

***Case No COMP/M.4890 -  
ARCELOR / FERNGAS***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 22/11/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.11.2007

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4890 – ARCELOR / FERNGAS  
Notification of 16.10.2007 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 16/10/2007, 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 Luxembourg-based undertaking Arcelor Luxembourg S.A. ("Arcelor"), a part of the ArcelorMittal S.A. group ("ArcelorMittal", Luxembourg) intends to acquire, within the meaning of Article 3(1)(b) of the Merger Regulation, sole control of the German-based undertaking Saar Ferngas AG (SFG), 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. Arcelor Luxembourg is a wholly owned subsidiary of the ArcelorMittal group<sup>2</sup>, the world's biggest steel producer.

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

<sup>2</sup> Case COMP/M.4137 – Mittal/Arcelor

4. SFG is a natural gas supplier and controls a regional gas transportation network operator ("Saar Ferngas Transport GmbH", "SFT") (high calorific gas). 76.9 % of the shares in SFG are currently held by RAG Saarberg Energiebeteiligungsgesellschaft mbH, 20 % of the shares are indirectly controlled by E.ON Ruhrgas AG, and the remaining shares (around 3%) are held by eight different municipal wholesalers and municipalities.

## II. THE TRANSACTION

5. The notified operation is the acquisition of sole control by Arcelor Luxembourg of the entire business of SFG through the acquisition of the 76.9% of its shares currently held by RAG Saarberg Energiebeteiligungsgesellschaft mbH, which is part of the RAG Aktiengesellschaft group (RAG). SFG controls Saar Ferngas Transport GmbH (SFT) which owns and operates the regional gas transportation network.

## III. THE CONCENTRATION

6. The proposed operation constitutes therefore a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## IV. COMMUNITY DIMENSION

7. The transaction has a Community dimension pursuant to Article 1(2) of the Merger Regulation. The parties have a combined aggregate worldwide turnover in excess of €5,000 million (ArcelorMittal € 70,545 million, SFG € 1,429 million), and each of the two undertakings has a Community-wide turnover in excess of € 250 million (ArcelorMittal € [...] million, SFG € [...] million). Only SFG achieves more than two-thirds of its aggregate Community-wide turnover within one Member State, namely Germany.

## V. RELEVANT MARKETS

### *a) Gas*

- Relevant product market

8. The German gas sector is characterised by a decentralised structure with about 700 utilities on three levels of the value chain: (i) producers/importers (upstream wholesalers of natural gas) traditionally selling gas to regional wholesalers or large industrial customers; (ii) regional wholesalers supplying gas to industrial customers or local utilities and (iii) local utilities selling gas to households, commercial and other end-users mainly via their local distribution grids.
9. As regards gas transportation, three different levels can also be distinguished: (i) supra-regional network connecting different regions, (ii) regional transportation network, (iii) local distribution networks to households and residential customers, which are normally managed by the local utilities.
10. The liberalisation of the German gas market started in 1998. In 2005 the Energy Industry Act was enacted which introduced regulated third party access (including the regulation of network fees). As of 2007, following a decision of the Federal Network Agency, the "two contract model", (i.e. the possibility for the gas providers to conclude only two contracts: (i) at the entry point and (ii) at the exit point connecting the network with the customer, instead of a set of different contracts for each and every entry and exit points

of the supra-regional, regional and local network used by the gas supplier to reach its customer) is the only contractual model which can be used in Germany.

11. The Commission has distinguished in its previous decisions<sup>3</sup> different product markets for (i) wholesale gas supply, which in Germany consist of two markets, namely a primary level –sales to regional wholesale companies such as SFG, and a secondary level – sales to LDC ("Stadtwerke"); (ii) retail gas supply to industrial customers (a market which may include electricity power plants), (iii) retail supply to small customers (households) and (iv) gas storage. As regards gas transportation, the Commission<sup>4</sup> has distinguished different product markets for: (i) long distance wholesale transportation (or long distance transmission); (ii) short distance –transportation(or transmission); (iii) local distribution. SFG is active in (i) wholesale supply, (ii) retail supply to industrial customers (including power plants), (iii) short distance-transportation/trasmissiontransmission and (iv) gas storage.
12. Of these markets, only the markets for retail gas supply to industrial customers and for downstream gas transportation are relevant for the purposes of this decision since the only competitive interactions between the parties' activities are between these markets and the steel markets on which the acquirer group (ArcelorMittal) is active.

#### Relevant geographic markets

13. According to the Commission's findings in its most recent case<sup>5</sup>, the market for retail gas supply to large industrial customers in Germany is no wider than national. The Bundeskartellamt, in its recent decision RWE/Saar Ferngas AG even considered the possibility of local markets for the supply to large final customers.<sup>6</sup> However, as the local level for the present case does not constitute a substantial part of the common market, the lowest level examined in this decision will be the regional one (Saarland).
14. The market for short distance gas transportation/transmission are traditionally seen as regional, i.e. limited to the relevant gas transportation grid.

