



Arcelor SA and Corus Group plc

A report on the acquisition by Arcelor SA of part of Corus Group plc's UK hot rolled steel sheet piling business

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The Competition Commission has excluded from this report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002. The omissions are indicated by [✂].

The acquisition by Arcelor SA of part of Corus Group plc's UK hot rolled steel sheet piling business

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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 part of the UK hot rolled steel sheet piling (HRSSP) business of Corus Group plc (Corus). We published a notice and summary of provisional findings on 23 December 2004 and the full text of provisional findings on 10 January 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 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 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.

Findings

1. The reference

- 1.1 On 10 September 2004 the OFT referred to the CC for investigation and report (under section 22(1) of the Enterprise Act (the Act)) the completed acquisition by Arcelor of the UK HRSSP business of Corus. We were asked to report by 24 February 2005. Our terms of reference are in Appendix A.
- 1.2 HRSSP, which is produced by a number of steel companies in Europe, Asia and the USA, is used to create a barrier or a retaining wall, either on land or in water. It consists of profiled steel sections, interlocked along their edges to form a continuous wall, which is driven into the earth's surface.
- 1.3 This document (together with its appendices) constitutes our final report. Non-sensitive versions of main party and third party submissions are on our web site, along with a number of other documents relevant to this inquiry including our provisional findings (which we published in summary on 23 December 2004 and in full on 10 January 2005). We cross-refer to them where appropriate.

2. The companies involved

Arcelor

- 2.1 Arcelor—which was the largest steel producer in the world in 2003—was created by the merging of three European companies:
 - the Luxembourg incorporated Arbed SA (Arbed);
 - the Spanish Aceralia Corporacion Siderurgica SA, which was already in a strategic alliance with Arbed; and
 - the French Usinor SA (Usinor).
- 2.2 Their merger was part of a continuing process of concentration within the European steel industry, each of the constituent firms having been the product of previous mergers in the last decade. Officially launched on February 19, 2001, the merger was put into effect on 18 February 2002 when Arcelor, which is incorporated in Luxembourg, issued shares—listed in France, Belgium, Spain and Luxembourg—in exchange for shares in the other three companies. On 9 October 2004 the group had a market capitalization of €8.4 billion (£5.8 billion). Its main plants are located in a number of European countries, and in the USA and Brazil. Its activities are based on four core businesses:
 - flat carbon steel;
 - long carbon steel;
 - stainless steel; and
 - steel distribution, processing and trading.
- 2.3 In 2003, Arcelor had a turnover, worldwide, of €25.9 billion, just over three-quarters of which was achieved within the EU. It produced some 40 million tonnes of steel

during the year, just over 12 million tonnes of which was used to make long products—amounting to a turnover of €[§] billion (£[§] billion). Overall, the group employed some 98,000 people in more than 60 countries.

- 2.4 Following a reorganization, in 2003, of Arcelor's long carbon steel business, HRSSP now falls within an operational unit known as Arcelor RPS (rails, piles and special sections). Production takes place at the Belval works located near Esch-sur-Alzette in Luxembourg. Manufacturing is the responsibility of Arcelor's ProfilARBED SA subsidiary; and marketing is carried out by Arcelor RPS Sarl. In 2003 Arcelor's sales of piling in the UK amounted to around [§] tonnes generating a turnover of €[§] million (£[§] million).

Corus

- 2.5 Corus is also the result of the merging of previously separate European steel companies, and was the seventh largest producer of steel, worldwide, in 2003. It was formed on 6 October 1999, through the merger of British Steel and the Dutch based Koninklijke Hoogovens. The group's headquarters are in London, with major plants in the UK, the Netherlands, Germany, France, Norway and the USA. Its shares are listed in London, New York and Amsterdam. On 13 October 2004 it had a market capitalization of £2 billion. The group's operations are carried out in four main divisions:

- strip products;
- long products;
- aluminium; and
- distribution and building systems.

- 2.6 Corus produced 19 million tonnes of steel in 2003, generating a turnover of £8 billion. At the end of December 2003, it had 49,400 employees. Its total shipment of steel sheet piling during that year was around [§] tonnes—a little under one-third of which ([§] tonnes) was sold to UK customers, producing a turnover of £[§] million. The rest ([§] tonnes) was exported.

3. The transaction and the relevant merger situation

The transaction

- 3.1 Arcelor announced on 27 April 2004 that—following Corus's decision to withdraw from steel sheet piling—it had agreed to purchase its UK commercial operations, including the transfer, to Arcelor, of Corus's UK piling sales staff, numbering 13. The transaction was completed on 30 April. In all, Arcelor acquired:

- supplier and customer lists including UK mailing addresses;
- product development and design information for the UK;
- UK sales, marketing and promotional information;

- specifications, drawings, data, instruction and training manuals, handbooks, plans, instructions, formulae, test results, project reports, testing procedures and tables of operating conditions for the UK;
- UK market forecasts, customer credit limits, customer payment history and transport rates; and
- technical and other expertise.

The transaction also included:

- a [REDACTED] non-compete clause; and
- [REDACTED].

The total consideration for the acquisition was relatively small [REDACTED], payable in three instalments, spread over a year.

- 3.2 In the period immediately following the announcement, Corus continued to fulfil existing orders, eventually ceasing to produce sheet piling on 6 July. The heavy section mill used to roll it at the Scunthorpe works was then closed, [REDACTED]. This resulted in the loss of 156 jobs at the site.

The rationale for the merger

- 3.3 Arcelor told us that, in its view, HRSSP was:

- a strategic product;
 - which it had ambitions to develop further; and
 - which had considerable growth potential in the retaining structures market.

It saw the UK as:

- an important market in which it had not hitherto had a significant presence; and
- one with strong growth potential.

Its aim was to be selling [REDACTED] tonnes of steel sheet piling here by [REDACTED], not least by taking customers away from alternative products, such as concrete.

- 3.4 Arcelor also told us that as Corus's intention to disengage from piling was becoming increasingly clear, it had decided that securing its local market knowledge and sales expertise was the most effective way to establish its own products in the UK. Engaging Corus's UK sales team gave Arcelor a means of also taking over its former market position in this country, in a non-disruptive way—although it did not take over any contracts with Corus's former customers. It regarded Corus's staff as highly motivated and efficient, with good technical expertise and excellent market knowledge. It believed that they would be well able to introduce the Arcelor product range to Corus's former customers. Without the acquisition, Arcelor feared that Corus's decision to exit would have created an opportunity for Salzgitter, which was better established as a long-term supplier to the UK. Arcelor told us that, in this event, it would, nonetheless, have still sought to have become the leading supplier of steel sheet piling in the UK—as it was in the EU generally—and that it would have

immediately engaged with Salzgitter in a contest over marketing and prices, in order to maximize its share of UK customers. Arcelor senior management, including the chief executive of its division responsible for production of steel piling and other sections, said at the hearings, for example, that, without the merger, it thought that in the short term there would have been a price war between Arcelor and Salzgitter (although this was not backed up by any evidence from Salzgitter). Following any such period of more intense price competition, however, it expected a very similar market structure would have been established to that which came about following the merger.

3.5 Arcelor's hope was that the acquisition would:

- provide its Belval mill with some of the additional sales it needed to exploit its recent investment in extra capacity;
- improve the product mix at the mill by allowing the manufacture of non-piling products to be moved elsewhere; and thus
- increase profitability.

Arcelor also believed that Corus's withdrawal from the piling business would have benefits for it elsewhere in Europe and in wider export markets, where they had previously been competitors. Its financial appraisal at the time indicated that the investment would be repaid within [~~3~~] years.

3.6 At the time of the transfer of its UK steel sheet piling business to Arcelor, Corus described the sale—together with the other investments and restructuring planned for Scunthorpe, which it also announced—as steps aimed at significantly improving its profitability and competitiveness. It added that it was taking action to focus on areas that offered scope for growth and profitability.

Jurisdiction

3.7 Under our terms of reference (see Appendix A), we are required to investigate and report on whether a relevant merger situation has been created. Under the Act, the considerations germane to determining whether there is a relevant merger situation are broadly:

- (a) whether two or more enterprises have ceased to be distinct;
- (b) whether either the turnover, or share of supply, test is satisfied; and
- (c) whether the reference was made in time.

3.8 On (a), an 'enterprise' is defined as the activities or part of the activities of a business (section 129(1) of the Act). We have reviewed the two agreements for the sale and purchase of assets made between Corus and ProfilARBED SA on 27 April 2004. The same assets—goodwill, employees, business information and business records—were transferred under both. No premises were transferred under either; neither were the benefit of contracts, receivables or cash in hand, nor certain tax assets. In our view the assets transferred constitute the activities of a business or part of a business. The effect of the agreements is that two or more enterprises ceased to be distinct.

- 3.9 On (b), the share of supply test is satisfied if the merger creates or increases a share of at least one-quarter in the supply of goods or services of any description in the UK, or in a substantial part of the UK.
- 3.10 As shown in Table 1 following paragraph 6.5, which gives Arcelor's estimates of market shares, before the merger Arcelor's share of the supply of HRSSP in the UK fluctuated at levels below 25 per cent. After the merger, its share of supply increased considerably. Because of conflicting evidence about the quantity of HRSSP supplied in the UK after the merger, we cannot state exactly Arcelor's post-merger share of supply. However, we have no doubt that it exceeds 25 per cent, and we have seen no figures that suggest that it might not exceed 25 per cent. Hence, the share of supply test is met for the supply of HRSSP in the UK.
- 3.11 On (c) the agreements for the sale and purchase of the assets were made—and made public—on 27 April 2004, and completed on 30 April. According to the OFT's decision to refer, it was notified of the merger on 21 June. We understand that although the OFT considered the period allowing it to make a reference would ordinarily have expired on 3 September, that period was extended to 27 September to allow further information to be gathered. The reference was made on 10 September, during the extended period. Accordingly, the reference was made in time.

