# Competition *merger brief*

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# Competition *merger brief*

## *LSEG/Refinitiv* – Safeguarding Access to Financial Data and Infrastructure

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**In a nutshell**

**The USD 27 billion acquisition of Refinitiv (previously known as Thomson Reuters F&R), by the London Stock Exchange Group, a UK-based financial market infrastructure provider, was conditionally cleared, subject to the divestment of Borsa Italiana as well as a package of non-structural remedies in over-the-counter interest-rate derivatives and financial data.**

### Introduction

On 13 January 2021, the Commission cleared the acquisition of Refinitiv by the London Stock Exchange Group ("LSEG"), subject to several remedies, following an in-depth investigation. LSEG operates a global financial market infrastructure business. It also offers financial data products. Refinitiv is a provider of financial data products, which also controls Tradeweb, a trading venue operator. By combining one of the largest global financial market infrastructure providers and a leading financial data provider, the transaction was transformational in key areas of the European financial market infrastructure.

The transaction raised horizontal and vertical competition concerns resulting from the parties' activities in the trading and clearing of financial instruments and in the provision of financial data products..[1] Absent the remedies, the transaction would have created a financial data and infrastructure giant with the potential to set higher prices and reduce choice for businesses and end-users and would have likely led to less innovation for financial data-based products and services. This would have had a detrimental impact on the financial markets where an efficient flow of data is essential for informed trading decisions and investment planning. In addition, the transaction would have also led to a loss of competition in trading services of key financial assets for European states and companies' liquidity (European government bonds and over-the-counter interest rate derivatives).

### Horizontal overlap in the trading of European Government Bonds

European government bonds ("EGBs"), as referred to in the decision, relate to bonds issued by the governments of the EEA countries (including the UK at the time) and Switzerland. The majority of EGB trades are executed electronically on trading venues. Their trading takes place at two trading levels: (i) dealer-to-dealer ("D2D"), i.e., among large traders such as major investment banks and (ii) dealer-to-client ("D2C"), i.e., between a larger trader and a financial investor that trades for its own investment purpose (e.g. a pension fund).

#### The Commission's assessment

Absent the remedies, this concentration would have combined two major electronic trading venues for EGBs, namely LSEG's MTS and Refinitiv's Tradeweb. It would have resulted in very large combined market shares, up to 70-80%, in the provision of electronic trading services for EGBs. In addition, the market investigation indicated that the parties' trading venues were in a leading position in the market, and were close competitors in this space, in particular for D2C trading. Evidence collected in the market investigation also showed that the provision of trading services for EGBs is characterised by strong network effects and high barriers to entry, which further entrenched the parties' market position. The Commission thus found that the concentration significantly impeded effective competition (SIEC) in this market.

#### The divestment of Borsa Italiana to Euronext

In order to remedy the Commission's concerns in the provision of electronic trading services for EGBs, LSEG proposed to divest its 99.9% stake in Borsa Italiana, the parent company of MTS, to Euronext. LSEG and Euronext signed a definitive and binding sale and purchase agreement on 9 October 2020. The Commission considered that this remedy fully removed the horizontal overlap between the parties' activities. In addition, the results of the market test confirmed that Borsa Italiana was a viable stand-alone business that, if operated by a suitable purchaser, could compete effectively on the market for EGB trading services (and

[1] While the transaction led to more than 50 affected markets that the Commission had to assess, this merger brief focuses on the affected markets that led to competitive concerns (i.e., for which the transaction significantly impeded effective competition).

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its D2C and D2D potential sub-segments) on a lasting basis. In a decision adopted on 26 February 2021, the Commission approved Euronext as a suitable purchaser for Borsa Italiana.

The purchase price agreed between Euronext and LSEG for the sale of Borsa Italiana exceeded EUR 4.3 billion making the sale of Borsa Italiana to Euronext one of the largest divestitures required to remedy the Commission's competition concerns in recent years. From the Commission's point of view, the sale of Borsa Italiana was a clear-cut remedy that fully removed the overlap between the parties' activities in EGB trading services, and constituted a self-standing and viable entity (as opposed to, for instance, a scenario where only MTS would have been divested instead of the whole of Borsa Italiana).

## Vertical relationship between the trading and clearing of over-the-counter interest-rate derivatives

Interest-rate derivatives ("IRDs") are contracts used to speculate on or hedge against a movement in interest rates, for instance by transforming a floating or variable interest-rate exposure to a fixed interest rate exposure or *vice versa*, depending on the respective trader's position/risk to be insured. The main types of IRD contracts are options, futures/forwards and swaps. Derivatives can be traded on a regulated market ("on-venue") or outside a regulated venue (i.e., over-the-counter, or "OTC"). EU regulation mandates that the trading of some OTC IRDs (e.g., futures), takes place on electronic venues.

Clearing occurs downstream of trading. It refers to the procedure by which trades are "settled" (i.e., when the seller has delivered the rights to the financial asset to the buyer and the buyer has paid the agreed funds to the seller). The main function of clearing is to insure each party to a trade against the risk of non-fulfilment of the commitments agreed to by the other party. EU regulation mandates the clearing of certain OTC IRD contracts.

### The Commission's assessment

In OTC IRDs, the parties were active at different supply chain levels: (a) Refinitiv was active upstream in the provision of D2C and D2D electronic trading services for OTC IRDs, via Tradeweb, and (b) LSEG was active downstream in the provision of clearing services for OTC IRDs, via the UK-based LCH SwapClear.

The Commission was concerned that the transaction would lead to customer foreclosure. The investigation showed that absent remedies the concentration would have provided LSEG with the ability and incentive to foreclose its upstream rivals active in the provision of electronic trading services for OTC IRDs. LSEG could have foreclosed Tradeweb's rivals by ceasing to clear, increasing charges, degrading the quality, imposing disadvantageous requirements for trades executed by its rivals, or by degrading LSEG's cooperation with Tradeweb's rivals for the introduction of new products.

The Commission found that LCH SwapClear was dominant in the OTC IRD clearing market, as evidenced by very high market share, a unique liquidity pool and attractiveness across currencies. The Commission also found that such dominance was entrenched, despite the upcoming Brexit, as the downstream market was characterised by strong network effects, high barriers to entry, difficulties to switch, as well as limited customers' countervailing buyer power. The investigation also showed that it was legally and technically possible to engage in the foreclosure strategies. In addition, the Commission undertook a quantitative vertical arithmetic modelling confirming that LSEG would have incentives to foreclose its upstream rivals. The model was based on the parties' financial data and identified the critical switching rate, i.e., the percentage of customers switching away from LCH SwapClear needed for the foreclosure strategies to not be profitable. The model showed that the critical switching rate was much higher than the actual switching rate resulting from the market investigation, thus confirming LSEG incentives to foreclose its trading rivals.

