



EUROPEAN COMMISSION
DG Competition

Case M.9076 – NOVELIS/ALERIS

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: 07/04/2020



EUROPEAN COMMISSION

Brussels, 07.04.2020
C(2020) 2274 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Novelis Inc.
3560 Lenox Road, Suite 2000
Atlanta, Georgia
USA

Dear Sir/Madam,

Subject: Case M.9076 – Novelis/Aleris
Approval of Liberty House Group Pte. Ltd. as purchaser of the Divestment Business following your letter of 25 November 2019 and the Monitoring Trustee’s opinion of 1 April 2020

1. FACTS AND PROCEDURE

- (1) By decision of 1 October 2019 (the ‘Decision’) based on Article 8(2) of Council Regulation (EC) No 139/2004 (the ‘Merger Regulation’), the Commission declared the operation by which Novelis Inc. (‘Novelis’, USA) would acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of Aleris Corporation (‘Aleris’, USA, together with Novelis the ‘Parties’) compatible with the internal market subject to conditions and obligations (the ‘Commitments’).
- (2) In particular, the Commitments provide that Novelis will divest Aleris’ aluminium automotive body sheets business (‘ABS Business’) and other aluminium flat rolled products business (‘Other FRPs Business’) located at Aleris’ plant in Duffel,

Belgium (jointly, the 'Divestment Business'), to a suitable buyer by the end of the Trustee Divestiture Period.¹

- (3) The Divestment Business is incorporated as Aleris Aluminium Duffel BVBA, which currently owns and operates the ABS Business and Other FRPs Business. The Divestment Business includes, as detailed in Annexes 1 to 6 of the Commitments:
- (a) all tangible assets that are necessary to operate the Divestment Business, including Aleris' Duffel plant and the land where the plant is located;
 - (b) all intangible assets, including intellectual property, leasehold interests, and all easements and rights of way or access appurtenant to the Duffel plant and land, necessary to operate the Divestment Business;
 - (c) all licenses, permits and authorizations issued by any governmental organization for the benefit of the Divestment Business;
 - (d) all contracts, leases and commitments of the Divestment Business, including supply agreements of metal products (primary ingot and slabs);
 - (e) all customer lists, customer contracts and/or purchase orders related to the Divestment Business;
 - (f) the personnel necessary to operate and ensure the viability of the Divestment Business; and
 - (g) all R&D activities related to aluminium automotive body sheets and other aluminium flat rolled products in the EEA, including the R&D activities conducted by Aleris at Duffel and at Aachen, the related assets and employees.
- (4) In accordance with the Commitments,² [details of the Parties' and Liberty's business strategy], Novelis will enter into the following contractual arrangements, [details of the Parties' and Liberty's business strategy], with the buyer of the Divestment Business and supply under the arrangements:
- (a) agreement for the supply of [...], covering the volumes and widths required by the Duffel plant from these [...] according to Aleris' existing business plans or volume projections at the signature of the Commitments, and in any event and at the option of the buyer of the Divestment Business not less than the amounts supplied in the last 12 months prior to 30 June 2019;
 - (b) agreement for the [...], covering the volumes required by the Duffel plant according to Aleris' existing business plans or volume projections at the signature of the Commitments, and in any event and at the option of the buyer of the Divestment Business not less than the amounts supplied in the last 12 months prior to 30 June 2019;
 - (c) agreement for the supply of [...], covering the volumes required by the Duffel plant according to Aleris' existing business plans or volume

¹ Commitments, paragraph 2.

² The Commitments, paragraph 8 and Schedule to the Commitments, paragraph 3.

projections at the signature of the Commitments, and in any event and at the option of the buyer of the Divestment Business not less than the amounts supplied in the last 12 months prior to 30 June 2019; and

