EN

Case No COMP/M.6974 - METINVEST / LANEBROOK / SOUTHERN GOK

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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PUBLIC VERSION

MERGER PROCEDURE

ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sir/Madam,

Subject: Case No COMP/M.6974 – Metinvest / Lanebrook / Southern GOK Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1]

(1) On 20 December 2013, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Metinvest B.V. ("Metinvest", Netherlands) acquires within the meaning of Article 3(1)(b) of the Merger Regulation joint control together with Lanebrook Limited ("Lanebrook", Cyprus) of open joint stock company Pivdennyi Ore Mining and Processing Plant ("Southern GOK", Ukraine), by way of purchase of shares (the "Transaction").

(2) Metinvest, Lanebrook and Southern GOK are hereinafter referred to as "the Parties".

1. THE PARTIES

(3) Metinvest is the holding company of a vertically integrated mining and metals group, with assets in Ukraine, Bulgaria, the United Kingdom and the United States. The Metinvest Group is active in all stages of the steel production and trading chain, from iron ore mining, coking coal mining, fluxes and coke production, through to semi-finished and finished steel production and international trading. The Metinvest group

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.

is jointly controlled by System Capital Management Limited ("SCM"), owned by the Ukrainian individual Rinat Akhmetov, and by the Smart Group, owned by the Ukrainian individual […] and the Russian individual […].[2]

(4) Lanebrook is the holding company of the Evraz Group ("Evraz"), a multinational, vertically integrated, steel, mining and vanadium company. Evraz is headquartered in London and has operations in the Russian Federation, Ukraine, the European Union, the United States, Canada and South America. Lanebrook is owned by three Russian individuals, Roman Abramovich, Alexander Abramov and Alexander Frolov.

(5) Southern GOK is a Ukrainian iron ore mining open joint stock company.[3] Southern GOK produces iron ore concentrate used to make sintered products, such as sinter and pellets, which are processed further at steel plants. Southern GOK does not produce iron ore fines. Sothern GOK sells its iron ore products mainly in Asia and eastern Europe, with [50-60]% of sales going to China and a further [30-40]% to Ukraine. The remaining [10-20]% is sold in the European Union, primarily in eastern Europe. Approximately [90-100]% of the share capital in Southern GOK is held by four companies,[4] each of which is jointly controlled by Lanebrook and Trosilia Holdings Limited ("Trosilia") on the basis of 50/50 shareholdings. Southern GOK is therefore currently jointly controlled by Lanebrook and Trosilia.

(6) Trosilia is a holding company not engaged in any business activity, except for holding and managing the shares of its subsidiaries, primarily Southern GOK. Trosilia is currently part of the Smart Group.

2. THE CONCENTRATION

(7) Pursuant to a Letter of Intent of April 2013 and a Share Subscription Agreement of 25 October 2013, Metinvest will acquire 100% of the shares in Trosilia.[5] Through the acquisition Metinvest will replace Trosilia in its role as controlling shareholder in the four companies holding shares in, and controlling, Southern GOK.

(8) Metinvest will therefore acquire joint control over Southern GOK together with Lanebrook which constitutes a concentration pursuant to Article 3(1)(b) of the Merger Regulation.

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2 The acquisition of joint control over Metinvest by SCM and the Smart Group was the subject of Case COMP/M.5251 - System Capital Management-Energees/Metinvest.

3 An open joint stock company is a type of company in many successor states of the Soviet Union, in particular in Russia and Ukraine. Its distinguishing feature is the right of stockholders to trade in stocks without the permission of other stockholders. Open joint stock societies are somewhat comparable to limited liability partnerships or corporations under US law.

4 These four companies are [three Cypriot companies and a Ukrainian company].The remaining [5-10]% is held by a large number of dispersed shareholders.

5 Due to Trosilia's 50% shareholding in the four companies holding shares in Southern GOK, Metinvest will thus acquire an indirect stake of approximately 46.15% in Southern GOK.

3. EU DIMENSION

(9) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[6] (Metinvest: EUR […], Lanebrook: EUR […], Southern GOK: EUR […]). Two of them have an EU-wide turnover in excess of EUR 250 million (Metinvest: EUR […], Lanebrook: EUR […]), and each of the undertakings concerned does not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

4. ASSESSMENT

4.1. Relevant Market

4.1.1. Iron ore

(10) The Parties' activities in the iron ore sector overlap in the production and sale of iron ore fines, iron ore concentrate and to some extent iron ore pellets.