Conclusions on relevant merger situation

- 3.12 For the reasons set out in paragraphs 3.8 to 3.11, we conclude that the acquisition has resulted in the creation of a relevant merger situation. Arcelor did not dispute that a relevant merger situation existed.

4. The steel industry

- 4.1 Fuller descriptions of the industry and the ways in which steel—and HRSSP—are manufactured can be found on the CC web site. Steel is a global business, with major works in almost all parts of the developed world. The industry produces three main types of metal:
- carbon steel;
 - stainless steel; and
 - special or alloy steel.
- 4.2 The type relevant to this inquiry is carbon steel, the metal from which HRSSP is made. It is also used to manufacture a wide range of other products, such as car bodies, cans, beams and reinforcing materials. The physical properties of carbon steel can be modified by changing its chemical composition or by the treatment it receives during production so that, for example, cans—which require a ductile material—and knives—which require a much harder metal—are made from different types of carbon steel.
- 4.3 The relevant steel business is divided horizontally into three types of activity:
- steel production;
 - rolling; and

- distribution.
- 4.4 In many cases, all three operations are integrated within a single firm though—as we shall see—there are also examples of firms that process and distribute products that are made from semi-finished steel, bought in from other producers. And there are also stockholders who distribute steel products made by others. As there are opportunities for making profits at each stage in this process, companies that are fully integrated may sometimes be willing to trade off benefits in one area, say, distribution, if this means that they can improve their performance elsewhere. They also have the potential to switch the semi-finished steel that they make between different finished products—or when the balance of supply and demand makes this more profitable sell it to other steel processing companies—to improve margins or find additional outlets when domestic demand is low.
 - 4.5 Steel is a very capital intensive business. The level of investment is greatest at the start of the process—the furnaces in which the liquid metal is produced—but it is also substantial in the next phase: the mills where the steel is rolled into finished products. Once installed, plant is designed to operate for several decades, so companies have to take long-term investment decisions about the amount of steel making capacity they need and which finished products they will make. Once taken, these decisions are difficult and expensive to reverse, because the sunk cost associated with them—and the fixed costs of operating the plant—are high. So it is very uneconomic to invest in capacity that is underutilized. This means that when there is excess capacity, suppliers will be prepared to offer prices that are close to their marginal costs and to accept other costs, such as those associated with establishing new channels of distribution, in order to acquire and maintain sales.
 - 4.6 Historically, the steel industry has been strongly cyclical with excess capacity except at the peak of each economic cycle. This has resulted in poor profitability for steel companies outside those peak years. Recently, capacity has been consolidated in larger steelworks, with less efficient ones being closed. At present, the industry is undergoing unusual pressures from the so-called ‘China effect’: a shorthand for the very high levels of demand in Asia in general and from the People’s Republic of China in particular. This has led to a worldwide increase in the prices charged both for steel products and for the raw materials used to manufacture them. Although the effect has been felt throughout the industry we have been told that it has been particularly apparent in the demand for scrap and for semi-finished steel.
 - 4.7 Nowadays, there are two processes that account for nearly all the world’s carbon steel production. They are generally described as the integrated route and the electric arc furnace (EAF) route. The integrated route is the more capital intensive and involves the production of liquid iron from ore, coke and limestone. This, together with added scrap, is then transformed into liquid steel in a basic oxygen furnace, after which the final chemical composition of the metal is adjusted in a secondary steelmaking furnace. In the EAF route, scrap (and sometimes directly reduced iron or pig iron) is melted. Small quantities of other metals are then introduced—either in the EAF or in a secondary steelmaking furnace to create liquid steel with the required chemical specification.
 - 4.8 The price of scrap tends to be more volatile than that of iron ore or coke. So, at the peak of the economic cycle, producers using the integrated route may have a cost advantage over those with an EAF. At the trough, those using an EAF may have the advantage (the CC web site contains further information about both routes and about their relative costs).

- 4.9 Whichever route is employed, once liquid metal of the right composition has been made it is—in almost all modern steel works—continuously cast into semi-finished products known, depending on their size and shape, as billets, blooms or slabs.
- 4.10 This semi-finished steel is then turned into a variety of products by further shaping and processing in a range of different mills. The different products made in this way have significantly differing levels of value added to them during the manufacturing process. This, in turn, translates into varying levels of prices and profitability for the different products.
- 4.11 Finished products are then distributed to their end users and to stockholders who act as intermediaries between the manufacturers and the ultimate customers—particularly those with small orders. There is also a market in some types of semi-finished steel.
- 4.12 In practice, the EU suppliers of HRSSP in the UK—Corus (before the merger), Arcelor, Salzgitter, Huta Katowice and Vítkovice—have taken varying positions on how they manufacture piling and supply it to the UK.
- 4.13 Corus used its own semi-finished steel—made by the integrated route into HRSSP—and offered a very high level of service to its major customers by maintaining a sales and technical support service comprising—at the time of the merger—13 sales and technical staff. The price it was able to charge at home was much higher than it could achieve on exports.
- 4.14 Arcelor uses the EAF route to produce its semi-finished steel, and, before the merger, had entered the UK, via a stockholder (Allied Piling) and by recruiting a salesman to develop direct sales.
- 4.15 Salzgitter produces some of its own steel—by the integrated route—but supplements this with semi-finished products bought on the world market. To date it has mainly sold in the UK via a stockholder (Rainham Steel).
- 4.16 Huta Katowice and Vítkovice both use the integrated route to make steel and both sell HRSSP to UK stockholders—sometimes through the agency of traders based in the Netherlands. Huta Katowice has not sold directly to the UK in the past few years.
- 4.17 The share of supply of HRSSP of these manufacturers in the UK over the last five years can be found in Table 1 following paragraph 6.5.

5. Market definition

- 5.1 A fuller discussion of both the product and the geographic markets can be found in Appendix C.

The product market

HRSSP

- 5.2 HRSSP is categorized as a 'long' product (see paper on rolling mills on our web site) and is made on a heavy section rolling mill.
- 5.3 The first piling produced by one of Arcelor's predecessor companies was rolled in 1911. Piling comes in a variety of standard shapes, widths and sizes, and, in the

majority of cases, the length is tailored to the particular requirements of a specific application.

- 5.4 HRSSP is used mainly in building or construction projects, to create a barrier or a retaining wall, either on land or in connection with river, canal or coastal works. HRSSP consists of profiled steel sections that are interlocked along their edges to form a continuous wall and driven vertically down into the earth's surface for the purpose of retaining water; or of holding ground—be it soil, rock or backfill—at an angle steeper than it would naturally assume, were no such structure employed. Users of these products have told us that steel piling is particularly suitable in cases where water is involved or where temporary barriers are required, which are removed once construction, or other structural, work has been completed. In some of these applications HRSSP can be the only—or most usual—option specified by civil engineers.
- 5.5 Common characteristics of most steel sheet piling, whatever its shape, are stiffness and strength. Within the UK, the most widely used piling is U shaped—which was the type that Corus predominantly produced. But in recent years the Z shape—which, we have been told, is lighter, per metre of width, for a given strength—has become increasingly prominent, both in continental Europe and in the USA where, we were told, it is the only type now manufactured (see the diagram on our web site for an illustration of the available shapes). Arcelor makes both types. It also produces a straight piling for niche applications and for use in combination with other shapes. In addition, Arcelor sells double Z piling—made by joining and crimping two Z sections together in a number of different configurations—which creates a particularly wide product. Increasing the width of sections helps to reduce both the cost per metre of piling and the time and cost involved in driving the sheets into the ground—which is a major consideration in the installation of barriers and retaining walls. This has led to a steady increase in the widths of piling offered by suppliers. For example, Arcelor told us that it had developed and put into production some 25 new sheet piling shapes—including wider designs—over the last 15 years, substantially renewing its product range. By contrast, Corus told us that it attributed the decline of its own piling sales—both in the UK and internationally—in part to its failure to develop a wide Z that could be rolled on its Scunthorpe mill.
- 5.6 New piling is delivered from the steel works, where it is made, either:
- to construction sites, where it is to be driven; or
 - to stockholders where it is cut to length and sold on to users.
- 5.7 We have been told that, as a general rule, larger orders—especially those which have longer timescales and require technical advice—are delivered by the producer, while smaller orders with short deadlines are more likely to be satisfied by stockholders.
- 5.8 There is also a market—which, we have heard, is perhaps one-fifth the size of the new steel market—for used piling. Some is sold, second-hand; and some hired out, so that it can be recycled and used again, often many times over.

Availability of substitutes

- 5.9 Other structures that are commonly used to provide barriers or retaining walls can take a number of forms and are generally made from concrete, masonry, stone or wood—though the extent to which HRSSPs and other products can be substituted for

one another varies considerably from application to application. As well as the differing technical requirements and the cost of the materials themselves, the ease with which retaining structures can be installed—and the time, costs and space involved in doing so—are other factors which determine the extent to which substitution is an option in particular cases.

5.10 From what we have been told, concrete is more likely to be used for permanent retaining structures—such as motorway embankments—and masonry and wood for structures where visual appearance or environmental aspects are a priority.

5.11 Decisions about which type of retaining structure to use in a particular location are complex. In the first place, a consulting engineer or designer may specify a particular type of structure—or even a specific product—but the ultimate owner of the project and the firm contracted to build it may well have views too. We have been told that, in practice, the ultimate choice is the result of many factors: where technical design considerations are weighed against construction ones, and the cost and suitability of particular materials are weighed against ease and cost of installation.

