



EUROPEAN COMMISSION

Hearing Officer for competition proceedings

Brussels, 9 February 2021

Final Report of the Hearing Officer¹

Case M.9076 – Novelis/Aleris (Restorative Measures)

(Text with EEA relevance)

1. This report relates to a draft decision pursuant to Article 8(4) of Regulation No 139/2004² (the “Draft Decision”) addressed to Novelis Inc. (“Novelis”). In the Draft Decision, the Commission finds that Novelis implemented its acquisition of Aleris Corporation (“Aleris”) in contravention of a condition attached to a decision under Article 8(2) of the Merger Regulation and that such implementation justifies the adoption of appropriate measures pursuant to Article 8(4)(b) of the Merger Regulation.

Background - Novelis’s acquisition of Aleris

2. On 1 October 2019, the Commission declared Novelis’s acquisition of Aleris compatible with the internal market and with the EEA Agreement (the “Clearance Decision”), subject to Novelis’s full compliance with the commitments as set out in the Clearance Decision (the “Commitments”).³
3. Under the Commitments, Novelis committed to divest (i) Aleris’s aluminium automotive body sheets (“Aluminium ABS”) business and (ii) other aluminium flat-rolled products business located in Aleris’s plant in Belgium, (the “Divestment Business”), and to find a purchaser and enter into a final binding sale and purchase agreement for the Divestment Business within six months from the Clearance Decision. Novelis also committed to close the sale of the Divestment Business within a period of [...] months from the approval of the purchaser and the terms of sale by the Commission (the “Closing Period”).

¹ Pursuant to Articles 16 and 17 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings, OJ L 275, 20.10.2011, p. 29 (“Decision 2011/695/EU”).

² Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ L 24, 29.1.2004, p. 1 (“Merger Regulation”).

³ Commission Decision authorizing the acquisition of Aleris by Novelis in Case M.9076 Novelis/Aleris (C(2019) 7061 final); see also Final Report of the Hearing Officer dated 19 September 2019 in the same case.

4. On 26 November 2019, Novelis proposed Liberty as a suitable purchaser for the Divestment Business. The Commission approved Liberty as a suitable purchaser for the Divestment Business on 7 April 2020.

5. On 14 April 2020, Novelis implemented its acquisition of Aleris.

Extension of the Closing Period

6. Novelis requested an extension of the Closing Period on 7 June 2020, [...]. Novelis requested further extensions on 14 July 2020 and on 21 July 2020. In response to these successive requests, the Commission extended the Closing Period four times:

- By a decision of 7 July 2020 the Commission extended the Closing Period until 14 July 2020;
- By a decision of 14 July 2020 the Commission extended the Closing Period until 22 July 2020;
- By a decision of 22 July 2020, the Commission extended the Closing Period until 31 July 2020.
- By a decision of 31 July 2020, the Commission extended the Closing Period until 31 August 2020.

7. On 28 August 2020, Novelis requested another extension of the Closing Period (the “Fourth Extension Request”).

8. On 31 August 2020, the monitoring trustee under the Commitments (the “Monitoring Trustee”) submitted a reasoned opinion on the Fourth Extension Request.

9. At a state of play meeting held on 31 August 2020 following the submission of the Monitoring Trustee’s opinion, and later by a reasoned letter, the Commission informed Novelis that the Commission would not grant the Fourth Extension Request. The Commission explained that Novelis had failed to inform the Commission in a timely fashion of outstanding closing deliverables and did not provide certainty that the closing of the sale of the Divestment Business to Liberty would take place on 30 September 2020.⁴

Decision imposing Provisional Interim Measures under Article 8(5)(b) of the Merger Regulation

10. By decision of 1 September 2020, the Commission found that, as Novelis had failed to close the sale of the Divestment Business within the Closing Period, it had implemented its acquisition of Aleris in contravention of a condition attached to the Clearance Decision. The Commission considered that there was an urgent need to restore or maintain conditions of effective competition in the EEA market for the supply of Aluminium ABS. Therefore, the Commission imposed provisional interim

⁴ On 11 November 2020, Novelis brought an application for annulment of the Commission’s rejection of the Fourth Extension Request before the General Court. This application is currently pending (Case T-680/20, *Novelis v Commission*).

measures on Novelis pursuant to Articles 8(5)(b) and 18(2) of the Merger Regulation, which mostly reproduced Novelis's obligations under the Commitments (the "Provisional Interim Measures Decision").

