



EUROPEAN COMMISSION
DG Competition

*Case M.9887 – JINGYE /
ASCOVAL / FRI*

Only the English text is available and authentic.

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

Article 7(3)
Date: 16/07/2020



EUROPEAN COMMISSION

Brussels, 16.7.2020
C(2020) 5021 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Subject : **Case M.9887 – JINGYE/ASCOVAL/FRI**
 Commission decision pursuant to Article 7(3) of Council Regulation
 N° 139/2004¹ and Article 57 of the Agreement on the European Economic
 Area²
 Request for derogation

Dear Sir or Madam,

- (1) We refer to your application for a derogation from the suspension obligation provided for in Article 7(1) of Council Regulation (EC) No 139/2004 (the ‘Merger Regulation’) with regard to the proposed acquisition of sole control by Jingye Group Co. Ltd. (‘Jingye’) of Ascoval Saint-Saulve (‘Ascoval’) and France Rail Industry (‘FRI’) (together the ‘Targets’) submitted pursuant to Article 7(3) of the Merger Regulation on 7 July 2020.

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

² OJ L 1, 3.1.1994, p. 3 (the ‘EEA Agreement’).

1. THE PARTIES AND THE TRANSACTION

- (2) **Jingye** is a Chinese multi-industrial group specialised in iron and steel manufacturing, but also active in steel processing, trade, powder metallurgy, 3D printing, tourism and the hotels industry.
- (3) **Ascoval** operates a steel mill located in Saint-Saulve, France, specialised in the production of steel-related products, notably semi-finished carbon steel products such as blooms and billets. Ascoval is currently directly controlled by Olympus Steel 2 Limited, which is in turn controlled by Greybull Capital LLP ('Greybull').
- (4) **FRI** is active in the production of rails, offering a wide range of steel rail products. FRI operates from a single site in Hayange, France. FRI is currently wholly owned by France Rail Industry Holding ('FRIH', formerly known as British Steel France Rail Holdings) – a holding company, which is also ultimately controlled by Greybull.
- (5) The concentration concerns a potential acquisition of sole control by Jingye of Ascoval and FRI within the meaning of Article 3(1)(b) of the Merger Regulation (the 'Transaction' or the 'Proposed Transaction').
- (6) The Proposed Transaction is to be achieved by means of two transactions, whereby Jingye would acquire:
 - (a) FRI, by purchasing 100% of FRI's share capital and voting rights from FRIH and all the potential claims held by FRIH against FRI; and
 - (b) Ascoval, by purchasing 100% of its share capital and voting rights from Olympus Steel 2 Limited.
- (7) The two transactions form part of a single concentration within the meaning of Recital 20 of the Merger Regulation for the following reasons:
 - (a) The acquisition of Ascoval is contractually conditional upon the completion of the acquisition of FRI:³
 - Such conditionality represents a *de jure* link between the two transactions, guaranteeing that none of the transactions would be carried out without the other within the meaning of paragraphs 39 and 43 of the Consolidated Jurisdictional Notice ('CJN');
 - (b) Control of Ascoval and FRI is acquired by the same undertaking (Jingye), which satisfies the requirement stated in paragraph 41 of the CJN; Point 12 of the Specifications for the Filing of Bidding Offers (in French, the *Cahier des Charges pour Dépôt des Offres*, a document), issued by the Strasbourg Regional Court, lays down the requirements and specifications that bidding offers must comply with to be deemed admissible in the bidding process for FRIH) clearly orders that: *'The bidders shall expressly confirm that any bidding offer over the assets and activities of FRIH is indivisible from the*

³ Article 6.1 of the draft Sale and Purchase Agreement.

purchase of the shares of ASCOVAL SAINT-SAULVE, failing which any offer would be inadmissible;

- (c) The acquisitions of both Ascoval and FRI are conditional upon obtaining the relevant regulatory authorisations from the French Ministry of Economy under foreign investment control rules (on the basis of the provisions of Article L. 153-1 of the French Monetary and Financial Code governing foreign investment control). This regulatory authorisation is also a condition set out by the Specifications for the Filing of Bidding Offers (point 11).
 - (d) The acquisitions of Ascoval and FRI by Jingye are also interdependent from an economic point of view within the meaning of paragraph 38 of the CJN. These acquisitions concern two businesses managed for a common commercial purpose. This common commercial purpose is to allow FRI and Ascoval to play key roles in making France a global leader in Green Rail.⁴ In this context, Ascoval and FRI entered into a supply contract on 31 October 2019, further discussed on paragraphs (27) and (28) below. Therefore, there is a strategic alignment of the Targets.
- (8) Therefore the Transaction is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

