

***Case No COMP/M.5211 -
OUTOKUMPU/
SOGEPAR***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 25/07/2008

***In electronic form on the EUR-Lex website under document
number 32008M5211***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25/07/2008

SG-Greffe(2008) D/204836

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5211 - OUTOKUMPU/ SOGEPAR
Notification of 19/06/08 pursuant to Article 4 of Council Regulation
No 139/2004¹,
Publication in the Official Journal of the European Union No. C 167, page
no. 25 on 02/07/2008**

1. On 19/06/2008, the Commission received a notification of a proposed concentration by which the undertaking Outokumpu Oyj ("Outokumpu", Finland) acquires sole control over the So.Ge.Par Group ("Sogepar", Italy) by purchase of shares.

I. THE PARTIES

2. Outokumpu Oyj –a Finnish company which is the parent company of a group that is active as a producer of stainless steel products. Outokumpu is mainly present in Italy, Sweden, Finland and the UK; its main business is the production, sale and distribution of a wide range of stainless steel products. In particular: (i) cold rolled flat products,

¹ OJ L 24, 29.1.2004 p. 1.

- (ii) hot rolled flat products, (iii) quarto plate, (iv) long products, (v) welded tubes and (vi) fittings.
3. So.Ge.Par Group – an Italian group operating as a distributor of stainless steel products across the EU, mainly in Italy, Germany and the UK, and Turkey. Sogepar's activity is managed by two internal divisions: (i) Stainless Steel Service, which carries out the servicing and distribution of cold rolled, hot rolled and quarto plate products; and (ii) Metal steel, which carries out the stocking and distribution of long products, tubes and fittings.

II. THE OPERATION

4. Outokumpu and the shareholders of Sogepar Group have entered into agreements pursuant to which Outokumpu will acquire 100% of Sogepar Group companies. Sogepar Group is entirely owned and controlled by Finsogepar S.p.A., which is ultimately controlled by the Borromeo family. Sogepar Group consists of the following companies: (i) Finsogepar S.p.A., which is the parent company of So.Ge.Par S.p.A., an Italian holding company which controls Sogepar France S.a.r.l. and the representative office in Turkey, and (ii) Sogefinlux, SA, a Luxemburg holding company, which controls Sogepar UK Ltd, Sogepar Deutschland GmbH, Eurotec N.V., Sogepar Finland OY and Sogepar Sweden AB.

III. CONCENTRATION

5. The notifying parties submit that the proposed transaction constitutes a concentration whereby Outokumpu will acquire sole control over Sogepar through a Share Purchase Agreement.
6. Prior to the concentration, the Borromeo family will acquire Sogefinlux SA and, at closing, the latter company will sell its subsidiaries to Outokumpu, who will also acquire Finsogepar S.p.A. Therefore, after the completion of the transaction, Outokumpu shall acquire sole control over Finsogepar S.p.A. and Sogefinlux SA, i.e. the Sogepar Group.
7. Given the above, the proposed transaction between Outokumpu and Sogepar constitutes a concentration within the meaning of Article 3 of Council Regulation (EC) No 139/2004 ("Merger Regulation").

IV. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate worldwide turnover that exceeds €5,000 million (Outokumpu € 6,913 million; Sogepar € 553 million in 2007). In addition, the undertakings concerned do not achieve more than two-thirds of their aggregate EU-wide turnover in one and the same EU Member State and the aggregate Community-wide turnover of at least two undertakings concerned is more than EUR 250 mil. Thus, the transaction has a Community dimension since it meets the thresholds set out in Article 1(2) of Council Regulation (EC) No 139/2004.

V. RELEVANT MARKETS

A. RELEVANT PRODUCT MARKETS

9. The concentration concerns the production and distribution of stainless steel products, including (i) cold rolled flat products, (ii) hot rolled flat products, (iii) quarto plate, (iv) long products, (v) welded tubes and (vi) fittings.
10. In previous decisions² the Commission distinguished four broad categories of finished steel products: (i) carbon steel, (ii) stainless steel, (iii) highly alloyed steel and (iv) electrical steel. Steel products in these four categories differ in terms of chemical composition, price and end applications. The parties' activities only overlap in the market for distribution of stainless steel products. Regarding vertical issues, Outokumpu's upstream activities in the market of stainless steel products are vertically related to Sogepar's downstream activities in the distribution market of stainless steel products.

