

The ISPAT / Unimetal Case

ANCILLARY RESTRAINTS (STEEL PRODUCTS): THE ISPAT / UNIMETAL CASE

Subject: Ancillary Restraints
Non-competition clauses

Industry: Steel products
(Implications for all industries)

Parties: Ispat International NV
Unimétal

Source: Merger Reports, Office for Official Publications, dated 22 June 1999

(Note. An extract from this case is reproduced below as an indication of the manner in which the principles governing ancillary restraints, and particularly non-competition clauses, are applied to individual merger cases.)

1. On 20/05/1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation EEC/4064/89 by which Ispat International NV acquires within the meaning of Article 3(1)(b) of the Regulation control of the whole of Unimetal by way of purchase of shares.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement ...

9. As set out pursuant to Clause 14 of the Share Purchase Agreement, Usinor and its subsidiary Aster undertake that as from completion, they shall not:

- (i) acquire, develop, operate or control any specific entity or group of entities having as a whole more than [...] of their turnover attributable to an activity directly competing with the current business of Unimetal and its subsidiaries;
- (ii) solicit, except under certain conditions, the employment or services of any employee of Unimetal or its subsidiaries.

10 The non-competition provision shall apply in the European Union for a period of five years following completion in respect of the restriction at (i) above and for a period of three years following completion in respect of the restriction (ii) above.

11 As these clauses guarantee the transfer to the new entity of the full value of the assets transferred, it can thus be considered as ancillary to the implementation of the concentration. □