COMMISSION DECISION

of 21 December 1994

declaring a concentration to be compatible with the common market

(Case No IV/M.484 - Krupp/Thyssen/Riva/Falck/Tadfin/AST)

(Only the German text is authentic)

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings, and in particular Article 8(2) thereof,[1]

Having regard to the Commission's decision of 21 October 1994 to initiate proceedings in this case,

After consultation of the Advisory Committee on concentrations,[2]

Whereas:

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1 OJ No L 395, 30.12.1989, p. 1; corrected version OJ No L 257, 21.9.1990, p. 13.

2 OJ No C

1. On 22 July 1994 the proposed acquisition of the Italian steel producer Acciai Speciali Terni S.p.A. (AST) by a German/Italian consortium, involving Fried. Krupp AG Hoesch-Krupp (Krupp) and Thyssen Stahl AG (Thyssen) on the German side and AFL Falck (Falck), Tadfin S.p.A. (Tadfin) and FI.RE. Finanziaria S.p.A. (Riva) on the Italian side, was notified under Regulation (EC) No 4064/89 (hereinafter referred to as "the Merger Regulation"). Since the notification was at first incomplete, the periods referred to in Article 10 of the Merger Regulation began on 21 September 1994, the day following the day of receipt of the complete information.

I. THE PARTIES

2. Krupp comprises a group of companies the principal activities of which include steelmaking, mechanical engineering, process plant engineering, automotive parts and components manufacture, and trading and services.

The main activities of Thyssen are the manufacture and distribution of steel products, including crude steel production and flat and long products.

Riva is the holding company of the Riva Group, the companies within which are engaged in the manufacture and distribution of steel products.

Falck is the holding company of the Falck Group, the companies within which are engaged in the manufacture and distribution of steel products, the generation and sale of electricity, real estate administration and environmental technology.

Tadfin is a holding company which holds shares in companies which are active in the distribution of steel products and in real estate.

AST was created on 1 January 1994 when the steelmaking activities of Ilva were separated into three companies in preparation for their subsequent sale. The main activity of AST is the production of special steel.

II. THE OPERATION

3. The sale of AST forms part of the programme for the privatization of the Ilva Group, endorsed by IRI in September 1993, in the context of which the Commission approved state subsidies to Ilva by a decision adopted on 12 April 1994, subject to the condition that the privatization be completed by the end of 1994. Following this decision, the stainless steel flat products business was transferred from Ilva to AST and sold by invitation to tender. The successful tender was submitted by the above-mentioned German/Italian consortium. Thyssen was not a direct party to the consortium, but cooperated closely in the negotiations.

4. For the purpose of acquiring AST and in order to take over the industrial management of that company, Krupp on the one hand and the Italian partners on the other (Riva, Tadfin and Falck) have founded a joint venture, KAI Acciai s.r.l. (KAI). The shares in KAI are divided equally between Krupp (50%) and the Italian partners (50%).

5. The interest of the Italian partners in KAI will be exercised through a vehicle company, F.A.R. Acciai s.r.l. (FAR), created expressly for that purpose. In FAR Riva and Tadfin will each hold an interest of 42% and Falck an interest of 16%. FAR is to exercise the voting rights resulting from the 50% interest in KAI. Within FAR, all major decisions are taken by the board of directors comprising five members, of whom Riva and Tadfin will each nominate two and Falck one. The decisions need the approval of the majority of the members.

6. Krupp and Thyssen have agreed the transfer from Krupp of its 50% share in KAI to Krupp Thyssen Rostfrei GmbH (KTR, also called RSH), a joint venture between Krupp and Thyssen, in which both partners have concentrated their flat stainless steel production. According to the provisions of the shareholders' agreement, Thyssen will have a veto right on fundamental decisions (such as product and market strategy, principles of financing, appointment of managers and large-scale investments) and will therefore have joint control with Krupp over KTR. The creation of KTR was authorized by the Commission under Article 66 of the ECSC Treaty on 26 July 1994.

7. AST's production consists primarily of stainless steel flat products, both cold rolled and hot rolled, cold-rolled electrical sheet and welded tubes manufactured by a subsidiary of AST. More than [...][3] of the total turnover of the AST group is achieved with stainless steel flat products and electrical sheet.

Of these products, cold-rolled stainless steel flat products, electrical sheet (both less than 500 mm wide) and welded tubes fall within the EC Treaty (and hence are covered by the Merger Regulation and this Decision. In addition, titanium products, hammer forgings and drop forgings manufactured by subsidiaries of AST fall within the EC Treaty.

By contrast, cold-rolled stainless steel flat products, electrical sheet (both 500 mm and more) and hot-rolled stainless steel flat products are covered by the ECSC Treaty and will be the subject of a separate Commission decision.

III. CONCENTRATION

Joint control of AST

8. The notified operation comprises several steps to acquire control of AST by the members of the German/Italian consortium:

- foundation of FAR by the Italian partners in the consortium in order to hold a 50% stake in KAI,
- creation of KAI for the purpose of acquiring all shares in AST and in order to take over the industrial management of AST,
- assignment of Krupp's 50% interest in KAI to KTR.