### Brexit

Generally speaking, Brexit constituted an important source of uncertainty as LSEG is UK-based and Brexit had an impact on its regulatory framework. This led the Commission to consider the possible regulatory scenarios related to Brexit, to the extent that they could be predicted at the time.

In particular, Brexit had important implications for the regulatory framework applicable to OTC IRDs. Before Brexit, LCH SwapClear, was located in the EEA and authorised to clear OTC IRDs in the EEA under the European regulatory framework. After Brexit, LCH SwapClear would be henceforth located in a non-EEA country and would therefore no longer be an *authorised* clearing house. Instead, it would become a *recognised* clearing house (by virtue of an equivalence decision dated 21 September 2020), allowed to clear OTC IRDs in the EEA. However, as a *recognised* clearing house, LCH SwapClear would no longer be bound as of 1 January 2021 by the same provisions, and in particular it would no longer be bound by the open-access provisions of the European Market Infrastructure Regulation (EMIR),[2] which would otherwise have prevented the full foreclosure of Tradeweb's rivals.

## Access remedy for over-the-counter interest-rate derivatives trading rivals

To address the Commission's competition concerns, LSEG committed to continue offering its global OTC IRD clearing services performed by LCH SwapClear on an open access basis and to not engage in commercial strategies that would discriminate customers based on where they execute their OTC IRD trade, for a period of 10 years. By this commitment, LSEG

[2] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, OJ L 201, 27.7.2012, p. 1–59.

undertook especially to (i) comply with the provisions of EMIR regarding the non-discriminatory and transparent clearing of OTC IRDs despite Brexit, and comply with these requirements vis-à-vis trading venues and also middleware providers (as they also execute trades); and (ii) not discriminate between Tradeweb and third party trading venues and middleware providers in relation to clearing charges, service levels, technical specifications and operational standards, as well as the introduction of new products. The commitments are subject to continuous monitoring by a monitoring trustee to ensure that LSEG adheres to its commitments.

## Vertical relationship between venue data and financial indices (upstream) and datafeeds and desktop solutions (downstream)

### Introduction

Each trading venue generates pricing data regarding the instruments that are traded on it ("venue data"). Put simply, venue data are a result of the trading activity that takes place on a venue. LSEG controls several trading venues and out-licenses the generated trading data. The vast majority of LSEG's revenues from venue data comes from real-time information which is typically used by on-trading floor customers to inform trading decisions.

Venue data is typically distributed to end-customers (e.g., traders) through a data vendor product. Both the end-customer and the data vendor need to in-license the venue data to be able to access it. The data vendor products through which venue data is typically accessed are (i) consolidated real-time data feeds ("CRTDs") and (ii) desktop solutions.

End-customers do not use data vendor products only to access venue data. Through these products, they consume many other types of financial data, including indices. An index is a figure calculated based on the value of underlying assets or prices and often serves as a benchmark for the performance of other assets. The Commission's market investigation showed that there are different relevant product markets for indices covering different asset classes (e.g., equity, fixed income, etc.). Within the same asset class (e.g., equities), there are indices with different geographic coverage (e.g., US or UK equities). The Commission's market investigation showed that equities indices with different geographic coverage are not substitutable with each other.

LSEG offers venue data, including from the London Stock Exchange ("LSE"). LSEG is also active in financial indices through FTSE Russell, including in indices for UK equities. Refinitiv is active in data vendor products, including CRTDs and desktop solutions.

### The Commission's assessment

The Commission identified a vertical relationship between the markets for LSE venue data and UK equity indices (upstream) and the markets for CRTDs and desktop services (downstream).

Following an in-depth investigation, the Commission found that the combined entity would have the ability and the incentive to foreclose rivals in the downstream markets by: (i) totally foreclosing access to LSE venue data or FTSE UK equity indices; and/or (ii) degrading the quality of the data offered through Refinitiv's downstream rivals to end-customers. The Commission also concluded that such input foreclosure would have a significant detrimental impact on competition in CRTDs and desktop solutions downstream.

***Ability.*** The Commission established that while the two inputs (LSE venue data and FTSE UK equity indices) represented a small cost factor in the downstream products, these types of data were important inputs for CRTDs and desktop solutions because: (i) they were re-distributed by the majority of data vendors; (ii) they were licensed by the majority of end-customers (at least for CRTDs); and (iii) end-customers valued the availability of a dataset through a downstream product even if they did not actually license the specific dataset. This is consistent with the Commission's Non-Horizontal Merger Guidelines, which state that an input can be considered important even if it does not represent a significant percentage of the cost of the downstream product.[3] This is particularly relevant for cases of total foreclosure or non-price based foreclosure, as the Commission's findings in this case suggest.

To find that the combined entity would have the ability to engage in input foreclosure of LSE venue data and FTSE UK equity indices, the Commission also considered the market power that LSEG held in both LSE venue data (100% market share in 2019) and UK equity indices (80-90%).

***Incentive.*** The Commission conducted a detailed vertical arithmetic analysis showing that in case of total foreclosure, the gains in the downstream markets for CRTDs and desktop solutions would be higher than any losses in the upstream markets. This also suggested that the combined entity would have the incentive to engage in partial non-price-based foreclosure, as the upstream losses would be, by definition, lower. The Commission also took into account the parties' past conduct when considering potential input foreclosure involving venue data. Notably, LSEG had faced antitrust scrutiny in Italy for foreclosing access to Borsa Italiana's venue data to the detriment of its data vendor rivals.[4] Moreover, at the time of the concentration, Refinitiv distributed exclusively through its own data vendor, product data from its most popular trading venue (Tradeweb). As regards the incentive to foreclose downstream

[3] Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C265/6, para. 34.

[4] A482 – E-Class/Borsa Italiana, Provvedimento n. 25859, Bolletino N. 4, 22 February 2016.

rivals in CRTDs, the Commission also considered that Refinitiv was dominant in the relevant market.

