EN

Case No COMP/M.7155 - SSAB / RAUTARUUKKI

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) in conjunction with Art 6(2)
Date: 14/07/2014

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

Dear Sir/Madam,

Subject: Case No COMP/M.7155 - SSAB/ RAUTARUUKKI
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004[1]

1. On 22 May 2014, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004, by which SSAB AB ("SSAB" or the "Notifying Party", Sweden) intends to acquire sole control of Rautaruukki Oyj ("Ruukki", Finland) within the meaning of Article 3(1)(b) of the Merger Regulation, by way of a public share exchange offer. SSAB and Ruukki are collectively referred to as "the Parties".

I. THE PARTIES

2. SSAB is a Sweden-based steel manufacturer with approx. 8 700 employees, active in the production and distribution of (mainly carbon) steel and in the supply of steel products for the construction industry. SSAB owns steel production plants in Sweden (Luleå, Borlänge and Oxelösund) and the US, as well as finishing units in China.

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.

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3. Ruukki is a Finland-based steel manufacturer with approx. 8 700 employees, active in the production and distribution of (mainly carbon) steel and in the supply of steel products for the construction industry. Ruukki's steel production assets are located in Raahe and Hämeenlinna (Finland).

4. Both of the Parties' European carbon steel production facilities are in the Nordic countries, SSAB's in Sweden and Ruukki's in Finland. Their production is mostly comprised of flat carbon steel products, for which they are today the 11th and 12th largest suppliers in Europe with combined deliveries of approx. 3 million tonnes of steel.

II. THE OPERATION AND THE CONCENTRATION

5. On 22 January 2014, the Parties announced that they had concluded a combination agreement setting out the terms of a public share exchange offer, by which the owners of Ruukki are offered SSAB shares in exchange for their Ruukki shares. The offer period for the share exchange offer began on 14 April 2014 and should expire on 22 July 2014.

6. Subject to the success of this public offer, Ruukki will be wholly owned by SSAB and no individual shareholder will have the ability to control the merged entity. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

7. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million [SSAB: 4 048 million EUR and Ruukki: 2 404 million EUR]. Each of them has an EU-wide turnover in excess of EUR 250 million [SSAB: […] million EUR and Ruukki: […] million EUR], but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

8. The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

IV. RELEVANT MARKETS

9. The Parties' activities primarily overlap in (i) the production and supply of carbon steel flat products, (ii) the distribution of steel products as well as in (iii) the production and supply of steel products for the construction industry.[2]

A. Introduction to the carbon steel industry in the Nordic region

10. Carbon steel production consists of two main stages (i) the production of crude steel slabs and (ii) processing of slabs into final products, both of which can have several stages.

11. The most common method of producing crude steel slabs is the production from iron ore. Ore-based hot metal is produced through reduction of iron ore pellets in blast furnaces. The hot metal is then treated, scrap may be added to it and its composition is adjusted to

2 For the sake of completeness, the Parties' activities also overlap in the production and supply of carbon steel tubes. However, their combined market share remains below [5-10]% at EEA level under any plausible market definition. Carbon steel tubes will accordingly not be further discussed in this decision.

give the steel the desired qualities. This adjustment may include the use appropriate quantities of various alloying elements. The hot metal is then cast and cooled in continuous casting machines to produce slabs of manageable sizes, usually weighing 25 tonnes.

12. Cooled slabs can be transported to rolling mills for further processing. In the rolling mills they are rolled into thinner, usable sheets or plates through a hot-rolling process that starts with re-heating of the slabs. Slabs can be rolled into different thicknesses through a series of stands. If required, hot rolled coils can be rolled down further to thinner gauges by cold-rolling. Various treatments may also be applied to the coils, such as quenching and tempering to produce steel with specific qualities. Finally, the coils can be coated, e.g. galvanised or colour-coated.

13. The flow chart below illustrates one of the SSAB's carbon steel production processes in Sweden.

Illustration of […]

[…]

Source: Form CO, paragraph 94

14. The Parties produce their carbon steel in the Nordic countries by using the iron-ore based method described above. They operate blast furnaces and produce carbon steel slabs in three sites in the Nordic countries: SSAB in Luleå and Oxelösund in Sweden and Ruukki in Raahe, Finland.

15. SSAB has two facilities in the Nordic countries for the processing of slabs into rolled flat products: one in Oxelösund (plate rolling) and another one in Borlänge (hot and cold-rolling of coils, coating), both in Sweden. In addition, SSAB has a further coating facility in Sandvika, Sweden.

16. Ruukki, on the other hand, processes the slabs at its production site in Raahe (plate rolling, hot rolling) and can do further processing in Hämeenlinna, Finland (cold rolling, coating). Ruukki also has an additional coating facility in Kankaanpää, Finland.

17. The Parties are the only slab producers located in the Nordic countries. Further processing of slabs for the merchant market is nonetheless also done by NLMK / Dansteel in Denmark.

18. In addition to producing flat carbon steel, both Parties operate an extensive distribution network throughout the Nordic region for those products. The Parties' assets cover both steel service centres ('SSCs') and stockholding centres ('SCs'). The traditional role of SSCs and SCs is to provide customers with flexible and quick deliveries of steel, including small batches that cannot economically be delivered from a steel mill.

19. Moreover, steel service centres also provide further processing of coils by cutting them to length and slitting them according to an individual customer's demands. The distribution network however also acts as a significant route to market for even ex-mill deliveries from steel works. The distribution facilities can on these occasions facilitate contacts between the customers and steel works, optimise logistics by increasing transport volumes and enable the customer to have a one-stop-shop for all of his steel requirements. This approach is exemplified by Ruukki's business model in Finland,

where it operates a fully integrated sales organisation with no clear distinction between distribution sales force and ex-mill sales force.

20. The Parties are the only competitors to be active in the whole Nordic region at the level of steel distribution. Across Norway, Sweden and Finland, the Parties solely or jointly control five steel service centres and twenty-two stockholding centres through SSAB's wholly owned subsidiary Tibnor, its joint ventures with Tata Steel (Norsk Stål, 'NS', and Norsk Stål Tynnplater, 'NST') as well as the Ruukki Metals distribution network.[3] Besides the Parties, a number of independent steel distributors are present in the Nordic countries. In addition, ArcelorMittal has a steel service centre joint venture with the BE Group in Sweden (AMBESSC) and Tata Steel Europe has a 50% stake in NS and NST in Norway.

21. In addition to selling and distributing flat carbon steel products, the Parties are also further integrated into certain downstream steel products markets, including steel construction products such as profiled steel construction sheets in the Nordic region. SSAB carries out these activities through its fully-owned subsidiary Plannja, while Ruukki is active in steel construction products through its Ruukki Building Products division. Steel construction products markets feature a number of independent competitors in the Nordic countries, while also both ArcelorMittal and Tata Steel Europe are active in the production and supply of these products in Sweden.

B. <u>Relevant product markets</u>

1. Production and supply of carbon steel

22. In its decision practice, the Commission has consistently distinguished steel products based on the chemical composition of the steel (metallurgical characteristics) on the one hand, and according to the physical shape of the products on the other. Based on chemical composition, the Commission has distinguished four broad categories of steel products: (i) carbon steel, (ii) stainless steel, (iii) specialty steels and (iv) electrical steel.

23. Carbon steel is carbon-based steel containing no or little amounts of alloying elements. The Parties' activities in the production and supply of steel only overlap as regards carbon steel.[4] In addition, the Commission has consistently held that carbon steel (i) flat products and (ii) long products belong to separate product markets.[5]

24. The Parties' activities only overlap in the production and supply of carbon steel flat products. There are three stages in the production process of flat carbon steel products: (i) hot-rolling, (ii) cold-rolling and (iii) coating.[6] In previous decisions, the Commission

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3 Form CO, paragraphs 952–5.

4 SSAB is active in the production and supply of tool steel, but Ruukki is not.

5 COMP/M.7138 – *Thyssenkrupp / Acciai Speciali Terni / Outukumpu VDM*, paragraph 7, COMP/M.6471 – *Outokumpu / Inoxum*, paragraphs 116–7, COMP/M.4137 – *Mittal / Arcelor*, paragraphs 8 and 17.

6 The parties' activities also overlap in the supply of carbon steel slabs, the semi-finished steel product which is further rolled and processed into finished carbon steel flat products. However, the Parties' combined market share for carbon steel slabs would remain below [0-5]% at EEA level and the Parties themselves are the only potential purchasers of slabs in Norway, Finland and Sweden.

has considered that the following carbon steel flat products constitute separate product markets: (i) quarto plate, which is produced in specific quarto (four-stand) mills[7] (ii) other hot-rolled products, (iii) cold-rolled products, (iv) steel for packaging, (v) galvanised steel and (vi) organic coated (i.e. painted) steel.[8] The Parties are not active in the production and supply of steel for packaging, which will not be further discussed in this decision.

25. The Parties agree with the above segmentations, which the market investigation has not called into question.[9]

2. High strength and wear resistant carbon steel

26. *High strength steels* ("HS") are carbon steels used in applications where high strength and low weight are required, such as in cranes or automotive components. Their strength is measured in terms of its yield strength and/or tensile strength[10] (in MegaPascals, "MPa").

27. *Wear resistant steels* ("WR") are carbon steels used in high abrasion environments, such as in mining equipment, shredders or dumper bodies. Their wear resistance is typically measured in terms of indentation hardness[11] (in Brinells, "HBW").

28. Both Parties concentrate a significant part of their flat carbon steel capacity on the production and supply of those two categories of specialty products. HS and WR specialty steels accounted for […]% of SSAB's deliveries and […]% of Ruukki steel sales in 2013, while these two niches account for only […]% of carbon steel flat products deliveries in the EEA.[12]

29. The Commission has not assessed in past decisions whether these niches constitute separate product markets. The Parties submit that the production and supply of these specialty carbon steels do not constitute separate markets due to both demand and supply-side substitutability.

30. Respondents to the market investigation have however not confirmed the Parties' claims in this respect.

31. First, most of the Parties' competitors have confirmed that the production of HS and WR carbon steel requires specific equipment and machinery compared to standard steel

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7 Quarto plates are non-coiled products with very different dimensions, in particular in term of thickness, from other hot-rolled flat products.

8 COMP/M.4137 – *Mittal / Arcelor*, paragraphs 18 to 37.

9 See replies to questions 5 and 6 of the Commission's request for information addressed to competitors (Q1) on 23 May 2014, and to questions 8 and 9 of the Commission's request for information addressed to customers (Q2) on 23 May 2014.

10 A material's yield strength corresponds to the maximum stress it can withstand without permanent deformation. Its tensile strength corresponds to the maximum stress it can withstand without breaking.

11 A material's indentation hardness corresponds to its resistance to penetration by an indenter under pre-determined conditions. For instance, hardness in HBW is measured by indenting the tested material with a tungsten carbide sphere.

12 Parties' estimates.

grades.[13] At the level of hot-rolling, such equipment includes quenching lines, tempering furnaces, and/or thermo-mechanical rolling equipment. Each of these lines would cost approx. EUR […] million[14] and recent examples of upgrading or commissioning new lines at the Parties' facilities show that several years are required to build, commission and ramp up such production lines. In this respect, the Commission notes that the quenching and tempering equipment required at a quarto plate mill is different from the one used in strip product mills.

32. Second, the production of HS and WR carbon steel requires significant know-how in terms of both metallurgy and production process, as also evidenced by the widespread use of patents by the Parties' competitors and by Ruukki in this field.[15] For instance, a Swedish customer stated in this respect that "*High strength steels are more difficult to produce. They require more R&D and a more qualified production facility.*"[16]

33. The Parties' assessment of their own production facilities also reflects that the ability to produce HS and WR steel at particular production facilities depends on the overall setup of the steel mill, including at the slab-making level. The combination agreement between the Parties recognises in this respect that […][17]

34. Third, a majority of competitors and customers disagree with the Parties' claim that most carbon steel mills in Europe would be capable of producing HS and/or WR carbon steel.[18] In addition, all competitors of the Parties responding to the market investigation have confirmed that a producer of standard carbon steel would not be able to start swiftly and without significant costs the production and sales of HS or WR carbon steel products due to high capital investments, and to the necessity to develop know-how and brand awareness. Although the market investigation was inconclusive as regards whether the same equipment can be used to produce HS and WR carbon steel,[19] most competitors of the Parties consider that there are nevertheless significant differences in terms of metallurgical composition, crystal structure and production process between HS and WR steel.[20]

35. Fourth, although the large majority of competitors and of customers considers that product brands and brand awareness do not play a significant role with respect to

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13 See replies to questions 8 and 15.1 of the Commission's request for information addressed to competitors (Q1) on 23 May 2014.

14 Parties' estimates.

15 See replies to question 54 of the Commission's request for information addressed to competitors (Q1) on 23 May 2014.

16 See replies to question 13 of the Commission's request for information addressed to customers (Q2) on 23 May 2014.

17 See Annex 6 to the Form CO, page 39.

18 See replies to questions 9 and 16 of the Commission's request for information addressed to competitors (Q1) on 23 May 2014 and to questions 11 and 16 of the Commission's request for information addressed to customers (Q2) on 23 May 2014. NLMK Europe stated in this respect that "*several plate mills do not have the required heat-treatment line to produce wear-resistant steels*".

19 See replies to questions 15.2 of the Commission's request for information addressed to competitors (Q1) on 23 May 2014.

20 See replies to question 16.2 of the Commission's request for information addressed to competitors (Q1) on 23 May 2014.

standard steel, most competitors and customers have indicated that brands and brand awareness play a significant role as regards high-strength and wear-resistant steel.[21] In this respect, the Commission notes that the Parties and their competitors use different brands for high-strength applications and for wear-resistant applications.

36. Fifth, the large majority of customers and competitors of the Parties considers that there is no demand-side substitutability between (i) high-strength, (ii) wear-resistant and (iii) standard carbon steel products, and in particular that steel customers would not switch away from HS or WR products in case of a 5-10% price increase.[22]

37. ThyssenKrupp stated for instance that "*As to high strength and wear resistant steels, there is a separate demand for each of them and the prices for these niche products vary independently. The products also have different end-uses: while high strength steel is used, e.g. in construction, wear-resistant steels find their applications in e.g. mining.*"[23]

38. [Another European competitor] also stressed that "*Contrary to HSS, WRS is not intended for structural applications, i.e. ensuring integrity of construction / structure subject to static, dynamic or cyclic loads. - Equipment parts made from high strength or abrasion are very different. Usage is usually mutually exclusive.*"[24]

39. Against this backdrop, the vast majority of competitors and customers consider that HS and WR carbon steel products exhibit significant price differences compared to the equivalent standard carbon steel products.[25] A number of customers referred to price differences ranging from 20 to 100% over standard steel of the same dimensions. This range of difference in prices […][26]

40. The Commission considers that it is likely that HS and WR carbon steel products belong to separate product markets than standard carbon steel products. The question of whether HS and WR constitute two distinct product markets or are part of broader markets for quenched and tempered carbon steel products can however be ultimately left open for the purposes of this case.

