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Case No COMP/M.4137 - MITTAL / ARCELOR

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(2) NON-OPPOSITION
Date: 02/06/2006

In electronic form on the EUR-Lex website under document number 32006M4137

Office for Official Publications of the European Communities
L-2985 Luxembourg

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 02.06.2006

SG-Greffe(2006) D/202923

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(2) DECISION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying parties

Dear Sir/Madam,

Subject: Case No COMP/M.4137 - Mittal /Arcelor
Notification of 07/04/2006 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 7/4/2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Mittal Steel Company N.V. ("Mittal", The Netherlands) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Arcelor S.A. ("Arcelor", Luxembourg) by way of public bid announced on 27/1/2006.

2. In the course of the proceedings, the notifying party submitted undertakings designed to eliminate competition concerns identified by the Commission, in accordance with Article 6(2) of the Merger Regulation. In light of these modifications, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES

3. Mittal, controlled by the Mittal family, is the largest steel producer at the worldwide level. Mittal is incorporated in the Netherlands and listed on the New York and Amsterdam stock exchanges.

4. Arcelor is the largest European steel producer and the second largest at the worldwide level. The Arcelor group has been created through the merger of the European steel producers Aceralia, Arbed and Usinor in February 2002[2]. The group is listed on the Brussels, Luxembourg, Paris and Madrid stock exchanges.

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1 OJ L 24, 29.1.2004 p. 1.

2 See Case No COMP/ECSD.1351 Usinor / Arbed / Aceralia (2001)

II. THE OPERATION

5. Mittal announced on 27 January 2006 an unsolicited bid for all of the outstanding shares and convertible bonds of Arcelor. Mittal's offer is conditional upon Arcelor's shareholders tendering more than 50% of Arcelor's total issued share. The offer was officially launched on 18 May 2006 in France, Belgium and Luxembourg and on 24 May 2006 in Spain. The offers are expected to close on 5 July 2006.

III. THE CONCENTRATION

6. If the bid is successful, Mittal will own a majority of the voting rights and will have acquired sole control over Arcelor. As such, the operation qualifies as a concentration within the meaning of Article 3(1)(b) of Council Regulation (EC) No 139/2004.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (Mittal EUR 22 billion, Arcelor EUR 32 billion)[3]. Each of them have a Community-wide turnover in excess of EUR 250 million (Mittal EUR […] billion; Arcelor EUR […] billion)[4], but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

V. THE RELEVANT MARKETS

8. The operation deals with the production and direct sales of steel and other related activities, including steel raw materials and distribution of steel products.

9. As regards the production and direct sale of steel, in previous decisions[5] the Commission distinguished four broad categories of finished steel products: (i) carbon steel, (ii) stainless steel (iii) highly alloyed steel and (iv) electrical steel. Steel products in these four categories differ in term of chemical composition, price and end applications. Arcelor's and Mittal's activities overlap only in carbon steel products and the present decision thus does not further discuss the other steel products. Steel raw materials and distribution of steel products are also assessed.

A. Relevant carbon steel product markets

1. The production of carbon steel products

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3 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

4 Arcelor turnover figures are Mittal's best estimates.

5 *Usinor / Cockerill Sambre,* Case No IV/ECSC.1268 and *Usinor / Arbed / Aceralia,* Case No COMP/ECSC.1351.

10. There are two principal production processes for the production of carbon steel; the integrated route and the electric arc furnace route. There are four types of iron-containing materials that may be used in steelmaking furnaces – hot metal (liquid carbon-saturated iron), pig iron (solid carbon-saturated iron), direct reduced iron (DRI) and scrap.

11. The integrated method involves the production of iron from a mixture of iron ore, coke and limestone in a blast furnace to produce hot metal. The hot metal must subsequently be refined into steel in an oxygen converter where scrap or pig iron may be added. During this process, or in a separate "secondary steelmaking" vessel, the composition of the steel is adjusted by adding alloys to obtain the desired chemical specification.

12. On the other hand, the electric arc furnace method involves melting scrap or less frequently DRI or pig iron into liquid steel. During this process, or in a separate "secondary steelmaking" vessel, the composition of the steel is adjusted by adding alloys to obtain the desired chemical specification.

2. *Semi-finished carbon steel products*

13. Steel is processed into semi-finished products primarily using the continuous casting process in which the molten metal is poured directly into casting machines to produce the required shapes. The majority of semi-finished steel produced in the EEA is further processed into finished products in integrated rolling mills belonging to the steel producer.

14. In accordance with previous Commission decisions[6], the following basic shapes of semi-finished steel products can be distinguished: (i) blooms (used to produce heavy sections), (ii) billets (used to produce bars, wire rod and light sections) and (iii) slabs (used to produce plate, strip and sheet).

15. To date the Commission has not finally determined whether all three types of semi-finished products constitute a single relevant product market.[7] However, the definition of the relevant product market can be left open, as regardless of the precise market definition, the transaction will not give rise to competition concerns in this area.

3. *Finished carbon steel products*

16. Semi-finished products are subsequently rolled into flat or long steel products. Flat products are generally manufactured from slabs, while long products are manufactured from billets and blooms.

17. The Commission has consistently found in past cases that flat steel products form a separate product market from long steel products[8]. These two types of carbon steel products are manufactured in different rolling mills and are used in different end applications.

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6 *Usinor / Arbed / Aceralia* ,Case No COMP/ECSC.1351.

7 *British Steel/Hoogovens*, Case IV/ECSC.1310

8 *Sollac / Aceralia / Solmed*, Case No IV/ECSC.1269 -. *Krupp Hoesch / Thyssen* Case No IV/ECSC.1243 -. *Usinor / Cockerill Sambre*. Case No IV/ECSC.1268 - *Arbed / Aceralia,* Case No IV/ECSC.1237 -. *Aceralia / Aristrain* , Case No IV/ECSC.1264.

A) *Flat carbon steel products*

18. There are three stages in the production process of flat carbon steel products: (i) hot-rolling, (ii) cold-rolling and (iii) coating. The finished products may be sold at the end of each of those three stages, which supports the distinction between three categories of flat carbon steel products. According to Mittal, the technical characteristics of hot-rolled, cold-rolled and coated products differ from one another. In particular, hot-rolled and cold-rolled products lack the surface qualities and the resistance to corrosion that characterize coated products. Price levels are also different for those three carbon steel flat product categories. The respondents to the Commission's market investigation largely confirmed Mittal's approach as regards product market definitions. In light of the above, it is to be concluded that the above mentioned products do not exercise competitive constraint upon each other and therefore constitute separate product markets.

(1) Hot rolled carbon steel flat products

19. Hot rolled products are used in the automotive and construction industries, as well as in the manufacture of pipes and tubes for the petrochemicals, shipbuilding and general engineering industries.

20. There are four main types of hot rolled carbon steel flat products; hot rolled wide strip, hot-rolled sheets, hot-rolled narrow strip and quarto plate. Hot-rolled wide strips are produced from steel semi finished products (slabs) in automated hot rolled strip mills and rolled into coils or produced flat on quarto mills. Sheets are produced in a square or rectangular shape by cutting strip to length. Narrow strip, including slit strip, is produced either directly or by slitting hot-rolled wide strip.

21. In line with the previous Commission's practice[9], it is considered that there are two separate product markets within hot-rolled carbon steel flat products: (i) hot-rolled flat products excluding quarto plates and (ii) quarto plates. The latter are non-coiled products with very different dimensions, in particular in term of thickness, from other hot-rolled flat products. Quarto plates are made on special quarto plate mills, have specific physical properties and are used in applications that differ from those for thin flat steel products.

22. The respondents to the Commission's market investigation confirmed that quarto plates constitute a separate product market within hot-rolled flat products. Thus, for the purposes of this case (i) hot-rolled flat products excluding quarto plates and (ii) quarto plates will be considered as two distinct relevant product markets.

(2) Cold rolled carbon steel flat products

23. Cold-rolling is a further processing stage undergone by hot-rolled carbon steel flat products that affects their basic properties by reducing their thickness, improving their profile and finishing their surface.

24. The majority of cold-rolled carbon steel strip and sheet is further processed by steel manufacturers into coated steel products. The remainder is sold into a number of different end-use applications, including automotive applications, packaging

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9 *Usinor / Arbed / Aceralia*, Case No COMP/ECSC.1351.

applications, transportation applications, machinery/equipment manufacturers, construction industry, furniture makers and welded tube manufacturers.

25. A small percentage of cold-rolled strip and sheet is sold through distribution centres, which sell the steel into the same end-use applications as the steel manufacturers but usually in smaller quantities.

26. In line with previous Commission decisions[10], it is considered that all cold-rolled flat products belong to the same relevant product markets. The results of the Commission's market investigation largely confirmed the previous Commission's findings. Thus, for the purposes of this case all cold-rolled flat products will be considered as belonging to the same relevant product market.

(3) Metallic and organic coated steel

27. The corrosion resistance of flat carbon steel can be increased by coating it with zinc or another metal (metallic coating) and / or by applying an organic topcoat (organic coating). Metallic coated and organically coated steel products belong to separate relevant product markets[11]. The latter have different characteristics and significantly higher prices. The proposed delineation of organic and metallic coating as separate markets is in line with previous Commission's decisions[12].

28. Metallic coated strip can be divided into two different broad classes: (1) steel for packaging (tinplate and ECCS); and (2) galvanised steel (hot-dip and electro-galvanised, including coatings of zinc alloys).

29. These two groups of products have very different prices and applications. Steel for packaging is used almost entirely for food and beverage cans. On the other hand, galvanised steel strip is widely used in the automobile, construction and engineering industries, where the zinc coating impedes corrosion of the steel substrate and thereby increases its life. These two groups of products can therefore be clearly distinguished.

(a) Hot-dip galvanised and electro-galvanised strip and sheet

30. The coating of steel with zinc is called "galvanising". Galvanised steel may be obtained by two production processes: (i) hot-dip ("HD") and (ii) electro-galvanised ("ELO"). Hot-dip and electro-galvanised steel are used in a number of end-use application where corrosion resistance is required, including in the construction, automobile, domestic appliance and metal furniture industries.

31. The Commission has previously defined[13] a single relevant market for galvanised strip and coils, including both hot-dip galvanised and electro-galvanised. The results of the market investigation confirm that the relevant product market encompasses all galvanised products, namely hot-dip galvanised steel and electro-galvanised steel.

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10 *Usinor / Arbed / Aceralia*, Case No COMP/ECSC.1351.

11 *Usinor / Arbed / Aceralia*, Case No COMP/ECSC.1351.

12 *Usinor / Cockerill Sambre,* Case No IV/ECSC.1268. *Sollac / Aceralia / Solmed,* Case No IV/ECSC.1269.

13 *Usinor / Arbed / Aceralia*, Case No COMP/ECSC.1351.

32. Within hot-dip galvanised steel, it may be possible to distinguish two sub-categories of products which can be distinguished from hot dip galvanised by their different production processes and technologies used in their manufacture and by their characteristics. These sub-categories are Galvanneal and Galvalume[14].

33. However, it is not necessary to decide whether Galvanneal or Galvalume constitute separate product markets for the purposes of this decision, as the competitive assessment will not change regardless of the product market definition.

(b) Metallic coated steel for packaging

34. Metallic coated steel for packaging consists of thin flat carbon steel cold-rolled steel coils or sheets, which are electrolytically coated with a fine layer of tin or chromium. Steel for packaging is essentially used in the beverage and food industry.

35. The Commission has previously defined a separate relevant product market for metallic coated steel for packaging[15], leaving open whether metallic coated steel for beverage packaging and other end applications were part of the same relevant product market. The results of the market investigation in this case confirmed that metallic coated steel for packaging constitutes a relevant product market and it is not necessary for the purposes of the present decision to decide on its further subdivision.

(c) Organic coated

36. Steel sheets with organic coatings are suitable for many applications where corrosion resistance and an attractive appearance are required. Organic coatings are usually applied to galvanised steel. On an-industry wide basis, it is submitted that approximately 80% of organic coated steel is sold to the construction industry and 20% to furniture and white-goods manufacturers. Both Mittal and Arcelor sell organic-coated steel into these end-use applications.

37. The Commission has previously defined a single relevant product market for organic coated steel products, comprising painted products, products with thin organic coatings and laminate- covered products.[16] The results of the market investigation in this case confirmed the Commission's findings in its previous cases.

(4) Other flat carbon steel products

38. Arcelor, but not Mittal, is active in a number of additional finished flat carbon steel product markets. These comprise (1) non-grain oriented electrical steel; (2) sandwich panels; (3) refrigerating panels; (4) tailor-welded blanks; (5) construction sheets; (6) hot-rolled stainless steel; and (7) cold-rolled stainless steel. Given the absence of overlaps in the parties' activities on these markets, these markets will not be further discussed in the present decision.

B) Long products

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14 Hot-dip galvanised steel may be put through an annealing process to produce Galvaneal, which fuses zinc and steel to provide a very smooth finish, used in particular in the automotive industry for exposed bodywork. Galvalume is produced with an alloy coating containing 45% aluminium and 55% zinc, which has good anti-corrosion properties and is used in the construction industry.

