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EUROPEAN COMMISSION
DG Competition

Case M.7779 - TRAFIGURA / NYRSTAR

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 15/12/2015

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EUROPEAN COMMISSION

Brussels, 15.12.2015
C(2015) 9606 final

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PUBLIC VERSION

MERGER PROCEDURE

To the notifying party

Dear Sir/Madam,

**Subject: Case M.7779 - Trafigura / Nyrstar
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²**

- (1) On 11 November 2015, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Trafigura Group ('Trafigura', the Netherlands) acquires with the meaning of Article 3(1)(b) of the Merger Regulation de facto sole control of Nyrstar NV

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 OJ L 1, 3.1.1994, p.3 ('the EEA Agreement').

('Nyrstar', Belgium) (the 'Proposed Transaction').³ Trafigura and Nyrstar are designated hereinafter as the 'Parties' and Trafigura as the 'Notifying Party'.

1. THE PARTIES

- (2) Trafigura is one of the world's leading independent commodity traders, specialising in the oil, minerals and metals markets. Its primary trading activities are the supply and transport of oil and petroleum products and metals and minerals. As regards zinc, Trafigura is the largest or second largest trader of zinc concentrate at a worldwide level (competing mainly with Glencore) as well as the second largest trader in zinc metal.
- (3) Nyrstar is an integrated mining and metals business, with established positions in zinc and lead. In particular, Nyrstar is the largest zinc smelter at a worldwide level but is relatively small in zinc mining. In the EEA, Nyrstar is the second largest smelter almost on par with EEA market leader Glencore.

2. THE CONCENTRATION

- (4) On 11 September 2014, Nyrstar launched a one-for-one rights issue as part of a capital raising strategy. Trafigura, which did not hold any shares in Nyrstar prior to the rights issue, acquired shares and preferential subscription rights in the market, resulting in a stake in Nyrstar of 10.19%. On 13 November 2014, Trafigura announced that it had increased its shareholding to 15.30%. Trafigura has continued to purchase shares in the market and held [20-30]% at the time of notification.
- (5) The Notifying Party considers that, on the basis of historical attendance rates, its shareholding in Nyrstar is highly likely to lead to control over a stable majority of votes cast at future Nyrstar shareholder meetings, and that therefore its acquisition of shareholding constitutes a 'concentration' within the meaning of the Merger Regulation. According to the Notifying Party, this is based on the following elements:
- a. From 2009 until September 2014 (when Trafigura first purchased shares in Nyrstar), attendance at shareholder meetings ranged from 3.57% to 23.67%. Attendance during the last five years has been, on average, around 12% of Nyrstar's total share capital;
 - b. At the shareholder meeting on 4 December 2014 (at which time Trafigura held a percentage interest of [10-20]%, but did not vote), the turnout was 15.83%. Trafigura has only voted at the most recent shareholder meeting, on 29 April 2015, when the attendance was 35.35% (of which [10-20]% was Trafigura itself);
 - c. The next largest (non-treasury) shareholder after Trafigura is Umicore, with a shareholding of 3.17% according to its transparency declaration on 23 March 2011. Only two (non-treasury) shareholders apart from Trafigura hold 3% or more of Nyrstar's shares.

³ Publication in the Official Journal of the European Union No C 386, 20.11.2015, p. 3.

- (6) According to the Commission Jurisdictional Notice⁴, "[a] minority shareholder may also be deemed to have sole control on a de facto basis. ... Where, on the basis of its shareholding, the historic voting pattern at the shareholders' meeting and the position of other shareholders, a minority shareholder is likely to have a stable majority of the votes at the shareholders' meeting, then that large minority shareholder is taken to have sole control."
- (7) The Commission observes that the historical attendance rate at Nyrstar's shareholder meetings fluctuated between 4 and 19% in the past six years (excluding Trafigura's votes). The attendance rate spiked to 23.67% only once, in 2012. According to the Notifying Party, this was due to Glencore acting as the reference shareholder of Nyrstar in that year. However, Glencore appears to have divested its shares by 2013 and can no longer be considered a reference shareholder in Nyrstar. Neither could any other shareholder be considered to have a strategic relationship with Nyrstar. The Commission's investigation did not reveal any indications that the attendance rates would increase in the future.
- (8) In this light, the Notifying Party's current shareholding of [20-30]% would have highly likely allowed it to have a majority in any past Nyrstar shareholder meeting both before and after September 2014 when Trafigura started acquiring shares in Nyrstar. More specifically, this shareholding would allow Trafigura to retain the majority of votes even if the shareholder attendance were to increase by further 5 percentage points. It has to be noted that such an increase would have been substantial in the case of Nyrstar, as its remaining shareholders are highly dispersed, and do not appear to have any strategic links to Nyrstar.
- (9) On this basis, the Commission considers that the Proposed Transaction, consisting in the acquisition of [20-30]% of Nyrstar shares from various sellers in a series of transactions, constitutes a concentration within the meaning of Article 3 of the Merger Regulation.

3. EU DIMENSION

- (10) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5,000 million⁵ [Trafigura: EUR 94,042 million; Nyrstar: EUR 2,799 million]. Each of them has a EU-wide turnover in excess of EUR 250 million [Trafigura: EUR 13,570 million; Nyrstar: EUR 1,246 million], but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation would therefore have an EU dimension.

4. COMPETITIVE ASSESSMENT

- (11) The Commission's investigation has consisted notably of the following investigative steps: (i) telephone interviews with 20 market participants, (ii) three questionnaires

⁴ Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (2008/C 95/01), recital 59.

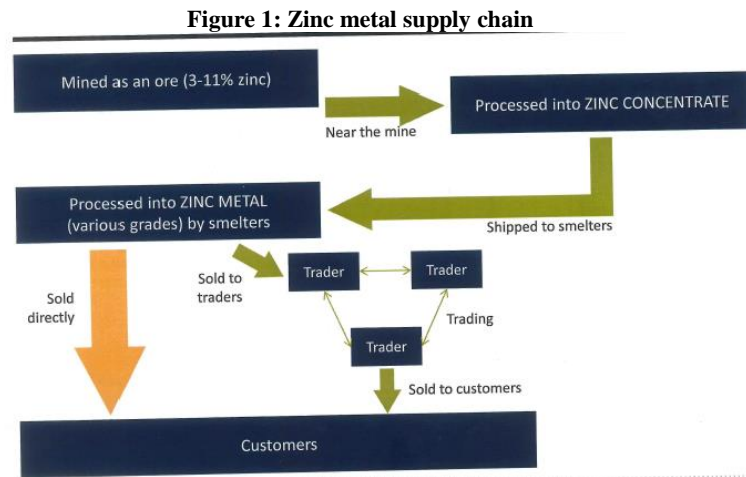
⁵ Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

(namely to customers⁶, competitors of zinc metal⁷ and competitors of zinc concentrate⁸) with over 75 replies, and (iii) a market reconstruction exercise.

4.1. Introduction to the industry

i. Zinc value chain

(12) The zinc value chain is depicted below from the point of extraction (mining) to end use.



Zinc ores

(13) There are zinc mines throughout the world, though the main mining areas are China, Australia and Peru. Trafigura has one mine in Spain and one mine in Peru. Nyrstar has a number mines, all outside the EEA, in Mexico, Honduras, Chile, Canada and the USA.

(14) Zinc is mined as an ore. This ore typically contains a range of other metals such as copper, lead, silver and iron. Approximately 3-11% of the ore is zinc. The ore rarely contains enough zinc to be used directly and so needs to be processed.

Zinc concentrate

(15) Zinc ore is processed into zinc concentrate at or near the mine by crushing and/or grinding the zinc ore into a powder. This powder is then put through a process called 'flotation' which separates the zinc concentrate from the other metals contained in the ore. Zinc concentrate has a zinc content of about 45-50%.