2. EUROPEAN UNION'S DIMENSION

- (9) Given that both FRI and Ascoval are currently ultimately owned by Greybull, they are part of the same group for the purpose of allocating turnover under Article 5(4) of the Merger Regulation.
- (10) While Jingye did not achieve any revenue for 2019 in the EEA, on 9 March 2020 Jingye acquired the business and assets of British Steel Limited (in liquidation) located in the United Kingdom, the assets and business of TSP Engineering Limited, and all the shares of FNSteel BV, a subsidiary of British Steel in the Netherlands. In accordance with paragraph 172 of the CJN, such acquisitions constitute 'permanent changes' in the economic reality of Jingye. Hence, it is appropriate to adjust Jingye's turnover to reflect this acquisition, given that it was completed after the date of the last audited accounts of Jingye.
- (11) Accordingly, the undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (combined EUR [...]: Jingye EUR [...], FRI EUR [...], and Ascoval EUR [...]). Each of them has an EU-wide turnover in excess of EUR 250 million (Jingye EUR [...], and FRI and Ascoval jointly EUR [...]), and they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
- (12) The Proposed Transaction therefore has an Union's dimension within the meaning of Article 1(2) of the Merger Regulation.

⁴ Green Rail is a new method of manufacturing steel rail via electric arc furnace for the European market to be tested in France before further implementation in Europe. The stated purpose of the Green Rail project is to coordinate Ascoval, FRI and SNCF's positions in the supply chain to support the French Government's carbon neutrality targets by 2050.

3. THE APPLICATION FOR DEROGATION

3.1. The situation of the Targets

(13) Jingye submits that both Targets are under great financial distress, [degraded financial situation].

3.1.1. The situation of FRI

(14) **FRI** is on the brink of insolvency, and judicial liquidation proceedings have been opened towards FRI's holding company (FRIH) on 6 July 2020, in accordance with the provisions of Article L 640-1 et seq. (notably Articles L. 642-19 et seq. and R. 642-37-3) of the French Commercial Code. The sale of FRI's shares will be implemented as part of such insolvency proceedings⁵.

(15) Following the announcement of the liquidation of their parent company (British Steel Limited),⁶ [degraded financial situation].

(16) [Administrative procedure under French law].

(17) However, several elements worsened the financial performance of FRI and FRIH, notably: (i) SNCF strikes in 2019, which prevented production and delivery for three months; (ii) increases of raw materials costs; (iii) contract losses related to Brexit; and (iv) contract losses and exceptional expenses related to the insolvency procedure at the parent company level.

(18) [Administrative procedure under French law].

(19) [Administrative procedure under French law].

3.1.2. The situation of Ascoval

(20) **Ascoval** is also on the brink of insolvency, and its financial advisors consider that a cash shortage is imminent.

(21) Ascoval has been facing financial difficulties for several years and undergoing several rounds of pre-insolvency and insolvency proceedings.

(22) Ascoval's financial difficulties started several years ago. In November 2017, judicial reorganization proceedings were initiated against Ascoval's owner (Asco Industries). Ascoval therefore anticipated a freeze on year-end payments. In addition, Ascoval's suppliers, fearing possible payment defaults, shortened their payment deadlines.

(23) In this context, Ascoval requested the opening of a safeguard procedure in accordance with the provisions of Articles L 620-1 et seq. of the French Commercial Code, which was granted by the Strasbourg Court on 29 November 2017.

(24) On 10 January 2018, this procedure was converted into judicial reorganisation proceedings as defined by Article L 631-1 of the French Commercial Code in order to find a potential purchaser. The Strasbourg Court endorsed the sales bid by

⁵ Which includes 100% of its shares and any receivable FRIH may have against FRI.

⁶ [...].

Olympus Steel 2 Limited (substituted by Ascoval Saint-Saulve) by judgment dated 2 May 2019, subsequently amended by a judgment dated 24 July 2019.

