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***Case No COMP/M.4781  
- Norddeutsche  
Affinerie/ Cumerio***

Only the English text is authentic.

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

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Article 8 (1)  
Date: 23-01-2008



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23-01-2008

C(2008) 273 final

**PUBLIC VERSION**

**COMMISSION DECISION**

**of 23-01-2008**

**declaring a concentration to be compatible with the common market  
and the functioning of the EEA Agreement**

(Case No COMP/M.4781 - Norddeutsche Affinerie/ Cumerio)

**Commission Decision**

**of 23-01-2008**

**declaring a concentration to be compatible with the common market  
and the functioning of the EEA Agreement**

**(Case No COMP/M.4781 - Norddeutsche Affinerie/ Cumerio)**

(Only the English text is authentic)

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No 139/2004 of 20.1.2004 on the control of concentrations between undertakings<sup>1</sup>, and in particular Article 8(1) thereof,

Having regard to the Commission's decision of 18.09.2007 to initiate proceedings in this case,

Having regard to the opinion of the Advisory Committee on Concentrations<sup>2</sup>,

Having regard to the final report of the Hearing Officer in this case<sup>3</sup>,

WHEREAS:

**I. THE PARTIES**

1. On 30 July 2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation No 139/2004<sup>4</sup> ("EC Merger Regulation") by which the undertaking Norddeutsche Affinerie AG ("NA", Germany) acquires within the meaning of Article 3(1)(b) of the EC Merger Regulation control of the whole of the undertaking Cumerio S.A. ("Cumerio", Belgium) by way of a public bid announced on 27 June 2007.

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1 OJ L 24, 29.1.2004, p. 1

2 OJ C ...,...200. , p....

3 OJ C ...,...200. , p....

4 OJ L 24, 29.1.2004 p. 1.

2. **NA** is a German public limited company with production facilities in Hamburg, Emmerich and Lünen (Germany). NA produces copper cathodes (in Hamburg and Lünen). These copper cathodes are then processed into copper rod (Hamburg and Emmerich) and copper shapes (both cakes and billets in Hamburg). Downstream of the shapes production, through its subsidiary Prymetall GmbH & Co. KG ("**Prymetall**") in Stolberg (Germany), NA is also active in the production and sale of semi-finished copper products. Downstream of the copper rod production Prymetall produces shaped wires. Moreover, through Prymetall NA holds indirectly 50% in Schwermetall Halbzeugwerk GmbH & Co. KG ("**Schwermetall**", Germany), which produces copper shapes and pre-rolled strips. The other partner in the joint venture Schwermetall is Wieland Werke AG ("**Wieland**", Germany), which is itself a producer of copper shapes, although only for its own internal processing, as well as a producer of semi-finished copper products and final copper products. Both Wieland and Prymetall purchase copper shapes and pre-rolled strips from Schwermetall. Finally, NA holds a 60% share in Deutsche Giessdraht GmbH ("**Deutsche Giessdraht**", Germany), a producer of copper rod jointly controlled with Corporacion Nacional del Cobre de Chile ("**Codelco**", Chile), which holds the remaining 40%. NA's production and sales activities further comprise a number of by-products of copper smelting such as sulphuric acid, iron silicate stone and precious metals.
3. **Cumerio** is a Belgian public limited company with production facilities in Olen (Belgium), Pirdop (Bulgaria), Avellino (Italy) and, through its subsidiary Swiss Advanced Materials AG, in Yverdons-les-Bains (Switzerland). Cumerio is active in the production of copper cathodes (Olen, Pirdop), of copper rod (Olen, Avellino) and of copper shapes (both cakes and billets in Olen), and further downstream of the copper rod production, to a lesser extent, of copper wires (Avellino) and profiles (Yverdons-les-Bains). Unlike NA, Cumerio is not active in the production of semi-finished copper products. As a result of the copper processing and smelting process, Cumerio also supplies chemical products and by-products such as sulphuric acid and anode slimes.

## II. THE OPERATION

4. The notified concentration consists of the acquisition through a public takeover offer by NA to Cumerio's shareholders for all outstanding shares, options and warrants. The offer is subject to the unilaterally rescindable condition that, at the completion of the offer period, 80% or more of the Cumerio shares outstanding at the time of the completion of the offer shall have been offered for sale to NA (minimum acceptance ratio).
5. NA currently holds 15.57% of the shares in Cumerio and 25% plus one of the voting rights in Cumerio.
6. The Austrian holding A-TEC Industries AG ("**A-TEC**"), an international industrial group with operations in drive systems, plant engineering, machine tools and metallurgy, had originally acquired a share of 15.13% in NA and a share of 25.22% in Cumerio. As a consequence of an increase of the share capital of NA on 9 November 2007, the shareholding of A-TEC has decreased. Currently, A-TEC holds a 13.75% shareholding in NA. A-TEC holds 100% of the shares in Montanwerke Brixlegg AG ("**Brixlegg**") which is the main competitor of NA and Cumerio for copper shapes.

7. The German competition authority (Bundeskartellamt) is currently reviewing the minority shareholding that A-TEC has acquired in NA.

### **III. THE CONCENTRATION**

8. The proposed transaction consists of the acquisition of sole control over Cumerio by NA via a public takeover offer for all outstanding shares, options and warrants. It therefore constitutes a concentration within the meaning of Article 3(1)(b) of the EC Merger Regulation.

### **IV. THE PROCEDURE**

9. In order for the Commission to be able to dismiss any possible serious doubts in Phase I, the parties submitted on 28 August 2007 a remedy proposal offering for sale the entire copper shapes business line of Cumerio. NA committed to divest the casting facility of Cumerio in Olen for billets and cakes. The commitment also contained a supply agreement for copper cathodes supplied by NA or Cumerio for a period of maximum ten years ("first leg of the remedies proposal"). If no interested third party were to be found for this divestment, the parties offered to grant all existing shapes customers of NA and Cumerio, long-term framework supply agreements for copper shapes of five + five years ("second leg of the remedies proposal"). The divestment commitment would completely remove the horizontal overlap in NA and Cumerio's shapes businesses.
10. The market test of the first leg of the remedy proposal was fairly negative. A large majority of customers and competitors as well as the German competition authority have indicated that the proposed divestment of Cumerio's shapes business line was considered not commercially viable because the production of copper shapes can only be operated as a viable business if the producer is also active on the upstream market for the refining of copper or on the downstream markets for semi-finished copper products. In line with this, no interested third party for the copper shapes business line of Cumerio could be identified.
11. With regard to the second leg of the remedy proposal, the Commission has indicated to the merged entity that the long-term framework supply agreement for copper shapes that was offered as an alternative remedy would most likely increase transparency and stability on copper markets, thus reducing the level of competition instead of increasing it. In addition, it could even increase the risk of coordinated behaviour on downstream markets for semi-finished copper products. The market test of the second leg of the commitment has also been fairly negative overall, pointing to the same risks for competition as already indicated by the Commission beforehand.
12. The Commission concluded that, after examination of the notification and market testing of the remedy proposal, and based on the information available in Phase I, its doubts could not be dismissed. Therefore, the Commission decided on 18 September 2007 to initiate proceedings pursuant to Article 6(1)(c) of the EC Merger Regulation.

## V. COMMUNITY DIMENSION

13. The parties have a combined aggregate world-wide turnover in excess of EUR 5 000 million (NA: EUR 5.8 billion; Cumerio: EUR 3.3 billion) and each of the parties has an aggregate Community-wide turnover in excess of EUR 250 million (NA: EUR [...] billion; Cumerio: EUR [...] billion). Only NA<sup>5</sup>, but not Cumerio, achieves more than two-thirds of its Community-wide turnover within one and the same Member State. Therefore, the transaction has a Community dimension within the meaning of Article 1(2) of the EC Merger Regulation

## VI. RELEVANT MARKETS

14. The sector of activity affected by the proposed transaction is the copper industry. The production chain of the copper industry consists of several steps, as described below in paragraph 6.1.

### 6.1 Copper industry

15. Copper is a natural product that is gained from copper ore. Copper ore only contains low concentrations of copper (below 5% copper content). After extraction from the copper mine, copper ore is enriched in processing facilities into copper concentrate (copper content of 25 to 40%). Both copper concentrate and copper scrap (recycled copper material) are used to produce copper cathodes in an electrolytic process in a copper tank house. Copper cathodes, flat bodies measuring around 1 m by 1 m, are the necessary inputs to produce both copper rod and copper shapes. To comply with the London Metal Exchange (LME) standard of "grade A" copper cathodes, the most widely used standard in international trade, the cathodes must have a copper content of at least 99.9935% and a defined maximum level of the various impurities such as silver, lead, phosphorous and others which make up the remaining 0.0065% or less.<sup>6</sup> The LME is the world's leading trading market for copper. The "LME price" is thus the "world copper price".
16. By-products stemming from the production of copper cathodes are sulphuric acid, iron silicate and anode slimes containing precious metals such as gold, silver and platinum.
17. Copper rod is a thin, long, round piece of copper, mostly produced in diameters of 8 mm, although it can vary from 8-25mm. Copper rod is the main feedstock for power cables, installation cables and communication cables and wires, with a length of around 17, 820 m. Copper rod can also be further processed into, for example, drawn and shaped wires, profiles and nuggets, which are copper rod chopped to dimensions according to customer requirements.
18. Although copper shapes are also manufactured from copper cathodes and copper scrap, they have to be differentiated from copper rod. There are two different kinds of copper shapes: billets and cakes. Billets are copper shapes with a circular section, with a

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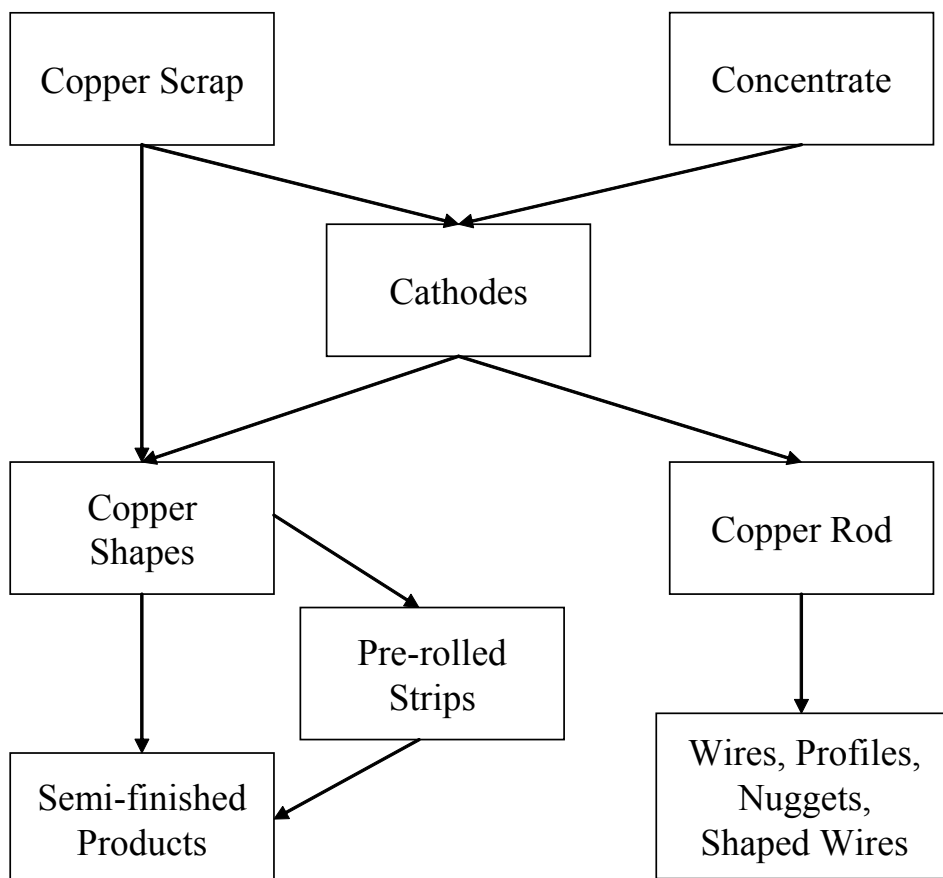
\* Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

<sup>5</sup> Turnover for NA in Germany: EUR [...] billion.

<sup>6</sup> At <http://www.lme.com/downloads/W027Copperspec.pdf> the maximum levels for distinct elements as well as the maximum levels for certain combinations of elements can be consulted.

diameter varying from 100-800 mm and a length of around 600 mm. Cakes are copper shapes with a rectangular section and weight up to 25 ton per cake. Copper billets are further transformed into tubes, bars and profiles, whereas copper cakes are the feedstock for pre-rolled strips and other rolled copper materials.

**Figure 1: Copper production chain**



## 6.2 Relevant markets in the copper industry

19. In the paragraphs 20-105 the product definition and geographic scope of the following markets in the copper industry will be described: copper scrap, copper cathodes, by-products stemming from copper smelting and electrolysis, copper rod, copper shapes and downstream copper products made out of copper shapes.