Regarding LSE venue data, LSEG argued that it would not have the incentive to engage in foreclosure because such conduct would be in breach of Article 13 of the Markets in Financial Instruments Regulation (MiFIR).[5] This provision requires trading venues to make venue data available to the public on a reasonable commercial basis ("RCB") and to ensure non-discriminatory access to the information. The existence of Article 13 MiFIR did not change the Commission's conclusions regarding the incentive of the combined entity to foreclose access to LSE venue data, given that:

a) Almost 50% of LSE's real-time venue data do not fall within the scope of Article 13 MiFIR;
b) Had Article 13 MiFIR rendered any foreclosure clearly or highly probably unlawful, it may have affected the combined entity's incentives. But in 2019, ESMA recognized that there was room for clarifications regarding Article 13 MiFIR and that "*RCB provisions have not delivered on their objectives*" and more guidance was needed;[6]
c) The UK's withdrawal from the EEA introduced additional legal uncertainty in the application of Article 13 MiFIR by LSEG post-merger.

***Impact on effective competition.*** The Commission concluded that input foreclosure strategies involving LSE venue data and/or FTSE UK equity indices would have significantly impeded effective competition in CRTDs and desktop solutions.

a) *Rivals*. In CRTDs, an input foreclosure strategy would have strengthened Refinitiv's dominance. Post-merger, it would have been even harder for rivals to compete effectively against Refinitiv, because they would have been missing an important input for their CRTD. In desktop solutions, Refinitiv does not hold a dominant position. However, an input foreclosure strategy would still have impeded effective competition because Refinitiv's rivals would only have been able to offer a desktop solution of lesser quality, which would not allow (high-quality) access to LSE venue data or FTSE UK equity indices.
b) *End-customers*. In addition to the impact on downstream rivals of the combined entity, an input foreclosure strategy would have harmed end-customers directly. Many of them would have been forced to add a Refinitiv product to continue accessing LSE venue data or FTSE UK equity indices. As a result, end-customers would have had to pay more for CRTDs or desktop services without any additional benefit, simply to replicate the data access conditions that they had before the transaction.

## Access remedy for datafeed and desktop solutions rivals

To address the Commission's competition concerns, LSEG offered to provide access to LSE venue data and FTSE UK equity indices to all existing and future downstream competitors, for a period of 10 years. Furthermore, LSEG committed not to: (i) change pricing terms to such an extent that it would have amounted to a *de facto* refusal to supply LSE venue data and FTSE UK equity indices nor (ii) to degrade technology, quality or service compared to that provided intragroup. LSEG also committed to maintain an information barrier between the personnel handling sensitive information of LSEG's customers and Refinitiv's CRTD and desktop solution businesses, to ensure that there is no exchange of such information with Refinitiv that could negatively impact third party data vendors.

## Vertical relationship between foreign exchange rate benchmarks (upstream) and financial indices (downstream)

### Introduction

Foreign exchange ("FX") benchmark providers supply reference exchange rates of various currency pairs to index providers for the design and calculation of indices. These FX benchmarks allow index providers to compare the performance of assets traded in different currencies.

LSEG is active in index design and calculation through FTSE Russell. Refinitiv offers FX benchmarks under the brand WM/R. Its flagship product is the WM/R London 4PM Closing Spot Rate, which is used by most market participants, in particular asset managers who are the key customers of indices.

### The Commission's assessment

The Commission considered that there is a vertical relationship between the market for FX benchmarks (upstream) and index licensing (downstream).

The Commission found that the combined entity would have had the ability and the incentive to foreclose rivals in the downstream market by totally foreclosing access to Refinitiv's FX benchmarks. The Commission also concluded that such input foreclosure would have had a significant detrimental impact on competition downstream.

***Ability.*** Refinitiv's benchmarks held a market share of 70-80% in the EEA in 2019 and were recognised as the "market standard". They were adopted not only by index providers but also by asset managers and other investors who are the customers of index providers and want to use in their internal systems the same FX

[5] Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, OJ L 173/84, 12.6.2014 ("MiFIR").

[6] ESMA, MiFID II/MIFIR Review Report No. 1, 5 December 2019, pp. 32 and 34 (available at https://www.esma.europa.eu/sites/default/files/library/mifid_ii_mifir_review_report_no_1_on_prices_for_market_data_and_the_equity_ct.pdf).

benchmark as in the indices they are tracking. The Commission acknowledged that the fees for an FX benchmark represent only a low proportion of the total costs of index providers. However, the Commission also found that it would be very hard for an index provider to switch away from Refinitiv's FX benchmarks because by doing so, the index provider would risk losing a meaningful percentage of their customers.

***Incentive.*** The Commission conducted a detailed vertical arithmetic analysis showing that in the case of total foreclosure, the gains in the downstream markets for index licensing would be higher than any losses in the upstream market for FX benchmarks.

LSEG argued that it would not have the incentive to engage in foreclosure because such conduct would be in breach of Article 22 BMR.[7] This provision requires that licenses of critical benchmarks should be provided to all users on a fair, reasonable, transparent, and non-discriminatory basis. However, the Commission noted that "users" within the meaning of Article 22 BMR do not include index providers.

***Impact on effective competition.*** The Commission concluded that input foreclosure strategies involving FX benchmarks would have significantly impeded effective competition in index licensing. These strategies would have allowed the combined entity to entrench its position as the top player (or one of the few top players) in the relevant markets for different indices and it would have made it harder for smaller rivals to compete effectively. A total input foreclosure strategy would also have increased barriers to entry in the downstream markets.

### Access remedy for financial index rivals

To address the Commission's competition concerns, LSEG offered to provide access to WM/R FX benchmarks to all existing and future customers active in index licensing, for a period of 10 years. Furthermore, LSEG committed not to change pricing terms to such an extent that it would amount to a *de facto* refusal to supply WM/R FX benchmarks.

## Conclusion

The LSEG/Refinitiv case illustrates the Commission's scrutiny of complex mergers, including of vertical theories of harm. The transaction took place in the context of ongoing debate on the value of, and access to, data, highlighting the essential nature of this input for many markets such as indices, data providers, and financial infrastructure providers such as trading and clearing service providers and other financial market intermediaries. The Commission's investigation also took place against the backdrop of Brexit – a process that started when LSEG was an EEA-based company and ended after the end of the transitional period, when LSEG was, for certain aspects, not subject to the same financial regulatory rules as before Brexit.

