

Case No COMP/M.6756 - NORSK HYDRO/ ORKLA/ JV

Only the English text is available and authentic.

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

Article 6(1)(b) in conjunction with Art 6(2)
Date: 13/05/2013

***In electronic form on the EUR-Lex website under document
number 32013M6756***



Brussels, 13.5.2013
C(2013) 2883 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sir/Madam,

**Subject: Case No COMP/M.6756 - NORSK HYDRO/ ORKLA/ JV
Commission decision pursuant to Article 6(1)(b) in conjunction with
Article 6(2) of Council Regulation No 139/2004¹**

1. On 18 March 2013, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation, by which the undertakings Norsk Hydro ASA ("Hydro", Norway) and Orkla ASA ("Orkla", Norway) acquire within the meaning of Article 3(4) of the Merger Regulation joint control of a newly created company constituting a joint venture (JV), by way of purchase of shares.² Hydro and Orkla are designated hereinafter as the "Parties".

I. THE PARTIES AND THE TRANSACTION

2. Hydro is a global supplier of aluminium with activities throughout the value chain, including the production and sale of primary aluminium, soft-alloy extrusions, building systems and flat-rolled products.

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

² Publication in the Official Journal of the European Union No C88, 26.3.2013, p. 8.

3. Orkla is a Norwegian company with international operations. Its main focus is the branded consumer goods sector. In addition it operates in the aluminium, hydro power and financial investment sector.
4. On 14 October 2012, Hydro and Orkla signed a contribution agreement with a view to establishing the JV operating in the aluminium soft-alloy extrusion sector (“Contribution Agreement”). Included within the businesses to be transferred to the JV are also the Parties’ building systems activities and their precision tubing businesses.
5. The businesses being contributed by Orkla all fall under the ownership of Orkla’s wholly-owned subsidiary, Sapa Holding AB (“Sapa”).
6. Each of Hydro and Orkla will retain outside the JV their respective interests in aluminium flat-rolled products.³

I.1. JOINT CONTROL

7. The JV will be jointly controlled by Orkla and Hydro within the meaning of the Merger Regulation. Orkla will hold 50% of the issued share capital in the JV and Hydro the remaining 50%. Pursuant to the shareholders’ agreement which is attached to the Contribution Agreement, the Parties will have parity of voting at the shareholders’ meeting and each will appoint the same number of directors to the board. No member of the board of directors will have a casting vote.

I.2. FULL-FUNCTIONALITY

8. The JV will have a management dedicated to its day-to-day operations and sufficient resources to operate independently on the market, including finance, staff and assets. It will also have direct access to customers and suppliers independent of its parents.
9. As for the lasting basis requirement, Article 19 of the shareholders' agreement attached to the Contribution Agreement provides that [...]subject to a procedure set out in the Shareholders agreement.
10. The Commission considers that this provision is not sufficient to conclude that the proposed transaction is not constituted on a lasting basis. This is because the Contribution Agreement, while providing for an option to terminate the joint venture, also provides for the possible continuation of the joint venture for an indefinite period.
11. As a result, the Commission concludes that the proposed transaction consists of the creation of a full-functional joint venture which will perform all the functions of an autonomous economic entity on a lasting basis.

II. EU DIMENSION

12. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Hydro: EUR 11 733 million; Orkla: EUR 7 351 million). The two of them have an EU-wide turnover in excess of EUR 250 million (Hydro: EUR [...] million; Orkla: EUR [...] million), but they do not achieve more than two-thirds of their

³ In the context of its strategy to reposition the focus of its activities on consumer goods, Orkla has announced that it will explore the opportunity for a divestment of its flat-rolled products business and has appointed a financial adviser to support this process.

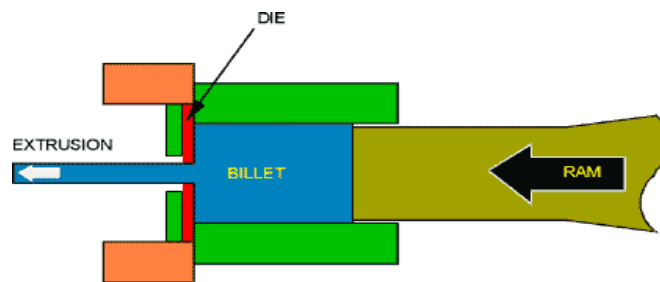
aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

III. COMPETITIVE ASSESSMENT

III.1. INTRODUCTION TO THE ALUMINIUM EXTRUSION INDUSTRY

13. Aluminium extrusions are produced from billets of aluminium alloys. Extrusion aluminium billets are heated in an oven and consequently pushed through a pre-shaped iron die by a large hydraulic press. The traditional analogy is that of squeezing toothpaste from a tube (see Figure 1 below).

Figure 1 – Soft alloy extrusions – production process



14. Following the extrusion process some extrusions are cooled and may be milled, drilled, tapped, bent, aged, anodized or painted. Extrusions are finally sawed in transportable lengths and packed.
15. There are two broad categories of alloys used for extrusion: hard-alloys and soft-alloys.
16. In the EEA, the principal aluminium-magnesium alloys used to manufacture soft alloy extrusions are alloy 6063 (and its alternative alloy 6060) and alloy 6082 (and its alternative alloy 6005a).
17. Plants vary as to the size of press in use. The most common press sizes are in the 7-9 inches diameter range,⁴ although there are a number of larger presses in the EEA (i.e. 12 inches and above). Presses can produce extrusions that are smaller in diameter than their classification and larger presses are sometimes employed to produce smaller extrusions (although this is often not economically profitable). There are more than 500 soft-alloy presses in the EEA.
18. Dies can be changed quickly and easily, allowing a large number of different shapes to be manufactured using the same machinery (see Figure 2 below). The dies may be manufactured in integrated die-shops, or designed to the customer's specifications at relatively little cost and in little time by independent die-shops. Most manufacturers keep a large stock of dies. Once a die is available, the time taken in switching a press from one die to another is on average only two minutes.

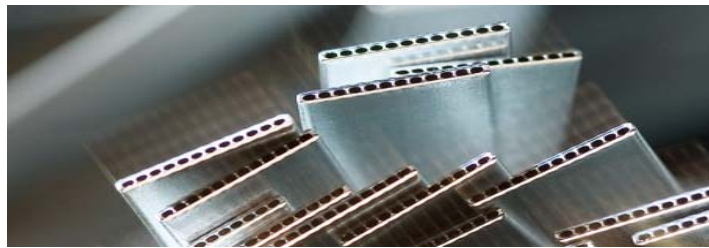
⁴ The press size refers to the diameter of the billet used in the press.

Figure 2 – Soft alloy extrusions – Shaping the billet through a die



19. The process of extrusion is capable of producing a variety of metal shapes. Consequently, extruded products are used in a range of applications, including construction (e.g. window frames, doorframes, and other architectural products), automotive, and industrial uses. Extrusions are produced in a huge variety of shapes, including rods, bars, tubing profiles, and forge stock, among others.
20. The same basic manufacturing process is used for all extrusion products, regardless of the end-use application. In some specific cases, however, a process involving additional steps is necessary for the production of some specialty extruded products. For instance, this is the case for multi-port extrusions ("MPEs"), which are small but important components widely used in the automotive industry for the manufacturing of condensers and evaporators.

Figure 3 – Multi-port extrusions (MPEs)



21. The proposed transaction gives rise to horizontal overlaps between the Parties' activities as regards (1) general soft-alloy extrusions; (2) MPEs; (3) a downstream market: building systems; and (4) a neighbouring product market: precision welded tubes. The Parties' activities do not overlap in precision drawn tubes.⁵
22. The proposed transaction also gives rise to vertical relationships with respect to the following: (1) Hydro's primary aluminium activities upstream and the Parties' soft-alloy extrusions activities downstream; and (2) the Parties' aluminium flat products activities upstream and the Parties' precision welded tubes activities downstream.

III.2. RELEVANT PRODUCT MARKET

III.2.1 Soft-alloy extrusions

23. There are two broad categories of alloys used for extrusion: hard-alloys and soft-alloys.

⁵ Sapa is not active in the production of precision drawn tubes.

24. In previous decisions, the Commission has identified separate markets for hard-alloy and soft-alloy extrusions.⁶ Although some companies manufacture both hard and soft-alloy extrusions, not all extrusion facilities operate with both types of alloy since different treatment processes are used in the preparation of hard-alloys.
25. In the past, the Commission has also concluded that the market for soft-alloy extrusions should not be further divided into segments relating to alloys,⁷ shapes or end-uses.⁸ Although from a demand-side perspective different shapes and alloys are often not substitutes to each other, there is significant supply-side substitutability, which allows many extruders to produce a wide range of products.
26. The Parties submit that, in line with Commission's precedents, the relevant product market comprises all soft-alloy extrusions.
27. Respondents to the Commission's requests for information confirmed that hard alloy extrusions constitute a separate market from soft alloy extrusions.⁹ The replies received also confirmed the Commission's precedents regarding different types of alloys and shapes
28. The Commission investigated whether it would be appropriate to define a separate market for profiles for the automotive industry, since only a limited number of suppliers, which have to go through a certification process, produce extrusions for the automotive industry. The results of the investigation confirmed that automotive manufacturers should be ISO/TS 16949 certified and that almost all extruders are able to obtain such certification. In any event, the Commission considers that the question whether the segment for soft alloy extrusions for the automotive industry would constitute a separate relevant product market can, however be left open, as the concentration would not give rise to serious doubts in that potential segment.
29. In previous decisions the Commission investigated and ultimately left open the question as to whether it would be appropriate to define separate markets for larger sized (more than 14" diameter) soft alloy extrusions, since only a limited number of supplier's operate large presses.¹⁰ In relation to a possible segment for large extrusions, the market investigation confirmed that the size of the final product is closely related to the size of the press which is used. The issue of a separate market for large extrusions with a diameter larger than 14" does not arise in this case given that the Parties' activities do not overlap as regards presses with more than 12" diameter. The Commission however investigated whether a market for larger sized extrusion could be defined as including the 12" press diameter. The Commission considers that it can be left open whether the potential segment for soft alloy extrusions produced with large extruded presses (above and including 12") would constitute a separate relevant product market, as the concentration would not give rise to serious doubts in that potential segment.

⁶ See, e.g., Case COMP/M.4827 *Rio Tinto/Alcan*, paragraph 35; Case COMP/M.4605 *Hidalco/Novelis*, paragraph 14; Case COMP/M.4518 *Alcoa/Orkla/Soft alloy Extrusion JV*, paragraph 11.

⁷ See for instance Case COMP/M.4518 *Alcoa/Orkla/Soft alloy extrusion JV*, paragraph 19.

⁸ See, e.g., Case COMP/M.2404 *Elkem/Sapa*, paragraph 12.

⁹ See replies to question 5 of Questionnaire Q1, Soft Alloy Extrusions Competitors; question 6 of Questionnaire Q2, Soft Alloy Extrusions Customers, Soft Alloy Extrusions Customers UK, Soft Alloy Extrusions Customers UK-2, Soft Alloy Extrusions Customers Norway / Sweden.

¹⁰ See Case COMP/M. 3170 *Sapa/Remi Claeys*; Case COMP/M.4518 *Alcoa/Orkla/Soft alloy extrusion JV*.

III.2.2 Multi-port extrusions (MPEs)

30. MPEs are extruded tubes that are designed to combine small dimensions (e.g., width of 16 mm, height of 1.8 mm and a wall thickness of 0.2 mm) with a large internal surface area. These characteristics make MPEs especially suited for use in heat exchangers for automotive applications.
31. There are no Commission precedents dealing specifically with MPEs.
32. The Parties submit that from a demand-side MPEs are not substitutable with normal soft-alloy extrusions. As regards demand-side substitutability, the Parties also submit that aluminium folded tubes represent a viable alternative to MPEs for customers and that they would indeed switch to folded tubes as a reaction to a price increase.
33. As regards supply-side substitution, the Parties submit that there is a certain degree of supply-side substitutability between MPEs and normal soft-alloy extrusions given that at the core of the MPEs production there is a standard extrusion press. However, in this regard the Parties acknowledge that a standard extrusion press would have to be modified in order to accommodate for the production of MPEs.
34. For these reasons, the Parties acknowledge that it may be appropriate to define a separate market for MPEs.
35. From the demand side, respondents to the Commission's requests for information stated that MPEs cannot be substituted with normal soft-alloy extrusions and cannot be replaced easily with other products.¹¹
36. As regards substitutability with aluminium folded tubes, a majority of customers replied that they would switch from MPEs to folded tubes further to a 5-10% permanent price increase. However, when questioned about the concrete possibility of such switch, the same customers expressed a number of reservations in terms of feasibility and timeliness of such switch. The market investigation showed that folded tubes cannot be used as substitutes for MPEs for all applications (in particular, not for evaporators and refrigerators). In addition, non-automotive applications, which are expected to be developed in the next years by a number of players, are mainly based on the use of MPEs. Furthermore, a number of market players still believe that MPEs constitute the leading technology and that MPEs are superior in performances to folded tubes (for further details see below, paragraphs 136-137).
37. From the supply side the market investigation indicated that although the technical production process for producing MPEs is similar to that of soft-alloy extrusions, significant investments are required to adjust the equipment to the requirements of MPEs production. For instance, the production of MPEs requires coiling lines, zinc spray and strict tolerance controls which are not necessary for the production of soft-alloy extrusions. Furthermore, market participants have indicated that MPEs are sophisticated products and specific production know-how is required.
38. In view of the above, the Commission considers that that a separate relevant product market for MPEs exists.

¹¹ See replies to question 4-5-6 of Questionnaire Q6 MPEs Competitors; 5-6-7-8 of Questionnaire Q6 MPEs Customers.

III.2.3 Building systems

39. The Commission has not previously considered the market for building systems.
40. According to the Parties, building systems comprise profiles made of different materials (aluminium, steel, wood or PVC) which are specifically designed to be used in the building industry. The building system suppliers add value to the basic profiles as their final product is considered a "system", which includes, apart from the profiles, other elements such as the design and conceptualisation of the system, the purpose-specific fabrication of the profiles (surface treatment of the profiles, cutting, drilling, punching, bending or the installation of a thermal brake), a variety of articles needed to install the products (all accessories and fittings) and service and logistics. The building system suppliers carry out R&D work in order to ensure that the systems meet the desired performance requirements in terms of insulation, tightness or durability. They do not offer the assembled products, such as windows frames or door frames, only the components needed to produce those.

Division between end applications

41. According to the Parties, the three main end applications of building systems are (1) windows; (2) doors; and (3) curtain walls. While doors or windows can be made from aluminium, PVC or wood (as main materials), building systems for façades use only soft alloy profiles as the basis to fabricate and install a "curtain wall".¹² Aluminium curtain walls are generally used on the exterior of buildings and might also incorporate technologies such as active double-skin façades for ventilation and heating and sun-shading or photovoltaic devices. The Parties do not consider a further segmentation of the market according to different end applications to be necessary. Nevertheless, they have provided data on this narrower segmentation.
42. The Commission notes that the replies to the market investigation in this case largely contradicted the segmentation proposed by the Parties between windows and doors. The vast majority of respondents indicated that, although the installation process and legal requirements could be different, windows and doors and other products should be considered as belonging to the same segment as there is no difference between (i) the manufacturing process, (ii) the knowhow used in the production, (iii) the complexity of their design, and (iv) the distribution channels.
43. On the contrary, the replies to the market investigation confirmed Parties' views as regards curtain walls as being a different segment different from all other products (including doors, windows or any other building system product). Competitors consider that curtain walls are different from other products due to the technical complexity of the projects. As usually curtain walls represent large projects, the technical complexity is higher than for the other products. Also, special requirements as wind loads and water resistance tests, and earthquake secure testing are specific for this segment.

Substitution between different types of materials

44. Although the Parties are active only in the production of aluminium building systems, they argue that to a certain extent, building systems made of other materials (among

¹² A "curtain wall" is attached to the façade of the building and does not help carry the weight of the building.

which the most important are PVC and wood) are substitutable and therefore the product market could be considered to be the supply of aluminium, PVC and wood building systems for the use in the construction market.

45. The Parties consider that PVC and wood are widely used as direct substitutes for aluminium, either for use as window or as door frames. Nevertheless, the Parties admit that, from the demand point of view, for some applications like large sliding doors, PVC and wood may be less suitable alternatives due to the weight that needs to be carried. As regards facades, even though from the technical point of view PVC or wood are not alternative materials, the Parties submit that, by opting for a different design concept, however, a PVC-based solution can be used as a substitute to an aluminium facade. The more complex the products are, the less PVC or wood can be regarded as a substitute for aluminium building systems.
46. From the supply-side perspective, aluminium on the one hand and other products, mainly PVC and wood, on the other hand cannot be regarded as close substitutes mainly due to the fact that the manufacturing process involved in the production of building systems from various materials are different and the machineries used differ from one material to another.
47. The Parties consider that the product market could be considered to be the supply of aluminium, PVC and wood products for use in constructions. However, they have adopted a filter focusing only on aluminium-based products and provided data on this narrower segmentation.
48. To verify the Parties' claims, the Commission analysed both supply-side and demand-side aspects of the substitution between aluminium and different other materials, mainly PVC and wood. Thus, the majority of competitors confirmed that from the supply side building systems made of aluminium are totally different from other building systems as the equipment used in their production is different (machineries and tools), operations may differ, and producing aluminium building systems seems to be more difficult than for the other materials. In addition, even though some suppliers offer besides the aluminium building systems also PVC products, the majority of them tend to specialize in the production of only one material.
49. From the demand side, the market investigation pointed also to a separate market for aluminium building systems and confirmed that customers do not consider PVC or wood as a real substitution for aluminium. Moreover, the vast majority of customers indicated that they buy only aluminium products and even if the price would increase with 5-15% they would not switch to other materials.¹³ The price difference between a building system made of aluminium and other materials is also important, aluminium windows and doors being more expensive than PVC.¹⁴

Different distribution channels

50. For the most standardized products like windows and doors, building systems users will typically use a customer tailor made window or door. Nevertheless, these products can be also sourced from stockists, which purchase standardised profiles directly from the

¹³ See replies to question 27 of the Questionnaires to building system customers.

