EUROPEAN COMMISSION
DG Competition

Case M.8713 - TATA STEEL / THYSSENKRUPP / JV

(Only the English text is authentic)

MERGER PROCEDURE
REGULATION (EC) 139/2004

Article 8(3) Regulation (EC) 139/2004

Date: 11/06/2019

EUROPEAN
COMMISSION

Brussels, 11.6.2019
C(2019) 4228 final

PUBLIC VERSION

COMMISSION DECISION

of 11.6.2019

declaring a concentration to be incompatible with the internal market and the functioning of the EEA Agreement

(Case M.8713 – TATA STEEL / THYSSENKRUPP / JV)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No 139/2004 of 20.1.2004 on the control of concentrations between undertakings[1], and in particular Article 8(3) thereof,

Having regard to the Commission's decision of 30.10.2018 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission,

Having regard to the opinion of the Advisory Committee on Concentrations,

Having regard to the final report of the Hearing Officer in this case,

1. INTRODUCTION

(1) On 25 September 2018, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the 'Merger Regulation') by which Tata Steel Limited ('Tata') and thyssenkrupp AG ('ThyssenKrupp') would acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control of a newly created joint venture (the 'JV').[2] Tata and ThyssenKrupp are designated hereinafter as the 'Notifying Parties' or the 'Parties', and each separately as a 'Party'.

(2) Tata, incorporated in India, is a diversified company active in the mining of coal and iron ore, manufacturing of steel products, and selling those steel products globally. Tata further produces ferro-alloys and related minerals and manufactures certain other products such as agricultural equipment and bearings.

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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 Publication in the Official Journal of the European Union No C 354, 03.10.2018, p. 4.

(3) ThyssenKrupp, incorporated in Germany, is a diversified industrial group active in the production of flat carbon steel products, material services, elevator technology, industrial solution and components technology.

2. THE OPERATION AND THE CONCENTRATION

(4) Tata and ThyssenKrupp intend to establish the JV, a new joint venture, which would be active in the production of flat carbon steel and electrical steel products. In accordance with the Contribution Agreement and the Shareholders' Agreement signed on 30 June 2018, each of the Notifying Parties would bring into the JV their European flat carbon steel and electrical steel production assets and businesses. The steel mill services of ThyssenKrupp would also be transferred to the JV. The operation is hereinafter also referred to as the 'Transaction'.

(5) Pursuant to the Contribution Agreement and the Shareholders' Agreement, Tata and ThyssenKrupp would each hold 50% of the shares in the newly created JV. Neither of the Parties would be granted relevant veto rights the other would not have, and the Parties would thus jointly control the JV. The JV would perform all the functions of an autonomous economic entity on a lasting basis. The JV would have sufficient own staff, financial resources and dedicated management for its operation and for the management of its portfolio and business interests. Furthermore, the JV would consist of pre-existing businesses and it would not be limited to exercising a specific function for its parents. It would have its independent market presence both upstream and downstream. It would also not have significant sale or purchase relationships with its parents. Finally, the JV would be set up for an indefinite period and thus intended to operate on a lasting basis. Therefore, the JV would be a full-functional joint venture.

(6) The operation thus constitutes a concentration within the meaning of Articles 3(1)(b) and 3(4) of the Merger Regulation.

3. UNION DIMENSION

(7) The combined aggregate worldwide turnover of the Parties is more than EUR 5 000 million (Tata: EUR 16 014 million; ThyssenKrupp: EUR 41 124 million) and the aggregate Union-wide turnover of each of the Parties is more than EUR 250 million (Tata: EUR […]; ThyssenKrupp: EUR […]). Tata and ThyssenKrupp do not both achieve more than two-thirds of their Union-wide turnover within one and the same Union Member State.

(8) The notified operation therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

4. THE PROCEDURE

(9) During the Phase I investigation, beside requests for information to the Parties pursuant to Article 11 of the Merger Regulation, the Commission contacted a number of market participants (including customers and competitors of the Parties) and requested information from such third parties both through four questionnaires[3] pursuant to Article 11 of the Merger Regulation and telephone calls.

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[3] Q1 – Questionnaire to Competitors; Q2 – Questionnaire to Customers; Q3 – Questionnaire to Customers (Automotive); Q4 – Questionnaire to Customers (Packaging).

(10) On 20 October 2018, the Commission informed the Parties of the concerns resulting from the preliminary assessment of the Transaction during a 'State of Play' meeting.

(11) Based on the results of the Phase I market investigation, the Commission found that the Transaction raised serious doubts as to its compatibility with the internal market and adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation on 30 October 2018 (the 'Article 6(1)(c) decision').

(12) On 31 October 2018, the Commission provided a number of key documents to the Notifying Parties.

(13) Upon a request of the Notifying Parties of 8 November 2018, pursuant to Article 10(3) second sub-paragraph, first sentence, of the Merger Regulation, on 13 November 2018, the Phase II review period was extended by five (5) working days.

(14) On 19 November 2018, the Notifying Parties submitted their written comments on the Article 6(1)(c) decision ('Comments on the Article 6 (1)(c) decision').

(15) On 20 November 2018, at a state of play meeting, the Commission provided the Parties with the opportunity to discuss orally the main issues raised in the Comments on the Article 6(1)(c) decision, and indicated the matters on which it planned to focus its further investigative efforts.

(16) On 5 December 2018, given the failure of the Notifying Parties to provide certain requested information, the Commission adopted two decisions, addressed to Tata and ThyssenKrupp respectively, pursuant to Article 11(3) of the Merger Regulation, requesting them to supply certain documents as soon as possible and no later than 21 December 2018 and suspending the merger review time limit until receipt of the complete and correct information. The suspension lasted until 9 January 2019, at which date the requested documents were provided.

(17) During the Phase II market investigation, the Commission sent several requests for information to the Notifying Parties, as well as to third parties. The Commission held several calls with market participants, and it sent requests for information in the form of eleven questionnaires,[4] in addition to those sent out before the initiation of the proceedings.

(18) On 5 February 2019 and following the results of the Phase II market investigation, a state of play meeting was held in order to inform the Notifying Parties of the preliminary results of the Phase II market investigation and the scope of the preliminary concerns regarding which the Commission planned to issue a Statement of Objections.

(19) On 13 February 2019, the Commission adopted a Statement of Objections ('SO'), which was sent to the Notifying Parties on the same day. According to the SO, the Commission came to the preliminary view that the Transaction would likely significantly impede effective competition in the internal market within the meaning of Article 2 of the Merger Regulation due to (i) horizontal non-coordinated effects by

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[4] Q11 - Questionnaire to Competitors, Phase II; Q12 (a) - Questionnaire to Automotive Customers, Phase II; Q12 (b) - Questionnaire to Automotive Customers, Phase II; Q13 - Questionnaire to Packaging Customers, Phase II; Q14 - Questionnaire to Electrical Steel Customers, Phase II; Commitments - Market Test (Competitors - MT1); Commitments - Market Test (Automotive Customers - MT2); Commitments - Market Test (Packaging Customers - MT3); Market Test (Commitments) – Competitors; Market Test Revised Commitments - Automotive Customers; Market test revised commitments - Packaging Steel customers.

eliminating an important competitive constraint in the market for the production and supply of automotive HDG in the EEA; (ii) the creation of a dominant position, or at least due to horizontal non-coordinated effects resulting from the elimination of an important competitive constraint, in the markets for the production and supply of metallic coated and laminated steel products for packaging in the EEA; and (iii) horizontal non-coordinated effects by eliminating an important competitive constraint in the market for the production and supply of grain oriented electrical steel in the EEA.[5] The Commission's preliminary conclusion was therefore that the notified concentration would be incompatible with the internal market and the functioning of the EEA Agreement.

(20) The Notifying Parties were granted access to the file on 14 February 2019. A data room was organised from 14 February to 21 February 2019 allowing the economic advisors of the Notifying Parties to verify confidential information of a quantitative nature, which formed part of the Commission's file. A non-confidential report of the data room (First Data Room Report) was provided to the Parties on 21 February 2019. A revised version of this report was provided to the Parties on 22 February 2019. Subsequent access to the file was granted on 1 March, 21 March, 17 April and 3 May 2019. Another data room was organised from 21 to 25 March 2019. The Second Data Room Report was provided to the Parties on 26 March 2019.

(21) The Notifying Parties submitted their reply to the SO on 27 February 2019 (the 'Reply to the SO'). They confirmed not to request a hearing.

(22) ArcelorMittal, industriAll (umbrella organisation of trade unions active in the mining, energy and manufacturing industries, including the steel sector), Salzgitter AG, Ardagh Group and IG Metall made applications to the Hearing Officer to be admitted as interested third persons in the proceedings and have been recognised as interested third parties by the Hearing Officer.

(23) All interested third persons were provided with a non-confidential version of the SO and Ardagh Group and Salzgitter AG submitted written comments to the SO, pursuant to Article 16(2) of the Commission Regulation (EC) 802/2004.[6]

(24) On 8 March 2019, a state of play meeting was held, during which the Commission provided the Notifying Parties with preliminary feedback following their Reply to the SO.

(25) On 12 March 2019, the Notifying Parties submitted draft commitments in order to address the competition concerns identified in the SO.

(26) Upon request by the Notifying Parties on 18 March 2019, the period for the adoption of a final Decision was extended on 19 March 2019 by eight (8) working days pursuant to Article 10(3) second subparagraph, third sentence of the Merger Regulation, to allow for the Commission and the Parties to have sufficient time to discuss and thoroughly assess any formal remedy proposal that might be submitted by the Notifying Parties. Accordingly, the deadline for a Commission decision in this proceeding was extended until 13 May 2019.

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5 Following further investigation, the Commission dropped its concerns relating to electrical steel, which is therefore not discussed further in this Decision.

6 Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ L 133, 30.4.2004, p. 1).

(27) A Letter of Facts – evidence corroborating the objections set out in the SO – was sent to the Notifying Parties on 20 March 2019. The Notifying Parties submitted their comments on the Letter of Facts on 25 March 2019 ('Reply to the Letter of Facts').

(28) On 1 April 2019, the Notifying Parties submitted commitments pursuant to Article 8(2) of the Merger Regulation in order to address the competition concerns identified in the SO (the 'Commitments of 1 April 2019').

(29) On 2 April 2019, the Commission launched a market test of the Commitments of 1 April 2019.

(30) On 12 April 2019, a state of play meeting was held, during which the Commission provided the Notifying Parties with feedback following the market test of the Commitments of 1 April 2019.

(31) On 17 April 2019, the Notifying Parties were granted further access to file. Also on 17 April 2019, a meeting with the Notifying Parties was held, during which the Commission provided the Notifying Parties with preliminary feedback on their envisaged submission of revised commitments.

(32) On 23 April 2019, the Notifying Parties submitted revised commitments (the 'Revised Commitments of 23 April 2019').

(33) On 25 April 2019, the Commission launched a market test of the Revised Commitments of 23 April 2019.

(34) On 2 May 2019, a state of play meeting was held, during which the Commission provided the Notifying Parties with feedback following the market test of the Revised Commitments of 23 April 2019.

(35) The Notifying Parties were granted further access to the file on 3 May 2019 and 17 May 2019.

(36) On 8 May 2019, the Commission sent a draft Article 8(3) decision to the Advisory Committee with the view of seeking the Committee's opinion on it.

(37) The meeting of the Advisory Committee took place on 27 May 2019.

5. INTRODUCTION TO THE STEEL INDUSTRY

5.1. Production process of flat carbon steel

(38) The Transaction primarily involves flat carbon steel products.

(39) The production of carbon steel typically consists of two main stages: (i) the production of crude steel and semi-finished products and (ii) the processing of semi-finished products into finished products. Each of the stages usually consists of several production steps.

(40) There are two principal processes for the production of crude steel and semi-finished products: (i) the so-called integrated or basic oxygen furnace route and (ii) the electric arc furnace ('EAF') route. In Europe, by far the most common method of producing crude steel for the production of finished flat carbon steel products is the integrated route.

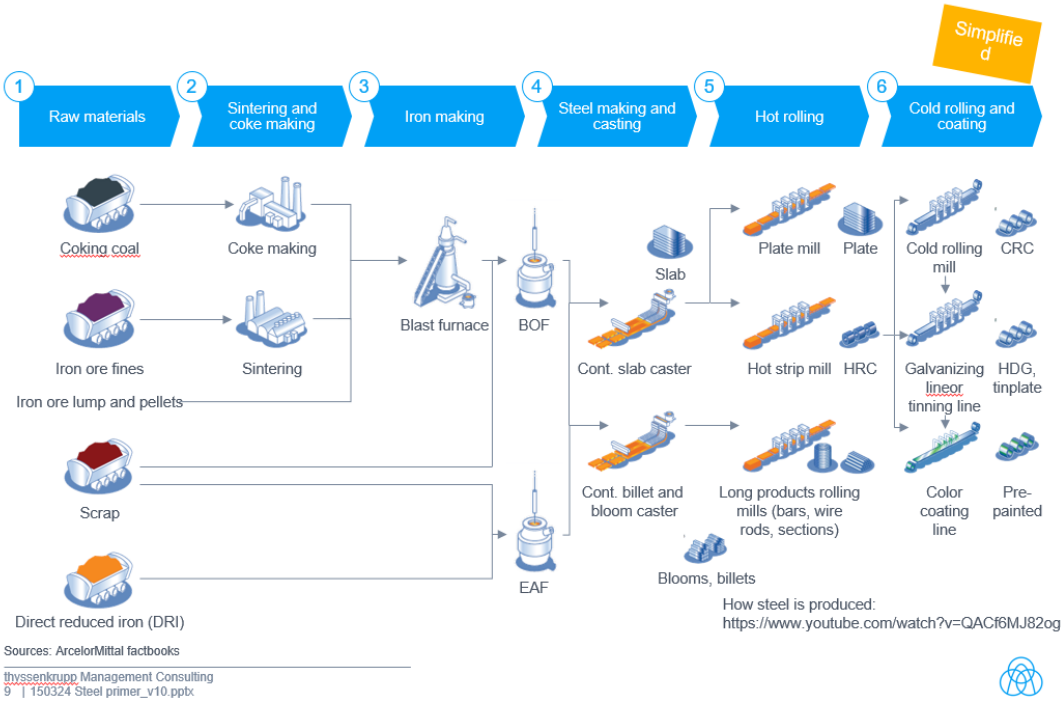
(41) The integrated route involves the production of liquid iron from a mixture of iron ore, coke and limestone in a blast furnace. The liquid ore-based hot metal is subsequently refined into steel in a basic oxygen converter ('BOF') where scrap may

also be added.[7] During the BOF process, or in a separate secondary steelmaking in a steel ladle, the composition of the steel is adjusted to give it the desired qualities. That adjustment may include the use of appropriate quantities of various alloying elements. Finally, the liquid steel is cast and cooled in continuous casting machines to produce semi-finished carbon steel products known as slabs.[8]

(42) Finished flat carbon steel products are typically obtained from slabs through rolling[9] and other further processing. There are three main stages in the production process of finished products: (i) hot-rolling, (ii) cold-rolling and (iii) coating. The finished products may typically be sold at the end of each of these stages. However, it is typical of the steel industry that significant volumes of the upstream products are used captively by major steel companies, such as the Notifying Parties, to produce downstream products.

(43) A schematic overview of the flat carbon steel production from the main raw materials to finished products is show in Figure 1.

Figure 1 – Overview of the flat carbon steel manufacturing process[10]



5.2. Description of flat carbon steel products

(44) The semi-finished carbon steel products used as inputs in the finished flat product production are **slabs.** Slabs are typically produced from the hot liquid steel at the

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7 It is also technically possible to cool the liquid iron and feed it, for instance, to an electric arc furnace at a later stage. However, such a process involves loss of energy (heat). In the integrated route, the iron is often kept in liquid form and fed immediately into the BOF.

8 If the steelworks is producing long products, liquid steel is typically cast into ingots or billets instead of slabs. As the Transaction only concerns the production and supply of flat steel, the production of long products is not considered further in this decision.

9 It is also possible to direct-roll flat steel where the cast steel is directly rolled in to finished hot-rolled products without first processing it into slabs. The Notifying Parties are both engaged in direct-rolling but it only forms a limited part of their overall hot rolling operation.

10 DocID 2663-9022 (*E06191-E0006-00027560.pptx*).

steel shop through continuous casting. Continuous casting starts when the molten metal is transported from the basic oxygen furnace or an electric arc furnace in a ladle and poured into a tundish that provides for a reservoir of liquid steel for the casting process. In the casting, the liquid steel is continuously cast through a mould to form the desired width and thickness of the slab, which is eventually cut into usable lengths at the end of the process.

(45) **Quarto plates** ('QP') are non-coiled hot rolled flat carbon steel products that are produced in dedicated plate mills after reheating the slabs to the desired temperature in reheat furnaces. QP differ from other hot rolled flat carbon steel products in their dimensions, being in particular thicker than strip products. They are used in applications that call for thick steel, such as at shipyards, boiler-making, nuclear and the oil & gas industry.

(46) **Hot-rolled** flat carbon steel products other than quarto plates ('HR') are strip products that are produced from slabs through hot-rolling in a strip mill after reheating the slabs to the desired temperature in reheat furnaces. HR products differ from QP in that they are thinner and are typically coiled at the end of the hot-rolling process. HR is also the input for downstream products such cold-rolled, hot-dip galvanised, electrogalvanised, organic coated and metallic-coated steel for packaging.

(47) **Cold-rolled** flat carbon steel products ('CR') are the result of the further rolling of HR in cold-rolling mills. Cold-rolling affects the basic properties of the product by reducing thickness, improving dimensional consistency and providing a smoother surface.

(48) CR is commonly used as an input in the production of coated steel products but may also be sold without further treatment into various applications, including construction, furniture manufacturing, welded tube making as well as packaging and machinery production.

(49) **Galvanised** flat carbon steel products ('GS') are flat carbon steel products that have been galvanised to improve their resistance to corrosion. Galvanisation involves coating the flat carbon steel strip with zinc, or a combination of zinc and other elements (for instance magnesium or aluminium).

(50) GS may be obtained through two main production processes: (i) hot-dip galvanisation and (ii) electrogalvanisation. Hot-dip galvanised products ('HDG') are produced through uncoiling and reheating a strip of CR (or sometimes HR), and feeding it through a bath of molten metal composed of zinc or a combination of zinc and other elements at an appropriate temperature. The dipping process results in a metallic coating on the steel substrate. Electrogalvanised products ('EG') are produced through the application of an electrolytic coating process which results in a zinc-containing coating on one or both sides of the strip.

(51) **Metallic coated steel for packaging** consists of thin CR coils or sheets that have been coated with a fine layer of another metal, primarily tin or chromium, resulting in either tinplate ('TP') or electrolytic chromium coated steel ('ECCS'). TP and ECCS are primarily used in the food industry to produce protective packages (such as food cans) but can also be used in certain other packaging applications.

Laminated steel for packaging consists of metallic coated steel for packaging that has been further coated. Laminated steel is produced by applying layers of plastic film to the steel substrate.

5.3. Dynamics of the steel value chain

(52) The market position of flat carbon steel producers in the EEA is by and large determined by their primary steelmaking capacity (that is the capacity to produce liquid steel and slabs), characterised on the one hand by high barriers to entry and expansion and, on the other hand, by limited flexibility to efficiently reduce production levels. Likewise, the overall hot rolled capacity typically reflects the primary steelmaking capacity and, in the EEA, is the closest proxy for the producer's position on the markets for finished flat carbon steel products.

(53) First, flat carbon steel production in the EEA is primarily based on the integrated route, that is to say the production of liquid steel through a combination of a blast furnace and a basic oxygen furnace. The EAF-route is relatively insignificant for the production of flat carbon steel products in the EEA and most producers have no EAF capacity for flat carbon steel in the EEA at all. This also applies to the Notifying Parties that produce flat carbon steel products solely through the integrated route.

(54) Second, the supply-side dynamics of primary steelmaking in the EEA is driven by the characteristics of the integrated route, which requires significant capital investments and which to a great extent relies on the simultaneous and constant operation of a blast furnace and a basic oxygen furnace, and often also a coking and a sintering plant.

(55) In the first place, high capital expenditure and environmental regulation act as an effective barrier to entry or expansion. The bulk of the costs of setting up greenfield steel capacity lie with the primary steel-making capacity, that is crude steel-making (coking and sintering of raw materials, blast furnace, basic oxygen furnace and steel ladles). This, compounded with modest demand growth in the EEA, is in line with the finding that, in recent years, the EEA saw no creation of new capacity for the integrated route technology.

(56) In the second place, the integrated route has limited flexibility when it comes to adapting production volumes to demand fluctuations: for technical and economic reasons blast furnaces need to be run at, or close to, maximum capacity. Restarting a blast furnace that has been blown down (that is where steel production has stopped) can also take several days or weeks, entails high one off costs, and becomes increasingly difficult the longer the blast furnace has been idled.

(57) Therefore, a steel manufacturer that bases its production on the integrated route is faced with limitations in its possibility to alter the production volumes of liquid crude steel and – since casting typically takes place immediately following the production of hot liquid steel – semi-finished products, notably slabs. To allow for viable operation, the producer needs to produce a certain volume with a blast furnace over extended periods of time, or not produce with that blast furnace at all. Where supply outstrips demand, the supplier has thus limited possibility to limit the output of blast furnaces in operation but can only decide to idle one or more blast furnaces altogether in order to align production and demand. On the other hand, the production process for finished products (strips) is not subject to as strict limitations from a technical point of view and can be altered more flexibly.

(58) Third, as a consequence of barriers to entry and expansion, as well as of inflexibility in scaling down production volumes, primary steelmaking capacity typically determines the overall available capacity for the entire flat carbon steel value chain. This said, downstream hot strip mills are not necessarily integrated with primary steelmaking facilities, as they can process slabs sourced from another site of the steel producer or sourced from third parties. This production model is occasionally

observed in practice. However, compared to vertically integrated steel mills, production based on slabs produced off-site or by a third party appear to be of much more limited scope and potentially less efficient, and may be employed as a temporary measure to bridge the imbalances between upstream primary steelmaking output and the requirements for the production of downstream strip products. The vast majority of the hot strip mill capacity ('HR capacity') in the EEA mimics the primary steelmaking capacity ('capacity for crude steel slabs') located at the same or nearby site.

(59) Fourth, given the interdependence of primary steelmaking and hot strip mills, the competitive position of integrated flat carbon steel producers (that is other than non-integrated re-rollers[11]) is driven by their HR capacity. From the upstream perspective of primary steelmaking, HR is the direct output of processing slabs. From the perspective of supply of flat carbon steel, HR is both a final product that is sold to the market, and the input for all other finished flat products products (including CR, HDG, EG, organic coated ('OC') and steel for packaging). Thus, the competitiveness and the capacity for HR is on the one hand determined by primary steelmaking, and, on the other hands, also determines the conditions for the supply of downstream products.

(60) Fifth, HR can either be sold on the merchant market or further processed into downstream finished products by the integrated producer. An integrated producer active on the various levels of the flat carbon steel value chain is thus faced with a choice as to at which level of the production chain it sells its steel. Typically, the value of steel increases the further it is processed and, moreover, a producer that has installed capacity for the downstream products and needs to pay for the fixed costs so incurred may, in general, be incentivised to employ the existing capacity to produce products on the downstream market. Therefore, an integrated steel manufacturer may be incentivised – to the extent possible in the prevalent market conditions – to direct its HR products into further processing internally. The steel kept by the integrated steel producer for further processing in its own processing facilities is part of the so-called 'captive market' of steel, as opposed to the 'merchant market', where the steel is sold by the integrated producer to other steel manufacturers (notably re-rollers), distributors and industrial customers.

(61) However, steel producers do not reserve a given primary/HR capacity solely to the production destined for the merchant market, or for captive use, but use their plants to feed both channels. Given the aforementioned lack of flexibility in adapting the output to demand fluctuations, conditions on the merchant market will not only influence the volume to be sold to third parties, but also HR for captive use. The producer may at least partly reallocate capacity to the channel that provides a more attractive return. For example, if the prices on the merchant market for HR drop, the supplier may reallocate more capacity to captive production for downstream products with a higher added value. The same may occur where there is a shortage on a downstream market, for example for HDG. In other words, the suppliers may leverage their production available to the merchant market in order to react to developments affecting the downstream markets, and vice versa. Moreover, suppliers may align their pricing policy for merchant sales of HR and for the sales of

[11] Re-rollers may however be structurally dependent on the HR producers that can offer them the requisite security of supply. This is exemplified by the long-term relationship between ArcelorMittal and Marcegaglia.

downstream products based on HR (for example, by virtue of the 'base price plus extras' pricing model).

