

***Case No COMP/M.5406 -
IPIC / MAN
FERROSTAAL AG***

Only the English text is available and authentic.

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

ARTICLE 6(1)b DECISION
IN CONJUNCTION WITH ARTICLE 6(2)
NON-OPPOSITION
Date: 13/03/2009

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.03.2009
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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION IN
CONJUNCTION WITH
ARTICLE 6(2)

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.5406 - IPIC/ MAN Ferrostaal AG
Notification of 23 January 2009 pursuant to Article 4 of Council
Regulation No 139/2004¹**

1. On 23 January 2009 the Commission received a notification of a proposed transaction pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the "EC Merger Regulation") by which the undertaking International Petroleum Investment Company ("IPIC", United Arab Emirates) acquires within the meaning of Article 3(1)(b) of the EC Merger Regulation sole control of the whole of the undertaking MAN Ferrostaal AG ("MAN Ferrostaal", Germany) by way of purchase of shares.

I. THE PARTIES

2. **IPIC** is an investment company with its registered office in Abu Dhabi, United Arab Emirates. IPIC's principle activity is to invest on a long-term basis in energy and energy-related companies outside of the United Arab Emirates concentrating on petroleum refining and related upstream and downstream distribution and service network. The activities of IPIC's investment companies focus mainly on the areas of oil processing, petrochemicals, pipelines, power stations and energy-intensive industries. While most of IPIC's investments are non-controlling minority shareholdings, IPIC jointly controls, *inter alia*, Borealis AG ("Borealis", Austria) which operates, via its wholly owned subsidiary **AMI** Agrolinz Melamine International GmbH ("AMI", Austria), petrochemical plants for the production of, amongst others, melamine.² AMI is one of

¹ OJ L 24, 29.1.2004 p. 1.

² Borealis is jointly controlled by IPIC (64%) and OMV AG ("OMV", Austria – 36 %) in which IPIC holds a minority shareholding of 19.6 %.

the leading melamine producers world-wide. In addition, IPIC contemplates to open a new melamine production facility in Chemaweyaah (Abu Dhabi), which will, however, according to the notifying party not be operative prior to 2014.

3. **MAN Ferrostaal** is a German *Aktiengesellschaft* and a (directly and indirectly) wholly owned subsidiary of MAN AG, a public company listed at the Frankfurt stock exchange. MAN Ferrostaal's business is divided into two divisions, namely the Projects Division and the Services Division. In the Project Division, MAN Ferrostaal builds turnkey industrial plants as a general contractor. It serves, amongst others, the petrochemical industry, which converts energy containing raw materials into high-quality chemical intermediate and end products. In addition, MAN Ferrostaal offers related services, such as project development, project financing and project management. In its Services Division, MAN Ferrostaal acts as a sales and service partner to Original Equipment Manufacturers ("OEMs"), particularly in the automotive industry.

II. THE OPERATION

4. IPIC via its solely controlled subsidiary, IPIC Ferrostaal Holding GmbH & Co. KG, Germany (the "Investment Vehicle") intends to acquire 70 % interest in MAN Ferrostaal from its current shareholders, *i.e.*, MAN AG and MAN Ferrostaal *Beteiligungs-GmbH*, Germany, a company wholly owned by MAN AG. [...]. After the proposed transaction, IPIC will exercise sole control over MAN Ferrostaal. Therefore, the proposed transaction constitutes a concentration according to Article 3(1)(b) EC Merger Regulation.

III. COMMUNITY DIMENSION

5. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion³ (in 2007, the combined turnover of all the undertakings concerned is over EUR [...]). Both of them have a Community-wide turnover in excess of EUR 250 million (IPIC: EUR [...], MAN Ferrostaal: EUR 387 million) and only MAN Ferrostaal achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State, namely Germany. The notified operation therefore has a Community dimension pursuant to Article 1(2) of the EC Merger Regulation.

IV. COMPETITIVE ASSESSMENT

6. While the parties' activities do not overlap horizontally, the transaction leads to a potential vertical link concerning the market for the production of melamine and the melamine production technology market because of a minority shareholding of MAN Ferrostaal.
7. **Eurotecnica** Melamine S.A. ("Eurotecnica", Luxembourg), belonging to Eurotecnica Group SA, is a process engineering contractor providing engineering services in the fields of chemical, hydrocarbon refining and effluent treatment plants. In particular, it owns and licenses to third parties a technology for the production of melamine that is

³ Turnover calculated in accordance with Article 5(1) of the EC Merger Regulation and the Commission Notice on the calculation of turnover (OJ C 66, 2.3.1998, p. 25).

based on a high-pressure non-catalytic process.⁴ Eurotecnica's current shareholders are CL Group [...] (60 %), MAN Ferrostaal (30 %) and Helm AG (10 %) which is a trading company for chemical products. Eurotecnica Contractors and Engineers SpA ("ETCE", Italy) is the operative part of the Eurotecnica company.⁵

8. **Methanol Holding Trinidad Limited** ("MHTL", Trinidad and Tobago) is a project company responsible for the construction of a large melamine site in Trinidad and Tobago (production capacity of 30,000 tons *per annum* and train) using Eurotecnica's technology and engineering know-how. MAN Ferrostaal is acting for MHTL as the general contractor for this project. The melamine plant, which is scheduled to go on-line in the last quarter of 2009, will be operated by MHTL. MHTL's main shareholder is the CL Group that holds 56.53 % of MHTL's share capital. MAN Ferrostaal (19.5 %) and Helm (4.6 %) are (indirect) non-controlling⁶ minority shareholders of MHTL.

