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Case No COMP/M.6737 - RUUKKI/ CAPMAN/ FORTACO

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

Article 6(1)(b) NON-OPPOSITION
Date: 10/12/2012

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EUROPEAN COMMISSION

Brussels, 10.12.2012
C(2012) 9537

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.6737 – RUUKKI/ CAPMAN/ FORTACO

Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹

1. On 6 November 2012, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Rautaruukki Oyj ("Ruukki", Finland) and CapMan Oyj ("CapMan", Finland) acquire, within the meaning of Article 3(1)(b) of the Merger Regulation, joint control of Fortaco ("Fortaco", Finland) by way of purchase of shares in a newly created company constituting a joint venture (the "Proposed Transaction"). Ruukki and CapMan are hereinafter referred to as the "Notifying Parties".²

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 349, 15.11.2012, p.20.

1. THE PARTIES

2. Ruukki is a Finnish public limited liability company listed on the Helsinki Stock Exchange and active in the production of energy-efficient steel solutions in three business areas: (i) Ruukki Construction; (ii) Ruukki Engineering and (iii) Ruukki Metals. The parts of Ruukki Engineering ("RE") transferred to Fortaco are active in the manufacturing, assembly and supply of cabins and components for heavy machinery and equipment. RE operates in Finland, Poland, Hungary and Slovakia.
3. CapMan is a Finnish public limited liability company listed on the Helsinki Stock Exchange and a private equity fund manager with operations in the Nordic countries and Russia. CapMan has four key entrepreneurial investment partnerships: CapMan Buyout, CapMan Russia, CapMan Public Market, and CapMan Real Estate. In addition, CapMan has two other investment areas (CapMan Technology and CapMan Life Science) which do not make new investments but focus on developing the value of their existing portfolio companies. Komasa, one of CapMan Buyout's portfolio companies, assembles and supplies mechanical components and solutions for the transport, construction, military, energy, mining and other industries and operates production facilities in Finland, Poland and Estonia.

2. THE TRANSACTION AND THE CONCENTRATION

4. The Proposed Transaction consists of the acquisition of joint control by Ruukki and CapMan, through its portfolio company Komasa, over Fortaco, a newly created full-function joint venture. Ruukki and CapMan set up Fortaco by combining certain activities of RE and Komasa. Fortaco will be active in the manufacturing and sale of operator cabins and steel components for the mechanical engineering industry.
5. Prior to the consummation of the Proposed Transaction both Komasa and RE will be restructured so that certain assets, liabilities and employees currently part of Komasa and RE respectively will be excluded from the scope of Fortaco.
6. On 16 October 2012, Ruukki, Komasa and as guarantors on Komasa's behalf the relevant CapMan Funds, Juha-Pekka Nikula and Y-Pakka Oy signed a Master Transaction Agreement (MTA) in which they agree to transfer RE to Komasa through share and asset transfers.
7. Post-transaction, the shareholdings of Ruukki and CapMan in Komasa (and therefore in Fortaco) will be 19% and 66.43%, respectively. The remaining shares in Komasa (14.59%) are held by Juha-Pekka Nikula, Y-Pakka Oy and certain former members of the management as well as of the Board of Directors of Komasa.

2.1. Joint control

8. The Board of Directors of Fortaco will consist of [...] ordinary members, [...] of which shall be nominated by [...], [...] of which shall be nominated by [...] and [...] of which shall be nominated by [...]. Decisions taken by the Board shall be adopted by [...], provided that a quorum is constituted (i.e. at least [...] member nominated by [...] should be present). However, strategic business decisions related to the operation of Fortaco [...].³

³ [...].

9. It follows that Ruukki and CapMan can only adopt together strategic decisions regarding the business policy of Fortaco. Accordingly, Ruukki and CapMan will exercise joint control over Fortaco within the meaning of Article 3(2) of the Merger Regulation.⁴

2.2. Full-functionality

10. Fortaco will be an autonomous economic entity, separate from Ruukki and CapMan, and will operate on the market independently and perform all the operations of a normal market operator.
11. Despite the fact that RE and Komasa currently purchase respectively [70-80]% and [10-20]% of their total demand of steel products from Ruukki, Fortaco would only purchase approx. [50-60]% of its steel products requirements from Ruukki. Fortaco will procure the remaining required raw materials from the open markets on commercial terms and on a standalone basis. In addition, it will provide its own products independently to third parties in the open markets. Fortaco will also have its own managing director dedicated to its day-to-day operations and its own chief financial officer.
12. Fortaco will have access to sufficient technological and financial resources, independently from the Notifying Parties. The assets relating to Fortaco's operations are transferred to Fortaco's ownership. Fortaco's activities will thus not be auxiliary or limited to specific functions within the Notifying Parties' business activities, and it will be performing on a lasting basis all the functions of an autonomous economic entity.
13. In light of the above, it follows that the Proposed Transaction constitutes a concentration within the meaning of Article 3(4) of the Merger Regulation.