9. The three Italian partners in the consortium - Riva, Falck and Tadfin - have founded FAR exclusively as a vehicle to act with one voice in KAI. Although none of the Italian companies is able to block any decision in FAR, this fact is immaterial owing to the instrumental character of FAR. In the basic agreement between the Italian partners in the consortium and Krupp of 29 April 1994, the Italians committed themselves to incorporate FAR for the exclusive purpose of the operation in question. This reflects the intention of both sides, the Italian partners and Krupp, to enable the Italian side to act in KAI - the management company of AST - with one voice. The Italian partners thereby ensure that,

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[3] In the published version of the Decision, some information has hereinafter been omitted, pursuant to the provisions of Article 17(2) of Regulation (EEC) No 4064/89. Therefore, all [...] replace figures or information deleted for business

together, they can exercise a decisive influence over KAI and therefore over AST. They will therefore exercise a decisive influence with the German side and there can never be a situation where KTR exercises sole control through the Italian partners being unable to reach a unified position on any decision.Thus it can be concluded that the three Italian partners exercise joint control over KAI and thereby over AST.

10. KTR and FAR will each hold 50% of the shares in KAI, whose exclusive purpose is to acquire the shares of AST and to take over the industrial management of AST. Within KAI decisions are taken by the board of directors comprising six members, of which KTR and FAR will each appoint three. Decisions need the approval of five members. This means that in KAI each shareholder is able to block a decision. Since KAI, just like FAR, is only of instrumental character with respect to the control of AST, factually KTR, Riva, Tadfin and Falck will have joint control of AST.

11. KTR is a joint venture between Krupp and Thyssen in which both partners have combined their stainless steel flat products (but no other products such as electrical sheet) with effect from 1 October 1994. Since KTR is jointly controlled by Krupp and Thyssen, the interest of Krupp in KAI assigned to KTR is under the joint control of Krupp and Thyssen. Consequently, Thyssen will also have a decisive influence over the decisions taken by KAI with regard to AST, with the result that Krupp, Thyssen, Riva, Tadfin and Falck will jointly control AST.

<u>Full-function joint venture</u>

12. AST has all the assets and resources necessary to enable it to perform all the functions of an autonomous economic entity. It will continue to perform activities in the area of stainless steel and other steel production markets. It supplies [...] of its stainless steel flat products and [...] of its electrical sheet products direct to customers. The remainder is sold by distributors, including own-group trading companies, and by external agencies.

13. AST supplies, partially on the basis of existing contracts, stainless steel flat products to two distribution companies belonging to some of the parties. The deliveries are not of significance when set against all AST's deliveries. Its deliveries to the parties account for [...] in the case of cold-rolled stainless steel flat products and [...] in the case of electrical sheet. Consequently, the fact that AST

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secret reasons.

will supply a relatively small part of its production to its parent companies does not disqualify AST as a full-function joint venture.

Absence of coordination of competitive behaviour

14. AST is mainly active as a producer of stainless steel flat products. The Italian side of the consortium (Riva, Falck and Tadfin) does not produce such products, whereas Krupp and Thyssen have transferred their entire flat stainless steel production to KTR. Consequently, of the parent companies of AST only one is active in that market, together with AST. There is therefore no relevant coordination.

15. AST also produces electrical sheet. Subsidiaries of Krupp (Hoesch Hohenlimburg GmbH) and of Thyssen (EBG) likewise manufacture electrical sheet. The parties have informed the Commission that Krupp will withdraw from electrical sheet production. Workers in that area will be transferred to the Thyssen subsidiary (EBG). At the same time Krupp will acquire a minority shareholding of less than 25% in EBG. In addition, on the Italian side of the consortium only Falck produces relatively small quantities of electrical sheet. Therefore, in the market for electrical sheet Thyssen and Falck will remain active. However, since, according to the parties, the market share of Falck in the West European market (EC and EFTA) is very low ([...]) the risk of coordination between Thyssen and Falck is negligible in the context of considering the operation as cooperative.

16. According to the parties a substantial part of their own production of stainless steel flat products is sold directly by mills to final consumers (more than [...] for each party), whereas the remainder is distributed by trading companies (stockholders) and service centres. Steel stockholders perform the wholesale function of buying material in bulk from manufacturers, stocking it and reselling it in smaller quantities. Stockholders have developed in-house processing facilities such as machines to slit steel strips in order to improve their service to customers. Service centres mainly perform materials processing and transformation activities (i.e. slitting, flattening, surface finishing and cutting to a shape) for their own account and for third parties, and subsequently they either return the processed products to the commissioning company or resell the materials in smaller quantities to customers who need only such quantities. For stockholding and most of the related service activities, a quick delivery and a short distance from the place to be supplied or serviced is essential. Thus the effect of the operation with regard to the distribution markets for stainless steel products has to be

assessed at a regional level. As regards distribution AST is active mainly in Italy. Of the parent companies only Tadfin is also active in the Italian stockholder market for stainless steel. Consequently, there is no risk of relevant coordination.

17. A subsidiary of AST, Tubificio di Terni, produces small quantities of welded tubes both made from stainless steel (Cr-content >13%) and from alloyed steel (Cr-content<13%). None of the parent companies is a manufacturer of welded tubes whether made from stainless steel or from alloyed steel. MHP, a joint venture between Krupp and Mannesmann Röhren, is active as a producer in the market for precision tubes made from carbon steel with a market share of about [...] and Falck is a producer of non-precision tubes made from carbon steel (market share of about [...]). However, welded tubes made from stainless or alloyed steel on the one hand and tubes made from carbon steel on the other hand belong to separate markets. The first group of products is used mainly in exhaust systems for passenger cars owing to their heat resistance and durability. By contrast, tubes made from carbon steel are used mainly in the furniture industry and in mechanical engineering. Moreover, there are substantial price differences between the different kinds of tube: non-precision tubes cost about ECU 480/tonne and stainless steel tubes ECU 2 120/tonne. It may be added that the Tadfin group as a trading company distributes small quantities of welded stainless steel tubes (value: ECU [...] million). But these activities belong to the separate distribution market for stainless steel products and are negligible. Consequently, as regards tubes, AST is active in tube markets other than those where parent companies are active, so there is no relevant coordination.