Relevant Product Markets

Melamine

9. Melamine is a specialty chemical, which is used in a wide range of applications such as surface applications (automotive industry or paper impregnation for the production of laminates), adhesives and glues (particularly in the wood industry for the production of chipboards and fibreboards) and as flame retardant.
10. Melamine, which is mostly processed into melamine-based resins, has in general the following characteristics: (i) high stability, enabling its use in products with high resistance to heat and to physical and chemical degradation, (ii) high bonding potential, enabling usage for surface applications with properties including hardness, scratch and moisture resistance and (iii) high nitrogen content, enabling its use as a flame retardant⁷.
11. The parties submit that melamine is sold as a commodity and is in no way adapted or adaptable to a specific client's needs. Customers may vary the recipe of the resins which incorporate melamine to obtain the required characteristics. According to the parties, there is no need to differentiate between high-grade melamine, which has a purity level of 99.8 % or higher, and low-grade melamine which has a purity comprised between 99.6 % and 99.7 %. The parties submit that melamine constitutes one single relevant product market.
12. The market investigation carried out in two previous mergers procedures⁸ indicated that a potential distinction between high purity and low purity melamine might be necessary

⁴ The melamine technology licensing accounts for approximately [...] % of Eurotecnica's 2007 revenues.

⁵ CL Group's acquisition of a majority stake in Eurotecnica's capital was notified to the German NCA ("Bundeskartellamt") and cleared on 14.11.2007 (B 5 – 299/07).

⁶ Case COMP/M.4178 – MAN Ferrostaal/Eurotecnica Group, recital 21.

⁷ See Case COMP/M.3923 – AMI/Eurotecnica.

⁸ Cases COMP/M.3923, AMI/Eurotecnica and COMP/M.4178, MAN Ferrostaal/Eurotecnica Group.

as the demand-side substitutability between different grades of melamine seems to be low,⁹ but the product market definition could be left open in the end.

⁹ See in detail Case COMP/M.3923 – AMI/Eurotecnica, recital 12.

Demand Side Substitutability

13. The market investigation has confirmed that customers distinguish between high-grade or A-grade melamine and low-grade or B-grade melamine. The difference between high-grade and low-grade is not only due to the higher purity of high-grade (99.8 % melamine content or more) but other product characteristics are also important. In particular, A-grade melamine is characterized by a clear and quick solubility into formaldehyde and a greater stability in resin.¹⁰ Only high-grade melamine is almost colourless.¹¹ Different grades are used for both processing and product performance reasons. Higher grade materials allow a more consistent production than lower grade material and the finished product resins have better properties, e.g. clarity, colour and shelf life.¹²
14. The notifying party admits that a distinction between melamine within the specification of the melamine producers ("in-spec" melamine) and outside the specification ("off-spec" melamine) can be made.¹³ According to them, the price for off-spec melamine is reduced by EUR [...] compared to in-spec melamine. This perception is probably due to the fact that the notifying party and its competitors in the EEA mainly produce high-grade melamine and only occasionally in case of problems in the production process melamine of a lower quantity. The fact that the European Melamine Producers Association ("EMPA") does not make a distinction between high-grade and low-grade melamine can be explained by the fact that the members of this association (besides AMI DSM, ZAP, BASF, and Azomures) are high-grade melamine manufacturers, whereas suppliers from other regions, e.g. from China, are not present in EMPA.
15. In the market investigation customers also confirmed that prices of high-grade and low-grade melamine differ to a certain extent. They observed price variations between EUR 50 and EUR 200/ton.¹⁴ Based on an average price for contract supplies between EUR 1,000/ton and EUR 1,300/ton between 2006 and 2008, these price differences seem to be significant and point towards the existence of a distinct product market for A-grade melamine.¹⁵ The price difference was less significant when the market was soft which was the case after 2004 with new capacities coming online for the production of high-grade melamine and more significant in the last two years with a tight market and significant capacity expansions for low-grade melamine mainly in China.

Supply Side Substitutability

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- ¹⁰ See Egger's reply (non confidential version) to question 6 of the questionnaire to customers.
 - ¹¹ Most respondents to question 7 of the questionnaire to customers referred to the APHA scale. A-grade melamine is normally below 20 APHA.
 - ¹² See Hexion's reply (non-confidential version) to question 8 of the questionnaire to customers.
 - ¹³ See Parties' submission of 18.2.2009, reply to question 2.
 - ¹⁴ See replies to question 10 of the questionnaire to customers.
 - ¹⁵ The parties submitted average prices for melamine on the basis of ICIS data on 11.2.2009. They claim that it is not possible to distinguish according to high- and low-grade melamine.

