

Chapter 8

Takeovers in Finland: the case of SSAB's bid for Rautaruukki

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1. Introduction

Finland has fairly strong worker rights; about three-quarters of the workforce are trade union members and about 90 per cent are covered by collective agreements. Particularly strong obligations exist regarding co-operation between workers and management, including the obligation to inform workers about the possible impact of restructuring. As described in this chapter, the implementation of the Takeover Bids Directive has resulted in few additional rights for worker representatives on top of what they already had. Most of the rights Finnish workers have in takeover situations are pre-existing general rights outside the sphere of takeover regulations.

The case analysed here – the takeover of the Finnish steel producer Rautaruukki by the Swedish steel company SSAB in 2014 – illustrates a number of important points. First, even though negotiations between the managements started at least a year before the formal takeover bid was launched, this information did not reach the workforces of either company beforehand. This shows that the rules regarding confidentiality need to be clarified for and better understood by employee representatives on boards. Secondly, as is frequently the case with mergers and acquisitions involving companies in the same sector, the European Commission competition authorities required the companies to divest parts of their operations before the takeover could go ahead. This shows that European competition policy requirements on the bidding and/or target companies can significantly magnify the impact of a takeover on the workforce.

2. Legal bases for takeover bids

In Finland there are few legal provisions that regulate takeover bids. One is the Finnish Securities Markets Act (SMA), which applies to tender offers for securities issued by companies with their registered offices in

Finland and that are publicly traded in Finland on a regulated securities market. The Finnish Companies Act applies to cross-border mergers; the guidelines from the Finnish Financial Supervision Authority (FSA) are also fairly important in these situations. If the securities are traded publicly in a country¹ other than Finland, only the provisions of the SMA related to disclosing information to employees and certain selected legal issues generally apply.

There are also regulations in the Act on Cooperation within Undertakings (334/2007) that apply to matters affecting the personnel covered by cooperation negotiations (companies that employ more than 20 persons), which are caused by the transfer of the undertaking to another location or by other, similar changes in the business operations that will affect the personnel. These are supposed to be dealt with in cooperation negotiations, but only if these matters have an impact on the personnel. These matters can include changes in duties, working methods, arrangements of work and work premises, transfers from one duty to another, but not matters that are anticipated to result in termination of employee contracts or temporary lay-offs; this is part of the Finnish model of industrial relations.

Prior to the commencement of the cooperation negotiations the employer must provide the employees or the representatives of the groups of workers concerned with the information necessary for dealing with the matter and the employees or representatives have to have an opportunity to familiarise themselves with it. The employer is considered to have fulfilled his duty to negotiate if he has followed the provisions set out in the act in the spirit of cooperation to obtain consensus. An employer or representative of the employer who intentionally neglects or violates the set provisions shall be subject to a fine for violation of the cooperation obligation.

According to the Act on Cooperation within Finnish and Community-wide Groups of Undertakings (335/2007) the European Works Council (EWC) must be informed in particular about the structure of the community-

1. Common Legal Framework for Takeover bids in Europe, General director Dirk Van Gerven, (Finland, Mikko Heinonen and Klaus Ilmoinen), p. 72 and SMA, Section 1: '... The provision of Chapter 2, Section 6b as well as Chapter 6, Section 3(2), Section 4(3), Section 6, Section 9(2), Section 10 and Section 15-16 shall apply to a company and its shareholders also if the corporate-law registered office of the company is in Finland and its share is subject to trade corresponding to public trade in a state other than Finland.'

wide undertaking or group of undertakings, its economic and financial position, development prospects and its production and sales. Informing the EWC and consultation with it concern, in particular, significant organisational changes and mergers, including takeovers. The central management, a controlling undertaking or a representative of an undertaking or operational unit thereof that intentionally or negligently fail to observe or violate the set provision shall be subject to a fine for violation of the cooperation obligation of a group of undertakings. However, such cases have never been tried in Finland. These issues can also be brought to the Cooperation Ombudsman,² who supervises these two laws.