11. The Commission extended Novelis's initial ten working day time-limit to submit its observations on the Provisional Interim Measures Decision multiple times on its own initiative as well as upon Novelis's request. Novelis submitted its comments on the said decision on 16 October 2020.
12. The measures ordered in the Provisional Interim Measures Decision will lapse with the adoption of the Draft Decision.

Procedure under Article 8(4) of the Merger Regulation

13. On 18 September 2020, the Commission adopted a statement of objections ("SO") in which the Commission set out the preliminary view that, absent the closing of the sale of the Divestment Business to Liberty by the Closing Period, Novelis had implemented a concentration which gives rise to a significant impediment to effective competition in relation to the EEA market for the production and supply of Aluminium ABS, in contravention to a condition attached to the Clearance Decision. In the SO, the Commission also expressed its intention to order the dissolution of the concentration pursuant to Article 8(4)(b) of the Merger Regulation and other appropriate measures to restore the situation prevailing before its implementation as far as possible. If restoring the situation prevailing before the implementation of the concentration through its dissolution would not be possible, the Commission expressed its intention to order the sale of the Divestment Business by a divestiture trustee as well as certain measures preserving its value.
14. On 30 September 2020, Novelis informed the Commission that the sale of the Divestment Business to Liberty had been closed on that day.
15. On 23 November 2020, the Commission sent a letter to Novelis, in which it explained that, in light of the closing of the sale of the Divestment Business to Liberty and of the circumstances set forward by Novelis in its response to the SO, it no longer appeared possible to restore the situation prevailing prior to the concentration through its dissolution (the "Letter of 23 November"). The Commission stated its intention to order the measures that are still necessary to ensure and maintain the structural effect of the transfer of the Divestment Business and to protect its viability and competitiveness. The Letter of 23 November also informed Novelis of additional factual elements and pieces of evidence which had not been expressly mentioned in the SO and which, after analysing Novelis's response to the SO, the Commission intended to refer to or rely on in its final decision.
16. On 8 September 2020 and 21 September 2020, Novelis was granted access to the Commission's file. On 5 October 2020, Novelis requested further access to documents, which was granted by the Directorate-General for Competition on the same day and on 8 October 2020.
17. On 16 October 2020, Novelis submitted its reply to the SO.

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18. On 30 November 2020, Novelis again requested further access to certain items on the file. The Directorate-General for Competition subsequently provided Novelis with further access to the requested information on 2, 3, 4, 7, 8 and 9 December 2020.
 19. On 14 December 2020, Novelis submitted its reply to the Letter of 23 November and made another request for further access to the Commission's file. On 18 December 2020, the Directorate-General for Competition granted access to the further documents requested and offered Novelis the possibility to submit further comments by 22 December 2020. Novelis made no further comments.
 20. I have not received any complaint or request from Novelis regarding access to the file.
 21. In the Draft Decision, the Commission imposes certain restorative measures on Novelis in order to restore the situation prevailing before the implementation of the concentration as far as possible, within the meaning of Article 8(4)(b) of the Merger Regulation. The Commission considers these measures necessary to ensure the effectiveness of the sale of the Divestment Business to Liberty and to preserve the viability and competitiveness of the Divestment Business.

Conclusion

22. Overall, I consider that the effective exercise of procedural rights has been respected during the present proceedings.

Wouter Wils
Hearing Officer