16. Two technologies are currently used to produce melamine: The low pressure technology ("LPT") and the high pressure technology ("HPT"). LPT was invented in the 1950s. A catalyst is employed to kick-start the chemical reaction which transforms urea into melamine. Established producers such as AMI, DSM, BASF adapted this technology to their needs and are able to produce high-grade melamine with LPT. The Tsinghua University in China developed LPT further and Lurgi, an engineering company based in Germany, supplies this technology outside China. HPT was invented in the 1960s. It uses high temperatures and pressure to kick-start the transformation synthesis of urea into melamine. A catalyst is not needed. Eurotecnica group, based in Italy and Luxemburg, is the only supplier of HPT to third parties.
17. The market investigation has confirmed that supply side substitutability is restricted for those producers which only or partially produce low-grade melamine to date. Melamine manufacturers which already have an established technology for the production of high-grade melamine can potentially expand their capacities, irrespective of whether their production is based on high pressure (e.g. AMI) or low pressure (e.g. DSM, BASF and AMI itself). Production facilities which produce low-grade melamine at the moment, e.g. in China, cannot easily switch to the production of high-grade melamine without incurring the significant costs of building new capacities based on a more advanced technology.¹⁶

Conclusion

18. For the reasons set out above and for the purpose of this decision, the relevant product market is the market for the production of high-grade melamine.

Melamine Production Technology

19. The notifying party has submitted that there is only one relevant product market for the licensing of melamine technology. Despite the technical differences between LPT and HPT, both technologies are – according to the notification – regarded as readily interchangeable by melamine producers. It was confirmed that established producers of high-grade melamine use both LPT (e.g. DSM, BASF, AMI) and HPT (AMI). However, as has already been mentioned, none of them licences melamine production technology to third parties and currently there are only two technologies freely available for producers which do not have their own in house technology – the low-pressure technology offered by Tsinghua University and further developed by Lurgi, and the high-pressure technology owned by Eurotecnica.
20. The market investigation revealed that the Tsinghua technology is currently not seen as a suitable alternative to produce high-grade melamine. High-grade melamine customers confirmed that melamine production capacities in China are only acceptable for them if they use the Eurotecnica high-pressure technology and they explicitly refuse melamine produced on LPT production lines in China.¹⁷ For this reason, the Tsinghua technology cannot be seen as an alternative supplier for customers who intend to produce high-

¹⁶ See for example ZAP's reply (non-confidential version) to question 15 of the questionnaire to melamine producers.

¹⁷ See minutes of call with Egger on 10.2.2009, non-confidential version; minutes of call with Hexion on 11.2.2009 non-confidential version.

grade melamine. Lurgi which develops the technology in cooperation with the Tsinghua University further and supplies it to customers outside China is at present not seen as a real alternative in the market. It has one project in Russia, with a capacity of 50,000 tons/year which is expected to be completed in 2011.¹⁸ While it cannot be excluded that this technology will develop as an alternative to Eurotecnica's technology it is not seen as an alternative by customers for the near future.

21. For the purpose of this decision, it can be left open whether HPT and LPT are in the same product market, as the operation will give rise to competition concerns whether the relevant product market is considered to be either the market for HPT or the overall market for the supply of technology for the production of high-grade melamine.

Relevant Geographic Markets

Melamine

22. Customers and competitors indicated that the relevant geographic market for melamine is at least EEA-wide as they source internationally and as imports constantly accounted for approximately 20 % of total consumption in the EEA during the last years. However, some respondents mentioned price differences between regions of around 10 % and elaborated that bulk melamine could only be purchased from EEA-based producers as shipments from outside the EEA have a lead-time of 4-6 weeks and are only available in big bags, which have to be unpacked with special and costly equipment. For the purpose of this investigation the geographic market definition may be left open as even under the assumption of a world-wide market the transaction would raise serious doubts.

Melamine Production Technology

23. The market investigation has confirmed that the market for the technology for the production of high-grade melamine is world-wide. In particular, Eurotecnica offers its technology to customers world-wide.

Competitive Assessment

24. Melamine is a commodity market and prices are according to the parties as well as market respondents tracked and published on a regular basis. Demand on the markets where most of the melamine is used – construction, automotive, furniture industries – basically follows the overall development of the economy as a whole.
25. Melamine is either sold on the merchant market to producers manufacturing products in the downstream markets or is used within the same company or group. While for example BASF uses most of its production captively, other producers, in particular AMI, DSM and the Polish producer ZAP focus on the merchant market and use only negligible amounts for internal use.

¹⁸ See press release of 12.6.2008, "Lurgi signs Contract for Melamine Plant in Russia", available at www.lurgi.com.

