

THE ACQUISITION BY ARCELOR SA OF PART OF CORUS GROUP PLC'S UK HOT ROLLED STEEL SHEET PILING BUSINESS

Notice of provisional findings made under Rule 10.3 of the Competition Commission's Rules of Procedure

On 10 September 2004, the Office of Fair Trading, in the exercise of its duty under section 22(1) of the Enterprise Act 2002 (the Act), and its powers under section 35(6) of the Act, referred to the Competition Commission (CC) the acquisition by Arcelor SA of part of Corus Group plc's UK hot rolled steel sheet piling business.

Provisional findings

The CC inquiry group (the Group) appointed to consider this reference has made provisional findings on the statutory questions it has to decide pursuant to section 35(1) of the Act:

- (a) whether a relevant merger situation has been created; and
- (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the UK for goods or services.

The Group's reasons are set out in full in the provisional findings report, and are outlined in the summary of the provisional findings report (see note (i)) which is attached to this notice.

Next steps

Anyone wishing to comment on the provisional findings is invited to provide the Group with their response in writing (see note (ii)) including any reason as to why these provisional findings should not become final (or as the case maybe, should be varied).

Written reasons must be received by the Group no later than 21 January 2005.

The Group will have regard to any such reasons in making their final decision on the statutory questions and actions.

Signed

Peter Freeman
Group Chairman
22 December 2004

Notes:

- (i) A copy of this notice and the summary of the provisional findings will be placed on the CC web site on 23 December 2004. The CC proposes to publish the full provisional findings report on its web site early in January 2005. The published version of the provisional findings will not contain any information that the Group considers should not be published having regard to the considerations set out in section 244 of the Act.
- (ii) Comments should be made in writing to:

Sally Van Noorden
Inquiry Secretary
Arcelor/Corus Inquiry
Victoria House
Southampton Row
London
WC1B 4AD

Or by email to: sally.vannoorden@competition-commission.gsi.gov.uk

Summary

1. On 10 September 2004, the Office of Fair Trading (OFT) referred to the Competition Commission (CC) the acquisition by Arcelor SA (Arcelor) of the UK hot rolled steel sheet piling (HRSSP) business of Corus Group plc (Corus). We are required to publish our final report by 24 February 2005.
2. Arcelor was the largest steel producer in the world in 2003. It was created in February 2001 by the merger of three European companies, based in Luxembourg, Spain and France, as part of a continuing process of concentration within the European steel industry. Corus was the seventh largest producer of steel worldwide in 2003. It was formed in October 1999 through the merger of British Steel and a Dutch steel producer. Arcelor announced on 27 April 2004 that, following Corus's decision to withdraw from steel sheet piling, it had agreed to purchase Corus's UK HRSSP commercial operations. The transaction was completed on 30 April 2004, and Corus ceased to produce steel sheet piling on 6 July, following which the heavy section mill used to roll it at the Scunthorpe works was closed.
3. Steel sheet piling is used mainly in building or construction projects to create a barrier or retaining wall, either on land or in connection with river, canal or coastal works. Other structures, generally made from concrete, masonry, stone or wood, are also commonly used to provide barriers or retaining walls. But the quantitative evidence we saw suggested that substitutability in the event of price increases relative to such alternatives is likely to be limited. Even though there are some applications with a high degree of substitutability, for others it is very low, and overall the degree of substitutability is not large enough to make it unprofitable to raise prices. Hence, we regarded the relevant product market as being confined to HRSSP. There were arguments for the geographic market being either a UK or a wider European one; the historical evidence points to a geographical market no wider than the UK, but we could

not come to a definitive conclusion about whether this would apply in future. We therefore assessed the post-merger market principally by considering the UK, but also in the context of a wider European market, but this does not affect our analysis or provisional conclusions.

4. Immediately prior to the merger, Corus accounted for between 65 and 75 per cent of the UK HRSSP market, and Arcelor between 5 and 15 per cent. Corus's strong position resulted in part from it being a local producer, willing for example to change its rolling programme or otherwise offer special treatment to its major domestic customers. Arcelor would not have the advantage of being a local producer, but has chosen to retain the sales and technical support previously offered by Corus. In the immediate future Arcelor expected to achieve a share of UK demand similar to that of Corus, but expected this to fall back. Compared to the pre-merger structure, there is one less supplier to the UK market. However, on the evidence before us it is likely that Corus would have closed the Scunthorpe mill and withdrawn from the piling business sometime in 2004 or 2005 even if there had been no transaction with Arcelor or anyone else; its declining market share, growing losses on the piling business and the increasingly better margins available from some finished and semi-finished steel products may all have encouraged it to act well before the end of 2005.

5. It is, moreover, highly uncertain how the market structure would have evolved in the absence of the merger. It is possible that it could have resumed the shape it had when Corus was active, with one large producer controlling the majority of supply and others sharing the remainder between them. We think it more likely that the balance of the market would have become different from what it was when Corus was active. Following the merger, we understand many of Corus's customers have switched to Arcelor. But although, as a result of the merger, Arcelor's position remains very strong, we have noted that it will not have the advantage available to Corus in competing in

the UK market of being a local producer; it has also taken over no long-term contracts from Corus, nor any framework agreements, and customers are free to deal with other suppliers. Three other suppliers with a significant presence elsewhere in Europe have to date had a more limited presence in the UK market, but there are reasons to believe this may be due to only temporary impediments on their competing effectively. We expect those other suppliers soon to be able to offer sufficiently effective competition to ensure that the market is no less competitive than would have been the case without the merger. But even if these expectations turn out to be false, and they did not compete vigorously in the UK, the same situation is likely to have applied in the counterfactual (that is, the situation that would have happened had the merger not taken place). Thus we have been unable to identify any clear change in market conditions compared to the counterfactual that would necessarily act substantially to lessen competition.

6. The main event influencing the intensity of competition is, in our view, the closure of Corus's HRSSP business, which would have happened without the merger, rather than the merger itself. We have therefore provisionally concluded, with one member of the group disagreeing, that the merger has not resulted, and may not be expected to result, in a substantial lessening of competition.