

## II

*(Acts whose publication is not obligatory)*

## COMMISSION

## COMMISSION DECISION

of 12 November 1992

declaring a concentration to be compatible with the common market

(Case No IV/M.222 — Mannesmann/Hoesch)

Council Regulation (EEC) No 4064/89

(Only the German text is authentic)

(93/247/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings<sup>(1)</sup>, and in particular Article 8 (2) thereof,

Having regard to the request of the German Bundeskartellamt of 29 June 1992 seeking referral of the case in accordance with Article 9 (2) of the above Regulation,

Having regard to the Commission's decision of 14 July 1992 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission,

After consultation with the Advisory Committee on Concentrations<sup>(2)</sup>,

Whereas :

## I. THE NOTIFIED OPERATION

- (1) Mannesmannröhrenwerke AG (MRW) and Hoesch AG (Hoesch) intend to bring together their preci-

sion steel tube business through the establishment of a new 50:50 joint venture (JV) called MHP Mannesmann Hoesch Präzisionsrohr GmbH (MHP). MRW will contribute its works at Brackwede, Holzhausen, Remscheid and Wickede, as well as its 75 % shareholding in Robur Buizenfabrik at Helmond in the Netherlands. In addition, the Mannesmannröhrenwerk Sachsen GmbH (MRS) works, making precision steel tubes, will become a dedicated production facility for MHP. Hoesch will contribute its works at Hamm, together with its 100 % shareholding in Schulte Rohrbearbeitung GmbH at Drensteinfurt.

- (2) With regard to non-precision steel tubes, Hoesch will in turn transfer ownership of its 100 % owned subsidiary, Hoesch Tubular Products Corporation, USA (HTP) to MRW and will give MRW a 50 % shareholding in its fully owned subsidiary, Gebr. Fuchs GmbH at Siegen (Fuchs). As such, Fuchs will become a 50:50 JV of MRW and Hoesch. That part of Hoesch's works at Hamm producing non-precision steel tubes and which is to be transferred to MHP will become a dedicated production facility for MRW. Hoesch has no other non-precision steel activities.

- (3) MRW's existing non-precision tube business, as well as its steel tube subsidiaries in Brazil and in Turkey, will not be part of the transaction. MRW

<sup>(1)</sup> OJ No L 395, 30. 12. 1989, p. 1; republished in OJ No L 257, 21. 9. 1990, p. 13.

<sup>(2)</sup> OJ No C 128, 8. 5. 1993, p. 3.

and Hoesch (through Krupp) each have a share of 11 % in the small German steel producer, NMH Stahlwerke GmbH. That company has a tube-making subsidiary, Rohrwerke Neue Maxhütte GmbH [..] <sup>(1)</sup>. Those steel tube activities are not part of the transaction either.

- (4) Since the above operations are carried out by the same parties and relate to the same sectors of an industry, with each operation representing part of an overall agreement between the parties to restructure their steel tubes activities, they have to be considered a single concentration within the meaning of Article 3 of Regulation (EEC) No 4064/89 (hereinafter known as 'the Merger Regulation'). Therefore the creation of the two joint ventures, i.e. MHP and Fuchs, and the acquisition by MRW of sole control of HTP, represent a single concentration for the purposes of the Merger Regulation.

## II. THE PARTIES

- (5) MRW is active in the production, finishing and distribution of steel tubes. It is a 75 % subsidiary of Mannesmann AG. The latter is a diversified German group with activities in the areas of mechanical engineering and plant construction, information systems, electronic engineering, automotive parts, the production and finishing of iron and steel products, and the provision of related services. The other 25 % of MRW is owned by Thyssen Stahl AG, a German steel producer, which is not a party to the present operation.
- (6) Hoesch is also a German producer of metal and in particular of steel and iron products, and engages in a very wide range of activities connected with those domains. Hoesch will be acquired by Krupp GmbH. The project has already been cleared under the ECSC Treaty <sup>(2)</sup>, but does not fall under the Merger Regulation as far as the non-ECSC products are concerned.

<sup>(1)</sup> In the published version of the Decision, some information has been omitted, pursuant to the provision of Article 17 (2) of Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets. However, for a better understanding of the text, some general information has been given in a footnote in those cases where it was possible to do so without violating the non-disclosure requirement for business secrets.

<sup>(2)</sup> Commission Decision of 15 May 1992 (unpublished).

## III. CONCENTRATIVE JOINT VENTURES

### Joint control

- (7) MRW and Hoesch will each hold 50 % of the shares of MHP and Fuchs. They will have equal voting rights and an equal number of shareholder representatives on the supervisory boards and in the shareholder committee of MHP. The management of each JV must submit all major business decisions to either the supervisory board (Fuchs) or to the shareholder committee (MHP) for prior approval; those business decisions include business, price and distribution policy as well as investment, financial and personnel planning.

Therefore MHP and Fuchs will be jointly controlled within the meaning of Article 3 of the Merger Regulation.

### Autonomous economic entity

- (8) MHP will bear its own responsibility for its business activities. The parties have agreed to provide MHP with the necessary financial resources for its business development in proportion to their shareholdings, if these cannot be met out of its own resources and unless more favourable financing can be found elsewhere.
- (9) Fuchs is at present a business performing all the functions of an autonomous economic entity. This will remain so notwithstanding the change in its ownership arrangements. The parties have agreed that Fuchs shall continue as an independent company with its own market strategy and that the necessary financial resources shall be supplied for its development, as for MHP.
- (10) The steel inputs of both joint ventures will be nearly fully supplied by their parents. Steel accounts for over 80 % of the material costs and for about 25 to 40 % of the total production costs. MHP will probably effect a substantial part of its sales (roughly 40 %) via its parents' trading companies. Furthermore, account must be taken of the existence of mutually dedicated production facilities (non-precision tubes being made by MHP on behalf of MRW and all of MRS' output of precision steel tubes being produced on behalf of MHP).
- (11) Although there will remain substantial commercial relationships between the parents and the JVs, particularly for MHP, these are insufficient to rebut the overall conclusion that MHP and Fuchs will operate as fully functioning JVs. It has to be taken into account that in the steel industry vertical integration is normal and to a certain extent necessary.

All large European competitors such as British Steel, Usinor and ILVA are fully integrated groups. They supply their tube subsidiaries with steel. They also act as traders for steel products. Moreover, the value added by the JVs to the steel inputs provided by the parents is substantial.