18. AST produces through a subsidiary (Titania S.p.A.) titanium semi-finished products. Titanium semis are also manufactured by Deutsche Titan GmbH, a company within the Vereinigte Schmiedegesellschaft (VSG) group jointly controlled by Krupp, Thyssen and Klöckner, who each hold an interest of 33☺%. The other parent companies of AST are not active in the field of titanium semi-finished products. The risk of coordination can therefore be ruled out for this market.

19. Another subsidiary of AST, Soc. delle Fucine s.r.l., produces hammer forgings (large, individually manufactured steel parts weighing anything from 0.5 tonnes to several hundred tonnes). VSG is also active in this market. Since there are no other parent companies of AST in this market, there is no relevant coordination.

20. Fils S.p.A., yet another subsidiary of AST, makes drop forgings, a product which in contrast to hammer forgings is not manufactured individually but is produced by shaping in a die. Drop forgings are also produced by a subsidiary of Krupp, Gerlach Werke GmbH, by a subsidiary of Thyssen, Thyssen Umformtechnik, and by Falck.

Nevertheless, the risk of coordination is negligible because Falck and AST have insignificant market shares and Krupp and Thyssen have market shares of less than [...].

IV. COMMUNITY DIMENSION

21. The operation has a Community dimension. The aggregate worldwide turnover of all the undertakings concerned amounts to more than ECU 5 000 million. Turnover for 1993 was as follows: Krupp ECU 10 600 million, Thyssen ECU 17 305 million, Riva ECU 1 247 million, Falck ECU 369 million, Tadfin ECU 58 million and AST ECU 758 million).

22. The aggregate Community-wide turnover of Krupp, Thyssen, Riva, Falck and AST is more than ECU 250 million each. The five companies do not achieve more than two thirds of their aggregate Community-wide turnover within one and the same Member State.

V. RELEVANT MARKETS

<u>Relevant product markets</u>

23. AST will continue producing stainless steel flat products, both cold rolled and hot rolled, and cold-rolled electrical sheet. The two types of product account for about [...] of AST's total production. Cold-rolled stainless steel flat products and electrical sheet (both less than 500 mm wide) fall within the EC Treaty and are thus covered by the Merger Regulation. Welded tubes, titanium products, hammer forgings and drop forgings also fall within the EC Treaty.

24. Stainless steel production differs from ordinary steel production in that chromium, nickel and other elements are added during the melting process in order to achieve metallurgically different properties in the end product. Chromium and nickel are quoted on the international metal exchanges and their price fluctuations closely follow one another. The price of nickel has a strong influence on stainless

steel prices as it accounts for between 30 and 35% of the cost price. The next stages in production are hot and cold rolling. Hot-rolled material is produced on hot-rolling mills but does not have surface qualities comparable to those of cold-rolled products. Hot-rolled flat stainless steel is also sold to end users. The subsequent cold-rolling process is aimed at improving the quality of the material and at further reducing its thickness to the required dimensions.

<u>Production of cold-rolled stainless steel flat products</u>

25. Cold-rolled stainless steel flat products are used in a wide range of industries with the following requirements:

- resistance to heat, rust and acids;

- a high-quality surface finish combining smoothness and a pleasing appearance.

The individual requirements depend on the use to which the end product is to be put. The main applications of cold-rolled stainless steel flat products for which there are internationally recognized standards are in the household equipment ("white goods") field, the food and drinks industry, the chemical industry, the automotive industry (exhaust systems) and the capital goods industry.

26. According to the parties, there is a high degree of substitutability between cold-rolled stainless steel and other materials such as carbon steel, coated steels (enamelled steel and zinc-coated steel), aluminium, plastics and glass. Some competitors contacted by the Commission confirmed that it is technically feasible to replace cold-rolled stainless steel with such materials. Other competitors said that, owing to its corrosion resistance, its hygienic, mechanical and physical properties and its advantageous life-cycle cost, cold-rolled stainless steel will generally hardly be replaceable. On the contrary, owing to its relative price advantage over other materials, cold-rolled stainless steel has replaced them, its cheapness apparently being the main factor in the substitution process. Other factors which have played a part in the growth of cold-rolled stainless steel are the increasing importance of life-cycle costs, tighter environmental regulations governing industrial processes and stricter hygiene standards. For many applications customers' investment in specific processing equipment will preclude any changeover in the short term from cold-rolled stainless steel to other materials.

27. Consequently, cold-rolled stainless steel flat products are to be regarded as a relevant product market.

28. All cold-rolled stainless steel flat products together can be seen as one product market because of the high degree of supply-side substitution. A splitting of the market between material under 500 mm and material over 500 mm in order to classify it either as an EC or as an ECSC product is not practicable, primarily because this is an artificial division based on the production technology at the time of the ECSC Treaty (1951) which has since been largely replaced by rolling wide and slitting to narrower widths, but also because a significant amount of slitting of wide coil to narrow is carried out at service centres as well as at the producing mill.[4] All big manufacturers of stainless steel flat products themselves today slit wide strip to widths of less than 500 mm.