(16) Concentrate is regularly transported over significant distances. North America, South America and Australia are net exporters of zinc concentrate. China, Japan, Korea and Europe are net importers of zinc concentrate.

Zinc metal

⁶ Q1 – Questionnaire to customers of zinc metal.

⁷ Q2 – Questionnaire to competitors of zinc metal.

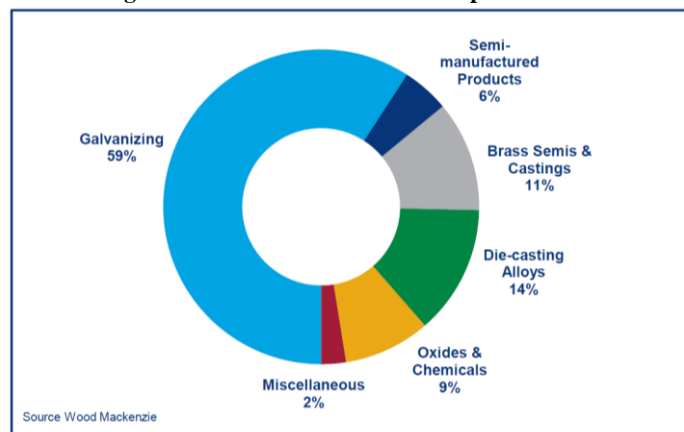
⁸ Q3 – Questionnaire to competitors of zinc concentrate.

- (17) The zinc concentrate is transferred to a smelter/refinery for the production of zinc metal. At smelters around the world, the conversion of zinc concentrate to zinc metal is accomplished through one of two methods: (i) the electrolytic process or (ii) the imperial smelting process.⁹ Both methods begin with the elimination of most of the sulphur in the zinc concentrate through heating the zinc concentrate to a high temperature to convert it to an impure zinc oxide called calcine.
- (18) While Nyrstar is active in the production and supply of zinc metal, Trafigura is not active in its production but only in trading.

End customers

- (19) End customers (who purchase zinc metal both directly from producers and also from traders) use zinc metal in a range of end uses including galvanising, brass semis and castings, rolled and extruded products, die casting alloys and chemicals. The largest use of zinc metal is for galvanizing steel and the main user of galvanised steel is the car industry.

Figure 2: Global first use of consumption for zinc



Source: Wood Mackenzie

- (20) The world consumption of zinc metal corresponds to around 13 million metric tonnes per year. China represents a large part of the zinc metal consumption so that the worldwide market excluding China corresponds to 7.3 million metric tonnes. EEA consumption corresponds to around one third of these quantities, i.e. 2.1 million metric tonnes.

ii. Price formation of zinc metal and zinc concentrate

- (21) As regards price formation, the London Metal Exchange ('LME') plays a central role in metals and concentrates. The LME is a commodity market in which standardised contracts (in terms of e.g. volume and grade) for metal are traded on a spot and futures basis. In non-ferrous metals, trading on the LME covers aluminium, copper, lead, nickel, tin and zinc. There is thus a global market price for these metals that is determined mainly on the LME.

⁹ The electrolytic process method converts calcine into zinc metal through a process of leaching, purification and electrolysis before the metal is melted and cast. The imperial smelting process method involves the sintering (crushing and mixing into a fine powder) of the zinc concentrate before it is fed into a furnace for smelting and then casting.

- (22) The price set on the LME acts as a benchmark for metal and metal intermediate products traded in the physical market i.e. between suppliers and customers.
- (23) When trading refined metal for physical supply to customers, a premium is added to the LME price. This premium reflects, amongst other factors, the logistical costs of delivery from the actual location of the metal and the metal grade/purity. The LME price reflects the metal grade/purity of metal meeting the LME specifications (e.g. SHG zinc metal). If a different grade/purity is delivered physically, the premia will be adapted to reflect these differences in grade/purity. Thus, contrary to the LME price, the premium varies between transactions.
- (24) When trading intermediate products, such as concentrates, refiners of metal, such as smelters, purchase their concentrate inputs with a rebate from the LME price, referred to as a 'treatment and refining charge'. The net difference between the LME price and the treatment and refining charge rebate is in effect the price that is paid to the concentrate supplier. The treatment and refining charge varies between transactions depending, for instance on transport costs. Zinc smelters typically also benefit from 'free' zinc metal, which measures the difference between the zinc recovered and sold by the smelter, and the percentage of zinc contained in the concentrate that is paid to the miner.
- (25) A zinc refiner's gross margin is thus determined by the treatment and refining charges, the value of free metal and the premium on top of the LME price for supplies of refined metal in the physical market. In addition, zinc metal smelters earn revenues from the sale of by-products (e.g. sulphuric acid or different metals recovered in the smelting process). As both input and sales prices are expressed with reference to the LME price, variations in the LME price do not directly affect the margin for metal refiners. Instead, they mainly affect the price that producers of concentrate obtain.
- (26) LME prices but also regional premia, 'benchmark premia' and treatment and refining charges are published by the trade press on a regular basis and provide a basis for pricing in the market.
- (27) Producers of metal typically prefer to sell to end-customers (e.g. to maintain long established client relationships and generate good will). In addition, metal producers always have the option of selling the metal instead on the LME if the metal produced has the correct LME grade. The LME thus functions as a buyer of last resort for the physical metal markets.
- (28) Purchasing metal on the LME entitles a buyer to a warrant that represents a unit of that metal stored in one of the LME warehouses. When a warrant is cancelled, the owner is entitled to the physical delivery of the metal from the LME warehouse where the metal is located. The LME thus functions as a source of last resort for the physical metal markets. However, depending on whether a queue exists at the warehouse where the metal is located, physical delivery of the metal may take a significant time. In practice, few transactions are physically settled at the LME, with most physical trading taking place directly between suppliers and customers outside the LME.

4.2. Relevant markets

4.2.1. Zinc concentrate

4.2.1.1. Relevant product market

- (29) In its previous decisional practice, the Commission has concluded that (i) zinc concentrate is not in the same product market as other metal concentrates and (ii) each of zinc concentrate and zinc metal constitute separate product markets.¹⁰ In a previous case, the Commission also considered whether zinc concentrate and zinc secondary products were part of the same product market, although this was ultimately left open.¹¹
- (30) The Notifying Party does not contest the Commission's previous conclusions in the decisions referred to in paragraph (29).
- (31) According to the Commission's investigation both customers and competitors on the market for zinc concentrate considered that zinc concentrate is sold on a market for zinc concentrate whereas zinc metal, zinc metal alloys and other concentrates are part of different markets.¹²
- (32) As regards a possible distinction between traders and producers of zinc concentrate, customers explained that they may have a preference to buy from producers since the supply is more stable and consistent.¹³ However, the majority of customers stated that both producers and traders compete for their purchases.¹⁴ These elements do not point to a segmentation of the market for zinc concentrate between traders and producers.
- (33) The Commission considers that, for the purpose of this decision, the exact scope of the product market can be left open since the Proposed Transaction does not give rise to serious doubts about its compatibility with the internal market under any plausible product market definition. Given that the Parties are not active in the production/supply of zinc secondary materials, the remainder of this decision will only address zinc concentrate.

4.2.1.2. Relevant geographic market

- (34) In previous decisions, the Commission had concluded that the relevant market for the supply of zinc concentrate was worldwide in scope, given that: (i) its price is determined globally based on LME quoted prices, and (ii) zinc concentrate is

¹⁰ Case M.6541 Glencore/Xtrata, decision of 22 November 2012; Case M.3284 Outokumpu/Boliden, decision of 8 December 2003; M.4256 Xstrata/Falconbridge, decision of 13 July 2006; Case M.4450 Umicore/Zinifex/Neptune, decision of 26 February 2007.

