

Case No COMP/M.7019 - TRIMET/ EDF/ NEWCO

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

Article 6(1)(b) NON-OPPOSITION
Date: 12/12/2013

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties:

Dear Sir/Madam,

**Subject: Case No COMP/M.7019 - TRIMET/ EDF/ NEWCO
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

(1) On 8 November 2013, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the TRIMET group ("TRIMET", Germany) and Electricité de France S.A. ("EDF", France) acquire joint control over two aluminium production facilities of the Rio Tinto Alcan Group ("Rio Tinto Alcan", United Kingdom) by way of purchase of shares in a special purpose vehicle ("NEWCO", France)².

1. THE PARTIES

(2) TRIMET is manufacturer of aluminium products based in Germany. It produces various kinds of primary and secondary aluminium products including extrusion billets, rolling ingots, re-melting ingots, liquid aluminium and die-cast parts. The group also trades aluminium products and scraps as well as copper products.

(3) EDF is active in the generation and wholesale of electricity and in the transmission, distribution and retail supply of electricity, as well as in the provision of other

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 Trimet and EDF are designated hereinafter also as the 'Parties'.

electricity-related services, in France and in other countries. EDF is also active, to a lesser extent, in the natural gas retail and wholesale markets.

- (4) Rio Tinto Alcan owns and operates two production plants which constitute NewCo. NewCo's production sites are located in Saint-Jean-de-Maurienne (Savoie) and Castelsarrasin (Tarn-et-Garonne), France. These plants manufacture mainly aluminium wire rod for the electrical, mechanical and welding industries.

2. THE OPERATION

- (5) According to an agreement between the parties (hereafter "the Term Sheet") the transaction will be executed in three steps. First, RTA will create a NewCo as a special purpose vehicle to which it will contribute the two production facilities. Then, TRIMET will acquire 100% of the shares of NewCo. Finally, EDF, TRIMET and NewCo enter into a supply agreement (the "Supply Agreement").
- (6) According to the Supply Agreement, EDF will supply electricity to NewCo for 10 years with a free opt-out option after 5 years.³
- (7) At the signing of the Supply Agreement, EDF will acquire 35% of the share capital and voting rights of NewCo.

3. THE CONCENTRATION

- (8) The acquisition of 100% of the share capital and voting rights of the NewCo by TRIMET merely constitutes the first step of the Transaction, which will ultimately lead to the acquisition of joint control by TRIMET and EDF over the two production sites. In accordance with the Consolidated Jurisdictional Notice of the Commission, the Transaction thus constitutes a single concentration⁴.
- (9) As a result of the whole transaction, TRIMET and EDF will respectively hold 65% and 35% of the share capital and voting rights of the NewCo.
- (10) The board of directors of NewCo will be composed of three members, two of which will be appointed by TRIMET and the third one will be appointed by EDF.
- (11) According to the Term Sheet, EDF has a veto right with regard to the adoption of decisions concerning reserved matters of NewCo (that is approval of the 10 year business plan, implementation of the business plan, annual budget and financial decisions involving more than EUR 5 million).
- (12) In view of the above, the Commission concludes that TRIMET and EDF will exercise joint control over NewCo.
- (13) The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

³ These conditions were made in view of complying with the commitments taken by EDF in the antitrust case COMP/39.386.

⁴ Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 138/2004 on the control of concentrations between undertakings, OJ C 95, 16.4.2008, p.1, para. 47.

4. EU DIMENSION

- (14) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (TRIMET: EUR 1 343 million; EDF: EUR 72 729 million; NewCo: EUR [...] million).⁵
- (15) Two of them have an EU-wide turnover in excess of EUR 250 million (TRIMET: EUR [...] million; EDF: EUR [...] million; NewCo: EUR [...] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
- (16) The notified operation therefore has an EU dimension according to Article 2(1) of the Merger Regulation.

5. COMPETITIVE ASSESSMENT

- (17) The proposed transaction mainly concerns the aluminium and electricity sectors in France.

5.1. Market Definition

Aluminium

- (18) Trimet and NewCo are both producers of primary aluminium products. Besides, Trimet produces secondary aluminium products. NewCo is not active in the production of secondary aluminium products.
- (19) In its previous decisions, the Commission has distinguished between primary aluminium products (i.e. produced by smelting alumina) and secondary aluminium products (i.e. produced by re-melting and re-converting used aluminium products)⁶.

