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Case No COMP/M.6123 - ARCELORMITTAL BREMEN / KOKEREI PROSPER / ARSOL AROMATICS

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party

Dear Sir/Madam,

Subject: Subject: Case No COMP/ M.6123 - ARCELORMITTAL BREMEN / KOKEREI PROSPER / ARSOL AROMATICS
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1]

1. On 18 April 2011**,** the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking ArcelorMittal Bremen GmbH controlled by ArcellorMittal SA (together 'ArcelorMittal') intends to acquire within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking Kokerei Prosper by way of purchase of assets. At the same time, ArcelorMittal Bremen intends to acquire [a minority shareholding] in Arsol Aromatics GmbH&Co.KG ('Arsol')[2]. ArcelorMittal and Kokerei Prosper are designated hereinafter as the "notifying parties" or "parties to the proposed transaction".)

I. THE PARTIES

2. This case concerns the acquisition by ArcelorMittal Bremen GmbH, a German subsidiary of ArcelorMittal S.A., Luxembourg from RAG Aktiengesellschaft (RAG) of all assets which are currently used by Kokerei Prosper as an autonomous economic entity (without being a legal entity).

1 OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

2 Publication in the Official Journal of the European Union No C 129, 30.04.2011, p.5

3. ArcelorMittal is a large global steel producer active on all major steel markets in over 60 European and non-European countries and also has sizeable captive supplies of raw materials and an important distribution network. There are arguments to assume that ArcelorMittal S.A. is *de facto* controlled by the Mittal family. However, as none of the Mittal family shareholders has sole or joint control in any undertakings active in any of the affected markets, it is not necessary to decide whether the Mittal family controls ArcelorMittal .

4. Kokerei Prosper is a coke producing plant located in Bottrop in North Rhine-Westphalia/Germany. It produces blast furnace coke (approx. 1.8 million tonnes a year.) which is used for the production of pig iron. Kokerei Prosper does not produce pig iron or steel, but sells coke to steel manufacturers, one of them being ArcelorMittal's steelworks in Bremen. In addition, Kokerei Prosper sells several by-products of the coke production process such as crude coal tar, ammonium sulphate, crude benzene, and coke gas to different customers outside the steel industry.

5. Apart from Kokerei Prosper, ArcelorMittal acquires simultaneously from RAG a minority shareholding of […] % of the shares in Arsol. Arsol processes Kokerei Prosper's crude benzene into different basic chemicals.

6. The shares in Arsol are currently held by RAG ([…] %), Rütgers Germany GmbH ([…] %), ThyssenKrupp Steel Europe AG (TKSE, […] %), Salzgitter AG ([…] %), and Hüttenwerke Krupp Mannesmann GmbH (HKM, […] %). However, none of these shareholders has sole or joint control over Arsol. First of all, none of them has the majority of voting rights.[3] Furthermore, there are no agreements of any kind between any of the shareholders with regard to joint exercise of voting rights. Only two actions require a […]% vote in the share holders meeting, amendments of the articles of association and the liquidation of Arsol.

7. As ArcelorMital will not acquire control over Arsol, the Commission considers that for the purpose of this decision, Arsol is not an undertaking concerned.

8. The shareholders of Arsol all operate plants producing crude benzene which they supply to Arsol for further processing and agreed that any shareholder which sells its crude benzene production plant is obliged to transfer simultaneously its shares in Arsol to the purchaser of that plant. The shareholders’ interests in Arsol are thus tied to the ownership of a crude benzene producing plant, e.g. Kokerei Prosper. Both acquisitions are to be made simultaneously between the same purchaser and the same seller, and they are legally and economically dependent on each other.

9. Consequently, Commission considers that the acquisition of Kokerei Proper and acquisition of the minority share in Arsol constitute one single concentration.

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3 The number of votes conferred upon a shareholder is subject to the amount of crude benzene (in t per annum) delivered by the specific shareholder to Arsol in the preceding business year. The number of votes thus attributable to each shareholder, however, roughly corresponds to its specific shareholding, i. e. none of the shareholders has more than […]% of the voting rights. Moreover, the number of votes is relatively stable as the amount of crude benzene delivered by a specific shareholder largely depends on the capacity of its coking plants (which is not subject to short-term changes).