### 6.2.1 Copper scrap

#### *Product market definition*

20. Copper is a 100% recyclable metal. Copper scrap is copper input gained from industrial and other copper waste, such as scrap copper tubes and scrap copper wires, and recycled by smelting and refining processes. Copper scrap also originates from all stages of the copper production chain, for example left-overs from cutting to size.

21. The Commission has in previous decisions indicated that there is a distinct product market for copper scrap.<sup>7</sup> The notifying party submits that it might be debatable whether copper scrap should be regarded as a distinct market from copper concentrate but considers that it can be left open for the purposes of this transaction.<sup>8</sup> However, the existence of a distinct product market for copper scrap has been confirmed by the market investigation.<sup>9</sup>
22. Furthermore, it has been claimed by one respondent to the market investigation that the refining of copper scrap under a so-called tolling arrangement might constitute a product market which is distinct from the market of copper scrap.
23. When a copper processor decides to sell the copper scrap falling off his production process, he has several options. First, he can sell the scrap to a trader, who will pay a price which is related to the LME copper price multiplied by the copper content of the scrap, minus the agreed refining charge. Secondly, he can have a producer of copper shapes or of cathodes refine the scrap, either by selling or by toll manufacturing. . In this second case, the scrap supplier sends his scrap to the copper refiner while retaining the property over it. The owner of the scrap pays a refining charge (or "tolling fee") and remains unaffected by fluctuations in the copper price.
24. The market investigation confirmed that scrap tolling is one of several ways to dispose of copper scrap in a profitable way. The Commission therefore concludes that from a demand-side perspective scrap tolling is substitutable with selling scrap to refiners and possibly scrap traders. The market investigation has shown that not only copper shapes producers, but all copper refiners, within and outside the EEA, use copper scrap as an input. Additionally, it follows from the market investigation that there is significant international trade in copper scrap across the EEA border, including exports, where the growing demand for copper has contributed to rising copper prices.<sup>10</sup> Therefore, the Commission concludes that the refining of copper scrap under a so-called tolling arrangement does not constitute a product market which is distinct from the market of copper scrap.

### ***Geographic market definition***

25. According to the notifying party, the market for copper scrap is world-wide in scope, given that copper scrap has a sufficiently high value to be transported overseas and that there is significant cross-border trade<sup>11</sup>. The notifying party points to European and US traders and suppliers of copper scrap who trade their scrap globally. Furthermore, European copper manufacturers source copper scrap from within the EEA as well as from North America, North Africa and the Middle East.

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<sup>7</sup> Cases COMP/M.4469- *Scholz/Voestalpine/Scholz Austria* and COMP/M.2196 - *Enron/Bergmann/Hutzler*.

<sup>8</sup> Form CO, p. 54.

<sup>9</sup> Replies to Art 11 RFI to producers of shapes.

<sup>10</sup> Brook Hunt, Copper Metal Service, August 2007.

<sup>11</sup> Letter from the notifying party of 28 November 2007.



26. In previous decisions, the Commission has indicated that the geographic scope of the copper scrap market is at least EEA-wide.<sup>12</sup> The market investigation has confirmed that suppliers and traders of copper scrap offer their scrap on a world-wide basis, and that many EEA-based buyers of scrap also purchase from sources outside the EEA. There is no EU customs duty on copper scrap. Furthermore, the market investigation has shown that, more generally, there are no barriers for trade across internal or external EEA borders for copper scrap. Indications were given that the transports costs are insignificant in relation to the total value of the copper scrap (less than 1%).<sup>13</sup> The high copper price has further limited the importance of transport costs in sourcing copper scrap world-wide.<sup>14</sup> There are significant imports of copper scrap from outside the EEA, notably from the US, Russia, North-Africa and the Middle East as well as exports of copper scrap from the EEA, mostly to Asia (China and India).<sup>15</sup>

### ***Conclusion***

27. In view of the above, the relevant market for the purposes of this case is the world-wide market for copper scrap.

### **6.2.2 Copper cathodes**

28. Copper cathodes are the base input for the production of copper rod and copper shapes. The notifying party submits, in line with previous Commission decisions,<sup>16</sup> that copper cathodes constitute a distinct product market. Furthermore, the notifying party submits that the market for copper cathodes is world-wide in scope, since copper cathodes are traded globally, transportation costs are low compared to the value of the product and prices are fixed on a global level (mainly by the LME), to which premium and transformation fees are added along the value chain. The submission of the notifying party is in line with previous Commission decisions<sup>17</sup>.
29. Copper cathodes are produced in various grades: The LME-certified cathodes (A-grade cathodes) have a copper content of at least 99.9935%. The remaining 0.0065% (65 ppm)<sup>18</sup> of the contents is the maximum amount of impurities, as set out by the LME.<sup>19</sup> All non-LME certified cathodes are called off-grade. Their copper content may amount to up to the content of the LME-certified cathodes, but the combination of impurities does not comply with the standard set by the LME. Within the off-grade cathodes, different sorts may be distinguished depending on the copper content and impurities. The copper cathodes are then analysed with respect to these contents in each individual transaction. As the present transaction does not raise any competition

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<sup>12</sup> Cases COMP/M.4469- *Scholz/Voestalpine/Scholz Austria* and COMP/M.2196 - *Enron/Bergmann/Hutzler*.

<sup>13</sup> Replies to Art 11 RFI to producers of shapes.

<sup>14</sup> Replies to Art 11 RFI to producers of shapes.

<sup>15</sup> According to the notifying party, copper scrap imports into EU27 were 408,539 t in 2006 (Form CO p.53-55, 197); see also Replies Art 11 RFI producers of shapes. Copper and copper alloy mill products, CRU Monitor, October 2007, p.8.

<sup>16</sup> Cases COMP/M.4505 - *Freeport-McMoran Copper & Gold / Phelps Dodge Corporation* and COMP/M.2413 - *BHP/Billiton*.

<sup>17</sup> See footnote 17.

<sup>18</sup> Ppm means part per million, i.e., one part of a million.

<sup>19</sup> See paragraph 15 and footnote 6.

concerns on the product market for cathodes, the question whether LME-grade and off-grade cathodes constitute a single product market or are rather to be distinguished, can, in line with previous Commission decisions<sup>20</sup>, be left open.

30. In the market test of the remedies, one customer<sup>21</sup> indicated that "first leach" cathodes are necessary as an input for copper shapes with low levels of impurities and that these "first leach" cathodes can only be produced by NA and Cumerio.
31. The market investigation offers no support for this statement. Several respondents (including large traders of copper cathodes) have indicated that they are not familiar with the term "first leach" cathodes, and only apply the distinction between grade A and off-grade cathodes.<sup>22</sup> Out of one anode, three crops of cathodes are usually produced<sup>23</sup>. This is the case for all cathode producers using the electrolysis method. The term "first leach" might relate to an alternative production process to the electrolysis process, the so-called leaching process or SX-EW process.<sup>24</sup> This process is used much less frequently than the electrolysis process.
32. In any case, the market investigation has confirmed that, from a quality perspective, there is no difference between the three crops of cathodes produced out of one anode.<sup>25</sup> All these three crops will have the same grade (LME/A grade or off-grade) and can be used in the same way as an input to produce copper shapes. The large majority of the respondents also indicated that there are no products produced out of cathodes for which "first leach" cathodes would be an indispensable input.<sup>26</sup>
33. With respect to the geographic market definition, the respondents to the Commission's market investigation in the present transaction confirmed, in line with previous Commission decisions<sup>27</sup>, that copper cathodes are traded world-wide. It follows that the geographic scope of the copper cathodes market is world-wide.

### ***Conclusion***

34. The question whether A-grade and off-grade cathodes constitute a single product market for copper cathodes, or whether they should be considered as two distinct product markets, can, in line with previous Commission decisions<sup>28</sup>, be left open. In either hypothesis, the geographic scope of the copper cathodes market(s) is world-wide.

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<sup>20</sup> Case COMP/M.4505 - *Freeport-McMoran Copper & Gold / Phelps Dodge Corporation*, paras 16-17.

<sup>21</sup> Replies to Art 11 RFI to producers of copper cathodes; replies to Art. 11 RFI – market test proposed commitments.

<sup>22</sup> Replies to Art 11 RFI to producers of copper cathodes; replies to Art 11 RFI to producers of shapes.

<sup>23</sup> According to the information provided, an anode stays 21 days in the refinery. Every 7 days, a crop of cathodes is harvested, the first crop harvested on day 7 is called "first leach". The second crop will be ready on day 14 and the third crop on day 21.

<sup>24</sup> Replies to Art 11 RFI to producers of copper cathodes.

<sup>25</sup> Replies to Art 11 RFI to producers of shapes.

<sup>26</sup> Replies to Art 11 RFI to producers of shapes.

<sup>27</sup> Case COMP/M.4505 COMP/M.4505 - *Freeport-McMoran Copper & Gold / Phelps Dodge Corporation*, paras 16-17, referring to previous decisions.

<sup>28</sup> Case COMP/M.4505 - *Freeport-McMoran Copper & Gold / Phelps Dodge Corporation*, paras 16-17.

### 6.2.3 By-products

35. Sulphuric acid, iron silicate stone and granulated slag are produced as by-products throughout the copper smelting process. Furthermore, the anode slime resulting from the production of copper cathodes contains small amounts of precious metals such as gold, silver and platinum metals (such as platinum, and palladium) as well as non-soluble components such as lead and selenium. These latter products extracted from the anode slime are sold by the parties on a worldwide market<sup>29</sup>.
36. No further investigation was required for these by-products since the combined market shares of the parties are so low or there is no overlap or only a very small increment in the combined market share. The market investigation did not raise any competition concerns in relation to these products.<sup>30</sup>

### 6.2.4 Copper rod

#### *Product market definition*

37. Copper rod is a thin, long, round string of copper. Copper rod is produced from copper cathodes and is the main feedstock for the production of wires, cables and profiles for many different applications such as power cables, winding wires, general cables and metallic communication cables.<sup>31</sup> According to the notifying party copper rod is not interchangeable with other products.<sup>32</sup>
38. The production of copper rod can be achieved by two different processes,<sup>33</sup> namely by continuous casting and rolling, or by direct casting. In the continuous casting and rolling process, accounting for around 98% of the EEA-wide copper rod production<sup>34</sup>, the molten copper cathode is cast in a continuously running caster and rolled into various diameters; afterwards it is coated with a surface protecting coating. In the direct casting process, the copper cathode is directly cast into the final diameter of the copper rod through continuous vertical upward casting; the copper is not rolled and there is no need to treat the surface for protection purposes.

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<sup>29</sup> The Commission has in previous cases defined distinct product markets for these precious metals. All these markets were considered to be world-wide in scope. See Commission decisions COMP/M.4505 *Freeport/Phelps Dodge*, COMP/M.2413 *BHP/Billiton* and COMP/M.745 *Anglo American/Lohmro*.

<sup>30</sup> Replies to Art 11 RFI to customers; replies to Art 11 RFI to competitors.

<sup>31</sup> According to the notifying party these applications of copper rod may be grouped into the following downstream product markets: i) drawn wires (produced by a drawing process and often bundled into cables to bear mechanical loads, carry electricity or transmit telecommunications signals, ii) complex profiles (small profiles extruded from copper rod for parts in electrical motors, cabinets or generators), iii) shaped wire (wire that is produced by a shaping process and mostly used for electrical and mechanical engineering, where electrical conductivity is important; shaped wire primarily serves as feedstock for plug pins, contact elements, luster terminals, etc.; shaped wire is a commodity which can also be produced from copper shapes) and iv) nuggets (pieces of chopped copper which are sold to customers who use it for the production of sanitary armatures, coins, furniture fittings, copper powders, jewellery and many other applications; nuggets are a commodity which can also be produced from copper shapes).

<sup>32</sup> Form CO, p. 71.

<sup>33</sup> Form CO, p. 77 and 78.

<sup>34</sup> Form CO, revised Annexes 7.1.2, 7.1.3, 7.1.4.

39. While copper rod is produced in various diameters ranging from 8 to 25 mm, 95% of the overall European copper rod production relates to only one diameter, that is to say 8 mm, which serves as a standard product.<sup>35</sup> Other diameters can slightly vary between different suppliers. Diameters which are produced by either NA or Cumerio are 8, 10, 12.5, 13, 16, 17.5, 18, 20, 23.5 and 25 mm.
40. The notifying party considers that the market for the production and supply of copper rod constitutes a single relevant product market and that no distinction between the two production processes or between the various diameters is necessary.<sup>36</sup> This is in line with previous Commission decisions, which considered that the production and sale of copper rod constitutes a distinct product market without considering any further subdivisions<sup>37</sup>.