5.12 In selecting which retaining option to use, the relevant British Standard (BS8002) suggests that consideration should be given to a range of factors such as:

- location; including
 - the barrier's position relative to other structures;
 - the amount of space available; and
 - whether there is a need to confine the support system within site boundaries;
- the proposed height of the barrier and the topography of the ground before and after construction;
- ground, water or tidal conditions;
- the extent of ground movement acceptable during and after construction, and
- the effect of movement of the retaining structure on other structures and services;
- external loading;
- availability of materials;
- appearance; and
- the required life and maintenance.

Only where several suitable options meet the relevant criteria is it recommended that an economic comparison should be made.

5.13 It is this last point that seems to us particularly important, as it is the *economic* substitutability of alternative products that is central to determining market definition ie whether the existence of these alternatives constrains price—not whether they offer different technical solutions. This is strengthened by what others have told us. Although Arcelor and other steel producers have maintained to us that sheet piling

and other forms of retaining structure are interchangeable across a wide range of applications (see for example Arcelor's arguments in pages 4 to 15 of the non-confidential version of its submissions on our web site)—and so constrain each other on price—this is not the picture that has emerged from the discussions that we have held with major customers (see their submissions on the CC web site: as evident from those submissions, there was concern among some customers, particularly the piling contractors, that the merger had increased HRSSP prices and had resulted in a reduction of standards of service). The line that we heard consistently from them was that steel sheet piling is often the only economically feasible option in at least three types of applications which account for a high proportion of sales. These are:

- most applications involving water;
- temporary uses, where steel is the only type of piling that can be removed easily after use; and
- restricted sites, or those with limited access, where it can be very difficult to use anything else.

5.14 We have also been told of a large number of cases where the use of steel sheet piling would either be impractical or not economically feasible as a retaining structure—Arcelor itself told us that its estimate was that steel was used in only about 10 per cent of applications involving retaining walls or barriers. From all of the evidence that we have received, it seems to us that the number of cases where substitutability between steel and other materials is a practical, and economically viable, option account for only a relatively small proportion of applications.

Economic analysis of product market

5.15 In considering the product market, we have looked at the possibility of supply- and demand-side substitution. Both could have led us to a broad definition: the first by including—along with steel sheet piling—other heavy section mill products (see again the paper on rolling mills on our web site), such as I and H beams; the second by including other retaining structures, such as those made from concrete. As regards supply-side substitution, we have seen little evidence to support the idea that other heavy sections rolling capacity not currently directed towards producing HRSSP could rapidly or competitively switch to doing so without significant investment. Arcelor did not advance such an argument, and indeed both Arcelor and Corus supplied evidence that suggested that substantial capital costs would be involved. It is therefore unlikely that capacity currently being used for other products could exert a competitive constraint on the price of piling, particularly while the capacity of existing producers exceeds forecast demand.

5.16 As regards demand-side substitution, if it is the case that HRSSP has just a small share (Arcelor suggested around 10 per cent) of a much wider 'retaining structures' market, we might expect to see very substantial swings in that share as the price of steel varies in a manner uncorrelated with that of the cost of other retaining structures. We have not seen such movements, despite the very large recent increases in the relative price of steel: overall, piling prices relative to concrete in the UK have increased by 28 per cent over the last 12 months (see Appendix C, Figure 4) (although we acknowledge there could be some time lag before adjustments to changes in relative prices are made). In defining the relevant market, we consider whether a non-transitory 5 per cent price rise (unaccompanied by changes in costs) would be profitable. The fact that prices can vary by as much as 28 per cent, without suppliers experiencing a total collapse in demand (indeed demand has increased in

the UK), suggests very strongly that significant substitution to other retaining structures would not occur in direct response to a 5 per cent price increase. More generally, much of Arcelor's and other parties' evidence that has been submitted to us is not consistent with the notion of a wider market in which (taking an EEA-wide market for example) Arcelor and Salzgitter each have about a 4 per cent share: the competitive focus is clearly upon HRSSP suppliers competing against one another. Arcelor has, for example, described a 'price war' in Continental Europe between itself and Salzgitter—not against concrete.

- 5.17 Although there are some applications with a high degree of substitutability, for others the degree of substitutability is very low. Moreover, suppliers of HRSSP sometimes do not know the applications to which a particular order is to be put. The overall degree of substitutability is not therefore in our view large enough to make it unprofitable to raise prices, and it seems reasonably clear that a hypothetical monopolist supplier of HRSSP (unless there was countervailing buyer power or a credible threat of entry, which we discuss below) would have very significant market power. For these reasons, and those set out in Appendix C, therefore, we do not accept the arguments of Arcelor and other suppliers that the availability of substitutes is such that HRSSP can be regarded as part of a wider product market. We conclude that the relevant product market is confined to HRSSP.

The geographic market

- 5.18 Corus told us that, in its view, the market for the supply of steel sheet piling had become an international one. For much of the second half of the last century, its character had been largely domestic and even in the early 1990s British Steel had met almost 90 per cent of UK demand. But the domestically produced share had begun to fall in the second half of the decade and by 2003 Corus was supplying between 65 and 75 per cent of UK demand. Corus's internal projections were that—while overall UK demand for steel sheet piling could be expected to grow slightly over the next decade—its own share would continue to decline, falling to [X] per cent by 2012. The scale of its exports was also much reduced, [X].
- 5.19 Arcelor also took the view that the market was international: being, at least, EEA-wide. It pointed to the fact that, in each of the last three years, between 25 and 35 per cent of UK consumption of HRSSP had been imported, and that, following Corus's ceasing production, the UK had been supplied entirely by producers based in Europe.
- 5.20 It also argued that, in previous decisions on mergers in the steel industry, the European Commission had defined the geographic scope of the segment including piling as (at least) EU wide. For example, it said that in the 2000 ECSC *Thyssenkrupp/HSP Hoesch/JV* decision the Commission had acknowledged the parties' arguments that:
- transport costs were not a determining factor;
 - there were only three main production plants across the (then, 15 member) EU, which, together with plants in Poland and the Czech Republic¹ served all European customers; and
 - there was a substantial level of cross-border trade.

¹Poland and the Czech Republic subsequently became member states in May 2004.

- 5.21 Arcelor went on to argue that the international nature of trade was evidenced, too, by the high level of sales, outside the EU, made by most of the EU-based players. For example, some 40 per cent of Arcelor's sales were made to the USA, Asia, the Middle East and South America. Before its closure, the Corus mill also exported to Asia, the Middle East and the USA.
- 5.22 The contention that the relevant market was, at least, EEA-wide was also supported by qualitative evidence from a number of third parties, some of whom suggested that the suppliers from the eastern parts of the EU were effective competitors in the UK.
- 5.23 Our own analysis (see Appendix C) led us to conclude that the evidence suggested that the UK has historically been a separate market, in that UK price movements occurred to some degree independently of prices elsewhere in Europe. In particular, the low level of correlation between the prices of similar products (such as 600mm U-shaped HRSSP, known as Us—see the diagram showing Us and Zs on the CC web site) in the UK and Continental Europe suggested that there were some features of the supply of HRSSP that might support an argument for the UK being seen as a separate, relevant, geographic market—at least in the recent past, when Corus was active. Such a market would exist if it could be shown that UK prices were not constrained by those in the rest of the EEA, because it would be possible, in principle, for there to be a separate national market—even when all the piling was imported—if marketing, distribution channels or other conditions in this country allowed UK prices to behave independently of those elsewhere. The amount of weight that should be attached to these historic correlations as an indicator of the future is, however, more problematic.
- 5.24 Arcelor disagreed with the conclusions that we drew from our price-correlation analysis (see Appendix C). It told us that its analysis of average price movements for all types of steel sheet piling—not just the 600mm Us—showed more correlation between the UK and continental European prices and between the UK and individual European countries. But, in our view—even putting to one side concerns about the methodology that Arcelor used—the correlations it reported were not high enough to indicate, with any certainty, that the UK was not a separate, relevant geographic market.
- 5.25 The shares of supply of the major piling producers before the merger—Arcelor, Corus, Salzgitter, Huta Katowice (recently renamed Dabrowa Górnicza and now part of Ispat Polska Stal) and Vítkovice—also appear to have been different in the UK from what they were in continental Europe. For example, Arcelor's share of UK sales, by tonnage, in 2003, was between 5 and 15 per cent ([~~5~~] per cent), whereas its share on the Continent was between 40 and 50 per cent ([~~40~~] per cent). Similarly, Corus's share of UK sales, in 2003, was between 65 and 75 per cent ([~~65~~] per cent), but its Continental share was only under 10 per cent ([~~10~~] per cent). While this uneven distribution of market shares is not completely inconsistent with an EEA-wide market definition, it does constitute evidence against it.
- 5.26 We also heard about geological features in the UK, which meant that U piles were relatively more popular—and Zs less so—than they were elsewhere—particularly when the work involved driving into clay or rocky soil. That said, we also received counter arguments: that the UK's preference for U piles derived largely from the fact that this was the type that Corus had mainly supplied, in the past. As a result, most piling equipment in the UK was optimized to drive Us and specifiers often considered U piling first. A number of contractors that we spoke to told us that, as Zs became more widely available in the UK, it was to be expected that their use would become more common—though there would be a transitional period while driving equipment was replaced or reconfigured and attitudes changed. Given the price of piling rigs—

we were told that new ones cost around £500,000—this would be neither a swift nor a cost free process: but, in the view of these contractors, while there was no reason to believe that Us would disappear, there was nothing inherent about construction methods or geology in this country, which meant that the balance between U and Z piling in the UK should not, over time, come more into line with that elsewhere in Europe.