4.1.1.1. Relevant product markets

(11) Iron ore is mainly used in steel production. Iron ore products are generally classified into five categories: fines, concentrate, lump, pellets and sinter. Fines, concentrate and lump are produced by crushing and grinding larger pieces of iron ore through different processes. Due to their larger size, lumps can be used directly in blast furnaces for pig iron[7] production. In contrast, due to their small size, fines and concentrates have to be agglomerated and processed into sinter or pellets before being used in pig iron production. Both fines and, to a more limited extent, concentrate are used for the production of sinter whilst only concentrate is used for the production of pellets.[8] An alternative to pig iron production in the steel production value chain is the use of direct reduction plants which require specific direct reduction iron ores ("DR iron ores") which can also take different forms such as fines, lump and pellets.[9]

(12) The Commission has previously considered that iron ore (i) fines, (ii) lump, and (iii) pellets each constitute a separate product market on the basis of the differences in their production, their uses and their prices.[10] The Commission has also

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6 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

7 Pig iron is liquid iron typically containing 95% iron and serves as an input product in carbon steel making.

8 Form CO, section 6.

9 M.2420 – Mitsui/CVRD/Caemi, Commission decision of 30 October 2001, paragraph 27.

10 M.4137 – Mittal/Arcelor, Commission decision of 2 June 2006, paragraph 78; M.3161 – CVRD/Caemi, Commission decision of 18 July 2003, paragraph 12; M.2420 – Mitsui/CVRD/Caemi, Commission decision of 30 October 2001, paragraphs 97-132; this question was previously left open in case M.2062 – Rio Tinto/North, Commission decision of 1 August 2000, paragraphs 18-20.

previously observed strong indications that DR iron ores formed separate product markets.[11]

(13) The Parties submit that there is a single market for iron ore, without further segmentation into fines, concentrate, pellets, lump and sinter. The Parties argue that various forms of iron ore have a certain degree of substitutability and that customers can switch from one product to another.

(14) As regards fines and concentrates in particular, the Parties submit that both products have similar parameters and can be used interchangeably by steel companies that have their own in-house sintering machines. According to the Parties, steel companies can use fines and concentrate in the proportion that they consider the best for the preparation of their sinter/pellets charge for the blast furnace without additional costs or changes to the technological process (e.g. 100% fines, 100% concentrate or a mixture of the two in various proportions).

(15) As regards sinter, pellets and lump in particular, the Parties submit that steel companies that use blast furnaces can use sinter, pellets, or a mixture of the two in any proportion as well as lump as feed for the blast furnace.

(16) Moreover, the Parties consider that since most large steel plants in Europe have their own sintering/pelletising facilities, these customers have a choice of buying the unprocessed fines and concentrates or the processed sinter/pellets (or lumps). According to the Parties, steel mills generally switch the proportions of what they buy depending on factors such as changes of market prices of the various iron ore products, introduction of a new quality of iron ore/depletion of an existing mine or even technology development.

(17) During the market investigation, customers indicated that iron ore fines and concentrate are substitutable within a certain proportion, but not entirely since this can have a negative impact on productivity.[12] Customers were divided as to whether they would switch their purchases to concentrate in case of a 5-10% permanent price increase in iron ore fines.[13] Most customers, however, stated that they would switch their purchases to iron ore fines in case of a 5-10% permanent price increase in concentrate.[14]

(18) In any event, for the purpose of the present case, the exact product market definition regarding iron ore can be left open given that no competition concerns arise under any plausible market definition.

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11 M.4137 Mittal/Arcelor, Commission decision of 2 June 2006, paragraph 78; M.3161 – CVRD/Caemi, Commission decision of 18 July 2003, paragraph 16; M.2420 – Mitsui/CVRD/Caemi, Commission decision of 30 October 2001, paragraphs 133-139.

12 Replies to Question 4 of Questionnaire Q1 sent by the Commission to customers of the Parties on 20 December 2013.

13 Replies to Question 6 of Questionnaire Q1 sent by the Commission to customers of the Parties on 20 December 2013.

14 Replies to Question 7 of Questionnaire Q1 sent by the Commission to customers of the Parties on 20 December 2013.

4.1.1.2. Relevant geographic markets

(19) In previous decisions, the Commission defined a separate geographic market for global customers of iron ore products that are fully or partly dependent on seaborne supplies. That geographic market principally included customers from western Europe and eastern Asia, such as for example Japan, with almost no indigenous iron ore production.[15] The Commission concluded that the conditions of competition in seaborne areas were specific to them, and that accordingly the supply of the different types of iron ore to such seaborne areas constituted a geographic market distinct from the supply of ores to non-seaborne areas.

