

*Case No IV/M.917 -
VALINOX / TIMET*

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

Article 6(1)(b) NON-OPPOSITION

Date: 12/06/1997

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.06.1997

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M.917 -Valinox/Timet

Notification of **06.05.1997** pursuant to Article 4 of Council Regulation N° 4064/89

1. On 6 May 1997 Titanium Metals Corporation of Denver, Colorado (Timet) and Groupe Vallourec SA of Boulogne-Billancourt (Vallourec), notified a proposed operation concerning the establishment of a joint venture for the manufacture of welded tubes in exotic materials, stainless steel, copper, cupro-nickel and titanium destined for the desalination, power generation and chemical process industries..
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation (EEC) No 4064/89 ("Merger Regulation") and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES

3. Vallourec is a French company the shares of which are quoted on the Paris Stock Exchange. At the time of the notification, Usinor Sacilor (Usinor) was the largest shareholder and controlled Vallourec with a 27.63% interest. Usinor has agreed to sell a controlling 21% interest to Mannesmannröhren-Werke AG. This operation was notified to the Commission on 25 April 1997 and a 6.1.b decision was taken on 3 June 1997. For the purposes of jurisdiction Vallourec was controlled by Usinor Sacilor.

¹ OJ No L 395, 30.12.1989, corrected version: OJ L 257, 21.09.1990, p. 13.

4. Vallourec's activities consist of the manufacture and processing of pipes, tubes and related products through its Valtubes subsidiary as well as of the manufacture and processing of other steel materials through its Sopretac subsidiary. Its Valinox subsidiary was established as a specialist manufacturer of high quality stainless steel, cupro-nickel and titanium tubes. The Vallourec group of companies had a total world wide turnover of ECU 1,168 million in 1995, thereof ECU 901 million (77.18%) were generated within the Community. Vallourec did not generate more than two-thirds of its aggregate Community-wide turnover in one of the Member States. The turnover of Usinor in 1995 was ECU 12,019 million.
5. In the field of production of tubes and tubular products Vallourec at present owns 100% each of Valtubes and Sopretac. The most important subsidiaries of Valtubes are Vallourec Industries (100%), Valti (100%), Vallourec Précision Étirage (100%), Vallourec Précision Soudage (100%), Valinox Welded (95%), DMV Stainless BV of The Netherlands (33.33%), Vallourec Oil & Gas (100%), International Drill Pipe Assembly SA (51%), Tubular Industries Scotland Ltd. (100%) and Valmont (100%). Besides that Vallourec holds a 10.01% interest in the French tubes distributor Trouvay Cauvin and a 12.34% interest in Pouchard, a French distributor and manufacturer of precision tubes.
6. Valinox Welded, the subsidiary involved in the proposed transaction has a manufacturing operation at les Launes in France and a 51% share in Valinox Asia which in turn owns 60% of a Chinese joint venture making low volumes of welded tubes.
7. Timet is a vertically integrated titanium producer, manufacturing among other products welded tube and pipe. It is controlled by Tremont Corporation (Tremont), a public company quoted on the New York and Pacific stock exchanges which is itself controlled by the Contran Corporation. The question of control is discussed in more detail below.
8. Until February 1996 Timet had two shareholders, Tremont Corporation with 75% and Union Titanium Sponge Corporation (UTSC), a consortium of Japanese companies with interests in the metals industry with 25%. In February 1996 Timet acquired IMI Titanium for shares (that is it issued additional Timet shares to IMI, IMI Titanium's owner), at completion of this transaction the share holdings were Tremont 46%, IMI 38% and UTSC 16%. In June 1996 there was a public offering of Timet shares and its current shareholders are Tremont (30%), UTSC(10%), IMI (6%) and the general public (54%). Only one of the other shareholders has a holding of more than 5%, a financial institution with 5.7%. Tremont and UTSC have options to purchase 4.5% and 1.5% of Timet's shares from IMI on favourable terms. IMI is also required, by a share holders agreement, to vote its shares in favour of directors nominated by Tremont.
9. Timet currently has six directors of whom three are also directors of Tremont and one nominated by Tremont. In addition three senior officers are common to the two companies, which also share the same office space.
10. At the last general meeting Tremont, which had 75% of the shares in Timet, clearly had a majority of votes cast. After the Public Offer Tremont effectively has 34.5% (30% directly held and 4.5% in options) and is the largest share holder, the next largest holdings being UTSC with 11.5% (10% directly and 1.5% in options), a

financial institution with 5.7% and no other shareholders with more than 5%. Tremont therefore has more than twice the votes of the two next largest shareholders. Tremont also has nominated four of the six directors of Timet, three of whom are also directors of Tremont. In this new situation the Commission has concluded that Tremont controls Timet.