¹⁴ See replies to question 20 of the Questionnaire Q3 building systems competitors.

profile suppliers or from Building Systems suppliers. They sell the profiles together with fittings to the metal builders who in turn assemble the product and install it. Alternatively, the metal builders/installers can purchase equivalent components from the Building Systems suppliers. Finally, the metal builders/installers can purchase ready-made windows, doors or other products directly from original equipment manufacturers ("OEMs"), who assemble standardised products on an industrial scale. Nevertheless, as the products become more sophisticated or increasingly bespoke, the option of purchasing standardised profiles or pre-fabricated products from stockists and OEMs becomes less and less suitable.

51. Given the fact that a straightforward separation of the different types of competitors at different levels of production and distribution of the building systems suppliers from stockists or OEMs is difficult, the Parties have adopted a conservative approach, excluding these alternative channels of distribution.
52. The market investigation in this case indicated that although some competitors consider OEMs and stockists in direct competition with them, the majority of suppliers indicated that the products that they deliver to their customers are tailor-made and specific to each project and therefore stockists and OEMs could not be considered as alternative suppliers. From the demand side, OEMs and/or stockists are considered more often as alternative sources for their building systems' needs.
53. The Commission considers that the precise product market definition for building systems can be left open in this case, since the transaction does not raise serious doubts as to its compatibility with the internal market regardless of the exact product market definition.

III.2.4 Aluminium welded precision tubes

54. The Commission has not previously considered the market for aluminium precision welded tubes. Precision welded tubes are produced by taking a flat coil of aluminium strip, forming it into a tube and welding it together. Welded precision tubes are derived from flat rolled products (FRP) and do not involve any extrusion process. Thus, welded precision tubes can be shaped so that they are round, flat-oval or rectangular pipes.
55. Although the precision welded tubes and the extruded tubes have similar shapes and may look the same, the Parties submit that the two products are not substitutable as extruded tubes are not produced with the same welding mills as the welded precision tubes. From the demand side, the replies to the market investigation revealed that, although welded precision tubes could in principle be substituted with other products (e.g. MPEs or extruded drawn tubes), the level of substitution is low and depends on the compatibility of the products with the final application. In addition, the businesses tend to be structured so as to focus primarily on one type of tubes.
56. Also, the difference between the standard welded tubes and the high precision welded tubes is important. Switching production from welded precision tube to high precision welded tube production is not as fast as in the case of soft-alloy extrusions. On the supply side, the replies to the market investigation confirmed that, although some producers produce both the standard and the precision welded tubes, for the production of the latter products there is a need for specific knowledge and experience in the field to be able to deliver quality products.

57. In any event, for the purpose of the present case the Commission considers that the product market definition can be left open, as the transaction does not raise serious doubts irrespective of the precise product market definition.

III.3. RELEVANT GEOGRAPHIC MARKET

III.3.1 Soft-alloy extrusions

58. In past decisions, the Commission has generally found the scope of the geographic market for soft-alloy extrusions to be EEA-wide.¹⁵ In more recent decisions, however, the Commission also considered whether a separate market for the UK existed, but ultimately left the question open.¹⁶
59. In particular, in *Alcoa/Orkla/Soft alloy extrusion JV*,¹⁷ the Commission concluded that the scope of the geographic market for soft-alloy extrusions was likely to be EEA-wide, with the possible exception of the UK, because of (i) the significant amount of trade flows of aluminium extrusions throughout the EEA; (ii) the low transport costs, in the region of 2-4% of the final selling price; and (iii) no major price differences within the EEA.
60. The Parties submit that the relevant geographic market for soft-alloy extrusions is at least as broad as the EEA, given that there are no tariffs or regulatory barriers to trade soft-alloy extrusions within the EEA, transportation costs represent only a small proportion of the final selling price and there are significant trade flows within the EEA.
61. The Commission notes that replies to the market investigation have not been fully supportive of the Parties' views.
62. On the one hand, according to the replies to the market investigation, there are large trade flows between different Member States, which are normally an indication that markets may be wider than national. In addition, many customers have replied that they source soft-alloy extrusions from a radius of more than 500 km.¹⁸ Lastly, many customers stated that transport costs normally represent a relatively small proportion of the final price (between 1% and 5%).
63. On the other hand, a large number of customers responding to the Commission's requests for information also stated that they find it economically profitable to source soft-alloy extrusions within a maximum radius of 500 km. Secondly, the Parties' business organisation is based on business units constituted by one or more nearby plants. Often, these business units are limited to one Member State (e.g. Italy) or to geographic regions smaller than the EEA (e.g. Benelux). [...]Fourth, independent

¹⁵ See Cases COMP/M. 2111 *Alcoa/British Aluminium*, COMP/M. 1161 *Alcoa/Alumax*, COMP/M.1003 *Alcoa/Inespal* and COMP/M.675 *Alumix/Alcoa*.

¹⁶ Case COMP/M.4518. See also Cases COMP/M2404 *Elkem/Sapa* and COMP/M.3170 *Sapa/Remi Claeys aluminium*.

¹⁷ Case COMP/M.4518 *Alcoa/Orkla/Soft alloy extrusion JV*.

¹⁸ See replies to question 23 of Questionnaire Q1, Soft Alloy Extrusions Competitors; question 26 of Questionnaire Q2, Soft Alloy Extrusions Customers, Soft Alloy Extrusions Customers UK, Soft Alloy Extrusions Customers UK-2, Soft Alloy Extrusions Customers Norway / Sweden.

industry analysts normally report market data such as prices on a national level for the larger Member States, and not on an aggregated EEA level.

64. In view of the above, and in the light of a high number of customers expressing concerns in (1) Norway and Sweden (the "Nordic Region") and in (2) the UK, the Commission investigated more in depth whether these two regions were separate from the mainland European market.

III.3.1.A Nordic Region

65. The Commission considers that there are a number of elements pointing at a possible separate market for soft alloy extrusions in a region composed by Norway and Sweden.
66. First, there are significant and persistent price differences between the Nordic Region and the remaining Member States. The average price difference between these regions for the past 6 years amounts to [10-20]%. In addition, there is no trend showing that in recent years the price differences have been decreasing. This appears to be incompatible with functioning price arbitrage across regions.
67. Second, there are significant and persistent differences in the "extrusion premia" charged by soft alloy extrusion suppliers between the Nordic Region and the remaining Member States. The extrusion premium is the price paid by customers for the value added by extruders (i.e. full price – aluminium price – billets conversion cost). In the course of its market investigation, the Commission has found that in the aluminium soft-alloy industry, negotiations between customers and suppliers normally only concern the extrusion premium. On the contrary, the aluminium price and the billet conversion cost are generally not object of negotiations and are therefore fixed for all customers. In the presence of a similar price structure, it seems appropriate to take as relevant benchmark price the extrusion premia rather than the full price.¹⁹ The premium difference between the Nordic Region and the remaining Member States for the past 6 years is [10-20]%, and therefore even higher than the price difference.
68. Third, a significant part of customers in the Nordic Region seems to be prevented by transport costs to source from continental Europe. In particular, some customers stated that transport costs may reach up to 20% of the final price. A significant number of customers also stated that they would not find it profitable to purchase soft-alloy extrusions beyond a radius of 500 km. It should be pointed out that other elements of the logistics system than transportation costs are equally important. Timely delivery of the products is essential for many customers due to their tight production schedules. A number of customers indicated that the transportation network was more congested for flows into the Nordic Region than out of it, making it more difficult to import into this part of the world in a sufficiently "just in time" manner than to export from it.
69. Fourth, the market structure in the Nordic Region is very different in comparison to other geographic areas. The supply-side of the market in many Member States such as Germany, Italy, Spain and the United Kingdom is fragmented and characterised by the presence of

¹⁹ A similar approach has been used by the Commission in Case COMP/M.6541 *Glencore/Xstrata*. It is also used by other merger enforcement agencies worldwide. See for instance the US Horizontal Merger Guidelines, Section 4.1.2. "Where explicit or implicit prices for the firms' specific contribution to value can be identified with reasonable clarity, the Agencies may base the SSNIP on those prices."

many suppliers of different size. By contrast, in the Nordic Region only three companies (Hydro, Sapa and ProfilGruppen) operate soft alloy extrusion plants.

70. Fifth, imports of soft-alloy extrusions in the Nordic Region account for approximately 20% of sales in that region, which is significantly lower than the average imports in other Member States or regions.²⁰ In the course of its investigation, the Commission has found that the Parties account for part of these imports (imports from Parties' Business Units are not necessarily driven by price arbitrage but could be driven e.g. by distribution needs of the merging parties). Therefore imports in the Nordic Region (excluding the Parties) would be even lower than 20%. In addition, it is not likely that the sources on which imports data is based are not reliable, insofar as they may also include products which are different from soft alloy extrusions, such as billets and windows frames. As a result, imports in the Nordic Region are likely to account for even less than 20% of sales in that region.
71. In view of the above, the Commission concludes that it is likely that a separate market for the Nordic Region exists. In any event, it is not necessary for the Commission to conclude on the matter, given that the Parties have submitted remedies that eliminate serious doubts on a possible market for soft-alloy extrusions in the Nordic Region in their entirety.

III.3.1.B UK

72. In some of its precedents on the soft alloy extrusions market, the Commission considered whether a separate market for the United Kingdom existed.²¹
73. In the present case, the results of the market investigation do not suggest that the United Kingdom constitutes a separate market for soft alloy extrusions.²²
74. First, price differences between the UK and remaining Member States (excluding Norway and Sweden) do not appear to be significant. In particular, prices in the United Kingdom tend to be only slightly higher or lower than prices in the remaining Member States (excluding Norway and Sweden). As for the premia, these seem to be systematically lower than in the other Member States.
75. Second, imports represent a significant proportion of consumption in the United Kingdom and account for approximately 50% of demand.
76. In any event, the Commission considers that the question as to whether a separate market for soft alloy extrusions in the United Kingdom exists can be left open, given that the proposed transaction would not give rise to serious doubts even under the narrowest product market definition.

²⁰ See RBB paper submitted on 8 March 2013, titled "Trade flow analysis for soft alloy extrusions" (e.g. imports in West Europe represented 78% of soft alloy extrusions consumption in that region; in Central/Eastern Europe 73%).

²¹ Case COMP/M.4518. See also Cases COMP/M2404 *Elkem/Sapa* and COMP/M.3170 *Sapa/Remi Claeys aluminium*.

²² See replies to questions 21-22-26 of Questionnaire Q2, Soft Alloy Extrusions Customers UK, Soft Alloy Extrusions Customers UK-2.

III.3.1.C Geographic markets for potential automotive and large extrusions profiles markets

77. The Commission investigated whether a potential segment for automotive profiles could be narrower than EEA in scope. The replies to the market investigation have not confirmed that there are narrower markets in the Nordic Region and in the UK. These profiles are more added-value products compared to the general soft alloy extrusions and therefore go through longer distances (relative transport costs are lower). In view of the above, the Commission has assessed the impact of the proposed transaction of the potential segment for automotive profiles in the EEA as a whole.
78. The Commission investigated also whether a potential segment for soft alloy extrusions produced with large extruded presses (above and including 12") could be narrower than EEA in scope. This does not appear to be likely because these profiles are more added-value products compared to the general soft alloy extrusions and therefore go through longer distances (relative transport costs are lower). In the UK there is not any press above and including 12". In any event, the Commission considers that the geographic market for the potential segment for larger profiles can be left open, given that the proposed transaction would not give rise to competition concerns even under the narrowest approach.

III.3.1.D Conclusion on the geographic market for soft alloy extrusions

79. In view of the above, the Commission has assessed the impact of the proposed transaction for soft alloy extrusions in the following possible markets: (1) in the EEA as a whole; (2) in the Nordic Region; (3) and in the United Kingdom. The Commission has also assessed the potential sub-segments for automotive in the EEA as a whole, and for large extrusions in the EEA as a whole and in the Nordic Region.

III.3.2 MPEs

80. The Parties submit that the relevant geographic market for MPEs is at least EEA-wide and could possibly be worldwide because of low transport costs, the common features of the products worldwide and the worldwide scope of the main customers' activities.
81. The responses to the Commission's requests for information indicated that MPE customers based in Europe purchase across the whole EEA territory.²³ MPEs are comparatively high value products and therefore transport costs do not play a major role in determining the customers' purchase patterns.
82. On the other hand, imports of MPEs from outside the EEA represent only a small proportion of the EEA consumption (approximately 3%). The responses of market participants indicate that imports do not play an important role in the EEA,²⁴ mainly because of quality reasons as well as the obstacles constituted by the certification process that is necessary to supply automotive customers.
83. In view of the above, the Commission concludes that the market for MPEs is EEA wide.

²³ See replies to question 12 of Questionnaire Q6 MPEs Customers.

²⁴ See replies to question 17 of Questionnaire Q6 MPEs Customers.

III.3.3 Building systems

84. According to the Parties, the relevant geographic market for Building Systems should be considered as being EEA-wide for several reasons.
85. Firstly, although from a demand-side perspective there are traditional and regulatory preferences and requirements that differ between some countries, from the supply side the basic profile typically does not differ much and it is not technically complex for a building systems supplier to adapt its product in order to meet a specific demand in a given country. There is also easiness for building systems suppliers from a certain Member State to devote resources to enter on another market offering solutions meeting the local demand. Also in cases of contraction or expansion of neighbouring countries, building system suppliers are continuously optimizing their portfolio to respond to the opportunity to earn a profit in other countries. This situation is often met in the Baltics countries (comprising Lithuania, Estonia and Latvia).
86. Secondly, national patterns seem to be less obvious for big projects or more sophisticated building systems, as such buildings tend to be built according to European standards and in the same manner and style throughout Europe.
87. Thirdly, language barriers for the customers for these building systems are less important and they usually conduct supra-national tenders to achieve the best prices for the project. Therefore, these products have a European-wide scope and can be supplied throughout the entire EEA.
88. During the market investigation, the large majority of respondents have submitted that the market for the aluminium building system appears to be narrower than EEA, possibly national, due to several reasons: customers' preferences, national habits, regulatory requirements, language barriers and price difference²⁵. Customers have also mentioned that a local presence of the suppliers represents an advantage for them as technical and logistic support is needed. The transport costs as indicated by the customers are also important and range from 1-4% within an area of less than 200 km up to 20% of the final price for a distance of 500-1000 km.
89. Nevertheless, the replies to the market investigation confirmed that customers in the Baltic countries tend to purchase their building systems also from suppliers located outside their country.
90. In any event, the Commission considers that the precise geographic market definition can be left open for the purpose of the present case, as the transaction is unlikely to raise serious doubts irrespective of the precise geographic market definition.

III.3.4 Aluminium welded precision tubes

91. The Parties submit that the relevant geographic market for aluminium welded precision tubes is at least EEA-wide and could possibly be worldwide for the following reasons.
92. Firstly, the vast majority of welded precision tubes are consumed by a small number of automotive heat transfer system (HTS) manufacturers. HTS manufacturers more generally operate on a worldwide basis and sell their products to car manufacturers

²⁵ See replies to question 24 of Questionnaire Q3.

around the world. Moreover, the products supplied to the HTS manufacturers are the same around the world. Secondly, the transport costs are not significant, and account for approximately 5% of the final sale price for products sourced worldwide. Thirdly, there are no quotas, tariffs or other barriers that would impact the imports into the EEA. In 2011, the level of imports into the EEA accounted of around 10% of all sales of welded precision tubes.

93. The market investigation indicated that transport costs account for around 3-10% of the final price for the welded precision tubes. As regards transport costs for imports from outside EEA, however, the market respondents appreciated that the transport cost can become a constraint, especially taken into account the added customs duties.
94. In any event, the Commission considers that the precise geographic market definition can be left open for the purpose of the present case, as the transaction is unlikely to raise serious doubts irrespective of the precise geographic market definition.

III.4. COMPETITIVE ASSESSMENT

III.4.1 Horizontal overlaps

III.4.1.A Soft alloy extrusions

95. As already said above, the Commission has assessed the impact of the proposed transaction for soft alloy extrusions in the following possible markets: (a) in the EEA as a whole (excluding automotive and large extrusions profiles); (b) in the Nordic Region (excluding automotive and large extrusions profiles); (c) and in the United Kingdom (excluding automotive and large extrusions profiles). The Commission has also assessed the potential sub-segments (d) for automotive in the EEA as a whole, and (e) for large extrusions in the EEA as a whole and in the Nordic Region.