II. THE OPERATION AND THE CONCENTRATION

10. The proposed concentration constitutes an acquisition within the meaning of Article 3(1)(b) of the Merger Regulation by ArcelorMittal of direct control over Kokerei Prosper, by way of acquiring ownership of the assets establishing that undertaking as meant in Article 3(2)(a) of the same Regulation.

11. After completion of the transaction, AM Bremen will own all assets attributable to the current business of Kokerei Prosper (including [a minority shareholding] in Arsol), and RAG will hold no interest in Kokerei Prosper anymore. Thus, ArcelorMittal will exercise sole control over Kokerei Prosper, without, however, exercising control over Arsol.

III. EU DIMENSION

12. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[4] [ArcelorMittal: EUR 58 855.9 million, Kokerei Prosper EUR […] million]. Each of them has a EU-wide turnover in excess of EUR 250 million ArcelorMittal: EUR […] million, Kokerei Prosper EUR […] million], but they do not both achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

IV. COMPETITIVE ASSESSMENT

Coke

Relevant product markets

13. In line with previous Commission decisions[5], the parties to the concentration submit that there is, from the demand side point of view, one product market encompassing all kinds of coke which can be used for metallurgical purposes such as, above all, blast furnace coke.

14. In certain cases, the Commission has also made distinction between various types of coke, in particular, blast furnace, foundry and electrometallurgical coke[6]. However, as this is immaterial for the competitive assessment, it can be left open whether the market only comprises blast furnace coke or also includes foundry and electrometallurgical coke as Kokerei Prosper only produces blast Furnace coke.

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

5 COMP/ECSC.1316 – RAG/Burton of 17 November 1999 para. 16; COMP/ECSC.1341 – RAG / North Goonyella of 7 November 2000, para. 18; COMP/ECSC.1344 – RAG / Sidarfin / BBCT of 22 December 2000, para. 21; COMP/M.4137 – Mittal / Arcelor of 2 June 2006, para. 73

6 COMP/M.3376 – Dillinger Hüttenwerke / Saarstahl / Cokerie De Carling, March 17, 2004 , para. 14. In this case, also 'specialty coke products' were distinguished. These products are here taken to be by-products of coke production and to constitute separate product markets (see below).

Relevant geographic market

15. In its earlier decisions the Commission considered, mainly due to the German coal subsidy regime, Germany to be a distinct relevant geographic market for coke[7]. In a later decision[8], the Commission considered the market could be wider as imports into Germany had already increased steadily for three years, however the Commission did not decide conclusively on the geographic market definition.

16. The Parties submit that, for several years the coke market should be considered as EEA-wide or possibly worldwide. AM Bremen argues that there are numerous exporters of coke that supply this material throughout the EEA or worldwide[9]. European carbon steel manufacturers, in addition to their own on-site coke production, purchase blast furnace coke from suppliers situated in North and South America, Poland, Russia and China. The parties also point to ArcelorMittal's own purchases of coke for usage in Germany, which originate from […].

17. More generally, the volume of coke imported into Germany amounted to approx. 2.64 m t in 2010 (60% of the German merchant market[10]) and was sourced to a significant amount (about 20% – 25%) from outside the EU. In general, coke imports into Germany, in particular from EU Member States appears significant.

18. Whereas this appears to confirm the Commission's earlier decision that the German coke market becoming wider, it is unclear whether this process has evolved to such an extent that a national geographical scope of the coke markets can be excluded. Consequently, it is being left open whether the (merchant) market for blast furnace coke is national in scope or EEA wide.

Competitive assessment

19. The coke market has to be assessed in relation to the horizontal overlap and also possible vertical links. Coke is an essential raw material for pig iron, an intermediary input for steel production[11].

<u>Horizontal effects</u>

20. On an EEA wide merchant blast furnace coke market, the combined market share of the new entity would be [20-30]%, with an overlap of [0-5]%. In this situation the operation is unlikely to give the combined entity any market power considering the modest combined market share and the small increment.

21. If the national German market for merchant blast furnace coke is considered, the combined market share of the parties would be [40-50]%, with no overlap[12]. At this level no competition concerns arise as there is no overlap.

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7 COMP/ECSC.1252 – RAG / Saarbergwerke / Preussen Anthrazit, of 29 July 1998, para. 20 and 26.

