



EUROPEAN COMMISSION  
DG Competition

***Case M.10157 - AURUBIS / TSR RECYCLING / JV***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 21/04/2021

***In electronic form on the EUR-Lex website under  
document number 32021M10157***



## EUROPEAN COMMISSION

Brussels, 21.4.2021  
C(2021) 2956 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Aurubis AG  
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**Subject: Case M.10157 – Aurubis/TSR Recycling/JV  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup> and Article 57 of the Agreement on the European Economic  
Area<sup>2</sup>**

Dear Sir or Madam,

- (1) On 12 March 2021, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Aurubis AG, (“Aurubis”, Germany) and TSR Recycling GmbH & Co. KG (“TSR”, Germany), intend to acquire within the meaning of Articles 3(1)(b) and 3(4) of the Merger

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<sup>1</sup> 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 (the ‘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.

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

Regulation joint control of newly incorporated joint venture (“the JV”, Germany) (the ‘proposed transaction’).<sup>3</sup> Aurubis and TSR are designated hereinafter as the ‘Notifying Parties’ and Aurubis, TSR and the JV as the ‘Parties’.

## 1. THE PARTIES

- (2) Aurubis is a vertically integrated worldwide provider of non-ferrous metals and one of the main copper producers in Europe. The core business of Aurubis is the production of copper cathodes from copper concentrates and copper scrap. Furthermore, Aurubis processes copper cathodes into wire rods and shapes.
- (3) TSR, belonging to Remondis SE & Co. KG (Germany), ultimately controlled by Rethmann SE & Co. KG (Germany), is active in trading and processing secondary raw material (mainly scrap) for steel producers and the foundry industry. TSR collects, stores and processes metal, including ferrous and non-ferrous metal scrap, and to a limited extent electronic scrap. Moreover, TSR offers waste disposal services and environmental services.
- (4) The JV is intended to be active in cable scrap recycling. The Notifying Parties plan to pool their own cable dismantling facilities at Fehrbellin (Aurubis’ subsidiary CABLO Metall Recycling & Handel GmbH, “Cablo”) and Gelsenkirchen (TSR). The JV’s output will be copper scrap no. 1 (used for direct melt), copper scrap no. 2 and copper scrap used for smelting and refining (“CSSR”), as well as aluminium granules and marginal quantities of lead and cast iron chips. The cable processing plant in Fehrbellin has a capacity of [...]t/a cable scrap and the plant in Gelsenkirchen has a capacity of [...]t/a cable scrap in total, this is to say [...]t/a regarding Line 1 and [...]t/a regarding Line 2, a new production line which will extend capacity as from 2022. From the cables, the JV will extract approximately [...]t/a copper granules with different qualities.<sup>4</sup>
  - i. TSR will provide approximately [...]t/a ([...])% of the JV’s total inputs of [...]t/a in cables scrap. TSR will continue to provide [...]% of the scrap copper cable to the plant in Gelsenkirchen and TSR’s overall supplies will represent approximately [...]% of the JV’s total input volumes. TSR will increase its supplies to the plant in Fehrbellin from [...]% in 2019 to [...]% of the JV’s copper cable scrap input, whereas third parties will supply [90-100]% of aluminium cable scrap.
  - ii. Aurubis will purchase approximately [...]% of the JV’s output volume in 2021; notably Aurubis will buy [...]% of copper scrap no.2 and CSSR, the other output materials will be mainly sold to third parties. Copper scrap no.2 and CSSR are currently mainly produced in Fehrbellin. [...], Aurubis will purchase approximately [...]% of the JV’s total output.<sup>5</sup>

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<sup>3</sup> Publication in the Official Journal of the European Union No C 93, 19.3.2021, p. 36.

<sup>4</sup> Form CO, paragraphs 19 and 29.

<sup>5</sup> Form CO, paragraph 84.

## 2. THE CONCENTRATION

- (5) The joint venture agreement (“JVA”) was executed on 13 November 2020.

### 2.1. Joint control

- (6) Under the JVA, Aurubis holds [40-50]% and TSR [60-70]% of the shares in the JV. As a rule, shareholders’ resolutions are passed with a majority of more than [...]%. However, the shareholders’ meeting shall pass resolutions [...] on a number of strategic decisions,<sup>6</sup> which gives Aurubis de facto veto rights on strategic decisions on business policy and decisions on budget, the business plan, major investments as well as the appointment of senior management.<sup>7</sup> The Notifying Parties will therefore jointly control the JV.

### 2.2. Full-Functionality

- (7) The JV will be responsible for day-to-day operations, with a dedicated management, and will be autonomous in operational respect. The parents will transfer their own plants for dismantling and processing cable scrap in Fehrbellin, Cablo and in Gelsenkirchen (owned by TSR), including staff, to the JV. Moreover, the JV will be equipped with equity (EUR [...] million) and will receive shareholder loans from Aurubis and TSR (EUR [...] million), as well as loans from banks, as specified in the JVA.<sup>8</sup> Therefore the JV will have access to sufficient resources including finance, staff, and assets (tangible and intangible) to conduct the business activities of the two plants.<sup>9</sup>
- (8) The JV will buy inputs from and sell to its parents, but it will nonetheless have an active role on the market and will be economically autonomous from an operational point of view.<sup>10</sup>
- (9) With regard to the proportion of sales made to its parents (compared with the total production of the JV), the JV will not exclusively depend on its parents. The JV will have business relations with third parties for at least [...]% of its sales<sup>11</sup> (Aurubis will purchase approx. [...]% of the JV’s total output in 2021, and approx. [...]% as of 2022).
- (10) Even if sales to one of the parent companies will be [...], this does not remove the full-functional character of the JV, since those sales will be commercial in character and done on an arm’s length basis (commercial terms will be based on standard market terms and therefore on arm’s length; contracts will be based on market

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<sup>6</sup> Adoption and binding declaration of the business plan including the budget; appropriation of the company’s profit, collection of payments on the capital contributions assumed by the shareholders; adoption of resolutions in the appointment and dismissal of managing directors as well as on their discharge; acquisition or disposal of assets with a market value exceeding EUR [...]; and business policies and strategy of the company as well as any changes in this respect.

<sup>7</sup> Form CO, paragraphs 71 et seq.

<sup>8</sup> Reply to request for information 3 of 21 April 2021. See also Annex 3.1.3 to the Form CO in Sections 6.2. and 6.3.

<sup>9</sup> Form CO, paragraph 80.

<sup>10</sup> Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (“CJN”), OJ C 95, 16.4.2008, p. 1-48, paragraph 98.

<sup>11</sup> Form CO, paragraph 83.

standards e.g., LME copper price, treatment and refining charges, quality and penalties for impurities, deliveries etc.; the contracts' duration will be [...] years and will subsequently be re-negotiated; and the JV's supply and sales will be in competition to other market participants).<sup>12</sup> The purchase of inputs from its parent companies will also be done under normal commercial conditions. TSR will supply the plant in Gelsenkirchen with input materials, primarily copper cable scrap at market-standard terms and on an arm's-length basis. The plant in Fehrbellin will continue purchasing copper cable scrap and aluminium cable scrap from third parties (which will account for approximately [...] % of its inputs), in addition to receiving supplies from TSR.<sup>13</sup> The JV will therefore be fully functional.