*Different processes of production*

41. Regarding the different processes of production of copper rod by either continuous casting and rolling or by direct casting the notifying party considers that although the production of direct cast copper rod is more costly and consequently more expensive the differences in quality are only marginal.<sup>38</sup> While continuous casting and rolling would be more suitable to produce high volumes the usually smaller facilities for direct cast (or upcast) rod provide more flexibility for a supplier to produce smaller quantities. According to the notifying party there are only a few specific applications where oxygen-free quality, which is more resistant and can be produced only by direct casting, is required. These are highly flexible wires and cables, very thin wires, fire-resistant wires and fatigue stress resistant wires.
42. The market investigation has shown that the substitutability, from a *demand-side perspective*, between copper rod produced by continuous casting and rolling or by direct casting, is mainly one-sided. For most end applications and production processes copper rod produced by continuous casting and rolling can be used. Continuous casting and rolling is cheaper and more easily available because of higher drawing speed, hence higher volumes<sup>39</sup> Only a few customers would consider switching from continuously cast copper rod to direct cast rod in case of a price increase of 5-10 %.<sup>40</sup> However, for a few specific qualities, in particular with less oxygen, direct cast rod is required, and for these applications customers do not consider direct cast rod to be fully substitutable by continuously cast rod.<sup>41</sup>
43. The market investigation has shown that several producers use both processes and that direct casting facilities are generally much smaller and therefore more flexible. Given the very limited volumes of direct cast copper rod (less than 2% of the EEA-wide

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<sup>35</sup> Form CO, p. 72.

<sup>36</sup> Form CO, p. 71.

<sup>37</sup> Cases M.1882 - *Pirelli/BICC*, paragraph 13; Case /M.4505 - COMP/M.4505 - *Freeport-McMoran Copper & Gold / Phelps Dodge Corporation*, paragraphs 21 and 22.

<sup>38</sup> Form CO, p. 78.

<sup>39</sup> Replies to Art 11 RFI to customers.

<sup>40</sup> Replies to Art 11 RFI to customers.

<sup>41</sup> Replies to Art 11 RFI to customers.

copper rod production<sup>42</sup>), direct cast copper rod is considered as a niche segment for a slightly higher quality product which is purchased by generally the same customers for certain applications.<sup>43</sup> According to both parties, from a *supply-side perspective* a direct cast rod facility could be set up within a limited time frame at reasonable cost.<sup>44</sup> Most competitors consider both products to be competing with each other as part of the same market, in particular in view of the similar characteristics of the product. In view of the above, a further subdivision of the product market according to the two production processes does not appear appropriate.

#### *Various diameters*

44. With regard to a potential further subdivision according to the different diameters of copper rod ranging from 8 to 25 mm, the market investigation has shown that the different diameters are used for different applications and most customers purchase copper rod of several different diameters. From a *demand-side perspective*, customers are generally not or only to a very limited degree able to switch between the different diameters as their production process and machine configurations cannot be adapted easily to different sizes.<sup>45</sup>
45. Notwithstanding these limitations in demand-side substitutability between the different diameters, the notifying party argues that a distinction between the various diameters is not needed in view of a very high degree of *supply-side substitutability*.<sup>46</sup> According to the notifying party, most producers of the 8 mm standard product of rod representing 95% of the overall European copper rod production could easily expand their production to larger diameters. They could use the same machinery (caster and rolling mills) for doing so by simply equipping it with different sets of rolls, which would mean switching costs of maximum EUR 100,000. The change of production from one to another diameter would be possible [...].<sup>47</sup>
46. The market investigation confirmed that nearly all suppliers produce copper rod with a diameter of 8 mm and that copper rod of 8 mm represents the most important part of the production for most, and up to 100% for some.<sup>48</sup> Those competitors who currently produce different diameters can switch in general to other rather similar diameters at low cost and at very short notice. For competitors who currently produce only copper rod of a certain diameter, in particular 8 mm, the level of investment required to adapt their production to other diameters depends on their current production facilities and the changes needed. Indications given in the market investigation show that these costs would for most of them amount to no more than EUR 100,000. In addition, most of these companies consider that the necessary changes would be feasible within a lead time of 6 weeks to 12 months.

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<sup>42</sup> Form CO, revised Annexes 7.1.2, 7.1.3, 7.1.4.

<sup>43</sup> Replies to Art 11 RFI to competitors.

<sup>44</sup> Submissions of the notifying party and of the target of 3 December 2007.

<sup>45</sup> Replies to Art 11 RFI to customers.

<sup>46</sup> Form CO, p. 76.

<sup>47</sup> Form CO, p. 72.

<sup>48</sup> Replies to Art 11 RFI to competitors.

47. In view of this confirmation of a high degree of supply-side substitutability, a further subdivision of the product market according to the different diameters of copper rod does not seem appropriate.

### ***Geographic market definition***

48. In line with previous decisions of the Commission<sup>49</sup> the notifying party considers the relevant geographic market for copper rod to be at least EEA-wide. The notifying party argues that the competitive conditions are sufficiently homogenous throughout the EEA and that transportation costs, while varying depending on the means of transport and the distance, play only a minor role compared to the final price for the cable or wire.<sup>50</sup>
49. The market investigation however clearly indicates that transport costs have an important impact and limit the substitutability of different suppliers for individual customers. A distance of around 1,000 km is considered by some to be the maximum distance copper rod of normal quality can travel economically by road. Whereas some customers consider the relevant geographic market to be EEA-wide others think it should be national or regional. The perception of the relevant market largely depends on the specific situation of a customer. Nearly all customers source from different suppliers, most of them from suppliers in more than one Member State.<sup>51</sup> The parties' data on delivery confirm that most of their sales are delivered within a radius of 1 000 km, but a smaller percentage also above 1 500 km and outside the EEA.<sup>52</sup> However, in view of the dispersion of suppliers of copper rod in Europe there are overlapping geographical circles around production sites<sup>53</sup> which influence each other's competitive situation, leading to the conclusion that the geographic market is to be defined as EEA-wide.

### ***Conclusion***

50. In view of the analysis in paragraphs 37 to 49, the relevant market for the purposes of this case is the EEA market for copper rod.

## **6.2.5 Copper shapes**

### **6.2.5.1 Product market definition**

51. This section describes the production process and characteristics of copper shapes in general; it thereafter presents the demand-side substitutability and the supply-side substitutability separately.

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<sup>49</sup> In Case COMP/M.1882 *Pirelli/BICC*, paragraph 34, the Commission held that the relevant geographic market for copper rod is at least Community-wide. In Case COMP/M.4505, COMP/M.4505 - *Freeport-McMoran Copper & Gold / Phelps Dodge Corporation*, paragraph 23, the market definition was left open.

<sup>50</sup> Form CO, p. 80.

<sup>51</sup> Replies to Art 11 RFI to customers.

<sup>52</sup> Form CO, Annexes 6.6 to 6.10.

<sup>53</sup> Form CO, Annexes 6.5.

### *Production process and characteristics*

52. Copper shapes are copper products cast from copper cathodes, copper scrap, and other copper inputs in a semi-continuous or a continuous process into billets (circular sections) or cakes (rectangular sections), and which will be further processed into semi-finished copper products. Another copper product at the same production level as shapes is copper rod (see above). Copper rod and copper shapes are not interchangeable in particular with respect to the form. Copper rod is produced with diameters varying from 8-25 mm and a length of around 17 820 m, whereas copper billets are produced with higher diameters (varying from 100-800 mm) and a shorter length (around 600 mm).
53. In a semi-continuous vertical process, a set size of a shape is cast, that is to say, the flow of copper is stopped. Cakes are usually cast in semi-continuous production lines, in particular due to their length and weight.
54. In a continuous vertical process, a "flying saw" cuts the appropriate sizes from the continuously flowing hardened copper strand. A continuous process is more automated and less interrupted than a semi-continuous casting process, and hence more efficient.
55. Billets are shapes with circular sections used for the production of tubes, bus bars<sup>54</sup> and profiles<sup>55</sup>.
56. Cakes are shapes with rectangular sections. They come in lengths up to 10 m and have a weight up to 25 tons per cake.<sup>56</sup> They are processed into rolled material: sheet, strip or foil.
57. Copper shapes can be produced with a different content of copper and impurities. The highest purity of copper is guaranteed by using the LME certified A-grade cathodes as an input.
58. Depending on the copper content and the content of impurities<sup>57</sup>, the notifying party distinguishes copper shapes of different qualities such as oxygen-free (OF-Cu), special-electrolytic (SE-Cu), electrolytic (E-Cu), phosphorus-bearing (Ph-bearing Cu) and Oxygen-bearing (O-bearing Cu)<sup>58</sup>.
59. The notifying party has made the following three submissions.
60. First, shapes, being an intermediate product in the production of semi-finished copper products, not constitute a product market from a competition law perspective, because most of the producers of semi-finished copper products process cathodes and scrap into shapes in-house, either in own production facilities, or through outsourcing

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<sup>54</sup> A bus bar in electrical power distribution refers to thick strips of copper or aluminium that conduct electricity within a switchboard, distribution board, substation, or other electrical apparatus.

<sup>55</sup> Profiles are rolled, extruded, drawn, forged or formed products, coiled or not, of a uniform cross-section along their whole length, which do not conform to any of the definitions of bars, rods, wire, plates, sheets, strips, foil, tubes or pipes.

<sup>56</sup> Form CO, p. 83.

<sup>57</sup> See paragraph 29.

<sup>58</sup> Form CO, p. 86 ff.

contracts with third parties. Less than 25% of all shapes produced in the EEA are sourced on the merchant market.<sup>59</sup>

61. Secondly, as a subsidiary argument of the notifying party, should shapes constitute a distinct product market, then this market should not be further subdivided – neither according to the form of the shapes, nor according to their composition. This argument of the notifying party is based on supply-side substitutability.<sup>60</sup>
62. Thirdly, as a further subsidiary argument, if a distinction were to be made within copper shapes according to the copper qualities, the notifying party submits that a distinction may have to be made for the case of OF-Cu qualities. OF-Cu qualities are produced in special dedicated production lines, and the entire production process of these shapes takes place under "protective atmosphere" to prevent the copper from being contaminated with oxygen.<sup>61</sup>
63. As to the first submission of the notifying party, the fact that a major part of the production of copper shapes is used internally as an intermediate product does not imply that there cannot be a distinct product market for copper shapes.
64. As to the second submission of the notifying party, the Commission has investigated the possible subdivisions of the copper shapes market from both demand-side and supply-side points of view. This is discussed in more detail below in paragraphs 67 to 84.
65. As to the third submission of the notifying party, the market investigation confirms that OF-Cu shapes are indispensable for some applications such as underwater cables and cable strips made of copper. OF-Cu shapes are used for special applications in electronics, telecommunications, and high energy physics, where high electrical and thermal conductivity are needed.<sup>62</sup> The market investigation confirms that OF-Cu qualities of shapes can only be produced in special dedicated production lines. Only a very limited number of suppliers of copper shapes, including the notifying party, has decided to invest in such special production lines to produce under "protective atmosphere" OF-Cu shapes.<sup>63</sup> Because of the requirement of a protected atmosphere, it would not be economically feasible to use the OF-Cu production line to produce Cu qualities with higher contents of impurities, as these would contaminate the production line.<sup>64</sup> The investment costs for a production line to produce oxygen free shapes are situated between 7 million EUR and 15 million EUR.<sup>65</sup>
66. As Cumerio is not equipped to produce OF-Cu shapes<sup>66</sup>, no overlap with respect to the OF-Cu qualities of copper shapes could be identified. In the reasoning on the market

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<sup>59</sup> Form CO, p. 85.

<sup>60</sup> Form CO, p. 84.

<sup>61</sup> Reply to Art 11 RFI to producers of shapes.

<sup>62</sup> Form CO, p. 87.

<sup>63</sup> In view of the substitution of underwater telecom cables by glass fibre, the relevance of the OF-Cu shapes from a demand point of view seems to be limited.

<sup>64</sup> Replies to Art 11 RFI to producers of shapes.

<sup>65</sup> Replies to Art 11 RFI to producers of shapes.

<sup>66</sup> Form CO, p. 86, Submission of NA on 8 November 2007. Replies to Art 11 RFI to producers of shapes.



definition and the assessment of the shapes market in this decision, the question of a distinct product market for OF-Cu qualities of copper shapes can be left open, as no competition problem arises under any plausible market definition.

### ***Demand-side substitutability***

#### *Demand-side substitutability with regard to billets and cakes*

67. With respect to demand-side substitutability between billets and cakes, the notifying party has not taken a position.
68. The respondents to the market investigation indicated that billets and cakes are not interchangeable, and constitute distinct product markets from their point of view.<sup>67</sup> This is based on the specific machinery used for the processing of the billets and cakes respectively as well as on the specific end applications of the resulting semi-finished copper products. Billets are used for the manufacturing of extruded products such as tubes, bars and profiles, since the extrusion process and the end applications require a circular section. Cakes are used for the manufacturing of rolled products such as sheets, strips and foils, whereby the rolling process requires a rectangular section.
69. Both customers and producers have stated that the different end applications of cakes and billets make a switch between them impossible. No producer of copper shapes has indicated that its customers of shapes could switch between billets and cakes<sup>68</sup> and this has been confirmed by the customers.<sup>69</sup>
70. The market investigation thus clearly shows that there is no demand-side substitutability between billets and cakes.

#### *Demand-side substitutability with regard to different qualities of copper*

71. For the different copper qualities of billets and cakes, the notifying party has submitted that customers can use different qualities of shapes for one and the same application.<sup>70</sup>
72. The market investigation has shown that the customers – both for billets and cakes – need the respective specific qualities required for their end applications.<sup>71</sup> Based on the respective specifications, the use of copper qualities with lower contents of copper and/or higher contents of impurities (sanitary tubes, fittings, roofing, etc.) would be impossible for specifications requiring a high copper content and low contents of impurities (used in the electric and electronic industries). The use of copper qualities with a high content of copper and low contents of impurities would be possible for specifications with lower requirements on the composition of copper; however, this would not be economically feasible.