8 COMP/M.3376 – Dillinger Hüttenwerke / Saarstahl / Cokerie De Carling, March 17, 2004, para. 23

9 e.g. OKD, Coeclerici, Glencore, Noble Group, Sinosteel, ThyssenKrupp MinEnergy GmbH, Oxbow etc.

10 See footnote 17

11 Case COMP/M.3376 Dillinger Hüttenwerke / Saarstahl / Cokerie de Carling, para. 21, 32 et seq.

12 This market share still awaits certain clarifications though, in particular whether all coal imported into Germany can (as the parties do) be considered part of the merchant markets.

22. As the combined entity does not produce foundry and electrometallurgical coke, the effects of the proposed operation would be even smaller on a more widely defined product market that would include these other types of coke.

Vertical effects

23. ArcelorMittal intends, once existing contractual arrangements expire, to use the blast furnace coke production of Kokerei captively. This might give rise to vertical competition concerns if the existing customers of Kokerei Prosper ([Customer A] and [Customer B]) were unable to find other sources of blast furnace coke.

24. The parties consider that the operation will not lead competition concerns of a vertical nature because ArcelorMittal will have neither the ability nor incentive to foreclose downstream pig iron producers.

25. The Commission considers that the Parties do not have the ability to foreclose downstream pig iron producers because:

   – ArcelorMittal has concluded an agreement whereby it will supply RVG, the sales subsidiary of RAG that has supply contracts with [Customer A] and [Customer B], with exactly the coke needed to fulfil these respective supply agreements with [Customer A] [13] and [Customer B][14]. Therefore, ArcelorMittal has no ability to restrict supplies, to raise prices or to otherwise make the conditions of supply less favourable than they would have been absent the acquisition[15] until these contracts expire.

   – [Customer A] is currently expanding the capacity of its integrated coking plant in […] by […] p.a. The programme is due to be completed in […]. The extension will be sufficient to cover all the coke [Customer A] currently purchases from Kokerei Prosper and will enable [Customer A] to supply [Customer B] with the additional coke it would require. […] the other shareholder in [Customer A] has no iron making activities outside [Customer A]. [Customer A] would also be able to supply coke. Consequently, even after the current supply agreements of RVG with [Customer A] and [Customer B] expire, ArcelorMittal will not be able to restrict supply or increase of competitors as they will have alternative sources of supply.[16]

   – The vast majority of steel manufacturers operate their own coke oven plants and do not need substantial supplies from a merchant coke market. At present about 59%[17] of blast furnace coke sales in Germany is imported including significant

13 [Confidential: description of supply conditions]

14 [Confidential: description of supply conditions]

15 Guidelines of the Commission on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 265/6 of October 18, 2008, hereafter: Non-horizontal Merger Guidelines, para. 33-36

16 Non-horizontal Merger Guidelines, para. 39.

17 Strictly speaking the imports reported here relate to imported coal regardless of being merchant or intra-group (i.e. captive sales). However (i) it is highly likely that they primarily relate to merchant sales as German based steel producers own their own coke plants (ii) the implementation of the proposed transaction and the coke plant extension programmed by [Customer A] will mean that companies become even more self-sufficient regarding coke. Consequently, even regardless of whether these imports represent merchant sales today, they are highly likely to be available for the merchant market in the future.

quantities from Poland. [Customer A], [Customer B] or other competitors of ArcelorMittal would be able to source additional amounts of coke from these importers who already have substantial infrastructure in place. The market investigation revealed that both [Customer A] and [Customer B] also procured regularly blast furnace coke on the merchant market, also from outside the EEA.

– Furthermore, if ArcelorMittal internalises the coke produced by Kokerei Prosper this will release the equivalent amount of coke currently bought by AM Bremen from third parties onto the market. This coke would be available to competitors.

26. As to the incentive to foreclose, the Commission consider that the Parties do not have the incentive to foreclose downstream pig iron or steel producers because it would not make economic sense to retain coke not required for captive use. Given the domestic production capacities of [Customer A], [Customer B] and other competitors, the envisaged enlargement of [Customer A]'s production plant, the possibilities of steel producers to source coke on the merchant market, and the fact that the costs for coke only amount to about 10-15 % of the total costs of the cheapest finished steel product, it is highly unlikely that ArcelorMittal could obtain any profits from not selling excess coke to its competitors.