### **2.3. Conclusion**

- (11) Therefore, the Commission concludes the proposed transaction constitutes a concentration within the meaning of the Merger Regulation since the JV will perform on a lasting basis all the functions of an autonomous economic entity.

### **3. UNION DIMENSION**

- (12) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (TSR (Rethmann Group): EUR [...] million; Aurubis: EUR [...] million).<sup>14</sup> Each of them has a Union-wide turnover in excess of EUR 250 million (TSR (Rethmann Group): [...] EUR million; Aurubis: EUR [...] million), and they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The proposed transaction therefore has a Union dimension within the meaning of Article 1(2) of the Merger Regulation.

### **4. MARKET DEFINITION**

- (13) The area of recycling ferrous and non-ferrous metals involves various activities including the collection of scrap, its trade and its processing for further supply downstream to smelters and refiners.
- (14) The proposed transaction mainly involves the area of copper scrap recycling from end-of-life cables from used electronic devices, appliances, buildings and vehicles.
- (15) At the top of the value chain, scrap collectors, like TSR, and traders (intermediaries not involved in collection nor recycling) collect, process and trade cables (primarily end-of-life cables but also some industrial scrap) for dismantling.
- (16) At the intermediary level, cable dismantlers, like the JV, remove the plastic coating of these end-of-life cables (which is reused or discarded as waste) and process and recuperate copper scrap in the form of granules.
- (17) Downstream, smelters and refiners of copper scrap, like Aurubis, source the copper granules from dismantlers to produce pure copper in the form of cathodes. Unlike

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<sup>12</sup> Form CO, Section 3.

<sup>13</sup> Form CO, paragraph 82.

<sup>14</sup> Turnover calculated in accordance with Article 5 of the Merger Regulation.

other copper scrap where trade takes place directly between collectors/traders upstream and smelters downstream, copper cables require the intermediary step in which dismantlers remove the plastic. “Dismantling” is different from “processing” for the purpose of this decision: dismantling describes the removal of plastic from cables, whereas processing describes less technically complex treatment of all types of scrap, such as sorting and shredding.

- (18) On the demand side, Aurubis’ market share for copper scrap exceeds 30% in the markets for copper scrap no.2 and CSSR in the EEA, which leads to two vertically affected markets as the JV will be active in the upstream market for copper cable dismantling.
- (19) On the basis of these considerations, the Commission will analyse the following four markets: the market for the collection and processing of copper scrap, the market for copper cable dismantling and the markets for the demand for copper scrap no.2 and CSSR respectively.

#### **4.1. Market for the collection and processing of metal scrap**

- (20) Scrap metal is provided by various companies, including large industrial companies, scrap metal suppliers, commercial firms, local authorities and private customers. Suppliers store their scrap metals, production residue and faulty batches and then have it recuperated by collecting companies, such as TSR, processed (sorted and shredded) and sold directly to refiners and smelters, or – in the case of cables – transported to dismantling facilities who remove the plastic components and sell the metal components of the cables to smelters and refiners.

##### *4.1.1. Product market*

###### *4.1.1.1. The Commission’s decisional practice*

- (21) The Commission has in the past identified a market for trade in metal scrap, which it has divided into a separate market for trade in (i) ferrous scrap and a separate market for trade in (ii) non-ferrous scrap.<sup>15</sup> Within the market for non-ferrous scrap, the Commission also considered potential sub-segments for trade in (a) aluminium scrap, (b) copper scrap and (c) zinc scrap, but left this open in most cases,<sup>16</sup> also noting that suppliers are flexible in collecting and trading different types of metal scrap.<sup>17</sup>
- (22) In previous decisions, the Commission considered whether, within the overall market for trade in metal scrap, the market segment for collecting and processing constitutes a separate market or whether the collection, processing and trade of processed metal belong to one single market, but ultimately left the question open.<sup>18</sup>

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<sup>15</sup> See e.g. COMP/M.5714 – Scholz/Scholz Austria/Kovosrot, paragraph 8, COMP/M.4469 – Scholz/Voestalpine/Scholz Austria, paragraphs 10, COMP/ECSC.1358 – Scholz/Alba/Elsa.

<sup>16</sup> See e.g. COMP/M.5714 – Scholz/Scholz Austria/Kovosrot, paragraph 8; COMP/M.4469 – Scholz/Voestalpine/Scholz Austria, paragraph 13.

<sup>17</sup> COMP/M.4469 – Scholz/Voestalpine/Scholz Austria, paragraph 13.

<sup>18</sup> COMP/M.5714 – Scholz/Scholz Austria/Kovosrot, paragraph 9, COMP/M.4495 – Alfa ACCIAI/Cronimet/Remondis/ TSR Group, paragraphs 16 et seq.

#### 4.1.1.2. The Notifying Parties' view

- (23) The Notifying Parties consider the market for copper scrap to include all trading activities in copper scrap on the supply and demand side.<sup>19</sup>

#### 4.1.1.3. The Commission's assessment

- (24) First, as to the question whether a distinction between different types of metals is warranted, a majority of respondents in the market investigation agreed with the Commission's practice to distinguish the market segment for collecting, processing and trading *ferrous* scrap from the market segment for collecting and processing and trading *non-ferrous* scrap.<sup>20</sup> Respondents explained that different recycling technologies such as shredding and separating machines are needed in ferrous and non-ferrous scrap recycling respectively. There are also differences in the importance of logistic costs and the networks necessary to conduct business. Moreover, customer groups and market dynamics are different. For instance, in ferrous scrap markets, price-setting mechanisms are driven by supply and demand of steel companies, while prices for non-ferrous scrap are set by the London Metal Exchange (LME).<sup>21</sup> Therefore, for the purposes of this decision, a distinction should be made between the markets for collecting, processing and trading ferrous scrap from the market segment for collecting, processing and trading non-ferrous scrap.
- (25) Second, within non-ferrous scrap, a majority of respondents who gave their views on whether the market for the collection, processing and trading of non-ferrous scrap should be further sub-segmented, argued for a further sub-segmentation between copper and aluminium.<sup>22</sup> Those who explained their view argued that customers and consumers are different. One respondent also noted that "*copper scrap is mainly used in the limited application at downstream market more than aluminum. A market of aluminum downstream has more wide application.*"<sup>23</sup> According to another respondent, "*different product know-how and different networks/access to customers is required. In addition, even though many traders trade all types of scrap, the "specialists" (e.g. only aluminium) often trade the largest volumes which is an indication for the segmentation.*"<sup>24</sup> This indicates that different types of non-ferrous scrap might constitute separate markets in the market for collection, processing and trading.
- (26) Third, as to the question whether a further distinction applies between the activities of collecting and processing on the one hand and trading on the other hand, a majority of respondents supports a broad market definition with respect to metal recycling in general.<sup>25</sup> According to a respondent, "*collecting and processing always includes trading of metals (the regained granules through recycling have to be*

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<sup>19</sup> Form CO, paragraph 138.