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<sup>67</sup> Replies to Art 11 RFI to competitors; replies to Art 11 RFI to customers.

<sup>68</sup> Replies to Art 11 RFI to producers of copper shapes.

<sup>69</sup> Replies to Art 11 RFI to customers. Solely one customer stated that it would be possible to switch.

<sup>70</sup> Form CO, p. 87.

<sup>71</sup> Replies to Art 11 RFI to customers.

73. The various copper qualities of shapes (billets and cakes) might therefore be substitutable in the sense that copper qualities with low copper content and high contents of impurities might be replaced by copper qualities with high copper content and low contents of impurities. But the reverse does not apply.<sup>72</sup> It follows that from the point of view of demand-side substitutability, different copper qualities are not fully substitutable.

#### ***Supply-side substitutability***

74. As a preliminary remark, not all producers of copper shapes produce both billets and cakes, nor do all of them currently produce all specific copper qualities.
75. The market investigation has shown that the companies active as shape producers have different types and designs of production equipment. The specific characteristics of the production equipment determine the ease of switching, both between forms of shapes and between copper qualities.
76. With respect to the supply-side substitutability of copper shapes, the notifying party has submitted that shape suppliers can easily switch from the production of billets to the production of cakes and *vice versa* [...]\*.<sup>73</sup> The same has been stated concerning the possibility of switching production between the various copper qualities of the shapes.<sup>74</sup>

#### ***Supply-side substitutability with regard to billets and cakes***

77. With respect to the distinction between billets and cakes, cakes are usually produced on semi-continuous casting lines, and billets (and small cakes) on continuous casting lines. This is in particular due to the different respective sizes and weights of cakes and billets. Up to a certain dimension and hence weight, these differences are of limited importance. However, some producers may be limited in respect of large (and therefore heavy) cakes, both with respect to the size of the (continuous) production line, and to the feasibility of handling these cakes in a (continuous) production line.<sup>75</sup> The market investigation has requested information on the substitution abilities of all current producers of shapes.
78. Both billets and cakes can be, and to a certain extent are being, produced on continuous as well as on semi-continuous casting production lines.<sup>76</sup> The market investigation has confirmed that several respondents would be able to switch production on the same line between billets and cakes easily with no or minor additional costs by changing some components such as moulds and dummy parts.<sup>77</sup> It can not be excluded that the switching may be limited with respect to the weight

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<sup>72</sup> The copper content and the content/combinations of impurities have an impact upon the electrical and thermal conductivity as well as other characteristics of the copper material. Also see replies to Art 11 RFI to producers of copper cathodes.

<sup>73</sup> Form CO, pp. 84 to 85.

<sup>74</sup> Form CO, pp. 88 to 89.

<sup>75</sup> Replies to Art 11 RFI – shape production equipment + downstream copper products.

<sup>76</sup> Replies to Art 11 RFI – shape production equipment + downstream copper products.

<sup>77</sup> Replies to Art 11 RFI to competitors; Replies to Art 11 RFI to producers of shapes; replies to Art. 11 RFI – shape production equipment + downstream copper products.

and/or dimensions of the shapes for some producers.<sup>78</sup> However, the overall conclusion of the market investigation is that flexibility prevails.

79. Several respondents have dedicated production lines for the production of billets, or of cakes. It appears from the market investigation that a switch on a semi-continuous line constructed primarily for the production of cakes to the production of billets is rather common.<sup>79</sup> Furthermore, the respondents have stated that the production of cakes on continuous lines which are currently dedicated to the production of billets would be possible, subject to adaptation of the line. The assessment of the investment in terms of money, time, and know-how ranges from minor to significant, depending on the current design of the production line.<sup>80</sup> In the case of some production lines currently dedicated to the production of billets, an adaptation to allow switching to cakes (and back to billets) would not be feasible<sup>81</sup>. However, the overall conclusion of the market investigation is that flexibility prevails.
80. It follows that although it may not be possible for every copper producer or processor to switch easily between the production of cakes and billets on the same production line, or to switch easily between all sizes or weights of cakes and billets, the possibility and likelihood of such switching characterises the market situation in general.
81. As a consequence, the market investigation has confirmed that from the point of view of supply-side substitutability, billets and cakes are interchangeable.

*Supply-side substitutability with regard to different qualities of copper*

82. With respect to the various copper qualities, these can in general be produced on the same production lines. Depending on the construction, layout and equipment of a production line, some limitations with respect to the production of some qualities with high copper content and low impurities content may exist. The market investigation has shown that the decisive factors for the ability to produce copper shapes with high copper content and low contents of impurities are the quality of the input, the equipment and the producer's know-how.<sup>82</sup>
83. Most respondents explained that they could produce both shapes with high levels of impurities and shapes with lower levels of impurities, including (S)E-Cu qualities on the same production lines, with none or only minor additional costs.<sup>83</sup>
84. The market investigation shows that there is no separate product market for (S)E-CU copper shapes, but that these qualities are rather part of an overall market for copper shapes. It has been confirmed that from the supply-side substitutability point of view, shapes of different copper qualities do not constitute distinct product markets, with the possible exception of OF-Cu shapes. However, since Cumerio does not produce OF-

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<sup>78</sup> Replies to Art 11 RFI to competitors.

<sup>79</sup> Replies to Art 11 RFI to producers of shapes.

<sup>80</sup> Replies to Art 11 RFI to producers of shapes.

<sup>81</sup> Replies to Art 11 RFI to competitors.

<sup>82</sup> Replies to Art 11 RFI – shape production equipment + downstream copper products.

<sup>83</sup> Replies to Art 11 RFI to producers of shapes; Replies to Art 11 RFI to competitors.

Cu shapes, a potential distinct product market for OF-Cu shapes would in any event not be affected by the transaction.

### ***Conclusion***

85. It is concluded that copper shapes constitute a single distinct product market regardless of whether they are cakes or billets as well as regardless of the specific qualities of copper, with the possible exception of OF-Cu qualities.

### **6.2.5.2 Geographic Market**

86. The notifying party submits that the relevant geographic market for shapes is at least EEA-wide, as there is significant trade between Member States and transportation costs are not a barrier.<sup>84</sup>
87. The market investigation confirms that transport costs are relatively low compared to the value of copper shapes. Even those customers who argue that transportation costs do play a role in the choice of a supplier indicate as geographic market for shapes an area including both the West-European and the new Central-European Member States<sup>85</sup>. More importantly, the market investigation confirmed that the EEA-based suppliers of the merchant market for copper shapes sell all over the EEA and to some extent outside the EEA, in Asia and North-America<sup>86</sup>.
88. Overall, the market investigation confirms that the relevant geographic market for copper shapes is at least EEA-wide in scope.

### ***Conclusion***

89. It is concluded that the relevant market is the EEA-wide market for copper shapes. Whether oxygen-free copper shapes constitute a distinct relevant product market can be left open, as it does not affect the competitive assessment of the transaction.

### **6.2.6 Markets downstream of copper shapes**

90. Cumerio is not active on any of the possible product markets for downstream semi-finished copper products. The notifying party has thus submitted that the market definition can be left open, since it does not affect the competitive assessment of the transaction. The Commission has nevertheless analysed the possible product markets for downstream semi-finished copper products because of their importance for the assessment of the upstream merchant market for copper shapes.

### ***Product market definition***

91. Copper shapes are further processed into semi-finished copper products. Copper billets are transformed into tubes, bars and profiles by an extrusion process, whereas

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<sup>84</sup> Form CO, p. 89-91.

<sup>85</sup> Replies to Art 11 RFI to customers.

<sup>86</sup> Replies to Art 11 RFI to customers; Replies to Art 11 RFI to shapes producers.

copper cakes are the feedstock for pre-rolled strips. Pre-rolled strips are thin strands of copper produced from copper cakes by a hot and cold rolling process. Pre-rolled strips can be further processed into even thinner so-called rolled materials. Examples of rolled materials are roofing copper, boiler strip, heat exchanger strip, cable strip, connector strip, stamping strip, industrial brass strip, industrial copper strip, plating strip and copper foils.

92. The notifying party has submitted that from a demand-side substitutability point of view, the different uses made of each of these different downstream copper products mentioned above point towards separate relevant product markets. The notifying party also indicated that the downstream copper products' use in different applications (electrical engineering and electronic industry; construction industry; telecommunications; automotive industry; machine construction<sup>87</sup>) influences the degree to which alternative materials constitute a competitive constraint for downstream copper products.
93. The Commission has analysed the possible substitutability in semi-finished copper products both in relation to alternative materials and different applications.
94. Concerning alternative materials, the market investigation<sup>88</sup> confirmed that a wide range of materials may replace copper, including firstly plastics, either alone or mixed with synthetic material, secondly aluminium, increasingly used to produce tubes and other extruded and drawn products<sup>89</sup>, and thirdly, to a lesser extent, (stainless) steel, zinc, silver, gold, etc.<sup>90</sup>.
95. The Commission has further analysed to what extent copper could be totally substituted by other materials<sup>91</sup>. Both suppliers and customers of semi-finished copper products stressed that copper has technical specificities making it to some extent indispensable for a substantial number of applications. The exact extent to which copper can be replaced by other materials depends on the very characteristics of copper, mainly with regard to electrical conductivity and processing characteristics. Overall, the market investigation confirmed that due to these specificities of copper, a proportion of semi-finished copper products could in no circumstance, taking into account the current development of research, be substituted by non-copper semi-finished products. As a consequence, even if copper may easily be substituted by other materials for certain finished products such as plumbing tubes or telecommunication

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<sup>87</sup> Annual report NA 2005/2006, p. 12.

<sup>88</sup> Replies to Art 11 RFI – shapes production equipment + downstream copper products.

<sup>89</sup> See also CRU International Limited Consumption and market trends – Flat Rolled Products: "In common with building and construction products, automotive heat exchangers have also been subjected to withering substitution losses during 2006. As much as 40,000 tons may have been lost to rival aluminium designs."

<sup>90</sup> CRU International Limited Consumption and market trends – Flat Rolled Products, p.15: "During 2006, the roofing and guttering strip market was severely impacted by the downturn in the US construction market and by price-led substitution across all regional markets. Our preliminary estimates suggest that as much as 20% of the 2005 market was lost to competing materials such as rolled zinc, pre-painted steel, aluminium, tile and plastic products."

<sup>91</sup> Replies to Art 11 RFI – shapes production equipment + downstream copper products.

cables, for other finished products, for which the characteristics of copper are essential, possibilities for substitution are far more limited<sup>92</sup>.

96. Concerning applications, the market investigation confirmed that there are different applications for copper products downstream of shapes, the most important of which are electrical engineering and the electronics industry (appliances, air conditioning and circuit boards); the construction industry (plumbing and roofing); telecommunications (cables); automotive industry (radiators); machine construction (motors).
97. The market investigation confirmed that, because of the electrical conductivity characteristics of copper, the applications of copper in the electrical engineering and the electronic industry are less subject to substitution pressure from alternative materials such as aluminium than the applications of copper in plumbing such as plastic, roofing, such as zinc, plastic for rain pipes and tiles for roofs, and telecommunications such as glass fibre.
98. Overall, the market investigation confirmed that such substitution in end applications can be found in several sectors of application. Firstly, in the automotive sector, where copper bus bars can be replaced by aluminium, and copper strips are being replaced by aluminium in radiators<sup>93</sup>. Secondly, in the construction sector, where galvanized steel or zinc can replace copper in roofing systems, and aluminium can replace copper in architectural applications<sup>94</sup>. Thirdly, in the plumbing sector, where plastic tubes represent approximately 40% of the European market and are increasingly used instead of copper tubes,<sup>95</sup> and finally in the telecommunication sector, where copper cables are being replaced by glass fibre cables<sup>96</sup>. The only sector of application of semi-finished copper products where substitution possibilities are technically very limited is the electrical and electronic sector.
99. In view of the fact that Cumerio is not active in the production of downstream semi-finished copper products, it is however not necessary for the assessment of the underlying transaction to precisely define the boundaries between the different markets for the various semi-finished copper products.

### ***Geographic market definition***

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<sup>92</sup> Replies to Art 11 RFI – shapes production equipment + downstream copper products.

<sup>93</sup> CRU International Limited Consumption and market trends – Flat Rolled Products: "Electro-deposited copper foil recorded the fastest growth (...) At one stage it had seemed possible that annual growth rates might reach 7-8%, but substitution losses began to build in the second half of the year in the automotive heat exchanger and roofing/guttering strip market segments."

<sup>94</sup> Brook Hunt – *The long term outlook for copper – Copper metal service* – 3rd quarter 2007, p.22.

<sup>95</sup> Brook Hunt – *The long term outlook for copper – Copper metal service* – 3rd quarter 2007, p. 21.

<sup>96</sup> Brook Hunt – *The long term outlook for copper – Copper metal service* – 3rd quarter 2007, p 20: "Since the early 1990s, copper telecommunication cable has been largely substituted by fibre optic cable in long distance networks."

