel grade petcoke, among others. SSM is a trading and distribution company and does not produce any of the products that it sells. SSM generates the majority of its revenue in Europe.

II. THE TRANSACTION AND THE CONCENTRATION

6. On May 3, 2007, Oxbow Netherlands Cooperatieve U.A. and SSM Coal Holding B.V. signed a Share Sale Agreement for the acquisition of: SSM Coal B.V. As a result of this transaction, OCM will indirectly acquire the shares of SSM Coal B.V. from SSM Coal Holding BV through Oxbow Netherlands Cooperatieve U.A., a Dutch special purpose acquisition entity owned by Oxbow Enterprises International LLC and Oxbow Carbon & Minerals International Holdings LLC. Those entities are wholly owned by OCM, a wholly owned subsidiary of Oxbow Carbon. Through the proposed transaction, Oxbow, through Oxbow Carbon would acquire sole control over of SSM. The operation thus constitutes a concentration within the meaning of Article 3.1(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

7. The concentration does not meet the jurisdictional thresholds under Article 1(2) of the Merger Regulation. The transaction has a Community dimension pursuant to Article 1(3) of the Merger Regulation. The parties have a combined worldwide turnover of more than EUR €2,5 billion (Oxbow €[...] million; SSM €1 017 million). In each of [at least three] Member States ([...]) the combined of all the undertakings concerned exceeds EUR €100 million ([...]). In [at least three] of these States ([...]) each of the undertakings concerned achieves more than €25million.

IV. RELEVANT MARKETS

8. Both Oxbow and SSM are active in the market for the supply of solid fuels. Such solid fuels comprise coal, fuel grade petcoke, calcined petcoke, metallurgical coke (metcoke)² and biomass³. Within the EEA they are both active only in coal and fuel grade petcoke⁴. Therefore the Commission examined only the overall market for solid fuels and potential market for fuel grade petcoke.
9. Fuel grade petcoke can be distinguished from the other types of solid fuels as it is a high carbon material which is a residual by-product of the oil refining process. Fuel grade petcoke almost always contains higher sulphur levels than other solid fuels and

² Oxbow does not sell metcoke in Europe and its combined sales of Oxbow and SSM metcoke are less than [<5]% of total global sales. SSM's sales of metcoke are less than [<5]% of total EU sales.

³ Only SSM trades biomass.

⁴ SSM is not involved in the production or supply of calcined petcoke, which is manufactured from petcoke. Calcining is an industrial process whereby heat is applied to fuel grade material in order to drive off volatile matter. Calcined petroleum coke is predominantly used by the primary metals industry for use in aluminium production and to a lesser extent also in the production of iron and steel. Calcined petcoke is substantially more expensive than fuel grade petcoke. See: Case No COMP/M.2588 - Rheinbraun Brennstoff/SSM Coal, 17/09/2001, para 8.

therefore, for environmental and operational reasons, is less versatile than other solid fuels.

10. In previous Commission decisions⁵, it was considered that the relevant product market was the market for the trading of fuel grade petcoke. The Commission found that fuel grade petcoke was not a substitute for coal to a sufficient degree because national environmental regulations on sulphur dioxide emissions constrained the amount of fuel grade petcoke that could be used in a blend with coal.
11. In the current transaction the parties submit that the market has changed since the Commission's decision in the *Rheinbraun Brennstoff* case. Many more users are now able to use fuel grade petcoke as a substitute fuel for coal as a result of the improvements in technology. More users also now hold the relevant permits needed to use fuel grade petcoke and, in such situations, switching from coal to fuel grade petcoke has become more common, depending on the relevant solid fuel market conditions. In addition, the parties claim that as regards substitution in the other direction, coal is and always has been a full substitute for fuel grade petcoke.
12. In any event, the precise product market definition can be left open for the purpose of this decision.
13. The parties claim that the market for solid fuels is worldwide. The supply of solid fuels to industrial users, utilities and wholesale distributors is conducted on a global basis. The vast majority of fuel grade petcoke supplies originate from North and South America and the largest coal producing countries are China, the US, India, Australia and South Africa. The parties themselves are active at a global level. In its previous decision *Rheinbraun Brennstoff* the Commission concluded that the market was at least EEA-wide (although the worldwide nature of the market for the trading in fuel grade petcoke had been broadly confirmed by the Commission's market investigation) but the question was left open. For the purpose of this decision the precise geographic market definition can be left open as either at the EEA-level or worldwide, the current transaction does not raise competition concerns.

V. COMPETITIVE ASSESSMENT

a) Horizontal aspects

14. The parties' combined sales of solid fuels are around [<5] % of total market, both globally and at an EU level.
15. For the supply of fuel grade petcoke their combined share in the EEA is [10-20] % (Oxbow [5-10] %, SSM [10-20] %). There are many other strong competitors in this market such as TCP Petcoke with [20-30] % and Koch Carbon with [5-10] %, Energy Coal with [5-10] % and Ovalar with [5-10] % among others.
16. The parties submit that ConocoPhillips and BP (both involved in calcined petcoke), have expanded their activities to include fuel grade petcoke. Both also are now major direct suppliers of US-produced fuel grade petcoke to European customers. In addition, several companies have started supplying fuel grade petcoke in the Community, among them: Mitsui (Japan), Ovalar (Turkey), and Energy Coal SpA (Italy).

⁵ Case No COMP/M.2588 - *Rheinbraun Brennstoff/SSM Coal*, 17/09/2001

17. In the wider global market for supply of fuel grade petcoke, the parties' combined share is around [10-20]% (Oxbow [5-10]%, SSM [5-10]%). There are many other competitors in this market such as TCP Petcoke ([5-10]%), Koch Carbon ([5-10]%), ConocoPhillips ([5-10]%) and many others.
18. The parties' claim that as a by-product, fuel grade petcoke falls outside of an oil refinery's core business. A large number of fuel grade petcoke-producing refineries contract with international trading houses for the assured purchase of their fuel grade petcoke. Nevertheless it has been a growing trend for fuel grade petcoke-producing refiners also to sell part of their own fuel grade petcoke production directly to industrial users, and Oxbow expects this practice to become more prevalent, increasing market entry and competition.
19. Therefore, the proposed transaction does not give rise to any competition concerns within the EEA.

b) Vertical aspects

20. There are no vertical relationships between the parties other than Oxbow's ownership of a single coal mine in the USA and its recent acquisition of a petcoke calcining business (GLC), which purchases fuel grade petcoke. However, Oxbow's share of the global coal production is below [<5]%, as is SSM's share of the supply of coal and solid fuels⁶. Furthermore, Oxbow's share of calcined coke production⁷ is well below 25% globally, as is SSM's share of the supply of fuel grade petcoke and solid fuels. In view of this limited upstream presence, any foreclosure of the parties' competitors is unlikely.
21. In view of the above the operation does not give rise to serious doubts about its compatibility with the common market.

VI. CONCLUSION

22. 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)
Janez Potocnik
Member of the Commission

⁶ According to the parties' estimates in terms of sales Oxbow represents [<5]% of total global coal sales

⁷ Oxbow represents [10-20]% of total global calcined coke sales. SSM does not produce or sell calcined coke.