Conclusion

41. For the purposes of this case, the Commission will assess flat carbon steel markets according to the distinctions between: (i) different shapes and finishing stages, i.e. (a) quarto plate ("QP"), (b) other hot-rolled products ("HR"), (c) cold-rolled steel ("CR"), (d)

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21 See replies to question 51 of the Commission's request for information addressed to competitors (Q1) and customers (Q2) on 23 May 2014.

22 See replies to questions 8, 15.1, 19.2 and 20 of the Commission's request for information addressed to competitors (Q1) on 23 May 2014, and replies to questions 12, 14, 17 and 19 of the Commission's request for information addressed to customers (Q2) on 23 May 2014.

23 See non-confidential minutes of conference call with ThyssenKrupp.

24 See reply to question 19.2 of the Commission's request for information addressed to competitors (Q1) on 23 May 2014.

25 See replies to questions 19.1 and 19.2 of the Commission's request for information addressed to competitors (Q1) on 23 May 2014 and to questions 13 and 18 of the Commission's request for information addressed to customers (Q2) on 23 May 2014.

26 See annexes 27 and 28 to the Form CO.

galvanised steel ("GS") and (e) organic-coated steel ("OC"), and (ii) standard steel, high-strength (“HS”) and wear-resistant (“WR”) steel.

3. Distribution of steel products

42. In addition to ex-mill sales, steel products may also be sold through various distribution channels. Mills tend to supply large orders with longer lead times. Distribution centres typically supply smaller lot sizes and also have shorter lead times. Distribution centres also do some processing for customers. Approximately 36% of steel volumes in the EU are sold by mills and the remaining 64% are sold through distributors.

43. In earlier decisions,[27] the Commission has considered separate markets for distribution of steel products on the basis of the following cumulative distinctions: (i) distribution of carbon steel products vs distribution of stainless steel products; (ii) distribution of flat steel products vs distribution of long steel products; and (iii) distribution through steel service centres (SSCs)[28] vs distribution through stockholding centres (SCs)[29] vs distribution through oxy-cutting centres.[30]

44. The Parties do not dispute the Commission's previous approach to product market definition. They submit, however, that oxy-cutting centres now use several different methods for cutting plates, long products, stainless steel and sheets from strip products including oxygen, gas, laser, plasma or water. In addition, the Parties themselves do not have separate oxy-cutting centres. The assets used for cutting with various methods are integrated at the same sites as stockholding centres. The Parties therefore consider that such centres now form an integral part of the market for distribution of steel products through stockholding centres.

45. The results of the market investigation are generally in line with the Commission's precedents. A large majority of customers stated that ex-mill sales satisfy different needs than sales from distributors. In particular, customers referred to differences between the two channels in terms of lead time, average contracts duration, range of products available, prices and minimum order volumes.

46. As regards possible segmentations between carbon steel and stainless steel, and between flat and long products, a large number of respondents identified differences between the different segments in terms of players active in each segment, equipment, and specific expertise needed to distribute products in each segment.

47. As regards distribution sales channels, a large majority of respondents confirmed the distinction between SSCs and SCs, even if some players stated that this distinction is somewhat blurred. On the other hand, respondents have generally confirmed the Notifying Party's views that oxy-cutting centres do not constitute a separate market in the Nordic region, as processing of quarto plates at distribution level requires similar equipment and know-how as other flat steel products.

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27 See e.g. Case COMP/M.4137 *Mittal/Arcelor*, Case COMP/M.6471 *Outokumpu/Inoxum*.

28 SSCs purchase from steel manufacturers strip mill products, which they then slit and cut to customers’ requirements.

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

30 Oxycutting centres purchase quarto plate from steel manufacturers, which they then cut to particular sizes and shapes as required by customers using oxyhydrogen blowtorches.

48. In view of the above, the Commission considers that the following cumulative distinctions are appropriate in identifying separate product markets: (i) distribution of carbon steel products vs distribution of stainless steel products; (ii) distribution of flat steel products vs distribution of long steel products; and (iii) distribution through SSCs vs distribution through SCs.

4. Production and supply of carbon steel products for the construction industry

49. The Parties are active in the production and supply of (i) profiled steel construction sheets and (ii) steel rainwater systems.

i) Profiled steel construction sheets

50. Profiled steel construction sheets are typically made from cold rolled galvanised or colour-coated flat carbon steel and they come in a variety of types and shapes. They are used for roofing, cladding (facades) and decking purposes in the construction industry. The Parties' activities mostly overlap in the production and supply of profiled steel construction sheets for roofing purposes.

51. The Commission has previously considered that steel sheets for roofing, cladding and decking belong to the same relevant product market because of a high level of supply-side substitutability.[31]

52. In addition to carbon steel, building products are manufactured from a large number of other materials as well. However, the Commission has previously considered in *Usinor / ARBED / Aceralia* that steel products, including steel roofing products, only face limited competition from other materials because of the particular characteristics of the use of steel products (flexibility of use, ease of replacements and maintenance) as well as price differences, leaving the exact market definition nonetheless open.[32] In *Umicore / Zinifex / Neptune*, which concerned zinc-made roofing products, the Commission nonetheless considered that a product market consisting of only zinc-made roofing products was too narrow.[33]

53. The Notifying Party submits that the relevant product market consists of all profiled steel construction sheets regardless of their end-use. The Notifying Party further submits that, in the event the Commission would consider roofing sheets to constitute a separate relevant product market, steel roofing sheets would compete with roofs made of other materials, such as bitumen, concrete tiles, clay tiles and various metals.

54. The results of the market investigation do not generally support the view that all profiled steel construction sheets would belong to the same relevant product market regardless of their end-use although some level of substitutability was acknowledged by market participants particularly between sheets for roofing and those for cladding.[34] In any

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31 COMP/M.2382 – *Usinor / ARBED / Aceralia*, paragraph 15; Case No IV/M.1595 – *British Steel / Hoogovens*, paragraph 8; Case No IV/M.1329 – *Usinor/Cockerill*, paragraphs 12–4; and Case No IV/M.1080 – *Thyssen / Krupp* paragraph 14.

32 COMP/M.2382 – *Usinor / ARBED / Aceralia*, paragraph 13. See also Case No. IV/M.1329 - Usinor / Cockerill Sambre.

33 COMP/M.4450 – *Umicore / Zinifex / Neptune*, paragraphs 51–3.

34 Replies to questions 6–9 of the Commission's request for information addressed to competitors – steel construction materials (Q5); replies to questions 5–7 of the Commission's requests for information

event, the question can be left open as the outcome of the competitive assessment in the present case is the same regardless of whether all profiled steel construction sheets belong to the same relevant product market or not.

55. The results of the market investigation also do not support the view that other construction materials would be effective substitutes to steel roofing sheets in all applications. Numerous market participants noted that steel roofing sheets are light in weight and that switching would not be possible particularly when renovating old buildings that have originally been designed and constructed using steel roofing sheets. References were also made to differences in price levels between different materials and to building regulations that often can determine the kind of roofing material to be used in a given building.[35] A clear majority of customers would also not switch to other materials even if the prices of steel roofing sheets rose by 5–10%.[36] That pattern was particularly strong in Finland, Estonia and Poland where none of the customers responded that they would switch when faced with such a price rise.[37]

56. The Commission thus concludes that other materials do not impose notable competitive constraints on steel roofing products.

ii) Steel rainwater systems

57. Rainwater systems allow for the removal of rain- and melt water from rooftops. They consist of various components, such as gutters and down pipes. The Parties are active in the production and supply of rainwater systems made of carbon steel.

58. The Commission has in a previous decision considered that rainwater systems constitute a separate market from roofing products as such.[38] The Notifying Party agrees with this distinction, which the market investigation has not called into question.[39]

59. In addition to carbon steel, rainwater systems are manufactured from numerous other materials, such as PVC, zinc and copper, as well. On a general level, the Commission has previously considered in *Usinor / ARBED / Aceralia* that steel construction products only face limited competition from other materials because of the particular characteristics of the use of steel products (flexibility of use, ease of replacements and maintenance) as

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addressed to customers – steel construction materials (Q6a – Q6c); and replies to question 5 of the Commission's requests for information addressed to customers – steel construction materials (Q6d and Q6e).

35 Replies to questions 10–4 of the Commission's request for information addressed to competitors – steel construction materials (Q5); replies to questions 8–12 of the Commission's requests for information addressed to customers – steel construction materials (Q6a–Q6c).

36 Replies to question 11 of the Commission's requests for information addressed to customers – steel construction materials (Q6a–Q6c) and replies to question 6 of the Commission's request for information addressed to customers – steel construction materials (Q6d and Q6e).

37 Replies to question 11 of the Commission's request for information addressed to customers – steel construction materials (Q6a and Q6c) and replies to question 6 of the Commission's request for information addressed to customers – steel construction materials (Q6d).

38 COMP/M.4450 – *Umicore / Zinifex / Neptune*, paragraph 53.

39 See, e.g. Replies to questions 34–5 of the Commission's request for information addressed to competitors – steel construction materials (Q5) and replies to questions 32–3 of the Commission's request for information addressed to customers – steel construction materials (Q6a–Q6c).

well as price differences, leaving the exact market definition nonetheless open.[40] In *Umicore / Zinifex / Neptune*, which concerned zinc-made rainwater systems, the Commission nonetheless considered that a product market consisting of only zinc-made rainwater systems was too narrow.[41]

60. The Notifying Party submits that the relevant product market consists of rainwater systems made of various different materials.

61. While the responses to the market investigation indicate some level of substitutability between rainwater systems made of different materials, a clear majority of customers nonetheless replied they would not switch to using rainwater systems of other materials even if the prices of steel rainwater systems rose by 5–10%.[42]

62. Nonetheless, the question can be ultimately left open as the proposed transaction does not give rise to competition concerns even under the narrowest product market definition, namely rainwater systems made of carbon steel.

C. <u>Relevant geographic markets</u>

1. Production and supply of standard carbon steel

63. In its latest decision assessing carbon steel flat product markets, in 2006,[43] the Commission found that all markets for carbon steel flat products were EEA-wide or at least EEA-wide. The issue of a separate Nordic cluster did however not arise and was therefore never previously investigated.

64. In the present case, a number of customers have suggested that competitive conditions in the Nordic region may be significantly different from the rest of the EEA, submitting in particular that (i) carbon steel flat product prices in the Nordic countries are often higher than in other parts of the EEA and that (ii) continental European suppliers have limited commercial activities in the Nordic countries so far. In addition, the Commission notes that the Parties have only limited market positions in the EEA as a whole, but achieve significant market positions in the Nordic countries, and in particular in Norway, Sweden and Finland.[44] Against this backdrop, the Commission has assessed whether the geographic scope of carbon steel flat product markets is in fact wider than the Nordic region.[45]

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40 COMP/M.2382 – *Usinor / ARBED / Aceralia*, paragraph 13. See also Case No. IV/M.1329 - Usinor / Cockerill Sambre.

41 COMP/M.4450 – *Umicore / Zinifex / Neptune*, paragraphs 51–3.

42 Replies to questions 18–22 of the Commission's request for information addressed to competitors – steel construction materials (Q5); replies to questions 16–20 of the Commission's requests for information addressed to customers – steel construction materials (Q6a–Q6c); and replies to question 7 of the Commission's requests for information addressed to customers – steel construction materials (Q6d and Q6e).

43 COMP/M.4137 – *Mittal/Arcelor*, paragraphs 63–5.

44 See market shares in section IV.D.1 below.

45 See Commission Notice on the definition of relevant market for the purposes of Community competition law, OJ C 372, 09.12.1997, paragraph 28: "*[The Commission] will take a preliminary view of the scope of the geographic market on the basis of broad indications as to the distribution of*

65. The Parties have claimed that the markets for carbon steel flat products are EEA-wide in scope on the basis of (i) significant trade flows, (ii) low transport cost differentials[46] and (iii) direct presence (through sales offices) of continental European competitors ArcelorMittal, Tata Steel, ThyssenKrupp, Salzgitter, Voestalpine, Dillinger and NLMK in the Nordic countries.

66. In addition, the Parties have submitted an econometric analysis of the evolution and correlation of prices in the Nordic countries on the one hand, and in a number of Western European countries (France, Belgium, the Netherlands, Germany and the UK) on the other.

67. However, on the basis of the phase I investigation in the present case, the Commission considers that there is at least a serious possibility that the geographic scope of carbon steel flat product markets is in fact not wider than the Nordic countries (Finland, Sweden and Norway), at least for hot-rolled ("HR"), cold-rolled ("CR") and organic coated ("OC) products, for the reasons outlined below.

68. The Commission notes as a preliminary point that SSAB has, during 2004-2008, stopped producing standard grades of QP, and has therefore largely exited this market including in the Nordic countries.[47] Moreover, the Parties are not present in several segments of GS.[48] The lack of offering by the Parties in these segments has contributed to the penetration of European imports and has resulted in different competitive trends than for HR, CR and OC which are primarily discussed thereafter.

The Parties consider the Nordic region as a separate business space

69. Both Parties consider that the Nordic countries constitute their "home market", whether in public presentations or as part of their internal strategy documents. SSAB thus states on its website, under the heading "*Strong position in the home market*", that "*for strip products,[49] the cost factor is important in a close-to-customer production. That is why SSAB works continually to develop the company's strong position in the home markets of Scandinavia and North America.*"[50]

70. Similarly, Ruukki depicts the competitive strengths of its Metals division as lying in (i) special steel products and (ii) the Nordic countries. Ruukki thus lists on its website the following "*Competitive edges in the Nordic countries*": (i) "*strong market position,*" (ii) "*comprehensive prefabrication and processing services*", (iii) "*extensive, flexible*

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market shares between the parties and their competitors, as well as a preliminary analysis of pricing and price differences at national and Community or EEA level."

46 The Parties submit in this respect that the transport cost advantage of the *furthest* of the Parties over continental European competitors (i.e. SSAB delivering in Finland or Ruukki delivering in Sweden) is approx. […]% or less of the price of carbon steel flat products.

47 See Annex 6 to the Form CO, page 44. The Industrial Plan of the Combination Agreement between the Parties states in this respect that "*during the strong economy 2004-2008 Oxelösund steel works converted completely to Q&T* [quenched and tempered] *plate production*".

48 For instance, Ruukki does not produce electro-galvanized products and SSAB does not produce Galvanneal and Galvalume products.

49 Strip products refer to all carbon steel flat products except QP.

50 http://www.ssab.com/en/Products--Services/About-SSAB/Vision-Strategy--Values/Strategy/ Retrieved on 7 July 2014.

distribution network" and (iv) "*steel products tailored to meet customer-specific needs*".[51]

71. This focus on the Nordic countries is also reflected in the Parties' internal strategy documents. For instance, […][52] In addition, […].

