

***Case No COMP/M.5179 -  
ERAMET / TINFOS***

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: 03/07/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 03-VII-2008

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5179 - ERAMET/ TINFOS  
Notification of 29/05/08 pursuant to Article 4 of Council Regulation No 139/2004<sup>1</sup>**

1. On 29/05/2008, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (“the EC Merger Regulation”) by which the undertaking Eramet SA (“Eramet”, France) acquires sole control over part of Tinfos A/S (“Tinfos”, Norway). The notification concerns the acquisition of all assets of Tinfos (constituting of Tinfos Metal) excluding Tinfos’ hydropower business.

**1. THE PARTIES**

2. Eramet is a French mining and metallurgical group which is active worldwide in three main areas: manganese, alloys and nickel. The activities of the manganese division include: (i) the production of manganese ore and sinter in Gabon; (ii) the processing of ore to produce manganese alloys; (iii) the production of chemical derivatives of manganese; and (iv) the collection and recycling of catalysts used by oil refineries, and the extraction/upgrading of metal content using metallurgical and chemical processes.

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

3. TINFOS is a Norwegian holding company which is active in two areas: (i) metal business and (ii) hydropower operations business. The metal business includes production of manganese alloys (SiMn), titanium slag, pig iron and raw material trading operations<sup>2</sup>. Tinfos' hydropower operations focus mainly on the running of the Notodden hydropower plant and on the development of small power stations in Norway.

## **2. THE OPERATION**

4. Eramet and the main shareholder of Tinfos who represents approximately [...] % of Tinfos' shares, have entered into a Master Agreement pursuant to which Eramet will acquire 100% of the metals business and will retain a 40% interest in the hydropower business. [...]\*. Mr. Holta (currently the main shareholder in Tinfos) will retain the majority of shares in Tinfos' hydropower business ([...]%) and the remaining [...] % will be held by minority shareholders who are related to Mr. Holta.

## **3. CONCENTRATION**

5. The notifying parties submit that the proposed transaction constitutes a concentration whereby Eramet will acquire sole control over Tinfos (through a Master Agreement).
6. After the completion of the concentration, Eramet will have a 100% interest in Tinfos' metal business and 40% in Tinfos' hydropower business and will legally acquire sole control over Tinfos' metal business,
7. Regarding Tinfos' hydropower business, Eramet will not have the possibility of exercising decisive influence over it. In the hydropower business, Eramet will appoint two of the five members the board (3 remaining, including the chairman will be appointed by Mr. Holta). All strategic decisions including budget, the business plan, major investments or the appointment of senior management will require simple majority of the board. The only decisions that Eramet could block concern matters in which it is typical to provide protection to minority shareholders. Therefore, Eramet will not obtain either joint or sole control of the hydropower business and the hydropower business is not part of this concentration.
8. Given the above, the proposed transaction between Eramet and Tinfos' metal business constitutes a concentration within the meaning of Article 3 of the Merger Regulation. The acquisition of 40% of the hydropower business does not qualify as a concentration.

## **4. COMMUNITY DIMENSION**

9. The parties have a combined aggregate worldwide turnover that does not exceed € 5,000 million (Eramet € 3,792 million; Tinfos Metal € 912 million in 2007). Therefore, the transaction does not meet the thresholds set out in Article 1(2) of Council Regulation (EC) n° 139/2004.
10. The combined aggregate worldwide turnover of Eramet and Tinfos Metal exceeds EUR 2.5 billion. Each of Eramet's and Tinfos' Metal Community-wide turnover exceeds

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<sup>2</sup> The trading activity comprises the sale of SiMn, pig iron and raw materials from other suppliers (including HC FeMn and LC/MC FeMn).

