EUROPEAN COMMISSION
DG Competition

Case M.8444 – ARCELORMITTAL / ILVA

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Decision on the implementation of the commitments -
Purchaser approval
Date: 17.4.2019

EUROPEAN COMMISSION

Brussels, 17.4.2019
C(2019)3149 final

PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party

Dear Sir or Madam,

Subject: Case M.8444 – ArcelorMittal/Ilva
Approval of Liberty House Group as purchaser of ArcelorMittal's Divestment Businesses following your letter of 11.3.2019 and the Trustee's opinion of 4.4.2019

1. FACTS AND PROCEDURE

1. By decision of 7 May 2018 ('the Decision') based on Article 8(2) of the Merger Regulation, the Commission declared the operation by which ArcelorMittal S.A. ('ArcelorMittal') would acquire sole control of certain assets of the Ilva Group ('Ilva') compatible with the internal market, subject to full compliance with the commitments submitted by ArcelorMittal and which are annexed to the Decision (the 'Commitments').

2. In particular, the Commitments provide that ArcelorMittal commits to divest the following Divestment Businesses[1]: (i) the Piombino/Galati Business; (ii) the Liège/Dudelange Business; and (iii) the Ostrava Business.

3. The Piombino/Galati Business ('Package A') comprises ArcelorMittal's flat carbon steel plant in Piombino, Italy; ArcelorMittal's flat carbon steel plant in

[1] Any capitalised terms have the meaning as set out in the commitments attached to the Commission's decision of 7 May 2018 unless indicated otherwise.

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Galati, Romania; and ArcelorMittal's flat carbon steel plant in Skopje, North Macedonia.

4. The Liège/Dudelange Business ('Package B') comprises certain flat carbon steel assets of ArcelorMittal in Liège, Belgium; and ArcelorMittal's flat carbon steel plant in Dudelange, Luxembourg.

5. The Ostrava Business ('Package C') comprises ArcelorMittal's flat and long carbon steel plant in Ostrava, Czechia.

6. The Divestment Businesses are described in Schedules 1, 2 and 3 of the Commitments. The Divestment Businesses include all assets and staff that are necessary to ensure the viability and competitiveness of the Divestment Businesses.

7. In addition, the Commitments provide that ArcelorMittal commits to cause Marcegaglia to divest its shareholdings in the AM Invest consortium and that ArcelorMittal disengages from its obligation to acquire a shareholding in Marcegaglia.

8. Moreover, Section D of the Commitments sets out related commitments of ArcelorMittal. These include (i) preservation of viability, marketability and competitiveness; (ii) hold-separate obligations; (iii) ring-fencing; (iv) non-solicitation clause; (v) due diligence; and (vi) reporting.

9. Furthermore, according to paragraph 17 of the Commitments ArcelorMittal will organise an open sales process and will keep the Commission and the Monitoring Trustee regularly informed about its progress, to enable the Monitoring Trustee to ensure that all potentially suitable purchasers are given the opportunity to participate in the sales process on an equal and non-discriminatory footing.

10. In a submission dated 4 May 2018, ArcelorMittal proposed Grant Thornton as the Monitoring Trustee, pursuant to the Commitments.

11. By letter of 8 May 2018, the Commission approved Grant Thornton as the Monitoring Trustee.

12. On 26 May 2018, the Monitoring Trustee submitted to the Commission its first Monitoring Trustee Report.

13. On 10 June 2018, ArcelorMittal submitted to the Commission its first Commitments Compliance Report pursuant to paragraph 14 of the Commitments.

14. On 26 June 2018, the Monitoring Trustee submitted to the Commission its second Monitoring Trustee Report.

15. On 10 July 2018, ArcelorMittal submitted to the Commission its second Commitments Compliance Report pursuant to paragraph 14 of the Commitments.

16. By letter of […] and with reference to paragraph 43 of the Commitments ArcelorMittal requested a […] extension of the First Divestiture Period.

17. On 26 July 2018, the Monitoring Trustee submitted to the Commission its third Monitoring Trustee Report.

18. On 2 August 2018, the Monitoring Trustee submitted to the Commission its reasoned opinion on ArcelorMittal's request of […] for a […] extension of the First Divestiture Period.

19. By a decision of 8 August 2018 and in accordance with paragraph 43 of the Commitments, the Commission decided to extend the First Divestiture Period by […], as requested by ArcelorMittal, until […].