72. Both Parties' sales organizations have separate divisions for the Nordic region on the one hand and for the rest of Europe on the other.[53] According to the Parties' post-merger integration plan, the combined entity's carbon steel businesses would also be organised according to a distinction between the Nordic countries and Western Europe or the rest of Europe going forward.[54]

73. As regards the Parties' outlook on competition, Ruukki's internal documents show that […][55] Similarly, the Commission notes that […].[56]

74. Overall, the Commission considers that the Parties view the Nordic region as a separate business space, […].[57]

75. Looking forward, according to the Parties' internal documents, […],[58] i.e. […].[59]

<u>Low and at best stagnating imports into the Nordics from the EEA</u>

76. The level of EEA imports into Finland, Sweden and Norway varies depending on the flat product under consideration.

Table 1: Ex-mill deliveries by EEA producers into the Nordic countries (volume)

2013	**HR**	**CR**	**OC**	**GS**	**QP**[60]
EEA imports	[10-20]%	[20-30]%	[20-30]%	[60-70]%	[40-50]%

Source: Parties, including captive volumes

77. As discussed above, EEA imports achieve higher penetration in the product markets for which SSAB and/or Ruukki's product offering are limited, namely GS and QP. EEA imports in HR, CR and OC remain below [30-40]% of deliveries to the Nordic countries.

51 http://www.ruukki.com/About-Ruukki/Market-position/Competitive-edges-and-competitors Retrieved on 7 July 2014.

52 See Annex 17 to the Form CO, […].

53 See Annexes 3 and 5 to the Form CO.

54 See Annex 17 to the Form CO, […].

55 See Annex 17 to the Form CO, […].

56 See for instance […].

57 See Annex 17 to the Form CO, […].

58 […](Annex 17 to the Form CO, […].

59 […](Annex 17 to the Form CO, […].

60 It should be noted that the Dansteel mill, located in Denmark, produces exclusively QP.

78. The Commission further notes that European imports of HR into the Nordics have significantly decreased in the last 6 years (by [5-10] p.p.). During the same period, imports of CR have mildly decreased (by [0-5] p.p.) while imports of OC have significantly increased (by [5-10] p.p.) in particular into Sweden. However, the import developments in OC appear to be linked to ArcelorMittal and Tata Steel's vertical integration into steel construction products in Sweden, with captive OC deliveries being used as an input for their downstream production in Sweden.

79. The limited and stable import penetration is also confirmed by the Parties' internal documents, with one of the SSAB documents […][61] This applies in particular […].

80. In this respect, a number of customers also indicated that the Nordic region was not a priority for continental European suppliers but rather an export market, and that the competitiveness of their offers accordingly deteriorated whenever demand conditions improve in continental Europe.[62] A customer stated in this respect that "*Competitors from Europe provide attractive offers during market downturns, but when demand picks up these suppliers have the reputation of prioritising their home markets over exporting to Scandinavia. In those circumstances deliveries become less frequent and reliable, and prices may even become worse.*"[63] The non-strategic nature of the Nordic markets was also confirmed by a number of European competitors.[64]

<u>Transport costs are a significant barrier to imports from the rest of the EEA into the Nordic region</u>

81. Transport costs from continental Europe into the Nordics account for approx. 10% of final prices and a majority of competitors consider that transport costs are a constraining factor for sales to the Nordics.[65] A majority of customers of the parties have also confirmed that non-Nordic suppliers face higher transport costs to supply into the Nordics compared to the Parties.[66]

Table 2: Transport costs for European mill deliveries into the Nordic countries[67]

Transport cost	**Denmark**	**Finland**	**Norway**	**Sweden**
EUR / tonne	[…]	[…]	[…]	[…]
% of HR price	[…]%	[…]%	[…]%	[…]%

61 See Annex 17 to the Form CO, […].

62 See for instance minutes of calls with Press Kogyo Sweden and MSK Group.

63 See minutes of conference call with customer on 2 May 2014.

64 See minutes of conference calls with European competitors.

65 See replies to question 25 of the Commission's request for information addressed to competitors (Q1) on 23 May 2014.

66 See replies to question 24 of the Commission's request for information addressed to customers (Q2) on 23 May 2014.

67 Source: replies to question 23 of the Commission's request for information addressed to competitors (Q1) on 23 May 2014, trimmed average of European competitors' average transport costs for actual deliveries into the Nordic countries, average 2013 price data from […].

82. The Commission also notes that national regulations regarding maximum weight limits for truck transportation may grant Nordic mills a further advantage when delivering close to their mills given that maximum weights are higher in the Nordics than in continental Europe, thereby reducing transport costs per tonne.[68]

83. In this respect, some European competitors of the Parties have also highlighted that the Nordic mills' relative transport cost advantage is in itself a constraining factor for sales in the Nordics, in particular in Sweden and Finland where the Parties' production facilities are located.[69] The Commission notes that this barrier to trade between the Nordic countries and the rest of the EEA is likely higher as regards HR and CR, which exhibit higher relative transport costs than other carbon steel flat products due to their lower average prices.

84. A number of customers of the Parties also consider that Nordic mills have an advantage in terms of minimum batch size to be able to supply, efficiently, directly from carbon steel mills.[70] In order to achieve shipping to Nordic delivery locations, the minimum efficient scale of orders appears to be larger from European mills than from Nordic mills. For instance, a Swedish customer stated in this respect that "*Ruukki and SSAB are flexible due to minimum order size. The European mills normally require higher order sizes to reach more competitive freight solutions.*"[71]

European importers face other barriers to expansion in the Nordics, in particular access to efficient local supply chains

85. The majority of HR, CR and OC competitors responding to the market investigation have also stated that setting up local supply chains is a stronger driver of competition in the Nordics compared to the rest of Europe. Competitor Voestalpine thus stated that "*In respect to directly reach the end customer it is necessary to establish a distribution network. Thereby the dependencies on these distribution networks is higher in the Nordic countries than in the rest of the EEA.*" [72]

86. Similarly, the majority of Nordic customers have stated that there are differences between the Nordic steel mills and other European suppliers in terms of supply chain reliability and just-in-time deliveries.[73] A Nordic customer stated in this respect that "*Nordics mills are having a local distribution network to support quick deliveries and small batch sizes*".

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68 The Parties have stated in this respect that the national limitations are 36 tons for Sweden and 25 tons for Germany (see footnote 70 to paragraph 259 of the Form CO).

69 See replies to question 25 of the Commission's request for information addressed to competitors (Q1) on 23 May 2014.

70 See replies to question 36 of the Commission's request for information addressed to customers (Q2) on 23 May 2014.

71 See reply to question 21.4 of the Commission's request for information addressed to customers (Q2) on 23 May 2014.

72 See replies to questions 26.1 and 26.3 of the Commission's request for information addressed to competitors (Q1) on 23 May 2014

73 See replies to question 21.3 of the Commission's request for information addressed to customers (Q2) on 23 May 2014. A Nordic distributor stated in this respect that "*Both SSAB and RUUKKI have developed a unique just-in-time delivery.*"

87. A number of Nordic customers also consider that switching part of their carbon steel flat product purchases to continental European mills would entail higher inventory, and therefore higher working capital in order to address both the higher minimum batch size and the loss of delivery reliability. A Norwegian customer stated for instance that "*ThyssenKrupp can be an alternative, but then we need [enormous] qty*".[74]

88. In this respect, the Commission further notes that Nordic mills have an advantage over their European competitors in terms of the reliability of their supply chain and agility of deliveries (including just in time). Lundberg & Kullberg AB for instance stated that the Nordic steel mills have an advantage in "*Supply reliability*".[75]

89. As regards OC, Nordic producers of strip products may have more closely differentiated their products to suit the Nordic markets in OC, in particular as regards the specific demand of the steel roofing industry.[76]

Price differences are substantial

90. Around half of the Parties' HR, CR and OC competitors and a plurality of customers responding to the market investigation indicated that flat carbon steel ex-mill prices in the Nordic countries significantly differ from continental European prices.[77] A Swedish customer of HR stated in this respect that "*Typically steel is approx. EUR 50 per ton (….) more expensive in Sweden and Scandinavia than for example in Germany. Italian steel prices are even lower due to the possibility to import steel from Turkey.*"[78] This was also confirmed by large and representative Nordic customers. A number of competitors of the Parties also indicated that prices in the Nordic countries were higher than on the continent, in particular due to logistical costs for shipments from European mills.[79]

91. The Commission considers that the market investigation has shown that potential price differences between the Nordic region and the rest of the EEA are not uniform across flat products, but depend on the specific product at stake.

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74 See reply to question 42 of the Commission's request for information addressed to customers (Q2) on 23 May 2014.

75 See reply to question 48 of the Commission's request for information addressed to customers (Q2) on 23 May 2014.

76 See replies to question 21.2 of the Commission's request for information addressed to customers (Q2) on 23 May 2014. A Swedish customer stated for instance that "*Soft material for roof cladding (PLX (SSAB), Tin Smith Pro (Ruukki)) are somewhat different*" between Nordic mills and European mills. Another customer stated during a conference call on 19 June 2014 that, with respect to OC, "*If SSAB prices increased by 5%, [customer] would likely not switch to European suppliers, but would seriously consider switching if prices increased by 10%.*"

77 See replies to question 26.5 of the Commission's request for information addressed to competitors (Q1) on 23 May 2014 and to question 23 of the Commission's request for information addressed to customers (Q2) on 23 May 2014. These customers also indicated that prices were consistently higher in the Nordic region compared to the rest of the EEA.

78 See minutes of conference call with a Swedish customer on 2 May 2014.

79 See non-confidential minutes of conference call with ThyssenKrupp: "*TKS views the difference in price in the Nordics and continental Europe as being mainly linked to the influence of logistics costs for continental European producers. In practice, the prices in the Nordics are thus somewhat higher due to the logistics costs.*"

92. The Parties have submitted price data from a third-party data provider, focussing on the most standard grades of each type of product. Accordingly, this price data eliminates any potential price differences linked to different product mixes between producers or countries.

[…]

93. According to this data, prices in Finland and Sweden appear to be currently substantially higher than in Germany for HR (EUR 70 per tonne for Finland and EUR 20 per tonne for Sweden) and CR (EUR 40 per ton for both Sweden and Finland). Moreover, these differences seem to have increased since 2009, suggesting price divergence between the Nordic and mainland European prices of these products. On the other hand, the Nordic and mainland European prices of QP, where the parties have less strong positions, are closely aligned, with differences of less than EUR 10 per tonne between both Finland and Sweden on the one hand, and Germany on the other.[80] No indication of price divergence is observed for QP.

Price correlation analysis is at best inconclusive

94. The Parties submitted a series of price correlation analyses for HR, CR, HDG and QP in order to assess in detail the divergence/co-movement of prices between the Nordic countries, mainland Europe (Germany, France, Belgium and the Netherlands) and the UK.[81] This evidence consisted of correlation of prices in levels and first differences, stationarity analysis of the log price ratios, residual-based co-integration tests, cyclical decomposition of the time series and conditional price correlation analysis. The Parties claim that the price correlation analysis provides evidence for co-movement of prices between the Nordic region and the rest of Europe. They argue that this finding indicates price arbitrage between carbon steel produced in the Nordics and imported carbon steel from the rest of Europe. Therefore, the Parties argue that the carbon steel markets are EEA wide.

95. The Commission notes that in general evidence on price correlation can only provide indirect evidence of market definition, given that it is not directly informative about the outcome of the demand substitution test as set out in paragraphs 15 to 18 of the Notice on Market Definition.[82]

96. The Commission further points out that the evidentiary value of price correlation analysis in general is highly dependent on controlling for common cost and demand factors that determine prices in the relevant regions. Price level and price difference correlations analysis do not control for these factors. Therefore these methods are unable to identify whether price co-movement is due to common cost and demand trends or to genuine substitution as a result of import competition.[83] Also co-integration between two price series can be the result of common demand and cost trends for otherwise completely unrelated markets. Therefore the Commission does not regard these methods as

80 […].

81 The Parties did not submit an analysis of price trends for OC.

82 OJ C 372 of 9.12.1997, p. 5.

83 The Parties report correlations in price levels. However, these prices are not stationary. Non-stationary prices result automatically in high correlations. These correlations therefore do not constitute evidence of a common market.

informative on their own about the existence and the extent of price arbitrage across regions, especially in light of the qualitative evidence pointing in the opposite sense, and in light of the evidence on price divergence across regions.

97. The conditional correlation analysis, submitted by the Parties on 24 June 2014, accounts for certain common cost elements, i.e. iron ore, scrap metal and coking coal.[84] This conditional correlation analysis provides some evidence that HR and CR prices within are more homogenous within the Nordic region when compared to the continental Europe. Indeed, for these products the average conditional price correlation within the Nordics is 95%, while it is only 85% between the countries of the Nordics and mainland Europe. No such difference can be observed for QP, for which product also the qualitative evidence points towards a common market (average correlation within the Nordics is 92% while between the Nordics and mainland Europe it is 90%). Therefore, using QP as a benchmark raises doubts as to whether there is a common market for HR and CR.[85]

98. A further indication for a separate Nordic market was established by the further price analysis carried out by the Commission. In its further analysis, the Commission removed monthly time fixed effects from the price series and repeated the conditional correlation exercise on the resulting residuals. The advantage of this method is that it controls for both common cost and demand trends. It will, however, also remove on average the price movements due to substitution. Therefore, this method works as a one sided test for geographic clustering: for common markets it produces low or even negative correlations and generates positive correlations only for clusters that are more correlated with each other than the average. The results show geographic clustering for CR: correlation within Nordic countries is positive (40-60%), just as within mainland Europe (15-70%), while there is zero or negative correlation between the countries of the two clusters. For HR the Nordics still show the same clustering, although Finland seems to be less correlated with the other Nordic countries. Moreover, for HR the Netherlands is more correlated with Denmark, Sweden and Norway than with the countries of mainland Europe. In contrast, no clear geographic clustering can be established for QP. This is in line with the qualitative finding that the market for QP is EEA-wide.

99. Overall, the econometric evidence submitted by the Parties in general is not conclusive either for or against a separate Nordic market. If anything, it indicates substantial geographic differentiation in the Nordic countries for HR and CR, with Norway, Sweden and Finland constituting a comparatively homogenous cluster.

100. This is also consistent with replies to the market investigation. For instance, a Danish distributor stated that "*Because Denmark is so close to Germany, we often have a lower price than Norway and Sweden, and we often feel the fluctuations faster than the rest of*

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84 The Commission notes that other potential common cost elements such as energy costs and common demand shocks have not been taken into account in this analysis.

85 The appropriate benchmarks to be used in a conditional correlation analysis should be based on similar markets to the ones under examination and using the same methods. This is because the general level of correlation across prices will depend on how well the common costs and demand shocks are controlled for. Therefore, the Commission notes that relying on QP is a superior benchmark for HR and CR than using correlation coefficients from another case and industry (namely the M.6663 - Ryanair/AerLingus III case) as suggested by the Parties.

the Nordic countries. In markets where SSAB and RUUKKI have their biggest positions (Sweden and Finland), the prices tend to fluctuate less and are generally higher."[86]

Conclusion

101. In light of the above, the Commission considers for the purposes of the present case that there is at least a serious possibility that the geographic scope of carbon steel flat product markets is not wider than the Nordic countries (i.e. Finland, Sweden and Norway) at least for HR, CR and OC.

102. In any event, even if it cannot be excluded that the geographic scope of carbon steel flat product markets could be wider than the Nordic countries, the Commission considers that the strong geographic differentiation evidenced by the above elements warrants an assessment of the impact of the Transaction on competitive conditions in the Nordic countries.