In addition, a more detailed self-regulatory recommendation on the procedure to be applied in takeover situations called the 'Helsinki Takeover Code' was published in 2006 by the Finnish Central Chamber of Commerce (FCCC). The FCCC can also issue statements in individual cases upon application. The Helsinki Takeover Code does not take the rights of the employee presentation into account, rather the contrary. It says that:

A member of the board of the directors of the target company may have a special connection to the offeror, for example as an employer or as a member of the board. Such connections may create an assumption that the member of the board in question is not unconstrained by undue influences to participate in the consideration of the bid in the target company. For example an employee position may create a relationship of dependency with the offeror. To avoid conflicts of interest, *under no circumstances* shall a[n] [employee] member of the board participate in the decision-making regarding the bid, both on the board of the offeror and the target company.³

It also says that the offeror shall make public information on the takeover bid immediately after the offeror has reached a decision on the matter. And after the decision is made public, it shall, without delay, be communicated to the employees' representatives or, where there are none, to the employees of the target company and the offeror.⁴

2. The Act on the Cooperation Ombudsman, 216/2010.

3. Helsinki Takeover Code, 2014, p. 25.

4. Helsinki Takeover Code, 2014, p. 41.

There is a discrepancy between the SMA and the other laws mentioned here, because according to the law and legal praxis – for example, the *Fujitsu-Siemens case*⁵ – the employees or their representatives must be informed and consulted before the final decision is made so that they can still have some influence on the matter. One of the main reasons for this is the fear of a confidentiality breach regarding insider information. However, the Cooperation Ombudsman gave a statement in 2013 which said that dealing with insider information or insider secrets shall not allow the company to omit the information and consultation procedures as laid down by law.

It should be noted that in the case study examined here, the Swedish bidding company SSAB decided to observe the Helsinki Takeover Code (from the FCCC) voluntarily.

2.1 Information and notification requirements in the takeover procedure

Pursuant to the Finnish Decree⁶ the tender offer document must contain the following information:

- the future position of the management and personnel, such as the continuity of jobs and material changes in the conditions of employment;
- equivalent information must also be given on the acquirer and the position of its management and personnel as far as the tender offer has any influence on them;
- information on strategic plans as far as the offeree company and acquirer are concerned, as well as on their probable effects on the employment and the locations of the company's office;
- remuneration of board members or the management of the offeree company;

5. C-44/08 ECJ, where it was stated that the employees or their representatives must be informed and consulted according to the Act on Cooperation within Undertakings before the final decision is made by the company.

6. The Decree is based on the Directive amending the Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and the Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issues whose securities are admitted to trading on a regulated market.

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- a statement from the offeree company's board of directors regarding the tender offer and a possible separate statement by the employee representatives; and
 - information on which national law will govern the contracts concluded between the acquirer and the holders of the offeree company's securities.

When the tender offer has been published, the employees of the offeree and the offeror companies shall be notified (SMA 11:13 §). In accordance with the SMA, the representatives of the employees of the company have the opportunity to give a separate statement on the effects of the offer on employment in the company (SMA 11:13 §), which should be appended to the board's statement to shareholders. The tender offer has to be valid from three to ten weeks and this would also be the appropriate time slot for, for example, EWC negotiations.

The normal confidentiality regulations apply here (SMA 11:29 §) and generally in the due diligence investigation, the target is also allowed to disclose certain insider information to a potential bidder. The appropriate procedure on the involvement of employees is also mentioned.

2.2 The Swedish Act on Public Offers on the Stock Market⁷

According to the Swedish Act on Public Offers on the Stock Market, an acquirer with residence in Sweden shall inform its employees of the given public offer and of the offer document, and the information must be provided as soon as the bid and the offer document have been published (4:1 §).