- (12) As MHP and Fuchs will be provided with substantial assets and sufficient financial resources and their commercial relationships with their parents do not go beyond normal industrial practice, both JVs must be considered fully functioning autonomous economic entities within the meaning of Article 3 (2) of the Merger Regulation.

#### Absence of coordination of competitive behaviour by independent undertakings

- (13) Hoesch will transfer all its precision steel tube activities to MHP. As regards non-precision steel, it will transfer its 100 % owned subsidiary HTP to MRW and grant a 50 % stake in Fuchs to MRW. After completion, Hoesch will have no other interest in the steel tube markets than through its shareholdings in both JVs. Given Hoesch's interest in the supply needs of both JVs and the existing overcapacity in steel markets, it makes no commercial sense for Hoesch to seek to re-enter the steel tube markets.

- (14) MRW will remain active in the markets of the JVs. This is particularly true with regard to non-precision steel tubes, since MRW has extensive interests outside Fuchs. With regard to precision tubes MRW will maintain only minor interests outside MHP. These are :

- its production capacity in MRS, which is nevertheless dedicated to MHP,
- its interest in Röhrenwerke Neue Maxhütte, which is a relatively small producer, and
- its majority shareholdings in Brazilian and Turkish steel tube producers. Both have negligible sales in the European Community.

- (15) The different nature of the interests of Hoesch — which will withdraw from the tube markets — as compared with MRW, which retains substantial interests in these markets, is reflected in the business guidelines (Geschäftsordnung) for the shareholders committee of MHP and in the partners agreement between MRW and Hoesch with regard to Fuchs.

- (16) Although both Mannesmann AG and the future Krupp/Hoesch group are important steel producers, it should be noted firstly that Mannesmann absorbs nearly all its own production and secondly, that the two are almost exclusively active in different product markets, namely tube rounds (pre-tubes) for Mannesmann and flat products (hot-rolled wide strip) for Krupp/Hoesch. Consequently,

the impact on competition in free markets upstream, which are already very small in size given the degree of vertical integration in the industry, is not significant.

- (17) The upstream product differentiation is also reflected in the supply agreement between the parents and the JVs; MRW will supply tube rounds (pre-tubes) and squares whilst Krupp/Hoesch will provide hot-rolled wide strip.
- (18) Consequently, the creation of the joint ventures will not give rise to the coordination of the competitive behaviour of independent undertakings within the meaning of Article 3 (2) of the Merger Regulation.
- (19) In conclusion, both MHP and Fuchs are to be regarded as concentrative JVs within the meaning of Article 3 (2).

#### IV. COMMUNITY DIMENSION

- (20) The aggregate worldwide turnover of the parties in 1991 exceeded ECU 5 000 million (Mannesmann ECU 13 025 million, Hoesch ECU 4 929 million). Both parties have a Community-wide turnover of more than ECU 250 million. The parties do not achieve more than two-thirds of Community-wide turnover within one and the same Member State. The operation has therefore a Community dimension within the meaning of Article 1 of the Merger Regulation.

#### V. COMPATIBILITY WITH THE COMMON MARKET

##### A. The steel tube industry

- (21) The steel tube industry produces a wide variety of tubes for a range of applications, using different production procedures. Tubes range in size from fine tubes with a diameter of 1 mm up to large tubes with a diameter of more than 1,60 m. The weight of a tube varies correspondingly between only some grams and more than five tonnes per metre length.
- (22) In general, steel tubes can be divided into two main groups, namely precision and non-precision tubes. The latter are also called trade and transport tubes. Precision tubes can be distinguished from non-precision tubes primarily through their dimensional accuracy. The necessary tolerances can be achieved either directly through the production process or alternatively through using a non-precision tube as a pre-tube which is subjected to further production steps.

(23) Non-precision tubes can be subdivided according to their application: thus, line pipes are used for the transport of gases and fluids, smooth pipes are mainly employed as construction elements in engineering and steel construction, threaded pipes are used in household installations, boiler and plant pipes are found in power stations and in the chemical and petro-chemical industry, oil-drilling pipes are used in the exploration and drilling for oil and gas, and hollow-section tubes are utilized as construction elements in engineering, motor vehicle construction and structural engineering. Seamless or welded tubes can be used to make the different tube types. Welded tubes are made from flat steel products, whereas seamless tubes are made from tube rounds. Welded tubes are generally cheaper than seamless tubes. Currently, seamless tubes can be replaced by welded tubes for around 85 % of applications. This percentage is increasing continuously due to technological progress and, above all, improved welding techniques. Consequently, the parties consider that seamless and welded tubes do not give rise to separate product markets. To a certain extent different production methods (including cold treatment) and different welding processes can be applied. A wide range of technical standards have to be satisfied corresponding to the specific field of application.

## B. Precision steel tubes

### 1. The relevant product market

- (24) Precision steel tubes are different from non-precision steel tubes in several respects: the production process (cold treatment of the pre-tubes), the degree of tolerance, and in particular the characteristics, the fields of application and the price. The parties have estimated that the overlap between precision and non-precision steel tubes amounts to only 5 % by volume. The parties consider that precision steel tubes as a whole give rise to a single relevant product market.
- (25) It might be possible further to subdivide the market for precision steel tubes into (in particular):
- (i) seamless and welded precision tubes with special characteristics (e.g. DIN 2391 and 2393);
  - (ii) Other welded precision tubes (DIN 2394 and 2395).
- (26) Despite existing differences the two precision tube segments are deemed to belong to a single relevant

product market. Of importance for this view is that customers in both market segments are the same (vehicle construction and engineering). Those customers are able to determine the scope for the substitution of more basic precision tubes for high-value tubes. The inclusion of both segments in a single relevant product market seems justified since it is possible to move smoothly from one into the other without specific breakpoints.

- (27) However, the precise market definition can remain open, since, if a narrower approach is taken, the competitive impact on neighbouring markets still requires assessment and in the present case this does not lead to a materially different conclusion.

### 2. Geographic reference market

- (28) On the basis of the given information it can be assumed that the geographic reference market is almost certainly at least Community-wide. This view is supported by the high level of mutual market penetration between Member States as well as the absence of significant price differences. The observation would appear to be equally valid for Member States having no significant steel industry.