20. On 10 August 2018, ArcelorMittal submitted to the Commission its third Commitments Compliance Report pursuant to paragraph 14 of the Commitments.

21. On 28 August 2018, the Monitoring Trustee submitted to the Commission its fourth Monitoring Trustee Report.

22. On 10 September 2018, ArcelorMittal submitted to the Commission its fourth Commitments Compliance Report pursuant to paragraph 14 of the Commitments.

23. On 25 September 2018, the Monitoring Trustee submitted to the Commission its fifth Monitoring Trustee Report.

24. By a letter of […] and with reference to paragraph 43 of the Commitments ArcelorMittal requested an additional […] extension of the First Divestiture Period.

25. On 1 October 2018, the Monitoring Trustee submitted to the Commission its reasoned opinion on ArcelorMittal's request of […] for an additional […] extension of the First Divestiture Period.

26. By a decision of 5 October 2018 and in accordance with paragraph 43 of the Commitments, the Commission decided to extend the First Divestiture Period by […], as requested by ArcelorMittal, until […].

27. On 10 October 2018, ArcelorMittal submitted to the Commission its fifth Commitments Compliance Report pursuant to paragraph 14 of the Commitments.

28. By letter of 19 October 2018, ArcelorMittal proposed Liberty House Group ('LHG') for approval by the Commission as purchaser of Package A and Package C and submitted the proposed Sale and Purchase Agreement and related agreements (the 'Initial Package A and C Reasoned Proposal').

29. On 26 October 2018, the Monitoring Trustee submitted to the Commission its sixth Monitoring Trustee Report.

30. On 28 October 2018, the Monitoring Trustee submitted a draft assessment of LHG's suitability as a purchaser of Package A and Package C (the 'Initial Package A and C Reasoned Opinion').

31. On 8 November 2018, the Commission held a meeting with LHG.

32. By letter of 9 November 2018, ArcelorMittal proposed LHG for approval by the Commission also as purchaser of Package B and submitted the proposed Sale and Purchase Agreement and related agreements (the 'Initial Package B Reasoned Proposal'). The Initial Package A and C Reasoned Proposal and the Initial Package B Reasoned Proposal are hereby jointly referred to as the 'Initial Proposal'. The Sale and Purchase Agreement and related agreements regarding the sale of Packages A, B and C and their amended versions are hereinafter jointly referred to as the 'Transaction Agreements'.

33. On 9 November 2018, ArcelorMittal submitted to the Commission its sixth Commitments Compliance Report pursuant to paragraph 14 of the Commitments.

34. On 16 November 2018, the Monitoring Trustee submitted a draft assessment of LHG's suitability as a purchaser of Package B (the 'Initial Package B Reasoned Opinion').

35. On 26 November 2018, the Monitoring Trustee submitted to the Commission its seventh Monitoring Trustee Report.

36. On 21 December 2018, the Monitoring Trustee submitted to the Commission its eighth Monitoring Trustee Report.

37. On 18 January 2019, the Commission held a second meeting with LHG.

38. On 25 January 2019, the Monitoring Trustee submitted to the Commission its ninth Monitoring Trustee Report.

39. On 6 February 2019, the Monitoring Trustee submitted to the Commission (i) a draft Addendum Report to its Initial Package A and C Reasoned Opinion and Initial Package B Reasoned Opinion, and (ii) final drafts of the Initial Package A and C Reasoned Opinion and of the Initial Package B Reasoned Opinion.

40. On 25 February 2019, the Monitoring Trustee submitted to the Commission its tenth Monitoring Trustee Report.

41. By letter of 11 March 2019, ArcelorMittal submitted an amended proposal whereby it proposed LHG for approval by the Commission as purchaser of all the Divestment Businesses and submitted updated proposed Sale and Purchase Agreements and related agreements (the 'Final Proposal'). In addition, on 19 March 2019, ArcelorMittal submitted an additional Sale and Purchase Agreement, for the sale of four distribution centres from AMCLN joint venture[2] to LHG.

42. On 20 March 2019, the Monitoring Trustee submitted to the Commission a final draft Addendum Report to the Reasoned Opinion.

[2] AMCLN is a joint venture between ArcelorMittal Distribution Solutions Italia S r.l and CLN S.p.A, which operates certain distribution centres in Italy for flat carbon steel products. The Commission approved the creation of AMCLN in case M.7461 – *AMDS Italia/CLN/JV*. […].