The board of the company shall inform its employees of the tender offer and of the offer document and of its recommendation to shareholders with respect to the bid (4:2 §) and this information shall also be submitted to unions representing workers (4:3 §). This information should also be provided directly to workers (4:3 §) if there are no employee representatives that have been elected or otherwise chosen.

7. Reference to Sweden is made because the bidder company in the case study examined here is registered in Sweden. See the chapter on Sweden in this publication for further information.

3. Case study of the Rautaruukki takeover

Rautaruukki was a steel manufacturer based in Finland with approximately 8,700 employees. It was active in the production and distribution of (mainly carbon) steel and in the supply of steel products for the construction industry. It was established in 1960 and its main shareholder – with a 39.7 per cent stake – was Solidium, the Finnish state-owned investment fund. SSAB was – before the merger – a steel manufacturer based in Sweden. It had approximately the same number of employees (8,700) and was involved in the same activities as Rautaruukki. It was created in a three-way merger in 1978 by Domnarvets Jernverk, Norbottens Järnverk and Oxelösunds Järnverk. Its largest investor was a holding company called Industrivärden (Handelsbanken being one of the main owners). SSAB and Rautaruukki have been the clear market leaders in their respective home countries for the distribution of flat carbon steel products, and directly or indirectly control a large majority of the distribution in Norway, which led to antitrust issues, as we will see later on.

In January 2014 SSAB agreed to buy Rautaruukki for USD 1.6 billion. This was a response to a prolonged downturn in demand that has forced Europe's smaller players to cut costs and deal with idle capacity. Steel consumption in the European Union fell by about 4 per cent in 2013 and was around 30 per cent below the 2007 peak when world consumption, by contrast, rose by about 3 per cent in 2013 and was some 20 per cent higher than in 2007.

The combined losses for both companies had been more than 400 million euros (USD 542 million) in the previous five quarters. Rautaruukki chairman Kim Gran said that he initiated negotiations soon after being appointed to the company's board in 2012; in other words, Rautaruukki itself was involved in negotiations early on. The sale was deemed successful because the shares of both of the companies soared after they announced the all-share deal (Rautaruukki shares rose by 34 per cent and SSAB A-shares by 13 per cent).

The exchange of Rautaruukki shares for new SSAB stock began in early May 2014. The merged company has its primary listing in Stockholm, but there also is a secondary listing in Helsinki. The new name for the whole company is now SSAB, but the name Rautaruukki will also remain in use (the exact details of its use will be decided in the future).

3.1 The bid and its estimated effects

The combined market capitalisation of the two companies increased considerably as a result of the bid. Part of the takeover plan is to cut the combined workforce of more than 17,000 by about 5 per cent, mostly in Sweden and Finland, to help lower costs by up to 1.5 billion euros. The aim is to focus the new business on specialty steel products, where profits are less volatile than in commodity carbon steel. The new company will have its largest facilities in Sweden, Finland and the United States. The combined annual production capacity will be 8.8 million tonnes, but the new company is still small compared with, for example, ArcelorMittal, which can produce 119 million tonnes. Solidium (the Finnish state) will be the biggest investor in the new company by number of shares, but Industrivärden (Sweden) will lead in terms of number of votes.

3.2 Antitrust issues

The companies did not expect any major antitrust issues, but early on in the takeover process some references to stainless steel maker Outokumpu's 2012 acquisition of ThyssenKrupp's Innoxum unit were made by some analysts, who warned of possible complications in the process. The combined market share of SSAB and Rautaruukki in the Nordic region was very close to the Commission's preferred limits and it was feared beforehand that if the competition authorities stepped in, SSAB would cancel the whole deal instead of agreeing to sell some of its key assets.

Nevertheless, on 15 July 2014 the European Commission cleared the acquisition of Rautaruukki by SSAB, but only upon the fulfilment of a number of conditions. The approval required the divestment of five businesses in Finland, Sweden and Norway, because the Commission had concerns that the merger would significantly reduce competition on the markets for certain carbon steel products in the Nordic countries, as well as for stainless steel and profiled steel construction sheets (for roofing), especially in Finland. The required divestments were designed to address these concerns.

