

***Case No COMP/M.7138 - THYSSENKRUPP/ ACCIAI
SPECIALI TERNI/ OUTOKUMPU VDM***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 12/02/2014

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EUROPEAN COMMISSION

Brussels, 12.2.2014
C(2014) 1008 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.7138 - THYSSENKRUPP/ ACCIAI SPECIALI TERNI/
OUTOKUMPU VDM
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

- (1) On 8 January 2014, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004² by which the undertaking ThyssenKrupp AG ("TK", Germany) intends to acquire, within the meaning of Article 3(1)(b) of the Merger Regulation, control of Acciai Speciali Terni ("AST") and its affiliates as well as Outokumpu VDM ("VDM", and together "AST/VDM"), by way of the acquisition of shares (the "Transaction"). TK is also hereinafter referred to as the Notifying Party, whereas TK, AST and its affiliates, as well as VDM, are collectively referred to as "Parties".³

¹ OJ L 24, 29.1.2004, p. 1. 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 OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

³ Publication in the Official Journal of the European Union No C 10, 14.01.2014, p.6.

1. THE PARTIES

- (2) TK is active in the production and distribution of steel and other materials, as well as in elevators, plant technology, engineering and construction services, and components for the car, construction and engineering industry.
- (3) AST/VDM is active in (i) stainless steel production and (ii) distribution, as well as in (iii) the production of high performance alloys. AST/VDM comprises the divestment business from the *Outokumpu/Inoxum* transaction.⁴ It also includes the VDM business and steel service centres ("SSCs") in Barcelona (Spain) and Gebze (Turkey), as well as AST's tube-making business Tubificio di Terni.

2. THE TRANSACTION AND CONCENTRATION

- (4) The Transaction would entail the acquisition of sole control by TK over AST/VDM by way of purchase of shares. The Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

- (5) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (TK: EUR 38,559 million and AST/VDM: EUR [...] million). The aggregate Union-wide turnover of each of both of the undertakings concerned is more than EUR 250 million (TK: EUR [...] million and AST/VDM: EUR [...] million). Finally, none of the undertakings concerned achieves more than two-thirds of its aggregate Union-wide turnover within one and the same Member State. The proposed transaction therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

4. COMPETITIVE ASSESSMENT

- (6) The Transaction gives rise to horizontally affected markets in the distribution of stainless steel products.⁵ The Parties' activities in the distribution of stainless steel also give rise to vertically affected markets with respect to the production and supply of stainless steel flat products.⁶

⁴ See Commitments attached to the Commission decision in case COMP/M.6471 *Outokumpu/Inoxum*.

⁵ AST will be TK's only stainless steel production plant, and TK is currently not active in the production of high-performance alloys. There are therefore no horizontally affected markets in the production and supply of steel products.

⁶ For the sake of completeness, TK's distribution business also purchases minimal quantities of high-performance alloys ([...] tons in 2012/2013, compared to a market size of more than 100 thousand tons), and that TK's elevator business also purchases minimal quantities of stainless steel ([...] ktons in 2013, compared to a market size of more than 3 million tons). These links do not constitute a vertical relationship (see Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004, OJ C 366, 14.12.2013, p. 5, footnote 10) and will therefore not be discussed further in this decision.

4.1. Product market definition

4.1.1. Production and supply of stainless steel products

- (7) The Commission has consistently distinguished four broad categories of steel products: (i) carbon steel, (ii) stainless steel, (iii) highly alloyed steel, and (iv) electrical steel.⁷ The Commission has also consistently found in past cases that flat steel products form a separate product market from long steel products.⁸ In addition, two separate markets for flat stainless steel products have been identified: (i) hot rolled stainless steel products ("HR"), and (ii) cold rolled stainless steel products ("CR").
- (8) As regards HR, a potential segmentation between hot black band ("HBB") and hot white band ("HWB") has been considered, but the precise market definition was ultimately left open.⁹
- (9) As regards CR, the Commission concluded in *Outokumpu/Inoxum* that the relevant product market was the overall market for the production and supply of CR flat products, excluding precision strip.¹⁰

4.1.2. Distribution of stainless steel products

- (10) In previous cases, the Commission concluded that the distribution of stainless steel products should be considered a separate market from the production and direct (ex-mill) sales of stainless steel products.¹¹ The Notifying Party agrees with this distinction.
- (11) The Commission observes that this view is in line with the result of the market investigation. According to most customers and competitors of the Parties, the production and the distribution of stainless steel products are different businesses with different prices, business processes and models.¹²
- (12) The Commission has in its *Outokumpu/Inoxum* decision investigated three different distribution channels: (i) stainless steel services centres which distribute flat and long products, (ii) stockholding centres/stockists which distribute flat and long products and quarto plate (QP), (iii) oxycutting centres, which only distribute QP. Ultimately, the Commission left open the question of whether or not each distribution channel constituted a separate market.¹³

⁷ See case COMP/M.4137 – *Mittal/Arcelor*, para. 9; case COMP/M.6471 – *Outokumpu/Inoxum*, para. 116. There is no overlap between AST's production activities and the production activities of TK in carbon and electrical steel. These products, therefore, will not be discussed any further in this Decision.

