



EUROPEAN COMMISSION  
DG Competition

***Case M.10408 - AIP / ALVANCE DUFFEL  
TARGET BUSINESS***

Only the English text is available and authentic.

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

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Article 7  
Date: 13/04/2022



## EUROPEAN COMMISSION

Brussels, 13.4.2022  
C(2022) 2512 final

### **PUBLIC VERSION**

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

American Industrial Partners Capital  
Fund VII, LP  
450 Lexington Avenue, 40th Floor  
New York, NY 10533  
United States of America

**Subject :**        **Case M.10408 – AIP / Alvance Duffel Target Business  
Commission decision pursuant to Article 7(3) of Council Regulation  
N° 139/2004<sup>1</sup> and Article 57 of the Agreement on the European Economic  
Area<sup>2</sup>  
Request for derogation**

Dear Sir or Madam,

- (1) We refer to your application for a derogation from the suspension obligation provided for in Article 7(1) of Council Regulation (EC) No 139/2004 (the ‘Merger Regulation’) with regard to the proposed acquisition by American Industrial Partners Capital Fund VII, LP, an investment fund managed by American Industrial Partners (collectively referred to as ‘AIP’, United States) of Alvance Aluminium Duffel Business (‘Duffel Aluminium’ or the ‘Target’, Belgium) (the ‘Transaction’) submitted pursuant to Article 7(3) of the Merger Regulation on 11 April 2022. AIP and Duffel aluminium will be referred to as the ‘Parties’.

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 (the ‘Merger Regulation’). With effect from 1 December 2009, the Treaty on the Functioning of the European Union (‘TFEU’) has introduced certain changes, such as the replacement of ‘Community’ by ‘Union’ and ‘common market’ by ‘internal market’. The terminology of the TFEU will be used throughout this decision.

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

## 1. THE PARTIES AND THE TRANSACTION

- (2) AIP is a private equity firm focused on buying and improving industrial businesses. Since 2020, AIP owns Commonwealth Rolled Products, which operates an aluminium rolled products facility with activities in the United States. AIP also owns and controls since 2021 Aluminium Dunkerque, a primary aluminium producer, which operates an aluminium smelter in Loon-Plage near Dunkerque (France).<sup>3</sup>
- (3) Duffel Aluminium is a European producer of aluminium flat rolled products ('FRPs'). It operates an aluminium plant in Belgium, which produces aluminium automotive body sheets ('ABS'), FRPs for heat exchangers ('HEX'), and standard FRPs such as industrial aluminium coil and sheet products used in building and construction, commercial transportation and other standard.
- (4) The assets which make up the Target are currently held across two corporate groupings (both currently subject to the ultimate ownership of Mr. Gupta).<sup>4</sup> The valuable assets relating to the Target are held through Alvance Aluminium Duffel BV ('OpCo') and its subsidiaries.<sup>5</sup> Ecnavla 8 UK Ltd (in administration, 'E8' or the 'Company') is the sole shareholder of Alvance Aluminium Belgium BV ('BidCo') which in turn is the sole shareholder of OpCo.
- (5) AIP indirectly owns fully matured claims outstanding against some entities of Mr Gupta's Aluminium business under a facility agreement dated 30 September 2020 (the 'FA').<sup>6</sup> On 7 July 2021, GLAS Trust Corporation Limited (as security agent, 'GLAS') appointed, in accordance with English law and in particular the UK Insolvency Act 1986, independent administrators, Geoffrey Paul Rowley and David Frederick Shambrook of FRP Advisory Trading Limited (the 'Administrators'), to administer E8. Following their appointment, during several months, the Administrators have engaged with Mr Gupta and his representatives to facilitate the debt repayment and ensure a solvent rescue of the Company. On the 3 February 2022, the Company's Administrators issued a progress report<sup>7</sup> (the 'Progress Report') confirming that, despite their extensive efforts, a solvent rescue of the Company is unlikely to occur. On the 8 April 2022, the Administrators informed the Commission that the sale process of the Target was launched.<sup>8</sup>

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<sup>3</sup> AIP's acquisition of Alvance Dunkerque Target Business was cleared by the Commission in case M.10407 – AIP / Alvance Dunkerque Target Business.

