EN

Case No COMP/M.6376 - ARCELORMITTAL / ATIC SERVICES

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 02/12/2011

In electronic form on the EUR-Lex website under document number 32011M6376

Office for Publications of the European Union
L-2985 Luxembourg

EUROPEAN COMMISSION

Brussels, 02.12.2011
C(2011) 9101

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.6376-ArcelorMittal/ATIC Services
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1]**

1. On 26 October 2011, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking ArcelorMittal Netherlands BV ("**ArcelorMittal**", Netherlands) acquires, within the meaning of Article 3(1)(b) of the Merger Regulation, control of the whole of ATIC Services Group ("**ATIC**", France) by way of acquisition of shares. ArcelorMittal and ATIC are designated hereinafter as the "**Parties**"[2].

1 OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

2 Publication in the Official Journal of the European Union No C 321, 04.11.2011, p.18

I. THE PARTIES

2. **ArcelorMittal** is a company belonging to the ArcelorMittal Group, which is a globally active steel and mining company.

3. **ATIC** provides services along the logistic chain for the import and onward inland transportation of primarily coal and iron ore, and to a more limited extent services for the export of finished steel products from the European Union. In particular ATIC's core activity is the provision of seaport terminal services for dry bulk goods at the ports of Rotterdam, Amsterdam, Zeeland, Fos-sur-Mer, Dunkirk, Le Havre and Gdynia.

II. THE OPERATION AND THE CONCENTRATION

4. ArcelorMittal already holds a non-controlling minority shareholding of approximately [40-50]% in ATIC. The other current shareholders are EDF Trading (approximately [30-40]%), CFD Energie[3] (approximately [10-20]%), as well as Etablissments Patin and Manufrance BV[4] with shareholdings of less than [0-5] percent. No shareholder currently exerts sole or joint control over ATIC.[5]

5. ArcelorMittal intends to acquire EDF Trading's shares following which ArcelorMittal will hold approximately [70-80]% of the shares with the remaining parties continuing to hold their shares. ArcelorMittal will therefore acquire sole control over the ATIC.

6. Consequently, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[6] (ArcelorMittal: EUR […] million; ATIC: EUR […] million). Each of them has an EU-wide turnover in excess of EUR 250 million (ArcelorMittal: EUR […] million; EUR ATIC: […] million). None of the undertakings concerned achieve more than two-thirds of its aggregate EU-wide turnover within one and the same Member State. Thus, the notified operation has an EU dimension.

---

3 A subsidiary of Total S.A.

4 A subsidiary of ATIC.

5 According to ATIC's statutes, no shareholder has a majority of the voting rights at the General Assembly or the Board (decisions are taken by simple majority). In addition, no shareholder has a veto right on decisions taken by the Administrative Board. Finally, there is no shareholder agreement.

6 Turnover calculated in accordance with Article 5 of the Merger Regulation.

IV. COMPETITIVE ASSESSMENT

8. The proposed transaction gives only rise to vertically affected markets, in particular through ATIC's strong position in the terminal services business, which is upstream of ArcelorMittal's steel production. In addition to terminal services, ATIC also provides (i) deep sea (dry) bulk shipping agency and related logistics services; (ii) inland waterway logistics; and (iii) coal trading services for large scale customers of the steel and energy production trade. These services are also vertically linked to steel production to the extent that they relate to coking coal and iron ore. The notifying party claims that ArcelorMittal is already today by far the largest customer of these services. As a result, most of ATIC's capacity relating to the above mentioned services is used by ArcelorMittal. The remaining capacity is directed at third parties. However, given that this capacity is limited, ATIC is a minor player towards third parties in each of these markets with a *de minimis* market share of well below 25% on any plausible market,[7] facing numerous stronger competitors in respect of each activity. This was confirmed by the market investigation as no respondent raised any concerns in relation to these services. Therefore, the proposed transaction is unlikely to give rise to competition concerns in relation to any of these services.

a) Relevant product markets

Seaport terminal services for coal and iron ore

9. Terminal services consist of cargo handling and storage. In the *Sea-Invest/EMO-EKOM*[8] (hereafter "the *Sea-Invest* decision") decision, the Commission concluded that the market for terminal services (cargo handling and storage) could be further subdivided according to the three main types of cargo: (i) parcel goods (in particular containers), (ii) dry bulk goods and (iii) liquid bulk goods.[9] In that decision, the Commission also considered that the market for terminal services for dry bulk goods could be further sub-divided according to the type of commodity handled and therefore identified, within the dry bulk goods, a separate sub-market for the seaport terminal services for (i) coal and iron ore, distinct from (ii) agri-bulk and (iii) other dry bulk goods. Moreover, in the same decision and in line with a previous decision[10], the Commission considered that the sub-market for terminal services for coal and iron ore could be further split according to the mode of onward shipping following the terminal services, distinguishing between (i) the market for terminal services for hinterland traffic (from deep-sea ships directly to inland barges, trains or trucks) for coal and iron ore and (ii) the market for terminal services for transhipment traffic (from deep sea ships to relay/feeder vessels) for coal and iron ore.

