

*Case No IV/M.760 -
Klöckner / ARUS*

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

Article 6(1)(b) NON-OPPOSITION
Date: 20/08/1996

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 04.02.1997

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

Subject : Case no IV/M.760 - Klöckner/ARUS

Notification of 18.07.1996 pursuant to Article 4 of Council Regulation No 4064/89

1. On 18 July 1996 Klöckner Stahl und Metallhandel GmbH (KSM) notified a proposed concentration by which KSM will acquire sole control of ARUS Distribution Industrielle S.A. (ARUS), by the purchase of shares representing 62% of ARUS capital.
2. The operation was notified to the Commission pursuant to Article 66 of the ECSC Treaty and Article 4 of Council Regulation (EEC) No. 4064/89. This decision is only concerned with those products which fall within the jurisdiction of the EC Treaty, a separate decision will deal with the ECSC aspects of the proposed operation.
3. After examination of the notification the Commission has concluded that the proposed operation falls within the scope of Council Regulation No 4064/89 and does not give rise to serious doubts as to its compatibility with the common market and the EEA Agreement.

I. The Parties

4. KSM is a German limited company which is active in the stockholding and distribution of steel products. KSM is a wholly owned subsidiary of Klöckner & Co. AG which is indirectly wholly owned by the German industrial corporation VIAG A.G. (VIAG). The VIAG group is active in several fields, including energy, aluminium, chemistry, glass products, packaging and trade services. Within VIAG, all stockholding activities for steel products are concentrated in KSM and its subsidiaries. KSM also distributes aluminium and other non-ferrous metals.
5. ARUS is a French company active in the stockholding and retail distribution of steel products in France and the UK. ARUS also stocks and distributes so-called FIB-products ("Fournitures pour l'industrie et le bâtiment"), which comprise inter alia equipment for industry, ironmongery, non-ferrous metals, heating and sanitary equipment. ARUS was founded in December 1993 when Arbed S.A., Paris (ARBED) and Usinor Sacilor S.A., Luxembourg (USINOR) merged their stockholding and distribution businesses for steel products, Hardy-Tortuaux S.A. and Nozal S.A.

II. The Operation

6. The proposed operation consists of the acquisition by KSM of 62% of ARUS shares, 31% from each ARBED and USINOR. ARBED and USINOR will retain 9.71% and 9.55% of ARUS shares respectively. The remaining 18.74% of the shares are widely dispersed and quoted on the Paris stock exchange. Given that ARBED and USINOR will have no veto rights which go beyond the rights accorded to minority shareholders under French law and there are no long term supply contracts between ARUS and ARBED and USINOR, the acquisition of 62% of the shares will give KSM sole control of ARUS.

III. Community Dimension

7. The worldwide turnover of the undertakings concerned amounts to more than 5.000 million Ecus. Community-wide turnover of each of KSM and ARUS exceeds 250 million Ecus. The undertakings involved do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The operation thus has a Community dimension.

IV. Compatibility with the Common Market

The Relevant Markets

Product Markets

8. Arus is engaged in the distribution of steel and FIB products while KSM is involved in the distribution of steel and non-ferrous metals. The distribution of steel can be separated from the distribution of FIB products and non-ferrous metals by the scale of the distribution operation, the uses to which the products are put and the value of the products. As there is no overlap for FIB products or non-ferrous metals no competition questions will arise in respect of these products.
9. Its steel distribution operations fall into three classes, steelstockholding, steel service centres and "Streckengeschaft". Stockholding consists of holding a wide variety of steel products at convenient locations to supply the needs, mainly but not exclusively of small and medium sized clients, with comparatively small quantities of steel that are not large enough to warrant dealing directly with the steel producers. Furthermore stockists have steel available for direct delivery and can therefore provide a service not available from steel producers. Steel service centres are a recent development. They purchase strip mill products from the steel producers and slit and cut the material to customers requirements. These customers include, major consumers (such as the automobile and white goods manufacturers), other stockholders and customers of all sizes. "Streckengeschaft" involves the customer placing an order with the stockholder but the steel is delivered by the steel producer. These three activities constitute "steel distribution".
10. Steel distribution can be differentiated from the production and direct sale of steel products by the diversity of its customers, the smaller size of its orders, its ability to respond rapidly to customer requirements (delivery times from steel mills are usually measured in weeks if not months, while stockholders work in hours or days), the local nature of its business and the large number of companies involved in the business.
11. Although many steel producers have wholly or partially owned steel distribution operations there is a strong independent sector consisting of a large number of companies of varying size and financial strength varying from small family companies with one small depot to subsidiaries of large industrial companies such as VIAG.
12. As far the actual operation is concerned there is no difference between the distribution of ECSC and non-ECSC steel products. This decision deals only with the non-ECSC products, tubes, cut and bent concrete reinforcing bars, hollow sections and others. It is not necessary to determine whether separate distribution markets exist for each product category because in all the alternative markets considered effective competition would not be significantly impede in the EEA or any substantial part of it.
13. As VIAG has sole control and no steel production activities no questions relating to vertical integration arise from the proposed operation.