[\* Detailed description of the individual steps of the transaction]

EUR 100 million (Eramet € [...] million; Tinfos € [...] million in 2007). Additionally, the combined, aggregate turnover of the Parties in each of [...] exceeds EUR 100 million. In each of these three EU Member States, the turnover of each undertaking exceeds EUR 25 million. Eramet and Tinfos Metal do not achieve more than two-thirds of their aggregate EU-wide turnover in one and the same EU Member State. Thus, the Transaction has a Community dimension since it meets the thresholds set out in Article 1(3) of Council Regulation (EC) No 139/2004.

## 5. RELEVANT MARKETS

11. The parties' activities overlap in the production and sale of manganese alloys on an EEA level. Also Eramet produces and sells all different types of manganese alloys (namely HC FeMn, LC/MC FeMn and SiMn) and nickel, and also sells FeV; and Tinfos produces only SiMn and it also has minor sales of LC/MC FeMn, HC FeMn, FeV<sup>3</sup> and Nickel<sup>4</sup> via its trading division. Eramet's upstream activities in the area of manganese ore are vertically related to Tinfos' downstream activities in the SiMn production.

### 5.1. RELEVANT PRODUCT MARKETS

12. Manganese ores: manganese is the fourth most used metal in terms of tonnage, behind iron, aluminium and copper. The majority of the world's manganese is consumed in metallurgical applications, with approximately 90% consumed in steel making. There are two main types of manganese ores depending on the level of manganese content, namely high grade and low grade manganese ores (but low grade ores can be "upgraded" in manganese content without incurring excessive costs). Besides, irrespective of their manganese content, all manganese ores have the same application areas.
13. Therefore, the Parties submit that the market for manganese ore constitutes a single relevant product market. This is in line with the previous precedent, where in *BHP/Billiton*<sup>5</sup>, the Commission has considered manganese ore as relevant product market.

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<sup>3</sup> Ferro Vanadium (FeV) is a ferro alloy high in vanadium; used to add 0.1-2.5% vanadium during the manufacture of engineering steels and high-strength steels. The Commission has briefly analysed the ferro alloy market in the case COMP/M.3134 - Arcelor / Umicore / Duology JV, pointing out that this market could be divided into distinct single markets depending on the percentage of iron present in the ferroalloy. In this sense, the Ferro Vanadium could be considered as a different market from other Ferro-alloys, such as Ferro Chrome, Ferro Titane, etc. Nevertheless, as from any of the possible definitions of the market competition concerns arise, the definition of the relevant market can be left open.

<sup>4</sup> The Commission has previously identified a distinct product market for refined and primary nickel production (Case N° IV/M.470 Gencor/ Shell and Case No COMP/M. 3767 - BHP/ WMC), noting that, according to its levels of purity, the refined nickel could be further divided into class I and II. There are also possible markets for the intermediate nickel products. These are nickelin-concentrate derived from nickel sulphide (10-25% nickel), laterite (nickel oxide) ores and nickel-inmatte (c.70% of nickel); all are traded as separate products. Nevertheless, as from any of the possible definitions of the market competition concerns arise, the definition of the relevant market can be left open.

<sup>5</sup> Case COMP/M.2413, BHP/Billiton, 16 June 2001.

14. Manganese alloys: manganese ore is processed into ferroalloys, including HC FeMn, LC/MC FeMn and SiMn. These manganese alloys differ principally in the quantity of carbon they contain and the presence of silicon.
15. In *BHP/Billiton* the Commission found that there is limited substitution between manganese metal and its various alloys and between the various manganese alloys themselves. In that case, the Commission reached the conclusion that in the area of manganese alloys the narrowest possible relevant product market definitions would appear to be (i) HC FeMn; (ii) MC/LC FeMn; and (iii) SiMn.
16. Nevertheless, in the earlier decision *Européen du Manganèse*<sup>6</sup>, the European Commission acknowledged substitutability between SiMn and FeMn. In the same line, the parties submit that HC FeMn and SiMn are substitutable both from a demand and a supply side perspective, since producers of HC FeMn, who have electrical furnaces, can switch their production to SiMn without having to undertake any investments ([80-90]% of the HC FeMn producers worldwide use these furnaces).
17. In any case, given that the Transaction will not lead to a significant impediment to competition, irrespective of whether all manganese alloys are considered as a single product market or whether SiMn, HC FeMn and LC/MC FeMn constitute separate product markets. The definition of the relevant product market can therefore be left open as it does not modify the competitive assessment.