#### *b) Steel*

##### - Relevant product market

15. The ArcelorMittal group has market shares in excess of 25% on the markets for (i) heavy sections (beams); (ii) cold rolled carbon steel products (strip and sheets) and (iii) galvanised steel products (including both hot-dip galvanised and electro-galvanised strip and sheet). These have been defined as relevant product markets in the Commission's decision authorising the creation of ArcelorMittal<sup>7</sup>.

##### - Relevant geographic market

16. All of these markets were considered by the Commission to be at least EEA-wide<sup>8</sup>.

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<sup>3</sup> Case COMP/M. 4110 EON/Endesa; Case COMP/M. 1383 Exxon/Mobil.

<sup>4</sup> Case COMP/M. 4110 EON/Endesa; Case COMP/M. 1383 Exxon/Mobil.

<sup>5</sup> Case COMP/M. 4110 EON/Endesa

<sup>6</sup> Cf. Beschluss des Bundeskartellamts ( 8. Beschlussabteilung) of 12 March 2007., pp.23 ff.

<sup>7</sup> Case COMP/M.4137 – Mittal/Arcelor

<sup>8</sup> Case COMP/M.4137 – Mittal/Arcelor

## VI. COMPETITIVE ASSESSMENT

17. There are no horizontal overlaps between the activities of ArcelorMittal and SFG. However a vertical relationship will arise from the fact that the ArcelorMittal group is a potential customer on the market for the supply of natural gas to industrial customers. Moreover ArcelorMittal holds a 51.5% ([...]) stake in a company Dillinger Hüttenwerke (DH) which is a customer of SFG

Vertical relationships

*(a) supply to industrial customers*

-national level

18. On the German market for the supply of natural gas to industrial customers SFG has a market share of [0-10]% while the ArcelorMittal group's shares of the EEA markets for beams, cold rolled carbon steel products and galvanised strip and sheet are all below 40%. In this situation ArcelorMittal would not have the ability to restrict supplies of natural gas to its competitors. In particular a number of alternative sources of gas supply would be available to ArcelorMittal's competitors in the hypothetical case SFG were to supply all the gas it currently sells to industrial customers in Germany to ArcelorMittal. A number of gas players, such as Wingas, EON, and RWE, Nuon Essent, Shell, Exxon, ENI/GVS are currently active and will remain active in Germany post-transaction. These companies which supply [90-100]% of the gas consumed by industrial users in Germany would be able to counter any attempt by ArcelorMittal to foreclose their competitors' access to gas.
19. As regards the risk of customer foreclosure, it should be noted that any such risk can be excluded given that ArcelorMittal group's total purchases of natural gas in Germany account for [0-10]% of the total gas supplies to industrial customers. Therefore SFG's competitors would still have alternative customers to whom they can sell their products.  
  
- regional level (Saarland)
20. On the narrowest possible geographic dimension of the market for gas supply to industrial customers, which corresponds to the area covered by SFT network and to the traditional supply area of SFG, SFG 's market share is below 30%, and is likely to remain so as the biggest customer in the area (BASF) is currently being supplied by Wingas ( a company in which BASF has a controlling interest). In this area ArcelorMittal is not active. However ArcelorMittal, as explained above, holds a 51.5% ([...]) stake in a company (DH) which is a customer of SFG.
21. As regards input foreclosure, it should be noted that, if one were to accept that DH is not controlled by ArcelorMittal, ArcelorMittal would not have, after the acquisition of SFG, the ability to foreclose DH or any other steel company in the area given the presence of other gas suppliers, such as Wingas, which, as mentioned above, is already supplying industrial customers in the area. Moreover ENI/GVS and Gaz de France's German subsidiary also have gas available in the Megal and TENP pipelines running in the immediate vicinity of the SFG area.
22. As regards customer foreclosure, if [...] Arcelor does not control DH, then the operation cannot lead to customer foreclosure of DH as DH remains free to choose another supplier. If Arcelor controls DH, then nevertheless (a) the fact that supplies to DH

amount only to [10-20]% of supplies to industrial customers in SFG's grid area is unlikely to affect the competitive situation on such a market significantly, in particular given the fact that DH is already currently supplied by SFG and given the fact that SFG's market share on such a market is below 30%.

(b) downstream gas transportation (or transmission)

23. In relation to the transport of natural gas by the SFT network, it should be noted that, as explained above, access to such network is regulated and open to all, under the terms of the German Energy Industry Act. Moreover the adoption of the "two contracts model" should facilitate access to the network for third parties. Furthermore SFT faces already competition in the Saarland region from the Wingas transport network as major customers such as Technische Werke Ludwigshaven and BASF have access to both networks. Therefore ArcelorMittal could not use the SFT gas transport system to restrict supplies to its competitors.

## **VI. CONCLUSION**

24. 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  
Charlie McCREEVY  
Member of the Commission