- (d) agreements for the provision of services that the buyer of the Divestment Business may require during a starting phase, which may comprise: (a) assistance with typical human resources tasks; (b) order management, production planning, order handling and finance services; (c) information services and software licenses necessary for sales handling and running the Divestment Business; (d) IT and telephony services; and (e) assistance with organizing logistics for supplies to the Divestment Business' customers.
- (5) The Commitments provide,³ for the avoidance of doubt, that in the performance of the contractual arrangements entered into pursuant to paragraph 8 of the Commitments, Novelis shall prioritise the production and services to be supplied to the purchaser of the Divestment Business over those to its own business and shall ensure a timely and effective supply.
- (6) By letter of 23 September 2019, Novelis proposed Grant Thornton UK LLP ('GTUK') as trustee in charge of monitoring the Parties' compliance with the Commitments (the 'Monitoring Trustee'), pursuant to the Commitments. On 1 October 2019, the Commission approved GTUK as a suitable Monitoring Trustee.
- (7) By letter of 25 November 2019, Novelis proposed Liberty House Group Pte. Ltd. ('Liberty' or the 'Proposed Purchaser') for approval by the Commission as purchaser of the Divestment Business and submitted the proposed Sale and Purchase Agreement (the 'Proposed Agreement').
- (8) Liberty is a private company group headquartered in the UK and wholly owned by Mr. Sanjeev Gupta. Liberty is active in the manufacture of steel, aluminium and engineering products, in commodity trading and metal recycling. Following its formation in 1992, it now operates in more than 30 countries and employs over 30 000 people. Liberty's business activities are divided into five main businesses: (i) commodities; (ii) recycling; (iii) steel; (iv) aluminium; and (v) engineering. With regard to aluminium, Liberty operates two smelters (in France and Scotland) as well as die casting, wheel production and pressing facilities, all located within the EEA/UK.
- (9) Liberty is part of the Gupta Family Group Alliance ('GFG Alliance'), an international group of businesses that are ultimately controlled by the Gupta family - Mr Sanjeev Gupta and Mr Parduman Gupta. GFG Alliance is active in industrial manufacturing, shipping, infrastructure, mining, energy, commodities, banking and real estate.
- (10) On 25 November 2019, Novelis asked for the Commission's consent to replace GTUK as the Monitoring Trustee [...]. On 27 November 2019, the Commission accepted Novelis' request to replace GTUK.

³ The Commitments, paragraph 8.

- (11) By letter of 27 November 2019, Novelis proposed Smith & Williamson LLP as Monitoring Trustee, pursuant to the Commitments. On 29 November 2019, the Commission approved Smith & Williamson LLP as a suitable Monitoring Trustee.
- (12) On 2 December 2019, the Commission sent a request for information to Liberty ('RFI 1'). On 8 and 9 December 2019, Liberty provided a [...] response to RFI 1.
- (13) On 12 December 2019, the Commission sent a second request for information to Liberty ('RFI 2'). On 18 December 2019, Liberty provided a [...] response to RFI 2.
- (14) On 3 January 2020, the Monitoring Trustee submitted an initial assessment of Liberty's suitability as the purchaser of the Divestment Business (the 'Trustee's Reasoned Opinion').
- (15) At the Commission's request, on 9 January 2020, Liberty provided supplementary responses to RFI 2.
- (16) On 10 January 2020, the Monitoring Trustee submitted a revised version of the Trustee's Reasoned Opinion (the 'Revised Trustee's Reasoned Opinion').
- (17) At the Commission's request, on 16 January 2020, Liberty provided supplementary responses to RFI 2.
- (18) At the Commission's request, on 4 February 2020, Liberty provided a consolidated response to RFI 1 and RFI 2, including the supplementary responses to RFI 2 (the 'Consolidated Response').
- (19) On 6 February 2020, the Monitoring Trustee informed the Commission about [...] provided by Liberty. On the same date, the Monitoring Trustee provided the Commission with [...] questions on [...] and other clarification questions on the Consolidated Response.
- (20) On 7 February 2020, the Commission sent a third request for information to Liberty ('RFI 3') asking for clarifying information on Liberty's replies to RFI 1 and RFI 2 as well as information that Liberty had not yet provided in such replies to RFI 1 and RFI 2. On 18 February 2020, Liberty provided a response to RFI 3.
- (21) On 26 February 2020, the Monitoring Trustee sent Liberty a list of clarification questions on Liberty's response to RFI 3. On 28 February 2020, Liberty provided a response to the Monitoring Trustee's questions.
- (22) On 3 March 2020, the Monitoring Trustee and Liberty's financial team held a workshop conference call for Liberty to explain some of the information provided in response to RFI 3 and to the Monitoring Trustee's clarification questions.
- (23) On 10 March 2020, the Monitoring Trustee submitted an assessment of Liberty's response to RFI 3, [...], as a supplement to the Revised Trustee's Reasoned Opinion.
- (24) At the Commission's request, on 25 March 2020, the Monitoring Trustee submitted a revised assessment of Liberty's response to RFI 3 taking into consideration the macroeconomic impact of the COVID-19 outbreak on Liberty's suitability as the purchaser of the Divestment Business.

