



EUROPEAN COMMISSION
DG Competition

Case M.10320 - APERAM / ELG HANIEL

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

Article 6(1)(b) NON-OPPOSITION
Date: 25/11/2021

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EUROPEAN COMMISSION

Brussels, 25.11.2021
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Aperam S.A.
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**Subject: Case M.10320 – APERAM / ELG HANIEL
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹ and Article 57 of the Agreement on the European
Economic Area²**

Dear Sir or Madam,

- (1) On 19 October 2021, the European Commission (“Commission”) received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Aperam S.A. (“Aperam”, Luxembourg) intends to acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of ELG Haniel GmbH (“ELG”, Germany), by way of purchase of shares (the “Transaction”). Aperam is designated as the “Notifying Party” and together with ELG as the “Parties.”

¹ OJ L 24, 29.1.2004, p. 1 (the ‘Merger Regulation’). With effect from 1 December 2009, the Treaty on the Functioning of the European Union (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.

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

1. THE PARTIES

- (2) Aperam is a global player active in the production of stainless steel flat products, electrical and specialty alloys steel, including nickel alloys. Aperam [...] the HSBC Trust (C.I.) Limited³, whose beneficiaries are members of the Mittal family (“Mittal Family Trust”). [...].⁴ The ArcelorMittal group has a wholly-owned subsidiary, Industeel, which is also active in stainless steel flat products and nickel alloys. Aperam’s stainless steel plants are located in Genk and Châtelet⁵ and Industeel’s in Charleroi (all in Belgium) and Le Creusot (France).
- (3) ELG is a global player active in trading, processing and recycling raw materials for the stainless steel industry, as well as high performance materials such as superalloys and titanium. ELG’s main yards in Europe are located in Rotterdam (Netherlands), Duisburg and Karlsruhe (Germany), Limay (France) and San Roque (Spain).

2. THE CONCENTRATION

- (4) The concentration consists of the acquisition of sole control by Aperam over ELG through the acquisition of shares. The Transaction will be implemented according to the terms of the Share Purchase Agreement signed on 6 May 2021. In light of the above, the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

- (5) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Aperam: EUR [...], ELG: EUR [...])⁶. Each of them has a Union-wide turnover in excess of EUR 250 million (Aperam: EUR [...], ELG: EUR [...]), but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified concentration therefore has a Union dimension.

4. MARKET DEFINITION

4.1. Introduction – metal scrap recycling

- (6) Metal scrap is generated as a waste product, but has become an important raw material. Together with primary raw materials, it is used as an input in the production of new metal products. It is available at lower prices and carbon footprint than primary raw material, while its quality is generally comparable.
- (7) Several steps are necessary between the collection of metal scrap and its use in new metal products, as the example of ELG demonstrates.

³ Form CO, paragraph 23.

⁴ Form CO, paragraph 26.

⁵ Genk is also a cold rolling mill. Châtelet is a hot rolling mill. Aperam also produces [...] stainless steel products in its plant Aperam Alloys Imphy in France, which is [...] active in the production of nickel alloy products. (Form CO, paragraphs 118 and 119).

⁶ Turnover calculated in accordance with Article 5 of the Merger Regulation.

- (8) In a first step, ELG purchases and receives scrap from numerous local and global collectors. In a second step, ELG processes the collected scrap and materials. This includes, in particular, the examination of the scrap for radiation, any other hazardous or harmful elements or hollow bodies, chemical analysis of the scrap, changing the size of the scrap, sorting / diluting impurities and finally blending the processed scrap (mix of materials) to meet the customer's specifications. In a third step, ELG sells the processed scrap as secondary raw material to customers: in the case of stainless steel scrap, to the stainless steel industry, among others to Aperam.⁷
- (9) Aperam and its competitors in the stainless steel industry buy the blended stainless steel scrap and use it in the production of stainless steel products.⁸ Nickel alloy scrap is used by Aperam and its competitors in the production of nickel alloys. Titanium scrap can be used as an input in nickel alloy and stainless steel products, used in small quantities to increase resistance to so-called intergranular corrosion or increase the strength of the final product.⁹
- (10) ELG also collects other types of metal scrap, [...]. Given that ELG's focus is on stainless steel scrap, nickel alloy scrap and titanium scrap, and Aperam [...] buys stainless steel scrap and nickel alloy scrap, this Decision will focus on these three types of scrap.

4.2. Market for the processing and blending of metal scrap

4.2.1. Product market

4.2.1.1. The Commission's previous practice

- (11) 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 collection, processing and trade of processed metal scrap belong to one single market, but ultimately left the question open.¹⁰ The Commission has identified a market for trade in metal scrap, which it has divided into separate markets for trade in: (i) ferrous scrap and in (ii) non-ferrous scrap.¹¹ The Commission also considered, but left open, potential sub-segments of

⁷ Form CO, paragraph 72.

⁸ In the EEA, stainless steel is produced via the electric arc furnace route ("EAF"). The EAF route relies on stainless steel scrap as the main input for the production of stainless steel. Stainless steel can also be made through primary materials (iron ore, coke and limestone) through the blast furnace/basic oxygen furnace ("BOF") route. However, this method is not used in the EEA, nor in countries such as the United States, Korea, Japan etc., due to the very negative environmental impact. See Form CO, paragraphs 539 – 541 and non-confidential minutes of a call with a customer, 26 July 2021. Carbon steel has a different production method. It is most commonly produced via the BOF route and is produced primarily through primary materials.

⁹ Form CO, paragraph 261.

¹⁰ COMP/M.5714 – Scholz/Scholz Austria/Kovosrot, paragraph 9, COMP/M.4495 – Alfa ACCIAI/Cronimet/Remondis/ TSR Group, paragraphs 16 et seq.

¹¹ See e.g. COMP/M.5714 – Scholz/Scholz Austria/Kovosrot, paragraph 8, COMP/M.4469 – Scholz/Voestalpine/Scholz Austria, paragraph 10, COMP/ECSC.1358 – Scholz/Alba/Elsa.

non-ferrous scrap for trade in: (a) aluminium scrap, (b) copper scrap and (c) zinc scrap.¹²

4.2.1.2. The Notifying Party's view

- (12) The Notifying Party agrees with the Commission's practice to distinguish between different types of metal scrap. As for the different activities, they consider that collection, processing and trading all form part of the same product market, arguing that all major players collect and process scrap metal in order to trade scrap metal.¹³ The Notifying Party also submits that no further sub-segmentation by end-use of grade of scrap is warranted, even though [...] make a distinction between the stainless steel scrap grades 304 and 316.¹⁴ The Notifying Party argues that most relevant suppliers offer and most relevant consumers source stainless steel grades 304 (used for more "standard" applications e.g. household appliances), and 316 (used for more industrial applications such as pipes in factories due to its higher resistance against corrosion).¹⁵

4.2.1.3. The Commission's assessment

- (13) In line with the Commission's previous practice, the results of the market investigation indicate that different types of scrap constitute different markets. The majority of respondents replied in the market investigation that stainless steel scrap and other types of metal scrap are not interchangeable in stainless steel production.¹⁶ As several respondents explained, primary raw materials and stainless steel scrap can be exchanged to some extent from a technical perspective, but prices and environmental impact are not remotely comparable for stainless steel production in the EEA.¹⁷ One customer explained that in the EEA and other countries: "*Stainless steel scrap is the main raw material in Europe and the US and other developed economies.*" However, in other countries, "*such as China, Indonesia, they use other raw materials (nickel pig iron etc.) and they use nickel ore and other alloys (which are in principle more expensive) and they also have mining capacities. The reason for this may be that stainless steel scrap is circular (it is recycled and reused); you only have large enough supplies of this in more developed countries.....*" The same customer explained the importance of stainless steel scrap for the stainless steel industry: "*In Europe and the US, with the importance of recycling and the need for*

¹² See e.g. COMP/M.5714 –Scholz/Scholz Austria/Kovosrot, paragraph 8; COMP/M.4469 – Scholz/Voestalpine/Scholz Austria, paragraph 13.

¹³ Form CO, paragraph 126.

¹⁴ The basic difference between these stainless steel scrap grades is their composition. The stainless steel scrap grade 304 contains typically approx. 7.5% of nickel, 15-17% of chrome and approx. 74% of iron. The stainless steel scrap grade 316 contains typically approx. 10% of nickel, 15-17% of chrome, approx. 70% of iron and – this is the additional ingredient – approx. 2% of molybdenum. Given the content of approx. 2% of molybdenum and increased content of nickel, the stainless steel scrap grade 316 is typically more expensive than the stainless steel grade 304. The stainless steel scrap grade 316 is typically used to produce stainless steel products of the same grade, i.e. 316 or similar grades. The molybdenum content results in increased corrosion resistance. Common applications of 316 stainless steel products include chemical processing and storage equipment, refinery equipment, medical devices and marine environments.

¹⁵ Form CO, paragraph 132.

¹⁶ Replies to question 4 and 7 of Questionnaire 2 to stainless steel scrap customers. Replies to question 5 of Questionnaire 1 to stainless steel scrap suppliers.