(62) Consequently, the higher its overall HR production, the stronger the supplier's pricing power both directly in the market for HR and in the related downstream markets. Therefore, the competitive assessment should not isolate the suppliers' position in the merchant channel from the remainder of their HR production and capacity.

(63) Finally, non-integrated producers ('re-rollers') that source HR coils and then further process them into downstream products such as CR and GS also play a role in the downstream CR and GS markets in addition to the integrated producers. Re-rollers are typical customers of HR coils on the merchant market and they thus depend on the supply of the input HR coils on the merchant market by the EEA-based integrated producers (and/or imports). Hence, their market position is affected by the availability and conditions of the supply of HR on the merchant market. The most prominent re-roller in the EEA is Marcegaglia in Italy.

5.4. Trade defence measures against steel imports

5.4.1. Legal framework

(64) Despite the reduction of custom tariffs on steel preogressively achieved within the WTO, at present, a wide number of carbon steel products entering the EU also are subject to trade defence measures ('TDIs').

(65) In line with public international law and trade agreements, including in particular the GATT/WTO agreements, trade defence measures can take the form of anti-dumping,[12] anti-subsidy[13] or safeguard measures[14].

(66) Anti-dumping measures are imposed on imports that are found to be dumped and cause injury to a Union industry. Dumping is defined as selling a good for export at less than its normal value. The normal value is either the product's price as sold on the home market of the non-EU company, or a price based on the cost of production and profit.

(67) Safeguard measures can be applied if, as a result of unforeseen developments, a product is being imported into the EU in such increased quantities and/or on such terms and conditions as to cause, or threaten to cause, serious injury to EU producers of like or directly competitive products. Safeguard measures may only be imposed to the extent and for such time as may be necessary to prevent or remedy the injury.

(68) Anti-dumping measures are always adopted in relation to imports from specific countries, safeguard measures in principle on imports from all countries (this is called *erga omnes*).

(69) Section 5.4.2 aims to provide a brief overview of the trade defence measures currently in place. The effect of these measures on the competitive environment in the specific product markets is assessed in more detail in Sections 8.3.3 and 8.3.4.

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[12] Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 176, 30.6.2016, p. 21).

[13] Anti-subsidy measures are not relevant for the product market at hand, so will not be described further,

[14] Regulation (EU) 2015/478 of the European Parliament and of the Council (OJ L 83, 27.3.2015, p. 16) and regulation (EU) 2015/755 of the European Parliament and the Council (OJ L 123, 19.5.2015, p. 33).

5.4.2. Safeguard measures targeting imports of steel products

(70) As concerns the steel sector, in 2003 the Commission imposed definitive safeguard measures in relation to seven steel products.[15] These safeguard measures were terminated shortly thereafter still in 2003,[16] in view of the fact that the tariff rate quotas were significantly underutilised for six of the seven products and that imports only marginally exceeded the quota for hot-rolled coils, as well as the repeal of the United States' steel safeguard measure.

(71) On 26 March 2018, the Commission initiated ex-officio an investigation into 26 different steel product categories[17]. On 28 June 2018, the Commission extended the product scope to two additional product categories.[18] Provisional safeguard measures were imposed on 18 July 2018[19] and became definitive with certain modification on 2 February 2019.[20] The definitive safeguard measures apply to 26 categories of steel products including flat products, long products and tubes.

(72) The measures took the form of a tariff-rate quota ('TRQ') calculated as the average imports in the period 2015-2017 plus 5%[21] with an out-of-quota duty of 25% which would apply only once the TRQ in a certain product category is exhausted. The Commission considered that this design was appropriate to limit the increase of imports to a level that is unlikely to cause serious injury to the Union industry while ensuring that traditional trade flows are maintained and that existing user and importing industries are sufficiently supported.

(73) As also stressed in the recitals to the relevant regulation, the safeguard measures have been adopted against the background of the adoption of safeguard measures by other countries, the global 25% tariff that the US have imposed on steel imports (with a limited number of origin exceptions subjected to very restrictive quotas) and the 50% tariff on Turkish imports and to deal with a significant increase of steel imports into the Union, accelerated as a result of those measures.[22]

(74) In this context, it is also useful to recall that provisional safeguard measures on steel have been adopted by Canada. The Eurasian Economic Union[23] has also initiated a procedure for the adoption of safeguard measures.

(75) For the purpose of the assessment of the Transaction, it can be mentioned that the definitive safeguard measures imposed by the Commission target also the import of flat steel products. In particular, safeguard measures will affect all products for

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15 Commission Regulation (EC) 1694/ 2002 (OJ L 261, 28.9.2002, p. 1).

16 Commission Regulation (EC) 2142/2003 of 5 December 2003 terminating the definitive safeguard measures in relation to certain steel products imposed by Commission Regulation (EC) No 1694/2002 (OJ L 321, 6.12.2003, p.11).

17 OJ C 111, 26.3.2018, p. 29.

18 OJ C 225, 28.6.2018, p.54.

19 Commission implementing regulation (EU) 2018/1013 (OJ C 111, 26.3.2018, p. 29).

20 Commission implementing regulation (EU) 2019/159 of 31 January 2019 imposing definitive safeguard measures against imports of certain steel products https://eur-lex.europa.eu/eli/reg_impl/2019/159/oj ('definitive safeguard measures').

21 Definitive safeguard measures, recital (144).

22 Definitive safeguard measures, recital (170).

23 The Kyrgyz Republic (on 4 September 2018), the Russian Federation (on 5 September 2018), Kazakhstan (on 7 September 2018) and Armenia (on 10 September 2018) notified the WTO's Committee on Safeguards that the competent authority of the Eurasian Economic Union initiated on 7 August 2018 a safeguard investigation on certain flat-rolled steel products.

which the Commission raises concerns, targeting imports of steel for packaging and HDG steel products including HDG for automotive applications.

(76) As concerns corrosion resistant sheets, including HDG, the safeguard measures calculate the relevant quotas distinguishing between two sub-categories, namely products subject to anti-dumping duties, see below recitals (79) and (80), and products that are not subject to anti-dumping duties (including automotive).

(77) Among other steel products, the safeguard measures concern both standard metallic coated sheets products, which are subject to anti-dumping duties as referred to below at recital (80), and non-standard metallic coated sheet products which are not subject to anti-dumping duties.[24] This latter category also includes products manufactured specifically for the automotive industry, based on precise product specifications and subject to long-term contracts. For non-standard metallic coated products including specialty products purchased by the automotive industry, suppliers need first to obtain a certification necessary to supply the industry over a long time period, based on a just-in-time system.[25] For this product category, the regulation acknowledges that there is a risk that some specific product types are crowded out from the free of duty quota by standard products that can be stockpiled at the beginning of the year. Furthermore, the standard types of products under this product category are currently subject to anti-dumping duties, which also have an impact on future import developments as well as quota allocation, based on what is explained above. The fact that these more specialised products were not covered in the industry's request for anti-dumping measures is also an indication that these products should be considered separately from the standard types of products.[26] The safeguard measures concern also the relevant markets for metallic coated steel for packaging.

5.4.3. Anti-dumping measures on imports of steel products

(78) The Commission has also conducted a number of anti-dumping investigations with regard to different steel products in recent years.

(79) At present, definitive anti-dumping measures are imposed, amongst others, on HR products from China,[27] CR products from China and Russia,[28] corrosion resistant steel products, including HDG, originating from China[29] and grain oriented flat-rolled products of silicon-electrical steel ('GOES') from China, Japan, Korea, Russia and the US.[30]

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24 See Definitive safeguard measures, recital (156).

25 These non-standard products are also defined as 'specialty products' thereafter and include HDG steel purchased by automotive customers

26 See Definitive safeguard measures, recital (157).

27 Commission Implementing Regulation (EU) 2017/649 of 5 April 2017 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 92, 6.4.2017, p. 68).

28 Commission Implementing Regulation (EU) 2016/1328 of 29 July 2016 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain cold rolled flat steel products originating in the People's Republic of China and the Russian Federation (OJ L 210, 4.8.2016, p. 1).

29 Commission Implementing Regulation (EU) 2018/186 of 7 February 2018 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain corrosion resistant steels originating in the People's Republic of China (OJ L 34, 8.2.2018, p. 16).

30 Commission Implementing Regulation (EU) 2015/1953 of 29 October 2015 imposing a definitive anti-dumping duty on imports of certain grain-oriented flat-rolled products of silicon-electrical steel originating in the People's Republic of China, Japan, the Republic of Korea, the Russian Federation and the United States of America (OJ L 284, 30.10.2015, p. 109).

(80) For corrosion resistant steel products, including HDG, the anti-dumping regulation imposes anti-dumping duties, but the anti-dumping regulation on GOES establishes minimum import prices.

(81) As the trade defence measures on steel for packaging and HDG steel cover respectively all or some of the major steel producing and steel exporting countries, any assessment of the extent to which imports of these products may exert competitive pressure on EEA-based flat carbon steel producers and, in particular the merged entity post-Transaction, must be made in light of the situation as affected by the definitive safeguard measures and anti-dumping duties.

6. PARTIES' ACTIVITIES

6.1. Tata Steel

(82) Tata produces and sells a range of carbon steel products (including HR, CR, metallic coated and laminated steel for packaging, GS and OC) as well as both grain-oriented electrical steel ('GOES') and non grain-oriented electrical steel ('NGOES'). Tata further produces further downstream products such as carbon steel tubes and steel elements for construction.

(83) Tata's plants are located predominantly in the United Kingdom and the Netherlands where it has its two integrated steelmaking plants in Port Talbot (United Kingdom) and IJmuiden (Netherlands). Further, it has also a number of downstream finishing plants elsewhere in Europe (in Belgium, France, Germany and Sweden).

(84) Tata produces liquid steel and semi-finished products (slabs) at its integrated steelworks in IJmuiden and Port Talbot. Tata processes slabs into HR products at those integrated steelworks and at the hot strip mill in Llanwern (United Kingdom).

(85) GS, including in particular HDG, is manufactured in IJmuiden (Netherlands), Llanwern (United Kingdom), Shotton (United Kingdom) as well as in Tata's plants in Ivoz-Ramet (the 'Segal' line, Belgium) and Maubeuge (France). Metallic coated and laminated steel products for packaging are produced in IJmuiden (Netherlands), Trostre (United Kingdom) and Duffel (Belgium).

6.2. ThyssenKrupp

(86) ThyssenKrupp, headquartered in Germany, is one of Europe's major flat carbon steel producers and it is active throughout the flat carbon steel value chain from primary steel production to coated finished products.

(87) ThyssenKrupp produces and supplies a range of flat carbon steel products (including HR, CR, metallic coated and laminated steel for packaging, GS, OC, GOES and NGOES products).

(88) ThyssenKrupp's activities are centered in Germany, and its integrated plants are all located in Duisburg (Germany). It also has a number of downstream finishing plants elsewhere in the EEA, including in France, Germany and Spain.

(89) ThyssenKrupp produces liquid steel and semi-finished products (slabs) at its integrated steelworks in Duisburg. ThyssenKrupp also has a stake in Hüttenwerke Krupp Mannesmann ('HKM') – a joint venture between ThyssenKrupp, Salzgitter and Vallourec – that is also located in Duisburg and that produces liquid steel and slabs. ThyssenKrupp processes slabs into HR products at its integrated steelworks in Duisburg and at the hot strip mill in Bochum (Germany).

(90) ThyssenKrupp manufactures GS, including in particular HDG, predominantly in Germany at its plants in Duisburg, Bochum, Dortmund, Finnentrop, Kreuztal (Eichen

and Ferndorf) but also in its plant in Sagunto (Spain). Metallic coated and laminated steel products for packaging are produced in Adernach (Germany) at the Rasselstein plant.

7. PRODUCT MARKET DEFINITION

7.1. Introduction

(91) The present case concerns flat carbon steel products.

(92) In light of the activities of the Notifying Parties, the Transaction gives rise to overlaps with regard to the production and supply of semi-finished flat products (slabs).

(93) Further, as regards finished products, the Notifying Parties' activities overlap for most products in the flat carbon steel value chain in the EEA, namely HR, CR, GS, metallic-coated and laminated steel products for packaging and OC. Their activities also overlap in the production and supply of fully-finished electrical steel (both GOES and NGOES) in the EEA.

(94) However, on the basis of the competitive concerns identified, the relevant products for the purpose of this Decision are (i) HDG supplied to the automotive industry and (ii) metallic-coated and laminated steel products for packaging. The preliminary concerns raised with regard to electrical steel were not confirmed by the further investigation. Electrical steel is therefore not discussed further in this Decision.

7.2. Broad categories of steel

(95) In past decisions,[31] the Commission has distinguished broad categories of steel products based, on the one hand, on the chemical composition of the steel (metallurgical characteristics) and, on the other hand, on the physical shape of the products. Based on their chemical composition, the Commission has distinguished four broad categories of steel products: (i) carbon steel, (ii) stainless steel, (iii) specialty steel and (iv) electrical steel. Based on their physical shape, the Commission has distinguished between (a) flat and (b) long products.

(96) The present case concerns only flat carbon steel products.

7.3. Production and supply of carbon steel

7.3.1. Introduction

(97) Carbon steel is iron- and carbon-based steel containing no or small amounts of alloying elements. That is in contrast to the other types of steel, which typically contain considerable amounts of alloys.

(98) Electrical steel has certain specific electromagnetic properties and, in order to achieve these properties, it needs to have a suitable chemical composition that differs from that of other types of steel. The main difference between electrical steel and (non-electrical) carbon steel in terms of chemical composition is silicon content, which is higher in electrical steel.[32] In addition, the amount of certain other alloying

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[31] See, for instance, M.7155 – *SSAB/Rautaruukki*, paragraphs 22–5; M.8444 – *ArcelorMittal/Ilva*, recitals 198–203; M.6471 – *Outokumpu/Inoxum*, recitals 116–7 and 126–8; M.4137 – *Mittal/Arcelor*, paragraph 9 and 16–7; and ECSC.1351 – *Usinor/Arbed/Aceralia*, paragraphs 29–33.

[32] Form CO, paragraph 6.245. See also replies to question 27 of Q1 – Questionnaire to Competitors, DocID2166. Electrical steels are therefore sometimes referred to as 'silicon steel' by some market participants, see replies to question 27 of Q1 – Questionnaire to Competitors, DocID2166.

elements, such as carbon, aluminium, nitrogen, sulphur and titanium need to be in different – often stricter – ranges in electrical steel compared to carbon steel.

(99) The chemical composition of steel is primarily determined in the liquid steelmaking stage, in particular in the BOF process, or during secondary steelmaking in steel ladles.

7.3.2. The Notifying Parties' view

(100) The Notifying Parties submit that – despite their different chemical compositions – there is a significant level of supply-side substitutability between electrical steel and carbon steel at the liquid steel / semi-finished products and hot-rolling stages. The Notifying Parties in general agree with the segmentation followed in previous cases. However, they submit that electrical steel should not be considered as a separate broad category of steel on the basis of its chemical composition. Instead, according to the Notifying Parties, electrical steel should be included in carbon steel due to, for instance, supply-side substitutability.

(101) The Notifying Parties acknowledge that the different chemical composition of electrical steel products puts somewhat different requirements on production facilities compared to the production of carbon steel. In particular, at the hot end of the production, cooling of cast electrical steel needs to be slow as the high silicon content could otherwise result in stress formation (cracking) in the steel. Consequently, the production of electrical steel requires a hot-connect facility between the casting of semi-finished products (slabs) and their further processing, unlike carbon steel. According to the Notifying Parties, the hot-connect facility can consist of a cover over the slabs in order to keep them at higher temperature and to slow down the cooling process. Alternatively, a direct-rolling method where no slabs are created but the cast steel is immediately rolled into HR can be used, […].

7.3.3. The Commission's assessment

(102) Overall, the results of the market investigation and the evidence available to the Commission do not give reasons to depart from the finding in previous cases that electrical steel should be distinguished from other broad groups of steel on the basis of its chemical composition.

(103) Nonetheless, for the purpose of this Decision, the Commission considers that it is not necessary to conclude specifically on a possible separation between the categories of carbon and electrical steel for product market definition purposes as the outcome of the competitive assessment remains the same under all alternatives. In particular, the question of whether carbon steel and electrical steel belong to the same or separate markets is only relevant for the upstream levels of semi-finished products, hot-rolled products and cold-rolled products (both carbon steel and electrical steel products go through these production steps).

(104) Specifically, the question is not relevant for defining the downstream product market for hot-dip galvanised steel for automotive applications or those for metallic-coated and laminated steels for packaging since electrical steel is not used for the production of hot-dip galvanised or packaging steels.[33]

[33] This is in line with the Notifying Parties' submission that supply-side substitutability would only apply to products upstream of these products.

7.4. Production and supply of flat carbon steel products

7.4.1. Introduction

(105) As explained above in Section 5.1, the production of flat carbon steel in principle consists of two main phases: the production of semi-finished products (slabs) and the production of finished products (rolled products). Semi-finished products are produced at the end of the liquid steel production phase through casting in continuous casters and are eventually cut into slabs. Finished products are obtained from slabs through rolling and other further processing such as coating.

(106) The Commission notes that the Notifying Parties […].

7.4.2. The Commission's decisional practice

(107) Within steel products, the Commission has held in previous cases that flat products give rise to distinct product markets, as opposed to long steel products.[34]

(108) The Commission has in previous decisions concluded that flat carbon steel products can be divided into distinct product markets based on the production steps. In line with this, the Commission has concluded that the following finished flat carbon steel products constitute distinct product markets: (i) quarto plates, which are produced in specific quarto (four-stand) mills ('QP');[35] (ii) hot-rolled products excluding quarto plates ('HR'); (iii) cold-rolled products ('CR'); (iv) galvanised steel ('GS'); (v) metallic-coated steel for packaging; and (vi) organic coated (for instance, painted) steel ('OC'). For some of the products, the Commission has also considered further segmentations.[36]

(109) The Notifying Parties largely agree with the segmentation in past Commission decisions. However, in their view, certain additional segmentations, in particular with regard to GS and metallic-coated steel for packaging, are not relevant. The Notifying Parties' arguments and the results of the market investigation are discussed separately in relation to each of the products that are relevant for the assessment of this Transaction.

7.5. Production and supply of galvanised flat carbon steel products / automotive HDG

7.5.1. Introduction

(110) Galvanised flat carbon steel products ('GS') are flat carbon steel products that have been galvanised to improve their resistance to corrosion. Galvanisation involves coating the flat carbon steel strip with zinc, or a combination of zinc and other elements (for instance magnesium or aluminium).

(111) GS may be obtained through two main production processes: (i) hot-dip galvanisation and (ii) electrogalvanisation. Hot-dip galvanised products ('HDG') are produced by uncoiling and reheating a strip of CR (or sometimes HR) and feeding it through a bath of molten metal composed of zinc or a combination of zinc and other

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[34] See, for instance, M.7155 – *SSAB/Rautaruukki*, paragraphs 23–5; M.8444 – *ArcelorMittal/Ilva*, recitals 199–203; M.6471 – *Outokumpu/Inoxum*, recitals 126–8; M.4137 – *Mittal/Arcelor*, paragraphs 16–7; and ECSC.1351 – *Usinor/Arbed/Aceralia*, paragraphs 32–3.

[35] Quarto plates are non-coiled hot-rolled products with very different dimensions, in particular in terms of thickness, from other hot-rolled flat products.

[36] See, for example, M.7155 – *SSAB/Rautaruukki*, paragraphs 22–5; M.4992 – *ArcelorMittal/Galvex*, paragraphs 10–1 and 15; M.4137 – *Mittal/Arcelor*, paragraphs 18–37; and ECSC.1351 – *Usinor/Arbed/Aceralia*, paragraphs 34–67.

elements at an appropriate temperature. The dipping process results in a metallic coating on the steel substrate. Electrogalvanised products ('EG') are produced through the application of an electrolytic coating process which results in a zinc-containing coating on one or both sides of the strip.

(112) GS products are used in various applications where superior resistance to corrosion is needed, including in the automotive industry, construction industry and in various engineering applications. GS is also used as a substrate in the production of organic coated flat carbon steel products.

(113) According to the Parties' estimates, the total EEA merchant market volume of GS was 28.4 million tonnes in 2017, of which 26.2 million tonnes were HDG and 2.2 million tonnes EG. A clear majority of the GS merchant market in the EEA thus consists of HDG.[37]

(114) The largest single user of GS in the EEA is the automotive industry, which uses almost half of all GS in the EEA.[38]

(115) The Commission further observes that the Notifying Parties appear to be more focused in supplying GS to the automotive industry, and their share of the EEA supply of GS to the automotive industry of [30-40]%[39] is higher than their share of the overall GS supply in the EEA of [20-30]%.[40] In line with this, and as explained in more detail in Section 9.3, the Notifying Parties estimate also having higher market shares if only considering the supply of HDG to the automotive industry ([20-30]%) compared to the overall share of the supply of HDG in the EEA ([20-30]%).[41]

(116) In light of the focus of the Notifying Parties, and considering the results of the market investigation, the Commission will examine whether or not the production and supply of HDG to the automotive industry constitutes a distinct product market, separate from the production and supply of HDG for other applications.

7.5.2. The Commission's decisional practice

(117) In the recent *ArcelorMittal/Ilva* case,[42] the Commission concluded that there was at least a serious possibility that the production and supply of HDG and the production and supply of EG constitute distinct product markets. The Commission nonetheless did ultimately not conclude on the question.[43]

(118) In the *ArcelorMittal/Ilva* case, the Commission did not examine whether or not a distinct market for the production and supply of HDG to the automotive industry was warranted. The parties in that case did not have a particular overlap in such supplies, and in particular Ilva was not significantly supplying steel to the automotive industry. Nonetheless, the decision in the case acknowledges and discusses both commodity and high-end HDG even if it does not define separate markets for them.[44]

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37 Figures provided by the Notifying Parties. Volumes for the merchant market include imports.

38 Based on the Parties' estimates of respective total market sizes, as presented in their replies to RFI 23 (Table 16.1) and RFI 28 (Annex 3), sales to the automotive industry accounted for 47% of all GS sales in 2017, or 45% if one excludes EG and focuses on HDG sales alone.

39 Parties' reply to RFI 23, Table 16.1.

40 See Section 8.2.

41 See Section 8.2.

42 M.8444 – *ArcelorMittal/Ilva*, recitals 213–246.

43 M.8444 – *ArcelorMittal/Ilva*, recital 246.

44 M.8444 – *ArcelorMittal/Ilva*, recital 299.

(119) In case M.7155 – *SSAB/Rautaruukki*, the Commission found that it was likely that high-strength steels ('HS') and wear resistant steel ('WR') belonged to a market separate from commodity ('standard') flat carbon steel. The Commission nonetheless did not conclude on the exact market definition.[45] ThyssenKrupp supported in *SSAB/Rautaruukki* the finding of a separate product market for HS and WR.[46]

(120) Nonetheless, the decision in *SSAB/Rautaruukki* does not discuss GS in detail because of the limited presence and complementarity between SSAB and Rautaruukki in those products.[47]

7.5.3. The Notifying Parties' views

(121) The Notifying Parties submit that a further segmentation of GS between HDG and EG is not warranted, mentioning in this regard that products are technically interchangeable, that customers do switch and that cost and price differences are small.[48] The Notifying Parties moreover submit that the Commission's finding that the inclusion of EG would not affect the competitive position of the JV in the galvanised automotive steel market segment (or would in fact slightly increase it) is insufficient to render the question of whether (automotive) EG is considered to form part of the same market as (automotive) HDG irrelevant, since there are significant spare capacities for (automotive) EG in the EEA.[49]

(122) The Notifying Parties further submit that there is no distinct market for automotive HDG. In particular, the Notifying Parties submit the following *general* arguments:

(a) The Commission did not define a separate automotive HDG market in its precedents, including in particular the recent in-depth investigation in *ArcelorMittal/Ilva*;[50]

(b) Vertical integration is not a key characteristic or requirement for the supply of HDG to the automotive industry, and even if it were, this would be unrelated to the question of whether automotive HDG constitutes a separate product market.[51] Moreover, customers mentioning the importance of '*control over the production chain and access to high quality substrate'* should not be misinterpreted to mean vertical integration, as such control and access can also be achieved without vertical integration;[52]

(c) The fact that automotive customers are being supplied through long-term contracts does not demonstrate that there is a separate market for automotive steel as some other customers also prefer to be supplied through annual contracts;[53] while the use of annual price agreements implies lower volatility and a lag compared to spot prices, this does not justify defining separate markets as steel supply can be redirected from the spot market to the automotive segment at the next re-contracting opportunity;[54]

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45 M.7155 – *SSAB/Rautaruukki*, paragraph 40.
46 M.7155 – *SSAB/Rautaruukki*, paragraph 37.
47 M.7155 – *SSAB/Rautaruukki*, paragraph 68.
48 Response to the Statement of Objections, paragraphs 3.27 to 3.34.
49 Response to the Statement of Objections, paragraph 3.29.
50 Response to the Statement of Objections, paragraph 3.1.
51 Response to the Statement of Objections, paragraph 3.15.
52 Response to the Letter of Facts, paragraph 1.2.iii.
53 Comments on the Article 6(1)(c) decision, paragraph 4.12.
54 Comments on the Article 6(1)(c) decision, paragraph 4.14.