43. On 25 March 2019, the Monitoring Trustee submitted to the Commission its eleventh Monitoring Trustee Report.

44. On 4 April 2019, the Monitoring Trustee submitted to the Commission a final assessment of LHG's suitability as a purchaser of all the Divestment Businesses (the 'Final Reasoned Opinion'). In its Final Reasoned Opinion, the Monitoring Trustee indicates that LHG fulfils the criteria of the purchaser requirements set out in paragraph 16 of the Commitments. In its assessment, the Monitoring Trustee also indicates that, on the basis of the Proposed Sale and Purchase Agreements, the Divestment Businesses would be sold in a manner consistent with the Commitments.

45. During the buyer approval process, the Commission sent several requests for information to ArcelorMittal as well as LHG. Moreover, the Commission received several submissions from, and held meetings with, several third parties and market participants.[3]

2. ASSESSMENT OF THE INITIAL PROPOSAL

46. In its Initial Proposal, ArcelorMittal proposed LHG as the purchaser of all of the Divestment Businesses.

47. LHG is an international metals and industrial group that is headquartered in Singapore. Following its formation in 1992, it now has operations in more than 30 countries and employs over 10 000 people. LHG is part of the GFG Alliance, an international group of independent businesses that are controlled by the Gupta family - […]. GFG Alliance is active in industrial manufacturing (LHG through Liberty Steel), shipping, infrastructure, mining, energy, commodities, banking and real estate.

48. LHG is active in a wide range of operations and has business divisions including Liberty Commodities (trading), Liberty Aluminium, Liberty Engineering, Liberty Recycling and Liberty Steel. A more detailed description of LHG's business activities in the steel industry is provided in Section 3 below.

49. As part of the Initial Proposal, LHG would acquire the Divestment Businesses for a combined purchase price of […].

50. Based on its preliminary assessment of the Initial Proposal, the Commission identified a number of issues and risks. In particular, it appeared that the sale of all three Divestment Businesses to LHG was likely to be subject to significant implementation risks and it was unlikely that LHG would fulfil the purchaser criteria based on the information available to the Commission at that stage. In particular, the following issues made it unlikely that the Commission would be able to approve LHG as a purchaser of the Divestment Businesses and conclude

[3] E.g. meeting with a market participant on 17 July 2018; meeting with an interested third party on 31 August 2018; meeting with an interested third party on 27 September 2018; meeting with a market participant on 30 October 2018; meeting with a market participant on 13 November 2019; meeting with a market participant on 21 February 2019.

that the sale would be made according to the Commitments under the Initial Proposal.

51. First, the financing structure of the deal raised concerns about (i) the financial stability of the Divestment Businesses going forward, and thus about their viability, (ii) the financial resources of LHG, and (iii) the incentives created by the financing structure. The concerns were also raised and echoed by certain third parties.[4]

a. The purchase by LHG would have been heavily leveraged. LHG would have only invested EUR […] in equity ([…] of the purchase price), while the rest of the purchase price would have been financed by various forms of debt. […] of the debt ([…] would have been provided by ArcelorMittal via the issuance of loan notes to LHG (vendor loan notes) to cover for the purchase price. […].

b. Moreover, the financing structure of the deal would have imposed limited financial exposure of LHG or the GFG Alliance, […] as the purchase price would have essentially been paid and secured by the Divestment Businesses […].

c. The Commission recalls that it *'will normally not accept any financing of the divestiture by the seller'*.[5] Such financing would create a long-lasting relationship between two competitors, and would be liable to distorting LHG's and ArcelorMittal's incentives to compete against each other post-Closing.

52. Second, certain provisions of the Transaction Agreements between ArcelorMittal and LHG raised concerns that LHG would likely not have had the incentive to fully maintain and develop the Divestment Businesses as a viable and active competitive force in competition with ArcelorMittal and other competitors. Such concerns were also raised by third parties and market participants.[6]

a. As already noted in paragraph 51, the Transaction Agreements between ArcelorMittal and LHG foresaw that LHG was to make an additional payment to ArcelorMittal if […]. Such performance related payment provision is likely to hamper the incentives of the Divestment Businesses to […] and to compete with ArcelorMittal. In line with this, the Commission recalls that it can refuse financing by the seller in particular if *'this were to give the seller a share in the profits of the divested business in the future.'*[7]

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4 E.g. written submission to the Commission by a third party dated 22 October 2018; written submission to the Commission by a third party dated 28 January 2019; written submission to the Commission by a third party dated 30 January 2019.