¹⁷ Reply to question 4 of Questionnaire 2 to stainless steel scrap customers.

*sustainability, everyone needs to buy as much stainless scrap as possible. Without scrap there would not be enough capacity to manufacture stainless steel.*¹⁸

- (14) As for the supply side, scrap is generated as a waste product, not “produced” according to demand in the market. Therefore, the quantities of different types of scrap cannot change as a result of increase in demand. Suppliers of stainless and nickel alloy scrap are also different, which indicates that it is common in the industry to specialise on certain types of scrap. Given the lack of both demand- and supply-side substitutability, stainless steel scrap constitutes a separate market.
- (15) The same reasoning applies for nickel alloy scrap. A majority of respondents replied that nickel alloy scrap is not substitutable with any other types of metal scrap.¹⁹ As a customer explained: *“Substitution with primary raw materials is technically possible, but would incur a non sustainable cost disadvantage. Substitution with other types of metal scrap is technically impossible, since the chemical contents would not be appropriate for the intended production”*.²⁰ This indicates that nickel alloy scrap also constitutes a separate market.
- (16) Internal documents, pre-notification calls as well as the description of the scrap industry in the Form CO however also point to a further segmentation by activity, notably collection, processing (which includes sorting and crushing of scrap) and blending.²¹ In this blending process different scrap types of different materials and alloys are mixed in a controlled process according to the customer’s specifications regarding chemical composition and physical shape.²² However, a majority of respondents in the market investigation suggest that the same companies are active in all mentioned stages.²³ In the words of a stainless steel scrap supplier, *“a real difference only exist in regards to smaller competitors, which focus on the trading of scrap because they are too small to process the scrap.”*²⁴ In addition, the market investigation also found that a further sub-segmentation of the product market, such as by grades, e.g. 304 and 316 (as well as other relevant grades) for stainless steel scrap, is not warranted.²⁵
- (17) As regards sales to customers of stainless steel scrap, the market investigation showed that only suppliers able to supply a certain quantity sell directly to customers i.e. the stainless steel producers²⁶, whereas smaller companies are active in collection

¹⁸ Non-confidential minutes of a call with a customer, 26 July 2021.

¹⁹ Replies to question 5 of Questionnaire 3 to nickel alloy scrap suppliers. Replies to question 4 of Questionnaire 4 to nickel alloy scrap customers.

²⁰ Reply to question 4 of Questionnaire 4 to nickel alloy scrap customers.

²¹ see e.g. Form CO, Annex 06.04, page 4; Annex 07.10, page 6 [...]; Form CO, paragraph 75; non-confidential minutes of a call with a competitor, 9 July 2021, paragraph 10.

²² (Form CO, paragraph 74.) Blending is the last step before which the required mix of scrap is sold to stainless steel or nickel alloy producers.

²³ Replies to question 7 of Questionnaire 2 to stainless steel scrap customers. Replies to question 6, 7 and 8 of Questionnaire 1 to stainless steel scrap suppliers.

²⁴ Non-confidential minutes of call with a competitor, 23 July 2021, paragraph 4.

²⁵ Replies to question 4 of Questionnaire 2 to stainless steel scrap customers. Replies to question 9 of Questionnaire 1 to stainless steel scrap suppliers. Replies to question 9 of Questionnaire 3 to nickel alloy scrap suppliers. Replies to question 8 of Questionnaire 4 to nickel alloy scrap customers.

²⁶ Replies to question 6 of Questionnaire 2 to stainless steel scrap customers.

and sell the scrap to larger suppliers.²⁷ Almost all of the purchases of stainless steel scrap made by stainless steel producers concerns blended stainless steel scrap.²⁸

- (18) The evidence in the Commission's file has not provided any indication that would suggest that applying by analogy the Commission's decisional practice on titanium scrap would not be appropriate in the present case. For the purposes of this Decision, the Commission will therefore analyse the market for the collection, processing and blending of titanium scrap.
- (19) With a view to the above, the Commission will analyse the effects of the Transaction on the basis of markets for the collection, processing and blending of stainless steel scrap, the collection, processing and blending of nickel alloy scrap and the collection, processing and blending of titanium scrap.

4.2.2. *Geographic market*

4.2.2.1. The Commission's previous practice

- (20) In its previous decisions, the Commission found the market for trade in metal scrap to be at least EEA-wide.²⁹ 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 trade market. It left open whether the markets are national or regional with respect to collection activities where markets might be determined according to the catchment radius of each facility (possible radius of approx. 200 km).³⁰

4.2.2.2. The Notifying Party's view

- (21) The Notifying Party submits that the geographic market for collection, processing and trading is at least EEA-wide: especially stainless steel and nickel alloy scrap is sold and sourced at least on an EEA-wide basis while properties, market conditions and prices are similar across the EEA. This kind of scrap is, in general, a more expensive scrap product compared to other metal scrap types. Thus, transport costs play a smaller role compared to other scrap material. Moreover, large exports to India and Taiwan show in the Notifying Party's opinion that distances are not an obstacle for the collection, processing and trade of metal scrap.³¹

²⁷ By way of example, ELG, as a larger supplier, not only collects scrap but also purchases from numerous companies active in collection, before then processing and blending scrap for sale to its customers. See paragraph (8).

²⁸ Replies to question 7 of Questionnaire 2 to stainless steel scrap customers. Replies to question 8 of Questionnaire 1 to stainless steel scrap suppliers.

²⁹ See e.g. COMP/M.4495 -Alfa Acciai/Cronimet/Remondis/TSR Group, paragraph 27 et seq. 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.

³⁰ COMP/M.5714 -Scholz/Scholz Austria/Kovosrot, paragraph 11, COMP/M.4469 -Scholz/Voestalpine/Scholz Austria, paragraph 15; COMP/ECSC.1358 -Scholz/Alba/Elsa.

³¹ Form CO, paragraphs 148 and 151.

4.2.2.3. The Commission's assessment

- (22) In line with its previous practice, the Commission considers that *collection* of different metal scraps takes place on a narrower scale than the supply of this scrap to customers. A slight majority of stainless steel scrap suppliers active in the collection of stainless steel scrap replied that they usually travel between 100 and 500km from their facilities to collect this scrap.³²
- (23) Processing and sale of blended stainless steel scrap can take place over longer distances, with the significant majority of suppliers processing and selling blended stainless steel scrap at distances greater than 300km, with some supplying stainless steel scrap at distances greater than 1200km.³³ [...], the Parties' data also shows that [...] % of sales from ELG's yard occur within a catchment area of approximately [...] km.³⁴ A minority of suppliers are active in smaller catchment areas, ranging from only 50 km to 50-300 km.³⁵
- (24) Market participants stressed that the mode of transport (i.e. by truck, trail, barge, or ship) plays a key role for costs³⁶ and hence the radius in which stainless steel scrap is sourced. A majority of customers indicated that prices of stainless steel scrap differ according to the location.³⁷ In the words of a supplier, "*prices are reliant upon freight costs, no matter if [stainless steel scrap] is being purchased or sold.*"³⁸ Both suppliers and customers of stainless steel scrap pointed to location as a key factor determining prices.³⁹ The market investigation indicates that the main driver for the geographic area over which stainless steel scrap suppliers are active is the location of the customers. As noted by one supplier, "*we do have all kind of distances depending on where our suppliers and customers are located.*"⁴⁰ These distances can be short, depending on the proximity of the scrap yard to the steel mill, or very much further. As noted by one stainless steel scrap supplier, "*the routes to Outokumpu (Tornio) and Acerinox (Algeciras) are really long!*"⁴¹ For this reason, and due to the important role played by transport costs in the delivery of stainless steel scrap, one suppliers notes: "*the main rationale behind opening a new yard always is: 'go where the scrap or the customer is'.*"⁴² As noted above at paragraph (23), some smaller stainless steel scrap suppliers are only active at distances of less than 50km or 300km. One such supplier explained that, "*our customers are situated very close to our facilities, less than 50km in the most of cases.*"⁴³

³² Replies to question 11 of Questionnaire 1 to stainless steel scrap suppliers.

³³ Replies to questions 12 and 13 of Questionnaire 1 to stainless steel scrap suppliers.

³⁴ Annex 17, Annex 18. Form CO and Annex 1, Annex 2, reply to RFI 9.

³⁵ Replies to question 13 of Questionnaire 1 to stainless steel scrap competitors.

³⁶ Replies to question 12 of Questionnaire 2 to stainless steel scrap customers. Replies to question 14 of Questionnaire 1 to stainless steel scrap suppliers.

³⁷ Replies to question 14 of Questionnaire 2 to stainless steel scrap customers.

³⁸ Replies to question 16 of Questionnaire 1 to stainless steel scrap suppliers.

³⁹ Replies to question 15 of Questionnaire 2 to stainless steel scrap customers. Replies to question 11 of Questionnaire 1 to stainless steel scrap suppliers.

⁴⁰ Reply to question 13 of Questionnaire 1 to stainless steel scrap suppliers.

⁴¹ Reply to question 13 of Questionnaire 1 to stainless steel scrap suppliers.