2. Production and supply of HS and WR carbon steel

103. The Parties have submitted that the geographic scope of potential HS and WR markets is worldwide.

104. The market investigation was inconclusive as regards the possibility for customers of HS and WR products to source efficiently from geographic areas outside the EEA. A number of customers mentioned transport costs, delivery times, minimum batch sizes, quality and payment terms as barriers to sourcing outside the EEA,[87] while a plurality of HS and WR customers considered that there are no barriers to sourcing HS and WR products from outside the EEA.[88] A majority of competitors of the Parties also mentioned certain barriers to expansion from one geographic area (such as the EEA, the US, etc.) to another for high-strength and wear-resistant steel, including anti-dumping margins and import tariffs in certain geographic areas.[89]

105. Regarding price differences, a large majority of customers and competitors considered that there are significant differences in prices between the EEA and other regions for HS and WR, but no significant price differences inside the EEA. Dillinger stated in this respect that "*Outside EEA markets could be influenced by steel products from China and Japan with other Price Level (example: Chile, lower Price due to Japanese Imports) Price Level in US due to high competition, influence of currency.*" The small number of customers reporting significant price differences inside the EEA considered these

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86 See replies to question 23 of the Commission's request for information addressed to customers (Q2) on 23 May 2014.

87 A Swedish customer stated in this respect that "*The competition is high but normally we/customers prefer to buy European due to quality.*"

88 See replies to question 29 of the Commission's request for information addressed to customers (Q2) on 23 May 2014.

89 See replies to question 31 of the Commission's request for information addressed to competitors (Q1) on 23 May 2014.

differences to be mostly related to brand and product quality rather than to geographic differentiation.[90]

106. The Commission notes that the significantly higher prices of HS and WR carbon steel[91] imply that relative transport costs are significantly lower than for standard carbon steel flat products. This is also evidenced by the substantial market position achieved by the Parties in regions where they do not have production facilities, such as Asia or Australia.[92]

107. While the parties, and in particular SSAB, are seen as having a global business and global brands in HS and WR, other European competitors in these niches appear to be mostly focused on one region. Similarly, while Japanese producers such as JFE and Nippon Steel Sumitomo have strong positions in Asia and Australia,[93] these players only achieve minimal market presence in Europe.[94] A European competitor stated in this respect that "*SSAB is also present in North America, together with a number of local suppliers. Producers in Asia are mostly from Japan, Korea and Europe (SSAB is the reference). Japanese and Korean producers do not however achieve a significant presence in Europe.*"[95]

108. The Commission concludes that the geographic scope of potential HS and WR markets is at least EEA-wide. The precise definition of the relevant geographic market regarding the production and supply of HS and WR can be left open, as the Transaction would not give rise to serious doubts under any plausible market definition.

3. Distribution of carbon steel

109. The Commission found in previous cases that the markets for the distribution of steel products are national or at most regional, because of barriers such as transport costs and lead time.[96]

110. The Parties consider the markets for the distribution of steel products through steel service centres and stockholding centres to be Nordic-wide (i.e. a single market encompassing Denmark, Finland, Norway and Sweden). This is in particular because of the presence of significant trade flows between countries in the Nordic region, moderate transport costs, and uniformity of prices in the region.

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90 See replies to questions 29 and 30 of the Commission's request for information addressed to competitors (Q1) on 23 May 2014 and to questions 30 and 31 of the Commission's request for information addressed to customers (Q2) on 23 May 2014.

91 See section IV.B.2 above.

92 SSAB has a finishing line in China, but no steelmaking or hot-rolling capabilities. Approx. […]% of both Ruukki's and SSAB's sales of high strength steel from their Nordic production facilities are outside the EEA.

93 See submissions in Australian anti-dumping case brought forward by the Australian producer Bisalloy.

94 The Parties estimate the combined market share of Asian producers to at most [5-10]% for all potential HS product markets, and less than [20-30]% for all potential WR product markets.

95 See non-confidential minutes of conference call with European competitor.

96 See e.g. Case COMP/M.4137 *Mittal/Arcelor*, Case COMP/M.6471 *Outokumpu/Inoxum*.

111. The Commission considers that the results of the market investigation do not support the views of the Notifying Party. Between […]% and […]% of the sales for each of the parties' distribution centres are concentrated within the Member State where the distribution centre is located. The only "exception" to this pattern is constituted by NST's SSC in Friedrikstad, which is located in Norway but close to the border with Sweden, and therefore sells […] of its output in the latter country. These figures have been confirmed by customers' responses to the Commission's questionnaires, which indicate that a large majority of customers in each of Finland, Norway and Sweden sources their steel requirements only or predominantly at national level.

112. A large majority of customers also perceive that a distributor's location within a given Member State provides it with an important strategic advantage to supply customers in that country. Among the reasons for this advantage, customers refer to local knowledge including language, lead time and logistics, as well as lower transport costs.

113. The existence of national markets for the distribution of steel products in each of Finland, Norway and Sweden is supported by the different competitive landscapes in these Member States. Each of these markets has a different market leader (respectively, Ruukki, NS/NST and SSAB's subsidiary Tibnor), which controls a large share of the market. In addition, the majority of distributors have concentrated their activities in only one of these Member States. Only three players have significant activities in more than one of these Member States (Tibnor, also through NS/NST, Ruukki and the BE Group).

114. The Commission has confirmed the above findings also on the basis of the parties' internal documents, […].[97]

115. In view of the above, the Commission considers that each of the relevant markets for the distribution of steel products are national in scope.

4. Production and supply of carbon steel products for the construction industry

Profiled steel construction sheets

116. In previous decisions, the Commission has considered the relevant geographic market for profiled steel construction sheets to be national or regional depending on the size of the countries: larger countries (such as Germany and France) have been considered to have national markets because of, for instance, delivery time questions, while the Benelux-countries together have been considered to constitute a single regional market.[98]

117. The Notifying Party submits that the relevant geographic market for profiled steel construction sheets should be the Nordics, including Denmark, Finland, Norway and Sweden. The Notifying Party supports its view by referring to, e.g. limited transport costs constituting [5-10]% of the final product price and notable amounts of cross-border trade.

118. While the replies to the Commission's market investigation show factors that could indicate regional cross-border markets, such as limited differences in customer

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97 See for instance […].

98 COMP/M.2382 – *Usinor / ARBED / Aceralia*, paragraphs 27–30 and Case No IV/M.1595 – *British Steel / Hoogovens*, paragraph 12. See also Case No IV/M.1329 – *Usinor / Cockerill*.

preferences or regulatory requirements,[99] the Commission considers that numerous factors point towards national markets.

119. First, the Commission observes that a clear majority of both competitors and customers consider that a physical presence in a given country is needed, and competitors have also usually organised their distribution on a national level. Reasons for this include, for instance; the need to provide technical assistance to customers at construction sites as well as delivery lead times.[100] The Commission has also been told that the physical presence should include a production facility.[101]

120. Second, the Parties have themselves organised their production mainly on a national basis for their main markets: The Parties are selling profiled steel construction sheets mainly in Finland, Sweden, the Baltic countries (Estonia, Latvia and Lithuania), Poland and Romania. These are also the locations of the Parties' production facilities: SSAB has two production facilities in Sweden, one in Finland, one in Poland and one in Romania while Ruukki has one production facility in Finland, Estonia, Poland and Romania each. With the exception of Ruukki's Estonian production facility, the supply patterns seem to be strongly national:

- Finland: SSAB's Finnish production facility supplies […]% of its production (in volume) to Finland, which constitutes close to […]% of all of SSAB's supplies to Finland. For Ruukki, its Finnish production facility supplies […]% of its production (in volume) to Finland, which constitutes […]% of all of Ruukki's supplies to Finland.

- Sweden: SSAB's Swedish production facilities supply […]% of their production (in volume) to Sweden and this constitutes […]% of all of SSAB's supplies to Sweden. Ruukki does not have a production facility in Sweden, and also its market share is considerably lower than in countries where it has a production facility.

- Poland: SSAB's Polish production facility supplies […]% of its production (in volume) to Poland, which constitutes […]% of SSAB's supplies to Poland. For Ruukki, the figures are […]% and […]% respectively.

- Romania: SSAB's Romanian production facility supplies […]% of its production to Romania and that also makes […]% of SSAB's supplies to Romania. For Ruukki, the corresponding figures are […]% and […]%.

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99 Replies to questions 23–6 of the Commission's request for information addressed to competitors – steel construction materials (Q5); replies to questions 21 and 22 of the Commission's requests for information addressed to customers – steel construction materials (Q6a–Q6c); and replies to question 8 of the Commission's requests for information addressed to customers – steel construction materials (Q6d and Q6e).

100 Replies to questions 27 and 28 of the Commission's request for information addressed to competitors – steel construction materials (Q5), replies to questions 24 and 25 of the Commission's requests for information addressed to customers – steel construction materials (Q6a–Q6c); and replies to question 10 of the Commission's requests for information addressed to customers – steel construction materials (Q6d and Q6e).

101 See, e.g. approved minutes of call with a customer, 24.6.2014.

121. As to Ruukki's Estonian production facility, it however only supplies […]% of its production (in volume) to Estonia. Nonetheless, […]% of its supplies go to the Baltic countries (Estonia, Latvia and Lithuania) together. Of all supplies to the Baltic countries, the Estonian production facility supplies […]%. SSAB does not have a production facility in the Baltic countries and also its sales to and market shares in those countries are notably small.

122. Third, it appears typical for even major suppliers to be only present in some of the Nordic countries. This is reflected in, for example in the fact that the Parties are the only major producers having a notable presence and market share in both Finland and Sweden while the other major competitors, including for instance Weckman, Lindab, Areco, ArcelorMittal and Tata Steel, appear to have a meaningful presence and market share in only one of the two countries.

123. Fourth, as discussed in recital 116, the Commission has previously found national markets with respect to Member States that are geographically large, such as Germany and France but regional cross-border markets with respect to the Benelux-countries that are geographically smaller. In this respect, the Commission notes that, for instance, Finland and Sweden are of a comparable size, or larger than, Germany and France and producers there face comparable or longer transport distances and times. The Baltic countries, on the other hand, are significantly smaller in geographic size.

124. In light of the above, the Commission considers that the relevant geographic markets for profiled steel construction sheets are national. However, with respect to the Baltic countries it can be left open whether the markets are national or cross-border regional consisting of all the Baltic countries as the notified transaction does not give rise to competition concerns with respect to the Baltic countries even under the narrowest feasible, that is national, market definition.

Steel rainwater systems

125. In a previous decision, the Commission has considered that the relevant geographic market for (zinc) rainwater systems was not narrower than national and probably not wider than EEA-wide, leaving the exact definition open.[102]

126. The Notifying Party submits that the market is EEA-wide, or at least cross-border regional consisting of all Nordic countries.

127. In line with the findings concerning profiled steel construction sheets, respondents to the market investigation referred to a need to have national presence with respect to steel rainwater systems.[103] On the other hand, the Commission notes that for instance the Parties have not organised their production of rainwater systems on a national basis but have concentrated their production to a limited number of locations: SSAB produces everything in Sweden while Ruukki produces in Finland and Romania.

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102 COMP/M.4450 – *Umicore / Zinifex / Neptune*, paragraph 61.

103 Replies to questions 27–8 of the Commission's request for information addressed to competitors – steel construction materials (Q5); replies to questions 24 and 25 of the Commission's requests for information addressed to customers – steel construction materials (Q6a–Q6c); and replies to question 10 of the Commission's requests for information addressed to customers – steel construction materials (Q6d and Q6e).

128. In any event, the exact geographic market definition can be left open as the notified transaction does not give rise to competition concerns with respect to steel rainwater systems even under the narrowest feasible, that is national, market definition.

D. Competitive assessment

1. Production and supply of carbon steel

129. The combined sales of the Parties in 2013 in the Nordic countries amounted to […] kt for a value of approx. EUR […] million for HR, […]kt and approx. EUR […] million for OC and[…]kt and approx. EUR […] million for CR.

Arguments of the notifying party

130. In addition to the arguments presented in section IV.C.1 above, the Notifying Party essentially submits that (i) there is enough spare capacity in the EEA to serve Nordic demand several times over, and that (ii) import pressure, including from non-EEA producers such as Severstal (Russia), is already today a sufficiently strong constraint on the Parties so as to prevent any price increase as a result of the Transaction.

The Parties have high market shares in the Nordic countries

131. The Commission has carried out a market reconstruction of the Nordic carbon steel flat product markets at stake. In line with its precedents in the steel industry, the Commission has assessed sales market shares including captive sales to the Parties' and their competitors' own downstream businesses. However, given the important outlet that Ruukki's tube-making and construction businesses represent for HR and CR in particular, the Commission has reported below, on a conservative basis, sales market shares excluding captive sales to non-distribution businesses.[104]

Table 3: Parties' market shares of ex-mill deliveries, including to captive distribution (2013, volumes)[105]

	HR			CR			OC		
	SSAB	Ruukki	Combined	SSAB	Ruukki	Combined	SSAB	Ruukki	Combined
Nordic 4	[30-40]%	[20-30]%	**[60-70]%**	[30-40]%	[10-20]%	**[50-60]%**	[30-40]%	[30-40]%	**[60-70]%**
Nordic 3	**[40-50]%**	**[20-30]%**	**[70-80]%**	**[40-50]%**	**[10-20]%**	**[50-60]%**	**[30-40]%**	**[30-40]%**	**[60-70]%**

Source: Market reconstruction (ex-Asia)

132. The Parties achieve high market shares for ex-mill deliveries in the Nordic countries (Finland, Sweden and Norway) as regards (i) HR ([70-80]% with a [20-30]% increment), (ii) OC ([60-70]% with a [30-40]% increment) and (iii) CR ([50-60]% with a [10-20]% increment). The market share increments are particularly significant in Finland and Sweden, which together make up more than [80-90]% of the Nordic flat steel demand.

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104 In other words, the combined market shares of the Parties including captive sales to other downstream businesses would be higher than the ones reported in table 3.

105 Nordic 4 refers to Denmark, Norway, Sweden and Finland while Nordic 3 refers to Norway, Sweden and Finland.

133. On the other hand, the Parties' combined market shares remain at approx. [40-50]% in QP and below [30-40]% for GS. The Commission notes in this respect that, as discussed in section IV.C.1. above, the Parties' moderate market presence in QP and GS can be linked to (i) the presence of several additional competitors in the Northern part of Europe for QP, and in particular of NLMK in Denmark ([20-30]% market share in the Nordics) (ii) the absence of the Parties from a number of sub-segments in GS, and (iii) lower relative transport costs in GS compared to HR and CR.

134. As regards HR and OC, the Commission's market reconstruction also suggests that European competitors of the parties mostly – if not exclusively – sell to distributors and only to a limited extent directly to end customers. The market shares of the Parties for direct sales to end customers are therefore even higher for (i) HR ([90-100]% with a [30-40]% increment) and (ii) OC ([70-80]% with a [30-40]% increment), while remaining virtually unchanged in CR, apart from Finland ([80-90]% with a [30-40]% increment).

135. As regards capacity shares, which are usually a useful complement to sales market shares in mature, basic industries with homogeneous goods such as the steel industry,[106] the Parties would by definition have 100% market share for HR, CR and OC in the Nordic countries, given that there are no other Nordic strip product suppliers.