¹¹ Case M.4450 Umicore/Zinifex/Neptune, decision of 26 February 2007.

¹² See replies to question 24 of the Q2 – Questionnaire to competitors zinc metal and to question 9 of the Q3 – Questionnaire to competitors zinc concentrate.

¹³ See replies to question 28 of the Q2 – Questionnaire to competitors of zinc metal.

¹⁴ See replies to question 29 of the Q2 – Questionnaire to competitors of zinc metal.

transported from mines to smelting facilities across the globe.¹⁵ Subsequent decisions have left open as to whether the market for zinc concentrate is considered to be worldwide or worldwide excluding Chinese production and intra-China sales.¹⁶

- (35) The Notifying Party does not contest the Commission's previous conclusions.
- (36) The Commission's investigation broadly confirmed that the market can be considered global in scope, possibly excluding China.¹⁷
- (37) Market participants confirmed that purchases and sales of zinc concentrate are generally organized at the worldwide level.¹⁸ Customers also pointed to their flexibility to redirect purchases of zinc concentrate to suppliers located in other geographical regions in response to a potential price increase in the EEA.¹⁹
- (38) A minority of the market participants stated that the geographic market for zinc concentrate should be considered worldwide excluding Chinese production and intra-China sales.²⁰ According to one competitor "*Across the globe, markets are transparent and quite interlinked except local Chinese production and sales of zinc concentrates*". On the one hand, none of the customers that responded to the Commission's market investigation purchased zinc concentrate from China in the last two years.²¹ Moreover, none of the customers has been buying zinc concentrate from China for their production facilities located in the EEA.²² The majority of the competitors of zinc concentrate also stated that zinc concentrate on offer in China does not compete with zinc concentrate on offer outside China.²³ Furthermore, [...] the industry analysts appear to report figures for China and the rest of the world separately.²⁴ On the other hand, some competitors maintained that sales of zinc concentrate into China influence the price and conditions of concentrate sales in other geographic areas.²⁵
- (39) In any case, the geographic market definition can ultimately be left open as the Proposed Transaction does not give rise to competition concerns regardless as to

¹⁵ Case M.4256 Xstrata/Falconbridge, decision of 13 July 2006; Case M.4450 Umicore/Zinifex/Neptune, decision of 26 February 2007.

¹⁶ Case M.6541 Glencore/Xtrata, decision of 22 November 2012.

¹⁷ See replies to question 39 of the Q2 – Questionnaire to competitors of zinc metal and to question 20 of the Q3 – Questionnaire to competitors of zinc concentrate.

¹⁸ See replies to question 31 of the Q2 – Questionnaire to competitors of zinc metal and to question 14 of the Q3 – Questionnaire to competitors of zinc concentrate.

¹⁹ See replies to question 38 of the Q2 – Questionnaire to competitors of zinc metal.

²⁰ See replies to question 39 of the Q2 – Questionnaire to competitors of zinc metal and to question 20 of the Q3 – Questionnaire to competitors of zinc concentrate.

²¹ See replies to question 36 of the Q2 – Questionnaire to competitors of zinc metal.

²² See replies to question 33 of the Q2 – Questionnaire to competitors of zinc metal.

²³ See replies to question 37 of the Q2 – Questionnaire to competitors of zinc metal.

²⁴ [...] and the report CRU Monitor, Lead and Zinc concentrates.

²⁵ See replies to question 18 of the Q3 – Questionnaire to competitors of zinc concentrate.

whether the market for zinc concentrate is considered to be worldwide or worldwide excluding Chinese production and intra-China sales.

4.2.2. *Zinc metal*

- (40) Zinc metal is used, among other things, for galvanising, die casting alloy, oxides and chemicals, and in the brass industry.
- (41) There are five commercially traded grades of zinc metal:
- a. Special high grade ('SHG') zinc metal (99.995% pure), which is suitable for a wide range of end applications including galvanising, die casting and alloy production.
 - b. Continuous galvanising grade ('CGG') zinc metal, used for galvanising steel.
 - c. Die casting alloys ('DCA'), which are alloys of SHG zinc and other non-ferrous metals, such as aluminium and copper, used in the making of precision parts such as sprockets, gears and connector housings predominantly in the automotive and construction sector, but also in the manufacturing sector.
 - d. High grade ('HG') zinc metal (99.95% pure), suitable for a similar range of end applications to SHG zinc metal (save for the production of casting alloys, such as DCA).
 - e. Good ordinary brand ('GOB') zinc metal (98.5% pure), suitable for production of alloys such as brass.
- (42) SHG, CGG and DCA are the most widely produced and heavily used grades of zinc metal throughout the world. In particular, SHG accounts for around 65% of world production and is considered as the commodity grade of zinc metal.
- (43) Commodity grade zinc metal is characterised by the fact that it is a standardised product, i.e. a product which is suitable for numerous customers. It can therefore be traded in the LME. This contrasts with non-commodity grade zinc metal, which can only be used by a limited set of customers.

4.2.2.1. Relevant product market

- (44) In its previous decisional practice, the Commission has concluded that zinc metal is a distinct market, because of its special characteristics.²⁶ The Commission has treated zinc metal as a distinct market²⁷ and has stated that the market may be further

²⁶ Case M.470 Gencor/Shell, decision of 29 August 1994; Case M.2062 Rio Tinto/North, decision of 1 August 2000; Case M.2413 BHP/Billiton, decision of 14 June 2001; Case M.4256 Xstrata/Falconbridge, decision of 13 July 2006; Case M.4450 Umicore/Zinifex/Neptune, decision of 26 February 2007.

²⁷ Case M.2062 Rio Tinto/North, decision of 01 August 2000; Case M.4450 Umicore/Zinifex/Neptune, decision of 26 February 2004; Case M.4256 Xstrata/Falconbridge, decision of 13 July 2006.

segmented by grades. However, the Commission has ultimately left the exact market definition open.²⁸

- (45) The Notifying Party submits that the exact product market can be left open in this case because no competitive concerns arise on the basis of any of the market definitions above.
- (46) According to the Commission's investigation, the customers of zinc metal cannot use interchangeably SHG and other grades of zinc metal for each of their applications.²⁹ One customer stated that "*no demand-side substitutability exists between these differing grades of zinc*". As regards DCA, customers mentioned that "*we can only use diecasting alloys (DCA) for diecasting operations*" and "*Some applications (higher corrosion resistance) needs Aluminium in the alloy*". As a consequence, the large majority of customers would not change the quantity purchased of SHG to buy another zinc metal grade if its price increased by 5%.³⁰ Moreover, a majority of customers stated that there are price differences between the different grades of zinc metal.³¹
- (47) Producers of zinc metal presented balanced views about the possibility to switch the production of other grades of zinc metal into the production of SHG quickly and at a low cost.³² One producer explained that "*Depending on customer orders prior to production we can switch between CGG and SHG (technical limits apply)*". Another one mentioned that "*smelters all start with the production of SHG and then add other metals to make the necessary alloys*". The market investigation was thus not conclusive with respect to supply-side substitutability between all grades.
- (48) The Commission also investigated eventual differences between buying from traders and smelters. According to the Commission's investigation, some customers of zinc metal notice differences between buying from smelters as opposed to traders.³³ Elements mentioned in the market investigation relate for instance to the fact that: (i) traders have more flexible conditions, whereas producers may have a better product range and prices, and (ii) smelters provide long-term relationships while traders work from deal to deal. However, these factors do not point to elements that render products less substitutable, but to different characteristics of otherwise similar product offerings.
- (49) The exact product market definition can nonetheless be left open since the Proposed Transaction does not give rise to serious doubts about its compatibility with the internal market under any plausible product market definition regardless as to

²⁸ Case M.6541 Glencore/Xtrata, decision of 22 November 2012; Case M.2348 Outokumpu/Norzink, decision of 27 March 2001; Case M.4256, Xstrata/Falconbridge, decision of 13 July 2006; Case M.4450 Umicore/Zinifex/Neptune, decision of 26 February 2007.