Relevant product markets:

11. Production of Stainless Steel Products: in accordance with the Commission's previous decisions³, the following relevant product markets could be identified: (i) cold rolled flat products, such as sheets, wide/narrow strips; (ii) hot rolled flat products, such as sheets, wide/narrow strips; (iii) quarto plates; (iv) long products, such as bars, rods, sections; (v) welded tubes, which are made from hot rolled strip which is curved into a tube and continuously welded; and (vi) fittings, such as butt welding, threads, flanges, which are used to join lengths of stainless steel tubes together and to enable bends and turns to be added. Nevertheless, with respect to vertical relationships between the production market and the distribution markets downstream, the following 3 product categories could be considered: (1) flat products (including hot and cold rolled), (2) quarto plates and (3) long products (including fittings and welded tubes).
12. However, as explained in recital 16, it is not necessary to decide whether distribution of long and of flat products constitutes a single or separate relevant product markets at a distribution level.
13. In any case, as it will be explained below in recitals 26 to 33, even if one were to consider the narrowest possible market definitions which are the 6 mentioned above in recital 11, the final definition can be left open since there are no competition issues either at horizontal level or due to the vertical relationships.
14. Distribution of Stainless Steel Products: as identified in previous Commission decisions⁴, steel products could be sold either directly (direct sales) or through various

² *Usinor / Cockerill Sambre*, Case No IV/ECSC.1268 and *Usinor / Arbed / Aeralia*, Case No COMP/ECSC.1351.

³ Case No COMP/M.4137 - Mittal /Arcelor IV/M.906 Mannesmann/Vallourec IV/M.315 Mannesmann/Vallourec/Ilva.

⁴ No COMP/M.5072 - AMSSC / BE GROUP /JV

distribution channels and each of them could be considered as separate relevant product markets: (i) steel service centres⁵, which distribute flat and long products, (ii) stockholding centres⁶/ stockists, which distribute flat, long products and quarto plate and (iii) oxycutting centres⁷, which only distribute quarto plate.

15. Nevertheless, the parties submit that there is a single distribution market for stainless steel products, since customers demand a wide range of stainless steel products from distributors and each of them stocks and distributes the entire range of steel products. The only exception to the above is quarto plate, which is distributed through different distribution channels (i.e. oxy-cutting centres and stockists), since the machinery to slit and cut quarto plate differs from that used for other stainless steel products.
16. Regarding the products distributed by channel, in previous decisions⁸ the Commission has considered distribution of carbon steel products split into long and flat products. Since the present case relates to stainless and not carbon steel, such precedents cannot be directly applied. In addition, as mentioned before, the parties submit that, for stainless steel, there should not be a distinction between distribution of flat and long products since both flat products (cold and hot rolled) and long products (including long products, fittings and welded tubes) are distributed by the same channels. However, as it is further explained below in recitals 34 to 48, it is not necessary to take a final decision on whether or not distribution of long and flat products constitutes one or two separate product markets since regardless of the definition retained the final assessment does not change. On the other hand, quarto plate products are distributed by a specific distribution channel and should therefore be considered as a different category (from flat and long products) at the distribution level.
17. In any case, as it will be explained below, given that the transaction will not lead to a significant impediment to effective competition, irrespective of whether each distribution channel (service centres, stockholding centres and oxycutting centres) is defined as a single product market or whether all distribution channels could be considered as a distribution market for stainless steel products as a whole, the definition of the relevant product market can therefore be left open as it does not modify the competitive assessment.

⁵ Stainless steel service centres purchase from steel manufacturers strip mill products, which they then slit and cut to customers' requirements. Their customers include car manufacturers, white goods manufacturers, and stockholders.

⁶ Stockholding centres are active as wholesalers in the steel industry, purchasing steel products in bulk and re-selling in smaller quantities.

⁷ Oxycutting centres purchase from steel manufacturers quarto plate, which they then cut to particular sizes and shapes as required by customers using oxyhydrogen blowtorches.