<sup>4</sup> All of the companies in the broader "Aluminium Duffel" are: Ecnavla 8 UK Ltd; ALVANCE Aluminium Belgium BV; ALVANCE Aluminium Duffel BV; ALVANCE Aluminium Italy Srl; Aluminium Gate (Asia Pacific) Pte Ltd; ALVANCE Aluminium Service Asia Pte Ltd; ALVANCE Aluminium Service UK Ltd; ALVANCE Germany GmbH; and ALVANCE Aluminium Beijing WFOE. The Administrators led sale process will result in AIP only acquiring E8's shareholding in BidCo and OpCo.

<sup>5</sup> Some minor assets of the Target are held through a corporate grouping composed of the following entities: Aluminium Gate (Asia Pacific) Pte Ltd, Alvance Aluminium Service Asia Pte. Ltd, ALVANCE Aluminium Service UK Ltd, Alvance Germany GmbH and ALVANCE Aluminium Beijing WFOE.

<sup>6</sup> These entities, which as corporate guarantors under the FA, are: ALVANCE Aluminium Belgium BV, ALVANCE Aluminium Duffel BV, Ecnavla 7 Singapore Pte. Ltd, Ecnavla 8 UK Ltd, Alvance Aluminium Service Asia Pte. Ltd, ALVANCE Aluminium Service UK Ltd, Alvance Germany GmbH (formerly known as Waterside A2. Vermögensverwaltungsgesellschaft GmbH), Aluminium Gate (Asia Pacific) Pte Ltd and AL Gate Pte Ltd and Alvance Aluminium Italy S.r.l.

<sup>7</sup> See: The Administrators' progress report of the period 7 July to 6 January 2022.

<sup>8</sup> Email from the Administrators to the European Commission dated 8 April 2022.

- (6) AIP intends to acquire control over Duffel Aluminium through one of the routes described below.
- (7) First, since E8 (Target's holding company) is under administration, AIP will acquire control of the Target through an administrator-led sale process (the 'Open Sale Process'). According to information provided by AIP, and available in the Administrators' Progress Report<sup>9</sup>, a solvent rescue of E8 is unlikely to occur. In this respect, AIP submits that it has been informed by the Administrators that they have compiled a list of possible buyers and will be now openly marketing the shares of BidCo by way of contacting all such possible bidders. AIP submits that it has confirmed to the Administrators that it will bid in E8's shareholding in BidCo in the context of the launched Open Sale Process.
- (8) Second, according to AIP, it could alternatively acquire control over Duffel Aluminium through an accelerated sale process in case the Target's financial stress becomes more acute such that it is unable to continue operating until completion of the Open Sale Process event (the 'Accelerated Sale Process').<sup>10</sup>
- (9) Finally, AIP submits that, should the administrator-led sale process fail (whether the open or the accelerated one), it could also acquire control over Duffel Aluminium by exercising its rights under either or both of:<sup>11</sup>
  - (a) a share pledge agreement dated 30 September 2020 between E8, GLAS, (the 'E8 Pledge Agreement'), by which the shares in BidCo are pledged as collateral;
  - (b) a share pledge agreement dated 30 September 2020 between BidCo and GLAS (the 'BidCo Pledge Agreement' together with the E8 Pledge Agreement, the 'Belgian Share Pledges') (the 'Enforcement').
- (10) According to AIP, there are, at present, certain claims outstanding against Liberty House Group Pte Ltd ('Liberty'), Mr Gupta and other entities of the Aluminium business of Mr Gupta, including BidCo and Opco, pursuant to the FA. AIP indirectly owns 100% of the debt claims under the FA, which are secured by the Belgian Share Pledges. Under the terms of each of the Belgian Share Pledges, GLAS may enforce AIP's rights over the shares in BidCo and/or OpCo at any time upon AIP's request after an event of default of the FA has occurred and is continuing. Thus, by exercising its rights under either or both of the Belgian Share Pledges and subject to a continuing default event, AIP may trigger its indirect acquisition of the shares and obtain indirect control of Duffel Aluminium.
- (11) Once AIP requests GLAS to enforce its rights under either or both of the Belgian Share Pledges after an event of default of the FA has occurred and is continuing,<sup>12</sup>

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<sup>9</sup> See: The Administrators' progress report of the period 7 July to 6 January 2022.

