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***Case No COMP/M.4971 - MPC / VIGA-VILLACERO / MAN / COUTINHO & FERROSTAAL (JV)***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 20/12/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject:** **Case No COMP/M.4971 - MPC/Viga-Villacero/MAN/Coutinho & Ferrostaal (JV)**
**Notification of 16/11/2007 pursuant to Article 4 of Council Regulation No 139/2004**[1]

1. On 16 November 2007, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No. 139/2004 ("the Merger Regulation") by which the undertakings Münchmeyer Petersen & Co GmbH ("MPC", Germany), Grupo Villacero ("Viga-Villacero", Mexico) and MAN AG ("MAN", Germany) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the newly created company Coutinho & Ferrostaal GmbH & Co KG ("Coutinho & Ferrostaal", Germany) 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. **MPC** is a German trading house active in the areas of ship investment, capital investments, consumer goods, commodities and machinery.

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1 OJ L 24, 29.1.2004 p. 1.

4. **Viga-Villacero** is a Mexican group which manufactures and distributes steel products mainly in Mexico and North America.

5. **MAN** is a globally-active commercial vehicle and engineering group that focuses on the areas of commercial vehicles, industrial services and diesel engines.

## II. THE OPERATION

6. The proposed transaction involves the formation of a newly created joint venture, Coutinho & Ferrostaal, which will combine the activities of MPC, Viga-Villacero and MAN ("the Parties") in the area of international steel trading. To this end, MPC and Viga-Villacero will contribute their existing 50-50 joint-venture in the steel trading business CCC Steel GmbH & Co KG ("CCC Steel") and MAN will contribute its indirectly wholly-owned steel trading subsidiary Ferrostaal Metals GmbH ("Ferrostaal"). Each of the Parties will hold equal shares of one-third in Coutinho & Ferrostaal ("The JV").

7. On 8 November 2007, the Parties entered into a Partnership Agreement which provides *inter alia* for a unanimous vote of the advisory board on certain important decisions, including the annual budget and business plan of the JV. As each shareholder nominates one member of the advisory board, the unanimity requirements grant to the shareholders a veto right concerning annual budget and business plan thereby conferring joint control to MPC, Viga-Villacero and MAN.

8. As regards the full-functionality of the JV, CCC Steel and Ferrostaal are pre-existing businesses which already operate in the markets for steel trading with a broad product range and an existing world-wide sales network. They have already an independent management dedicated to their day-to-day operations and the JV will have access to sufficient resources to perform on a lasting basis all the functions of an autonomous economic entity[2].

## III. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (EUR […] million for MPC, EUR […] million for Viga-Villacero, EUR 13,049 million for MAN). The Community–wide turnover of at least two undertakings concerned is more than EUR 250 million (EUR […] million for MPC, EUR […] million for MAN) but they do not achieve more than two-thirds of their Community-wide turnover in one Member State. The proposed transaction therefore has a Community dimension within the meaning of Article 1(2) of the EC Merger Regulation.

## IV. COMPETITIVE ASSESSMENT

10. As the Parties will contribute their existing steel trading subsidiaries (CCC Steel and Ferrostaal) to the JV, there is an overlap, albeit limited, between the activities of the parties as regards the trading of steel products. The transaction will also marginally affect the vertical link between the upstream steel producing business of one of the parents (Viga-Villacero) and the steel trading activities of the JV.

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2 The Partnership Agreement is entered into for an indefinite period of time.

## Relevant product market

11. In previous cases involving steel products, the Commission has distinguished the markets for steel distribution and the markets for steel production and direct sales[3] on the basis of a number of factors, including different sets of customers, the smaller size of orders and the ability to respond rapidly to customers' request for distribution. The Parties endorse this approach.

12. Within steel distribution, the Parties submit that they are not active in the markets for physical (or stockholding) steel distribution which have been defined by the Commission in several previous cases[4]. According to the Parties, neither CCC Steel nor Ferrostaal operate any depots or storage facilities and they do not physically handle the steel products they trade. They order steel products from steel producers for which they have already one or several customers and they arrange a supply relationship between a seller and a purchaser. The products are then delivered by the seller to the customer or shipped to a harbour where the customer collects them. Hence the parties consider that they are active in a market for "non-stockholding based steel distribution (or trading)". This is in line with previous case law, where the Commission considered that stockholding steel distribution is a separate market from non-stockholding distribution, while the exact delimitation of the latter was left open[5].

13. The Parties submit that the market should not include stainless steel products[6], as the distribution patterns differ significantly. The parties claim that in the stainless steel segment, large quantities are normally sold by producers through direct sales leaving traders only a small fraction of the market. The parties trade only carbon steel products and are not active in trading of stainless steel products.

14. The Commission has traditionally subdivided the markets for physical steel distribution according to the product groups[7] (long products, flat products, etc.). The Parties submit that this differentiation is not appropriate for non-stockholding steel distribution since their activities are comparable to the work of a broker and therefore not dependent of the specific products traded. Accordingly the JV will trade a broad product range comprising flat steel products, long steel products and alloyed steel products.

15. A majority of respondents to the market investigation share the Parties' views as regards this distinction between stockholding and non-stockholding distribution. They put forward that stockholders often offer additional services (processing operations, administration and insurance services) that non-stockholders do not provide, that orders in non-stockholding distribution have a much higher value than in stockholding and finally that the customer

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[3] See i*nter alia* decision n° COMP/ECSC 1351 Usinor/Arbed/Aceralia of 21 November 2001.

[4] See *inter alia* decision n° COMP/M.2481 Balli/Klöckner of 28 August 2001.

[5] Decision n° IV/M.1369 Thyssen Handel/ Mannesmann Handel of 7 April 1999

[6] Unlike carbon steel, stainless steel is a high purity product which is generally more expensive and designed for specific applications and performances. See decision COMP/M.3778 Böhler-Udedeholm/Buderus of 30 June 2005.