5.27 We are therefore inclined to the view that the historical evidence points to a geographic market no wider than the UK. However, we do not believe that this historical evidence allows us to come to a definitive conclusion about the future. It is plausible that the presence, and market position of Corus, was principally responsible for this separate market and in the absence of Corus, prices in the UK may begin to move more in line with those in Continental Europe. There is no evidence one way or the other, just as must be expected for a potential change of this nature. We therefore assessed the post-merger market principally by considering the UK. However, we also considered market shares and possible competitive effects of the merger in an EEA-wide market. We note that whatever definition was adopted, the constituent elements of the question that we were required to address would remain substantially the same: customers that were most affected by the merger were, to a significant extent, those based in the UK; and their suppliers, from now on, would be drawn very substantially from elsewhere in Europe.

Conclusions on market definition

5.28 So the conclusions that we have reached are that:

- the product market is HRSSP; and
- there are arguments for the geographic market being seen as either a UK or, particularly in the future, as a wider, EEA one: in either case, the customers of interest to our inquiry and the manufacturers that supply them remain the same.

6. Assessment of competitive effects of the merger

The counterfactual

6.1 In this section we consider what would have been likely to happen to Corus's business—and to the supply of HRSSP in the UK—had the transaction which we have been asked to consider not taken place.

6.2 This analysis (which is set out in greater detail in Appendix D) is based on the evidence we have received—in particular from Corus, Arcelor and Salzgitter—and looks at eight options for what might have arisen had the merger not proceeded. Four of them envisage scenarios in which Corus continues to supply steel sheet piling in the UK, and four do not.

6.3 But first, we examined the position of the three main European producers—Corus, Arcelor and Salzgitter—in the period immediately before the transaction.

6.4 Corus has told us that, compared with Arcelor and Salzgitter, it believed that:

- its product range was uncompetitive, and
- its heavy section mill, at Scunthorpe, was out of date and uneconomic.

6.5 Arcelor's estimates of recent trends in shares of the UK HRSSP market are as shown in Table 1.²

TABLE 1 Arcelor's estimates for market share of HRSSP in the UK, 1999 to 2003

Company	per cent				
	1999	2000	2001	2002	2003
Arcelor	[]*	[]*	[]*	[]*	[]†
Corus UK business	[]‡	[]‡	[]‡	[]‡	[]‡
Saltzgitter	[]§	[]§	[]§	[]§	[]§
Vitkovice	[]¶	[]¶	[]¶	[]¶	[]¶
Others#	[]*	[]*	[]*	[]*	[]*
Volume ('000 tonnes)	59	53	67	69	[]

Source: Arcelor.

*Between 0 and 5 per cent.

†Between 5 and 15 per cent.

‡Between 70 and 80 per cent.

§Between 65 and 75 per cent.

¶Between 10 and 25 per cent.

#Includes Polish HRSSP imported through Dutch traders. Some shares are zero due to rounding, but are less than 0.5 per cent (see Appendix B, Table 3).

6.6 Although, as shown in Table 1, Corus retained a strong (if declining) position with its UK customers—based partly on their conservative purchasing habits and partly on the service levels it continued to provide—this was not enough to prevent its piling business making a loss [£] of £[] in 2003. Because the revenue achieved from the sale of piling in the UK was not enough to cover the fixed costs of operating the Scunthorpe mill, Corus was required to export two-thirds of its production to markets which offered much lower prices. Although these sales still made a contribution to the fixed costs at Scunthorpe, they did not make the piling business profitable, overall.

6.7 Corus's financial projections (updated in April 2004) indicated that its piling business would make a further [£] loss (of £[] million) in 2004, which would worsen in 2005 and 2006. The actual results—to June 2004, just before production ceased—do show further losses being made, though not as great as the projections had envisaged. [£]

6.8 Corus told us that, over the years, it had tried to address the difficulties that its piling business faced by:

- developing new products;
- investing in a capability to produce wider piles; or
- forming an alliance with another manufacturer.

But:

- the only significant new product it developed (a cold formed wide Z) did not prove competitive;
- the considerable investment needed to produce wider hot rolled piling could not be justified, given the level of excess capacity in Europe; and

²We received somewhat different estimates of market shares from some other sources.

- all its proposals for an alliance—at different times it approached Huta Katowice, Salzgitter and Arcelor—foundered.
- 6.9 By contrast, Arcelor told us that it had invested heavily in its rolling capacity. By the end of 2003, its Belval mill was able to roll between 400,000 and 500,000 ([§]) tonnes of piling a year, including wide Zs. Its actual sales in that year were over 400,000 ([§]) tonnes. At the same time, Arcelor began seriously to address the UK, selling via a stockholder and recruiting a sales manager to promote its products to potential customers. During 2003 it secured between 5 and 15 per cent ([§] per cent) of UK sales, having had next to none in 2002. An additional investment (of €[§] million) identified at Belval would, by removing production bottlenecks, raise the mill's capacity to over 600,000 tonnes ([§]) a year. To put this in context, consultants appointed by Arcelor and Corus in November 2003 (when they were considering a joint venture) estimated that the combined capacity of the three largest European steel sheet piling producers (Arcelor, Corus and Salzgitter) was [§] tonnes a year (and potentially [§] tonnes, after the further investment by Arcelor). This was almost twice as much as European demand in 2003. Indeed, after the further investment planned for Belval, the mill would be able to supply all European demand, on its own. This compared with Corus's total sales of piling, in 2003, of over 150,000 tonnes ([§] tonnes): some two-thirds of which, around [§] tonnes, were sold in Europe—including the UK ([§] tonnes) and Ireland ([§] tonnes). These same consultants also identified synergy benefits from a joint venture between Arcelor and Corus—[§].
- 6.10 Salzgitter told us that it had invested heavily in the Hoesch Spundwand & Profil (HSP) Union Mill in Dortmund, after acquiring it from Thyssen Krupp in 2000. By the end of 2003, the mill—which, by then, could produce both wide Zs and Us—had achieved a capacity of between 300,000 and 350,000 tonnes ([§]). This compared with its sales of between 200,000 and 300,000 tonnes ([§] tonnes) in that year. Salzgitter also established a marketing joint venture with Thyssen Krupp, to maximize its piling sales, worldwide. In the UK, it opted [§] to sell through a stockholder, Rainham Steel, and, before the merger, was satisfying between 10 and 20 per cent (around [§] per cent) of UK demand. But this approach was now changing, with Salzgitter deciding that, to achieve the increased margins it needed, [§]. Salzgitter told us that, for the immediate future, it gave a higher priority to increasing margins, rather than expanding its market share: [§].
- 6.11 We were also told that Salzgitter had had some difficulty buying in semi-finished steel for Dortmund—though the position has eased with the increase in the amount of steel it produces itself. In the past it had bought mainly from Huta Katowice, but, as world demand for steel had begun to rise, and since Huta Katowice had become part of Ispat Polska Stal, Salzgitter had found it harder [§]. Salzgitter has now brought on stream a third blast furnace and a continuous casting machine of its own—to increase its annual iron making capacity by 500,000 tonnes—which will reduce dependence on external suppliers. It will not, however, eliminate the need to buy in steel altogether and there will be a temporary reduction in iron making for three months during 2005, when another of Salzgitter's blast furnaces needs to be relined.
- 6.12 We then considered, in turn, each of the eight possible scenarios for a counterfactual. First, we looked at four that involved Corus continuing to supply HRSSP. These were:
- (a) Corus continues to operate the Scunthorpe mill without making any investments or otherwise taking steps to improve its position.

- (b) Corus invests in its Scunthorpe heavy section mill so as to be able to produce wide Zs.
- (c) Corus continues to operate its Scunthorpe heavy section mill, while investing in its Teesside beam mill,³ before switching piling production there and closing the Scunthorpe mill.
- (d) Corus retains its sales force and sells imported steel sheet piling, having closed the Scunthorpe mill.

6.13 We were persuaded by none of them. On (a): we acknowledged that Corus had made it very clear that this is not what it had in mind. Among the reasons that it gave us in support of closure were:

- its existing piling range was uncompetitive and would come under increasing pressure;
- Scunthorpe was remote from European customers;
- while the mill was profitable through the peak of the cycle, on average, [X]; and
- [X].

6.14 Corus's Restoring Success programme was a series of initiatives launched in November 2003 [X]. While these plans could have been revised—had circumstances changed—none of the evidence that we have received is such that it might have been expected to cause Corus's management to question its earlier thinking. Indeed, Corus argued that the recent increases in world steel prices would have affected the closure of the mill, because it would have been able to earn higher margins by diverting steel away from the manufacture of sheet piling and selling it instead in the form of semi-finished or other finished products.

6.15 On (b) Corus told us that its efforts to develop new and competitive products had mostly culminated in insurmountable technical problems—often related to the width of the mill stands at Scunthorpe—or in financial projections which showed that the costs involved in improving the mill—for example, to allow the production of wide Zs—could not be justified by the likely profitability of any new designs that might be produced.

6.16 Corus told us that the improvements which Arcelor and Salzgitter had made over the last few years had also weakened its own case for investing, as European (EEA) capacity in sheet piling now greatly exceeded demand.

6.17 Similarly on (c) the figures that Corus showed us from its evaluation of this option (undertaken in July 2003) demonstrate that the expected return would not have met its hurdle rate for non-essential capital spending: which was a payback period of [X] years and an internal rate of return of [X] per cent; and that it would have risked damaging its wider business, as it would no longer have been possible to make a full range of sections at Teesside after some production had been displaced by piling.