<sup>10</sup> AIP's application for the derogation request pursuant to Article 7(3) of the Merger regulation, paragraph 26.

<sup>11</sup> Ibid., paragraph 29.

<sup>12</sup> According to AIP, a number of Defaults and Events of Default have occurred under the FA. Without limitation, such Defaults and Events of Default have included, among others, a failure to repay certain Loans made under the FA when due on 15 June 2021 and 21 June 2021, and on 30 June 2021. In addition, AIP explains that the entire FA matured in accordance with its terms on 31 December 2021 and no interest payments have been made since June 2021.

GLAS will transfer control over Duffel Aluminium to AIP. No further action would be required from AIP to acquire control over Duffel Aluminium. [Description of contractual aspects of enforcement steps].

## **2. THE EU DIMENSION**

- (12) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (AIP in 2020: EUR 12 725.5 million and Duffel Aluminium in 2020<sup>13</sup>: EUR 502 million). Each of them has an EU-wide turnover in excess of EUR 250 million (AIP in 2020: EUR 569.7 million and Duffel Aluminium in 2020<sup>14</sup>: EUR 370 million), and they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The proposed Transaction therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

## **3. THE APPLICATION FOR DEROGATION**

- (13) AIP submits that an acquisition of control of the Target may be imminent and may occur before the Commission would be in a position to issue a clearance decision pursuant to Article 6(1)(b) of the Merger Regulation.
- (14) In this respect, AIP contends that, in either an Open Sale Process or an Accelerated Sale Process, the Transaction should not be subject to the standstill obligation pursuant to Art. 7(1) of the Merger Regulation as delay for clearance pursuant to the Merger Regulation may result in the irretrievable collapse of the Target.
- (15) Likewise, AIP asserts that, in the event that the acquisition of the shares in Duffel Aluminium proceeds rapidly after AIP instructs GLAS to exercise AIP's rights under the FA, the application of Article 7(1) of the Merger Regulation would also result in substantial harmful effects for the Target (and for AIP and its investors). In this respect, AIP submits that should it proceed with the enforcement of its right under the FA while the Transaction is subject to the standstill obligation contained in Article 7(1) of the Merger Regulation it could find itself in a scenario where:
- (a) AIP has instructed GLAS to proceed with the acquisition mechanism under the Belgian Share Pledges;
  - (b) [Description of contractual aspects of enforcement steps]; and
  - (c) GLAS then transfers legal title to the relevant shares to AIP before it would be possible for AIP to receive clearance pursuant to the Merger Regulation.
- (16) In addition, AIP confirms that the Transaction raises no substantive competition concerns whatsoever as there are no horizontal overlaps between the Parties, there is no risk of potential vertical foreclosure or any other potential substantive concern.
- (17) In view of the above, AIP submits that a derogation from the standstill obligation pursuant to Article 7(1) of the Merger Regulation meets the criteria of Article 7(3) of

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<sup>13</sup> Year ending March 2020.

<sup>14</sup> Ibid.

the same regulation, particularly in view of (a) the harmful effects to AIP and the Target that would result from application of the standstill obligation, and (b) the complete lack of any potential threat to competition as a result of the Transaction.

#### **4. THE CONDITIONS FOR DEROGATION PURSUANT TO ARTICLE 7(3) OF THE MERGER REGULATION**

- (18) Pursuant to Article 7(1) of the Merger Regulation, a concentration falling under that Regulation shall not be implemented either before its notification or until it has been declared compatible with the common market. Pursuant to Article 7(3) of the Merger Regulation, the Commission may, on the basis of a reasoned request, grant a derogation from the obligation imposed by Article 7(1).
- (19) Derogation from the obligation to suspend concentrations is granted only exceptionally, normally in circumstances where the suspension required under the Merger Regulation would cause serious damage to the undertakings concerned by a concentration, or to a third party.
- (20) In deciding upon the request, the Commission must take into account, *inter alia*, the effects of the suspension on one or more undertakings concerned by the concentration or on a third party and the threat to competition posed by the concentration.

