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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying parties

**Subject: Case M.9317 — ArcelorMittal/CLN/Ilva SSCs
Commission decision pursuant to Article 6(1)(b) of Council
Regulation No 139/2004¹ and Article 57 of the Agreement on the
European Economic Area²**

Dear Sir or Madam,

- (1) On 21 February 2019, the European Commission received a notification of a proposed concentration (the ‘Transaction’) pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which ArcelorMittal SA (‘ArcelorMittal’) and Coils Lamiere Nistri SpA (‘CLN’) acquire joint control over Ilva’s steel service centres in Legarno and Paderno (the ‘Ilva SSCs’).³

1. THE PARTIES AND THE OPERATION

- (2) ArcelorMittal is a global steel and mining company, whose principal business is the production, distribution, marketing, and sale of steel products. It produces a

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

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

³ Publication in the Official Journal of the European Union No C 83, 05.03.2019, p. 11.

range of steel semi-finished and finished products, including flat carbon steel products. It supplies steel for various applications including automotive, construction, household appliances, and packaging.

- (3) CLN is an Italian steel processing company, active in the (i) distribution of flat carbon steel products through steel service centres ('SSCs') (the SSC Division); and (ii) production of steel automotive components and steel wheels for cars and commercial vehicles. ArcelorMittal and CLN are referred to as the 'Notifying Parties' or 'Parties'.
- (4) AMCLN is a full-function joint-venture jointly controlled by ArcelorMittal and CLN. AMCLN carries out an activity of steel distribution through SSCs. The Commission cleared the creation of AMCLN in the case M.7461 – AMDS Italia/CLN/JV in 2015.
- (5) The Ilva SSCs are two flat carbon steel service centres located in Italy.

2. THE CONCENTRATION

2.1. Background

- (6) The Commission approved ArcelorMittal's proposed acquisition of Ilva S.p.A. and a number of its subsidiaries in the case M.8444 – ArcelorMittal/Ilva. The Commission's approval was conditional upon ArcelorMittal divesting certain of its businesses, including [...] SSCs of [...].⁴
- (7) AMCLN is jointly controlled by ArcelorMittal and CLN.⁵ [Background of the transaction].
- (8) While ArcelorMittal has sole control over the Ilva assets including the Ilva SSCs before the Transaction, it does not currently own them but leases them from the Ilva Group. [Details on the parties' control structure].
- (9) The acquisition of the Ilva SSCs, among others, by ArcelorMittal under the said arrangements were cleared by the Commission in the case M.8444 – ArcelorMittal/Ilva.

2.2. The operation and the concentration

- (10) [Background of the transaction], ArcelorMittal and AMCLN have signed a letter of intent to transfer the assets.
- (11) Based on this letter of intent, the operation is to take place in three steps. [Details on transaction structure].⁶ [Details on transaction structure].
- (12) [Details on transaction structure].
- (13) [Details on transaction structure].

⁴ [Background of the transaction].

⁵ M.7461 – *AMDS Italia/CLN/JV*.

⁶ [Details on transaction structure].

Figure 1 – [Details on transaction structure]

[...]

- (14) [Details on transaction structure].

Figure 2 – [Details on transaction structure]

[...]

- (15) [Details on transaction structure].

- (16) Therefore, the operation will, [...] constitute a concentration. [...].⁷

- (17) [...].

- (1) [...].

- (2) [...].

- (18) Nonetheless, it is not necessary for the Commission to conclude on the matter for the purposes of the present decision. This is because the final stages of the operation ([...]) would each constitute a concentration even if the intermediary step(s) before them would not take place.

- (19) The question whether [...] is part of the same transaction with the latter stages of the operation or constitutes a concentration on its own is not relevant in this context. The question would be relevant if the Commission was called to assess whether the concentration was implemented in contravention to the suspension obligation arising from Article 7 of the Merger Regulation. However, that is not the subject of the present decision, and [...].

2.3. Full-functionality

- (20) The Ilva SSCs each are full-functional and will continue to operate on the market as a going concern business with their own resources.

- (21) First, they already operate as market-facing businesses with their own resources and staff. [Commercial information].

- (22) Second, their activities will extend beyond one function of the parents. This is in line with the Commission's decisional practice regarding full-functionality of AMCLN.⁸ In particular, the Ilva SSCs will both be active in the processing of steel as well as in the sale and distribution thereof to third-party customers.