³It was announced on 29 April 2003 that as part of the UK restructuring programme Corus intended to concentrate its UK steelmaking capacity at Scunthorpe, Port Talbot and Rotherham. Mills previously supplied with semi-finished products by its Teesside Works would in future receive them from Scunthorpe or Port Talbot; the steelmaking plant at Teesside, now known as 'Teesside Cast Products', would then no longer be needed for Corus's internal requirements. It was further announced on 16 December 2004 that Teesside Cast Products will become a supplier of slabs to other steel companies, chiefly a consortium headed by Duferco of Switzerland which has agreed to take most of the output for ten years. This does not affect the operation of the Teesside Beam Mill, which will be retained by Corus Construction & Industrial.

6.18 Finally, on (d) although Corus did consider the option of buying sheet piling from Arcelor or Salzgitter to sell on to UK customers, it quickly rejected the idea, because whoever supplied Corus could have been expected to move quickly to sell direct to UK customers, to increase its margin. Customers, too, would have wanted to deal direct with the supplier, to get a better price. So by ceasing to manufacture sheet piling and opting to trade in imported products instead, Corus:

- would have been in competition with existing stockholders;
- would have found that its two main potential suppliers would soon have moved to supply customers direct; and
- would have been squeezed out of the market.

6.19 We then turned to the four possible counterfactual scenarios that we identified under which Corus ceases to supply HRSSP:

- (e) Corus sells its UK sheet piling commercial operations to Salzgitter and closes the Scunthorpe mill.
- (f) Corus sells its UK sheet piling commercial operations to another party, such as Mittal Steel and closes the Scunthorpe mill.
- (g) Corus closes the Scunthorpe mill before the end of 2004 without any sale of operations having occurred.
- (h) Corus closes the Scunthorpe mill before the end of 2005 without any sale of operations having occurred.

6.20 On (e) although, in order to maximize value, Corus ought to have offered its UK business to Salzgitter, if Arcelor had not bought it, Salzgitter told us that no such offer had been made; and Corus told us that an agreement with Salzgitter was unlikely [REDACTED].

6.21 Salzgitter, too, had told us that:

- it aimed to increase UK margins [REDACTED]; and
- it had already tried to recruit some of Corus's sales staff.

So, in our view, the opportunity to acquire the whole UK marketing team should have been attractive to it (see Appendix D, paragraph 38). [REDACTED] As it was also, at this time, having difficulty securing steel at reasonable prices [REDACTED], an approach by Corus, in April 2004, might not have been ideally timed.

6.22 Scenario (f) has some similarities to (e). Again, we have received no evidence that Corus considered selling its business to anyone else, or that anyone else had expressed an interest. Nonetheless, such a deal might have had some benefits for Mittal Steel as it:

- was already producing piling (in the former Huta Katowice plant);
- appeared to have an adequate supply of semi-finished steel; and
- has announced an intention to increase its output.

- 6.23 Scenarios *(g)* and *(h)* are essentially the same: their only difference being timing. [X]
- 6.24 Scenario *(h)* is the outcome [X] which Corus believes would have occurred. The closure would have had to be announced by [X].

Conclusions on the counterfactual

- 6.25 What would actually have happened had the merger not occurred is, of course, unknowable. Our task is to consider what the most likely outcome would have been.
- 6.26 On the evidence before us—summarized in the preceding section—we do not believe that Corus would have continued to produce piling, even if there had been no transaction with Arcelor, or with anyone else. Corus's [X] made it very clear that closing the Scunthorpe mill—rather than continuing to operate it (scenario *(a)*)—was, [X] aimed at making its operations profitable—for the first time since the creation of the group. And we are persuaded by the figures we have seen that seeking to develop new piling products or shifting manufacturing to Teesside (*(b)* and *(c)*) could not justify the (not inconsiderable) investment involved, given:
- the excess capacity for producing more advanced piling already available at Belval and Dortmund; and
 - the alternative—and potentially more profitable—uses for the semi-finished steel and the Teesside rolling capacity that would have been required.
- 6.27 Nor do we believe that Corus would have tried to develop a business *(d)* that simply stocked and sold other manufacturers' piling, once it had ceased to be a producer itself.
- 6.28 Neither is there any evidence that Corus would have been successful in selling its UK business to anyone else. Salzgitter *(e)* told us that it would not have bought it—even if it had been offered the chance—and while Mittal *(f)* might have been interested, nothing we have seen indicates that it ever considered the possibility, or that Corus contemplated offering it the opportunity.
- 6.29 So, we are left with the last two scenarios (*(g)* and *(h)*): that Corus would have closed the Scunthorpe mill and withdrawn from the piling business sometime in 2004 or 2005, even in the absence of a deal with Arcelor. This is the counterfactual that we believe is most likely to have occurred and it is the one against which we assess the merger in the rest of this report. How soon closure would have happened, without the transaction, is impossible to say. The timing of the deal with Arcelor—and the funds that it produced—clearly made it easier for Corus to press on with its plans more quickly than would otherwise have been the case. But:
- its declining market share;
 - the growing losses on the piling business; and
 - the increasingly better margins available from semi-finished steel and other long products,

may all have encouraged Corus to act well before the end of 2005, so as to realize the potential benefits as quickly as possible.

Implications of the counterfactual

- 6.30 We then considered the sort of market structure that would have been likely to occur, under the counterfactual that we had chosen to adopt, once customers had had time to adjust to the withdrawal of Corus. It seemed to us that there are two possibilities.
- 6.31 The first is that the counterfactual market would be different in structure from that which existed when Corus was active, and that it would settle down to a more balanced sharing between the two, three or four European producers that have the potential to sell significant amounts of piling into the UK—perhaps with the addition of further supplies from Asia and the USA. The argument for this is that the shape of the UK market before Corus withdrew was the consequence not of any particular need for the distribution and support system that it had in place, but of factors that were peculiar to Corus. For example, a number of its customers may well have bought from it because its production was locally based. This may have been out of a wish to ‘buy British’, or because Corus was a local producer offering a high level of service and was more able—and more willing—to, say, change its rolling programmes or otherwise offer special treatment to its major domestic customers. No other producer will be able to play the ‘buy British’ card and as there are four manufacturers within Europe, none will have exclusive rights even to encourage customers to buy from the EU. And as UK customers will, in future, be buying from producers that are much further away and who see them only as part of one, among many, export markets, special treatment is unlikely to be on offer to anything like the extent under Corus.
- 6.32 In this context, the difference between Corus’s withdrawing in 2004 or 2005 (see paragraph 6.29) is most likely to be seen in how quickly—and in what proportions—Corus’s former UK business would have been shared between Arcelor and Salzgitter. Some, at least, of Corus’s sales and technical staff would have been available to recruit if Corus had withdrawn in 2004. On the other hand, if it had delayed until 2005, Corus’s presence might have acted as a temporary constraint on Arcelor and Salzgitter, albeit a limited one as it appears to have been the highest price supplier in the UK. In either case, we do not see the exact date of Corus’s withdrawal having any great significance for our consideration of the effects of the merger.
- 6.33 The alternative view of the counterfactual is that the market would resume the shape that it had when Corus was active: with one large producer controlling the majority of supply and others sharing the remaining customers between them. The argument for this option is that successful piling suppliers need a high level of sales and technical support and an ability to provide the very short delivery schedules that the major customers require for their projects. So securing these customers requires expenditure on a sales and technical support team. If, for example, such expenditure, which we estimate could be up to £1 million a year, could also be regarded as fixed (which we discuss below), to incur such a level of fixed costs would only make economic sense for a supplier if it could be spread over a substantial share of sales, given the likely profitability to be derived from a total annual market for piling in the UK of the order of £20 million to £30 million, or if a premium price could be charged. So, once one supplier has established such a team, it would not be economically worthwhile for its competitors to do so too. Instead they would content themselves with supplying stockholders and smaller customers who are less concerned about technical advice and just-in-time delivery.
- 6.34 We have not been able to establish whether a large enough number of customers were prepared to pay sufficiently higher prices for a premium service to justify expenditure on such a sales and technical support team. Clearly, Corus created such a team at an annual cost of perhaps £1 million but it could be argued that Corus’s

distribution and sales arrangements were made necessary solely by the more limited range of its own piling offer.⁴ Furthermore, it is not clear whether an effective competitor to Corus would have needed to match this £1 million expenditure—because the costs of sales and technical support might not be fixed. If a moderately effective service could be created on a smaller scale, for example, then it might be feasible to bridge the gap between low-priced low-service entrants and a full-service incumbent. Quite apart from the deal under consideration, Arcelor had begun to create a sales force in the UK and has subsequently vertically integrated with a stockholder. Others could presumably do the same.

- 6.35 If the UK market position of Corus did indeed reflect the fundamental economics of the industry—rather than merely the historical legacy—then we might expect to see a similar pattern of incumbents securing high and stable market shares at premium prices elsewhere. Arcelor supplied us with estimates of market shares in different EU member states since 1999. The evidence does not point to a single clear conclusion. Market shares in different national jurisdictions seem to have been reasonably stable over these five years, in that leadership only rarely switched between Arcelor and Salzgitter. The most recent market shares show a clear market leader in some jurisdictions: for example, a single firm supplied over 80 per cent or more in France and Belgium. These two features appear to support the hypothesis that market leadership is hard to contest. However, in Germany, the Netherlands and Italy the largest supplier had a share around 50 per cent and at least one other major supplier had a significant (over 20 per cent) market share. We also note that some smaller markets, such as the Scandinavian countries (separately or together) were evenly balanced between Arcelor and Salzgitter. It is hard to reconcile the continued presence of two suppliers in small markets with there being substantial fixed costs in serving those markets. In Germany, for which we can examine price data, we note that there is little difference in the prices achieved by the two main suppliers. Corus—which we have been told was selling cheaply in continental Europe—typically has had less than 10 per cent of the German market but has been selling into the ‘project’ segment of the market.⁵ This suggests that Germany, at least, does not fit the pattern of a single supplier monopolizing this market segment at a premium.
- 6.36 Our own preference is therefore for the view that the structure of the market under the counterfactual would be different—more balanced—from what it was when Corus was active. However, we discuss both options, later in this report, when we compare the effect of the merger with the counterfactual (see paragraphs 6.69 to 6.82).