⁸ See cases COMP/M.6471 – *Outokumpu / Inoxum*, paragraph 128, and COMP/M.4137 – *Mittal / Arcelor*, paragraph 17.

⁹ See case COMP/M.6471 – *Outokumpu/Inoxum*, para. 136.

¹⁰ See case COMP/M.6471 – *Outokumpu/Inoxum*, para. 209.

¹¹ See case COMP/M.6471 – *Outokumpu/Inoxum*, para. 214; case COMP/M.5211 – *Outokumpu/Sogepar*, para. 14.

¹² See replies to question 5 of the Commission's requests for information pursuant to Article 11 of the Merger Regulation to customers and competitors, sent on 9 January 2014.

¹³ See case COMP/M.6471 – *Outokumpu/Inoxum*, para. 215 to 231.

- (13) The Notifying Party is of the view that there is an overall market for the distribution of stainless steel products, which is however separate from the distribution of QP products.
- (14) The Commission notes that, on the basis of the results of the market investigation, it was not possible to conclude as to whether the distribution of stainless steel products through SSCs constitutes a separate market. Most customers and competitors of the Parties in distribution markets agreed with the distinction outlined in paragraph (12) above, on the basis that SSCs provide additional services to their customers¹⁴ and therefore require additional equipment compared to stockholding centres, and that the prices and delivery times also differ depending on the distribution channel.¹⁵ However, most customers and competitors also considered that SSCs and stockholding centres compete with each other as they partly serve the same demand, especially with respect to spot purchases of standard products.¹⁶
- (15) In any event, the product market definition for distribution markets may be left open as no competition concerns would arise under any plausible market definition.

4.2. Geographic market definition

- (16) In *Outokumpu/Inoxum*, the Commission concluded that the market for the production and supply of hot-rolled stainless steel flat products is at least EEA-wide.¹⁷ Regarding the market for the production and supply of cold-rolled stainless steel flat products, the Commission concluded in *Outokumpu/Inoxum* that the geographic scope of the market is EEA-wide.¹⁸
- (17) Regarding the distribution of stainless steel products, in line with the Commission's conclusion in *Outokumpu/Inoxum*, the Notifying Party submits that the geographic scope of the distribution markets for stainless steel flat products is either national or cross-border regional.¹⁹
- (18) Most customers and competitors of the Parties considered that the geographic scope of such markets is either national or cross-border regional in scope.²⁰ In particular, most

¹⁴ SSCs typically cut stainless steel flat products to the customers' desired length and width.

¹⁵ See replies to question 6 of the Commission's requests for information pursuant to Article 11 of the Merger Regulation to customers sent on 9 January 2014, and replies to questions 6 and 7 of the Commission's requests for information pursuant to Article 11 of the Merger Regulation to competitors sent on 9 January 2014.

¹⁶ See replies to question 7 of the Commission's requests for information pursuant to Article 11 of the Merger Regulation to customers sent on 9 January 2014, and replies to question 8 of the Commission's requests for information pursuant to Article 11 of the Merger Regulation to competitors sent on 9 January 2014.

¹⁷ See case COMP/M.6471 – *Outokumpu/Inoxum*, para. 238, 239 and 243. See also case COMP/M.5211 – *Outokumpu/SoGePar* of 25 June 2008.

¹⁸ See case COMP/M.6471 – *Outokumpu/Inoxum*, para. 246 and 260.

¹⁹ The potential regional geographic markets identified by the Commission were the Nordic countries, i.e. Denmark+Norway+Sweden+Finland, the Benelux countries and UK plus Ireland. The Commission however ultimately left the exact geographic market definition open. See case COMP/M.6471 – *Outokumpu/Inoxum*, para. 277.

²⁰ See replies to question 13 of the Commission's requests for information pursuant to Article 11 of the Merger Regulation to customers sent on 9 January 2014, and replies to question 14 of the Commission's requests for information pursuant to Article 11 of the Merger Regulation to competitors sent on 9 January 2014.

customers of the Parties at distribution level indicated that they source stainless steel either in the country where their facilities are located or in neighbouring countries, and that local knowledge is necessary in order to carry out stainless steel distribution activities.²¹

- (19) However, the precise geographic market definition for distribution markets may be left open as no competition concerns would arise under any plausible market definition.