- (23) Third, the Ilva SSCs will deal with their parents at an arms' length basis. [Commercial information].

⁷ See the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentration between undertakings, OJ C 95, 16.4.2008, page 1, paragraph 18.

⁸ M.7461 – *AMDS Italia/CLN/JV*.

- (24) Fourth, the Ilva SSCs will operate on a lasting basis as part of AMCLN, intended to operate indefinitely.

3. UNION DIMENSION

- (25) ArcelorMittal and CLN have a combined aggregate world-wide turnover of more than EUR 5 000 million⁹. Each of them has a Union-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension.

4. COMPETITIVE ASSESSMENT

- (26) In previous cases, the Commission has considered separate markets for the distribution of carbon steel products through SSCs, separate from ex-mill sales of steel and from distribution through stockholding centres (SCs) or oxy-cutting centres. While markets for ex-mill sales have been considered not wider than EEA, markets for distribution are national or at most cross-border regional.¹⁰
- (27) ArcelorMittal, CLN, the Ilva SSCs and AMCLN are active in the distribution of carbon steel through SSCs. ArcelorMittal is also active upstream in the production and supply of carbon steel, while CLN is active downstream in the manufacturing of automotive components and steel wheels.¹¹

4.1. Horizontal effects

- (28) The Ilva SSCs are predominantly active in Italy, where ArcelorMittal and CLN have no distribution activities other than those contributed in the AMCLN joint venture. The sales market share of the Parties (including AMCLN) in Italy post-Transaction amounts to [10-20]%, where the Ilva SSCs represent a market share of <[0-5]%. While the Parties will remain the biggest player, there are numerous other distributors on the market (including Gabrielli with [10-20]% and Marcegaglia with [10-20]% market share).
- (29) In other countries, the Parties (including AMCLN) achieve the highest combined market share in Germany where the share reached [10-20]% and the Ilva SSCs account for less than <[0-5]%.
- (30) Therefore, there are no affected markets as the Parties' combined market share under any plausible market definition would remain below 20%.

4.2. Vertical effects

- (31) Vertically affected markets arise between (i) ArcelorMittal's upstream supply of flat carbon steel in the EEA, and (ii) the Parties' distribution of flat carbon steel.

⁹ Turnover calculated in accordance with Article 5 of the Merger Regulation.

¹⁰ See for instance M.8444 – *ArcelorMittal/Ilva*.

¹¹ The Commission has considered the market for the production and supply of automotive components to be at least EEA-wide in the case M.7461 – *AMDS Italia/CLN/JV*.

- (32) ArcelorMittal is active upstream in the production and supply of flat carbon steel with substantial sales market shares in hot-rolled ([30-40]%), cold-rolled ([30-40]%), galvanised ([30-40]%), tinplate ([30-40]%) and organic coated ([30-40]%) flat carbon steel.
- (33) The Commission considers that the Transaction is unlikely to give rise to competition concerns related to vertical effects because ArcelorMittal is pre-Transaction already exercising sole control over the Ilva SSCs, as assessed in M.8444 – *ArcelorMittal/Ilva*, and the vertical link between ArcelorMittal's upstream production and supply of flat carbon steel, and the downstream distribution of such steel through SSCs also exists already prior to the Transaction. At the downstream level, this applies to both the (i) Ilva SSCs solely controlled by ArcelorMittal and (ii) the SSCs currently operated by AMCLN over which ArcelorMittal has joint control with CLN.
- (34) In practice, the Transaction is de-concentrative in nature in that ArcelorMittal's sole control over the Ilva SSCs is replaced with joint control by ArcelorMittal and CLN. Therefore, to the extent that there would have been any incentive for ArcelorMittal to engage in input foreclosure prior to the Transaction, such incentive would diminish post-Transaction, as ArcelorMittal would suffer any upstream losses alone while having to share the downstream gains from such foreclosure practices with CLN.
- (35) CLN is active in the production and supply of steel automotive components and steel wheels, which is downstream of the activities of the Ilva SSCs. No affected markets however arise as its sales market share in the EEA is below 10% under any plausible market definition. [Commercial information].

5. CONCLUSION

- (36) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Member of the Commission