(d) Internal documents considering automotive separately are irrelevant to product market definition and are rather a reflection of different sales personnel and *'economic conditions'*;[55]

(e) Different treatment of specialised products under trade defence measures does not constitute evidence for a separate automotive HDG market; the differentiation under the trade defence measures is between passivated and non-passivated HDG products, which does not correspond to the automotive vs. non-automotive distinction;[56]

(f) The ability to price-discriminate between automotive and non-automotive customers is a necessary but not a sufficient condition for finding a separate product market, as this would also require finding limited supply-side substitution; and in any case, the evidence presented in the SO to demonstrate the presence of price discrimination is in fact inconclusive;[57]

(g) Differing gross margins do not constitute evidence for separate product markets;[58]

(h) Similar price trends for automotive and non-automotive steel are evidence of both supply-side and demand-side substitution.[59]

(123) The Notifying Parties also submit the following *demand-side* arguments in this regard:

(a) Customers are not dependent on specific grades of steel; they can use different types of steel as well as other substitute materials such as aluminium instead;[60]

(b) While automotive customers may require homologation, other customers also have such requirements and *'there are no barriers to steel producers meeting such requirements'*;[61]

(c) Homologation is not a barrier preventing demand-side substitution, as automotive customers typically identify potential steel suppliers one or two years prior to the start of production of any given model;[62]

(d) Conditions of supply do not differ based on end-user industry;[63] other industries also require just-in-time deliveries, tight specifications and tailored products.[64]

(124) The Notifying Parties also submit the following *supply-side* arguments in this regard:

(a) Different production lines are not required as both automotive and non-automotive customers can be supplied from the same line without adjustments[65] or with minor investments of at most EUR 8 million per line;[66]

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55 Response to the Statement of Objections, paragraph 3.19.
56 Response to the Statement of Objections, paragraph 3.16.
57 Response to the Statement of Objections, paragraphs 3.21 and 3.22.
58 Response to the Statement of Objections, paragraph 3.24.
59 Comments on the Article 6(1)(c) decision, paragraph 4.15-16 and 4.24-27.
60 Comments on the Article 6(1)(c) decision, paragraph 4.9.
61 Form CO, paragraph 6.321.iv.
62 Comments on the Article 6(1)(c) decision, paragraph 4.23.
63 Form CO, paragraph 6.321.iii.
64 Response to the Statement of Objections, paragraph 3.5.
65 Form CO, paragraph 6.321.i and Comments on the Article 6(1)(c) decision, paragraph 4.5.ii.
66 Response to the Statement of Objections, paragraph 3.9.

(b) While some automotive steel types, such as AHSS with a tensile strength exceeding 800 MPa, do require special production assets, these facilities can be and are also being used to produce other types of steel;[67]

(c) Many of the steel types sold to automotive customers can also be sold to non-automotive customers[68] or are in fact sold to non-automotive customers;[69] or, more specifically, around one-half of HDG sold to automotive customers is of a type that is also sold to non-automotive customers.[70]

(125) The Notifying Parties further submit that aluminium is a substitute for automotive HDG steel given that its higher cost is compensated by CO_2 emission savings and mentioning its use in a range of non-luxury car models.[71]

7.5.4. The Commission's assessment

7.5.4.1. Framework of the assessment

(126) The Commission's assessment of the definition of a relevant product market typically takes into account both demand- and supply-side substitution. In the field of steel, supply-side substitution has typically played a central role in the Commission's assessment due to the specificities of the markets in question.

(127) Furthermore, a product market might be narrowed in the presence of distinct groups of customers. A distinct group of customers for the relevant product may constitute a narrower, distinct market when such a group could be subject to price discrimination. This will usually be the case when two conditions are met: (a) it is possible to identify clearly which group an individual customer belongs to at the moment of selling the relevant products to him, and (b) trade among customers or arbitrage by third parties should not be feasible.[72]

(128) In this section, after discussing the likely distinction between EG and HDG, the Commission will address both demand- and supply-side factors, as well as the more general arguments raised by the Notifying Parties. Finally, the Commission will assess the Notifying Parties' argument regarding the alleged substitutability of aluminium with automotive HDG.

(129) Furthermore, the Commission notes that the definition of a relevant market is always performed in the context of a particular case. The Notifying Parties have in this respect claimed that the Commission is departing from its precedent, in particular in that it did not consider automotive HDG in its most recent flat carbon steel case, M.8444 – *ArcelorMittal/Ilva*. Nonetheless, the Commission recalls that the precedent did not exclude the finding of a separate market for automotive HDG and in any event primarily concerned commodity steel, whereas in the present case both of the Parties proved to have significant sales to the automotive industry. Furthermore, the market distinction in this context was also emphasised by market participants as explained in this Decision.

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67 Comments on the Article 6(1)(c) decision, paragraphs 4.20 to 4.21.

68 Form CO, paragraph 6.321.ii.

69 Comments on the Article 6(1)(c) decision, paragraph 4.5.i.

70 Comments on the Article 6(1)(c) decision, paragraph 4.8.

71 Response to the Statement of Objections, paragraphs 3.35 to 3.37.

72 Commission Notice on the definition of relevant market for the purposes of Community competition law (OJ C372, 9.12.1997, page 5, 'Market Definition Notice'), paragraph 43.

7.5.4.2. EG and HDG likely constitute distinct markets

(130) As noted in Section 7.5.1, there are two different types of galvanised flat carbon steel: (i) hot-dip galvanised steel ('HDG') and (ii) electrogalvanised steel ('EG').

(131) As already explained, in the recent *ArcelorMittal/Ilva* case[73] the Commission concluded that there was at least a serious possibility that the production and supply of HDG and the production and supply of EG constitute distinct product markets, although it ultimately did not conclude on the question.[74]

(132) It is similarly unnecessary for the Commission to conclude in this case whether or not HDG and EG constitute distinct product markets or whether an overall GS market (HDG+EG) should be considered. This is because, on the one hand, Tata is not active in EG and, on the other hand, the outcome of the competitive assessment would be the same regardless of whether a distinct HDG market or a GS (HDG+EG) market is considered.

(133) In this respect, the Commission observes that, as also noted in Section 7.5.1, HDG constitutes by far the majority of the overall GS production and supply in the EEA. Based on figures provided by the Notifying Parties, the total volume of EG supplied in the EEA was approximately 2.2 Mt in 2017 while the total volume of GS supplied was 28.3 Mt. EG thus constituted less than 8% of the total GS volume, HDG making up over 92%.[75]

(134) Much of the EG volume is used in the automotive industry. Based on a submission by the Notifying Parties, approximately 1.3 Mt of the EG volume would be used in the automotive industry. This is nonetheless less than 10% of all GS used in the automotive industry, based on the submission by the Notifying Parties.[76]

(135) ThyssenKrupp is active in the production and supply of EG and it supplied [20-30]% of all EG in the EEA in 2017. As regards supplies to the EEA automotive industry, ThyssenKrupp's share for EG was [30-40]% in 2017 ([30-40]% including all sales to SSCs as well). These compare to the Parties' combined share of the supply of all HDG in the EEA that was [20-30]% in 2017 and their combined share of supply of HDG to the automotive industry that was [20-30]% based on the Notifying Parties' submission.[77]

(136) The Commission observes that ThyssenKrupp's market share in the supply of EG was higher than the Notifying Parties' combined market share in the supply of HDG in the EEA in 2017 – both if considering the overall supply in the EEA or the supply to the automotive industry. Therefore, including EG in the same market with HDG would increase the Notifying Parties' combined market share. Nonetheless, given the small volume of EG compared to HDG and the consequently small part of GS that it represents, the Commission considers that the outcome of the competitive assessment would likely be the same regardless of whether HDG is considered separately or if GS (HDG+EG) is considered.

(137) Moreover, the market investigation revealed strong evidence that EG and HDG are not substitutable and if anything, substitution occurs from EG to HDG, rather than the reverse, which is what would be required for EG to impose a constraint on HDG.

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73 M.8444 – *ArcelorMittal/Ilva*, recitals 213–246.
74 M.8444 – *ArcelorMittal/Ilva*, recital 246.
75 Reply to RFI 28, corrected Annex 3.
76 Reply to RFI 23, Table 16.1.
77 Reply to RFI 23, Table 16.1., and reply to RFI 28, corrected Annex 3.

(138) For instance, a customer suggests that there is no demand-side substitutability: '*[f]rom [its] perspective, HDG and EG are not substitutable*'.[78] This concurs with Tata's internal document that explains […].[79]

(139) Furthermore, there is evidence that substitution, if any, occurs from EG to HDG, rather than the other way round. For instance, a news article describes Tata's newly-developed HDG steel as allowing '*producers of EG to switch to HDG without giving up on a high-quality coating result*'.[80] Similarly, a Tata press release of 18 November 2015 states: *'In order to help car manufacturers switch from electrogalvanised steels to hot-dip galvanising, which costs around € 30 less per vehicle, Tata Steel is currently developing a special additional coating. This pulling aid is intended to provide better performance in pressing the components by minimising abrasion and zinc fouling.'*[81]

(140) These statements are in line with a technical expert's publication titled *'Application of continuous galvanized steel in Europe: driving forces and game changer'*, which states*: 'So the pressure on reduction of material costs is extremely high. In respect to continuous galvanizing this was and is a major driving force to switch from electrogalvanized (EG) to hot-dip galvanized (HDG) steel sheet. Many developments from the steel industry did not withstand this economic pressure. Products based on EG like Zink-Nickel coatings, in use at Opel for more than 10 years, and duplex coatings like Corrosion Protection Primer (CPP: EG coating covered by a thin organic coating with embedded Zn particles to enable spot weldability) phasing out at Daimler, had a limited life cycle mainly due to higher product costs.'; 'For several years also electrogalvanized ZnNi-coatings and duplex coatings (weldable thin organic coatings on electrogalvanized steel sheet) were in serial production (Opel, Daimler). Due to several reasons (cost, corrosion protection, spot weldability) the application has been stopped.'*[82]

(141) Regarding specifically switching patterns between EG and HDG, the Parties claimed that switches from HDG to EG would also occur.[83] However, the evidence presented relates to Mexico and South Africa, not the EEA, the Parties only having a suspicion that this could also be the case for one production plant of one automotive customer in Spain. The Commission therefore considers this evidence to be unpersuasive, especially in view of the broadly observed switching trend from EG to HDG (and not the reverse) in the EEA.

(142) This shows that the Parties, customers and independent experts all either consider EG and HDG to be separate markets, or consider that substitution is only relevant from EG to HDG, rather than the reverse.

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78 Minutes of a call with a customer on 30.5.2018, DocID700.

79 […].

80 Courtesy translation. The German original reads:'*Außerdem können Hersteller von elektroverzinkten Stahlsorten zu günstigeren feuerverzinkten Stählen wechseln – ohne auf ein hochwertiges Lackierergebnis verzichten zu müssen.*' DocID2661-76026 (*E06191-E0002-00084943.pdf*).

81 Courtesy translation. The German original reads: '*Um Automobilhersteller bei dem Wechsel von elektroverzinkten Stählen auf die um 30 Euro pro Fahrzeug kostengünstigere Feuerverzinkung zu unterstützen, entwickelt Tata Steel derzeit eine spezielle Zusatzbeschichtung. Diese Ziehhilfe soll für ein besseres Verhalten beim Pressen der Bauteile sorgen, indem Abrieb und Zinkaufschweißungen minimiert werdenä*', DocID002850-031488 (*TSE0162698.pdf*).

82 DocID002851-040499 (*TSE0271709.pdf*).

83 Response to the SO, paragraph 3.30(i) and footnote 31.

(143) In any event, the assessment in this Decision is conservatively based on HDG, potentially underestimating the Parties' relevant market position. This is because the Parties' combined market share in a potential HDG+EG market would likely be higher than that in an HDG market only due to ThyssenKrupp's high market presence there. For the reasons set out above, namely the large share of GS that is accounted for by HDG and the Parties' similar combined market shares in HDG and EG, the outcome of the competitive assessment would apply to both a distinct HDG market and an overall GS (HDG+EG) market.

(144) As regards the Notifying Parties' observation that there are significant spare capacities for EG, it is clear that these do not constrain producers of automotive HDG since (i) EG is significantly more expensive than HDG;[84] (ii) from the supply side, switching from HDG to EG is not sufficiently cheap and swift; and, consequently, (iii) if anything, switching occurs from EG to HDG rather than the reverse.

7.5.4.3. HDG: The automotive industry has specific technical requirements for galvanised steel

(145) HDG is used in the production of cars in various different applications, including the exterior (exposed) and interior (non-exposed) parts of the car. Depending on the part of the car, the steel used is subject to a number of different requirements. These requirements range from surface quality to specific requirements on the strength and crash behaviour of the steel.

(146) Exposed parts typically need to achieve a particularly good surface quality to contribute to an appealing and spotless look of the finished car. High formability is required of the steel input for achieving the desired design, and particularly wide coils may be needed to produce desired surfaces of the car without weld seams. At the same time, exposed parts need to be resistant against dents and the corrosive effects of the elements and road salt. ThyssenKrupp notes the heavy conditions under which exposed parts need to perform: *'The body of a car has to endure many things: swirled up stones, rain and road salt. It must not rust – even where scratches have left their mark.'*[85] Tata further explains in its internal documents some of the requirements on exposed parts, as shown in Figure 2.

Figure 2 – Tata internal document: Requirements on auto exposed parts[86]

[…]

(147) At the same time, many non-exposed but structurally critical parts have specific requirements in terms of crash behaviour (for instance energy absorption) and hardness of the steel. As shown in Figure 3 and Figure 4, some safety-critical non-exposed parts need to absorb energy to cushion a crash, while other parts need to be able to keep their shape and fight intrusion to protect passengers.

Figure 3 – Tata internal document on requirements on non-exposed crash structures[87]

[…]

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84 For ThyssenKrupp, considering 2017 EEA sales the average price of EG was [5-10]% more expensive than HDG (Commission's calculation on the basis of RFI 2).

85 ThyssenKrupp website, consulted on 12 February 2019: https://www.thyssenkrupp-steel.com/en/innovations/materials/all-round-protection-for-auto-bodies/all-round-protection-for-auto-bodies html.

86 […].

87 […].

Figure 4 – Tata internal document on requirements on non-exposed passenger cell[88]

[…]

(148) In addition to safety, looks and other considerations related to the functionality of a car, car manufacturers also consider the weight of the steel structures. A significant part of a car's weight comes from the steel components, and the weight of a car largely determines its fuel economy and environmental friendliness – as a ThyssenKrupp internal document notes, *'[v]ehicle weight is one of the most important emission drivers'*.[89] High strength steels can be employed to reduce the weight of a car as they can help achieve the same strength with a reduced amount of steel and, hence, reduced weight. In line with this, a customer notes: *'[t]he automotive industry requires steel of higher strength, lighter proportional weight and superior quality, if compared to that used in more general applications such as the construction of buildings.'* [90]

(149) To achieve the required specifications, car manufacturers use different grades of steel in different applications. While conventional mild grades may find use in less critical applications, specialty steels are more commonly used in the critical components of a car. For instance, boron steel may be used in the safety shell that must not deform in a crash, dual-phase steels can be used in the crash structures that need to absorb energy in a crash and dent-resistant bake-hardened steels can be used in exposed parts, as shown in Figure 5.

Figure 5 – Tata internal document on specific grades of steel used in a car[91]

[…]

(150) The Notifying Parties submit that many of the steel types sold to the automotive industry are also sold for other applications. In particular, the Notifying Parties submit that steel sold to automotive customers can be classified into two broad categories: (i) 'general automotive steel', the production of which does not require specific equipment; and (ii) 'higher strength automotive steel' (high strength AHSS). Further, the Notifying Parties submit that general automotive steel consists of: (i.a) steel types sold to both automotive and non-automotive customers; and (i.b) steel types sold predominantly to automotive customers.

(151) Overall, the Notifying Parties submit that […] of all HDG they sell to automotive customers is of a type that is sold to both automotive and non-automotive customers,[92] though they have not provided detailed evidence to support their claim.

(152) The Commission finds the following evidence to the contrary.

(153) Based on the updates of the transaction-level datasets responsive to RFI 2 submitted in reply to RFI 36 and focusing on 2017 sales, the Commission finds that […] of the volumes sold by Tata to automotive customers were customer-specific grades, which are not sold to any other customers. This contrasts with other customer categories that purchase no or very limited volumes of customer-specific grades. For instance, the customer category *Construction* purchases less than […] (by volume) as customer-specific grades. The only other customer category apart from automotive customers that purchases more than […] of its volumes as customer-specific grades

88 […].
89 […].
90 Minutes of a call with a customer, 23.5.2018, DocID667.
91 […].
92 Comments on the Article 6(1)(c) decision, paragraph 4.35.

is the category *Trading/SSC*.[93] However, as this group consists of resellers, these products are likely resold mainly to automotive customers as Tata makes virtually no direct sales of customer-specific grades to customers other than automotive, as described above.

(154) Focusing on Tata's sales of non-customer-specific grades to automotive customers, the Commission finds that, excluding internal sales and sales to Trading/SSCs, non-customer-specific grades that are predominantly sold to automotive customers (meaning that more than 90% by volume of steel of those grades are sold to automotive customers) represent approximately [90-100]% of Tata's sales of such non-customer-specific grades to automotive customers (in terms of volume). In other words, the non-customer-specific grades that automotive customers purchase and that are also sold to a significant extent to other industries represent only [0-5]% of automotive customers' purchases (in terms of volume) from Tata of products with defined non-customer specific grades (roughly only […]).

(155) Based on the same data and analysis for ThyssenKrupp, the Commission finds that [60-70]% of the volumes sold by ThyssenKrupp to automotive customers concern customer-specific grades. As for Tata, other customer groups do not genereally purchase customer-specific grades. The only other customer categories that purchase significant volumes of customer-specific grades are *Cold-rolling* ([…]), which purchase minimal volumes in absolute terms, and *Trading/SSC* ([…]). Neither of them is an end-user customer group and the group *Trading/SSCs* presumably largely resells to the automotive industry, for the same reasons as explained above for Tata. Finally, ThyssenKrupp's customer group *Other* purchases almost exclusively customer-specific grades, but this also represents a minor group purchasing only […] (less than [0-5]% of ThyssenKrupp's total HDG sales in terms of volume).

(156) Focusing on ThyssenKrupp's sales of non-customer-specific grades to automotive customers, the Commission finds that, excluding internal sales and sales to Trading/SSCs, non-customer-specific grades that are predominantly sold to automotive customers (meaning that more than 90% by volume of steel of those grades are sold to automotive customers) represent approximately [60-70]% of ThyssenKrupp's sales of non-customer-specific grades to automotive customers (in terms of volume). In other words, the non-customer-specific grades that automotive customers purchase and that are also sold to a significant extent to other industries only represent […] of automotive customers' purchases (in terms of volume) from ThyssenKrupp of products with defined non-customer-specific grades (roughly only […]).

(157) The overlap between sales to automotive and non-automotive customers could appear important when considering the more aggregate steel-type breakdown suggested by the Parties in their reply to Question 9 of RFI 22 (between Mild, HSLA, BHS, DP_600-- and AHSS_780), each of which contain several different steel grades. However, when considering the more granular level of actual steel grades – which is how customers place orders – the overlaps between automotive and non-automotive customers are negligible, as described above.

(158) More generally, it is natural that if 'types' of HDG are defined sufficiently broadly, there will always be sales of the same type of HDG to different customer groups. The analysis above shows that if looking at the relevant category of product 'grade',

[93] Trading/SCC purchase […] of volumes under customer specific grades.

which the Parties also use internally in the regular course of business, the vast majority of sales to the automotive industry are of grades not sold in significant volumes to non-automotive customers. In other words, the types of steel sold to automotive customers and non-automotive customers might present similarities at an aggregate level (namely of the same broad category of steel) but they are significantly different at the more granular level at which purchases are made (namely different grades).

(159) Moreover, the Commission infers from the Notifying Parties' submission that, even on the aggregate level of analysis suggested by the Parties, […] of the types of HDG they sell to the automotive industry are only or predominantly sold to the automotive industry and not to other customers. This seems to include both AHSS and general automotive steel. In any case, the Commission finds that the fact that some broadly defined steel types are sold for multiple applications is not in contradiction to the finding that automotive customers have specific requirements for the steel they demand.

(160) The Commission thus concludes that HDG for automotive applications caters for specific technical characteristics required by automotive customers, distinguishing it from HDG supplied to other industries. The results of the market investigation also suggest that the automotive industry overall has specific requirements for the steel it demands compared to other applications and that there are at least some steel grades and types that are solely or predominantly used in the automotive industry.

(161) First, a number of customers explained in the market investigation that the automotive industry has specific requirements for the steel it purchases. An automotive customer notes in this respect that '*there are special grades used by automotive sector, including AHSS and UHSS, PHS*'[94] while another submits that '*[t]he steel used in the automotive industry is different from the steel applied in the construction industry. Indeed, car manufacturers need high strength steel grades, especially to make the stamped parts, with particular elongation properties. Moreover, surface, size and tolerance requirements are different.*'[95] A third customer concurs: '*Finally, the potential overcapacity globally or in the EU for steel is not applicable to automotive grades, which are to that extent different than construction grades. [The respondent] is not able to use non-automotive grades as they are fundamentally different to the grades used in cars.*'[96, 97]

(162) Second, competitors suggested that there are differences between automotive and non-automotive HDG in particular when it comes to HDG used in exposed car parts. In this area, automotive applications appear to require particular surface quality and wider coils than non-automotive applications. A competitor notes that '*HDG for exposed automotive parts need some specific properties such as high strength along with high ductility and formability. That is why steels with specific compound structure are used for these applications (dual phase, multiphase grades, TRIP- and IF steels). Higher requirements for surface quality and higher width for some exposed parts*.' Another competitor makes similar observations: '*[T]he surface quality is most demanding qualitative requirement of the Auto [sic] industry as it directly affects further paint-coating of the exposed auto - - exposed Auto [sic] parts*

94 Reply to question 7 of Q3 – Questionnaire to Customers (Automotive), DocID2168.

95 Minutes of a call with a customer, 18.6.2018, DocID587.

96 Minutes of a call with a customer, 30.5.2018, DocID700.

97 See also, for instance, minutes of a call with a customer, 23.5.2018, DocID667; and replies to questions 7 and 12 of Q3 – Questionnaire to Customers (Automotive), DocID2168.

require an extended capability in terms of steel coil width (up to 1850 mm) as exposed Auto [sic] panels are made from a single wide steel sheet (no welding) whilst manufacturers in non-Auto [sic] industries, for instance Construction [sic], purchase largely panels, profiles or flat sheets and slit strips made from standard coils 1250/1500 mm'.[98]

(163) Third, when it comes to HDG for non-exposed applications, some competitors suggest that there is interchangeability with non-automotive application HDG but that some grades are automotive-specific even in this area. A competitor notes in this respect that *'HDG suitable for non-exposed automotive parts can also be used as for non-automotive uses and vice versa, even if some grades are specific to automotive applications'*.[99]

(164) Fourth, another competitor explains that some grades sold for other applications cannot be used for automotive applications: *'[s]ome HDG steel products EN 10346 (DX51D-DX54D can be used for non-exposed automotive parts as well as for construction applications - - [s]tructural grades by this standard (S220GD-S550GD) are not suitable for automotive elements production because of their low ductility and formability'*.[100]

(165) Fifth, the results of the market investigation suggest that the automotive industry in general has tighter quality and tolerance requirements compared to other customers.[101] In line with this, a clear majority of flat carbon steel manufacturers responding indicated that automotive customers require stricter tolerances compared to other customers, including both when they purchase high-end and more conventional grades.[102] For example, one automotive customer explains that *'[e]ven commodity steel grades like a CR240LA GI50/50 or a mild, deep drawing grade CR3 have to fulfill tighter specifications than for industrial use, e.g. surface roughness is higher, low oil distribution. The grade decision depends on the functional requirements of the part itself.'*[103] Similarly, a customer submits that *'automotive tolerance requirements are the highest'*[104] while another customer explains that *'[t]he automotive industry requires steel of - - superior quality, if compared to that used in more general applications such as the construction of buildings'*.[105] Another customer explains in more detail that *'all steel used in the car is considered being high end steel . This in terms of formability, high strength mechanical properties, surface finish , corrosion protection and thickness tolerances.'* [106]

(166) Moreover, a clear majority of respondents agreed that *'Commodity steel could not be used instead of high-end steel for any applications'* and most of the remaining respondents found that *'Commodity steel could be used instead of high-end steel only for very few applications'*.[107]

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98 Replies to question 13 of Q1 – Questionnaire to Competitors, DocID2166.