4.3. Assessment

4.3.1. Distribution of Stainless Steel products

- (20) TK's and AST/VDM's activities overlap in the distribution of stainless steel products. The Transaction thus gives rise to a number of potentially affected markets at national and regional level, as summarized in the tables below.

Table 1: Distribution of all stainless steel products (market shares in volume, 2012)

	TK	AST SSCs	Combined
Austria	[20-30]%	[0-5]%	[20-30]%
France	[10-20]%	[10-20]%	[20-30]%
Germany	[20-30]%	[5-10]%	[30-40]%
Netherlands	[10-20]%	[5-10]%	[20-30]%
Benelux	[10-20]%	[5-10]%	[20-30]%

Table 2: Distribution of flat stainless steel products (market shares in volume, 2012)

	TK	AST SSCs	Combined
Austria	[10-20]%	[0-5]%	[20-30]%
France	[5-10]%	[10-20]%	[20-30]%
Germany	[20-30]%	[5-10]%	[30-40]%

Table 3: Distribution of flat stainless steel products through SSCs (market shares in volume, 2012)

	TK	AST SSCs	Combined
Czech Republic	[10-20]%	[5-10]%	[20-30]%
France	[0-5]%	[20-30]%	[20-30]%
Germany	[20-30]%	[10-20]%	[40-50]%
Netherlands	[5-10]%	[10-20]%	[20-30]%

- (21) Apart from Germany, the Parties' combined market shares remain at or below [20-30]% regardless of the market definition. In all Member States, the Parties will continue to face competition from the other three vertically integrated stainless steel producers

²¹ See replies to questions 9 and 11 of the Commission's requests for information pursuant to Article 11 of the Merger Regulation to customers, sent on 9 January 2014.

Outokumpu, Aperam and Acerinox, as well as from a number of national or regional independent distributors.²²

- (22) Regarding the German stainless steel distribution markets, the Parties' activities overlap only in distribution through SSCs. In the narrowest possible market definition – i.e. the distribution of flat stainless steel products through SSCs – the main competitors of the Parties are Outokumpu ([10-20]%), Aperam ([10-20]%), Acerinox ([10-20]%) and Norder Bandstahl ([5-10]%).
- (23) The Commission notes as a preliminary point that SSCs make up only one of the distribution channels for stainless steel flat products,²³ and that some customers have expressed some willingness to substitute purchases from SSCs with purchases from stockholding centres, while other customers source part of their requirements directly from stainless steel mills.²⁴
- (24) Most customers of the Parties indicated that they do not consider TK's distribution business and the AST SSCs as close competitors, in particular as regards Germany where Outokumpu and Aperam SSCs were considered closer competitors to AST than TK.²⁵
- (25) On the basis of the market investigation, the Commission has noticed that barriers to entry and to expansion are overall moderate in the stainless steel distribution markets,²⁶ in particular as regards Germany due to its central location in Europe.²⁷
- (26) Furthermore, most German customers have confirmed that it is possible for them to switch easily between different distributors of stainless steel flat products within a short period of time.²⁸

²² According to the Notifying Party, Outokumpu would enjoy a [10-20]% market share, Acerinox [10-20%] market shares and Aperam [10-20%] market shares in potential affected markets in Austria; Outokumpu would enjoy [10-20%] market shares, Acerinox [[10-20] – [20-30] %] market shares and Aperam [[20-30] – [20-30]%] market shares in potential affected markets in France; Outokumpu would enjoy [[10-20] – [30-40]%] market shares, MCB [[10-20] – [30-40]%), Roba [[5-10] – [10-20]%) and Aperam [[10-20] – [10-20]%) in potential affected markets in the Netherlands; in the Czech Republic, Outokumpu would enjoy a [20-30]% market share, Acerinox [5-10]% and Aperam [30-40]% in a potentially affected market for SSCs. Finally, in a potential market for stainless steel distribution in the Benelux, Outokumpu would enjoy a [10-20]% market share, Aperam [10-20]%, MCB [20-30]%, Sadel [5-10]% and Roba [5-10]%.

²³ As regards Germany, the Notifying Party estimates that the distribution of stainless steel flat products through SSCs accounts for [50-60]% of the total distribution of stainless steel flat products, and [40-50]% of the total distribution of stainless steel products.

²⁴ See replies to questions 5, 7, 14 and 15 of the Commission's requests for information pursuant to Article 11 of the Merger Regulation to customers, sent on 9 January 2014.