(20) The Parties submit that the relevant geographical market for all iron ore products is worldwide, characterised by extensive trade flows between the European Union ("EU") and other jurisdictions. According to the Parties, transport by rail and ship both require substantially the same effort and capacity to deliver products from supplier to customer, with similar cost of transport. The Parties consider that the global character of the iron ore markets derives from the global dimension of the downstream steel markets; prices are based on general market conditions in the global market and not determined by local factors. They submit that EU customers are capable of procuring their iron ore from a plurality of suppliers all over the world. The Parties acknowledge that traditionally, western European countries have relied more on seaborne supplies whereas eastern European countries have largely relied on non-seaborne supplies from the CIS ("Commonwealth of Independent States") countries. At the same time, the Parties note that this line has become blurred across the EU countries, in that seaborne and non-seaborne suppliers pose a growing competitive constraint on each other.

(21) Furthermore, the Parties submit that iron ore fines and concentrate can be freely imported into the European Economic Area ("EEA") and there is no specific import duty or quota for these products from Ukraine or Russia. Iron ore fines and concentrate are transported into the EEA via sea and land and the Parties claim that both seaborne and non-seaborne iron ore suppliers have well-developed facilities to transport iron ore to the EEA region over long distances. According to the Parties, competitors from Brazil, Australia and the CIS countries (former Soviet Republics) can easily compete with them and the costs of transport do not act as a barrier to imports of iron ore fines/concentrate to the EEA. The Parties also note that their price levels for iron ore fines and concentrate are in line with relevant price indicators in the global industry.

(22) The Commission considers that given that most iron ore products imported into eastern Europe come from Russia and Ukraine, if the transaction were to have any effect, those effects would most likely arise in respect of the steel producers located in eastern Europe. Therefore, the narrowest plausible market definition would encompass the cluster of eastern European non-seaborne countries including Poland, Czech Republic, Slovakia, Slovenia, Bulgaria, Hungary, Romania, Austria

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15 M.4137 – Mittal/Arcelor, Commission decision of 2 June 2006, paragraph 78; M.3161 – CVRD/Caemi, Commission decision of 18 July 2003, paragraph 17; M.2420 Mitsui/CVRD/Caemi, Commission decision of 30 October 2001, paragraphs 141-164.

and Croatia ("Eastern EU Countries"), which rely to a significant extent on non-seaborne supplies, mainly from Russia and Ukraine.

(23) The market investigation indicated that the majority of customers in Eastern EU Countries currently purchase some iron ore from seaborne origins.[16] Most customers in Eastern EU Countries also stated that they can purchase iron ore fines and concentrate from many different origins.[17] Customers also noted, however, that there are differences in the properties and qualities of iron ore depending on its origin.[18]

(24) In any event, for the purpose of the present case the exact geographic market definition regarding iron ore can be left open given that no competition concerns arise under any plausible market definition.

4.1.2. Steel

(25) Metinvest and Lanebrook are also active in the steel sector in the EEA and worldwide. In contrast, Southern GOK is not active in steel production.

4.1.2.1. Relevant product markets

(26) As regards the production and direct sale of steel, in previous decisions, the Commission distinguished four broad categories of finished steel products due to differences in terms of chemical composition, price and end applications: (i) carbon steel; (ii) stainless steel; (iii) highly alloyed steel; and (iv) electrical steel.[19] Metinvest's and Lanebrook's activities overlap only in carbon steel products.

(27) In previous decisions, the Commission also found that semi-finished carbon steel products and finished carbon steel products constitute two separate product markets.[20] Furthermore, the Commission considered the following possible sub-segments of the markets:[21]

- semi-finished carbon steel products:
    i. blooms;

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16 Replies to Question 8 of Questionnaire Q1 sent by the Commission to customers of the Parties on 20 December 2013.

17 Replies to Question 9 of Questionnaire Q1 sent by the Commission to customers of the Parties on 20 December 2013.

18 Replies to Questions 10 and 13 of Questionnaire Q1 sent by the Commission to customers of the Parties on 20 December 2013.

19 See M.4137 – Mittal/Arcelor, Commission decision of 2 June 2006, paragraph 9, with further references

20 Ibid.

21 See M.5771 – CSN/Simpor, Commission decision of 15 February 2010, paragraphs 17-19; M.4137 – Mittal/Arcelor, Commission decision of 2 June 2006, paragraphs 13-61; IV/ECSC 1351 – Usinor/Arbed/Aceralia, Commission decision of 21 November 2001, paragraphs 32-33; IV/M.925 – Krupp-Hoesch/Thyssen (IV/ECSC.1243), Commission decision of 11 August 1997, paragraphs 16-20.

ii. billets; and

iii. slabs.