²⁹ See replies to question 8 of the Q1 – Questionnaire to customers of zinc metal.

³⁰ See replies to question 9 of the Q1 – Questionnaire to customers of zinc metal.

³¹ See replies to question 7 of the Q1 – Questionnaire to customers of zinc metal.

³² See replies to question 13 of the Q2 – Questionnaire to competitors of zinc metal.

³³ See replies to question 10 of the Q1 – Questionnaire to customers of zinc metal.

whether the market for zinc metal is considered to include all the grades or each grade would constitute a separate market.

4.2.2.2. Relevant geographic market

- (50) In previous decisions, the Commission has considered the geographic market for zinc metal to be EEA-wide in scope³⁴. In Glencore/Xstrata, the Commission considered that there was at least a serious possibility that the market is EEA-wide.³⁵
- (51) The Notifying Party does not contest such conclusion.
- (52) Firstly, the main factors pointing to a EEA-wide market mentioned in previous decisions³⁶, namely (i) the import duties on imported zinc into the EEA (i.e. 2.5%), (ii) the reduced volume of imports into the EEA, (iii) the significant transport costs and (iv) the differences in regional premia, are still present in the current context of the market for zinc metal.
- (53) In fact, according to the Commission's investigation, factors like the transport costs, import duties and shipping time affect the ability of importers of zinc metal to be an effective competitor in the EEA.³⁷ One zinc metal supplier from outside EEA stated that *"We do not sell any zinc metal in Europe due to high freight costs"*. Other suppliers of zinc metal explained that *"Once the logistics costs are included, this can make imports too expensive"* and *"Higher transport costs will have a negative effect on the profitability"*. As regards import duties, one competitor stated that *"Import duties can have a material impact on the import price which can make them too expensive"*.
- (54) Both customers and competitors also stated that there are significant price differences between different regions in the world.³⁸ According to one competitor, *"Regional demand and supply conditions will determine regional zinc metal premiums"*. Another competitor mentioned that *"If prices are understood as premia to LME, then prices depend on the regional availability of metal"*. Customers also explained that *"Premiums differ from region to region do to availability in the specific region"*.
- (55) In the Figure below it is possible to observe the differences between the premium evolution in different regions. This evidence also supports a definition of the relevant geographic market that is EEA-wide in scope.

Figure 3: Evolution of zinc premia
[...]

³⁴ Case M.2348 - Outokumpu/Norzink, decision of 8 December 2003; Case M.4256 - Xstrata/Falconbridge, decision of 22 November 2012; Case M.4450 - Umicore/Zinifex/Neptune JV, decision of 26 February 2004; Case M.6541 Glencore/Xtrata decision of 22 November 2012.

³⁵ Case M.6541 Glencore/Xtrata, decision of 22 November 2012.

³⁶ Case M.6541 Glencore/Xtrata, decision of 22 November 2012.

³⁷ See replies to question 22 of the Q2 – Questionnaire to competitors of zinc metal.

³⁸ See replies to question 16 of the Q1 – Questionnaire to customers of zinc metal and question 20 of the Q2 – Questionnaire to competitors of zinc metal.

- (56) Secondly, the majority of customers and competitors explained that importers of zinc metal from free tax duty areas, namely Namibia, Peru and Mexico, effectively compete with smelters and/or traders of zinc metal located in the EEA.³⁹ In fact, 91% of the quantities imported into EEA in 2014 had an origin in these three countries.⁴⁰
- (57) Nevertheless producers from these areas stated that they cannot sell in the EEA all the quantities they produce in those countries since their priority market is the domestic market. Therefore, in the market share calculations the Commission only takes into account the quantities effectively sold in the EEA from these countries.
- (58) Thirdly, if a worldwide market is considered, it is likely that China should be excluded. China is a net importer of many metal commodities and there are no exports from China to the EEA.⁴¹ This is explained by the restrictions on exports from China in the form of tariffs, export taxes or other export barriers. Furthermore, [...] the industry analysts appear to report figures for China and the rest of the world separately.⁴²
- (59) In any case, the geographic market definition can ultimately be left open as the Proposed Transaction does not give rise to competition concerns regardless as to whether the market for zinc metal is considered to be worldwide or worldwide excluding Chinese production and intra-China sales, or most likely EEA-wide.

4.3. The activities of the Parties

- (60) The Proposed Transaction would only give rise to horizontally affected markets for the supply of zinc metal, but not for the supply of zinc concentrate. Moreover, as regards zinc metal, Trafigura is only present in the trading of SHG, and not the other zinc metal grades.
- (61) The Parties' activities also overlap in the production of copper and lead concentrates, in the supply of copper metal, gold, lead, silver concentrates, and in the supply of lead, silver, and sulphuric acid. However, none of such relationships gives rise to horizontally or vertically affected markets.

4.4. Assessment of potential horizontal effects in the market for zinc metal

4.4.1. Market structure

- (62) For the purposes of the present decision, the Commission takes two approaches for calculating market shares of the market for zinc metal: at the production and at the supply level. This allows assessing market power both in terms of original access to volumes (production level) and in terms of market relations with customers (supply level).
- (63) As regards the assessment at the supply level, and with the purposes of excluding double counting, the Commission uses the following allocation of sales among

³⁹ See replies to question 17 of the Q1 – Questionnaire to customers of zinc metal and question 21 of the Q2 – Questionnaire to competitors of zinc metal.

⁴⁰ See reply to question 9 of the Commission's request for information of 4 November 2015.

⁴¹ See reply to question 9 of the Commission's request for information of 4 November 2015.

⁴² [...] and the report CRU Monitor, Lead and Zinc concentrates.

producers and different traders. Sales volumes should be attributed to a trader, independently of who they sell the product to, if they derive from (i) the trader's own production, or (ii) the acquisition from a producer on the trader's own account (including in particular through de facto long-term and/or exclusive off-take agreements). Consequently, also for sales that take place between traders, volumes should be attributed to the trader that produced the volumes or that first procured the volumes from a producer or the LME on its own account.

- (64) The Notifying Party provided market shares following both the production level and supply level approach.
- (65) In the market for zinc metal the Parties overlap in the supply (but not production) of zinc metal. This is because Trafigura's main source of zinc metal is other traders.
- (66) Horizontally affected markets for the supply of zinc metal would only occur if the geographic scope of this market is EEA. This is because, at a worldwide level, the Parties' overlap is small, with the combined market shares remaining below 10%. The inclusion or exclusion of China from a potential worldwide market does not change such conclusion.

Table 1: Market shares in the market for zinc metal Worldwide, 2014

	Worldwide excluding China, all grades of zinc		Worldwide all grades of zinc	
	Supply share (%)	Supply volumes (metric tonnes)	Supply share (%)	Supply volumes (metric tonnes)
Nyrstar	[5-10]%	[...]	[5-10]%	[...]
Trafigura	[0-5]%	[...]	[0-5]%	[...]
Combined	[5-10]%	[...]	[5-10]%	[...]
TOTAL	-	[...]	-	[...]