⁴² Non-confidential minutes of a call with a stainless steel scrap supplier, 23 July 2021.

⁴³ Reply to question 13 of Questionnaire 1 to stainless steel scrap suppliers.

- (25) In summary, the results of the market investigation suggest that smaller suppliers generally supply at shorter distances⁴⁴ whereas the larger suppliers are able to supply blended stainless steel scrap over much longer distances of more than 2000km respectively.⁴⁵ The Commission therefore notes that the catchment areas at which some scrap suppliers operate is rather high, while noting also that many of the smaller stainless steel scrap suppliers are only active in certain regions.
- (26) For the purposes of the assessment of the vertical link between stainless steel scrap and the production of stainless steel products, the Commission considers that the relevant level of the supply chain at which to conduct the assessment is the processing and supply of the blended stainless steel scrap to the customer. Therefore, the geographic market for the processing and blending of stainless steel scrap is at most EEA-wide. The fact that smaller stainless steel scrap suppliers are not active throughout the EEA will be taken into account in the competitive assessment.
- (27) As regards the supply of nickel alloy scrap to customers, the results of the market investigation point to an EEA-wide market. Transportation costs also play a role, although they are less relevant than for stainless steel scrap, as nickel alloy scrap has a higher value.⁴⁶
- (28) The evidence in the Commission's file has not provided any indication that would suggest that applying by analogy the Commission's decisional practice on titanium scrap would not be appropriate in the present case. In comparison to stainless steel scrap, transport costs play less of a role due to the high value of titanium scrap.⁴⁷
- (29) The Commission will therefore analyse the effects of the Transaction on the basis of an EEA-wide market for the markets for the processing and blending of stainless steel scrap, nickel alloy scrap and titanium scrap, while taking into account in the competitive assessment that as far as stainless steel scrap is concerned, not all market participants are active on an EEA-wide level.

4.3. Markets for stainless steel products and nickel alloy products

4.3.1. Product market

4.3.1.1. The Commission's previous practice

- (30) The Commission has considered in previous cases that the distribution of steel products forms a separate market from the production and wholesale – thus, direct (ex-mills) sales – of steel products.⁴⁸ Based on chemical composition, the Commission has distinguished between: (i) carbon steel, (ii) stainless steel, and (iii)

⁴⁴ Replies to questions 13 and 14 of Questionnaire 1 to stainless steel scrap suppliers.

⁴⁵ Replies to questions 13 and 14 of Questionnaire 1 to stainless steel scrap suppliers.

⁴⁶ Replies to question 14.2 and 15 of Questionnaire 4 to nickel alloy scrap customers. See e.g. reply to question 15 of Questionnaire 4 to nickel alloy scrap customers: “*Higher transport costs due to longer transport routes increase our purchase prices if our competition is closer to the supplier. Proximity to the supplier therefore has a competitive advantage. But transport costs are not the decisive element.*”

⁴⁷ Non-confidential minutes of a call with a competitor, 2 September 2021.

⁴⁸ See Case M.7839 - Outokumpu / Hernandez Edelstahl, paragraph 25; M.7138 – ThyssenKrupp / Acciai Speciali Terni/ Outokumpu VDM, paragraph 10 et seq.

speciality steels and (iv) electrical steel.⁴⁹ As to the physical shape, the Commission has defined separate product markets for long steel products and flat products.⁵⁰ Within flat stainless steel products, the Commission has further distinguished between: (i) hot rolled and (ii) cold rolled steels.⁵¹ As regards hot-rolled products, a potential segmentation between hot black band and hot white band steels was left open.⁵² Within long steel products, the Commission has left open whether to further distinguish between: (i) ingots and billets, (ii) wire rod, (iii) hot rolled and forged bars, (iv) bright bars and (v) drawn wire.⁵³ Moreover, the Commission has defined a separate market for stainless steel quarto plates⁵⁴ and has defined a separate market for stainless steel precision strip⁵⁵.

- (31) The Commission has considered a separate product market for production and sale of nickel alloys. Based on the shape, the Commission considered a further segmentation in relation to product categories such as strips, plates, wires and bars.⁵⁶

4.3.1.2. The Notifying Party's view

- (32) The Notifying Party submits that there is no need to draw conclusions on the exact scope of the relevant product markets, as no competition concerns arise irrespective the market definition.⁵⁷

4.3.1.3. The Commission's assessment

- (33) The evidence in the Commission's file has not provided any indication that would suggest that applying the Commission's decisional practice on stainless steel products and nickel alloy products would not be appropriate in the present case. For the purposes of this Decision, the Commission will analyse the markets for: (i) production and wholesale of stainless steel flat products as well as for (ii) nickel alloy products.
- (34) The stainless steel markets where Aperam is active are (i) production and wholesale of stainless steel flat hot rolled black band products, (ii) production and wholesale of stainless steel flat hot rolled white band products, (iii) production and wholesale of stainless steel flat cold rolled products and (iv) production and wholesale of stainless steel welded tubes.
- (35) The nickel alloy markets where Aperam is active are (i) production and sale of nickel alloy semis, (ii) production and sale of nickel alloy bars, (iii) production and

⁴⁹ See Case M.8159 - ArcelorMittal / Cellino / JV, paragraph 13; Case M.7155 – SSAB / RAUTARUUKKI, paragraph 22; Case ECSC 1351 Usinor /Arbed/Aceralia, paragraph 13.

⁵⁰ See Case M.7155 – SSAB / RAUTARUUKKI, paragraph 23; COMP/M.7138 – Thyssenkrupp / Acciai Speciali Terni / Outokumpu VDM, paragraph 7.

⁵¹ See COMP/M.7138 – Thyssenkrupp / Acciai Speciali Terni / Outokumpu VDM, paragraph 7; Case M.8159 - ArcelorMittal / Cellino / JV, paragraph 15.

⁵² COMP/M.7138 – Thyssenkrupp / Acciai Speciali Terni / Outokumpu VDM, paragraph 8; Case COMP/M.6471 – Outokumpu/Inoxum, paragraph 136.

⁵³ See Case M.7273 - GERDAU EUROPE / ASCOMETAL, paragraph 24; Case M.6962 - RENOVA INDUSTRIES / SCHMOLZ+BICKENBACH, paragraph 16.

⁵⁴ Case M.5211 - Outokumpu / Sogepar, paragraph 11; Case M.4137 - Mittal /Arcelor, paragraph 21 et seq.

⁵⁵ Case M.6471 – Outokumpu/ INOXUM, paragraph 201 et seq.

⁵⁶ See Case M.1080 - Thyssen / Krupp, paragraph 17.

⁵⁷ Form CO, paragraph 147.

sale of nickel alloy wire, (iv) production and sale of nickel alloy wire rod, (v) production and sale of nickel alloy strip and (vi) production and sale of nickel alloy “plates and sheets”.

- (36) The Commission considers that for the purposes of the analysis of vertical links between Aperam and ELG, these are the relevant downstream markets.

4.3.2. *Geographic market*

4.3.2.1. The Commission’s previous practice

- (37) In previous decisions, the Commission has considered that the relevant geographic markets for production and wholesale of stainless steel and nickel alloys is at least EEA-wide in scope.⁵⁸

4.3.2.2. The Notifying Party’s view

- (38) The Parties submit that the market for all types of stainless steel products is at least EEA-wide.⁵⁹ For nickel alloys, they argue that no need arises to draw conclusions on the exact scope of the relevant product markets, as no competition concerns arise irrespective the market definition.⁶⁰

4.3.2.3. The Commission’s assessment

- (39) The evidence in the Commission’s file has not provided any indication that would suggest that applying the Commission’s decisional practice on stainless steel products and nickel alloy products would not be appropriate in the present case. For the purposes of this Decision, the Commission will analyse the markets for production and wholesale of stainless steel flat products and for nickel alloy products at EEA-wide level.⁶¹

5. **COMPETITIVE ASSESSMENT OF VERTICAL NON-COORDINATED EFFECTS**

- (40) The Transaction gives rise to vertical links between the upstream supply of stainless steel scrap and the downstream production of stainless steel and in the upstream supply of nickel alloy scrap and the downstream production of nickel alloys and these links are assessed in Sections 5.2 and 5.3 below. Although these links do not give rise to affected markets based on the market shares provided by the Notifying Party, as further outlined in the competitive assessment below, the Commission also considers that the market shares do not fully represent the respective importance of the Parties in the respective upstream and downstream markets.

⁵⁸ See Case M.7839 - Outokumpu / Hernandez Edelstahl, paragraphs 30 et seq.; Case M.1080 - Thyssen / Krupp, paragraph 18.

⁵⁹ Form CO, paragraph 201.

⁶⁰ Form CO, paragraph 206.

⁶¹ The Transaction also gives rise to a negligible horizontal overlap between the Parties’ activities in relation to the distribution of stainless steelsheets and plates in Germany. However, as the Parties’ combined share remains below 20% (Form CO, footnote 5), this market will not be further discussed in this Decision.