136. However, in the specific circumstances of this case, the Commission notes that the relevance of capacity market shares in the Nordic countries is diminished by the significant available production capacities of continental European suppliers, which could in principle serve Nordic demand in all carbon steel flat products several times over.[107] According to the Parties' estimates, submitted on 10 June 2014, European carbon steel producers had in 2012 spare capacity of above […] million tonnes of HR, […] million tonnes of CR and […] million tonnes of OC.

137. Throughout the assessment it also has to be borne in mind that on an EEA-wide basis, the Parties' combined market shares would remain at most [5-10]% in all standard flat carbon steel product markets.

<u>The Parties' control over routes to market in the Nordic region is an important competitive advantage over their competitors</u>

138. Among steel suppliers, the Parties are the two companies with by a large distance the strongest downstream integration across the Nordic countries.

139. Both Parties are vertically integrated in steel distribution in Norway, Sweden and Finland, as well as in steel construction products in Finland and Sweden. In addition, Ruukki operates further downstream businesses such as tube-making, which use carbon steel flat products as an input. Across Norway, Sweden and Finland, the Parties solely or jointly control five steel service centres and twenty-two stockholding centres through SSAB's wholly owned subsidiary Tibnor, its joint ventures NS and NST, as well as the Ruukki Metals distribution network.[108]

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106 See M.6471 *Outokumpu / Inoxum*, paragraphs 359-360.

107 See replies to question 63 of the Commission's request for information addressed to competitors (Q1) on 23 May 2014.

108 See Form CO, paragraphs 952-955.

140. Besides the Parties, (i) ArcelorMittal has a steel service centre joint venture with the BE Group in Sweden (AMBESSC), (ii) Tata Steel Europe has a 50% stake in NS and NST in Norway, and (iii) both ArcelorMittal and Tata Steel Europe are integrated into steel construction products in Sweden.

141. The majority of customers and of competitors have stated that vertically integrated players (i.e. companies operating both a steel mill and a Nordic distribution network) have a competitive advantage vis-à-vis other steel suppliers for the direct (ex-mill) supply of carbon steel flat products in the Nordic countries. A customer of the Parties stated in this respect that "*Integration of logistic services provide benefit especially to small and midsize customers*". Competitor US Steel Kosice also confirmed that "*Own distribution network together with service centers brin[gs] some advantages like: Just-In-Time deliveries, multi-item orders in small quantities, narrow dimensional tolerances and tailored blanks & special formats. These service are very important for deliveries to high-demanding industries.*"[109]

142. The Commission notes that the Parties enjoy high market shares in the distribution of carbon steel flat product distribution across Norway, Sweden and Finland (see section IV.D.3 below).

143. The Commission further considers that the Parties' control over distribution could constitute a barrier to imports by depriving European suppliers of a route to market to reach small and mid-size ex-mill customers in the Nordic countries.

144. A Swedish ex-mill customer stated in this respect that "*Steel producers such as ThyssenKrupp, Salzgitter, Voestalpine do not have service centres in Sweden. Therefore, [customer] does not source products of them. For [customer], a supplier needs to have a service centre in Sweden since [customer] is dependent on just-in-time delivery*."[110]

145. A number of competitors and customers have confirmed in this respect that the Parties' strong position in steel distribution across the Nordic countries constitutes a barrier to imports by other European steel suppliers. NLMK Europe stated for instance that the "*fairly high level of consolidation in distribution as well as vertical integration (eg. TIBNOR) could limit the ability to others to enter the market.*"[111] A Finnish steel distributor stated that "*The control of the distribution will keep potential suppliers away.*"[112] Similarly, the Swedish steel consumer association SAMS stated that "*SSAB and Ruukki could in the future have the ability to limit steel imports from continental Europe as they would control a large share of steel distribution.*"[113]

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[109] See replies to question 55 of the Commission's request for information addressed to competitors (Q1) on 23 May 2014, and to question 53 of the Commission's request for information addressed to customers (Q2) on 23 May 2014.

[110] See minutes of conference call with Swedish customer on 16 May 2014.

[111] See reply to question 26.3 of the Commission's request for information addressed to competitors (Q1) on 23 May 2014.

[112] See reply to question 63 of the Commission's request for information addressed to customers (Q2) on 23 May 2014.

[113] See minutes of conference call with SAMS on 14 May 2014.

146. The Commission notes that the importance of the Parties' captive distribution channel in limiting the flow of imports from outside the Nordic countries is also reflected in the Parties' internal documents analysing the Transaction. […]. Similarly, […]"[114]

The Parties are each other's closest competitor for HR, CR and OC

147. Customers of the Parties see them as each other's closest competitors for the supply of carbon steel flat products in the Nordic countries.[115] AMBESSC stated in this respect that "*The 2 Companies are very much alike and are competing with the same kind of Products, on the same markets*." The Commission notes that this competition is viewed as particularly strong in HR and CR sheets, where the Parties' processing capabilities in the Nordic countries set them further apart from European competitors, [116] and in OC due to a degree of product differentiation.[117]

148. In particular, customers consider that the strongest constraint on the pricing behaviour of each of the Parties for carbon steel flat products in the Nordic countries is the other Party, with European mills coming second at some distance.[118] A Swedish customer of HR and CR noted in this respect that "*Sweden is considered by both SSAB & Rautaruukki part of their "home market", and that as a consequence these two producers have been more dependable than alternative suppliers in the past*."[119]

149. European competitors of the Parties also consider that SSAB and Ruukki are close competitors for the supply of standard carbon steel flat products in the Nordic countries,[120] and the Parties compete most strongly in HR, CR and OC markets.[121] ISD Huta Czestochowa mentioned in this respect: "*Nordic markets – proximity to customers and same logistic advantage level*". European competitors also consider that the strongest constraint on the pricing behaviour of each of the Parties for carbon steel flat products in the Nordic countries is the other Party. However, contrary to the Parties' customers, they reckon other European steel suppliers are less of a constraint on the Parties than Russian and CIS producers.[122]

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114 See Annex 17 to the Form CO, […].

115 See replies to questions 45.1 and 46 of the Commission's request for information addressed to customers (Q2) on 23 May 2014.

116 A customer stated in this respect that "*They are currently first tier competitors at Nordics against each others according to our view as both only mills with significant service center network at Nordics with similar volume delivery capabilities*".

117 See replies to question 45.1 of the Commission's request for information addressed to customers (Q2) on 23 May 2014, with several reference to close competition in "*Coated products*".

118 See replies to questions 54 and 55 of the Commission's request for information addressed to customers (Q2) on 23 May 2014.

119 See minutes of conference call with customer on 2 May 2014.

120 See replies to question 45.1 of the Commission's request for information addressed to competitors (Q1) on 23 May 2014.

121 See replies to question 39 of the Commission's request for information addressed to competitors (Q1) on 23 May 2014.

122 See replies to questions 56 and 57 of the Commission's request for information addressed to competitors (Q1) on 23 May 2014.

150. In addition, as discussed above, the majority of competitors and customers consider that vertically integrated producers have an advantage not just for distribution sales but also for ex-mill deliveries in the Nordic countries. This is confirmed by internal documents of the Parties which show that they consider themselves as enjoying an advantage over all European and Russian competitors in terms of […].[123]

151. The Parties also appear to pursue largely similar business agendas for HR, CR and OC products,[124] with both Parties (i) […], (ii) […](iii) […].

The Parties exercise a strong competitive constraint on each other before the Transaction

152. Over the last 6 years, Ruukki has gained market share in the Nordics in all three of HR ([10-20] p.p.), CR ([5-10] p.p.) and OC ([0-5] p.p.), mainly at the expense of SSAB, and in particular in Sweden. On the contrary, SSAB has gained market share to some extent at the expense of Ruukki in Finland for HR ([0-5] p.p.) and OC ([5-10] p.p.), but remained stable in CR at approx. [30-40]% market share.

153. Recent SSAB documents state that […][125] and that its goal is to "*strengthen position*" in Finland, Norway and Denmark.[126] Conversely, internal documents of Ruukki […]. In particular […].[127]

154. A number of customers in the market investigation have stated that the head-to-head competition between the two companies has helped them keep prices in line in the past. A Swedish customer stated as regards the closeness of competition between the Parties that "*They are the ones competing in our eyes*",[128] while another stated that "*Today both companies are in competition with is allowing to keep certain level of pricing. After merger it might ea[s]ier controlled by new Party and may lead to price increase*."[129]

155. SSAB's internal strategy documents are also consistent with a significant degree of head-head competition between SSAB and Ruukki, […].[130] Similarly, […].[131] […].[132]

The reaction by the Parties' competitors is unlikely to prevent an anti-competitive outcome

156. Competitor feedback and the parties themselves anticipate a degree of switching from large customers in particular in the automotive segment in Sweden. In addition, as

123 See Annex 17 to the Form CO, […].

124 […].

125 See Annex 17 to the Form CO, SSAB document n°17, […].

126 See SSAB Eurobond Roadshow Presentation of April 2014 (publicly available), slide 11.

127 See Annex 17 to the Form CO, […].

128 See reply to question 45 of the Commission's request for information addressed to customers (Q2) on 23 May 2014.

129 See reply to question 63 of the Commission's request for information addressed to customers (Q2) on 23 May 2014.

130 […].

131 See for instance […].

132 See Annex 17 to the Form CO, […].

mentioned in paragraph 135 above, several European competitors have significant spare capacity in HR, CR and OC.

157. However, the market investigation has shown that Russian and Asian suppliers are overall seen as less credible alternatives compared to the Parties and their European competitors because of (i) their more limited product portfolio, […], (ii) inferior quality and perceived quality and (iii) longer lead times for Asia.[133] It also appears that Russian competitor Severstal is consistently forced to price its HR and CR products at least EUR […] per tonne below Ruukki prices (i.e. […]%) in Finland without clear evidence of Severstal increasing its ex-mill market share in the last 6 years.[134] Against this backdrop, a large majority of customers considered that there was no recent significant entry or expansion (in the last 3 years) by suppliers directly (ex-mill) supplying carbon steel flat products in the Nordic countries.[135]

158. As regards European competitors, it is doubtful whether on the basis of their currently existing limited local presence their reaction to the merger would be sufficient to prevent a price increase by the combined entity. In particular, the approx. EUR 50 per tonne price difference for HR between Finland and Sweden suggests that European imports may not today be the binding constraint on the Parties' pricing.[136] As discussed above, the lack of strategic focus and marketing efforts by European suppliers in the Nordic countries has been confirmed by respondents to the market investigation. A Finnish customer stated in this respect that "*Overall, other European suppliers have not invested significant time and effort to gain market share in Finland due to the strength of Rautaruukki (with SSAB being a strong second).*"[137]

159. Moreover, as discussed above, a number of customers consider that switching to European suppliers would be possible but may result, in order to achieve efficient shipping, in higher inventory and therefore larger working capital requirements. In addition, the lower reliability of deliveries from European mills and, in some circumstances, longer lead times would appear to constitute barriers to switching to European mills. A majority of Nordic customers stated in this respect that they do not have sufficient alternatives to the Parties for carbon steel flat products in the Nordic countries.[138] It is therefore also unclear whether a reaction by European competitors,

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133 In a conference call, a Finnish customer mentioned as regards OC that "*switching its process to Korean material would have a number of disadvantages for [customer]: (i) the quality of the material is lower, (ii) the reliability of deliveries is uncertain, which would prompt [customer] to significantly increase its inventories and would constitute a financial burden, (iii) the colour palette of Korean suppliers does not sufficiently match Finnish customer preferences and (iv) there is a strong preference among end customers for Nordic steel and [customer]'s brand image would suffer from the use of Korean material – in [customer]'s opinion it would also suffer from the use of continental European suppliers such as ArcelorMittal.*"

134 According to the Parties' submissions, non-EEA imports into Norway, Sweden and Finland have remained stable or marginally decreased from 2010 to 2013, for HR ([5-10]% in 2010, [5-10]% in 2013), CR ([10-20]% in both 2010 and 2013) and OC ([10-20]% in 2010, [10-20]% in 2013).

135 See replies to question 61 of the Commission's request for information addressed to customers (Q2) on 23 May 2014.

136 See section IV.C.1 above.

137 See minutes of conference call with customer on 6 May 2014.

138 See replies to question 42.1 of the Commission's request for information addressed to customers (Q2) on 23 May 2014.

which today hold a very limited fraction of the market, would be sufficient to defeat a price increase by the merged entity.

160. Finally, and as mentioned as regards geographic market definition, internal documents of the parties suggest that […] due to transport costs differentials and to the parties' important captive distribution volumes, which the market investigation suggests may to some extent deter European competitors from actively expanding in the Nordics, as discussed in paragraphs 137 to 145 above.

161. In this respect, the Commission notes that the lower size[139] of Nordic ex-mill customers may make it even more important for a producer to control a local distribution network in order to support ex-mill sales compared to the rest of Europe. This could be linked to (i) the commercial efficiencies in addressing both demand by the same customer for large quantities (above 20 tonnes) directly from mills and smaller quantities (including below 1 tonne) from distributors, […][140] and to (ii) the higher proportion of processed material sales in the Nordic countries, which require local processing capacity.

162. In light of the above, the Commission considers unlikely that the reaction of the Parties' competitors would be sufficient to defeat a price increase by the combined entity in HR, CR and OC in the Nordic countries.

Customers are concerned about the impact of the transaction

163. A majority of Nordic ex-mill customers (49 out of 85) have expressed concerns regarding the impact of the transaction for the production and direct supply of flat carbon steel in the Nordic countries.[141] The transaction has sparked an even higher level of interest and concerns in Finland (more than 70%), while both large and representative customers in Sweden are concerned as well about the market power of the Parties in the Nordics.

164. A Finnish CR and HR customer of the Parties stated that "*Ruukki and SSAB are so strong now in the Nordic countries that of course the transaction will have a negative effect on competition. We hope that other mills would have much more activity in future.*" An OC customer declared that the combined entity would acquire a particularly strong position in "*Organically coated, pre-glued, carbon steel flat products in which sector they are more or less the only alternatives due to the extremely high flexibility required. (Small volumes at short, reliable delivery time)*".[142] As regards the impact on prices, a

139 See answer to questions 26.1 and 26.4 of Q1 and answer to question 2 of the RFI of 5 June 2014, submitted on 10 June 2014. For instance, Ruukki's median annual delivery of carbon steel flat products to end customers in 2013 was […] tons in Germany, […] tons in Sweden and […] tons in Finland.

140 In this respect, […]. See Annex 17 to the Form CO, […].

141 See replies to question 63 of the Commission's request for information addressed to customers (Q2) on 23 May 2014, to question 39 of the Commission's requests for information addressed to customers (Q4a, Q4b and Q4c) on 23 May 2014.

142 See reply to question 43 of the Commission's request for information addressed to customers (Q2) on 23 May 2014.

Norwegian customer stated that "*SSAB will eat Ruukki, control the Nordic marke[t] and increase prices.*"[143]

165. Competitors of the Parties also confirmed the Parties' strong combined position in HR and OC after the Transaction.[144]

166. A number of customers also linked their concerns about the transaction to its vertical integration into steel distribution. For instance, an OC customer stated that the Parties would acquire a particularly strong position "*generally as steel manufacturer and steel distributor in the Nordics.*"[145] A Swedish original equipment manufacturer mentioned that "*SSAB and Ruukki have an advantage over continental steel mills and the transaction creates an obvious risk of increased steel prices in the Nordic market.*"[146]

<u>Conclusion</u>

167. In light of the above, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market with respect to the production and supply of hot-rolled, cold-rolled and organic coated carbon steel in the Nordic countries.