[7] See decisions COMP/M.4137 Mittal/Arcelor of 2 June 2006, COMP/M.4211 Schmolz + Bickenbach/Ugitech of 3 July 2006 and COMP/M. 4225 Celsa/Fundia of 28 July 2006.

base clearly differs (end-users for stockholders and others distributors for non-stockholders). Nevertheless, the precise product market definition can be left open, as it would not materially affect the assessment of the notified transaction.

16. As regards a further distinction within non-stockholding steel distribution according to product groups, answers are more mixed. Some respondents indicate that it is the intermediary function rather than the product which constitutes the specific feature of the activity whilst others point out that demand characteristics and logistic issues (which are however only relevant for stockholding distribution) differ from one product to the other. In any case, it can be left open whether a further distinction is necessary since it would not modify the competitive assessment.

**Relevant geographic markets**

17. The parties submit that the market for non-stockholding steel distribution should be defined as world-wide in scope. They argue that the carbon steel products traded by CCC Steel and Ferrostaal have their origin in countries around the globe and are transported by ships over long distances. Unlike physical distribution which has been defined as national or regional in geographic scope[8], the non-stockholding based steel distribution has in the "Thyssen" decision been regarded as taking place internationally. The precise geographic definition was left open.

18. All respondents to the market investigation but one consider the geographic scope of the non-stockholding distribution markets to be worldwide while one reply took the view that it was EEA-wide. The aim of non-stockholding distribution is precisely to connect purchasers and sellers located in different geographic areas to provide goods and services. As a result, trade flows resulting from non-stockholding distribution take place on an international basis and non-stockholders can arrange any sort of transaction around the world. Nevertheless, it is not necessary for the purposes of the present case to reach a definitive conclusion regarding the relevant geographic markets (EEA-wide or world-wide) as the conclusions of the competitive assessment would remain the same.

19. The market for steel production and direct sales has been defined as EEA-wide in previous decisions[9].

**Competitive assessment**

**1. Horizontal overlaps**

20. The parties' combined shares[10] in the non-stockholding steel distribution market would be [5-10]% on a worldwide basis (CCC Steel: [0-5]% and Ferrostaal: [0-5]%) and [0-

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8 See Decision Usinor-Arbed-Aceralia, §99 to 107.

9 See inter alia decision n° COMP/M.4137 Mittal/Arcelor

10 Source: Parties' best estimates. Market shares have been estimated by the Parties on the basis of the following hypothesis: in tonnage, 50-60% of the steel products sold in Europe are traded by distributors among which 50% of the steel traded is handled by non-stockholding distributors. In value, the average price per ton of traded steel is about 500€. The market investigation has broadly confirmed these assumptions.

5]% on an EEA-wide basis (CCC Steel: [0-5]% and Ferrostaal: [0-5]%). Hence there are no affected markets.

21. A similar picture arises if a distinction was made according to the product groups traded by the parties (long, flat and semi-finished products). The combined market shares of the Parties in the world and the EEA would be the following : for semi-finished products, [5-10]% in the EEA and [5-10]% in the world; for long products, [0-5]% in the EEA and [5-10]% in the world; for flat products, [0-5]% in the EEA and in the world[11].

22. The parties would face competition from large international non-stockholding distributors such as Corus, ThyssenKrupp Mannex, Liberty Steel, Salzgitter Mannesmann and Stemcor. Although the parties have not been able to provide market shares estimates for these competitors, in the market investigation it was estimated that the JV would rank n°4 in the non-stockholding distribution market (in the EEA or in the world) and the market leader would hold a market share between [5-15]%. No customers, suppliers or competitors expressed any competition concerns as regards the horizontal effects of the transaction.

23. In the light of the above, the transaction does not raise serious doubts as regard its impact on the markets for non-stockholding steel distribution.

**2. Vertical links**

24. Viga-Villacero is active in the production and direct sales of steel products, which is situated upstream of the JV's steel distribution activities. However, no adverse competitive effects are likely to arise from this vertical relationship. On the basis of world-wide and EEA-wide market definitions downstream as confirmed in the investigation there are no vertically affected markets[12]. In addition, Viga-Villacero, whose activities are focused on the USA, Canada and Mexico, does not generate any revenues with steel products in the EEA. It sold some steel products to its subsidiary CCC Steel, but these were all delivered to clients outside the EEA.

25. Furthermore, Viga-Villacero is already vertically integrated into non-stockholding distribution via its subsidiary CCC Steel, which will be contributed to the JV. Viga-Villacero does not supply any other steel traders in the EEA than CCC Steel. Input foreclosure effects for competing traders in the EEA are therefore excluded. In addition, even on the basis of the exclusive supply relationship with Viga-Villacero, the steel acquired by CCC Steel from Viga-Villacero only amounted to [0-5]% of CCC Steel's overall purchasing volume. CCC Steel consequently had to source the vast majority of its demand from competing steel producers; customer foreclosure effects are therefore equally unlikely.

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[11] As mentioned above, no market participants considered in the investigation that the geographic scope of the market could be smaller than EEA wide. For completeness it is noted that even on the basis of national markets in the EEA only Ireland would be affected ([25-35]% combined) with a minimal increment (+[0-5]%).

[12] For completeness it is noted that even on the basis of national markets in the EEA only Ireland would be affected ([25-35]% downstream) with a market share just minimally above the 25% threshold.

26. In addition, in the Commission's market investigation no market participants expressed any concerns about possible input or foreclosure effects as a result of this merger. Therefore the transaction does not raise serious doubts as regards input or customer foreclosure.

## V. CONCLUSION

27. 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)*
Neelie KROES
Member of the Commission