²⁵ See replies to question 20 of the Commission's requests for information pursuant to Article 11 of the Merger Regulation to customers, sent on 9 January 2014. This was also confirmed by a majority of German customers.

²⁶ See replies to question 27 of the Commission's requests for information pursuant to Article 11 of the Merger Regulation to customers, sent on 9 January 2014. The Parties submit that the opening of a new steel service centre in a different geographic area in the EEA would require around [...] and a EUR [...] investment.

²⁷ The Notifying Party submits in this respect that Asian distributors are mainly present in Austria, Germany, France, Italy, Spain and Poland.

²⁸ See replies to question 25 of the Commission's requests for information pursuant to Article 11 of the Merger Regulation to customers, sent on 9 January 2014.

- (27) Overall, it appears that the Parties will, also after the Transaction, face sufficient competition from a number of established players in all potentially affected markets for the distribution of stainless steel products. No substantiated concerns were raised during the Commission's market investigation as regards stainless steel distribution markets.
- (28) Therefore, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the markets for the distribution of stainless steel.

4.3.2. *Vertical relationship between stainless steel production and stainless steel distribution*

- (29) The Transaction will also give rise to a vertical relationship between AST's stainless steel production activities and the distribution activities of the Parties in Germany only.

4.3.2.1. Potential input foreclosure

- (30) According to the Parties, AST/VDM will be the smallest of the four integrated suppliers of CR (respectively HR) stainless steel flat products in the EEA, with a market share estimated at approx. [10-20]% (respectively [5-10]%) in 2012. It thus appears unlikely that AST would have any market power in the upstream markets for the production and supply of stainless steel flat products in the EEA.
- (31) Furthermore, the other three European stainless steel suppliers, as well as a number of non-EEA competitors,²⁹ control their own network of distributors and SSCs in the EEA. These competitors therefore have the ability to self-supply stainless steel flat products.
- (32) The Commission also found in the *Outokumpu/Inoxum* case that distributors who are not vertically integrated upstream have access to and purchase both from AST/VDM's EEA-based rivals and from third-country producers.³⁰ Thus, independent distributors have alternative sources of supply for HR and CR products other than AST/VDM.
- (33) During the market investigation, most other stainless steel distributors were of the view that the Parties would not have the ability and incentive to stop supplying competing distributors, or to increase prices for these distributors.³¹
- (34) In light of the above, the Commission concludes that input foreclosure is unlikely as a result of the Transaction.

4.3.2.2. Potential customer foreclosure

- (35) For customer foreclosure to be a concern, TK would need to have the ability and incentive to foreclose upstream HR and CR stainless steel producers by restricting access to an important source of demand for their products.

²⁹ E.g. Jindal Stainless, Baosteel and Posco.

³⁰ The Commission concluded that "Approximately [90-100]% of imports in the EEA [which account for approx. 20% of the EEA CR market] are sold to independent distributors, who in turn sell to other distributors or final customers." See case COMP/M.6471 – *Outokumpu/Inoxum*, para. 528.

³¹ See replies to question 23 of the Commission's requests for information pursuant to Article 11 of the Merger Regulation to customers, sent on 9 January 2014.

- (36) First, as noted in paragraph (28) above, it appears that the combined entity will not acquire any significant market power in any of the potential German markets for the distribution of stainless steel products.
- (37) Second, the other EEA stainless steel suppliers are vertically integrated into distribution across the EEA and would be able to distribute their production through their own distribution network. In Germany, as noted in paragraph (22) above, Outokumpu, Aperam and Acerinox all enjoy substantial market presence, in particular through SSCs.
- (38) Third, as noted above, it appears that barriers to entry and to expansion are moderate in EEA distribution markets, and a number of non-EEA stainless steel suppliers have opened new distribution facilities in the last three years, such as Posco.³² As noted in paragraph (25) above, barriers to entry and to expansion in the potential German distribution markets appear to be further limited by Germany's central geographic position in Europe.
- (39) Finally, no substantiated concerns were raised by customers or competitors of the Parties during the Commission's market investigation as regards the vertical link between the markets for the production and direct sale of stainless steel flat products and German markets for the distribution of stainless steel products.
- (40) The merger is therefore unlikely to give TK the ability to foreclose upstream rival stainless steel suppliers.

4.3.2.3. Conclusion

- (41) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the vertical link between the markets for the production and direct sale of stainless steel flat products and German markets for the distribution of stainless steel products.

5. CONCLUSION

- (42) 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*

³² The Parties submit in this respect that the number of Asian distribution centers has nearly doubled in the five year period between 2005 and 2010.