99 Replies to question 12 of Q1 – Questionnaire to Competitors, DocID2166.

100 Replies to question 12 of Q1 – Questionnaire to Competitors, DocID2166.

101 See, for instance replies to question 11 of Q12 (a) – Questionnaire to Customers Phase II (Automotive), DocID2952; replies to question 11 of Q12 (b) – Questionnaire to Customers Phase II (Automotive), DocID2953; and replies to question 32 of Q11 – Questionnaire to Competitors Phase II, DocID2951.

102 Replies to question 32 of Q11 – Questionnaire to Competitors Phase II, DocID2951.

103 Reply to question 9 of Q3 – Questionnaire to Customers Phase I (Automotive), DocID2168.

104 Reply to question 11 of Q12 (a) – Questionnaire to Customers Phase II (Automotive), DocID2952.

105 Minutes of a call with a customer, 23.5:2018, DocID667.

106 Reply to question 9 of Q3 – Questionnaire to Customers Phase I (Automotive), DocID2168.

107 Replies to question 13 of Q3 – Questionnaire to Customers Phase I (Automotive) , DocID2168.

(167) Sixth, as recognised in the internal documents of the Notifying Parties, the product mix demanded by the automotive industry is changing, largely due to stricter environmental requirements on emissions and by extension on the total weight of a car. Based on the Parties' internal documents, this results in advanced high-strength steels and ultra high-strength steels displacing conventional mild steels and high-strength steels, further emphasising the difference between HDG steel used in the automotive industry compared to that used in other industries.[108]

(168) Therefore, the Commission considers that the automotive industry has distinct requirements for the HDG it demands. The variety of HDG grades the automotive industry purchases is extensive and ranges from specific grades sold only or nearly only to automotive applications – for instance advanced high-strength HDG – to more conventional grades that may also be sold to other applications at least to some extent. Regardless of the grade, the automotive industry nonetheless has tighter quality and tolerance requirements for the steel it requires.

(169) Furthermore, within automotive HDG, there appears to be an important degree of differentiation. For instance, HDG for exposed applications has particularly high requirements as to its quality, in particular surface quality, compared to even other types of automotive HDG.

7.5.4.4. HDG: Automotive customers homologate individual production lines

(170) As discussed in Sections 7.5.4.3 and 7.5.4.7, automotive customers (including in particular OEMs) have specific quality requirements for the HDG they demand and the production of HDG for automotive customers requires specific capabilities from the steel production lines.

(171) In line with the quality requirements, a general characteristic of the sale of steel for the automotive industry is the need for homologation. Automotive customers require their suppliers to undergo a homologation process before the customer accepts them as a supplier. In many instances automotive customers homologate not only the supplier but individual production plants and lines, including both the downstream HDG lines and the upstream rolling lines.[109] A flat carbon steel supplier explains: *'Each plant and each production line must be homologated with the OEM customers before deliveries'*.[110]

(172) The automotive industry requires homologation not only when steel is supplied directly to OEMs but also when it is supplied indirectly, for instance through tier component suppliers.[111] In case of indirect supply, it may either be the immediate customer (for instance the tier supplier) that homologates, or the immediate customer may be tied to the homologation performed by the OEM. In the latter occasions, the tier supplier is required by the OEM to only acquire steel that originates from suppliers and production lines that the OEM has homologated and approved. A flat carbon steel supplier explains in this respect that *'[f]or some application the homologated supplier is specified on the part drawing and tieri [sic] I or II fabricators are not allowed to change supplier without the OEM approval'*.[112]

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108 […].

109 See, for instance, replies to questions 41 and 45 of Q1 – Questionnaire to Competitors, DocID2166, and replies to question 86 of Q3 – Questionnaire to Customers (Automotive), DocID2168.

110 Reply to question 41 of Q1 – Questionnaire to Competitors, DocID2166.

111 See, for instance, replies to questions 41 and 45 of Q1 – Questionnaire to Competitors, DocID2166.

112 Reply to question 41 of Q1 – Questionnaire to Competitors, DocID2166.

(173) Homologation by the automotive industry can be onerous and time-consuming. The Notifying Parties themselves submit that homologation takes a minimum of three months to one year for non-structural steel components, whereas fatigue- and corrosion-prone components require between one and one-and-a-half years, and safety-critical components up to two years.[113] The results of the market investigation largely support this view, also suggesting that homologation for a new product can be quicker if the production line has already been previously homologated by the customer.[114]

(174) The results of the market investigation further show that automotive customers are not willing to switch to non-homologated suppliers even in the short term. In particular, no OEM reported to have done so in the past five years while only a minority of tier suppliers indicated that they had done such a switch.[115]

(175) Therefore, the Commission considers that strict homologation requirements are a characteristic of the sale of HDG to the automotive industry, unlike for instance sales to the construction industry, the other large customer industry of HDG. Contrary to the Notifying Parties' claims in this regard, the costs and delays caused by homologation constitute a barrier to entry for new suppliers and non-qualified production lines. Such a finding is also in line with the findings in Sections 7.5.4.3 and 7.5.4.7 on the specific quality needs of the automotive industry and the capabilities required from a production line, and in particular the finding that automotive customers have stricter requirements on quality and tolerances than other steel-consuming industries.[116] Homologation requirements also apply to both direct supplies to automotive OEMs and to indirect supplies to them, including for instance supplies to tier component manufacturers.

7.5.4.5. HDG: The automotive industry has specific commercial requirements for steel supplies

(176) The results of the market investigation show that the sale of HDG to automotive customers is subject to certain additional specific characteristics that emanate from the needs of the automotive industry. These include, among others, long-term supply contracts and an increased need for security and flexibility of supply. This is in contrast to many other sales of HDG, including to the construction industry that is a large HDG customer, which are mostly on the spot market.

(177) With regard to long-term supply contracts, the results of the market investigation show that automotive customers procure steel through long-term contracts instead of the spot market. In the market investigation, the majority of customers indicated that they solely use long-term contracts for their needs and purchase nothing from the spot market.[117] Prices and other terms in these agreements are typically negotiated

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113 Reply to RFI 1, question 117.

114 See, for instance, replies to question 41 of Q12 (a) – Questionnaire to Customers Phase II (Automotive), DocID2952; and replies to question 41 of Q12 (b) – Questionnaire to Customers Phase II (Automotive), DocID2953.

115 Replies to question 44 of Q12 (a) – Questionnaire to Customers Phase II (Automotive), DocID2952; and replies to question 44 of Q12 (b) – Questionnaire to Customers Phase II (Automotive), DocID2953.

116 See, for instance replies to question 11 of Q12 (a) – Questionnaire to Customers Phase II (Automotive), DocID2952; replies to question 11 of Q12 (b) – Questionnaire to Customers Phase II (Automotive), DocID2953; and replies to question 32 of Q11 – Questionnaire to Competitors Phase II, DocID2951.

117 See, for instance, replies to question 64 of Q3 – Questionnaire to Customers (Automotive), DocID2168. See also replies to question 45 of Q2 – Questionnaire to Customers, DocID2167.

annually, although other durations such as over a year or six months were also mentioned.[118]

(178) A further characteristic of the conditions of supply to automotive customers is a specific need for security and reliability of supply. The automotive industry requires reliable supplies that are delivered at the correct time in order to avoid costly line stoppages at the automotive production sites due to lack of input steel or quality issues. This may also be a further reason why automotive customers may prefer integrated suppliers. A flat carbon steel manufacturer explains: '*Integrated steelmakers as opposed to re-rollers are able to guarantee a certain level of security of supply, which is considered essential by automotive customers. Should a steel producer not be able to supply, it could cause a line stoppage at the automotive manufacturing site, which is expensive. Steel represents only a small part of the total cost of production of a car. As an example, [the respondent] mentions that the cost of steel in a Volkswagen Golf (approximately 1 tonne) would amounts to ca. EUR 600. This compared to the final cost of the car of about EUR 20 000 would explain that automotive customers are not willing to risk having quality issues and to that end prefer having a secure and reliable steel source even if this means forgiving some short term savings in purchases from less reliable sources.*'[119]

(179) The internal documents of the Notifying Parties also suggest that security of supply is important when supplying the automotive industry. For instance, Tata's internal documents […].[120]

7.5.4.6. HDG: Vertical integration is important in automotive HDG

(180) The Commission observes that vertical integration is important in the supply of HDG to the automotive industry. The Commission recalls in this respect that, in M.8444 – *ArcelorMittal/Ilva*, concerning mainly commodity HDG, the Commission found that integrated HDG suppliers are more competitive than re-rollers.[121] It would appear that in the present case, which concerns high-end HDG for the automotive industry, the requirements for integration go even further and are not only a question of competitiveness but that production of HDG for the automotive industry may be difficult overall if a supplier is not vertically integrated.

(181) First, the Commission recalls that the automotive industry has specific requirements for the HDG it demands and that there are also certain specific grades, for instance advanced high-strength HDG that are supplied only to the automotive industry. In this respect, the Commission further recalls that the chemical composition of steel is determined at the liquid steel phase and, overall, the whole production chain affects the quality of the final finished HDG product.

(182) Second, it has been explained in the market investigation that acquiring high-quality substrate for HDG production is not necessarily possible from the market as integrated suppliers that also compete downstream are not willing to release it to the

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118 See, for instance, replies to question 67 of Q3 – Questionnaire to Customers (Automotive), DocID2168; replies to questions 27 and 28 of Q12 (a) – Questionnaire to Customers Phase II (Automotive), DocID2952; and replies to questions 27 and 28 of Q12 (b) – Questionnaire to Customers Phase II (Automotive), DocID2953.

119 Minutes of a meeting with a flat carbon steel manufacturer, 9.1.2019, DocID3571. See also reply to RFI 32, question 11.

120 See, for instance, DocID 2932-35977 (*TSE0366475.pptm*); DocID 2932-35979 (*TSE0366477.pptm*); and DocID 2602-4253 (*TSE0072253.pptx*).

121 See, for instance, M.8444 – *ArcelorMittal/Ilva*, recitals 888–90.

market. An integrated flat carbon steel manufacturer explains: '*[I]t is important for a steelmaker to be vertically integrated and able to control the quality and consistency of the slabs and HR substrate. While in principle HR can be purchased on the market, including also with the characteristics needed for automotive products; in practice this remains difficult particularly for the more special grades. This is due to, for instance, to the non-availability of such grades and the unwillingness of other competing steel producers to supply such HR coils as they themselves compete in the downstream HDG market for automotive customers.*'[122]

(183) Third, even if one could acquire substrate of good quality, it is not necessarily enough to produce high-end HDG in practice. Instead, the supplier would need to be able to fine-tune the production process at all stages so that the different production steps work well together. The same integrated flat carbon steel manufacturer from the previous recital continues: '*In addition, the production of high-end HDG is not a question of only acquiring HR substrate of a suitable grade and high enough quality, but the substrate and the downstream lines will need to work together. This means in practice that, even if the substrate was in principle of the same grade but came from varying different origins, production process on the downstream lines would need to be slightly tailored for each different substrate coil origin – and ideally such tailoring should be made at both upstream and downstream levels. In this respect, an integrated steel manufacturer can more efficiently fine-tune its production process to match the characteristics of the steel substrate and the downstream production.*'[123]

(184) Fourth, the results of the market investigation further show that automotive customers find vertical integration of their suppliers important, with the majority of automotive OEMs finding it very important.[124]

(185) The above observations cast doubt on the Notifying Parties' claim that the need for control of the entire value chain does not imply a need for vertical integration.

(186) The need to control the whole value chain is also reflected in the homologation requirements that the automotive industry has: automotive customers do not limit the homologation requirement to the final products and HDG production lines. Instead, they can require homologation through the whole steel production chain. A flat carbon steel supplier explains: '*Homologation is done from Blast furnace to finishing line.*'[125] Similarly, an automotive customer clarifies that '*[a]ll steel products must pass through a homologation process which aims at assessing both the production process and the quality of steel at the galvanization level and upstream thereof. Not only the upstream hot-rolling production has to be qualified, but also the overall steel production process. [The respondent's] steel suppliers are not allowed to change the HR substrate without its prior approval. For this reason also, [the respondent] today only sources from vertically integrated suppliers.*'[126]

(187) Therefore, the Commission concludes that vertical integration of the steel suppliers is a key characteristic and likely a requirement in practice for significant supply of HDG to the automotive industry.[127]

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122 Minutes of a meeting with a competitor, 9.1.2019, DocID3571.

123 Minutes of a meeting with a competitor, 9.1.2019, DocID3571.

124 Replies to question 59 of of Q3 – Questionnaire to Customers (Automotive), DocID2168.

125 Replies to question 41 of Q1 – Questionnaire to Competitors, DocID2166.

126 Minutes of a call with a customer, 15.6.2018, DocID596.

127 All significant suppliers of automotive HDG in the EEA are vertically integrated. The non-integrated players play a negligible role with market shares estimated below 1%.

(188) The Notifying Parties' claim that vertical integration being a key characteristic and requirement for the supply of HDG to the automotive industry does not constitute evidence for a separate market is factually and legally erroneous. As a matter of fact, an automotive customer cannot switch to a non-integrated manufacturer if vertical integration is a requirement. As a matter of law, the market definition guidelines state that the objective of defining the relevant market is *'to identify those actual competitors of the undertakings involved that are capable of constraining those undertakings' behaviour and of preventing them from behaving independently of effective competitive pressure. It is from this perspective that the market definition makes it possible* inter alia *to calculate market shares that would convey meaningful information regarding market power […].'*[128]

7.5.4.7. HDG: There are specific 'automotive HDG' lines

(189) The Notifying Parties submit that most of the HDG supplied to the automotive industry does not require any specific production equipment but can be produced on the same production lines as HDG for other applications. As explained in recital (151), the Notifying Parties suggest that steel sold to automotive customers can be classified in two broad categories: (i) 'general automotive steel' the production of which does not require specific equipment; and (ii) 'higher strength automotive steel' (high strength AHSS) that requires specific production equipment and production control throughout all steps of the production. According to the Notifying Parties, a clear majority of HDG sold to automotive applications is general automotive steel that does not require specific production equipment. Out of the Notifying Parties' own supplies of HDG to the automotive industry, less than [10-20]% would be specialised high-strength HDG.[129]

(190) The Notifying Parties acknowledge that HDG used in exposed applications requires a high quality finish. However, they submit that this does not require any significant specialised assets but only careful handling of the steel as well as strict process and quality control on the production line. Specifically, the HDG line would require an automatic surface quality control system, plastic roofs over production lines and 'good housekeeping' in the sense of ensuring cleanliness in the production area. The Notifying Parties submit that the overall cost of acquiring these special capabilities would be between EUR 1 million and 3 million.

(191) […]. The production split between automotive and non-automotive applications on the Notifying Parties' own HDG lines is shown in Table 1.

Table 1 - Production split on Parties' HDG lines, 2017[130]

[…]

(192) Nonetheless, the Commission's investigation does not support the Notifying Parties' submission and instead suggests that the production of HDG for the automotive industry requires specific qualities from the production line and that there are 'automotive' and 'non-automotive' HDG lines.

(193) First, the Commission notes that the Notifying Parties themselves acknowledge that high-strength HDG requires specific production equipment. In fact, the Notifying

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128 Commission Notive on the definition of relevant market for the purposes of Community competition law (97/C 372/03), paragraph 2.

129 Comments on the Article 6(1)(c) decision, paragraph 4.32.

130 Comments on the Article 6(1)(c) decision, Table 4.2. […].

Parties have submitted […].[131] The Notifying Parties explain further that strict process control and quality control is overall needed to produce HDG for exposed automotive applications.

(194) Second, replies to the market investigation suggest that automotive HDG production lines require specific capabilities, not just for high-strength HDG. Flat carbon steel manufacturers mention for instance requirements such as surface quality and tolerance control as particular requirements when producing for the automotive industry.[132] A competitor explains: '*Automotive processes are usually highly automated and therefore sensitive for variations and deviations in the material.'*[133]

(195) Some – though not all – competitors also mention some further specific capabilities that automotive lines require. For instance, certain suppliers mention that the width of the production lines is important and that, in particular, competitive production of HDG for exposed parts requires wide production lines. A competitor notes in this respect that '*[t]he majority of the exposed panels have widths grater [sic] than 1500mm'* whereas for other applications the '*[m]ajority of demand is <1500 mm*'.[134]

(196) Some competitors also indicate in the market investigation that dedicated HDG lines are required for being able to supply automotive applications. For instance, a flat carbon steel manufacturer explains that *'[t]his depends on production strategy but for HDG products it is in most cases better to have dedicated automotive lines in order to better control process and quality as well as productivity',* while another competitor clarifies that *'[f]or AHSS dedicated production lines are needed. This is particular critical for HDG'*.[135]

(197) Third, the Notifying Parties submit that the same production lines can produce both automotive and non-automotive HDG. The Commission nonetheless considers that a difference needs to be drawn between automotive-capable lines producing also for non-automotive applications and non-automotive lines. The fact that a production line capable of producing for the automotive industry also produces for non-automotive applications does not mean that a non-automotive line would be a suitable source of HDG for automotive applications.

(198) The Commission understands that it is not uncommon that capable high-end HDG lines also produce less demanding products even if the opposite is not true.

(199) In this respect, the Commission understands that even if steel producers may strive to prioritise the production of high-end products where possible, it is in practice difficult to achieve 100% high-end production on a given line. Instead, periods of 'relaxation' will be needed for technical and commercial reasons, for instance because the zinc (or other alloy) bath conditions are not stable or because rolling cylinders get worn and are no longer suitable for high-end production even if they can be used for products that require less-demanding surface quality.[136]

(200) Furthermore, it has been suggested in the market investigation that automotive HDG suppliers reserve capacity 'buffers' on their automotive HDG lines so that they can quickly meet additional demand required by automotive HDG customers, if needed

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131 […].

132 See, for instance replies to questions 27, 32 and 34 of Q11 – Questionnaire to Competitors Phase II, DocID2951. See also replies to question 45 of Q1 – Questionnaire to Competitors, DocID2166.

133 Reply to question 32 of Q11 – Questionnaire to Competitors Phase II, DocID2951.

134 Reply to question 30 of Q11 – Questionnaire to Competitors Phase II, DocID2951.

135 Replies to question 45 of Q1 – Questionnaire to Competitors, DocID2166.

136 See, for example M.8444 – ArcelorMittal/Ilva, recitals 294 and 521.

by sacrificing less profitable sales to non-automotive customers. Because of this, an automotive HDG supplier could not dedicate in practice all of the capacity of its automotive HDG lines to producing automotive HDG under normal operating situations.[137]

(201) Thus, the fact that a production line in practice produces HDG for both automotive and non-automotive customers is not contrary to the finding that there are specific automotive production lines and that there are HDG production lines that are not capable of producing automotive HDG.

(202) Fourth, the Commission observes that a number of the Notifying Parties' internal documents divide their own HDG production lines between 'auto' and 'non-auto' ones. For instance, Figure 6 shows a slide from a Tata internal document that classifies ThyssenKrupp production lines. In the slide, 'Automotive' lines are framed in red. Similarly, Figure 7 shows another Tata internal document classifying the Notifying Parties' HDG lines between 'automotive galvanising lines', 'general purpose galvanising lines' and 'OCS substrate galvanising lines'. Furthermore, Figure 8 shows a ThyssenKrupp internal document that classifies competitors' expansion plans and labels some of them 'Auto'. The Commission considers that such documents show, on the one hand, that categorisation of production lines into 'auto' and 'non-auto' is something the Notifying Parties find important and engage in, and, on the other hand, that they are able to categorise even other market participants' lines.

Figure 6 – Tata internal document classifying ThyssenKrupp production lines[138]

[…]

Figure 7 – Tata internal document discussing the Parties' HDG lines[139]

[…]

Figure 8 – ThyssenKrupp internal document classifying competitors' new HDG lines[140]

[…]

(203) Fifth, the Commission observes that, among those lines that can produce for the automotive industry, different levels of competitiveness and actual production for the automotive industry can exist. This also supports the finding that there are differences between automotive and non-automotive capable lines.

(204) As shown in Table 1, all of the Notifying Parties' production lines produce for both automotive and non-automotive applications ([…]). Nonetheless, a closer assessment shows that there are clear differences between lines. For instance, for ThyssenKrupp, six out of the nine lines listed produce over 80% of their output for the automotive industry. For two of the lines the percentage is particularly high: […] produces [90-100]% of its production for the automotive industry and for […] the figure is [90-100]%. In contrast, there are two lines – […] and […] – that predominantly produce for non-automotive customers. In the case of Tata, two HDG lines produce over 80% for the automotive industry, the highest percentage being [90-100]% on the […] line. In contrast, the production of […] goes predominantly to non-automotive applications.

137 Minutes of a meeting with a competitor on 9.1.2019, DocID 3571.
138 […].
139 […].
140 […].

(205) The Commission recalls that overall the share of the automotive industry of the HDG demand in the EEA is close to 50%. Compared to this, the Notifying Parties have numerous lines that produce for the automotive industry proportionately more than what is the automotive industry's share of the overall EEA HDG demand. The fact that those lines also produce some volumes for other applications does not alter the finding that those lines seem to be predominantly dedicated to producing automotive HDG and may be particularly competitive in doing that.

(206) The Commission notes that individual lines' competitiveness in production for the automotive industry may be different even if they have the capability to produce automotive HDG. As shown in Figure 6, Tata's internal document considers […]. Figure 7 […]. The Commission understands that these lines are […].[141] In addition to ThyssenKrupp's lines, Figure 7 […].

(207) The Commission observes that the lines classified in Tata's internal documents as 'automotive' in general also achieve the highest automotive sales. Table 2 shows which lines have been classified as automotive in Tata's internal documents referred to in Figure 6 and Figure 7. It also explains which lines the Notifying Parties' have in their own submissions considered as (i) automotive-capable and (ii) capable of exposed automotive parts.

Table 2 - ThyssenKrupp's and Tata's HDG lines

[…]	[…]	[…]	[…]	[…]	[…][142]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

(208) The Commission observes that the classification in Tata's internal document shown in Figure 6 is […].

(209) By contrast, the Tata document does not consider the rest of the lines […].[143] […].

(210) Similarly, the Commission observes that when assessing Tata's production lines, Tata seems to consider […].[144]

(211) Sixth, the Commission observes that the Parties discuss in their internal documents the capabilities of their own and competing HDG lines. For instance, Figure 9 shows a ThyssenKrupp internal document that discusses the capabilities of different EEA flat carbon steel manufacturers in automotive HDG. In the slide, ThyssenKrupp specifies for instance […].[145] […].

Figure 9 – […][146]

[…]

(212) Figure 9 shows, as broadly confirmed by the Commission's market investigation, that whereas the Parties are capable of producing products […], this is not true for a significant number of their competitors, such as Voestalpine, SSAB and USSK; and that this is known and considered relevant by (at least one of) the Parties.

141 See, for instance reply to RFI 1, Annex 3.
142 […].
143 Reply to RFI 21, Annex 14b.
144 Reply to RFI 21, Annex 14a.
145 Courtesy translation. The original text reads: […].
146 […].