#### **4.1. The Transaction falls under the suspension obligation pursuant to article 7(1) of the Merger Regulation**

- (21) As indicated, AIP's intended acquisition of control over the Target constitutes a concentration with a Union dimension, which means that any transaction which, in whole or in part, in fact or in law, contributes to the change in control over the Target falls under the standstill obligation set out by Article 7(1) of the Merger Regulation.
- (22) AIP has manifested its intention to exercise control over Duffel Aluminium on a lasting basis, by virtue of a share sale process carried by the UK administrators or, if necessary, via the Enforcement option as described in the above paragraph (6) and following. According to the information provided by AIP, under each of these three routes, there is a risk that AIP would need to implement immediate actions to address the Target's precarious financial condition before receiving the Commission's clearance.
- (23) The Administrators have already started the sale process of E8's shareholding in BidCo. According to information provided by AIP (and confirmed by the Administrators), the sale process would need to be completed within few weeks, if not days. The Administrators have, according to AIP, already taken public steps to proceed with the sale process (*i.e.* compiled a list of possible buyers and are openly marketing the shares of BidCo by way of contacting all such possible bidders), which will be completed swiftly given Mr Gupta's lack of cooperation with the Administrators and its decision to withhold information. Recent public comments

from Union leaders in OpCo also report a precarious operational situation.<sup>15</sup> In this respect, the Administrators have confirmed to the Commission the existence of operational and financial circumstances which justify the launch of an auction process on behalf of E8 in order to achieve the best possible price for E8's shareholding in BidCo and OpCo. The Administrators further confirmed that if an event occurs prior to completion of the Open Sale Process which indicates that the Target will be unable to continue operating until completion of the Open Sale Process, such as OpCo entering or being about to enter formal bankruptcy proceedings, then the Administrators would best meet the interests of E8's creditor body through an immediate sale of the shares of BidCo.<sup>16</sup> An Accelerated Sale Process could be completed in a matter of days and would therefore permit AIP to take control of the Target, refinance it and return the Target to a state of operational and financial stability.

- (24) In view of this, AIP would therefore risk completing the acquisition of the Target without having received the Commission's clearance, which is the only condition precedent that would trigger the completion of such an immediate sale of the shares of BidCo and thus the implementation of the necessary measures to stabilize the Target.
- (25) In addition, under the Enforcement route, if AIP were to instruct GLAS to take enforcement action in respect of the debt arrangements described in paragraph (10) above, AIP would be handed control of Duffel Aluminium by GLAS very shortly thereafter, without any further action required by AIP. Therefore, the only step required from AIP to acquire control over Duffel Aluminium is instructing GLAS to enforce its rights under the acquisition mechanism of the Belgian Share Pledge. [Description of contractual aspects of enforcement steps]. AIP would therefore risk acquiring control over the Target as soon as it triggers the acquisition mechanism foreseen in the Share Pledge Agreement without having received the Commission's clearance.
- (26) Therefore, the Commission considers that the Transaction falls under the standstill obligation pursuant to Article 7(1) of the Merger Regulation. This means that, in the absence of a derogation pursuant to Article 7(3) of the Merger Regulation, the standstill obligation under Article 7(1) of the Merger Regulation would prevent AIP from either:
  - (a) implementing necessary measures to address the Target's precarious financial situation before obtaining the Commission's clearance decision, should it be the retained acquirer in the context of the sale process, or
  - (b) Should the sale process fail, exercising its rights as a lender under the FA and the Belgian Share Pledges by triggering a mechanism that would lead to its acquisition of control over Duffel Aluminium, and therefore the implementation of the Transaction, without the need for any further measure to be taken by AIP.

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<sup>15</sup> Comments on Union leaders at Duffel are described in a new article from DE TIJD on 23 March 2022. See: [tijd.be/ondernemen/grondstoffen/duur-aluminium-bezorgt-duffelse-verwerker-avance-kopzorgen/10375747.html](https://tijd.be/ondernemen/grondstoffen/duur-aluminium-bezorgt-duffelse-verwerker-avance-kopzorgen/10375747.html)

<sup>16</sup> Email from the Administrators to the European Commission dated 12 April 2022.