<sup>20</sup> Replies to question 4 of the eQuestionnaire.

<sup>21</sup> Replies to question 4.1 of the eQuestionnaire.

<sup>22</sup> Replies to question 4.1 of the eQuestionnaire.

<sup>23</sup> Replies to question 4.1 of the eQuestionnaire.

<sup>24</sup> Replies to question 6.1 of the eQuestionnaire.

<sup>25</sup> Replies to question 5 of the eQuestionnaire.

*traded/sold*)". Other respondents noted that many companies in the Union collect scrap, process and trade it within the same business unit.<sup>26</sup>

- (27) Fourth, the Commission also investigated whether a sub-segmentation for cables as opposed to other types of scrap might be warranted for the purposes of this decision. However, none of the replies in the market investigation indicated that cables and other scrap constitute separate sub-segments of the market for collection, processing and trading of scrap.
- (28) For the purpose of this decision, the Commission considers that the exact product market definition for the non-ferrous scrap market can be left open, as the proposed transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible market definition (as under wider market definitions both market shares and market power would be even lower), whether the market is (i) sub-segmented by type of non-ferrous scrap or (ii) sub-segmented by activity (between collecting and processing on the one hand and trading on the other hand). In conclusion, in line with the Commission's precedents and the findings of the market investigation, for the purposes of this decision, the Commission will analyse the narrowest plausible market which is the market for the collection and processing of copper scrap.

#### 4.1.2. *Geographic market*

##### 4.1.2.1. The Commission's decisional practice

- (29) The Commission found the market for trade in metal scrap and its sub-segments to be at least EEA-wide and possibly worldwide.<sup>27</sup>
- (30) As regards the geographic scope of the market for collecting and processing of metal scrap, the Commission indicated that the geographic dimension is smaller than that of the trading market. It left open whether the markets are national or regional, in particular with respect to collection activities, which might only take place within a catchment radius (of approximately 200 km) of each facility.<sup>28</sup>

##### 4.1.2.2. The Notifying Parties' view

- (31) The Notifying Parties submit that the geographic market for the collection and processing of non-ferrous scrap (including sub segments) is EEA-wide. The Notifying Parties submit that the distances that the scrap is transported by the collecting and processing companies depend on the location of the companies, the density of customers and collection points in the regional area, the transport connection, the means of transport and the availability of a suitable return freight. Moreover, the transport distances also depend on the weight and the composition of scrap. Depending on market conditions and market reality, scrap is regularly also collected over distances of more than 200-300 km. Moreover, the transport costs for

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<sup>26</sup> Replies to question 5.1 of the eQuestionnaire.

<sup>27</sup> See e.g. COMP/M.5714 – Scholz/Scholz Austria/Kovosrot, paragraph 11, COMP/M.4781 –Norddeutsche Affinerie/Cumerio, paragraphs 25 et seq., COMP/M.6541 –Glencore/Xstrata, paragraphs 246 et seq., COMP/M.4469 –Scholz/Voestalpine/Scholz Austria, paragraphs 14 and 15.

<sup>28</sup> COMP/M.5714 – Scholz/Scholz Austria/Kovosrot, paragraph 11, COMP/M.4469 – Scholz/Voestalpine/Scholz Austria, para. 15; COMP/ECSC.1358 – Scholz/Alba/Elsa.



different distances do not differ significantly from each other and scrap can be transported easily over long distances.<sup>29</sup>

#### 4.1.2.3. The Commission's assessment

- (32) The market investigation was inconclusive whether the market for collection and processing of copper scrap (including cables) should be defined as regional, national or EEA-wide.<sup>30</sup> A majority of respondents in the market investigation replied that companies active in the collection of copper cables collect throughout Germany as well as other EEA Contracting Parties.<sup>31</sup> Prices for copper cable scrap are broadly the same across at least Germany, with some minor differences reflecting transport costs.<sup>32</sup> However, several replies indicated that collection usually takes place within a radius that grows and shrinks depending on the copper price. In fact, it appears that copper cables may be transported over shorter distances than other types of copper scrap, as a market participant explained: "*As copper cables consist of about 60% plastic waste it is not economical to transport them over large distances.*"<sup>33</sup>
- (33) A majority of respondents also replied that they trade copper scrap, including cables, for dismantling in all of Germany as well as in other European countries.<sup>34</sup> Transport costs play an important role, which means that copper scrap and cables are transported over longer distances when the copper price is higher and shorter distances when the copper price is lower.<sup>35</sup>
- (34) In conclusion, in line with the Commission's precedents and the findings of the market investigation, the geographic market definition can be left open, as the proposed transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible geographic market definition. No affected markets arise regardless of whether (i) the market for collection and processing of copper scrap is defined as regional (within catchment areas of 200 km), national or EEA-wide and whether (ii) the market for trade in copper scrap is defined as national, EEA-wide or worldwide.<sup>36</sup> Given some concerns by market participants related to the market for collection of copper scrap, the Commission will analyse the market for collection and processing of copper scrap at regional, national and EEA-wide level.

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<sup>29</sup> Form CO, paragraph 129.

<sup>30</sup> Replies to question 9.1 of the eQuestionnaire. "*Smaller companies tend to buy more regionally. Larger and traditionally supra-regional companies (such as TSR, EMR, Nordschrott) are buying throughout Germany and abroad also.*" "*Collection of copper cables is a more regional/local market whereas dismantling can be national or even international. Then larger the company then more international its sourcing of material will be. Depending on the type of cable and the supply and demand situation prices may vary internationally.*"

<sup>31</sup> Replies to question 9 of the eQuestionnaire.

<sup>32</sup> Replies to question 11 of the eQuestionnaire.

<sup>33</sup> Reply to question 9.1 of the eQuestionnaire.

<sup>34</sup> Replies to question 12 of the eQuestionnaire.

<sup>35</sup> Replies to question 9.1 of the eQuestionnaire. "*The higher the price of scrap metal, the less transport costs matter, but generally transport costs are an important factor influencing the decision how far from the dismantling facility cables for dismantling are collected.*"

<sup>36</sup> The proposed transaction does not lead to affected markets if a separate market for *trade* in copper scrap is considered (TSR's market share is [0-5]% at worldwide level, [0-5]% EEA-wide and [5-10] % in Germany, see Form CO table 8). Therefore this market will not be further discussed in this decision.

## 4.2. Market for copper cable dismantling

- (35) Cable dismantling plants receive end-of-life-cables from collectors and traders.
- (36) They then use various types of shredding and cutting systems in order to separate the different qualities of ferrous and non-ferrous metals from the other cable materials (e.g. removing the outer layer of plastic and recovering the copper content, usually in the form of granules).
- (37) The recycled raw materials are purchased downstream by steelworks, smelters and foundries, or by metal scrap traders who, in turn, resell the inputs for further processing.