5 Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004, OJ C 267, 22.10.2008, p. 1 ('Commission's Remedy Notice'), paragraph 103.

6 E.g. written submission by a third party on 28 January 2019; written submission by a third party on 30 January 2019; written submission by a third party on 19 March 2019.

7 Commission's Remedy Notice, paragraph 103.

b. Furthermore, ArcelorMittal and LHG agreed that ArcelorMittal would supply considerable volumes of hot rolled steel ('HR') to LHG, in particular […].[8] However, the arrangement described in the Initial Proposal seemed to be of a more structural nature with terms that could jeopardise the independence of LHG from ArcelorMittal and LHG's incentives to compete. […].

53. Third, the Initial Proposal did not include several key assets that were part of the Divestment Businesses or connected to them.[9] In particular:

a. The Initial Proposal did not include certain additional CO_2 rights of the Ostrava and Galati Businesses that ArcelorMittal considered unnecessary for the Divestment Businesses. Such exclusion of these additional CO_2 rights raised concerns about the extent to which the CO_2 rights retained by the Divestment Businesses would be sufficient for their operational needs. Those concerns were shared by certain third parties.[10]

b. The Initial Proposal did not provide for a transfer of ArcelorMittal's interest in TAMEH Czech s.r.o ('TAMEH') – an energy plant that supplies energy to the Ostrava Plant – or of the underlying assets. According to ArcelorMittal, LHG had not requested the plant despite the plant having been made available to it by ArcelorMittal.

[…].

Under the Initial Proposal, there was no clarity about the reasons why LHG had not requested to purchase ArcelorMittal's interest in TAMEH or its underlying assets, or about the conditions under which such interest or assets had been made available to LHG. […].

The fact that TAMEH was not included in the scope of the purchase was seen as a problem by certain third parties, in that it would make LHG dependent on ArcelorMittal for a material part of the costs of the Ostrava Business.[11]

54. Fourth, the Initial Proposal included provisions whereby LHG would have been required to purchase […] under the terms of a […] supply agreement. It could not be excluded that those terms could have a negative impact on the profitability and viability of Package A. Certain market participants made submissions to the Commission, where they questioned the […] supply arrangement.[12]

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8 Paragraph 68 of Schedule 2(A) of the Commitments.

9 See Schedules 1(B) and 3 of the Commitments – The Galati Plant and The Ostrava Plant, respectively.

10 E.g. written submission by a third party on 22 October 2018, written submission by a third party on 26 October 2018; written submission by a third party on 5 November 2018; written submission by a third party on 22 March 2019.

11 E.g. written submission by a third party on 22 October 2018, written submission by a third party on 5 November 2018; written submission by a third party on 22 March 2019.

12 E.g. minutes of a meeting with a market participant on 21 February 2019.

55. Fifth, the Monitoring Trustee also raised concerns regarding the production of […] by the Dudelange Plant. Some of the production assets in that Plant are technically dedicated to the production of this product, and cannot be shifted to the production of other products without incurring additional investments. […].[13]

56. On 11 December 2018, at a State of Play meeting, the Commission communicated to ArcelorMittal its concerns regarding the Initial Proposal.

57. On 11 March 2019, ArcelorMittal submitted its Final Proposal.

3. ASSESSMENT OF THE FINAL PROPOSAL

58. In its Final Proposal, ArcelorMittal proposes LHG as the purchaser for all of the Divestment Businesses, that is Package A, Package B and Package C.

59. Under the Final Proposal, several amendments have been introduced in order to address the issues that were identified by the Commission in the Initial Proposal and which are set out in Section 2 above.

   a. The financing arrangements have been revised in the Final Proposal. In particular, the nominal purchase price for the Divestment Businesses has been reduced to […]. Moreover, LHG's equity contribution has increased, while the vendor loan notes from ArcelorMittal have been removed.

   b. The terms under which Package B will source HR from ArcelorMittal now […] without having its incentive to compete unduly compromised.

   c. The Final Proposal now includes all CO_2 rights attributed to the Divestment Businesses, which had previously been partially excluded under the Initial Proposal.

   d. The Final Proposal does not explicitly reproduce the commitment by ArcelorMittal […].[14]

      However, the Commission takes note that ArcelorMittal has, during the purchaser approval review, clarified the way it intends to fulfil its commitment […].[15,16]

   e. The scope of the transaction under the Final Proposal also includes a number of amendments to the terms of certain supply agreements, […]. These shall ensure that the Divestment Businesses have access to the necessary inputs.