168. The Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the production and supply of galvanised steel and quarto plate.

2. Production and supply of HS and WR carbon steel

169. On a worldwide level, none of the HS and WR markets at stake would be affected. On an EEA level, potential markets for HS QP and WR QP would be affected.

170. The Commission has reconstructed the EEA markets for HS and WR QP and HR products. In this respect, the Parties' market share estimates were broadly confirmed by the market investigation.

Table 4: EEA sales and market shares of the Parties (2013, volume):

	High-strength quarto plate			**Wear-resistant quarto plate**		
	SSAB	**Ruukki**	**Combined**	**SSAB**	**Ruukki**	**Combined**
Sales (th. tonnes)	[…]	[…]	[…]	[…]	[…]	[…]
Shares of supply	[20-30]%	[0-5]%	[30-40]%	[30-40]%	[5-10]%	[30-40]%

Parties' estimates

143 See reply to question 63 of the Commission's request for information addressed to customers (Q2) on 23 May 2014.

144 See reply to question 69 of the Commission's request for information addressed to competitors (Q1) on 23 May 2014.

145 See reply to question 43 of the Commission's request for information addressed to customers (Q2) on 23 May 2014.

146 See non-confidential minutes of conference call with Swedish customer on 8 May 2014.

171. First, the Commission notes that the potential EEA markets for HS QP and WR QP are dynamic in nature, and exhibit a strong level of innovation competition between EEA suppliers. In this regard, the large majority of respondents to the market investigation has confirmed the Parties' claim that there has been gradual commoditization of the lower grades of high-strength and wear-resistant carbon steel flat products in the last 3 to 5 years.[147] In addition, the majority of competitors and customers consider that there is a high level of technological innovation in the EEA for high-strength and wear-resistant carbon steel flat products.[148]

172. Second, the Commission considers that the Parties will continue to face competition from a number of established players, including some of the leading QP players in Europe, namely Dillinger ([15-20]% in HS QP and WR QP), ArcelorMittal ([10-15]% in HS QP, [5-10]% in WR QP), ThyssenKrupp ([10-15]% in HS QP and WR QP), and Voestalpine (10-15]% in HS QP and WR QP). The Commission notes that these players have sufficient scale and scope to continue competing with the combined entity through innovation after the Transaction.

173. Third, the Commission notes that respondents to the market investigation have confirmed that Ruukki does not constitute a particularly important constraint on SSAB's existing strong position, as can be seen in table 4 above from its limited market share increment. [A European competitor] stated in this respect that the "*leading brand in Europe* [for WR QP] *is SSAB's Hardox. Ruukki's equivalent brand, Raex, is generally perceived to be at the same level with other competitors.*"[149]

174. Fourth, a majority of respondents to the market investigation have confirmed that NLMK has recently entered the potential HS QP and WR QP markets from its Clabecq mill and is currently gaining market share in these niche markets.[150]

175. Against this backdrop, a majority of customers of the Parties stated during the market investigation that they have sufficient alternatives to the Parties for HS and for WR products.[151] The large majority of customers further consider that the Transaction would have no negative impact on competition and prices in potential HS QP and WR QP markets in the EEA.[152]

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147 See replies to question 35 of the Commission's requests for information addressed to competitors (Q1) and customers (Q2) on 23 May 2014. BE Group Sverige AB stated in this respect that "*With more and more producers offering the lower high strength grades these grades will be as any commodity steel grades soon*".

148 See replies to question 53 of the Commission's request for information addressed to competitors (Q1) on 23 May 2014 and question 52 of the Commission's request for information addressed to customers (Q2) on 23 May 2014.

149 See minutes of conference call with [a European competitor].

150 See replies to question 66 of the Commission's request for information addressed to competitors (Q1) on 23 May 2014, and to question 60 of the Commission's request for information addressed to customers (Q2) on 23 May 2014.

151 See replies to questions 42.2 and 42.3 of the Commission's request for information addressed to customers (Q2) on 23 May 2014.

152 See replies to questions 65.1, 65.2, 66.1 and 66.2 of the Commission's request for information addressed to customers (Q2) on 23 May 2014. The Commission notes that the few concerns expressed regarding HS QP and WR QP mostly stem from distributors of the Parties' HS and WR products, and not from end customers.

176. In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the production and supply of HS and WR carbon steel.

3. *Distribution of steel products*

177. The transaction gives rise to affected markets in a number of markets for the distribution of steel products at national level in Finland, Norway and Sweden.

178. The Notifying Party submits that only half of the market share of Tibnor's JVs NS/NST should be attributed to SSAB, and that the remaining half should be attributed to Tibnor's JV partner, Tata Steel. The Commission notes that, as recognised by the Notifying Party, SSAB through Tibnor exercises joint control over NS/NST. As such, SSAB is capable of exercising decisive influence over NS/NST's strategic commercial behaviour.[153] In this scenario, the Commission considers that adding the entire market share of NS/NST to that of SSAB adequately reflects the absence of competitive pressure between NS/NST and Tibnor.

179. The market shares of the Parties at the level of distribution are shown in the table below.

Table 5: Nordic and national market shares of the Parties in the distribution of steel products (2013, volume)

2013	Flat carbon steel products through SSC	Flat carbon steel products through SC	Long carbon steel products through SC	Stainless steel products through SC
Finland				
Tibnor	[0-5]%	[0-5]%	[5-10]%	[10-20]%
NS+NST	N.A.	N.A.	N.A.	N.A.
Ruukki	[30-40]%	[20-30]%	[10-20]%	[30-40]%
Combined	**[40-50]%**	**[20-30]%**	**[10-20]%**	**[50-60]%**
Norway				
Tibnor	[5-10]%	[0-5]%	[0-5]%	[0-5]%
NS+NST	[30-40]%	[30-40]%	[20-30]%	[10-20]%
Ruukki	[30-40]%	[40-50]%	[10-20]%	[40-50]%
Combined	**[70-80]%**	**[70-80]%**	**[40-50]%**	**[60-70]%**
Sweden				
Tibnor	[20-30]%	[20-30]%	[30-40]%	[20-30]%
NS+NST	[10-20]%	N.A.	N.A.	N.A.
Ruukki	[10-20]%	[0-5]%	[0-5]	[10-20]%
Combined	**[50-60]%**	**[30-40]%**	**[30-40]%**	**[30-40]%**

Parties' estimates

180. The competitive impact of the proposed transaction in each of Norway, Sweden and Finland will be discussed below.

153 See paragraph 62 of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ 2008/C 95/01.

Norway

181. The addition of Tibnor, NS/NST and Ruukki would lead to combined market shares of [70-80]% in the market for the distribution of carbon steel flat products through SSCs, [70-80]% in the market for the distribution of carbon steel flat products through SCs, and [60-70]% in the distribution of stainless steel products through SCs.

182. A majority of customers responding to the Commission's questionnaires and customers interviewed by the Commission in conference calls have submitted that the proposed transaction would result in a price increase at the level of distribution of steel products in Norway. Customers have for instance stated that "[post-transaction] *in Norway SSAB and Ruukki would have a very dominant position and that competition at the distribution level would be limited*."[154], and that "*Norsk Stål / Tibnor and Ruukki N will dominate in N[orway]*.".[155] A large number of customers referred to SSAB or NS/NST as the closest competitor to Ruukki, and vice-versa.

183. NS/NST is perceived as the clear market leader in Norway, […].[156] Ruukki, the clear number two in the market, considers in its internal documents that […].[157] NST internal documents confirm in this respect that […][158]

184. In view of the above, the Commission considers that the proposed transaction raises serious doubts as to its compatibility with the Internal Market with regard to the markets for the distribution of carbon steel flat products through SSCs, carbon steel flat products through SCs, and stainless steel products through SCs in Norway.

185. The Commission also notes that the parties' market shares would also be significant with regard to the distribution of long products. However, there is no need to conclude as to whether serious doubts would arise in this area, given that the remedies proposed by the Notifying Party to remove serious doubts as regards the distribution of flat products through SSCs and SCs eliminate the overlap in long products in its entirety.

Sweden

186. The market shares of the combined entity in Sweden at the level of the distribution of carbon steel products through SSCs would exceed [50-60]%.

187. A number of customers have raised concerns and stated that the proposed transaction would result in a price increase. In addition, the Swedish Association for Material Sourcing (SAMS), a Swedish customer association representing 23 companies in Sweden which together purchase approx. 800 000 tons of carbon steel, stated that the

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154 See non-confidential minutes of call with Vik Ørsta.

155 Saferoad AS' response to question 37 of Q4a – DISTRIBUTION (Norway) – QUESTIONNAIRE TO CUSTOMERS.

156 […].

157 […].

158 See Annex 17 to Form CO, […].

proposed transaction would lead to a "*dominating market shares of the parties on the distribution market*", and therefore give rise to anticompetitive effects.[159]

188. Internal documents of the parties also confirm that […],[160] […].[161] […][162] Moreover, […].[163]

189. With regard to the other distribution markets in Sweden, the overlap between the parties would be limited or the combined market shares of the parties would remain below [40-50]%. In the absence of substantiated concerns raised by market players, the Commission considers that no competition concerns arise in these markets.

190. In view of the above, the Commission considers that the proposed transaction raises serious doubts as to its compatibility with the Internal Market with regard to the market for the distribution of carbon steel flat products through SSCs in Sweden.

<u>Finland</u>

191. According to the Notifying Party, Ruukki's share in the market for the distribution of carbon steel flat products through SSCs amounts to [30-40]%. The Commission notes, however, that the Notifying Party's estimates of its competitors' sales appear to overestimate substantially the position of its competitors. When taking into account sales figures submitted by the parties' competitors in the course of the market investigation, Rukki's sales appear to be much higher, and closer to [50-60]%.

192. A large number of market participants refer to Ruukki as being dominant at the level of distribution in Finland. Important elements of this alleged dominance appear to be: (i) Ruukki's unmatched presence in Finland in terms of distribution locations and share; and (ii) Ruukki's strong position at the level of production and supply of flat steel products, which increases its market power at distribution level.

193. SSAB's activities in Finland at the level of sales of flat carbon steel products appear to be relatively limited, with a market share of [0-5]%. In spite of this, the Commission notes that […]. Moreover, several customers considered Tibnor as the closest competitor of Ruukki at distribution level in Finland. Finally, internal documents from SSAB show that […].[164]

194. On the basis of the above, the Commission considers that even the limited addition in terms of market share brought about by the combination could result in the strengthening of Ruukki's possible dominance. This is even more the case considering that even "independent" distributors in Finland currently source approx. […]% of their carbon steel needs from the parties.

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159 See non-confidential minutes of call with with Swedish Association for Material Sourcing (SAMS).

160 […].

161 […].

162 Ibid.

163 […].

164 […].

195. This conclusion would be supported by a large majority of customers who have submitted that the proposed transaction would result in a price increase at the level of steel distribution in Finland, with customers for instance stating that "*I'm afraid that after this transaction there will be no competition in the distribution of steel products in Finland. In particular, I am afraid that this happens with the metal strip products. They are very important products for us and there is no other distributors in Finland*.",[165] and comparing the possible price effects of the proposed transaction to "*a catastrophe to our business*".[166]

196. In any event, there is no need to conclude as to whether serious doubts would arise in this area, given that the remedies proposed by the Notifying Party eliminate the overlap at the level of sales of carbon steel flat products through SSCs in its entirety.

197. As regards the distribution of stainless steel products through SCs, a majority of customers purchasing stainless steel from the Parties have raised concerns on the impact of the transaction. The Parties are the two largest distributors in Finland, and the transaction would lead to combined market shares of [50-60]%. With the exception of the BE Group, remaining competitors are independent distributors with low market shares, and are unlikely to constitute a viable option for stainless steel customers.

198. The Commission therefore considers that the proposed transaction raises serious doubts as to its compatibility with the Internal Market with regard to the market for the distribution of stainless steel products through SCs in Finland.

4. Production and supply of carbon steel products for the construction industry

Profiled steel construction sheets

199. The proposed transaction gives rise to affected markets in Finland, Sweden and Poland with respect to profiled steel construction sheets. In addition, the proposed transaction gives rise to affected markets in the potential national markets of Estonia and Latvia.

Finland

200. The Finnish market is characterised by the presence of numerous small, often local, competitors. The merged entity would become a clear market leader as shown in the table below.

165 Eino Talsi Oy's response to question 37 of Q4c – DISTRIBUTION (Finland) – QUESTIONNAIRE TO CUSTOMERS.

166 Pumppulohja AB Oy's response to question 37 of Q4c – DISTRIBUTION (Finland) – QUESTIONNAIRE TO CUSTOMERS.

Table 6: Finnish market shares (2013, value)

Company	Share (%) profiled steel construction sheets	Share (%) steel roofing sheets
SSAB	[10-20]	[10-20]
Ruukki	[30-40]	[30-40]
SSAB + Ruukki	**[40-50]**	**[40-50]**
Weckman	[10-20]	[10-20]
Poimukate	[0-5]	[0-5]
Hämeen Laaturemontti	[0-5]	[0-5]
Others	[30-40]	[30-40]

Source: The Notifying Party

201. During the market investigation, customers indicated that technical support from the sheet producer is often required at the construction sites which is why a nationwide presence is required at least by customers who themselves operate on a nationwide level.[167] In addition to the Parties, only Weckman has a practicable nationwide presence.[168] Among the nationwide competitors, the Commission's market reconstruction shows that the merged entity would achieve a market share of 80–90% in profiled steel construction sheets as well as in the potential market for steel roofing sheets.

202. The market investigation also indicated that branding has importance in Finland with respect to consumer customers. The Parties have strong brands, and in particular Ruukki was referred to be particularly strong in this respect by market participants.[169]

203. During the market investigation, a number of customers raised concerns that the notified transaction could result in competition concerns, such as increased prices in Finland. Those customers also included major purchasers with notable negotiation power.[170] Customers commented, for instance that:[171]

- *'I am afraid that prices may change significantly when the two market leaders no longer compete with each other'*[172]

- *'[T]he proposed transaction could result into higher prices in the Nordics for profiled steel construction sheets - - while - - might as a big purchaser be somewhat shielded from part of the negative effects of the proposed transaction*

167 Replies to question 25 of the Commission's request for information addressed to customers – steel construction materials (Q6a). See also, e.g. approved minutes of a call with a customer, 24.6.2014.

168 See, e.g. approved minutes of a call with a customer, 24.6.2014.

169 Replies to questions 31 of the Commission's request for information addressed to competitors – steel construction materials (Q5) and replies to questions 40 of the Commission's request for information addressed to customers – steel construction materials (Q6a).

170 Replies to questions 46–7 of the Commission's request for information addressed to customers – steel construction materials (Q6a).

171 Replies to questions 46–7 of the Commission's request for information addressed to customers – steel construction materials (Q6a). Approved minutes of a pre-notification call with a customer, 16.5.2014.