15 *Usinor / Arbed / Aceralia*, Case No COMP/ECSC.1351.

16 *Usinor / Arbed / Aceralia*, Case No COMP/ECSC.1351.

39. The production of long steel products involves different production equipment and processes. When producing long steel products, billets or blooms are initially re-heated and then passed repeatedly through pairs of rolls to obtain the exact shapes required. Among long steel products a number of different products may be distinguished: wire rod (the raw material for a number of wire products); merchant bars, reinforcing; sections (including light and heavy sections, mine shaft beams, rails and sheet piling).

(1) Wire rod

40. Wire rod is produced by re-heating and rolling billets and is manufactured in a number of standard diameters ranging from 5.5 mm up to 16 mm. They are normally produced in coils. Wire rod may be distinguished from other long products by the type of mill used for its manufacture and its characteristics. The vast majority of wire rod is further processed by the wire rod producer itself or by third parties into a wide variety of products including wire, wire mesh, bolts and screws. There are two main types of carbon steel wire rod: (1) high-carbon wire rod and (2) low-carbon wire rod. High carbon wire rod is a stiffer product with greater strength and is typically used to produce wire mesh, binding wire, wire rope products and spring wire. Low carbon wire rod is softer and more formable and is used for tire cords and PC cords.

41. In previous cases[17], the Commission has not concluded on the exact definition of the relevant product market. Mittal submits that wire rod constitutes a separate relevant product market and that, in light of the high degree of substitutability between the different types of wire rod, no further segmentation of this product market appears necessary. However, for the purposes of the present transaction, the precise definition of the market maybe left open since this would not affect the conclusions of the competitive assessment.

(2) Drawn wire Products

42. Drawn wire rods include bright bars, high carbon and low carbon wire, wire ropes, nails and piano and PC strings. The question of whether these products belong to separate relevant product markets may be left open for the purpose of the present case since, on any reasonable definition of the relevant market, the parties' combined market share would not exceed 15%.

(3) Reinforcing bars

43. Reinforcing bars ("rebars" or "deformed bars") have a ridged surface, are manufactured in standard diameters between 6 and 24 mm and are used mainly in the construction industry to strengthen concrete structures. In a previous case[18], the Commission considered reinforcing bars as a separate relevant product market. In the present case in light of the very limited activities of the parties in this sector[19], it is not necessary to conclude on the precise dimension of the product market.

(4) Merchant bars

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17 Rautarruky/Warstila*/SKF/JV and LNM/PHS,* Case M. 3747.

18 *Aceralia/UCIN*, Case ESCS 1313.

19 The parties' combined EEA market share is around [0-10]% (Mittal [0-10]% and Arcelor [0-10]%).

44. Merchant bars, produced from billets on so-called bar or medium mills, may have round, square or hexagonal shape. Merchant bars are normally sold to fabricators, steel service centres and other manufacturers for cutting, bending and shaping into a variety of products. It is possible to distinguish two main types of merchant bars: (1) merchant bars with good machineability (for example through adding lead to the crude steel), these products are used in the automobile and machine industries, and (2) merchant bars with a high carbon content that are less machineable which are typically used in the construction industry.

45. In previous decisions, the Commission considered that merchant bars constitute a distinct relevant product market and did not segment the market further. In the present case the product market definition may be left open since the parties' activities in this market are not significant and the proposed transaction does not give rise to competition concerns whatever the product market definition. Moreover, within the market for merchant bars, Mittal and Arcelor have different business focuses: Arcelor is more active in construction grade qualities of bars, whereas Mittal is more active on machineable merchant bars.

(5) Sections

46. Sections are produced by passing re-heated billets and blooms several times through section mill stands, thereby reducing the size of the steel and changing its shape. Sections may be manufactured in a number of different shapes ("I"; "H"; "T" and "U"). Two main types may be distinguished according to their width: (i) light sections and (ii) heavy sections.

(a) Light sections

47. Light sections are sections that are less than 80 mm in width and are not classified as merchant bars[20]. Light sections have three principal shapes: angles; "T" shapes and "C" shapes and are largely used in the construction industry. All light sections can be produced on the same rolling mill by changing the rolls used.

48. In a previous case[21] the Commission has left open the question of whether light section constitute a separate product market within long carbon steel products. Also for the purposes of the present decision, the precise definition of the relevant product market may be left open since the operation does not give rise to any overlap in this area[22].

(b) Heavy sections (beams)

49. Heavy sections (or beams) are manufactured from re-heated blooms and are used mainly in the construction industry. They include structural sections ("I", "H", and "U" shapes), mine shaft beams, rails and sheet piling. The main industry association, Eurofer, classifies as heavy sections all the sections with a width above 80 mm. From the supply perspective sections with a width between about 80 and 250 mm are

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[20] This is according to Eurofer and CRU terminology.

[21] *Rautarruki/Warstila/SKF/JV,* Case Comp M. 3747.

[22] Only Mittal is active in this area and has an estimated share of around [0-10]% (calculated on the basis of CRU data based on a definition of sections of up to 80 mm). Mittal estimates that the situation would not change if sections of up to 100 mm width were included in the light sections.

manufactured on medium or heavy section mills, while heavy sections with a width above 250 mm can be manufactured only on heavy section mills

50. Mittal submits that, with the exception of sheet piling and rails, there is relatively easy supply-side substitution between various types of heavy sections at least up to the width of 550 mm. Conversely only a limited number of mills can produce sections with a width above 550 mm. Thus, Mittal submits that, in light of the very low demand and supply-side substitutability between this type of sections and the others, the sections of a width above 550 mm would constitute a different product market. However the larger mills capable of producing beams above 550 mm are also capable of producing the smaller sizes. Of the parties, only Arcelor is active in sections of a width above 550 mm.

51. However, the results of the market investigation have indicated that there is a single relevant product market for heavy section on the basis of continuous supply side substitution between the various sizes of mill. Therefore the Commission considers that there is a single relevant product market including all heavy sections with a width above 80 mm with the exception of sheet piling and rails and possibly of mine shaft beams (see below).

(c) Sheet piling

52. Sheet piling is a type of heavy section in the shape of a "U" or "Z" which is used in the construction industry, mainly as earth retaining structure. The sections are interlocked along their edges to form a continuous wall, which is driven vertically down into the earth's surface to create a barrier or retain walls either on land or in connection with a river, canal, or coastal works.

53. Sheet piling may be manufactured in different shapes, widths and lengths. Mittal manufactures sheet piling in a "U"-shape up to a width of 550 mm while Arcelor manufactures sheet piling in a "U" and "Z"-shape with a width up to 900 mm and a length up to 40 metres. In line with a previous Commission's decision[23] and due to restriction in supply side substitutability, sheet piling does not belong to the same relevant product market as other heavy section beams.

54. Mittal submits that sheet piling should not be regarded as constituting a separate market. In this respect, it notes that from the demand perspective, a wide variety of other materials can be used as retaining structures as a substitute to sheet piling. Mittal submits that sheet piling is, in fact, increasingly being superseded by other types of retaining structures (even in its traditional maritime and river works applications), not least because of its lack of rigidity and its susceptibility to corrosion and leaks.

55. In this respect, Mittal notes that in earth excavations, sheet piling may be substituted by retaining structures, including diaphragm walls[24], Berlin walls[25], soil nailing,[26] and

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23 COMP ESCS 1328 Salzgitter / HSP.

24 Diaphragm walls are vertical concrete walls built by excavating from the ground surface.

25 Berlin walls, also known as soldier piles, are made out of wide flange steel H sections spaced around 2-3 metres apart, which are driven into the ground prior to excavation. As the excavation proceeds, horizontal timber sheeting is inserted between the H steel sections.

26 Soil nailing provides ground support by reinforcing the earth with bars grouted into the soil and tied to a confining membrane at the surface of the excavation.

concrete bored piles[27]. In earth applications for fill construction, substitutable structures include gravity retaining walls made from reinforced concrete[28], masonry,[29] gabions[30], and crib walls[31]. In major harbour works, diaphragm walls and concrete caissons are increasingly preferred to, and therefore substituted for, sheet piling. In less deep water applications (such as canals), substitutes include wooden, PVC, and concrete piles.

56. In past cases[32], the Commission noted that "sheet piling (…) is increasingly facing competition from alternative solutions involving competing materials such as cold-rolled sheet piles." The majority of the respondents to the market investigation, including Arcelor, in the present case confirmed the existence of an increasing competitive constraint exercised by other retaining structures vis-à-vis sheet piling, which points towards a broader product market definition. However, a very limited number of respondents indicated that for certain specific applications, substitutability between sheet piling and other retaining structures is limited due to alleged differences in cost effectiveness.

57. In view of these comments, the Commission has carried out a further investigation and has ultimately concluded that sheet piling and other retaining structures are substitutable for the vast majority of their end applications. Therefore, it concluded that sheet piling belongs to a broader product market for retaining structures. The precise definition for this retaining structure market can be left open for the purposes of this case.

(d) Rails

58. Rails are also rolled in heavy section mills. However they require additional equipment for head-hardening and straightening. Given the safety critical nature of rails they must also be ultra-sonically tested to ensure the internal consistency of the rails. In line with a previous Commission's decision[33] and due to restriction in supply side substitutability, rails do not belong to the same relevant product market as other heavy sections.

59. Mittal notes that its rails may have a maximum length of 25 metres whereas its competitors (including Arcelor) are able to produce rails of a length of up to 120

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27 Soil nailing provides ground support by reinforcing the earth with bars grouted into the soil and tied to a confining membrane at the surface of the excavation.

28 Gravity retaining walls are constructed from reinforced concrete and have a trapezoidal cross-section design. They use their weight to resist the overturning momentum exerted by the ground.

29 Un-reinforced masonry is suitable for small retaining walls.

30 Gabions are free-draining walls constructed by filling large baskets (made from galvanised steel mesh) with broken stone.

31 Crib walls are constructed by interlocking individual boxes made from timber, pre-cast concrete, or metal units. The boxes are filled with crushed stone or other coarse granular materials to create a free-draining structure.

32 Salzgitter/HSP, Case COMP/ESCS.1328. In Thyssenkrupp/HSP/Hoesch/JV, the Commission left open the possibility that sheet piling might form part of a broader market.

33 COMP ESCS 1046 ProfilArbed / Unimetal.

metres. As a result, while Mittal's rails are more suitable for use on curves and in shunting yards, Arcelor's rails are used for most standard applications.

(e) Mine shaft beams

60. It may be possible to further distinguish, within the heavy sections market, the so called- mine shaft beams. Mine shaft beams are beams typically in a "V" shape used only in the mining industry. Therefore these products are sold only in those countries having mining industries (i.e. Poland, Germany, France and Spain). However, it is not necessary to decide whether there is a separate relevant product market for mine shaft beams given the minimal overlap of the parties' activities in this area[34]. In the following analysis, mine shaft beams have been included within heavy sections.

(6) *Tubes*

61. Only Mittal is active in steel tubes in the EEA. Both Mittal and Arcelor are active at the global level but Arcelor's sales are marginal and the parties' combined markets shares on any reasonably conceivable product market would be less than 10%. For this reason, this product segment will not be further discussed in the present decision.

B. Relevant geographic markets

62. In previous Commission decisions, the geographic market for both semi-finished carbon steel[35] and flat carbon steel[36] was defined as at least EEA wide.

63. As regards flat carbon steel, Mittal submits that flat carbon steel markets are characterized by extensive trade flows at the EEA level. There are no barriers to trade within the EEA. Moreover, the adoption of EEA-wide standards has led to the harmonisation of customer requirements within the EEA.

64. In previous decisions the Commission, considered the markets for hot rolled carbon steel flat products (including quarto plates) and cold rolled flat products to be at least Community-wide. In particular, as regards cold rolled flat products the Commission noted in a previous case[37] that the respondents to the market investigation considered the market to be not wider than Western Europe, i.e. an area encompassing the EU 15 and the EFTA States. However the definition of the relevant geographic market was ultimately left open.

65. In previous decisions the Commission considered the markets for steel for packaging and coated steel products to be not wider than the Community[38]. The results of the market investigation in this case point towards an at least EEA-wide dimension for these markets. However the precise geographic scope of the markets for the production

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34 Whereas Mittal produce around [60-70]% of all mine shaft beams sold in the EEA, Arcelor's market share on this segment is only [0-10]%.

35 *Dillinger Huettenwerke/Saarstahl/Cokerie De Carling,* Case COMP/M.3376.

36 *Usinor / Arbed / Aceralia* , COMP/ECSC 1351.

37 *Usinor / Arbed / Aceralia* , COMP/ECSC 1351.

38 *Usinor / Arbed / Aceralia*, COMP/ECSC 1351.

and direct sale of steel for packaging and coated steel products may be left open as it does not modify the competitive assessment.

66. In line with previous Commission decisions[39], Mittal has submitted that the geographic market for long carbon steel products is at least EEA wide. For rails, the Commission has previously found that the scope of the relevant geographic market is at least EEA-wide, but probably wider[40].

67. The respondents to the market investigation conducted by the Commission in the present case confirmed that the market for the production and direct sale of carbon steel flat and long products are at least EEA-wide. However the precise geographic scope of the markets for the production and direct sale of hot rolled carbon steel products, quarto plates and cold rolled carbon steel flat products may be left open as the competitive assessment is unchanged on any reasonable market definition.

