



EUROPEAN COMMISSION
COMPETITION DG

Directorate R
Unit R.2 COMP-MEETINGS

OPINION

of the ADVISORY COMMITTEE on MERGERS

AT ITS MEETING OF 9 FEBRUARY 2021

CONCERNING A PRELIMINARY DRAFT DECISION RELATING TO

CASE M.9076 – Novelis/Aleris

Rapporteur: The Netherlands

(Text with EEA relevance)

Implementation of a transaction in contravention of a condition attached to a clearance decision

- (1) The Advisory Committee (14 Member States) agrees with the Commission that by failing to close the sale of the Divestment Business by the end of the Closing Period, Novelis breached a condition attached to the Clearance Decision.
- (2) The Advisory Committee (14 Member States) agrees with the Commission that Novelis implemented the Novelis/Aleris transaction in contravention of a condition attached to a decision under 8(2) of the Merger Regulation, which had found that, in the absence of the condition, the concentration would fulfil the criterion laid down in Article 2(3) of the Merger Regulation, by closing the acquisition of Aleris and failing to close the sale of the Divestment Business by the end of the Closing Period.

Need for the Commission to adopt final measures

- (3) The Advisory Committee agrees (14 Member States) with the Commission that, as Novelis closed the sale of the Divestment Business to Liberty when the Commitments were no longer applicable and the Interim Measures adopted provisionally on the basis of Article 8(5) of the Merger Regulation will expire, there is a need for the Commission to adopt final measures on the basis of Article 8(4) of the Merger Regulation.

Dissolution of the Transaction to restore the situation prevailing before the implementation of the concentration

- (4) The Advisory Committee agrees with the Commission that it is impossible to achieve the restoration of the situation prevailing before the implementation of the Novelis/Aleris

transaction through a dissolution of the concentration, taking into account also that the sale of the Divestment to Liberty was closed with the express encouragement of the Commission. 13 Member States voted in favour, 1 Member State abstained.

Other measures to restore the situation prevailing before the implementation of a concentration

- (5) The Advisory Committee (14 Member States) agrees with the Commission that there is a need to adopt Final Restorative Measures to ensure and maintain the structural effect of the sale of the Divestment Business, its viability and competitiveness, in order to restore the situation prevailing before the implementation of the Novelis/Aleris transaction as far as possible.
- (6) The Advisory Committee (14 Member States) agrees with the Commission that the Final Restorative Measures are necessary, appropriate and proportionate to restore the situation prevailing prior to the implementation of the Transaction as far as possible.

Penalty payments

- (7) The Advisory Committee (14 Member States) agrees with the Commission that, pursuant to Article 15(1)(d) of the Merger Regulation, if Novelis were to fail to comply with any of the measures set out in the Article 8(4) decision, the Commission is entitled to impose on Novelis a periodic penalty of up to [...] % of its average daily aggregate turnover of the business year, preceding such failure to comply for each working day in which it is in breach until it complies.