EN

Case No COMP/M.5771 -
CSN/ CIMPOR

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

Subject: **Case No COMP/M.5771 – CSN/ CIMPOR**
Notification of 18.11.2009 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On the 14th of January 2010, 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 undertaking Companhia Siderúrgica Nacional ("CSN", Brazil) intends to acquire within the meaning of Article 3(1)(b) of the Merger Regulation control of the undertaking CIMPOR - Cimentos de Portugal, SGPS, S.A ("CIMPOR", Portugal), by way of a public bid.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

I. THE PARTIES

3. *CSN* is a large fully integrated steel producer in Brazil and in Latin America. CSN is also active in mining and logistics. CSN entered the cement business in Brazil in 2009. CSN's European activities are mainly limited to the sale of iron ore and steel imported from Brazil and it also operates a steel processing site in Portugal through its subsidiary Lusosider, where it runs a cold rolling mill and a hot-galvanizing line.

1 OJ L 24, 29.1.2004 p. 1.

4. *CIMPOR* is a Portugal-based international cement group active *inter alia* in Brazil, Egypt and South Africa. Its European activities are limited to Portugal and Spain. Its core business is the production and sale of cement, but it also produces downstream cement-based products, such as concrete and mortars.

II. THE OPERATION

5. The proposed transaction concerns the acquisition of sole control under Article 3(1)(b) of the Merger Regulation by CSN over CIMPOR by way of a public take over bid over the entire share capital. The preliminary announcement of the bid was made on 18 December and, on 7 January the bid was considered hostile by the Board of Directors[2].

6. As a result of the transaction, CSN would exercise sole control over CIMPOR. The proposed transaction therefore constitutes a concentration within the meaning of Article 3 (1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[3] in 2008 (CSN: EUR 5200 million, CIMPOR: EUR 2089 million). Each of them has a Community-wide turnover in excess of EUR 250 million (CSN: EUR […] million, CIMPOR: EUR 845 million). The undertakings concerned do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State.

8. The notified operation therefore has a Community dimension pursuant to Article 1(2) of the Merger Regulation.

IV. COMPETITIVE ASSESSMENT

1. RELEVANT MARKETS

9. The parties are not active in the same markets within the EEA.[4] CIMPOR is a major cement producer in Portugal and is also active in Spain, whereas CSN has no cement production in Europe. CSN's activities in Europe are limited to the sale of iron ore and certain steel products, such as galvanised steel, and hot rolled steel from its plant in Portugal. As a by-product of its steel business, CSN produces and markets in Brazil small quantities of slag, a potential input product for the production of cement and concrete.

1.1 RELEVANT CEMENT PRODUCTION RELATED PRODUCT MARKETS

10. *Cement* is manufactured by grinding clinker (originating from limestone) and gypsum into a fine powder. There are two main types of cement: grey cement and white cement.[5] Other cement varieties are achieved by adding cement additives to clinker

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2 Report of the Board of Directors of CIMPOR on the opportunity and the conditions of the offer by CSN of 7th January 2010.

3 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

4 They have overlapping activities in Brazil, where both of them produce cement.

5 Grey cement accounts for 98% of all the cement consumption in Europe.

during the cement production process. The Commission has previously defined distinct product markets for grey cement and white cement. [6] The question whether cement markets could be further separated depending on the type and proportion of additives can be left open for the purpose of this decision.

11. Furthermore, the Commission also defined separate *cement-related product markets*, namely the markets for aggregates[7], for ready-mix concrete[8] and for mortar[9]. The exact market definition can be left open for the purpose of this decision.

12. One of the main cement additives is a specific slag, *GGBS* (Ground Granulated Blast Furnace Slag), which is a further processed by-product of iron and steel production. The Commission previously considered a separate market for cement additives including fly ash (a by-product of electricity and heat generation) and GGBS.[10] Both GGBS and fly ash are used for the production of cement, ready-mixed concrete and other concrete products. CSN is not active in fly ash production but only in GGBS production. The question whether GGBS could constitute a separate market, can be left open in the case at hand since, regardless of the alternative market definitions, the concentration would not raise serious doubts as to its compatibility with the common market.

1.2 RELEVANT CEMENT PRODUCTION RELATED GEOGRAPHIC MARKETS

13. As regards the geographic scope of the *cement markets*, the Commission in its previous practice has considered the market for grey cement as being at least national, but ultimately left the exact geographic market definition open in recent decisions.[11] The market for white cement has previously been regarded as being EEA-wide.[12] It is not necessary to decide the issue in the present case because, in all alternative market definitions considered, no serious doubts would be raised.

14. As regards other *cement-related product markets*, namely aggregates[13], ready-mix concrete[14] and mortar[15], these markets have all been considered in previous decisions to be

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6 COMP/M.4719 HeidelbergCement/Hanson, para. 11, COMP/M.3572 Cemex/RMC, para. 11, COMP/M.3415 CRH/SEMAPA/Secil JV, para. 10,and COMP/M.2317 Lafarge/Blue Circle (II), para. 9 and COMP/M.3713 Holcim/Aggregate Industries, para. 7.