- (67) Table 2 below lists the production and supply market shares of the Parties as well as of their competitors in the EEA market for zinc metal, as estimated by the Notifying Party. Trafigura's market share is based on its total zinc sales in the EEA, which were [...] metric tonnes in 2014.⁴³
- (68) According to information provided in Table 2, the combined market shares of the Parties would correspond to [20-30]% in the EEA with an increment of [0-5]%. Glencore Xstrata would still be the market leader post-transaction with a market share of [30-40]%.
- (69) A factor worth noticing from Table 2 is the fact that Nyrstar's sales of zinc are significantly less than its production. This is due to an existing off-take agreement

⁴³ The Notifying Party claimed that, if the market shares' were measured according to the main methodology used in Glencore/Xstrata, Trafigura's market share in the EEA is less than [0-5]% as Trafigura was first a trader in the chain for only [...] metric tonnes of zinc in 2014. However, given that those quantities were acquired in the LME from a warehouse, the Commission considered that Trafigura was in fact the first trader to bring those quantities to the market in 2014.

with Noble, which commits in favour of the latter a sizeable portion of Nyrstar's SHG production.⁴⁴ Noble's sales in the EEA, also shown in Table 2, stem primarily from this off-take. If these quantities were to be attributed to the merged entity, its market share would reach [30-40]%.

⁴⁴ See paragraph 6.42(i) of the Form CO.

Table 2: Market shares in the market for zinc metal, EEA 2014

	Production share (%)	Production volumes (metric tonnes)	Supply share (%)	Supply volumes (metric tonnes)
Nyrstar	[30-40]%	[...]	[20-30]%	[...]
Trafigura	-	-	[0-5]%	[...]
Combined	[30-40]%	[...]	[20-30]%	[...]
Glencore Xtrata	[30-40]%	[...]	[30-40]%	[...]
Boliden	[20-30]%	[...]	[20-30]%	[...]
ZGH Boleshaw	[5-10]%	[...]	[5-10]%	[...]
KCM AD	[0-5]%	[...]	[0-5]%	[...]
Noble	-	-	[5-10]%	[...]
Louis Dreyfus	-	-	[0-5]%	[...]
MRI Group	-	-	[0-5]%	[...]
Other	[0-5]%	[...]	[0-5]%	[...]
TOTAL	100%	[...] ⁴⁵	100%	[...]

(70) Table 3 below lists the production and supply market shares of the Parties as well as of their competitors in the EEA market for SHG, as estimated by the Notifying Party.

Table 3: Market shares in the market for SHG, EEA 2014

	Production share (%)	Production volumes (metric tonnes)	Supply share (%)	Supply volumes (metric tonnes)
Nyrstar	[20-30]%	[...]	[10-20]%	[...]
Trafigura	-	-	[5-10]%	[...]
Combined	[20-30]%	[...]	[20-30]%	[...]
Glencore Xtrata	[30-40]%	[...]	[30-40]%	[...]
Boliden	[20-30]%	[...]	[10-20]%	[...]
ZGH Boleshaw	[5-10]%	[...]	[5-10]%	[...]
KCM AD	[0-5]%	[...]	[0-5]%	[...]
Noble	-	-	[10-20]%	[...]
Louis Dreyfus	-	-	[0-5]%	[...]
MRI Group	-	-	[0-5]%	[...]
Other	[0-5]%	[...]	[0-5]%	[...]

⁴⁵ The difference in the volume of production and the volume of supply results from the fact that zinc sold in the EEA can also be originated from imports to the EEA, purchases from the LME as well as decrements of other available stocks of metal. On the other hand, some quantities produced in the EEA are not sold in the EEA, namely if they are exported, sold in the LME or increment other available stocks of metal.

TOTAL	100%	[...]46	100%	[...]
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- (71) If only the SHG grade is considered, the combined market share of the Parties is [20-30]%, with an increment of [5-10]%. If Noble's quantities were to be attributed to the merged entity, its market share would reach [30-40]%. In either case, Glencore Xstrata would be the market leader post-transaction with a market share of [30-40]%.
- (72) The difference between Nyrstar's production volumes in Table 2 and Table 3 is due to the fact that Nyrstar is an important producer of zinc other than SHG, such as CGG and other DCA. Conversely, Trafigura, which is a trader of zinc metal, only deals with commodity grade SHG zinc.

4.4.2. *Notifying Party's view*

- (73) The Notifying Party submits that the Proposed Transaction would not give rise to unilateral effects (in relation to either zinc metal as a whole or SHG metal only, on either a global or EEA-wide basis) for a number of reasons, including the following:
- a. The combined market shares are not of a level that would be expected to give rise to competition concerns. Further, the impact of the Proposed Transaction is modest, with of an increment of no more than [5-10]% (specifically for SHG).
 - b. The Parties would continue to face competition post-transaction from a range of sources, including integrated producer-traders, such as Glencore Xstrata, Boliden and SGH Boleslaw, and traders, such as Noble, Louis Dreyfus and the MRI Group.
 - c. The market is shaped by off-take agreements and long term contracts, which commits significant proportions of Nyrstar's EEA production to third parties, including Noble and Umicore. Trafigura believes that the off-take with Noble will expire [...].
 - d. Customers multi-source and would be able to switch suppliers. In addition, i) market participants maintain some reserve volumes to be available to meet short term requests from customers, and ii) the LME warehouses can also be sources of metal for traders and customers.
 - e. Volumes can be easily imported or diverted back to the EEA. The Notifying Party argues that the competitive conditions outside the EEA act as a competitive constraint on EEA traders and will continue to do so in the future.

4.4.3. *Commission's assessment*

- (74) During the investigation, the Commission undertook a market reconstruction exercise of the zinc metal availability in the EEA and possible uses of such zinc metal. This analysis did not yield market shares for the Parties materially different

⁴⁶ See previous footnote n.45.

from those estimated by the Notifying Party: the combined market share of the Parties was around [20-30]% for zinc metal all grades and around [20-30]% for SHG only.

- (75) A sizeable portion of Nyrstar's SHG market share is due to the zinc cathodes that it sells to an industrial customer.⁴⁷ Zinc in the shape of cathodes is a semi-finished product that bypasses the melting and casting process (which casts the zinc metal into ingots/jumbos) and is sold directly to customers as zinc cathodes. If such cathodes were excluded from the market, the combined market share of the Parties would drop below [10-20]% for SHG only and below [20-30]% for zinc all grades.⁴⁸
- (76) The market reconstruction also indicated that sizeable quantities of zinc which would be in principle available in the EEA market due to EEA production, imports to the EEA and available stocks are actually not sold in the EEA, but exported to foreign countries or stored in warehouse facilities. If the market shares were computed using actual sales to EEA customers and traders, the combined market share of the Parties would be slightly higher, around [20-30]% for zinc metal all grades as well as for SHG only. If zinc metal cathodes were excluded from actual sales, the combined market shares would again decrease significantly.
- (77) The respondents to the Commission's investigation have not raised material concerns in relation to the Proposed Transaction. Trafigura is not seen as a major player in Europe, with a limited number of medium-large customers. In this regard, one major customer of metal stated "*Trafigura is one of the biggest traders but is very small on the metal side in Europe*";⁴⁹ while another sees Trafigura "*as followers to the other producers / main traders (e.g. Glencore)*".⁵⁰ One large metal customer "*believes that the proposed transaction is mostly a change in ownership that will not have a significant impact on the market and on the quantities produced in Europe*".⁵¹
- (78) The Commission also concluded that Trafigura and Nyrstar are not close competitors. To this account, it should firstly be noted that the overlap in terms of the zinc products supplied by the Parties is rather limited as Trafigura only trades the commodity grade zinc metal (SHG), whereas Nyrstar is an important supplier of CGG and DCA. Moreover, most of Nyrstar's commodity grade zinc metal is marketed by Noble due the existing off-take with Nyrstar. If the zinc metal sold in the form of cathodes (around [...] metric tonnes) and the zinc metal sold by Noble under the off-take agreements (around [...] metric tonnes) are both excluded from Nyrstar's SHG production, its actual sales of SHG zinc are around [...] metric tonnes. This could explain why the large majority of zinc customers did not see Trafigura and Nyrstar competing intensively against each other.⁵² In this respect, one large zinc customer

⁴⁷ [...].