100. The notifying party considers that all the possible product markets for downstream semi-finished copper products, whether considered together or as distinct per application, are at least EEA-wide in scope, but probably wider.
101. The market investigation contains no indication that the geographic market for downstream semi-finished copper products could be narrower than the EEA. On the contrary, it appears from the market investigation that the biggest purchasers of semi-finished copper products source semi-finished copper products both inside and outside the EEA, including North and South America, Asia and Africa.<sup>97</sup>
102. As regards the supply-side, semi-finished copper products are imported into the EEA from countries such as Turkey, China, Malaysia, Mexico, Brazil, United States. The existence of such trade flows to the EEA and the replies to the market investigation<sup>98</sup> indicate that non-EEA producers are capable of matching the requirements of purchasers/customers of semi-finished copper products in terms of quality, time delivery etc. Although the market investigation has shown that some producers of semi-finished copper products have partly specialised their production, it has also made clear that the production of semi-finished copper products is not characterized by high entry barriers, neither financial nor technical (know-how, certification process). Although there is an import duty of 4.8% on entry of semi-finished products into the EU, it appears from the market investigation that this does not hinder imports. The fact that the import duty is not a noticeable barrier to imports is related to the high added value of semi-finished copper products compared to the value of the copper contained in it.
103. As regards the demand-side, as a result of both relatively low transport costs and their world-wide presence, large customers of semi-finished copper products have adopted geographic multi-sourcing strategies in which they may use up to around fifty suppliers of copper semi-finished products worldwide<sup>99</sup>. In case prices of semi-finished copper products increase, they can easily switch to other suppliers, and if necessary ship these semi-finished copper products from one area to another<sup>100</sup>.
104. However, in view of the fact that Cumerio is not active in the production of downstream semi-finished copper products, it is not necessary for the assessment to decide the exact geographic extension, either EEA or worldwide, of the markets for the various semi-finished copper products.

## ***Conclusion***

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<sup>97</sup> Replies to Art 11 RFI to customers of copper products.

<sup>98</sup> Replies to Art 11 RFI to customers of copper products; replies to Art 11 RFI – shapes production equipment + downstream copper products.

<sup>99</sup> Reply to Art 11 RFI to customers of copper products.

<sup>100</sup> Brook Hunt – *The long term outlook for copper – Copper metal service* – 3rd quarter 2007, p.32 "The strong growth in Italy and the US can be attributed to Boeing following the right path in an industry that is "going global". By outsourcing to other parts of the world it has had a chance to focus on its advantages – design, supply chain management, marketing and branding."

105. In view of the fact that Cumerio is not active in the production of downstream semi-finished copper products, it can be left open whether the downstream semi-finished copper products constitute a few or numerous distinct markets on the basis of their use in different applications, and it can also be left open whether these product markets are EEA-wide or worldwide.

## VII. COMPETITIVE ASSESSMENT

106. In the following sections, the non-coordinated effects, vertical effects and coordinated effects stemming from the underlying transaction will be analysed.

### 7.1 Non-coordinated effects

107. The Commission has assessed whether the underlying transaction will significantly impede effective competition due to non-coordinated effects on the world-wide market for copper scrap, on the EEA-wide market for copper rod as well as on the EEA merchant market for copper shapes.

#### 7.1.1 Non-coordinated effects on the market for copper scrap

108. During the market investigation, a few customers have expressed concerns that the transaction might lead to the creation of buyer power, whereby the new entity could seek to take advantage of its position as one of the reduced number of buyers of copper scrap to lower the price thereof.<sup>101</sup>
109. As stipulated in the *Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings* ("Horizontal Merger Guidelines"), increased buyer power, if established, is not in itself sufficient to conclude that competition may be significantly impeded.<sup>102</sup>
110. Nevertheless, it appears in any event to be very unlikely that significant buyer power would be created through the transaction. On the world-wide market for copper scrap, which has an overall volume of 2,424,000 tons (2006), both NA and Cumerio are active as purchasers rather than as suppliers.<sup>103</sup> Their aggregate share of demand of copper scrap is around [10-15]\*% (NA around [5-10]\*% and Cumerio around [0-5]\*%). There are many other actors on the purchasing side of the world-wide market for copper scrap.<sup>104</sup> The new entity will thus face competitive pressure from many rivals. Given its own market share of around [10-15]\*%, the new entity will not be in a position to enter into anti-competitive behaviour on this market<sup>105</sup>.

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<sup>101</sup> Replies to Art 11 RFI to customers; replies to Art 11 RFI to competitors; Letter from a customer of 23 August 2007.

<sup>102</sup> *Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings*, OJ C 31, 5 February 2004, paragraphs 61-62.

<sup>103</sup> Form CO, pp. 51 and 55.

<sup>104</sup> Reply of the notifying party to RFI, email of 28 November 2007.

<sup>105</sup> See also replies to Art 11 RFI to customers; replies to Art 11 RFI to competitors; Letter from a competitor of 23 August 2007, Replies to Art 11 RFI to competitors.



111. It follows that the concern with regard to the potential creation of buyer power on the market for copper scrap has to be dismissed.

### ***Conclusion***

112. In view of the above analysis in paragraphs 108 to 111, it can be concluded that the proposed transaction will not lead to unilateral effects, and effective competition will not be significantly impeded in the world-wide market for copper scrap.

### **7.1.2 Non-coordinated effects on the market for copper rod**

113. Following the transaction the new entity would become the largest supplier of copper rod in the EEA. According to the notifying party, the total volume of copper rod production within the EEA in 2006 was [2 500 000-3 000 000]\* tons. While [2 000 000-2 500 000]\* tons ([80-90]\*%) were sold to third parties, the rest of this volume ([500 000-1 000 000]\* tons, equalling [15-20]\*%) was used by copper rod suppliers internally for their own production of wires, cables and profiles. On the merchant market for copper rod,<sup>106</sup> the parties would have a combined market share of around [30-40]\*% (NA [15-20]\*% and Cumerio [15-20]\*%).<sup>107</sup> In relation to the total production of copper rod, including production which is used internally, the parties' combined market share would be around [20-30]\*% (NA [10-15]\*% and Cumerio [10-15]\*%).<sup>108</sup>
114. Table 2 gives an overview of the market structure in the EEA for copper rod (based on 2006 figures):

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<sup>106</sup> The merchant market refers to the sales and purchases between independent undertakings, excluding in other words captive production, i.e. in-house production for immediate use as an input in a downstream production step.

<sup>107</sup> Form CO, p. 126 and revised Annex 7.1.2. Market shares of NA for copper rod include 60% of the market shares of Deutsche Giessdraht in which NA holds a share of 60% (the other 40% being held by and attributed to Codelco). NA's market share would be slightly higher by around [2-5]\*% if Deutsche Giessdraht were included with 100% of its market share because of NA having joint control over this company (together with Codelco). The full attribution of Deutsche Giessdraht to both NA and Codelco would lead to slightly lower market shares for their competitors.

<sup>108</sup> Form CO, p. 124 and revised Annex 7.1.2.

**Table 2 Market shares copper rod in the EEA (2006)**

<b>Copper Rod EEA 2006</b> (based on volume )	<b>Including captive use</b>		<b>Excluding captive use</b>	
	k t	%	k t	%
NA (incl. NA-DG-Share)		[10-15]*		[15-20]*
Cumerio		[10-15]*		[15-20]*
<b>NA + Cumerio</b>		<b>[20-30]*</b>		<b>[30-40]*</b>
Nexans (incl. L+K Bramsche)		[15-20]*		[10-15]*
CCI/CCP, Italy		[10-15]*		[10-15]*
KGHM, Poland		[5-10]*		[10-15]*
CuNext, Spain		[5-10]*		[5-10]*
MKM, Germany		[5-10]*		[5-10]*
Elektrokoppar, Sweden		[5-10]*		[2-5]*
Codelco (incl. Codelco- DG-share)		[2-5]*		[5-10]*
Prysmian, UK (closed down by end of 2006)		[2-5]*		[2-5]*
Lacambra, Spain		[2-5]*		[<2]*
SIA, Spain		[2-5]*		[2-5]*
Cuprom, Romania		[<2]*		[<2]*
Halcor/Fulgor, Greece		[2-5]*		[<2]*
Luvata, Finland		[<2]*		[<2]*
Italchimici, Italy		[<2]*		[<2]*
Cable Commerce, Bulgaria		[<2]*		[<2]*
<b>Total</b>	[2 500 00-3 000 000]*	100	[2 000 000-2 500 000]*	100.0

Source: the notifying party, Form CO, page 126, revised Annex 7.1.2

115. Although some respondents to the market investigation who purchase copper rod raised concerns that the increased market share of the combined entity might lead to higher prices and less choice<sup>109</sup>, such concerns can be dispelled.
116. Firstly, the new entity will face a number of major competitors active all over the EEA including Nexans (the largest producer of copper rod world-wide, EEA market share [10-15]\*%), CCI/CCP Group ([10-15]\*%), KGHM ([10-15]\*%), CuNext ([5-10]\*%), MKM ([5-10]\*%) as well as several others as shown in the table above.<sup>110</sup> These competitors, most of which are active on more than one level of the copper value chain, would continue to be important alternative sources of supply for copper rod.
117. Secondly, the market investigation has confirmed that most customers source copper rod from two to three different suppliers and consider several other suppliers as an alternative option.<sup>111</sup> It follows that transport costs are not a barrier to multi-sourcing for most copper rod customers in the EEA. The market investigation confirmed that all major copper rod producers supply customers in a large number of Member States and there is no Member State where only the parties are active.<sup>112</sup>
118. Thirdly, the notifying party has stated that the copper rod market in the EEA is characterised by overcapacity. According to the notifying party, suppliers of copper rod have the following capacities (sold to third parties/used in-house/spare):<sup>113</sup>

**Figure 3: Rod production and capacity by competitor (2006)**

[...]\*

119. The market investigation has confirmed that most suppliers of copper rod have spare capacity and could increase sales on the merchant market or expand their overall production in case of a price increase for copper rod.<sup>114</sup> Most respondents to the market investigation indicated that they would be able to increase their capacity in the short term. At least one copper processor (La Farga Lacambra) has already made public its intention to add capacity to produce copper rod within the EEA in the near future.<sup>115</sup>
120. The existence of other strong competitors together with the current situation of overcapacity for copper rod within the EEA as well as the potential expansion of the

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<sup>109</sup> Replies to Art 11 RFI to customers.

<sup>110</sup> Form CO, pp. 126, 130, 131, revised Annex 7.1.2.

<sup>111</sup> Replies to Art 11 RFI to customers.

<sup>112</sup> Form CO, Annex 7.1.1.

<sup>113</sup> Form CO, p. 128, Annex 8.3.1.

<sup>114</sup> Replies to Art 11 RFI to competitors.

<sup>115</sup> According to <http://www.wireworld.com/wirenews/index.php?cat =Projects> News of 1 October 2007 "La Farga Group announced that it is establishing a new company that will produce electrolytic copper rods. The new facility will be called La Farga Rod. It is expected to start business next year and have sales of 350 million euros (US\$495 million) its first year. The company expects to start producing electrolytic copper rods by early next year, and will have an installed capacity of 180,000 metric tons per year. [...]The new plant will be located in the Barcelona area in Spain. The new company will sell its finished products in Spain, as well as southern Europe and North Africa."

current production by competitors will continue to act as a competitive constraint and limit the ability and incentive for the new entity to raise prices after the transaction.<sup>116</sup>

### ***Conclusion***

121. In view of the above it can be concluded that the transaction will not lead to a significant impediment of effective competition on the EEA market for copper rod.

### **7.1.3 Non-coordinated effects on the market for copper shapes**

122. In paragraphs 123 to 134 the characteristics of the market for copper shapes as well as the current market situation are described. Furthermore, the concerns expressed during the market investigation with regard to the acquisition of a dominant position on the EEA-wide merchant market for copper shapes by the new entity, are analysed. In doing so, the Commission has taken into account the competitive pressure exercised by the downstream markets for semi-finished copper products on the market for copper shapes.

#### **7.1.3.1 Characteristics of the market for copper shapes**

123. The main characteristic of the consumption of copper shapes in the EEA is the high proportion of in-house consumption. Most users of copper shapes produce their own copper shapes. As a consequence, in-house consumption of copper shapes is nearly five times higher than merchant sales: whereas the EEA merchant market accounted for 476 000 tons of copper shapes in 2006, another 2 331 000 tons were produced in-house and used as input in the production of semi-finished copper products.<sup>117</sup>
124. The Commission has assessed to what extent captive production may constitute a constraint for the merchant market for copper shapes.
125. Overall, the market investigation has shown that the production and use of copper shapes in the EEA, either in-house or through the merchant market, is driven by dynamics situated both upstream and downstream of the copper shapes production.
126. First, the copper price affects the whole value chain of the copper industry. The market investigation confirmed that the copper price, which is determined on a world-wide market, represents around 95% of the value (in-house consumption) or sales price (purchases on the merchant market) of copper shapes. Less than 5% of the value or sales price of a copper shape constitutes the value added by the producers of copper shapes (the "transformation fee").<sup>118</sup> On the downstream markets for semi-finished copper products, the price of copper has a strong influence on the competitiveness of semi-finished copper products compared with semi-finished products made of other inputs such as aluminium, plastics etc.<sup>119</sup>

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<sup>116</sup> Replies to Art 11 RFI to competitors.