Geographic Market

14. The value added by steel distribution operations is comparatively low so that transport costs are an important constraint on the ability of a distribution operation to compete over long distances. The actual area covered by a given depot or service centre will depend on a number of factors including, the value of the material handled, the value added by the operation and the location of competitors.
15. Normally the activities of steel distributors are confined to an individual member state and cross border transactions by steel stockholders and service centres are very limited. In the present case only about 1% of ARUS's sales were made to countries in which it did not operate. While the sales from KSM's distribution subsidiaries outside the United Kingdom and France were less than 1% and 8% respectively of KSM's total sales in those countries.
16. It appears that the relevant geographic market is national. However it is not necessary to determine the relevant geographic market in more detail because in all the alternative geographic markets considered effective competition would not be significantly impeded in the EEA or any substantial part of it.

Analysis

17. ARUS has its principal operations in France and in the United Kingdom. It has very limited sales in Germany and negligible sales in Belgium. KSM operates in these four countries as well as in a number of other European states. In Germany the combination of ARUS and KSM will not give rise to a dominant position. ARUS's sales are less than 1% of those of KSM and will not add significantly to overall market share of about [...] ⁽¹⁾. In Belgium ARUS sold only 275 tonnes in 1995, less than 0.02% of Belgian stockholder sales. The market position in both Germany and Belgium will be virtually unchanged by the proposed operation.
18. In the United Kingdom the combined market share of ARUS and KSM was less than [...] ⁽¹⁾ for all the various categories of non-ECSC steel products. KSM has only a marginal presence for these products in the UK. The operation will not significantly change the market situation for non-ECSC steel products in the UK.
19. In France the combined share of the steel (all products together) stockholding market is [...] ⁽²⁾ on the basis of the 1995 figures. This is made up of ARUS [...] ⁽²⁾ and KMS [...] ⁽³⁾. The stockholding market in France is highly competitive with approximately 700 stockholders.

⁽¹⁾ Business secret - between 0 and 10%.

⁽²⁾ Business secret - between 15 and 25%

⁽³⁾ Business secret - less than 5%

20. The table below gives the market shares in 1995 for the parties.

EC Products	ARUS %	KMS/VIAG %	Total %
Tubes	[...] ⁽⁴⁾	[...] ⁽⁵⁾	[...] ⁽⁴⁾
Reinforcing bars	[...] ⁽⁶⁾	[...] ⁽⁵⁾	[...] ⁽⁷⁾
Hollow sections	[...] ⁽⁸⁾	[...] ⁽⁹⁾	[...] ⁽⁷⁾

21. For tubes and reinforcing bars the additional market share arising from the combination of ARUS and KSM will not significantly change the market situation. In the market for hollow sections the combined ARUS/KSM entity will face strong competition from PUM and from Descours and Cabaud both of whom have market shares of over 20% and from direct sales by the manufacturers.
22. So far as non-steel products are concerned there are no product overlaps. KSM sells aluminium products in both United Kingdom and in France. These product is not handled by ARUS. On the other hand ARUS sells supplies for the manufacturing and construction industries which are not carried by KMS.

VI. Ancillary restraints

23. According to the Purchase Agreement, ARBED and USINOR agree, for a period of five years from the transfer date, to refrain in France and Great Britain from taking any participation in or setting up of a general steel stockholding company in France and the UK. This provision seems to be reasonable and necessary to the implementation of the concentration and is, therefore, ancillary within the meaning of the Merger Regulation.

⁽⁴⁾ Business secret - between 35 and 50%
⁽⁵⁾ Business secret - less than 5%
⁽⁶⁾ Business secret - between 30 and 40%
⁽⁷⁾ Business secret - between 35 and 45%
⁽⁸⁾ Business secret - between 25 and 35%
⁽⁹⁾ Business secret - between 5 and 15%

V. Conclusion

24. For the above reasons, 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 and is without prejudice to the ECSC aspects of the proposed operation..

For the Commission,