26. The size of the melamine market amounted to approximately [...] kt/year in 2007.¹⁹ Overall capacity amounted to [...] kt/year²⁰, [...] % of it able to produce high-grade melamine.
27. According to the market investigation the world-wide market for melamine has been growing at an estimated rate of around 5 % per year. Respondents expect the market to grow further, once the current economic downturn is over. In particular, melamine consumption in the countries of Central and Eastern Europe is expected to increase significantly.
28. There are three major producers on the market for high grade melamine: AMI, DSM and ZAP with a focus on the EEA market. Further significant producers are BASF and Cytec, mostly focused on the North and South American markets. The table below shows the market shares and the capacity shares for high-grade melamine based on the parties' best estimates and on competitor's replies.

Table 1: Market Shares and Capacities for high-grade melamine

Producers meeting EEA suppliers requirements	Market shares world-wide	Market shares EEA-wide	Capacities world-wide	Capacities EEA-wide
AMI	[20-30]%	[20-30]%	[10-20]%	[30-40]%
DSM	[20-30]%	[20-30]%	[20-30]%	[20-30]%
ZAP	[10-20]%	[20-30]%	[10-20]%	[20-30]%
Cytec	[5-10]%	[0-5]%	[5-10]%	0%
BASF	[0-5]%	[0-5]%	[5-10]%	[10-20]%
Others	[20-30]%	[20-30]%	[30-40]%	[0-5]%

Source: Market investigation, parties' estimates

29. The capacity utilisation rate is currently up to [90-100%] for established suppliers, while capacity utilisation in China is much lower (according to the notifying party 50-60%). New capacities are built with a strategic proximity to sources of natural gas, mainly in Asia and the Middle East.
30. Most melamine producers including AMI, DSM and BASF have their own proprietary technology, while ZAP and some other smaller players are fully dependent on a melamine licensing and construction company.
31. As has already been outlined above, the Eurotecnica high-pressure technology is currently the only technology which is freely available for companies which intend to enter the market for high-grade melamine or to expand existing capacities for high-grade melamine without a proprietary technology like AMI or DSM. The Tsinghua University inside China and Lurgi outside China which develop and offer LPT may become an alternative to Eurotecnica at some point in the future. However, the market investigation clearly confirmed that they are currently not perceived as a reliable alternative supplier of high-grade melamine production technology.

Non-coordinated effects: Foreclosure of melamine production technology

¹⁹ See Form CO, page 39, table 7.1.1.

²⁰ See Annex 1 to response of the notifying party of 11.2.2009.

32. The market investigation confirms that the merged entity will be able and, following AMI's past behaviour, will also likely have an incentive to foreclose Eurotecnica from providing licences to its competitors.

Ability to foreclose access to melamine production technology

33. Input foreclosure may raise competition concerns if (i) it concerns an important input for the downstream product and (ii) the vertically integrated firm has a significant degree of market power in the upstream market.
34. On the input market for the licensing of the melamine production technology Eurotecnica is the only company which is not vertically integrated and which offers and has licensed HPT to third parties to produce melamine. The alternative high-pressure technologies owned by AMI or DSM are only used captively or in joint ventures in which the owner of the technology has a significant share. Even on a hypothetical overall market including both HPT and LPT, the only other licensor, Lurgi, was not considered an option by almost all melamine producers outside China. In conclusion, Eurotecnica independently of the relevant market definition has a significant degree of market power in the market for licensing of melamine technology.
35. Moreover, HPT is according to the market investigation an important input for an overall melamine market, since a large majority of the HPT melamine plants built worldwide in the last decade have been based on Eurotecnica's technology. Given that the Chinese based technology has according to respondents in the market investigation some problems in consistently producing high-grade melamine, an expansion of capacity or new entry into the market for the production of high-grade melamine seems to only be possible for non-integrated melamine producers if they have access to Eurotecnica's technology.

Decisive influence of MAN Ferrostaal on Eurotecnica

36. MAN Ferrostaal holds currently a 30 % share in Eurotecnica. Although a minority stake, this 30 % participation gives the company decisive influence on the decision making concerning Eurotecnica's melamine licensing and engineering business. This influence will be sufficient to give MAN Ferrostaal the ability to foreclose this technology to other non-vertically integrated companies.
37. [...] there are a number of super majority provisions [...]. Whilst some of them seem to be normal minority protections rights, others go far beyond the normal scope of such rights.
38. [...], it can be concluded that IPIC could invoke such a "super majority right" to influence the decision of Eurotecnica of entering and licensing certain competitive projects.
39. Furthermore, the shareholders agreement gives all shareholders broad information rights [...]. This is likely to have a substantial deterrent effect on the licensing practice for current and future customers if it is known that the voluminous information which needs to be exchanged between a prospective client and Eurotecnica might end up in the hands of a competitor of these clients, namely AMI.
40. The information gained through these broad access to information rights could be used as an effective marketing tool to persuade prospective clients to establish a joint-venture

with AMI instead of competing with AMI on the melamine market or at least delay significantly such projects for Eurotecnica. [...].²¹

41. The market investigation has confirmed the concern that after the transaction IPIC would have the ability to limit capacity expansions, delay projects or to prevent entry of potential competitors. Current and potential customers of Eurotecnica have expressed serious concerns about the future commitment of Eurotecnica to the independent licensing of HPT stating that "AMI will be able to control the manufacturers using Eurotecnica technology" or that "it would in practice be impossible for new entrants to enter the market".²²
42. In conclusion, MAN Ferrostaal currently would have a number of possibilities to decisively influence Eurotecnica's ability to be active in licensing and engineering of melamine plants ranging from total foreclosure to strategies like delaying projects, granting licenses only to particular producers or condition licensing to the establishment of joint ventures with AMI.