### 3. Competition assessment

- (29) The combined Community market share of the undertakings concerned is below 10 %. If a narrower product-market definition is adopted for precision steel pipes with high specifications the Community market share still does not exceed 25 %. In Germany the undertakings have a combined market share of approximately 25 %, rising to ...<sup>(1)</sup> for precision pipes with high specifications.
- (30) Even if this very narrow definition of product and geographic market is adopted, the concentration cannot be expected to lead to the creation or strengthening of a dominant position. On the German market there are a number of domestic and foreign producers with significant market shares. Having regard to present and future competitive pressure from other foreign suppliers, as well as the competition through partial substitution from precision tubes of lower specifications, those producers and suppliers will be able to limit the scope of action of MRW/Hoesch to a considerable extent.

<sup>(1)</sup> In the interests of business secrecy, the figures given in the original text are replaced in the published version by: well above 25 %.

### C. Non-precision tubes excluding line pipes

#### 1. *The relevant product market*

(31) The market for non-precision tubes distinguishes itself by reference to the area of application (as has already been seen above) and the price. In their notification, the parties initially put forward the view that trade and transport tubes could be divided into the following relevant product markets:

- line pipes,
- threaded pipes,
- smooth pipes ('Siederohre'),
- boiler and plant pipes,
- oil-drilling pipes,
- hollow sections.

(32) However, in the course of the proceedings they changed their views to the extent that they now consider all tubes used for the transport of materials (e.g. water, gas, oil, air) as giving rise to a single transport tube market, i.e. all threaded, oil-drilling and line pipes as well as some smooth and some boiler and plant pipes.

(33) The extent to which such pipes can be placed in the same relevant product market as line pipes is considered in detail below.

(34) Leaving aside the market for line pipes, the other product markets affected require no detailed analysis of the precise product market definition since this has no significant effect on the assessment of the proposed concentration. This is valid both for a wider approach (e.g. for hollow sections including construction elements made from other materials) or a narrower approach (e.g. for boiler and plant pipes based on qualitative criteria). Consequently, the precise relevant product market for trade and transport tubes (excluding line pipes), can also be left open.

#### 2. *Geographic reference market*

(35) With the exception of line pipes, the same considerations regarding the definition of the geographic reference market apply for non-precision tubes as for precision tubes. By way of example: in Germany, where the only significant impact of the proposed concentration arises, import percentages for the various non-precision steel tubes vary from 28,5 for boiler and plant pipes to 70 % for hollow sections. Importers are the main steel producers in

western and eastern Europe. Consequently, the geographic reference market is almost certainly at least Community-wide (except perhaps for boiler and plant pipes) and for oil-drilling pipes possibly worldwide.

#### 3. *Competition assessment*

(36) On none of the relevant product markets for non-precision tubes (excluding line pipes) does the concentration result in a combined Community market share exceeding 25 %. Major additions to the market share are found only in Germany. Here, the combined market share exceeds 50 % for both oil-drilling pipes and boiler and plant pipes.

(37) Nevertheless, the creation or strengthening of a dominant position on these markets (with the exception of line pipes) can be excluded.

(38) As regards the market for oil-drilling pipes, even if the concentration leads to the fusion of the last two German producers of any importance, the international nature of the oil business removes the scope for uncontrolled action on the German market.

(39) With respect to the market for boiler and plant pipes, in view of the special technical and safety standards in Germany some evidence of a separate German market exists. However, even on that hypothesis there would still be no sufficiently detrimental impact on competition. MRW's market position is improved only in the low end of the market as Hoesch is present only in this segment (Gütestufe 1) and not in the segment for high value boiler and plant pipes. In the low end of the market, import penetration is particularly high. Therefore the improvement in MRW's position in this segment will not increase its scope of action to any appreciable extent in the market as a whole.

### D. Steel gas-line pipes

#### 1. *The relevant product market*

(40) The Commission includes in the relevant product market those products which are regarded by the consumer as interchangeable by reason of their characteristics, price and intended use. The Commission also considers whether the scope for suppliers is significantly limited on the market affected through the action of suppliers on neighbouring product markets.

(41) The Commission considers that a relevant product market for steel gas-line pipes (excluding large pipes) exists. The reasons for this are set out below.

### 1.1. Distinction from other trade and transport tubes

- (42) In the first place, line pipes are distinct from the so-called other trade and transport tubes. The latter fulfil partly the same function (e.g. threaded pipes) to the extent that they allow the flow of fluids or gaseous materials. They are, however, clearly distinct from line pipes with regard to their technical specifications (e.g. DIN 2440/2441/2442), their field of application (household use), their users, their method of distribution and their prices.
- (43) The undertakings concerned are of the opinion that, because of supply side substitutability and price-interdependence, there exists a single product market for non-precision tubes if all application purposes are taken into account. They claim that non-precision tubes constitute a single product market fulfilling the same basic function, namely the transport of materials (water, gas, oil, hot air for heating, air, solids).
- (44) Leaving aside the fact that the information submitted by the parties shows the clear price differences between different trade and transport tubes, the evolution of the graphs submitted by the parties merely reflects the price development of steel tube inputs (as for example here, the price of coils). According to the undertakings these represent 60 % of the total production costs. However, the conditions of competition applying to the markets affected are obviously different (lack of demand side substitutability, different distribution systems). The differences are reflected, *inter alia*, in the completely different import percentages between gas-line pipes on the one hand and the other trade and transport tubes on the other.
- (45) The Commission agrees with the parties that large pipes do not belong to the same relevant product market. Compared to other line pipes they are not only different with regard to their size but also with respect to their field of application (very long distance transport, e.g. from Siberia to Germany), their users and their conditions of competition. MRW has already separated out this business area and placed it in a JV (with Usinor Sacilor) called Europipe GmbH.
- (46) The parties include water pipes in the same relevant product market. The Commission does not

share this view. Water pipes are made according to DIN 2460 and are therefore not permitted for use in carrying gas. In addition, the share of water pipes in the total volume of steel line pipes (excluding large pipes) is only about ...<sup>(1)</sup>. The share of water pipes in total turnover for steel line pipes is less than ...<sup>(1)</sup> for MRW and under ...<sup>(1)</sup> for Hoesch/Fuchs.