68. With respect to heavy sections, the results of the market investigation have largely confirmed the existence of an EEA-wide market. However, during the course of the procedure, Arcelor submitted that there is economic evidence[41] to suggest that market conditions within the new EU member states, and more particularly a zone including the Czech Republic, Hungary, Poland and Slovakia ("CHPS") would be different from those prevailing in the rest of the EEA, in particular that transport costs would represent a significant percentage of total cost and that competition from Western Europe-based mills would not constitute a strong constraint on the parties within the CHPS. Ultimately, this evidence may be interpreted as suggesting that the geographic scope of the market for heavy sections would be narrower than EEA-wide and may be CHPS-wide.

69. In rebuttal to Arcelor's claims, Mittal submitted counterarguments in favour of the broader EEA-wide market definition[42].

70. The Commission has carefully examined the evidence submitted by Arcelor and Mittal, in conjunction with the results of the market investigation and the responses of third parties, and concluded that the balance of evidence favoured defining the market as EEA wide. The market for heavy sections is thus assessed on the basis of an EEA-wide geographic market definition. However, in view of these submissions, the Commission has examined with particular care, within the EEA-wide market for heavy sections, the effects of the transaction on the CHPS area.

C. Other markets

1. Raw materials

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39 *Rautaruukki Wartsila.SKF/JV*, Case COMP/M.3747 LNMPHS, Case COMP/M.3226.

40 *VA Stahl/Thyssen Schienen Technick*, Case COMP/ECSC.1357.

41 Arcelor submitted two papers by Professor Jerry Hausman: "*Economic Analysis of an Acquisition of Arcelor by Mittal*", 8 May 2006 and "*geographic Competitive Differences in Beams in the EU 25",* 18 may 2006.

42 Mittal submitted a paper by Simon bishop and Dr Janusz Ordover: "*Mittal's proposed Acquisition of Arcelor: An Economic Response to Hausman*", 29 May 2006. Mittal submitted also to the Commission a presentation on 23/05/2006.

71. As described above, steel may be produced by the integrated, blast furnace, oxygen converter route or by the electric arc furnace route. The raw materials for blast furnaces are iron ore, coke and limestone. The liquid iron produced by the blast furnace is mixed with scrap in the oxygen converter. Liquid iron which is allowed to solidify is called pig iron. Pig iron, DRI and scrap may be fed into electric arc furnaces.

72. There are four types of iron-containing materials that may be used in steelmaking furnaces – hot metal (liquid carbon-saturated iron), pig iron (solid carbon-saturated iron), direct reduced iron (DRI), and scrap. While both Parties manufacture certain upstream raw materials used in steel production, only Mittal has minor merchant sales of such products, namely DRI and pig iron.

A) Coke

73. Coke is a combustible substance, produced in a coke oven by the dry distillation of coal. Coke is principally used to melt-reduce iron ore to pig iron, although it is also used as a fuel in other industries. In previous decisions, the Commission has considered that coke constitutes a separate relevant product market[43].

74. While in previous decisions the Commission had defined Germany as a separate relevant geographic market because of the German coal subsidy regime, it found more recently that increasing imports of coke into Germany pointed to a broader market definition[44]. The Commission has not finally determined whether the rest of the EEA constitutes a single relevant geographic market.

75. The notifying party submits that the scope of the relevant geographic market is at least EEA-wide and probably global,[45] notwithstanding the subsidy regimes that exist in Germany, Poland, and possibly other Member States, for coal mining[46].

76. However in light of the very limited activities of the parties in this market it is not necessary to define the precise relevant product and geographic markets.

B) Iron ore and direct reduced iron (DRI)

77. When extracted from the mine, iron ore comes in two forms, namely, lump and fines. As only lump can be directly loaded into an oxygen blast furnace, fines are

43 RAG/Burton, Case COMP/ECSC.1316, *RAG/SIDARFIN/BBCT*, Case COMP/ECSC.1344. See also *Dillinger Huttenwerke/Saarstahl/Cokerie De Carling* Case COMP/M.3376. In this case, the notifying parties noted that coke can be segmented into four different forms: (1) blast furnace coke; (2) foundry coke; (3) specialty coke products; and (4) electrometallurgical coke. The notifying parties in that case considered that, while each of the first three types of coke formed part of the same relevant product market, electrometallurgical coke formed a separate relevant product market. The Commission nevertheless left open whether electrometallurgical coke should be regarded as a separate market. Since neither Mittal nor Arcelor are active in electrometallurgical coke, this question can also be left open in this case.

44 *Dillinger Huttenwerke/Saarstahl/Cokerie De Carling* Case COMP/M.3376.

45 In *Dillinger Huttenwerke/Saarstahl/Cokerie De Carling Case* COMP/M.3376 para. 22, the notifying parties considered that the scope of the relevant geographic market was at least EEA-wide if not global.

46 As in Germany, coal producers in Poland receive restructuring aid from the Polish State pursuant to the Law on restructuring of the pit-coal sector for the period 2003-2006 of November 28, 2003 (Dz.U. No. 210, item 2037). Polish coke producers are not, however, recipients of state aid.

agglomerated either through sintering or pelletising. Sintering is always carried out adjacent to the blast furnaces as sinter is fragile and breaks down if transported any distance. Iron ore can also be converted into direct reduced iron ("DRI") in a direct reduction furnace for steel production in an electric arc furnace. The ore used to produce DRI must be of a particularly high grade (high iron content and low levels of impurities such as silica, phosphorous and sulphur).

78. In previous cases[47], the Commission defined separate relevant product markets within iron ore for lumps, sinter fines, and pellets. The Commission also noted that there were strong indications that DRI production belongs to distinct product markets. The Commission defined the relevant geographic market as comprising all "seaborne" customers[48], *i.e.*, customers (located principally in Western Europe and East Asia) that are dependent on seaborne supplies of iron ore. However for the purposes of the present decision it is not necessary to determine the precise scope of the relevant geographic market given that the transaction raises no concerns on any reasonably conceivable market definition.

C) Pig iron

79. Pig iron is raw iron produced from smelting iron ore with coke and limestone in a blast furnace. Owing to its high carbon content, pig iron is a brittle substance in its solid state. In a previous decision[49], the Commission did not ultimately define the scope of the relevant product or geographic market. Similarly in this case it is not necessary to determine the precise scope of the relevant product or geographic market as the transaction raises no competition concern on any reasonably conceivable definition.

2. Distribution

80. Steel products may also be sold through various distribution channels. In previous cases[50], the Commission defined separate relevant product markets for (1) steel service centres for carbon steel flat products[51], (2) stockholding centres for carbon steel flat products,[52] (3) stockholding centres for carbon steel long products, and (4) oxycutting centres[53]. The Commission found that the scope of the relevant product markets was

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47 *Mitsui/CVRD/Caemi*, Case COMP/M.2420.

48 *Mitsui/CVRD/Caemi*, Case COMP/M.2420.

49 *SMS/Mannesmann,* Case IV/M.1450.

50 *Usinor/Arbed/Aceralia*, Case COMP/ECSC.1351.

51 Steel service centres purchase from steel manufacturers strip mill products, which they then slit and cut to customers' requirements. Their customers include car manufacturers, white goods manufacturers, and stockholders. Long products are not sold through service centres.

52 Stockholding centres are active as wholesalers in the steel industry, purchasing steel products in bulk and re-selling in smaller quantities.

53 Oxycutting centres purchase from steel manufacturers quarto plate, which they then cut to particular sizes and shapes as required by customers using oxyhydrogen blowtorches. The traditional cutting technology is being replaced with lasers and water jets.

national or at most regional[54]. The results of the market investigation in the present case have largely confirmed the Commission's findings in the previous cases with regards to both the geographical and product market definition.

VI. COMPETITIVE ASSESSMENT[55]

A. Introduction

81. In its notification, Mittal has emphasised the complementarity of the two companies' activities, both geographically and from the product range viewpoint. Arcelor is principally active in Western Europe and America, with only minor operations in Eastern Europe, and Asia. In contrast, Mittal is active principally in North America, Central and Eastern Europe, Africa, and Kazakhstan, with only a minor presence in Western Europe and no presence in South America.

82. As to product complementarity, in the EEA, while Mittal achieves the majority of its sales in long carbon steel products, Arcelor is active mainly in flat carbon steel products.

B. Horizontal overlaps

83. There are five EEA-wide horizontally affected markets in the area of flat finished carbon steel: (1) hot-rolled carbon steel strip and sheet; (2) cold-rolled carbon steel strip and sheet; (3) hot-dip and electro-galvanised carbon steel; (4) organic-coated carbon steel and (5) metallic coated steel for packaging. At the Commission's request[56], Mittal has also treated quarto plates as an affected market. Moreover the transaction would give rise to four EEA-wide horizontally affected markets in long finished carbon steel: (1) wire rod; (2) heavy sections (including mine shaft beams); (3) rails; and (4) sheet piling.

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54 *Usinor/Arbed/Aceralia*, Case COMP/ECSC.1351.

55 The following assessment is based on figures provided by Mittal in its notification and subsequent submission. These figures originate from steel industry specialised sources, most notably Eurofer. In view of this, the market investigation has largely confirmed Mittal figures and estimates and has highlighted non-material discrepancies in a limited number of cases.

56 Arcelor has a 52.25% shareholding in the holding company controlling Dillinger Hütte, a German company active in quarto plate production. Arcelor appears to consider that, under relevant corporate governance rules, it does not have a sole or joint controlling interest in this company. Should Dillinger Hütte's sales nevertheless be added to Arcelor's sales, the Parties' combined 2005 EEA-wide share of quarto plate sales would be [20-30]% (Mittal: [0-10]%; Arcelor: [10-20]%).

84. The other relevant product markets identified above are not horizontally affected, given that where there are overlaps between the parties, combined market shares are less than 15%. Therefore, these markets will no longer be addressed in this decision[57].

1. Flat carbon steel products

A) Quarto plates

85. The parties' combined 2005 EEA-wide share of quarto plate sales was [5-15]% (Mittal: [0-10]%; Arcelor: [0-10]%). Arcelor has a 52.25% shareholding in the holding company controlling Dillinger Hütte, a German company active in quarto plate production. However, under the relevant corporate governance rules, Arcelor does not consider that it has sole or joint control of that company. Should Dillinger Hutte's sales be added to Arcelor's, the parties´s combined EEA-wide share of quarto plate sales would be [20-30]% (Mittal [0-10]%, Arcelor [15-25]%). Imports from non-EEA countries accounted for about 14% on average over the last three years. Capacity utilisation for quarto plate was less than [50-70]% in each of the last two years. The parties competitors have over [5.5-7.5] million metric tonnes ("MT") a year in spare capacity, more than the parties' (including Dillinger) combined EEA capacity.

86. At any rate, the combined entity will face continued competition from several significant competitors, including Corus ([5-15]%), Salzgitter ([5-15]%), TKS ([0-10]%), SSAB ([0-10]%), Ruukki ([0-10]%), Duferco ([0-10]%), Riva ([0-10]%), and Voest Alpine ([0-10]%). The transaction will not lead to competitive problems in this market, given the relatively low combined market shares, the comparatively small increment resulting from the transaction, the low capacity utilisation rates, the fragmented nature of the market and the existence of significant competitors. The market investigation did not identify any concerns for this market.

B) Hot-rolled strip and sheet

87. The parties' combined 2005 EEA-wide share was around [20-30]%[58] (Mittal: [0-10]%; Arcelor: [15-25]%), down from [20-30]% in 2004[59]. The combined entity will continue to face strong competition from its main competitors, being Corus ([5-15]%), TKS ([5-15]%), Riva ([5-15]%), US Steel Kosice ([0-10]%), Salzgitter ([0-10]%),

57 In the framework of the market investigation, Arcelor brought to the Commission' attention that the activities of the two companies overlap in Poland also with regard to construction sheet/profiles. This product category was considered as constituting a separate product market having a national geographic scope, in line with past Commission practice. At the Commission' request Mittal explained that, in keeping with its internal reporting, sales data for construction profiles were included, for the purposes of the notification, under hot-dip galvanised sales.

At any rate, by combining the individual sales data for Poland provided separately by Arcelor and Mittal for profiles, the new entity would have a combined market share of around [20-30]% in 2005 (Arcelor [15-25]%, Mittal [0-10]%). Moreover, Mittal's sales appear to have been steadily decreasing over the period 2003-2005 (down from [0-10]%). In view of the relatively low combined market shares, the limited increment and the decreasing significance of Mittal's sales, the Commission has not considered it necessary to further investigate the market for construction profiles in Poland.

58 These data derive from Mittal estimates. Arcelor's data are not materially different.

59 More generally, Mittal's overall steel sales decreased between 2004 and 2005, largely reflecting essential maintenance downtime at its European manufacturing facilities during the second and third quarters of 2005. According to CRU data, overall EEA-wide crude steel production fell by around 7 million MT between 2004 and 2005 in response to market conditions. Mittal estimates that, overall, there was a reduction in overall EEA crude steel demand of around 1-3 million MT.