11. Contran and its subsidiaries own in excess of 40% of the shares in Tremont and had a majority of the votes cast at the general meetings of Tremont in 1995 and 1996. In 1995 there was an internal reorganisation of the Contran group which gave Contran a direct holding in Tremont to its shareholders. At the 1993 and 1994 general meetings of Tremont, Contran, through a subsidiary, had a majority of the votes cast. Contran holds a 56% controlling interest in NL industries. In 1996 Timet had a turnover of 399 million ECU (of which [...] million in the EU), Contran a turnover of [...] million ECU [...] EU and NL Industries 776 million ECU [...] million in the EU).
12. Therefore in the sense of Article 5(4)(b) of Council Regulation 4064/89 Contran controls Tremont and therefore, indirectly, Timet.

II. THE OPERATION

13. Under the terms of the joint venture agreement both Valinox and Timet will contribute the totality of their welded tube businesses to Valtimet. The joint venture will have a total turnover of about [...] million ECU, of which about [...] % is realised in the European Union.

III. JOINT VENTURE

Joint Control

14. Valinox will hold 54% of the shares in the new entity and Timet 46%. Valtimet will have five directors, three including the chairman will be appointed by Valinox and two by Timet.
15. Decisions of the board are usually taken by simple majority. However, a number of key decisions including “the approval of any annual business or operating plan or budget” can only be taken with the agreement of four board members including the two Timet appointees. Therefore, as Timet has a veto right over the key commercial decisions of the company, Valinox and Timet exercise joint control over Valtimet.

Autonomous Economic Entity

16. Valtimet will own and control all that is necessary to carry on its business independently. In particular it will have its own plant, operative, sales and administrative staff, intellectual property rights and bank facilities. The company will have its own research and development team which will subcontract some studies to its parents. However it is under no obligation to do so and will own the results of any such subcontracted research.

² Deleted - Business secret

17. Valtimet and Timet propose to enter a [...] year supply agreement for titanium tube strip, which will require Timet to supply the lower of [...] million pounds or [...] % of Valtimet's requirements of titanium tube strip each year. As the Timet tube making operation has relied entirely on its supplies of titanium tube strip from its own strip mill and Valinox has traditionally sourced a large part of its titanium requirements from Timet this requirement is reasonable to ensure that the new joint venture company has access to adequate supplies for the start up period. These purchases would account for only [...] Valtimet's production costs. Furthermore the value added to titanium strip by the tube making process is approximately [...] %⁴. In these circumstances this provision of the supply agreement does not bring the concentrative nature of the joint venture into question.
18. The same agreement obliges Valtimet to purchase at least [...] % of its requirements for titanium tube strip from Timet. As this [...] % would only account for about [...] of Valtimet's production costs and because there is a very significant value added by the company the concentrative nature of the operation is not brought into question. In addition Valinox currently purchases titanium tube strip from other [...] and Valtimet will be able to do so for the remaining [...] % of its requirements in future.

Absence of Co-ordination

19. Timet will no longer be involved in the production of tubes on a commercial scale. It owns a small German business, LASAB, engaged in research and development into the use of lasers for welding, surface treatment and cutting. This company manufactures and sells, in the course of its research and development activities, small tonnages of stainless steel tubes of diameter greater than 40 mm for use in the production of automobile silencers. The quality of the welding is such that these tubes could not be used for the applications for which Valtimet will be a supplier. In addition the tubes made by Valtimet are generally below 40 mm. [...].
20. For completeness it should be noted that either parent can produce tubing for the automobile market, and that Timet is allowed by the terms of the Joint Venture Agreement to produce welded tubing of a diameter greater than 4 inches or of a size or type not capable of being manufactured by Valtimet at that time. With exception of LASAB, Timet has no production and at present has no intention of producing tubes. It seems to the Commission highly unlikely that Valtimet's parents will co-ordinate their behaviour since such co-ordination would require both parents to be active in a sector where the joint venture is not active.

Lasting Basis

21. Valtimet is established for a period of 99 years.

Conclusion

³ Deleted : between 20 and 35 %

⁴ Deleted : substantial

⁵ Deleted : between 20 and 30 %

22. The proposed operation will result in the creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity which will not give its parents the possibility of co-ordinating their behaviour. It is therefore a concentration in the sense of Article 3.2 of Council Regulation N° 4064/89.

IV. COMMUNITY DIMENSION

23. The combined aggregate world-wide turnover of all the undertakings concerned (see paragraphs 3 to 11 above) exceeds ECU 5,000 million. Each of the parent groups has a Community-wide turnover in excess of ECU 250 million, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension according to Article 1(2) of the Merger Regulation. It does not qualify for co-operation with the EFTA surveillance Authority pursuant to Article 57 of the EEA Agreement.