- (41) The Transaction also gives rise to a vertically affected market in collection and processing of titanium scrap (an input for nickel alloy products) in the EEA, assessed in Section 5.4 below.⁶²

5.1. Legal framework

- (42) According to the Commission's Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Non-horizontal Merger Guidelines"), foreclosure effects may occur where actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing these companies' ability and/or incentive to compete.⁶³
- (43) In assessing the likelihood of an anticompetitive input foreclosure scenario, the Commission examines, first, whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs, second, whether it would have the incentive to do so, and third, whether a foreclosure strategy would have a significant detrimental effect on competition downstream.⁶⁴
- (44) In assessing the likelihood of an anticompetitive customer foreclosure scenario, the Commission examines, first, whether the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals, second, whether it would have the incentive to reduce its purchases upstream, and third, whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.⁶⁵
- (45) Finally, vertical mergers may also give rise to the disclosure of commercially sensitive information regarding the upstream or downstream activities of rivals, where the merged entity may gain access to this information. For example, by becoming a supplier of a downstream competitor, a company may obtain critical information allowing it to price less aggressively in the downstream market. It may also put competitors at a competitive disadvantage, thereby dissuading them from entering or expanding in the market.⁶⁶

5.2. Stainless steel scrap

5.2.1. Market shares

5.2.1.1. Upstream market – supply of stainless steel scrap

- (46) The market for the supply of stainless steel scrap in the EEA is mostly served by three major players who are active across the EEA: Cronimet ([20-30]%), ELG ([10-20]%) and Oryx ([10-20]%). The remainder of the market is fragmented among a

⁶² The Parties' activities marginally overlap in the upstream markets for collection and processing of stainless steel and in titanium scrap via Aperam's ownership of a scrapyards in Belgium (formerly Cronimet Belgium but now called Aperam/ASB Recycling.[...]). (Form CO, paragraph 269).

⁶³ Non-horizontal Merger Guidelines, paragraph 18.

⁶⁴ Non-horizontal Merger Guidelines, paragraph 32.

⁶⁵ Non-horizontal Merger Guidelines, paragraph 59.

⁶⁶ Non-Horizontal Merger Guidelines, paragraph 78.

small number of more local players (e.g. Reinoxmetal in Spain, Derichebourg in France). This is evident from the market shares set out in Table 1 below.⁶⁷

⁶⁷ The market shares set out in Table exclude so-called “internal use” stainless steel scrap as this has not been purchased from stainless steel scrap suppliers. This is stainless steel scrap that is produced by stainless steel producers as a by-product of their own production and then recycled again into their own production. See footnote 85 Form CO.

Table 1: Processing and blending of stainless steel scrap for the stainless steel industry in the EEA in terms of volume

ELG Competitors /	2020		2019		2018	
	Volume (mt)	Market shares (%)	Volume (mt)	Market shares (%)	Volume (mt)	Market shares (%)
Cronimet Group	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
ELG	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Oryx	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Paul Jost	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Innovative Metal Recycling	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Scholz	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Stena Recycling	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Derichebourg	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Reinoxmetal	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
GDE Group Ecore	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Aperam ([...] ⁶⁸)	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Co fer m.	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Com.Steel	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Rizzinox	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Theo Steil	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Irnes	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Met.Extra	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Cometfer	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Recymet Systems	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Acciai Mella	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Soligon	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Others	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Total scrap demand	[...]	100%	[...]	100%	[...]	100%

Source: Form CO, Annex 24, Table 2 (p. 2)

⁶⁸ [...].

- (47) However, the Commission notes that these market shares do not represent the importance of the largest three scrap suppliers in the market. The large stainless steel producers consume large volumes of stainless steel scrap per month (for example Aperam sourced [...]mt⁶⁹ of stainless steel scrap in 2020 from stainless steel scrap suppliers, equating to around [...]mt per month). Looking at the total volumes supplied by some of the smaller and mid-sized scrap suppliers, it is clear that it is only the larger stainless steel scrap suppliers that can fulfil the high volumes required by the main stainless steel producers. As noted by one market participant, *“the market is somewhat consolidated, 4 major stainless steel producers are buying the majority of their monthly blended stainless steel scrap demand from 3 suppliers in Europe.”*⁷⁰
- (48) The importance of the largest two stainless steel scrap suppliers in particular (Cronimet and ELG) is also clear from [ELG’s internal documents].

Figure 1 – [...]

[...]

Source: Form CO, Annex 12.02, [...]

- (49) Further, as noted in paragraph (17), smaller stainless steel scrap suppliers do not sell directly to the stainless steel producers, as only larger stainless steel scrap suppliers are able to fulfil the buyers’ demand for large volumes. As also noted by one customer, *“In the EEA there are three main suppliers of stainless steel scrap. Besides ELG, those are Cronimet and Oryx. But there are also smaller (medium) suppliers..... Besides these big and medium suppliers there are local small suppliers but these normally sell their scrap to the big suppliers.”*⁷¹ The market shares set out in Table 1 include a large market share ([10-20]%) for “other” suppliers and which has not been attributed to any additional suppliers.

5.2.1.2. Downstream market – production and wholesale of stainless steel products

- (50) In terms of the production and wholesale of stainless steel flat products, Aperam is, along with Outokumpu, the most important producer. As can be seen in Table 2 - Table 4 below, Aperam is either the largest or second largest competitor in the following markets.⁷²
- (51) In the market for production and wholesale of stainless steel flat hot rolled white band products in the EEA, Aperam’s market share is [20-30]%, close to [...]

⁶⁹ Form CO, Table 101.

⁷⁰ Reply to question 6 of Questionnaire 1 to stainless steel scrap suppliers.

⁷¹ Non-confidential minutes of a call with a customer, 26 July 2021.

⁷² Aperam is also active in production and wholesale of stainless steel flat hot rolled black band products, and production and wholesale of stainless steel welded tubes, but its market shares in these downstream markets are below 5% at EEA-level (Form CO, Annex 26). The analysis of vertical relationships focuses on those downstream markets where Aperam’s market share exceeds 20%. In any case, the arguments why no foreclosure concerns arise are equally valid for all plausible downstream markets in which Aperam is active.

Outokumpu with [20-30]% and ahead of AST with [20-30]% and Acerinox of [10-20]%.⁷³

- (52) In the market for production and wholesale of stainless steel flat cold rolled products in the EEA, Aperam’s market share is [20-30]%, only exceeded by Outokumpu with [20-30]% and well ahead of AST with [10-20]% and Acerinox with [5-10]%.⁷⁴
- (53) In the market for production and wholesale of stainless steel quarto plates in the EEA, Aperam’s share is [20-30]%, followed by Outokumpu ([20-30]%), SIJ Acroni ([20-30]%), Acerinox ([5-10]%) and AST ([0-5]%) (see Table 4).⁷⁵
- (54) The Commission also notes that the market shares set out in Table 2- Table 4 below may not fully represent the importance of Aperam as a downstream customer. This is notably because the market shares the Notifying Party provided include sales attributed to Marcegaglia which is not active in the production of hot rolled and cold rolled stainless steel products from stainless steel scrap, as well as a significant “other” share (up to [20-30]% for some markets), which relate to imports.⁷⁶

Table 2: Production and wholesale of stainless steel flat hot rolled white band products in the EEA in terms of volume

	2020		2019		2018	
	Volume (mt)	Volume (mt)	Market shares (%mt)	Volume (mt)	Market shares (%mt)	Volume (mt)
Aperam	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Outokumpu	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Acciai Speciali Terni	[...]	[20-30]%	[...]	[10-20]%	[...]	[10-20]%
Acerinox	[...]	[10-20]%	[...]	[5-10]%	[...]	[5-10]%
Marcegaglia	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Otelinox	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Others	[...]	[10-20]%	[...]	[20-30]%	[...]	[20-30]%
Total market	[...]	100%	[...]	100%	[...]	100%

Source: Form CO Annex 24, Table 29 (p.13)

⁷³ Form CO, Annex 24, Table 29. Market shares for 2020 in terms of volume. In terms of value, Aperam’s market share in 2020 was [20-30]% (Outokumpu: [30-40]%, AST: [20-30]% and Acerinox: [10-20]%). Form CO, Annex 24, Table 40.

⁷⁴ Form CO, Annex 24, Table 30. Market shares for 2020 in terms of volume. In terms of value, Aperam’s market share in 2020 was [20-30]% (Outokumpu: [20-30]%, AST: [10-20]% and Acerinox: [5-10]%). Form CO, Annex 24, Table 41.

⁷⁵ Form CO, Annex 24, Table 52.

⁷⁶ Reply to RFI 5, Q5.