Incentive to foreclose access to melamine production technology

43. The incentive to foreclose depends on the degree to which foreclosure would be profitable. The merged entity faces a trade-off between the profit lost in Eurotecnica's upstream market due to a reduction of licence fees and related engineering revenues and the profit gain from expanding sales or increasing prices in the melamine market in which AMI is active.²³
44. The Commission's investigation indicated that IPIC would likely have the incentive to refuse to grant new licenses for Eurotecnica's HPT, even though it would thereby forego its share of the profits that the ETM group makes on its projects.
45. In particular, a conservative empirical estimation carried out by the Commission indicates that it would be profitable for the merged entity not to grant a licence as long as this refusal impacts melamine prices even by a very small amount.²⁴ This is because the merged entity would lose little profits on the upstream market from doing so since the profit made by the ETM group on each project is rather limited and since, furthermore, the merged entity would only bear this cost in proportion to its 30 % share

²¹ See answer 1, response of the parties dated 11.2.2009.

²² See replies to question 24 of the questionnaire to melamine producers.

²³ In this respect it should be noted that despite the fact that Eurotecnica already today is the only provider of HPT technology, it is not able to extract all available profits from the downstream markets due to the fact that downstream players like AMI or DSM have their own technology and can either offer it to third parties (as joint ventures) or expand melamine capacity themselves.

²⁴ The Commission calculated the critical price increase in the melamine market that would make the refusal to grant a license for a 60,000 ton project profitable. Considering for simplicity melamine prices of EUR 1000/ton, the loss for not granting the licence would be recouped by the merged entity if, as a result, melamine prices are less than 1 % higher (considering the present value of additional profits on the melamine market for a period of 20 years, with an annual discount factor of 10 %). A sensitivity analysis, which was carried out with respect to the main parameters of this simple estimation, confirmed the conclusion that the critical price difference on the downstream market that would make a foreclosure strategy profitable for the merged entity is very low.

in Eurotecnica.²⁵ In contrast, the additional profits that such a strategy would bring on the downstream market are likely to be significant given the large presence of AMI on the downstream market and the elevated price for melamine.

46. In addition to this empirical estimation, a further indication for the incentive to foreclose can be found by looking at AMI's behaviour.[...].

Overall likely impact on effective competition

47. As explained above, the market investigation indicates that after the merger IPIC through MAN Ferrostaal is likely to have the ability to limit capacity expansions of melamine producers competing with IPIC's subsidiary AMI and to prevent the entry of potential competitors. The investigation moreover leads to the conclusion that the notifying party is also likely to have the incentive to do so, as this restriction on competitors' ability to expand capacity and foreclosure of potential entrants is likely to prevent prices for melamine from decreasing or even trigger a price increase harming users of high-grade melamine.
48. Although the current financial and economic crisis temporarily makes such a strategy difficult to sustain, in the mid-term market participants expect world-wide demand for melamine to increase again with a growth rate of around [0-5%] ([5-10%] in Central or Eastern Europe) or [...] demand growth annually. Before the crisis, the market for melamine has been tight, particularly in the EEA. Contractual prices for melamine have gone up in the last nine consecutive quarters. Furthermore, the time it takes to launch new production is relatively long.
49. In such a situation of increasing demand, competitors would be unlikely to be able to react. According to the parties, the capacity utilization rate in Europe and North America is approximately [90-100%], in China only [50-60%]. Spare capacity seems to be vested with technology not able to produce high-grade melamine. Thus, once the economic downturn is over, increasing demand can only be satisfied in the medium-term if new capacity comes to the market.
50. Currently, the only high-grade melamine producer planning a capacity expansion so far is ZAP. DSM has not planned any expansion and cannot be expected to defeat a foreclosure strategy carried out by IPIC. ZAP as well as any other market entrant is fully dependant on Eurotecnica's licence and plant engineering for a new project. If AMI, via MAN Ferrostaal, were able to exercise a decisive influence on Eurotecnica, it would have the ability and the incentive to limit the entry of new capacities on the market.
51. Furthermore, after the transaction Eurotecnica's licensees would be likely to depend indirectly on AMI for licensing, maintenance or capacity extension within existing plants, which would limit, if not completely impede, potential capacity expansions and might even disturb to some extent the current operation of the existing plants. In addition, AMI would be able to get access to crucial information relating to the cost

²⁵ Since the fees that the ETM group charges are endogenous, it may be the case that the merged entity would, instead of refusing to grant a licence, increase its fees very significantly. Melamine prices could also rise as a result if these increased fees to use Eurotecnica's technology lead to fewer capacity expansions by independent suppliers on the melamine market.

structure, capacity or planned improvement of its competitors in so far as they use Eurotecnica's licence.