(213) As regards Tata, its internal documents show that Tata has recently engaged in a development and investment programme to improve its production lines' capabilities for automotive HDG production. […][147] […].[148] […][149] […].[150]

(214) Therefore, the Commission considers that the production of HDG for the automotive industry likely requires specific capabilities and, therefore, dedicated production lines. While a number of HDG lines on which non-automotive HDG is produced may also be capable of producing HDG products for the automotive industry, some products require a particular width and surface quality that can only be produced on certain 'automotive' HDG lines that have the required capabilities. In addition, other capabilities such as the possibility to produce specific coatings can be a factor for competitiveness. Moreover, the Notifying Parties' internal documents show that they categorise their own and their competitors' HDG production lines between automotive and non-automotive, and that they find such distinction relevant.

7.5.4.8. HDG: The pattern of supply for automotive HDG is different than for other HDG

(215) The Commission observes that the pattern of supply is different for automotive HDG compared to the overall supply of HDG in the EEA. This is reflected, for instance, in different relative market presence of suppliers and the more limited role of imports in the supply of HDG to the automotive industry compared to the overall HDG supply.

(216) With respect to the relative market presence of suppliers, and as explained in more detail in Section 9.3, the Notifying Parties have a combined market share of [20-30]% in the overall supply of HDG in the EEA, based on information submitted by them. In contrast, they have indicated that their share in the supply of HDG to the automotive industry is [20-30]% in the EEA, while the Commission's market reconstruction puts the figure at [30-40]%.

(217) At the same time, the role of imports in the supply of HDG for the EEA automotive industry is significantly less than its role in the overall HDG supply in the same area. Based on information provided by the Notifying Parties, imports represent [10-20]% of all supply of HDG in the EEA. This is in contrast with the estimate of the European Automobile Manufacturers' Association ('ACEA') of a [5-10]% import penetration in all steel for the automotive sector.[151]

(218) The Commission considers that the different structure of supply in HDG for the automotive industry compared to the overall supply of HDG in the EEA is in line with the considerations discussed in Sections 7.5.4.3 to 7.5.4.7 about the specific demands that the automotive industry has for HDG and its suppliers. This is also in line with the specific requirements put on suppliers, resulting in a more limited pool of competitive suppliers being present for automotive HDG.[152] The different structure of supply also supports a finding of a distinct product market for automotive HDG as compared to non-automotive HDG.

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147 An air knife is a piece of equipment that controls the thickness of the galvanising coating on an HDG line.

148 […].

149 Reply to RFI 21, Annex 14a.

150 Comments on the Article 6(1)(c) decision, Table 4.2.

151 Commission's computation on the basis of a statement made by ACEA, see https://www.acea.be/press-releases/article/steel-import-restrictions-now-definitive-leaving-eu-auto-manufacturers-extr (available online on 10.2.2018).

152 See Section 9.4.3.2.

7.5.4.9. HDG: The finding of a distinct market for automotive HDG is in line with recent trade defence regulation

(219) The Commission observes that in recent trade defence measures, metallic-coated corrosion-resistant steel (galvanised steel) has been explicitly defined to include products specifically produced for the automotive industry, in addition to standard products, and that those are covered by the Definitive safeguard measures, as explained above in Section 5.4.

(220) The Commission observes that the Definitive safeguard measures explicitly separate HDG for automotive and non-automotive applications. In the Regulation, the Commission concludes that '*corrosion resistant sheets – include both products produced specifically for the automotive industry, based on precise product specifications and subject to long term contracts, and other standard products. For the former products, suppliers need first to obtain a certification necessary to supply the industry over a long time period, based on a just-in-time system. – Furthermore, the standard types of products under this product category are currently subject to anti-dumping duties - - The fact that these more specialised products were not covered in the industry's request for anti-dumping measures is also an indication that these products should be considered separately from the standard types of products.*'[153]

(221) The definition of a relevant product market in merger control is solely based on the relevant competition legislation and is not dependent on considerations under other instruments of law. However, the Commission finds that the conclusions in the Commission Regulation on safeguard measures are in line with the findings in the present merger case.

7.5.4.10. HDG: The Parties consider automotive HDG separately

(222) The Notifying Parties' internal documents contain abundant references to the automotive industry as a separate market segment that the Notifying Parties follow, and to automotive HDG as a distinct product that they consider separately from non-automotive HDG and other types of steel. They also follow and implement specific strategies in sales to the automotive industry. A few examples of those documents are provided in this section.

(223) Figure 10 shows a slide from a ThyssenKrupp internal document that discusses the business plan for the JV between Tata and ThyssenKrupp, discussing different market segments with automotive being one of them.

Figure 10 –ThyssenKrupp internal document: automotive a separate market segment[154]

[…]

(224) Figure 11 shows an example of Tata's internal weekly newsflash on 'Sector Automotive' where it reports and discusses recent developments in their supplies to the automotive industry.

Figure 11 – Tata internal document on Sector Automotive Weekly News Flash[155]

[…]

153 Definitive safeguard measures, recitals (156) and (157).

154 […].

155 […].

(225) Figure 12 shows a ThyssenKrupp internal document that discusses a deep dive into ThyssenKrupp's strategy in automotive.

Figure 12 – ThyssenKrupp internal document on separate auto strategy[156]

[…]

(226) Figure 13 shows a Tata internal document that discusses the portfolios of the Notifying Parties. In the document, 'Metallic coated auto' and 'Metallic coated non auto' are discussed separately. The Commission understands that 'Metallic coated auto' refers in particular to HDG, given that 'Electrolytically Metal Coated Sheets', is considered separately and only ThyssenKrupp is indicated to be active in that.

Figure 13 - Tata internal document on automotive HDG followed separately[157]

[…]

(227) Furthermore, the Commission observes that Tata has undertaken a specific development and investment programme […]to improve its capabilities in supplying the automotive industry. […].

Figure 14 - […][158]

[…]

7.5.4.11. HDG: The Parties consider competitive pressure in automotive HDG to be different from pressure in non-automotive HDG

(228) The Commission considers that evidence shows that the Notifying Parties themselves consider the automotive sales channel to have different competitive dynamics than sales to other industries. The Commission concludes from the Notifying Parties' internal documents that the Notifying Parties consider there to be less competitive pressure in sales to the automotive industry than in sales to other industries, for instance due to the possibility to differentiate. Such a finding would also be consistent with the product mix sold to the automotive industry: automotive HDG consists of a number of high-end grades that can be priced at least to some extent independently from commoditised HDG. This differentiation can be implemented irrespective of the pricing model. For example, in the case of a 'base price + extras' pricing model, the extras level relates to the high-end grades used for automotive HDG, enabling differentiation on price even if the base price were influenced by the conditions of competition on basic HDG. The same would apply if effective pricing is considered instead of 'base price + extras', namely in the event that base price and the price of extras are not provided separately to the customer.[159]

(229) More generally, the finding of differing competitive pressure is relevant as it constitutes direct evidence that the Notfying Parties themselves consider in the regular course of business that automotive HDG should be defined as a separate market according to the market definition guidelines quoted above, which state that the objective of market definition is '*to identify those actual competitors of the*

156 […].

157 […].

158 […].

159 The 'base price + extras' is a typical pricing method used in the steel industry in which the final price is composed of a base price (normally the price of a commodity steel product with some standard specification) plus the price of some extras related to dimension (width and thickness) and other additional properties of the steel. Under the 'base price + extras' method, the customer has visibility of all the pricing components. An alternative pricing model is the effective pricing model in which the price to the customer does not show the detailed breakdown of the different components.

undertakings involved that are capable of constraining those undertakings' behaviour and of preventing them from behaving independently of effective competitive pressure.' [160]

(230) Figure 15 shows an extract from a ThyssenKrupp internal document where ThyssenKrupp discusses the attractiveness of selling to particular market segments and customer groups. The caption shows […].[161]

Figure 15 - ThyssenKrupp internal document on sales channels[162]

[…]

(231) Figure 16 shows an extract from a Tata internal document where Tata discusses pricing separately for sales to automotive customers.

Figure 16 - Tata internal document on pricing for sales to automotive customers[163]

[…]

7.5.4.12. HDG: The Parties are able to price discriminate

(232) The Commission recalls that, as noted in Section 7.5.4.1, a distinct group of customers for the relevant product may constitute a narrower, distinct market when such a group could be subject to price discrimination. This will usually be the case when two conditions are met: (a) it is possible to identify clearly which group an individual customer belongs to at the moment of selling the relevant products to it, and (b) trade among customers or arbitrage by third parties should not be feasible.

(233) The Commission observes that the Notifying Parties are able to identify automotive customers and are able to price discriminate between automotive and non-automotive customer groups as arbitrage between automotive and non-automotive customers is not feasible.

(234) First, the Commission recalls that it is characteristic of the sales of HDG to the automotive industry that automotive customers have specific requirements, homologate production lines and predominantly purchase on long-term agreements (see for instance Sections 7.5.4.3 and 7.5.4.5). It is thus apparent that they are able to identify an automotive customer at the moment of selling the relevant products to them.

(235) Furthermore, the requirements of automotive customers – for instance the need for security of supply and high requirements for quality and quality stability (see for instance Sections 7.5.4.3 and 7.5.4.5) – and the associated need for homologation (see Section 7.5.4.4) heavily limit the possibility for trade between customers and other arbitrage as those factors make it difficult if not impossible for customers to switch suppliers or use new sources of supply within a relatively short period of time.

(236) The following pieces of evidence show that the Parties are in fact able to price-discriminate between automotive customers and other customer groups.

(237) Tata maintains a separate price list for automotive customers […].

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160 Commission Notive on the definition of relevant market for the purposes of Community competition law (97/C 372/03), paragraph 2, highlighting added.

161 Courtesy translation. The German originals read: […].

162 […].

163 DocID1141-1472 (DOC-000001483.pptx. Presentation. […].

Figure 17 – […][164]

[…]

Figure 18 – […][165]

[…]

Figure 19 – […][166]

[…]

Figure 20 – […][167]

[…]

(238) […].

Figure 21 – […][168]

[…]

(239) ArcelorMittal, the Parties' most important competitor, also maintains an automotive HDG price list, as illustrated in Figure 22.

Figure 22 – Excerpt from ArcelorMittal automotive HDG pricelist[169]

[…]

(240) As to the Notifying Parties' claims, in the first place and contrary to those claims, similar price trends between different products are not necessarily evidence of substitutability, but can rather be attributed to common cost drivers. HDG used by automotive customers and HDG used by the general industry or construction share most of the same raw materials. Further, raw materials account for a large part of the selling price. The processing cost of the two products might vary but is not likely to change significantly over time. At the same time, also the changes in demand for the two products do not appear to have the magnitude to drive significant price variations. Therefore, most of the price variations that can be observed over time are mostly related to common raw material cost and this explains the common evolution over time.

(241) In the second place, it was suggested in the market investigation that prices for general HDG are not necessarily representative of automotive HDG prices. An automotive customer explains that it '*does not use steel market indices in its price negotiations. The published HDG indices relate to lower quality (construction) HDG and are not directly representative of prices for automotive suitable HDG. The prices of steel for the automotive industry may follow the general development of steel prices but loosely – what matters most is the economic cycle of the automotive industry (demand) and subsequent availability of material.'*[170]

(242) The Notifying Parties argue that '*prices will reflect the specific production costs'* – which may indeed be higher for automotive steel given the need for specific production capabilities – and further that comparing prices may not be meaningful if

164 […].
165 […].
166 […].
167 […].
168 […].
169 DocID2932-8545 (TSE0339043.pdf).
170 Minutes of a call with a customer, 23.5.2018, DocID667.

costs differ. The Notifying Parties therefore claim that the relevant comparison is margins instead of prices.[171]

(243) Second, the Commission observes that the Notifying Parties […]. This is further evidence that they are able to price discriminate between automotive and non-automotive customers in practice, and that automotive customers cannot arbitrage.

(244) The Commission notes that a comparison of margins also supports the conclusion that HDG sales to automotive customers constitute a separate product market since […].

(245) Table 3 shows Tata's variable margins for different types of HDG sold to the automotive and non-automotive industries, as submitted by the Notifying Parties. […].

Table 3 - Tata's variable profit margin for HDG sold to automotive and non-automotive customers, 2015-17[172]

[…]

(246) Table 4 shows ThyssenKrupp's variable margins for different types of HDG it sells to the automotive and non-automotive industries, as submitted by the Notifying Parties. […].

Table 4 - ThyssenKrupp's variable profit margin for HDG sold to automotive and non-automotive customers, 2015–17[173]

[…]

(247) Further, Figure 23 shows an internal Tata document that also shows both higher sales prices and higher margins for automotive HDG compared to non-automotive HDG in August 2018. […].

Figure 23 – Tata internal document on sales, prices and margins[174]

[…]

7.5.4.13. HDG: Aluminium and other alternative materials are not in the same market as steel

(248) The Notifying Parties submitted that alternative materials and in particular aluminium are a substitute to steel and compete with it in supplies to the automotive industry.

(249) The results of the Commission's investigation do not support the Notifying Parties' submission. To the contrary, both replies to the market investigation and the Notifying Parties' own internal documents contradict the claim that aluminium and steel would be substitutes and in direct competition with each other.

(250) Based on the results of the market investigation, the Commission considers that two different situations need to be distinguished when assessing substitutability between different materials in automotive production: (i) switching materials during the production run of a car model and (ii) switching materials during the design phase of a car model.

(251) As to switching materials during the production run of a car model, the results of the market investigation show that switching is in practice usually not possible or at least

171 Comments on the Art 6(1)(c) decision, paragraph. 4.16.
172 […].
173 […].
174 […].

difficult and costly. This relates in particular to the fact that a car model has been designed with a particular material in mind and switching that material would in many instances require both re-design and re-testing of the car, also including crash tests depending on the component in question, as well as reworking vehicle production. A major car OEM explains: *'Replacing steel with aluminium in car models that are already in production is practically impossible. Such a move would require re-design and re-testing of the car. It would take up to 3–5 years to adapt the design of a vehicle that was meant to be made of steel, and the costs would be very high.'*[175] Another car manufacturer concurs: *'[A]t the production stage of a car model it is not possible to change the material that has been chosen at the design phase. Replacing a part with one made from different material might require more re-engineering of the car, new crash tests etc. Even if the prices for HDG would increase by 5–10% while the prices for aluminium remained the same, [market participant] would likely not switch any volumes to aluminium when it comes to models already in production.'*[176]

(252) As regards the design phase of a car model, switching seems to be technically more possible than during the production phase. Some car manufacturers though expressed reservations in this respect, noting for instance that *'[t]here are certain applications where the mechanic properties of the material may limit substitutability between steel and aluminium, requiring that only steel be used'*.[177]

(253) Overall, respondents to the market investigation acknowledged that aluminium can provide weight reduction, which is desirable when designing a car. Nonetheless, the results of the market investigation show that significant use of aluminium – even if chosen at the design-phase of a car model – is limited to high-end cars due to the significantly higher price of aluminium compared to steel solutions. A market participant explains: *'The obvious gain from aluminium is weight-saving. However, this has to be weighed against the significantly higher price of aluminium: in practice aluminium costs at least twice as much as steel and this would in practice be prohibitive in mass production.'*[178] Another major car OEM concurs by submitting that *'the usage of aluminium [is] limited to applications for luxury cars.'*[179]

(254) The Commission further finds that the Notifying Parties' internal documents support the conclusion that steel is not substitutable with aluminium or other alternative materials. For instance, Figure 24 shows how ThyssenKrupp finds that aluminium is proportionately […] more expensive than steel even when considering its lower weight, […]. The document further shows that certain other alternative materials, such as magnesium and carbon fibre, are proportionately even more expensive.

Figure 24 – ThyssenKrupp internal document: Aluminium is too expensive to compete with steel[180]

[…]

(255) Similarly, Figure 25 shows an extract from a Tata internal document which concludes that […].

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175 Minutes of a call with an automotive customer, 30.5.2018, DocID700.

176 Minutes of a call with an automotive customer, 23.5.2018, DocID667.

177 Minutes of a call with an automotive customer, 23.5.2018, DocID667. See also replies to question 54 of Q3 – Questionnaire to Customers (Automotive), DocID2168.

178 Minutes of a call with an automotive customer, 30.5.2018, DocID700.

179 Minutes of a call with an automotive customer, 15.6.2018, DocID596. See also replies to question 55 of Q3 – Questionnaire to Customers (Automotive), DocID2168.

180 […].

Figure 25 – […][181]

[…]

7.5.5. Conclusion

(256) Taking into account all evidence available to it, and in light of the considerations explained in Section 7.5.4, the Commission finds that HDG and EG likely constitute distinct product markets. It is nonetheless not necessary to conclude on this specific question for the purpose of this Decision.

(257) The Commission concludes that the production and supply of HDG (or GS if accounting for EG as well) to the automotive industry ('automotive HDG') constitutes a distinct product market, separate from the production and supply of HDG for other applications. This is in particular due to the limited demand- and supply-side substitutability, the specificities of the demand and supply of automotive HDG and the apparent possibility for steel suppliers to price (and margin) discriminate between automotive and non-automotive customers.

(258) Given the key role automotive OEMs and their requirements have as regards both direct and indirect supply of automotive HDG, the Commission considers that all automotive HDG, regardless of whether supplied directly or indirectly to automotive OEMs, belong to the same relevant product market.[182] The market does however not include aluminium or any other alternative materials.

(259) The Commission further concludes that, within automotive HDG, differentiation likely exists, for instance between HDG for exposed and non-exposed car parts. Such differentiation is however not so strong as to justify the definition of distinct product markets.[183]

7.6. Production and supply of metallic coated and laminated steel products for packaging

7.6.1. Introduction

(260) Metallic coated steel for packaging consists of thin, flat, CR coils or sheets, which are electrolytically coated with a fine layer of tin (tin plate, 'TP') or chromium (electrolytic chromium coated steel, 'ECCS') and may additionally be laminated ('laminated steel for packaging'). Metallic coated steel for packaging is used in a wide range of packaging applications, such as food, beverage, and paint cans, aerosol, closures and crown corks.

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181 […].

182 In particular, OEMs often specify not only the particular type of steel needed but indicate the approved suppliers even when they are purchasing from SSCs or indirectly through tier component manufacturers – in line with their homologation needs and requirements that apply in such situations as well, as explained in Section 7.5.4.5.

183 See Section 9.4.3.3.

Figure 26 – applications of metallic coated steel for packaging[184]

(261) Food applications represent the largest category and account for roughly [40-50]% ([40-50]% for Tata and [30-40]% for ThyssenKrupp) of the Parties' overall sales in the EEA.

Table 5 – Tata's sales in the EEA by application in 2017, kt[185]

[…]

Table 6 – ThyssenKrupp's sales in the EU28 by application in 2017, kt[186]

[…]

(262) The usage of Chromium trioxide and certain other 'Chromium VI'compounds used in the TP and ECCS production processes are subject to the authorisation requirements under the REACH Regulation[187] as of 21 September 2017.[188] Production lines that have not been converted to be REACH-compliant are not able to operate on the market in the EEA unless an authorisation has been granted or an application for authorisation has been submitted within the applicable timelines. Tata has developed a replacement product for ECCS (branded 'TCCT') that aims to be REACH-compliant, which it has licensed to ThyssenKrupp. The Notifying Parties submit that REACH does not require the development of a new product to replace TP, but that an update of the TP production technology would be sufficient in order to be REACH-compliant.[189]

7.6.2. The Commission's decisional practice and the Notifying Parties' views

(263) The Commission has previously defined a separate relevant market for metallic coated steel for packaging, considering a potential distinction between TP and ECCS, and between beverage and non-beverage steel packaging applications.[190]

184 Parties' reply to RFI 4.

185 […].

186 Parties' reply to RFI28. […].

187 Regulation (EC) No 1907/2006 of the European Parliament and of the Council 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals, OJ L 396, 30.12.2006.

188 Commission Decision C(2018) 3734, OJ C 218/6, 22.6.2018.

189 Parties' reply to RFI 28

190 See, for instance, M.4408 – *Tata Steel/Corus*, paragraph 9; M.4515 – *CSN/Corus*, paragraph 8; M.4137 – *Mittal/Arcelor*, paragraph 35; ECSC.1351 – *Usinor/Arbed/Aceralia*, paragraph 65. See also M.5771 – *CSN/CIMPOR*, paragraph 16 and the footnote therein; M.8444 – *ArcelorMittal/Ilva*, recital 266.

(264) The Notifying Parties do not agree with such distinctions and argue for an all-encompassing product market of metallic coated steel for packaging that include both TP and ECCS. In particular, the Notifying Parties submit the following arguments:

(a) There is a high level of demand-side substitutability between TP and ECCS. While traditional ECCS are used only for a narrower range of applications than TP, Tata's Protact (laminated steel that used ECCS as substrate) is suitable for most applications for which TP is used.

(b) While sales price and production costs for TP are generally higher than for ECCS, a like-for-like comparison is not meaningful due to different TP grades that can and are used for a given packaging application (and idem ECCS). In addition, the total cost for producing a packaging solution should be taken into account.

(c) There is supply-side substitutability. TP lines can be converted into an ECCS line and vice versa. Furthermore, there are production lines that can produce both TP and ECCS.

(265) The Parties consider it not appropriate to sub-divide the market into beverage and non-beverage applications for the following reasons:

(a) On the demand side, this distinction historically reflected the use of two piece cans for beverage applications and three piece cans for non-beverage applications. In recent years however, there has been an increase in demand for two piece cans for non-beverage applications.

(b) On the supply side, producers do not have specific production lines for beverage or non-beverage packaging.

(266) The Parties do not consider laminated steel for packaging to be a distinct relevant product market, because of:

(a) Demand-side substitutability with TP/ECCS (in particular when lacquered). In that regard Tata submits that it has a large number of laminated steel development projects to trial this product as an alternative to existing usage of TP or ECCS.

(b) Supply-side substitutability: the production of laminated steel for packaging requires one further processing step to add a coating to the TP or ECCS which would require an investment of around EUR 30 million. In addition, existing organic coated steel production equipment could be used for such coating.

(267) The Notifying Parties furthermore submit that there is a strong competitive constraint from alternative materials, including aluminium, plastic, Tetra Pak and glass. To that end, they argue that any market for beverage applications in particular should include aluminium.

7.6.3. The Commission's assessment

7.6.3.1. TP and ECCS

(268) From a **demand–side** perspective, the Parties claim that there is a high level of substitutability between TP and ECCS, whereby TP in particular can be used for all applications for which customers use ECCS.

(269) The Commission's market investigation however indicates that there is very limited demand-side substitutability between TP and ECCS. The vast majority of customers indicate that they would not switch from TP to ECCS and vice versa in reaction to a

small but significant non-transitory increase in prices.[191] They explain that ECCS cannot be welded and therefore is technically not an alternative to TP for their use.[192]

(270) In the Comments on the Article 6(1)(c) decision, the Parties submit that 'new ECCS' products are also substitutable for more applications than traditional ECCS products, and quote that Tata has for instance developed a laminated ECCS-like product that can be welded. The Commission, as discussed below in recitals (290)–(300), however considers laminated steel for packaging to constitute a separate product market. Furthermore, it appears that sales volumes of such weldable laminated steel are limited to [0-5]% of Tata's total laminated steel sales in the EEA, while ThyssenKrupp does not sell this product.[193]

(271) Similarly, ECCS would not easily be replaceable by TP for other applications due to for instance the superior coating adhesion of ECCS.[194] As also indicated in Table 7, from a mere technical viewpoint, the amount of applications or properties for which the usage of ECCS would be preferable to TP are more limited than is the case vice-versa. Furthermore, from a commercial viewpoint, ECCS is cheaper than TP. Contrary to the Notifying Parties' claims[195], customers confirm that this also holds when including the total cost of ownership (that is, for instance taking into account cost savings through production process efficiencies, weight savings and so on).[196]

(272) A major customer for instance explains: '*TP and ECCS are NOT interchangeable for technical reasons. ECCS, which is cheaper than TP, is only used in the production of can ends because of its particular adhesion properties. TP, instead, is used for the can's body and for any other application because ECCS cannot be welded. If [Company] could, it would use ECCS more as it is cheaper, if this is not happening it means there is only a limited substitution between the two products'*[197] Another large customer concurs with this understanding: '*TP, ECCS and laminated steel, for technical reasons, are not interchangeable in all applications. ECCS, which is cheaper than TP, and laminated steel are only used in the production of can's top/bottom ends. TP, instead, is used for the can's body for its welding properties.'*[198]

(273) As mentioned above, the Parties have the production capabilities to produce TCCT, which is intended to be REACH-compliant. As indicated in Table 7, TCCT[199] is a like-product to ECCS. As neither of the Parties (or other competitors) are today producing or supplying commercial volumes due to the ongoing development of this product, there is no need to conclude on whether or not TCCT constitutes a separate product market.