The commitments offered by LSEG are far-reaching. For EGB trading services, LSEG offered to divest the entirety of Borsa Italiana, going beyond the perimeter that raised concerns, and with that enabled an efficient and swift clearance of the Commission's concerns in this respect. With respect to trading and clearing of OTC IRDs, the non-structural commitments are robust and long-lasting (10 years) and also take account of different possible scenarios in terms of applicable law following Brexit. Effectively, the commitments mean that LSEG will be bound by rules akin to EMIR and even beyond (e.g., ensuring fast track dispute resolution in maximum 25 days).

On financial data, in addition to committing to provide its data on equivalent terms to competitors, LSEG also established effective information barriers to avoid unfair disclosure of commercially sensitive information to the detriment of its competitors.

[7] Regulation (EU) 2016/1011 of 8 June 2016, on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014, OJ L 171/1, 29.6.2016 ("BMR").

Competition Merger Brief 2/2022 – Article 2

# Competition *merger brief*

## *Novelis/Aleris*: Firm Competition Rules in a Soft Metal Merger

*Marianne Auffret, Otmane Sbitri, Andreas Sowa, Maria Zafra Saura*

### In a nutshell

**Following an in-depth investigation, the Commission conditionally cleared the acquisition of Aleris by Novelis. The Parties are two global manufacturers of flat-rolled aluminium products.**

**The case focused on the Parties' overlap in aluminium automotive body sheets in Europe, and in particular relied on an assessment of the merged entity's pivotal position in addressing market demand.**

**The case also features the Commission's response to a failure to implement remedies within the timeline foreseen in the clearance decision.**

### Introduction

On 1 October 2019, following an in-depth investigation, the Commission conditionally cleared the acquisition of Aleris by Novelis (referred to also as the 'Transaction' and the 'Parties'). Novelis, based in the U.S., is a global manufacturer of flat-rolled aluminium products and a recycler of aluminium. Novelis operates manufacturing facilities across North America, South America, Europe and Asia. Novelis' parent company, Hindalco Industries Limited (India), is a supplier of aluminium and copper. Prior to the Transaction, Aleris was a global manufacturer of flat-rolled aluminium products with production facilities in North America, Europe and Asia.

The Parties' activities mainly overlapped in the production and supply of aluminium automotive body sheets ('Aluminium ABS'). Aluminium ABS are used in the production of vehicles' body closures and body structures. Novelis and Aleris are among the largest producers of Aluminium ABS in Europe.

The in-depth investigation in this case sought to establish whether, as a consequence of the Transaction, the merged entity would have increased its market power and been able to impose higher prices for Aluminium ABS, while reducing its incentive to add capacity to the market. Competitors had limited spare capacity and they would have been unlikely to offset price increases resulting from the Transaction. Such higher prices could have harmed direct customers in the EEA, which include European companies active in the automotive sector, such as car manufacturers and other companies active in the automotive supply chain. In particular, these European industrial customers need to be able to source Aluminium ABS at competitive prices to compete with imported products in the EEA, or export their products outside Europe and compete globally. In addition, higher prices for Aluminium ABS could potentially lead to vehicles becoming more expensive. Moreover, the use of light materials, such as aluminium, allows car manufacturers to produce vehicles that are more fuel-efficient and reduce emissions.

### The relevant product market

#### *The aluminium industry*

Aluminium is one of the most abundant elements in the Earth's crust, and it is one of the most commonly used non-ferrous metals. Metallic aluminium can be produced either from aluminium-containing minerals (primary aluminium) or through recycling metallic aluminium (secondary aluminium).

Once primary or secondary aluminium is molten, certain alloying elements can be added to obtain the desired characteristics. The liquid aluminium can thereafter be cast into various forms, such as ingots, extrusion billets, wire rods, foundry alloys and slabs, which are typically used by rolling mills to produce aluminium flat rolled products ('Aluminium FRPs'). Aluminium FRPs are produced in rolling mills and can be used for various different end-uses, such as foil, beverage/food cans, aerospace applications, construction applications and automotive applications. Within the automotive applications, Aluminium ABS are used for vehicles' body closures and structures.

Certain alloying elements can be added to aluminium to achieve the desired characteristics of the final product. Depending on the main alloying element(s), certain alloy series can be distinguished. Aluminium ABS are almost exclusively made of the aluminium alloys series called '5xxx' and '6xxx'.

#### *Aluminium vs. steel*

The amount of aluminium in an average car has increased from 50 kg in 1990 to about 150 kg today. The increased use of aluminium in cars has primarily been driven by more demanding carbon dioxide (CO2) emission standards worldwide. To reduce

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the weight of cars and thereby lowering fuel consumption, lighter materials such as aluminium are used – a process referred to as 'light weighting'. Despite this, steel remains by far the most prevalent material in passenger cars. Overall, aluminium has certain technical advantages over steel, such as its strength-to-weight ratio. Nevertheless, using steel has other advantages, including lower cost.

***Definition of the relevant markets***

The Commission found that the production and supply of Aluminium ABS constitutes a distinct product market, separate from the production and supply of other types of Aluminium FRPs.

Notably, the Commission found that Aluminium ABS and flat steel products used in automotive bodies are not in the same relevant product market. Overall, steel and aluminium have different physical and commercial characteristics. There is no supply-side substitutability, as different equipment is required to manufacture these distinct products, and neither the Parties nor their main competitors supply both Aluminium ABS and flat steel products. Demand-side substitutability is limited at most – there is no substitution during a vehicle's production phase (typically 5-7 years) and the potential to substitute steel and aluminium during the design phase is limited (e.g., due to the need to achieve certain light weighting objectives).

On the other hand; the Commission considered that all types of Aluminium ABS (5xxx series and 6xxx series, and within the latter, 6xxx-skin, used for the car exterior, and 6xxx-structure, used for the interior) belong to the same relevant product.

Both Parties were active in 5xxx and 6xxx alloys, although Aleris focused on 6xxx alloys. The Parties also both supplied automotive original equipment manufacturers ('OEMs') as well as tier components suppliers and distributors, and overlap at a significant number of customers.

With respect to the geographic scope, the Commission reached the conclusion that competition for the production and supply of Aluminium ABS is homogeneous EEA-wide. This was because there are significant obstacles for EEA-based customers to source from outside the EEA and constraints for intercontinental supply lead to a demand-side preference for EEA-based suppliers. Trade flows between different world regions exist but are limited and producers sell the majority of their products in the region in which their production sites are located. The aging of some alloys (specifically 6xxx-skin series) appears to be a significant constraint for long distance shipping and a hindrance to imports into the EEA. As a result, the Commission found that the relevant market was EEA-wide in scope.