⁸ Case No COMP/M.4137 - Mittal /Arcelor

B. RELEVANT GEOGRAPHIC MARKETS

18. In previous decisions⁹ the Commission considered the markets for production of hot rolled steel flat products (including quarto plates) and cold rolled flat products to be at least Community-wide. In particular as regards cold rolled flat products the Commission noted in a previous case¹⁰ that the respondents to the market investigation considered the market to be not wider than Western Europe, i.e. an area encompassing the EU 15 and the EFTA States. However, the definition of the relevant geographic market was ultimately left open.
19. Along the same lines, in previous decisions¹¹, the Commission considered that the geographic market for long steel products was at least EEA-wide.
20. In the case of the distribution market for stainless steel products, the Commission has found in previous decisions¹² that the scope was national or regional. In that regard, the parties submit that the distribution market has a regional dimension, since the sale conditions are homogeneous in certain areas and there is significant cross-border selling, especially in densely populated middle European areas. In particular, the parties have identified the following regional markets: Nordic countries (Denmark, Sweden, Finland and Norway) and Benelux (Belgium, Luxembourg and the Netherlands)
21. According to the information provided by the parties there are a limited number of affected national markets (i.e countries where both parties are present and their aggregate market shares after the merger exceeds 15%), but no potential regional market would be affected. The following assessment has therefore been focused on the national affected markets.
22. Based on the above, and given that the transaction will not lead to a significant impediment to effective competition, the precise geographic scope of the market for production and distribution of stainless steel products (flat, long steel products, quarto plates, fittings and welded tubes) can be left open as it does not modify the competitive assessment.

VI. COMPETITIVE ASSESSMENT

23. As mentioned above, the proposed operation results in the following affected markets:
 - (i) Vertically affected market: production of Stainless Steel Products upstream and

⁹ *Usinor / Arbed / Aceralia* , COMP/ECSC 1351.

¹⁰ *Usinor / Arbed / Aceralia* , COMP/ECSC 1351.

¹¹ *Rautaruukki Wartsila.SKF/JV*, Case COMP/M.3747 LNMPHS, Case COMP/M.3226 and Case No COMP/M.4137 - Mittal /Arcelor

¹² *Usinor/Arbed/Aceralia*, Case COMP/ECSC.1351.

distribution of Stainless Steel Products downstream, and (ii) Horizontally affected market: Distribution of Stainless Steel Products.

Production of Stainless Steel Products

24. Only Outokumpu is active in the production of stainless steel products so there are no horizontal overlaps as a result of the transaction.
25. However, the transaction gives rise to a limited vertical relationship between the upstream market of stainless steel production and downstream market of distribution of stainless steel products.

Production of stainless steel flat products

26. On the upstream market for production of stainless steel flat products, Outokumpu has a market share of [10-20]% in cold rolled products, [20-30]% in hot rolled products, [0-5]% in long products, [0-5]% in welded tubes and [10-20]% in fittings on an EEA level.
27. Only in the case of the distribution of flat products by service centres, Sogepar's individual (or aggregated together with Outokumpu) market share is higher than 25% in the following countries: Austria ([20-30]%), Denmark ([20-30]%) France ([20-30]%), Ireland ([30-40]%), Slovenia ([20-30]%) and Sweden ([40-50]%). Nevertheless, no vertical concerns could arise given Outokumpu's market shares upstream and the presence of strong competitors in the upstream market. Thus the risk of foreclosure is very limited. Besides, in the Swedish case, where the parties have their highest market share, no vertical concerns could be identified since the increment of the market share due to the transaction is very small ([0-5]%).

Production of quarto plates

28. In terms of production of quarto plates, Outokumpu has a market share in the upstream market of [30-40]%¹³ on an EEA level.
29. As far as the distribution market of quarto plates by stockists is concerned, the parties' combined market shares only exceed 15% in the cases of Hungary ([40-50]%) and Italy ([10-20]%). Nevertheless, in the Hungarian market no vertical concerns can be identified since Outokumpu's market share upstream is only [30-40]% and there is a limited increment in the market share in that market ([0-5]%) due to the transaction.
30. Regarding the distribution market of quarto plates by oxycutting-centres, the parties' aggregate market shares do not exceed 15% on an EEA level or on a national level and Outokumpu's upstream market share only amounts to [30-40]%, thus there is no risk of foreclosure.
31. In light of the above, the operation does not significantly affect or impede effective competition as regards the vertical link between the upstream market and the downstream market of distribution of quarto plates, since no competition concerns

¹³ Data in volume.

could arise from any of the narrowest markets analysed (i.e distribution of quarto plates by stockists and by oxycutting centres).

Production of long products (including fittings and welded tubes)

32. For long products (including fittings and welded tubes), Outokumpu's upstream market share is well below the 25% thresholds which could give rise to vertical issues on the distribution markets. Moreover, the aggregated market shares of Outokumpu and Sogepar in each and all distribution markets (i.e. service centres and stockists) are also below 15%.
33. Given the above, the operation does not significantly affect or impede effective competition as regards the vertical link between the upstream and downstream markets for production and distribution of long products.