<sup>117</sup> Form CO, pp. 162-164; Replies to Art 11 RFI to competitors; replies to Art 11 RFI to producers of copper shapes; replies to Art 11 RFI to shapes production equipment; replies to Art 11 RFI to producers of shapes.

<sup>118</sup> Form CO, p. 49.

<sup>119</sup> Replies to Art 11 RFI to customers of copper products.

127. Secondly, the competitive dynamics are strongly influenced by the different degrees of vertical integration of the various actors and/or their location in the value chain. As the largest customers of the notifying party on the merchant market for copper shapes have at the same time a significant in-house production of their own, they limit their dependence on the notifying party.<sup>120</sup> Other important in-house producers of copper shapes use their entire copper shapes production to produce semi-finished copper products. On the markets for semi-finished copper products, they compete with the largest customers of copper shapes of the notifying party.<sup>121</sup> As the volume of shapes produced and used in-house in the EEA is more than four times the volume traded on the merchant market, and both shapes used in-house and traded shapes are used as inputs for the same wide variety of semi-finished copper products, an important main focus for the competitive analysis for copper shapes has to be on the downstream markets for semi-finished copper products.
128. In particular, the Commission has assessed firstly the ability and incentive for non-integrated copper shapes users to integrate upstream into the production of copper shapes, secondly the ability and incentive for integrated copper shapes users to increase their production and get into the merchant market, thirdly the possible effects of an increase of the copper shapes' prices on the downstream markets of semi-finished copper products and fourthly the competitive pressure semi-finished copper products suppliers face from semi-finished non-copper product suppliers.

#### **7.1.3.2 Structure of the market for copper shapes**

129. The consumption of copper shapes in the EEA is characterized by significance of the captive consumption, and by the substantial market share of the new entity on the EEA-wide merchant market for copper shapes.

##### ***Merchant market versus in-house consumption***

130. As indicated above, copper shapes are produced for selling on the merchant market as well as for internal processing into downstream semi-finished copper products. On the basis of the figures submitted by the notifying party for 2006 and the information received during the market investigation, it can be concluded that only around 17% of all copper shapes produced in the EEA are sold on the merchant market.<sup>122</sup>
131. As such, the disproportion between merchant sales and in-house consumption shows that the value chain in this industry operates in such a way that copper shapes are widely considered as mere inputs. So far, in-house copper shapes producers do not consider that it would make economic sense to source the copper shapes they need as an input for the production of copper products on the merchant market. Consequently, their strategy focuses on the downstream markets of semi-finished copper products.
132. The Commission has thus assessed to which extent the transaction would significantly affect the actual balance between in-house production and consumption of copper

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<sup>120</sup> Replies to Art 11 RFI to users of shapes.

<sup>121</sup> Replies to Art 11 RFI to producers of shapes.

<sup>122</sup> Form CO, pp. 162-164; replies to Art 11 RFI to competitors; replies to Art 11 RFI to producers of copper shapes; replies to Art 11 RFI to shapes production equipment.

shapes on the one hand, and production for the merchant market of copper shapes on the other hand.

133. As can be seen from the table below, on the merchant market the parties are the main supplier of copper shapes in the EEA. The combined market share of the parties on the merchant market for copper shapes in the EEA is around [50-60]\*%. In a market for copper shapes excluding OF-Cu qualities, the combined market share of the parties in the EEA is around [50-60]\*%.

**Table 4: Overview merchant market shares copper shapes EEA (2006)**

<b>Year 2006</b>	<b>Shapes</b>	<b>Shapes excluding OF shapes</b>
<b>NA</b>	[30-40]*%	[30-40]*%
<b>Cumerio</b>	[15-20]*%	[10-15]*%
<b>NA + Cumerio</b>	<b>[50-60]*%</b>	<b>[50-60]*%</b>
Brixlegg (Austria, A-TEC group)	[20-30]*%	[15-20]*%
Fonderie de Cuivre du Palais (France)	[10-15]*%	[10-15]*%
Luvata (Finland)	[5-10]*%	[5-10]*%
KGHM (Poland)	[2-5]*%	[2-5]*%
Lacambra (Spain)	[2-5]*%	[2-5]*%
<b>Total merchant market</b>	100%	100%

Source: the notifying party, Form CO, page 165, confirmed in the market investigation

134. The market shares show that Montanwerke Brixlegg, which belongs to A-TEC, is the main competitor of the parties on the merchant market for copper shapes in the EEA, with a market share of around [20-30]\*%.

### **7.1.3.3 Competitive constraints on the market for copper shapes**

135. In the paragraphs below the existence of possible competition concerns on the EEA merchant market for copper shapes is assessed. The focus is both on the remaining capacity to produce copper shapes as well as on the competitive pressure exerted on the production of copper shapes by the downstream markets of semi-finished copper products.

136. The Commission has investigated to what extent an increase of prices on the EEA merchant market for copper shapes could be sustainable. The market investigation has shown that such an increase would be undermined either by an increase of the supply on the merchant market by in-house producers of shapes and/or by the integration upstream of copper shapes users that would be in a position to produce their own shapes.

#### **7.1.3.3.1 Capacity to produce copper shapes – in-house producers of copper shapes**

137. Although the notifying party sells parts of its copper shapes production on the merchant market, the notifying party disputes the existence of a merchant market for copper shapes.<sup>123</sup> The notifying party argues that the market for copper shapes includes both captive and non-captive production. Consequently, to determine its real position on the market for copper shapes, the production of shapes for captive use would have to be taken into account. The notifying party underlines that it offers its services as a subcontractor for copper shapes to its largest shapes customers, who themselves also produce substantial quantities of copper shapes for internal processing. If the new entity were to reduce its sales of copper shapes on the merchant market in order to increase prices, these large integrated shapes customers could increase their in-house production or switch to other suppliers. According to the notifying party, copper processors decide at short notice whether they achieve better conditions by outsourcing part of their copper shapes production to third parties such as the notifying party or by producing more copper shapes in-house.

138. In addition the notifying party submits that, after the transaction, the new entity would face strong potential competition from in-house producers of copper shapes. The mere possibility for these producers to sell their copper shapes on the merchant market would in itself exert a competitive pressure on the new entity and deter it from raising prices.

139. The notifying party submitted the following data regarding spare capacity and total production of copper shapes in the EEA for 2006.<sup>124</sup>

#### **Figure 5: Production and capacities of copper shapes (2006)**

[...]\*

140. As can be seen in figure 5, the notifying party indicated that NA has a free capacity of around [15-20]\*% of their total copper shapes production capacity and Cumerio around [40-50]\*%. The data also indicate that other actors have sizeable spare capacity, both actors who are already active on the merchant market and actors who currently do not sell their copper shapes but use them for their own in-house production of semi-finished copper products.

141. The market investigation has confirmed the data submitted by the notifying party regarding the existence of spare capacity for the production of copper shapes.<sup>125</sup>

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<sup>123</sup> Form CO, pp. 162-163.

<sup>124</sup> Form CO, p. 165.

142. A number of copper processors who also produce copper shapes for their own internal use have confirmed in the market investigation that they would react to a potential price increase of copper shapes by entering the merchant market. In this situation they would exert a competitive constraint on the new entity. In addition, they indicated that up to now they have not yet been contacted by potential customers of copper shapes, and that they would prefer to fill their production equipment more fully over the year. These copper processors state, in line with the submission of the notifying party, that there is overcapacity in the EEA for the production of copper shapes.<sup>126</sup>
143. Other copper processors which produce copper shapes for their own internal use have stated that in the hypothesis of a price increase for copper shapes they would prefer to increase their own in-house production of copper shapes production, in order to supply more semi-finished copper products, given the higher profitability of the downstream products.<sup>127</sup>
144. In the market investigation, only a few respondents named exclusively NA, Cumerio and Brixlegg as the only producers of copper shapes. Most of the respondents mentioned, apart from NA, Cumerio and Brixlegg, other producers of copper shapes such as Fonderie de Cuivre du Palais, Luvata, KGHM and Lacambra as their actual and/or potential suppliers<sup>128</sup>. It is logical that respondents to the market investigation, who have so far no commercial relations with some producers of copper shapes or have so far not judged it worthwhile to contact them as potential suppliers, do not immediately point to some of them as potential suppliers. This does however not provide any indications with regard to the ability and willingness of these producers, when requested, to sell copper shapes. Neither does the fact that some suppliers sell almost their entire production of shapes to one single customer.

#### **7.1.3.3.2 Capacity to produce copper shapes – non-integrated users of copper shapes**

145. The Commission has also investigated the competitive pressure the non-integrated users of copper shapes, that is to say customers of copper shapes who do not have their own production facilities for shapes, exert on the merchant market for copper shapes. By integrating upstream, these non-integrated users of copper shapes may become active as producers of copper shapes themselves. These non-integrated users of copper shapes exert competitive pressure on the merchant market due to the possibility that they may start to produce copper shapes only for their own internal use and they may also sell these copper shapes on the merchant market. As a result of this upstream integration, their current demand for copper shapes on the merchant market would decline, which would exert a downward pressure on the price for copper shapes.
146. In order to assess the likelihood of such a scenario, the Commission has investigated whether the possibility for non-integrated users of shapes to integrate upstream would prevent any potential increase of prices on the merchant market. In addition, the underlying investment costs and time frame were investigated.

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<sup>125</sup> Replies to Art 11 RFI to shape producers; replies to Art. 11 RFI to competitors.

<sup>126</sup> Replies to Art 11 RFI to shape producers; replies to Art. 11 RFI to competitors.

<sup>127</sup> Replies to Art 11 RFI to producers of shapes.

<sup>128</sup> Replies to Art 11 RFI to users of shapes.



147. The market investigation resulted in a mixed outcome with regard to the likelihood of such integration upstream.
148. Non-integrated users of copper shapes indicated that the investment costs to start up and install a casting shop for copper shapes, depending amongst others on current production and location facilities, range between 1 million EUR and 25 million EUR (on average around 5 million EUR) . It would take them between 1.5 and 3 years to become fully operational as a producer of copper shapes.<sup>129</sup> Integrated shapes users and shapes producers indicated as well that the investment costs to set up and install a new casting shop for copper shapes (leaving aside OF-copper shapes) are also on average around 5 million EUR, with costs ranging from 0.5 million EUR up to 25 million EUR. It would take between a few months up to 5 years<sup>130</sup>. Processors of shapes consider that the current profitability of copper shapes sales on the merchant market may not be sufficient to provide an incentive for such investments, which are deemed to be considerable and thus not likely to occur<sup>131</sup>.
149. In general a casting shop for copper shapes is not a very high-tech production facility and can be operated for a long period without major investments. Should the prices of copper shapes increase after the transaction to a point that non-integrated copper shapes processors would have difficulties in competing with integrated producers of semi-finished copper products, it would be practically and economically feasible for them to integrate upstream and to produce themselves the inputs they need, that is to say copper shapes, in order to protect their core activities.<sup>132</sup>

#### **7.1.3.3 Conclusion regarding capacity for the production of copper shapes**

150. It follows from the analysis in paragraphs 137 to 149 that the availability of a considerable amount of spare capacity for the production of shapes will continue to exert a competitive constraint on the new entity and prevent it from increasing prices of copper shapes.
151. In addition, should prices on the merchant market for copper shapes increase, there is a possibility that non-integrated users of copper shapes would integrate upstream and thus become active as producers of copper shapes.
152. Regardless of whether they would only use these copper shapes for in-house production of downstream semi-finished copper products or rather sell additional copper shapes on the merchant market, in both instances this would exert a competitive constraint on the new entity not to increase post-transaction the prices for copper shapes sold on the merchant market.

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<sup>129</sup> Replies to Art 11 RFI to users of shapes; Replies to Art 11 RFI to non-integrated copper shapes customers.

<sup>130</sup> Replies to Art 11 RFI to producers of shapes; Replies to Art 11 RFI to users of shapes; Replies to Art 11 RFI to producers of copper shapes.

<sup>131</sup> Replies to Art 11 RFI to producers of shapes.

<sup>132</sup> Also replies to Art 11 RFI to users of shapes; Replies to Art 11 RFI to non-integrated copper shapes customers; Submission of the notifying party of 12 October 2007 in reply to Art 6(1)(c) decision.

#### **7.1.3.4 Competitive pressure from the downstream markets of semi-finished copper products**

153. The market investigation shows that the strategy most widely adopted by suppliers of semi-finished copper products is to be vertically integrated, that is to say to produce their own shapes. This strategy may help to explain that; overall, the size of the merchant market for copper shapes amounts to less than 20% of the total consumption of copper shapes in the EEA<sup>133</sup>. The importance of this vertical integration contributes to the competitive pressure which the downstream markets for semi-finished copper products exert on the upstream market for copper shapes.
154. The competitive pressure from the market for semi-finished copper products is analysed in paragraphs 155 to 170 in three steps: firstly, the competition between non-integrated and integrated producers of semi-finished copper products; secondly, the substitution pressure exerted by materials other than copper at the level of the semi-finished copper products, in all applications except those in the electric and electronic industries; and thirdly, the worldwide rivalry to supply semi-finished copper products to the customers thereof, in particular in the electric and electronic industries.