- (25) Olympus Steel 2 Limited planned to ensure the continuation of Ascoval's business, but, when it lost control of the British Steel group as part of the compulsory liquidation opened in the United Kingdom, it was no longer in a position to secure its commitments.
- (26) In November 2019, Ascoval was still underperforming because of insufficient volumes, [degraded financial situation].
- (27) [Administrative procedure under French law], a strategic analysis was carried out to ensure the sustainability of Ascoval's activities. It appeared that an alliance between Ascoval and FRI, enabling the creation of an electric rail production line in France from recycled scrap metal could be a critical area of development.
- (28) In this context, FRI and Ascoval entered into a supply contract for blooms on 31 October 2019. This contract results from discussions between FRI, Ascoval and SCNF, to set up a French electrical sector of rail supply compliant with sustainable development and environmental responsibility requirements, while enabling FRI to secure its supply of blooms through an alternative source.
- (29) [Administrative procedure under French law]. Jingye submits that the reason to avoid a sale of Ascoval in an insolvency context is to prevent damage being inflicted on Ascoval again (as it has already undergone several restructuring rounds, and formal insolvency proceedings can be value-destructive). Further, Jingye argues that the sale of Ascoval outside of insolvency proceedings can convey a positive message to the market and to key customers and suppliers to give them comfort in still trading with Ascoval. Therefore, the sale of Ascoval will not take place in the context of insolvency proceedings (to the extent possible).

3.2. The measures to be put in place

- (30) [Administrative procedure under French law]. As mentioned, the sale of FRI's shares will take place in the context of judicial liquidation proceedings, while Ascoval's sale will not take place in the context of insolvency proceedings (to the extent possible), but through a Share Purchase Agreement.
- (31) As was explained in section 3.1.2 above, to ensure the business continuity of both FRI and Ascoval, the sale of Ascoval is conditional upon the acquisition of FRI's shares by the same bidder.
- (32) On 17 July 2020, an endorsement hearing (the 'Endorsement Hearing') will be held regarding FRHI's insolvency proceedings. During this Endorsement Hearing, the Strasbourg Court bankruptcy judge will examine the offers submitted for FRI in light of several criteria, such as the industrial project, the number of jobs saved and the price offered to discharge creditors. The judge can then select a bidder and authorise the transfer of FRI's shares by an endorsement ruling (the 'Endorsement Ruling').

- (33) The judicial liquidation proceedings that FRIH is undergoing (and which ties the acquisition of both FRI and Ascoval, as mentioned in paragraph (7)(b) above) have two essential features:
- (a) All bidders must have satisfied (or waived) any potential condition precedent by the date of the Endorsement Hearing at the latest (in this case, 17 July 2020); and
 - (b) The Endorsement Ruling will have as a consequence that FRI's ownership will be transferred to the successful bidder on the day following this Endorsement Ruling becoming final (i.e. when all French recourses have lapsed). This is to allow the successful bidder to inject the amounts necessary to fund FRI's operations in the short and medium term.
- (34) Therefore, if Jingye is not granted a derogation from the standstill obligation pursuant to Article 7(3) of the Merger Regulation, it will be excluded from the bidding process for the acquisition of FRI, as not all condition precedents for it to take ownership of the Targets would be satisfied (or waived).
- (35) Given that Ascoval's sale is conditional upon the acquisition of FRI's shares, if Jingye is not granted a derogation from the standstill obligation and Jingye is therefore excluded from the bidding process for the acquisition of FRI, the sale of Ascoval would not be carried out either.
- (36) In view of the financial distress of the Targets, as described above, Jingye submits that it is essential for Jingye to be able to take control over the Targets upon the Endorsement Ruling becoming final. The acquisition of the Targets' shares will automatically result in a transfer of all employees, contracts, assets and liabilities of the Targets. This will allow them to continue operating as going concerns outside of any insolvency proceedings.

4. THE CONDITIONS FOR DEROGATION PURSUANT TO ARTICLE 7(3) OF THE MERGER REGULATION

- (37) Pursuant to Article 7(1) of the Merger Regulation, a concentration falling under that Regulation shall not be implemented either before its notification or until it has been declared compatible with the common market. Pursuant to Article 7(3) of the Merger Regulation, the Commission may, on the basis of a reasoned request, grant a derogation from the obligation imposed by Article 7(1).
- (38) Derogation from the obligation to suspend concentrations is granted only exceptionally, normally in circumstances where the suspension required under the Merger Regulation would cause serious damage to the undertakings concerned by a concentration, or to a third party.
- (39) Article 7(3) of the Merger Regulation provides that in deciding upon the request, the Commission must take into account, *inter alia*, the effects of the suspension on one or more undertakings concerned by the concentration or on a third party and the threat to competition posed by the concentration.