29. The market for cold-rolled stainless steel flat products has not to be divided into two separate markets for austenitic steel and ferritic steel. These two kinds of stainless steel differ in their chemical composition, which gives them different properties. Austenitic steel is more expensive than ferritic steel, owing mainly to the addition of nickel. However, since both types of steel can be produced by the same plant, which in the space of one or two weeks can switch from one type to the other, it can be concluded that there is supply-side substitutability and hence both types are to be considered included in the same relevant product market.

<u>Production of electrical sheet</u>

30. Electrical sheet is characterized by specific electromagnetic properties (conductivity and electrical resistance). It is used mainly for the construction of large transformers, electric motors, power supply and switching units, and power plant generators. It can be regarded as a separate product market.

Electrical sheet being a type of cold-rolled sheet, the ECSC Treaty differentiates between strips less than 500 mm wide and over 500 mm wide. However, there is a high degree of supply-side substitution between both kinds. As already stated for stainless steel flat products, mills can roll widths of below 500 mm (EC product) and above (ECSC product), and material of less than 500 mm can be slit from wider coils.

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4 See the Decision of 4 September 1992 in Case No IV/M.239 Avesta/British Steel/NCC/AGA/Axel Johnson.

31. Electrical sheet must be further differentiated as between oriented material and non-oriented material. On the demand side there are differences between the application areas of both types of product. Oriented material has good conductivity, low core loss and lesser heat development, whereas non-oriented material is characterized by higher resistance and higher heat development. Oriented and non-oriented material must also be distinguished according to the method of production. Both kinds of material are pickled and cold rolled, but they undergo a different annealing process, this being the process by which material acquires the required electromagnetic properties. Since the necessary production facilities differ considerably, there is no supply-side substitutability. There are therefore two separate markets for oriented and non-oriented electrical sheet.

Distribution of stainless steel

32. As already indicated, distribution has to be considered a separate market as far as stainless steel is concerned. Of West European stainless steel production, an estimated 30-40% (the figures vary slightly between the various competitors) is sold through stockholders or service centres. Electrical sheet is mainly sold direct to the customer and virtually none is dealt in by stockholders or service centres.

33. To sum up, the following relevant product markets can be singled out for the purposes of the present analysis:

1. cold rolled stainless steel flat products;
2. oriented electrical sheet;
3. non-oriented electrical sheet;
4. distribution of stainless steel products.

With regard to the other products covered by the merger which fall under the EC Treaty and the Merger Regulation and for which the relevant geographic market is Western Europe, there are no competition problems since:

- only AST is present in the welded tube market, of which it has a negligible share;
- for hammer forgings and drop forgings, the new entity will have a market share of only about [...] and for titanium products a share of only about [...] (see point 78).

The relevant geographic market

Production of cold-rolled stainless steel

34. The relevant geographic market for cold-rolled stainless steel is Western Europe (EC and EFTA countries). There are no tariffs in trade between the EC and EFTA. Although all major producers have large market shares in their respective countries, there is intensive trade among Community Member States and between the Community and EFTA. Transport costs are low compared with the value of the product in question (2-3%). There are no legislative or technical barriers to market entry between EC Member States and the EFTA countries.

35. The relevant geographic market does not extend beyond Western Europe. According to estimates provided by the parties and by other producers, Western Europe is, compared with other parts of the world, the biggest market (consumption of 1.9 million tonnes), followed by America (1.3 million tonnes), the Far East including China (1.2 million tonnes) and Japan (0.9 million tonnes). The main production areas are Western Europe, Japan and America. Both in Western Europe and in Japan, capacity is larger than consumption. A substantial proportion of West European and Japanese production is exported to other parts of the world. In 1993 Western Europe exported almost 30% of its production in this way. West European exports to the Far East (including China) and to America each accounted for about 9% of total West European production. Exports from Western Europe to Japan are negligible (700 tonnes in 1993).

36. The volume of imports into Western Europe from the rest of the world is very low. Imports account for only 3% of total West European consumption and come mainly from Japan, South Korea and South Africa.

37. The transport costs faced by producers located outside Western Europe represent about 4-6% of the sales price. Imports from countries outside the EEA are subject to a 6% import duty. However, within the framework of GATT a lowering of import duties on steel products is currently being negotiated with a view to a linear reduction over a ten-year period starting from 1995.

38. The investigations showed that price levels for cold-rolled stainless steel flat products differ substantially in the different parts of the world. Prices in America have been described for the first

quarter of 1994 as being up to 20-29% higher, in Japan 30-48% higher and in the Far East (including China) about 10% lower.

39. Even if the price level in the West European market were to increase by a significant amount, say 5%, this is not likely to result in a substantial increase in imports from Japan, America or the Far East, bearing in mind the higher price level in Japan and America and import duties and transport costs. Nor are there likely to be substantial imports from the Far East despite the lower price level because producers there have to take into account not only transport costs and import duties but also demands from customers for discounts to compensate for a lack of supply reliability - compared with West European producers - and after-sales service. Similarly, there will not be any substantial imports from East European countries.

40. The parties have argued that overcapacity in South Africa will result in increased imports from that region into Western Europe. Although the South African producer Columbus, which was contacted by the Commission, will increase its production capacity until 1998, the resulting overcapacity in South Africa will be relatively low (about 100 000 tonnes). Exports from South Africa will focus not only on Western Europe but also on America and the Far East. Moreover, South African suppliers will have the same problems as Far East manufacturers with regard to supply reliability and service in Western Europe. Consequently, it is extremely unlikely that imports from South Africa into Western Europe will increase the import rate in Western Europe substantially.