---

7 As regards i) deep sea (dry) bulk shipping agency and related logistics services and ii) trade in coal, ATIC's market share are below 10% on any plausible market.

8 Case COMP/M.3848-*Sea-Invest/EMO-EKOM*.

9 See also Case No JV.55-*Hutchinson/RCPM/ECT*; Case COMP/M.3576-*ECT/PONL/Euromax.*

10 Case No JV.55-*Hutchinson/RCPM/ECT*

10. The notifying party submits that in the present case it can be left open whether the relevant product market should be defined as dry bulk terminal services (excluding agri-bulk, but including other dry bulk products besides coal and iron ore) or on a narrower basis. In addition, the notifying party considers that the distinction between hinterland and transhipment services is flawed as far as it relates to dry bulk products, because there are several ways to unload or lighten a ship for access to a deep sea port and many port terminals offer both the unloading of dry bulk for hinterland services and the unloading of dry bulk from ocean going vessels onto smaller vessels. The notifying party considers that if there is any distinction that should be made, it should be made on the basis of whether a deep sea vessel can access the facilities, even after required lightening at anchorage or another port, or not.

11. Almost all respondents to the market investigation[11] confirmed that the market for the seaport terminal services should be split between i) parcel goods, ii) dry bulk goods and iii) liquid bulk. As regards a possible widening of the coal and iron ore segment to include "other dry bulk" the findings of the market investigation tend to support the conclusion reached in the *Sea-Invest* decision that terminal services for coal and iron ore form a separate market from that of other dry bulk.

12. With regard to a possible further segmentation between terminal services for coal on the one hand and iron ore on the other hand, the results of the market investigation were inconclusive with a majority of customers considering that stevedoring services for coal and iron ore are substitutable i.e. a terminal usually handling coal could handle iron ore and vice-versa, subject to measures being put in place to deal with any contamination risk. A majority of competitors considered that switching from handling coal to iron ore would be easier than the other way round, although only a minority of them have switched from handling coal to iron ore and vice-versa. For the purposes of the present case there is no need to reach a final view as regards this potential further segmentation as even on the basis of the narrower segmentation competition concerns do not arise.

13. As regards the differentiation between terminal services for hinterland traffic and terminal services for transhipment traffic, the outcome of the market investigation was inconclusive. However, for the purposes of the present decision it is not necessary to decide whether or not this differentiation remains appropriate since the conclusions of the competition analysis will not be affected.

Steel production

14. According to the notifying party, ATIC's terminal services are used by ArcelorMittal for the import of coal and iron ore which in turn are used to produce steel. ArcelorMittal and other steel producers import intermediate products such as coking coal which is used to produce coke which in turn is used jointly with iron ore to produce pig iron, which is then used to produce various steel products. In its previous decisions,[12] the Commission has distinguished between four broad categories of finished steel products: (i) carbon steel, (ii) stainless steel, (iii) highly alloyed steel and (iv) electrical steel. Within the carbon steel category the Commission suggested that a further distinction

---

11 One respondent suggested the following distinction: i) liquid bulk, ii) dry bulk, iii) containers, iv) break bulk and general cargo, v) Ro-ro (roll on-roll off) and vi) cold storage of fruits.

12 See for example Case COMP/M.4127 – *Mittal/Arcelor*.

could be made between semi-finished and finished products. Within the finished product category the Commission suggested that a further distinction could be made between long products, flat products and welded and seamless tubes.