4.1. The Transaction falls under the suspension obligation pursuant to article 7(1) of the merger regulation

- (40) Given that the proposed Transaction qualifies as a concentration with EU dimension within the meaning of the Merger Regulation, it falls under the suspension obligation laid down in Article 7(1) of the Merger Regulation.

4.2. The effects of the suspension on the undertakings concerned and third parties

- (41) According to the information provided by Jingye, both Targets are in serious financial distress. This information has been supported by documentation provided by the Parties (such as the Targets' financial statements, and the Specifications for the Filing of Bidding Offers issued by the Strasbourg Court regarding FRIH's insolvency proceedings). This situation of financial distress of the Targets has been confirmed by [...], and by the fact that FRI is on the brink of insolvency.
- (42) As mentioned in Section 3.2 above, if Jingye is not granted a derogation from the standstill obligation pursuant to Article 7(3) of the Merger Regulation, it will be excluded from the bidding process for the acquisition of FRI, as not all condition precedents for it to take ownership of the Targets would be satisfied (or waived).
- (43) According to Jingye, in the absence of credible bidders willing to inject liquidity in the Targets, it is very likely that FRI would be liquidated and that Ascoval would file for bankruptcy in the coming weeks.
- (44) Jingye therefore submits that this would result in a loss of significant business opportunities on both sides – for Jingye and for the Targets, including the benefit of the new contractual arrangement between FRI and Ascoval in relation with SNCF and the Green Rail project.
- (45) Against this background, given the impossibility in the present case to complete merger control proceedings by 17 July 2020, the Commission concludes that the suspension obligation imposed by Article 7(1) could lead to serious harm to FRI and Ascoval on the one hand, and Jingye on the other hand. Furthermore, on the basis of the information submitted by Jingye, a derogation from the stand-still obligation would not have adverse effects on any third party. To the contrary, it would enable the Targets to continue their operations outside of insolvency proceedings, to the benefit of customers and suppliers.

4.3. The threat to competition posed by the concentration

- (46) The Parties to the Transaction are active at various stages of the steel processing chain. Ascoval is active in the EEA supply of semi-finished carbon steel products, including blooms and billets. FRI is active in the EEA supply of finished steel products, namely long steel products, and within these, rails. Jingye is a partially integrated steel manufacturer producing both semi-finished and finished steel products.⁷

⁷ Long steel products are generally manufactured from billets and blooms.

4.3.1. Market definition

- (47) Within the steel production, the Commission has held in previous decisions that semi-finished and finished steel products constitute two separate product markets.⁸
- (48) The Commission has further distinguished semi-finished steel products based on shape, although to date it has not determined whether all these three types of products constitute a single relevant product market:⁹ (i) blooms (used to produce heavy sections and rails); (ii) billets (used to produce bars, wire rods and light sections); and (iii) slabs (an intermediate product used as internal feedstock).¹⁰
- (49) The Commission has held that there are two further product markets within finished steel products: (i) flat steel products; and (ii) long steel products.¹¹ These two are manufactured in different rolling mills and used in different applications. Flat steel products are generally manufactured from slabs, whereas long steel products are generally manufactured from billets and blooms.¹² The Parties do not overlap in the production and supply of flat steel products.
- (50) Within long steel products, several product categories can be further distinguished: (i) drawn wire products; (ii) wire rods; (iii) merchant bars; (iv) reinforcing bars; (v) tubes; and (vi) sections¹³. Sections can be divided between (i) light sections; (ii) heavy sections (beams); (iii) retaining structures; and (iv) rails¹⁴.
- (51) In terms of geographic market definition, the Commission has generally considered the e production and supply of semi-finished and long finished carbon steel products as EEA-wide in scope.¹⁵
- (52) For rails, specifically, the Commission has previously found that the scope of the relevant geographic market is at least EEA-wide, and possibly wider.¹⁶

⁸ Commission decision of 5 February 2014, COMP/M.6974 – *Metinvest/Lanebrook/Southern Gok*, paragraphs 26-27; Commission decision of 2 June 2006, COMP/M.4137 – *Mittal/Arcelor*, paragraphs 13-17.