## **5.2. RELEVANT GEOGRAPHIC MARKETS**

18. In *BHP/Billiton* the European Commission established that manganese ores and manganese alloys are produced in a limited number of areas and sold to steel producers and other consumers on a worldwide basis. The geographic scope of the markets for manganese ores and manganese alloys was, however, left open since no competition concerns would have arisen under any possible geographic scope of the markets at issue.
19. The Parties submit that the market for manganese ores is worldwide in scope due to the following reasons: (i) manganese alloys are commodity products and, thus, basically the same throughout the world, as are the production processes, (ii) there are no trade barriers due to different technical standard, (iii) transportation costs are low between regions and (iv) all main suppliers are active on a worldwide level among other reasons.
20. According to the parties, price differences between different world regions are not significant and if they exist this is usually because of short term fluctuations in local demand and supply. Over a longer period of time, regional prices tend to converge.
21. Moreover, imports into the EEA are significant and have shown increasing trend in recent years. In 2007, manganese alloys (including SiMn) imports accounted for approximately [60-70]% of total consumption of manganese alloys in the EEA (as compared to [50-60]% in 2006). The parties' expect that further increase of import into the EEA, due to the continuously increasing demand, particularly in Eastern Europe that will be satisfied by increased imports form China, India and CIS (available capacities are allocated largely there not in Europe).

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<sup>6</sup> See press release IP/85/164 of 25 April 1985.

22. Even though there are strong indications that the manganese markets are global, given that the Transaction will not lead to a significant impediment to competition, irrespective of the precise geographic scope of the market for manganese ores, the definition of the relevant geographic market can be left open as it does not modify the competitive assessment.

## 6. COMPETITIVE ASSESSMENT

23. The proposed operation results in affected markets for the following products: (i) manganese ores, (ii) manganese alloys, including: (1) SiMn, (2) HC FeMn (3) LC/MC FeMn and, in a minor scale, (iii) sales of FeV and Nickel.

### *Manganese Ores*

24. The transaction gives rise to no horizontal overlap on the market for manganese ores and a limited vertical overlap between the upstream market of manganese ores and downstream market of manganese alloys. On the upstream market for manganese ores, Eramet has a market share of [10-20]% on the global level, and of [20-30]% in the EEA. Due to limited combined market shares of the parties on the downstream markets for manganese alloys (see paragraphs 22-26 below), the risk of foreclosure is unlikely. Therefore the operation does not significantly impede effective competition as regards the vertical link between the upstream manganese ore and downstream manganese alloys markets.

### *Manganese Alloys*

25. Regarding horizontal overlaps, the Parties' combined market shares in the market in 2007 for manganese alloys are [0-10]% on a worldwide level and [10-20]% on an EEA level. The addition of market shares due to transaction is limited to [0-5]% worldwide. On a EEA level a [5-10]% overlap is attributed to Tinfos. In addition, there are strong competitors in the market, such as Privat, BHP Billiton, VALE, Ferroatlantica and OFZ7, which are able to increase their sales in the EEA in response to any attempts of the combined entity to increase prices in Europe. Therefore the operation does not significantly impede effective competition as regards the horizontal overlap between the parties in the manganese alloy market.
26. In terms of vertical relationships, Eramet produces a wide range of special steels; products where alloys are used as input for the production (tool steels, high-performance steels and superalloys, as well as high-speed steels). Eramet's market shares in all these different segments are below [0-10]% on both the worldwide and the EEA level. The only exception is the high-speed steel segment where Eramet has a worldwide share of approximately [10-20]% and an EEA-wide share of approximately [40-50]%. However, the consumption of manganese alloys for Eramet's annual high-speed steel production represents less than [0-5]% of the annual EEA-wide consumption of manganese alloys. As a result, the combination of the parties' activities could not possibly result in any foreclosure of steel producers from manganese alloy inputs or of manganese alloy producers from customers in the steel industry.