⁴⁸ Trafigura estimates that 150,000 metric tonnes of Nyrstar's estimated 2014 zinc metal production and trading (all in the EEA) is in the form of cathodes. Given that zinc cathodes are very high purity zinc metal, these have been included in Trafigura's market size and share estimates as SHG zinc metal.

⁴⁹ See agreed minutes of a call with a zinc customer in November 2015.

⁵⁰ See replies to question 39 of the Q1 – Questionnaire to customers of zinc metal.

⁵¹ See agreed minutes of a call with a zinc customer on 17 November 2015.

⁵² See replies to question 41 of the Q1 – Questionnaire to customers of zinc metal.

noted that "*Trafigura is currently active in Europe but to a lesser extent than Noble, Glencore or Boliden*".⁵³

- (79) The large majority of zinc metal customers also noted that Trafigura does not play any particular role in the price formation process⁵⁴ and that none of the Parties have a competitive advantage over their competitors.⁵⁵ Conversely, Nyrstar was seen as playing a particular role in the price formation process in the market for zinc metal in the EEA.⁵⁶
- (80) On the basis of the above and the available evidence, the Commission concludes that it is unlikely that Trafigura and Nyrstar are close competitors in the markets for zinc metal and for SHG in the EEA.
- (81) The Commission's investigation also focused on the impact of the Proposed Transaction on Noble's ability to compete in the market in case the off-take agreement with Nyrstar was ceased. In this regard, [...]. These volumes can only become available to Trafigura if the current off-take with Nyrstar expires.⁵⁷
- (82) In this context, a hypothetical scenario can be considered where the merged entity would capture all the current customers of Noble assuming that they would go with the off-take volumes. The merged entity's market shares would, in that extreme case, sum up to [30-40]% in the market for zinc metal, with the merged entity becoming the largest player in the market for zinc metal in the EEA (marginally ahead of Glencore Xstrata). The corresponding market share for SHG only would be up to [30-40]%, placing the combined entity after Glencore.
- (83) However, the market investigation did not provide strong indications that (i) having an off-take is necessary to be able to compete effectively on the market, (ii) Noble's entry made a major impact on the market, and (iii) the replacement of Noble with Trafigura would lead to significant price effects.
- (84) Having an off-take with a smelter was seen as important to be able to compete effectively by some market participants, but not by others. In this regard, one major competitor observed: "*Without its offtake, Noble would not be able to keep all its customers. It will not be economically feasible to source 200kt to compensate for the loss of Nyrstar volumes. Noble could find some quantities via importers and the LME market, but it is doubtful whether it can replace the volumes granted by existing off-take with Nyrstar with these other sources*".⁵⁸
- (85) Other traders contacted during the Commission's investigation noted that having an off-take agreement was not a pre-requisite to compete in the market as there multiple

⁵³ See agreed minutes of a call with a zinc customer on 16 November 2015.

⁵⁴ See replies to question 39 of the Q1 – Questionnaire to customers of zinc metal.

⁵⁵ See replies to question 42 and 43 of the Q1 – Questionnaire to customers of zinc metal.

⁵⁶ See replies to question 38 of the Q1 – Questionnaire to customers of zinc metal.

⁵⁷ The existing off-take agreement between Nyrstar and Noble results from the commitments submitted by Glencore to obtain the clearance of the Glencore/Xstrata transaction. [...].

⁵⁸ See agreed minutes of a call with a zinc competitor on 3 December 2015.

sources of metal. One competitor stated that *"It is difficult but possible to do business in Europe without an off-take agreement. A new entrant can source zinc from the market or buy quantities from producers, traders, on the LME or from banks"* and *"network and commercial relationships are what matter the most"* to be able to compete.⁵⁹

- (86) To this point, one zinc customer observed *"any trading company can easily get zinc metal from the LME"*,⁶⁰ even though LME purchases are considered more as a complementary to other zinc sources rather than a complete substitute for them: *"Buying from LME warehousing is often a kind of "last resort" for actors in the zinc market. Depending on the market conditions buying material which is stored in LME warehouses can be a more expensive option, than buying directly from producers. LME is often used as a complement for selling zinc surplus or buying zinc when sourcing needs are not fully covered"*.⁶¹ Another competitor observes that zinc metal *"can also be sourced from producers outside Europe such as Votorantim, Namzinc and Penoles. It is part of the commercial strategy of these companies to diversify their sales to avoid relying at 100% on the domestic/local market. For instance Penoles currently supplies limited volumes to Europe but is able to increase its exports quickly if the domestic market is doing bad. Votorantim and Penoles generally prefer to have a handful of big customers rather than selling very small tonnages to end customer"*.⁶²
- (87) Finally, also regarding the possibility of Noble losing its offtake with Nyrstar, one competitor observed *"the possibility that Noble loses its offtake has a limited importance"*.⁶³
- (88) The majority of customers believe, however, that Noble would lose a significant part of its customers without the off-take.⁶⁴ In this case, according to the Commission's investigation, customers would not necessarily be expected to switch to the new company taking the off-take.⁶⁵
- (89) Regarding Noble's entry in the market, only a minority of zinc metal customers observed that such entry was a positive factor for the market.⁶⁶ Other customers mentioned lower availability of zinc metal in the EEA after Noble's entry due to Noble exporting quantities outside the EEA. One major zinc metal customer noted *"Noble sold and shipped mainly tonnages to China and played warehousing games on the LME side in and outside of the EEA zone. It helps only other market participants like Glencore to keep the market tight"*⁶⁷, while another observed *"Noble opened an office in Singapore when it obtained Nyrstar off-take agreement with the intention to*

⁵⁹ See agreed minutes of calls with a zinc competitor on 19 and 26 November 2015.

⁶⁰ See agreed minutes of a call with a zinc customer on 13 November 2015.

⁶¹ See agreed minutes of a call with a zinc customer on 17 November 2015.

⁶² See agreed minutes of calls with a zinc competitor on 19 and 26 November 2015.

⁶³ See agreed minutes of a call with a zinc competitor on 18 November 2015.

⁶⁴ See replies to question 28 of the Q1 – Questionnaire to customers of zinc metal.

⁶⁵ See replies to question 28.1 of the Q1 – Questionnaire to customers of zinc metal.

⁶⁶ See replies to question 21 of the Q1 – Questionnaire to customers of zinc metal.

⁶⁷ See replies to question 21 of the Q1 – Questionnaire to customers of zinc metal.

sell important quantities to Asia and especially to China"⁶⁸ and a third one *"Noble is also a worldwide trading company that often does arbitrages between the LME and Shanghai FX. Noble ships around 100kt from Europe to China in 2014, most of these quantities originating from the offtake agreement with Nyrstar"*⁶⁹.