Table 3: Production and wholesale of stainless steel flat cold rolled products in the EEA in terms of volume

	2020		2019		2018	
	Volume (mt)	Market shares (%)	Volume (mt)	Market shares (%)	Volume (mt)	Market shares (%)
Aperam	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Outokumpu	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Acciai Speciali Terni	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Acerinox	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Marcegaglia	[...]	[5-10]%	[...]	[5-10]%	[...]	[0-5]%
Otelinox	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Others	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Total market	[...]	100%	[...]	100%	[...]	100%

Source: Form CO, Annex 24, Table 30 (p. 14)

Table 4: Production and wholesale of stainless steel quarto plates in the EEA in terms of volume

	2020		2019		2018	
	Volume (mt)	Market shares (%)	Volume (mt)	Market shares (%)	Volume (mt)	Market shares (%)
Aperam ([...])	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Outokumpu	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
SIJ Acroni	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Acerinox (excluding its German subsidiary VDM Metals)	[...]	[5-10]%	[...]	[10-20]%	[...]	[10-20]%
Acciai Speciali Terni	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Others (including VDM Metals)	[...]	[20-30]%	[...]	[10-20]%	[...]	[10-20]%
Total market	[...]	100%	[...]	100%	[...]	100%

Source: Form CO, Annex 24, Table 52 (p. 22)

- (55) Aperam is the [...] buyer of stainless steel scrap in the EEA. Based on consumption shares provided by the Notifying Party, Aperam accounts for [20-30]% of stainless steel scrap consumption in the EEA, after Outokumpu, which accounts for [20-30]%. Other buyers of stainless steel scrap are AST ([10-20]% share of consumption),

Acerinox ([10-20]% share of consumption) and several smaller consumers (all below 5%).⁷⁷

Table 5: Stainless steel scrap consumption in the EEA in terms of volume⁷⁸

Consumer	2020		2019		2018	
	Volume (mt)	Market shares (%)	Volume (mt)	Market shares (%)	Volume (mt)	Market shares (%)
Outokumpu	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Aperam ([...])	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Thyssenkrupp (Acciai Speciali Termi)	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Acerinox	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Swiss Steel Group	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Valbruna	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
SIJ Acroni	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Sandvik	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Cogne Acciai Speciali	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Olarra	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
BGH	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Acería de Álava (Tubacex)	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Others	[...]	[0-5]%	[...]	[5-10]%	[...]	[5-10]%
Total scrap demand	[...]	100%	[...]	100%	[...]	100%

Source: Form CO, Annex 24, Table 23 (p. 10)

5.2.2. Input foreclosure

5.2.2.1. The Notifying Party's views

(56) The Notifying Party submits that it lacks market power to have the ability to successfully engage in any input foreclosure strategy, as the Parties' combined market share in collection, processing and trading of stainless steel scrap is below 30% at the EEA-level. ELG accounts for only approx. [10-20]% of the EEA-wide market for collection, processing and trading of stainless steel scrap. Customers can continue to source stainless steel scrap from strong competitors upstream, such as Cronimet Group ([20-30]%), Oryx ([10-20]%), Paul Jost ([0-5]%) and Innovative

⁷⁷ Form CO, Annex 24, Table 23.

⁷⁸ The consumption shares include "internal use" stainless steel scrap, namely scrap that has been produced and recycled within the stainless steel producers own production.

Metal Recycling ([0-5]%).⁷⁹ Aperam's competitors would also be able to switch easily to alternative suppliers across the entire EEA. In addition, stainless steel scrap is a commodity product mostly procured on a spot basis without any brand loyalty.⁸⁰ [...].⁸¹

- (57) The Notifying Party submits that it does not have an incentive to foreclose access to inputs, as Aperam would prefer to source scrap from a third party supplier in the EEA if offered at a lower price compared to ELG (e.g. because of a transport cost advantage). A strategy of sourcing scrap volumes from ELG at any price would not be sustainable for Aperam.⁸² Moreover, redirecting any volumes of ELG to Aperam's plants will free up volumes elsewhere and not reduce availability for competitors.⁸³ Given Aperam's limited market share at the downstream level, the merged entity would not be able to materially benefit from any input foreclosure strategy.⁸⁴ Finally, [summary of Aperam's post-merger sourcing strategy]. Instead, Aperam's main objective with the Transaction is to make material flows more efficient and to optimise the composition of scrap for its needs.⁸⁵ Nevertheless, the markets are not highly concentrated and, therefore, any foreclosure strategy would have no (long-term) impact on effective competition.⁸⁶

5.2.2.2. The Commission's assessment

- (58) Stainless steel scrap is the most important input for the production of stainless steel, accounting for approximately [40-50]% of the total cost of downstream production.⁸⁷ While the Notifying Party argues that ELG's upstream market shares are low and could not therefore give rise to any input foreclosure concerns, the Commission notes that for at least one customer, Acerinox, which is based in Spain, ELG is an important supplier due to the particularly close proximity of ELG's scrap yard to the customer's steel mill.
- (59) As observed by the Notifying Party, it is important for stainless steel producers to ensure that stainless steel scrap can be sourced locally: [...]⁸⁸ Therefore, the Commission's investigation focussed on whether the Transaction could give rise to input foreclosure for Acerinox in particular.
- (60) The Commission's investigation focussed on Spain, where ELG has a scrap yard in San Roque, Cádiz, in southern Spain. This is located only 8km from the steel mill of Acerinox, one of Aperam's main competitors. Acerinox's mill near Algeciras, Cádiz, in southern Spain has access to a deep port facility and Acerinox sources its stainless

⁷⁹ Form CO, paragraphs 650 et seq.

⁸⁰ Form CO, paragraph 654; paragraphs 684 et seq.; reply to RFI 9, page 2 et seq.

⁸¹ Form CO, paragraphs 612 et seq.; paragraph 676 ; paragraph 698; reply to RFI 9, page 3.

⁸² Form CO, paragraph 655; paragraphs 693 et seq.; reply to RFI 9, page 3.

⁸³ Reply to RFI 9, page 4.

⁸⁴ Form CO, paragraph 656.

⁸⁵ Form CO, paragraph 657; reply to RFI 9, paragraphs 17 et seq.

⁸⁶ Reply to RFI 9, Q7, paragraphs 49 and 50.

⁸⁷ Form CO, Annex 26, Table 19. Out of Aperam's total cost for the production of grade 304 flat stainless steel products in the last three years in the EEA, externally sourced scrap accounted for [...], [...] and [...]. For grade 316 flat stainless steel products the share is slightly lower, with [...], [...] and [...]. (Form CO, Annex 26, Table 20).

⁸⁸ Reply to RFI 9, Q1, paragraph 5.

steel scrap both by container ship (with scrap shipped from Germany or the Netherlands) and also by truck from ELG's San Roque yard. There are advantages to ensuring this balance of supplies of stainless steel scrap.⁸⁹

- (61) In terms of *ability* to foreclose, stainless steel scrap is an important input for the downstream production of stainless steel.⁹⁰ The Commission's market investigation also confirmed the importance of having scrap suppliers close to the customers' production facilities.⁹¹ However, the Commission notes that Oryx, the third largest stainless steel scrap supplier in the EEA, has recently opened a scrap yard in Vilanova i la Geltrú, 40 km south of Barcelona, Spain.⁹² This scrap yard is around 1000km away from Acerinox's facilities in southern Spain and the Commission considers that it could provide Acerinox with an alternative source of supply of stainless steel scrap that is still located on the Iberian peninsula.
- (62) In terms of *incentive* to foreclose, the Commission notes that [...].⁹³ Acerinox is the largest stainless steel producer in Spain. The Commission notes that any attempt to foreclose Acerinox would necessarily entail loss of sales of stainless steel scrap at the San Roque yard; Aperam's own steel mills are located in Belgium (2,210km to Châtelet and 2,309km to Genk)⁹⁴ [Aperam's future sourcing strategy post-merger].⁹⁵
- (63) In summary, the Commission therefore considers that any input foreclosure strategy pursued by Aperam could not have any overall detrimental effects on competition, due to the possibility of Acerinox to source from alternative suppliers of stainless steel scrap, including in particular from Oryx's scrap yard in Vilanova i la Geltrú.
- (64) The Commission does not consider that the merged entity would have the ability or incentive to foreclose any of the other downstream stainless steel producers. Either these producers are not currently supplied by ELG or are supplied in limited volumes⁹⁶ or their stainless steel mills are not located in such a close proximity to the ELG yard as compared to Acerinox.
- (65) In view of the above, the Commission concludes that the 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 supply of stainless steel scrap upstream and the production and wholesale of stainless steel products downstream on the basis of input foreclosure.

⁸⁹ Non-confidential minutes of a call with a customer, 26 July 2021.

⁹⁰ Form CO, Annex 26, Table 19.

⁹¹ Replies to question 15 and 18 of Questionnaire 2 to stainless steel scrap customers.

⁹² Non-confidential minutes of a call with a competitor, 9 November 2021.

⁹³ San Roque supplied to Acerinox [...] mt in 2019 and [...] mt in 2020. Annex 17 and Annex 18 from Form CO.

⁹⁴ Reply to RFI 9, Q6, paragraph 42.

⁹⁵ Reply to RFI 9, Q6, paragraph 47.

⁹⁶ Replies to question 20 of Questionnaire 2 to stainless steel scrap customers; non-confidential minutes of a call with a customer, 22 July 2021.