41. Under these circumstances the relevant geographic market for cold-rolled stainless steel flat products is Western Europe.

<u>Electrical sheet production</u>

42. The Commission has already stated in a previous decision adopted under the ECSC Treaty that the relevant geographic market for oriented electrical sheet is the world market.[5] The main reasons for this were the importance of the American and Japanese producers, which control the technology through patent rights, and worldwide import and export activity. Imports into the Community from third countries accounted for 21% of EEA consumption. These reasons still hold good today. The market for oriented electrical sheet is therefore the world market.

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5 Decision of 19 December 1988, Ugine/Cockerill Sambre.

43. As far as non-oriented electrical sheet is concerned, the parties argue that the relevant geographic market is at least the West European market, as the sector is becoming more and more internationalized and is developing into a world market. In the light of the facts, however, it cannot be contended that the market is wider than Western Europe. Conditions of competition vary between the three main markets, i.e. Western Europe, North America and Japan. The transport costs faced by producers outside Europe represent 8-12% of the sales price. Most imports into Western Europe are subject to a 6% duty, and the remainder to a 10% duty. A reduction of import duties is currently being negotiated within the framework of GATT. There is a low rate of interpenetration between Western Europe and the rest of the world. The volume of exports from Western Europe to other parts of the world is not high (5% of West European consumption). Imports from third countries account for only 4% of West European consumption. Consequently, the relevant geographic market for non-oriented electrical sheet is Western Europe.

<u>Distribution of stainless steel products</u>

44. Steel stockholders perform the wholesale function of buying material in bulk from the manufacturer, stocking it and then reselling it in smaller quantities to customers who need only such quantities. Since steel distribution by stockholders and service centres takes place at a regional level, the relevant geographic market is a regional market. Since AST is active in the distribution market for stainless steel mainly in Italy, the impact of the merger would be felt mostly in that Member State.

VI. COMPATIBILITY WITH THE COMMON MARKET

Cold-rolled stainless steel flat products

(a) <u>Features of the market</u>

Overview

45. Unlike ordinary carbon steel, which is considered a mature product, stainless steel, including cold-rolled stainless steel, is still in the expansion phase of its product life cycle. Owing to its intrinsic qualities and a favourable price/performance ratio, stainless steel is a natural choice for a large

number of applications. Increased environmental pressure, often backed by legislation, has resulted in new applications by the energy industry (waste treatment plants) and by the car industry (catalytic exhausts). The expansion of the fast food industry has stimulated stainless demand as stainless steel products satisfy the industry's requirement for a hygienic, maintenance-free surface. While production of steel in general has increased by 2.4% per year since 1950, stainless steel production has increased at an average annual rate of 5.8% during the same period. The pace of growth has slowed down with the passage of time, reflecting the process of maturation: between 1970 and 1993, the annual growth rate for stainless steel was about 3.8%. At the same time, the leading consuming and producing regions have changed over time: up until the mid-1960s North America was the main region, then Western Europe and Japan took over. Today's growth areas are the newly industrializing countries, where the annual aggregate growth rate is approximately 16%. Following this trend, apart from exporting from Europe some European producers are investing in the net importing areas (America and East Asia).

46. As for the next four years, it can be assumed in line with some current long-term forecasts that cold-rolled stainless steel consumption growth rates in the Western world will be about 5-6%, although according to the parties West European consumption of cold-rolled stainless steel products will increase only by approximately 3.8% over that period. However, due to the higher growth rates in the NICs, total Western-world consumption of cold-rolled stainless steel will increase at the above-mentioned rate.

47. Like the steel market in general, the market for cold-rolled stainless steel is also characterized by severe instability in the supply/demand equilibrium. Changing demand tends to lead from time to time to a degree of idle capacity and lower capacity utilization. The slowdown in world economic growth during the last three to four years resulted in Western Europe in a slower increase in consumption of stainless steel (with a substantial slowdown in 1993) and left the industry in general with more production capacity than is needed.

European apparent consumption of cold-rolled stainless steel flat products suffered a severe setback of 6.7% in 1993 compared with the previous year. The steepest falls took place in Germany (13.4%) and Spain (11.7%). This overall situation as well as the drop in prices for raw materials (in particular nickel) led to falling prices in recent years. Prospects in the last months of 1994 have obviously changed and an increase in demand has taken place. There are signs that prices are starting to rise once more.

Overcapacity

48. According to official Commission figures, in 1993 total cold-rolled stainless steel capacity[6] in Western Europe amounted to about 3 million tonnes,[7] whereas consumption was about 1.6 million tonnes and production about 2.3 million tonnes. The consumption figures for 1990 (about 1.7 million tonnes), 1991 (about 1.8 million tonnes) and 1992 (about 1.9 million tonnes) show that in 1993 consumption slowed down substantially. Nearly all consumption in Western Europe is covered by deliveries by West European producers. A substantial part of their production - approximately 700 000 tonnes (about 30%) - in 1993 was exported to other parts of the world. Given the gap between capacity and production, there is currently substantial surplus capacity in Western Europe.

49. According to estimates by cold-rolled stainless steel producers, overcapacity in the West European market will continue until 1998 owing both to existing overcapacity and to the construction by West European producers of new cold-rolled stainless steel mills in Western Europe with an additional capacity of about 200 000 tonnes. According to estimates by the competitors contacted, the gap between West European capacity and consumption in 1998 will amount to at least 700 000 tonnes.

