

*Case No IV/M.971 -
KLÖCKNER /
COMERCIAL DE
LAMINADOS*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 26/08/1997

*Also available in the CELEX database
Document No 397M0971*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26 August 1997

PUBLIC VERSION

MERGER REGULATION
ARTICLE 6(1)(b) DECISION

To the notifying parties

Subject: Case N° IV/M.971 - Klöckner/Comercial de Laminados

**Notification of 22.07.1997 pursuant to Article 4 of Council Regulation
N° 4064/89.**

Dear Sirs,

- 1 On 22 July 1997 Klöckner Stahl- und Metallhandel GmbH, Duisburg, (KSM) notified an operation whereby KSM would acquire sole control of Comercial de Laminados, Barcelona (CDL).
- 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 CDL is active on the market for the stock holding and retail distribution of steel and other metals in Spain and Portugal. CDL is a public limited company with its

registered office in Barcelona. Its shares are quoted on the Barcelona stock exchange. Approximately 94.8% of its shares are held directly or indirectly by three families.

II THE OPERATION

5 The operation consists of the acquisition by Klöckner Iberica SL, a wholly owned subsidiary of KSM of at least the 94.8% of the shares held by the three families. KSM will make a public bid for the remaining 5.2% of the shares in accordance with the provisions of Spanish legislation. As both KSM and CDL 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 22 378 million; CDL, ECU 295 million). The aggregate Community-wide turnover of each party exceeds ECU 250 million (KSM, ECU 2 050 million; CDL ECU 295 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 Klöckner Iberica , at least 94.8% of the shares in CDL and will therefore exercise control over CDL in the sense of Article 3 of Council Regulation (CEE) No. 4064/89.

V COMPETITIVE ASSESSMENT

Relevant Product Market

General

8 Both KSM and CDL are engaged in the distribution of steel products, (including steel tubes) and KSM also distributes 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. KSM only distributes aluminium. CDL is not involved in the distribution of non-ferrous metals.
- 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 Spain and Portugal where CDL realises 100% of their sales. Exports of non-ECSC products from KSM into Spain were confined to aluminium and represented [less than 5%]¹ of Spanish demand while exports of KSM into Portugal were confined to steel tubes and represented [less than 5%] of demand for steel tubes in Portugal.
18. The tables below show the market shares of each of the parties in Spain and Portugal by value for 1996

Table I. Market Shares by value in Spain

EC Products	CDL %	KSM %	Total %
Tubes	[<10]	-	[<10]
Aluminium	-	neg	neg

Table II. Market Shares by value in Portugal

EC Products	ODS %	KSM %	Total %
Tubes	[<5]	[<5]	[<5]
Aluminium	-	-	-

- 19 In Spain there is no aggregation of market shares so the operation will not have any direct effect on the structure of the market. In Portugal there will be an addition of market shares for tubes but the combined share of [less than 5%] will not give KSM any market power.
22. The operation will not even on the narrowest product market definitions create or strengthen a dominant position in Spain or Portugal or any neighbouring Member States or in any combination of geographic areas.

¹ Square brackets indicate business secrets that have been deleted, where appropriate they have been replaced by ranges.

VII ANCILLARY RESTRAINTS

23. In the non compete and non solicitation clauses in the sale and purchase agreement requires the sellers not to directly or indirectly conduct any activity in the field of steel distribution in Spain or Portugal for three years (clause 9.1), and not to solicit senior executive officers away from the company and its subsidiaries for the same period (clause 9.2).
24. These clauses ensure that the full value of the company is transferred to KSM. This is particularly important where, as in this case, a substantial part of the sales price relates to goodwill and where the skills and contacts of senior executives are essential to the successful operation of the company.
25. The period, three years in each case, is not unduly long. These clauses are therefore directly related to the proposed operation and necessary for its implementation. They may therefore be regarded as ancillary to the operation.

VIII CONCLUSION

26. 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.
27. 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.