##### **7.1.3.4.1 Competition between integrated and non-integrated producers of semi-finished copper products**

155. Some respondents to the market investigation stated that confronted with a price increase of copper shapes they would nevertheless rather concentrate on the downstream markets, where more value added is created, than starting to sell on the merchant market<sup>134</sup>. These respondents state that most added value is created downstream, on the transformation of copper shapes into semi-finished copper products which they sell on the market.
156. Most producers of shapes, whether integrated or not, confirmed that competition in the downstream markets is strong.<sup>135</sup> This is also consistent with the Commission's findings that gross margins in the production of copper products using shapes as an input generally appear to be rather small.<sup>136</sup>
157. The Commission's market investigation confirmed that producers of semi-finished copper products who would source shapes from the new entity would be in direct competition on the downstream markets, not only with the new entity (including NA's downstream affiliates Prymetall and Schwermetall) but also with competitors that have their own internal production of shapes such as Luvata, Halcor and Silmet.
158. The Commission also approached the customers of those producers of semi-finished copper products who source shapes from the new entity. Most of the respondents had no concerns about the transaction and confirmed the presence of alternative suppliers other than the new entity and its merchant market customers.

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<sup>133</sup> Replies to Art 11 RFI – shape production equipment + downstream copper products.

<sup>134</sup> Reply to Art 11 RFI – shapes production equipment + downstream copper products; email of 8 November 2007.

<sup>135</sup> Reply to Art 11 RFI - shapes production equipment + downstream copper products.

<sup>136</sup> Reply to Art11 RFI - shapes production equipment + downstream copper products.

159. Furthermore, although the product markets for semi-finished copper products appear fragmented by sector of application, the demand side of these product markets has important actors, such as the largest international engineering groups. There are indications that these groups enjoy a certain amount of buyer power vis-à-vis their suppliers. These actors did not express any concerns about the transaction, in view of the number of actual and alternative suppliers they have.<sup>137</sup>
160. On the basis of the market investigation, it has to be concluded that the competition on the downstream markets for semi-finished copper products constrains the new entity. The extent to which the new entity is constrained is best demonstrated by considering their share in the total copper shapes production or their share in the total copper shapes capacity in the EEA, that is to say by taking the in-house copper shapes production and production capacity fully into account in the competitive analysis.

#### 7.1.3.4.2 Competition from non-copper semi-finished products

161. The conclusion in paragraph 160 is further reinforced by the substitution pressure which copper is subject to. This follows from the high copper price which results from the high economic growth in the world, and from the very strong industrial growth in countries such as China.
162. The notifying party has submitted that should copper shapes users, either integrated or not, increase the prices of semi-finished copper products, they would face significant competitive pressure from suppliers of non-copper semi-finished products.
163. The market investigation has confirmed that producers of semi-finished copper products increasingly compete with non-copper semi-finished producers. The market investigation has confirmed that producers of semi-finished copper products consider producers of non-copper semi-finished products as their direct competitors. This varies depending on the specific characteristics of the products concerned.
164. Having come to the conclusion that only a proportion of semi-finished copper products could be replaced by non-copper semi-finished products, the Commission has tried to evaluate this proportion. Because of the fragmentation of the demand for semi-finished copper products into applications in separate sectors, no overall statistic is publicly available. The notifying party submitted that "until today, already 30% of the semi-finished copper products sold actually have been replaced by non-copper semi-finished products"<sup>138</sup>. The market investigation shows that the proportion varies from one company to another. While one respondent<sup>139</sup> has indicated that 70% of its semi-finished copper products compete as an input with non-copper inputs, another respondent<sup>140</sup> has indicated that there is a clear difference between plumbing semi-

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<sup>137</sup> Reply to Art 11 RFI – customers of copper products. See also *Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings*, paragraph 65: "It is more likely that large and sophisticated customers will possess this kind of countervailing buyer power than smaller firms in a fragmented industry."

<sup>138</sup> Replies to Art 11 RFI – shapes production equipment + downstream copper products.

<sup>139</sup> Replies to Art 11 RFI – shapes production equipment + downstream copper products.

<sup>140</sup> Replies to Art 11 RFI – shapes production equipment + downstream copper products.

finished products (for which substitution may reach 100%), and industrial applications (for which competitive pressure of non-copper inputs may be exerted on approximately 30% of the products). Another respondent<sup>141</sup> stressed that while 20% of its production of rolled products was facing competition from non-copper semi finished products, this proportion amounted to up to 60-70% for tubes<sup>142</sup>.

165. The respondents to the market investigation expect the substitution pressure to further increase<sup>143</sup>. Such evolution is driven by economic factors, that is to say the high level of the copper price, and, to a lesser extent, by technical factors. As an example of the latter, in the telecom sector optical fibre offers an alternative to semi-finished copper products<sup>144</sup>.
166. The substitution pressure affecting the markets for semi-finished copper products would make it difficult for any price increase which the parties may try to impose on their customers to be sustainable. The applications for the electric and electronic sectors, however, are an exception to this. Not only are there many rivals with large amounts of capacity, there is also pressure from the demand side not to price copper out of the market by a too high transformation fee.
167. It is concluded that the strong substitution pressure which most semi-finished copper products are subject to<sup>145</sup> reinforces the point made in paragraph 160, namely that the competition on the downstream markets for semi-finished copper products constrains the new entity.

#### **7.1.3.4.3 Worldwide competition to supply semi-finished copper products to the electric and electronic industry**

168. The conclusion that the competition on the downstream markets for semi-finished copper products constrains the new entity on the upstream copper shapes market is additionally reinforced by the worldwide sourcing practices of the electric and electronic appliance makers and their suppliers.
169. It was indicated in paragraphs 161 to 167 that the applications of semi-finished copper products are either less or not at all subject to substitution pressure from other materials. The electric and electronic industries have a worldwide sourcing perspective. In the market investigation the largest engineering groups explained that they source their copper products globally, which means that they approach all suppliers inside as well as outside the EEA.<sup>146</sup> It also results from the market investigation that transport costs are estimated to account for only around 1% of the total cost of these products.<sup>147</sup> For one of the semi-finished copper products which are

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<sup>141</sup> Replies to Art 11 RFI – shapes production equipment + downstream copper products.

<sup>142</sup> Replies to Art 11 RFI – shapes production equipment + downstream copper products.

<sup>143</sup> Replies to Art 11 RFI – shapes production equipment + downstream copper products.

<sup>144</sup> CRU Monitor Copper Studies May 2007, p 5: "In the telecom market fibre is not only a cheaper material, but it is superior technologically." "Telecom cable has seen significant losses. In 2006 there was a 50 000 tons shift away from copper, or a 7% net substitution effect."

<sup>145</sup> Exception made for the electric and electronic sectors' demand for semi-finished copper products.

<sup>146</sup> Reply to Art 11 RFI to customers of copper products.

<sup>147</sup> Reply to Art 11 RFI to customers of copper products.

inputs for the electronics industry, it was stated that: *"In 2006 the world's most important markets for electro deposited copper foil were China (128 Kt), South Korea (48 Kt), Taiwan (37 Kt) and Japan (36 Kt). Demand is becoming ever more concentrated in Asia with the region now accounting for 87% of world demand, up from 70% in 2000. We see no factor emerging to prevent this, and indeed consider it more likely the trend will accelerate further in the new few years."*<sup>148</sup> Asia has large existing capacities and is building additional new ones to produce copper shapes and semi-finished copper products, making it improbable that the present transaction could negatively affect competition.

170. Considering the worldwide demand side of semi-finished copper products and considering that it is concentrated in Asia, it is highly unlikely that the present transaction, which directly affects the merchant market for copper shapes within the EEA, could have a detrimental effect on competition in the EEA.

#### **7.1.3.4.4. Conclusion regarding competitive pressure exercised by the downstream markets**

171. It follows that the downstream markets for semi-finished copper products exercise competitive pressure on the upstream market for copper shapes. This is the case first because there are more sellers (participants in the merchant market) on the downstream markets for semi-finished copper products than on the upstream market for shapes; secondly because the integrated sellers have excess capacity, as does the new entity; thirdly because the sellers on the downstream markets for semi-finished copper products face competition from non-copper products; and fourthly because they face strong competition from rivals outside Europe for the semi-finished copper products that are used for electric and electronic applications.

#### **7.1.3.5 Overall conclusion on non-coordinated effects on the market for copper shapes**

172. On the basis of the characteristics of the market for copper shapes, its structure, the constraints exercised by the overcapacity and the competitive pressure exercised by the downstream markets of semi-finished copper products, it is concluded that the transaction will not significantly impede effective competition on the market for copper shapes in the EEA.

## **7.2 Vertical effects**

173. The Commission has assessed whether the new entity will have the ability and incentive to foreclose firstly the input of copper cathodes to producers of copper shapes and copper rod and secondly the input of copper shapes to producers of semi-finished copper products.

### **7.2.1 From copper cathodes to shapes and rod**

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<sup>148</sup> CRU International Limited Consumption and market trends – Flat Rolled Products.

174. In the market investigation some respondents claimed that post-transaction access to copper cathodes might become more difficult for producers of copper rod and copper shapes in the EEA.
175. However, the market investigation confirmed that the new entity will not have the ability to foreclose the input of copper cathodes to producers of copper rod and copper shapes. Whereas on the world-wide market for copper cathodes the combined market share of the new entity would be too limited (around [5-10]\* to [5-10]\*% both for A-grade and off grade copper cathodes) to allow them to foreclose<sup>149</sup>. In view of this low market share, the new entity would not have the ability to apply a foreclosure strategy towards downstream markets that use copper cathodes as an input.
176. It follows that the transaction will not significantly impede effective competition on the markets downstream of copper cathodes.

### 7.2.2 From copper shapes to semi-finished copper products

177. During the market investigation it has been submitted to the Commission [by some customers that the new entity would have the ability and the incentive to follow a foreclosure strategy on the markets for semi-finished copper products on the basis of its position on the merchant market for copper shapes. Some customers expressed concerns, referring to the market shares of the new entity on the merchant market for copper shapes in the EEA. These concerns pointed to a possible discrimination in favour of the new entity's subsidiaries (Schwermetall and Prymetall) which are present on the downstream markets for semi-finished copper products.
178. As stipulated in the Non-Horizontal Merger Guidelines, non-horizontal mergers "*pose no threat to effective competition unless the merged entity has a significant degree of market power (which does not necessarily amount to dominance) in at least one of the markets concerned.*"<sup>150</sup> It follows that the possibility of the merger leading to a significant impediment to effective competition through vertical effects is closely linked to the possibility of the new entity exerting a significant degree of market power on the overall production of copper shapes in Europe. The assessment of the effect of the horizontal overlap between the new entity's shapes production has already ruled out such a possibility.
179. It follows from the assessment of the copper shapes market that the new entity would not be able to enter into any input foreclosure strategy on the downstream markets for semi-finished copper products. Nevertheless, should such a strategy be implemented, it would have no impact on the welfare of end consumers.<sup>151</sup>

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<sup>149</sup> Replies to Art 11 RFI to producers of copper cathodes.

<sup>150</sup> *Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings*, paragraph 23 (publication in OJ pending, see <http://ec.europa.eu/comm/competition/mergers/legislation/nonhorizontalguidelines.pdf>). See also paragraphs 31 to 39 of the Guidelines regarding the ability to foreclose in the context of input foreclosure.

<sup>151</sup> See *Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings*, paragraph 16.

180. As demonstrated, the position of the new entity on the EEA merchant market for copper shapes will remain under the competitive pressure of both in-house producers of copper shapes and purchasers of copper shapes that may integrate upstream. In view of this, the new entity will not have the ability to undertake any successful strategy of input foreclosure on the downstream markets for semi-finished copper products.
181. Furthermore, even if the new entity decided to implement such a strategy, and some purchasers of copper shapes faced, as a result, transitional difficulties in sourcing the copper shapes they need as an input, the markets for semi-finished copper products are, as demonstrated above, competitive and at least EEA-wide. Consequently, any concern of a reduction of consumer welfare can be dispelled.
182. As a consequence, the transaction will not significantly impede effective competition on the markets for semi-finished copper products.