52. Thus, given the market structure for high-grade melamine the merger is likely to eliminate an important competitive constraint, allowing high-grade melamine producers with their own in-house technology supplying the merchant market, in particular AMI, to profitably prevent prices from decreasing or even to increase them.
53. In light of the above, the transaction raises serious doubts as to its compatibility with the common market.

Coordinated Effects

54. Given the characteristics of the market, the removal of Eurotecnica as a licensor of melamine production technology raises barriers to entry and increases the dependence on AMI of current producers using Eurotecnica's technology. The elimination of these competitive constraints will significantly increase the likelihood of coordination behaviour in the melamine market between the two market leaders AMI and DSM.
55. The planned transaction would make coordination more likely since the market is highly concentrated with two main integrated producers (AMI [20-30]%, DSM [20-30]%).
56. High-grade melamine is a commodity product and, is highly homogeneous. The melamine market is transparent, with both spot and contract prices being published on a weekly basis²⁶. The market investigation indicates that melamine production costs are directly linked to the cost of urea (main raw material) and natural gas (raw material for urea production), both being commodities with prices well known in the market.
57. In addition, both AMI and DSM are relatively symmetric in terms of market shares and capacity and therefore have similar incentives. While one should consider the possibility that a collusive behaviour be detected and punished, a coordination involving two players only could be organised in an effective way and could be difficult to uncover.
58. The coordinated behaviour may be defeated by customers if they are able to switch their demand to alternative producers who would be able to expand their output to serve this new demand. However, as already explained in the previous "non-coordinated effects" section, the other producers' ability to expand capacity and render the coordinated behaviour unprofitable is very limited.
59. Some market respondents consider ZAP to be able to disrupt the possibility for the two leading players, AMI and DSM, to collude and referred to ZAP's competitive pricing in recent years.
60. After the transaction, ZAP would continue to depend on Eurotecnica's after-sale services and its ability to expand capacity would be indirectly controlled by AMI. This is likely to lessen its competitive force. Furthermore, ZAP and other Eurotecnica licensees are obliged by the terms of their licences to provide significant amounts of information and to allow Eurotecnica to check on the operation of the plant and the

²⁶ www.icislor.com.

production levels. Once the operation has been completed, this highly sensitive information will be available to AMI.

61. The rest of the market is fragmented, and other players (most of them are not vertically integrated into technology or have little incentive to enter the merchant market) are constrained in their ability to expand capacity.
62. The other main impact will be on potential market entry. As explained above, in the last 10 years all new entrants have got their licences either from Eurotecnica or from the Chinese LPTs. AMI, once the currently signed projects have been finalised, would have the incentive and the ability to prevent Eurotecnica from licensing its technology to third parties.
63. For the reasons mentioned above, although it cannot be excluded that the present transaction gives rise to coordinated effects on the melamine market, this question can be left open as in any event, on the one hand, the vertical effects of the transaction already raise serious doubts and, on the other hand, the proposed commitments restore the status quo and therefore the present transaction does not make coordination more likely or easier than it was pre-transaction.

Conclusion

64. In light of the above, the transaction raises serious doubts as to its compatibility with the common market.

III. COMMITMENTS SUBMITTED BY THE NOTIFYING PARTY

65. In order to render the concentration compatible with the common market, the notifying party has offered commitments pursuant to Article 6(2) of the Merger Regulation. The commitment package was submitted by IPIC on 20 February 2009. After market testing this package, the commitments were deemed suitable to remedy the competition concerns identified. These commitments are attached to this decision and form an integral part thereof.
66. The commitment package provides for the full divestment of MAN Ferrostaal's minority shareholding in Eurotecnica.
67. The offered divestment is suitable to eliminate the serious doubts identified in the melamine market. The divestment removes the vertical link between Eurotecnica and AMI, thereby taking away the ability of AMI to foreclose any existing or potential competitor on the melamine market by influencing indirectly through MAN Ferrostaal the granting of high-pressure technology licences.
68. Overall, the results of the market test gave a positive feedback on the divestment package. The Commission therefore considers the commitments suitable for remedying the serious doubts on the compatibility of the concentration with the common market, which have been established in the previous sections of this Decision.

V. CONDITIONS AND OBLIGATIONS

69. Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they

have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the common market.

70. The achievement of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the common market no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(5) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.
71. In accordance with the basic distinction described above, the decision in this case is conditional on the full compliance with Section B of the Commitments. The remaining requirements set out in the other Sections of the Commitments are considered to constitute obligations.

VI. CONCLUSION

72. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement pursuant to Article 2(2) of the Council Regulation (EC) No 139/2004, subject to full compliance with the conditions in Section B of the Commitments annexed to the present decision and with the obligations contained in the other sections of the said commitments.
73. This decision is adopted in application of Article 6(1)(b) in connection with Article 6(2) of Council Regulation (EC) No 139/2004.