### 4.2.1. Product market

#### 4.2.1.1. The Commission's decisional practice

- (38) The Commission has not yet considered a separate market for copper cable dismantling.

#### 4.2.1.2. The Notifying Parties' view

- (39) The Notifying Parties consider that there is a separate market for copper cable dismantling, which is distinct from the market for CSSR, and distinct from aluminium cable dismantling. The Notifying Parties submit that cable dismantling requires special equipment and know-how. It is only after dismantling that cables can be recycled and provided for metallurgical processes further down the value chain. Therefore, not all market players active in the copper scrap market also buy copper cable scrap for dismantling, but only cable dismantling companies.<sup>37</sup>

#### 4.2.1.3. The Commission's assessment

- (40) The market investigation supports the Notifying Parties' view that the dismantling of copper cables constitutes a separate product market, distinct from the collection, processing and trading of other copper scrap.<sup>38</sup> Some respondents explained that not every processor can dismantle copper cables, as dismantling requires special equipment and facilities.<sup>39</sup>
- (41) The results of the market investigation also supported the Notifying Parties' argument that copper cable scrap for dismantling constitutes a separate market from CSSR. A majority of respondents view these as not interchangeable or substitutable.<sup>40</sup> In the words of a respondent, "*the scrap for dismantling requires a processing step (shredding/sorting) that the smelters typically do not have in-house*" and although copper granules derived from copper cable scrap are the same material as can be derived from copper scrap other than cables, "*refiners typically do not buy cable scrap but only the dismantled granulates.*"<sup>41</sup> A few respondents also argued that market entry is relatively easy in the market for collection and processing of

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<sup>37</sup> Form CO, paragraph 146.

<sup>38</sup> Replies to question 8 of the eQuestionnaire.

<sup>39</sup> Replies to question 8.1 of the eQuestionnaire.

<sup>40</sup> Replies to question 7 of the eQuestionnaire.

<sup>41</sup> Replies to question 7.1 of the eQuestionnaire.

scrap, but that more complex recycling steps (such as dismantling) make it more difficult to enter the market for cable dismantling.<sup>42</sup>

- (42) The Commission considers that for the purposes of analysing the markets involved in cable recycling, a distinction between collection and processing on the one hand and dismantling on the other hand is warranted, as cable collectors collect and process all types of scrap and cable dismantlers are much more specialised and only dismantle cables, and in consequence, only some scrap collectors also offer cable dismantling, which translates into different competitive dynamics in these two markets.
- (43) Therefore, in line with the Notifying Parties' submission and the findings of the market investigation, for the purposes of this decision, the Commission will analyse the impact of the proposed transaction on a separate market for copper cable dismantling.

#### 4.2.2. Geographic market

##### 4.2.2.1. The Commission's decisional practice

- (44) The Commission has not yet considered a separate market for copper cable dismantling.

##### 4.2.2.2. The Notifying Parties' view

- (45) The Notifying Parties consider the market for copper cable dismantling to be worldwide, given that cable scrap can be transported over long distances due to the high value of metals contained in the cables, demonstrated by the high export volumes of copper cable scrap from the Union.<sup>43</sup>

##### 4.2.2.3. The Commission's assessment

- (46) In the market investigation, a majority of respondents replied that companies active in the dismantling of copper cables source copper cables at an at least national level, often also in other EEA contracting parties.<sup>44</sup>
- (47) The Commission's investigation showed that in recent years, copper cables were only collected and traded within the EEA, since China and other South East Asian countries imposed an import ban on different types of waste, including cables.<sup>45</sup> Before this import ban, exports of end-of-life cables, in particular to China, were significant.

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<sup>42</sup> Replies to question 4.1 of the eQuestionnaire. *"The market for the collection of scrap needs to be distinguished from the market for the processing of scrap. While market entry to the former is relatively easy and accordingly a lot of small and medium size players offer collection services, market entry to the latter is relatively difficult because processing (if it consists in more than mere manual sorting) requires equipment and thus capital, know-how, staff and access to purchasers of processed scraps. For this reason the suppliers of processing services are often also active as collectors but not the other way around."*

<sup>43</sup> Form CO, paragraph 150.

<sup>44</sup> Replies to question 10 of the eQuestionnaire.

<sup>45</sup> Call with a market participant on 11 February 2021.

- (48) In conclusion, in line with the Notifying Parties' submission and the findings of the market investigation, the geographic market definition can be left open between national and EEA-wide, as the proposed transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible market definition.

### **4.3. Market for copper scrap products**

#### *4.3.1. Product market*

##### 4.3.1.1. The Commission's decisional practice

- (49) As for the demand-side of the market for copper scrap, the Commission found in *Aurubis/Metallo Group Holding* that a further segmentation of the market for copper scrap by purity grade is warranted. The Commission found distinct markets for (i) copper scrap for direct melt (copper scrap no.1), (ii) copper scrap no. 2, (iii) copper scrap for smelting and refining ("CSSR") and (iv) e-scrap.
- (50) *Copper scrap no.1* comprises scrap that is not used for the production of cathodes, but is melted directly into products further down the copper value chain, such as copper rod and copper shapes. Its copper content is particularly high and it is generally more expensive and follows a different price setting formula.<sup>46</sup>
- (51) *Copper scrap no. 2* is defined as scrap with copper content of 94%-96% and with little or no non-metallic impurities.<sup>47</sup>
- (52) *CSSR* comprises different types of copper scrap materials, which are non-standard and require special metallurgical know-how and equipment to process, and therefore is highly differentiated in terms of material composition and origin.<sup>48</sup>
- (53) *E-scrap* is copper scrap from electronic equipment, consists mainly of printed circuit boards and is always low grade.<sup>49</sup> The JV will not be active in e-scrap.

##### 4.3.1.2. The Notifying Parties' view

- (54) While they do not generally contest the Commission's market definition practice, the Notifying Parties submit that their purchases of copper cable scrap do not form part of the purchasing side of the CSSR market, but constitute a separate market (see Section 4.2.1.2).

##### 4.3.1.3. The Commission's assessment

- (55) The findings of the market investigation were in line with the findings of the Commission in *Aurubis/Metallo Group Holding*: a majority of respondents considered that copper scrap and copper concentrate are not substitutable from a

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<sup>46</sup> COMP/M.9409 – Aurubis/Metallo Group Holding, para. 159 et seq.

<sup>47</sup> COMP/M.9409 – Aurubis/Metallo Group Holding, para. 166 et seq.

<sup>48</sup> COMP/M.9409 – Aurubis/Metallo Group Holding, para. 159 et seq.