5.2.3. Customer foreclosure

5.2.3.1. The Notifying Party's views

- (66) The Notifying Party submits that it lacks market power to have the ability to successfully engage in any customer foreclosure strategy, as Aperam's market shares in relation to production and wholesale of stainless steel are respectively below 30% at the EEA-wide level and a number of competitors with considerable stainless steel requirements remain in the market.⁹⁷ Aperam sources stainless steel scrap from [...]. In these countries there are a number of competitors including AST which has stainless steel production in Italy, the Swiss Steel Group which has several stainless steel production sites in Germany and in France, together with a number of additional stainless steel producers including Valbruna, SIJ Acroni, Sandvik, Cogne Acciai Speciali, Olarra, BGH and Aceria de Alava (Tubacex).⁹⁸
- (67) The Notifying Party submits that it does not have an incentive to stop buying stainless steel scrap from other suppliers than ELG, as [...].⁹⁹

5.2.3.2. The Commission's assessment

- (68) Aperam is an important downstream customer for stainless steel scrap as can be seen in Table 5. Aperam ([...]) is the second largest downstream stainless steel producer in the EEA, accounting for [20-30]% of consumption of stainless steel scrap in terms of volume in 2020. Only Outokumpu (based in Finland) is of a similar scale, with a [20-30]% share of consumption.¹⁰⁰ The third and fourth players are significantly smaller, accounting for [10-20]% (AST, based in Italy) and [10-20]% (Acerinox, based in Spain) of all stainless steel scrap consumption. The next largest player accounts for [0-5]% of stainless steel scrap consumption (Swiss Steel) and the remaining [10-20]% of consumption is fragmented amongst many smaller players.¹⁰¹
- (69) Of the main stainless steel producers, Aperam is the only one centrally located in Europe, with its main production facilities in Châtelet and Genk (both located in Belgium) and Industeel's production facilities in Charleroi (also Belgium) and Le Creusot (France). By contrast, Outokumpu's steel plants are in Finland, Acerinox in southern Spain (Algeciras) and AST in central Italy (Terni). Aperam is well placed to receive stainless steel scrap from stainless steel scrap suppliers in the Netherlands and Germany where the main scrap yards are located. Due to this central location, Aperam sources the [...] of its scrap within a [...] km radius.¹⁰²
- (70) While the Notifying Party argues that transport costs are insignificant,¹⁰³ this is not supported by the Commission's market investigation.¹⁰⁴ For example, one scrap supplier noted that: "*in terms of absolute cost, transport costs do vary*

⁹⁷ Form CO, paragraphs 704 et seq.

⁹⁸ Form CO, paragraphs 710 and 711.

⁹⁹ Form CO, paragraph 660.

¹⁰⁰ In 2019, Aperam [...] accounted for [20-30]% of stainless steel scrap consumption, compared to Outokumpu's [20-30]%.

¹⁰¹ Form CO, Annex 24, Table 23.

¹⁰² Form CO, Annex 21.

¹⁰³ See for example, Form CO, paragraphs 149 and 162.

¹⁰⁴ Replies to question 13 of Questionnaire 1 to stainless steel scrap suppliers. Replies to question 14 of Questionnaire 2 to stainless steel scrap customers.

*significantly...within Europe. The difference – particularly in relation to the potential gross margin – shows how important the distance and the connection of means of transport between supplier and customer is.*¹⁰⁵ It is clear also from data supplied by the Notifying Party that stainless steel scrap that has been transported over shorter distances, incurs lower transport costs than stainless steel scrap transported over longer distances.¹⁰⁶

- (71) [Aperam’s future stainless steel scrap sourcing strategy].¹⁰⁷ [Aperam’s future stainless steel scrap sourcing strategy].¹⁰⁸
- (72) [...]. The Commission has therefore investigated the impact of the Transaction on Aperam’s current stainless steel scrap suppliers and whether the Transaction may give rise to customer foreclosure concerns.
- (73) Over the last five years, Aperam has [...] sourced its supplies of stainless steel scrap from the largest suppliers of stainless steel scrap, namely Cronimet, ELG and Oryx.¹⁰⁹ By way of example, in 2019 Aperam sourced [...]% of its total stainless steel scrap supplies from ELG, [...]% from Cronimet, [...]% from Oryx and in 2020, [...]% from each of ELG and Cronimet and [...]% from Oryx. These shares of sourcing have remained [...] over the last five years, with Aperam sourcing the [...] volumes from ELG and Cronimet ([...] suppliers of stainless steel scrap in the EEA) and approximately [...]% of its total supplies from Oryx. Aperam sources [...] volumes of stainless steel scrap from the suppliers Paul Jost and Derichebourg, for example in 2019 Aperam sourced [...]mt from Paul Jost and [...]mt from Derichebourg and in 2020, [...]mt from Paul Jost and [...]mt from Derichebourg.¹¹⁰ The remainder of Aperam’s stainless steel scrap (around [...]% of its total supply in 2019, [...]% in 2020) is sourced from a number of smaller suppliers.
- (74) The supply of stainless steel scrap is core to Cronimet, Oryx and Paul Jost’s business.¹¹¹ Derichebourg is a recycling company focussed on the recycling of ferrous and non-ferrous metal and the supply of stainless steel scrap accounts for a small proportion of its total turnover.¹¹²
- (75) The Commission investigated whether, post-Transaction, the merged entity would have the ability to foreclose these suppliers, by assessing whether they would have sufficient alternatives to sell their output.
- (76) Indeed, in light of the Transaction, market participants and in particular stainless steel scrap suppliers, have envisaged the possibility of needing to switch to

¹⁰⁵ Reply to question 13 of Questionnaire 1 to stainless steel scrap suppliers.

¹⁰⁶ By way of example, based on ELG’s own transport data, ELG’s cost of transport stainless steel scrap transported over [...]km is EUR [...] and is EUR [...] for stainless steel scrap transported over distances greater than [...]km. See Table 12, Form CO.

¹⁰⁷ Form CO, paragraphs 613 – 618.

¹⁰⁸ Form CO, paragraph 618.

¹⁰⁹ Form CO, paragraph 553.

¹¹⁰ Form CO, Tables 101 and 102.

¹¹¹ See replies to question 1 and 2 of Questionnaire 1 to stainless steel scrap suppliers. See also <https://www.cronimet.de/en/expertise/materials/>, <https://www.oryx.com/>, <https://www.jost-recycling.com/en/business-fields/stainless-steel-scrap>.

¹¹² Reply to question 1 and 2 of Questionnaire 1 to stainless steel scrap suppliers.

alternative customers if Aperam were to reduce its purchases from them. Several are in negotiations with other downstream stainless steel producers.¹¹³ For example one noted that: *“already today we are discussing such scenarios with our customers and the majority is prepared to increase purchase volumes and to compensate missing ELG volumes.”*¹¹⁴

- (77) However, and as noted above, Aperam is the only major stainless steel producer that is located centrally in Europe. Suppliers that switch their sales from Aperam to alternative customers such as Acerinox, Outokumpu or AST would necessarily face increased transport costs as these suppliers are located much further away from the main stainless steel scrapyards in Germany and the Netherlands.¹¹⁵ Several suppliers therefore noted that re-arranging supplies of stainless steel scrap would increase their transport costs and would have a negative impact on their profitability.¹¹⁶
- (78) Despite this, the Commission has found that certain suppliers were already supplying lower volumes to Aperam than they had in the past. For example, between the years 2019 and 2021, the volumes that Paul Jost has supplied to Aperam have [...]: [...]mt in 2019, [...] in 2020 and [...] in 2021.¹¹⁷ The Commission therefore notes that it is possible for suppliers to shift their supplies to alternative customers.
- (79) Indeed, by way of example, one supplier considered that the Transaction should not raise concerns, because even if Aperam decided to source its scrap only from ELG in the future, this would provide suppliers such as themselves alternative outlets in the future. *“For the overall market, [...] does not see a problem because the quantities within the market concerning supply and demand will stay the same. Even if Aperam should decide to source its scrap only from ELG after the merger that should not dramatically change the market. This is because for the quantities that Aperam would now source from ELG there would then be other customers (former ELG customers), which would need a new supplier.”*¹¹⁸
- (80) The Commission also notes that the Transaction takes place at a time of very strong demand for stainless steel scrap, which should ensure a high number of available outlets for scrap suppliers in Europe.¹¹⁹ Market participants referred both to a general increase in demand but also to the need to ensure sustainability by ensuring the maximum recycling of stainless steel scrap.
- (81) On the basis that certain stainless steel scrap suppliers have already started to diversify their sales of stainless steel scrap and in the expectation that downstream customers may also need to increase their purchases from other upstream stainless steel scrap suppliers post-Transaction, the Commission considers that the merged entity would not have the ability to conduct a customer foreclosure strategy.

¹¹³ Replies to question 32 of Questionnaire 1 to stainless steel scrap suppliers.

¹¹⁴ Reply to question 32 of Questionnaire 1 to stainless steel scrap suppliers.

¹¹⁵ By way of example of increased transport costs, ELG's costs of transport stainless steel scrap transported over [...]km is EUR [...] and is EUR [...] for stainless steel scrap transported over distances greater than [...]km. See Table 12, Form CO.

¹¹⁶ Replies to question 32 of Questionnaire 1 to stainless steel scrap suppliers.