### 1.2. Substitution with pipes made of plastic and other materials

- (47) The parties consider that the relevant product market for line pipes includes not only steel pipes but also pipes made from other materials (plastics, cast iron, cement and stone). They justify this by their interchangeable use and, in their view, the very real possibility of substituting plastic pipes for steel ones.
- (48) After enquiry with industrial associations, competitors and users of gasline pipes and taking into account the expert opinion presented by the parties, the Commission has come to the conclusion that the underlying reasons for the substitution between steel and plastic gasline pipes is determined principally by the technical possibility of substitution, the (national) safety standards, the existing gas networks of utility companies, and buyer preferences.
- (49) The theoretical degree of substitution depends on the particular segment of the gasline pipe market concerned. Those segments correspond to the usual divisions employed by the gas industry, namely:
- low-pressure pipes ( $\leq 4$  bar), which are mainly used for gas distribution at the local level,
  - medium-pressure pipes ( $> 4$  bar up to  $\leq 16$  bar), which are mainly used for gas distribution at the regional level,
  - high-pressure pipes ( $> 16$  bar), which are also used in regional networks.
  - Low-pressure pipes (below 4 bar)
- (50) Low-pressure plastic pipes (since these are made from polyethylene they are often denoted as PE pipes) are, being approved for the pressure range up to 4 bar, technically substitutable with steel tubes.

<sup>(1)</sup> In the interests of business secrecy, the figures given in the original text have been omitted in the published version: in each case, the share is minor.

(51) On this subject the parties' expert has added that :

'The technical/economic planning underlying the construction of a distribution network of line pipes is relatively complex. In the first instance, the following parameters can be mentioned :

- current gas demand and forecast evolution,
- options in the routing of trenches, which have a considerable impact on the costs for digging and surface work,
- pressure range,
- pipe material.

Depending on the technical restrictions for the distribution network to be established or extended, or on the line pipes to be renewed with regard to the required pressure range and choice of pipe material, the objective is to find a low-cost combination of pipe material and line-pipe diameter possessing the necessary flow capacity as well as a sufficient estimated reserve capacity.

With regard to the assessment of the substitution relationships between steel and PE pipes, there exist certain restrictions in very dense distribution networks, in that for technical reasons a large juxtaposition of different materials in the network is to be avoided. The objective is to keep down the number of joints between different materials since these are potentially sensitive to damage. Hence, it is usual that, as part of the pre-planning of the make-up of a distribution network in a region, the choice of material for small extensions or line pipe renewals is already established on the basis of the technical/economic considerations.

Practically no such restrictions exist for the construction of a new distribution network or for line pipes above 1 bar. Thus, the most economical combination of pipe material and diameters for achieving the required flow capacity can be objectively planned and chosen.'

(52) Therefore, even according to the expert opinion submitted by the parties, technical restrictions in the choice of pipe material exist in the dense distribution networks (pressure range up to 1 bar) and it is confirmed that this choice is made in the pre-planning phase. According to statistics of the BGW (the Federal Association of the German Gas and Water Industry) for 1990, 98 % of plastic gas pipes are used in that pressure range whereas only 2 % are used in the pressure range between 1 to 4 bar,

where according to the expert opinion no such restrictions exist.

(53) Furthermore, the expert opinion also confirms large price differences between steel and plastic pipes with regard to the pipe material and to the pipe-laying costs. Those price differences depend on the pipe diameter (7,6 to 50,6 % for networks up to 1 bar and 14,7 to 61,8 % for networks up to 4 bar). More important is the point that a tube producer can only influence one cost component, namely the simple pipe cost. Should a steel tube producer wish to submit a lower offer to a gas utility, not only does he have to make up the cost disadvantage of the steel pipe, but also the higher pipe-laying costs for a steel pipe. For example, in a network up to 1 bar, he has to make up a cost disadvantage between 13,8 and 66,4 %.

(54) Therefore, with regard to low-pressure pipes, steel and plastic pipes cannot be placed in the same relevant product market. The decision process between steel and PE pipes takes place in the pre-competitive stage. In any event, the scope for price increase by a steel tube supplier which had a dominant position would not be limited in a significant way by PE pipe suppliers.

— Medium-pressure pipes (4 to 16 bar)

(55) For medium-pressure pipes there is only limited technical substitution possible between steel and PE pipes. At present, PE pipes can be used on technical grounds only up to a maximum pressure of 10 bar. Possible developments in materials suggest that PE pipes may be developed within a few years for testing purposes up to and including 16 bar.

(56) In assessing the possibilities of substitution in terms of competition, not only do the technical circumstances have to be considered but also the general legal and economic conditions as well as the timing of effective substitution.

(57) It can thus be established that British Gas has limited its regional networks to an operating pressure of 7 bar in order to be able to use PE pipes, and in France and Belgium for example, part of some distribution networks are operated in this pressure range. On the other hand, the maximum operating pressure allowed in Germany for PE pipes is only 4 bar. The use of PE pipes is therefore excluded for the time being for regional distribution networks, since these networks typically have operating pressures in the range 4 to 16 bar.

(58) It cannot be expected that in Germany approval for an extension of the pressure range of PE pipes will be obtained before the end of 1994. Therefore it cannot be supposed that the scope of action of steel suppliers for this pressure range could be significantly limited by PE pipe producers during this period at least. In particular, an isolated change in national standards is not to be expected during the harmonization phase at the European level.

(59) In addition, attention is to be drawn to the substantial price disadvantages of PE pipes in this pressure range, as documented by the parties' expert.

(60) The Commission therefore draws the conclusion that in Germany (See definition of geographic reference market below) PE pipes cannot be included in the same relevant product market.

— High-pressure range (above 16 bar)

(61) At the present time there are no technical possibilities for replacing steel pipes with plastic ones for the high-pressure range. This remains valid for the foreseeable future. Consequently, PE and steel pipes cannot be included in the same relevant product market for this pressure range either.

— Conclusion

(62) Steel and PE gasline pipes cannot be considered to belong to the same relevant product market.

1.3. The market for steel gasline pipes

(63) The above discussion shows that gasline pipes must, for technical reasons, be chosen in the light of the different pressure ranges. Although there exist three different pressure ranges for gas networks, steel gasline pipes are produced (at least in Germany) only according to two different technical standards, i.e. DIN 2470, Part 1 and DIN 2470, Part 2. The first standard covers all steel gasline pipes up to and including 16 bar (since there are no technical differences between steel gasline pipes for the low and middle-pressure range); the second covers the pressure range above 16 bar (high-pressure range).