## Theory of harm

In a basic industry characterised by capacity constraints unilateral effects may arise through at least two channels. First, given the available capacities in the market, a merged entity may compete less aggressively on price for two reasons: (i) before the transaction the two independent merging parties were not concerned about cannibalising each other's sales through price competition, but this changes once the combined capacity is controlled by a single entity; (ii) after the transaction competitors control less capacity than the rival capacity faced by the merged entity pre-transaction. Second, merging producers may also compete less aggressively on capacity expansions post-transaction, as they will take account of the negative effect that new capacity in the market has on the sales of the respective merging partner. Otherwise stated, pre-transaction each merging party only took into account the negative impact that new capacity would have on its own sales (via the decrease in overall market price due to the additional capacity) but did not take into account the negative effect on the sales of the other merging party. This is internalised post–transaction, which results in a loss of competition on the market.

Whether these theories of harm apply in a concrete case depends on two important factors: (i) the level of the parties' market position (as characterised by their market shares and capacity shares) and (ii) the extent of spare capacities in the market (in particular those held by rivals). All else being equal, anti-competitive effects are more likely if merging parties control a large part of the market after the transaction, and if the extent of spare capacities in the market (in particular those held by rivals) is moderate relative to projected demand.

## Outcome of the assessment

The Commission found that the Transaction would lead to very large combined sales and capacity shares of the merged entity in the EEA market for Aluminium ABS. In particular, the merged entity would have sales and capacity shares in excess of 50%; with the merger bringing about important market share increments in a highly concentrated market. These shares suggested the creation or strengthening of a dominant position in the market.

Further, the Commission concluded that the merged entity would not only control a large share of the market (in terms of sales and capacity) after the Transaction but would also face competitors with limited capacity in light of the level of market demand. The inability of competitors' overall capacity to cover the whole market demand meant that Novelis held maket power already before the Transaction. Moreover, by acquiring Aleris' capacity, Novelis would face even less rival capacity after the Transaction. Post-Transaction, Novelis would therefore be an even more pivotal player in addressing demand on the market.

By reducing the competitive constraint on Novelis, the merger would have allowed the merged entity to increase prices after the Transaction without facing competitors able to readily expand supply. The limited available spare capacity in the market, and the limited competitor spare capacity in particular, resulted in affording further pricing power to Novelis; the market leader. It also made it unlikely that competitors would have had the ability to offset the merged entity's potential price increase by readily increasing supply through spare capacity. Moreover, Novelis'

acquisition of Aleris reduced its incentives to increase capacity, and enabled it to maintain its market leadership without facing detrimental decreasing pressure on prices.

Further, neither imports nor potential new entrants could be considered as sufficient competitive constraints. In this context, the merged entity would have had the incentive and the capability to reduce the output below the combined pre-Transaction levels and thereby raise market prices.

The Commission also found that buyer power was likely already limited pre-Transaction, and that any residual buyer power would have been further reduced as a consequence of the Transaction. Specifically, EEA Aluminium ABS customers would not have been able to switch significant volumes away from the merged entity (in particular due to limited spare capacity of competitors) and would thus not have been able to avoid price increases by the merged entity. The Transaction was therefore likely to result in higher prices for Aluminium ABS.

In light of all these elements, the Commission considered that the Transaction would significantly impede effective competition in relation to the market for the production and supply of Aluminium ABS in the EEA because the Transaction would create or strengthen a dominant market position in the relevant market. In any event, the Transaction would also give rise to horizontal non-coordinated effects in relation to the production and supply of Aluminium ABS in the EEA resulting from the elimination of an important competitive constraint.

## Commitments and their implementation

To address the Commission's competition concerns, the Parties offered to divest Aleris' entire aluminium automotive body sheet business in Europe, including its production plant in Duffel, Belgium. In order to preserve its viability, the Duffel plant's divestiture also included other products manufactured at that plant.

The proposed divestiture removed the entire overlap created by the Transaction in aluminium automotive body sheets in Europe. Furthermore, the Duffel plant consisted of an integrated production site that produced almost the entirety of the upstream inputs required for its downstream operations.

The Commission therefore concluded that the Transaction, as modified by the commitments, would no longer raise competition concerns.

### *Failure to close the divestiture & interim measures*

After the Commission approved a purchaser for the divestment business, Novelis seemed unable to proceed to a sale within the deadlines foreseen for closing after a purchaser approval. These deadlines are generally short because, when the parties submit a purchaser for approval, they typically also have to ensure a swift closing and alleviate implementation risks.

The Commission granted several extensions of the closing deadline following requests from Novelis. Nevertheless, Novelis failed to close the sale of the Duffel plant within the extended closing deadline. As the 2019 clearance decision and the commitments attached to it became inapplicable as soon as the deadline expired, on 1 September 2020, the Commission ordered provisional interim measures pursuant to Article 8(5) of the Merger Regulation. These were meant to ensure that damage to competition could be avoided pending the consideration of final measures. The interim measures were therefore aimed at ensuring the preservation of the Duffel plant's viability and competitiveness and reproduced *mutatis mutandis* Novelis' obligations under the Commitments. They included *inter alia* obligations ensuring that the divestment business would remain independent from Novelis up until its sale as well as a prohibition from re-acquiring the divestment business within 10 years after its transfer.

Novelis appealed the Commission's decision not to further extend the deadline to complete the sale of the Duffel plant, but later withdrew its appeal..[1]

### *Definitive measures and US process*

Before the Commission adopted final measures, and within the framework of the interim measures, Novelis closed the sale of the Duffel plant to Liberty House ('Liberty'). The Commission still decided to adopt definitive measures under article 8(4) to restore competition. The Commission can adopt these measures in particular situations, including in cases where companies implement a transaction absent a clearance, or fail to implement a condition to clearance. While those can typically result in a dissolution of the main transaction, given the circumstances of the case the Commission took a more targeted approach. These measures, which were needed as the decision and the commitments became inapplicable, included, among others, a non-reacquisition measure preventing Novelis from re-acquiring all or part of the Duffel plant, as well as a non-solicitation measure preventing Novelis from soliciting the Duffel plant's customers or standing orders. They also reproduced other safeguards and obligations typically required under the commitments, which in this case had become inapplicable. The decision also provided for transitional agreements, measures on the trustee's mandate, as well as on investment funding for the benefit of the plant. Finally, daily penalty payments were foreseen in the event Novelis failed to comply with the measures.