Primary Aluminium

- (20) With regard to primary aluminium, the Commission considered that there are three relevant product markets with respect to the level of purity, namely (i) low-purity aluminium (i.e. with an aluminium content below 99.5%), (ii) standard primary aluminium (i.e. with an aluminium purity of 99.5 % to 99.9%) and (iii) high-purity aluminium (i.e. with a purity of above 99.9%)⁷.
- (21) According to a previous Commission decision, standard primary aluminium may be further segmented into (i) standard ingots/T-bars, (ii) extrusion billets, (iii) rolling slabs, (iv) wire rod and (v) foundry alloys⁸.
- (22) The Parties submit that most primary aluminium producers are able to supply primary products under different forms, and therefore a single market for standard primary aluminium covering all forms should be considered.

⁵ Turnover calculated in accordance with Article 5 of the Merger Regulation.

⁶ IV/M.470, *Gencor / Shell*; IV/M.1003, *Alcoa / Inespal*; COMP/M.1693, *Alcoa / Reynolds*; COMP/M.2702, *Norsk Hydro / VAW*; COMP/M.4441, *EN+ / Glencore / Sual / UC Rusal*; COMP/M.4827, *Rio Tinto / Alcan*.

⁷ COMP/M.4441, *EN+ / Glencore / Sual / UC Rusal*.

⁸ COMP/M.4441, *EN+ / Glencore / Sual / UC Rusal*.

- (23) The question whether the various forms of standard primary aluminium mentioned above constitute separate markets can be left open, since the proposed transaction does not give rise to competition concerns under any alternative product market definition.
- (24) As to the geographic scope, it should be noted that primary aluminium is a commodity traded and transported at a worldwide level and quoted on a global exchange, the London Metal Exchange (hereafter “LME”)⁹.
- (25) In view of the above, and in line with the previous Commission decision making practice¹⁰, the various markets for primary aluminium are considered as worldwide in scope.

Secondary Aluminium

- (26) In past decisions, the Commission indicated that secondary aluminium is a distinct market from primary aluminium¹¹.
- (27) The Parties submit that this market definition might no longer be relevant since secondary aluminium products compete with primary products to a significant extent and in several end-use applications, such as cast alloys for various die-cast automotive applications.
- (28) The Parties therefore submit that secondary aluminium and primary aluminium are parts of the same relevant market.
- (29) However, for the purpose of the transaction the precise product market definition may be left open since only TRIMET produces secondary aluminium products and the transaction would not give rise to any competition concerns on either basis.
- (30) As to the geographic scope and in line with its previous Commission decision making practice¹² the various markets for secondary aluminium are considered as worldwide in scope.

Retail Supply of Electricity

- (31) EDF is active in the retail supply of electricity on all levels including the supply of electricity to large industrial and commercial customers such as the target.
- (32) In its previous decision making practice, the Commission identified two different product markets for retail supply of electricity namely (i) the market for retail

⁹ The Commission also noted that, despite the existence in the EEA of import duties and regional premiums which have to be added to the LME price, the import volumes of primary aluminium are significant.

¹⁰ IV/M.470, *Gencor / Shell*; IV/M.1003, *Alcoa / Inespal*; COMP/M.1693, *Alcoa / Reynolds*; COMP/M.2702, *Norsk Hydro / VAW*; COMP/M.4441, *EN+ / Glencore / Sual / UC Rusal*; COMP/M.4827, *Rio Tinto / Alcan*.

¹¹ IV/M.470, *Gencor / Shell*; IV/M.1003, *Alcoa / Inespal*; COMP/M.1693, *Alcoa / Reynolds*; COMP/M.2702, *Norsk Hydro / VAW*; COMP/M.4441, *EN+ / Glencore / Sual / UC Rusal*; COMP/M.4827, *Rio Tinto / Alcan*.

¹² IV/M.470, *Gencor / Shell*; IV/M.1003, *Alcoa / Inespal*; COMP/M.1693, *Alcoa / Reynolds*; COMP/M.2702, *Norsk Hydro / VAW*; COMP/M.4441, *EN+ / Glencore / Sual / UC Rusal*; COMP/M.4827, *Rio Tinto / Alcan*.

supply of electricity to large industrial and commercial customers that are connected to the high and medium voltage grid and (ii) the market for retail supply of electricity to household and smaller industrial and commercial customers that are connected to the low voltage grid¹³.

