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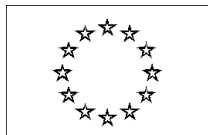
***Case No IV/M.599 -
Noranda Forest / Glunz***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 08/09/1995

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08.09.1995

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject : Case No IV/M.599 - Noranda Forest/Glunz
Notification of 4 August 1995 pursuant to Article 4 of Council Regulation No 4064/89
(Merger Regulation)

1. On 4 August 1995 Noranda Forest Inc. (NFI) and Glunz AG (Glunz) notified the Commission of their intention to combine the European wood based panel board operations of NFI with the United Kingdom wood based panel board operations of Glunz in a joint venture.
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 and with the functioning of the EEA Agreement.

I. THE PARTIES

3. NFI is a Canadian forest products company whose principal interests are in lumber, panel boards, pulp and paper. Noranda Inc, a Canadian conglomerate, controls 75% of the shares of NFI and is according to the parties controlled by Brascan Limited Inc, a Canadian holding company, which owns 42% of Noranda Inc's shares. None of these companies have any interest in panel board products outside their interest in NFI.
4. Glunz, a German company, is quoted on the Frankfurt and Düsseldorf Stock Exchange. It is engaged in the manufacture, distribution and sale of timber derived products, particularly for use in the furniture, construction and automobile industries, for interior decoration and for Do-It-Yourself.

II. THE OPERATION

5. Following the signature of a letter of intent on 5 July 1995, NFI and Glunz signed agreements on 24 July 1995 for the merger of NFI's European wood based panel board operations and Glunz's United Kingdom wood based panel board operations into Norbord Holdings limited (NHL) which is currently a wholly owned subsidiary of NFI.
6. NHL is engaged in the production and sale of OSB (oriented strand board) and the distribution and sale of OSB and other panel board products for third parties. The Glunz subsidiaries involved, Glunz (UK) plc and Glunz (UK) Holdings Limited are holding companies for a number of operating companies in the United Kingdom whose principal activities are the production and sale of particle board, MDF and components for flat pack furniture. The assets, goodwill and technical know how related to the manufacture and distribution of these products will be transferred to the joint venture.
7. In the joint venture company, whose name will be changed from NHL to CSC Forest Products Limited on completion, Glunz will hold one more share than NFI. The interests of Glunz and NFI will be held through newly incorporated wholly owned subsidiary companies.

III. CONCENTRATION

Joint Control

8. Although Glunz will hold one more share in NHL than NFI, both parties will have equal representation on NHL's board and all matters of strategic importance to the company will require the approval of both shareholders. These matters include, inter alia :
 - the business plan,
 - the annual budget,
 - major capital expenditure and
 - the hiring and firing of key personnel.
9. The joint venture agreement provides that the key issues must be approved either at general meetings by the holders of at least 75% of the shares in the company carrying the right to attend general meetings or at duly convened meetings of the board at which majorities of the directors representing NFI and Glunz respectively have each voted in favour of resolutions signed by all the directors representing NFI and Glunz.
10. As each of the parties will effectively have the right of veto at least over the principal decisions concerning the joint venture (see point 8) they will exercise joint control over the company.

Full Function Entity

11. NHL will have its own production, distribution and sales operations for a wide range of panel board products independent of its parents. It will not be dependent on either of its parents for supplies of raw materials nor will it sell the products of either parent in any quantity. NHL will distribute as principal, in the European Union, panel board products manufactured in North America by NFI and Northwood Pulp and Timber a Canadian joint

venture in which NFI has a 50% interest []⁽¹⁾. That is, NHL will be completely free to decide the volumes, prices and customers of such products it will sell. The existing agency agreement between NHL and NFI will end upon the completion of the notified operation. In 1994 NHL sold only plywood as agent for NFI and its joint venture, Northwood Pulp and Timber Company. Its total agency sales were []⁽¹⁾m³, including []⁽¹⁾m³ on behalf of third parties. NHL agency sales accounted for about [0-5%] of EU plywood consumption.

