

***Case No IV/M.723 -  
NORSK ALCOA /  
ELKEM***

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 006/08/1997

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 06.08.1997

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

**Subject: Case No. IV/M.723 - NORSK ALCOA/ELKEM**  
**Notification of 04.07.1997 pursuant to Article 4 of Council Regulation**  
**No 4064/89**

- 1 On July 4, 1997 Norsk Alcoa A/S ("Alcoa") and Elkem ASA ("Elkem") notified the Commission of their intention to acquire joint control of Elkem Aluminium ANS ("EA").
- 2 After examination of the notification the Commission has concluded that the notified operation falls within the scope of application of Council Regulation N 4064/89 and does not raise serious doubts as to its compatibility with the common market or with the functioning of the EEA Agreement.

I. **THE PARTIES**

- 3 Norsk Alcoa is a wholly-owned subsidiary of the Aluminum Company of America, the largest producer of primary aluminium in the world. Alcoa is a vertically

integrated company with world-wide activities including the mining of bauxite, alumina refining, smelting alumina into primary aluminium, fabricating flat rolled aluminium and extruded aluminium. In addition, Alcoa is active in the collection and recycling of used aluminium beverage cans. Alcoa has operations in many parts of the world, including North and South America, Australia, Japan, China and the EU.

- 4 Elkem is a Norwegian-based company, active in the production of ferro-alloys, silicon-metal, micro-silica and carbon products. It is also active in the production of primary aluminium through its 50% participation in EA. Elkem's main operations are in Norway and North America.
- 5 EA is a Norwegian partnership active in the production of primary aluminium, through its two smelters located in Norway and producing [...] metric tons per year of primary aluminium.

## **II. THE OPERATION**

- 6 The notified concentration involves the change of control over EA, an already existing joint venture which was established by a partnership agreement between Elkem (50%) and Norsk Alcoa (50%) in 1963. Over these years, Alcoa's role in the partnership has been that of a passive financial investor, while Elkem, acting as Managing Partner, has exercised sole control over EA, in particular through its rights unilaterally to approve EA's budget and operating plans and to take other strategic decisions.
- 7 However, as conditions in the aluminium industry have changed over the past few years, in particular as a result of the breakdown of the Soviet Union, the rapid development of aluminium demand and the on-going liberalisation of international trade of primary aluminium, Alcoa wished to increase its profile in Europe and Elkem to modernise EA's operations and to take advantage of new opportunities in the aluminium industry. This has led the parties to change their partnership agreement in order to give Alcoa joint control over EA and therefore more impetus for participation in costly modernisation projects. This was made possible through an amendment and restatement of the EA partnership agreement, which the parties agreed on on July 3, 1997.

## **III. CONCENTRATION**

### Joint control

- 8 EA is governed by a Partnership Meeting, the supreme decision-making body of a partnership under Norwegian law, which makes all the decisions concerning management and strategy and determines EA's overall policy and direction. It is comprised of six members, three appointed by each partner. The Partnership Meeting decides by majority vote, whereas the Chairman of the Meeting, who is appointed by the Managing Partner (i.e. Elkem) from among these six, may cast a tie-breaking vote. Furthermore, the Managing Partner, in the person of a General Manager, is

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<sup>1</sup> Deleted business secrets

responsible for the day-to-day operation of EA. He oversees such matters as the operation of the smelters, the preparation each year of an annual budget and a long-range operating plan, the maintenance of adequate insurance on EA's assets, the hiring and managing of personnel and the implementation of decisions of the partners. However, Articles IV and V of the Agreement give Alcoa veto rights over all decisions concerning the budget, the operating plan, the consummation of long-term contracts of co-operation and the making of capacity expansions, major investments and certain major replacements of assets. Therefore, while maintaining the 50:50 ownership ratio and Elkem as Managing Partner, the amended Partnership Agreement would give Norsk Alcoa veto rights over the strategic commercial behavior of EA. Given the particular nature of a highly capital-intensive industry such as the primary aluminium industry, the acquisition of these veto rights would give Alcoa a decisive influence over all of EA's key business decisions and therefore joint control over EA.

#### Full-function joint venture operating on a lasting basis

- 9 EA will continue to conduct its primary aluminium activities based on its own financial resources, personnel and assets, including two smelters in Lista and Mosjoen, in Norway. Moreover, the deadlock resolution procedure, provided for in the amended Partnership Agreement, in case the partners reach a deadlock for two consecutive years over the budget, the operating plan, long-term contracts of co-operation or capacity expansions, would not prevent EA from being considered as operating on a lasting basis. EA will conduct its activities as a joint venture performing on a lasting basis all the functions of an autonomous economic entity.