3. UNION DIMENSION

14. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Ruukki:EUR [...]; CapMan: EUR [...])⁵. Each of them has an EU-wide turnover in excess of EUR 250 million (Ruukki: EUR [...]; CapMan: EUR [...]), but they do not 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.

⁴ The business activities of Fortaco will be developed on a long-term basis [...]. [...].

⁵ 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. COMPETITIVE ASSESSMENT

4.1. Relevant markets

4.1.1. Product market definition

4.1.1.1. Manufacture and sale of steel components for industrial customers active in the mechanical engineering industry

15. RE and Komas are active in the manufacturing and sale of steel components for the mechanical engineering industry.⁶ The steel components manufactured for the mechanical engineering industry comprise, for example, mobile machine booms, masts, steering axels, generator frames, engine frames and oil sumps. According to the Notifying Parties, these steel components can be separated from steel components manufactured for the heavy industries, such as the offshore industry and infrastructure.
16. According to the Notifying Parties, the relevant product market is the market for the manufacturing and sale of steel components for industrial customers active in the mechanical engineering industry. In the Notifying Parties' view, there is no need to segment the market further by end application such as mining, military, materials handling, etc. The Notifying Parties explain that there is little demand-side substitutability between these segments as all solutions are customised. However, there is a high degree of supply-side substitutability, given that all steel components for the mechanical engineering industry can be manufactured in the same plants and using the same production equipment.
17. From a demand-side perspective, the vast majority of respondents to the market investigation confirmed that the steel components for the mechanical engineering industry they purchase/manufacture and sell are customized components.⁷
18. From a supply-side perspective, most of the customers indicated that suppliers of steel components for the mechanical engineering industry are not generally active in the whole range of products or for all the end applications. One customer explained that *"normally all mentioned products consist of different range of steel components, so it is not cost effective to make all in one place"*.⁸
19. With regard to competitors' view on supply-side substitutability, the results of the market investigation were unclear. Whereas competitors rather tend to believe that

⁶ RE is also active in the manufacturing and sale of operator cabins, which is vertically linked with the distribution of carbon and stainless steel. However, CapMan is not active in any of these markets and therefore there is no vertical relationship between the Notifying Parties as regards the distribution of carbon and stainless steel (upstream) and the manufacturing and sale of operator cabins (downstream).

⁷ Replies to question 6 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers of steel components for the mechanical engineering industry, dated 9 November 2012 and Replies to question 6 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors of steel components for the mechanical engineering industry, dated 9 November 2012.

⁸ Replies to question 11 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers of steel components for the mechanical engineering industry, dated 9 November 2012.

producers are normally active across the whole range of steel components for the mechanical engineering industry and are technically capable of doing so, some responses also indicated that it is not possible to produce all steel components for the mechanical engineering industry in the same plants, using the same production equipment and that there are indeed producers active only in specific segments of the market.⁹

20. For the purpose of this decision, the exact product market definition can be left open as the Proposed Transaction does not raise serious doubts as to its compatibility with the internal market under any alternative product market definition.

4.1.1.2. Distribution of carbon steel and stainless steel

21. Ruukki Metals is active in the distribution of carbon steel and stainless steel through its steel service centres and stockholding centres.
22. In previous cases the Commission has defined four separate product markets for the distribution of carbon steel products: steel service centres for carbon steel flat products, stockholding centres for carbon steel flat products, stockholding centres for carbon steel long products and oxy-cutting centres.¹⁰
23. The Notifying Parties submit that only the following markets are relevant for the Proposed Transaction: (a) steel service centres for carbon steel flat products and (b) stockholding centres for carbon steel long products.
24. As regards the distribution of stainless steel products, the Commission has not conclusively decided whether this activity should be further divided into different relevant markets. Nevertheless, the Commission has investigated the markets with a possible segmentation between (i) stainless steel service centres, (ii) stainless steel stockholding centres, and (iii) oxy-cutting centres.¹¹ The Notifying Parties agree with this segmentation.
25. For the purpose of this decision, the exact product market definition can be left open as the Proposed Transaction does not raise serious doubts as to its compatibility with the internal market under any alternative product market definition.