The Commission was originally concerned that the transaction (as initially notified) could have allowed the merged entity to raise prices in the Nordic countries in the absence of sufficient competition from imports from continental Europe and for the distribution of stainless steel. The

combined entity would become more than three times larger than its only sizable remaining competitor in Finland for stainless steel, the BE Group. The Commission's investigation also concluded that in Finland the transaction (as initially proposed) would have created a player three times larger than its sole remaining nationwide competitor (Weckman, which produces, for example, roofing products). The Commission was therefore concerned that the remaining players would have been unable to sufficiently constrain the merged entity from raising prices.

In order to address those concerns, SSAB committed to divest:

- a steel service centre in Sweden, together with a number of consignment stock and ex-mill sales contracts in Sweden;
- a steel service centre in Finland, together with a number of consignment stock and ex-mill sales contracts in Finland;
- SSAB's 50 per cent share (owned through SSAB's subsidiary Tibnor) in two Norwegian-based joint ventures acting as a steel service centre and distributor, Norsk Stål and Norsk Stål Tynnplater;
- SSAB's distribution subsidiary Tibnor Oy in Finland;
- SSAB's construction business Plannja Oy, in Finland.

SSAB also committed to ensure that another flat carbon steel producer will own a stake in the first and third businesses listed above after their sale. These businesses would therefore be in a position to serve as a route to market for another producer, who could establish and develop a direct presence in the Nordic countries (in addition to competing with the combined entity at the distribution level).

The Commission concluded that the transaction, as modified by these divestment commitments, would not raise any more competition concerns. The whole deal was finally completed on 29 July 2014.

3.3 Situation of the workforce and information and consultation

As already mentioned, part of the takeover plan is to cut the combined workforce of more than 17,000 by about 5 per cent, mostly in Sweden and Finland. This cut refers to the workforce after the divestments required by the Commission have been made.

As of early 2015, one of the abovementioned steel service centres was already sold in the city of Naantali in Finland. This was preceded by the transfer of a couple of shop stewards based in Oulu to this unit, which is situated 536 km away. One of the reasons behind this could be that certain shop stewards are seen as 'difficult' in the eyes of the management, raising troublesome questions or contesting the employer's decisions and because their employment contracts cannot be terminated according to the normal procedure pursuant to the Employment Contracts Act (55/2001). In other words, this could be seen as an easy way to get rid of them. This is an illustration of how badly the company has managed the whole situation when it comes to the workforce.

A further illustration of this is a strike on 12 May 2014, when the Finnish Development Minister and the Minister who is responsible for State Ownership Steering, Pekka Haavisto, was about to visit the Rautaruukki factory in the city of Raahе (near the city of Oulu) in Finland. The visit was intended to get him acquainted with the site – the first and even now one of the biggest Rautaruukki sites in Finland – and its workforce. This whole visit was also cancelled due to the strike. About 1,000 employees were involved in the action, because they felt that they had not been adequately heard during the intended sale and that the company should have stayed state-owned.

Otherwise the national and local workforces are waiting for the Co-decision (Sweden) and Cooperation (Finland) negotiations to take place, when the plans for the collective redundancies are further clarified. Usually the companies in these countries are more likely to follow the local and national information and consultation processes⁸ mentioned before in this chapter than the transnational ones (e.g. EWC), but even in these cases (takeovers or cross-border mergers) the processes do not happen at a right time, which would be before the final decision is made.

In Rautaruukki there is no employee representation on the board of directors (or elsewhere in the company for that matter, although it is explicitly allowed by Finnish law). In SSAB, however, there are two employee representatives on the board. They were told about the coming bid as early as 2013, but they never disclosed any of this information to the other employees due to concerns about confidentiality and disclosure

8. The local information and consultation procedures pursuant to the Act on Cooperation within Undertakings (334/2007).

of insider information. It seems that the abovementioned Helsinki Takeover Code was followed to the letter here.