12. NHL will accordingly perform on a lasting basis all the functions of an autonomous economic entity.

Absence of Coordination

13. NFI will effectively transfer all its European panel board operations, including the distribution of the small volumes imported from its North American operations, to the joint venture, NHL. NFI undertakes that for as long as it remains a shareholder in NHL, that all its sales in the EEA of its panelboard products manufactured outside the European Union []⁽¹⁾ will be made through NHL as distributor. In 1994 these sales, which were only of plywood, amounted to about []⁽¹⁾ m³ or less than [less than 5%] of Community consumption, in no member state did these sales exceed [less than 15%] of consumption. NFI's presence EU market through exports channelled through the joint venture will therefore be only of minor economic importance relative to the operation as a whole (de minimis).
14. In view of the serious investment it has made in the joint venture and in particular because it has transferred its sales force it is not to be expected that NFI would re-enter the market in view of the small sales involved. Although NFI is a large producer of OSB in North America it would be unable to supply the European Union with material from this source, first because the North American OSB is generally of a lower quality and does not meet European requirements and secondly, and more importantly, because transport costs and tariffs add [significantly] to the factory cost of the material. Production costs in Europe and North America are similar. NFI has therefore definitively left the European panel board market and cannot be considered as a realistic potential competitor to the joint venture.
15. Therefore only Glunz will remain significantly active as an independent producer and distributor in same product markets as the joint venture. Furthermore the nature of the non-competition agreements between the parties (see discussion below) particularly the fact that NFI would have to dispose of its interests in NHL before it could restart production (in the United Kingdom NFI would have to wait an additional []⁽¹⁾ before starting production or soliciting sales) confirm the concentrative nature of the operation. As NFI will transfer its assets, goodwill and expertise in the products concerned to the joint venture, it would be costly and commercially unreasonable for NFI to attempt to re-enter the production and distribution markets in the European Union.
16. The operation does not therefore give rise to coordination of competition.

Conclusion

⁽¹⁾ Business secret

17. The operation constitutes a concentration within the meaning of Article 3.1.b of the Regulation.

IV. COMMUNITY DIMENSION

18. The combined aggregate turnover of the parties exceeded 5,000 million ECU in the last financial year (Noranda Inc 4,158 million ECU and Glunz 978 million ECU). As the threshold is exceeded by the combined turnovers of Glunz and Noranda Inc the question of whether Noranda Inc is controlled by Brascan may be left open. The European Union turnover of the parties was [over 250] million ECU and [over 250] million ECU respectively. The parties do not generate more than two-thirds of their aggregate community-wide turnover in one and the same Member State. The operation therefore has a Community dimension.

V. COMPATIBILITY WITH THE COMMON MARKET

Relevant product markets

19. The proposed transaction concerns the manufacture, distribution and sale of wood based panel board products. The principal products are :
- Plywood, softwood, temperate hardwood and tropical
 - Oriented strand board (OSB)
 - Particleboard
 - Medium density fibreboard (MDF)
 - Fibreboard
20. These panel board products are substitutable among themselves to a greater or lesser extent. For example substantial quantities of particle board, plywood and OSB are used for flooring and the furniture industry uses particle board, plywood and MDF.
21. However the substitutability is only partial and there are significant differences in price, with hardwood plywood prices being over three times the price of particle board and the premium for MDF over particle board being over 40% in France, Germany and the United Kingdom.
22. To ensure that the joint venture's position is adequately analyzed the market for each type of wood based particle board will be examined individually, ie the narrowest definitions of the product market will be used. If the transaction does not give rise to competition questions at these narrowly defined levels it will not give rise to difficulties at the Community or EEA level.

Relevant geographic market

23. The joint venture will be based in the United Kingdom, in addition Glunz has substantial operations in Germany and in France. In 1993⁽¹⁾ sales in United Kingdom, France and Germany accounted respectively for [60-75]% and [85-100]% of NFI's and Glunz's sales in the EEA.

⁽²⁾ 1993 has been chosen because statistics are available for EEA and Community production and consumption. These figures are not yet available for 1994. The pattern of sales of both NFI and Glunz did not change significantly between 1993 and 1994.

24. There are considerable flows of panel board products both within the EEA and between the EEA and third countries. For example Germany imports about 20% of its consumption of particle board and exports a volume equivalent to 12%. These trade flows would suggest that the markets for panel board products are Community or EEA- wide.
25. Against this must be set the fact that prices vary significantly (by up to 40%) between Member States for the same product which indicates separate national markets.
26. The proposed operation will be examined on the narrowest possible definitions, specifically, the individual wood based panel board products and at the national level for the three countries most affected by the operation, France, Germany and the United Kingdom. If the transaction does not give rise to competition questions at these narrowly defined levels it will not give rise to difficulties at the Community or EEA level.

Assessment

27. The three tables below show, for each wood based panel board product the sales of NHL and Glunz in France, Germany and the United Kingdom :

Sales of Panel Board Products - France, 1000s of m³, 1993

	NFI ⁽¹⁾	Glunz	Total	Market Share %
Particleboard	[]	[]	[]	[10-25]
Plywood	[]	[]	[]	[10-25]
MDF	[]	[]	[]	[35-50]
Non-MDF fibreboard	[]	[]	[]	[50-65]
OSB	[]	[]	[]	[45-60]
TOTAL	[]	[]	[]	[25-40]

