

*Case No IV/M.918 -
KLOCKNER / ODS
(see also
IV/ECSC.1244)*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 005/08/1997

*Also available in the CELEX database
Document No 397M0918*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 5.08.1997

PUBLIC VERSION

MERGER REGULATION
ARTICLE 6(1)(b) DECISION

To the notifying parties

Subject: Case N° IV/M.918 - Klöckner/ODS
Notification of 18.03.1997 pursuant to Article 4 of Council Regulation
N° 4064/89.

Dear Sirs,

- 1 On 2 July 1997 Klöckner Stahl- und Metallhandel GmbH, Duisburg, (KSM) notified an operation whereby KSM would acquire sole control of ODS Hoogovens Handel BV, Barendrecht, (ODS).
- 2 After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation 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 KSM is a German limited liability company and is a subsidiary of Klöckner & Co AG, both these companies form part of the Klöckner Group whose ultimate holding company is the German conglomerate VIAG AG. VIAG AG is active in the energy sector, the production of aluminium, chemicals, and glass products. It is also active in trade, distribution and services. The VIAG group's metal distribution operations are concentrated in KSM.

4 ODS is a co-operative joint venture between KSM (through its subsidiary BV Aluminium Verkoop Zuid (AVZ) and the Dutch steel and aluminium producer Hoogovens Groep through its subsidiary Hoogovens Staalverwerking en Handel BV (HSH). ODS is active in the stockholding of steel and non-ferrous metal products in the Netherlands. ODS is currently owned 49% by HSH and 51% by AVZ. The parties received comfort letters under Articles 85 EC and 65 ECSC concerning the establishment of ODS in 1995.

II THE OPERATION

5 The operation consists of the acquisition by AVZ of all the outstanding shares in ODS held by HSH. As both KSM and ODS sell both ECSC and non ECSC products this case has to be examined under both Article 66 ECSC and Council Regulation (CEE) No. 4064/89. This decision deals only with the non-ECSC aspects of the operation which fall to be considered under Council Regulation (CEE) No. 4064/89.

III COMMUNITY DIMENSION

6 The combined aggregate world-wide turnover of the parties exceeds ECU 5 000 million (VIAG AG, ECU 22378 million; ODS, ECU 298 million). The aggregate Community-wide turnover of each party exceeds ECU 250 million (KSM, ECU 2 050 million; ODS, ECU 298 million) and the parties do not achieve more than two-thirds of their turnover in one and the same Member State.

IV CONCENTRATION

7 After completion of the operation KSM will control, through AVZ, 100% of the shares in ODS and will therefore exercise control over ODS in the sense of Article 3 of Council Regulation (EEC) No. 4064/89.

V COMPETITIVE ASSESSMENT

Relevant Product Market

General

8 Both KSM and ODS are engaged in the distribution of steel products, (including steel tubes) and non-ferrous metals. There are strong indications that the distribution of steel can be separated from the distribution of non-ferrous metals by the scale of the distribution operation, the uses to which the products are put and the value of the products. These considerations also apply to the question of whether the distribution of different metals should be considered as separate relevant markets..

Steel distribution

9 Steel distribution operations fall into three classes, steel stockholding, steel service centres and "Streckengeschäft". 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. Their customers include, major consumers (such as the automobile and white goods manufacturers), other stockholders and customers of all sizes. “Streckengeschäft” involves the customer placing an order with the stockholder but the steel is delivered by the steel producers. These three activities constitute “steel distribution”.

- 10 Steel products 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 larger number of companies of varying size and financial strength varying from small family companies to subsidiaries of large industrial companies. The Commission has dealt with other distribution of steel and non ferrous products in a number of cases including IV/M.073-Usinor/ASD, IV/M.239-Avesta and IV/M.760-Klöckner/Arus

Conclusion on product markets

- 12 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 impeded in the EEA or any substantial part of it.

Distribution of other metals

- 13 A similar situation arises in the distribution of non-ferrous metals for which sales via stockholders may be distinguished from direct sales. A distinction could also be made between the different metals. The parties are both active in the distribution of aluminium. ODS distributes copper products.
- 14 However, it is not necessary to further delineate the relevant product markets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Geographic Market

15. The value added by metal distribution operations is comparatively low. 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 its competitors. Distribution is therefore essentially a regional business. Whether this region includes one or more Member States, depends upon a number of factors, including

the size of the Member State, the type and value of the products sold and the location of the competitors.

- 16 It is not necessary to further delineate the relevant geographic markets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

VI ANALYSIS

- 17 Most important effects of the proposed operation will be realised in The Netherlands. In the present case about 4% of ODS's sales were made outside the Netherlands. The estimated 1996 shares of the sales through stockholders of the various products are given in the table below.

Table I. Market Shares by value in The Netherlands

EC Products	ODS %	KSM %	Total %
Tubes	33	3	36
Aluminium	17	2	19
Copper	45	-	45

- 18 KSM currently has no sales of copper in The Netherlands so that the operation will not change the market structure for this product.
- 19 The combined market share for aluminium products in the Netherlands is only 18 %, of which the contribution of KSM is less than 2 %. This market share will not create or strengthen a dominant position in a market for aluminium products.
- 20 In so far as tubes are concerned the combined operation will have a share of 36 % of the tubes distributed via stock holders. KSM will only add an additional 3% to the 33% held by ODS. In addition to competition from direct sales from major tube suppliers including, Mannesmann/Vallourec, Eurotube, British Steel, Hoogovens and Dalmine, KSM/ODS will face competition from Van Leeuwen, one of the largest tube distributors in Europe, whose sales of steel tubes in the Netherlands are slightly greater than those of the combined entity.
- 21 ODS sales of all the relevant products, steel, aluminium and copper into the neighbouring European Community countries are extremely low. In Germany, the combined shares of sales for these products is less than 1% for each of the three categories. In Belgium, no figures are available for sales of copper products. There is however no addition of shares as KSM does not sell copper in Belgium. Furthermore, ODS sales are less than 4% of its sales in the Netherlands. The shares of sales in Belgium for aluminium and tubes are 1% and 7% respectively.
22. The operation will not even on the narrowest product market definitions create or strengthen a dominant position in the Netherlands or any of the neighbouring Member states or in any combination of geographic areas.

VII CONCLUSION

- 23 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.
- 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 (EEC) No 4064/89.

For the Commission.