(64) Furthermore, it has to be taken into account that a large number of customers buy at least either in the low and medium or in the medium and high-pressure ranges. This supports the existence of uniform conditions of competition in the different segments, since, for example, price setting in one segment could not ignore the knock-on effect on the other segments. It can therefore be left open whether a single market exists or whether the

market consists of different market segments based on pressure.

(65) The parties have estimated the size of the steel gasline pipes market in Germany at ECU 142 million (annual sales in 1991). The market size estimated by the Commission amounted to ECU 128,1 million, of which ECU 75,1 million related to the pressure range up to 16 bar and ECU 53 million to the pressure range above 16 bar.

1.4. Supply-side substitutability

(66) In the determination of the relevant product market, supply-side substitutability can only be taken into account if manufacturers of products other than the product in question can readily and quickly switch to the production of the latter.

(67) According to the submissions of the parties, supply-side substitutability can be achieved at relatively little cost and with little loss of time.

(68) Nevertheless, the Commission maintains its opinion that other steel tube producers cannot easily and quickly switch their production to gasline pipes, particularly for high-pressure pipes. The essential difference in this assessment lies in the fact that the Commission estimates that:

— more extensive production changes are required,

— the time required is significantly greater, since sufficiently long phases must be allowed for planning, purchasing equipment, construction and testing of the plant, TÜV (Technischer Überwachungsverein — Technical Supervisory Association) approval procedures for the producer and his production, and for the training and testing of his workers.

(69) Ultimately, the question of whether or not sufficient supply side substitutability exists can be left open. In any event, there is a lack of powerful competitors producing only simple trade and transport tubes who, on the basis of assumed supply side substitutability, could quickly enter the market and thus restore common conditions of competition in an assumed combined market for simple trade and transport tubes and gasline pipes. Since all producers of gasline pipes are already today producers of the basic trade and transport tubes and since, as was shown above, clear differences in the conditions of competition nevertheless continue to exist — at least between gasline pipes on the one hand and the other trade and transport tubes on the other — it cannot be accepted that any independent producer of simple tubes of any significance could appreciably change this structural difference,



even if supply side substitutability is substantially easier than is assumed by the Commission. With regard to the ability of current producers of both simple tubes and gasline pipes to use their existing capacity to increase their production of gasline pipes, it should be noted that this is not a problem related to market definition but a question of potential capacity utilization of existing competitors.

### 1.5. Conclusion

- (70) Consequently, the Commission considers that a relevant product market for steel gasline pipes (excluding large pipes) exists. (The product will be referred to hereinafter in abbreviated form as gasline pipes). Whether there exists a single market or whether the market consists of different market segments determined by pressures, can be left open on account of the comparable market position of the undertakings concerned in all segments.

### 2. The geographic reference market

- (71) As regards the structural aspects and general competitive framework set out below, the Commission considers that the conditions of competition in Germany are currently different from those in other Member States but that these will change because of the dynamic developments designed to bring about a Community-wide market. However, this change will only be progressive, so that the inference must be that sufficiently homogeneous conditions of competition will not be created throughout the common market in the immediate future. Consequently, it is reasonable at the present time to relate the assessment of the effects of the proposed concentration to the geographic reference market constituted by the territory of Germany.

#### 2.1. The current market situation

##### — Market share differences as indicators

- (72) According to the data collected by the Commission, MRW and Hoesch will become the largest player in the Community, with a market share in the Community of under 40 % in terms of value. The ILVA group follows next with a share of between 25 and 35 % and three companies, British Steel, the Hoogovens Group and Tubos Reunidos, have Community shares of between 5 and 10 %.

- (73) However, at present mutual interpenetration of the different national markets remains limited. In all large Member States having their own steel-pipe production, the national suppliers of gasline pipes have the largest market share. In Germany, imports are presently around 10 %. In Italy, the national producer achieves about 90 % and in Spain the corresponding figure is over 70 %. However, in France and the United Kingdom imports are significantly higher.

##### — Type and characteristics of the product

- (74) The market for gasline pipes is chiefly characterized by the technical conditions. These are not yet harmonized in the European Community. It appears that in Germany, France and the United Kingdom the prevailing national standards are used exclusively, whereas in Italy, Spain and the Benelux countries the ISO and the DIN standards can also be used.

- (75) Under German law the technical requirements for low and medium-pressure gasline pipes are effectively derived from the law for the energy sector (Energiewirtschaftsgesetz) and for high-pressure gas pipelines from the high-pressure gas pipelines regulation (Verordnung über Gashochdruckleitungen). Neither text establishes specific technical requirements. Both refer to a requirement to satisfy the 'generally recognized technology rules'. According to the legal texts, those requirements are presumed to be satisfied by products satisfying the DVGW (Deutscher Verein des Gas- und Wasserfachwesens eV — German association of gas and water utilities) rules.

The DVGW working papers (DVGW-Arbeitsblätter) G462, Parts 1 and 2 (low and medium pressure) and G463 (high pressure) lay down the specific rules for gas pipelines. The working papers refer to DIN 2470, Parts 1 and 2. DIN 2470 sets out a large number of detailed standards covering, *inter alia*, the steel used, other material aspects, the production process and the testing procedures. The plastic coating of the line pipes can be undertaken separately by another producer, but in practice this is not often the case in Germany. In any event the manufacturer has to meet the requirements of other DIN standards, such as DIN 30670 for polyethylene coating.

(76) Furthermore, the producer of gasline pipes needs the general technical approval of the TÜV or MPA (Materialprüfungsanstalt — Materials testing authority). Approval covers the production process, equipment for the integrated testing of the products and the qualifications of the employees (e.g. welders). The tests are laid down in the AD (Arbeitsgemeinschaft Druckbehälter — working group for pressurized vessels) notices. All of the major west European steel producers have at least partial TÜV approval for the production of steel gasline pipes.

— Demand-side structure

(77) An important element in the assessment of existing differences in the conditions of competition between the Member States is the demand-side structure. In this respect, the demand side differs markedly between Germany and the other larger Member States with high gas consumption :

- in the United Kingdom, excluding gas pipeline requirements for off-shore gas activities, British Gas has a near monopoly for land-based requirements,
- in France, Gaz de France provides approximately 90 % of the national and local networks,
- in Italy, SNAM owns about 90 % of the national network and via its subsidiary Italgas about 50 to 60 % of the local supply,
- in Germany, there exists in principle one company for the long-distance network in west Germany (Ruhrgas) and one company in east Germany (VNG). There are more than 30 regional gas distributors and more than 500 local gas utilities. The size of regional distributors and local gas utilities varies appreciably.