SSAB ([0-10]%), Voest Alpine ([0-10]%), Duferco ([0-10]%), and Ruukki ([0-10]%). Imports from non-EEA countries accounted for over 15% on average over the last three years. Capacity utilisation for hot rolled strip was less than [70-90]% in each of the last two years. The parties' competitors have over [13-15] million MT a year in spare capacity, four times Mittal's total EEA capacity.

88. The transaction will not lead to competitive problems in this market, given the relatively low combined market shares, the comparatively small increment resulting from the transaction, the fragmented nature of the market, the low capacity utilisation rates and the existence of significant competitors. The market investigation did not identify any concerns for this market.

C) Cold-rolled strip and sheet

89. The parties' combined 2005 EEA-wide share of cold-rolled sales was [25-35]% (Mittal: [0-10]%; Arcelor: [25-35]%), down from [30-40]% in 2004. Competitors include Corus ([5-15]%), Riva ([5-15%), TKS ([5-15]%), Voest Alpine ([0-10]%), US Steel Kosice ([0-10]%), SSAB ([0-10]%), Duferco ([0-10]%), Salzgitter ([0-10]%), and Ruukki ([0-10]%). It should also be noted that imports from outside the EEA accounted for over 10% of sales on average over the last three years.

90. Moreover, Mittal and Arcelor are currently targeting two different segments of the demand on this market. While the automotive industry accounts for around [30-50]% of Arcelor's cold-rolled steel sales, Mittal achieves only [0-20]% of its EEA-wide cold-rolled sales in the automotive segment, instead focusing heavily on the construction sector.

91. Industry-wide average capacity utilisation for cold rolled strip was less than [80-90]% in each of the last two years. Both Mittal and Arcelor have higher than average utilisation rates for cold rolled strip. Implying that their competitors are well placed to increase their output. The parties' competitors have over [12-14] million MT a year in spare capacity, three times Mittal's total EEA capacity. Mittal estimates cold-rolled capacity utilization among the parties' EEA competitors at about [55-65]% in 2005 ([55-65]% in 2004).

92. The market test did not identify any competition problems for this product. In light of the presence of a number of competitors, the low capacity utilization among the parties' EEA competitors, the relatively low increment in market share and the different business focus of the two companies, the transaction does not raise competition concerns on this market.

D) Galvanised steel

93. The parties' combined 2005 EEA-wide share of galvanised steel sales was [25-35]% (Mittal: [0-10]%; Arcelor: [25-35]%[60]). Competitors include TKS ([10-20]%), Corus ([5-15]%), Riva ([0-10]%), Voest Alpine ([0-10]%), Salzgitter ([0-10]%), and Ruukki ([0-10]%). Imports accounted for over 4% on average during the last three years. New capacity announced by competitors is equivalent to over twice Mittal's installed capacity.

60 The figure supplied by Arcelor for their market share is higher but does not materially change the competitive analysis.

94. For this product the parties' focuses are different. Arcelor sells a significant proportion of its sales to the automobile industry, [30-50]% according to Mittal. Mittal sells almost exclusively, [90-100]%, to the construction industry. In relation to the sub-categories of Galvanneal and Galvalume, Mittal does not produce either of these products in the EEA, though it does produce Galvanneal in the USA.

95. Therefore the Commission has concluded that in light of the presence of a number of competitors, the relatively low increment in market share, the planned capacity increases of competitors and the different business focus of the two companies, the transaction does not raise competition issues on this market.

96. During the market investigation, it was submitted that, absent the proposed transaction, Mittal would have become one of Arcelor's main competitors for the supply of higher-end flat carbon steel products (including Galvaneal) for the automotive industry. It was highlighted that Mittal was already present in this end-use segment in the United States and had plans to use the technology of these plants to enter the market segment in the EEA. The proposed transaction would thus lead to the elimination of Mittal's potential competition on the automotive market segment.

97. Mittal already supplies commodity grade hot-rolled and cold-rolled flat products to the EEA automotive industry for use in unexposed body parts, together with limited quantities ([0-100,000] MT) of electro-galvanized steel. Its overall share of steel supplied to the automotive industry is currently below [0-10]%. According to Mittal, the company's current flat carbon steel facilities do not have the capability to produce higher-end flat carbon steel products for exposed body parts […]. Mittal further argues that there is currently strong competition among existing suppliers of flat steel to automotive manufacturers (including Arcelor, Thyssen Krupp, Voest Alpine, Salzgitter, Corus and Riva) and that other steel producers are as well positioned as Mittal to enter into the automotive steel segment.

98. The Commission analyzed internal documents from the Mittal strategy and management teams discussing several options for Mittal to modernize some of its existing flat carbon steel production facilities to produce high-end flat steel products intended to the automotive industry. […]. In view of the above, there is no evidence that Mittal would have been a new entrant in the automotive market segment in the short/medium term and that the company would have exerted a stronger competitive constraint on Arcelor, relative to that exerted by existing competitors, in this market segment absent the transaction. Therefore, the Commission does not consider that the proposed transaction creates competition concerns in this respect.

99. It was also claimed that Mittal and Arcelor were the only two potential global suppliers of steel products to the automotive industry. In view of the current global sourcing trend in the automotive industry, the merger would thus negatively affect global automobile suppliers. The Commission investigated this issue and concluded that the proposed transaction was not likely to bring about such negative effect as the automotive market segment is still EEA-wide in scope and neither of Arcelor or Mittal is currently capable of supplying global automotive manufacturers on a global basis. In particular, Mittal has marginal supplies to the automotive industry in the EEA […]. The Commission's investigation did not provide any evidence that Arcelor and Mittal were potential global suppliers of steel products to the automotive industry or that the proposed transaction could prevent other steel producers to become global suppliers, in particular through cooperation alliances.

E) *Metallic coated steel for packaging*

100. The parties' combined 2005 EEA-wide share of sales of metallic coated steel for packaging was [30-40]% (Mittal: [0-10]%; Arcelor: [30-40]%), the same as in 2004. Mittal's 2005 EEA-wide sales of metallic coated steel for packaging were only [0-100,000] MT (in a total market [4-6] million MT), sold into non-beverage applications in Italy and Poland. All of this material was imported from outside the EEA.

101. Given that Mittal has minimal sales and does not sell to the beverage market the competition analysis is the same for whether a single market for metallic coated steel for packaging is considered or separate markets for beverage and non-beverage applications. Competitors include Corus ([25-35]%), TKS ([15-25]%), Riva ([0-10]%) and US Steel Kosice ([0-10]%). The market investigation did not raise concerns in this market. In light of the presence of important competitors and the very low increment in market share, the transaction does not raise competition concerns on this market.

F) *Organic-coated steel*

102. The parties' combined 2005 EEA-wide share of organic-coated steel sales was [25-35]% (Mittal: [0-10]%; Arcelor: [25-35]%), The combined entity will continue to face strong competition from a number of competitors including Corus ([15-25]%), TKS ([5-15]%), Voest Alpine ([0-10]%), Ruukki ([0-10]%), SSAB ([0-10]%), Salzgitter ([0-10]%), Riva ([0-10]%), Duferco ([0-10]%), and US Steel Kosice ([0-10]%). Imports were nearly 6% on average over the last three years. The market investigation did not raise concerns in this market. In light of the presence of a number of important competitors and the low increment in market share, the transaction does not raise competition concerns on this market.

2. *Long carbon steel products*

103. The parties' EEA market share in 2004 and 2005 do not exceed 15% for drawn wire products, reinforcing bars or merchant bars. These products are thus not further considered in the present decision.

104. In 2005 the combined market share for wire rod was also below 15%, however in 2004 it exceeded 15%. The present decision therefore examines below the situation on the wire rod market.

105. The parties' combined EEA-wide share of sheet piling sales was [60-70]% (Mittal: [5-15]%; Arcelor: [50-60]%) in 2005[61]. However, sheet piling forms part of a larger market for retaining structure as confirmed by the market investigation. Out of all retaining structures, sheet piling accounts for less than 10% of consumption. Thus, the parties' market share is most likely below 10% of the overall value of most commonly used retaining structures and no competition concerns are likely to arise.

106. For rails and heavy sections, the combined entity would have market shares in excess of 15%. The markets for these products are discussed below.

A) *Wire rod*

[61] These figures were supplied as Mittal's best estimates. They have been checked against Arcelor's data.

107. The parties' combined 2005 EEA-wide share of wire rod sales was [5-15]% (Mittal: [5-15]%; Arcelor: [0-10]%), down from [10-20]% in 2004 (Mittal: [5-15]%; Arcelor: [0-10]%)[62]. The parties' position would not materially differ if two distinct markets for high-carbon and low-carbon wire rod were deemed to exist. In light of the modest market share of the combined entity and of the presence on this market of a number of competitors including Riva (10-20%), Saarstahl ([0-10]%), Celsa ([0-10]%), Badische ([0-10]%), Corus ([0-10]%), Voest Alpine ([0-10]%), and Duferco ([0-10]%) the proposed transaction will not raise competition concerns for this product.

B) Heavy sections (beams)

108. In 2005 the EEA market for heavy sections was approximately [8-10] million MT of which Arcelor provided [2.5-3.5] million MT ([25-35]%) and Mittal [0.5-1.5] million MT ([5-15]%). The combined entity would therefore have a market share of [35-45]%. Total sales of heavy sections over the last three years have been erratic (2003, [8-10] million MT; 2004, [8.5-10.5] million MT; 2005, [8-10] million MT. In the longer term an increase of [2-4]% a year in demand is expected for the period 2004 – 2010.

109. As a result of the proposed operation the new entity will become the undisputed market leader in the EEA market for heavy sections. In this position they may be able to raise prices unilaterally. Other producers are not likely to have an incentive to compete strongly nor are they likely to be able to do so. This effect is likely to be particularly strong in the CHPS area.

Table 1: EEA market shares of heavy section (beams) – in %

Company	**2003**	**2004**	**2005**
Arcelor	[30-40]	[30-40]	[30-40]
Mittal	[5-15]	[10-20]	[5-15]
Combined	**[40-50]**	**[45-55]**	**[35-45]**
Salzgitter	[5-15]	[5-15]	[5-15]
Corus	[5-15]	[5-15	[5-15
Celsa	[0-10]	[0-10]	[0-10]
Duferco	[0-10]	[0-10]	[0-10]
Riva	[0-10]	[0-10]	[0-10]
Saarstahl	[0-10]	[0-10]	[0-10]
Others	[5-15]	[5-15]	[15-25]
Imports	[0-10]	[0-10]	[0-10]

62 These data derive from Mittal's best estimate. They have been checked against Arcelor's data and are not materially different.

110. The combined entity will be at least three times as big as the next competitor the EEA. In fact it will be bigger than the next four competitors combined. It should be noted that Mittal's sales in 2005 were reduced by previously planned maintenance shut downs at a number of its mills.

111. This large difference in market shares between the combined entity and its competitors would make it more difficult for other players to respond to Mittal/Arcelor's price increases and/or output reductions in such a way as to make such unilateral action of the merged firm unprofitable. The concentration will provide Mittal/Arcelor with a larger base for sales on which to enjoy any resulting price rise while eliminating its largest competitor.

112. Capacity estimates in this area are particularly difficult for a number of reasons. Some rolling mills will produce both light and heavy sections while others will produce or have the capacity to produce heavy sections, rails and sheet piling. Therefore a given mill might produce more than one product and theoretically has the possibility of using all of its capacity for a particular product. The only meaningful capacity utilisation figures are therefore those which reflect the entire production of the mill.

113. It is very unlikely that any new green field heavy section mills will be built in the EEA. None of the parties' major competitors are planning capacity increases. Arcelor is commissioned a new mill at Belval in 2005 with a significant capacity. The mill's output is being ramped up over the next few years. On the basis of the overall capacity utilisation described above the parties will have significant additional capacity (Arcelor, in 2005, had significant unused capacity in addition to the as yet unused potential spare capacity at Belval). The combined entity may have sufficient additional capacity to discipline new entrants.

114. As previously explained, Czech Republic, Hungary, Slovakia and Poland constitute an area within the EEA market for heavy sections on which competitive conditions may be different. One of the respondents to the market investigation has indicated that in its view new entry in this area is difficult due to the need to build a local sales force, the difficulties of building customers relationship, administrative and financial barriers and less well-developed infrastructures. In addition the parties are well established in this area. In this area Mittal is already well established with production facilities in Poland and Czech Republic and has high market shares. Arcelor is the leading competitor supplying the bulk of its sales in to the CHPS area from its mill at Unterwellenborn in Germany but close to the Czech border and most of the remainder from Luxembourg.Thus, the removal of the competitive constraint exercised by the production capacity in Unterwellenborn, would significantly strengthen the position of Mittal. There are very few other suppliers of heavy sections in CHPS, with limited sales, the main ones being Salzgitter, with a production facility in Peine (Germany) and Vitkovice (Czech Republic) and imports from outside the EEA.

115. The combined entity would have significant market shares in both the EEA as a whole and in the CHPS area. The Commission considers that there are serious risks that the Mittal/Arcelor may be able to significantly impede competition in the EEA and, more particularly, in the so-called CHPS area.