- (90) Finally, considering the possible price effects of Trafigura replacing Noble in the off-take agreement with Nyrstar, only relatively few customers expected this to lead to higher zinc prices in the EEA.⁷⁰ In this respect, zinc metal customers observed that it would just be the replacement of a trader with another and with no impact on prices: *"[...] does not think that there would be a real impact if Noble loses its offtake agreement and disappears from the zinc European market"*.⁷¹ Finally, none of Noble's customers expressed substantiated concerns in relation to the Proposed Transaction.
- (91) On the basis of the above and the available evidence, the Commission concludes that the possibility of Noble losing its off-take with Nyrstar would not significantly affect competition in the markets for zinc metal and for SHG in the EEA.
- (92) During the Commission's investigation, one zinc metal customer expressed concerns in relation to Nyrstar changing its 'nature' of industrial player and behaving more like a trader: *"Trafigura has trading philosophy, it could bring a new management model and try to control market as other big trading houses"*.⁷² In this perspective, the Proposed Transaction would lead to the only independent smelter disappearing from the market.
- (93) Traders are seen as being capable of exploiting arbitrage opportunities across (world) regions and/or over time, whereas industrial players are more focused on the production and sale of metal as well as building long-term relationships with their customers. The idea that business model of traders is significantly different from that of smelters received some support during the Commission's investigation.⁷³ One major competitor observed: *"smelters' and traders' business models, smelters produce a certain quantity of zinc metal every year. They try to match this amount with their sales for every given year. Conversely, traders do not need to match production with sales because of warehousing and financing capabilities. They are more flexible on where and when to sell"*.⁷⁴
- (94) It is, however, unlikely that European customers will be harmed from such a change for a number of reasons. First and foremost, a very sizeable portion of Nyrstar's production, which can be quantified around [40-50]%, is made of non-commodity zinc metal grade, such as CGG and alloys, which are not suitable for shipping, storing in warehouses and selling on the LME, which is the market of last resort.

⁶⁸ See agreed minutes of a call with a zinc customer in November 2015.

⁶⁹ See agreed minutes of a call with a zinc customer on 13 November 2015.

⁷⁰ See replies to question 55 of the Q1 – Questionnaire to customers of zinc metal.

⁷¹ See agreed minutes of a call with a zinc customer on 13 November 2015.

⁷² See agreed minutes of a call with a zinc customer in November 2015.

⁷³ See replies to question 10 of the Q1 – Questionnaire to customers of zinc metal.

⁷⁴ See agreed minutes of a call with a zinc competitor on 3 December 2015.

- (95) Moreover, it should be noted that most of the commodity-zinc metal grade produced by Nyrstar was already marketed according to the traders' business model, as Noble is itself a trader. Therefore, Nyrstar's volumes that could change 'nature' due to the Proposed Transaction are only a limited fraction of Nyrstar's production.
- (96) Finally, by granting it access to Nyrstar's metal, the Proposed Transaction could also strengthen Trafigura and thus enable it to compete more aggressively with the market leader. To this point, one market participant noted "*Trafigura and Glencore are competing a lot against each other in the different regions of the world and for the different metals. Thus, the transaction by strengthening the position of Trafigura in Europe could have as an impact a decrease in the European prices*".⁷⁵
- (97) A limited number of small zinc customers expressed concerns with the overall functioning of the market for zinc metal in the EEA.⁷⁶ Most of their concerns pointed to a limited number of options for their purchases of zinc metal and high prices. These concerns can be probably explained by the fact that the number of independent smelters in the EEA is rather limited and that such smelters do not cover the entire EEA market. As regards to traders, given their focus on large customers and on commodity grade zinc only, Trafigura was most probably not a real alternative for such customers; Noble was not a real alternative to them either due to its trading strategies.⁷⁷ It is also worth mentioning the recent entry of new traders, such as Concord Resources, that will likely focus on small and medium customers.⁷⁸ Moreover, imports to the EEA can be an alternative source of metal for EEA zinc customers, though to a limited extent. In fact, despite the EEA currently being a net exporter of zinc metal,⁷⁹ until 2012 the EEA was a net importer of zinc metal.⁸⁰ Between 2010 and 2013, EEA imports virtually dried up as a result of the drop in the European consumption of zinc metal, and exports to China and Turkey increased.
- (98) On the basis of the above and the available evidence, the Commission concludes that it is unlikely that the Proposed Transaction can be a source for additional harm to the current functioning of the markets for zinc metal and for SHG in the EEA.

4.4.4. Conclusion on horizontal effects

- (99) In view of the above and of all the evidence available to the Commission, and in the light of the outcome of the market investigation, the Commission considers that the Proposed Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the markets for zinc metal and for SHG in the EEA.

⁷⁵ See agreed minutes of a call with a zinc competitor on 18 November 2015.

⁷⁶ See replies to question 48 of the Q1 – Questionnaire to customers of zinc metal.

⁷⁷ See footnote n. 67.

⁷⁸ See <http://www.metalbulletin.com/Article/3496642/Ex-Noble-traders-set-up-Concord-with-backing-from-Andersons-Ospraie.html#axzz3rxAG7T2E>

⁷⁹ In 2014, the EEA imported at least 239,649 metric tonnes of zinc metal and exported at least 344,953 metric tonnes.

⁸⁰ For instance, in 2010 imports of zinc metal amounted to 377,535 metric tonnes

4.5. Assessment of potential vertical effects

4.5.1. Market structure

(100) A vertically affected market arises from the Parties' upstream activities in zinc concentrate (production and trading) and Nyrstar's downstream activities in zinc metal (over 30% production share).

(101) The market shares for the market for zinc concentrate are presented in Table 4 below. As regards the worldwide market, the Parties combined market share would be [0-5]% from the production point of view and [5-10]% from the supply point of view. Excluding China, the combined market shares would be [5-10]% and [5-10]%, respectively.

Table 4: Market shares in the market for zinc concentrate Worldwide, 2014

% (metric tonnes)	Worldwide			Worldwide excluding China		
	Trafigura	Nyrstar	Combined	Trafigura	Nyrstar	Combined
Zinc Concentrate production	[0-5]%, ([...])	[0-5]%, ([...])	[0-5]% , ([...])	[0-5]%, ([...])	[0-5]%, ([...])	[5-10]% , ([...])
Zinc Concentrate supply	[5-10]% , ([...])	0%, (0)	[5-10]% , ([...])	[5-10]% , ([...])	0%, (0)	[5-10]% , ([...])

4.5.2. Input foreclosure

4.5.2.1. Notifying Party's views

(102) The Notifying Party argues that the Proposed Transaction does not raise concerns on input foreclosure for the following reasons:

- a. The Proposed Transaction does not affect the ability of a rival zinc metal producer to obtain zinc concentrate given that Nyrstar was not present in the supply market (only Trafigura is present with a [5-10]% market share). All the quantities of zinc concentrate produced by Nyrstar were used for internal production of zinc metal.
- b. Several other alternative suppliers of zinc concentrate would continue to be available, including Glencore Xstrata, Teck, China Minmetals Group and Vedanta.
- c. From a production point of view the combined market shares of the Parties are even smaller (i.e. [0-5]%). Only [10-20]% of Trafigura sales come from its production, which implies that it needs to purchase the rest from third-party miners.
- d. Almost all the customers of zinc concentrate multisource. Therefore, they could easily switch their purchases to an alternative supplier.

4.5.2.2. Commission's assessment

(103) First, the Commission's investigation showed that the Proposed Transaction will not change significantly the structure of supply of zinc concentrate since Nyrstar is

not active at the supply level, given that it consumes all the volumes produced internally or uses them to enter into swap agreements.