(274) Table 7 provides a comparison between the technical characteristics and suitability to certain applications of TP, ECCS and TCCT, as provided by the Notifying Parties. It shows that there are a number of applications where TP is suitable but where ECCS or TCCT are not and vice versa. This further supports the findings of the market investigation that demand-side substitutability between TP and ECCS is limited further indicating that TP and ECCS are separate product markets.

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191 Replies to questions 15 and 16 of Q4 – Questionnaire to Customers (Packaging), DocID2169.
192 Replies to question 15.1 of Q4 – Questionnaire to Customers (Packaging), DocID2169.
193 […].
194 Replies to question 16.1 of Q4 – Questionnaire to Customers (Packaging), DocID2169.
195 Comments on the Article 6(1)(c) decision.
196 Replies to question 3 of Q13 – Questionnaire to Customers Phase II (Packaging), DocID2954.
197 Minutes of a call with a customer, 4.6.2018, DocID693.
198 Minutes of a call with a customer, 5.6.2018, DocID2009.
199 Tata developed product technology, licensed also to ThyssenKrupp.

Table 7 - Comparison of TP, ECCS and TCCT[200]

[…]

(275) From a **supply–side** perspective, the Notifying Parties submit that there is a considerable level of supply-side substitutability, for instance because producers would be able to produce TP and ECCS on the same production lines: TP and ECCS can be produced either on dedicated lines or on 'swing lines' capable of swinging their capacity between the two types of products and that, hence, there is considerable supply-side substitutability.

(276) Converting a TP production line to an ECCS production line or vice versa in a timely fashion does not seem feasible without incurring significant investments. The Notifying Parties have submitted that converting an existing TP line into ECCS line would require approximately EUR […] capital and require over one year to complete, and that converting an existing ECCS line into a TP line would require approximately EUR […] capital and require over one-and-half years to complete from order. Furthermore, the Notifying Parties submit that converting an existing dedicated line into a swing line that could produce both TP and ECCS is usually not technically possible.[201]

(277) The Commission therefore considers that the time and capital cost required for a conversion between a TP line and ECCS line are material. It appears unlikely that a producer would engage in such conversion due to short-term relative price increases in either of the products.

(278) According to the Notifying Parties, ArcelorMittal, a major competitor, operates several swing lines in the EEA, which would be able to produce both TP and ECCS. The Notifying Parties submitted estimations as to the capacity of these swing lines. The market investigation however pointed out that these estimations may over-estimate the available swing line capacity. In any event, based on the data it has collected, the Commission found that any of such swing lines are very limited in number and capacity to the extent that these do not play a material role in the market.[202]

(279) […].[203]

(280) Moreover, some of the market participants' market shares are notably different in these products. For instance, as shown in Table 8, while ThyssenKrupp had similar market shares of [20-30]% and [20-30]% in TP and ECCS respectively, Tata had a market share of [20-30]% in TP and [5-10]% in ECCS in the EEA in 2017. At the same time, the Notifying Parties' main competitor, ArcelorMittal, had a market share of [30-40]% in TP and [40-50]% in ECCS. In addition, there are two other EEA producers of TP other than the Parties (ArcelorMittal & USSK), while only one for ECCS (ArcelorMittal).

7.6.3.2. Segmentation by end–application: beverage and non–beverage

(281) As regards the distinction between beverage and non-beverage packaging, the Notifying Parties submit that such delineation historically represented the use of two-piece cans for beverage and three-piece cans for non-beverage. In recent years, two-

200 […].
201 Form CO, paragraphs 6.311 to 6.313.
202 Annex 4 to ArcelorMittal's reply to Q11 – Questionnaire to Competitors Phase II, DocID2736.
203 Form CO, paragraph 6.309.

piece cans would have increasingly been used for non-beverage applications as well. From a supply-side perspective, the Notifying Parties submit that steel for these applications can be produced on the same production lines and that switching is quick and requires no additional cost. This segmentation is only relevant for TP, as there are no commercial sales of ECCS and laminated steel for beverage packaging.

(282) From a **demand-side** perspective, the replies to the Commission's market investigation seem to indicate at least some differentiation between metallic coated steel for beverage and non–beverage packaging.

(283) First, the market investigation points out that the distinction between beverage and non-beverage packaging does not broadly reflect the usage of steel for two-piece cans and three-piece cans. The Commission understands that there are broadly two types of two-piece cans, being drawn-and-wall-ironed (DWI) and direct-drawn (DRD) cans, with beverage cans being DWI while DRD cans are used for other applications such as fish cans. Customers indicate that even two-piece DWI cans differ for beverage and non-beverage applications.[204] Even though two-piece DWI cans are used for both beverage and non-beverage, it seems that beverage applications require specific cans. They explain that DWI food-cans for instance can be subject to pasteurisation process as part of the food-processing, for which the steel needs to be of higher strength than what is used for beverage applications.[205] The Commission therefore concludes that, contrary to the Notifying Parties' claim, any trend towards more DWI usage for also non-food applications does not exclude a relevant delineation between beverage and non-beverage packaging steel as regards demand-side substitutability since customers still require specific cans for beverage applications.

(284) Second, a great majority of customers indicate that flat carbon steel used for beverage and non–beverage applications is not interchangeable.[206] They explain that there are technical differences, such as the requirement for non–beverage applications to have the surface passivated while this is not done for beverage applications.[207]

(285) From the **supply-side**, it appears […], not all suppliers are active in both types of products. In particular, USSK is not active in beverage applications, leaving ArcelorMittal as the only EEA supplier besides the Notifying Parties.[208]

(286) The Commission therefore cannot exclude that a further segmentation in beverage and non-beverage applications could be warranted. Nonetheless, it is not necessary for the Commission to conclude on this matter as the outcome of the competitive assessment would be the same regardless of whether distinct product markets are considered for these segments.

(287) In particular, the Commission observes that competition concerns arise under both potential segments, beverage and non-beverage. Furthermore, the Commission observes that, as also noted in Section 9.5.8, non-beverage constitutes by far the majority of the overall TP production and supply in the EEA. Based on figures provided by the Notifying Parties, the total volume of beverage TP supplied in the EEA was 251 kt in 2017 while the total volume of TP supplied was 3 179 kt.

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204 Replies to question 10 of Q4 – Questionnaire to Customers (Packaging), DocID2169.
205 Replies to question 10 of Q4 – Questionnaire to Customers (Packaging), DocID2169.
206 Replies to question 17 of Q4 – Questionnaire to Customers (Packaging), DocID2169.
207 Replies to question 18 of Q4 – Questionnaire to Customers (Packaging), DocID2169.
208 Reply to question 15 of Q1 – Questionnaire to Competitors, DocID2166.

Beverage TP thus constituted 8% of the total TP volume, making non-beverage account for 92% (see recital (1376)). Therefore, given the small volume of beverage TP compared to TP overall, the Commission considers that the outcome of the competitive impact as regards TP is not impacted whether or not beverage and non-beverage are considered together or separately.

(288) The Parties submit that any potential segment of metallic coated steel for beverage applications should also include aluminium. They refer to the *Ball/Rexam* transaction,[209] in which the Commission found aluminium and steel beverage cans to belong to the same product market in certain areas. However, the Commission notes that when the relevant product market for an end-product includes products made of different substrates (that is steel or aluminium), it does not necessarily result in that those different substrates belong to the same relevant product market.

(289) In the present case, the Commission observes that the results of the market investigation suggest that demand-side substitutability between aluminium and steel is limited. In particular, the production lines of can-makers are tooled to work with a particular material. Production lines that make beverage cans from TP cannot use aluminium, or vice versa.[210] Nonetheless, the Commission will take into account in its assessment the competitive constraint exerted by alternative materials, including aluminium. This is addressed further below in Section 9.5.8.

7.6.3.3. Laminated steel for packaging constitutes a distinct product market

(290) Laminated steel products are produced by applying a laminate coating on metallic coated steel for packaging. The lamination is applied on a specific production line that follows the production of the steel substrate. While the substrate for this product can be TP or ECCS, the Notifying Parties submit that there is full substitutability between TP-based and ECCS-based laminated steel.[211] Nonetheless, one exception is that TP-based laminated steel would be more suitable for welding using standard industry welding machines in order to produce three-piece cans than ECCS-based laminated steel.[212] However, as noted above in recital (270), there are no significant sales volumes of weldable laminated steel being sold in the EEA.

(291) Tata has recently invested in a new facility for laminated steel for packaging in its Ijmuiden plant. The total capex for this investment amounted to […].[213]

(292) The Notifying Parties submit that laminated steel for packaging does not constitute a distinct market. According to the Notifying Parties, laminated steel is essentially similar as TP/ECCS in particular when lacquered and both of the products can be used for the same applications. The Notifying Parties have further submitted that the lacquering is also done by the steel user itself (or by a third-party).[214]

(293) The Commission nonetheless notes that, from the **supply-side**, laminated steel requires specific manufacturing equipment in addition to that used for the production of TP and ECCS. The equipment is also different from any lacquering equipment. There is thus no supply-side substitutability. Laminated steel is produced on a lamination line, which applies layers of plastic film to either TP or ECCS.[215]

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209 M.7567 – *Ball/Rexam*, recital 166.
210 Minutes of a meeting with a customer on 17.10.2018, DocID2298.
211 Parties' reply to RFI 20
212 Parties' reply to RFI 23
213 Parties' reply to RFI 23
214 Form CO (Annex 99).
215 Annex 68 to the Form CO.

ThyssenKrupp has one such line in its Rasselstein plant ([…]) since 1991.[216] Tata has such a line in Trostre ([…]) since 1992 and in Duffel ([…]) since 1997,[217] but is in addition currently investing in a […] lamination line in its IJmuiden plant.[218] The fact that the Parties have dedicated lamination lines (and Tata even investing in a new one), and that other packaging steel competitors have organic coating lines but are not active in the production and supply of laminated steel questions the Parties' argument that existing organic coated steel production equipment would enable supply side substitutability.

(294) From the **demand-side**, the market investigation points out that a majority customers find would not switch from laminated to lacquered steel or vice versa given a small but significant non-transitory increase in prices.[219] Several customers explain that laminated steel is not weldable, while some indicate that laminated steel provides other benefits such as better product protection properties for some applications than lacquered steel.[220] A customer explains in this respect: *'laminated steel is used for special final uses so its consumption would not change so much in case of an increase of 5-10% [in price].'*[221]

(295) […]. The market investigation indeed recognises that, when considering Tata's product development in particular, there is to a certain extent such substitutability.[222][223]

(296) Nonetheless, the Commission observes that laminated steel is more expensive than non-laminated TP or ECCS: This is confirmed by the Notifying Parties' submission as illustrated in Figure 27 and Figure 28.[224]

Figure 27 – Tata's sales prices of packaging steel material in the EEA, 2013-2017[225]

[…]

Figure 28 – ThyssenKrupp's sales prices of packaging steel material in the EEA, 2013-2017[226]

[…]

(297) Therefore, the Commission concludes that the prices of laminated steel for packaging and non-laminated steel for packaging are significantly different, supporting the finding of distinct product markets.

(298) The Notifying Parties submit that while the cost of laminated steel for packaging may be higher than for non-laminated packaging steel, this does not take into account the total cost for the end-user, for whom processing costs would be lower when using laminated steel due to no longer needing to lacquer the steel in the can production

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216 Parties' response to RFI 1 tranche 3, annex 3.
217 Parties' response to RFI 1 tranche 3, annex 1.
218 Parties' reply to RFI 38.
219 Reply to questions 20 and 21 of Q4 – Questionnaire to Customers (Packaging), DocID2169.
220 Reply to questions 20 and 21 of Q4 – Questionnaire to Customers (Packaging), DocID2169.
221 Reply to question 21 of Q4 – Questionnaire to Customers (Packaging), DocID2169.
222 Reply to questions 5, 6 and 7 of Q4 – Questionnaire to Customers (Packaging), DocID2169.
223 One of the largest applications of TP is three-piece can bodies which require welding. As indicated in recital 271, there are no significant sales of weldable laminated steel.
224 The underlying data has not been provided to the Commission. The difference looks sizeable based on the charts submitted. For Tata, the chart shows roughly a difference of [20-30]% and [10-20]% for ThyssenKrupp (comparing laminated with TP+lacquered).
225 Parties' reply to RFI 32, Figure 10.1
226 Parties' reply to RFI 32, Figure 10.2

process. The Notifying Parties submit an estimation of can production costs using laminated and non-laminated packaging steel, as shown in Figure 29.

Figure 29 – Price per can using Protact[227]

[…]

(299) The Commission observes that according to the Parties' submission the total production cost would be lower when using laminated packaging steel. Customers did not raise this in the market investigation, except a few who would even indicate the contrary: *'The most recent information the Company has on this dates from 9 months ago, when laminated steel solution was 25% more expensive than lacquered steel solution for the same application'.*[228] *'[…] As laminated is more expensive to the same application than lacquered we use it according customer request due to end use application.'*[229]

(300) Further, the Commission notes that the claim that laminated packaging steel would be a substitute to other packaging steel and that its total cost of ownership is lower is not consistent with the fact that only very small volumes are being sold compared to other packaging steel. The Commission notes that both Parties' laminated steel production lines have been online for 20 years or more.[230] One would in those circumstances namely expect laminated steel for packaging to be by this time a product that would be higher in demand than other packaging steel.

7.6.4. Conclusion

(301) Considering all evidence available to it and in light of the considerations explained in Section 7.6.3, the Commission concludes that the production and supply of TP and ECCS constitute distinct product markets. It can be left open whether further sub-segmentation of TP for beverage and non-beverage applications is warranted as the outcome of the competitive assessment remains the same.

(302) The Commission further concludes that the production and supply of laminated steel for packaging also constitutes a distinct product market.

8. GEOGRAPHIC MARKET DEFINITION

8.1. The Commission's decisional practice

(303) In its most recent decision, the Commission concluded, following an in-depth investigation, that markets for the production and supply of flat carbon steel products, and in particular the markets for HR, CR, HDG and EG are EEA-wide with, however, strong indications of geographic differentiation between Northern and Southern Europe.[231]

(304) The Commission's conclusions were based on a number of reasons, and in particular:

(a) differentiation between Southern and Northern Europe suggested by market participants and demand trends;

(b) the structure of demand is differentiated within the EEA;

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227 *Parties' reply to RFI 32, figure 9.1*

228 Minutes of a call with a filler (user of steel packaging), 11.1.2019, DocID3512.

229 Replies to question 20.1 of Q4 – Questionnaire to Customers (Packaging), DocID2169.

230 Parties' response to RFI 1, tranche 3, annexes 1 and 3.

231 M.8444 – *ArcelorMittal/Ilva*, recital 385.

(c) the structure of supply is differentiated within the EEA;

(d) producers in the EEA tend to supply regionally;

(e) customers tend to source regionally;

(f) prices are differentiated geographically.

(305) In its earlier precedents, the Commission also acknowledged differentiation in EEA flat carbon steel markets and concluded in particular that there was at least a serious possibility that three Nordic countries (Finland, Sweden and Norway) constituted a market separate from the rest of the EEA, in particular for commodity HR, CR and OC.[232]

(306) In previous decisions, the Commission considered at first the market for metallic-coated steel for packaging not to be wider than the EEA. In a later decision, the Commission considered the product market to be at least EEA-wide, but ultimately left open the exact geographic scope.[233]

8.2. The Notifying Parties' views

(307) The Notifying Parties submit that the relevant geographic markets for flat carbon steel products are global and, in any event, at least EEA-wide.[234] In their view, the global nature of the steel market generally would be evidenced by the extensive global trade flows, by global pricing trends being a key factor taken into account by suppliers when setting pricing at regional level as well as by the fact that many steel products are generally commoditised and have a standard specification so that customer requirements for these products can be met by producers across the world.[235]

(308) The adoption of anti-dumping duties and other trade safeguard measures would further confirm the global nature of the market. On the other hand, the Notifying Parties consider that anti-dumping measures would not limit the competitive pressure of imports, because only a part of the imports, namely those that are found not to have been operating on a level playing field with other imports and EU supply, are caught by such measures.[236]

(309) Further, any finding about specific steel product markets (for instance HR and HDG) would not necessarily apply to other steel product markets (such as automotive HDG, metallic-coated and laminated steel products for packaging).[237]

(310) As regards automotive HDG, the Notifying Parties also submit that the Commission has not quantified the extent of customers' preferences for local sourcing and that the sales patterns are correlated with the location of the customers' plant rather than determined by sourcing preferences. Furthermore, the Notifying Parties submit that the automotive OEMs' sourcing is organised globally, that OEMs could increase their share of imports and that in this context the recently imposed safeguard measures would not constitute a barrier to imports. Finally, also pricing would support the global market definition and the fact that exporters are opportunistic would also indicate a global market.[238]

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232 M.7155 – *SSAB/Rautaruukki*, paragraphs 101 and 102.

233 M.4085 – *Arcelor/Oyak/Erdemir*, paragraph 38.

234 Form CO, paragraph 6.368.

235 Form CO, paragraph 1.1.5.

236 Form CO, paragraph 6.16.

237 Form CO, paragraph 6.16.

238 Reply to the Statement of Objections paragraphs 3.40-3.44.

(311) As regards metallic-coated and laminated steel products for packaging, the Notifying Parties argue that the relevant geographic market is global. In this regard, they submit that transport costs and lead times do not form a barrier for non-EEA suppliers to supply into the EEA, considering that these are higher-value products. They indicate that this is demonstrated by the presence of importers and the fact that the Parties themselves export significant quantities of their EEA production. In addition, the Notifying Parties argue that the recently imposed safeguard measures will not limit the competitive constraint exerted by non-EEA suppliers going-forward.[239]

8.3. The Commission's Assessment

8.3.1. Legal framework

(312) The Commission recalls that the relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of relevant products, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because, in particular, the conditions of competition are appreciably different in those areas.[240]

(313) As set out in the Commission Notice on the definition of relevant market for the purposes of Community competition law ('Market Definition Notice'),[241] the starting point to determine the geographic scope of the relevant product market is the analysis of market shares as well as of pricing and price differences.[242]

(314) The reasons behind any particular configuration of prices and market shares need to be explored further through the analysis of demand characteristics[243] and supply factors in order to assess whether companies located in differing areas do not face impediments in developing their sales on competitive terms throughout the whole geographic market.[244]

(315) The actual pattern and evolution of trade flows offer useful supplementary indications as to the economic importance of each demand or supply factor. The analysis of trade flows will generally address the question of transport costs and the extent to which these may hinder trade between different areas, having regard to plant location, costs of production and relative price levels.[245] Furthermore, it will address the presence or absence of regulatory barriers arising amongst others from price regulations, quotas and tariffs limiting trade or production as possible obstacles and barriers isolating companies located in a given area from the competitive pressure of companies located outside that area.[246]

(316) Notwithstanding the global trade flows and trends of flat carbon steels highlighted by the Notifying Parties, the market investigation has not revealed evidence that would allow the Commission to depart from its most recent precedents. In particular, on the basis of the evidence on the file, the Commission considers that the markets for automotive HDG and steel products for packaging are at least not wider than the EEA, contrary to the submission of the Notifying Parties.

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239 Comments on the Article 6(1)(c) decision, paragraph 2.11 et seq.
240 Market Definition Notice, paragraph 8.
241 OJ C 372, 9.12.1997, p. 5.
242 Market Definition Notice, paragraph 28.
243 Market Definition Notice, paragraph 29.
244 Market Definition Notice, paragraph 29.
245 Market Definition Notice, paragraphs 30.
246 Market Definition Notice, paragraphs 31.

(317) In Section 8.3.2., the Commission will first set out the main arguments which apply to flat carbon steel products generally, and in particular: first, conditions of competition appear to be different across global regions as indicated by the competitive landscape and prevailing prices and to be non-homogeneous even within the EEA (Section 8.3.2.1.); second, customers source predominantly at a regional level (Section 8.3.2.2.); third, supply occurs predominantly at a regional level (Section 8.3.2.3.); fourth, pricing does not take place at the global level (Section 8.3.2.4.); fifth, import flows play a role in the EEA but do not offset the impact of competitive dynamics at the regional or sub-regional level (Section 8.3.2.5.); sixth, increased trade barriers in the EEA and across the world strengthen regional dynamics (Section 8.3.2.6).

(318) The Commission will subsequently present arguments and evidence supporting the conclusion that the general findings on the production and supply of carbon steel products also apply to the specific areas of concerns, namely the production and supply of automotive HDG (see Section 8.3.3) and of metallic-coated steel and laminated steel for packaging (see Section 8.3.4).

8.3.2. Production and supply of finished flat carbon steel products

8.3.2.1. Conditions of competition appear to be different across global regions and even within the EEA as indicated by the competitive landscape and prevailing prices

(319) First, the Commission observes that the presence and market shares of flat carbon steel suppliers at EEA and global level are not homogeneous.

(320) In particular, while imports play a role with regard to certain (but not all) flat carbon steel products, as also acknowledged in Commission precedents,[247] supply is characterised by the predominant presence of players established in the same region, and with integrated steelmaking facilities, from upstream liquid steelmaking facilities down to finishing lines for downstream products.

(321) When considering the EEA more specifically, the market structure, as described below under Section 9.3, clearly reflects the importance of vertical integration. Large basic steelmaking capabilities do not only translate into a strong presence upstream, but also further down the supply chain.

(322) As also highlighted in the section on the industry description (see Section 5.3), this is because the capability of steelmakers to supply in a specific geography is strongly linked to their presence in that geography (region or sub-region) through integrated production facilities, which require significant investment.

(323) Second, it appears also that there are appreciable price differences across different global regions (in terms of domestic prices).[248] As an example, Figure 30 illustrates the evolution of the HR price spread over a number of global regions, which reveals different trends. Thus, the spread development in Europe and China has been markedly different from the developments in India during 2017 and 2018.

(324) The Turkey price series also shows significant variations with HR price spreads being above the European levels in the earlier period to then decline afterwards.

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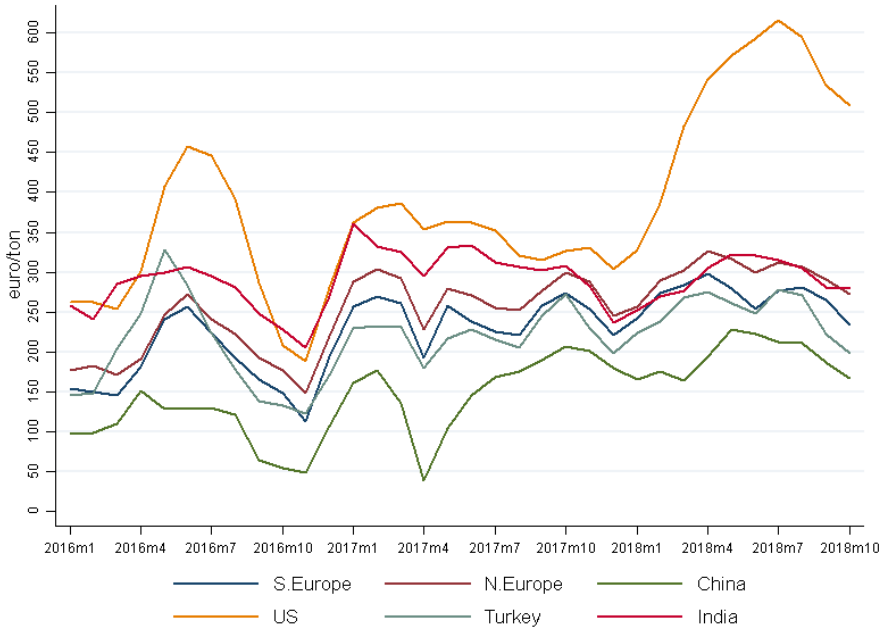
247 See, for instance, M.8444 – *ArcelorMittal/Ilva*.

248 The Commission considers the comparison of local domestic prices to be meaningful to assess differentiated or different geographic markets. Indeed, export prices might simply take a price-taker perspective and are not indicative of relative price movement across separate markets, which is the relevant measure to understand the strategic opportunity of exporting or not from a supply perspective.

Further, the dynamics in the US spreads show how this market is disconnected from all other geographic regions.

Figure 30 – HR domestic price spread over RMB across global region



Source: Commission's computations on the basis of Platts SBB price series (RMB – raw material basket)

(325) During the market investigation, a wide majority of customers also indicated for all steel products that the prices for flat carbon steel are different inside and outside the EEA.[249]

(326) Third, during the market investigation and in line with the finding in its most recent decision,[250] the Commission also found evidence suggesting that conditions of competition would not only be different across global regions, but they are also likely non-homogeneous even within the EEA.