172 The original in Finnish reads: *'Pelkään että hinnat saattavat muuttua oleellisesti kun kaksi markkinajohtajaa eivät enää kilpailekaan keskenään'*.

and be able to find at least partial alternative suppliers, smaller companies and private home-owners could be hit harder.'

- *'There is a risk for higher prices in these products in future since one major company away from the market.'*

204. While many customers nonetheless thought they might find alternative suppliers, they also expressed doubts about the competitors' capacity to meet the volumes required.[173] The Commission also notes that a many of the remaining small competitors at present rely on raw material supplies from the Parties. The Commission considers that this is likely to decrease their viability as competitors at least in the short term to some extent.[174]

205. In light of the above, the Commission considers that the notified transaction is likely to raise serious doubts as to its compatibility with the internal market with respect to the production and supply of profiled steel construction sheets in Finland. However, there is no need to conclude on the matter as the commitments submitted by the Notifying Party remove the overlap between the Parties' activities in profiled steel construction sheets in Finland.

<u>Sweden</u>

206. The Notifying Party's estimates of the most important suppliers' market shares in Sweden are presented in the table below.

Table 7: Swedish market shares (2013, value)

Company	Share (%) profiled steel construction sheets	Share (%) steel roofing sheets
SSAB	[20-30]	[30-40]
Ruukki	[5-10]	[5-10]
SSAB + Ruukki	**[30-40]**	**[30-40]**
Lindab	[20-30]	[20-30]
Areco	[10-20]	[5-10]
Armat	[5-10]	[10-20]
Others	[20-30]	[10-20]

Source: The Notifying Party

207. The Commission's market reconstruction has confirmed that the above market shares somewhat overestimate the merged entity's market position. The merged entity would also continue to meet competition in profiled steel construction sheets and in the potential market for steel roofing sheets by a number of strong competitors such as Lindab and Areco that will command a market share of 10–20% each. In addition some of the main steel producers, such as ArcelorMittal and Tata Steel, are also present on the market.

173 Replies to question 37 of the Commission's request for information addressed to customers – steel construction materials (Q6a).

174 See, e.g. replies to questions 48–9 of the Commission's request for information addressed to competitors – steel construction materials (Q5).

208. While singular customers expressed concerns during the market investigation, customers in Sweden did not in general raise substantiated doubts about the notified transaction.[175] Customers also named many alternative Swedish suppliers.[176]

209. In light of the above, the Commission considers that the notified transaction does not raise doubts as to its compatibility with the internal market with respect to the production and supply of profiled steel construction sheets, or the potential market for steel roofing sheets, in Sweden.

Poland

210. The Notifying Party's estimates of the most important suppliers' market shares in Poland are presented in the table below.

Table 8: Polish market shares (2013, value)

Company	Share (%) profiled steel construction sheets	Share (%) steel roofing sheets
SSAB	[5-10]	[5-10]
Ruukki	[10-20]	[20-30]
SSAB + Ruukki	**[20-30]**	**[30-40]**
Pruszynski	[20-30]	[10-20]
Budmat	[10-20]	[10-20]
Balex	[5-10]	[10-20]
Others	[30-40]	[20-30]

Source: The Notifying Party

211. The Commission's market reconstruction has confirmed that the above market shares overestimate the merged entity's market position and that the merged entity would not become the market leader in profiled steel construction sheets or the potential market for steel roofing sheets. Instead, Pruszynski would remain bigger than the merged entity in both markets and also Balex would remain ahead of the Parties in the total market for profiled steel construction sheets.

212. While singular customers expressed concerns during the market investigation, customers in Poland did not in general raise substantiated doubts about the proposed transaction.[177] Customers also thought they would have alternative suppliers they could switch to should the merged entity try to raise prices.[178]

213. In light of the above, the Commission considers that the notified transaction does not raise doubts as to its compatibility with the internal market with respect to the production

175 Replies to questions 46–7 of the Commission's request for information addressed to customers – steel construction materials (Q6b).

176 See, e.g. replies to questions 37 of the Commission's request for information addressed to customers – steel construction materials (Q6b).

177 Replies to questions 46–7 of the Commission's request for information addressed to customers – steel construction materials (Q6c).

178 See, e.g. replies to questions 37 of the Commission's request for information addressed to customers – steel construction materials (Q6c).

and supply of profiled steel construction sheets, or the potential market for steel roofing sheets, in Poland.

Estonia and Latvia

214. The Notifying Party estimates that Ruukki has a market share of [40-50]% (2013, value) in Estonia for profiled steel construction sheets and [40-50]% (2013, value) for steel roofing sheets. For Latvia, the figures are [20-30]% and [30-40]% respectively. However, although SSAB has some sales in these countries, the market share increment brought by the notified transaction would be less than [0-5] percentage points in both Estonia and Latvia.

215. In light of the above, the Commission considers that the notified transaction does not raise doubts as to its compatibility with the internal market with respect to the production and supply of profiled steel construction sheets, or the potential market for steel roofing sheets, in the potential national markets of Estonia and Latvia.

Steel rainwater systems

216. The proposed transaction only gives rise to an affected market in the potential national markets of Sweden and Estonia with respect to steel rainwater systems.

Sweden

217. The Notifying Party's estimates of the most important suppliers' market shares in Sweden are presented in the table below.

Table 9: Swedish market shares (2013, value)

Company	Share (%)
SSAB	[30-40]
Ruukki	[0-5]
SSAB + Ruukki	**[30-40]**
Lindab	[30-40]
Icopal / Wijo	[10-20]
Areco	[0-5]
Others	[10-20]

Source: The Notifying Party

218. The Commission's market reconstruction has confirmed that the increment brought about by the merger is limited (0–5 percentage points) and that the merged entity will continue to meet competition in steel rainwater systems by numerous competitors, including Lindab (30–40%) as well as Icopal, Areco and ArcelorMittal (0–10% each).

219. During the market investigation, no customer raised substantiated concern with respect to steel rainwater systems in Sweden.[179]

179 Replies to questions 46–7 of the Commission's request for information addressed to customers – steel construction materials (Q6b).

220. In light of the above, the Commission considers that the notified transaction does not raise doubts as to its compatibility with the internal market with respect to the potential market of production and supply of steel rainwater systems in Sweden.

Estonia

221. The Notifying Party estimates that Ruukki has a market share of [30-40]% (2013, value) in Estonia for steel rainwater systems. However, although SSAB has some sales in Estonia, the market share increment brought by the notified transaction would be less than [0-5] percentage points. Consequently, the Commission considers that the notified transaction does not raise doubts as to its compatibility with the internal market with respect to the potential market of the production and supply of steel rainwater systems in Estonia.

5. Vertically affected markets

222. Colour-coated steel is a significant input into the production of profiled steel construction sheets, including steel roofing sheets, as well as steel rainwater systems. Given the Parties' market shares both in the upstream and in the downstream markets, this vertical link results in vertically affected markets.

223. A vertical merger may result in two types of competition concerns: input foreclosure and customer foreclosure.[180] Input foreclosure arises where, post-merger, the merged entity would be likely to restrict access to the products that it would otherwise supplied absent the merger. In assessing the likelihood of anti-competitive effects of a foreclosure scenario, the Commission examines whether the merged entity would, post-merger, have (i) the ability to foreclose access to inputs, (ii) whether it would have the incentive to do so and (iii) whether such foreclosure would have a significant detrimental effect on competition in the downstream market.[181]

224. For input foreclosure to be a concern, the merged entity must have a significant market power upstream. As discussed in paragraphs 131–132 above, the merged entity would have a significant market share and market power in the supply of organic colour coated steel in the Nordics. Downstream competitors have also raised concerns with respect to their access to this raw material.[182]

225. In addition to ability, the merged entity will need to have an incentive to foreclose for a foreclosure to be a concern. Essentially, the merged entity may face a trade-off between profits lost in the upstream market due to reduction of input sales to rivals and the profit gain in the downstream market.[183] In the present case, the Commission considers that it is likely that the merged entity could be in a position to increase its sales or prices in the downstream market for profiled steel construction sheets as a result of the merger. This results not only from the high market shares upstream but from the Parties significant

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180 See, e.g. Guidelines on the assessment of non-horizontal mergers under the Council regulation on the control of concentrations between undertakings, OJ 2008/C 265/07, 'Non-horizontal Guidelines'.

181 See, e.g. Non-horizontal Guidelines, paragraphs 31–2.

182 Replies to questions 49–50 of the Commission's request for information addressed to competitors – steel construction materials (Q5). See also replies to question 46 of the Commission's request for information addressed to customers – steel construction materials (Q6a–Q6b).

183 See, e.g. Non-horizontal Guidelines, paragraphs 40–6.

presence in the downstream markets. Downstream competitors have also indicated previous attempts by the Parties to engage in such behaviour.[184]

226. In light of the above, the Commission considered that it cannot be excluded that the proposed transaction could raise serious doubts as to its compatibility with the internal market with respect to input foreclosure of colour-coated carbon steel to the merged entity's downstream competitors. However, there is no need to conclude on the matter as the commitments submitted by the Notifying Party reduce the merged entity's ability to engage in such behaviour.

227. As to customer foreclosure, it may occur when the merged entity could foreclose its upstream rivals' access to sufficient customer base and reduce their ability or incentive to compete. In turn, this may raise downstream rivals' costs by making it harder for them to obtain supplies of input under similar prices and conditions as absent the merger. For a customer foreclosure to result in a competition concern the merged entity will need to have both the ability and the incentive to engage in such a behaviour and it would have to have a significant detrimental effect on consumers in the downstream market.[185]

228. In the present case, such effects appear unlikely. This is mainly due to the fact that the Parties are already at present mostly using their own raw materials in their downstream construction materials production in countries where they have any notable markets shares downstream: […]. […].[186] The Commission thus considers that the notified transaction does not raise serious doubts as to its compatibility with the internal market with respect to customer foreclosure of competing flat carbon steel suppliers.

V. PROPOSED COMMITMENTS

A. Procedure

229. Where a concentration raises serious doubts which could lead to a significant impediment to effective competition, the Parties to a transaction may seek to modify the concentration so as to address the serious doubts identified by the Commission with a view to having the merger cleared.

230. In order to address the concerns identified following the first phase market investigation and therefore render the concentration compatible with the internal market, the Notifying Party submitted commitments pursuant to Article 6(2) of the Merger Regulation on 24 June 2014 (the "24 June 2014 Commitments").

231. Upon comments from the Commission case team, the Notifying Party submitted revised commitments on 27 June (the "27 June 2014 Commitments"), essentially introducing a stricter purchaser requirement. The Commission launched a market test of the 27 June 2014 Commitments on the same day.

232. The Notifying Party submitted a final set of commitments on 10 July 2014 (the "Final Commitments").

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184 See, e.g. agreed minutes of a pre-notification call with a competitor, 16.5.2014.

185 See, e.g. Non-horizontal Guidelines, paragraphs 58–9.

186 Form CO, Annex 24.

B. Description of the 27 June 2014 Commitments

233. The 27 June 2014 Commitments consist of the divestment of:

a. SSAB's stake in NS/NST;

b. Ruukki's SSC in Halmstad, Sweden;

c. Tibnor Oy, the entire steel distribution organisation of SSAB in Finland, including the SC in Tampere;

d. Ruukki's SSC in Naantali, Finland; and

e. Plannja, SSAB's profiled construction sheet business in Finland.

234. These assets are together referred hereinafter as the "Divestment Businesses".

235. Pursuant to the 27 June 2014 Commitments, the Divestment Businesses include all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Businesses, in particular:

(a) all tangible and intangible assets (including intellectual property rights);

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

(c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Businesses; and

(d) the personnel currently employed by the Divestment Businesses, including staff seconded to the Divestment Businesses, shared personnel as well as the additional personnel listed in the Schedule attached to the 27 June 2014 Commitments.

236. In addition, the Divestment Businesses include the benefit, for a transitional period after closing (as detailed in the Schedule attached to the 27 June 2014 Commitments) and on terms and conditions equivalent to those at present afforded to the Divestment Businesses, of all current arrangements under which SSAB or its affiliated undertakings supply products or services to the Divestment Businesses, unless otherwise agreed with the Purchaser. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the production mill.

237. As regards the purchaser requirements, the Notifying Party committed to the following: (i) in relation to the assets described at points b. and d. above, the purchaser must be a flat carbon steel producer […]; (ii) in relation to the asset described at point a. above, after divestment NS and NST must be wholly owned or jointly controlled by a flat carbon steel producer […].

C. The results of the market test

238. On balance, the results of the market test on the suitability of a remedy based on the divestiture of SSCs to remove the competition problem at the level of supply of steel products in the Nordic region have been positive.

239. According to the majority of both customers and competitors, in the specific circumstances of this case, a remedy based on divestitures of SSCs is in principle suitable to remove a competition problem at the level of supply of carbon steel flat products in the Nordic region. On balance, feedback from customers and competitors confirmed that SSCs assets in the Nordic region are capable of providing a continental producer with a route to market to enter this region.

240. The market test also confirmed that the Divestment Businesses are viable. Even if a large majority of the respondents in this case has admitted that they could not provide their views for lack of sufficient information, a majority of the respondents who have provided their views confirmed the viability of the assets. Feedback from competitors, in particular, confirmed the viability of the assets.

241. As to the purchaser requirements, the result of the market test have on balance confirmed the importance of strong links (for instance, through full or partial ownership) between the SSCs Divestment Businesses and a steel producer. A distributor without strong links with a producer would likely only be capable of removing doubts at the distribution level, but not at the level of supply of carbon steel flat products in the Nordic region.

242. While customer and distributor replies suggest that the divested assets are in principle attractive, during the market test only two of the flat steel producers that would be likely suitable have openly stated a potential interest in purchasing the assets. Of these two producers, only one has expressed an equal interest in acquiring all the assets composing the Divestiture Business, while the other has stated that the comparatively least attractive of the assets was the Naantali SSC in Finland, because of strong current dependency on Ruukki and uncertainty on the willingness of local customers to switch to a non-Nordic supplier. Other producers have explicitly excluded their interest in acquiring the whole Divestment Business, of part of it.

243. As regards the size and scope of the 27 June 2014 Commitments, the results of the market test have been positive for Norway, but less clear-cut for Finland and Sweden.

244. In Finland, a relatively large number of customers raised concerns that the remedy would be insufficient in scope. The Commission however considers that these results should be interpreted with care. In this Member State, it is likely that the results of the market test have been affected by the pre-existing situation of possible dominance by Ruukki at the level of distribution of carbon steel products. Removing such possible dominance, which is not merger-specific (in the sense of not being caused by the merger), would be beyond what can be asked by way of commitments in a merger control procedure.

245. In Sweden, a number of customers also raised concerns that the commitments would not be sufficient to remove the competition problem. The extent of the concerns raised by market players, however, has been smaller than in Finland.

246. Finally, as regards profiled construction sheets, the results of the market test show that the remedy is likely to remove the competition problem and that the divested assets are able to function as a viable competitor in Finland. The results of the market test also indicated that it is not necessary that the divested assets are operated by a flat carbon steel producer but that an independent operator can also compete effectively on the market.