III.4.1.A.a EEA

96. Table 1 below shows the market shares of the Parties and their competitors.

Table 1 – 2011 Shares of soft alloy extrusion sales at EEA level

PRODUCER	KMT	%
Hydro	[...]	[10-20%]
Sapa	[...]	[10-20]%
Combined	[...]	[20-30]%
Constellium	[...]	[5-10]
Aleris International	[...]	[0-5]
Metra	[...]	[0-5]
Cortizo	[...]	[0-5]
Alumil	[...]	[0-5]
Others	[...]	[60-70]%
Total	[...]	100

Source: Form CO

97. Table 2 below shows the share of capacity of the Parties and their competitors.

Table 2 – 2011 Shares of soft alloy extrusion production capacity at EEA level

PRODUCER	KMT	%
Hydro	[...]	[10-20]%
Sapa	[...]	[10-20]%
Combined	[...]	[20-30]%
Others	[...]	[70-80]%
Total	[...]	100

Source: Form CO

98. The market shares in Table 1 and 2 show that the proposed transaction will create the largest producer of soft alloy extrusions in the EEA. The Parties' combined market share for the sales of soft alloy extrusions amount to [20-30]%, but the Parties will continue to face competition from many smaller players such as Constellium, Aleris, Metra and Cortizo.
99. In the EEA (excluding the Nordic Region and the UK, which has been assessed in the following sections) only a very small minority of the respondents to the Commission's requests for information raised concerns.
100. The Parties submit that the market for soft alloy extrusions is very fragmented. In 2011, the shares of the leading suppliers (Hydro, Sapa, Constellium, Aleris International, Metra, Cortizo and Alumil) together accounted for only around 40% of 2011 EEA sales. The remaining 60% of demand was met by more than 250 independent extruders that own over 500 presses.
101. According to the Parties, entry into the production of soft alloy extrusions is relatively straightforward, as there are no technical or regulatory barriers. The Parties estimate that to set up a single press with 8 to 10 KMT annual capacity would take around 12 months. The initial investment required is around EUR 10 million.²⁶ Despite the downturn in demand, according to the Parties, there were new entrants in the EEA market in the last five years.²⁷
102. The Parties submit as well that the soft alloy extrusion market in 2011 in the EEA was characterized by significant levels of overcapacity. Average utilization in the EEA in 2011 was around [50-60]%. The Parties' utilization was slightly higher than the average. Therefore, according to the Parties, a significant proportion of spare capacity is found with the Parties' competitors and, as such, customers have alternative sources of supply to the Parties for soft alloy extrusions.

²⁶ According to the Parties, 70% of the cost accounted for by the press and other necessary equipment and 30% of the cost accounted for by building infrastructure; no more than around 40 employees are required to conduct operations.

²⁷ Emax (Belgium), and Extrusion Berlin and Schletter, both based in Germany, have all started supplying soft alloy extrusions within that period. Also, Smart has over the past 2 years increased its sales in the UK from zero to around 10 KMT.

103. The respondents to the Commission's requests for information confirmed the existence of alternative suppliers and a significant part of customers in the rest of the EEA confirmed that it is possible to switch easily between different suppliers within a short time period.²⁸ Almost all competitors confirmed that they have free capacity to expand production without any significant investment.
104. In view of the above, the Commission considers that the proposed transaction does not give rise to serious doubts as regards its compatibility with the internal market in relation to an EEA (as a whole) market for soft alloy extrusions.
105. If the relevant geographic market were to be considered as the EEA excluding the UK, the Commission considers that there would be additional reasons to conclude that the transaction does not raise serious doubts because, by excluding the relatively high market shares of the Parties in the UK, the market shares in the rest of the EEA would be even lower.
106. Similarly, if the relevant geographic market were to be considered as the EEA excluding the Nordic Region (or the Nordic Region and the UK), the transaction does not raise serious doubts because, by excluding the high market shares of the Parties in the Nordic Region, the market shares in the rest of the EEA would be even lower.

III.4.1.A.b Nordic Region

107. Tables 3 and 4 below show the sales and capacity shares of the Parties and their competitors in the Nordic Region market for soft-alloy extrusions.

Table 3 – Shares of soft alloy extrusion sales in the Nordic Region in 2011

PRODUCER	KMT	%
Hydro	[...]	[20-30]%
Sapa	[...]	[50-60]%
Combined	[...]	[70-80]%
Others (including ProfilGruppen) ²⁹	[...]	[20-30]%
Total	[...]	100

Source: Market reconstruction based on internal documents

²⁸ See replies to question 36 of Q2 Soft Alloy Extrusions Customers.

²⁹ This share of sales exclude Benteler (see footnote below) and includes imports and volumes sold by stockists. Currently there are only three extruders in the Nordic Region: Hydro, Sapa and ProfilGruppen.

Table 4 – 2011 Shares of soft alloy extrusion production capacity in the Nordic Region in 2011³⁰

PRODUCER	KMT	%
Hydro	[...]	[30-40]%
Sapa	[...]	[40-50]%
Combined	[...]	[70-80]
ProfilGruppen	[...]	[20-30]
Total	[...]	100

Source: Market reconstruction based on internal documents

108. The Parties are respectively the only producer of soft-alloy extrusions in Norway (Hydro) and the largest producer of soft-alloy extrusions in Sweden (Sapa). The only remaining competitor operating presses in the Nordic Region would be ProfilGruppen, which is already today much smaller than each of Hydro and Sapa. The proposed transaction would therefore eliminate one of the only three producers of soft alloy extrusions in the Nordic Region. The combined capacity share of the Parties would amount to [70-80]% in the Nordic Region.
109. The majority of customers replying to the Commission's requests for information expressed concerns that the proposed transaction will result in a reduction of competition and increase of prices.³¹ Some respondents stated that competition in the Nordic Region is only or mainly depending on the rivalry between Hydro and Sapa, which would be eliminated as a result of the proposed transaction.
110. The Commission considers that similar conclusions can be reached on the basis of an analysis of the Parties' internal documents. [...]This shows that the merging parties are close competitors and, consequently, the transaction would remove a competitive constraint in relation to the soft-alloy extrusions. ProfilGruppen (excluding the merging parties) is the only other extruder currently producing in the Nordic Region. ProfilGruppen has some spare capacity but would not have the production capacity to strongly compete with the merging parties.
111. The Parties submit that the proposed transaction would not result in anticompetitive effects. The Parties claim that (1) their competitor ProfilGruppen will strongly compete for share after the merger; (2) imports from Finnish producers and a trader will defeat the price rise; (3) large scale imports from continental Europe will defeat a possible price rise; (4) they are making losses in the Nordic Region due to high labour costs.

³⁰ These shares of capacity exclude Benteler's extrusion capacity in Norway. Benteler uses extrusions for captive purposes (see Parties' internal documents and call with Benteler) and therefore its inclusion in the shares would not be justified.

³¹ See replies to questions 41 and 42 of Q2, Soft Alloy Extrusions Customers Norway / Sweden.

112. [...]In addition, a customer in the Nordic Region explicitly pointed out that in the past it conducted some trials with alternative suppliers in Finland, however, the results were not satisfactory, in particular in terms of quality standards required.³²
113. Furthermore, the Nordic Region has the lowest share of imports in all the EEA (at most approximately 20%). The reasons for this appear to be mixed and are related mainly to higher transport costs³³ than in the rest of the EEA and product mix (in the Nordic Region customers require, in relative terms, a lower amount of simple extrusions - which have on average lower transport costs).
114. In theory, barriers to entry are not particularly high and economies of scale are not significantly important. However, from the market investigation there were no indications that entry would be likely, timely and sufficient.³⁴ Respondents to the market investigation stated that there was no entry in recent years and that they did not expect any entry in the Nordic Region. Internal documents of the Parties do not refer to any significant entry that could take place in the close future.
115. Therefore, contrary to the Parties' submissions, the Commission's investigation indicated that customers would face limited possibilities of switching supplier post-transaction.
116. Furthermore, as regards the Parties' submission that they are [...] in the Nordic Region due to [...], the Commission considers that the fact that the Parties are [...] does not mean that they do not today, and could in the future, enjoy significant market power, but may be linked to other issues including [...].
117. In view of the above and of the other available evidence, the Commission considers that the proposed transaction raises serious doubts as regards its compatibility with the internal market in relation to soft-alloy extrusions market in the Nordic Region.

III.4.1.A.c UK

118. Tables 5 and 6 below show the sales and capacity shares of the Parties and their competitors in a possible UK market for soft-alloy extrusions.

Table 5 – Shares of soft alloy extrusion sales in the UK in 2011

PRODUCER	KMT	%
Hydro	[...]	[10-20]%
Sapa	[...]	[20-30]%
Combined	[...]	[40-50]%
Boal	[...]	[5-10]
Smart	[...]	[5-10]
Kayes	[...]	[0-5]

³² See minutes of the call with Dovista on 27 March 2013.

³³ See minutes of the call with Benteler on 16 April 2013.

³⁴ In the meaning of the Commission Guidelines on the assessment of horizontal mergers (para. 68 and following).

Others	[...]	[40-50]%
Total	[...]	100

Source: Form CO

Table 6 – Shares of soft alloy extrusion production capacity in the UK in 2011

PRODUCER	KMT	%
Hydro	[...]	[20-30]%
Sapa	[...]	[20-30]%
Combined	[...]	[50-60]%
Boal ³⁵	[...]	[10-20]
Smarts	[...]	[10-20]
Kayes	[...]	[10-20]
Others	[...]	[10-20]%
Total	[...]	100

Source: Form CO

119. In a possible separate market encompassing the UK only, the Parties had a combined market share in 2011 of [40-50]%.³⁶ Boal would be the second largest supplier with a share of [5-10]%, followed by Smart ([5-10]%) and Kayes ([0-5]%).
120. The Parties are by far the two largest suppliers of soft-alloy extrusions in the UK. In addition, the merged entity would achieve a share of [50-60]% of the UK installed capacity.
121. Some customers answering the Commission's requests for information stated that the proposed transaction will result in a reduction of competition and increase of prices.³⁷
122. According to the Parties, the proposed transaction will not result in anticompetitive effects. The Parties claim that (1) there is strong competition from stockists such as Amari which import large volumes of soft alloy extrusions into the UK; (2) the other three main extruders (i.e. Boal, Smart and Kayes) are also strong players with spare capacity which can provide the same products as the Parties; (3) imported products accounted for approximately 50% of 2011 UK sales, the largest source of imports into the UK being China, with a share of approximately 18%, followed by Germany (17%) and Belgium + Luxembourg (9%).
123. According to the replies to the market investigation, stockists have a strong position in the UK (e.g. Amari alone being around [10-20]% of sales to end users) and stockists tend to source large volumes from non-EU suppliers, in particular from Asia (therefore

³⁵ In the course of the State of Play meeting, the Parties reported of a clerical error in the shares of capacity of Boal. The table above has been amended in accordance with the new data.

³⁶ Soft alloy extrusions in the UK represented around 5% of total EEA sales by volume in 2011.

³⁷ See replies to question 41 and 42 of Q2, Soft Alloy Extrusions Competitors UK, Soft Alloy Extrusions Competitors UK-2.

explaining the high levels of imports into the UK).³⁸ Independent stockists exercise a strong competitive constraint, supplying approximately 39% of soft-alloy extrusions in the UK.

124. In addition, the replies to the market investigation indicated that even post-transaction, there is considerable excess capacity (spare capacity estimated by the Parties to be around [30-40]%) and that the Parties will continue to face competitive pressure from the remaining extruders.
125. In view of the above and of the other available evidence, the Commission considers that the proposed transaction does not raise serious doubts as regards its compatibility with the internal market in relation to the possible soft-alloy extrusions market in the UK.

III.4.1.A.d Profiles for the automotive industry

126. Concerning the potential segment for automotive profiles, the Parties estimate the combined share of soft alloy extrusion sales to the automotive industry to amount to [10-20]% (Hydro:[5-10]%, Sapa:[5-10]%) in 2011 at EEA level. Automotive end-users often require that suppliers are certified to the ISO/TS 16949 standard. The Parties submit that many of their competitors are certified to that standard. Among them: Constellium: [10-20]%, Benteler: [10-20]%, Aleris: [5-10]%, Herbsloeh: [5-10]%, Honsel: [5-10]%, Brokelmann: [5-10]%, Hai: [5-10]%, etc.
127. Internal documents of the Parties confirm the submissions of the Parties. They show that strategic decisions on the automotive profiles are based on EEA level. Automotive profiles are more added-value than general soft alloy extrusions and travel longer distances. Competitors' replies to the market investigation confirmed the Parties' submission.
128. Therefore, the Commission concludes that the proposed transaction does not raise serious doubts in relation to the potential automotive segment.

III.4.1.A.e Large extrusions profiles

129. Concerning the potential segment for soft alloy extrusions produced with large extruded presses (above and including 12"), the Parties estimate the combined share of extrusion capacity on presses of 12" and higher to amount to approximately to [20-30]% at EEA level. Hydro does not contribute any press of diameter larger than 12" to the JV. For soft alloy extrusions with diameters of 12", the Commission considers that although Hydro would contribute one 12" press to the JV (in the Raufoss plant in Norway, described in details below), several competitors remain operating large size presses within the EEA. Furthermore, as the Parties have submitted remedies, which include the divestment of the Raufoss plant, the overlap is eliminated in relation to presses of 12" or larger.
130. Therefore, the Commission concludes that the proposed transaction does not raise serious doubts as regards its compatibility with the internal market in relation to the potential segment for soft alloy extrusions produced with large extruded presses (above and including 12").

³⁸ See minutes of the call with Kayes on 9 April 2013. On the contrary, in the Nordic Region, the Commission did not observe any significant import from Asia (which is explained by the size of the market and, on average, by quality requirements of the customers).

III.4.1.B MPEs

131. Table 7 below shows the market shares of the Parties and their competitors.

Table 7 –Shares of MPEs sales at EEA level in 2011

PRODUCER	KMT	%
Hydro	[...]	[50-60]%
Sapa	[...]	[10-20]%
Combined	[...]	[60-70]%
Herbsloeh	[...]	[20-30]%
Sumitomo	[...]	[10-20]%
Imports	[...]	[0-5]%
Total	[...]	100

Source: Form CO

132. The proposed transaction would eliminate one of the only four European suppliers of MPEs in the EEA. The proposed transaction would also further strengthen the already strong position of Hydro, which pre-merger accounts for more than [50-60]% of the MPEs sales in the EEA. [...] This shows that the merging parties are close competitors and, consequently, the transaction would remove a competitive constraint in relation to MPEs.
133. All the customers responding to the Commission's requests for information raised concerns as to the effect of the proposed transaction with regard to the EEA market for MPEs. These customers submitted that the proposed transaction would result in the merged entity achieving or reinforcing a dominant position. As a result, prices for MPEs in the EEA would be affected.
134. The Parties submitted that the proposed transaction would not result in anticompetitive effects for three reasons. First, the competitors of the merged entity have spare capacity and would be ready to expand output further to a price increase from the merged entity. Second, customers would switch to folded tubes as a reaction to a price increase. According to the Parties, folded tubes represent a viable alternative to MPEs and can be easily produced in-house by customers. Third, the large majority of the MPEs customers are large tier-1 automotive producers who are capable to exercise sufficient buyer power to prevent a possible price increase.
135. With regard to the likely reaction of competitors, the Commission found that both competitors of the merged entity are currently operating at high utilisation rate. This means that competitors would be unlikely to have the ability to increase output to counter a possible price increase from the merged entity.
136. In addition, the Commission has not found any evidence of future entry in the EEA market for MPEs. While some customers stated that in principle they would try to sponsor entry as a reaction to a price increase, all but one customers replying to the Commission's requests for information stated that they do not expect any entry in the future.

137. As regards possible substitution of MPEs with folded tubes, a narrow majority of customers responding to the Commission's requests for information stated that they would switch to folded tubes further to a permanent increase in the price of MPEs in the range of 5-10%. However, further investigation showed the following:
- (a) Folded tubes cannot be used as substitutes for MPEs for all applications (in particular, not for evaporators and refrigerators). In addition, non-automotive applications, which are expected to be developed in the next years by a number of players, are mainly based on the use of MPEs;
 - (b) A switch to folded tubes cannot be immediate and would probably require time. In particular, customers wishing to switch would need to invest to build captive production and request approval to final OEMs customers. The use of folded tubes in the automotive segment may also involve the use of patented processes;³⁹
 - (c) A number of market players still believe that MPEs constitute the leading technology and that MPEs are superior in performances to folded tubes;
 - (d) None of the two remaining competitors of the Parties expects any major impact of the switching to folded tubes on the MPEs business; and
 - (e) The Parties' internal documents show that apart for a few isolated statements, no in-depth analysis on the future impact of folded tubes on the MPEs business has been carried out. In addition, there has not been any significant decrease in the volume of MPEs due to the switch to folded tubes in recent years.
138. In view of the above, the Commission considers that some degree of future substitution between MPEs and folded tubes cannot be excluded. However, such substitution would not be certain and it would be, in any event, limited. In addition, in light of the above, the Commission has doubts that it would be timely and sufficient to exclude any anticompetitive effect stemming from the proposed transaction.
139. As regards buyer power, the Parties have not submitted compelling evidence that customers enjoy sufficient countervailing buyer power to prevent a price increase. On the contrary, a number of customers have submitted that Hydro enjoys a strong if not dominant bargaining position, and makes use of that position to influence the outcome of the negotiations in its favour, for instance by adopting a "take it or leave it" approach or threatening interruptions in deliveries.⁴⁰
140. In view of the above and of the other available evidence, the Commission considers that the proposed transaction raises serious doubts as regards its compatibility with the internal market in relation to the EEA market for MPEs.