Competitive effects

- 6.37 In assessing the competitive effects of this merger, we have focused on the central facts about the recent changes in the supply of HRSSP in the UK:
- the only UK based producer has withdrawn;
 - its commercial goodwill and sales staff have been bought by Arcelor; and
 - no new suppliers, who are not already able to do so, are likely to start selling to UK customers.

We have considered the implications of the transaction under a number of headings.

⁴It is noteworthy that in the immediate aftermath of the merger, Arcelor has also chosen such a system.

⁵We use ‘project segment’ to refer to those transactions in which the purchaser is not able to buy standard piling sections from a stockholder, but instead had to buy directly from a manufacturer because of specific technical, support, delivery or storage requirements.

Market entry and expansion

- 6.38 Entry barriers are high in steel production. As we have already seen, the processes are very capital intensive; and it is not realistic to consider entering this industry in a small way: the minimum efficient scale is large, and investments tend to be substantial, specific and long term. Vertical integration is, with few exceptions, the rule. Most producers control several, or all, parts of their production and distribution chain. And, even after the withdrawal of Corus, there is still significant excess capacity for the manufacture of steel sheet piling in the EEA as a whole. So the only new entry that could, in practice, be expected in the manufacture of HRSSP is the development of new lines or products by companies that are already rolling carbon steel for other applications.
- 6.39 But, as we have seen in our examination of Corus's own thinking about developing its product range (see paragraphs 6.15 to 6.16 and Appendix D) the level of investment needed to manufacture steel piling to modern standards is very difficult to justify, even for a manufacturer that already has a significant steel making capability, a heavy section mill, and an established position in the market. It would be even more difficult for a new entrant.
- 6.40 So any new sales into the UK are most likely to come from the four steel producers within the EEA that already roll steel sheet piling.
- 6.41 After Arcelor, the largest is Salzgitter, a German company that has significantly expanded its steel sheet piling business in recent years. It produced between 200,000 and 300,000 (☒) tonnes of piling in 2003 and—until Arcelor's acquisition of Corus's UK business—was the largest exporter to this country, where it has had a presence for a number of years. It has recently modernized its production facilities at Dortmund—which are largely focused on the manufacture of piling—and, like Arcelor, makes wide Zs as well as Us. It has told us that, for the immediate future, its priority is to:
- maintain—rather than ☒ expand—its share of the UK market; and
 - seek to increase ☒—as it believes this will help increase its margins.

This view must, however, be interpreted in the context of Salzgitter's long-term commitment to investing in HRSSP. Since it acquired the Hoesch Spundwand und Profil (HSP) business in 2000, Salzgitter has invested heavily to improve its product range and is now able to produce wide Z-shaped and wide U-shaped piling. Its Dortmund mill now has substantial spare capacity and it needs to increase its sales to achieve a return on the recent investments and bring its unit operating costs closer to those of Arcelor. Salzgitter has formed an associated company (ThyssenKrupp GfT Bautechnik GmbH) in cooperation with ThyssenKrupp GfT Gesellschaft für Technik mbH to market its sheet piles, with the announced objective of 'significantly improving market penetration in Germany and abroad'. It has also acted to reduce its dependency on external purchases of slab feedstock by bringing a further blast furnace on stream (see paragraph 6.11). In this context, we expect that Salzgitter will wish to seek opportunities to increase sales volumes as well as to improve its sales margins.

- 6.42 The other two EU producers are both based in the eastern part of Europe. The Polish steel maker, Huta Katowice (now renamed Dabrowa Górnicza) is part of Ispat Polska Stal (IPS) a group which was acquired by LNM Holdings (LNM) in March 2004. LNM has announced that it is committed to a capital investment programme for IPS as a whole that will exceed €500 million. Part of this money is earmarked for the

construction of a third continuous casting machine in place of the remaining ingot production facilities at Katowice. We have been told that the heavy section mill at Katowice is relatively modern, having been installed some 25 years ago, and that its annual capacity—which is also used to produce rails, angles and beams—is around a million tonnes. We have heard that 90,000 tonnes of this capacity is available for piling and that, in 2003, 80,000 tonnes were rolled. There is an expectation within the industry that production of piling—along with that of other sections—will be increased at Katowice, under IPS ownership. Though this Polish steel company has not directly supplied the UK in the last few years, that is not a reason for thinking it will not do so in future.

- 6.43 The other eastern European producer in the EU is Vítkovice Steel. It is based in Ostrava, in the Czech Republic, and has been producing sheet piling since 1935. This company is state owned, but the Czech Government has announced its intention to privatize the operation, and it is currently seeking bids. Press reports identify LNM as one of a number of potential buyers here too. The heavy section mill at Vítkovice has been described to us as very old and not modernized. We have been told that it has an annual capacity of 140,000 tonnes. In 2003, actual production was between 100,000 and 150,000 tonnes ([~~100,000~~] tonnes) and between 40,000 and 50,000 ([~~40,000~~]) tonnes were devoted to piling. Vítkovice told us that the UK had accounted for a relatively small amount (about [~~10~~] per cent) of its export sales in recent years and that [~~10~~].
- 6.44 Both of these Eastern European manufacturers produce only U shaped piling, up to a width of 600mm. Neither has any experience in making Z shapes, and we have been told that a considerable amount of investment and technical development would be required before either could do so. As evident from the submissions on our web site, there was concern expressed by these manufacturers that the merged entity would have an above 50 per cent share for HRSSP products in Europe and that other suppliers would have a more difficult position in acquiring market share in the UK than they would have done if the merger had not taken place.
- 6.45 Outside the EU, HRSSP is also produced in Russia, the Ukraine, Asia and the USA. We have been told that a number of Far Eastern producers have sold small quantities of piling to UK customers in the past, but we have also heard that—given the current very high levels of demand for steel in Asia—their priority at the moment is to satisfy markets nearer to home. That said, there is no reason why they should not resume exports to the UK in the future, should market conditions change. From what we have been told, the piling made in Asia is similar in design to that made in Europe—both Us and Zs are produced with Larssen interlocks (see glossary).
- 6.46 Supply from the USA is also a possibility, but, from what we have heard, US manufacturers produce only Z shapes and UK customers are unfamiliar with the ‘ball and socket’ interlocks used on the other side of the Atlantic. Nevertheless, one of the UK stockists that we have spoken to told us that he had been in contact with a US producer and that the prices they had discussed made importing US piling appear an attractive proposition.

Market power

- 6.47 Market power—a concept which is discussed more fully in Appendix B—is usually defined as a market participant’s ability to act, to some extent, independently of its competitors, for example, by exercising some freedom in setting prices. High market shares are a good guide to market power when, for example,

- buyers are weak and fragmented;
- no entry is possible;
- the product is a commodity; and
- buyers are locked into the seller, with high switching costs.

A company that enjoys such market shares:

- may not lose customers if it raises prices (because there are few alternative suppliers); or
- even if it does sacrifice a few, may still find it worthwhile to raise prices, overall, if the customers that remain become, by paying higher prices, more profitable.

6.48 Arcelor has told us that, in its view, the supply of steel sheet piling in the UK has some of the characteristics of a 'bidding market', because, it argues:

- there are no switching costs between piling from different manufacturers; and
- most orders are tendered for, project-by-project;

so that, in consequence, market shares in this case do not offer any significant indication of market power.

6.49 As we discuss in Appendix B, we do not share Arcelor's view about this being a bidding market, but the process of analysing our response to its contention provides a convenient context for setting out our own understanding of the nature of this market. Economists define a bidding market as one in which all suppliers have an incentive to bid at competitive levels, because orders are large and infrequent. So each tendering process could, in principle, be defined as a separate market, as the outcome of one need not affect the outcome of others. In such markets, participants' existing shares reflect no more than their past successes and do not imply any ability to raise prices in future. Competition begins afresh each time, so someone with a small market share can exert a competitive constraint that is just as effective as a larger supplier's. In such markets, orders must be contested through an open tendering process, which allows smaller players to participate, with neither significant reputational barriers to the likelihood of their being able to win, nor capacity constraints that prevent them fulfilling orders, if they do win.

6.50 Two obvious ways to assess whether a bidding market exists in this case are:

- to determine if sales are actually made (or lost) in ways resembling the description given in the previous paragraph; and
- observing whether customers do, indeed, freely switch suppliers in response to price changes.

Choosing a more expensive supplier (other things being equal) is unlikely to indicate a bidding market—nor does a tendency to choose the same supplier time after time.