### **7.3 Coordinated effects**

183. The Commission has further investigated whether the fact that A-TEC, the main competitor of the parties on the EEA market for copper shapes, which is also an important minority shareholder in both NA and Cumerio, could give rise to coordinated effects on this market. As mentioned in paragraph 6, A-TEC had originally acquired a share of 15.13% in NA and a share of 25.22% in Cumerio, but as a consequence of an increase of the share capital of NA on 9 November 2007, the shareholding of A-TEC has decreased to 13.75%. The Commission has assessed whether A-TEC's minority shareholding in Cumerio might increase the incentives to reach a common understanding to coordinate their business strategies on the market for copper shapes.
184. As shown above in Table 4, on the basis of the figures provided by the notifying party the new entity and A-TEC's subsidiary Brixlegg would have a combined market share of around [70-80]\*% on the EEA-wide merchant market for copper shapes. When excluding OF-Cu shapes, the new entity and Brixlegg would have a combined market share of around [70-80]\*%. The other suppliers on the EEA-wide merchant market for copper shapes have market shares between [2-5]\*% and [10-15]\*% ([2-5]\*% and [10-15]\*% for copper shapes excluding OF-Cu shapes).
185. The Commission currently has no indications that A-TEC and the new entity would have the intention to cooperate after the transaction, nor that they would coordinate their market behaviour on the market for copper shapes. However, A-TEC's minority shareholdings might slightly increase the economic incentive to reach a common understanding to coordinate their business strategies on the market for copper shapes. The existence of the minority shareholding would also entail a minimum flow of information about the activities of the new entity to A-TEC which might facilitate reaching an understanding on the terms of coordination.

186. For coordination to be sustainable, three conditions as set out in the Airtours judgment and incorporated in the Horizontal Merger Guidelines would have to be fulfilled.<sup>152</sup> First, the coordinating firms must be able to monitor to a sufficient degree whether the terms of coordination are being adhered to. Second, discipline requires that there is some form of credible deterrent mechanism that can be activated if deviation is detected. Finally, the reactions of outsiders, such as current and future competitors not participating in the coordination, as well as customers, would not be able to jeopardise the results expected from the coordination. In paragraphs 187 to 191, it will be analysed whether these three cumulative conditions necessary for coordination are met.

### ***Monitoring of deviations***

187. First, only the credible threat of timely and sufficient retaliation keeps companies away from deviating from terms of coordination. This requires in general that markets are sufficiently transparent to allow coordinating companies to monitor to a sufficient degree whether companies are deviating.<sup>153</sup> The result of the market investigation with regard to the transparency of price conditions in this market is mixed: one half of the respondents considered the price conditions to be transparent, stressing the importance of the LME price in the total price; the other half of the respondents considered the price conditions not to be transparent, on the grounds that the transformation fee is negotiated individually between the customer and the supplier.<sup>154</sup> With regard to the amount of production capacity for copper shapes the market investigation has shown that competitors are aware of available capacity out of public source, but would however not have reliable information about the amount of capacity available on the merchant market for copper shapes. While it is therefore not obvious for the new entity to be able to detect possible deviations by A-TEC, A-TEC may on the contrary be able to do so. Although at the level of formal shareholder rights, the rights of A-TEC as a minority shareholder do not extend to the commercial conditions of individual customers, several respondents to the market investigation have expressed concerns that A-TEC may, through its shareholding, obtain access to information on the business strategy of NA. Should the new entity and A-TEC try to coordinate their competitive behaviour, it can not be fully excluded that A-TEC's position as a minority shareholder might provide A-TEC with access to information on NA which it would not have if such a shareholder relationship did not exist. It can therefore not be fully excluded that A-TEC would be able to monitor deviations by the new entity of a potential understanding.

### ***Deterrent mechanisms***

188. Secondly, coordination is not sustainable unless the consequences of deviation are sufficiently severe to convince coordinating companies that it is in their best interest to adhere to the terms of the coordination.<sup>155</sup> In case of detected deviations of a

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<sup>152</sup> *Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings*, OJ C 31 of 5 February 2004, paragraph 41.

<sup>153</sup> *Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings*, paragraph 49.

<sup>154</sup> Replies to Art 11 RFI to competitors; replies to Art 11 RFI to customers.

<sup>155</sup> *Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings*, paragraph 52.



potential coordination by the new entity or A-TEC, their ability and means of retaliation would seem to be quite different in view of their different capacity and market position. The fact that the new entity will have more spare capacity and a market share almost three times as high as A-TEC is likely to give the new entity a higher ability to retaliate than A-TEC. At the same time, the minority shareholding might provide A-TEC with the possibility to take advantage of its shareholding and enabling it to retaliate, by either using information it would not have as a simple competitor or by opposing the new entity's business policy as a major shareholder. In view of this, it cannot be excluded that the A-TEC and the new entity might consider each other as able to react to deviations of a potential agreement.

### ***Reactions of outsiders***

189. Thirdly, for coordination to be successful, the actions of non-coordinating companies and potential competitors, as well as customers, should not be able to jeopardise the outcome expected from coordination. If coordination were aimed at reducing overall capacity for copper shapes in the market, this would only hurt consumers if non-coordinating companies are unable or have no incentive to respond to this decrease by increasing their own capacity sufficiently to prevent a net decrease in capacity, or at least to render the coordinated capacity decrease unprofitable.<sup>156</sup>
190. As shown by the assessment of unilateral effects on the market for copper shapes, the new entity will not be in a position to raise prices post-transaction due to the characteristics of the copper shapes market and the competitive constraints exerted by customers on the downstream markets for copper products. This situation would not significantly change with regard to attempts of coordination by the new entity and A-TEC.
191. If the new entity and A-TEC try to reduce capacity for copper shapes, other actors would easily be able to react by increasing production or shifting capacity to the merchant market.<sup>157</sup> Given that the merchant market for copper shapes where a potential coordination would take place accounts for less than one-fifth of the total copper shapes production, the competitive constraint by the existing capacity which is currently used in-house would be substantial. Attempts by the new entity and A-TEC to raise prices could successfully be undermined by competitors. In addition, a reduction of capacity or a price increase would raise the incentive for users of copper shapes to enter copper shapes production.<sup>158</sup> As discussed, copper shapes producers which are not yet active on the merchant market, as well as customers who could integrate upstream into the production of copper shapes would exert an additional competitive constraint. The ability of actual and potential competitors to timely counteract any attempts of coordination between the new entity reduces the ability and incentives for NA and A-TEC to try to coordinate their commercial behaviour. Finally, even if the new entity together with A-TEC managed to implement a coordination strategy which would not be fully jeopardised by competitors, the competitive conditions on the downstream markets for copper products would prevent

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<sup>156</sup> *Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings*, paragraph 56.

<sup>157</sup> See Section 7.1.3.3.1

<sup>158</sup> See Section 7.1.3.3.2

these attempts from having any anti-competitive effects on the downstream markets by raising prices for copper products to consumers.

***Conclusion on coordinated effects***

192. As a consequence, it can be concluded that the proposed transaction will not lead to coordinated effects and effective competition will not be significantly impeded on the EEA-wide market for copper shapes.

**VIII. CONCLUSION**

193. The notified operation whereby Norddeutsche Affinerie AG acquires sole control of Cumerio S.A. within the meaning of Article 3(1)(b) of the EC Merger Regulation has to be declared compatible with the common market and the functioning of the EEA Agreement in accordance with Art 8(1) of the EC Merger Regulation.

HAS ADOPTED THIS DECISION:

*Article 1*

The notified operation whereby Norddeutsche Affinerie AG acquires sole control of Cumerio S.A. within the meaning of Article 3(1)(b) of the EC Merger Regulation is declared compatible with the common market and the functioning of the EEA Agreement.

*Article 2*

This decision is addressed to:

**Norddeutsche Affinerie AG "NA"**  
Hovestraße 50  
20539 Hamburg  
Germany

Done at Brussels, 23-01-2008

For the Commission  
(signed)  
Neelie KROES  
Member of the Commission



**EUROPEAN COMMISSION**

Competition DG

Policy and Strategic Support  
**Antitrust Policy and Scrutiny**

## **OPINION**

**of the ADVISORY COMMITTEE on MERGERS**

**given at its meeting of 09 January 2008**

**regarding a draft decision relating to**

**CASE COMP/M.4781 – NORDDEUTSCHE AFFINERIE/CUMERIO**

**Rapporteur : CZECH REPUBLIC**

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1. The Advisory Committee agrees with the Commission that the notified operation constitutes a concentration within the meaning of the Council Regulation No 139/2004.
2. The Advisory Committee agrees with the Commission's definitions of the relevant markets of :
  - a) the world-wide market for copper scrap.
  - b) the world-wide market for copper cathodes.
  - c) the EEA-wide market for copper rod.
  - d) the EEA-wide market for copper shapes, whereby a further possible sub-segmentation into oxygen-free copper shapes and other copper shapes can be left open in the present case.
3. The Advisory Committee agrees with the Commission that the definitions of the relevant product markets for the various semi-finished copper products and their geographic scopes can be left open in the present case.
4. The Advisory Committee agrees with the Commission that the proposed concentration does not lead to non-coordinated effects in the world-wide market for copper scrap, as a result of which effective competition would be significantly impeded in the Common Market or in a substantial part of it.

5. The Advisory Committee agrees with the Commission that the proposed concentration does not lead to non-coordinated effects in the EEA-wide market for copper rod, as a result of which effective competition would be significantly impeded in the Common Market or in a substantial part of it.
6. The Advisory Committee agrees with the Commission that the proposed concentration does not lead to non-coordinated effects in the EEA-wide market for copper shapes, as a result of which effective competition would be significantly impeded in the Common Market or in a substantial part of it.

One Member State disagrees.

7. The Advisory Committee agrees with the Commission that the proposed concentration does not lead to vertical effects on the markets downstream of copper cathodes, as a result of which effective competition would be significantly impeded in the Common Market or in a substantial part of it.
8. The Advisory Committee agrees with the Commission that the proposed concentration does not lead to vertical effects on the markets downstream of copper shapes, as a result of which effective competition would be significantly impeded in the Common Market or in a substantial part of it.

One Member State disagrees.

9. The Advisory Committee agrees with the Commission that the proposed concentration does not lead to coordinated effects on the EEA-wide market for copper shapes, as a result of which effective competition would be significantly impeded in the Common Market or in a substantial part of it.

One Member State disagrees. Another Member State abstains.

10. The Advisory Committee agrees with the Commission that the proposed concentration should be declared compatible with the Common Market and with the EEA Agreement.

One Member State disagrees. Another Member State abstains.

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<u>BELGIË/BELGIOUE</u>	<u>BULGARIA</u>	<u>ČESKÁ REPUBLIKA</u>	<u>DANMARK</u>	<u>DEUTSCHLAND</u>
		L. BRINEK		C. ZAPFE K. WELLIGE M. SCHULZE (observer)
<u>EESTI</u>	<u>ÉIRE-IRELAND</u>	<u>ELLADA</u>	<u>ESPAÑA</u>	<u>FRANCE</u>
				O. GUILLEMOT
<u>ITALIA</u>	<u>KYPROS/KIBRIS</u>	<u>LATVIJA</u>	<u>LIETUVA</u>	<u>LUXEMBOURG</u>
Luca ARNAUDO				
<u>MAGYARORSZÁG</u>	<u>MALTA</u>	<u>NEDERLAND</u>	<u>ÖSTERREICH</u>	<u>POLSKA</u>
		A. SIBLESZ A. DORENBOS	G. PADLEWSKI	
<u>PORTUGAL</u>	<u>ROMANIA</u>	<u>SLOVENIJA</u>	<u>SLOVENSKO</u>	<u>SUOMI-FINLAND</u>
Alípio CODINHA				Hanna KAIPONEN
<u>SVERIGE</u>	<u>UNITED KINGDOM</u>			
Maria ULFVENSJÓ BALTATZIS	Tom HEIDEMAN Ingrid NITSCHÉ			



EUROPEAN COMMISSION

The Hearing Officer

**DRAFT FINAL REPORT OF THE HEARING OFFICER**  
**IN CASE COMP/M.4781 – Norddeutsche Affinerie/Cumerio**

**(pursuant to Articles 15 and 16 of Commission Decision (2001/462/EC, ECSC)  
of 23 May 2001 on the terms of reference of Hearing Officers  
in certain competition proceedings – OJ L 162, 19.6.2001, p. 21)**

On 30 July 2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation No 139/2004 ("EC Merger Regulation") by which the undertaking Norddeutsche Affinerie AG ("NA", Germany) would acquire within the meaning of Article 3(1)(b) of the EC Merger Regulation control of the whole of the undertaking Cumerio S.A. ("Cumerio", Belgium) by way of a public bid announced on 27 June 2007.

After a preliminary examination of the notification, the Commission concluded that the proposed transaction consists of the acquisition of sole control over Cumerio by NA via a public takeover offer for all outstanding shares, options and warrants and therefore constituted a concentration within the meaning of Article 3(1)(b) of the EC Merger Regulation.

In order for the Commission to be able to dismiss any possible serious doubts in Phase I, the parties submitted a remedy proposal on 28 August 2007.

The Commission concluded that, after examination of the notification and market testing of the remedy proposal and based on the information available in Phase I, its doubts could not be dismissed and decided on 18 September 2007 to initiate proceedings pursuant to Article 6(1)(c) of the EC Merger Regulation.

NA did not request to be given access to key documents in the file in accordance with the Best Practices rules for merger cases.

Following an in-depth market investigation, the Commission services concluded that the proposed transaction would not significantly impede effective competition in the common market or a substantial part thereof and was therefore compatible with the common market and the EEA Agreement. Accordingly, no Statement of Objections was sent to the notifying party.

No queries or submissions have been made to me by the parties or any third party. The case does not call for any particular comments as regards the right to be heard.

Brussels, 8 January 2008

Karen WILLIAMS