<sup>49</sup> COMP/M.9409 – Aurubis/Metallo Group Holding, paras. 166 et seq. Since the JV will not be active in e-scrap, no overlaps or vertical relationships arise from the proposed transaction. Therefore, this market will not be further discussed in this decision.

demand-side point of view, or at least not completely interchangeable, as is the case for copper scrap no. 1, copper scrap no. 2 and CSSR.<sup>50</sup>

- (56) In line with the Commission's precedents and the submission of the Notifying Parties, the Commission considers it appropriate to analyse the markets under the narrowest plausible product market definition, as the proposed transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible market definition (as under wider market definitions both market shares and market power would be even lower). The Commission will therefore consider separately the markets for (i) copper scrap no.1, (ii) copper scrap no.2 and (iii) CSSR.

#### 4.3.2. Geographic market

##### 4.3.2.1. The Commission's decisional practice

- (57) Specifically, the Commission found the markets for copper scrap no. 2 and CSSR to be EEA-wide.<sup>51</sup> As for the market for copper scrap no.1, the Commission did not assess its geographic scope in *Aurubis/Metallo Group Holding*. In previous decisions which analysed a broader product market including all copper scrap, the Commission found such market for copper scrap or secondary copper products to be at least EEA-wide and in some cases worldwide.<sup>52</sup>

##### 4.3.2.2. The Notifying Parties' view

- (58) In the opinion of the Notifying Parties the geographic scope of the market for copper scrap no.1 is worldwide.<sup>53</sup> In the Notifying Parties' view, the markets for copper scrap no. 2 and CSSR are worldwide due to the intensive international copper scrap trade.<sup>54</sup>

##### 4.3.2.3. The Commission's assessment

- (59) As for the buyers of copper scrap such as Aurubis, a majority of respondents buy copper scrap (no.1, copper scrap no.2 and CSSR) in the EEA or worldwide.<sup>55</sup> From the point of view of Aurubis and its competitors, transport costs of copper scrap play a role when the material is purchased outside the EEA. Although Aurubis and its competitors do not pay the transport costs themselves, the relation between transport costs and metal price determine how far suppliers will transport the copper scrap, as some participants in the market investigation explained.<sup>56</sup>
- (60) In line with the Commission's precedents and the submission of the Notifying Parties, the Commission considers it appropriate to analyse the markets under the narrowest plausible geographic market definition, as the proposed transaction does

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<sup>50</sup> Replies to question 7 of the eQuestionnaire.

<sup>51</sup> COMP/M.9409 – Aurubis/Metallo Group Holding, paras. 250 et seq. and 333 et seq.

<sup>52</sup> See e.g. COMP/M.6541 – Glencore/Xstrata, paragraphs 246 et seq, COMP/M.4469 – Scholz/Voestalpine/Scholz Austria, paragraphs 14, 15.

<sup>53</sup> Form CO, paragraph 158.

<sup>54</sup> Form CO, paragraph 214.

<sup>55</sup> Replies to question 13 of the eQuestionnaire.

<sup>56</sup> Replies to question 13.2 of the eQuestionnaire.

not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible market definition (as under wider market definitions both market shares and market power would be even lower). In conclusion, for the purposes of this decision, the relevant markets are the EEA-wide or worldwide market for demand for copper scrap no.1,<sup>57</sup> and the EEA-wide markets for copper scrap no.2 and CSSR.

## 5. COMPETITIVE ASSESSMENT

- (61) The proposed transaction gives rise to two vertically affected markets, as Aurubis' market share as a purchaser in the downstream market for two types of copper scrap exceeds [30-40]% in the EEA: [30-40]% with regard to copper scrap no. 2 and [30-40]% with regard to CSSR. The upstream market is the market for copper cable dismantling, where the JV is active with an expected market share at national level of [10-20]% and [0-5]% at EEA level.
- (62) A further vertical relationship resulting from the proposed creation of the JV can be found between the upstream market for the collection and processing of copper scrap, where TSR is active and the downstream market for copper cable dismantling, where the JV will be active. In the market investigation, some participants voiced concerns that the Parties might foreclose access of copper scrap collectors to the cable dismantling facilities of the JV. Some cable dismantlers and scrap traders voiced concerns that TSR might stop supplying them with cables.
- (63) However, this market is not technically affected, as TSR's market share in the upstream market for collecting and processing copper scrap, TSR's market share was [0-5]% EEA-wide, [5-10]% in Germany, [10-20]% in a 200 km radius around Fehrbellin and [5-10]% in a 200 km radius around Gelsenkirchen.<sup>58</sup> In the downstream market, the JV's expected market share will be [10-20]% in the German market and [0-5]% in an EEA-wide market. In light of the concerns raised, the vertical relationships will nevertheless be discussed below.

### 5.1. Legal test for the assessment of vertical effects

- (64) The legal test for the assessment of vertical effects is set out in the Merger Regulation. In addition, the Commission will base its assessment on the principles set out in the Guidelines on the assessment of non-horizontal mergers ('Non-Horizontal Merger Guidelines').<sup>59</sup>
- (65) A vertical merger may result in anti-competitive effects due to foreclosure. Foreclosure concerns a situation where actual or potential rivals' access to supplies

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<sup>57</sup> TSR's market share on the supply side amounted to [0-5]% worldwide and [0-5]% EEA-wide in 2019. The JV's market share on the supply side is expected to be [0-5]% worldwide and [0-5]% EEA-wide. On the demand side, Aurubis reached a market share of [0-5]% worldwide and [0-5]% EEA-wide in 2019. (Form CO, paragraph 208). Therefore, no affected markets arise for copper scrap no.1, so this market will not be further discussed in this decision.

<sup>58</sup> Response to RFI 2 of 9 April 2021.

<sup>59</sup> Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 265, 18.10.2008, p. 6)

or markets is hampered or eliminated as a result of the vertical merger, thereby reducing these companies' ability and/or incentive to compete.<sup>60</sup>

- (66) Two forms of foreclosure can be distinguished in a vertical relationship: input and customer foreclosure:
- (67) *Input foreclosure* arises where, post-transaction, the new entity would be likely to restrict access to the products or services that it would have otherwise supplied to downstream competitors, thereby raising its downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the vertical merger.<sup>61</sup> For input foreclosure to be a concern, the vertically integrated firm resulting from the merger must have a significant degree of market power in the upstream market. Only in such a case can the merged firm be expected to have a significant influence on the conditions of competition in the upstream market and, in consequence, potentially on prices and supply conditions in the downstream market.<sup>62</sup> By reducing access to its own upstream products or services, the merged entity would only have the ability to foreclose downstream competitors if it could negatively affect the overall availability of inputs for the downstream market in terms of price or quality. This might happen in case the remaining upstream suppliers are less efficient, or lack the ability to expand output in response to the supply restriction, for example because they face capacity constraints.<sup>63</sup>
- (68) *Customer foreclosure* may occur when a supplier integrates with an important customer in the downstream market. Because of this downstream presence, the integrated company may foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market (the input market) and reduce their ability or incentive to compete. This in turn may raise downstream rivals' costs as obtaining supplies of the input under similar prices and conditions as absent the vertical merger might become more difficult.<sup>64</sup> For customer foreclosure to be a concern, the vertical merger must involve a company which is an important customer with a significant degree of market power in the downstream market. If, on the contrary, there is a sufficiently large customer base, at present or in the future, that is likely to turn to independent suppliers, the Commission is unlikely to raise competition concerns on that ground.<sup>65</sup>
- (69) The Non-Horizontal Merger Guidelines note that Commission is unlikely to find concern in non-horizontal mergers where the market share post-merger of the new entity in each of the markets concerned is below [30-40]% and the post-merger HHI is below 2 000.<sup>66</sup>

## **5.2. The Notifying Parties' view**

- (70) The Notifying Parties submit that no customer foreclosure or input foreclosure concerns arise as a result of the proposed transaction.