6.51 From what we have been told about the supply of steel sheet piling in the UK:

- there is a very large number of relatively small orders;

- most contracts are awarded in relation to specific projects; and
 - Corus's former customers indicated to us that they had entered into bilateral negotiations with their supplier rather than run competitive tenders.
- 6.52 As noted in paragraph 12 of Appendix B, we would also expect in a bidding market to see no significant capacity constraints, to ensure suppliers are interested in winning tenders. While there do not appear to be constraints on rolling capacity that would make existing piling suppliers reluctant to compete for a tender, we have been told that producers do consider the price and availability of semi-finished steel and the opportunity cost of using it to make other finished products rather than piling. Some customers, for example, also told us that they found it difficult to obtain competitive quotes from Salzgitter; and the firm itself has said that its immediate priority, in the UK, was to increase profit margins, rather than market share (see paragraph 6.41). We also heard that Salzgitter had experienced difficulties in obtaining semi-finished steel, [redacted], although it has now started up a third blast furnace of its own to address this problem—but another furnace, which is currently producing steel, will be out of action for around three months next year, while it is being relined. Furthermore, Salzgitter's main stockist in the UK, Rainham Steel, told us that—[redacted]. As we discuss in paragraphs 6.73 to 6.78, however, although the current position could prevent buyers accessing supply from Salzgitter, even in a competitive tender, we would not necessarily expect that situation to last.
- 6.53 As for whether there is any reputational loyalty in this industry, Corus clearly enjoyed an advantage among UK customers long after its sales position had begun to deteriorate in other parts of the world. Arcelor also spoke to us about Salzgitter having had a much more established name in the UK than it enjoyed itself. As for the two remaining suppliers, Huta Katowice and Vítkovice currently account for only a small share of the UK market. Although some of those that we spoke to—particularly steel stockholders—said that there was no material difference in quality between any of the EU manufacturers, some customers told us that they would be reluctant to use Polish or Czech piling, either generally or in particular applications, although the reasons for this were sometimes unclear; for example, the extent to which this was merely a simple reluctance to try the unfamiliar, or the result of disparaging statements by Western European producers, or for other reasons. But, whatever the reason—and however unjustified it might be—it did not appear to us that at least hitherto all four European piling manufacturers had been regarded as equally acceptable suppliers by some important potential customers. Indeed, we did not talk to anyone who was currently buying directly from Poland, though we did hear from a third party that there were some customers in the UK supplied by a Dutch trader (see paragraph 6.67), and we did come across at least one stockist that had recently ordered piling from Vítkovice. But with Corus's withdrawal from the market, that situation could significantly change in future.
- 6.54 As for how this market has operated in recent years, Corus's UK share—until it withdrew—was running at between 65 per cent and 75 per cent in 2003 ([redacted] per cent in 1999, falling to [redacted] per cent in 2003). While this is not necessarily incompatible with a bidding market—because, for example, transport costs might often have made Corus the most attractive bidder—its high and relatively stable share of supply to a group of customers within the overall market suggests a relatively low degree of switching, particularly as Corus was selling (by its own admission) a more limited range of products at prices, in the UK, that were significantly higher than it could command elsewhere.
- 6.55 Furthermore, Arcelor has told us that its purchase of Corus's commercial activities enabled it to guarantee a significant and steady presence in the UK; and that

acquiring Corus's sales team was a major factor in its securing Corus's UK market position. Being willing to pay a substantial sum to obtain a substantial market share in this way seems inconsistent with the notion of a bidding market.

- 6.56 These indications suggest that the supply of HRSSP to the UK is up to now unlikely to have been a bidding market in the sense in which it is normally defined. So, we are considering a market where shares in the past at least have had some significance. However, as shares are not, in themselves, an absolute guide to market power, and as the withdrawal of Corus may have changed the way the market operates, we now need to go on to examine other aspects of competition in more detail.

Buyer power

- 6.57 Buyer power—which is discussed at greater length in Appendix B—is often seen as customers being able—because of their size or commercial significance—to resist what would otherwise be seen as the normal relationship between, say, market share and price; and so prevent their suppliers from exercising market power. Typically, this will reflect the buyer's ability to 'walk away' or simply not to use the product being sold.
- 6.58 Our analysis of the [REDACTED] sales made by Arcelor, from 1 January to 30 September 2004 (see Appendix B), indicates that its [REDACTED] largest customers (most of them piling specialists) accounted for [REDACTED] per cent of its £ denominated sales. Among these [REDACTED], individual shares of Arcelor's UK sales ranged from 4 to 14 per cent. A concentration of this sort among customers would indicate, at least, a potential for the exercise of buyer power. Evidence on whether piling typically represents a relatively small element of total project cost is mixed. Customer responses varied but the average response we received from all customers was that it was of the order of 40 per cent and of the order of 35 per cent from civil engineers only. Arcelor supplied us with estimates that were of the order of 35 per cent. It is hard to say whether, at these levels, customers may be less likely to walk away from suppliers when arguing about price, as the cost, to them, of risking a delay in the overall project could exceed any benefit from cheaper piling.
- 6.59 There is then a further question about whether—even if we did consider that Arcelor's top ten customers could exercise a degree of buyer power—that would be enough to remove concerns about adverse effects for the customers responsible for the remaining [REDACTED] per cent of total demand. That might be the case if, say, the top ten were prepared to re-sell piling to other end-users, or if Arcelor could not discriminate by negotiating different prices with each customer. In the event, we saw no indications that re-selling was likely to occur; and Arcelor told us that prices were individually negotiated with each customer and could vary between them.
- 6.60 So, while some customers may have a degree of buyer power, we do not believe that their presence is sufficient to protect the generality of purchasers. We do not, therefore, consider that Arcelor faces a significant element of buyer power in the supply of HRSSP in the UK.

Assessing competitive effects

- 6.61 To assess the competitive effects of this merger, we must decide whether market power is, or may be expected to be, enhanced compared with what we expect would have happened had the merger not occurred (the counterfactual).

- 6.62 We have already concluded (see paragraphs 5.9 to 5.28) that the relevant product market is HRSSP; and that the relevant geographic market now that Corus has withdrawn will be *either* the UK *or* the EEA.
- 6.63 Next we need to consider how much of Corus's share of supply is likely to be captured by Arcelor. In 2003, Arcelor had between 5 and 15 per cent (approximately [X] per cent), by volume, of UK supply. Corus had between 65 and 75 per cent ([X] per cent). So the upper limit of the likely post-merger market share is between 75 and 90 per cent ([X] per cent). However, we received evidence that, although many of Corus's former customers have switched to Arcelor, some of them had been actively testing the market for alternative suppliers. Arcelor's own estimate is that, while it expects, in the immediate future, to achieve a share of 65 to 75 per cent (around [X] per cent) of UK demand, it believes that this will fall, once customers have adjusted fully to the withdrawal of the only domestic supplier, to something more like 60 or 65 per cent. Arcelor's assessment of its post-merger share in the UK would give rise to a 45 to 55 per cent ([X] per cent) share in the EEA.
- 6.64 We have assumed that the pre-merger sales of Arcelor or Corus not retained by Arcelor will be distributed among the remaining suppliers in proportion to their pre-merger situation. Although this is standard practice in the absence of evidence pointing to a different outcome, it is simplistic.

Market shares and concentration

- 6.65 In Appendix B, Tables 3 and 4, we present market shares for the situation before Corus's withdrawal, for the counterfactual situation following Corus's withdrawal and for the post-merger situation, on a percentage basis and using the Herfindahl-Hirschmann Index (HHI) measure of concentration. That analysis would appear to suggest the immediate post-merger UK market is more concentrated as a result of the merger than in the counterfactual. But this analysis is based on market shares in the post-merger market and in the counterfactual which, as noted in paragraph 6.64, are derived on simplistic assumptions. We recognized that it is particularly unsatisfactory to determine the division of the majority of the market in the counterfactual using relatively small—and highly volatile—historical market shares. These counterfactual market shares should therefore be regarded as illustrative. It seemed to us that the merger is likely to have resulted in a less evenly balanced market than would otherwise have been the case and the market shares illustrate that outcome. It would not, however, be appropriate to base conclusions on the precise figures, and still less to pay excessive regard to the details of differences between these market shares and those assumed to exist after the merger. Such market shares also do not allow for the effectiveness of the potential competition that can in time be exerted by suppliers with, at least initially, a relatively small market share.
- 6.66 Our Guidelines (CC2, Merger References, paragraphs 1.20 and 1.21) define competition as a 'process of rivalry'—not in terms of a particular value for a specific measure of concentration. It is not evident that the intensity of rivalry in the UK would be less if Arcelor or Salzgitter had the larger market share in Europe—or if their shares were more balanced. And if Corus would have ceased production in any event (as our counterfactual view indicates) or even had it sold its business to Salzgitter or Mittal Steel (which we do not consider likely) instead of to Arcelor, the number of firms supplying steel sheet piling to the UK would have been the same with or without the merger. The HHI rises when shares become more asymmetric, even without a reduction in the number of suppliers, and while sometimes such a rise will reflect enhanced market power, on other occasions it will not. The change comes

solely from the different distribution of shares before and after a merger. We also note that the HHI is just one measure of concentration. Capacity shares are unaffected by the merger, so an HHI measure based on capacity, rather than volume, would be unaffected too. The derived increment to the HHI (the so-called delta) is highly sensitive to changes in assumptions about market shares—and there is great uncertainty in both the post-merger market and in the counterfactual. Indeed, all that can be said with any assurance is that market shares in both will be different from what they were before Corus withdrew, as between 65 and 75 per cent of UK demand will have needed to find a new supplier.

6.67 As for the EEA-wide market, the difference in estimated shares and in the HHI after Corus's withdrawal with—or without—the merger is relatively small. And, as with the UK, even though shares are distributed very unevenly, there is no sense in which the smaller players are limited in their capacity to supply the market. Salzgitter and Vítkovice both currently export piling to the UK and Huta Katowice has done so recently through the Dutch traders (see paragraph 6.53). We have been told that all three have the capacity to supply on a much more substantial scale without additional investment, if selling to UK customers became sufficiently attractive—though they may need to establish local sales teams.

6.68 So while, in both the UK and to a lesser extent the EEA, the immediate result of the merger appears to be a more concentrated market (as measured by HHI on volume) than would have occurred had Corus withdrawn without selling its UK business, it should be noted that:

- the precise market shares and increments as measured by the HHI are highly sensitive to assumptions about how Corus's customers will behave;
- other standard measures of concentration would not be affected by whether or not the merger had taken place at the time when Corus stopped producing piling; and
- small market shares at a given point in time do not necessarily indicate that the effectiveness of a competitor is low: this seems particularly relevant in a narrow, UK market.