116. Moreover, the one area of serious concern identified by third parties in their replies to the Commission's market investigation was heavy sections. These third parties

mentioned the high market shares particularly in Eastern Europe and the parties' excess capacity.

117. On the basis of the above considerations the Commission has serious doubts as to the compatibility of the transaction, as initially notified, with the common market.

C) Rails

118. The parties' combined 2005 EEA-wide share of sales of rails was [20-30]% (Mittal: [5-15]%; Arcelor: [10-20]%). Post-transaction, the combined entity would be the third biggest player, behind Voest Alpine ([35-45]%) and Corus ([25-35]%). In addition, for the reasons previously explained, Mittal argues that the companies' products are not perfect substitutes from a demand perspective being more suited to curves and sinter yards application. Furthermore the level of imports of these products in the EEA has been volatile but reached over [25-35]% in 2004. (It was [5-15]% in 2005). The respondents to the market investigation did not express concerns in this area. In view of the presence of two other larger competitors and of the level of imports, the Commission does not consider likely that the transaction will raise competition concerns in this area.

C. Vertically related markets

1. Raw materials

119. Neither Mittal nor Arcelor are present in the EEA in the sale of coking coal to third parties. Arcelor is not present on the upstream market for coke, DRI and pig iron. Mittal has a small presence on those markets (less than [0-10]%). On this basis the proposed operation is not likely to give rise to competition concerns in relation to coke, DRI and pig iron.

120. Mittal has no sales of iron ore to third parties in the EEA. In February 2005 Arcelor acquired a Canadian company, Dofasco, which sells iron ore fines and pellets into the EEA. However, even if all the Canadian sales of iron ore fines and pellets into the EEA were to be imputed to Dofasco (this is unlikely as there are at least two other significant iron ore mines in Canada), according to the parties they would account for less than 15% of the EEA consumption of these products. Thus, competition problems are unlikely to arise as a result of the present transaction on the iron ore fines or pellets markets.

121. None of the respondents to the Commission's market investigation has raised any problems in relation to these raw material products.

122. As regards the vertical effect of the transaction, and in particular the market for the purchase of raw materials and other inputs, the Mittal does not consider that the combined entity would exceed a 15% share of purchases on any relevant market. The respondents to the market investigation did not express any concerns in relation to the position of the merged entity in these markets.

123. On the basis of the above considerations, the proposed transaction does not raise either horizontal or vertical competition concerns as regards raw materials markets.

2. *Distribution*

124. In view of the fact that the market investigation confirmed that distribution markets are national[63], the proposed operation will give rise to limited overlaps only in Poland and the Czech Republic, the only countries where Mittal is active in distribution. On the Polish market for steel services centres the parties' combined market share in 2005 was [5-15]% (Arcelor [0-10]% and Mittal [0-10]%). For stockholding the parties' combined market share in 2005 was [0-10]% (Arcelor [0-10]% and Mittal [0-10]%).

125. In the Czech Republic the only overlap is for stockholding where the combined entity will have a market share of [0-10]% (Mittal [0-10]%; Arcelor [0-10]%). On this basis the parties would not be able to foreclose access to distribution for competing steel manufacturers in Poland and Czech Republic. Arcelor has high market shares in a number of other EEA member States. However, as there is no overlap in these countries, the operation would not give rise to horizontal problems.

126. As regards the vertical effect of the proposed transaction, the large majority of the respondents to the market investigation held that although Arcelor has market shares in excess of 25% in some EEA States, it was not dominant. Therefore the combined entity would not be able to foreclose access to distribution to competing steel makers. Nor, given the parties' combined market shares for all products (except beams), they would be able to restrict supplies to competing distributors.

127. On the basis of the above considerations, the proposed transaction does not raise either horizontal or vertical competition concerns as regards steel distribution markets.

D. Conglomerate effects

128. .As regards possible conglomerate effects, the concentration is unlikely to significantly increase the opportunity for bundling as most steel products are not typically purchased by the same customers, and therefore there is little scope for bundling. Furthermore, where customers demand a broader range of steel products or the supply of steel products in different geographic regions, they can source from a number of different manufacturers.

129. In addition, the combined entity would not be unique in offering a variety of steel products – there are other significant sources of supply such as Corus, TKS, Riva, Salzgitter, SSAB, US Steel, and Duferco, all of which have allegedly a broad steel product offering. Finally, respondents to the market investigation did not express any concern in relation to conglomerate effects.

130. On the basis of the above considerations, the proposed transaction does not raise competition concerns of a conglomerate nature.

VII. REMEDIES

A. Procedure

63 *Usinor / Arbed / Aceralia* , COMP/ECSC 1351.

131. In order to address the competition concerns identified by the Commission, Mittal submitted on 8 May 2006 a remedy package consisting in the divestment of two Arcelor medium/heavy section mills located in Unterwellenborn, Germany and in Pallanzeno, Italy. The Commission carried out an extensive market test among Mittal's competitors and customers to assess the effectiveness of the remedy package to remove the competition concerns identified. With a view to incorporating comments and suggestions expressed by market players as regards the first remedy package[64], Mittal submitted on 31 May 2006 a revised remedy package including, in addition to the first package, a Mittal section and bar mills located in Poland and additional commercial and marketing assets in Eastern Europe (together "the divested businesses").

132. The Commission has assessed the improved remedy package and has concluded that it is sufficient to remove the competition concerns identified and that the divested businesses constitute independent and economically viable entities able to compete effectively with the combined Mittal/Arcelor on the market for the production and direct sale of heavy sections (beams) in the EEA. The Commission therefore concludes that the remedy package, as revised on 31 May 2006, is sufficient to remove the competition concerns brought about by the proposed transaction.

B. Description of the remedy package

133. The revised remedy package proposed by Mittal on 31 May 2006 comprises three steel production facilities producing long carbon steel products together with related commercial and marketing assets. Under the proposed remedy package, Mittal undertakes to divest:

- Stahlwerk Thüringen GmbH ("Stahlwerk Thüringen"), Arcelor's heavy section mill in Unterwellenborn, Germany, together with an option to purchase Arcelor's sales offices and stockholding centres in the Czech Republic and Poland;
- Travi e Profilati di Pallanzeno S.p.A. ("Pallanzeno"), Arcelor's medium section mill in Pallanzeno, Italy, together with an option to purchase its 49.9% shareholding in the San Zeno di Naviglio facility ("San Zeno"), which supplies feedstock to the Pallanzeno mill; and
- Huta Bankowa Ltd ("Huta Bankowa"), a Mittal section and bar mill located in Poland.

134. Mittal undertakes to divest all tangible and intangible assets of these three manufacturing facilities, including all manufacturing equipment, personnel, licenses, contracts, agreements, leases, customer lists, intellectual property rights and technical information. Mittal also undertakes to give the purchaser(s) of Stahlwerk Thüringen and Pallanzeno the option of having Arcelor sales and marketing personnel included in the divestiture package.

135. The three facilities and the related commercial and marketing assets are described in more details below[65].

65 Capacity and sales figures are Mittal's best estimates. Arcelor's figures differ materially only for the Pallenzano plant. However, these differences do not affect the overall assessment of the remedy package.

1. Stahlwerk Thüringen

136. Arcelor's heavy section plant in Unterwellenborn, Eastern Germany, has been in operation since 1984. It was acquired by the Luxembourg-based ARBED Group, now part of Arcelor, in April 1992 from Maxhütte Unterwellenborn, a former integrated steel producer. The plant currently employs 669 staff and 50 apprentices.

137. Stahlwerk Thüringen is an integrated plant, comprising an electric arc furnace, continuous bloom caster, and rolling mill. It also has storage facilities for up to 10,000 MT of heavy sections. The plant has been recently modernized. Its electric arc furnace and continuous casting machines were installed in 1995, while its rolling mill was upgraded in 2004 to extend its heavy section production from a width of 400 mm to a width of 550 mm.

138. Arcelor's Stahlwerk Thüringen heavy section plant has a capacity to produce around 900,000 MT of heavy sections up to a width of 550 mm and can manufacture a broad range of heavy sections and rails. According to Arcelor's data, Stahlwerk Thüringen was operating at close to full capacity during 2005.

2. Pallanzeno

139. Arcelor's Pallanzeno medium section mill is located in northern Italy, and has been in operation since 1996. Arcelor acquired a 49.9% shareholding in the Pallanzeno plant in 2003, and purchased the remaining 50.1% from Duferco in 2003. Pallanzeno currently has approximately 200 employees.

140. Pallanzeno currently has a capacity to produce around 550,000 MT of heavy sections in a width range of 100-300 mm and a capacity to produce around 50,000 MT of merchant bars.

3. Huta Bankowa

141. Huta Bankowa, which Mittal acquired from the Polish Government as part of Polskie Huty Stali S.A. in 2004, is a section and bar facility located in Poland and wholly owned by Mittal Steel Poland S.A. It comprises a rolling mill commissioned in 1996 and the rolling lines commissioned in 1974, a forged rings department; and a service centre department. The company currently employs around 750 staff.

142. Huta Bankowa currently focuses on the production of merchant bars, although it also produces small quantities of heavy sections. The mill currently produces various forgings, equal angles heavy sections with a width of 200 mm, round bars, square billets for forging, square blooms, square rods, round and square bars for tubes and bulb flats.

143. The rolling mills at Huta Bankowa are currently capable of producing heavy sections, although not within standard European quality tolerances. To address this quality issue, Mittal undertakes to finance the conversion of the rolling mills to enable the facility to produce a larger range of heavy sections, up to an investment of EUR [5-10] millions. Huta Bankowa will then have a capacity to produce around [50-150,000] MT of heavy sections annually up to a width of 300 mm.

144. Huta Bankowa's overall sales amounted to approximately [100,000-200,000] MT in 2004 and [50,000-150,000] in 2005. Around [60-70]% of those sales were achieved in Poland and the remainder in other countries (principally the EEA). The mill's turnover amounted to approximately EUR […] million in 2004, and […] million in 2005. In 2005, Huta Bankowa produced around [0-10,000] MT of heavy sections.

4. *Sales and Marketing*

145. Mittal undertakes to grant to the purchaser of Stahlwerk Thüringen the option to purchase Arcelor's sales offices and stockholding centres in the Czech Republic and Poland. Arcelor has two sales offices, respectively in Prague and in Warsaw, together with two stockholding centres respectively in the Czech Republic and in Poland. The stockholding centres can store up to around [0-100,000] MT of steel products, including [0-100,000] MT of heavy sections.

146. In addition, Mittal undertakes to grant to the purchaser(s) of Stahlwerk Thüringen and Pallanzeno the option to acquire additional Arcelor sales and marketing personnel, including individuals with expertise in marketing heavy sections in Eastern Europe. The option comprise ten sales and marketing personnel, comprising a senior manager, sales people and administrative support for the Stahlwerk Thüringen facility, and five sales and marketing personnel for Pallanzeno.

147. Huta Bankowa has already its own sales and marketing staff who would be transferred together with the long product mill.

C. Assessment of the remedies

1. *Introduction*

148. As explained in the Commission notice on remedies[66], under the Merger Regulation, the Commission assesses the compatibility of a notified concentration with the common market. Where a concentration raises competition concerns as it could lead to a significant impediment to effective competition, the parties may seek to modify the concentration in order to resolve the competition concerns raised by the Commission and thereby gain clearance of the merger. In assessing whether or not the remedy will restore effective competition, the Commission considers the type, scale and scope of the remedies by reference to the structure of and particular characteristics of the market in which competition concerns arise.

149. Where a proposed concentration threatens to significantly impede effective competition, creating the conditions for the emergence of a new competitive entity or the strengthening of existing competitors via divestiture may be an effective way to restore effective competition. The divested activities must consist of a viable business that, if operated by a suitable purchaser, can compete with Mittal / Arcelor on a lasting basis.

150. Whenever the notifying parties submit remedies, the Commission has thus to assess whether the remedies will lead to the restoration of effective competition on the relevant markets. In so doing, the Commission has to assess both (i) the independence, the viability and the competitiveness of the divested business on the

[66] Commission Notice on remedies acceptable under Council Regulation (EEC° No 4064/89 and under Commission Regulation (EC) No 447/98.

long term and (ii) the effectiveness of the proposed remedy in removing the competition concerns. In order to carry out this assessment, the Commission may seek the views of competitors and customers on the relevant markets.

151. The Commission's assessment concluded that the proposed remedy package, revised by Mittal on 31 May 2006, addresses all concerns identified during the course of the procedure, and incorporates satisfactorily the comments and suggestions put forward by market participants as regards the first remedy package, which focused on the need for the divestment of marketing and commercial operations together with the manufacturing facilities and the divestment of production facilities in Eastern Europe. Therefore the Commission has concluded that the proposed remedy package is effective in removing all competition concerns brought about by the proposed transaction at the EEA level. Moreover, the Commission has also concluded that the package satisfactorily addresses potential concerns specific to the so called CHPS countries (see geographic market definition section) in that most of the production capacity to be divested is located close or within the CHPS area.

2. *Independence, viability and competitiveness*

152. The Commission's investigation has confirmed that the three divested businesses would constitute independent, viable and competitive businesses. The Commission's assessment of the matter particularly focused on the ability of the divested businesses to source input materials and to sell their steel production.