This approach was justified not only in view of the fact that the divested business identified in the initial decision was eventually divested shortly after the interim measures, but also of the circumstance that other parts of the initial business had been divested as part of a remedy process in the United States.

[1] See order of the General Court to discontinue the proceedings: https://curia.europa.eu/juris/document/document.jsf?text=&docid=242101&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1179738.

In the US, Novelis also failed to sell the divestment business within the deadline set by the US Department of Justice. A divestiture trustee was appointed to complete the sale of the divestment business.[2]

In the EU, the Commission considered that the adoption of final measures were necessary to ensure that the sale remains effective, and that the plant's viability and competitiveness are protected. Therefore, pursuant to Article 8(4)(b) of the Merger Regulation and in order to restore as far as possible the situation that existed before the implementation of the *Novelis/Aleris* Transaction, the Commission ordered the measures described above, with which Novelis had to comply.

## Conclusion

The Commission's decision ensured that the Transaction, as modified by the commitments, would not result in the combination of two important producers of aluminium automotive body sheets thereby creating an even more pivotal player in addressing demand on the EEA market.

This case also constitutes the first instance in which the Commission adopted interim and final measures under Articles 8(5) and 8(4) of the 2004 Merger Regulation. It thus provides a clear and instructive example of the Commission's commitment to maintain the integrity and effectiveness of its processes: when clearing mergers conditionally upon the sale of a business, the Commission will use the full extent of its toolbox to ensure a timely divestiture and the preservation of the structure of the market.

[2] See US Department of justice application to appoint divestiture trustee: https://www.justice.gov/atr/case-document/file/1306291/download.

# Competition *policy brief*

## The Hyundai/Daewoo Shipbuilding prohibition[1]

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### In a nutshell

**On 13 January 2022, the European Commission prohibited the acquisition of DSME by HHIH, two South Korean shipbuilder.**

**The Commission considered that the acquisition would create a dominant position in the worldwide market for the construction of large LNG carriers.**

### Introduction

On 13 January 2022, the European Commission prohibited the acquisition of Daewoo Shipbuilding & Marine Engineering CO., Ltd (DSME) by Hyundai Heavy Industries Holdings (HHIH). HHIH is a privately held South Korean company that is mainly active in shipbuilding. It produces a range of commercial vessels, marine engines and offshore facilities used to explore, produce and process oil and gas under the sea. DSME is a South Korean company that is also mainly active in shipbuilding. It produces a range of commercial vessels and offshore facilities.

The Parties are active in the construction of a wide array of vessels and offshore facilities. The Commission's decision to block the transaction relied on its significant impediment to effective competition in large liquefied natural gas (LNG) carriers ('LLNGCs'). LLNGCs are vessels with capacity to carry at least 145,000 cubic meters of LNG at a temperature of -162 degrees Celsius. The Commission considered that the acquisition would have created a dominant position and reduced competition in the worldwide market for the construction and sale of LLNGCs. Both companies are global leaders in the construction and sale of LLNGCs, and two of the three largest players that compete very closely in this very concentrated market.

The Commission's decision is currently on appeal before the General Court of the EU.[2]

The decision, a classic horizontal case, illustrates the Commission's methodology in assessing unilateral effects and the existence of potential competitive constraints. It also exemplifies the reach of the EU Merger Regulation.

[1] Decision of 13 January 2022 in case M.9343 – Hyundai Heavy Industries Holdings/Daewoo Shipbuilding ("HHIH/DSME").

[2] T-156/22 – HHIH v Commission.

### Foreign-to-foreign concentration and the reach of the EUMR

The undertakings concerned are two foreign shipbuilders, located outside of the EEA. They build and sell the vessels concerned, LLNGCs, in shipyards located in South Korea. Delivery of the vessels is also done outside of the EEA as customers take possession of the vessels at the shipyard.

However, EU merger control applies regardless of the merging parties' location, provided that they are active in Europe and that the transaction has an impact within the EEA. First, as a purely jurisdictional issue, the case was notified under the EUMR due to the geographical allocation of turnover. Indeed, for the purpose of assessing whether the EU turnover thresholds were met, the Parties' sales were geographically attributed to the Member States in which their customers were based.

Furthermore, although the Parties' products were built in South Korea, the market for the construction and sale of LLNGCs is worldwide. A significant part of demand in the market originates from the EEA and the Parties, as all LLNGC shipbuilders, compete for customers that are based in the EEA. Consequently, the Transaction was likely to affect competition in the EEA.

### LLNGCs, a sophisticated and differentiated product

LLNGCs are an essential element in the supply chain of LNG and therefore contribute to the diversification of Europe's source of energy, improving energy security. Over the past five years, the worldwide market for the construction of LLNGCs represented up to €40 billion, with European customers accounting for almost 50% of all orders.

LLNGCs are highly sophisticated and expensive vessels that can carry large quantities of LNG at an extremely low temperature, and thus require specific skills and expertise. LLNGCs are also a differentiated product as there are differences by type (e.g., LLNGCs that can store and transport LNG, LLNGCs that are used

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to store and degasify LNG, and LLNGCs that can sail iced waters without the help of an ice-breaker vessel), by type of gas containment system and gas handling technologies (membrane v non-membrane), by innovative technologies, and by overall quality of the vessel.

## The transaction's significant horizontal effects

The Commission's assessment focused on the proposed merger's horizontal effects in LLNGCs, where the merger would have combined a very significant market share and left customers with fewer alternative suppliers and the absence of likely, timely and sufficient entry and/or expansion.

First, the proposed transaction would have consolidated a very large market share in the combined entity's hands. The combined entity would have been by far the largest LLNGC supplier in the world, in a market that was already concentrated pre-merger. The parties' combined market shares have attained at least 60%, which in itself is consistent with the finding of a dominant position in the relevant market. The quantitative indication of dominance was even stronger in the case at hand, in that both Parties' market shares had been increasing significantly in the past 10 years.

Second, very few shipbuilders are active in this market because LLNGCs are very difficult and expensive vessels to build. Besides the parties, there is only one other large competitor in the market. However, this competitor's capacity would not have been sufficient to act as a credible constraint on the new company resulting from the merger. Although another independent shipbuilder exists, that manufacturer has limited activities in the LLNGC market and focuses on domestic projects. Finally, the Commission found that other shipbuilders that constructed LLNGCs in the past had not receive orders for LLNGCs in recent years and had effectively exited this market.