27. The market investigation confirmed the parties' claims.

28. It follows that, even on the narrowest conceivable market, the German merchant market for blast furnace, the proposed operation would not give rise to vertical competition concerns. As the competitors of ArcelorMittal continue to have access to coke supplies, from Kokerei Prosper (under the contracts with RVG) from the additional capacity available at [Customer A] and from imports.

By-products

<u>Crude coal tar</u>

Relevant product market

29. The Commission has previously published decisions concerning coal tar or its derivatives[18], but has not defined a market for crude coal tar itself.

30. Crude coal tar is mainly supplied to distillation plants (57% of the world production and even more in Europe, according to the Parties) where it is distilled into its individual components which are used for a wide variety of industrial and medical applications. The most important product of the distillation process is coal pitch which is mainly used as an electrode binding agent for the production of anodes for aluminium smelting. Other products derived from crude coal tar distillation are used for manufacturing paints, synthetic dyes and photographic materials as well as in medical soaps, shampoos and ointments. Approximately 37% is used as a fuel in power plants and another 6% for producing carbon black which is contained in rubber products such as automobile tyres. In all these products can be produced using alternative input materials.

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[18] Case No COMP/M.5530 - Glaxo Smith Kline/ Stiefel Laboratories and Case No COMP/M.3225 - Alcan / Pechiney

31. For the purposes of this case, the relevant product market definition can be left open, as even on the basis of a distinct market for crude coal tar the proposed transaction does not give rise to competition concerns.

Relevant geographic market

32. The parties submit that the market for crude coal tar encompasses an area including at least the EEA, Russia and the Ukraine. The most important buyers are distillation plants located in the Czech Republic, the UK and the Netherlands, in Spain, Germany, Belgium and Denmark. EU distillation plants import about 30% of the supply needed to operate at full capacity from countries outside the EU, mainly from Russia and the Ukraine as there are significant coke production capacities in these countries. According to the parties crude coal tar is readily transported within this area, and prices are similar.

33. The market investigation provided strong indications that the geographical scope of a market for crude coal tar is EEA, CIS and Ukraine wide. Indeed, a number of distillers confirmed that they procured crude coal tar from a wide variety of location throughout the EEA, CIS and the Ukraine. In any event, it is not necessary to conclude on the geographical scope of the market in view of the fact that the proposed operation does not give rise to competition concerns on more narrowly defined market as wide as the EEA or, even, a national German market.

Competitive assessment

34. On a market comprising the EEA, Russia and Ukraine, the combined market share of the parties would be [20-30]%, with an overlap of [0-5]%.

35. On a market comprising the EEA, the combined market share of the parties would be [30-40]%, with an overlap of [0-5]%.

36. On a market comprising only Germany, the combined market share of the parties would be [40-50]% with an overlap of [10-20]%. The largest other German suppliers crude coal tar suppliers have market shares of [20-30]% and [20-30]%.

37. Crude coal tar is a by-product of coke production and its market price does not have any direct effect on the coke production and little effect on the total cost of coke production. It is not possible to increase or decrease the production of crude coal tar without increasing or decreasing the production of coke as there is fixed relationship between the amounts of each produced, nor would a coke producer have an incentive to do so. Indeed, Kokerei Prosper's revenues from crude oil tar sales represent only [0-5]% of its revenues from sales of coke. Crude coal tar prices have moreover been decreasing since mid 2008, due to decreasing demand for the final products of coal tar distillers, in particular from aluminium plants.

38. The Commission consider that AM Bremen will have no incentive to adjust the coke production to react to price changes for crude coal tar, as it will operate the coke ovens to produce the coke it needs for its own pig iron production and the needs of its customers [Customer B] and [Customer A].

39. Against this background, the Commission considers that the proposed acquisition of Kokerei Prosper and, thus, of crude coal tar production capacities will not confer a

significant market position onto ArcelorMittal and, therefore, not be able to impede competition on the crude coal tar market in any way.

Crude benzene

40. Crude benzene or light oil is produced as a by-product in coke oven plants. Due to its low level of purity it has to be distilled to extract widely used chemicals such as benzene, methylbenzene (toluene) and dimethylbenzene (xylene) (BTX products). BTX products are used for a wide array of applications in the chemical and pharmaceutical industry. According to the Parties, BTX products are produced in oil refineries and crude benzene produced in coke plants only accounts for approximately 10% of the world-wide benzene production. Crude benzene is purchased by a small number of manufacturers specialized in extracting BTX products (like Arsol). The price for crude benzene is calculated on the basis of its content of benzene, methylbenzene and dimethylbenzene, and is therefore very closely linked to their respective market prices.