- (25) On 1 April 2020, the Monitoring Trustee submitted the final version of its reasoned opinion on Liberty's suitability as the purchaser of the Divestment Business (the 'Final Reasoned Opinion'). In its assessment, the Trustee indicated in particular that the Proposed Purchaser fulfils the criteria of the purchaser requirements in section D of the Commitments attached to the Decision. In this assessment, the Monitoring Trustee also indicated that, based on the Proposed Agreement, the Divestment Business would be sold in a manner consistent with the Commitments.
- (26) On 2 April 2020, the Commission sent a fourth request for information to Liberty ('RFI 4'). On 3 April 2020, Liberty provided a response to RFI 4.

2. ASSESSMENT OF THE PROPOSAL

- (27) In order to be approved by the Commission, the purchaser of the Divestment Business must fulfil the following criteria set out in the Commitments⁴ and the Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the 'Remedies Notice')⁵:
- (a) it shall be independent of and unconnected to the Parties' and their affiliated undertakings;
 - (b) it shall have the financial resources, proven expertise (in particular in the aluminium and/or in the flat rolled products sector) and incentive and ability to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors; having adequately proven to the Commission that the purchaser will effectively and cost efficiently replace the current supply relationships between the Divestment Business and other Aleris' plants in the medium term, whether through investment in the Duffel plant (with or without the CapEx funding specified in the Commitments), existing or planned capabilities in the purchaser's other plants, or third-party supply relationships; and
 - (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.
- (28) For the approval of the Proposed Agreement, according to paragraph 23 of the Commitments, the Commission must verify whether the Divestment Business is being sold in a manner consistent with the Decision and the Commitments.

⁴ Commitments, paragraph 22.

⁵ Remedies Notice, paragraph 48.

2.1. Independence from the Parties

- (29) According to the Commitments and the Remedies Notice, the Proposed Purchaser is required to be independent of and unconnected to the Parties and their affiliated undertakings.⁶
- (30) Novelis submits that Mr. Gupta, Liberty and its affiliates are independent from, and unconnected to, Novelis, Aleris and their respective affiliates. First, Novelis submits that neither Mr. Gupta/Liberty, nor any of their affiliates have any direct or indirect ownership interests in Novelis, Aleris or any of their respective affiliates. Second, Novelis submits that neither Novelis, nor Aleris, or any of their respective affiliates have any direct or indirect ownership interest in Liberty and its affiliates. Third, Novelis submits that no director of Novelis, Aleris, or their respective affiliates, is on the board of any entity controlled by Liberty or its affiliates.
- (31) However, according to Novelis, there is an existing commercial arrangement between Novelis, Liberty and the Divestment Business. In particular, a business wholly owned by Mr. Gupta, Liberty Dunkerque Aluminium, supplies both Novelis and the Divestment Business with aluminium slabs from its Dunkirk smelter (the “Dunkirk Smelter”). In 2018, Liberty Dunkerque Aluminium supplied Novelis and the Divestment Business with [...] and [...] of aluminium slabs, respectively. In that regard, Novelis submits that these supply relationships represented [10-20]% of aluminium slabs production from Liberty. Furthermore, Novelis submits that purchases by Novelis and the Divestment Business from Liberty only represented [...] and [...] of their purchases of aluminium slabs from third parties in 2018, respectively.
- (32) In its Final Reasoned Opinion, the Monitoring Trustee submits that the Proposed Purchaser is independent from and unconnected to the Parties and their affiliated undertakings.⁷ The Monitoring Trustee considers that existing commercial links between Liberty and the Parties are of limited duration and that they are consistent with the Commitments.⁸
- (33) On the basis of the information made available to the Commission by Novelis and by the Monitoring Trustee, the Commission finds that the commercial links that will exist between Novelis and Liberty following this transaction are not material. Furthermore, the current commercial links between Liberty and Aleris are not relevant for the purpose of the assessment of Liberty’s suitability as the buyer of the Divestment Business as after the transfer of the Divestment Business to Liberty, such links will remain within Liberty. Therefore, the Commission considers that Liberty is independent and unconnected to the Parties and their affiliates.

⁶ Commitments, paragraph 22(a) and Remedies Notice, paragraph 48.

⁷ Final Reasoned Opinion, paragraphs 2.2.5 and 4.8.5.

⁸ Final Reasoned Opinion, paragraph 4.8.4.