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13 […].

14 Paragraph 102 of Schedule 3 to the Commitments.

15 Letter by ArcelorMittal to Liberty House on 15 April 2019 and ArcelorMittal's reply to RFI 53, including their e-mails of 3 April 2019 and 9 April 2019 to the Commission.

16 ArcelorMittal's reply to RFI 53, including their e-mail of 9 April 2019 to the Commission.

3.1. Description of LHG's steel business and the purchaser criteria set out in the Commitments

60. LHG, through its Liberty Steel business, is active in the production of ingots, blooms, flat carbon steel products (HR, cold rolled, quarto plates), long carbon steel products (rebars, steel wire, structural hollow sections, merchant bars), and tubular steel products (electric resistance welded tubes, cold drawn steel tubes, stainless steel tubes, boilers and pressure tubes, and gas list tubes) in a variety of grades and specifications.

61. LHG's industrial footprint in Europe currently comprises steel assets in the UK with a network of regional sales offices in Germany and France. In addition, LHG operates several steel production and distribution assets in the US, Australia, India, and China.

62. In order to be approved by the Commission, the Purchaser must fulfil the following criteria[17]:

a. The Purchaser shall be independent of and unconnected to ArcelorMittal and its 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 Businesses as viable and active competitive forces in competition with ArcelorMittal and other competitors.

c. The acquisition of the Divestment Businesses 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 Businesses.

d. […].

e. […][18].

3.2. Independence from ArcelorMittal

3.2.1. ArcelorMittal's submissions

63. ArcelorMittal submits that LHG and ArcelorMittal are independent of, and unconnected to, each other. Furthermore, ArcelorMittal submits that LHG and ArcelorMittal have no cross-shareholdings, no cross-directorships, and have not identified any existing relationships. Finally, ArcelorMittal submits that the transitional agreements that ArcelorMittal and LHG have agreed with respect to

[17] […].

[18] […].

the Divestment Businesses are designed to ensure the competitiveness of the Divestment Businesses and will not affect LHG's independence.

3.2.2. The Monitoring Trustee's Final Reasoned Opinion

64. In its Final Reasoned Opinion, the Monitoring Trustee submits that LHG is an independent group controlled by the Gupta family. In addition, the Monitoring Trustee confirms that there are no cross-shareholdings or cross-directorships between LHG and its affiliated undertakings, on the one hand, and ArcelorMittal and its affiliated undertakings, on the other hand. Moreover, the Monitoring Trustee reports that as far as ArcelorMittal and LHG are aware, there are no significant corporate or structural links between any of the entities which belong to LHG and its affiliated undertakings and any of the entities which belong to ArcelorMittal and its Affiliated Undertakings.

65. In terms of relationships that will be created through the acquisition of the Divestment Businesses by LHG, the Monitoring Trustee submits:

   a. There will be transitional supply agreements as envisaged in the Commitments.

   b. […].[19]

   c. […].

   d. […].

   e. […]. Given that these […] arrangements have been negotiated on commercial terms, the Monitoring Trustee does not consider that they will raise any independence issues.

   f. […].

   g. The vendor loan notes and the contingent deferred consideration foreseen in the Initial Proposal have been removed from the financing structure of the deal under the Final Proposal. […].

66. In its Final Reasoned Opinion, the Monitoring Trustee submits that, in light of the considerations set out above, following the divestiture, LHG will be independent of and unconnected to ArcelorMittal and its Affiliated Undertakings.

3.2.3. The Commission's assessment

67. The Commission notes that the Final Proposal includes several amendments to the Initial Proposal, which have an impact on the assessment of LHG's independence from ArcelorMittal and its affiliates.

68. First, the Commission notes that the vendor loan notes provided by ArcelorMittal have been removed from the financing. Thus, this aspect of the

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19 […].

financing that would have created a long-lasting relationship between two competitors, and would have possibly distorted LHG's and ArcelorMittal's incentives to compete against each other post-Closing, is no longer present.