III.4.1.C Building systems

141. According to the Parties, the proposed transaction would not significantly impede effective competition in the market for aluminium building systems in general and in any potential sub-segments for the following reasons.

³⁹ Behr, for instance, stated that it would consider switching to folded tubes for a product, but that it would find it difficult given that a number of competitors' patents protect the use of folded tubes in this product.

⁴⁰ See minutes of calls with Behr on 4 April 2013 and with Delphi on 5 April 2013.

142. First, the building systems suppliers operate in a market where they compete with non-integrated stockists and specialist fabricators who source profiles that they turn into complete systems. These companies offer products and services that in the case of stockists often are less, and in the case of specialist fabricators often are more sophisticated than those offered by building systems suppliers. Therefore, the competition in the building system market is very dynamic and the competitive pressure from other alternative suppliers like stockists and OEMs is stronger on the low level sophisticated products (windows or doors) and it is less for the high sophisticated level products (facades with special technical characteristics like high energy efficiency buildings).
143. Second, the Parties consider the estimated market shares as the most conservative approach. In the absence of any public available data for the building system market, the Parties have adopted a filter, focusing only on aluminum-based products and only to the extent that the building system suppliers are directly involved in that products flow, thus excluding the potential competition from the specialist fabricators (OEMs) and stockists, as well as from profiles that are based on other materials, like PVC or wood.
144. The Parties' activities overlap in the production and supply of aluminium building systems. Neither of them is active in supplying building systems based on other materials, except aluminum.
145. Should the market of aluminum building systems be considered as an overall market, the Parties combined market shares at EEA level would reach [10-20]% (in volume) and [20-30]% (in value). Their main competitors are Schueco ([10-20]% market share in volume and [10-20]% in value) and Reynaers ([0-5]% market share both in volume and in value). Other players are Metra ([0-5]% market share in volume and [0-5]% in value), Alumil ([0-5]% market share both in volume and in value), Cortizo ([0-5]% market share both in volume and in value). According to Parties' best estimates, the EEA building system market amounted to [...] MT in 2011, equivalent to approximately EUR [...].
146. Should the market of building systems be further segmented, the *curtain walls* segment would not represent an affected market at EEA level, as the combined market shares would reach only [10-20]%. Nevertheless, on the *other products* segment Hydro has a market share of [10-20]% and Sapa [5-10]%. Therefore, the combined market share of the Parties would reach almost [20-30]% at EEA level. Post-transaction the merged entity will face the same competitors as in the overall market for building system. Among all, Schueco has a market share equal to the merged entity. In addition, other competitors like Reynaers, Metra, Alumil, Kawneer (Alcoa) and Cortizo are also active across the EEA and will continue to compete with the Parties.
147. Thus, the Commission considers that taking into account the moderate combined market share of the Parties in the overall market for building systems and in the *other products* segment and the existence of the alternative suppliers mentioned above who will continue to exercise competitive pressure on the merged entity, the proposed transaction does not raise serious doubts in this market.
148. At national level, according to the Parties, the combined market share is above 15% in Austria, Belgium, Czech Republic, France, Ireland, Italy, Norway, Portugal, Spain, Sweden, the UK and the Baltics. On the basis of value market shares, Slovakia is not an affected market, but it would be considered if volume figures are taken into account. On

the contrary, Denmark is an affected market based on volume figures. Except this, the Parties have confirmed that the competitive situation would not change if value figures are taken into account. Therefore, the competitive analysis based on country level is carried out on the basis of volume figures only, except for Denmark.

149. At national level by segment, there are 9 affected national markets in the curtain walls segment and another 15 affected national markets in the other products segment.

Austria

150. The Parties estimate the total supply for Building Systems in Austria to be approximately [...] MT in 2011. The Parties' combined share of supply amounts to [20-30]% in volume. Schueco will continue to be the largest competitor of the merged entity with a share of around [20-30]%. Reynaers is also present (with a share of around [0-5]%), together with a number of other suppliers including Hueck [10-20]%, Heroal [5-10]%, Alumil [0-5]%, Kawneer (Alcoa) [0-5]%, Metra [0-5]%, AluK [0-5]% and Akotherm, Gutmann/Alco, Lumon, Feal and Raico with less than [0-5]%.
151. The Commission considers that should the market for building system be further segmented, the curtain walls segment in Austria would not be an affected market. In the other products segment, the situation would be similar to the one on the overall market for building system.
152. The replies to the market investigation in this case did not reveal any competitive concern on this market. Moreover, they indicated that the market for building systems in Austria is competitive, confirming the alternative suppliers mentioned above who will continue to exercise competitive pressure on the merged entity. Therefore, in view of the above and of the other available evidence, the Commission considers that the proposed transaction does not raise serious doubts in relation to the building systems market and to any of its narrower segments in Austria.

The Baltics

153. The Parties estimate the total supply for Building Systems in the Baltics to be approximately [...] MT in 2011. Of this, Hydro supplied [...] MT and Sapa [...] MT. The Parties' combined share of supply amounts to [30-40]% (Hydro [20-30]/Sapa [10-20]%). The Parties believe that Schueco is the largest supplier in the Baltics with a market share of around [30-40]%. There are numerous other competitors including Reynaers ([10-20]%), Hueck ([5-10]%), Aluprof and Javal (with market shares of less than [5-10]%). The Parties consider Cortizo as a potential new entrant on this market due to its Polish operations.
154. At segment level, the Parties would have a similar market presence in the curtain wall segment with a combined market share of [30-40]%. Their main competitor Schueco would also reach [30-40]%. Other players present in this market are Reynaers (supplying from Poland) and Hueck, each with a share of around 5-10%. Cortizo, Heroal and Guttmann would also be active, as would Raico. The Parties also consider that Aluprof and Yawal may also be supplying curtain walls into the Baltics from Poland.
155. As regards the *other products* segment, the combined market shares will be smaller than in curtain walls of [20-30]%, facing competitive constraint from Schueco (with a market

share of [20-30]%), Reynaers, Heroal and Aluprof, each with market share in the range of 5-10%. Metra, Alumil, Cortizo and Aliplast are also present on this market with market shares of less than [5-10]%.

156. The Parties confirmed that the competitive situation in all three of the Baltic States (i.e., Estonia Latvia and Lithuania) is similar to the overall position on the Baltics. Moreover, in all these countries Hydro does not have a local presence and therefore it exports building system products from neighbouring countries. Reynaers has the same strategy , supplying all these countries from its Polish offices.
157. The Commission considers that the replies to the market investigation in this case confirmed that customers do purchase building systems from outside their country. In the Baltics, respondents confirmed the presence of other alternative suppliers mentioned above. Moreover, respondents confirmed that the market leader is Schueco and that Sapa is among other alternative suppliers. Hydro seems indeed to have limited presence and therefore is not seen as a close competitor of Sapa. Therefore, in view of the above and of the other available evidence, the Commission considers that the proposed transaction does not raise serious doubts in relation to the building systems and to any of its narrower segments in the Baltics.

Belgium

158. The Parties estimate the total supply for Building Systems in Belgium to be approximately [...] MT in 2011. Of this, Hydro supplied [...] MT and Sapa [...] MT. In Belgium, the Parties' combined share of supply amounts to [20-30]% in 2011, with a small increment of [0-5]% brought by Hydro. Reynaers, a Belgian company, is by far the largest supplier in Belgium, with around [40-50]% of sales on a national basis. Schueco and Aliplast are also present, with Schueco supplying around [10-20]% of sales and Aliplast supplying [10-20]%, as well as a number of smaller local suppliers, including Van Beveren [5-10]%, Heroal, Flandria and Blyweert, each of them with around [0-5]% market share.
159. At segment level, the Parties' activities overlap only in *other products* segment, where the situation is similar to the one in the overall segment of building systems. The Commission considers that the replies to the market investigation in this case confirmed that due to the minimum increment in market shares and the existence of other alternative suppliers, the proposed transaction does not raise serious doubts in relation to the building systems and to any of its narrower segments in Belgium.

Czech Republic

160. The Parties estimate the total supply for Building Systems in the Czech Republic to be approximately [...] MT in 2011. Of this, Hydro supplied [...] MT and Sapa [...] MT. In the Czech Republic, where the Parties' combined share of supply amounts to [10-20]%, Schueco is the most important supplier and will continue to be so post-transaction, with around [40-50]% of total sales. Reynaers is also another significant supplier with around [10-20]% of sales.
161. If considering product segments, the combined market share would be just above the level of constituting a horizontally affected market in relation to Building Systems for other products ([10-20]% combined market share) and curtain walls would not represent an affected market ([10-20]% combined market share). The Parties argue that the

structure of competition in the Czech Republic would not materially change after the proposed transaction.

162. Indeed, the replies to the market investigation in this case confirmed that due to the relatively small market shares of the Parties and the existence of other alternative suppliers who will continue to exercise competitive pressure on the merged entity. In the light of the above and of the other available evidence, the Commission considers that the proposed transaction does not raise serious doubts in relation to the building systems and to any of its narrower segments in the Czech Republic.

Denmark

163. The Parties estimate the total supply of Building Systems in Denmark to be approximately [...] MT in 2011. Of this, Hydro supplied [...] MT and Sapa [...] MT. In Denmark, the Parties' combined share of supply amounts to [10-20]% (in value) and only [10-20]% (in volume). Schueco will continue to be by far the largest competitor, with a share of around [40-50]%, with Metra ([5-10]%), Alumil and H S Hansen also being present (each of the two with market shares less than [0-5]%).
164. For the product segment, only the segment for Building Systems for curtain walls would represent a horizontally affected market. The Parties would have a combined market share of [20-30]%. Schueco would be the most significant competitor in relation to the supply of curtain walls in Denmark, representing around [30-40]% of total sales and Hueck accounting for around 5-10%. The Parties are also in direct competition with facade specialists, such as Hansen, with a share of [20-30]%, and Permasteelisa and Oskomera, which would represent between [10-20]% of sales each.
165. The Commission considers that the replies to the market investigation in this case confirmed that due to the relative moderate combined market share, the existence of other alternative suppliers, and the fact that customers indicated that they do purchase building systems also from regional suppliers located outside their country,⁴¹ the proposed transaction does not raise serious doubts in relation to this the building systems and to any of its narrower segments in Denmark.

France

166. The Parties estimate the total supply of Building Systems in France at [...] MT in 2011. Of this, Hydro supplied [...] MT and Sapa [...] MT. The Parties' combined share would reach [30-40]%. Other large competitors include local suppliers Profile Systemes and Sepalumic with estimated shares of local sales of [5-10]% and [5-10]%, respectively. In addition, Schueco, Reynaers, Alcoa and Aliplast are all present, accounting for shares of [5-10]%. The remainder of the market ([30-40]% by volume) is fragmented.
167. In the curtain wall segment, Schueco has a market share of [20-30]%, with Reynaers and Alcoa each accounting for around 5-10%. The Parties also face significant direct competition from the large national facade specialists, Ouest Alu and Goyer each accounting for around [10-20]% of sales. There are also international facade specialists, like Permasteelisa accounting for between [10-20]% of the French market. Metal Yapi from Turkey is also seen as an active competitor, winning projects on this market. The Parties also sometimes encounter companies like Profiles Systemes, Sepalumic,

⁴¹ See replies to Question 25 of Questionnaire Q4, Building systems customers DA.

Installux and Raico competing for curtain wall projects, but also Yuanda, a Chinese facade specialist.

168. In the other products segment, the Parties have a combined market share of [20-30]% (Hydro [20-30]% and Sapa [5-10]%). The most important competitor is again Schueco with a market share of [10-20]%. There are numerous other smaller competitors in this segment like Reynaers, Kawneer (Alcoa), Profiles Systemes, Sepalumic or Installux, each with a market share of 5-10% and also Cortizo and Heroal with market shares below [5-10]%. The Parties argue that Cortizo, a recent entry in the market decided to establish a local manufacturing facility in France and increase its sales here.
169. The Parties also argue that Hydro and Sapa are not closed competitors in the French market. Whereas Hydro has a stronger position due to historical reasons, it is addressing the higher-end customers, where Sapa presence is insignificant. Moreover, the supply of building systems in France has been industrialized to a greater extent than in other European countries. Thus, approximately 20 000MT of additional supplies in France go through OEMs who source components and assemble the systems in large factories. These products would account for windows and other products, which represent an alternative supply for the building systems customers.
170. The Commission considers that the replies to the market investigation on the French market confirmed the fact that indeed some customers do consider OEMs and/or stockists as alternative sources for aluminum building systems.⁴² Customers also confirmed the existence of others as alternative suppliers as indicated by the Parties. Moreover, Cortizo indeed confirmed its plans to expand its presence in France.⁴³
171. Taking into account the moderate market shares of the Parties, the existence of other alternative suppliers, some of them having the intention to expand their presence here and also considering other distribution channels as a real alternative for the customers who will continue to exercise competitive pressure on the merged entity, the proposed transaction does not raise serious doubts in relation to the building systems and to any of its narrower segments in France.

Ireland

172. The Parties estimate the total supply of Building Systems in Ireland at [...] MT in 2011. Of this, Hydro supplied [...] MT and Sapa [...] MT. In Ireland, the Parties' combined share of the overall building systems supply amounts to [20-30]% volume. Here, too, Schueco, Kawneer (Alcoa) and Reynaers are all active competitors with shares of [20-30]%, [10-20]% and [5-10]%, respectively. Other smaller competitors together account for [30-40]% of the Irish market.
173. The Parties have insignificant presence in the curtain walls segment. In the other products segment the combined market share reaches [20-30]% (Hydro [10-20]% and Sapa [5-10]%). Schueco and Kawneer (Alcoa) are the most important competitors with market shares of [20-30]% and [10-20]% respectively. Reynaers and Profiles Systemes are also active with market shares of 5-10% each. In addition, there are a number of active smaller players such as Beufort, Comar, Senior Universal and Metal Technology

⁴² See replies to Question 6 to Questionnaire 4, Building System customers FR.

⁴³ See minutes of the call with Cortizo on 12 April 2013.

with market shares between 0-5%. Taking into account the moderate market shares of the Parties and strong presence of Schueco and Kawneer (Alcoa) and the existence of other smaller competitors who will continue to exercise competitive pressure on the merged entity, the proposed transaction does not raise serious doubts in relation to the building systems and to any of its narrower segments in Ireland.

Italy

175. The Parties estimate the total supply of Building Systems in Italy at [...] MT in 2011. Of this, Hydro supplied [...] MT and Sapa [...] MT. In Italy, the Parties' combined market share of supply thus amounts to [10-20]% (Hydro: [10-20]%; Sapa: [5-10]%). Their main competitors have a volume based share of supply as follows: Metra ([10-20]%), Alumil ([5-10]%) Ponzio ([5-10]%), Schueco ([5-10]%) and Allco ([5-10]%). [30-40]% of the Italian supply is fragmented between smaller competitors.
176. In the other products segment, the situation is similar, where the combined market share of the Parties reaches [10-20]%. The main competitors in this segment are as follows: Metra ([10-20]%), Schueco, Alumil, Ponzio, Allco and Aluk(Valfidus) each with market shares of around 5-10%. Reynaers have a smaller presence on the Italian market, as well as Gold Indinvest with market shares below [5-10]%. Curtain walls would not represent an affected market.
177. Taking into account that replies to the market investigation in this case have confirmed the existence of other alternative suppliers, the moderate market shares of the Parties and the existence of a relative number of other alternative suppliers who will continue to exercise competitive pressure on the merged entity, the proposed transaction does not raise serious doubts in relation to the building systems and to any of its narrower segments in Italy.

Portugal

178. The Parties estimate the total supply of Building Systems in Portugal at [...] MT in 2011. Of this, Hydro supplied [...] MT and Sapa [...] MT. In Portugal, the Parties' combined share of sales therefore amounts to [30-40]% (Hydro: [10-20]%; Sapa [10-20]%) by volume. Other notable competitors include Navarra, a local supplier with a market share of [10-20]%, Anicolor ([5-10]%), Reynaers ([5-10]%), Cortizo ([0-5]%) and Schueco ([0-5]%). Due to the lack of data public sources, the Parties argue that it is difficult to accurately estimate market shares for Portugal as there is a significant portion of demand that is sourced through Portugal but exported to African countries, including Angola. For Sapa, it is estimated that such exports account for around [20-30]% of Sapa's sales reported above. The Parties' combined market share therefore is likely to be overestimated and would actually be less than [30-40]%.
179. In relation to curtain walls segment, the combined market share would be just over [30-40]%. The Parties' main competitor in this segment is Cortizo, supplying both from Spain and now from within Portugal (see below), which represents between [10-20]% of total sales. Reynaers is also a significant player, accounting for around 5-10% of sales. Alcoa and Hueck are both active competitors, each with just under [5-10]% of total supply. The Parties also see Extrusal, Jobefar, Navarra and Sosaes competing in this segment as well. In addition, facade specialists also compete directly with the Parties, such as Permasteelisia and Oskomera, each accounting for around [10-20]% of this segment.