2.2. Financial resources, proven expertise, incentive and ability to maintain and develop the Divested Business as a viable and active competitor

2.2.1. Scope of the assessment

- (34) According to the Commitments and the Remedies Notice, the Proposed Purchaser must possess the financial resources, proven expertise (in particular in the aluminium and/or in the flat rolled products sector) and have the incentive and ability to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors.⁹ The Proposed Purchaser must also adequately prove to the Commission that it will effectively and cost efficiently replace the current supply relationships between the Divestment Business and other Aleris' plants in the medium term.¹⁰
- (35) The different legal entities conducting Liberty's business activities [details of Liberty's business strategy], although the Gupta family ultimately owns all of them.
- (36) Liberty submits that, by placing the Divestment Business [details of Liberty's business strategy], it would be insulated from any [...] for other Liberty operations, and that the Commission's assessment should thus cover [details of Liberty's business strategy]. To support Liberty's argument, Novelis proposed to [details of Liberty's business strategy].
- (37) However, the Commission considers that it is appropriate and necessary to carry out its assessment of Liberty's financial resources, proven expertise, ability and incentive to maintain and develop the Divestment Business as a viable and active competitor on the basis of Liberty's and its sister- and parent companies' overall financial and business activities.
- (38) In that regard, the Commission notes that it would have no direct legal authority under the Merger Regulation or under the Commitments to enforce the proposed [details of Liberty's business strategy]. The Commission considers that [...] arrangements [...] to this effect may also have negative implications on competition as [details of the Parties' and Liberty's business strategy].
- (39) Besides the foregoing considerations, the Commission considers that [details of Liberty's business strategy] would not remove the need to assess Liberty's and its sister- and parent companies' overall financial and business activities. The Commission considers that an assessment not carried out on the basis of the purchaser's overall financial and business activities entails a risk of circumventing the criteria set out in the Remedies Notice if the acquired remedy business is profitable. Indeed, in that case, any buyer could avoid any assessment of its financial position and incentives as long as the remedy is profitable and [details of Liberty's business strategy].
- (40) In addition, there are several reasons specific to Liberty why, in order to assess the incentives and ability of Liberty to develop the Divestment Business as a viable and active competitive force on a lasting basis, as well as the financial and other risks associated with its long-term ownership of the Divestment Business, the

⁹ Commitments, paragraph 22(b) and Remedies Notice, paragraph 48.

¹⁰ Commitments, paragraph 22(b).

Commission should look at the whole group of companies and not at Liberty's aluminium silo only.

- (41) First, it appears that [details of Liberty's business strategy].
- (42) Second, Liberty claimed that [details of Liberty's financial arrangements].
- (43) Third, it appears that, [details of Liberty's financial arrangements].
- (44) Fourth, the assessment of the incentive and ability of industrial buyers is typically done based on consolidated (audited) group statements. Because of the corporate structure of Liberty, [...] are not reflected in consolidated financial accounts of the operating companies. This justifies a close scrutiny [...].

2.2.2. *Novelis' submissions*

- (45) First, according to Novelis, Liberty has sufficient financial resources to (i) pay the purchase price under the Proposed Agreement to finance the acquisition of the Divestment Business pursuant to the terms of the Proposed Agreement and (ii) ensure that the Divestment Business remains a viable and active competitor from, and after, the transfer of the Divestment Transaction to Liberty, [details of Liberty's business strategy].¹¹
- (46) Second, Novelis submits that Liberty has proven expertise in aluminium, flat rolled products, and business integration. In particular, Novelis submits that Liberty has expertise and a proven track record of acquiring and developing steel flat rolled products assets, and an existing base of aluminium production assets, including in Europe.
- (47) Third, Novelis submits that Liberty has the required ability and incentive to maintain and develop the Divestment Business as a viable and active competitor. According to Novelis, [details of Liberty's business strategy].

2.2.3. *Liberty's submissions*

2.2.3.1. Acquisition structure

- (48) Liberty explains that the Divestment Business [details of Liberty's business strategy]. As part of that structure, Liberty claims that the Divestment Business [details of Liberty's business strategy]. According to Liberty, the Divestment Business [details of Liberty's business strategy].

2.2.3.2. Business plan

- (49) Liberty's [details of Liberty's business strategy].
- (50) Moreover, Liberty intends to [details of Liberty's business strategy].

¹¹ Reasoned Proposal – Liberty House Group/Divestment Business, 25 November 2019, paragraph 7 and reply to the Commission's request for information addressed to Novelis on 2 April 2020, questions 1 and 2.