— Purchasing decision criteria

(78) Currently, the purchasing policy of German customers is nationally orientated. According to investigations carried out by the Commission, purchasing criteria such as :

- security of supply
- compatibility of the pipes with the existing network
- long-term supply relationship
- technical advice and support and
- the ability to satisfy company specific requirements

have a significant influence on the purchasing decisions of German gas utilities. Therefore the criteria determining purchasing behaviour tend to encourage national buying, in so far as it is now

commercially easier for domestic suppliers to satisfy those objective requirements.

2.2. The future market situation — dynamic developments

— Harmonization of technical standards

(79) Harmonization of current European standards for the operation of gasline systems as well as material requirements is now being undertaken by the European Committee for Standardization (CEN). Under the aegis of CEN, 18 countries and representatives of recognized industrial associations are working to achieve a common standard.

(80) Within CEN, work is organized and undertaken by various technical committees (TCs). The TCs themselves may further delegate specific tasks to working groups. The preparation of European standards for gasline pipes is being undertaken by TC 234 and its six working groups. TC 234 was established in 1990 and formal work on the standards commenced in 1992. In particular, TC 234 is responsible for the establishment of functional requirements for the distribution and transport of gas. Amongst other tasks, TC 234 will check if standards produced by other TCs meet these functional requirements and, if necessary, will seek their reformulation. In the case of steel line pipes, TC 234 can draw on the draft standards already prepared by TC 29 of the ECISS (European Committee for Iron and Steel Standardization) namely : 'pr EN 10208/2 : Steel pipes for pipelines for combustible fluids — Technical delivery conditions — Part 2 : Pipes of requirements class B'.

(81) The Commission is preparing a mandate to CEN in the context of Council Directive 89/106/EEC<sup>(1)</sup> (the 'Construction Products Directive' — (CPD)) for the development of European standards on gasline pipes. Once such a European standard is agreed it will be published in the *Official Journal of the European Communities* as a standard in support of the CPD. Under the procurement rules it is obligatory to use European standards when they exist.

(82) According to CEN, the majority of the European standards of TC 234 will become available in 1996. It is expected that the steel pipe standards prepared by TC 29 will enter into force in 1994. They do not completely coincide with DIN 2470, Part 1 and Part 2, because they do not, for example, extend to the TÜV approval procedure, but they do cover, for example, the important DIN 1626 and 1629 standards.

<sup>(1)</sup> OJ No L 40, 11. 2. 1989, p. 12.

(83) Until harmonization is completed, the current German DIN standards present a formal market-entry barrier and an economic entry barrier. This is because production and testing must be carried out in accordance with German DIN standards. The importance of this barrier depends mainly on the production volume. The higher the order volumes achieved the less significant are the negative cost effects of adapting the production process to match the German DIN standards.

(84) It can therefore be concluded that, on the one hand, there remain differences in standards between the large Member States and that an immediate change in this position cannot be expected. On the other hand, account must be taken of the fact that most foreign producers have already obtained at least partial TÜV approvals. Furthermore, the approvals lacking and required to cover the full range of requirements of the DIN 2470 standards can be quite easily obtained by suppliers currently producing gasline pipes according to different standards. This is particularly true for the major west European steel producers.

— The Community Directive on public procurement

(85) Procurement patterns of gas utilities currently differ in several respects. In some Member States they are subject to existing national public procurement rules, whereas in others their purchasing procedures are regulated by their own internal rules. In Germany, the gas utilities do not generally publish their invitations to tender because, as was confirmed by nearly all of the utilities questioned by the Commission, they claim to know already those suppliers capable of providing both technically and commercially satisfactory tenders.

(86) Therefore the application of the Community procurement rules (Council Directives 90/531/EEC<sup>(1)</sup> and 92/13/EEC<sup>(2)</sup>) which will come into force on 1 January 1993 will help to open up national markets, as they require transparent and non-discriminatory procurement procedures. While it cannot be taken for granted that steel tube suppliers of other Member States will immediately be able to take full advantage of the opportunities thereby created, there will nevertheless be a gradual opening-up of markets.

(87) The most important obstacle to the full effectiveness of the Community procurement rules is that

technical standards are not yet harmonized. Thus tender offers can currently be based on national standards. Therefore the full effectiveness of the Community Procurement Directive will be achieved when important parts (e.g. TC 29 in 1994), or the majority of the relevant technical standards (e.g. TC 234 in 1996) have been agreed.

(88) When the Community procurement rules come into force in 1993, their effectiveness will be dependent on the proportion of all national tenders which achieve the minimum purchase volume of ECU 400 000 and which are therefore subject to Community-wide tender. The higher that proportion, the more commercially attractive it will be for foreign suppliers to produce according to DIN standards even though the technical harmonization process has not yet been completed.

In that connection it is estimated that a significant proportion (possibly 50 % or more) of German orders for gasline pipes will achieve the minimum purchase volume under the Directive. Taking into account the long-term commercial and strategic interests in supplying the German market, e.g. because of existing overcapacities, the large absolute size of the German market, the exceptionally high level of demand in the following years due to German reunification, and in particular the certainty that in the foreseeable future even the remaining technical barriers will be removed, it is to be expected that, with the imminent implementation of the Community Public Procurement Directive, foreign suppliers will seek to develop a supply relationship on the German market because they can rely on a further opening-up of the market with regard to the technical standards.

### 2.3. Conclusion

(89) The Commission therefore takes the view that appreciably different conditions of competition still exist today between Germany and the other Member States because of the above structural elements on the market for gasline pipes. However, the dynamic impulses identified, such as the harmonization of technical standards and the Community Public Procurement Directive, will help to open up the national market. As these changes will come about only over time and will develop progressively rather than all at once, it seems proper to relate the assessment of the effects of the proposed concentration to the German market and to take into account, when appraising the question of market dominance, the effects of the transitional period of the opening-up of the German market.

<sup>(1)</sup> OJ No L 297, 29. 10. 1990, p. 1.