Third, HHIH and DSME account for a very significant share of the total capacity to build LLNGCs. The balance between supply (capacity) and demand in the market was assessed in different scenarios with a range of demand forecasts and capacity estimates for the Parties' competitors. The Commission thus performed a pivotality analysis, examining whether, as result of the Transaction, the Parties would have a production capacity large enough to make them indispensable, or "pivotal", to meet the demand. Put differently, the pivotality analysis examines if the Parties' rivals would have sufficient capacity post-Transaction to satisfy the entire LLNGC demand so that customers demanding LLNGCs would not have to rely on the Parties.

Under the most plausible scenarios, the combined entity appeared pivotal for a large share of demand, as the remaining competitors had insufficient capacity to absorb the entire demand of the market. Consequently, the Parties' competitors' capacity would not have been sufficient to constrain the merged entity in such a way as to avoid the creation of a dominant position by the combined entity as a result of the Transaction.

Fourth, the Commission's market investigation showed that the LLNGC market is characterised by very high barriers to entry and expansion. These barriers consist in, for example, licences, know-how and project management, technology, track-record, dock size, special equipment and facilities, delivery time and quay slots. In this context, the Commission found that there have been no recent entries in the LLNGC market. Rather, the market was characterized by multiple exits and the absence of credible evidence that any future entry or expansion was likely, timely and sufficient to constrain the merged entity. In addition, the Commission found that customers do not and would not have exerted a sufficient degree of buyer power as the LLNGC customer base is relatively fragmented and customers have a very limited choice of shipbuilders as possible suppliers.

Finally, the Commission found that the present and future demand outlook for LLNGCs remained positive in spite of the COVID-19 outbreak. Thus, post-Transaction demand for LLNGCs would not have been affected by the pandemic. As a result, the assessment of the relevant counterfactual showed that, absent the Transaction, DSME would likely continue to exercise an effective competitive pressure in the market for LLNGCs.

## The absence of any formal commitment submission

Pursuant to paragraph 6 of the Commission's Remedy Notice, once the Commission has communicated its competition concerns to the merging parties, it is then up to them to put forward commitments. In the present case, the merging parties did not formally offer remedies to address the Commission's concerns.

## Conclusion

The merger between HHIH and DSME would have led to a dominant position in the global market for LLNGCs, for which there is significant demand from European customers. Given that no remedies were submitted, the merger would have led to fewer suppliers and higher prices for LLNGCs. In line with paragraph 6 of the Commission's Remedy Notice, the Commission prohibited the transaction given that, in the absence of any remedy, the merger would have significantly impeded effective competition in the market for LLNGCs.

European Commission



Competition *merger brief*

# *Derichebourg/Ecore* – Ensuring fair competition in metal scrap recycling markets

*Eider Echeverria-Alvarez, Anne Jussiaux*

## In a nutshell

***Derichebourg/Ecore*** **was a transaction involving leading players in the French metal recycling sector. This case is a good example of how the Commission runs its competitive assessment on local markets defined by catchment areas. At local level, the Commission found competitive concerns in a significant number of markets.**

**To address the Commission's concerns, Derichebourg offered to divest 8 recycling sites in a commitment that also included additional safeguards to ensure the viability of the divestment businesses.**

## Introduction

On 16 December 2022, the European Commission cleared the acquisition of Groupe Ecore by Derichebourg subject to an extensive remedy package. Both companies are active in the recycling of metal scrap, and are number 1 and 2 players in France with their activities overlapping along the entire value chain, from the collection of the scrap, to its valorisation and sale.

The metal recycling industry contributes to a circular economy and to the objectives of the Green Deal. Most metals can be recycled indefinitely while losing almost none of their properties, which implies important savings of CO2, energy and natural resources. The metal and steel industries in particular are subject to CO2 savings objectives, and request secondary raw materials with as much added value as possible and of better quality (i.e., increasingly free of residues). Recycled metal scrap is thus crucial for a green transition while ensuring the competitiveness of the European manufacturing industry.

Metal scrap can be found in products such as end-of-life vehicles, windows, washing machines, batteries, railways, or metal scrap resulting from industrial activities such as the manufacture of car parts. Contrary to other waste (such as plastic or paper), metal scrap has a significant market value.

The *Derichebourg/Ecore* decision provided the Commission with an opportunity to carry out a comprehensive assessment of the metal scrap recycling markets.[1] The case is also illustrative of how the Commission runs its competitive assessment in markets defined by catchment areas. Finally, to secure clearance in Phase 1 the Parties had to offer a significant divestment package, together with additional safeguards, in order to ensure the viability of the remedy package.

## The relevant product markets

### Product markets

The recycling market is sub-segmented into three categories of activities: the collection of the metal scrap, its valorisation and the sale of recycled metal. In line with previous cases, the Commission found that each of these activities constitutes a separate product market.

In addition, the different types of metal scrap are subject to different regulatory requirements, do not always request the same tools for their recycling and are not always collected/treated by the same players.

As a result, the Commission found out that there are separate markets for each recycling activity, depending on the different types of metal waste: (i) non-hazardous waste (including ferrous waste and non-ferrous waste), (ii) specific waste subject to specific regulatory requirements (such as end-of-life vehicles and electrical and electronic equipment waste) and (iii) hazardous waste (such as batteries and accumulators), that are also subject to specific regulatory requirements.

In its decision, notably in view of the market investigation, the Commission considered that the following product markets were relevant:

- Within collection activities: (i) the collection of non-hazardous metals, without distinction between ferrous and non-ferrous; (ii) the collection of end-of-life vehicles; (iii) the collection of electrical and electronic

[1] Prior to *Derichebourg/Ecore,* few decisions either at the Commission level or at Member State level have analysed this market. Recent decisions involving an in-depth analysis of metal scrap recycling markets include the Commission's decision of 4 May 2020 in case M.9409 – *Aurubis/Metallo* and the CMA's decision of 14 August 2018 in *Ausurus Group Ltd/Metal & Waste Recycling*.

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equipment waste and (iv) the collection of batteries (with a further sub-segmentation for lead car batteries);

- Within valorisation activities: (v) the valorisation of ferrous metals; (vi) the valorisation of non-ferrous metals; (vii) the valorisation of end-of-life vehicles; and (viii) the valorisation of electrical and electronic equipment waste (with further sub-segmentations depending on the type of equipment, in the case at stake a separate market was considered for large electrical and electronic equipment). Indeed, each of these waste types present some distinct features as to their valorisation. For example, according to the applicable regulations, only shredders can valorise end-of-life vehicles.