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<sup>60</sup> Non-Horizontal Merger Guidelines, paragraph 29.

<sup>61</sup> Non-Horizontal Merger Guidelines, paragraph 31.

<sup>62</sup> Non-Horizontal Merger Guidelines, paragraph 35.

<sup>63</sup> Non-Horizontal Merger Guidelines, paragraph 37.

<sup>64</sup> Non-Horizontal Merger Guidelines, paragraph 58.

<sup>65</sup> Non-Horizontal Merger Guidelines, paragraph 61.

<sup>66</sup> Non-Horizontal Merger Guidelines, paragraph 25.

- (71) First, Aurubis and TSR have insignificant customer and supplier relationships and exchanges are limited to small quantities of mainly non-ferrous metals.<sup>67</sup>
- (72) Second, sufficient competitors who purchase copper cable scrap and recycle copper cable scrap remain active in the market. In Germany, these competitors include Zirec, KMR, Alba, Loacker, Lewandowski, Zimmer, Schrott-Bosch, MVM, Phönix, SK-Metals, MKV-Nordenham and Prossmann. In the EEA, examples include KMT, SMK, GP-Eco, Gruba, Manera Silvio SRL, Nexans, Suez, Salzburger Metallverwertung and Recytel.<sup>68</sup>
- (73) Third, the JV is not an important provider of an essential input product for Aurubis. The JV will supply approximately [...] % of all copper scrap sourced by Aurubis per year.<sup>69</sup> Even under a further segmentation of the market for copper scrap, the JV as a supplier has a marginal position on all plausible segments (below [...] %).<sup>70</sup>
- (74) Fourth, a sufficient number of suppliers remain active on the market from which copper processing companies can purchase copper scrap no. 1, copper scrap no. 2 and CSSR.<sup>71</sup> The Notifying Parties estimate that copper cable recyclers who will compete with the JV generally have spare capacity, on average roughly 10-20%. In addition to long-term contracts and thus have medium-term planning capability, a part of the existing capacities is reserved for spot business, so that copper cable dismantlers can promptly react to changes in the copper price, also by introducing additional night and weekend shifts.<sup>72</sup>
- (75) Fifth, CSSR, copper scrap no. 2 and copper scrap no. 1 are recycled not only from copper cable scrap, but from various sources and types of copper scrap. This means that not only the JV, but all cable dismantlers as suppliers of scrap are easily substitutable from the perspective of the demand side.<sup>73</sup>
- (76) Finally, scrap volumes, which need to be processed in the EEA, continue to rise and will further expand the involved markets in the upcoming years.<sup>74</sup>

### **5.3. The Commission's assessment**

#### *5.3.1. No customer foreclosure in relation to copper scrap no.2 and CSSR*

- (77) The Commission considers that the Parties will not have the ability or incentive to foreclose access to customers of copper scrap no.2 and CSSR for other cable dismantlers, nor would a foreclosure strategy have a significant detrimental effect, for the following reasons:
- (78) First, although Aurubis is the largest buyer of copper scrap no.2 and CSSR in the EEA, its market shares in 2019 were [30-40] % for copper scrap no.2 and [30-40] %

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<sup>67</sup> Form CO, paragraph 199.

<sup>68</sup> Form CO, paragraph 199.

<sup>69</sup> Form CO, paragraph 199.

<sup>70</sup> Form CO, paragraph 246.

<sup>71</sup> Form CO, paragraph 199.

<sup>72</sup> Response to request for information 1 of 29 March 2021.

<sup>73</sup> Form CO, paragraph 246.

<sup>74</sup> Form CO, paragraph 39.



for CSSR. This leaves copper cable dismantlers the possibility to sell to Aurubis' competitors which represent nearly [60-70]% of demand for copper scrap no.2 and nearly [60-70]% of demand for CSSR.

- (79) Second, cable dismantlers would have a number of different alternative customers to which they could switch in case Aurubis stopped buying from them. Although the main competitors in the EEA are relatively small compared to Aurubis, each with market shares below 10% in terms of demand in the last three years, there is nevertheless a number of them with an appreciable size. In addition, a number of these main competitors is active on the market: Brixlegg, Boliden, KGHM and Atlantic Copper are the main buyers for copper scrap no.2 and Brixlegg, Boliden, KGHM are the main buyers for CSSR. A large share of demand for copper scrap no.2 and CSSR is accounted for by exports to non-EU countries.<sup>75</sup> Moreover, the market investigation indicated that there are sufficient buyers of copper cable scrap.<sup>76</sup> Therefore, it is unlikely that the Parties would have the *ability* to foreclose access to customers for copper scrap no.2 and CSSR.
- (80) Third, Aurubis could not exclusively rely on the JV and TSR to source copper scrap, as the JV will only be able to provide [...]% of Aurubis' needs ([...]% of its needs for copper scrap no.2 and [...]% of its needs for CSSR).<sup>77</sup> Although scrap volumes might continue to rise, the Parties have no plans to expand the JV's capacity in the coming years apart from the planned ramp-up of Line 2 in Gelsenkirchen, a new production line which will result in extended capacity, but has already been included in the expected output of the JV. The JV will first aim at fully utilising this new capacity in addition to the already existing capacities.<sup>78</sup> Even once line 2 in Gelsenkirchen is in full operation, Aurubis will have to continue buying the vast majority of its copper scrap needs (ca. [...]%) from other dismantlers, and the very small proportion of copper scrap that it will acquire from the JV will not substantially alter its current market position vis a vis other cable dismantlers. Therefore, it is unlikely that the Parties would have the *incentive* to foreclose access to customers for copper scrap no.2 and CSSR.
- (81) Fourth, also in the future, it is unlikely that the Parties would have the *incentive* to foreclose access to copper scrap no.2 and CSSR for Aurubis' competitors, as it would require a significant investment in the JV's capacity. The market investigation was inconclusive regarding the Notifying Parties' claim that the involved markets are likely to grow in the coming years.<sup>79</sup> Rather, the market investigation suggested that the market dynamics are uncertain. Some participants expect some growth in the short-term because higher availability of end-of-life cables and because of higher demand due to the electrification in several sectors, especially automotive. On the other hand, if China's import restrictions are lifted, European sites will probably have lots of spare capacity. Also, supply will depend on environmental regulations and demand may decrease due to alternative technologies available (e.g. glass fibre cables), and due to tighter requirements for plastic disposal. Some companies also

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<sup>75</sup> Annex 7 to the Form CO.