Suppliers and customers in the relevant geographic market

50. Besides KTR and AST, Ugine, Outokumpu, Avesta Sheffield, Acerinox and ALZ are currently active in the relevant geographic market. After the merger, besides KTR and AST, five competitors with integrated steelworks would remain as well as some smaller independent rerollers. Imports account only for 3% of West European cold-rolled stainless steel consumption and derive mainly from some Japanese producers (Nippon Steel, Daiclo Steel, Hitachi Metals), the South Korean producer Posco and the South African producer Columbus.

51. There are two categories of customer: end users who belong to different economic sectors (see point 25) on the one hand, and stockholders and service centres on the other. The end users purchase either

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6 Capacity means the maximum possible annual production that can be attained during the year in question under ordinary working conditions.

large quantities ex-mill, i.e. direct from the producer, or smaller quantities from stockholders. Stockholders perform the traditional wholesale function of buying in bulk from the manufacturer and reselling in smaller quantities. In addition, steel stockholders have developed their in-house processing facilities in order to add value and improve their services to customers. Such processing includes cutting to length, slitting, shearing and polishing. The latter activities are also traditionally carried on by service centres.

Market shares

52. Consumption of cold-rolled stainless steel flat products in Western Europe (EC and EFTA) in 1993 amounted to about 1.6 million tonnes. KTR, in which Krupp and Thyssen have merged their stainless steel businesses, accounted for [20-30%] and AST for [10-20%].[8] Following the merger the combined market share of the parties would amount to [35-45%]. The deliveries of the next largest competitor, Ugine, accounted for [15-25%] of West European consumption. The other five competitors have market shares of [10-20%], [under 10%] (two of them) and [more than 5%]. Imports represent 3% of West European consumption.

53. Of total West European cold-rolled stainless steel flat products capacity in 1993, Krupp and Thyssen together accounted for [20-30%] and AST for [10-20%]. Following the merger the combined capacity of the parties would amount to [35-45%] of total capacity in Western Europe. As far as production is concerned, Krupp and Thyssen together accounted for [20-30%] of total West European production while AST accounted for [10-20%]. The production of the parties to the merger would represent [35-45%] of total West European production (and [below 20%] at world level).

(b) Assessment of dominance

(aa) Sole dominance

54. Following the merger, the parties would together hold a market share of [35-45%]. The total turnover of all the undertakings taking part in the merger would amount to about ECU 30 billion and their global steel production to 17.6 million tonnes. In addition, Thyssen holds a 33.3% stake in the

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7 The competitors in the market who were contacted estimate that there is current capacity of 2.8 million tonnes.

8 Market shares according to ECSC survey.

Mexican stainless steel producer Mexinox. Nevertheless, it cannot be considered that the proposed operation would lead to a sole dominant position as a result of which effective competition would be significantly impeded in the common market. Although the market share of the new entity AST would be more than double that of its next largest competitor, Ugine, the new entity would be faced with powerful, financially strong competitors such as Usinor, British Steel and Acerinox with substantial market shares, large production capacities and R&D activities.

Effective competition

55. Ugine, the next largest competitor (market share [15-25%]), belongs to the Usinor Sacilor group, which in turn is the leading European steel producer and the second largest in the world (total steel production 21 million tonnes). Its worldwide turnover amounts to ECU 12.7 billion, earned almost entirely from steel. Ugine accounts for about [15-25%] of total West European cold-rolled stainless steel production capacity and it has significant spare capacity which would deter any attempt by the new group to restrict output in order to increase prices. Because of its total size and the fact that its stainless steel production is not confined to Europe, Ugine holds a very strong position as far as financing of investments, research and development (which in the stainless steel sector is of particular importance[9]) and sales organization are concerned. Finally, the internationalization of Usinor reinforces its position: Usinor controls J&L Special Steels, the largest cold-rolled stainless steel sheet producer in the United States, and has a 21% shareholding in the leading cold-rolled stainless steel producer in Thailand, Thainox.

56. Avesta Sheffield, the third largest competitor in Western Europe with a market share of [10-20%], is controlled by British Steel plc, the second largest steel producer in Europe (total steel production 12 million tonnes). The worldwide turnover of British Steel Group amounts to ECU 6.4 billion, of which steel accounts for ECU 5.5 billion. Avesta Sheffield is the result of a merger between British and Swedish stainless steel producers. It plans to increase its production capacity in Western Europe.

57. The next largest competitor, Acerinox (market share [below 10%]), is a relative newcomer to the steel business. Created in 1974 and equipped with modern plant, it is known for its low costs and excellent profitability. Acerinox achieved a worldwide turnover of ECU 600 million, mainly in

9 Ugine's annual R&D expenditure as a percentage of total sales revenue is by far the highest among all the players contacted by the Commission.

stainless steel. It recently gained sole control over the US stainless steel producer North American Stainless, which was originally a joint venture with the American producer Armco. Acerinox's two main individual shareholders, Nisshin Steel with 9.66% and Nissho Iwai with 7.7%, are Japanese, and one of them, Nisshin Steel, is the second largest Japanese stainless steel producer. Four out of nine members of Acerinox's board of directors are Japanese. Acerinox recently decided to increase its capacity in Europe (and another increase in capacity is under way in the United States). It holds a 33% shareholding in Mexinox, the Mexican producer of cold-rolled sheet in which Thyssen has a similar stake. Acerinox exports an above-average amount of its production of cold-rolled stainless steel outside Europe and also has considerable spare capacity.

