

*Case No IV/M.504 -
Avesta III*

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

Article 6(1)(b) NON-OPPOSITION
Date: 20/10/1994

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

Brussels, 20.10.1994

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)b DECISION

To the notifying party

Dear Sirs,

Subject: **Case No. IV/M.504 - AVESTA (III)**

Your notification of 19.09.1994 pursuant to Article 4 of Council Regulation No. 4064/89.

1. The proposed operation concerns the acquisition by British Steel of a further 9.9% of the shareholding of Avesta Sheffield AB (ASAB) taking its shareholding to 49.9%. The operation was notified to the Commission on 19 September 1994 pursuant to Article 4 of Council Regulation (EEC) No 4064/89.

2. After examination of the notification the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market.

THE OPERATION

3. On 4 August 1992, British Steel plc (BS), NCC AB (NCC), Axel Johnson HAB and AGA AB (AGA) notified an operation to the Commission by which they formed a joint venture, Avesta Sheffield AB from the stainless steel manufacturing activities of Avesta AB, whose major shareholders NCC, Axel Johnson and AGA, and British Steel were parties to a shareholders' agreement.
4. On 4 May 1994, BS, NCC and AGA notified to the Commission the operation by which Axel Johnson disposed of its shareholding. The Axel Johnson shares were placed with Swedish investors. The shareholders' agreement continued to operate among the three remaining parties.
5. On 14 August 1994, NCC withdrew from the shareholder's agreement and decided to dispose of its 22% shareholding in ASAB. The shareholders agreement was subsequently terminated by the British Steel and AGA.
6. On 19 September 1994, British Steel notified the operation by which it acquires from Barclays de Zoete Wedd Securities (BZW), NCC's broker-dealer, 9.9% of ASAB's issued share capital previously held by NCC. The rest of NCC's shares have been placed with several institutions which belong to various member States and EFTA States.

THE PARTIES

7. BS is a British steel manufacturer created in 1988 by the privatisation of the British Steel Corporation. NCC is principally involved in the contracting and real estate sector in Sweden. AGA is a Swedish company involved in the supply of industrial and medical gases.
8. ASAB, a Swedish company, is the operating parent of the Avesta group which is involved in the manufacture and sale of certain stainless steel products.

CONCENTRATION

9. As a result of the operation described above, British Steel will hold a 49.9% stake in ASAB. The rest of ASAB's shareholding will be widely dispersed and no shareholder's agreement will continue to be in operation.

In view of this 49.9% shareholding of British Steel, and taking into account the dispersion of the remaining shareholders, the Commission considers that British Steel will enjoy sole control over ASAB.

10. Moreover, at the last shareholder's meeting of ASAB, British Steel, with 40% of the issued share capital, held 52.4% of the votes of those present or represented. Assuming the same level of attendance at future meetings, British Steel's 49.9% shareholding would confer 65.6% of the votes of those present or represented. Indeed, given the further dispersal of ASAB's remaining shareholding, following NCC's exit, it is extremely likely that British Steel would hold, at least, a majority of the votes in any future shareholder's meeting.
11. It is also very likely that British Steel will be able to control ASAB's board of directors as well. As a matter of the Swedish law, any owner of more than 10% of the share capital can call an extraordinary shareholder's meeting with a view to proposing a new board. Under ASAB's articles of associations, the vote is to be by simple majority, unless holders of at least 10% of the shares request the special voting procedure provided for in article 6 of ASAB's article of association to apply.

Under the special voting procedure, if a shareholder votes for several candidates, it shall split its votes equally between each candidate. On the assumption that British Steel would hold [...] ¹ of the votes of the presents and represented, the remaining shareholders could not prevent it from obtaining a majority in the board even in the unlikely situation where they would all engage in a concerted action against British Steel.

12. Thus the operation results in the acquisition by British Steel of sole control on ASAB and constitutes therefore a concentration within the meaning of Article 3 of the Merger Regulation.

COMMUNITY DIMENSION

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

COMPATIBILITY WITH THE COMMON MARKET

Relevant product and geographical markets

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

¹ This figure would vary depending on the attendance at ASAB's AGM.

as the competition analysis was unaltered even if a stricter market definition was used.

Assessment

15. As the whole of the Stainless Steel business of British Steel was already merged in ASAB since 1992, there will be no change in the structure of the company or its market share ([...]² and [...]³ of the EEA sales of respectively cold rolled stainless steel flat products and welded stainless steel tubes) as a result of the acquisition of sole control by British Steel. Therefore, the operation does not lead to any addition of market share.
16. A change from joint to sole control may also have implications for competitive conditions, in particular as far as the vertical and conglomerate effects are concerned.

As regards the former, British Steel's stainless steel facilities as well as distribution network have been combined with ASAB's operations as a result of the 1992 agreement. The impact of this vertical integration was evaluated in the decision of the Commission n° IV/M.239 - Avesta/British Steel.

As regards the latter, in both markets, it faces competition from large stainless steel companies which are also integrated in large international groups. Some of these competitors belong to steel groups like ASAB such as Thyssen-Krupp-Hoechst, Ugine (belongs to Usinor), AST (belongs to Ilva and is currently in a privatisation process).

17. For the above reasons, the concentration will not strengthen or create a dominant position in EEA territory or a substantial part of it.

CONCLUSION

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

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² Business secret deleted. Between 10-15%.

³ Business secret deleted. Between 15-20%.

For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No. 4064/89. The application of Regulation (EEC) 4064/89 is without prejudice to the applicability of the provisions of Articles 92 to 94 of the Treaty.

For the Commission