#### No possibility of coordination of the competitive behavior of Elkem and Alcoa

- 10 Elkem has no activities in the aluminium market other than through its partnership interest in EA and a 10% interest in A-CMI, a joint-venture among Alcoa, CMI International and Elkem in the field of cast aluminium automobile parts. Elkem's interest in A-CMI does not give it any rights beyond those attached to a minority partnership interest under Norwegian law, and in particular does not give it any right to participate in the day-to-day management of A-CMI.
- 11 While Alcoa will remain active in the aluminium market and expects to co-ordinate its competitive behavior with that of EA, this co-ordination will not produce or reinforce any co-ordination of the competitive behavior of the parent undertakings that remain independent in the market. Therefore, there is no possibility of co-ordination of the competitive behavior of the parent companies.
- 12 For the reasons outlined above, EA is a concentrative joint venture within the meaning of Article 3(2) of the Merger Regulation.

#### **IV. COMMUNITY DIMENSION**

- 13 The combined aggregate world-wide turnover of the undertakings concerned exceeds 5.000 million ECU. The aggregate Community wide turnover of Alcoa and of Elkem each exceed 250 million ECU. They do not achieve more than two-thirds of their

turnover in one and the same Member State. The operation has therefore a Community dimension.

## **V. THE RELEVANT MARKETS**

### **A. Relevant Product Markets**

- 14 EA is active in the primary aluminium sector. The relevant product market is primary aluminium.

Aluminium is used in a wide range of applications in sectors including transportation, building and construction, containers and packaging, and the electrical industry. In the transportation sector aluminium has traditionally been used in the aerospace industry but is also being used in other areas, including automobiles, ships and rail cars. In the construction sector, aluminium is used in applications including cladding, roofing, window and door frames. In containers and packaging, aluminium is used in a range of applications including beverage cans, barrels and kegs, tubes and bottles, aluminium foil containers, caps and closures, and aerosol cans.

- 15 Primary aluminium is produced by smelting alumina, which is obtained by refining bauxite. The smelting process converts alumina into its two elemental components, aluminium and oxygen. The separation of aluminium from oxygen is accomplished by high-temperature electrolysis. Aluminium can be shipped in its molten form in insulated ladles directly to a user's plant, or it can be cast into ingots (rectangular), rolling slab (rectangular), or billets (circular) of varying sizes and shapes, either in pure form or alloyed with other metals (e.g. manganese, magnesium, copper, zinc or iron).

### **B. Geographic Reference Market**

- 16 Primary aluminium possesses all the features of world market, both from a supply and a demand perspective. Aluminium ingot is transported and traded throughout the world, whereas its pricing is substantially uniform, being linked to prices resulting from daily quotation at the London Metals Exchange. Following the dissolution of the Soviet Union, the CIS has become a major exporter of primary aluminium, further enhancing the world-wide character of the market. The EEA is a net importer of primary aluminium.

## **VI. ASSESSMENT**

- 17 Alcoa is the world's largest primary aluminium producer, with consolidated production capacity of approximately [...] metric tons in 15 plants located throughout the world and consolidated production in 1996 of approximately [...] metric tons. Other than its 50% interest in EA's two smelters, Alcoa's only interest in

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<sup>2</sup> Deleted business secrets

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primary aluminium plants in the EEA are the two smelters acquired from Alumix (case IV/M.675), which have a combined potroom capacity of [...] tons per year.

- 18 Although Alcoa is the world's largest primary aluminium producer, it accounts for only [...] of world capacity.
- 19 The competitors on this market include large integrated aluminium producers such as Alcan [...] , Reynolds [...] , Gencor/Billiton [...] , Pechiney [...] , Alumax [...] , Hydro Aluminium [...] , Kaiser [...] , Comalco [...] and VAW [...] .
- 20 Elkem is a producer of ferro-alloys and various silica products, while its activities in the primary aluminium market are limited to its 50% partnership interest in EA. Elkem's share of EA accounts for less than [...] of world capacity. Moreover, Elkem is not active in any upstream, downstream or horizontal neighboring markets.
- 21 The notified transaction will not lead to any horizontal overlap and will not create or strengthen a dominant position on this market.

## **VII. CONCLUSION**

- 22 For the reasons outlined above, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission,

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<sup>4</sup> Deleted business secrets

<sup>5</sup> Deleted business secrets - Between 5% and 15%

<sup>6</sup> Deleted business secrets - Between 5% and 15%

<sup>7</sup> Deleted business secrets - Between 0% and 10%

<sup>8</sup> Deleted business secrets - Between 0% and 10%

<sup>9</sup> Deleted business secrets - Between 0% and 10%

<sup>10</sup> Deleted business secrets - Between 0% and 10%

<sup>11</sup> Deleted business secrets - Between 0% and 10%

<sup>12</sup> Deleted business secrets - Between 0% and 10%

<sup>13</sup> Deleted business secrets - Between 0% and 10%

<sup>14</sup> Deleted business secrets - Between 0% and 10%

<sup>15</sup> Deleted business secrets - Between 0% and 10%