58. The Finnish competitor Outokumpu Polarit (market share [below 10%]) has, like Acerinox, very modern production plant which is devoted exclusively to making cold-rolled stainless steel flat products. It is the only West European producer that can produce raw materials (ferrochromium and nickel) in-house, and is therefore not affected by fluctuating world market prices for these raw materials (see point 24). Its worldwide turnover amounts to ECU 2.6 billion. Outokumpu plans to increase its cold-rolled stainless steel production capacity in Western Europe.

59. ALZ (market share [more than 5%]) has invested heavily in recent years and is a competitive producer. ALZ belongs to the ARBED group, which is one of the leading European steel producers with a turnover of about ECU 5 billion. After the acquisition by ARBED of Kloeckner (total steel production of the new group 10 million tonnes), ALZ will benefit from Kloeckner's modern hot-rolling capacity.

60. Acerinox, Outokumpu and ALZ have expanded their share of the West European market in recent years from about 15% in 1980 to about 25% in 1993 at the expense of established European producers.

61. Prices for cold-rolled stainless steel products declined substantially between 1990 and the first two quarters of 1994. According to the answers received from cold-rolled stainless steel producers, their prices for the most-sold product, cold-rolled sheet AISI 304 (DIN 4301), declined during the above-mentioned period on average by approximately 19%. Between 1990 and 1992 West European consumption increased from 1 758 000 tonnes to 1 907 000 tonnes and in 1993 it fell back to 1 600 000 tonnes. However, even when consumption was increasing, prices for the above-mentioned

key product declined on average by 9%. This is a clear indication of existing price competition in the market.

62. It can be expected that even after the merger price competition will continue to work. As indicated above, in the medium term the West European market will be characterized by overcapacity. According to the capacity and production figures, in 1993 the five competitors of the new entity together had spare capacity of more than 270 000 tonnes, of which the three largest competitors had more than 200 000 tonnes. If the new entity were to raise its prices, the competitors could easily react by increasing their production in order to obtain higher market shares. Moreover, West European cold-rolled stainless steel manufacturers export a substantial part of their production to other parts of the world. The five competitors together export nearly 100 000 tonnes to South-East Asia, an area where prices are 10% lower than the current West European price level. If the new entity were to raise prices in particular at times of growing demand, the competitors would take the opportunity to switch supplies from South-East Asia to Western Europe with a view to improving earning.

63. In the medium term the competitors of the new entity will continue to have spare capacity at their disposal. As mentioned above, it is very likely that in Western Europe overcapacity will continue to exist during the next four years. There are grounds for believing that the West European competitors of the new entity will not close down capacity in the medium term. As in the past, European manufacturers will try to export to third countries the part of their production that is not sold in Western Europe. The fact that in the next four years at least three West European competitors will increase their capacity by approximately 200 000 tonnes indicates that there is a policy to increase capacity rather than to close it down.

Potential competition

64. The parties have argued that West European manufacturers will have to face substantial competition in Western Europe in the next few years from Far Eastern and East European producers. In particular, low-cost manufacturers in Taiwan, South Korea, the People's Republic of China and Thailand will increase their production capacity substantially and - although consumption in that region will also grow - there will in 1997 be excess capacity of 500 000 tonnes. As Far Eastern manufacturers produce steel more cheaply than West European mills, the parties take the view that there is a threat of potential entry into the West European market of 500 000 tonnes of cold-rolled stainless steel.

65. The Commission's investigations have not confirmed the likelihood of such a development. In line with the long-term forecasts of independent experts, competitors contacted by the Commission stated that in the next four years there will be no overcapacity in the Far East. Thus there is an incentive for Far Eastern producers to export cold-rolled stainless steel to Western Europe only if they can achieve better earnings there than in their home market. That is not the case. Although the price level in the Far East is lower than in Western Europe, Far Eastern producers have to take transport costs and import duties into account and have in practice to grant substantial discounts to offset the lack of supply reliability and service.

66. Customers and competitors questioned by the Commission hold the view that there are currently no East European producers of cold-rolled stainless steel which would meet West European customers' requirements in terms of quality, reliability of supply and service. Although some increases in imports from these countries have been noted, the volume is still very limited. It is estimated by those customers and competitors that the time frame within which they might become able to match West European standards is five to ten years. Whether these estimates are correct depends mainly on the time in which the necessary investment in the East European plants is carried out. In any case, it is not necessary to decide when and to what extent competition from East European producers of cold-rolled stainless steel will become effective given what has been said at points 55 to 63 above.

General conclusion

67. The proposed merger will increase the degree of concentration in an already concentrated market. The new entity will hold a sizeable market share in Western Europe ([35-45%]) as well as in the Member State with the highest consumption of stainless steel (i.e. Germany).

Although the proposed merger will increase substantially the degree of concentration, it will not create or strengthen a dominant position on the West European market for cold-rolled stainless steel flat products as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it. Despite its market share, the new entity will be confronted with powerful competitors, mostly active in all sectors of the steel business, such as Usinor, British Steel, Acerinox, Outokumpu and Arbed with considerable market shares and substantial financial resources which should enable them to carry out the necessary investment in the market in order to compete with the new entity. More importantly, the competitors will have a substantial amount of spare production capacity for cold-rolled stainless steel flat products. In view of the strong price competition in recent years, it can be assumed that even after the merger the remaining competitors will be in a position to restrict any unjustified price increases by the new entity. In that event, the competitors have the power to use their spare capacity to increase production and offer lower prices with a view to gaining market share at the expense of the new entity.