- (27) Therefore, the Commission considers that the Transaction falls under the standstill obligation pursuant to Article 7(1) of the Merger Regulation.

## **4.2. The effects of the suspension on the undertakings concerned and third parties**

### *4.2.1. Effects of the suspension on the undertakings concerned*

- (28) AIP claims that the financial situation of Duffel Aluminium is deteriorating. In this respect, AIP submits that as long as it is unable to take immediate action to stabilize the Target upon acquiring control, Duffel Aluminium's financial and operational situation will further deteriorate to the point of putting its competitiveness and possibly its viability at risk.
- (29) AIP explains that the business is likely to suffer substantial and long-term damage. In particular, AIP stresses that Duffel Aluminium is in a precarious financial condition and [Summary of Duffel Aluminium's financial position].
- (30) According to AIP, the Target's financial situation is even more critical since its holding company (E8) is, as explained in paragraph (29) above, already under administration. AIP explains that given the Administrators' decision that E8 cannot return to solvency, Mr. Gupta would have provided evidence of the Target's operational stability had he been able to do so. According to AIP, Mr. Gupta's decision to withhold information from the Administrators is in itself evidence that Target is in a precarious operational situation.
- (31) AIP asserts that, in order to maintain the Target operating as a going concern and avoid its collapse, it will implement immediate actions in the form of additional essential working capital as needed.
- (32) This concurs with the Administrators' findings in their most recent Progress Report. In this respect, the Administrators stress that while they initially considered, based on the representation from Mr. Gupta and his representatives, that a solvent rescue of E8 may be achievable, they "*no longer consider that a solvent rescue of the Company following a debt repayment transaction is likely to occur*".<sup>17</sup> This is, according to the Administrators, due to the absence of any satisfactory repayment proposal from Mr Gupta and his representatives of the indebtedness of ICP Origination I LLC's ('ICP'), an AIP entity.<sup>18</sup> Consequently, the Administrators stress their intention to immediately "*take steps towards a sale of the Company's share in Alvanco Belgium*" in order to achieve the best possible return for the Company's creditors.<sup>19</sup> The Administrators informed the Commission that such a sale process was launched on the 8 April 2022.
- (33) Therefore, in view of (i) the Administrators' ongoing steps to market the shares of E8 in BidCo and (ii) the information provided by AIP on the Target's significant financial stress, the Commission considers that it is credible that the standstill obligation imposed by Article 7(1) could lead to serious harm to Duffel Aluminium.

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<sup>17</sup> See: The Administrators' progress report of the period 7 July to 6 January 2022. Available at the UK Companies House: <https://find-and-update.company-information.service.gov.uk/company/12781791/filing-history>

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.



#### 4.2.2. *No harm to third parties*

- (34) In this context, the Commission considers that there are no indications that a derogation of Article 7(1) of the Merger Regulation with regard to the Transaction could harm Liberty or any other third party.
- (35) The Administrators' ongoing steps to market the shares of E8 in its wholly owned subsidiary (the BidCo) is already in the public domain.<sup>20</sup> Likewise, it is public knowledge that AIP intends to take control over Duffel Aluminium.<sup>21</sup> As a result, the Target's customers, suppliers and employees as well as Liberty could legitimately foresee that AIP, as a secured creditor, would seek to take control of the Target as way of repayment of its debt under the FA or as the beneficiary of the sale process since E8 is under administration. The derogation could therefore not cause harm to third parties since it is largely contingent upon the Administrator launching the sale process or AIP taking enforcement actions under the FA. In both cases, the fact that the Commission granted a derogation from the standstill obligation under Article 7(1) of the Merger Regulation would not prevent Liberty or any other third party from exercising their rights before the competent instances and courts.
- (36) Furthermore, since it is public knowledge that AIP intends to take control over Duffel Aluminium, the derogation cannot cause harm by sending a signal to the markets that the Target is in the process of being taken over.
- (37) Therefore, based on the information available to the Commission, a derogation from the standstill obligation would not have adverse effects on Liberty or any other third party.