153. In particular, as regards commercial and marketing aspects, respondents to the Commission's market test expressed concerns that the business proposed for divestiture would not be viable without the transfer of sales and marketing capability. In particular, market participants were concerned that the purchaser(s) would be unable to sell effectively into CHPS without relevant sales and marketing personnel and that it would require significant resources/efforts to develop such capabilities.

154. According to Arcelor, the establishment of network of sales offices and distribution centres require substantial time and effort in particular in the CHPS area due to the need to manage several currencies, languages, to overcome administrative and financial barriers and to build a relationship with shippers and independent stockholders and distributors.

155. Mittal substantially improved the remedy package on 31 May, in particular to ensure that the purchaser(s) of the divested businesses would have sufficient commercial and marketing capabilities.

A) Stahlwerk Thüringen

156. The market investigation has confirmed that the Stahlwerk Thüringen is self-standing business and one of the most modern, efficient, and technologically advanced heavy section mills in Europe.

157. Stahlwerk Thüringen is fully integrated, stand-alone facility. As regards feed supply, Arcelor decided to replace the oxygen furnace with a modern electric arc furnace and a continuous casting machine. Stahlwerk Thüringen therefore manufactures liquid steel that is subsequently transformed into semi-finished feedstock for the heavy

section rolling mill in a continuous process. It has the capacity to manufacture around 950,000 MT of blooms annually, in line with its heavy section production capacity.

158. As regards commercial and marketing operations, as described above, Mittal undertakes to grant to the purchaser of Stahlwerk Thüringen an option to divest the sales offices and stockholding centres, through which Arcelor supplies heavy section customers in the Czech Republic and Poland. In addition, the purchaser of Stahlwerk Thüringen will be granted an option to acquire a team of ten sales and marketing personnel. Therefore, the Commission estimates that the divested business will be in position to compete effectively with Mittal / Arcelor on the market for the production and direct sale of heavy sections.

B) Pallanzeno

159. The market investigation has confirmed that the Pallanzeno is a modern and viable plant.

160. As regards feed supply, Pallanzeno currently obtains its bloom supply from San Zeno di Naviglio ("San Zeno"), located nearby Pallanzeno in Brescia, Italy. San Zeno, which is owned 49.9% by Arcelor and 50.1% by Duferdofin (Duferco), has four electric arc furnaces and two bloom casters. It has an annual bloom capacity of 750,000 MT, supplying the entirety of Pallanzeno's requirements. In view of this, Mittal undertakes to grant the purchaser of Pallanzeno the option to purchase Arcelor's shareholding in San Zeno di Naviglio. The Commission considers that there is no reason to believe that Dufreco's incentive as regards the supply of Pallanzeno may be affected by the change in ownership.

161. In addition, the option of Pallanzeno's purchaser to acquire a team of five sales and marketing personnel will ensure its ability to market efficiently its heavy section production in the EEA.

162. Therefore the divested business will constitute an independent and stand-alone facility.

C) Huta Bankowa

163. As regards the production of heavy sections of higher quality, Mittal estimates that the necessary investment would require around [6-18] months while the facility remains in operation and that the overall cost would amount to around EUR [5-10] million plus EUR [0-5000,000] for the rolls for each new section. Mittal undertakes to finance this investment up to a level of EUR [5-10] million.

164. As regards feed supply, Huta Bankowa is a stand-alone facility, which currently obtains its billet supply from Dąbrowa Gornicza. The size of the EEA merchant market for blooms amounted to over [5-7] million MT in 2005, of which the parties supplied [400,000-800,000] MT. Therefore, it can be considered that Huta Bankowa will have sufficient access to bloom supplies on the merchant market independently of Mittal / Arcelor.

165. In addition, Mittal Poland. Mittal undertakes to grant the purchaser the option to enter into a long-term supply agreement with the purchaser to supply billets and blooms up to an amount sufficient to produce [0-200,000] MT of heavy sections per year. The divested business will thus have sufficient guarantees as regards its feed supply.

166. Huta Bankowa already has its own sales and marketing staff who would be transferred together with the long product mill. Therefore the divested business will constitute an independent and stand-alone facility.

3. Effectiveness of the remedies in removing the competition concerns

167. The revised remedy package eliminates the overlap between Arcelor and Mittal in heavy sections in the EEA in terms of sales and reduces significantly the capacity overlap. Moreover, it includes steel production and distribution assets located in Eastern Europe, an area which, within the EEA-wide relevant geographic market, was likely to be particularly affected by the transaction. Stahlwerk Thüringen and Pallenzeno are the two Arcelor facilities geographically most proximate to Mittal's plants in Eastern Europe.

168. The need for greater production capacity independent of Mittal/Arcelor in CHPS, in particular in Poland, was pointed out by a number of respondents to the market test on remedies in order to better address the competition concerns in Eastern Europe. Mittal improved the remedy package on 31 May with the proposal to divest Huta Bankowa in Poland, which can bring an additional [0-200,000] MT of heavy section capacity in the area.

A) Proposed divestitures entirely remove overlap between Mittal and Arcelor in heavy section EEA sales

169. The proposed remedy will divest heavy section capacity exceeding the overlap between the parties' sales. Mittal's sales of heavy sections (excluding sheet piling, mine shaft beams, and rails) amounted to around [700,000-900,000] in 2003, [1,100,000-1,300,000] in 2004 and [600,000-800,000] MT in the EEA in 2005. In terms of sales, the combined heavy section sales of Stahlwerk Thüringen ([800,000-1,000,000] MT) and Pallanzeno ([300,000-500,000] MT[67]) of [1,200,000-1,400,000] MT in 2004 exceeded Mittal's 2004 EEA-wide sales. Moreover, as detailed further below, the heavy section capacity proposed for divestiture amounts to [1.4-1.6] million MT, equivalent to [15-25]% of 2005 EEA-wide heavy section sales.

170. As regards sales in the Eastern Europe area, where the competition concerns appear to be more acute, the Commission has also considered the remedy in the context of the 10 Accession Countries (the "EU 10") or, alternatively, the Czech Republic, Hungary, Poland, and Slovakia ("CHPS"). The proposed divestitures exceed the increment in sales also in the EU 10 and CHPS. Arcelor's 2004 heavy section sales were only [50,000-250,000] MT in the EU 10 and [0-200,000] MT in CHPS while Mittal's 2004 heavy section sales were [500,000-700,000] in the EU 10 and [400,000-600,000] MT in CHPS. The capacity of Stahlwerk Thüringen alone exceeds largely Arcelor's sales in the EU 10 by over [600,000-800,000] MT and the large majority of the heavy sections sold by Arcelor in those two areas was produced in Stahlwerk Thüringen. The divestment of this plant will thus enable its purchasers to maintain the competitive constraint on Mittal's heavy section sales in CHPS exercised by Arcelor prior to the merger.

B) Proposed divestitures significantly reduce overlap between Mittal and Arcelor in heavy section EEA capacity

[67] Mittal estimates. The conclusion as regards the removal of the overlap in sales in the EEA would remain similar if Arcelor data would be considered.

171. Within the EEA, Mittal manufactures heavy sections at its heavy section and medium section mills in Dabrowa Gornicza, Poland, and its light and medium section mills in Ostrava, the Czech Republic. Huta Bankowa also produced approximately [0-10,000] MT in 2004 and 2005. In those plants, Mittal has the capacity to produce around [1-2.2] million MT of heavy sections in the EEA, comprising [800,000-1,000,000] MT at its heavy section mill in Poland, [500,000-700,000] MT at its medium section mill in Poland, [500,000-700,000] MT at its medium section mill in the Czech Republic and [0-200,000] MT at its light section mill in the Czech Republic. Furthermore, pursuant to the Second Protocol to the Treaty of Accession 2003, Mittal has committed to make a net reduction of 270,000 MT in the heavy section capacity of its Ostrava plant by August 2006, its overall heavy section capacity is scheduled to decrease to [1-2] million MT[68].

172. The proposed divestitures represent [1.5-2.0] million MT capacity and thus eliminate the largest part of the overlap in capacity brought by the proposed transaction. The proposed divestitures will reduce the parties' combined share of overall EEA-wide heavy section capacity from [40-50]% (Arcelor: [30-40]%; Mittal: [5-15]%) to [30-40]%.

173. During the market investigation, it was submitted that Mittal's large excess production capacity for heavy section beams both within the EEA and outside the EEA could undermine the effectiveness of the proposed remedies as Mittal / Arcelor could use this excess capacity to discipline buyers of the divested assets. It must be stressed that while Arcelor, as previously explained in par. 113 has significant unused capacity in addition to the as yet unused potential spare capacity at Belval, Mittal has very limited spare capacity: production and capacity figures provided by Mittal show that it had / has very limited spare capacity in the EEA in 2004 and during the first half of 2006, in particular if the impeding capacity reduction in its Czech medium mill[69] is taken into account. The apparent spare capacity in Mittal's heavy section mills in 2005 was essentially due to maintenance downtime. Therefore, the Commission considers that the proposed remedy, is at the same time necessary and sufficient to address, inter alia, the concerns stemming from the spare capacity available to Mittal/Arcelor.

C) The divested businesses cover the same range of heavy sections as currently sold by Mittal in the EEA

174. Mittal's heavy section mill in Poland produces heavy sections up to a width of 550 mm, its medium section mill in Poland up to a width of 270 mm, its medium section mill in the Czech Republic up to a width of 220 mm, and its light section mill in the Czech Republic up to a width of 140 mm. Mittal also produces small quantities of heavy sections at Huta Bankowa. As regards the divested businesses, Arcelor's Stahlwerk Thüringen facility manufactures a very broad range of heavy sections up to a width of 550 mm, while its Pallanzeno facility manufactures sections up to a width of 300 mm. Following upgrading, Huta Bankowa will be able produce a larger range of heavy sections up to a width of 300 mm. Moreover, the types of heavy sections

68 It should be noted that Mittal currently uses the capacity in Poland to manufacture around [0-200,000] MT of rails annually and [100,000-300,000] MT of mine shaft beams.

69 Presentation « Mittal Steel / Arcelor - Proposed remedies », 23 May 2006.

currently produced by Stahlwerk Thüringen, Pallanzeno, and Huta Bankowa cover the full range of heavy sections currently produced and sold by Mittal in the EEA.

D) Location of divested businesses

175. As indicated in para.168, the respondents to the market investigation (particularly customers) highlighted the need to ensure that the remedy package include greater production capacity independent of Mittal/Arcelor located within or close to the CHPS area, in view of the strong presence of the combined entity in the area. It is necessary for commitments submitted to the Commission in phase I to clearly rule out serious doubts and to provide a straightforward answer to the competitive doubts identified[70]. It is therefore necessary for the commitments to take into account this clearly expressed view of market participants. In these circumstances, serious doubts can only be satisfactorily removed through divestiture of the three plants in question.

4. Conclusion

176. The assessment of the proposed remedy package carried out by the Commission shows that the three manufacturing facilities to be divested, together with the related commercial and marketing assets, constitute stand-alone and viable businesses capable of competing with Mittal and Arcelor on the market for the production and direct sale of heavy sections. The three facilities to be divested account for roughly [1-2] million MT in sales in 2004, which removes the entire overlap brought about by the proposed transaction. The geographic location of the three facilities and the addition of commercial teams and distribution assets in Poland and in the Czech Republic provide sufficient guarantees that the divested businesses will have the capacity to compete with Mittal/Arcelor and that competition concerns will be entirely removed, in particular in Eastern Europe.

D. Conditions and obligations

177. The commitments under Section B of the Commitment text attached herewith constitute conditions of this decision, as only through full compliance therewith (subject to any change pursuant to the review clause of the Annex), can the structural change on the relevant market be achieved. The remaining commitments constitute obligations, as they concern the implementing steps, which are necessary to achieve the sought structural change.

VIII. CONCLUSION

178. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(2) of Council Regulation (EC) No 139/2004.

For the Commission,
signed,
Neelie KROES
Member of the Commission

70 See Commission Notice on remedies, paragraphs 11 and 37.

By hand and by fax: 00 32 2 296 4301

European Commission

DG Competition

Rue Joseph II 70

B-1000 Brussels

May 30, 2006

Case COMP/M.4137 – Mittal Steel / Arcelor

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No. 139/2004 (the "***Merger Regulation***"), Mittal Steel Company N.V. ("***Mittal Steel***") hereby provides the following Commitments (the "***Commitments***") in order to enable the European Commission (the "***Commission***") to declare the acquisition of Arcelor S.A. ("***Arcelor***") by Mittal Steel compatible with the common market and the EEA Agreement by a decision pursuant to Article 6(1)(b) of the Merger Regulation (the "***Decision***").

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on Remedies.

A. DEFINITIONS

For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by Mittal Steel, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in the light of the Commission Notice on the Concept of Concentration.

Closing: the transfer of the legal titles of the Divestment Businesses to the Purchaser(s).

Divestment Businesses: the businesses as defined in Section B and Schedules 1-3 that Mittal Steel commits to divest.

Divestiture Trustee: one or more natural or legal person(s), independent from Mittal Steel, who is approved by the Commission and appointed by Mittal Steel and who has received from Mittal Steel the exclusive Trustee Mandate to sell the Divestment Businesses (or either of them) to a Purchaser(s) at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of […] months calculated from the date of completion of the notified public bid ("Public Bid").