(bb) Oligopolistic dominance

68. Although the new entity together with the next largest competitor, Ugine, will have a market share of [55-70%] in Western Europe (and the market share of the five leading competitors - including the new entity - will be about 90%), the Commission does not consider that these two - or five - companies would be able to exercise joint dominance. In the case of collective dominance by the small group composed of the new entity and Ugine, this group would be subject to effective competition from Avesta, Acerinox, Outokumpu and ALZ, which are financially strong and possess significant excess capacity for the production of cold-rolled stainless steel flat products. In the case of collective dominance by the wider group composed of the new entity, Ugine, Avesta, Acerinox and Outokumpu, market shares at European level are quite different, and this renders anti-competitive parallel behaviour difficult. Moreover, the cold-rolled stainless steel market is a growing market with a growth rate of approximately 4% a year. In such a market, it is more likely that competitors will use their existing spare capacity if the new entity raises prices. In this context, it should be noted that, according to official ECSC figures for 1993, the new entity's competitors have more than twice as much spare capacity as it would have. The proportion will remain the same in the near future. In addition, there is insufficient market transparency to allow such behaviour because of the large number of customers and their diversity in terms of size and requirements (see point 51). Finally, it must be borne in mind that the leading firms pursue different corporate strategies at international level, as can be seen from the fact that their presence outside Europe differs considerably from one company to another. Consequently, there is no reliable basis for any anti-competitive parallel behaviour.

Production of oriented electrical sheet

69. The proposed merger will reduce the number of European competitors from four to three. Nevertheless, the market being worldwide, the new group will not hold a dominant position at world level, where Nippon Steel from Japan is the leader. Even at European level the new group, with a market share of [25-35%], will be confronted with Ugine (with a slightly higher market share).

Production of non-oriented electrical sheet

Effective competition

70. Although the new entity would have a significant market share ([30-40%]), there are other major competitors in the West European market. The two next largest competitors, EES and Ugine, have market shares of [15-25%] and [10-20%] while the other six competitors have market shares below 10%.

71. EES is controlled by British Steel, the second biggest European steel producer. It is the result of the merger in 1991 of the Swedish and British electric steel producers. The post-merger rationalization process has been completed and has made possible focused, rationalized low-cost production, a comprehensive product range and a strong product development division.

72. The second largest competitor, Ugine, belongs to the Usinor Sacilor group. In the electrical sheet sector in particular, the strength of Ugine consists in the fact that it offers the full range of electrical sheet and is able to cover all the different production stages of the product.

73. Among the smaller competitors Voest Alpine (Austria) is a particularly active competitor which has steadily increased its market share in recent years.

74. Since most sales of electrical steel to the European market are made direct from the producer to the end user, competitors are not dependent on wholesalers and any distribution network dominated by the parties. Actual and potential competitors can with relative ease enter the market by selling their products direct to end users. Transport costs in Western Europe amount, according to estimates of the parties and their competitors, only to 2-5% of the overall cost of the product and do not constitute a significant barrier to competition on the European market.

75. Purchasers of non-oriented electrical sheet have considerable bargaining power. According to competitors, between 40 and 80% of their sales are accounted for by only five big customers. Customers are mostly big international producers of motors, generators, transformers and household appliances. A large part of the demand side is made up of a number of slitting companies which slit the steel into smaller widths in order to sell it to the end user. These companies also have considerable bargaining power because of the large quantities they buy from the producers.

76. Under these circumstances, the proposed merger will not create or strengthen a dominant position in the market for non-oriented electrical sheet.

Distribution of stainless steel products

77. Since AST is mainly active in the distribution market for stainless steel through its subsidiaries in Italy, the main impact in the area of stainless steel distribution will be in Italy. The Commission's investigations have shown that there is a sufficient number of competing and independent stockholders and service centres in the different Italian regional areas which can efficiently supply stainless steel coming from production facilities belonging to different competitors. In addition, the vast majority of Italian stockholders and service centres questioned by the Commission stated that they do not believe they will be affected by the operation in question. Moreover, most of the parties' competitors have their own stockholding and service centres in Italy, and in any way they could easily increase their number, as the capital investment required is not significant. Not only the competitors but also other independent operators could enter the market as it does not present high barriers to entry. Therefore, the merger will not lead to a dominant position in the Italian regional markets for distribution of stainless steel products in Italy.

Titanium products

78. Within the West European market for titanium products AST's deliveries account for about [below 10%] and the deliveries of Krupp for about [below 10%]. Thus the combined market share would be about [10-20%]. The largest competitor (IMI) has about [15-25%] and Krupp and AST together would be in second place. Under these circumstances the merger will not lead to a dominant position in the market for titanium products.

VII. OVERALL ASSESSMENT

79. The Commission has therefore come to the conclusion that the proposed merger does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it,

HAS ADOPTED THIS DECISION:

Article 1

The proposed joint acquisition of Acciai Speciali Terni S.p.A. by Fried. Krupp AG Hoesch-Krupp, Thyssen Stahl AG, AFL Falck, Tadfin S.p.A. and FI.RE Finanziaria S.p.A. is declared compatible with the common market and the functioning of the EEA Agreement.

Article 2

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Done at Brussels, 21 December 1994

For the Commission
Karel Van Miert
Member of the Commission