In Rautaruukki and in SSAB the workforces heard about the bid when it became public in January 2014 for the first time, as required by the Directive, but in neither of the companies did worker representatives issue separate statements to shareholders regarding the bid offer. Hence there were no talks between the employer and the employees at this stage (no Swedish Co-decision Law (MBL) or Finnish Cooperation negotiations).

The tender offer should be valid from three to ten weeks, and this would have been the right time slot for EWC negotiations (from January to mid-March 2014, before the final decision was made). However, the bid with its projected effects on employment in both countries was never dealt with in either the Rautaruukki or the SSAB EWCs, although the matter at hand was definitely of a transnational nature. In neither of the EWC agreements are there provisions for situations like this (adaptation clauses in cases of changes in the company structure). Rautaruukki's EWC agreement is from 2005 and SSAB's agreement is even older, from 1996. The SSAB EWC has existed only on paper, as it has not had any EWC representatives or any meetings in recent years and hence there would not have been anyone to inform and consult. The Rautaruukki EWC has been more active, but still no action was taken by the management to follow the right procedures.

Now both parties are working together in order to establish a new EWC for the merged company and even the employer has been positive about the establishment of a new EWC for both companies. The first meeting regarding the EWC took place in July 2014, when the Special Negotiating Body (SNB) was established. After that there was one meeting in November and two meetings in December 2014. Both old agreements have been terminated and a totally new one is being negotiated. On 3 December the company supplied the employee negotiators with a very poor EWC agreement as their own proposal and the employees responded with the Finnish trade unions' best EWC model agreement. After that there have been exchanges of different types of EWC agreements, but nothing has been signed yet. The employee representatives still remain positive about the outcome of the negotiations and they are hoping for at least a good compromise. The countries involved in Europe are Finland, Sweden, Norway, the United Kingdom, Spain, Portugal, Italy, Poland, Romania, the Netherlands, Denmark, Lithuania, Latvia, Estonia, Ukraine

and Belarus. Outside Europe SSAB operates in the United States, Canada, Russia, Singapore, South Africa, Australia, Chile and China (24 countries altogether).

4. Conclusions

All in all it seems that the companies tend to regard these types of situations – takeover bids or cross-border mergers – as matters that have nothing to do with the employee representatives, but rather something that the company decides totally on its own. This becomes clear most remarkably from the Helsinki Takeover Code – which the companies usually follow – where it is bluntly stated that ‘under no circumstances must any employee participate in decision-making regarding a takeover bid’. Unfortunately these things have not yet been contested by Finnish employees or their organisations.

It also seems that the information and consultation procedures according to the EWC law – and even the national cooperation procedures – are for the most part neglected. The national cooperation negotiations will be followed by companies generally only when people are being made redundant or laid-off temporarily (Chapter 8), but not when other types of changes are happening in or to the company (Chapter 6), even though this should also be done.⁹ The reasons behind this are likely to be the lack of trust – which sadly often hinders the well-functioning information and consultation procedures between Finnish companies and their workforce – and the probability of insider information and secrets being disclosed in these processes. It seems that fears about sanctions for breaches of insider information are much stronger than fears about sanctions for breaching employee rights, which – it must be said – are fairly vague.

Another noteworthy thing here is that even though the European Commission set quite harsh requirements for divestments, these requirements had no impact on the company's plans regarding how many people will be made redundant in the future, even though they are bound to happen automatically. It could have been expected that the European Commission would also protect the workforce – not only the welfare of

9. The cooperation negotiations pursuant to the Act on Cooperation within Undertakings (334/2007) and the negotiations according to Chapter 6 and Chapter 8 (lay-off and redundancies).

the European companies with regard to antitrust issues – and it would have been very much appreciated if the Commission had also commented on this issue when announcing the requirements for divestments and maybe even laid down some other requirements regarding it. Unfortunately that was not done.