⁹ Replies to questions 8 and 9 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers of steel components for the mechanical engineering industry, dated 9 November 2012 and Replies to questions 8 and 9 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors of steel components for the mechanical engineering industry, dated 9 November 2012.

¹⁰ Case COMP/M.4137 – Mittal / Arcelor, para. 80. See also COMP/M.5211 – Outokumpu / Sogepar, para. 16.

¹¹ COMP/M.5211 – Outokumpu / Sogepar, para. 16 and Case COMP/M.6471 – Outokumpu / Inoxum, para. 215.

4.1.2. Geographic market definition

4.1.2.1. Manufacturing and sale of steel components for the mechanical engineering industry

26. The Notifying Parties submit that the geographic market for the manufacturing and sale of steel components for the mechanical engineering industry is at least EEA-wide as there are significant trade flows at the EEA level and customers are, to a large extent, international companies, who purchase on an international basis.
27. The market investigation largely confirms this position. Most of the respondents considered that producers of steel components for the mechanical engineering industry which are based in different areas of the EEA compete with each other. A vast majority of the respondents also indicated that a local presence in a specific Member State is not necessary in order to sell these steel components to customers located in that Member State. A vast majority of customers even considered that having a presence within the EEA was not necessary for their suppliers. In addition, a vast majority of EEA competitors indicated that they were selling steel components for the mechanical engineering industry also outside the EEA.¹²
28. For the purpose of this decision, the exact geographic market definition can be left open as the Proposed Transaction does not raise serious doubts as to its compatibility with the internal market under any alternative geographic market definition.

4.1.2.2. Distribution of carbon steel and stainless steel

29. The Notifying Parties consider that although the Commission has considered the geographic scope of distribution of steel and other metals as national or regional,¹³ in their view the relevant geographic market should be considered as regional encompassing at least the Nordic Countries (Finland, Sweden, Norway and Denmark) and Estonia.
30. The market investigation has been inconclusive in this respect. The geographic scope of the activities of distributors of carbon and stainless steel who responded to the Commission's request for information varies to a significant extent. While some distributors replied that their activities are limited to one Member State (for instance, Finland or Sweden), others stated that their activities extend across the EEA.¹⁴

¹² Replies to questions 13, 14 and 15 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers of steel components for the mechanical engineering industry, dated 09 November 2012 and Replies to questions 13, 14 and 15 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors of steel components for the mechanical engineering industry, dated 09 November 2012.

¹³ See e.g. COMP/M.5211 – Outokumpu / Sogepar, para. 20, COMP/M.4137 – Mittal / Arcelor, para. 80, and COMP/M.971 - Klöckner / Commercial de Laminados, para. 15.

¹⁴ Replies to question 3 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors for distribution of steel, dated 9 November 2012.

31. For the purpose of this decision, the exact geographic market definition can be left open as the Proposed Transaction does not raise serious doubts as to its compatibility with the internal market under any alternative geographic market definition.

4.2. Competitive assessment

32. The Proposed Transaction gives rise to only one possible horizontally affected market, i.e. the market for the manufacturing and sale of steel components for the mechanical engineering industry in relation to the materials handling segment in Sweden.

33. In addition, the Proposed Transaction results in possible vertically affected markets in relation to: (a) Ruukki's upstream activities in (i) the distribution of carbon steel products in Finland through service centres and (ii) the distribution of stainless steel products in Finland through service centres, and (b) the Notifying Parties' downstream activities in the manufacturing and sale of steel components for the mechanical engineering industry.¹⁵

4.2.1. Horizontally affected market

34. Both Notifying Parties manufacture and sell steel components for the mechanical engineering industry.

35. At EEA level, the combined market shares of the Notifying Parties would be negligible. The only Member State where the Notifying Parties' combined shares exceed 15% in the manufacturing and sale of steel components for the mechanical engineering industry is Sweden, in relation to the materials handling segment where Fortaco's market share would be [10-20]%.

36. During the market investigation, a vast majority of respondents indicated that customers procure their requirements of steel components for the mechanical engineering industry from more than one supplier (either multi-source or dual-source). In addition, a vast majority of respondents confirmed that customers of steel components for the mechanical engineering industry have bargaining power vis-à-vis suppliers.¹⁶

37. A vast majority of respondents to the market investigation also confirmed that customers of steel components for the mechanical engineering industry would be able to switch away from their current supplier (including the Notifying Parties) and named a number of alternative suppliers active in the EEA, including Agrostroj Pelhrimov, Vlassenroot,

¹⁵ There is a further vertical relationship between Ruukki's upstream activities in the market for the distribution of aluminium and Komasa's downstream activities in the market for steel components for the mechanical engineering industry. However, this vertical relationship does not give rise to any affected market and Komasa's purchases of aluminium are extremely small.