- (104) Secondly, the Commission considers that Trafigura's position in the market for zinc concentrate supply would not give it the ability to engage in an input foreclosure strategy.
- (105) Trafigura's market share in the market for zinc concentrate is below 10%, which implies that smelters could find alternatives in the market to buy zinc concentrate in case Trafigura degrades the conditions of sale to Nyrstar competitors.
- (106) According to the Commission's market investigation, almost all competitors on zinc metal (most of them also customers of zinc concentrate) in the EEA do not consider that Trafigura has a competitive advantage over other suppliers of zinc concentrate.⁸¹ Moreover, none of them considered themselves to be dependent on Trafigura as a supplier of zinc concentrate.⁸² In fact, Trafigura was satisfying only a very small percentage of the needs of some of these customers and for the remaining ones there was not even a commercial relationship with Trafigura for zinc concentrate.⁸³ In addition, customers confirmed that they normally adopt a multi-sourcing strategy to add flexibility to the business and avoid being dependent on only few sources.⁸⁴
- (107) In Trafigura's internal documents is made reference to the fact that this company has a market share above 30% in the tradable market for zinc concentrate. This excludes (i) all the quantities that are sold directly from miners to zinc concentrate customers and (ii) all the quantities that are sold to traders via off-takes. This means that Trafigura could have a significant position as regards the quantities of zinc concentrate that are effectively "free" in the market.
- (108) Trafigura argues that from the perspective of zinc concentrate customers, those are clearly two key supply alternative channels which should not be ignored. During the Commission's investigation, EEA customers of zinc metal listed several possible alternative suppliers of zinc concentrate from whom they currently purchase zinc concentrate or from whom they would consider purchasing.⁸⁵ Some of these customers are also vertically integrated at the level of zinc concentrate production or have long-term contracts for the purchase of zinc concentrate. For instance, one zinc metal producer in the EEA explained that "*On the zinc concentrate side, [...] is predominantly consuming its own mining production*" and that "*it plans to further develop its recycling activities which produce secondary oxides concentrates*".⁸⁶
- (109) This confirms that customers of zinc concentrate use the different channels of supply as alternatives. Competitors on the market for zinc concentrate also mentioned

81 See replies to question 68 of the Q2 – Questionnaire to competitors of zinc metal.

82 See replies to question 69 of the Q2 – Questionnaire to competitors of zinc metal.

83 See replies to question 10 of the Q2 – Questionnaire to competitors of zinc metal.

84 See replies to question 66 of the Q2 – Questionnaire to competitors of zinc metal.

85 See replies to question 65 of the Q2 – Questionnaire to competitors of zinc metal.

86 See agreed minutes of a call with a zinc metal competitor on 18 November 2015.

several other suppliers with whom they compete. These included both traders and producers.⁸⁷

- (110) Thirdly, as regards the incentives to adopt an input foreclosure strategy, only two out of the 10 competitors in the market for zinc metal (purchasers of zinc concentrate) stated that Trafigura would deteriorate the supplying terms and conditions or even stop supplying to third-party smelters/traders of zinc concentrate in order to favour Nyrstar.⁸⁸ From these, only one competitor stated that this would have a negative impact on smelters or traders. Only one competitor on the market for zinc concentrate expressed the same opinion.⁸⁹
- (111) Fourthly, almost all customers of zinc concentrate think the transaction would not have any impact on the total price of zinc concentrate.⁹⁰ Customers stated that *"the merger will not change the supply/demand fundamentals of the whole market"*.⁹¹ According to another customer of zinc concentrate *"the market has currently a surplus and the production volumes should continue post transaction, unless smelters/capacities are shut down. The only thing that may change is the identity of the trader"*.⁹²
- (112) On the basis of the above and the available evidence, the Commission concludes that Trafigura would not have the ability and the incentives to foreclose zinc metal competitors from access to zinc concentrate.

4.5.3. Customer foreclosure

4.5.3.1. Notifying Party's views

- (113) The Notifying Party also argues that the Proposed Transaction does not raise concerns on customer foreclosure for the following reasons:
- a. Zinc concentrate suppliers would continue to have significant outlets for sales.
 - b. Nyrstar is a net purchaser of zinc concentrate and purchases more zinc concentrate than Trafigura supplies. Therefore, Trafigura could not fully satisfy Nyrstar needs.
 - c. Trafigura only produced [...] of its total trading volumes of [...] tonnes of zinc concentrate. Even if it purchased Nyrstar entire production of [...] tonnes, it would still need to source a significant volume from third-party suppliers of zinc concentrate.

⁸⁷ See replies to questions 27 and 28 of the Q3 – Questionnaire to competitors of zinc concentrate.

⁸⁸ See replies to question 84 of the Q2 – Questionnaire to competitors of zinc metal.

⁸⁹ See replies to question 42 of the Q2 – Questionnaire to competitors of zinc metal.

⁹⁰ See replies to question 82 of the Q2 – Questionnaire to competitors of zinc metal.

⁹¹ See replies to question 82 of the Q2 – Questionnaire to competitors of zinc metal.

⁹² See agreed minutes of a call with a zinc metal competitor on 18 November 2015.

4.5.3.2. Commission's assessment

- (114) Firstly, the Commission's investigation revealed that Nyrstar is a net purchaser of zinc concentrate given that its worldwide production ([...] metric tonnes) is lower than its needs ([...] metric tonnes). Some zinc concentrate suppliers confirmed that Nyrstar is a significant buyer of zinc concentrate.⁹³ However, Nyrstar represents only [10-20]% of the non-captive worldwide market (excluding China). Accordingly, several other outlets should be available for zinc concentrate suppliers to sell their product.
- (115) Secondly, Trafigura's production is very small compared with Nyrstar's needs. This implies that, if Trafigura assumes all the supply to Nyrstar's needs, it would need to purchase those volumes from third-party miners. Thus, these players would still be able to sell quantities that will indirectly satisfy Nyrstar's needs.
- (116) The main effect of a customer foreclosure strategy could therefore be on traders of zinc concentrate that could lose Nyrstar as a customer if Nyrstar would only buy zinc concentrate via Trafigura. However, this strategy could also free some of Trafigura's current customers who would thus have to find alternative traders or miners to satisfy their needs of zinc concentrate. One trader of zinc concentrate explained that "*Zinc concentrate traders will also lose one important customer with the transaction because Trafigura will in all likelihood buy concentrate for Nyrstar. However, there will be enough demand from other smelters, ie those currently supplied by Trafigura*".⁹⁴ Another zinc concentrate player stated "*If Trafigura buys zinc concentrate for Nyrstar it will change substantially the mix in the zinc concentrate market. However other mining and trading companies will be able to fill the gap of Trafigura quantities that would be moved to Nyrstar*".⁹⁵
- (117) Thirdly, three out of seven competitors in the market for zinc concentrate stated that, post-transaction, Nyrstar would only purchase zinc concentrate directly from Trafigura, and that this would have a significant negative effect on the suppliers.⁹⁶ However, most of these suppliers sold very small quantities to Nyrstar in the past. Therefore, the effect of Nyrstar not buying from them anymore is not likely to be significant.
- (118) Fourthly, during the Commission's investigation, competitors of zinc concentrate stated that they do not think that the Proposed Transaction would likely have an impact on zinc concentrate total prices.⁹⁷
- (119) On the basis of the above and the available evidence, the Commission concludes that the Trafigura would not have the ability and the incentive to foreclose zinc concentrate competitors from access to a significant part of the customer base constituted by zinc metal suppliers.

⁹³ See replies to question 31 of the Q3 – Questionnaire to competitors of zinc concentrate.

⁹⁴ See agreed minutes of a call with a zinc concentrate competitor on 26 November 2015.

⁹⁵ See agreed minutes of a call with a zinc concentrate competitor on 26 November 2015.

⁹⁶ See replies to question 41 of the Q3 – Questionnaire to competitors of zinc concentrate.

⁹⁷ See replies to question 39 of the Q3 – Questionnaire to competitors of zinc concentrate.

4.5.4. Conclusion

(120) In view of the above and of all the evidence available to the Commission, and in the light of the outcome of the market investigation, the Commission considers that the Proposed Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the vertical relationship between the market for zinc concentrate and the market for zinc metal.

5. CONCLUSION

(121) 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 and Article 57 of the EEA Agreement.

For the Commission

(Signed)

Margrethe VESTAGER

Member of the Commission