¹¹⁷ Form CO, Tables 101 and 102, reply to RFI 11, question 9.

¹¹⁸ Non-confidential minutes of a call with a competitor, 23 July 2021.

¹¹⁹ Replies to question 30 of Questionnaire 1 to stainless steel scrap suppliers and to question 24 of Questionnaire 2 to stainless steel scrap customers.

- (82) In view of the above, the Commission concludes that the 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 supply of stainless steel scrap upstream and the production and wholesale of stainless steel products downstream on the basis of customer foreclosure.

5.2.4. *Access to commercially sensitive information*

5.2.4.1. The Notifying Party's views

- (83) The Notifying Party submits that its limited market power both upstream and downstream restricts the impact amount of transparency in the markets that any information exchange would bring about. Moreover, the lack of market power excludes a significant impediment of competition resulting from the Parties acting on the exchanged information, in particular given that the information collected would not be complete (in particular [...]).¹²⁰ Furthermore, as a reference price such as the London Metal Exchange or Fastmarkets is used for pricing, any possible information will not enable it to gain significant visibility on its competitors' cost structure at the downstream level of production and wholesale of stainless steel products or production and direct sale of nickel alloy products.¹²¹

5.2.4.2. The Commission's assessment

- (84) As certain market participants raised concerns that the merged entity would have access to pricing and other confidential conditions related to the supply of stainless steel scrap,¹²² the Commission investigated this claim on the basis of the legal framework outlined in paragraph (45), but considers that no concerns arise for the following reasons.
- (85) The Commission observes that the Transaction would increase transparency in the market for the supply of stainless steel scrap [...]. In particular, Aperam could receive access to ELG's [...].¹²³ ELG, via Aperam, would also receive access to [...]. The Commission considers that these conditions are not transparent; as noted by the Notifying Party's own reply, [...].¹²⁴ Any information disclosed would nonetheless necessarily only relate to either the share of purchases made from ELG or the share of sales made to Aperam and this therefore provides a limit to the insight gained by the merged entity post-Transaction.
- (86) However, the Commission notes that based on the conclusions on input and customer foreclosure above, market participants may take steps in order to manage any potential disclosure of commercially sensitive information. For example, downstream customers may decide to limit their purchasing from ELG in order to reduce access to potentially sensitive information and upstream competitors may also decide to redirect their supplies away from Aperam and towards other downstream customers.

¹²⁰ Form CO, paragraphs 728 et seq.

¹²¹ Form CO, paragraphs 731 et seq.; reply to RFI 9, paragraphs 28 et seq.

¹²² Replies to Q33, questionnaire 1 to competitors and replies to question 28 of Questionnaire 2 to stainless steel scrap customers.

¹²³ Form CO, paragraphs 728 – 736.

¹²⁴ Reply to RFI 9, paragraph 67.

- (87) In view of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement based on access to commercially sensitive information.

5.3. Nickel alloy scrap

- (88) No affected market arises for the vertical relationship between processing and blending of nickel alloy scrap, where ELG is active, and different nickel alloy products and stainless steel products for which nickel alloy scrap is an important input, where Aperam is active. Given concerns about input foreclosure by some market participants as a result of this vertical relationship, the reasons why the Commission considers input foreclosure unlikely will nevertheless be discussed below. With the exception of nickel alloy rod where Aperam's market shares are still significantly below 30%, Aperam's market shares did not exceed 10% on any of the downstream markets for which nickel scrap is used as an input.¹²⁵ Therefore, customer foreclosure can be excluded on the basis of lack of market power.

5.3.1. Market shares

5.3.1.1. Upstream market – supply of nickel alloy scrap

- (89) The market for the supply of nickel alloy scrap in the EEA is mostly served by two major players who are active across the EEA: Cronimet and ELG. In terms of the supply of nickel alloy scrap, ELG and Cronimet are the largest suppliers in the EEA with [10-20]% market share each. The next largest player (Siegfried Jacob) has a [0-5]% share, followed by Wyman Gordon (Caledonian Alloys) with [0-5]%. The remainder of the market is fragmented among small local players.¹²⁶ The Commission notes that the market shares provided by the Notifying Party are based on estimates by ELG, [...].¹²⁷ The results of the market investigation indicate that actual market shares might diverge from the provided estimates, but would not result in significantly higher market shares for ELG.¹²⁸

5.3.1.2. Downstream market – production and wholesale of nickel alloy products

- (90) Aperam is the second largest buyer of nickel alloy scrap in the EEA, accounting for [20-30]% of nickel alloy scrap consumption in the EEA, after VDM Metals which accounts for [30-40]%. Other buyers account for less than [10-20]% of demand (Voestalpine with [5-10]% and Deutsche Nickel, Sandvik and ERAMET with [5-10]% each, as well as several buyers accounting for [5-10]% or less).¹²⁹

¹²⁵ Notably, Aperam is also active in (i) production and sale of nickel alloy semis, (ii) production and sale of nickel alloy bars, (iii) production and sale of nickel alloy wire, (iv) production and sale of nickel alloy strip and (v) production and sale of nickel alloy “plates and sheets”, but its market shares in these downstream markets are below 10% at EEA-level (Form CO, Annex 26). The analysis of vertical relationships focuses on those downstream markets where Aperam's market share exceeds 20%. In any case, the arguments why no foreclosure concerns arise are equally valid for all plausible downstream markets in which Aperam is active.

¹²⁶ Form CO, Annex 24, Table 25.

¹²⁷ Form CO, paragraph 332.

¹²⁸ Replies to question 16.1 of questionnaire 4 to nickel alloy scrap customers.

¹²⁹ Form CO, Annex 24, Table 26.

- (91) In terms of nickel alloy products, Aperam's share is relatively low in most sub-segments, with the exception of nickel alloy wire rod in the EEA where Aperam [...] with [20-30]%, followed by BGH ([20-30]%), VDM Metals ([10-20]%), Sandvik ([5-10]%), Gebauer & Griller ([5-10]%), Deutsche Nickel ([0-5]%), Böhler ([0-5]%) and Carpenter Technology ([0-5]%). [...].
- (92) The Notifying Party also notes that it is not in a position to estimate the total size, its own market share, the market shares of its competitors or imports into the EEA in relation to production and direct sale of the various nickel alloy products in terms of value in the EEA in 2018, 2019 or 2020.¹³⁰

Table 6: Nickel base alloy scrap consumption in the EEA in terms of volume

Consumer	2020		2019		2018	
	Volume (mt)	Market shares (%)	Volume (mt)	Market shares (%)	Volume (mt)	Market shares (%)
VDM Metals	[...]	[30-40]%	[...]	[20-30]%	[...]	[30-40]%
Aperam	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Böhler (Voestalpine)	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Deutsche Nickel	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Sandvik	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Aubert & Duval (ERAMET Group)	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Feroni	[...]	[0-5]%	[...]	[5-10]%	[...]	[5-10]%
Valbruna	[...]	[0-5]%	[...]	[5-10]%	[...]	[0-5]%
BGH	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Vacuumschmelze	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Others	[...]	[0-5]%	[...]	[0-5]%	[...]	[5-10]%
Total scrap demand	[...]	100%	[...]	100%	[...]	100%

Source: Form CO, Annex 24, Table 26 (p. 12)

¹³⁰ Form CO, paragraph 337.

Table 7: Production and sale of nickel alloy wire rod in the EEA in terms of volume

	2020		2019		2018	
	Volume (mt)	Market shares (%)	Volume (mt)	Market shares (%)	Volume (mt)	Market shares (%)
Aperam	[...]	[20-30]%	[...]	[20-30]%	[...]	[10-20]%
BGH	[...]	[20-30]%	[...]	[10-20]%	[...]	[10-20]%
VDM Metals	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Sandvik	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Gebauer & Griller	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Deutsche Nickel	[...]	[0-5]%	[...]	[5-10]%	[...]	[5-10]%
Böhler	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Carpenter Technology	[...]	[0-5]%	[...]	[0-5]%	[...]	[5-10]%
Others	[...]	[10-20]%	[...]	[10-20]%	[...]	[20-30]%
Total market volume	[...]	100%	[...]	100%	[...]	100%

Source: Form CO, Annex 24, Table 49 (p. 21)

5.3.2. The Notifying Party's view

(93) As already shown above, the Notifying Party submits that it lacks market power to have the ability to successfully engage in any input foreclosure strategy, as the Parties' combined market share in collection, processing and trading nickel alloy scrap is below 30% at the EEA-level. ELG accounts for only approximately [10-20]% of the EEA-wide market for collection, processing and trading of nickel alloy scrap. Customers can continue to source nickel alloy scrap from strong competitors upstream, such as Cronimet Group ([10-20]%), Siegfried Jacob ([0-5]%) and Wyman Gordon (Caledonian Alloys; [0-5]%).¹³¹

(94) Besides, externally sourced nickel alloy scrap is in general not an as important input for the production of nickel alloy products as stainless steel scrap is for the production of stainless steel products. For producing nickel alloys, specific amounts of different metals and elements need to be combined. Such a stringent chemical composition often requires pure primary raw materials. Thus, nickel alloy products could be manufactured or effectively sold without nickel alloy scrap.¹³²

5.3.3. The Commission's assessment

(95) The Commission considers that the Parties are not able to foreclose access to nickel alloy scrap. Although the market shares do not fully reflect the position of ELG in the upstream market, the results of the market investigation indicate that a large number of credible alternative suppliers are active in the upstream market. The customers who replied to the market investigation indicated that they sourced from

¹³¹ Form CO, paragraphs 650 et seq.