(327) EEA steel suppliers' products are mainly distributed in their 'local' markets, corresponding to the locations of their facilities, with only one player, namely ArcelorMittal, having sales distributed across the EEA due to its more extended network of manufacturing facilities.[251]

(328) This finding is also acknowledged by internal evidence, as represented by the Tata internal document captioned in Figure 31, […].

Figure 31 – […][252]

[…]

(329) Fourth, this view is supported by several market participants responding to the market investigation, according to which conditions of competition are not similar even throughout the EEA.[253] A steel supplier explains that the '*EEA is commonly divided into two pricing areas, Northern and Southern EU. Market prices are driven*

249 Replies to question 25 of Q2 – Questionnaire to Customers, DocID2167.
250 M.8444 – *ArcelorMittal/Ilva*, recital 385.
251 M.8444 – *ArcelorMittal/Ilva*.
252 […].
253 Reply to question 33 of Q1 – Questionnaire to Competitors, DocID2166.

by the demand of main end-using sectors of each area (Auto, General industry, Tubes, Construction...) and Imports (Belgium and Italy being the two main entrances for Imports into EEA. Also, since transport costs play an important role, Belgian steel producers, for instance, are unable to compete with Eastern EU producers on equal footing in their region'.[254]

(330) As also illustrated above in Figure 31 and further analysed in more detail in Section 8.3.2.4., there are price variances both within the EEA and between the EEA and other global regions.

(331) Tata's internal document captioned in Figure 32 refers to […] and notes that […]. ThyssenKrupp's internal document captioned in Figure 33 also mentions that […],[255] […].

Figure 32 – […][256]

[…]

Figure 33 – […][257]

[…]

(332) In line with the Market Definition Notice, the differences in presence and market shares of suppliers, differences in prices and different conditions of competition and prices suggest that the geographic scope of the steel production market is not wider than the EEA.[258] As indicated in Sections 8.3.3. and 8.3.4., this finding applies also to the specific areas of concerns.

8.3.2.2. Customers source predominantly at a regional level

(333) Demand characteristics (like the importance of national or local preferences, current patterns of purchases of customers and product differentiation/brands) are elements that need to be taken into account in order to establish whether companies in different areas do indeed constitute a real alternative source of supply for customers.[259]

(334) The Notifying Parties submit that customers frequently source on a global basis, and that, in any event, evidence that many customers source regionally does not demonstrate that geographic markets should be considered narrowly.[260] In their view, steel products are largely commoditised, with no real notion of '*brand preference*'.[261]

(335) The Notifying Parties also argue that transport costs would not be a barrier to serving a wide geographic area. The marginal advantage of geographically closer suppliers would quickly disappear if such a supplier were to seek to increase their price above the competitive level. Further, there would be important routes to market for steel that would enable a customer to be served from a proximate supplier even if the steel itself were produced further away, for instance via re-rollers, SCS and stockholders.[262]

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254 Reply to question 33.1 of Q1 – Questionnaire to Competitors, DocID2166.
255 Courtesy translation. The original text reads: […].
256 […].
257 […].
258 Market Definition Notice, paragraph 28.
259 Market Definition Notice, paragraph 46.
260 Comments on the Article 6(1)(c) decision, paragraph 1.6.(d).
261 Form CO, paragraph 6.6.
262 Comments on the Article 6(1)(c) decision, paragraph 2.23.

(336) Contrary to the Notifying Parties' arguments, the market investigation has provided ample evidence that sourcing takes place predominantly at the regional or even sub-regional level and not only because of transport costs.

(337) First, feedback from customers during the market investigation appears consistent with the finding that flat carbon steel is mostly supplied within the same or neighbouring countries of the production sites. The vast majority of customers of all types of relevant products indicated to source mostly from suppliers located within the EEA, and for certain products including carbon steel for automotive and for packaging even in a narrower area closer to their own locations.[263] A vast majority of customers also indicated to have a preference to source domestically at the EEA-level or even at a level smaller than the EEA.[264]

(338) Second, according to customers, transport costs alone do not explain these sourcing patterns. Transport costs are certainly crucial, especially for customers purchasing small quantities. However, other factors that customers regard as decisive[265] are lead times, the fact that only EEA steelmakers would be able to meet their needs in terms of quantities or specifications, exchange rate volatility and supply security.[266]

(339) A customer explains that '*[i]t is important to have the plants relatively close to maintain reasonable delivery times and therefore make sure we have material to run our operation. All our regular suppliers have plants in Middle-Europe which is at maximum distance to Northern Europe to keep the delivery times short enough*'.[267] For another customer, '*[the m]ain reason to source is the "quality/price" argument. Then the fact to be close to the producer is very important for communication and technical issues. Then because a lot of our customers ask us a "Long Term declaration for products having preferential status", we prefer to used raw material from EEA. And then, last but not least, we prefer to purchase EEA raw material because it's a European production!*'[268] As summarised by another customer, '*[i]n countries outside of EEA (where tariffs have not been applied) there are generally long lead times, large transport costs, different price cycles and slow reaction times which all represent significant obstacles for sourcing steel from outside the EEA*'.[269]

(340) Some customers also mentioned supply security considerations in light of the recent rise of trade barriers including the quotas imposed by safeguard measures (see Section 8.3.2.6.).[270] As an illustration, a customer complains that *'[s]ince at time of order placement it is not clear, whether delivery will be inside the quota or not (due to long lead times), imports from countries outside the EEA are a risk'*.[271] Therefore, '*[i]ncreased reliance on EEA suppliers is a logical result of trade barriers*', as noticed by a customer.[272]

(341) Third, the evidence collected from customers also shows that customers' purchasing decisions are affected by location considerations, but also that a different set of suppliers is often considered for deliveries in sub-regions of the EEA.

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263 Replies to question 16 of Q2 – Questionnaire to Customers, DocID2167.
264 Replies to question 17 of Q2 – Questionnaire to Customers, DocID2167.
265 Replies to question 18 of Q2 – Questionnaire to Customers, DocID2167.
266 Replies to question 17.1 of Q2 – Questionnaire to Customers, DocID2167.
267 Reply to question 17.1. of Q2 – Questionnaire to Customers, DocID2167.
268 Reply to question 17.1. of Q2 – Questionnaire to Customers, DocID2167.
269 Reply to question 17.1. of Q2 – Questionnaire to Customers, DocID2167.
270 Replies to question 24 of Q2 – Questionnaire to Customers, DocID2167.
271 Reply to question 24.1. of Q2 – Questionnaire to Customers, DocID2167.
272 Reply to question 24.1. of Q2 – Questionnaire to Customers, DocID2167.

(342) One customer indicates that it has a good longstanding partnership with ThyssenKrupp, which moreover offers the best prices possibly because it has plants close to its facilities and likely because transport costs are lower. The same customer says that in France the main supplier is ArcelorMittal because its plant is the nearest.[273]

(343) Another customer explains that sourcing decisions are made on the basis of total landed cost including transport. Therefore, in the Iberian region (atlantic and central Spain) the main suppliers are ArcelorMittal and ThyssenKrupp, with some presence of Tata and some importers. In Western Europe (i.e. France and Germany) the suppliers are ArcelorMittal, ThyssenKrupp, NLMK, Voestalpine and Salzgitter. In Eastern Europe (i.e. Poland and Slovakia) the suppliers are Voestalpine and ArcelorMittal since very few steel suppliers in that area can provide automotive grades. Finally, in the United Kingdom the only supplier is Tata.[274]

(344) A customer with plants in France, Spain (central and south) and Italy indicates that it sources from ThyssenKrupp, ArcelorMittal and some Italian and Spanish distributors, in addition to sourcing from Germany. This customer indicates that it does not source any volume from Tata because of the location of its plants (United Kingdom and the Netherlands) and because of its limited geographical footprint.[275]

(345) On the basis of this evidence, the Commission considers that the conditions of demand for flat carbon steel products are different between the EEA and outside the EEA. The evidence even suggests that conditions of demand are differentiated within the EEA. As indicated in Sections 8.3.3. and 8.3.4., this finding applies also to automotive HDG as well as metallic-coated and laminated steels for packaging.

8.3.2.3. Supply occurs predominantly at a regional level

(346) As set out in the Market Definition Notice, the Commission further needs to assess whether companies located in different areas face impediments in developing their sales on competitive terms throughout the whole potential geographic market.[276]

(347) The Notifying Parties submit that suppliers typically locate their plants in a small number of locations from which the products are shipped across the EEA and globally. They further claim that their significant exports outside the EEA together with the inflow of imports from outside the EEA are consistent with global rather than regional competition.[277]

(348) Based on the evidence collected during the market investigation, the Commission considers, however, that producers generally supply flat carbon steels regionally and that the geographic location of steel producers' plants appears to significantly affect their influence on the competitive conditions **across the EEA**.

(349) First, the feedback from competing steel suppliers as well as the review of the Parties' internal documents provide consistent indications that transport costs are neither the only nor the main factor that hinders trade between different areas. A wide majority of steel suppliers indicated that the effective delivery range that can be reached by a steel plant in the EEA is not mainly determined by transport costs.[278]

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273 Minutes of a call with a customer, 6.7.2018, DocID724.
274 Minutes of a call with a customer, 9.7.2018, DocID1874.
275 Minutes of a call with a customer, 6.7.2018, DocID1810.
276 Market Definition Notice, paragraph 30.
277 Form CO, paragraph 6.368 (ii).
278 Replies to question 31 of Q1 – Questionnaire to Competitors, DocID2166.

(350) Determinant factors other than transport/logistics costs are lead times, exchange rate volatility, different price levels, regulatory environment and also trade barriers. According to a supplier, '*[b]esides transport costs also lead times are important as well as customer relationship grown over the years. In general steel mills in Europe can and do supply throughout the EEA. Though, proximity remains an important factor for customers*'.[279]

(351) Similarly, as results from its internal documents captioned in Figure 34 and Figure 35, ThyssenKrupp also […]. As an example, ThyssenKrupp's internal document captioned in Figure 34 indicates that, as concerns HR, […][280][…]. The document further states that […].[281] ThyssenKrupp's internal document captioned in Figure 35 on precision steel says […]. It further states that […].

Figure 34 – […][282]

[…]

Figure 35 – ThyssenKrupp internal document on its global development[283]

[…]

(352) Second, the Commission further observes that the review of the Parties' internal documents also purport that they pursue regional, or even country-based, strategies.

(353) ThyssenKrupp's internal document captioned in Figure 36 shows […].

Figure 36 – ThyssenKrupp internal document on market positioning[284]

[…]

(354) Third, the Commission also found evidence that both Parties benchmark essentially against […].

(355) […].

Figure 37 – ThyssenKrupp internal document assessing the competitive landscape[285]

[…]

Figure 38 – […][286]

[…]

(356) Similarly, Tata's internal documents captioned in Figure 39 and Figure 40 […].

Figure 39 – […][287]

[…]

Figure 40 – Tata internal document on business environment and competitive landscape[288]

[…]

279 Reply to question 31.1. of Q1 – Questionnaire to Competitors, DocID2166.
280 Courtesy translation. The original text reads: […].
281 Courtesy translation. The original text reads: […].
282 […].
283 […].
284 […].
285 […].
286 […].
287 […].
288 […].

(357) While this evidence provides indications that the market is certainly not wider than the EEA, the Commission in addition considers that there are strong indications of **differentiation also within the EEA**.

(358) First, as indicated in Tata's internal document captioned in Figure 31, most steel producers in the EEA […].

(359) Second, regional supply patterns are also applicable to the Parties. For instance, HR and HDG products of the Parties are mostly sold in the countries of the production plants or in their immediate proximity. For HR, Tata has its production in the United Kingdom and the Netherlands, […]. In comparison, ThyssenKrupp, that has all of its HR production in Germany, […]. For HDG, Tata has production in the United Kingdom, the Netherlands and Belgium […]. For TP, Tata has production in the United Kingdom and the Netherlands […]. All of ThyssenKrupp's TP production is located in Germany, […].

Figure 41 – HR distribution of sales by country (Parties)[289]

[…]

(360) The Commission's findings are not only in line with its previous assessments in cases concerning the flat carbon steel industry, where regional sourcing patterns were largely documented (as layed out in Section 8.1), but are also supported by ample evidence in the form of internal documents produced by both companies in the ordinary course of business and assessing regional supply patterns. This is shown for instance by ThyssenKrupp's internal document captioned in Figure 42. […]. A similar conclusion can be seen from Tata's internal document captioned in Figure 43, […].

(361) On the basis of this evidence the Commission observes that both companies have significant customers and deliveries particularly in the North-western part of the EEA.

Figure 42 – ThyssenKrupp internal document on customers' and supply distribution[290]

[…]

Figure 43 – Tata's internal document on its customers' demand distribution[291]

[…]

(362) On the basis of the above in Section 8.3.2.3, the Commission finds that producers generally supply flat carbon steel regionally, in many cases predominantly in the countries of the production plants or in their immediate proximity. This further evidences a market not wider than the EEA and with differentiation also within the EEA.

8.3.2.4. Pricing does not take place at the global level

(363) The Notifying Parties claim that global pricing trends are a key factor taken into account when setting pricing due to the high level of substitutability between supplies across the world.[292] The Parties submit that EEA prices are formed in a global steel market, with a resulting very high correlation between EEA prices and global steel prices for all product types, to the effect that EEA producers are price-takers, finding

289 Commission calculations based on Annex 19A to the Form CO.
290 […].
291 […].
292 Form CO, paragraph 6.368 (iii).

that their pricing is 'locked' to the global steel price. This would be evidenced, in an analysis carried out by the Notifying Parties, by a very high correlation between EEA steel prices and global steel prices in all product types.[293]

(364) The Commission nonetheless observes that the differences in the structure of supply and demand and the non-homogeneous conditions of competition appear to be reflected in different prevailing prices for flat carbon steels across global regions, and seem even differentiated within the EEA.

(365) First, the Commission observes that a price correlation analysis can only provide indirect evidence of market definition, and is more suitable as a 'separation' test rather than an 'inclusion' test. That is to say, it can provide insights on whether two products/regions do not belong to the same relevant market, rather than whether they belong to the same relevant market. Similar price trends may simply be explained by common cost and demand factors. Consequently, the evidentiary value of price correlation analysis is highly dependent on controlling for such common cost and demand factors.[294]

(366) In that respect, the Commission acknowledges that the prices of flat carbon steel products in different regions around the world share similar macro-movements. In particular, this is consistent with the importance of common raw material costs traded in international markets like iron ore and coking coal. As highlighted in ThyssenKrupp's internal document in Figure 44, the '*price development of steel products is highly dependent on the cost of raw materials*'.[295]

Figure 44 – ThyssenKrupp internal document on strong influence of raw material costs on steel prices[296]

[…]

(367) Second, the Commission does not refute that prices in different parts of the world are impacted by common developments in the overall balance between worldwide demand and supply or by the development of the cost of raw materials that are traded on a worldwide basis. Nevertheless, the Commission considers that there are also regional dimensions of competition that have a significant impact on prices and drive regional pricing and local margins, reflecting also a variation in the regional conditions of competition described for instance in Sections 8.3.2.1 to 8.3.2.3.

(368) Third, the Commission observes that different regions in the world experience different price evolution. Figure 45 and Figure 46 (data for HR and HDG)[297] below show, as an illustrative example, that price differences between the EU, Turkey and China sometimes get smaller and other times get larger. It thus appears that the difference between prices for HR and HDG in different regions is not constant over time but varies reflecting local conditions of competition. For example, it is possible to identify periods in which Turkish domestic prices are higher than European prices and other periods in which the opposite holds. Given that these geographic market differences influence the prices of HR and HDG, the Commission considers that at least similar if not higher differences are likely to characterise HDG sold to

293 Form CO, paragraph 6.19 et seq.

294 See for example M.7155 – *SSAB/Rautaruukki*, paragraph 96, and M.7061 – *Huntsman Corporation/Equity interests held by Rockwood Holdings*, recital 146 and Annex I.

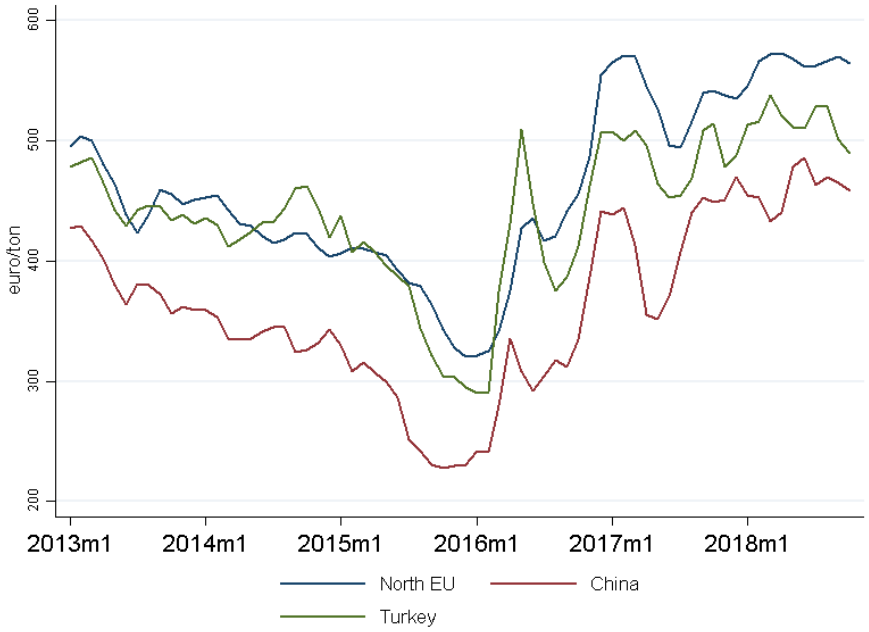
295 Courtesy Translation. The original text in German reads: *'Stahlpreisentwicklung stark abhängig von Rohstoffkosten'*.

296 […].

297 The same figure cannot be produced for TP and GOES as there are no international price benchmarks for these price series.

automotive customers and packaging steel (for both products comparable price series do not exist). This is because automotive HDG depends on HR as an upstream input and therefore would reflect to a certain extent the local variations in HR prices (similarly as other HDG). The same applies to packaging steels. Further, packaging steel and automotive HDG are specialty products for which there is a smaller set of producers and for which there are stronger customer preferences that are therefore likely to drive differences in prices across regions.

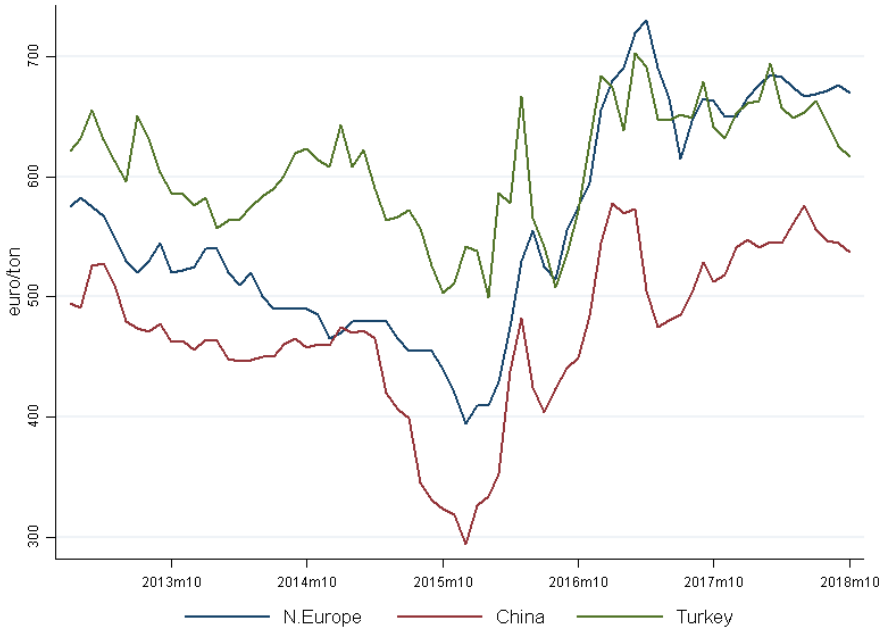
Figure 45 – HR price-levels in the N. Europe, China and Turkey[298]



Source: Commission calculations on the basis of Platt's SBB data – domestic prices

298 Commission calculations on the basis of Platt's SBB data.

Figure 46 – HDG price-levels in the N. Europe, China and Turkey[299]



Source: Commission calculations on the basis of Platt's SBB data– domestic prices

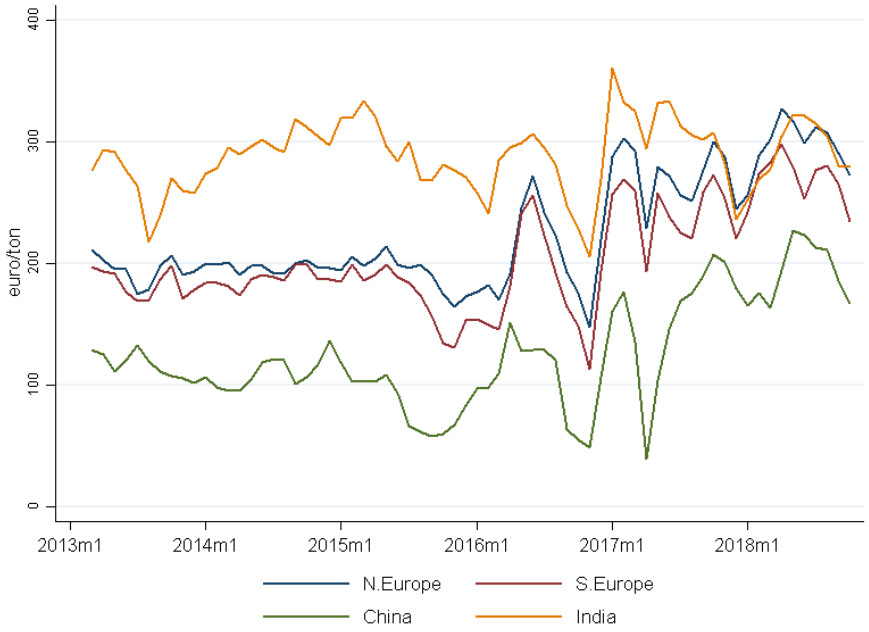
(369) Estimates, calculated on the basis of data on domestic HR price spreads over raw material costs, as presented in Figure 47, also show that price spreads over raw material costs have been increasing at a different pace across regions. This indicates that local conditions of competition also drive price variations. The same geographical variation at the level of spreads is also found for HDG in Figure 48.

(370) Fourth, the increase of spreads, which typically reflects an increased profitability, shows that despite the Parties' argument that global overcapacities would discipline any price increase,[300] such overcapacities do not appear to prevent increases in prices that are not driven by increases in raw material costs. Further, it shows that global overcapacity has not prevented an overall increase of the margins everywhere in the world, including in the EEA. This indicates that, contrary to the Notifying Parties' arguments, global overcapacity does not prevent producers from pricing above costs worldwide or in the EEA.

299 Commission calculations on the basis of Platt's SBB data.

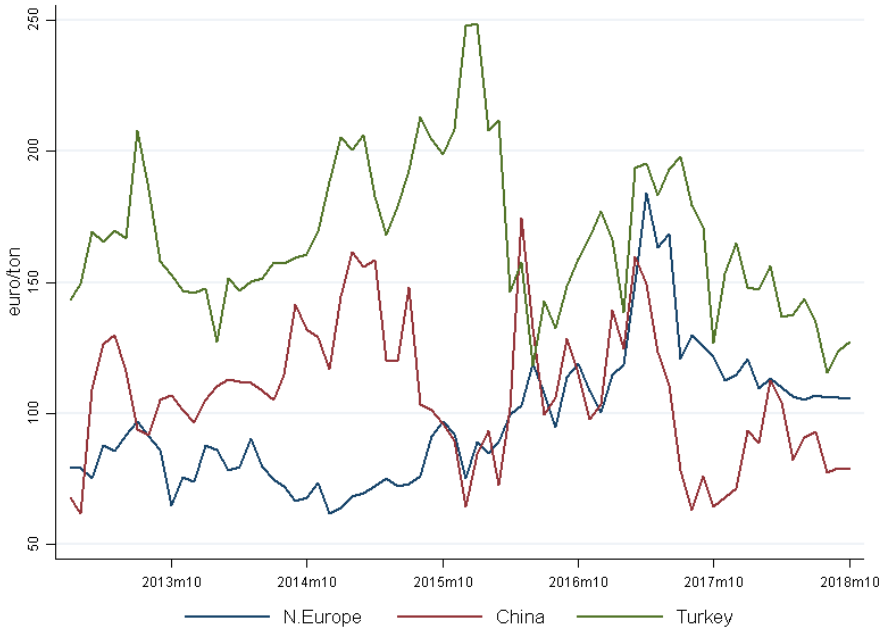
300 Form CO, paragraph 6.17.