- (33) The Commission generally defined the markets for retail supply of electricity as being national in scope¹⁴.
- (34) In any case, since the transaction does not raise any competition concerns with regard to this market, the market definition can be left open.

5.2. Competitive Assessment

No Horizontally Affected Markets

- (35) TRIMET is active both on the market for primary and for secondary aluminium¹⁵, while its presence on the downstream market is negligible¹⁶.
- (36) NewCo is only active on the market for production of primary aluminium, which it produces in its two production sites in France.
- (37) The present transaction does not give rise to any horizontally affected market since, regardless of the precise product market definition of worldwide markets for primary and secondary aluminium production, market shares for TRIMET and NewCo, both separately and combined, are below 15%.
- (38) The Commission therefore considers that the concentration does not lead to serious doubts as to its compatibility with the internal market as a result of horizontal effects on the worldwide markets (and submarkets) for primary and secondary aluminium.

Vertically Affected Markets

- (39) The proposed transaction gives rise to a vertical relationship between EDF's activities in the supply of electricity to large industrial customers and NewCo's activities the downstream markets for the production of primary aluminium.

Input foreclosure to the detriment of other aluminium producers

- (40) The Commission assessed whether the transaction leads to a situation where EDF would foreclose other aluminium producers.

¹³ COMP/M.5979 *KGHM / Tauron Wytwarzanie / JV*; COMP/M.6225 – *Molaris/Commerz Real/RWE/Amprion*; COMP/M.5827 – *Elia/IFM/50Hertz*; COMP/M.5467 – *RWE/Essent*.

¹⁴ COMP/M.6225 – *Molaris/Commerz Real/RWE/Amprion*; COMP/M.5827 – *Elia/IFM/50Hertz*; COMP/M.5467 – *RWE/Essent*; COMP/M.5512 *Electrabel / E.on*; COMP/M.5224 *EDF / British Energy*; COMP/M.4180 *Gaz de France / Suez*; COMP/M.3696 *E.ON / MOL*.

¹⁵ TRIMET also trades and provides approximately [...] tonnes/year of electrolytic copper cathodes. However, this business is unrelated to the aluminium business since the copper products traded are in no way complementary to aluminium. The supply of electrolytic copper cathodes is therefore not further discussed in the present assessment.

¹⁶ Trimet only finishes certain quantities of die-cast aluminium products in majority cast by other parties. However, these sales represent less than [0-5%] of the worldwide sales.

- (41) In assessing the likelihood of input foreclosure, the Commission examines, first, whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs, second, whether it would have the incentive to do so, and third, whether a foreclosure strategy would have a significant detrimental effect on competition downstream¹⁷.
- (42) A merged entity has the ability to foreclose downstream competitors, if it can negatively affect the overall availability of inputs for the downstream market¹⁸.
- (43) According to the Parties, EDF will not have an ability to foreclose other aluminium producers as the main aluminium competitors of NewCo/Trimet are not located in France and other suppliers of electricity like GDF/SUEZ and E.ON are active on the French retail market and could supply producers of aluminium in France.
- (44) In this respect the Parties note that the legal situation in France gives EDF's competitors regulated access to electricity from EDF's nuclear power plants. Pursuant to the "NOME" Law, which entered into force in July 2011, EDF's competitors can source, until 31 December 2025, nuclear-generated electricity from EDF at a cost-oriented price set by the French Government and by the French Energy Regulatory Commission as of December 2013 ("ARENH regime")¹⁹.
- (45) Therefore, the "NOME" Law allows any competitor wishing to supply retail customers in France to have access, under regulated conditions, to the electricity produced by EDF's nuclear power plants, enabling them to cover up to 80% in average of their customers' needs.
- (46) The Commission notes that electricity is a key input for the production of primary aluminium. Moreover, as regards France, EDF held a significant market share of [40-50%] in the market for the supply of electricity to large industrial customers in 2012.
- (47) However, the Commission considers that EDF will not have an ability to foreclose electricity input for competitors on the aluminium markets.
- (48) First, EDF's strong position on the French market for electricity generation is mitigated by its legal obligation to grant competitors regulated access to its nuclear generated electricity under the ARENH regime.
- (49) Second, the production sites of NewCo's and Trimet's main competitors as for example Rusal (Russia), Chalco (China), Alcoa (USA) or Rio Tinto Alcan (Canada) are not located in France. They are located in other areas of the world where EDF does not have a strong market position or does not supply electricity on the retail market for large industrial customers.
- (50) Third, competitors of EDF such as GDF/Suez (ca. [10-20%]), E.ON (ca. [10-20%]) as well as HEW, ENEL and ALPIQ (each ca. 5-10%) would be able to supply in France competitors active on the aluminium markets.