Conclusions on a substantial lessening of competition test

6.69 The picture that has emerged from our inquiry is a complex one.

6.70 Although we have noted the concern of customers and competitors about the effect of the merger, it seems to us that the most important event for UK customers of HRSSP in 2004 was not the merger, but Corus's decision to withdraw from the business, which—we are persuaded—would have occurred in any event: at least by the end of 2005, if not considerably earlier.

6.71 And while the removal of the major supplier has had immediate implications for the intensity of competition in the UK, it cannot be assumed that Corus's withdrawal will lead to higher prices, because the two companies likely to be the major suppliers in the future—Arcelor and Salzgitter—both:

- operate plants that are more efficient than the facilities that used to exist at Scunthorpe; and

- have, for a number of years, been selling piling to their customers elsewhere in Europe at prices below those that Corus was charging at home.
- 6.72 Nevertheless, it could be argued that the merger—by providing one producer with a swift and straightforward route to becoming the leading supplier in the UK—has made the competitive environment in the UK less intense than if Arcelor, Salzgitter, Huta Katowice, Vítkovice and anyone else had been required to establish their positions after Corus’s withdrawal, without any company having bought itself a substantial marketing advantage. But there seems little evidence of other suppliers increasing their competitive activity despite Corus’s withdrawal. Even though Arcelor’s acquisition has enabled it to gain an immediate advantage over its competitors, other producers could have seen the withdrawal of Corus as an opportunity, which they could exploit; customers, by the same token, could have seen it as a chance to review potential suppliers and establish new relationships with them. But competition appears to have been more muted than might have been expected.
- 6.73 For example, Rainham Steel, Salzgitter’s long-term stockist in the UK, has chosen this moment, not to expand its customer list, [REDACTED]. Another stockist, which used to rely on Corus for piling, told us that it had approached Salzgitter, but had been turned down. A number of end users also told us that they had experienced difficulty in obtaining supplies from Salzgitter. [REDACTED]. Other customers, who had a well-established relationship with Corus, seem to us to have been very willing to transfer their business to Arcelor, without first conducting a rigorous review of the options and placing at least a few orders with other suppliers that might have been available to them.
- 6.74 Salzgitter’s behaviour may well be explained by the difficulties that we have been told it has been experiencing:
- [REDACTED]—though this is now being addressed; and
 - [REDACTED].
- 6.75 Huta Katowice—itself a major producer of semi-finished steel, which has not supplied UK customers directly with piling in the past—also seems to be largely absent from the market at the moment (although we did hear about recent imports via Dutch traders, see paragraph 6.67). Its behaviour may result from its recent reorganization and absorption into IPS—with the considerable investment which that entails—and the current availability of other outlets for its products, nearer to home.
- 6.76 The above suggests to us that some producers have been less willing to compete to sell HRSSP in the UK than we might expect to be the case, but whilst this may give an opportunity to Arcelor as a result of the merger, the same would have occurred in the absence of the merger (but with Corus having withdrawn from the market). Indeed, this muted competition—from rivals that might otherwise have been expected to have been challenging Arcelor strongly for the orders of Corus’s former customers—affects the assessment of competition under either of the alternative market structures that we considered at the end of our discussion of the counterfactual.
- 6.77 In relation to our preferred view of the counterfactual market structure—namely that after a year or so the UK shares of supply would have been more evenly distributed among the main European producers—it does not appear to us that we can reliably form an expectation that the degree of rivalry in the counterfactual would necessarily be any greater than following the merger. This is because this market does not

appear to us one in which the precise distribution of market shares is likely to lead in any definitive way to different levels of market power. It should also be noted that while Arcelor's position, immediately after the merger, is very strong, it has taken over no long-term contracts between Corus and its former customers and inherited no framework agreements. Customers may choose to establish such links with it, but they could equally opt to deal with Salzgitter or with someone else. The business purchased by Arcelor provides it with some advantages over its rivals in winning the customers formerly supplied by Corus. However, it does not appear to us that these advantages are likely to be insuperable for a determined rival—they do not provide a sufficiently powerful competitive advantage for Arcelor to be likely to foreclose the market and subsequently raise prices to consumers' detriment.

6.78 Whether in the post-merger situation those rivals will compete in a determined manner is not clear. There is good cause to believe that—for the reasons that we have set out—the current low profile, in the UK, of all of the European suppliers other than Arcelor is likely to be a temporary phenomenon. Whether they will shortly emerge as more effective competitors to Arcelor once world demand for steel returns to more normal levels depends on how quickly current concerns over:

- [X] (Salzgitter);
- and in relation to the less active producers, future ownership (Vítkovice); or
- reorganization (Huta Katowice),

will have been addressed. But, if the excess of demand that now characterizes the world steel industry is replaced by an excess of supply (as appears entirely plausible in an industry characterized by cyclical activity), then it may well be necessary for these companies to become much more active in markets such as the UK to which they are currently devoting a lower priority. It is possible that these expectations will turn out to be false and that Arcelor's rivals—or some of them—will not compete vigorously in the UK. Even then, the same situation is likely to apply in the counterfactual.

6.79 In relation to the alternative assumption that the future will be similar to the past in that one supplier with a well regarded sales and technical support team will end up securing the majority of UK demand, then this market position would be likely to emerge both in the merger, and in the counterfactual situation. In either case, the logic by which one supplier meets any fixed costs of providing sales and technical support through supplying a large share of the market at premium prices would remain. If these costs are indeed fixed and sufficiently large to prevent effective challenge to Arcelor after the merger, they would also render it uneconomic for two suppliers each to provide a premium service in the counterfactual. They might in principle contest the prime position, but one would presumably prevail and establish a market position—which may still be contestable—similar to that of Corus in the recent past.

6.80 However, even this contest may well not have materialized, as it would not be sensible to contest a market position against a player clearly committed to and capable of winning prime position. Any contest for Corus's former UK customers would have been between Salzgitter, and to a lesser extent Huta Katowice and Vítkovice—all of whom appear to have reasons for not competing vigorously for UK piling orders at the moment—and Arcelor, which clearly has a very strong commitment to establishing itself with UK customers—in order to maximize the return on its considerable recent investment in new designs and expanded capacity—and which, in this counterfactual scenario, would still have the [X] that it has paid to

Corus to spend on sales and technical support force. So, even if we took the view that the future structure of piling supply in the UK would be similar to what it was when Corus was active, we do not believe that this outcome would have been significantly more likely with the merger than without it.

- 6.81 Thus, we have not been able to identify any clear change in market conditions compared to the counterfactual that would necessarily act substantially to lessen competition. Our belief therefore is that the withdrawal of Corus from HRSSP is the main event affecting the competitiveness of UK supply, and that, at least in the medium or longer term, the market within the UK—whichever of the two possible structures it takes—will be no less competitive with the merger than it would be without it.
- 6.82 However, we noted in paragraph 3.4 that Arcelor itself suggested there would have been a period of more intense price competition when Corus withdrew from the market, had the merger not occurred (with the implication that, thereafter, price competition would again become more muted). In our view, whether this would have occurred, and for how long it would have lasted, is uncertain and was not backed up by any evidence from Salzgitter. We believe the merger has no impact on the competitive position of other producers; even if, as noted in paragraph 6.78, other suppliers do not choose to compete actively in the market in future, the prospects of competition in the short term without the merger would have been equally poor. We would not therefore regard the risk of any such temporary reduction in competition as sufficient to represent a substantial lessening of competition resulting from the merger. Similarly, we have noted in paragraph 5.13 concerns by some customers that the merger has increased prices. We do not believe any inferences can be drawn from any changes in prices of HRSSP in the UK following the merger, including any comparisons with price changes elsewhere in Europe. Such comparisons are highly sensitive to the time periods over which they are made and the basis of the prices compared (eg sales or shipment prices) and are likely to reflect factors other than the merger. Information from Arcelor (see Appendix B), however, suggested that, up to November 2004, prices in the UK have increased less than elsewhere in Europe since the merger (although up to October 2004, UK prices had increased more than those elsewhere in Europe). Although soon after the merger some customers also complained about service levels, Arcelor said these had improved and gave us data to show its delivery record had improved substantially.
- 6.83 We have noted in paragraph 6.76 that at present competition in UK HRSSP supply appears to be muted. Our expectation is that in the medium term other suppliers, such as Salzgitter, will seek to increase their share of supply of HRSSP in the UK and that customers will have sufficient choice of supplier and product. If that situation does not occur, then one possible explanation is that the member of our group who (as noted below, and for the reasons set out in his note) dissents from our conclusions is right in his assessment of the incentives to compete. But another possible explanation could be that competition is muted by collusion, either explicit or tacit, between suppliers or potential suppliers. We have seen no direct evidence of collusion, and the possibility of collusion has not played an important part in our investigations. However, the lack of competition that we have observed may be telling in an industry which, by virtue of its high fixed costs, product homogeneity, limited number of competitors and low sales margins may be considered susceptible to collusion. We recommend that the evolution of this market be watched carefully by the appropriate competition authorities in the EU and UK (ie the European Commission and Office of Fair Trading) and appropriate action be taken if needed.

Conclusion

- 6.84 We therefore conclude that, while there may have been a competitive advantage to Arcelor in the months immediately following the withdrawal of Corus from HRSSP, we do not expect that a substantial lessening of competition in any market or markets in the UK for goods or services has resulted, or may be expected to result, from this merger.
- 6.85 One of the members of the group, Chris Goodall, dissents from this view.