<sup>76</sup> Replies to question 16 of the eQuestionnaire: [...], etc.

<sup>77</sup> Form CO, Table 21.

<sup>78</sup> Form CO, paragraph 21.

<sup>79</sup> Replies to question 21 of the eQuestionnaire.

pointed out to large fluctuations in the market in the past.<sup>80</sup> Against this background, an investment to significantly increase the JV's capacity beyond the planned ramp-up of Line 2 in Gelsenkirchen would appear to be unlikely.

- (82) Finally, even if the JV further increased its capacity in the future, any foreclosure attempt would incite other cable dismantlers to increase their capacity in order to offer dismantling services to the foreclosed market participants. The results of the market investigation indicate that barriers to entry in the market for the dismantling of copper scrap are relatively high, as cable dismantling requires special equipment, regulatory approvals, industrial know-how, experienced staff, and it takes more than one year to start operating.<sup>81</sup> However, existing suppliers can expand their capacity more easily. In the market investigation, most companies expressed that currently excess capacity for copper cable dismantling in Europe is available. Some respondents noted that capacity was initially insufficient when China stopped sourcing cables in 2018, but that capacity has been adjusted by now.<sup>82</sup> Moreover, in response to the import ban on end-of-life cables by China, new capacity has been built in the EEA as well (e.g. in Poland and the Benelux countries), according to a respondent in the market investigation.<sup>83</sup> This indicates that cable dismantlers are able to adjust capacity to changes in supply and demand. Therefore any customer foreclosure attempt by the JV would incite cable dismantlers to increase capacity in order to dismantle the cables collected by TSR's competitors. Hence, it is unlikely that the Parties will have the *ability or incentive* to foreclose access to the JV as an expansion of capacity would incite competitors to react, leading to overall more available capacity which would be a procompetitive *effect*.

#### 5.3.2. *No input foreclosure in relation to copper scrap no.2 and CSSR*

- (83) The Commission considers that the Parties will not have the ability or incentive to foreclose access to inputs of copper scrap no.2 and CSSR for other smelters and refiners, nor would a foreclosure strategy have a significant detrimental effect, for the following reasons:
- (84) First, as outlined in paragraph (67), for input foreclosure to be a concern, the vertically integrated firm resulting from the merger must have a significant degree of market power in the upstream market, which is not the case here. The JV's market share in copper cable dismantling is expected to be at [0-5]% EEA-level and [10-20]% in Germany. The Notifying Parties estimate the HHI for copper cable dismantling in the EEA to be [100-200] in the EEA and [300-400] in Germany.<sup>84</sup> As the JV has no significant market power in the upstream market, although Aurubis plans to buy [...]% of the JV's output of copper scrap no.2 and CSSR, Aurubis' competitors would still have access to the JV's competitors which represent [80-90]% of the market for copper cable dismantling in Germany and [90-100]% in the EEA.

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<sup>80</sup> Replies to question 21 of the eQuestionnaire.

<sup>81</sup> Replies to question 18 and 18.1 of the eQuestionnaire.

<sup>82</sup> Replies to question 20 of the eQuestionnaire.

<sup>83</sup> Replies to question 18 of the eQuestionnaire.

<sup>84</sup> Response to request for information 2 of 9 April 2021.

- (85) Second, the results of the market investigation indicated that there are numerous companies active in the dismantling of copper cables, even for the narrowest plausible geographic market limited to Germany,<sup>85</sup> from which Aurubis' competitors could source. In fact, only three competitors of Aurubis who replied to the market investigation currently source from the JV's cable dismantling facilities, compared to eight who do not source from the JV.<sup>86</sup> All competitors of Aurubis who replied to the market investigation stated that they would still have sufficient supplies even in case Aurubis bought all output of copper scrap no.2 and CSSR produced by the JV.<sup>87</sup> Therefore, although Aurubis plans to buy [...] % of the JV's output of copper scrap no.2 and CSSR produced by the JV, it is unlikely that the Parties would have the *ability* to foreclose the access to copper scrap no.2 and CSSR for its competitors, as the JV has no significant degree of market power in the upstream market.
- (86) Third, it is not planned and unlikely that the JV further expands its capacity in the future, see paragraph (81).
- (87) Fourth, even in this unlikely case, such an expansion of capacity of the overall market would have a procompetitive *effect*, as explained in paragraph (82).
- (88) Finally, the market investigation moreover indicated that end-of-life cables only account for 30-40% of all copper scrap, so that the majority of copper scrap supply would not be significantly affected by changes in the market for copper cables dismantling.<sup>88</sup> Therefore, a foreclosure strategy by the JV would not be successful, as Aurubis' competitors would be able to buy copper scrap no.2 and CSSR from other cable dismantlers as well as copper scrap suppliers other than cable dismantlers.

#### 5.3.3. *Conclusion on input and customer foreclosure in relation to copper scrap no.2 and CSSR*

- (89) In view of the above, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement in relation to the vertical link between the national or EEA-wide market for copper cable dismantling upstream and the EEA-wide markets for copper scrap no.2 and CSSR downstream.

#### 5.3.4. *No customer foreclosure in relation to copper cables dismantling*

- (90) The Commission considers that the Parties will not have the ability or incentive to foreclose access to customers of copper cables for dismantling, i.e. cable dismantlers, for TSR's competitors active in the collection and processing of copper scrap, nor would a foreclosure strategy have a significant detrimental effect, for the following reasons:
- (91) First, for customer foreclosure to be a concern, the company in the downstream market must have a significant degree of market power, as outlined in paragraph (68). This is not the case here, as the JV only has an [10-20] % market share at

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<sup>85</sup> Replies to question 15 of the eQuestionnaire: [...], etc.

<sup>86</sup> Replies to question 22 of the eQuestionnaire.

<sup>87</sup> Replies to question 22 of the eQuestionnaire.

<sup>88</sup> Replies to question 17 of the eQuestionnaire.

national level and [0-5]% at EEA level. The Notifying Parties estimate the HHI for copper cable dismantling in the EEA to be [100-200] in the EEA and [300-400] in Germany.<sup>89</sup> As the JV has no significant market power in the downstream market, although TSR plans to increase its supplies of copper scrap to the JV, the JV's competitors would still have access to the JV's competitors which represent [80-90]% of the German market for copper cables dismantling and [90-100]% at EEA level.