V. COMPETITIVE ASSESSMENT

Relevant Product Market

24. The parties say that the relevant product market is the market for welded tubes in stainless steel, nickel alloy, titanium, copper and cupro-nickel for certain applications in power stations, desalination plants and refining and chemical process industries. It appears that for these applications tubes of the different materials can be substituted one for the other despite quite large differences in price of the tube. This is because over the life of the project, total (capital, maintenance replacement etc.) costs may be lower for a more expensive material.
25. The Commission has differentiated between tubes made of stainless steel, i.e. steel with a chromium content in excess of 13% and tubes made of carbon and alloy steel (see case IV/M.315 - Mannesmann/Vallourec/ILVA). In this respect it is not necessary to determine whether tubes in the various different materials constitute individual markets as there is only a combination of market shares for titanium tubes. If no competition problems arise in this sector or in the combined market for titanium, stainless steel, copper and cupro-nickel welded tubes the operation will not create or strengthen a dominant position.
26. The same decision considered that seamless stainless steel tubes constituted a separate relevant product market to welded stainless tubes. Seamless tubes can theoretically be used for the same applications as the welded tubes concerned in this case. However there is a significant additional cost of about 30% for the normal wall thickness range of 1.0 mm to 2.5 mm (and more for thinner gauges). It is not necessary to decide whether the seamless and welded tubes are separate product markets because on the narrow definition of welded tubes the proposed operation will not create or strengthen a dominant position.
27. The only overlap of products arising from the operation is in welded titanium tubes as these are the only tubes produced by Timet. There is no need, therefore to define the relevant product market because if the operation does not create or strengthen a dominant position in welded titanium tubes it will not do so on any wider market.

Relevant Geographic Market

28. The parties claim that the market is world-wide on the basis that the parties and other suppliers of welded tubes in stainless, titanium etc. can successfully tender for contracts in almost all parts of the world, that transport costs are low and that their customers are the large multinational engineering contracting companies such as ABB, Siemens, Bechtel and GEC-Alsthom.
29. In previous decisions concerning tubes the Commission has considered the relevant geographic market to be supra-national. It is very difficult to compare prices because most sales are made on the basis of individual tenders for different qualities, wall thickness etc. However the prices for recent sales of titanium tubes in the European Union appear to have been in a narrow band. Furthermore similar prices have been reported in other countries of the world. The exact definition of the relevant geographic market can be left open in the last analysis, as even if the market were assumed to be EEA-wide the proposed concentration is not likely to create or strengthen a dominant position.

Assessment

30. On the narrowest definitions, that is separate product markets for stainless, titanium, cupro nickel etc. welded tubes, and a European Union geographic market, there will only be an aggregation of market shares for titanium as Timet only produces titanium welded tubes. The combined market share will be between [...].⁶ It should be noted that Timet has only small sales into the European Union, its share of the market for titanium welded tubes installed there being only about [...].⁷ The addition of Timet's operation to that of Valinox will not therefore make any significant change to the structure of the market. The combined share on the world market for welded titanium tubes will be, according to the parties, about [...].
31. If the larger market for welded tubes made of stainless steel, titanium, copper and cupro-nickel is considered the parties market share in the European union would be about [...].⁸ % and in the world [...].⁹ %. In either case the joint venture will face competition from AST and from the major Japanese companies, Nippon Steel, Sumitomo and Kobe Steel.

Ancillary restraints

32. The Titanium Supply Agreement provides for Timet to provide a minimum quantity - the lower of [...].² % of requirements or [...].² million pounds - to the new company. It is clear that the joint venture needs, at least for a transitional period, a guaranteed source of raw material. The supply agreement does this for a period of [...].³ years.

⁶ Deleted : between 30 and 50 %

⁷ Deleted : less than 5 %

⁸ Deleted : between 30 and 50 %

⁹ Deleted : between 5 and 20 %

¹⁰ Deleted : between 5 and 15 %

33. The obligation on Timet to supply minimum quantities of Titanium tube strip to Valtimet is directly related to the implementation of the concentration since it ensures the continuity of supply for a transitional period and may therefore be considered ancillary to the concentration.
34. Valtimet is required to purchase [...] % of its requirements of titanium strip from Timet. The parties claim that without a reciprocal obligation on Valtimet to purchase substantial tonnages of strip from Timet it would not be economic for Timet to reserve this capacity. However, this does not justify the imposition of an obligation to purchase fixed percentage of its needs from Timet, since this percentage could result in a very different tonnage of supply each year, possibly much higher than the tonnage presently purchased by Valtimet, and cannot therefore be presented as a simple protection for Timet
35. Therefore the obligation on Valtimet to purchase a minimum percentage of its requirements from Timet in excess of what is required to protect the economic interests of Timet and cannot be regarded as essential to the operation It cannot therefore be considered ancillary to the concentration and its appreciation is to be made under Article 85.

VI. CONCLUSION

36. It follows from the above that the proposed concentration would not create or strengthen a dominant position as a result of which competition would be significantly impeded in the common market or in a substantial part of it.
37. 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 (EEC) No 4064/89.

For the Commission,