⁹ Commission decision of 2 June 2006, COMP/M.4137 – *Mittal/Arcelor*, paragraph 15.

¹⁰ Commission decision of 7 May 2018, COMP/M.8444 – *ArcelorMittal/Ilva*, paragraph 195; Commission decision of 7 November 2012, COMP/M.6471 – *Outokumpu/INOXUM*, paragraph 118; Commission decision of 13 February 2004, COMP/M.4085 – *Arcelor/OYAK/Erdemir*, paragraph 22; Commission decision of 2 June 2006, COMP/M.4137 – *Mittal/Arcelor*, paragraph 14.

¹¹ Commission decision of 5 February 2014, COMP/M.6974 – *Metinvest/Lanebrook/Southern Gok*, paragraph 126; Commission decision of 13 February 2004, COMP/M.4085 – *Arcelor/OYAK/Erdemir*, paragraph 23.

¹² Commission decision of 2 June 2006, COMP/M.4137 – *Mittal/Arcelor*, paragraphs 16-17; Commission decision of 13 February 2004, COMP/M.4085 – *Arcelor/OYAK/Erdemir*, paragraph 23.

¹³ Commission decision of 2 June 2006, COMP/M.4137 – *Mittal/Arcelor*, paragraphs 46-60; Commission decision of 13 February 2004, COMP/M.4085 – *Arcelor/OYAK/Erdemir*, paragraph 24.

¹⁴ Commission decision of 2 June 2006, COMP/M.4137 – *Mittal/Arcelor*, paragraphs 46-60.

¹⁵ See, for example, Commission decision of 5 February 2014, COMP/M.6974 – *Metinvest/Lanebrook/Southern Gok*, paragraphs 30-32 (although in this case the geographic market definition was left open); Commission decision of 21 December 2006, COMP/M.4408 – *Tata/Corus*, paragraph 10; Commission decision of 2 June 2006, COMP/M.4137 – *Mittal/Arcelor*, paragraphs 62-70.

¹⁶ Commission decision of 2 June 2006, COMP/M.4137 – *Mittal/Arcelor*, paragraph 66; and Commission decision of 11 September 2001, COMP/ECSC.1357 – *VA Stahl/Thyssen Schienen Technik*, paragraph 15.

- (53) The activities of the Parties overlap in the following markets:
- (a) The EEA market for the production and supply of semi-finished carbon steel products, and within this market, in (i) the carbon steel bloom segment, and in (ii) the carbon billet segment.
 - (b) The different EEA markets for the production and supply of finished long carbon steel products: (i) wire rods, (ii) heavy sections and (iii) rails.

4.3.2. *Prima facie* assessment

4.3.2.1. Horizontal overlap

- (54) The horizontal overlaps arising from the Proposed Transaction are the following: (i) Jingye and Ascoval's overlap in the production of carbon steel blooms and billets; and (ii) Jingye and FRI's overlap in the supply of rails.
- (55) The only overlap that will lead to an affected market is the overlap in the rail production¹⁷. On the basis of the information provided by Jingye, the Parties' 2019 combined market shares would be below 25% ([20-30]% in value and [20-30]% in volume) in the EEA supply of rails. Other competitors remain present on the market, such as ArcelorMittal ([30-40]% in value, [30-40]% in volume), Voestalpine ([20-30]% in value, [20-30]% in volume), Trinecke ([10-20]% in value, [10-20]% in volume) or JSW Group ([5-10]% in value, [5-10]% in volume).
- (56) Jingye submits that, according to the Horizontal Merger Guidelines, a transaction that results in a combined market share below 25% is presumed not to raise competition concerns¹⁸.
- (57) Moreover, Jingye argues that the acquisition of FRI would essentially result in a reunification of British Steel assets under a single ownership, since FRIH and FRI were ultimately not included in the British Steel Limited acquisition perimeter (acquired by Jingye, as mentioned in paragraph (10) and footnote 6 above). Hence, the impact on competition should be neutral compared to the status quo preceding the bankruptcy of British Steel, as the Proposed Transaction would bring FRI back into the group to which it belonged prior to the acquisition of British Steel Limited by Jingye.
- (58) Further, Jingye submits that the industry is characterized by a strong vertical integration among the major actors (ArcelorMittal, Voestalpine, Trinecke and JSW Group) and that the Proposed Transaction will not put these other actors in a less favourable position compared to that of the merged entity.
- (59) As part of its assessment, the Commission also sought the opinion of customers of the Parties,¹⁹ which have generally acknowledged the existence of alternative suppliers of rails in the EEA (such as ArcelorMittal, Voestalpine, and JSW Group).