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

COMMITMENTS TO THE EUROPEAN COMMISSION PURSUANT TO
COUNCIL REGULATION (EC) No 139/2004

Case COMP/M.5406 - IPIC/MAN Ferrostaal AG

PROPOSED ACQUISITION OF SOLE CONTROL
OVER MAN FERROSTAAL AG
BY INTERNATIONAL PETROLEUM INVESTMENT COMPANY

February 20, 2009

Shearman & Sterling LLP

20 February 2009

Case M.5406 - IPIC/MAN Ferrostaal AG
COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the "**Merger Regulation**"), IPIC and MAN Ferrostaal (the "**Parties**") hereby provide the following Commitments (the "**Commitments**") in order to enable the European Commission (the "**Commission**") to declare the acquisition of sole control over MAN Ferrostaal by IPIC compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the "**Decision**").

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

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004.

Section A. Definitions

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

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004.

Closing: the transfer of the legal title of the Divestment Business to the Purchaser.

Divestment Business: the business as defined in Section B that the Parties commit to divest.

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

Effective Date: the date of adoption of the Decision.

ETCE: Eurotecnica Contractors and Engineers S.p.A., incorporated under the laws of Italy, with its registered office at 25 Via Pergolesi in Milan, Italy and registered with the Companies' Register of Milan under number 04763900158.

ETM: Eurotecnica Melamine SA, incorporated under the laws of the Grand Duchy of Luxembourg, with its registered office at 23 Val Fleuri in 1526 Luxembourg, Luxembourg and registered with the Companies' Register of Luxembourg under number B 104410. ETM owns all shares in ETCE.

Eurotecnica: ETCE and ETM.

First Divestiture Period: the period of [CONFIDENTIAL] from the Effective Date.

Hold Separate Manager: the person appointed by the Parties for the Divestment Business to manage, to the extent legally and practically possible, the day-to-day business under the supervision of the Monitoring Trustee.

IPIC: International Petroleum Investment Company PJSC, a legal entity under the laws of Abu Dhabi with its office at Sheikh Zayed the 1st street, Al Muhairy Center, Office Tower, 10th floor, Abu Dhabi, United Arab Emirates and its Affiliated Undertakings.

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

MAN Ferrostaal: MAN Ferrostaal AG, incorporated under the laws of Germany, with its registered office at Hohenzollernstrasse 24 in 45128 Essen, Germany and registered with the Commercial Register of the lower court of Essen, Germany under number HRB 73 and its Affiliated Undertakings.

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

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

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

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

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

Section B. The Divestment Business

Commitment to divest

1. In order to restore effective competition, the Parties commit to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 15. To carry out the divestiture, the Parties commit to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If the Parties have not entered into such an agreement at the end of the First Divestiture Period, the Parties shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 24 in the Trustee Divestiture Period.
2. The Parties shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, the MAN Ferrostaal has entered into a final binding sale and purchase agreement, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 15 and if the closing of the sale of the Divestment Business takes place within a period not exceeding 3 months after the approval of the purchaser and the terms of sale by the Commission.

3. In order to maintain the structural effect of the Commitments, the Parties shall, for a period of 10 years after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Business, more specifically, over whole or part of Eurotecnica, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the Divestment Business

The Divestment Business consists of all shares in ETM currently held by MAN Ferrostaal, *i.e.*, [CONFIDENTIAL] shares accounting for 30% of ETM's share capital.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

5. From the Effective Date until Closing, the Parties shall preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimize as far as possible any risk of loss of competitive potential of the Divestment Business. In particular the Parties undertake to the extent legally and practically possible:
 - (a) not to carry out any act upon their own authority that might have a significant adverse impact on the value, management or competitiveness of Eurotecnica or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of Eurotecnica;
 - (b) to make available sufficient resources for the development of Eurotecnica, on the basis and continuation of the existing business plans,
 - (c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with Eurotecnica.

Hold-separate obligations of Parties

6. The Parties commit, from the Effective Date until Closing, to keep the Divestment Business separate from the businesses they are retaining and to ensure that Key Personnel - including the Hold Separate Manager - have no involvement in any business retained and vice versa. To the extent legally and practically possible, the Parties shall also ensure that the Personnel does not report to any individual outside Eurotecnica and ETM's other shareholders.
7. Until Closing, the Parties shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable participation separate from the businesses retained by the Parties. The Parties shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties.
8. To ensure that the Divestment Business is held and managed as a separate participation the Monitoring Trustee shall exercise MAN Ferrostaal's rights as shareholder in the Divestment Business (except for its rights for dividends that are due before Closing), with the aim of acting in the best interest of the business, determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling the Parties' obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of MAN Ferrostaal. Upon request of the Monitoring Trustee, the Parties shall cause such members of the boards to resign.