D. Final Commitments

247. On 10 July 2014, having received feedback from the Commission on its assessment of the 27 June 2014 Commitments and the results of the market test, the Notifying Party submitted the Final Commitments.

248. The Final Commitments include, in addition to the 27 June 2014 Commitments:

a. […]

b. The amendment of the purchaser requirements for SSAB's stake in NS/NST, Halmstad, Naantali […]. In particular, after divestment, these Divestment Businesses must be at least partially owned by a flat carbon steel producer […].

c. Improvements to the scope and size of the Finnish and Swedish parts of the remedies, consisting in particular of the inclusion of: (i) sales personnel dealing with ex-mill sales; (ii) contracts for the sale of ex-mill consignment stocks currently invoiced at Halmstad and Naantali; and (iii) contracts between Ruukki and its customers for ex-mill sales.

E. Commission's assessment of the Final Commitments

249. The Commission considers that the Final Commitments remove the serious doubts raised by the proposed transaction.

250. In light of the particular nature of the competition concerns at the level of the supply of carbon steel in this case, the remedy submitted by the Notifying Party are capable of removing the serious doubts raised by the transaction in the Nordic region.

251. The Commission considers that the remedy would work as a route to market, providing the purchaser with increased ability and incentive to establish and develop a presence in the Nordic region, also at the level of ex-mill sales.

252. The Commission notes that the purchaser requirements included in the Final Commitments ensure that either a steel producer would solely or jointly acquire ownership of the SSCs composing the Divestment Business. The full or partial ownership over the SSCs by such producer would considerably increase its incentives to develop the divested assets and use them as a route to market to penetrate the Nordic region.

253. As discussed above, a major obstacle for rival carbon steel producers to enter the Nordic markets appears to be constituted by the strong presence of the Parties at the level of steel distribution. The total volumes at distribution level which are divested by the Notifying Party as part of the Divestment Business are significant, insofar as the divestitures would result in the elimination of the overlap in Norway, and the elimination of much more than the overlap in Sweden and Finland. The Commission considers that the divestment of such a significant share of the Parties' distribution network would open up the market, and facilitate import competition, including for direct sales.

254. By entering the market at SSC level, a rival steel producer would be gradually capable of increasing its presence also at the level of ex-mill sales, given that: (i) customers buying ex-mill are often also purchasing some qualities and quantities from SSCs; (ii) local presence at SSC level makes it easier for the purchaser to develop an efficient logistic

chain; (iii) ex-mill deliveries could be shipped in batches together with shipments to the Nordic SSCs, which would proportionally decrease transport costs for ex-mill deliveries;[187] and (iv) the purchaser could more effectively compete with ex-mill deliveries of processed material by the Parties by shipping unprocessed material – which is more cost efficient – to its local SSC for processing and delivery (local service centre as finishing centres for coils shipped from the continent).

255. The Commission also considers that the addition of ex-mill sales personnel to the Divestment Businesses, together with contracts for the supply of consignment stocks and other ex-mill orders, would increase the likelihood that the remedy would be effective at the level of supply of carbon steel flat products in the Nordic region. These improvements would further increase the purchaser's ability and incentive to compete with the merged entity for substantial volumes of orders from ex-mill customers, thereby removing the remaining uncertainties raised by market players in the market test.

256. As a result of these improvements, the Commission notes that the total volumes of carbon steel flat products which are divested by the Notifying Party as part of the Divestment Businesses amount to […] kt. This figure is significant, and accounts for more than the overlap between the parties in the Nordic Region at the level of ex-mill sales to end customers.

257. The remedies submitted by the notifying party are also suitable to remove serious doubts in all the distribution markets, as: (a) in Norway, the divestment of SSAB's stake in NS/NST removes essentially the whole overlap at the level of sales through SCs and SSCs; (b) in Sweden, the divestment of Ruukki's SSC in Halmstad, together with the divestment of SSAB's stake in NS/NST, removes more than the overlap between the parties; and (c) in Finland, the divestment of Ruukki's SSC in Naantali and the divestment of Tibnor's SC in Tampere as part of Tibnor Oy remove more than the overlap in carbon steel and the entire overlap in stainless steel.

258. As regards profiled construction sheets, the remedies submitted by the notifying party are also suitable to remove serious doubts as they remove the entire overlap between the Parties.

259. The Commission also notes that the assets which are part of the Final Commitments are viable assets, which would be able to compete on a standalone basis in the hands of a suitable purchaser.

260. The Commission also takes into account the expression of interest for the purchase of the Divestment Businesses that the Notifying Party has received from […] steel producers. This element, together with the fact that the Divestment Businesses has been improved after market test, supports the conclusion that the Divestment Businesses, including Naantali, are attractive for a suitable purchaser.

261. The attractiveness of the Naantali SSC, in particular, has been strengthened by the addition of ex-mill sales personnel, and ex-mill sales contracts. Moreover, financial information submitted by the Notifying Party confirms that Naantali is the most profitable SSC among those operated by Ruukki, and should be therefore attractive for a suitable purchaser with interest to enter the Nordic region. The existence of a transitory

[187] Economies of scale can be achieved by transporting carbon steel products to the Nordic countries by vessel instead of by truck. […](see Form CO, paragraphs 275 and 276).

agreement for the supply of steel products on terms and conditions equivalent to those at present afforded by Naantali also makes sure that any transitory disruption in the SSC's activities will likely be avoided.

262. […]

VI. CONDITIONS AND OBLIGATIONS

263. Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market.

264. The fulfilment 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 internal market and the EEA Agreement 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(6)(b) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

265. In accordance with the basic distinction between conditions and obligations, the decision in this case is conditional on full compliance with the requirements set out in Section B of the Final Commitments, which constitute conditions, whereas Sections C to F of the Final Commitments constitute obligations on the Notifying Party.

266. The full text of the Final Commitments is annexed to this Decision as Annex I and forms an integral part thereof.

VII. CONCLUSION

267. 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 in section B of the commitments 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

10/07/2014

Case M.7155 – SSAB/Rautaruukki

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the "***Merger Regulation***"), SSAB AB (publ) (the "***Notifying Party***") enters into the following Commitments (the "***Commitments***") vis-à-vis the European Commission (the "***Commission***") with a view to rendering the acquisition of Rautaruukki OYJ (the "***Concentration***") compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the "***Decision***"), in the general framework of European Union law, in particular in 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 (the "***Remedies Notice***").

Section A. Definitions

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

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

   […]

   Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as indicated in Section B, paragraph 9 (a), (b) and (c) and described more in detail in the Schedule.

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

   Closing Period: the period of 3 months from the approval of the Purchaser and the terms of sale by the Commission.

   Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

Divestment Business: the business or businesses as defined in Section B and in the Schedule which the Notifying Party commits to divest.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by SSAB and who has/have received from SSAB 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 […] from the Effective Date.

[…]

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

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

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

Parties: the Notifying Party and the undertaking that is the target of the concentration.

Personnel: all staff currently employed by the Divestment Business, including staff seconded to the Divestment Business, shared personnel as well as 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.

Purchaser Criteria: the criteria laid down in paragraph 20 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

Schedule: the schedule to these Commitments describing more in detail the Divestment Business.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

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

[…]

SSAB: SSAB AB (publ), incorporated under the laws of Sweden, with its registered office at P.O. Box 70, SE-101 21, Stockholm, Sweden and registered with the Swedish Companies Registration Office under registration number 556016-3429.

Section B. The commitment to divest and the Divestment Business

Commitment to divest

2. In order to maintain effective competition, SSAB 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 21 of these Commitments. To carry out the divestiture, SSAB 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 SSAB has not entered into such an agreement at the end of the First Divestiture Period, SSAB shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 33 in the Trustee Divestiture Period.

3. SSAB shall be deemed to have complied with this commitment if:

   (a) by the end of the Trustee Divestiture Period, SSAB or the Divestiture Trustee has entered into a final binding sale and purchase agreement and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 21; and

   (b) the Closing of the sale of the Divestment Business to the Purchaser takes place within the Closing Period.

4. In order to maintain the structural effect of the Commitments, the Notifying Party shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from the Notifying Party showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 47 of these Commitments), the Commission finds 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 internal market.

Structure and definition of the Divestment Business

5. The Divestment Business consists of

   a) **Plannja Oy** – SSAB's construction business in Finland, as described in Schedule 1.

   b) **Norsk Stål and Norsk Stål Tynnplater** – SSAB's 50% share in two joint ventures with Tata Steel Europe. The joint ventures are active in distribution in Norway and Sweden, as described in Schedules 2 and 3.

c) **Halmstad SSC** – Ruukki's steel service centre in Sweden, as described in Schedule

d) **Tibnor Oy** – SSAB's distribution subsidiary in Finland, including stainless steel stockholding centre, as described in Schedule 5.

e) **Naantali SSC** – Ruukki's steel service centre in Finland, as described in Schedule

6. […]

7. […]

8. […]

9. The 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 assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:

   (a) all tangible and intangible assets (including intellectual property rights);

   (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; and

   (d) the Personnel.

10. In addition, the Divestment Business includes the benefit, for a transitional period after Closing (as detailed in the Schedule) and on terms and conditions equivalent to those at present afforded to the Divestment Business, of all current arrangements under which SSAB or its Affiliated Undertakings supply products or services to the Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the production mill.

Section C. Related commitments

Preservation of viability, marketability and competitiveness

11. From the Effective Date until Closing, the Notifying Party shall preserve or procure the preservation of 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 SSAB undertakes:

(a) not to carry out any action 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, or procure 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, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to SSAB's remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, SSAB shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. SSAB must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

[…]

<u>Hold-separate obligations</u>

12. The Notifying Party commits, from the Effective Date until Closing, to keep the Divestment Business separate from the businesses it is retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the businesses retained by SSAB have no involvement in the Divestment Business; (ii) the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by SSAB and do not report to any individual outside the Divestment Business.

13. Until Closing, SSAB shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses which SSAB is retaining. Immediately after the adoption of the Decision, SSAB shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, 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 SSAB. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 11(c) of these Commitments. The Commission may, after having heard SSAB, require SSAB to replace the Hold Separate Manager.

[…]

14. To ensure that the Divestment Business described at paragraph 5(b) comprising NS and NST is held and managed as a separate entity the Monitoring Trustee shall exercise SSAB's rights as shareholder in the legal entity or entities that constitute the Divestment Business (except for its rights in respect of dividends that are due before Closing), with the aim of acting in the best interest of the business, which shall be determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling SSAB's obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of SSAB. Upon request of the Monitoring Trustee, SSAB shall resign as a member of the boards or shall cause such members of the boards to resign.

<u>Ring-fencing</u>

15. SSAB shall implement, or procure to implement, all necessary measures to ensure that it does not, after the Effective Date, obtain any Confidential Information relating to the Divestment Business and that any such Confidential Information obtained by SSAB before the Effective Date will be eliminated and not be used by SSAB. This includes measures vis-à-vis SSAB's appointees on the board of directors of the Divestment Business. In particular, the participation of the Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. SSAB may obtain or keep information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or the disclosure of which to SSAB is required by law.

<u>Non-solicitation clause</u>

16. 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 […] after Closing.

<u>Due diligence</u>

17. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, SSAB 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.

<u>Reporting</u>

18. SSAB 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). SSAB shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Business to the Commission at

each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.

19. SSAB shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

20. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:
    (a) The Purchaser shall be independent of and unconnected to the Notifying Party and its/their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).
    (b) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;
    (c) The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in 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. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.
    d) After divestment, the Divestment Business described at paragraphs 5 (b), 5(c) and 5(e) […] must ultimately be at least partly owned by a flat carbon steel producer […].

21. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When SSAB has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. SSAB must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different 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

22. SSAB shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Notifying Party commits not to close the Concentration before the appointment of a Monitoring Trustee.

23. If SSAB has not entered into a binding sale and purchase agreement regarding the Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by SSAB at that time or thereafter, SSAB shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

24. The Trustee shall:
    (i) at the time of appointment, be independent of the Notifying Party and its Affiliated Undertakings;
    (ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
    (iii) neither have nor become exposed to a Conflict of Interest.

25. The Trustee shall be remunerated by the Notifying Party 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, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by SSAB

26. No later than two weeks after the Effective Date, SSAB shall submit the name or names of one or more natural or legal persons whom SSAB proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, SSAB shall submit a list of one or more persons whom SSAB proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 24 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

27. 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, SSAB shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, SSAB 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 SSAB

28. If all the proposed Trustees are rejected, SSAB shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 22 and 27 of these Commitments.

Trustee nominated by the Commission

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

II. Functions of the Trustee

30. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or SSAB, 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

31. 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, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by SSAB with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

(a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 11 and 12 of these Commitments;

(b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 13 of these Commitments;

(c) with respect to Confidential Information:

- determine all necessary measures to ensure that SSAB does not after the Effective Date obtain any Confidential Information 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,
- make sure that any Confidential Information relating to the Divestment Business obtained by SSAB before the Effective Date is eliminated and will not be used by SSAB and
- decide whether such information may be disclosed to or kept by SSAB as the disclosure is reasonably necessary to allow SSAB 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 SSAB or Affiliated Undertakings;

(iii) propose to SSAB such measures as the Monitoring Trustee considers necessary to ensure SSAB'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;

(iv) 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 and correct 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;

(v) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;

(vi) provide to the Commission, sending SSAB a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Business as well as the splitting of assets and the allocation of Personnel 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;

(vii) promptly report in writing to the Commission, sending SSAB a non-confidential copy at the same time, if it concludes on reasonable grounds that SSAB is failing to comply with these Commitments;

(viii) within one week after receipt of the documented proposal referred to in paragraph 21 of these Commitments, submit to the Commission, sending SSAB a non-confidential copy at the same time, 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;

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

32. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

33. 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 (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 20 and 21 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) 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 SSAB, subject to the Notifying Party’s unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

34. 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 Notifying Party.

III. Duties and obligations of the Parties

35. SSAB shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of SSAB 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 SSAB and the Divestment Business shall provide the Trustee upon request with copies of any document. SSAB 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.

36. SSAB 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. SSAB 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. SSAB shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.

37. SSAB shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), 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, SSAB shall cause the documents required for effecting the sale and the Closing to be duly executed.

38. SSAB 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 SSAB 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.

39. At the expense of SSAB, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to SSAB'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 SSAB refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard SSAB. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 38 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served SSAB during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

40. SSAB agrees that the Commission may share Confidential Information proprietary to SSAB with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.

41. The Notifying Party agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.

42. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

43. 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 and SSAB, require SSAB to replace the Trustee; or

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

44. If the Trustee is removed according to paragraph 43 of these Commitments, 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 22-29 of these Commitments.

45. Unless removed according to paragraph 43 of these Commitments, 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

46. The Commission may extend the time periods foreseen in the Commitments in response to a request from SSAB or, in appropriate cases, on its own initiative. Where SSAB requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause**.** This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. Only in exceptional circumstances shall SSAB be entitled to request an extension within the last month of any period.

47. The Commission may further, in response to a reasoned request from the Notifying Party showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section G. Entry into force

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

Duly authorised for and on behalf of SSAB AB (publ)

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[...]

……………………………………
[...]

Date: 10/07/2014