69. Second, the deferred payment (amounting to […]) and working capital adjustment (amounting to […]), which were introduced as part of the financing of the transaction under the Final Proposal […]. The Deferred Consideration is a fixed amount that will be paid in years […]. It constitutes […] of the transaction consideration, which is in line with the Commission's decisional practice[20]. The working capital adjustment will have to be paid within […] from closing. The gap for LHG to fill between the remaining reference working capital after the adjustment and the average of the Divestment Businesses' historical working capital needs amounts to about EUR […].

70. Third, as regards the […] supply agreement from ArcelorMittal for the Galati Plant […]. These amendments shall ensure that the Divestment Businesses have flexibility in sourcing alternative […] supplies […].

71. […].

72. […].

73. […].

74. […].

75. Eighth, the current energy supply contract […].

76. […].

77. Ninth, based on the information at the Commission's disposal, there will be no remaining links at the staff level upon Closing that would affect the independence of LHG from ArcelorMittal.

78. Therefore, on the basis of the information made available to the Commission by ArcelorMittal and based on the Final Reasoned Opinion of the Monitoring Trustee, the Commission finds that, while there will be certain links and relations created between ArcelorMittal and LHG as a result of this transaction, LHG is (and will remain after the divestiture) independent of and unconnected to ArcelorMittal and its affiliates.

3.3. Financial resources, proven expertise and incentive to maintain and develop the Divestment Businesses as a viable and active competitor

3.3.1. ArcelorMittal's submissions

79. First, ArcelorMittal submits that LHG has the requisite financial resources.

80. Second, ArcelorMittal submits that LHG has the requisite expertise and a proven track record of acquiring and developing steel assets, and an existing

[20] A similar structure was accepted by the Commission e.g. in case M.7982 – Abbot Laboratories/Alere.

base of flat, long, and tubular production assets and steel distribution, including in Europe.

81. Third, ArcelorMittal submits that LHG has the requisite incentive to maintain and develop the Divestment Businesses as a viable and active competitor. According to ArcelorMittal, LHG currently has no production assets in Southern or Eastern Europe and does not produce HDG, electro-galvanised steel (‘EG’), or tin-plate steel (‘TP’) in the EEA. LHG has a strategic incentive to maximise production at Package A and Package C to win share from incumbent producers, including ArcelorMittal.

3.3.2. The Monitoring Trustee’s Final Reasoned Opinion

82. First, as regards LHG’s financial resources, the Monitoring Trustee submits that LHG’s current turnover is approaching […] and it employs over 10 000 people globally. The Monitoring Trustee further submits that while there has been recent negative press reports in relation to LHG’s ability to meet financial commitments, the Monitoring Trustee understands that this relates to specific reasons by LHG to withhold payment rather than LHG’s inability to pay.

83. Moreover, the Monitoring Trustee submits that the amended financing structure under the Final Proposal is such that the post-sale capital structure appears to be at a sustainable level […].

84. The Monitoring Trustee concludes that LHG appears to have the financial resources to maintain and develop the Divestment Businesses as a viable and active competitive force in competition with ArcelorMittal and other competitors.

85. Second, as regards LHG’s proven expertise, the Monitoring Trustee submits that LHG is an international metals and industrial group that has considerable expertise in developing, producing, marketing and selling a wide range of flat, long and tubular steel products. Moreover, the Monitoring Trustee submits that LHG has a strong management team, which includes individuals who have had previous roles within ArcelorMittal and have therefore firm knowledge of a number of the Divestment Businesses. In addition, over the last five years LHG has made an extensive number of acquisitions in the steel sector and has therefore significant experience in acquiring businesses, stabilising the businesses post acquisition and delivering successful transformations.

86. Moreover, with respect to the more complex separation programme for the Liège Plant to effectuate the separation between the Liège assets and ArcelorMittal, the Monitoring Trustee submits that […].

87. Accordingly, […], the Monitoring Trustee concludes that LHG appears to have the expertise to maintain and develop the Divestment Businesses.

88. Third, as regards LHG’s incentive to maintain and develop the Divestment Businesses, the Monitoring Trustee submits that the acquisition matches LHG’s strategy, which is to acquire standalone businesses in the steel sector. Moreover, the Capex ESCROW affords LHG with the added incentive to expand the Galati Plant […].

89. The Monitoring Trustee concludes that LHG appears to have the incentive, both from a financial and strategic perspective to maintain and develop the Divestment Businesses.