180. In the other products segment, the combined market share would also be just above [30-40]%. where Reynaers, Cortizo, Navarra and Sosoares have each a market share of 5-10%. Small other competitors such as Schueco, Kawneer (Alcoa), Anicolor, Extrusal and Jobefar are also present, having a market shares of less than [5-10]%.
181. According to the Parties, the Portuguese building system market is intensely competitive and experiences significant price pressure as a result of the significant decline in demand and overall economic climate. Under the prevailing economic conditions, the Parties consider that their customers tend to multi-source more than in other countries. As regards the closeness of competition, the Parties' activities overlap primarily in the higher end commercial and residential developments space which represents approximately only [30-40]% of Hydro's local sales and [30-40]% of Sapa's local sales. In this segment the Parties view Schueco and Reynaers as their main competitors. For the remainder of its sales Hydro does not consider Sapa its closest competitor as Sapa's local offering is more focused at the lower end of demand with lower prices.
182. The Commission considers that the market investigation in this country did not largely infirm or confirm the arguments of the Parties. Although some customers mentioned that they only use one single supplier, there are also customers who use two or even more than two suppliers in the same time in order to secure their purchases.⁴⁴ Also, as regards the closeness of competition between the two Parties, although some customers mentioned that Hydro and Sapa are both seen as close competitors, innovative companies with a good reputation, having competitive prices, some of them said that Hydro is perceived as offering better quality products.⁴⁵
183. Some customers raised concerns about the combined entity's ability to increase prices post-transaction. However, all respondent customers confirmed that it is easy for them to switch suppliers,⁴⁶ indicating the existence of other alternative suppliers. They also mentioned that they multisource, some of them from more than two suppliers.⁴⁷ Therefore, it is unlikely that the combined entity could impose a significant price increase after the transaction.
184. In light of the above, the Commission considers that the proposed transaction does not raise serious doubts in relation to the building systems market and to any of its narrower segments in Portugal.

Spain

185. The Parties estimate the total supply of Building Systems in Spain to be approximately [...] MT in 2011. Of this, Hydro supplied [...] MT and Sapa [...] MT. Thus, the combined market share after the transaction amounts to [10-20]%. The largest supplier post-transaction will be Cortizo, with a share of over [20-30]%. In addition, there are a number of other European suppliers active in Spain, including Schueco ([0-5]%), Reynaers ([0-5]%), Metales ([5-10]%) and Laminex ([5-10]%).

⁴⁴ See replies to Question 43 to Questionnaire 4, Building system customers PL.

⁴⁵ See replies to Question 34 to Questionnaire 4, Building system customers PL.

⁴⁶ See replies to Question 38 to Questionnaire 4, Building system customers PL.

⁴⁷ See replies to Question 43 to Questionnaire 4, Building system customers PL.

186. The curtain walls segment is not an affected market, as the combined market shares would be only [5-10]%. In the other products segment, the combined market share of the Parties and their competitors would be similar to the one in the overall building system.
187. The Commission considers that the market investigation in this case has confirmed the existence of other alternative suppliers, the moderate market shares of the Parties and the presence of other suppliers, especially the Spanish producer Cortizo, who will continue to exercise competitive pressure on the merged entity. Therefore, the proposed transaction does not raise serious doubts in relation to the building systems market and to any of its narrower segments in Spain.

Sweden

188. The Parties estimate the total supply of Building Systems in Sweden to be approximately [...] MT in 2011. Of this, Hydro supplied [...] MT and Sapa [...] MT, reaching a combined share of [30-40]% in volume. The largest competitor is Schueco with an estimated share of [20-30]% followed by H S Hansen with [0-5]% and Reynaers with [0-5]% which has priced its products aggressively to gain market share. In addition, the Parties argue that close to 25% of the Swedish market is supplied through foreign metal builders who source Building Systems elsewhere (mainly from the Baltics, Poland, Hungary and, increasingly, Finland), assemble them locally and then install the Building Systems in Sweden.
189. The combined market share for the Parties in curtain walls segment is estimated to be [30-40]% with an increment of only [5-10]%. The Parties largest competitor with regard to curtain walls is Schueco, accounting for around [20-30]% of total sales in Sweden. Reynaers, Cortizo (supplying from its operations in Poland) and Hueck are also active, each with a share of just under [5-10]%. In addition, the Parties face direct competition from facade specialists, including Oskomera, which would represent around [10-20]% of total sales. Imports from Purso in Finland and from the Baltic states also represent a significant competitive constraint in relation to the supply of curtain walls.
190. In the other products segment, the combined market share would reach [30-40]%. As in curtain walls segment, Schueco remains the strongest competitor for the merged entity, with a market share of [20-30]%. The other suppliers like Reynaers, the new entrant Cortizo, Aluprof and Yawal are also present with market shares of less than [5-10]%. In addition, Purso is supplying the Swedish market, reaching a market share of 5-10%.
191. The Parties argue that in Sweden, the competitive pressure coming from OEMs is also stronger, estimating that there are approximately 60 metal builders (not including glaziers) active in Sweden accounting for almost all large projects. Specialist fabricators like Skandinaviska Glassystem, Upglaze, Fasadlas Bäcklin are all present there being regarded as three major players on the Swedish building system market.
192. The Commission considers that the market investigation in this case confirmed indeed that the Parties have important presence in this market. Nevertheless, all customers confirmed that they do not see the local presence of a supplier as necessary, even though it is considered as an advantage. Moreover, Swedish customers do think that switching

suppliers is easy, providing examples of past switches.⁴⁸ Some customers also indicated that when they take a purchasing decision they take into consideration the offer of suppliers outside Sweden, especially in Denmark or the Baltic countries.⁴⁹ As regards the competitive pressure coming from OEMs, 2 out of 4 customers considered OEMs as alternative suppliers for their needs of building systems.⁵⁰

193. Taking into account the results of the market investigation, especially the competitive constraints coming from neighbouring countries like Denmark or the Baltic countries, the fact that most of the respondent customers mentioned that it is easy for them to switch to other suppliers confirming the existence of other alternative suppliers,⁵¹ the proposed transaction does not raise serious doubts in relation to the building systems market and to any of its narrower segments in Sweden.

United Kingdom

194. The Parties estimate the total supply of Building Systems in the UK at [...] MT million in 2011. Of this, Hydro supplied [...] MT and Sapa [...] MT, reaching a combined market share of [20-30]% in volume. The other strong competitors are Schueco ([10-20]%) and Kawneer (Alcoa) ([10-20]%). In addition, Reynaers (with a volume-based share of [5-10]%), Aliplast and Beaufort are also present. The remainder of supply (around [40-50]%) is divided between a large number of smaller players.
195. In curtain walls segment, the Parties have a relatively low combined market share of [10-20]%, with an increment of just [0-5]%. The market leader remains Schueco, with around [20-30]% of sales. Alcoa is also a significant competitor in this segment, representing around [10-20]% of total supply. In addition, Reynaers, Hueck and Aliplast are all active, each accounting for just under [5-10]% of sales. The Parties also face direct competition from facade specialists, such as Permasteelisa and Oskomera, representing around [20-30]% and [10-20]% of the segment, respectively, and also Yuanda.
196. In the other products segment, the Parties combined market share reaches [20-30]%. Here again Schueco remains the main and stronger competitive constraint with a market share of [10-20]%, but also Kawneer (Alcoa), Aliplast, each with [10-20]% market shares and Reynaers (5-10%). Beaufort, Comar, Senior Universal and Metal Technology are also present, each with a modest market share of 0-5%.
197. The Commission considers that the the market investigation in this case revealed that the Parties are not close competitors, some indicating that their offer is not comparable from the quality point of view, either they address different geographic areas.⁵² The

⁴⁸ See replies to question 38 to Questionnaire 4, Building systems customers Sw.

⁴⁹ See replies of Scandifront to question 45 and reply of Preconal Fasad to question 44.1 to Questionnaire 4, Building systems customers Sw.

⁵⁰ See replies to question 6.2 to Questionnaire 4, Building systems customers Sw.

⁵¹ See replies to question 36 to Questionnaire 4, Building systems customers Sw.

⁵² See reply of Dortech Architectural Systems and Coastal Windows to question 34 to Questionnaire 4, Building systems customers UK.

majority of customers indicated that it is easy for them to switch suppliers, confirming the existence of various alternative suppliers.⁵³

198. Taking into account the moderate combined market share with the limited increment, especially for the curtain walls segment and the existence of other alternative suppliers that will continue to exercise competitive pressure on the merged entity, the proposed transaction does not raise serious doubts in relation to the building systems market and to any of its narrower segments in United Kingdom.

Norway

199. The Parties estimate the total supply of Building Systems in Norway to be approximately [...] MT in 2011. Of this, Hydro supplied [...] MT and Sapa [...] MT, reaching a combined share of [20-30]% in volume. Schueco is the main competitor with a market share of [30-40]%. In addition, Hueck Building Systems (market share [0-5]%) imported from Germany are sold in Norway through the wholesale company Astrup AS, re-distributing to 10 to 15 customers (this represents around €[...] of sales). HS Hansen Building Systems (market share [0-5]%) are sold in Norway through its subsidiary Hubro AS. Some specialized facade fabricators ([30-40]%) have also developed their own Building Systems: SG Bøckmann AS, Nord Norsk Aluminium AS and Bårdsen Aluminium AS. The Parties estimate that total imports of Building System products into Norway represent close to [30-40]% of total supply. Most of these imports come from Sweden, the Baltics and Poland.
200. At segment level, the combined shares are lower in the other products segment, reaching only [10-20]%. Schueco has a very strong presence in this market, accounting for [30-40] of total sales in volume. Hueck has also an important presence with a market share of [10-20]%. Numerous smaller suppliers are also present with market shares of 0-5%, i.e. Reynaers, Cortizo, Aluprof, Yawal, Aliplast, Purso and Hansen.
201. For the curtain wall segment, the Parties' combined share is around [10-20]%. By far the largest competitor is Schueco, with a share of around [40-50]%. Hueck is also a significant competitor, with a share of between [10-20]%, and Reynaers, Cortizo and Aliplast are all active each with shares of just under [5-10]%. The Parties also face direct competition from specialist facade companies, including Oskomera which the Parties estimate delivered around [10-20]% of total supply of curtain wall.
202. The Parties consider that Hydro is not a close competitor of Sapa. Hydro specialises particularly on the higher end of demand through its Wicona brand. Sapa's products are positioned at a lower price. Moreover, Hydro's products have undergone two further design upgrades. Accordingly, Hydro does not consider Sapa as its closest competitor but focuses its competitive efforts in terms of benchmarking more on Schueco. In addition, a substantial part of Hydro's activities in Norway [20-30] relate to the supply of customized project solutions which Sapa does not offer at all. Instead, Hydro's main competitors here are again Schueco and specialist fabricators such as Skandinavske Glassysteme or Gartner. A particular focus of Hydro in Norway is the supply of solutions for energy-efficient buildings and so-called 'passive houses'. Sapa's presence in this segment is very limited.

⁵³ See replies to question 36 and 38 to Questionnaire 4, Building systems customers UK.

203. Taking into account the moderate market shares of the Parties and the existence of a relative number of other alternative suppliers who will continue to exercise competitive pressure on the merged entity, the proposed transaction does not raise serious doubts in relation to the building systems market and to any of its narrower segments in Norway.

III.4.1.D Aluminium welded precision tubes

204. The Parties estimate the merchant sales of welded precision tubes to [...] MT in the EEA in 2011. According to the Parties, Hydro's share of supply amounts to [5-10]% of all sales in the EEA, while Sapa's amounts to [20-30]%. The Parties' combined share therefore amounts to [20-30]% in the EEA in 2011. Other competitors are Thermasys/Arup with [40-50]%, Soll [10-20]% and Lingemann with [10-20]%.

205. According to the Parties, the proposed transaction will not result in anticompetitive effects. First, large customers are able to captively produce all types of welded precision tubes. The captive manufacturing capacity in the market is estimated at [5-10] times the merchant market. Second, the buyer power of customer would in any event prevent the merging entity from any possible price increase. Customers typically spread their orders across a number of suppliers, allowing them to shift demand easily with significant investment. Third, the welded precision tubes market is characterised by high levels of overcapacity, both at the merchant level as well as at the captive level.

206. The market investigation confirmed the argument of the Parties that large customers operate in-house production facilities for welded precision tubes. In this respect, the capacity utilisation operated captively appears to be as large as several times the size of the merchant market. Any price increase would be therefore easily offset by an output increase from the customers' side. Given the magnitude of the captive capacity, an output increase by large customers will be also likely to protect the remaining small customers who do not operate captive capacity.

207. In addition, even post-transaction the Parties will continue to face competitive pressure from the remaining competitors, and notably from the market leader Thermasys/Arup (market share: 47%).

208. In view of the above, the proposed transaction does not raise serious doubts with regard to the market for aluminium welded precision tubes in the EEA.

III.4.2 Vertical relationships

III.4.2.A Primary aluminium / Soft – alloy extrusions and MPEs

209. The proposed transaction gives rise to a vertical relationship with respect to Hydro's primary aluminium activities upstream and the Parties' soft-alloy extrusions activities downstream.

210. Hydro's market share for primary aluminium in the EEA amounts to [10-20]%. Sapa has no activities in the manufacture or sale of primary aluminium.

211. As stated above, the combined market share of the Parties for soft-alloy extrusions at EEA level amounts to only [20-30]%.

212. The market for soft alloy extrusions is particularly fragmented. The Parties face strong competition from a number of credible competitors. In 2011, the shares of the leading suppliers (Hydro, Sapa, Constellium, Aleris International, Metra, Cortizo and Alumil) together accounted for only around [40-50]% of 2011 EEA sales. The remaining [60-70]% of demand was supplied by more than 250 independent extruders.
213. Furthermore, none of the respondents to the market investigation raised any substantiated concerns with respect to the Parties' vertical relationship.
214. Therefore, it can be concluded that the Parties would have neither the ability nor the incentive to engage in any foreclosure strategies with regard to the supply of primary aluminium for the downstream production of soft alloy extrusions in the EEA. As regards a possible input foreclosure scenario, the Parties lack the degree of market power on the upstream market that is required for input foreclosure to be a concern. There is also no risk of customer foreclosure given that the proposed transaction will not lead to the elimination of a key portion of demand.
215. In the light of the above, it can be concluded that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards the supply of primary aluminium for the downstream production of soft alloy extrusions in the EEA.
216. As regards possible vertical concerns in relation to the downstream markets for soft alloy extrusions in the Nordic Region and MPEs, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market in the light of the commitments offered by the Parties to remedy horizontal competition concerns.

III.4.2.B Aluminium flat products / welded precision tubes

217. The proposed transaction gives rise to a vertical relationship between the Parties' activities on the upstream market for aluminium flat rolled products and the downstream market for precision welded tubes. Both Parties manufacture flat rolled products which they use as an input for their downstream production of precision welded tubes.
218. The Parties' combined market shares on the upstream market for flat rolled products in the EEA are relatively low ([10-20]%). Furthermore, the Parties face strong competition from a number of credible competitors (Novelis; Constellium; Alcoa; Aleris).
219. As stated above, the Parties' combined market shares on the downstream market for precision welded tubes are not particularly large ([20-30]%). Furthermore, the Parties face strong competition from a number of credible competitors (Thermasys/Arup; Soll; Lingemann) and a particularly large captive capacity is operated by end-customers.
220. Furthermore, none of the respondents to the market investigation raised any substantiated concerns with respect to the Parties' vertical relationship.

221. Therefore, it can be concluded that the Parties have neither the ability nor the incentive to engage in any foreclosure strategies with regard to the supply of aluminium flat rolled products for the production of precision welded tubes in the EEA. As regards a possible input foreclosure scenario, the Parties lack the degree of market power on the upstream market that is required for input foreclosure to be a concern. There is also no risk of customer foreclosure given that the proposed transaction will not lead to the elimination of a key portion of demand. In conclusion the transaction does not raise serious doubts in relation to the vertical relationship between Parties' activities on the aluminium flat rolled products and the downstream market for precision welded tubes.

IV. REMEDIES

222. In order to render the concentration compatible with the internal market, the Parties have modified the notified concentration by entering into commitments in relation to: (i) the market for Soft Alloy Extrusions in the Nordic Region (composed of Norway and Sweden); and (ii) the EEA market for MPEs. The commitments are annexed to this Decision and form an integral part thereof.