<sup>(2)</sup> OJ No L 76, 23. 3. 1992, p. 14.

### 3. Market dominance

- (90) In its assessment of market dominance the Commission takes into account not only the current market position of the undertakings concerned and the other structural elements which give rise to the existing conditions of competition but also those structural elements which will in due course change those existing conditions of competition, having regard to the specific circumstances of the individual case under consideration.

#### 3.1. Market shares

- (91) Market shares characterize the current market position of an undertaking. High market shares represent an important factor as evidence of a dominant position provided they not only reflect current conditions but are also a reliable indicator of future conditions. If no other structural factors are identifiable which are liable in due course to change the existing conditions of competition, market shares have to be viewed as a reliable indicator of future conditions.
- (92) The Commission has obtained the turnover figures of suppliers of gasline pipes in Europe for the last three years, i.e. 1989, 1990 and 1991. On the basis of those figures, market shares in Germany for gasline pipes in 1991 for the two different market segments, i.e. for low and medium pressure on the one hand and for high pressure on the other hand, are as shown below:

(Reference year: 1991)

Supplier	< 16 bar	> 16 bar	Total
MRW	[..] % (*)	[..] % (*)	[..] % (*)
Hoesch/Fuchs	[..] % (*)	[..] % (*)	[..] % (*)
	[..] % (**)	[..] % (**)	[..] % (**)
Flender	< 20 %	—	< 10 %
Klöckner	—	< 10 %	< 5 %
Hoogovens	< 5 %	< 10 %	< 5 %
Arfa	< 5 %	—	< 5 %

(\*) In the interests of business secrecy, the figures have been omitted in the published version.

(\*\*) In the interests of business secrecy, the figures given in the original text have been omitted in the published version: in each case, the combined market share was over 60 %.

Neue Maxhütte, British Steel (Mannstaedt), Rautaruukki, Arbed, ILVA, Krieglach and the Turkish company Borusan each have a market share not exceeding 2 % in any market segment or in the market as a whole.

- (93) After the concentration, MRW and Hoesch will attain a market share of [..] % (\*) which in the high-pressure segment will exceed [..] % (\*) and in the low and medium-pressure segment will amount to [..] % (\*). The total market share of the parties, taking the average over the three years, amounted to [..] % (\*). The parties have contested the Commission's calculation of the market shares. Based on their estimates they calculate their total market share for 1991 at [..] % (\*) and for the previous two years as being even lower.

- (94) Borusan and Rautaruukki recently entered the German market, as did British Steel through its purchase of Mannstaedt from Klöckner. The latter subsequently re-entered the market through the acquisition of a tube-works at Muldenstein in East Germany.

#### 3.2. Other elements of competition

##### — The product range

- (95) The undertakings concerned cover the complete product range of gasline pipes. This applies both to the pressure range and to gas-pipe diameters. Since normally, a single gas utility does not order pipes from the whole product range, the lack of a complete product range does not seem to present a decisive competitive handicap. This has been confirmed by the gas utilities interrogated.

##### — Distribution

- (96) The sale of gasline pipes in Germany takes place predominantly through project-specific calls for tenders. According to the parties, those projects were, in the past, primarily supplied by the tube producers, whereas small repair needs were met by traders. The parties have stated that traders are now increasingly taking part in project-specific calls for tenders.
- (97) Within Germany, only German suppliers have been active in direct customer sales. The exception to this is Rautaruukki. British Steel (Mannstaedt) is still selling its gasline pipes through the former owner, Klöckner, and the trader Löwe & Jägers, which belongs to the VIAG-Klöckner group. Usinor has bought the German tube producer Homburger Röhrenwerke. That company does not produce gasline pipes and therefore does not possess a distribution network for such pipes. Where other foreign suppliers have been active in Germany (such as Arbed, Arfa, Borusan, Hoogovens and ILVA), they have operated on the market only through German traders.

(<sup>1</sup>) In the published version of the Decision, some information has been omitted, pursuant to the provision of Article 17 (2) of Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets.

(98) With regard to distribution the undertakings concerned, as well as other German manufacturers, have therefore a competitive advantage compared to foreign competitors which do not possess their own distribution arrangements for gasline pipes in Germany.

— Vertical integration

(99) The undertakings concerned are totally vertically integrated, from steel production to plastic coating. However, this does not give rise to a significant advantage.

(100) As regards the production of steel inputs, which for gasline pipes means essentially hot-rolled wide strip, there are no notable competitive advantages for the parties as compared with other German competitors. Klöckner is itself a steel producer and Flender has extensive and competitive supply alternatives. The advantage of domestic as opposed to foreign producers does not reside in an internal source of supply, since in the main foreign producers also have their own steel supply. Rather, it lies in the fact that German producers already manufacture steel according to the usual German specifications. On the other hand, the important Community standards prepared by TC 29 governing the production of steel pipes are expected to enter into force in 1994.

(101) German producers enjoy a competitive advantage over their foreign competitors with respect to plastic coating. All German producers (except British Steel (Mannstaedt) and NMH) have the necessary coating facilities. ILVA, Hoogovens/VBF and British Steel also possess such installations.

The parties contest this competitive advantage. They have drawn attention to a number of foreign 'job coaters'. Nevertheless, it has to be pointed out that the coating process also has to meet the DIN standard.

— Transport costs

(102) Differences in transport costs are of no significance for competitors within Germany. For suppliers from countries bordering Germany they should not represent a relevant market entry barrier. Some foreign competitors have declared that these costs curtail their competitiveness on the German market. For all competitors located further afield, e.g. Spain, Greece or Turkey, the transport cost disadvantage for pipes with a diameter above DN 200 has been estimated at 10 % or more. Consequently, the impact of transport costs is not deci-

sive. However, for low order volumes and distant competitors they may represent a specific handicap.

### 3.3. Potential competition

(103) The Commission considers that the prevailing conditions of competition in the German market for gasline pipes, which have led to the above market position of parties holding a very high combined-market share, will change significantly in due course as a result of potential competition brought about by the dynamic impulses identified.

(104) On the German market for gasline pipes three main kinds of potential competition have to be considered. These are : an extension of the product range of current competitors, the market entry or a significant increase in the existing market participation of west European suppliers, and the market entry of east European competitors.