Hold Separate Manager: the person appointed by Mittal Steel for the Divestment Businesses to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Businesses.

Monitoring Trustee: one or more natural or legal person(s), independent from Mittal Steel, who is approved by the Commission and appointed by Mittal Steel, and who has the duty to monitor Mittal Steel's compliance with the conditions and obligations attached to the Decision.

Personnel: all personnel currently employed by the Divestment Businesses, including Key Personnel, staff seconded to the Divestment Businesses, and shared personnel.

Purchaser(s): the entity or entities approved by the Commission as acquirer(s) of the Divestment Businesses (or either of them) in accordance with the criteria set out in Section D.

Trustee(s): the Monitoring Trustee and the Divestiture Trustee.

Trustee Divestiture Period: the period of […] months from the end of the First Divestiture Period.

B. THE DIVESTMENT BUSINESSES

Commitment to divest

1. In order to restore effective competition, Mittal Steel commits to divest or procure the divestiture of the Divestment Businesses by the end of the Trustee Divestiture Period as a going concern to the Purchaser(s) on terms of sale approved by the Commission in accordance with the procedure described in paragraph 15. To carry out the divestiture, Mittal Steel commits to find a Purchaser or Purchasers and to enter into a final binding sale and purchase agreement(s) for the sale of the Divestment Businesses within the First Divestiture Period. If Mittal Steel has not entered into such an agreement(s) at the end of the First Divestiture Period, Mittal Steel shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Businesses in accordance with the procedure described in paragraph 24 during the Trustee Divestiture Period.

2. Mittal Steel shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, Mittal Steel has entered into a final binding sale and purchase agreement(s), if the Commission approves the Purchaser(s) and the terms in accordance with the procedure described in paragraph 15 and if the closing of the sale(s) of the Divestment Businesses takes place within a period not exceeding three months after the approval of the Purchaser(s) and the terms of sale by the Commission.

3. In order to maintain the structural effect of the Commitments, Mittal Steel shall, for a period of […] years after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Businesses, unless the Commission has

previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Businesses is no longer necessary to render the proposed concentration compatible with the common market.

Structure and Definition of the Divestment Businesses

4. The Divestment Businesses consist of Stahlwerk Thüringen GmbH (“***Stahlwerk Thüringen***”), Travi e Profilati di Pallanzeno S.p.A. (“***Pallanzeno***”), and Huta Bankowa Spólka z o.o (“***Huta Bankowa***”).[71] The Divestment Businesses as operated to date are described to the best of Mittal Steel’s knowledge in more detail in Schedule 1, Schedule 2, and Schedule 3. The Divestment Businesses will include the following elements:

(a) all tangible and intangible assets (including intellectual property rights), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Businesses;

(b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Businesses;

(c) all contracts, leases, commitments and customer orders of the Divestment Businesses; all customer, credit and other records of the Divestment Businesses (items referred to under (a)-(c) hereinafter collectively referred to as “***Assets***”);

(d) the Personnel and Key Personnel;

(e) at the option of the Purchaser of Stahlwerk Thüringen, Mittal Steel will divest Arcelor’s sales offices and stockholding centers situated in the Czech Republic and Poland, together with up to 10 sales and marketing personnel as detailed in Schedule 1;

(f) at the option of the Purchaser of Pallanzeno, Mittal Steel will offer to transfer up to 5 sales and marketing personnel as detailed in Schedule 2;

(g) at the option of the Purchaser of Pallanzeno, Mittal Steel will enter into an agreement for the purchase and sale of Mittal Steel’s 49.9% shareholding in the San Zeno di Naviglio facility, Brescia, Italy;

(h) at the option of the Purchaser of Huta Bankowa, Mittal Steel will enter into a supply agreement for the Purchaser’s required tonnage of billets and blooms (sufficient to produce up to [0-200,000] MT of sections annually) to be supplied on a timely basis for a minimum of […] years. In case of disagreement between Mittal Steel and the Purchaser, the Trustee will set the initial terms of the supply agreements referred to above on the basis of normal commercial terms. These agreements will include arbitration provisions to deal with any subsequent disagreements between Mittal Steel and the Purchaser.

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71 Given the unsolicited nature of its bid, Mittal Steel has not had access to Arcelor proprietary information in preparing these Commitments. Unless data were publicly available, Mittal Steel has where possible estimated Arcelor’s activities to the best of its ability.

C. RELATED COMMITMENTS

Preservation of Viability, Marketability and Competitiveness

5. From the completion of the Public Bid until Closing, Mittal Steel shall preserve the economic viability, marketability and competitiveness of the Divestment Businesses, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Businesses. In particular Mittal Steel undertakes:

   (a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Businesses, or the industrial or commercial strategy or the investment policy of the Divestment Businesses;

   (b) to make available sufficient resources for the development of the Divestment Businesses, based on the continuation of the existing business plans;

   (c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Businesses.

Hold-Separate Obligations of Mittal Steel

6. Mittal Steel commits, from completion of the Public Bid until Closing, to keep the Divestment Businesses separate from the businesses it is retaining and to ensure that Key Personnel of the Divestment Businesses – including the Hold Separate Manager – have no involvement in any business retained and vice versa. Mittal Steel shall also ensure that the Personnel do not report to any individual outside the Divestment Businesses.

7. Until Closing, Mittal Steel shall assist the Monitoring Trustee in ensuring that the Divestment Businesses are managed as distinct and saleable entities separate from its retained businesses. Mittal Steel shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Businesses, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Businesses independently and in the best interest of the businesses with a view to ensuring their continued economic viability, marketability and competitiveness and their independence from the businesses retained by Mittal Steel.

8. To ensure that the Divestment Businesses are held and managed as a separate entity the Monitoring Trustee shall exercise Mittal Steel's rights as shareholder in the Divestment Businesses (except for its rights for dividends that are due before Closing), with the aim of acting in the best interest of the Businesses, determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling Mittal Steel's obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the boards of directors, who have been appointed on behalf of Arcelor (or Mittal Steel). Upon request of the Monitoring Trustee, Mittal Steel shall resign as member of the boards or shall cause such members of the boards to resign.

Ring-fencing

9. Mittal Steel shall implement all necessary measures to ensure that it does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Businesses. In particular, the participation of the Divestment Businesses in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Businesses. Mittal Steel may obtain information relating to the Divestment Businesses which is reasonably necessary for the divestiture of the Divestment Businesses or whose disclosure to Mittal Steel is required by law.

Non-solicitation clause

10. Mittal Steel undertakes, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Businesses for a period of two years after Closing.

Due Diligence

11. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Businesses, Mittal Steel shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:

(a) provide to potential purchasers sufficient information as regards the Divestment Businesses;

(b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

12. Mittal Steel shall submit written reports in English on potential purchasers of the Divestment Businesses and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).

13. Mittal Steel shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee.

D. THE PURCHASER(S)

14. In order to ensure the immediate restoration of effective competition, the Purchaser(s), in order to be approved by the Commission, must:

(a) be independent of and unconnected to the Mittal Steel;

(b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business(es) as a viable and active competitive force in competition with Mittal Steel and other competitors;

(c) neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of both or one of the Divestment Businesses (the before-mentioned criteria for the Purchaser(s) hereafter the "***Purchaser Requirements***").

15. The final binding sale and purchase agreement shall be conditional on the Commission's approval. When Mittal Steel has reached an agreement with a potential purchaser(s), it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. Mittal Steel must be able to demonstrate to the Commission that the proposed purchaser(s) meets the Purchaser Requirements and that the Divestment Businesses are being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the proposed purchaser(s) fulfils the Purchaser Requirements and that the Divestment Businesses are being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Businesses without one or more Assets or parts of the Personnel, if this does not affect the viability and competitiveness of the Divestment Businesses after the sale, taking account of the proposed purchaser(s).

E. <u>TRUSTEE</u>

I. <u>Appointment Procedure</u>

16. Mittal Steel shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If Mittal Steel has not entered into a binding sale and purchase agreement(s) one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser(s) proposed by Mittal Steel at that time or thereafter, Mittal Steel shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

17. The Trustee shall be independent of Mittal Steel, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by Mittal Steel in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Businesses, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by Mittal Steel

18. No later than one week after the Effective Date, Mittal Steel shall submit a list of one or more persons whom Mittal Steel proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, Mittal Steel shall submit a list of one or more persons whom Mittal Steel proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to

verify that the proposed Trustee fulfils the requirements set out in paragraph 18 and shall include:

(a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;

(b) the outline of a work plan that describes how the Trustee intends to carry out its assigned tasks;

(c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

19. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Mittal Steel shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Mittal Steel shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by Mittal Steel

20. If all the proposed Trustees are rejected, Mittal Steel shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 17 and 20.

Trustee nominated by the Commission

21. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Mittal Steel shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

22. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Mittal Steel, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

23. The Monitoring Trustee shall:

(i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.

(ii) oversee the on-going management of the Divestment Businesses with a view to ensuring their continued economic viability, marketability and competitiveness and monitor compliance by Mittal Steel with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

(a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Businesses, and the keeping separate of the Divestment Businesses from the business retained by Mittal Steel, in accordance with paragraphs 6 and 7 of the Commitments;

(b) supervise the management of the Divestment Businesses as distinct and saleable entities, in accordance with paragraph 8 of the Commitments;

(c) (i) in consultation with Mittal Steel, determine all necessary measures to ensure that Mittal Steel does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Businesses, in particular strive for the severing of the Divestment Businesses' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Businesses, and (ii) decide whether such information may be disclosed to Mittal Steel as the disclosure is reasonably necessary to allow Mittal Steel to carry out the divestiture or as the disclosure is required by law;

(d) monitor the splitting of assets and the allocation of Personnel between the Divestment Businesses and Mittal Steel or Affiliated Undertakings;

(iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;

(iv) propose to Mittal Steel such measures as the Monitoring Trustee considers necessary to ensure Mittal Steel's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Businesses, the holding separate of the Divestment Businesses and the non-disclosure of competitively sensitive information;

(v) review and assess potential purchasers as well as the progress of the divestiture process and verify that, depending on the stage of the divestiture process, (a) potential purchasers receive sufficient information relating to the Divestment Businesses and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and (b) potential purchasers are granted reasonable access to the Personnel;

(vi) provide to the Commission, sending Mittal Steel a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divestment Businesses so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending Mittal Steel a non-confidential copy at the same time, if it concludes on reasonable grounds that Mittal Steel is failing to comply with these Commitments;

(vii) within one week after receipt of the documented proposal referred to in paragraph 16, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser(s) and the viability of the Divestment Businesses after the sale(s) and as to whether the Divestment Businesses are sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the sale(s) of the Divestment Businesses without one or more Assets or not all of the Personnel affects the viability of the Divestment Businesses after the sale(s), taking account of the proposed purchaser.

Duties and obligations of the Divestiture Trustee

24. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business(es) to a purchaser(s), provided that the Commission has approved both the purchaser(s) and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 16. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Mittal Steel, subject to Mittal Steel's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

25. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to Mittal Steel.

III. Duties and obligations of Mittal Steel

26. Mittal Steel shall provide and shall cause its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Mittal Steel's or the Divestment Businesses' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and Mittal Steel and the Divestment Businesses shall provide the Trustee upon request with copies of any document. Mittal Steel and the Divestment Businesses shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

27. Mittal Steel shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Businesses. This shall include all administrative support

functions relating to the Divestment Businesses that are currently carried out at headquarters level. Mittal Steel shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Mittal Steel shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all material developments in the divestiture process.

28. In relation to each or all of the Divestment Businesses, Mittal Steel shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, Mittal Steel shall cause the documents required for effecting the sale and the Closing to be duly executed.

29. Mittal Steel shall indemnify the Trustee and its employees and agents (each an "***Indemnified Party***") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Mittal Steel for any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

30. At the expense of Mittal Steel, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Mittal Steel's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Mittal Steel refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Mittal Steel. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 30 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Mittal Steel during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. <u>Replacement, Discharge and Reappointment of the Trustee</u>

31. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:

    (a) the Commission may, after hearing the Trustee, require Mittal Steel to replace the Trustee; or

    (b) Mittal Steel, with the prior approval of the Commission, may replace the Trustee.

32. If the Trustee is removed according to paragraph 32, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full handover of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 17-22.

33. Besides the removal according to paragraph 32, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

F. REVIEW CLAUSE

34. The Commission may, where appropriate, in response to a request from Mittal Steel showing good cause and accompanied by a report from the Monitoring Trustee:

    (i) grant an extension of the time periods foreseen in the Commitments, or

    (ii) waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

    Where Mittal Steel seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall Mittal Steel be entitled to request an extension within the last month of any period.

MITTAL STEEL COMPANY N.V.