7 See for example COMP/M.4719 HeidelbergCement/Hanson.

8 Idem.

9 Idem.

10 COMP/M.3415 CRH/ SEMAPA/SECIL/JV, para. 14 and COMP/M.4719 HeidelbergCement/Hanson, para. 13-20.

11 COMP/M.4719 HeidelbergCement/Hanson, para. 28, COMP/M.3572 Cemex/RMC, para. 20, COMP/M.2317 Lafarge/Blue Circle II, para. 8 and COMP/M.3415 CRG/SEMAPA/Secil JV, para. 17.

12 COMP/M.2317 – Lafarge/Blue Circle (II) para. 9.

13 See for example COMP/M.4719 HeidelbergCement/Hanson.

14 See for example COMP/M.3572 Cemex/RMC.

15 See for example COMP/M.1779 Anglo American/Tarmac.

local. The exact market definitions can be left open in the case at hand since, regardless of the alternative geographic definitions that may be considered, effective competition would not be significantly impeded in the EEA or any substantial part of it.

15. As regards *GGBS*, CSN submits that the geographic market for GGBS is regional or at most EEA-wide, as traditionally cement producers installed their production facilities close to steel and iron production sites, therefore most slag is shipped and used locally. The Commission has in former decisions considered national markets for cement additives including GGBS and fly ash.[16] In a recent decision, the Commission suggested that the market for GGBS could be wider than national, considering the increasing European cross-border trade, but ultimately left the market definition open in this decision.[17] At the case at hand the exact geographic market definitions can be left open as the competitive assessment would not change regardless of the precise definition.

1.3 RELEVANT STEEL PRODUCTION RELATED PRODUCT MARKETS

16. CSN's runs a cold rolling mill and a hot-dip galvanizing line in Portugal, where it produces and sells two flat carbon steel products: flat galvanized steel and flat hot-rolled steel excluding quarto plates.[18]

17. According to the established decision practice of the Commission flat carbon steel products constitute a separate product market from long carbon steel products. [19] There are three stages in the production process of flat carbon steel products: (i) hot rolling, (ii) cold-rolling and (iii) coating (that includes galvanized steel). The finished products may be sold at the end of each of those three stages, which supports the distinction between three categories of flat carbon steel products. As mentioned above, CSN is active only in two of these products: flat hot-rolled steel excluding quarto plates and flat galvanized steel.

18. *Hot-rolled steel products* are produced by is a metalworking process, by which metal is deformed via rollers at a temperature above its re-crystallisation temperature. Hot rolling permits large deformations of the metal. According to the decision practice of the Commission hot-rolled carbon steel products are a separate product market from cold-rolled carbon steel products.[20] For hot-rolled carbon steel flat products in previous cases, the Commission has defined two separate product markets: (i) hot-rolled flat

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16 COMP/M.3415 CRH/ Semapa/Secil/JV para. 16.

17 COMP/M.4719 HeidelbergCement/Hanson, para. 31.

18 CSN also sells but does not produce in the EEA tin-plates. Tin-plate is produced by the electrolytic application of tin onto both sides of a cold rolled flat steel sheet with a thickness inferior to 0.5 mm. Tin-plates are used for the manufacture of tin cans for use in the food and beverages packaging industry, for capsules and decorative products, as well as for containers for sprays, paint and varnishes. Hence, tin-plates are not relevant for the competitive assessment.

19 See e.g. IV/ECSC.1269 - Sollac/Aceralia / Solmed, IV/ECSC.1243 - Krupp Hoesch/Thyssen, IV/ECSC.1268 - Usinor/Cockerill Sambre, IV/ECSC.1237 - Arbed/Aceralia, IV/ECSC.1264 - Aceralia/ Aristrain and IV/ECSC 1351-Usinor/Arbed/ Aceralia.

20 See e.g. IV/ECSC.1269 - Sollac / Aceralia / Solmed, IV/ECSC.1243 - Krupp Hoesch /Thyssen, IV/ECSC.1268 - Usinor / Cockerill Sambre, IV/ECSC.1237 - Arbed /Aceralia, Case No IV/M.484 - Krupp / Thyssen / Riva / Falck / Tadfin / AST and IV/ECSC 1351-Usinor/Arbed/ Aceralia.

products excluding quarto plates and (ii) quarto plates.[21] As CSN only produces hot-rolled flat products excluding quarto plates, for the purpose of the present decision, only this market will be taken into account.

19. The coating of steel with zinc is called “galvanising”. *Galvanised steel* is a value-added steel product which takes either the form of sheets or of coils. It is produced by hot-dip galvanisation or electro-galvanisation. It is used in a wide variety of applications, including construction works. The Commission has previously defined a single relevant market for galvanized strip and coils, including both hot-dip galvanized and electro-galvanized steel.[22] As CSN only produces flat galvanised steel, for the purpose of the present decision, only this market will be taken into account.