– finished carbon steel products:

i. flat carbon steel products, which may be sub-divided into hot rolled, cold rolled and coated carbon steel products (with potential further segmentation of the latter) plus other flat steel products; and

ii. long steel products, which may be sub-divided into wire rod, merchant bars, sections, drawn wire products, etc.

(28) The Parties did not make any submission regarding possible product market definitions in the steel sector. They did, however, provide market information on the basis of the Commission's product market findings in past decisions (see paragraph (27) above).

(29) In any event, for the purpose of the present case the exact product market definition regarding steel can be left open given that no competition concerns arise under any plausible market definition.

4.1.2.2. Relevant geographic markets

(30) In its previous decisions the Commission has generally considered that the relevant geographical market for carbon steel products is EEA-wide or at least EEA-wide.[22]

(31) The Parties submit that the relevant geographic markets for steel products (as defined in past Commission decisions) should be viewed as worldwide. According to the Parties: (i) these markets are characterised by extensive trade flows between the EU and other jurisdictions; (ii) at least the largest customers and suppliers operate on an international/global level; (iii) products are largely commoditised; and (iv) price levels are relatively comparable across jurisdictions and dependent on the conditions of competition at a global level.

(32) In any event, for the purpose of the present case the exact geographic market definition regarding steel can be left open given that no competition concerns arise under any plausible market definition.

4.2. Competitive Assessment

(33) The proposed transaction will lead to horizontal overlaps between the Parties' activities in the area of iron ore production and steel production as well as vertical links between iron ore products and steel production.[23]

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22 See M.5771 – CSN/Simpor, Commission decision of 15 February 2010, paragraph 20; M.4137 – Mittal/Arcelor, Commission decision of 2 June 2006, paragraphs 62-70.

23 A vertical link will also be created between the parent companies Metinvest and Lanebrook in that Metinvest has minor activities in the distribution of steel, which can be seen to be downstream from the production of steel. Metinvest's market share in the steel distribution sector does not, however, exceed [0-5]% under any plausible market definition and therefore no affected market arises with respect to these distribution activities.

4.2.1. Horizontal overlaps in iron ore

(34) The Parties have only limited sales of iron ore pellets and sinter, and there is no overlap as regards iron ore lump.[24] The key overlaps therefore arise in iron ore concentrate (between Metinvest and Southern GOK) and fines (between the parent companies Metinvest and Lanebrook, through its subsidiary Evraz).

(35) If the relevant geographical markets were global, the transaction would not lead to any affected markets under any product market definition.

(36) On the narrowest plausible geographic and product market basis, affected markets would arise in the following segments:

i. iron ore fines in non-seaborne Eastern EU Countries, with a combined market share of approximately [30-40]% and an increment of approximately [5-10]%; and

ii. iron ore concentrate in non-seaborne Eastern EU Countries, with a combined market share of approximately [30-40]% and an increment of approximately [10-20]%.

Table 1. Estimated market shares in sales of iron ore products in 2012:

	Worldwide/EEA				**Non-seaborne Eastern EU Countries**			
	Metinvest	**Evraz**	**S. GOK**	**Combined**	**Metinvest**	**Evraz**	**S. GOK**	**Combined**
Fines	[0-5]%/ [5-10]%	[0-5]%/ [0-5]%	[0-5]%/ [0-5]%	[0-5]%/ [5-10]%	[20-30]%	[5-10]%	[0-5]%	[20-30]%
Concentrate	n/a/ [5-10]%	n/a/ [0-5]%	n/a/ [0-5]%	n/a/ [5-10]%	[20-30]%	[0-5]%	[10-20]%	[30-40]%
Pellets	[0-5]%/ [0-5]%	[0-5]%/ [0-5]%	n/a	[0-5]%/ [0-5]%	[5-10]%	[0-5]%	n/a	[10-20]%
Sinter	[0-5]%/ [0-5]%	[0-5]%/ [0-5]%	[0-5]%/ [0-5]%	[0-5]%/ [0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

Source: Parties' submissions on pages 41-44 of the Form CO and in Annex 17 to the Form CO based on various industry reports.