2.2.3.3. Acquisition and CapEx funding

- (51) Liberty has provided [details of the acquisition structure]. Based on those documents, Liberty argues that it has sufficient financial headroom available to make the acquisition of the Divestment Business [details of business plans] that will enhance the Divestment Business's product offering and make it a sustainable independent operator in the long term.
- (52) With regard to [details of the acquisition structure], the use of proceeds has been clarified in one of Liberty's submissions as follows: "[...]. *The intention is that [details of Liberty's business strategy].*"¹²
- (53) As described by Liberty, the acquisition of the Divestment Business will be made [details of the acquisition structure and Liberty's future plans].¹³
- (54) The source of funds for the acquisition of the Divestment Business [details of Liberty's business strategy] was further confirmed and clarified by Liberty in a subsequent submission: "*The acquisition structure for the Divestment Business is [details of the acquisition structure].*"¹⁴ Furthermore, Liberty indicated that [details of Liberty's business strategy].¹⁵
- (55) While Liberty provided documents to demonstrate the availability of the funds, Liberty also made representations about [details of the acquisition structure].¹⁶

2.2.4. The Monitoring Trustee's Final Reasoned Opinion

- (56) The financial assessment of Liberty by the Monitoring Trustee has been [...] because of the structure of the 'group' and the absence of consolidated group accounts. As described by the Monitoring Trustee: "*we have considered the financial position of the group, albeit there are no consolidated group accounts covering all the companies with the Liberty 'group', and [...].*"¹⁷
- (57) Moreover, the Monitoring Trustee's assessment was [...].
- (58) It is to be noted that, according to Liberty, it is heading towards a consolidation of its business lines starting by the steel business. As described by Liberty: [details of Liberty's business strategy].¹⁸ The Aluminium business would, [details of Liberty's business strategy].¹⁹
- (59) The Monitoring Trustee specifies that [...]. While the Monitoring Trustee does not have any specific concerns that any of the figures provided are not materially accurate, [...].²⁰ However, the Monitoring Trustee sought to understand [...] the

¹² Reply to RFI 2 dated 12 December 2019, question 16.

¹³ Reply to RFI 3 dated 7 February 2020, paragraph 1.4.

¹⁴ Consolidated Response, paragraph 2.2.

¹⁵ Consolidated Response, paragraph 2.4.

¹⁶ Consolidated Response, paragraph 6.1.

¹⁷ Final Reasoned Opinion, paragraph 5.2.11.

¹⁸ Reply to RFI 3 dated 7 February 2020, footnote 23.

¹⁹ Follow-up response after meeting with the European Commission on 10 January 2020 reply to question 1.

²⁰ Final Reasoned Opinion, paragraph 5.2.102.

financial information provided and considered that “*This exercise was satisfactorily completed following our workshop on 3 March 2020*”.²¹

- (60) For the acquisition itself, in its report the Monitoring Trustee assesses [details of the acquisition structure]. The Monitoring Trustee mentions: “*On other Trustee cases we have worked on where a Divestment Business [details of the acquisition structure], we have relied on [details of the acquisition structure]*”.
- (61) In this particular case, the Monitoring Trustee has assessed [details of the acquisition structure] based on documents provided by Liberty and Liberty’s representations [details of the acquisition structure]. As explained by the Monitoring Trustee, “*Liberty has provided us with documents which, on their face and considered in conjunction with Liberty’s representations, indicate that [details of the acquisition structure]*.”²²
- (62) The Monitoring Trustee has also assessed [details of the acquisition structure]. However, as described by the Monitoring Trustee, [details of the acquisition structure].²³
- (63) For the funding of the Divestment Business, post-closing the Monitoring Trustee confirms that Liberty has identified [details of Liberty’s business strategy].²⁴

2.2.5. *The Commission’s assessment*

2.2.5.1. Proven expertise: Industrial buyer

- (64) The Divestment Business, while operationally sound, has seen limited investment until now due to the fact it was significantly leveraged by its current owner. Trade unions insist that any buyer should be an industrial player committed to invest in the plant to avoid viability risks. Considering the investment and the expertise needed to implement the remedy CapEx plan to make the Divestment Business independent from the broader Aleris ecosystem and to develop the Divestment Business as a viable and active competitive force, the Commission required a buyer with industrial expertise in flat rolled products or aluminium products.
- (65) Liberty is active both in flat rolled products through its steel business, in particular through its acquisition of the ArcelorMittal remedy assets following case M.8444 ArcelorMittal / Ilva in July 2019. Liberty is also active in aluminium upstream through its aluminium smelting capabilities (following its acquisition of the Dunkirk Smelter in December 2018) and downstream through its casting business (Liberty Wheels France, Liberty Engineering Poitou and Liberty Wheel Lochaber).
- (66) Liberty has also created an Alvanco management team, led by CEO Arnaud de Weert, with expertise in Aluminium markets to drive the business integration plan.
- (67) The Commission concludes that Liberty has sufficient proven industrial expertise to satisfy the required proven expertise in the aluminium and/or in the flat rolled

²¹ Final Reasoned Opinion, paragraph 5.2.95.