- Within commercialisation activities: (x) the commercialisation of recycled ferrous scrap (with a further sub-segmentation for the sale of shredded steel scrap, also referred to as E40, and non-shredded steel scrap) (xi) the commercialisation of recycled stainless steel and (xi) the commercialisation of recycled non-ferrous scrap (with further sub-segmentations per type of metal such as copper, tin, lead, nickel, etc.). For recycled ferrous scrap, the Commission found that the sale of shredded steel scrap (also referred to as E40) constituted a separate segment from the sale of other recycled metal scrap because of its higher quality, price and use. Steel makers could not substitute E40 with other recycled non-ferrous scrap in case of price increase.

### The scope of the different geographic markets

Previous decisions had concluded that the collection of metal scrap had a local dimension (around catchment areas), the valorisation a national dimension and the commercialisation of the different recycled metals at least a European dimension.

The results of the Commission's investigation partially called into question the current relevance of the approach adopted in past decisions, as they highlighted the local nature of both the metal waste collection and valorisation activities, the importance of transport costs at these stages of the value chain, and the fact that only few competitors had a national footprint, which resulted in diverging conditions of competition in different geographic zones of the French territory. Belgian or Spanish competitors active in France also limited their activity in France within specific catchment areas around their collection and valorisation sites.

The commercialisation of recycled ferrous scrap (including shredded ferrous scrap) also revealed having a supra-national dimension, given the role of transport costs in the case of ferrous scrap (being heavier and cheaper than non-ferrous scrap). The purchase of scrap from remote suppliers is more expensive and increases security and safety risks. As a result, buyers of recycled ferrous waste prefer supplies located near their factories. The majority of export volumes from France are thus sold to neighbouring countries (mainly Spain and Belgium) while exports to more distant countries account for a smaller share of the volumes sold.

The Commission defined the relevant catchment areas as circles around the Parties' recycling sites. To determine the specific catchment areas of each product market where a local dimension was applicable, the Commission analysed, for each of the Parties' sites, the distances travelled by the Parties to purchase (or sell) 70%, 80% and 90% of the scrap. The Commission then compared the results with feedback received from market players and, in line with previous cases, considered that the 80% cut was appropriate to define the geographic markets in this case.

## Local competitive assessment: dealing with a high number of affected markets

### Methodology to calculate market shares

The transaction involved a very high number of product and geographic markets. For this reason, the Commission implemented a consistent methodology to identify areas where competition problems would be likely to arise.

The Parties submitted the volumes of metal scrap collected, valorised and sold in each of their sites, as well as their best estimates of the competitors' volumes. Based on this data, the Commission calculated the Parties' market shares as well as their competitors' shares. The Commission included all the volumes processed by a site located in the relevant catchment area, while it excluded the volumes of sites located outside of the catchment area.

Nevertheless and in order to mitigate the potential limitations that using specific catchment areas may entail, the Commission also considered rival sites located at the immediate outset of the considered catchment area to assess whether they could exert a competitive pressure on the Parties' sites.

The Commission also performed a partial market reconstruction of the market for the valorisation of end-of-life vehicles through shredders to determine the importance of the competitive pressure exerted by Spanish and Belgian competitors in the Ile-de-France region. Indeed, the Parties claimed that these players placed a significant competitive constraint over French players that the Commission should fully take into account. Nevertheless, the market reconstitution showed that, while Belgian players were present with non-negligible volumes exported, Spanish players were purchasing only marginal volumes from Ile-de-France. Therefore, the Commission concluded that Spanish players did not exercise a significant competitive constraint on the Parties in the catchment areas located in Ile-de-France.

### Identifying problematic markets

In view of the large (more than 500) number of markets affected by the transaction at every level of the value chain, the

Commission identified *prima facie* problematic markets based on market shares filters designed to identify material horizontal effects. In view of the market specificities, the Commission considered that *prima facie* problematic markets were the ones where the Parties overlapped and held the following market shares:

- above 50%; or
- above 40%, with the Transaction bringing about a market share increment of at least 5%.

However, in light of the heterogeneity of the product and geographic markets, the Commission complemented its analysis with a site-by-site competitive assessment for all markets identified as *prima facie* problematic.

In many problematic areas, the Parties appeared as very close competitors in terms of market shares, distance between their sites, footprint or assets, whereas the other competitors were often much smaller or with a reduced local presence. In addition, the Parties also appeared particularly strong in the valorisation of end-of-life vehicles when looking at the number of shredders they owned in France and their shredding power. In the end, the Commission raised serious doubts for many of the *prima facie* problematic areas.

In other instances; however, the Commission was able to dismiss competition concerns in specific catchment areas in view of the particular features of those areas, such as the existence of competitor(s) located at the fringe that represented a significant competitive constraint on the Parties.

## Remedies: ensuring the viability of the divestment business

As a general rule, in Phase 1 conditional clearances, the Commission encourages the merging parties to initiate remedy negotiations as early as possible. This is because the procedure allows for very limited time for the Commission to both conduct a merger investigation and assess remedy proposals. As a result, in order to be remediable, competition concerns must be straightforward and the proposed remedy clear-cut.

In this case, as per the Commission's well-established policy in cases involving horizontal effects, a structural remedy was the favoured solution. To address the Commission's competition concerns, Derichebourg thus offered to divest 8 sites (including 4 sites equipped with shredders).

The main challenge in this case was to ensure the divestment business' viability. To do so, the Commission obtained significant safeguards. Notably, the Parties committed to an agreement to supply certain quantities of metal scrap to the purchaser(s) of the divested sites equipped with shredders to ensure that, during a start-up period, those divested sites remained viable and covered the high fixed costs such assets entail, and that the purchaser had the time to seek new suppliers of metal scrap.

Following the Commission's market test, and in view of feedback received from market participants, the Parties further improved the remedy package by offering additional assets and services, including:

- Up to 5 additional feeder sites (i.e. collection sites) to ensure the supply of the sites divested which had shredders;
- The trucks needed for transportation purposes when not directly located on the divestment site;
- An option to acquire the land on which the divested site is located;
- Commercial and environment/safety/quality employees as well as drivers (not directly employed on the divested sites).

Finally, the commitments mention that, in addition to the standard purchaser criteria, the purchaser should have experience in metal scrap recycling or in a vertically related sector. This requirement ensured, among other things, that the purchaser would have the necessary skills and knowledge to operate the divested sites.

This substantial remedy package allowed the Commission to clear the merger in Phase I.