#### **4.3. The threat to competition posed by the concentration**

- (38) AIP is active (through Dunkerque Aluminium) in the production of primary aluminium in France. In addition, AIP is active (through Commonwealth Rolled Products) in the production of aluminium rolled products for the US. Furthermore, AIP controls two separate companies, EnTrans and REV Group, which manufacture products that use as an input aluminium automotive body sheets ('ABS').
- (39) The Target is active in the production and supply of aluminium ABS in addition to a number of other aluminium flat rolled products ('FRPs'), namely HEX and standard FRPs.
- (40) While both Parties are active in the production and supply of aluminium flat rolled products, their activities do not overlap geographically. Indeed, the Commission has previously considered that the market for the production and supply of FRPs is EEA-wide in scope whereas AIP is active in the US. Consequently, there could be no horizontal overlaps between the Parties' activities.
- (41) There are vertical links between AIP's presence in the upstream markets for standard-purity aluminium and high-purity aluminium and the Target's operation in the downstream markets for the production and supply of FRPs (i.e. the market for

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<sup>20</sup> See: The Administrators' progress report of the period 7 July to 6 January 2022. Available at the UK Companies House: <https://find-and-update.company-information.service.gov.uk/company/12781791/filing-history>

<sup>21</sup> <https://www.davisindex.com/gfg-struggles-to-maintain-control-of-duffel/>

aluminium ABS, the market for Aluminium HEX and the market for standard FRPs). However, as explained in section 4.3.2.1, these links will not give rise to vertically affected markets.

- (42) Furthermore, the Transaction will result in two additional vertical overlaps between, on the one hand, the Target's activities in the markets for aluminium ABS and, on the other hand, activities of EnTrans<sup>22</sup> and REV Group<sup>23</sup>, two AIP's portfolio companies that use ABS to manufacture certain products.<sup>24</sup> These vertical relationships are further discussed in section 4.3.2.2 below.

#### 4.3.1. Market definition

##### 4.3.1.1. Primary aluminium

- (43) Regarding the production of aluminium, the Commission typically distinguishes between separate product markets for: (i) bauxite; (ii) alumina; (iii) primary aluminium and (iv) secondary aluminium.<sup>25</sup>
- (44) In *Trimet/EDF/Newco*,<sup>26</sup> the Commission considered a potential segmentation of primary aluminium according to degree of purity (high, standard and low purity). Within high-purity aluminium, the Commission previously found that high-purity aluminium P0404 (with an aluminium purity of approximately 99.92%) constitutes a distinct and separate product market.<sup>27</sup> Separately, the Commission also envisaged in its previous decisions whether a further segmentation according to the form of aluminium (in various shapes – standard ingots/T-bars; extrusion billets; slabs; wire rod and foundry alloys)<sup>28</sup> is warranted but ultimately left the question open.<sup>29</sup>
- (45) As to the geographic scope, the Commission considered the various markets for primary aluminium as worldwide in scope.<sup>30</sup>

##### 4.3.1.2. Aluminium FRPs

- (46) The Commission typically distinguishes between various FRP product markets depending on the type of FRP and end application.<sup>31</sup> These product markets are: (i) beverage can bodies, (ii) beverage can ends, (iii) food cans, (iv) lithographic sheet, (v) aluminium foil, (vi) aluminium automotive body sheets (ABS) and

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<sup>22</sup> Engineered Transportation (EnTrans) is a manufacturer of aluminium and stainless-steel tanker trailers, well stimulation, completion equipment technology and related aftermarket parts & services.

<sup>23</sup> REV Group is a manufacturer of specialty vehicles for three industry segments—fire & emergency (e.g. fire apparatus, ambulances), recreational vehicles, and commercial (e.g. buses, trucks).

<sup>24</sup> In addition, Vertex Aerospace is active in the manufacture of aerostructure detail and related assembly and maintenance of aircraft—via its Crestview business unit based in the U.S. Crestview has approximately US\$[...] million of sales and consumes aluminium sheet for use in aerospace applications. Nevertheless, Duffel Aluminium does not produce any form of FRP for use in aerospace applications so that there is no vertical relationship between Vertex and the Target's businesses.