Ring-fencing

9. The Parties shall implement all necessary measures to ensure that they do not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business. In particular, the participation of the Divestment Business in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. The Monitoring Trustee and/or the Hold Separate Manager and not MAN Ferrostaal shall exercise all

of MAN Ferrostaal's information rights, in particular the rights pursuant to Articles 7.1(xiii) and 9(c) of ETM's Shareholders' Agreement. The Parties may obtain information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or whose disclosure to the Parties is required by law.

Non-solicitation clause

10. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel for a period of [CONFIDENTIAL] after Closing.

Due Diligence

11. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, the Parties shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
 - (a) provide to potential purchasers sufficient information as regards the Divestment Business;
 - (b) to the extent legally and practically possible, provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

12. The Parties shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).
13. The Parties shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

14. In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must:
- (a) be independent of and unconnected to the Parties;
 - (b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;
 - (c) neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business (the before-mentioned criteria for the purchaser hereafter the "*Purchaser Requirements*").
15. The final binding sale and purchase agreement shall be conditional on the Commission's approval. When the Parties have reached an agreement with a purchaser, they shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. The Parties must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments.

Section E. Trustee

I. Appointment Procedure

16. The Parties shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If MAN Ferrostaal has not entered into a

binding sales and purchase agreement one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by the Parties at that time or thereafter, the Parties shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Extended Divestment Period.

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

Proposal by the Parties

18. No later than one week after the Effective Date, the Parties shall submit a list of one or more persons whom the Parties propose to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, the Parties shall submit a list of one or more persons whom the Parties propose to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 17 and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfill its duties under these Commitments;
 - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
 - (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

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

New proposal by the Parties

20. If all the proposed Trustees are rejected, the Parties shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 16 and 19.

Trustee nominated by the Commission

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

II. Functions of the Trustee

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

Duties and obligations of the Monitoring Trustee

23. The Monitoring Trustee shall:

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

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

(a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 5 and 6 of the Commitments;

(b) supervise the management of the Divestment Business as a distinct and saleable participation, in accordance with paragraph 7 of the Commitments;

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

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

(iv) propose to the Parties such measures as the Monitoring Trustee considers necessary to ensure the Parties's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability

or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;

- (v) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process and the legal and factual possibilities of the Parties, (a) potential purchasers receive sufficient information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and (b) potential purchasers are granted reasonable access to the Personnel;
- (vi) provide to the Commission, sending the Parties a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divestment Business so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending the Parties a non-confidential copy at the same time, if it concludes on reasonable grounds that the Parties are failing to comply with these Commitments;
- (vii) within one week after receipt of the documented proposal referred to in paragraph 15, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision.

Duties and obligations of the Divestiture Trustee

- 24. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 15. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such, customary representations and warranties and indemnities as are

reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of the Parties, subject to the Parties' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

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

III. Duties and obligations of the Parties

26. The Parties shall provide and shall cause their advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Parties' books, records, documents, management or other personnel necessary for fulfilling its duties under the Commitments and the Parties shall provide the Trustee upon request with copies of any document. To the extent legally and practically possible, the Parties shall cause Eurotecnica to give the Trustee access to Eurotecnica's books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling the Trustee's duties under the Commitments and to provide the Trustee upon request with copies of any document. The Parties shall and, to the extent legally and practically possible, shall cause Eurotecnica to be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
27. The Parties shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business, which are currently carried out at headquarters level. The Parties shall provide and shall cause their advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. The Parties shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.
28. The Parties shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers

necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, the parties shall cause the documents required for effecting the sale and the Closing to be duly executed.

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

30. At the Parties' expense, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the Parties' approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should the Parties refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard the Parties. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 29 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served the Parties during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of the Trustee

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

- (a) the Commission may, after hearing the Trustee, require the Parties to replace the Trustee; or
- (b) the Parties, with the prior approval of the Commission, may replace the Trustee.

32. If the Trustee is removed according to paragraph 31, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be

appointed in accordance with the procedure referred to in paragraphs 16-21.

33. Beside the removal according to paragraph 31, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The Review Clause

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

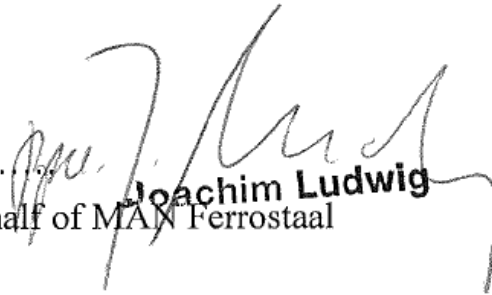
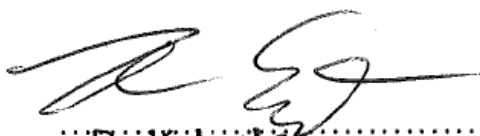
- (i) grant an extension of the time periods foreseen in the Commitments, or
- (ii) waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

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



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gez. Dr. Meyer-Lindemann

Duly authorized for and on behalf of IPIC



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Dr. K. Lesker

.....
Joachim Ludwig

Duly authorized for and on behalf of MAN Ferrostaal