¹⁶ Replies to question 23 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers of steel components for the mechanical engineering industry, dated 09 November 2012 and Replies to question 23 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors of steel components for the mechanical engineering industry, dated 09 November 2012.

SKS Toijala Works, the Metalliset Group, Mesera, Kumera, Zugil, UNEX, the PPS Group and Henschel Engineering.¹⁷

38. In view of the above, the Proposed Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the manufacturing of steel components for the mechanical engineering industry.

4.2.2. *Vertical relationships*

39. Ruukki currently supplies steel raw materials to both RE and Komasa. This supply relationship is intended to continue even after the establishment of Fortaco.
40. RE purchases from Ruukki Metals various flat carbon steel products, structural tubes and very small amounts of flat stainless steel. Komasa purchases from Ruukki Metals various flat and long carbon steel products and very small amounts of flat stainless steel products.
41. The Transaction does not give rise to vertically affected markets if the upstream markets are defined as broader than national.
42. At national level, the transaction would only give rise to vertically affected markets in Finland with regard to (a) Ruukki's upstream activities in (i) the distribution of carbon steel products in Finland through service centres and (ii) the distribution of stainless steel products in Finland through service centres, and (b) the Notifying Parties' downstream activities in the manufacturing and sale of steel components for the mechanical engineering industry and its sub-segments.
43. In Finland, Ruukki has a market share of [30-40]% in each of the markets for the distribution of carbon steel flat products and for the distribution of stainless steel flat products through service centres.¹⁸ The Notifying Parties' combined market share in the manufacturing and sale of steel components for the mechanical engineering industry in Finland amounts to [10-20]%. With regard to the sub-segments, under the narrowest possible market definition by end-application, the Notifying Parties' shares would not exceed 15%.
44. A vast majority of Ruukki's customers currently purchasing carbon steel in respect to their activities in the manufacturing and sale of steel components for the mechanical engineering industry considered that they would be able to find alternative suppliers, if Ruukki were to stop selling carbon steel to them.¹⁹ In addition, there are a number of

¹⁷ Replies to question 25 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers of steel components for the mechanical engineering industry, dated 09 November 2012 and Replies to question 25 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors of steel components for the mechanical engineering industry, dated 09 November 2012.

¹⁸ Ruukki's activities as regards the distribution of long carbon steel products by means of stockholding centres would not give rise to a vertically affected market even under the narrowest geographic market definition.

¹⁹ Replies to question 9 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors for distribution of steel, dated 9 November 2012.

competitors active in the distribution of carbon steel and stainless steel products through service centres in Finland such as the BE Group with a [20-30]% market share, Tibnor with [10-20]%, Kontino with [10-20]% and Onninen with [10-20]%.²⁰

45. Furthermore, during the market investigation, a vast majority of competitors in the distribution of carbon steel and stainless steel products indicated that they would be able to find alternative customers, if Ruukki or Komasa were to stop purchasing carbon steel or stainless steel from them.²¹
46. Based on the Notifying Parties' moderate market shares and the presence of several alternative suppliers of carbon steel and stainless steel products in Finland, the Commission concludes that competition concerns arising from a risk of input foreclosure are unlikely. Similarly, due to the presence of a number of alternative customers of carbon steel and stainless steel products, the Proposed Transaction is unlikely to give rise to customer foreclosure.
47. In light of the above, it can be concluded that the Proposed Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the vertical relationship between the distribution of carbon steel flat products and stainless steel flat products through service centres and the manufacturing and sale of steel components for the mechanical engineering industry.

5. CONCLUSION

48. 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*

²⁰ The Notifying Parties state that they do not have a sufficient degree of transparency of the market to provide competitors' market shares for the distribution of carbon and stainless steel products via service centres. In particular, Ruukki stated that they have no precise knowledge of the exact breakdown of competitors' distribution activities in carbon vs. stainless steel products as many competitors distribute both carbon and stainless steel products. In any event, the Proposed Transaction would be unlikely to give rise to serious doubts given the moderate market shares of Ruukki in both markets upstream, the low market shares of the Notifying Parties in the downstream market and the fact that respondents to the Commission's requests for information have generally not raised concerns.

²¹ None of the respondents to the market investigation raised substantiated concerns in relation to the Proposed Transaction.