



**FINAL REPORT OF THE HEARING OFFICER<sup>1</sup>**  
**(M.8444 – ARCELORMITTAL/ILVA)**

**Introduction**

1. On 21 September 2017, the Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation<sup>2</sup> pursuant to which ArcelorMittal S.A. ("ArcelorMittal" or "the Notifying Party") would acquire sole control of certain assets of the Ilva Group ("Ilva"), which entered into insolvency proceedings (Amministrazione Straordinaria) (the "Transaction").

**Procedure**

2. The Commission's first phase investigation raised serious doubts as to the compatibility of the Transaction with the internal market and with the functioning of the EEA market. On 8 November 2017, the Commission adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation, to which ArcelorMittal responded on 18 November 2017<sup>3</sup>.
3. On 15 December 2017, 22 February 2018 and 12 March 2018 the time period set out in Article 10(3), first subparagraph, of the Merger Regulation was extended by a total of 20 working days pursuant to Article 10(3), second subparagraph, third sentence, of the Merger Regulation.

**Statement of Objections**

4. On 18 January 2018, the Commission adopted a Statement of Objections ("SO") pursuant to Article 18 of the Merger Regulation which was notified to the Notifying Party on the same day. On 25 January 2018, Ilva received a non-confidential version of the SO pursuant to Article 13(2) of Commission Regulation (EC) No 802/2004<sup>4</sup>.

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<sup>1</sup> Pursuant to Articles 16 and 17 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings, OJ L 275, 20.10.2011, p. 29 (the "Terms of Reference").

<sup>2</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

<sup>3</sup> ArcelorMittal sent a revised version of its written comments on 19 November 2017.

<sup>4</sup> Commission Regulation (EC) No 802/2004 of 21 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ L 133, 30.04.2004, p. 1-39 (the "Merger Implementing Regulation").

In the SO the Commission took the preliminary view that the Transaction would significantly impede effective competition in a substantial part of the internal market within the meaning of Article 2 of the Merger Regulation due to (i) horizontal non-coordinated effects in the markets for hot rolled flat carbon steel products, cold rolled steel, hot dip galvanised steel and electro galvanised steel in the EEA; and (ii) horizontal coordinated effects in the markets for flat carbon steel in the EEA.

5. ArcelorMittal was given until 2 February 2018 to reply to the SO and eventually submitted its reply on the morning of 3 February 2018. Ilva submitted its observations to the SO on 1 February 2018. Both ArcelorMittal and Ilva requested to be heard orally.

### **Access to the file**

6. The Notifying Party was granted, upon its request, pursuant to Article 17, first paragraph of the Merger Implementing Regulation, access to the file on 19 January 2018 via CD-ROM. A data room was organised from 19 January to 29 January 2018 allowing the economic advisors of ArcelorMittal to verify confidential information of a quantitative nature, which formed part of the Commission's file. Further documents were sent on 24 January, 1 February, 2 March, 26 March, 28 March 2018 and 26 April 2018. A second data room was organised from 1 March to 2 March 2018.
7. I did not receive any requests for access to file on the basis of Article 7 of the Terms of Reference.

### **Interested third persons**

8. Upon their request, I admitted three undertakings (ThyssenKrupp AG, Tata Steel Limited and Marcegaglia) as interested third persons in the present proceedings. These undertakings are competitors and/or customers of ArcelorMittal and Ilva and have contributed to the Commission's investigation.
9. All interested third persons were provided with a non-confidential version of the SO and given a time-limit within which to submit their responses. Given the urgency of the proceedings, the interested third persons were allowed to make known their views at the oral hearing prior to the submission by them of their written comments pursuant to Article 16(2) of the Merger Implementing Regulation.

### **Oral Hearing**

10. The formal oral hearing was held on 8 February 2018 and was attended by ArcelorMittal and Ilva, as well their external legal and economic advisers, the three interested third persons, relevant Commission services and representatives of the competition authorities of seven Member States (Belgium, Finland, France, Germany, Italy, Luxembourg and Spain) and the EFTA Surveillance Authority.

### **Letter of Facts**

11. On 28 February 2018 the Commission sent a Letter of Facts to the Notifying Party, setting out additional factual elements which the Commission, on further analysis of the file and of the reply to the SO, considered to be relevant for the final assessment

of the Transaction. ArcelorMittal submitted written comments to this Letter of Facts on 9 March 2018.

### **Commitments**

12. On 15 March 2018, the Notifying Party submitted a first set of formal commitments. Consequently, the review period was further extended pursuant to Article 10(3), first subparagraph of the Merger Regulation. On the basis of feedback obtained from the market testing of these commitments, the Notifying Party submitted a final set of commitments on 11 April 2018 ("Final Commitments").
13. In the draft Decision, the Commission finds that the Final Commitments are suitable and sufficient to eliminate the significant impediment to effective competition to which the Transaction would give rise. The Final Commitments therefore render the Transaction compatible with the internal market and the EEA Agreement.

### **Draft Decision**

14. I have reviewed the draft Decision pursuant to Article 16(1) of Decision 2011/695/EU and I conclude that it deals only with objections in respect of which the parties have been afforded the opportunity of making known their views.

### **Conclusion**

15. I conclude that the parties have been able to effectively exercise their procedural rights in the present proceedings.

Brussels, 3 May 2018

Joos STRAGIER