3.3.3. The Commission's assessment

90. First, under the Final Proposal, the financing structure of the transaction has been significantly amended.

a. The purchase price has been decreased to EUR […].

b. The equity contribution by LHG has been increased to EUR […], constituting [30-40]% of the purchase price. […].

c. The vendor loan notes have been removed. […].

d. […].[21]

e. […].

f. Overall, LHG's forecasts show that the business can viably afford the levels of debt and that it would have similar leverage ratios as its peers in the industry.

91. […].

92. While LHG's yield on the bonds it will issue to finance the transaction is […].

93. Third, LHG is an international metals and industrial group. It operates several steel assets and has an expertise in developing, producing, marketing and selling a wide range of flat, long and tubular steel products. While it may be too early to conclude definitely, LHG's acquisitions in the steel industry over the past five years seem to show that LHG has an experience in acquiring and stabilising steel businesses.

94. Fourth, the Commission's investigation did not reveal any information that would indicate that LHG's business forecast is not viable.

95. Fifth, under the Final Proposal, a number of amendments have been made to the Initial Proposal, which ensure that LHG will have the incentive to maintain and develop the Divestment Businesses as a viable and active competitor.

a. Third parties had raised concerns that the financial data provided by ArcelorMittal to LHG for Package B might have been subject to certain adjustments for which the underlying assumptions might have skewed the results of the business towards a more profitable representation. The Commission's investigation challenged the extent to which these assumptions would hold up going forward.

[21] […].

Following the results of a sensitivity analysis carried out by the Monitoring Trustee and an independent third-party auditor, […], and improves the incentives of the Divestment Businesses to compete with ArcelorMittal and other steel players. […].

b. In the Final Proposal, all CO_2 rights related to the Divestment Businesses and of an overall estimated value of EUR […] been included in the transaction. Inclusion of these assets shall ensure that the Divestment Businesses can use these additional CO_2 rights for a viable operation in the future and for a possible expansion.

c. […][22].

96. Therefore, on the basis of the information made available to the Commission by ArcelorMittal and based on the Final Reasoned Opinion of the Monitoring Trustee, the Commission finds that LHG has the financial resources, proven expertise, and incentive to maintain and develop the Divestment Businesses as a viable and active competitor.

3.4. Absence of prima facie competition problems and of risk of delays in the implementation

3.4.1. ArcelorMittal's submissions

97. ArcelorMittal submits that LHG's acquisition of the Divestment Businesses raises no prima facie competition concerns in the EEA or other jurisdictions where merger control approvals will be sought.

98. ArcelorMittal submits that the overlaps between LHG and the Divestment Businesses are limited and their combined share would not exceed [0-5]% in any product markets in the EEA. Moreover, ArcelorMittal submits that the transaction is expected to receive timely clearances in all jurisdictions where a mandatory and suspensory filing is required, […].

99. […].

3.4.2. The Monitoring Trustee's Final Reasoned Opinion

100. In its Final Reasoned Opinion, the Monitoring Trustee submits that whilst ArcelorMittal and LHG do not consider that there are any merger or regulatory issues, […].

3.4.3. The Commission's assessment

101. The acquisition of the Divestment Businesses by LHG was notified to the Commission on 19 March 2019 under case file M.9172 – Liberty House Group/ArcelorMittal Divestment Businesses. The notified transaction has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

[22] Paragraph 102 of Schedule 3 of the Commitments.

102. Horizontal overlaps arise in the production of supply of semi-finished carbon steel products, hot rolled flat carbon steel, cold rolled flat carbon steel and quarto plates, long steel products and tubular products. Both LHG and the Divestment Businesses are also active in the distribution of flat carbon steel products. Vertical overlaps arise upstream where LHG is active in the production and supply of cold rolled flat carbon steel, which can be further processed into products such as galvanised steel or packaging steel. LHG is also active in trading.

103. There are no overlaps with other businesses held by the Gupta family. While the Gupta family also owns other steel plants, these are not located in the EEA.

104. The competitive assessment of the relevant markets and of the impact of the transaction on competition has been conducted by the Commission as part of the review of the notified transaction M.9172 – Liberty House Group/ArcelorMittal Divestment Businesses. A decision approving the notified transaction under Article 6(1)(b) of the Merger Regulation was adopted by the Commission on 17 April 2019.[23]

105. Therefore, on the basis of the information made available to the Commission and based on the Final Reasoned Opinion by the Monitoring Trustee, the Commission concludes that *prima facie* competition concerns do not arise as a result of the acquisition of the Divestment Businesses by LHG.