Sales of Panel Board Products - Germany, 1000s of m³, 1993

	NFI ⁽¹⁾	Glunz	Total	Market Share %
28.μ Particleboard	[]	[]	[]	[0-15]
Plywood	[]	[]	[]	[0-15]
MDF	[]	[]	[]	[0-15]
Non-MDF fibreboard	[]	[]	[]	[0-15]
OSB	[]	[]	[]	[40-55]
TOTAL	[]	[]	[]	[5-20]

(3) Includes agency sales of both NFI and third party products

(4) Includes agency sales of both NFI and third party products

Sales of Panel Board Products - United Kingdom, 1000s of m³, 1993

	NFI	Glunz	Total	Market Share %
Particleboard	[]	[]	[]	[25-40]
Plywood	[]	[]	[]	[0-15]
MDF	[]	[]	[]	[0-15]
Non-MDF fibreboard	[]	[]	[]	[0-15]
OSB	[]	[]	[]	[75-90]
TOTAL	[]	[]	[]	[15-30]

28. NFI does not sell particle board or non-MDF fibreboard in any of the three member states. The proposed operation will not therefore result in an increase in market power as there is no addition of market shares for these products.
29. With regard to MDF, NFI has no sales in France and Germany and in the United Kingdom its sales are [insignificant in relation to] Glunz's sales. The proposed transaction will not therefore result in any significant change in market position.
30. In France the effect on market share for plywood arising from addition of NFI's share of [insignificant] to Glunz's existing [10-25%] is minimal and will not create a dominant position. In Germany and the United Kingdom the combined market shares of NFI & Glunz are [0-20%] and [0-20%] respectively. These market shares are very small and certainly will not create a dominant position.
31. For OSB the joint venture and Glunz will have market shares of [45-60%], [40-55%] and [75-90%] in France, Germany and the United Kingdom respectively. This is not surprising as they own the only two production units in the EEA. However, a new plant with a capacity exceeding the combined capacity of NHL and Glunz, is being built by a joint venture between the US forestry products group, Louisiana Pacific, and the Irish State-owned forestry company, Coillte. It will be operational in 1996. This plant is being built in Ireland which has a tiny home market so the majority of its output will have to be exported, with the most likely destinations being France, Germany and particularly the United Kingdom.
32. OSB is a new product (in the EEA) which is a substitute for other more traditional wood based panel board products such as particle board and plywood. The combined market shares of Glunz and NHL in a market for particle board and OSB in France, Germany and the United Kingdom are [15-30%], [0-15%] and [25-40%] respectively. In a market for plywood and OSB they are [10-25%], [0-15%] and [5-20%]. None of these market shares will result in NHL/Glunz acquiring a dominant position.
33. Independent market research indicates that the consumption of OSB in the EEA will increase by over 500% by 2004. In view of the new OSB capacity coming on stream next year it is extremely unlikely that Glunz/NHL would be able to maintain its market shares at current levels. Furthermore its ability to raise prices is constrained by the fact that its main uses are replacing existing bulk products, such as particle board and plywood, for which the consumption is at least ten times greater.

VI ANCILLARY RESTRAINTS

34. NFI covenants that, for as long as it remains a shareholder in NHL, it will not engage in the manufacture or sale of panel board products in Europe, and for an additional [] after it ceases to be a shareholder it covenants not to manufacture or solicit sales of any panel board products in the UK. If NHL is engaged in the manufacture of OSB in Europe (other than UK or Ireland), NFI covenants not to manufacture OSB in Europe for a period of [] after it ceases to be a shareholder there are no restrictions on the sale or marketing of OSB by NFI in this period. Finally the Deed of Covenant allows NFI to appoint NHL as distributor for its products manufactured outside the European Union.
35. The non-competition covenants are directly related to the notified operation and necessary for its successful operation. They express the continued withdrawal of NFI from the European panel board sector otherwise than through the joint venture and may, therefore, be regarded as ancillary to the operation.
36. As to the distribution agreement for Europe it can be considered as ancillary so far as it guarantees an outlet for NFI's exports following its withdrawal from the Community markets for the production and distribution of panel board products.
37. Glunz covenants that while it remains a shareholder in NHL and for [] thereafter it will not manufacture panel board products in the UK and that it will not solicit sales of panel board products in the United Kingdom during a period of five years from the formation of the joint venture.
38. This covenant prevents Glunz from undermining the position of the joint venture by making capital investments in close proximity to the joint venture or by seeking orders that would otherwise be satisfied by the joint venture. The covenant is of limited geographical coverage and offers a degree of protection to the joint venture and consequently to the interests of the withdrawing partner. It may also therefore be regarded as ancillary to the establishment of the joint venture. As it is objectively necessary at least during the start-up period to protect the transfer of assets, goodwill, technical know how and sales expertise, a period of five years is not unreasonable.

VII CONCLUSION

39. It follows from the above that the proposed concentration would not create or strengthen a dominant position as a result of which competition would be significantly impeded in the common market or in a substantial part of it.

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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.

For the Commission,