By: ___________________________

Title: __________________________

SCHEDULE 1

1. Stahlwerk Thüringen is owned and operated by Arcelor;[72]

2. Following paragraph 4 of these Commitments, to the best of Mittal Steel's knowledge, Stahlwerk Thüringen comprises:

   (a) the electric arc furnace (built by Voest), the liquid metallurgical furnace (built by Voest), the 4 strand bloom caster (built by Voest), and the heavy section plant (built by SMS/Cockerill) located in Unterwellenborn, Germany, and all machinery and equipment located therein;

   (b) all tangible assets used in the development, production, servicing, and sale of the products manufactured at the Stahlwerk Thüringen heavy section plant including: all real property; any facilities used for research, development, and engineering support, and any real property associated with those facilities; manufacturing and sales assets, including capital equipment, vehicles, supplies, personal property, inventory, office furniture, fixed assets and fixtures, materials, on- or off-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorisations issued by any governmental organisation; all contracts, agreements, leases, commitments, and understandings; all customer lists of the current and previous calendar year, accounts, and credit records; and other records relating to Stahlwerk Thüringen;

   (c) existing inventory of product (including heavy sections and semi-finished product) held as at Closing;

   (d) copies of any and all design history files, technical files, drawings, product specifications, manufacturing process descriptions, validation documentation, and quality control standards;

   (e) any and all current advertising and promotional materials;

   (f) subject to paragraph (g) below, all intangible assets that have been used exclusively or primarily in the development, production, servicing, and sale of the products manufactured at the Stahlwerk Thüringen heavy section plant, including but not limited to all patents, licenses, and sublicenses, intellectual property, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools, and all manuals and technical information provided to the employees, customers, suppliers, agents or licensees of Stahlwerk Thüringen;

   (g) a non-exclusive, non-transferable, royalty-free license(s) for use of any intangible asset that has been used by both Stahlwerk Thüringen and any of Arcelor's non-divested businesses, provided that such license(s) may be

[72] Given the unsolicited nature of its bid, Mittal Steel has not had access to Arcelor proprietary information in preparing these Commitments. Unless data were publicly available, Mittal Steel has where possible estimated Arcelor's activities to the best of its ability.

transferable to any future purchaser of Stahlwerk Thüringen, and provided further that such license(s) shall be provided on commercially reasonable terms;

(h) all research data concerning historic and current research and development efforts conducted at or for Stahlwerk Thüringen, including designs of experiments, and the results of unsuccessful designs and experiments; and

(i) the Personnel and Key Personnel.[73]

3. At the option of the Purchaser, the Key Personnel shall include up to 10 sales and marketing personnel, comprising a senior manager required to manage the sales and marketing process, sales people, and administrative support, to be transferred in the following manner:

(a) the Hold Separate Manager shall, in co-operation with the Monitoring Trustee, establish objective criteria for drawing up a matrix of sales and marketing functions and specific skills required for Stahlwerk Thüringen, including the sales and marketing skills required for the sale of heavy sections into the Czech Republic, Hungary, Poland, and Slovakia;

(b) in co-operation with the Purchaser, Mittal Steel shall provide up to 10 sales and marketing personnel whom it considers to satisfy the objective criteria described in paragraph 3(a) above. Mittal Steel will use its best endeavors to identify Arcelor sales and marketing personnel, although it may also offer Mittal Steel sales and marketing personnel. In case of disagreement between Mittal Steel and the Purchaser, the Monitoring Trustee will determine the personnel that satisfy the aforementioned criteria;

(c) Mittal Steel shall take all reasonable steps to encourage sales and marketing personnel transferred to Stahlwerk Thüringen to remain with the business. The incentive scheme shall be based on industry practice, and be proposed by Mittal Steel and agreed with the Monitoring Trustee after both have heard the Hold Separate Manager.

4. The Purchaser of Stahlwerk Thüringen, will have the option to purchase Arcelor's sales offices and stockholding centers situated in the Czech Republic and Poland;

5. Stahlwerk Thüringen shall not include Arcelor's downstream fabrication facilities located in Unterwellenborn, and utilised by various divisions within Arcelor.

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[73] Given the unsolicited nature of its bid, Mittal Steel does not have access to information on Personnel. Mittal Steel will provide this information to the Commission as soon as practicably possible following completion of the Public Bid.

SCHEDULE 2

1. Pallanzeno is owned and operated by Arcelor;[74]

2. Following paragraph 4 of these Commitments, to the best of Mittal Steel's knowledge, Pallanzeno comprises:

   (a) the medium section plant located in Pallanzeno, Italy, and all machinery and equipment located therein;

   (b) all tangible assets used in the development, production, servicing, and sale of the products manufactured at the Pallanzeno medium section plant including: all real property; any facilities used for research, development, and engineering support, and any real property associated with those facilities; manufacturing and sales assets, including capital equipment, vehicles, supplies, personal property, inventory, office furniture, fixed assets and fixtures, materials, on- or off-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorisations issued by any governmental organisation; all contracts, agreements, leases, commitments, and understandings; all customer lists, accounts, and credit records; and other records relating to Pallanzeno;

   (c) existing inventory of product (including heavy sections and semi-finished product) held as at Closing;

   (d) copies of any and all design history files, technical files, drawings, product specifications, manufacturing process descriptions, validation documentation, and quality control standards;

   (e) any and all current advertising and promotional materials;

   (f) subject to paragraph (g) below, all intangible assets that have been used exclusively or primarily in the development, production, servicing, and sale of the products manufactured at the Pallanzeno medium section plant, including but not limited to all patents, licenses, and sublicenses, intellectual property, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools, and all manuals and technical information provided to the employees, customers, suppliers, agents or licensees of Pallanzeno;

   (g) a non-exclusive, non-transferable, royalty-free license(s) for use of any intangible asset that has been used by both Pallanzeno and any of Arcelor's non-divested businesses, provided that such license(s) may be transferable to any future purchaser of Pallanzeno, and provided further that such license(s) shall be provided on commercially reasonable terms;

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74 Given the unsolicited nature of its bid, Mittal Steel has not had access to Arcelor proprietary information in preparing these Commitments. Unless data were publicly available, Mittal Steel has where possible estimated Arcelor's activities to the best of its ability.

(h) all research data concerning historic and current research and development efforts conducted at or for Pallanzeno, including designs and experiments, and the results of unsuccessful designs and experiments;

(i) the Personnel and Key Personnel;[75]

3. At the option of the Purchaser, the Key Personnel shall include up to 5 sales and marketing personnel, comprising a senior manager required to manage the sales and marketing process, sales people, and administrative support, to be transferred in the following manner:

(a) the Hold Separate Manager shall, in co-operation with the Monitoring Trustee, establish objective criteria for drawing up a matrix of sales and marketing functions and specific skills required for Pallanzeno, including the sales and marketing skills required for the sale of heavy sections into the Czech Republic, Hungary, Poland, and Slovakia;

(b) in co-operation with the Purchaser, Mittal Steel shall provide up to 5 sales and marketing personnel whom it considers to satisfy the objective criteria described in paragraph 3(a) above. Mittal Steel will use its best endeavors to identify Arcelor sales and marketing personnel, although it may also offer Mittal Steel sales and marketing personnel. In case of disagreement between Mittal Steel and the Purchaser, the Monitoring Trustee will determine the personnel that satisfy the aforementioned criteria;

(c) Mittal Steel shall take all reasonable steps to encourage sales and marketing personnel transferred to Pallanzeno to remain with the business. The incentive scheme shall be based on industry practice, and be proposed by Mittal Steel and agreed with the Monitoring Trustee after both have heard the Hold Separate Manager.

4. The Purchaser of Pallanzeno will have the option to purchase Arcelor's 49.9% shareholding in the San Zeno di Naviglio facility. This facility is located in Brescia, Italy, and supplies the entirety of the feedstock requirements of the Pallanzeno medium section mill. Should Duferco's consent to the transfer of Arcelor's 49,9% stake in the San Zeno Del Naviglio facility prove necessary, Mittal undertakes to exercise best efforts to obtain such consent.

[75] Given the unsolicited nature of its bid, Mittal Steel has not had access to information on Personnel. Mittal Steel will provide this information to the Commission as soon as practicably possible following completion of the Public Bid.

SCHEDULE 3

1. Huta Bankowa is owned and operated by Mittal Steel;

2. Following paragraph 4 of these Commitments, Huta Bankowa comprises:

(a) three divisions: (1) the rolling mill, including a walking beam furnace for re-heating billets before rolling and commissioned in 1996 and the rolling lines (a roughing mill commissioned in 1974 and modernised in 1979, together with a reversing mill commissioned in 1974 and modernised in 1982 and 2002); (2) a forged rings department, including a rotary furnace, hydraulic press, exial radial rolling mill, five new furnaces, two quenching tanks, and a modern band-saw; and (3) a service centre department.

(b) all tangible assets used in the development, production, servicing, and sale of the products manufactured at Huta Bankowa including: all real property; any facilities used for research, development, and engineering support, and any real property associated with those facilities; manufacturing and sales assets, including capital equipment, vehicles, supplies, personal property, inventory, office furniture, fixed assets and fixtures, materials, on- or off-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorisations issued by any governmental organisation; all contracts, agreements, leases, commitments, and understandings; all customer lists, accounts, and credit records; and other records relating to Huta Bankowa;

(c) existing inventory of product held as at Closing;

(d) copies of any and all design history files, technical files, drawings, product specifications, manufacturing process descriptions, validation documentation, and quality control standards;

(e) any and all current advertising and promotional materials;

(f) subject to paragraph (g) below, all intangible assets that have been used exclusively or primarily in the development, production, servicing, and sale of the products manufactured at Huta Bankowa, including but not limited to all patents, licenses, and sublicenses, intellectual property, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools, and all manuals and technical information provided to the employees, customers, suppliers, agents or licensees of the Huta Bankowa;

(g) a non-exclusive, non-transferable, royalty-free license(s) for use of any intangible asset that has been used by both Huta Bankowa and any of Mittal Steel's non-divested businesses, provided that such license(s) may be transferable to any future purchaser of Huta Bankowa, and provided further that such license(s) shall be provided on commercially reasonable terms;

(h) all research data concerning historic and current research and development efforts conducted at or for Huta Bankowa, including designs and experiments, and the results of unsuccessful designs and experiments;

(i) the Personnel and Key Personnel (including existing sales and marketing personnel) comprising the following departments:

- Board of Management of a total headcount of 3;
- Board of Management Office of a total headcount of 6 (including 1 manager);
- HSE of a total headcount of 2 (including 1 manager);
- Strategy and Development of a total headcount of 2 (including 1 manager);
- Marketing of a total headcount of 2 (including 1 manager);
- Sales of a total headcount of 18 (including 4 managers);
- Finance of a total headcount of 22 (including 2 managers);
- HR of a total headcount of 12 (including 1 manager);
- Technical Division of a total headcount of 21 (including 1 manager);
- Maintenance of a total headcount of 125 (including 2 managers);
- Head of Production/Dispatchers of a total headcount of 5 (including 1 manager);
- Informatics of a total headcount of 9 (including 1 manager);
- Logistics and internal transport of a total headcount of 51 (including 1 manager);
- Quality Control Department of a total headcount of 29 (including 1 manager);
- Heavy Section Mill of a total headcount of 305 (including 2 managers);
- Rings and Tyres Department of a total headcount of 133 (including 2 managers);
- Service Center of a total headcount of 12 (including 1 manager).

3. At the option of the Purchaser of Huta Bankowa, Mittal Steel will enter into a supply agreement for the Purchaser's required tonnage of billets and blooms (sufficient to produce up to [0-200,000] MT of sections annually) to be supplied on a timely basis for a minimum of […] years. In case of disagreement between Mittal Steel and the Purchaser, the Trustee will set the initial terms of the supply agreements referred to above on the basis of normal commercial terms. These agreements will include

arbitration provisions to deal with any subsequent disagreements between Mittal Steel and the Purchaser.

4. Mittal Steel is prepared to cover reasonable expenses, up to a cap of € [5-10] million, to convert Huta Bankowa for the production of a broader range of heavy sections as detailed in Schedule 4. If, during the divestiture process, the Trustee was to consider that the reasonable expenses that Mittal is prepared to cover, up to a cap of € [5-10] million, are insufficient to successfully convert Huta Bankowa for the production of a broader range of heavy sections meeting the common Western European quality standards, Mittal undertakes to review the figure upward, in co-ordination and consultation with the candidate purchaser and under the stewardship of the Trustee.

SCHEDULE 4

The rolling mills at Huta Bankowa are currently capable of producing heavy sections, although not within standard European quality tolerances. To address this quality issue and enable the facility to produce a larger range of heavy sections would involve a small investment and take around [6-18] months while the facility remains in operation. Mittal Steel estimates that the overall cost would be [20-60] million PLN plus [0-2] million PLN for new rolls for each section type (€[5-15] million plus €[0-0.5] million for the rolls for each new section). The breakdown of the expenditures is as follows:

- Tightening of existing stands (new bearings) at a cost of [0-20] million PLN (€[0-5] million);

- Modernization of roller tables and auxiliary equipment at a cost of [0-20] million PLN (€[0-5] million);

- Reconstruction of part of cooling bed for walking cooling bed at a cost of [0-20] million PLN (€[0-5] million);

- Adjustment of straighteners and finishing line at a cost of [0-20] million PLN (€[0-5] million); and

- 1.5 Rolls and equipment at a cost of [0-20] million PLN/section (€[0-5] million).