- (92) Second, collectors of copper scrap would still have access to numerous other cable dismantlers (see paragraph (78)). Also, according to a majority of respondents in the market investigation, in case TSR became the exclusive supplier of copper cables of the JV, competitors of TSR would still have sufficient customers to which they could sell copper cables for dismantling.<sup>90</sup>
- (93) Third, TSR currently already supplies its cable dismantling facilities in Gelsenkirchen and will continue to do so post-transaction, so the proposed transaction does not have an impact on supply structures there. The Notifying Parties expect that the Fehrbellin dismantling facility will continue to retain its existing suppliers in the future, assuming that the commercial conditions remain unchanged. TSR's share in supply of copper cables dismantling will be [40-50].<sup>91</sup> Therefore, it is unlikely that the Parties would have the *ability* to foreclose access to customers for copper cable dismantling.
- (94) Fourth, it is not planned and unlikely that the JV further expands its capacity in the future, see paragraph (81).
- (95) Finally, even in this unlikely case, such expansion of capacity of the overall market would have a procompetitive *effect*, as explained in paragraph (82).

### 5.3.5. *No input foreclosure in relation to copper cables dismantling*

- (96) The Commission considers that the Parties will not have the ability or incentive to foreclose access to inputs of copper cables for dismantling for other cable dismantlers which compete with the JV, nor would a foreclosure strategy have a significant detrimental effect, for the following reasons:
- (97) First, as outlined in paragraph (67), for input foreclosure to be a concern, the vertically integrated firm resulting from the merger must have a significant degree of market power in the upstream market, which is not the case here. TSR's market share in the upstream market for collecting and processing copper scrap, TSR's market share was [0-5]% EEA-wide, [5-10]% in Germany, [10-20]% in a 200 km radius around Fehrbellin and [5-10]% in a 200 km radius around Gelsenkirchen.<sup>92</sup> This leaves cable dismantlers the possibility to buy from TSR's competitors, which represent nearly [90-100]% of the market even at the narrowest plausible geographic market definition.

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<sup>89</sup> Response to request for information 2 of 9 April 2021.

<sup>90</sup> Replies to question 24 of the eQuestionnaire.

<sup>91</sup> Form CO, paragraph 82 and 83.

<sup>92</sup> Response to RFI 2 of 9 April 2021.

- (98) Second, the market investigation showed that there are numerous companies offering the collection and processing of copper cables even in Germany,<sup>93</sup> as well as at local level.<sup>94</sup> In the EEA and Germany, TSR's main competitors in the area of collecting copper scrap are Scholz Recycling (with approx. [0-5]% market share at EEA level and approx. [0-5]% in Germany), DEUMU (with approx. [0-5]% at EEA-level and approx. [0-5]% in Germany) and European Metals Recycling (approx. [5-10]% at EEA-level and approx. [0-5]% in Germany). Other competitors are Derichebourg (at EEA-level, with approx. [0-5]%) and Alba (in Germany, with approx. [0-5]%).<sup>95</sup> Considering a 200 km radius around Fehrbellin, the main competitors of TSR with regard to collecting and processing copper scrap are Alba (approx. market share of [5-10]%), Theo Steil (approx. market share of [5-10]%) and KMR Kabelmetall-Recycling (approx. market share of [0-5]%). Considering a 200 km radius around Gelsenkirchen, main competitors of TSR and Remondis with regard to collecting and processing copper scrap are Siegfried Jacob Metallwerke (approx. market share of [0-5]%), Müller & Sohn (approx. market share of [0-5]%) and Grafenberg-Metall (approx. market share of [0-5]%). Furthermore, a large number of smaller competitors is active both at national and regional level. TSR's competitors do not appear to be less efficient (see paragraph (67)), or to lack the ability to expand output in response to the supply restriction. The Notifying Parties confirmed that the storage capacities for copper scrap of TSR do not differ significantly from other competitors.<sup>96</sup> Therefore, it is unlikely that the Parties would have the *ability* to foreclose access to inputs for copper cable dismantling.
- (99) Third, it is unlikely that TSR would have an *incentive* to stop supplying competitors of the JV, given that the JV's capacity only allows it to offtake a small fraction of the cables TSR collects. Therefore, other buyers of copper cables scrap for dismantling will continue to have sufficient suppliers, including TSR and various other competitors.
- (100) Fourth, it is not planned and unlikely that the JV further expands its capacity in the future, see paragraph (81). The Commission also investigated whether TSR is likely to increase its capacity and upstream market share. The results of the market investigation show that entry barriers in the market for collection and processing of cables are low. A majority of respondents considered entry "*relatively easy*", explaining that requirements for entry are limited to a licence, basic infrastructure and some knowledge of the market.<sup>97</sup> Therefore, the Commission considers that a significant increase in TSR's market share is unlikely in the short term.
- (101) Finally, even in the unlikely case that the JV further expands its capacity, such expansion of capacity of the overall market would have a procompetitive *effect*, as explained in paragraph (82). Therefore, a future foreclosure strategy would not have a significant detrimental *effect* on competition in the market.

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<sup>93</sup> Replies to question 14 of the eQuestionnaire: [...], etc.

<sup>94</sup> Replies to question 14 of the eQuestionnaire, for the Fehrbellin area: [...]; for the Gelsenkirchen area: [...].

<sup>95</sup> Response to request for information 2 of 9 April 2021.

<sup>96</sup> Form CO, paragraph 14. Form CO, paragraph 258.

<sup>97</sup> Replies to question 18 and 18.1 of the eQuestionnaire. "*For the collection of cables you need a licence, a yard, a financial background and knowledge about product and market.*" (Reply to question 18.1)

5.3.6. *Conclusion on input and customer foreclosure in relation to copper cables dismantling*

(102) In view of the above, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement in relation to the vertical link between the regional, national or EEA-wide market for collection and processing of copper scrap upstream and the national or EEA-wide market for copper cable dismantling downstream.

5.3.7. *No conglomerate non-coordinated effects*

(103) Pursuant to the Non-Horizontal Merger Guidelines, conglomerate mergers may lead to competition problem in the form of foreclosure effects. This may be the case when the combination of products in related markets may confer on the integrated company the ability and incentive to leverage a strong market position from one market to another closely related market by means of tying or bundling or other exclusionary practices.<sup>98</sup> In the context of the proposed transaction, the Parties might offer both cable collection and processing and dismantling as a bundle. However, the Commission considers that the proposed transaction is unlikely to lead to conglomerate effects. For the reasons outlined in Section 5.3.1 to 5.3.5, foreclosure effects do not arise. The Notifying Parties also confirmed that there are no other markets in which the proposed transaction may have a significant impact according to the definition in Section 6.4 of the Form CO.<sup>99</sup>

**6. CONCLUSION**

(104) For the above reasons, the European Commission decides not to oppose the proposed transaction and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

*For the Commission*

*(Signed)*  
*Margrethe VESTAGER*  
*Executive Vice-President*

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<sup>98</sup> Non-horizontal Merger Guidelines, paragraph 93.

<sup>99</sup> Form CO, paragraph 249. Markets under Section 6.4 of the Form CO are markets where (i) any of the Parties has a market share larger than 30% and any other party to the concentration is a potential competitor into that market, (ii) any of the Parties has a market share larger than 30% and any other party to the concentration holds important intellectual property rights for that market, (iii) any of the Parties has a market share larger than 30% in neighbouring markets, i.e. markets for products which are complementary to each other/belong to a range of products generally purchased by the same set of customers for the same end use.