Distribution of Stainless Steel Products

Distribution by service centres

34. With regard to the distribution¹⁴ of flat (cold and hot) stainless steel products by service centres, the aggregate market share¹⁵ of Outokumpu and Sogepar is higher than 15% in the following countries: Austria ([20-30]%), Belgium ([20-30]%), Czech Republic ([10-20]%), Denmark ([20-30]%), France ([20-30]%), Germany ([10-20]%), Ireland ([30-40]%), Italy ([10-20]%), Slovenia ([20-30]%), Sweden ([40-50]%) and UK ([20-30]%).
35. In Denmark, Czech Republic, France, Germany and Sweden, the addition of market shares due to the transaction is between [0-5] and [0-5]%. However, in other countries the increment is higher. Specifically, in the UK it is [5-10]%, in Slovenia [20-30]%, in Italy [10-20]%, in Ireland [20-30]%, in Belgium [10-20]% and in Austria [10-20]%. Nevertheless, the aggregate share after the transaction will not exceed [30-40]% in any of them. Therefore, the operation does not significantly impede effective competition in these markets.
36. The highest Outokumpu market share is in Sweden ([40-50]%), but the additional market share due to the transaction is only [0-5]% in this country. In addition, there are strong competitors in the market on an EEA level, such as ThyssenKrupp, ArcelorMittal and Acerinox. Thus, the operation is not likely to create competitive concerns in the market of distribution of flat products by service centres.
37. Concerning the distribution of long products (which include fittings and welded tubes) by service centres, there is either no horizontal overlap between the parties or the parties' combined market shares are below 15% in this product market. Thus, no competition concerns could arise.
38. Quarto plate is not distributed by service centres.

¹⁴ Colled rolled and hot rolled products.

¹⁵ Data in value (even though the figures in volume are very similar).

39. In the alternative, if a wider market for distribution of stainless steel products is considered (i.e without distinction between flat and long products), no competition concerns would arise either. This is in view of the parties' much lower aggregate market shares in long products than in flat products. In effect, if both flat and long products are considered as part of the same distribution market then the market shares would always be below the ones for flat products alone.
40. Taking into consideration the foregoing, the operation is not likely to create competitive concerns in the markets for distribution of stainless steel products by service centres, since no competition concerns could arise from any of the narrowest markets analyzed (flat products and long products).

Distribution by stockholding centres or stockists

41. In the distribution market of flat products (cold and hot) and long products (including fittings and welded tubes) by stockists, there is no horizontal overlap or the parties' combined market shares are below 15%. Thus, no competition concerns could arise due to the transaction.
42. Regarding the market for distribution of quarto plates by stockists, there are only two markets where the parties' combined market shares are higher than 15%: Hungary ([40-50]%) and Italy ([10-20]%). Nevertheless, in both cases the addition of market share is less than 10% ([0-5]% in Hungary and [5-10]% in Italy). Despite the additional market share of [5-10]% in Italy, no competition concerns could arise given the presence of competitors such as Acerinox, ArcelorMittal and the Bender Group.
43. Given the facts mentioned above, the operation is not likely to create competitive concerns in the market for distribution of quarto plates by stockists. Even in the Hungarian case where the combined market shares are high ([40-50]%), again no competition concerns can be identified due to the very small increment in the market share in that market ([0-5]%).
44. If a wider market for distribution of stainless steel products is considered, no competition concerns would arise either, since the parties' aggregate market shares would be, in any case, lower than the ones in quarto plate products.
45. Therefore, the operation is not likely to create competitive concerns in the markets for distribution of stainless steel products by stockists, since no competition concerns could arise on any of the narrowest markets analyzed (quarto plates, flat and long products).

Distribution by oxycutting centres

46. In the distribution markets for quarto plate by oxycutting centres there is no horizontal overlap or the parties' combined market shares are below 15%. No other stainless steel products are distributed by oxycutting centres. Thus, no competition concerns could arise.
47. Taking into consideration the foregoing, the transaction is not likely to give rise to competition concerns in any of the above distribution markets (service centres, stockists and oxycutting centres).

48. Therefore, the operation does not significantly impede effective competition, neither as regards the horizontal overlaps, nor as regards the vertical effects described above.

VI. CONCLUSION

49. 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)
Vladimir Špidla
Member of the Commission