IV.1. PROPOSED REMEDIES

IV.1.1 Nordic Region market for soft alloy extrusions

223. In order to address the serious doubts identified by the Commission in relation to the Nordic Region market for soft alloy extrusions,⁵⁴ the Parties entered into the commitments in annexed to this Decision in Annex 1 and which are described and assessed in Section IV.1.1 and IV.2.1 of this Decision.

224. By virtue of these commitments, the Parties propose to divest the Hydro's soft-alloy extrusions plant in Raufoss, Norway and, if required by the Purchaser, Hydro's soft-alloy extrusion facility in Vetlanda, which consists of value-added activities, along with Hydro's Swedish sales team (the "SAE Divestment Business").

225. Hydro's Raufoss plant operates three presses and also carries out value-added anodizing and packing activities in-house, as well as thermal break, painting and fabrication activities which are outsourced. Hydro's Vetlanda facility carries out soft-alloy extrusion value-added fabrication activities.⁵⁵

226. This represents almost all of Hydro's soft alloy extrusion operations in Norway and Sweden with the exception of its Magnor extrusion facility.

227. The SAE Divestment Business, described in more detail in Annex 1, includes:

(A) the following main tangible assets:

- i. the Raufoss plant used for the production of soft-alloy extrusion including all tangible assets and production equipment (all of which is owned by the SAE Divestment Business) located at Fabrikkeveien, Bygning 232, N-2830 Raufoss,

⁵⁴ See Section III.4.1.A.b above.

⁵⁵ In Hydro's Vetlanda facility there are no extrusion press lines.

Norway, including the three extrusion press lines (6, 8 and 12 inches), an automatic packing line, an anodizing plant and a thermal-break line (which is leased to a subcontractor);

- ii. the shares currently held by Hydro Aluminium Profiler AS in Profilanlegg ANS ([...]);
- iii. at the request of the Purchaser, the Vetlanda plant including all tangible assets and production equipment (all of which is owned by the Divestment Business) located at Tomasbaken 6, SE-574 23, Vetlanda, Sweden, including CNC machines, robotized production lines and other fabrication machinery;
- iv. the real estate property on which the Vetlanda plant is located.

(B) the following main intangible assets:

- i. There are no intangible assets such as brand names or intellectual property rights used in conducting the SAE Divestment Business.

(C) the following main licences, permits and authorisations:

For the Raufoss plant:

- i. ISO 14001/2004 certification
- ii. Manufacturing permit

For the Vetlanda plant:

- i. ISO 14001/2004 certification
- ii. ISO 9001:2008 certification
- iii. Environmental protection license Vetlanda County Council
- iv. Functional control of Ventilation - Vetlanda County Council

(D) the following main contracts, agreements, leases, commitments and understandings:

- i. the Seller will make its best efforts to transfer the real estate contract lease for the Raufoss plant which is held by Profilanlegg ANS to the Purchaser;
- ii. the Seller will make its best efforts to transfer to the Purchaser the existing contracts entered into with die manufacturers for the purpose of die manufacturing for the Raufoss plant;
- iii. the Seller will make its best efforts to transfer to the Purchaser the existing contract entered into with Benteler Raufoss for the supply of billets.

(E) the following customer, credit and other records:

For the Raufoss plant:

- i. All of the customers currently served by the Raufoss plant. In relation to the sales of large profiles to Hydro companies which are then delivered to third parties, the Seller will facilitate the introduction of the Purchaser to those third party customers. In addition, the Seller will provide the Purchaser with the records

pertaining to such sales of large profiles that are manufactured by the Raufoss plant for onward sale to third party customers.

For the Vetlanda plant:

- i. The two main customers serviced by Hydro's Vetlanda plant to be divested together with the respective turnover.

(F) [...] at the Divestment Business.

(G) [...] at the Divestment Business.

(H) the arrangements for the supply with the following products or services by Seller for a transitional period after Closing:

Hydro and its Affiliated Undertakings commit, at the option of the Purchaser of the SAE Divestment Business, to:

- i. enter into a temporary supply or toll-manufacturing agreement with the Purchaser for the non-exclusive supply or toll-manufacturing of billets on same or similar terms to the supply contract between Hydro Primary Metal and the new Joint Venture;
- ii. enter into a temporary supply agreement for metal price hedging services on terms to be agreed with the Purchaser;
- iii. enter into a temporary supply agreement for the supply of electricity for the Raufoss and Vetlanda plants (which is currently sourced through a scheme in conjunction with Hydro Energy) on terms to be agreed with the Purchaser;
- iv. provide to the Purchaser certain support services for a temporary period, namely IT services (including IT software), logistics and customer services (back office) on terms to be agreed with the Purchaser.

228. In addition the Parties have entered into related commitments, *inter alia* regarding the separation of the divested businesses from their retained businesses, the preservation of the viability, marketability and competitiveness of the divested businesses, including the appointment of a monitoring trustee and, if necessary, a divestiture trustee.

229. The Parties submit that the commitments ensure that there will be effective competition in the Nordic Region by divesting the vast majority of the competitive overlap between the Parties relating to the supply of soft alloy extrusions in the Nordic Region including Hydro's larger press capabilities and almost all of its value-added sales activities. The Parties claimed that the commitments will entirely eliminate all of the concerns leading to the Commission's serious doubts. Furthermore, the Parties submit that, until the divestiture, the viability, marketability and competitiveness of the SAE Divestment Business will be ensured through the use of a hold-separate manager under the supervision of a monitoring trustee.

230. The proposed commitments were verified in the market by the Commission with market players that have an in-depth knowledge of how the market functions.

IV.1.2 EEA market for MPEs

231. In order to address the serious doubts identified by the Commission in relation to the EEA market for MPEs,⁵⁶ the Parties submitted the commitments annexed to this Decision in Annex 2 and which are described and assessed in Section IV.1.2 and IV.2.2 of this Decision.
232. By virtue of these commitments, the Parties propose to divest all of the MPE manufacturing capacity and sales and marketing activity in the EEA owned by Sapa, as well as its dedicated MPEs R&D facility located in Louisville, US (the "MPE Divestment Business").
233. The MPE Divestment Business, described in more detail in Annex 2 includes:
- (A) the following main tangible assets:
- i. the physical part of the plant used for the production of MPEs including all production equipment located at Harderwijk in the Netherlands, and the property on which the plant is located.⁵⁷ Internal divisions, a separate entrance and goods dock will be constructed at the current plant to allow the current MPE and Sapa general profiles businesses to be operated separately. Outside space for storage of billets, scrap and parking will also be allocated to the Divestment Business;
 - ii. tangible assets required for the manufacture of MPEs, in particular: (a) 1800T 7" press (3500-4000 MT capacity); (b) zinc arc spray equipment; (c) flux coating equipment (2000 MT); and (d) cut-to-length equipment (2 high speed, 2 medium speed, 5 conventional speed);
 - iii. at the request of the Purchaser, the land⁵⁸ and premises currently used to house the R&D facility together with all testing and other equipment and assets, including but not limited to: a) general metallurgical laboratory services; b) light optical microscopy; c) scanning electron microscopy; d) X-Ray microanalysis; e) controlled atmosphere brazing furnaces; f) corrosion testing SWAAT cabinets; g) prototype flux coating line; and
 - iv. all other tangible assets which are needed to operate the Divestment Business in the way it is currently operated;
- (B) the following main intangible assets:
- i. licensed patents in relation to: (a) aluminium alloys with optimum combinations of Formability, Corrosion Resistance and Hot Workability, and Methods of Use; (ii) aluminium Alloy with Intergranular Corrosion Resistance, Methods of Manufacturing and its Use; and
 - ii. the rights to use the NEXCOR name in relation to products produced by the MPE Divestment Business using the relevant technology;

⁵⁶ See Section III.4.1.B above.

⁵⁷ Currently located at Industrieweg 15, 3846 BB Harderwijk, the Netherlands.

⁵⁸ Currently located at 4301 Produce Road, Louisville, Kentucky, 40218-3099, USA.

iii. at the request of the Purchaser, all expertise and know-how with regard to R&D projects and pipeline products and developments currently held by the NAAC facility in relation to MPEs supplied by the Divestment Business;

(C) the following main licences, permits and authorisations:

- i. Quality management system - ISO TS 16949:2009;
- ii. Environmental management system – ISO 14001:2004;
- iii. WVO license/permit Harderwijk 2004;
- iv. Integrated environmental permit;
- v. Permit under the Environmental Management Act; and
- vi. all other licenses, permits and authorisations which are needed to operate the MPE Divestment Business in the way it is currently operated;

(D) all supplier arrangements which are needed to operate the MPE Divestment Business in the way it is currently operated; and customers contracts and/or relationships with certain customers;

(E) the transfer of all customer, credit and other records which are needed to operate the MPE Divestment Business in the way it is currently operated;

(F) the employees working at the Divestment Business plant who fulfil a range of functions including production, manufacture, IT, research and development and human resources and all other personnel needed to operate the Divestment business in the way it is currently operated;

(G) 18 key personnel, including plant, production, sales/marketing, quality and engineering managers and application engineers;

(H) 5 R&D employees (a manager, a laboratory technician and an assistant, a material specialist and an application engineer); and

(I) arrangements for the supply with the following products or services by the seller of the MPE Divestment Business (or affiliated undertakings) for a transitional period after closing of the proposed transaction to secure the handover of such services: (i) IT services, financial back office services, local IT service support, human resources and purchasing support; (ii) the use of certain facilities and capabilities (caustic facilities, air compressors, nitrogen tanks, billet and scrap handling equipment) which are currently shared with Sapa Profiles, until such facilities and capabilities are installed on a standalone basis at the MPE Divestment Business;

234. In addition the Parties have entered into related commitments, *inter alia* regarding the separation of the divested businesses from their retained businesses and the preservation of the viability, marketability and competitiveness of the divested businesses, including the appointment of a monitoring trustee and, if necessary, a divestiture trustee. The only exception to the commitment to hold the MPE Divestment Business separate from the retained business, relates to R&D for a transitory period. That is, Sapa's Monterrey MPEs plant will continue to receive R&D support and services from NAAC, as it does currently, until either the transfer of the legal title of the Divestment Business to the Purchaser or the completion of the proposed transaction whichever comes earlier.

235. The Parties submit that the commitments which they have offered in relation to the EEA MPE market remove the grounds for the Commission's serious doubts in relation to this market. In this regard, the Parties submit that the commitments remove, in its entirety, the horizontal overlap between the Parties' activities on this market. Furthermore, the Parties submit that, until the divestiture, the viability, marketability and competitiveness of the Divestment Business will be ensured through the use of a hold-separate manager under the supervision of a monitoring trustee.

IV.2. ASSESSMENT OF THE PROPOSED REMEDIES

236. Where a concentration raises serious doubts as to its compatibility with the internal market, the Parties may undertake to modify the concentration so as to remove the grounds for the serious doubts identified by the Commission with a view to having the transaction approved in phase I of the merger review procedure.

237. As set out in the Commission Notice on Remedies,⁵⁹ the commitments have to eliminate the competition concerns entirely and have to be comprehensive and effective from all points of view and must be capable of being implemented effectively within a short period of time as the conditions of competition on the market will not be maintained until the commitments have been fulfilled.⁶⁰

238. In assessing whether or not the remedy will restore effective competition, the Commission considers the type, scale and scope of the remedies by reference to the structure and the particular characteristics of the market in which the competition concerns arise.⁶¹

239. Divestiture commitments are the best way to eliminate competition concerns resulting from horizontal overlaps.⁶² The divested activities must consist of a viable business that, if operated by a suitable purchaser, can compete effectively with the Merged Entity on a lasting basis and that is divested as a going concern.⁶³

240. The business must include all the assets which contribute to its current operation or which are necessary to ensure its viability and competitiveness and all personnel which are currently employed or which are necessary to ensure the business' viability and competitiveness. Personnel and assets which are currently shared between the business to be divested and other businesses of the parties, but which contribute to the operation of the business or which are necessary to ensure its viability and competitiveness, must also be included. Otherwise, the viability and competitiveness of the business to be divested would be endangered. Therefore, the divested business must contain the personnel providing essential functions for the business such as, for instance, group R & D staff—at least in a sufficient proportion to meet the on-going needs of the divested business.⁶⁴

⁵⁹ Commission Notice on remedies acceptable under Council Regulation (EEC) No 139/2004 and under Commission Regulation (EC) No 802/2004, Official Journal C 267, 22.10.2008, p. 1-27.

⁶⁰ Commission Notice on Remedies, paragraph 9.

⁶¹ Commission Notice on Remedies, paragraph 12.

⁶² Commission Notice on Remedies, paragraph 17.

⁶³ Commission Notice on Remedies, paragraph 23.

⁶⁴ Commission Notice on Remedies, paragraphs 25 and 26.

IV.2.1 Nordic Region market for soft alloy extrusions

241. The objective of the soft alloy extrusions commitments is to ensure that the proposed transaction will have almost no impact on the manufacturing capacity, sales and supply of soft alloy extrusions in the Nordic Region.
242. The Parties submitted an initial commitments proposal regarding the Nordic Region market for soft alloy extrusions on 18 April 2013. This initial set of commitments did not include the possibility of the introduction to the Purchaser of the customers purchasing large profiles from other Hydro Business Units but extruded in Raufoss.
243. The Commission launched a market test regarding the proposed commitments on 22 April 2013. The main purpose of the market test was to check whether the proposed commitments were sufficient to clearly rule out the serious doubts identified by the Commission. The feedback received from respondents to the market test as to the suitability of the remedy to remove the serious doubts identified by the Commission in relation to the Nordic Region market for soft alloy extrusions was positive overall. However, some issues regarding whether Raufoss could be dependent on exports to other Hydro's Business Units in Europe with large extrusions were raised by respondents to the market test.
244. In light of these issues, the Parties have made modifications to the commitments with a view to ensuring that the commitments are workable and effective. In relation to the sales of large profiles to Hydro companies which are then delivered to third parties, the Seller will facilitate the introduction of the Purchaser to those third party customers. In addition, the Seller will provide the Purchaser with the records pertaining to such sales of large profiles that are manufactured by the Raufoss plant for onward sale to third party customers. The final commitments regarding the Nordic Region market for soft alloy extrusions (described in Section IV.1.1 above) were submitted by the Parties on 2 May 2013.
245. The Commission considers that the remedy proposed in relation to soft alloy extrusions eliminates almost all the horizontal overlap in the Nordic Region between the Parties. The remedy will therefore almost restore the market structure which existed before the merger. The purchaser of the SAE Divestment Business will have an initial soft alloy extrusion production capacity share of [20-30]% in the Nordic Region.
246. The Commission notes that the majority of respondents to the Commission's market test indicated that they consider that the proposed commitments remove the competition concerns raised in relation to the Nordic Region market for soft alloy extrusions. Furthermore, respondents generally indicated that they consider that the SAE Divestment Business constitutes a viable business that would enable a suitable purchaser to compete effectively on the Nordic Region market for soft alloy extrusions.⁶⁵

⁶⁵ See replies to questions 1 and 2 of the Market test questionnaires to suppliers and to customers both dated 29 April 2013.

247. Some respondents to the market test stressed the potential dependence of Raufoss on other Hydro's Business Units.⁶⁶
248. The Commission considers that the improved commitments submitted by the parties on 2 May 2013 now fully address by including the commitment to introduce the Purchaser to customers purchasing large profiles from other Hydro Business Units but extruded in Raufoss. No further significant issues were raised by respondents to the market test regarding tangible or intangible assets which would affect the suitability of the commitments to remove the Commission's serious doubts in relation to the Nordic Region market for soft alloy extrusions.
249. In light of the above, the Commission considers that the commitments dated 02 May 2013 regarding the Nordic Region market for soft alloy extrusions adequately address the concerns identified by respondents to the Commission's market test.
250. For the reasons outlined above, the Commission concludes that the commitments entered into by the Parties regarding the Nordic Region market for soft alloy extrusions (attached hereto as Annex 1) are sufficient to remove the serious doubts as to the compatibility of the transaction with the internal market in relation to the Nordic Region market for soft alloy extrusions.

IV.2.2 EEA market for MPEs

251. The Parties submitted an initial commitments proposal regarding the EEA market for MPEs on 18 April 2013. This initial set of commitments did not include the possibility of the transfer, at the request of the purchaser, of the R&D facility providing support to the MPE plant in Harderwijk.
252. The Commission launched a market test regarding the proposed commitments on 22 April 2013. The main purpose of the market test was to check whether the proposed commitments were sufficient to clearly rule out the serious doubts identified by the Commission. The feedback received from respondents to the market test as to the suitability of the remedy to remove the serious doubts identified by the Commission in relation to the EEA MPE market was positive overall. However, respondents to the market test raised some issues regarding R&D which are set out below..
253. In light of these issues, the Parties amended the commitments, including the R&D facility with a view to ensuring that the commitments are workable and effective. The final commitments regarding the EEA market for MPEs (described in Section IV.1.2 above) were submitted by the parties on 2 May 2013.
254. The Commission considers that these commitments completely eliminate the horizontal overlap at EEA level between the parties' MPE activities. The remedy will therefore restore the market structure which existed before the merger. The purchaser of the MPE Divestment Business will have an initial EEA market share of [10-20]%.
255. The MPE Divestment Business is not a stand-alone business but includes several tangible and intangible assets, contracts and licences belonging to or having been

⁶⁶ See in particular replies to question 1 the Market test questionnaires to suppliers and to customers both dated 29 April 2013.

concluded by Sapa. Some of these assets are currently shared with other product areas which are being retained by the Parties.