¹⁷ The other horizontal overlaps give rise to minimal market shares in 2019, notably [0-5]% in value and [0-5]% in volume for the production of blooms, and [0-5]% (both in value and volume) for the production of billets.

¹⁸ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings of 5 February 2004, paragraph 18.

- (60) In view of the above, the Transaction does not raise *prima facie* competition concerns as regards horizontal overlaps, in particular in view of the remaining number of competitors in the market, including at least two players with larger market shares than those of the merged entity.

4.3.3. Potential foreclosure

- (61) There are three vertical links arising from the Proposed Transaction:
- (a) Between the (upstream) market for blooms and the (downstream) market for rails. The combined market share of Ascoval and Jingye is far below 30% ([0-5]% in value, [0-5]% in volume) on the upstream market for blooms, and the combined market share of FRI and Jingye's market share is also below 30% ([20-30]% in value, [20-30]% in volume) on the downstream market for rails.
 - (b) Between the (upstream) market for blooms and the (downstream) market for heavy sections. The combined market share of Ascoval and Jingye is far below 30% ([0-5]% in value, [0-5]% in volume) on the upstream market for blooms, and Jingye's market share is also far below 30% ([5-10]% in value, [5-10]% in volume) on the downstream market for heavy sections.
 - (c) Between the (upstream) market for billets and the (downstream) market for wire rods. The combined market share of Ascoval and Jingye is far below 30% ([0-5]% both in value and in volume) on the upstream market for billets, and Jingye's market share is also far below 30% ([0-5]% in value, [0-5]% in volume) on the downstream market for wire rods.
- (62) In view of these limited market shares in the EEA, any risk of input foreclosure through a reduction of rail producers and heavy section producers' access to blooms, as well as wire rods producers' access to billets can be *prima facie* excluded.
- (63) Customer foreclosure can also be *prima facie* excluded. Regarding the upstream market for blooms and the downstream markets for both rails and heavy sections, the Commission notes that carbon steel blooms are semi-finished products used to produce all types of long carbon steel finished products. Therefore, carbon steel blooms are not only used to produce rails or only used to produce heavy sections, but all types of long carbon steel finished products. Therefore, suppliers could continue selling their blooms to all other players on the markets for long carbon steel finished products. Regarding the upstream market for billets and the downstream market for wire rods, the very limited market shares make it difficult for any risk of foreclosure of the merged entity's competitors' access to the market for Jingye's downstream market for wire rods.
- (64) In view of the above, the Transaction [...] does not raise *prima facie* competition concerns as regards vertical links due to the unlikely foreclosure effects.

¹⁹ Questionnaire sent to customers of the Parties by email on 10 July 2020.

4.3.4. Conclusion

- (65) Therefore, it appears *prima facie* that the Transaction is not likely to pose a threat to competition within the EEA, both with respect to horizontal and vertical overlaps.

4.4. Balance of interests

- (66) On balance, it appears that whilst the suspension obligation could seriously affect the financial situation of the Targets (Ascoval will virtually run out of liquidity in the next few weeks and runs the risk of being liquidated, while FRI runs the risk of being liquidated) and the business opportunities of Jingye, no threat to competition caused by the operation can currently be identified, and a derogation does not appear to generate adverse effects on third parties. Therefore, the Commission finds that derogation can be granted in accordance with the application and to the extent specified below.

5. CONCLUSION

- (67) The Commission considers that the reasons given by Jingye for derogation from the suspension obligations meet the requirements set out in Article 7(3) of the Merger Regulation.
- (68) On the basis of the above considerations, and in accordance with Article 7(3) of the Merger Regulation and Article 57 of the EEA Agreement, Jingye is granted a derogation from the obligations imposed by Article 7(1) of the Merger Regulation in accordance with its application and until the Commission takes a final decision under the relevant provisions of the Merger Regulation.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President