Relevant product market

41. The Commission has not previously defined a product market regarding crude benzene. Refined benzene has been found to constitute a distinct product market in the past[19]. According to the parties, there is one product market encompassing all purity levels of benzene given that all BTX products reflect different purity stages of the same basic material and that competitive pressure with regard to crude benzene is exercised by the large BTX producers in the first place. However, even if crude benzene were considered to constitute a distinct product market, the proposed transaction would not give rise to competitive concerns with regard to this market.

Relevant geographic market

42. The Parties submit that crude benzene is sold on a world-wide basis. Arsol, whose distillation plant is located close to Kokerei Prosper, sourced [20-30]% of its crude benzene demand from suppliers situated outside the EEA, including Argentina and Brazil in 2010. Another [50-60]% was purchased from ten different EU countries and only [20-30]% from within Germany (including all crude benzene production of Kokerei Prosper). The crude benzene produced by ArcelorMittal in its integrated steel plant in Kryviy Rih, Ukraine, is sold to […]. Other purchasers of crude benzene source this product on an international basis, too. However, even if the market for crude benzene was considered to be only EEA-wide[20], the proposed transaction would not give rise to competition concerns.

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19 Case COMP/M.2806 – SABIC / DSM Petrochemicals and Case COMP M. 2345 – Deutsche BP / Erdölchemie

20 Which would in fact coincide with the Commission's finding in previous cases regarding benzene, toluene and xylene i.e. the end products of refining crude benzene (COMP M. 2345 – Deutsche BP / Erdölchemie, COMP/M. 2389 – Shell/DEA and COMP/M.4179 - Huntsman / Ciba Te Business) in which these markets were deemed at least as wide as, respectively Western Europe (EEA and Switserland) , Western Europe and the EEA. When crude coal tar is considered, these geographical scopes coincide as Switserland does not produce crude benzene.

Competitive assessment

43. The parties are both active on the crude benzene market. Their combined market share on a world-wide basis is below 15% and the parties therefore do not consider any crude benzene market to constitute an affected market according. Only on the basis of an EEA-wide market, the combined market share of the parties would exceed 15%.

44. The parties estimate the world-wide market volume for crude benzene at approx. 5 million tonnes (taking into account that the quantity of crude benzene produced amounts to 1 % of the coke production, the global production of crude benzene would be around 6 m t. However, not every coke oven plant extracts crude benzene. The parties have no exact knowledge as to how many coke oven plants do not extract this by-product and therefore estimate a market volume of 5 m t.) Since the combined production of crude benzene by ArcelorMittal and Kokerei Prosper only amounts to […] m t, their combined market share only amounts to [0-5] % on the market for crude benzene.

45. On an EEA wide market for crude benzene, the combined market share of the parties would be [30-40]%, with an overlap of [5-10]%.

46. According to the supply agreement between Arsol and RAG, the entire production of crude benzene from Kokerei Prosper is supplied to Arsol. This contract will be taken over by ArcelorMittal Bremen subsequent to the transaction. The supply contract is valid until […].

47. According to the parties, the sellers of crude benzene carry the risk of price fluctuations as the price for crude benzene is determined by the market prices of the BTX products extracted from it, taking the production costs of the distillation plant into account Producers of crude benzene cannot significantly influence the benzene price since BTX products extracted from crude benzene only accounts for approx. 10 % of the overall market for these products.

48. Moreover, the production of crude benzene is in a fixed relationship to the production of coke. The Commission therefore considers that AM Bremen would as in the case for crude coal tar, have no incentive to disrupt its coke production to vary its production of crude benzene. Indeed, Kokerei Prosper's revenues from crude benzene only represent [0-5]% of its revenues from selling coke.

49. Finally the operation will not have an effect on the market place as the entire output of crude benzene from Kokerei Prosper will continue to be processed by Arsol. It follows that the proposed transaction will not impede competition on the crude benzene market.

V. CONCLUSION

50. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission

(signed)
Joaquín ALMUNIA
Vice-President