(105) The probability of an increase in competitive pressure owing to an extension of the product range of current competitors is considered to be low. Only Klöckner has recently invested in the gasline business, following its acquisition of the east German plant Muldenstein. For all other competitors it is considered that the extension of the product range in terms of pipe diameters is expensive and, because of existing overcapacities, improbable for commercial reasons.

(106) The incentives for market entry or for increased market participation of western European suppliers have to be considered significant, because :

— there is a large degree of overcapacity for steel and all kinds of steel tubes throughout Europe,

— there is strong competitive pressure in steel tube markets, in particular for simple trade and transport tubes,

— the German market is the largest European market for gasline pipes and, as a result of German unification, has now a very high level of demand,

— the foundations for an internal market have been created ; the first practical steps will come into force with the Public Procurement Directive on 1 January 1993 and will continue progressively, through the technical harmonization process.

(107) In the specific circumstances of the present case, the period of time deemed appropriate for assessing the impact of potential competition on the parties' scope of action requires special and detailed consideration.

In terms of assessing the timing of potential competition, three dates are important in relation to the existing legal and technical barriers. They are: 1993, with the implementation of the Public Procurement Directive; 1994, with the expected standardization of steel pipe production; and 1996, when the majority of steel gasline pipe standards will enter into force.

The dismantling of the barriers will have a significant impact on market entry, since the major Community competitors will have to anticipate the progressive structural changes in the market. Therefore, given the exceptional circumstances of this case, as identified below, it is reasonable to take into account the progressive nature of future developments over a longer period than would be appropriate in other circumstances.

(108) With respect to the existing legal and technical barriers, it has been noted in the preceding analysis that the Public Procurement Directive will enter into force within a few months. It will become fully effective upon the completion of the harmonization of technical standards. Consequently, the attainment of the objective of creating a single European market will take place progressively, even though its realization is still some years away. In the present case, harmonization of the standards for steel gasline pipes will take between two and four years. However, its advent is certain and, as stated above, there are already significant incentives to market entry for the major west European suppliers.

(109) Until now the major west European suppliers such as British Steel, Usinor and ILVA have had little or no share in the German market for gasline pipes and have not established their own distribution system, nor made extensive use of independent traders. However, given the certainty attaching to the new framework for future competition and the imminent implementation of the Public Procurement Directive, these major producers will anticipate the full harmonization of standards and seek to take advantage of opportunities progressively where they arise.

(110) Therefore, given the specific circumstances of this case, the Commission considers that there is strong evidence that there will very probably be a perceptible impact on the German market before full harmonization is completed. The reasons for this view are as follows:

— firstly, the potential competitors, i.e. ILVA, British Steel and Usinor-Sacilor, are amongst

the largest steel producers. They have good potential for availing themselves of the immediate, albeit imperfect, opportunities created by the Public Procurement Directive. This is particularly true because they are already active in Germany on neighbouring tube markets, because there seem to be no substantial one-off 'sunk costs' for market entry and because they already hold TÜV approval for part of their product range and can — having regard to the time required and the expected costs — obtain it relatively easily for the other part,

— secondly, there are strong incentives for market entry as indicated above,

— thirdly, notwithstanding the fragmented demand structure in Germany, a significant part of the German market for gasline pipes falls under the Public Procurement Directive,

— lastly, it is reasonable to suppose that the German gas utilities, particularly the larger customers, will seek to involve the major west European suppliers in the competitive process in the German market: on the one hand, given the very high combined market share of Mannesmann/Hoesch, they have a rational incentive to seek alternative sources of supply; on the other, they have a legal obligation to comply with the requirements of the Public Procurement Directive, and the major west European suppliers will enjoy legal remedies in the event of non-compliance.

(111) The parties have also pointed to the rapid growth in imports from east European producers of semi-finished steel products and simple transport tubes. In particular they have referred to their low labour costs in comparison to Community producers and pointed out that some of these producers hold the necessary TÜV-approval. The east European suppliers alone may not be able to restrict the scope of action of MRW-Hoesch. Nevertheless, they will remain a possible source of competition, in addition to the expected active competition from west European suppliers.

### 3.4. Conclusions

(112) Given the high combined market share of MRW/Hoesch on the German market for gasline pipes, together with their competitive advantages in relation to the remaining German and foreign competitors, there is strong evidence that the parties concerned may achieve upon completion of the concentration a liberty of action that is not immediately fully controlled by existing competitors.

- (113) However, in assessing whether the market position of MRW/Hoesch is such as to significantly impede competition in the common market within the meaning of Article 2 (3) of the Merger Regulation, it has to be borne in mind that the large west European competitors, namely ILVA, British Steel and Usinor Sacilor, are currently not at all — or only minimally — active on the German market. Nevertheless, the incentives and opportunities for market entry are high not only for west European competitors, but also for the east European producers of steel tubes.
- (114) The Public Procurement Directive, which comes into effect in only a few months' time, will produce a structural change in the scope for non-German companies' entry into the market. The effectiveness of the Public Procurement Directive will progressively increase and attain full maturity with the completion of the technical harmonization process. It is therefore considered that given the absence of other significant entry barriers, even if a dominant position were created at the outset by the proposed concentration, this would only subsist for a limited period of time because of the high probability of new competition which will quickly erode the position of MRW/Hoesch on the German market for gasline pipes.

#### VI. OVERALL ASSESSMENT

- (115) The Commission has therefore come to the conclusion that the proposed concentration does not give rise to a dominant position on the various product and geographic tube markets as a result of which

effective competition would be significantly impeded in a substantial part of the common market,

HAS ADOPTED THIS DECISION :

#### *Article 1*

The proposed operation by Mannesmannröhren-Werke AG and Hoesch AG is declared compatible with the common market.

#### *Article 2*

This Decision is addressed to :

Mannesmannröhren-Werke AG,  
c/o Bruckhaus Westrick Stegemann,  
Freiligrathstraße 1,  
D-W-4000 Düsseldorf,

for the attention of Herr Rechtsanwalt Moosecker,  
Fax No 0049 211 49 79 103 ;

Hoesch AG,  
c/o Bruckhaus Westrick Stegemann,  
Freiligrathstraße 1,  
D-W-4000 Düsseldorf,

for the attention of Herr Rechtsanwalt Moosecker  
Fax No 0049 211 49 79 103.

Done at Brussels, 12 November 1992.

*For the Commission*

Leon BRITTAN

*Vice-President*