²² Final Reasoned Opinion, paragraphs 5.2.14 and 5.2.16.

²³ Final Reasoned Opinion, paragraph 5.2.22.

²⁴ Final Reasoned Opinion, paragraph 2.3.26.

products sector pursuant to the Commitments, paragraph 22(b) and the Remedies Notice, paragraph 48.

- (68) Similarly, the ability and incentive to maintain and develop the Divestment Business as a competitive force is also linked to the financial capacity of Liberty not only to acquire the Divestment Business (section 2.2.5.2) but also to make the necessary investments (section 2.2.5.3).

2.2.5.2. Financial Resources: Funds for acquisition

- (69) The structure of the funding for the acquisition is based on [details of the acquisition structure].
- (70) Based on the documents provided and in particular [reference to an internal document] provided by Liberty in an email sent on 27 March 2020 ([reference to an internal document]) to the Commission, [details of the acquisition structure].

2.2.5.3. Ability to develop and financial resources: Funds for investment

- (71) The funds to implement the business plans will be [details of Liberty's business strategy] as described by Liberty, which stated that [details of Liberty's business strategy].²⁵
- (72) When considering the [details of Liberty's business strategy] the ability of the broader Liberty group have been assessed. When requested to provide consolidated audited figures at group level to perform the assessment, Liberty indicated that this information is [details of Liberty's financial structure]. Absent consolidated audited figures, the Commission requested management accounts for 2019 [details of Liberty's financial structure]. The Monitoring Trustee ultimately managed to [...] and complete its analysis.
- (73) During this investigation, there have been recent developments [...]. These developments include [...] ²⁶. These developments also include [...].
- (74) With [details of Liberty's financial arrangements] confirmed its support of Liberty by [details of Liberty's financial arrangements]. As described by Liberty [details of Liberty's financial arrangements]. ²⁷
- (75) This [details of Liberty's financial arrangements]. The Commission notes that this [details of Liberty's financial arrangements].²⁸
- (76) The [details of Liberty's financial arrangements] thus confirming [details of Liberty's financial arrangements]. Liberty explains that [details of Liberty's financial arrangements]²⁹ [details of Liberty's financial arrangements]. However, [details of

²⁵ Consolidated Response, paragraph 2.4.

²⁶ Consolidated Response, paragraph 32.4.

²⁷ Consolidated Response, paragraph 39.11.

²⁸ Consolidated Response, paragraph 34.13 & 34.14.

²⁹ Consolidated Response, paragraph 1.15.

Liberty's financial arrangements] as expressed in a letter³⁰ sent to the Commission provides comfort [details of Liberty's financial arrangements].

- (77) The [details of Liberty's financial arrangements]³¹ show that Liberty has the ability and financial resources to perform the acquisition of and develop the Divestment Business by implementing its business plan.

2.2.5.4. Incentive to develop

- (78) The acquisition of the Divestment Business by Liberty is [details of Liberty's business strategy].
- (79) This strategy [details of Liberty's business strategy]. This strategy also translated into business plans [details of Liberty's business strategy].
- (80) Given Duffel's close location to Dunkirk, the Divestment Business [details of Liberty's business strategy]. Therefore, Liberty expects to realise significant synergies through the acquisition and has an incentive, given its strategy, to acquire and develop the Divestment Business.
- (81) Considering Liberty's business strategy for aluminium and the potential synergies with the existing assets in Liberty portfolio of companies it appears that Liberty has the incentive to develop the Divestment Business.

2.2.5.5. Customer confidence

- (82) To ensure that the Divestment Business will still have the ability to act as a competitive constraint on the market, the Commission contacted the main automotive customers to assess their interest in continuing working with the Divestment Business under Liberty's ownership.
- (83) An OEM³² confirmed that it has started an internal assessment of the philosophy and intention of the Proposed Purchaser and that it has not identified any risk with regard to Liberty so far, pending an external financial risk assessment through an external source.
- (84) Another OEM explained that *"it has an internal process of looking into any buyer acquiring a business with which the Company has a commercial relationship.[...] In the case of Aleris Divestment Business, the Company will also look into how Liberty House Group intends to substitute the materials currently coming from Aleris' Koblenz plant."* The same OEM further develops *"In addition, the Company usually performs a financial risk assessment on any new supplier. In practice, this involves the risk management department from the company. The Company has not identified any risk with regard to Liberty House Group so far. However, the assessment of Liberty House Group is still pending"*.³³

³⁰ Letter signed by [details of Liberty's financial arrangements] sent by Liberty's counsel to the Commission on the 4 February 2020.