15. In line with these previous Commission decisions, the notifying party has identified four relevant steel segments which could be affected by this transaction as follows: (i) cold-rolled carbon steel, (ii) hot-dip galvanised and electro-galvanised strip and sheet (iii) organic coated sheet which all belong to the segment of flat products and (iv) heavy sections (beams) which are part of the long products segment. For the purpose of the present decision, the Commission agrees with the notifying party's position.

b) Geographic market definition

Seaport terminal services for coal and iron ore

16. In its *Sea-Invest* decision, the Commission concluded that the market for terminal services for hinterland traffic for coal and iron ore in the Netherlands (Rotterdam/Amsterdam/Zeeland) was a separate market from Antwerp/Ghent/Dunkirk.[13] In addition, the Commission left open whether the ports of Ghent and Dunkirk were in the same geographic market as Antwerp or whether they formed a separate market (which was in any case distinct from Rotterdam/Amsterdam/Zeeland). As concerns the geographic dimension of the market of terminal services for transhipment traffic for coal and iron ore, it was concluded that this market included at least the deep-sea ports in the range of Gothenburg-Le Havre and the UK deep sea ports.

17. According to the notifying party, the relevant product market is the market of the seaport terminal services for hinterland traffic for dry bulk goods. Hence, the notifying party submits that the geographic dimension of this market includes all deep sea ports at least in the Hamburg - Le Havre region, capable of receiving dry bulk sea vessels (even if after appropriate lightening). Eventually, the notifying party considers that the exact geographic dimension can be left open.

18. The market investigation does not allow clear conclusions to be drawn as regards the geographic dimension of the market for terminal services for hinterland traffic for coal and iron ore. It appears that there may be some blurring of the distinction made in the *Sea-Invest* decision between the Dutch ports and the ports of Antwerp/Ghent/Dunkirk. Most of the competitors view the ports of Antwerp, Ghent, Dunkirk and LeHavre as credible alternatives to the Dutch ports. The customers' replies are less straightforward as a majority of them considers that only Antwerp is a credible alternative to the Dutch ports. As regards the area Antwerp/Ghent/Dunkirk, contrary to the customers, most of the competitors do not see the ports of Antwerp, Ghent and Dunkirk as substitutable with one another.

19. Overall, it seems that draught limitation of the terminals as well as their location and their inland connections have an impact of the decision-making process of the customers. For example, a customer, who has installed its production facility nearby a terminal and heavily invested in direct connections between the two, will not consider the switch to another terminal as a viable alternative.

---

13 The decision acknowledged limited fringe competition between these geographic markets but considered it too marginal to impact significantly the geographic dimension of the markets.

20. As regards the geographic dimension of the market for terminal services for transhipment traffic for coal and iron ore, the outcome of the market investigation does not allow to draw firm conclusions.

21. For the purpose of the present decision, the exact geographic market of both i) the market for terminal services for hinterland traffic for coal and iron ore and ii) the market for terminal services for transhipment traffic for coal and iron ore can be left open as the transaction will not raise any competition concern even under the narrowest market definition.

S*teel production*

22. In previous Commission decisions[14] the Commission has found that the geographic market for relevant steel segments was at least EEA-wide. For the purpose of the present decision, the exact geographic market definition can be left open as the transaction will not raise any competition concerns under any reasonable market definition.

c) Competitive Assessment

23. The transaction gives rise to vertically affected markets as a result of the vertical link between ATIC's seaport terminal services (in particular in relation to the handling of iron ore and coal) and ArcelorMittal's activities as a steel producer.

Risk of foreclosure on the downstream market for steel

24. On the downstream market for steel production ArcelorMittal's position on the four relevant steel segments is as follows: [20-30]% for cold-rolled flat carbon steel while three competitors hold sizeable market shares (Riva: [10-20]%, Corus [10-20]% and TKSE [5-10]%). As regards the market for hot-dip galvanised and electro-galvanised strip and sheet according to the parties ArcelorMittal ranks first with a [30-40]% share in the EEA followed by TKSE with [10-20]%, Corus with [5-10]% and Riva and Voest Alpine each with [5-10]%. In the market for organic coated sheet ArcelorMittal has a share of [20-30]% followed by Corus with [10-20]%, TKSE with [5-10]% and Voest Alpine with [5-10]%. Finally in the segment for heavy sections (beams) ArcelorMittal has a [30-40]% share followed by three competitors with substantial shares: Celsa ([10-20]%), Salzgitter ([10-20]%) and A. Gallardo ([10-20]%). It follows that while ArcelorMittal enjoys a leading position on each of these segments its nearest rivals have substantial market shares so that it does not enjoy significant market power in any of these segments.