¹³² Form CO, paragraphs 677 and 679.

up to ten different suppliers in the past year¹³³ and could switch to most of them if ELG were to reduce their supplies and increase price and/or reduce quality of their supplies.¹³⁴ The majority of customers described switching as rather easy. According to one respondent, a switch “*would take few days and it can be done easily*”.¹³⁵ Therefore, it is unlikely that the Parties would have the ability to foreclose access to nickel alloy scrap.

- (96) The Commission also considers that Aperam does not have an incentive to significantly increase its purchases of nickel alloy scrap from ELG. First, as explained in paragraph (94), secondary raw material cannot be easily used to substitute primary raw material in the production of nickel alloys, [...]. Moreover, unlike in stainless steel scrap, [...].¹³⁶ In 2020, Aperam’s re-using of nickel alloy scrap coming about as a by-product of Aperam’s nickel alloy production accounted for approx. [...] % of Aperam’s nickel alloy’s raw material costs in the EEA.¹³⁷ In 2019, Aperam’s re-using of nickel alloy scrap coming about as a by-product of Aperam’s nickel alloy production accounted for approx. [...] % of Aperam’s nickel alloy’s raw material costs in the EEA.¹³⁸ Finally, many important buyers of nickel alloy scrap remain in the market post-Transaction to which ELG would lose sales of nickel alloy scrap in case it restricted its supply, or supplied at worse conditions, without any benefit for Aperam. Therefore, it is unlikely that the Parties would have the incentive to foreclose access to nickel alloy scrap.
- (97) In summary, the Commission therefore considers that any input foreclosure strategy pursued by Aperam could not have any overall detrimental effects on competition, due to the possibility of customers to source from alternative suppliers of nickel alloy scrap.
- (98) In view of the above, the Commission concludes that the 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 nickel alloy scrap, and different nickel alloy products and stainless steel products.

5.4. Titanium scrap

- (99) The Transaction also results in a vertically affected market between the market for processing and blending of titanium scrap, where ELG is active, and Aperam’s activity as buyer of titanium scrap. Aperam’s share of sourcing volumes of titanium scrap for the purposes of its nickel alloy production remained below [...] % in the last three years.¹³⁹ Therefore, customer foreclosure can be excluded on the basis of lack of market power. Aperam did not source any titanium scrap for [...].¹⁴⁰ Aperam’s market shares also did not exceed 30% on any of the downstream markets

¹³³ Replies to question 17 of Questionnaire 4 to nickel alloy scrap customers.

¹³⁴ Replies to question 20.1 and 20.2 of Questionnaire 4 to nickel alloy scrap customers.

¹³⁵ Replies to question 20.3 of Questionnaire 4 to nickel alloy scrap customers.

¹³⁶ As the Notifying Party explains, the aerospace segment is a key area of application for nickel-base superalloys as well as titanium. Due to the zero-defect policy, a lot of scrap is generated during the production of products for the aerospace segment. [...]. (Form CO, paragraph 86.)

¹³⁷ Form CO, paragraph 335.

¹³⁸ Form CO, paragraph 336.

¹³⁹ Form CO, paragraph 282.

¹⁴⁰ Form CO, Table 31 (p. 64); reply to RFI 11, paragraph 8.

for which titanium is used as an input (see paragraph (91)). Given that ELG's market share on the upstream market exceeded 30% in 2020, the reasons why the Commission considers input foreclosure unlikely will be discussed below.

5.4.1. *Market shares*

- (100) The market for collection and processing of titanium scrap in the EEA has one big player with a market share of [30-40]% in 2020: ELG. The next largest players are Recymet with a market share of [5-10]%, Cronimet Group and Co.Fer.M (both [5-10]%). They are followed by SOS Metals ([5-10]%) and AmeriTi Manufacturing Company and Aerometal (both [5-10]%). Other market players do not have market shares exceeding 3%.¹⁴¹
- (101) The Commission notes that the Parties have very limited visibility on the market position of competitors in relation to processing and blending of titanium scrap.¹⁴² The Commission's market investigation did not produce any evidence that ELG's market power might exceed that suggested by the market shares provided by the Parties.
- (102) Concerning the downstream market, the market shares correspond with the one for nickel alloy products (see paragraph (50) and paragraph (90))¹⁴³.

5.4.2. *The Notifying Party's view*

- (103) The Notifying Party submits that the Parties will have no ability to foreclose access to titanium scrap post-Transaction. [...] stainless steel scrap, not on titanium which is in general not an important input for nickel alloy manufacturers.¹⁴⁴ Second, nickel alloy producers can use, and easily switch to ferrotitanium (a primary alloy) and/or titanium scrap as sources of titanium.¹⁴⁵ Third, given the Parties' low market shares in relation to collection and processing as well as collection, processing and trade of this scrap in the EEA, the Transaction will not negatively affect the overall availability of titanium scrap for traders or manufacturers of steel products in the EEA in terms of general availability, price or quality.¹⁴⁶ Fourth, the Parties will continue to face numerous strong competitors in relation to collection and processing of titanium scrap that are not less efficient, less preferred alternatives and do not lack the ability to expand output.¹⁴⁷
- (104) The Notifying Party submits that the Parties will also have no incentive to foreclose access to titanium scrap post-Transaction. First, Aperam is not well placed to capture the demand diverted away from Aperam's competitors as a result of a foreclosure strategy, as titanium is not an essential input in nickel alloy scrap [...].¹⁴⁸ Second,

¹⁴¹ Aperam also has a market share of [0-5]% via its ownership of a scrapyard in Belgium, see footnote 65. (Form CO, Tables 27 and 30).

¹⁴² Form CO, paragraph 256.

¹⁴³ Titanium is also an input for stainless steel products, but it is purchased as part of the stainless steel scrap blend. [...] the Commission considers the relevant downstream markets to be nickel alloy products.

¹⁴⁴ Form CO, paragraph 287.

¹⁴⁵ Form CO, paragraph 288.

¹⁴⁶ Form CO, paragraph 291.

¹⁴⁷ Form CO, paragraphs 290 et seq.

¹⁴⁸ Form CO, paragraph 293.

since Aperam's market share in any EEA-wide market segment for production and direct sale of nickel alloy products is below 30%, the Parties would not benefit from any price increases at these downstream markets.¹⁴⁹

5.4.3. *The Commission's assessment*

- (105) The Commission considers that the Parties are not able to foreclose access to titanium scrap. ELG's market share in the upstream market for processing and blending of titanium scrap only [...] exceeded 30% in 2020 and remained below 30% (at [20-30]%) in 2018 and 2019. Although ELG is the clear market leader in collection and processing of titanium scrap, numerous competitors remain in the market, accounting together for around [70-80]% of the supply of titanium scrap. Therefore, it is unlikely that the Parties would have the ability to foreclose access to titanium scrap.
- (106) The Commission also considers that Aperam does not have an incentive to significantly increase its purchases of titanium scrap from ELG. Indeed, Aperam's purchases of titanium scrap only accounted for [...]% of titanium sourced in the EEA in the last three years. This indicates that Aperam's demand for titanium scrap is [...], also given that like nickel alloy scrap, a large share of titanium scrap is generated internally, covering a large share of Aperam's demand (see paragraph (96)). Moreover, Aperam uses titanium scrap [...], where its downstream market share does not exceed 30% in any plausible market.
- (107) Finally, many important buyers of titanium scrap remain in the market post-Transaction to which ELG would lose sales of titanium scrap in case it restricted its supply, or supplied at worse conditions, without any benefit for Aperam. In 2020 and 2018, Aperam only accounted for [...]% of ELG's sales of titanium scrap to nickel alloy producers in the EEA and for less than [...]% of its overall sales of titanium scrap. In 2019, sales of titanium scrap from ELG to Aperam were higher, but Aperam still only accounted for [...]% of ELG's sales of titanium scrap to nickel alloy producers in the EEA and for [...]% of its overall sales of titanium scrap.¹⁵⁰ For these reasons, it is unlikely that the Parties would have the incentive to foreclose access to titanium scrap.
- (108) In summary, the Commission therefore considers that any input foreclosure strategy pursued by Aperam could not have any overall detrimental effects on competition, due to the possibility of customers to source from alternative suppliers of titanium scrap.
- (109) In view of the above, the Commission concludes that the 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 titanium scrap and different nickel alloy products.

¹⁴⁹ Form CO, paragraph 294.

¹⁵⁰ Form CO, Tables 31 and 32.

6. CONCLUSION

- (110) For the above reasons, the European Commission has decided not to oppose the notified concentration 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