³¹ Consolidated Response, paragraph 2.4.

³² Minutes of a call with a customer 13.12.2019.

³³ Minutes of a call with a customer 17.12.2019.

- (85) A third OEM explained that “According to the Company, the assessment of Liberty House Group will be conducted with difficulty, as there is not much publicly available information about Liberty House Group. The financial risk assessment includes verifying the Company’s rating on creditworthiness. This process has already started and so far the financial situation of the Liberty House Group seems stable.” The same OEM further elaborated that “The Company considers that the acquisition of Aleris Divestment Business by Liberty House Group is positive. However, the assessment of Liberty House Group is still pending”.³⁴
- (86) Overall, there have been no identified risks so far by customers that would prevent them to continue working with the Divestment Business under Liberty’s ownership.
- (87) Given that, as confirmed by the Monitoring Trustee’s Final Reasoned Opinion and by the Commission’s assessment:
- (a) Liberty has proven industrial expertise through its activities in flat rolled products and in the aluminium sector;
 - (b) Liberty appears to have sufficient financial resources to perform the acquisition, and is committed to fund the acquisition of the Divestment Business through [details of the acquisition structure], the sufficiency of which for the acquisition has been evidenced by supporting documents provided by Liberty;
 - (c) Liberty has the ability to develop the Divestment Business [details of Liberty’s business strategy];
 - (d) Liberty has the incentive to develop the Divestment Business through [details of Liberty’s business strategy] the potential synergies with the existing assets in Liberty portfolio of companies;
 - (e) Customers are willing to continue working with the Divestment Business under the new ownership;

the Commission considers that Liberty has the financial resources, proven expertise, ability and incentive to maintain and develop the Divestment Business as a competitive force.

- (88) Therefore, on the basis of the information made available to the Commission by Novelis and Liberty and based on the Final Reasoned Opinion of the Monitoring Trustee, the Commission finds that Liberty has the financial resources, proven expertise, ability and incentive to maintain and develop the Divestment Businesses as a viable and active competitor.

2.3. Absence of *prima facie* competition concerns and of risk of delays in the implementation

- (89) According to the Commitments and the Remedies Notice, the acquisition of the Divestment Business by Liberty must neither be likely to create, in light of the

³⁴ Minutes of a call with a customer 18.12.2019.

information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed.³⁵

2.3.1. *Absence of prima facie competition concerns*

- (90) Novelis submits that there are no competition concerns with Liberty's acquisition of the Divestment Business as there are no (i) horizontal overlaps between the Divestment Business and Liberty's activities and (ii) the vertical relationships present no input or customer foreclosure concerns.
- (91) First, Novelis submits that Liberty and its affiliates are not active in any markets where the Divestment Business operates.
- (92) Second, according to Novelis, the vertical relationship between the Divestment Business and Liberty presents no input foreclosure concerns, as Liberty does not have a significant production capacity in the global primary aluminium market. In fact, Liberty has capacity to produce [...] kilotons of aluminium slab and ingot annually and global consumption of primary aluminium amounted to about 60 million tons in 2018. Therefore, the [...] kilotons production capacity represents [0-5]% of the global demand for primary aluminium.
- (93) Third, according to Novelis, the vertical relationship between the Divestment Business and Liberty presents no customer foreclosure concerns, as the Divestment Business represents an immaterial percentage of the global demand for primary aluminium ([0-5]%).
- (94) Similarly, Novelis submits that there are no foreclosure issues on further segments of the market for primary aluminium involving the supply of (i) slabs and (ii) standard ingots. According to Novelis, the Divestment Business represents [0-5]% of the global demand for slabs and standard ingots in the merchant market, respectively, while Liberty does not have a material share of supply for slabs or standard ingots globally ([0-5]% in the slabs segment and [0-5]% in the standard ingots segment). Furthermore, [details of Liberty's business strategy].
- (95) In its Final Reasoned Opinion, the Monitoring Trustee submits that the acquisition of the Divestment Business by the Proposed Purchaser will not give rise to *prima facie* competition concerns.³⁶ The Monitoring Trustee also indicates that there appear to be synergies that can be achieved between the Divestment Business and Liberty's Dunkirk Smelter.³⁷
- (96) The Commission has already assessed the absence of competition concerns in the framework of a notification received on 5 December 2019 and considered under the case number M.9693.³⁸ In its decision of 20 January 2020 in case M.9693, the Commission concluded that the proposed acquisition of the Divestment Business by Liberty would raise no competition concerns given the absence of horizontal overlaps and the limited scale of the vertical link between Liberty and the Divestment Business.