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7 Worldwide and EEA market shares for manganese alloys in 2007 by company: Privat ([10-20]% and [10-20]%), BHP Billiton ([0-10]% and [0-10]%), VALE ([0-10]% and [0-10]%), OFZ ([0-10]% and [0-10]%), Ferroatlantica ([0-10]% and [0-10]%) and Guangxi Bayi ([0-10]%, not active on the EEA level).

Therefore the operation does not significantly impede effective competition as regards the vertical link between the upstream manganese alloy and downstream special steel product markets.

#### SiMn

27. On the market of SiMn, the parties' combined shares in 2007 are [0-10]% on a worldwide level and [10-20]% on an EEA level, with an addition of market shares of [0-5]% and [5-10]%, respectively. In addition, there are strong competitors in the market, such as Privat, BHP Billiton, VALE, Ferroatlantica and OFZ<sup>8</sup>, which are able to increase their sales in the EEA in response to any attempts of the combined entity to increase prices in Europe. Therefore the operation does not significantly impede effective competition on the narrowest potential product market for SiMn manganese alloys only.

#### HC FeMn

28. On the market of HC FeMn, Tinfos' turnover achieved in the HC FeMn segment is negligible. Accordingly, there is practically no market share addition both on a worldwide or EEA levels (below [0-5]%). The market shares after the completion of the operation will be [0-10]% worldwide and [10-20]% on a EEA level. Therefore the operation does not significantly impede effective competition on the narrowest potential product market for HC FeMn manganese alloys only.

#### LC/MC FeMn

29. In the market of LC/MC FeMn where both parties are active, the addition of market shares due to transaction are below [0-5]% on the worldwide level and below [0-5]% on the EEA level. Eramet's market share in this segment is already high. ([20-30]% worldwide and [40-50]% EEA before the transaction and would be [20-30]% worldwide and [40-50]% EEA after it). Nevertheless, the Parties submit that Tinfos does not produce LC/MC FeMn and only sells it through its trading division and as stated above the overlap is limited. Therefore the operation does not significantly impede effective competition on the narrowest potential product market for LC/MC FeMn manganese alloys only.

#### *Sales of FeV and Nickel*

30. Both Parties are active in the sale of ferro-vanadium ("FeV"), where Eramet's worldwide market share in FeV is [0-5]% (in the EEA, Eramet does not sell ferrovanadium) and Tinfos' market share is below [0-5]% on the worldwide and the EEA levels.
31. Eramet is also active in the production and sale of nickel metal and nickel powder, while Tinfos has minor sales of nickel metal and nickel powder via its trading division, Eramet's worldwide market share in nickel metal is [0-5]% and in the EEA, is [0-5]%. In Tinfos' case market share is below [0-5]% on the worldwide and the EEA levels.

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<sup>8</sup> Worldwide and EEA market shares for manganese alloys in 2007 by company: Privat (0-10)% and [10-20]%), BHP Billiton ([0-10]% and [0-10]%), VALE ([0-10]% and 0-10%), OFZ ([0-10]% and [0-10]%), Ferroatlantica ([0-10]% and [0-10]%) and Guangxi Bayi ([0-10]%, not active on the EEA level).

Thus, the Parties' horizontal overlap in nickel metal and FeV does not give rise to competition concerns.

## **7. CONCLUSION**

32. For the above reasons, the concentration does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement and it does not significantly impede effective competition. Thus, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission  
(signed)  
Jan FIGEL  
Member of the Commission