<sup>25</sup> M.4605 - Hindalco / Novelis, paragraph 10.

<sup>26</sup> M.7019 Trimet/EDF/Newco, paragraph. 20.

<sup>27</sup> M.1693, Alcoa/Reynolds, paragraph. 95.

<sup>28</sup> M.7019 Trimet/EDF/Newco, para. 23. M.4441, EN+ / Glencore / Sual / UC Rusal, para. 27.

<sup>29</sup> M.7019 Trimet/EDF/Newco, paragraph. 23.

<sup>30</sup> Ibid., paragraph. 25.

<sup>31</sup> M.4605 - Hindalco / Novelis, paragraph 13.

(vii) FRPs for automotive heat exchangers (HEX).<sup>32</sup> In addition, the Commission defined, in a previous decision, a separate market for standard FRPs, which encompasses all aluminium FRPs that do not constitute distinct product markets within the field of FRPs.<sup>33</sup>

- (47) Regarding the relevant geographic market, the Commission held that the geographic market for the production and supply of Standard FRPs is EEA-wide.<sup>34</sup> A similar geographic market was defined for other FRP markets.<sup>35</sup>

#### 4.3.2. Potential foreclosure

- (48) In view of the information provided by AIP, the Transaction does not appear to give rise to any vertically affected markets and therefore the likelihood that the Transaction may result in any foreclosure effects appears to be unlikely.

##### 4.3.2.1. Vertical link between AIP's production of primary aluminium and Duffel Aluminium's downstream manufacturing activity

- (49) AIP submits that the acquisition of the Target, as a consumer of primary Aluminium, does not represent any possible risk of vertical foreclosure, with both AIP's share of global primary aluminium production and the Target's downstream EEA share of secondary aluminium production (for FRPs and for each main type of FRP), being at a low level. AIP further submits that until very recently Aluminium Dunkerque and the Target's assets were part of the same undertaking concerned, a combination that was recently cleared by the Commission in *Liberty / Aleris Divestment Business*.<sup>36</sup>
- (50) The Commission considers that, for the reasons set out below, the vertical relationship between AIP's production of primary aluminium and Duffel Aluminium's downstream manufacturing activity would not raise *prima facie* competition concerns.
- (51) In relation to input foreclosure, AIP's position in the overall market for primary Aluminium is rather marginal (less than 1% market share in 2021 at global level). AIP's market share remains [0-5]% on the narrowly defined markets of (i) standard-purity aluminium and (ii) high-purity aluminium. Other important players remain active in the market of primary aluminium, namely: Hongqiao, UC Rusal and Xinfu with 2021 market shares of approx. [5-10]%, [5-10]% and [5-10]% respectively. These competitors are also active in the narrower markets of (i) standard-purity aluminium and (ii) high-purity aluminium where they all have larger market shares than AIP. Therefore, it is unlikely that AIP will have sufficient market power upstream to be able to engage in an input foreclosure strategy through the reduction of FRPs producers' access to primary aluminium, whether of standard or high purity.
- (52) In respect of customer foreclosure, the Target has a small market share in the market for aluminium ABS (approx. [10-20]% in 2020 at EEA level), as opposed to Novelis (approx. [40-50]%) and Constellium and Hydro (approx. [20-30]% each). In the market for standard FRPs, the Target has a limited market share ([0-5]% at EEA

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<sup>32</sup> Ibid.

<sup>33</sup> M.9706 – Novelis/Aleris, paragraph 322.

<sup>34</sup> Ibid., paragraph 359.

<sup>35</sup> M.4605 - Hindalco / Novelis, paragraph 13.

<sup>36</sup> Case M.9693 - *Liberty / Aleris Divestment Business*.

level in 2020) compared to other key players such as Hydro (approx. [10-20]%), Arconic (approx. [10-20]%) and Novelis (approx. [5-10]%). In the market for aluminium HEX, the Target's market share is marginal ([0-5]% in 2020 at EEA level) while other key players such as Gränges, Aleris and Hydro, all of which have a larger market share than the Target, will continue to be active therein. It can therefore be inferred from the Target's limited market share in the above three markets that the vertical relationship between AIP and Duffel Aluminium is unlikely to deprive other primary Aluminium suppliers of a sufficient customer base.