106. This *prima facie* assessment is based on the information available for the purpose of this buyer approval and does not prejudge the competition assessment of the acquisition of the Divestment Businesses by LHG by a competent competition authority under applicable merger control rules.

107. The Commission also considers that the transaction under the Final Proposal will not give rise to a risk of delayed implementation of the Commitments. The Commission is not aware of any additional regulatory approvals that would be required at this stage. The Commission, at this stage, is not aware of any intended action by third parties or national governments that would pose a risk of delayed implementation of the Commitments.

3.5. […]

3.5.1. ArcelorMittal's submissions

108. ArcelorMittal submits that the sale of all of the Divestment Businesses to […] LHG, is consistent with the requirement set forth at paragraph 16(d) of the Commitments […], which renders paragraph 16(e) of the Commitments inapplicable.

3.5.2. The Monitoring Trustee's Final Reasoned Opinion

109. In its Final Reasoned Opinion, the Monitoring Trustee concludes that the sale of all of the Divestment Businesses to LHG would meet the criterion set forth at

[23] M.9172 – Liberty House Group/ArcelorMittal Divestment Businesses.

paragraph 16(d) of the Commitments. Therefore, there would be no requirement for the Commission to waive the requirement as set out in paragraph 16(e) of the Commitments.

3.5.3. The Commission's assessment

110. The Commission concludes that the sale of all of the Divestment Businesses to LHG fulfils the requirement under paragraph 16(d) of the Commitments […].

3.6. The Divestment Businesses are being sold in a manner consistent with the Commitments

3.6.1. ArcelorMittal's submissions

111. ArcelorMittal submits that the signed SPAs provide for the sale of the Divestment Businesses in a manner consistent with the Decision, the Commitments and their Schedules.

3.6.2. The Monitoring Trustee's Final Reasoned Opinion

112. The Monitoring Trustee submits that the requirement of ArcelorMittal to demonstrate to the Commission that the Divestment Businesses are being sold in a manner consistent with the Commission's Decision and the Commitments has been fulfilled in coherence with the Commitments for all of Packages A, B and C.

3.6.3. The Commission's assessment

113. The Commission considers that the terms of the Transaction Agreements as amended under the Final Proposal are consistent with the Commitments. While there may be limited changes compared to the terms envisaged by the Commitments, such as […], these limited changes do not affect the viability and competitiveness of the Divestment Businesses post-Closing. Thus, the sale of the Divestment Businesses to LHG is in line with the objective to bring about a lasting structural change in the market.

114. In its assessment, the Commission has taken into account, among others, the inclusion of CO_2 rights, as explained in paragraph 59.c, and the clarification by ArcelorMittal, explained in 59.d, on how it intends to effect its commitment related to […].

115. In light of the above and in line with the Monitoring Trustee's Final Reasoned Opinion, the Commission concludes that, pursuant to paragraph 18 of the Commitments, the Divestment Businesses are being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market.

3.7. Other items raised by third parties or market participants

116. Market participants have raised a concern that […]. The Commission's investigation has not found evidence that the parties involved in that purchase are the same driving parties for the current transaction.

117. Market participants have raised concerns about LHG's dependency […]. The Commission investigation has not found evidence […] that would impact the current transaction or the suitability of LHG as a purchaser of the Divestment Businesses.

118. Third parties have raised concerns on press reports that a number of entities acquired by LHG would have […]. The Commission's investigation into the specifics of these cases, including its and the monitoring trustee's analysis of […] the entities concerned, does not provide any basis for concerns impacting the current transaction.

4. CONCLUSION

119. On the basis of the above assessment, the Commission approves Liberty House Group as a suitable purchaser for the above-mentioned reasons.

120. On the basis of the Final Proposal, the Commission further concludes that the Divestment Businesses are being sold in a manner consistent with the Commitments.

121. This decision only constitutes approval of the proposed purchaser identified herein and of the Final Proposal. This decision does not constitute a confirmation that ArcelorMittal has complied with its Commitments.

122. This decision is based on paragraph 18 of the Commitments attached to the Commission Decision of 7 May 2018.

For the Commission

(Signed)
Johannes LAITENBERGER
Director-General