25. On the upstream market for seaport terminal services, according to the information provided by the notifying party and on the basis of the wider geographic region of Le Havre–Hamburg, ATIC would have a [40-50]% share of an all dry bulk (coal and iron ore plus "other dry" bulk but excluding agri-bulk) terminal services market. For the same geographic area but on a narrower product market of coal and iron ore only, ATIC's share would rise to [50-60]%. For the narrower geographic market of Rotterdam - Amsterdam -

---

14 See for example Case COMP/M.4127 – *Mittal/Arcelor*.

Zeeland, ATIC's share of the "dry-bulk" (coal and iron ore plus "other dry" bulk) market would be [60-70]% and of coal and iron ore only, its share would be [80-90]%.[15]

26. The Commission investigated the impact of the vertical link between the activities of ArcelorMittal and ATIC on competition, in particular in respect of ArcelorMittal's ability and incentive, through ATIC, to foreclose rival steelmakers who would need iron ore and coal as inputs shipped into the Dutch ports (whether by reducing the quality of service, raising price, refusing service or any other potential measure), and concluded that the transaction does not give rise to any competition concerns for the reasons set out below.

a) Ability to Foreclose

27. Although some of ArcelorMittal's rival steel producers on the relevant downstream steel markets do use ATIC's terminals, the market investigation has revealed that most (or at least the largest competitors) have their own captive terminals or use other terminals not controlled by ATIC at other ports, or other means of (inland) transportation. Thus a large number of Arcelor's important rivals do not actually use any of the ATIC terminals (Riva, US Steel Kosice, Celsa, A. Gallardo, Salzgitter). A number of ArcelorMittal's main rivals are themselves vertically integrated and have their own captive terminals in the Rotterdam-Amsterdam-Zeeland region. For example, Thyssen Krupp Steel is the owner and sole user of the EECV terminal at Rotterdam, while Corus has a captive terminal at Amsterdam. The availability of the ATIC terminals does not therefore appear to be critical for most steel competitors overall, despite the fact that some terminals may be important points of entry for specific steel production plants.[16]

28. Taking the narrowest possible geographic market definition of Rotterdam-Amsterdam-Zeeland, i.e. the Dutch ports, each of ATIC's solely or jointly controlled terminals (EMO-EKOM[17] at Rotterdam, OBA[18] at Amsterdam and OVET at Zeeland), are all, to some extent, currently used by certain competitors of ArcelorMittal. However, for the reasons set out below, the Commission is of the view that ArcelorMittal is unlikely to have the ability to foreclose its competitors to such an extent that the transaction would result in a significant impediment to effective competition in the relevant downstream steel segments.

29. First, the high overall combined market shares of the terminals solely or jointly controlled by ATIC may be misleading since the majority of ATIC's market share can be attributed to two jointly-controlled terminals: OBA in Amsterdam and EMO-EKOM in Rotterdam. On the narrowest possible market these two terminals account for [70-80]% alone.

15 ATIC's market shares have been calculated on the basis of both solely and jointly controlled terminals.

16 For example, the German steelmaker Dillinger Hütte ships not an insignificant part of its inputs via the EMO-EKOM terminal in Rotterdam, as well as using the ATIC terminal at Dunkirk for exporting finished steel products. Also another steel maker, without shares in any terminal, ships coal and iron ore via the EMO-EKOM terminal.

17 EMO-EKOM is jointly controlled by Manufrance (ATIC), Thyssen Krupp, H.E.S. Beeher and Sea-Invest (see case COMP/M.3848-*Sea-Invest/EMO-EKOM*).

18 OBA's is jointly controlled by H.E.S. Beeher and OVET (ATIC).

30. With regard to EMO-EKOM, which is the most important terminal in terms of capacity and other qualities, such as draught, ArcelorMittal […] members of the supervisory board which gives it only negative veto power for certain major decisions, none of which touch upon individual customer contracts.[19] Therefore, according to the notifying party, it will not have the ability post-transaction to positively determine the outcome of any day-to-day commercial decision and thus the ability, for instance, to determine the individual decision to accept a particular customer contract, to influence the specific contract conditions or even the price.

31. The market investigation confirmed that none of the shareholders have the possibility to influence specific contract conditions or prices. In respect of access to information concerning EMO-EKOM's customers, the market investigation has confirmed the finding made by the Commission in the *Sea-Invest* decision in that the members of the Supervisory Board of EMO-EKOM do not, as a matter of principle, discuss individual customers, nor do they receive detailed information on specific customers of the terminal, including information on prices charged, volumes per customer or other competitive information. In terms of the types of instructions that the Supervisory Board can give the Board of directors of EMO-EKOM, the shareholders have all confirmed that such instructions relate to general financial, social, economic and human resources policy. Furthermore, all jointly controlling shareholders have confirmed that no shareholder receives preferential treatment by the terminal, whether or not they are also a customer of the terminal. In short, EMO-EKOM is operated on an arms-length basis, independently of its shareholders.