- (53) In view of the above, the Transaction does not raise *prima facie* competition concerns as regards vertical links between AIP's upstream activities and the Target's downstream presence due to the unlikely foreclosure effects.

#### 4.3.2.2. Vertical relationship between Duffel Aluminium's production of FRPs and AIP's downstream manufacturing activity

- (54) AIP submits that no AIP's portfolio company, which would potentially purchase a relevant input from Duffel Aluminium, is present in the EEA territory (*i.e. no EEA presence in a market that is vertically related to that in which Duffel Aluminium operates*). In this respect, AIP explains that both EnTrans and REV are active almost exclusively in North America and that if taken together they account for a very small fraction of North American ABS consumption, estimated at about 1% of U.S. production capacity. Furthermore, according to AIP, neither EnTrans nor REV Group has any presence in the EEA territory, and neither company has any sale/supply relationship with Duffel Aluminium.

- (55) For the reasons set out below, it is unlikely that the potential vertical relationship between Duffel Aluminium, on the one hand, and EnTrans and REV, on the other hand, would raise any competition concerns.

- (56) First, input foreclosure (*i.e. Duffel Aluminium restricting its supply of Aluminium ABS to either or both of EnTrans' and REV competitors post-merger*) is unlikely given that Duffel Aluminium's market share in the market for aluminium ABS is limited (approx. [10-20]%) in 2020 at EEA level. There are alternative ABS suppliers in the market including Novelis with a market share of approx. [40-50]% in addition to Constellium and Hydro, each holding around [20-30]% in the EEA. These competitors would be in the position to fully supply the customers that Duffel Aluminium would refuse to supply.

- (57) Second, customer foreclosure (*i.e. EnTrans and REV only supplying themselves at Duffel Aluminium*) would also be unlikely to cause any competitive harm given that neither EnTrans nor REV Group has any presence in the EEA territory, and neither company has any supply contract with any EEA-based producer of aluminium FRPs.<sup>37</sup> Therefore, were EnTrans and REV to divert their demand towards Duffel Aluminium, there would be no impact on other aluminium ABS suppliers in the EEA.

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<sup>37</sup> EnTrans has a supply contract with a U.S. processor & distributor of aluminium FRPs – [...], under which it purchases approximately [...] (approx. [...] tons) of aluminium plates annually (accounting for less than [...]% of its total demand for standard FRPs). The aluminium plate purchased from [...] is originally produced in a mill in [...]. EnTrans has no contractual relationship with [...] and [details on EnTrans supplier]. In any event, even when this supply relationship is accounted for, EnTrans' demand of standard FRP represents less than [...]% of all standard FRP demand in the EEA.

- (58) In view of the above, the Transaction does not raise *prima facie* competition concerns as regards vertical links between Target's upstream activities and the AIP's downstream presence due to the unlikely foreclosure effects.

#### 4.3.3. Conclusion

- (59) Therefore, based on the information provided by the Parties, it appears *prima facie* that the Transaction is not likely to pose a threat to competition within the EEA.

#### 4.4. Balance of interests

- (60) Based on the above, it appears that whilst the suspension obligation could seriously affect the viability and competitiveness of the Target, no threat to competition caused by the operation can currently be identified. The likely absence of threats to competition justifies all the more the need to ensure that the assets and their operation are preserved. The derogation does not appear to have adverse effects on the Parties or on any third party either. Therefore, the Commission finds that derogation can be granted in accordance with the application and to the extent specified below.

### 5. CONCLUSION

- (61) The Commission considers that the reasons given by AIP for derogation from the suspension obligations meet the requirements set out in Article 7(3) of the Merger Regulation.
- (62) On the basis of the above considerations, and in accordance with Article 7(3) of the Merger Regulation and Article 57 of the EEA Agreement, AIP is granted a derogation from the obligations imposed by Article 7(1) of the Merger Regulation in accordance with its application and until the Commission takes a final decision under the relevant provisions of the Merger Regulation.

*For the Commission*

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