(37) According to the Parties, the main suppliers in the Eastern EU Countries for iron ore fines and concentrate are Lebedinsky GOK, Mikhailovsky GOK (both part of the Metalloinvest Group), VALE, LKAB and Voest-Alpine Erzberg. The Parties also cite Ferrexpo, ENRC (Sokolovsko-Sarbaiskoye), Magnitogorsk, Novolipetsk Steel (NLMK) and Petropavlovsk as examples of CIS suppliers of landborne iron ore. Moreover, according to the Parties, there are significant reserves held by competitors in both Ukraine and Russia. These players may increase total output in the coming years.[25]

24 Iron ore lump is sold only by Metinvest and not by either Lanebrook's subsidiary Evraz, or by Southern GOK.

25 The Parties estimate there to be 31 billion tonnes of reserves of the overall explored projects/deposits throughout Ukraine, and 65 billion tonnes in the Kursk Magnetic Anomaly area of Russia (leaving aside further significant deposits in other Russian regions), not to mention the deposits that are at the exploration stage (for which in Ukraine the Parties identified approximately 8 billion tonnes).

(38) The Parties also state that large steel manufacturers, which are the main customers of iron ore, hold countervailing buyer power. These include companies such as Arcelor Mittal, U.S. Steel Kosice, ISD Dunaferr, Trinecke Zalazarny, Tata Steel Europe, ThyssenKrupp and RIVIA Group. A number of these customers are also vertically integrated upstream with their own iron ore mines.

(39) During the market investigation, the majority of the Parties' customers in the Eastern EU Countries indicated that the Transaction will not have any negative effects on their business. Only two customers claimed that their business would be negatively affected, one of whom described this impact as "limited".[26] The vast majority of the Parties' customers in the Eastern EU Countries also indicated that they are able to switch between different iron ore suppliers in an economically profitable manner. Furthermore, these customers stated that, if they were no longer able to purchase iron ore from the Parties, they would have alternative suppliers from a variety of seaborne and non-seaborne origins, such as Russia, Brazil, the USA, Scandinavia and Canada, subject to considerations of quality and transport costs.[27]

(40) Finally, certain customers indicated that Metinvest already distributes some of Southern GOK's iron ore outside Ukraine and as such, the Transaction changes little from their perspective.

(41) In view of the above, the Commission considers that the Transaction will not lead to a significant impediment of effective competition regarding iron ore under any plausible market definition.

4.2.2. Horizontal overlaps in steel

(42) As regards the steel market, the transaction would only lead to an affected market in the hypothetical EEA-wide market for slabs. The table below shows the market shares of the Parties in those steel products where their combined market share exceeds [0-5]%. In other segments, e.g. in blooms or in cold-rolled flat steel products, the Parties' activities do not overlap or their combined market share remains below [0-5]%.

Table 2. Parties' market shares in steel products in the EEA in 2012

Product market	Metinvest	Evraz	Combined
Semi-finished steel products			
Billets	[0-5]%	[10-20]%	[10-20]%
Slabs	[10-20]%	[0-5]%	[10-20]%
Finished flat steel products			
Hot-rolled flat steel products	[0-5]%	[0-5]%	[0-5]%
Finished long steel products			
Reinforcing bars	[0-5]%	[0-5]%	[0-5]%

Source: Parties’ submissions in Annex 23 to the Form CO based on various industry reports.

26 Replies to Question 16 of Questionnaire Q1 sent by the Commission to customers of the Parties on 20 December 2013.

27 Replies to Questions 14 and 15 of Questionnaire Q1 sent by the Commission to customers of the Parties on 20 December 2013.

(43) In view of the above, in particular given the limited increment of the Transaction, the fact that the horizontal overlap in steel concerns solely the parent companies of Southern GOK, and the existence of significant competitors, the Commission considers that the Transaction will not lead to a significant impediment of effective competition regarding steel under any plausible market definition.

4.2.3. Vertically affected markets

(44) The transaction will also lead to vertically affected markets for the production of iron ore fines and concentrate on the one hand and the production of the various steel products on the other.

(45) The Parties' combined market shares are, however, limited in the downstream steel product markets and the Parties' market share is above [30-40]% only on a hypothetical market for concentrates in Eastern EU Countries. Thus, the Transaction will not give rise to foreclosure effects. Moreover, both Metinvest and Evraz are already vertically integrated companies and the acquisition of joint control over Southern GOK will not significantly increase this vertical integration.

(46) In view of the above, the Commission considers that under any plausible market definition, the Transaction will not lead to a significant impediment of effective competition regarding vertically affected markets for the production of iron ore fines and concentrate on the one hand and the production of steel products on the other.

5. CONCLUSION

(47) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission

(signed)
Joaquín ALMUNIA
Vice-President