32. Furthermore, the other shareholders at the jointly controlled terminals are companies with opposing, if not competing interests. Indeed, at EMO-EKOM, two of the jointly controlling shareholders, Sea-Invest and H.E.S. Beheer, operate multiple terminals and have no activities in the steel sector. Therefore, they will have no interest in agreeing with ArcelorMittal to exclude particular steel customers. The same reasoning applies to ATIC's other joint venture terminal, OBA.

33. Second, as regards the solely controlled OVET terminal in Zeeland, the only steel competitors currently using the terminal belong to ThyssenKrupp who also has its own captive terminal at Rotterdam.

34. Third, the market investigation has confirmed that there are some feasible alternative terminals for smaller steel competitors of ArcelorMittal that do not have their own captive terminals and who require sea-transport of iron ore and/or coal to the region such as the European Bulk Services ("EBS") terminal at Rotterdam and the Rietlanden terminal (owned by EDF trading) at Amsterdam to which customers of terminals such as EMO-EKOM and OBA could potentially switch at least some of their volumes given that the market investigation has shown that both EBS and Rietlanden are not utilised to full capacity. Indeed, switches between some of the terminals have taken place in the past.[20]

35. Fourth, the market investigation has shown that there are plans to improve handling capabilities at various competing terminals/ports, for example: (i) for draught increase and

---

19 ATIC has veto rights over the budget and business plan, certain major investments and loans and the appointment of directors of the board.

20 This has been confirmed by Vattenfall AB, Oxbow coal B.V., Corus Tata Steel and EDF Trading Limited in the course of the market investigation.

improved hinterland connections by train at Wilhelmshaven which is located just beyond the Dutch border; (ii) for increasing train loading capabilities at Rietlanden at Amsterdam; (iii) for lock width and draught increases at Amsterdam. Such improved handling capabilities would allow for further switching between terminals by steel customers.

36. Of the terminals owned by ATIC and situated in the wider geographic area, the terminal at Le Havre is jointly controlled by ATIC and EDFT and is used only by EDFT (which is not a competitor of Arcelor).

37. As regards Dunkirk, in addition to ArcelorMittal, only Dillinger Hütte uses the terminal. However, it does not use the terminal for importing iron ore and coal; rather, it uses the terminal for export of some finished steel products. Furthermore, given that ArcelorMittal argues that it co-controls Dillinger Hütte through its [30-40]% share of the voting rights, any incentive by ArcelorMittal to hinder the export of Dillinger Hütte's products must be questioned.

38. The Commission therefore considers that ArcelorMittal will be unlikely to have the ability to foreclose its downstream rivals to such an extent as to cause a significant impediment to effective competition

b) Incentive to Foreclose

39. Even if ArcelorMittal had the ability to foreclose rivals post-transaction, it is unlikely to have the incentive to do so for the reasons set out below.

40. First, the market investigation has confirmed that sea port terminal services for the handling of coal and iron ore account for only a small proportion of the overall transport costs, and even less of the overall cost of steel production. It follows that any price increase of terminal services would have a limited impact on the cost structure and hence on competition in the downstream steel market. Even if hypothetically one of ArcelorMittal's smaller rivals without full or partial ownership in terminals were obliged to move some of their volumes to an alternative, more expensive terminal, this would be unlikely to have a significant impact downstream on steel prices to end customers.

41. Second, the notifying party has submitted that ArcelorMittal is already a major customer of ATIC and does not need further volumes at ATIC terminals for itself. Given that none of ATIC's Dutch terminals currently appear to be consistently running at full capacity, and there are also plans to increase capacity at the OVET terminal in Zeeland[21], to expand EMO-EKOM, and increase capacity at OBA, any foreclosure strategy would either result in further underutilised capacity or require finding new customers to use the terminals' coal and iron ore handling capacity. The plans to improve handling capabilities at other non-ATIC terminals as referred to above, arguably also increase the uncertainty that ArcelorMittal would face in finding new customers to fill the increased ATIC terminal capacity. Such a foreclosure strategy would risk losses for the terminal operations without any corresponding benefits.

42. For the reasons set out above the Commission considers that the operation is unlikely to result in input foreclosure.

---

21 According to information provided by the notifying party, a new quay should be completed in spring 2012 and additional loading, unloading and handling facilities will be operational by the end of 2012.

V. CONCLUSION

43. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1) (b) of the Merger Regulation.

For the Commission

(signed)
Joaquín ALMUNIA
Vice-President