256. Although normally the divestiture of an existing viable standalone business is required, the Commission taking into account the principle of proportionality, may also consider the divestiture of businesses which have existing strong links or are partially integrated with businesses retained by the parties and therefore need to be 'carved out' in those respects.⁶⁷
257. The Divestment Business will be carved out from the remaining general profiles business which will be retained by the parties. In such carve-out operations, it is of utmost importance for the viability of the transferred business that it has access to all inputs and other resources such as R&D necessary to carry out its operation in full independence. The Commission can only accept commitments which require such carve out of a business if it can be certain that, when the business is transferred to the purchaser the risks for the viability and competitiveness caused by the carve-out will be reduced to a minimum.
258. The Commission notes that the majority of respondents to the Commission's market test indicated that they consider that the proposed commitments remove the competition concerns raised in relation to the EEA market for MPEs. Furthermore, respondents generally indicated that they consider that the divestment business constitutes a viable business that would enable a suitable purchaser to compete effectively on the EEA market for MPEs.⁶⁸
259. As regards the separation of the tangible assets forming part of the MPE Divestment Business from the remaining assets at Harderwijk which will be retained by the Parties, the majority of respondents to the market test did not consider this separation as posing a risk of negatively affecting the implementation of the commitments or the viability of the MPE business to be divested.⁶⁹
260. As regards intangible assets and personnel, several respondents to the market test stressed the importance of R&D and know-how in the MPE sector. Indeed, several respondents indicated that the divestment business would require relevant know-how and R&D facilities in order for it to be able to successfully compete in the EEA market for MPEs.⁷⁰
261. The Commission considers that the improved commitments submitted by the Parties on 2 May 2013 now fully address this issue. Indeed, the commitments now provide for the transfer of all R&D facilities and related personnel that will provide the divestment business with the required capabilities and necessary knowhow to continue its activity in the MPE area.

⁶⁷ Commission Notice on Remedies, paragraphs 25 and 26.

⁶⁸ See replies to questions 1 and 2 of the Market test questionnaires to suppliers and to customers both dated 29 April 2013.

⁶⁹ See replies to question 6 of the Market test questionnaires to suppliers and to customers both dated 29 April 2013.

⁷⁰ See in particular replies to questions 3, 4 and 5 of the Market test questionnaires to suppliers and to customers both dated 29 April 2013.

262. Several respondents to the market test also indicated it would be important for the purchaser of the MPE Divestment Business to have experience in the aluminium extrusion market or neighbouring market in order to be considered suitable.⁷¹
263. In the commitments dated 2 May 2013 the Parties expressly state that the purchaser must, *inter alia*, have proven expertise and incentive to maintain and develop the Divestment Business as a viable competitive force on the MPE market in order to be considered suitable. The Commission considers that proven expertise in the aluminium extrusion market or neighbouring markets is indeed an important condition for the approval of the Purchaser.
264. No further significant issues were raised by respondents to the market test regarding tangible or intangible assets (beyond those related to R&D/know-how and purchaser suitability criteria) which would affect the suitability of the commitments to remove the Commission's grounds serious doubts in relation to the EEA MPE market.
265. In light of the above and of the other available evidence, the Commission considers that the commitments dated 2 May 2013 regarding the EEA MPE market adequately address the concerns identified by respondents to the Commission's market test.
266. For the reasons outlined above, the Commission concludes that the commitments entered into by the Parties regarding the EEA MPE market (attached hereto as Annex 2) are sufficient to remove the serious doubts as to the compatibility of the transaction with the internal market in relation to the EEA MPE market.

V. CONDITION AND OBLIGATION

267. Under the first sentence of the second subparagraph of Article 6(2) of the EC 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.
268. 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 EC Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the EC Merger Regulation.
269. In accordance with the basic distinction described above, the decision in this case is conditional on the full compliance with: (i) Section B and the Schedule of the commitments dated 2 May 2013, relating to the Nordic Region market for soft alloy extrusions (attached hereto as Annex 1) and (ii) Section B and the Schedule of the commitments dated 2 May 2013, relating to the EEA MPE market (attached hereto as

⁷¹ See in particular replies to questions 3, 4 and 5 of the Market test questionnaires to suppliers and to customers both dated 29 April 2013.

Annex 2). The remaining requirements set out in the other Sections of the said commitments are considered to constitute obligations.

VI. CONCLUSION

270. For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions contained in Section B and the Schedule of the commitments dated 02 May 2013, relating to the Nordic Region market for soft alloy extrusions and in Section B and the Schedule of the commitments dated 02 May 2013, relating to the EEA MPE market, annexed to the present decision, and with the obligations contained in the other Sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation.

*For the Commission
(signed)*

*Joaquín ALMUNIA
Vice-President*

By hand and by fax: 00 32 2 296 4301
European Commission
DG Competition
Merger Registry
Place Madou / Madouplein 1
1210 Saint-Josse-ten-Noode / Sint-Joost-ten-Node
Belgique / België

Case M. 6756 – Norsk Hydro ASA / Orkla ASA / JV

Pursuant to Article 6(2) of Council Regulation (EC) No. 139/2004 as amended (the “*Merger Regulation*”), Orkla ASA (“*Orkla*”) and Norsk Hydro ASA (“*Hydro*”) (the “*Parties*”) hereby provide the following Commitments (the “*SAE Commitments*”) in order to enable the European Commission (the “*Commission*”) to declare the creation of a full-function joint venture between Orkla and Norsk Hydro which will own and operate the soft alloy extrusion businesses of each of Orkla’s wholly-owned subsidiary, Sapa Holding AB (“*Sapa*”), and Hydro, including their respective building systems and precision tubing activities compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation of the Merger Regulation (the “*Decision*”).

Orkla will provide separate commitments with respect to the divestment of certain of its activities in the field of multi-port extrusions (the “*MPE Commitments*”).

The SAE Commitments shall take effect upon the date of adoption of the Decision. The scope of the Parties’ respective obligations under the SAE Commitments depends on the time at which the divestment will take place; *i.e.*, prior to or post Completion.

This text shall be assessed in conjunction with the MPE Commitments of this date, and 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 SAE 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, including the JV, 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 on the control of concentrations between undertakings.

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

Completion: the completion of the transaction to create a joint venture between Hydro and Orkla.

Divestment Business: the business or businesses as defined in Section B and the Schedule that Hydro commits 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 Hydro 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.

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

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

Hydro: Norsk Hydro ASA incorporated under the laws of Norway, with its registered office at Drammensveien 260, PO Box 980 Skøyen, NO-0240, Oslo, Norway.

Joint Venture: the proposed joint venture between Hydro and Orkla which the Commission is currently reviewing under Case COMP/M.6756.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule.

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.

Orkla: Orkla ASA incorporated under the laws of Norway, with its registered office at Karenslyst allé 6, PO Box 423 Skøyen, NO-0213, Oslo, Norway.

Personnel: all personnel currently employed by the Divestment Business, including Key Personnel, staff seconded to the Divestment Business, shared personnel and the additional personnel listed in the Schedule.

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

Seller: Hydro if the sale of the Divestment business takes place prior to Completion, or the Joint Venture, if the sale of the Divestment business takes place post Completion.

SAE: Soft alloy extrusions are produced from billets of aluminium alloys, and are the products sold by the Divestment Business.

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

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

Section B. The Divestment Business

Commitment to divest

1. In order to restore effective competition, Seller commits 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 17. To carry out the divestiture, Seller commits to find a purchaser and enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If Seller has not entered into such an agreement at the end of the First Divestiture Period, Seller shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 27 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, Seller 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 17 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 and the Joint Venture 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, 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

4. The Divestment Business consists of Hydro's soft-alloy extrusions plant in Raufoss, Norway and, if required by the Purchaser, Hydro's soft-alloy extrusion facility in Vetlanda which consists of value-added activities along with Hydro's Swedish sales team.
5. Hydro's Raufoss plant is located at Fabrikkeveien, Bygning 232, 2830 Raufoss, Norway. The plant is part of Hydro Aluminium Profiler AS, a company registered under Norwegian law with its registered address at N-2830 Raufoss, Norway. Hydro's Raufoss plant operates three presses (6 inches, 8 inches and 12 inches, providing a wide product range capability) and also carries out value-added anodizing and packing activities in-house, as well as thermal break, painting and fabrication activities which are outsourced.
6. Hydro's Vetlanda facility is located at Tomasbaken 6, SE-574 23, Vetlanda, Sweden. The facility is Hydro's Swedish headquarters and part of Hydro Aluminium Profiler AB, a company registered under Swedish law and with its registered address at Vetlanda, Sweden. Hydro's Vetlanda facility carries out soft-alloy extrusion value-added fabrication activities specialized in advance milling of aluminium components based on CNC machines and robotized production lines. The Vetlanda facility also houses Hydro's sales team in Sweden. Vetlanda acts as (i) a subcontract fabricator for both of Hydro Aluminium Profiler AS' Raufoss and Magnor plants, and (ii) a sales agency for the Raufoss and Magnor plants.
7. The present legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes
 - a. all tangible and intangible assets (including intellectual property rights), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business;
 - b. all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
 - c. all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business (items referred to under (a)-(c) hereinafter collectively referred to as "*Assets*");
 - d. the Personnel; and
 - e. the benefit, for a transitional period of up to [CONFIDENTIAL] months after Closing and on terms and conditions equivalent to those at present afforded to the Divestment Business, of all current arrangements under which Hydro or Affiliated Undertakings supply products or services to the Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

8. From the Effective Date until Closing, Seller shall preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular Seller undertakes:
 - (a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
 - (b) to make available sufficient resources for the development of the Divestment Business, 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 the Divestment Business.

Hold-separate obligations of Seller

9. Seller commits, from the Effective Date until Closing, to keep the Divestment Business separate from the businesses retained by Hydro and to ensure that Key Personnel of the Divestment Business – including the Hold Separate Manager – have no involvement in any Hydro business retained and vice versa. Seller shall also ensure that the Personnel does not report to any individual outside the Divestment Business.
10. Until Closing, Seller shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses retained by Hydro. Seller 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.

Ring-fencing

11. Seller 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. Hydro may obtain information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or whose disclosure to Hydro is required by law.

Non-solicitation clause

12. The Parties and the Joint Venture undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of [CONFIDENTIAL] after Closing.

Due Diligence

13. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, Seller 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) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

14. Seller 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).

15. 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

16. 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 and the Joint Venture;
- (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, the Joint Venture 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**").

17. The final binding sale and purchase agreement shall be conditional on the Commission's approval. When Seller has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. Seller 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. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment Procedure

18. The Parties shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If Seller 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 Seller at that time or thereafter, the Seller 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.

19. The Trustee shall be independent of the Parties and of the Joint Venture, 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 Seller in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by the Seller

20. No later than one week after the Effective Date, the Parties shall submit a list of one or more persons whom they 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, Seller shall submit a list of one or more persons whom they 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 19 and shall include:
 - (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
 - (b) the outline of a work plan 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

21. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Seller 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, Seller 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 Seller

22. If all the proposed Trustees are rejected, Seller 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 18 and 21.

Trustee nominated by the Commission

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

II. Functions of the Trustee

24. 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

25. 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 Seller 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 and the Joint Venture, in accordance with paragraphs 8 and 9 of the Commitments;

(b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 10 of the Commitments;

(c) (i) in consultation with the Parties, determine all necessary measures to ensure that the Seller does not after the effective date obtain any business secrets, knowhow, 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 Seller as the disclosure is reasonably necessary to allow the Seller to carry out the divestiture or as the disclosure is required by law;

(d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and the Seller or Affiliated Undertakings;

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

(iv) propose to the Seller such measures as the Monitoring Trustee considers necessary to ensure the Seller'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, (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 Seller 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 Seller a non-confidential copy at the same time, if it concludes on reasonable grounds that the Seller is failing to comply with these Commitments;

(vii) within one week after receipt of the documented proposal referred to in paragraph 17, 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, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser.

Duties and obligations of the Divestiture Trustee

26. 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 17. 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 Seller, subject to the Seller's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
27. 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 Seller.

III. Duties and obligations of the Seller

28. The Seller shall provide and shall cause its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Seller's or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Seller and the Divestment Business shall provide the Trustee upon request with copies of any document. The Seller and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
29. The Seller 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 Seller shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. The Seller 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.
30. The Seller 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 Seller shall cause the documents required for effecting the sale and the Closing to be duly executed.

31. The Seller 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 Seller for any liabilities arising out of the performance of the Trustee’s duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
32. At the expense of the Seller, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the Seller’s approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should the Seller refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard the Seller. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 31 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served the Seller 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

33. 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 Seller, with the prior approval of the Commission, may replace the Trustee.
34. If the Trustee is removed according to paragraph 33, 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 18-23.
35. Beside the removal according to paragraph 33, 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

36. The Commission may, where appropriate, in response to a request from the Seller 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 Seller seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall the Seller be entitled to request an extension within the last month of any period.

.....
duly authorised for and on behalf of
Norsk Hydro ASA

.....
duly authorised for and on behalf of
Orkla ASA

SCHEDULE

1. The Divestment Business as operated to date has the following legal and functional structure:

Hydro's Raufoss plant is located at Fabrikkeveien, Bygning 232, N-2830 Raufoss, Norway. The plant is part of Hydro Aluminium Profiler AS. Raufoss leases its premises at Raufoss industrial park from Profilanlegg ANS. Hydro Aluminium Profiler AS owns [CONFIDENTIAL]% of the shares in Profilanlegg ANS. The remaining [CONFIDENTIAL]% shareholding of Profilanlegg ANS is owned by Benteler, which also operates a facility on the industrial park. The SAE Divestment Business shall consist of the Raufoss plant and the shareholding in Profilanlegg ANS.

An organisation chart of the Raufoss plant is provided below:

[CONFIDENTIAL]

In addition, at the request of the Purchaser, Hydro's Vetlanda facility located in Sweden will also be divested. Hydro's Vetlanda facility is the entire activity of Hydro Aluminium Profiler AB which is a subsidiary of Hydro Aluminium AS.

An organisation chart of the Vetlanda plant is provided below:

[CONFIDENTIAL]

Three of the internal sales personnel included in this organisation chart are located in Magnor, and one at Raufoss, all employed by Hydro Aluminium Profiler AS. The three located in Magnor will remain with Hydro/the JV and the person in Raufoss will transfer with the Raufoss business.

The working assumption for a transaction structure is that:

- (i) the assets and business of the Raufoss plant will be divested from Hydro Aluminium Profiler AS, including its shares in Profilanlegg ANS, and that
- (ii) at the request of the Purchaser, Hydro Aluminium AS' shares in Hydro Aluminium Profiler AB will also be divested.

2. Following paragraph 4 of these Commitments, the Divestment Business includes, but is not limited to:

(a) the following main tangible assets:

- the Raufoss plant used for the production of soft-alloy extrusion including all tangible assets and production equipment (all of which is all owned by the Divestment Business) located at Fabrikkeveien, Bygning 232, N-2830 Raufoss, Norway, including the three extrusion press lines (6, 8 and 12 inches), an automatic packing line, an anodizing plant and a thermal-break line (which is leased to a subcontractor),
- the shares currently held by Hydro Aluminium Profiler AS in Profilanlegg ANS (representing 74% of Profilanlegg ANS),

- at the request of the Purchaser, the Vetlanda plant including all tangible assets and production equipment (all of which is all owned by the Divestment Business) located at Tomasbaken 6, SE-574 23, Vetlanda, Sweden, including CNC machines, robotized production lines and other fabrication machinery,
- the real estate property on which the Vetlanda plant is located.

(b) the following main intangible assets:

There are no intangible assets such as brand names or intellectual property rights used in conducting the SAE Divestment Business.

(c) the following main licences, permits and authorisations:

Raufoss plant

ISO 14001/2004 certification
Manufacturing permit

Vetlanda plant

ISO 14001/2004 certification
ISO 9001:2008 certification
Environmental protection license Vetlanda County Council
Functional control of Ventilation - Vetlanda County Council

(d) the following main contracts, agreements, leases, commitments and understandings

- the Seller will make its best efforts to transfer the real estate contract lease for the Raufoss plant which is held by Profilanlegg ANS to the Purchaser (Profilanlegg ANS will be majority owned by the Purchaser following Completion),
- make its best efforts to transfer to the Purchaser the existing contracts entered into with die manufacturers for the purpose of die manufacturing for the Raufoss plant,
- make its best efforts to transfer to the Purchaser the existing contract entered into with Benteler Raufoss for the supply of billets.

(e) the following customer, credit and other records ;

Raufoss plant

All of the customers currently served by the Raufoss plant. [CONFIDENTIAL]. The following is a list of the main customers serviced by Hydro's Raufoss plant to be divested together with the respective turnover generated by each of these customers in 2011:

Customer	Sales (excl VAT) Million EUR	Percentage of Total Turnover	Country

[CONFIDENTIAL]

Vetlanda plant

The two main customers serviced by Hydro's Vetlanda plant to be divested together with the respective turnover generated by each of these customers in 2012 is set out below:

Customer	Sales (excl VAT) Million EUR	Percentage of Total Turnover	Country

[CONFIDENTIAL]

(f) the following Personnel:

Raufoss plant

A list of the personnel working at the Raufoss plant which are part of the SAE Divestment Business is enclosed as Annex 1 [CONFIDENTIAL ANNEX].