1.4 RELEVANT STEEL PRODUCTION RELATED GEOGRAPHIC MARKETS

20. Given the common standards and the transportation costs, CSN considers both markets to be EEA-wide. The Commission in its established decision practice hold that for both *hot-rolled carbon steel products excluding quarto plates*[23] and *galvanised steel products*[24] markets were at least EEA-wide in scope. The precise geographic market definition can be left open in the case at hand since, regardless of the alternative market definitions, the concentration would not raise serious doubts as to its compatibility with the common market.

2. ASSESSMENT ON EFFECTS ON COMPETITION

2.1 HORIZONTAL RELATIONSHIPS

21. CIMPOR is the largest grey cement producer in Portugal with, approximately [50-60]% market share and with about [5-10]% market share in Spain[25] and with strong presence in local downstream cement-based product markets. CSN's cement and cement additive production is based and only sold in Brazil, hence CSN is not active in the cement or cement-based product markets in the EEA. As the parties are not active in the same geographic markets within the EEA, no horizontal overlap occurs as a result of the transaction.

2.2 VERTICAL RELATIONSHIPS

22. Whilst a vertical relationship might be said to exist, as CSN produces and sells one of the cement additives, GGBS, CSN only sells this by-product of steel production in Brazil, with no sales to the EEA. In a recent decision, the Commission suggested that the market for

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[21] COMP/ECSC.1351 - Usinor/Arbed/ Aceralia.

[22] COMP/M.4291 -Voestalpine/Profilaroid/SAP, COMP/ECSC.1351 Usinor/Arbed/Aceralia and, COMP/M.4137 Mittal/Arcelor. See also COMP/M.4992 - ArcelorMittal/Galvex.

[23] IV/ECSC.1264 - Aceralia / Aristrain, IV/M.1329 - Usinor / Cockerill Sambre, COMP/ECSC.1351 Usinor/Arbed/Aceralia and IV/ECSC.1243 - Krupp Hoesch / Thyssen. See also COMP/M. 4137 Mittal/Arcelor and Case COMP/M. 4992 ArcelorMittal/Galvex.

[24] IV/ECSC.1269 - Sollac / Aceralia / Solmed, IV/CECA.1268 - Usinor / Cockerill Sambre, IV/ECSC.1237 - Arbed / Aceralia and IV/ECSC 1351-Usinor/Arbed/ Aceralia.

[25] Form CO p. 28, 29.

GGBS could be wider than national.[26] Even if, the market would be considered to be global, CSN's production and sales of GGBS would represent only [0-5]%[27] of total worldwide sales of GGBS. Thus, in any event any eventual vertical effects resulting from the transaction would be insignificant and would not lead to foreclosure effects.

2.3 CONGLOMERATE EFFECTS

23. During the proceedings, CIMPOR argued that CSN via its subsidiary, Lusosider may be active in markets closely related to the cement sector, therefore the Commission should scrutinise any potential conglomerate effects post-merger. This might occur, according to CIMPOR, as the products produced by the parties are destined, amongst other sectors, to the construction sector and that CIMPOR and CSN might have similar clients/types of clients.

24. The information subsequently obtained from both parties during the procedure allowed to Commission to conclude that no conglomerate effects, as indicated by CIMPOR, could arise as a result of the transaction.

25. First, the merged entity would have a strong market position only in the grey cement market in Portugal, with about [50-60]% market share, and eventually on local downstream markets for cement-based products. It would have less than [0-5]% market share in both the EEA-wide market for hot-rolled carbon steel excluding quarto plates and the EEA-wide market for flat galvanised steel, with the presence of significant competitors, such as ArcelorMittal, Corus, ThyssenKrupp and Riva/Ilva.

26. Thus, any possible conduct, such as bundling or tying by the merged entity would not allow it to leverage its position from the Portuguese market for cement or from the local downstream markets for cement-based products to any significant effect to the EEA-wide hot-rolled carbon steel or galvanised steel markets. Even if all Portuguese customers were to buy from the merged entity, this would not foreclose the other steel producers from a substantial customer base.

27. Further, the merged entity will not be able to carry out any such bundling or tying strategy, as the parties have no common customer base, which suggests that the products are not complementary to any significant extent. In fact, as opposed to CIMPOR, CSN does not have clients directly active in construction. This is explained by the fact that the flat steel products produced by CSN in Portugal are not directly destined to the civil construction business. They need to be further processed by industrial clients into downstream products, such as tubes, profiles, coverings, which are eventually sold to the construction industry.

2.3 CONCLUSION ON THE ASSESSMENT ON EFFECTS ON COMPETITION

28. Given the above, it can be concluded that the notified transaction does not raise serious doubts as to its compatibility with the common market.

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26 COMP/M.4719 HeidelbergCement/Hanson, para. 31.

27 Form CO p. 30.

V. CONCLUSION

29. 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)*
Joaquin ALMUNIA
Vice President of the Commission