³⁵ Commitments, paragraph 22(c) and Remedies Notice, paragraph 48.

³⁶ Final Reasoned Opinion, paragraphs 2.6.1 and 5.6.10.

³⁷ Final Reasoned Opinion, paragraph 5.6.11.

³⁸ See case M.9693 - *Liberty/Aleris Divestment Business*.

2.3.2. *Absence of risk that the implementation of the Commitments will be delayed*

- (97) Novelis submits that the acquisition of the Divestment Business by Liberty following the Proposed Agreement does not give rise to a risk that the implementation of the Commitments could be delayed.
- (98) Liberty submits that it stands behind its rights and obligations with regard to the Proposed Agreement.³⁹ Liberty has raised [details of the Parties' and Liberty's business strategy].⁴⁰ [details of the Parties' and Liberty's business strategy]. In this regard, Novelis has clarified in response to a request for information that [details of the Parties' and Liberty's business strategy].⁴¹
- (99) In its Final Reasoned Opinion, the Monitoring Trustee submits that the acquisition of the Divestment Business by Liberty will not give rise to a risk that the implementation of the Commitments will be delayed.⁴²
- (100) On the basis of the information made available to the Commission by Novelis, Liberty and the Final Reasoned Opinion of the Monitoring Trustee, the Commission takes the view that the acquisition of the Divestment Business by Liberty will not give rise to a risk of delayed implementation of the Commitments.

2.4. The Divestment Business is being sold in a manner consistent with the Commitments

- (101) The Commission must verify whether the Divestment Business is being sold in a manner consistent with the Decision and the Commitments according to the Proposed Agreement.⁴³
- (102) Novelis submits that, as follows from the Proposed Agreement, the Divestment Business is being sold in a manner consistent with the Commitments as it includes the businesses, assets, licenses, permits, authorizations, contracts, leases, commitments, records, customer lists, purchase orders, personnel and R&D activities necessary to operate the Divestment Business. Furthermore, [details of the Parties' and Liberty's business strategy]. According to Novelis, these funds will be held for the benefit of the Divestment Business and will be available to the Divestment Business to fund the three investment projects considered for the Duffel plant in the Commitments. Moreover, Novelis submits that it has agreed with Liberty to enter into several supply agreements [details of the Parties' and Liberty's business strategy].⁴⁴ [details of the Parties' and Liberty's business strategy].
- (103) In its Final Reasoned Opinion, the Monitoring Trustee submits that the terms of the Proposed Agreement are consistent with the Decision and the Commitments.⁴⁵
- (104) On the basis of the information made available to the Commission by Novelis and the Final Reasoned Opinion of the Monitoring Trustee, the Commission takes the

³⁹ Reply to RFI 4 dated 2 April 2020, question 1.

⁴⁰ Reply to RFI 4 dated 2 April 2020, question 3.

⁴¹ Reply to the Commission's request for information addressed to Novelis on 2 April 2020, question 8.

⁴² Final Reasoned Opinion, paragraphs 2.6.1 and 5.6.10.

⁴³ The Commitments, paragraph 23.

⁴⁴ According to [details of the Parties' and Liberty's business strategy].

⁴⁵ Final Reasoned Opinion, paragraphs 2.6.1 and 6.7.1.

view that, following the Proposed Agreement, the Divestment Business is being sold in a manner consistent with the Decision and the Commitments.

3. CONCLUSION

- (105) On the basis of the above assessment, the Commission approves Liberty as a suitable purchaser of the Divestment Business for the above-mentioned reasons.
- (106) On the basis of the Proposed Agreement, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments.
- (107) This decision only constitutes approval of Liberty and of the Proposed Agreement. This decision does not constitute a confirmation that Novelis and Aleris have complied with the Commitments.
- (108) This decision is based on paragraph 23 of the Commitments attached to the Commission Decision of 1 October 2019.

For the Commission

(Signed)
Olivier GUERSENT
Director-General