Vetlanda plant

A list of the personnel working at the Vetlanda plant, which are, at the request of the Purchaser, a part of the SAE Divestment Business is enclosed as Annex 2 [CONFIDENTIAL ANNEX].

(g) the following Key Personnel:

Business/Sales

[CONFIDENTIAL]

Raufoss

[CONFIDENTIAL]

HAP AB

[CONFIDENTIAL]

A Hold Separate Manager will be appointed by Hydro among the Key Personnel at the Effective Date.

(h) the arrangements for the supply with the following products or services by Seller or Affiliated Undertakings for a transitional period after Closing:

Hydro and its Affiliated Undertakings commit, at the option of the Purchaser of the Divestment Business, to:

- enter into a temporary supply or toll-manufacturing agreement with the Purchaser for the non-exclusive supply or toll-manufacturing of billets on same or similar terms to the supply contract between Hydro Primary Metal and the new Joint Venture which will come into force upon Completion for a term of up to [CONFIDENTIAL],
- enter into a temporary supply agreement for metal price hedging services on terms to be agreed with the Purchaser for a period of up to [CONFIDENTIAL] months,
- enter into a temporary supply agreement for the supply of electricity for the Raufoss and Vetlanda plants (which is currently sourced through a scheme in conjunction with Hydro Energy) on terms to be agreed with the Purchaser for a period of up to [CONFIDENTIAL] months,

- provide to the Purchaser certain support services, namely IT services (including IT software), logistics and customer services (back office) for a period of up to [CONFIDENTIAL] months on terms to be agreed with the Purchaser.

3. The Divestment Business shall not include:

For the sake of clarity and completion, Hydro Aluminium Profiler AS, which owns the Raufoss plant, also has responsibility for a value-added facility in Finland, Hydro Aluminium Salko Oy. The legal owner of Hydro Aluminium Salko Oy is Hydro Aluminium A.S, not Hydro Aluminium Profiler AS. Hydro Aluminium Salko Oy currently sells, fabricates and paints profiles sourced from both the Raufoss and Magnor plants. Hydro Aluminium Salko Oy is part of the business to be retained by the Joint Venture and it is specifically excluded from the commitments.

In addition, Hydro Aluminium Profiler AS also operates a smaller extrusion plant located in Magnor, Norway. This plant which has a 7 inch press as well as anodizing and fabrication capabilities, is to be retained by the Joint Venture and is also specifically excluded from the commitments.

ANNEX 1 [...]

ANNEX 2 [...]

By hand and by fax: 00 32 2 296 4301

European Commission
DG Competition
Merger Registry
Place Madou / Madouplein 1
1210 Saint-Josse-ten-Noode / Sint-Joost-ten-Node
Belgique / België

Case M. 6756 – Orkla ASA / Norsk Hydro ASA

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No. 139/2004 as amended (the “*Merger Regulation*”), Orkla ASA (“*Orkla*”) and Norsk Hydro ASA (“*Hydro*”) (the “*Parties*”) hereby provide the following Commitments (the “*MPE Commitments*”) in order to enable the European Commission (the “*Commission*”) to declare the creation of a full-function joint venture under the joint control of Orkla and Norsk Hydro which will own and operate the soft alloy extrusion businesses of each of Orkla’s wholly-owned subsidiary, Sapa Holding AB (“*Sapa*”), and Hydro, including their respective building systems and precision tubing activities, compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation of the Merger Regulation (the “*Decision*”).

The Parties will provide separate commitments with respect to the divestment of activities related to its soft-alloy extrusion plant in Raufoss (the “*SAE Commitments*”).

The MPE Commitments shall take effect upon the date of adoption of the Decision. The scope of the Parties’ respective obligations under the MPE Commitments depends on the time at which the divestment will take place: i.e. prior to or post Completion.

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 MPE 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, including the JV, 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 on the control of concentrations between undertakings.

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

“Completion”: the completion of the transaction to create a joint venture between Orkla and Hydro.

Non-Confidential

“Divestment Business”: the business or businesses as defined in Section B and the Schedule 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.

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

“Hold Separate Manager”: the person appointed by the Parties for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

“Hydro”: Norsk Hydro ASA incorporated under the laws of Norway, with its registered office at Drammensveien 260, PO Box 980 Skøyen, NO-0240, Oslo, Norway.

“Joint Venture”: the proposed joint venture between Orkla and Hydro which the Commission is currently reviewing under Case COMP/M.6756.

“Key Personnel”: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule.

“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.

“MPE”: multi-port extrusions, being the products sold by the Divestment Business.

“Orkla”: incorporated under the laws of Norway, with its registered office at Karenslyst allé 6, PO Box 423 Skøyen, NO-0213, Oslo, Norway.

“Personnel”: all personnel currently employed by the Divestment Business, including Key Personnel, staff seconded to the Divestment Business, shared personnel and the additional personnel listed in the Schedule.

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

“Sapa”: Sapa Holding AB, a wholly-owned subsidiary of Orkla, in which all of Orkla’s aluminium interests are housed.

“Seller”: means Orkla via its Sapa subsidiary, if prior to Completion, or the Joint Venture, if post Completion.

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

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

Section B. The Divestment Business

Commitment to divest

In order to restore effective competition, Seller commits 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, Seller commits 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 Seller has not entered into such an agreement at the end of the First Divestiture Period, Seller shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 23 in the Trustee Divestiture Period.

The Parties shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, Seller 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.

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, 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 the MPE production facility located in Harderwijk in the Netherlands, currently 100% owned by Sapa. This represents all of Sapa's MPE manufacturing capacity and sales and marketing activity in the EEA. The Divestment Business also includes, at the option of the Purchaser, Sapa's North American Applications Centre, located at Louisville, Kentucky, in the USA, also owned 100% by Sapa. The present legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes

- all tangible and intangible assets (including intellectual property rights subject to assignment), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business;
- all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
- all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business (items referred to under (A)-(C) hereinafter collectively referred to as *Assets*”);

the Personnel; and

the benefit, for a transitional period of up to six months after Closing and on terms and conditions equivalent to those at present afforded to the Divestment Business, of all current arrangements under which Orkla or Affiliated Undertakings supply products or services to the Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

From the Effective Date until Closing, Seller shall preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular Seller undertakes:

not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;

to make available sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans

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

Hold-separate obligations of Parties

The Seller commits, from the Effective Date until Closing, to keep the Divestment Business separate from the businesses it is retaining and ensure that Key Personnel of the Divestment Business – including the Hold Separate Manager – have no involvement in any business retained and vice versa. Seller shall also ensure that the Personnel do not report to any individual outside the Divestment Business. By derogation from the commitment in this paragraph:

VI.1.1.A the Seller shall be entitled to obtain R&D services from NAAC until the first of Completion or Closing; and

VI.1.1.B the Divestment Business shall, to the extent necessary, be able to obtain the services described in Paragraph 2(I) of the Schedule for the period defined in that paragraph.

Until Closing, Seller shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses retained by it. 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,

Non-Confidential

marketability and competitiveness and its independence from the businesses retained by the Parties.

Ring-fencing

Seller shall implement all necessary measures to ensure that it does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment 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. Seller may obtain information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or whose disclosure to Seller is required by law.

Non-solicitation clause

The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of one year after Closing.

Due Diligence

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

provide to potential purchasers sufficient information as regards the Divestment Business;

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

Reporting

Seller 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).

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

In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must:

be independent of and unconnected to the Parties;

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;

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”).

The final binding sale and purchase agreement shall be conditional on the Commission’s approval. When Seller has reached an agreement with a purchaser, it 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. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment Procedure

The Parties shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If Seller 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, they shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestment Period.

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 fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by the Parties

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 they propose to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient

Non-Confidential

information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 16 and shall include:

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

the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;

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

The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, 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

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 15 and 18.

Trustee nominated by the Commission

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

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

The Monitoring Trustee shall:

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.

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:

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 and the Joint Venture, in accordance with paragraphs 5 and 6 of the Commitments;

supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 7 of the Commitments;

(i) in consultation with the Parties, determine all necessary measures to ensure that Seller does not after the effective date obtain any business secrets, knowhow, 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 as the disclosure is reasonably necessary to allow Seller to carry out the divestiture or as the disclosure is required by law;

monitor the splitting of assets and the allocation of Personnel between the Divestment Business and Seller or Affiliated Undertakings;

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

propose to the Parties such measures as the Monitoring Trustee considers necessary to ensure the Parties' 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;

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, (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;

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;

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, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser.

Duties and obligations of the Divestiture Trustee

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 14. 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.

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

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

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 its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the

data room documentation and all other information granted to potential purchasers in the due diligence procedure. 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.

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.

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 wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

At the expense of the Parties, 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 28 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

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:

the Commission may, after hearing the Trustee, require the Parties to replace the Trustee;
or

the Parties, with the prior approval of the Commission, may replace the Trustee.

If the Trustee is removed according to paragraph 30, 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 15-20.

Beside the removal according to paragraph 30, 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

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:

Grant an extension of the time periods foreseen in the Commitments, or

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

.....

duly authorised for and on behalf of

Orkla ASA

.....

duly authorised for and on behalf of

Norsk Hydro ASA

SCHEDULE

The Divestment Business as operated to date has the following legal and functional structure:

The Divestment Business (Sapa's Harderwijk MPE business) is currently part of Sapa Profiles NL B.V. and the assets related to the Divestment Business are mainly held by Sapa Profiles NL B.V. ("**Sapa Profiles**"). Sapa Profiles is 100% owned by Sapa. For a description of the management/organisational structure of Sapa's Harderwijk MPE business, please see below.

In order to facilitate its transfer to the Purchaser, the Divestment Business will be separated through:

- a) transfer of the relevant assets and liabilities located at the level of Sapa Profiles and relating to the Divestment Business through a legal demerger (*juridische afsplitsing*) into a newly – by Sapa Profiles - to be incorporated entity ("**Newco**") combined with an asset and liability transfer to Newco of other assets and liabilities located at the level of other Sapa group entities; or
- b) individual transfer of all assets and liabilities relating to the Investment Business to an Orkla group company incorporated to that extent or, alternatively, to a third party directly.

The Parties propose that Sapa's North American Application Centre (NAAC) facility in Louisville, Kentucky in the USA, which currently provides research and development capabilities to the Harderwijk MPE business, will be included within the Divestment Business. The inclusion of the NAAC within the Divestment Business is at the option of the Purchaser.

Following paragraph 4 of these Commitments, the Divestment Business includes, but is not limited to:

the following main tangible assets:

- the physical part of the plant used for the production of MPEs including all production equipment (all of which is all owned by the Divestment Business) located at Industrieweg 15,3846 BB Harderwijk, the Netherlands and the property on which the plant is located. Internal divisions, a separate entrance and goods dock will be constructed at the current plant to allow the current MPE and Sapa general profiles businesses to be operated separately. Outside space for storage of billets, scrap and parking will also be allocated to the Divestment Business. Transfer of interest in the land to the Purchaser will be by sale or long-term lease at market rates, at the option of the Purchaser;
- the principal tangible assets included within the Divestment Business which are required for the manufacture of MPEs are:
 - 1800T 7" press (3500-4000 MT capacity);
 - zinc arc spray equipment;

- flux coating equipment (2000 MT); and
- cut-to-length equipment (2 high speed, 2 medium speed, 5 conventional speed).
- The land and premises currently used to house the NAAC facility located at 4301 Produce Road, Louisville, Kentucky, 40218-3099, USA, including all testing and other equipment and other assets located within the NAAC, which are currently owned by Sapa and which are needed to provide the R&D support currently provided to the Harderwijk MPE business, including but not limited to:
 - general metallurgical laboratory services;
 - light optical microscopy;
 - scanning electron microscopy;
 - X-Ray microanalysis;
 - controlled atmosphere brazing furnaces;
 - corrosion testing SWAAT cabinets;
 - prototype flux coating line.
- all other tangible assets which are needed to operate the Divestment Business in the way it is currently operated.

the following main intangible assets:

- Licensed patents in relation to:
 - aluminium alloys with optimum combinations of Formability, Corrosion Resistance and Hot Workability, and Methods of Use;
 - aluminium Alloy with Intergranular Corrosion Resistance, Methods of Manufacturing and its Use; and

Note that these patents, which relate to NEXCOR technology, are currently licensed by Alcoa to Sapa. Sapa will seek to assign these licences to the Purchaser of the Divestment Business.

- the rights to use the NEXCOR name in relation to products produced by the Divestment Business using the relevant technology.
- all expertise and know-how with regard to R&D projects and pipeline products and developments currently held by the NAAC facility in relation to MPEs supplied by the Divestment Business.

There are no other intangible assets such as brand names or intellectual property rights used in conducting the Divestment Business.

the following main licences, permits and authorisations:

- Quality management system - ISO TS 16949:2009
- Environmental management system – ISO 14001:2004
- WVO license/permit Harderwijk 2004
- Integrated environmental permit
- Permit under the Environmental Management Act; and
- all other licenses, permits and authorisations which are needed to operate the Divestment Business in the way it is currently operated.

the following main contracts, agreements, leases, commitments and understandings:

Suppliers

- all supplier arrangements which are needed to operate the Divestment Business in the way it is currently operated;

Customers

- customer contracts and/or relationships with the following customers:
 - [SAPA CONFIDENTIAL].

the following customer, credit and other records:

- all customer, credit and other records which are needed to operate the Divestment Business in the way it is currently operated will be transferred with the Divestment Business;

the following Personnel:

- the employees working at the Divestment Business plant who fulfil a range of functions including production, manufacture, IT, research and development and Human Resources as set out in more detail in the organisation chart at Annex 1 (Organisation Chart);

the following Key Personnel based at Harderwijk in the Netherlands:

- [SAPA CONFIDENTIAL] (Plant Manager);
- [SAPA CONFIDENTIAL] (Production Manager);

- [SAPA CONFIDENTIAL] (Sales/Marketing Manager);
- [SAPA CONFIDENTIAL] (Financial Controller);
- [SAPA CONFIDENTIAL] (Engineering Manager);
- [SAPA CONFIDENTIAL] (Applications Engineer/Research and Development);
- [SAPA CONFIDENTIAL] (Quality manager);
- [SAPA CONFIDENTIAL] (EHS Manager);
- [SAPA CONFIDENTIAL] (Sales);
- [SAPA CONFIDENTIAL] (Logistics and planning);
- [SAPA CONFIDENTIAL] (Press Engineer);
- [SAPA CONFIDENTIAL] (Die Shop Manager);
- [SAPA CONFIDENTIAL] (Maintenance Manager);
- [SAPA CONFIDENTIAL] (Maintenance Employee);
- [SAPA CONFIDENTIAL] (Maintenance Employee);
- [SAPA CONFIDENTIAL] (Maintenance/Electrical Employee);
- [SAPA CONFIDENTIAL] (Shiftleader);
- [SAPA CONFIDENTIAL] (Shiftleader); and
- all other Personnel needed to operate the Divestment Business in the way it is currently operated;

the employees of the NAAC in the USA are as follows:

- [SAPA CONFIDENTIAL] (Manager)
- [SAPA CONFIDENTIAL] (Applications Engineer)
- [SAPA CONFIDENTIAL] (Materials Specialist)
- [SAPA CONFIDENTIAL] (Laboratory Technician)
- [SAPA CONFIDENTIAL] (Laboratory Assistant)

the arrangements for the supply with the following products or services by Seller or Affiliated Undertakings for a transitional period after Closing to secure the handover of such services:

- IT services, financial back office services, local IT service support, Human Resources and Purchasing support currently provided by Sapa Profiles Harderwijk. These arrangements are uncomplicated and can be easily provided by the Purchaser but Sapa would be willing to provide these services until the transfer to a Purchaser takes place and for an appropriate period to secure the handover of such services;
- the use of certain facilities and capabilities (caustic facilities, air compressors, nitrogen tanks, billet and scrap handling equipment) which are currently shared with Sapa Profiles, until such facilities and capabilities are installed on a standalone basis at the Divestment Business;
- The NAAC currently provides support to Sapa's MPE plants in Harderwijk and in Monterrey (Mexico). The Monterrey MPE plant will continue to receive R&D support and services from NAAC, as it does currently, until either Closing or Completion, whichever happens earlier. After either Closing or Completion has taken place, the Monterrey MPE plant will need to source these services elsewhere.

The Divestment Business shall not include:

Certain members of Sapa Senior Management that currently oversee a number of regional businesses including the Divestment Business. Specifically, the following individuals, who are all based in the USA, will not be included:

- [SAPA CONFIDENTIAL] – Operations Manager for SHET's business worldwide;
- [SAPA CONFIDENTIAL] – HR/EHS Manager for SHET's business worldwide.

The Parties have included within the Divestment Business all the personnel it requires in order to operate and compete effectively as a standalone business.

ANNEX 1 [...]