¹⁷ Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C265, 18.10.2008, p. 6), (hereafter: "Non-Horizontal Merger Guidelines"), para. 32.

¹⁸ Non-Horizontal Merger Guidelines, para. 36.

¹⁹ SA.21918 (C 17/2007) Tarifs réglementés de l'électricité en France (12.6.2012).

- (51) The Parties would also need to have an incentive to foreclose which depends on the expected profitability of such a strategy²⁰.
- (52) In this respect the Parties note that EDF will hold only have a limited shareholding of 35% in NewCo, which in turn only represented around [0-5%] of the market for primary aluminium in 2012.
- (53) In view of the above the Commission considers it unlikely that EDF would forego profits from supplying potential downstream competitors of NewCo in order to hypothetically increase the latter's sales in the market for primary aluminium products.
- (54) Finally, as regards the overall impact of the transaction on competition, a concentration will normally not raise competition concerns if there remain sufficient credible downstream competitors.²¹
- (55) In that regard the Parties note that the merged entity accounts for less than [0-5%] of the worldwide market for primary aluminium. There remain significant market players, which all had significantly higher market shares than the merged entity in 2012, such as Rusal (ca. [5-10%]), Chalco (ca. [5-10%]), Alcoa (ca. [5-10%]) or Rio Tinto Alcan (ca. [5-10%]).
- (56) In view of the above, the Commission considers it unlikely that any foreclosure efforts by EDF would result in a significant effect on competition on the market for primary aluminium.
- (57) The Commission notes that in the course of the market investigation, none of the competing aluminium producers raised any concerns as regards to the possibility of EDF being able to negatively impact their electricity supplies.
- (58) In view of the above, the Commission considers that the concentration does not raise serious doubts as to its compatibility with the internal market as a result of input foreclosure.

Customer foreclosure to the detriment of other electricity suppliers

- (59) The Commission has assessed whether the transaction leads to customer foreclosure to the detriment of other electricity suppliers on the upstream market for retail supply of electricity to large industrial and commercial customers in France.
- (60) Customer foreclosure may arise where a supplier integrates with an important customer on the downstream market, thus foreclosing upstream rival's access to this customer base²². A customer may be considered as important, if he has a significant degree of market power in the downstream market²³.
- (61) In that regard the Parties note that NewCo only accounts for less than [0-5%] in volume of the market for the supply of electricity to the sites of large industrial and

²⁰ Non-Horizontal Merger Guidelines, para. 40.

²¹ Non-Horizontal Merger Guidelines, para. 50.

²² Non-Horizontal Merger Guidelines, para. 58

²³ Non-Horizontal Merger Guidelines, para. 61

commercial customers in France and less than [0-5%] of the downstream market of primary aluminium production.

- (62) Besides, the Parties submit that NewCo already procures almost all of its electricity from EDF²⁴. The transaction would therefore not significantly change the existing situation.
- (63) In view of the above, the Commission considers that the merged entity is not an important customer with a significant degree of market power.
- (64) In view of the above, the Commission considers that the concentration does not raise serious doubts as to its compatibility with the internal market as a result of customer foreclosure.

6. CONCLUSION

- (65) 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.
- (66) This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission
(Signed),
Joaquín ALMUNIA
Vice-President*

²⁴ EDF supplies electricity to NewCo's Saint-Jean-de-Maurienne site, which accounts for more than [90-100%] of NewCo's electricity consumption (approximately [...]), while the site in Castelsarrasin accounts for less than [0-5%] of NewCo's electricity consumption (approximately [...]).