Figure 47 – HR price spreads in the N. and S. Europe, China and India



Source: Commission calculations on the basis of Platt's SBB data – domestic prices

Figure 48 – HDG price-spread over HR domestic price in the N. Europe, China and Turkey



Source: Commission calculations on the basis of Platt's SBB data – domestic prices

(371) Fifth, the Commission considers that the fact that EEA-specific market developments drive pricing decisions is demonstrated by abundant evidence from the Parties in the ordinary course of business. Tata's internal document captioned in Figure 49 for instance demonstrates that different considerations are being taken into account when assessing EEA markets compared to when assessing developments in other global regions.

(372) Furthermore, Tata's internal document captioned in Figure 50 also shows […]. For example, in that document, which concerns Southern Europe, the main factors driving prices are defined to be […], clearly a factor related to […]. This would

indicate that the competitive constraint exerted by imports, at least at the moment of drafting that document, […].

(373) Sixth, conditions of competition appear to be differentiated so as to result in different pricing also within the EEA, i.e. at the sub-regional level, as documented by market information collected during the market investigation, and as corroborated by the Parties' internal documents. For instance, as shown by Tata's internal document captioned in Figure 51, […]. This further indicates a local dimension of pricing. Similarly, Figure 52 […].

Figure 49 – Tata internal document: Example of weekly price report[301]

[…]

Figure 50 – Tata internal document: South Europe Report Week 30[302]

[…]

Figure 51 – […][303]

[…]

(374) […].

(375) Similarly, […][304] […].

Figure 52 – […][305]

[…]

(376) Seventh, the Commission finds that the above considerations from the Parties in their pricing decisions made in the ordinary course of business are not consistent with their claim of homogenous conditions of competition at a global level.

(377) […].

(378) This document shows the importance of looking at three different elements to analyse the existence of a price premium: base price, extras and transport charges. Of these elements, the base price is the component that can arguably be affected by global dynamics and import flows. […].[306] […].

(379) […]. This shows that despite the base price being influenced by global dynamics, Tata has the ability to exert some degree of market power in different areas of the EEA by acting on price elements that are not affected by alleged global dynamics: the pricing of extras and the setting of its transport charges.

(380) Further, the Commission observes that the current shifts from a model of 'base price + extras' to a model based on effective pricing, […],[307] may further facilitate price differences across geographic locations as customers can no longer observe all the pricing components, but would only have visibility on the final delivered price, therefore reducing their ability to compare prices across regions.

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301 Annex 118 to the Form CO.
302 Annex 162 to the Form CO.
303 […].
304 […].
305 […].
306 […].
307 Form CO, paragraph 8.18.

Figure 53 – […][308]

[…]

(381) Eighth, the importance of local demand and supply balances, and therefore of local competitive conditions, are widely recognised in the market and acknowledged by market analysts specialised in the steel sector. For instance, a recent Platts commentary on the European steel market reports that *force majeure* events affecting ThyssenKrupp factories on the Rhine, '*have been supportive of ex-works Ruhr coils prices, which have held relatively stable this week despite prices in southern Europe continuing to move lower*'.[309] This indicates that to the extent that a local *force majeure* has an impact on pricing then also local changes in competitive conditions would have an impact on local pricing on top of the fluctuations that might be driven by worldwide developments.

(382) On the basis of the above in this Section 8.3.2.4, the Commission considers that due to the differences in the structure of supply and demand and the non-homogeneous conditions of competition, prices differ for flat carbon steels across global regions, and seem even differentiated within the EEA.

8.3.2.5. Import flows play a role in the EEA but do not offset the local competitive dynamics at the regional or sub-regional levels

(383) The Notifying Parties argue that the global nature of the carbon steel industry is evidenced by the extensive trade flows at both the global and EEA levels.[310] The Notifying Parties stress the significant share of imports over the past few years in all relevant product markets and argue on that basis that imports constitute a significant constraint to domestic producers in the EEA.[311]

(384) The Commission finds that, while imports play a role as a source of supply and as such have to be taken into account in the competitive assessment, import flows are not sufficient to offset the significance of regional supply and demand developments and to make conditions of competition in the EEA homogeneous with the rest of the world.

(385) First, most suppliers outside of the EEA are not regularly active on a global scale as they rather focus on their domestic markets. Most of these players exploit export opportunities in an opportunistic way to take advantage of global differences in relative domestic prices or more strategically to not depress their own market. Therefore, the set of suppliers is not homogeneous across different world regions and this implies that also the conditions of competition, from a supply point of view, will not be homogeneous across countries but will depend on the configuration of suppliers active or willing to serve each specific area.

(386) In the first place, this is confirmed by Tata's own assessment in the ordinary course of business, […].

(387) The document discusses import prices and prices in other geographic markets. […].

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308 […].

309 Platts Breaking News email of 19/10/2018 2.58 PM - TK declares *force majeure* on low Rhine River levels, DocID2059.

310 Form CO, paragraph 6.368 (i).

311 Comments on the Article 6(1)(c) decision, paragraph 2.65.

Figure 54 – […][312]

[…]

(388) In the second place, also ThyssenKrupp's internal document captioned in Figure 55 and Figure 56 supports the finding that imports alone or global dynamics are not determining EEA prices. […].

Figure 55 – […][313]

[…]

Figure 56 […][314]

[…]

(389) Second, a number of anti-dumping investigations found that in the period 2014–2016 the EEA flat steel industry has been affected by dumping practices. During a limited period of time, high levels of imports have been offered in the EEA market at dumped import prices and this created several market distortions. To counter these practices, the Commission has adopted a number of anti-dumping measures. As a result, any price-depressing effect related to these dumping practices is likely to have been eliminated.

(390) In the first place, this is confirmed by feedback from market participants responding to the market investigation, which have consistently linked the adoption of measures addressing distortions to a restoration of normal pricing dynamics in the EEA by limiting the competitive pressure exerted by imports. Further, during the market investigation a very large majority of customers expressed the opinion that currently imports exert only limited or moderate competitive pressure.[315] For instance, one customer explains that '*import prices [are] not interesting in the last years*'.[316]

(391) In the second place, after the introduction of a number of anti-dumping measures, prices and margins in the EEA have increased to the benefit of domestic steel producers in the EEA. As an illustration, Figure 57 shows that the Parties, as well as other EEA producers, have experienced better financial performance in the last years even though the inflow of imports, in volume, did not decrease from the levels reached during the episodes of dumping.

Figure 57 […][317]

[…]

(392) Third, internal documents of Tata, like those captioned in Figure 58, indicate that competition from imports would not be important, at least in some periods. […].

Figure 58 – Tata internal document assessing import competition[318]

[…]

312 […].
313 […].
314 […].
315 Reply to question 22 of Q2 – Questionnaire to customers, DocID2167.
316 Reply to question 22.1 of Q2 – Questionnaire to customers, DocID2167.
317 Commission's calculations on the basis of the Parties' reply to RFI 22 (Annex 1 and Annex 2).
318 Annex 162 to Form CO.

Figure 59 – […][319]

[…]

(393) Fourth, also third-party data providers indicate that imports are opportunistic and are not always priced below EEA prices: *'Over the past few days, however, import offers particularly from India and Turkey have increased. This makes imports, particularly for hot-rolled coil, unattractive as the current spread between domestic and import prices has shrunk to around Eur30/mt. Sources said the lowest CIF Antwerp import prices were at Eur470/mt for HRC, up by around Eur10-15/mt. One source said he also heard prices at Eur490/mt CIF'.*[320]

(394) Finally, during the market investigation, the majority of customers expressed the view that imports concern mostly commodity products,[321] and, therefore, not high-end products such as automotive HDG and packaging steel.

(395) ThysssenKrupp's internal document captioned in Figure 60 also indicates […],[322] […].

Figure 60 – […][323]

[…]

8.3.2.6. Increased trade barriers in the EEA and across the world strengthen regional dynamics

(396) As concerns possible barriers, the Notifying Parties claim that the introduction of the US tarriff measures (under Section 232) will further increase the competitive pressure that EEA domestic producers face from imports. This is because significant volumes of exports by producers originally destined for the US will have to move into other markets and the Parties expect that a large share of those volumes will be routed to the EEA, directly increasing the volume of imports into the EEA.

(397) The Notifying Parties also submit that the safeguard measures adopted by the Commission to mitigate the effects of redirected trade volumes to the EEA prove again the global nature of the carbon steel industry.[324] On the other hand, anti-dumping measures imposed on certain products are always limited to defined products originating from certain countries. Thus, they would *per se* not be suitable nor intended to remove the whole competitive pressure from imports in an entire industry.[325]

(398) Contrary to the Parties' arguments, the Commission finds that increasing trade barriers are not evidence for global markets, but rather reinforce regional dynamics and are therefore an indication of the regional or infra-regional geographic scope of the relevant markets.

(399) First, trade barriers increase frictions in trade of goods and therefore reduce the dependency on third-country sources of supply, making them more unlikely to be a ready substitute for domestic (or regional) sources of supply.

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319 […].
320 SBB DAILY BRIEFING of Thursday, 7 Feb 19, DocID3907 | Prices effective 6 Feb 2019.
321 Replies to question 23 of Q2 – Questionnaire to Customers, DocID2167.
322 Courtesy transaltion. The original text in German reads: […].
323 […].
324 Form CO, paragraph 6.10.
325 Form CO, paragraph 6.16.

(400) This logical consequence of trade barriers is in line with the established framework for the assessment of the geographic scope of markets and in line with the Commission Market Definition Notice, which clearly indicate that impediments to supply across geographic areas are relevant supply factors differentiating such different areas, and in particular that the analysis of the geographic scope of a market *'will include an examination of requirements for a local presence in order to sell in that area (…) the presence or absence of regulatory barriers arising from public procurement, price regulations, quotas and tariffs, limiting trade or production (…). In short, the Commission will identify possible obstacles and barriers isolating companies located in a given area from the competitive pressure of companies located outside that area, so as to determine the precise degree of market interpenetration at national, European or global level.'*[326]

(401) Second, as a matter of law and fact, as described in Section 5.4.2, in the few last years the incidence of safeguard measures has dramatically increased.

(402) The Commission itself adopted safeguard measures (see recital (71)). These measures have not been adopted because of a generic recognition of an alleged '*global'* market, but rather against the background of '*a sharp, sudden and significant increase in imports as the result of unforeseen developments that found their source in a number of factors* [the US Section 232 measure imposing import duties on steel originating from outside the US] *establishing and aggravating imbalances in the international trade of the product concerned*'. As it is specified in the Definitive safeguard measures '*[t]hese factors consisted of an unprecedented steelmaking overcapacity that persists despite the important number of measures adopted worldwide to reduce it, accentuated by distortive subsidies and government support measures, which led to price depression, the increased use of trade restrictive practices, trade defence instruments and the US Section 232 measures adopted in March 2018*'.[327]

(403) Third, contrary to the view of the Notifying Parties, as to the effects of the safeguard and anti-dumping measures, several customers indicated explicitly that the current trade measures reduce the pressure exerted by imports. During the market investigation, a competitor also mentioned that '*current trade measures in EU (safeguard measures, anti-dumping measures) are main threat to limit competition from imports and create more conditions to increase prices'*.[328]

(404) Fourth, in line with the Commission's analysis, the majority of customers submitted that trade defence measures recently make it more important to source steel from EEA suppliers, notably in terms of security of supply, as trade defence measures increase the uncertainty in sourcing from suppliers which are or may be subject to trade restrictions, besides the other factors typically affecting the possibility of sourcing from imports further described in Section 8.3.2.2.[329]

(405) Fifth, this uncertainty is best illustrated by the fact that already in January 2018 the import quota foreseen under the provisional safeguard measures for HDG products

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326 Market Definition Notice, paragraph 30.

327 See recitals (30) to (36) of the provisional Regulation and recitals (48) to (62) of the Definitive safeguard measures.

328 Reply to question 113 of Q1 – Questionnaire to Competitors, DocID2166.

329 Reply to question 22.1. of Q2 – Questionnaire to Customers, DocID2167.

reached the so-called 'critical' status[330] and suppliers were no longer exempted from providing the necessary deposit for the release of their goods.[331]

(406) Sixth, the Commission's analysis is duly documented and reasoned in line with submissions of market participants, including the Parties. The Parties themselves recognise that inflows of products from outside the EEA and their impact on prices were the manifestation of a market distortion rather than manifestations of an alleged global market. […].[332] […] (Figure 61).

Figure 61 – […][333]

[…]

(407) In the above-captioned internal document in Figure 61 – dated 2017, that is before the introduction of safeguard measures in the EU – ThyssenKrupp unequivocally observes that […][334] and that […].[335] […].

(408) The above findings in Sections 8.3.2.1 to 8.3.2.6 apply equally to the specific areas where the Transaction raises concerns as will be further explained in Sections 8.3.3 and 8.3.4.

8.3.3. Production and supply of automotive HDG

(409) The Commission considers that the results of the market investigation as regards the relevant geographic market definition for automotive HDG are in line with the findings for the production and supply of finished carbon steel products in general delineated in Section 8.3.2. The market investigation has not revealed evidence that would allow the Commission to consider this product market to be wider than the EEA, as explained below.

(410) First, in line with the general finding outlined above, conditions of competition for automotive HDG appear to be different across global regions as indicated by the competitive landscape and prevailing prices and to be non-homogeneous even within the EEA, as explained in Section 9.4.3.5.

(411) The conditions of competition are not homogeneous inside and outside the EEA. A wide majority of automotive customers who expressed a view indicated that, both for commodity and high-end HDG for automotive applications, there are different prices inside and outside the EEA.[336] Further, as explained in Section 9.4.3.5.c, most importers lack the technical abilities and required presence to supply automotive customers. This indicates that, contrary to what is claimed by the Notyfing Parties, the possibility to have warehouses in the EEA or to supply some steel types in other parts of the world does not make extra-EEA competitors a viable alternative to EEA domestic automotive HDG producers.

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330 A tariff quota is considered as critical as soon as 90% of the complete volume has been used.

331 Article 153 of Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ L 343, 29.12.2015, p.1), in combination with Article 53 of Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

332 […].

333 […].

334 Courtesy translation. The original text reads: […].

335 Courtesy translation. The original text reads: […].

336 Replies to question 32 of Q3 – Questionnaire to Customers (Automotive), DocID2168.

(412) Second, the conditions of demand for automotive steel appear to be differentiated even within the EEA in particular in light of the preference of automotive customers for suppliers that are located in their proximity.

(413) In the first place, a large majority of automotive customers indicated that they source galvanised carbon steel products predominantly locally, from suppliers in the same or nearby countries within the EEA or across the EEA,[337] and also explained to have a preference to source domestically at the EEA level or even at a smaller level.[338] The Commission considers that the current low level of imports of automotive HDG, which is stable over time and is further described in Section 9.4.3.5.a, clearly indicates and quantifies a high preference for local and in particular EEA sourcing of automotive HDG.

(414) In the second place, from the feedback by automotive customers it also results that factors other than transport costs can be decisive in defining the effective area where a company can viably purchase significant quantities.[339]

(415) Price competitiveness, service quality and lead-time appear to be determining factors. An automotive customer explains that *'[d]ue to transport costs it is important to be Close to the supplier. Further it gives flexibility and it's easy to discuss and clarify Topics in face to face Meetings*'.[340] Another customer mentions that when suppliers are closer *'[t]here are quicker reaction times in case of any changes in the demand situation*'.[341] Yet another automotive customer explains that '*[d]ue to the high volume consumption and the numerous references, we need to be very reactive because we can't store that many references. Being 'close' to supplier is key. Also, the logistic cost suppose in most cases national/nearby countries choice, but EEA-level can be sometime more competitive. To understand a coil is roughly 20 tons… which is often the maximum loading possibility of a truck… So in general 1 coil/ truck, the rest of the truck is empty… (for example we can't optimize by and put 5 coils in 1 truck…)*'.[342]

(416) In that respect, there is also wide agreement among automotive customers that lead-times significantly differ depending on whether steel is supplied from within or outside the EEA.[343] The difference in lead-times appears to be significant: an automotive customer indicates that '*[f]or lead times min 1 month has to be added*',[344] while another customer points out that it can be also substantially longer: '*For overseas deliveries the sea freight needs to be considered which is then changing the lead-time standard form 12 weeks to even beyond 20 weeks*'.[345] This is considered as a disadvantage, as stressed by another customer: '*[t]he suppliers with long lead time are less flexible in case of changes such as volume increase/decrease, technical modifications or phase out steel grades*' and further disadvantages are '*the cost of the*

337 Replies to question 26 of Q3 – Questionnaire to Customers (Automotive), DocID2168.
338 Replies to question 27 of Q3 – Questionnaire to Customers (Automotive), DocID2168.
339 Replies to question 28 of Q3 – Questionnaire to Customers (Automotive), DocID2168.
340 Reply to question 27.1. of Q3 – Questionnaire to Customers (Automotive), DocID2168.
341 Reply to question 27.1. of Q3 – Questionnaire to Customers (Automotive), DocID2168.
342 Reply to question 27.1. of Q3 – Questionnaire to Customers (Automotive), DocID2168.
343 Replies to question 29 of Q3 – Questionnaire to Customers (Automotive), DocID2168.
344 Reply to question 29.1. of Q3 – Questionnaire to Customers (Automotive), DocID2168.
345 Reply to question 29.1. of Q3 – Questionnaire to Customers (Automotive), DocID2168.

warehouse storage and also the risk to scrap more material in case of quality problem'.[346]

(417) In the third place, a number of automotive customers refer to the fact that there are additional transport risks when sourcing from non-EEA suppliers compared to EEA suppliers.[347] One customer also mentions that '*[e]xposed parts are more at risk. Back-Hardening are not possible to source long distance due to stock issues. Otherwise same issue with all categories*'.[348] According to another customer, '*[t]he longer the distance the higher the risk for corrosion or other damages*', whereby '*for outer skin quality the risk to get transport damages, is higher. the rest is the same*'.[349]

(418) Third, the data provided by the Notifying Parties about their supplies, the feedback of market participants during the market investigation as well as the review of the internal documents of the Notifying Parties clearly indicate that supplies of automotive HDG occur predominantly at the regional level.

(419) Figure 62 and Figure 63 provide a picture of the geographic distribution of sales of HDG and automotive grades based on the data provided by the Notifying Parties and show that ThyssenKrupp's supplies are concentrated […] while Tata's […]. This suggests that the relevant geographic market is at most EEA-wide, but that conditions of competition are not homogeneous even within the EEA.

Figure 62 – HDG distribution of sales by country (Parties)[350]

[…]

Figure 63 – Automotive grades distribution of sales by country (Parties)[351]

[…]

(420) The Notifying Parties claim that as concerns automotive steel, the proximity of supply is mainly a function of the distribution of the locations of car producers in the EEA rather than an indicator of regional supply.[352]

(421) While the location of customers is certainly a fact that affects the distribution of supplies, the Commission notes that other factors such as exchange rate volatility, the regulatory environment, different price levels and trade barriers appear also to play a role as for other flat carbon steel product markets, as indicated above in recitals (349) and (350).

(422) The internal document of ThyssenKrupp captioned in Figure 64 […].[353]

Figure 64 – ThyssenKrupp internal document on plants' locations[354]

[…]

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346 Reply to questions 20 and 21 of Q12 (a) – Questionnaire to Customers Phase II (Automotive), DocID2952.

347 Replies to question 23 of Q12 (a) – Questionnaire to Customers Phase II (Automotive), DocID2952 and replies to question 23 of Q12 (b) – Questionnaire to Customers Phase II (Automotive), DocID2953.

348 Reply to question 23.2. of Q12 (b) – Questionnaire to Customers Phase II (Automotive), DocID2953.

349 Reply to questions 23.1. and 23.2. of Q12 (b) – Questionnaire to Customers Phase II (Automotive), DocID2953.

350 Commission calculations based on Annex 19A to the Form CO.

351 Commission calculations based on Parties' reply to RFI 8.

352 Comments on the Article 6(1)(c) decision, paragraph 1.6.

353 Courtesy Translation. The original text in German reads: […].

354 […].

(423) Tata's internal email captioned in Figure 65 shows that also with respect to ThyssenKrupp's Sagunto line, Tata considers the following: […].

Figure 65 - Tata internal e-mail on ThyssenKrupp's restart of the Sagunto line[355]

[…]

(424) Tata explicitely indicated that […].[356] This consideration by Tata shows that Tata considers geographic location when assessing competition.

(425) These documents further show that the EEA market for automotive HDG is a geographically differentiated market.

(426) Fourth, from the review of internal documents of the Notifying Parties it results that […].

Figure 66 – […][357]

[…]

(427) Fifth, as further evidenced in the competitive assessment section and discussed at a general level for instance in Section 8.3.2.5, imports into the EEA only play a limited role in the market for automotive HDG, including in relation to price-setting.

(428) In the first place, the share of imports in automotive HDG is very low, making imports unlikely to significantly affect pricing dynamics. There is a limited dependency on third country sources of supply, making them more unlikely to be a ready substitute for domestic (or regional) sources of supply.

(429) In the second place, abundant evidence from the ordinary course of business shows that specifically in the market for automotive HDG (and even in sub-segments thereof) the Parties regard pricing as less affected by competition, including from imports, enabling them to obtain higher margins without facing significant switching to alternative sources of supply, including imports.

(430) In the third place, as opposed to commodity steel, fewer players even on the global level have the capabilities needed to manufacture steel products which respond to the specific characteristics demanded by automotive companies.

(431) In the fourth place, internal documents show that, […].

(432) In the fifth place, contrary to the Notifying Parties' view, the observation that exporters are opportunistic does not indicate that they are a reliable source of supply. An opportunistic seller might not offer its product on a consistent basis, therefore undermining the typical long-term and stable relationship that is sought by automotive HDG customers.

(433) In the sixth place, the Parties' internal documents demonstrate that […].

Figure 67 – […][358]

[…]

(434) Sixth, as already mentioned in recital (76), imports of automotive HDG are affected by safeguard measures.

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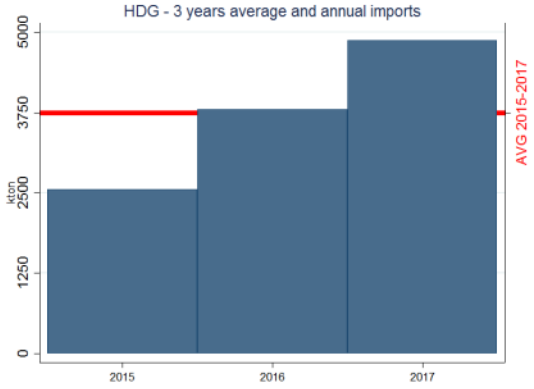
355 […].
356 Parties' reply to RFI 20, paragraph 22.1.
357 […].
358 […].

(435) The competitive pressure exercised by imports has been further weakened by the introduction of safeguard measures, as highlighted by a number of customers during the market investigation. One customer explains that '*The already introduced trade defense measures already caused supply difficulties in the European Union like increase in lead times of HDG beginning 2017 from 14 up to 26 weeks and several mills have been booked out. This situation has meanwhile been improved but currently we see some risks in the HR category in regards to lead times and availability*'.[359] However, another automotive customer mentions '*Financial risk from duties on payable price can only roughly [be] estimated (market price in the future, lead times longer than contract duration)*'.[360]

(436) The potential of the measures to reduce any residual pressure from imports has been highlighted by automotive customers. As submitted by an association of vehicle makers during the investigation on the Definitive safeguard measures, *'imposing safeguard measures would create a risk of supply interruptions, and substantially increase steel prices. Already at this moment (without any safeguard measure) there is a shortage in supply of steel. Production and exports of motor vehicles in the EU are expected to grow in 2018-2025. This will lead to higher steel consumption by the sector. Safeguard measures have led to a 25% price increase in the US. If the same happens in the EU this will have a negative effect for the expected growth in production and exports'.*[361]

(437) The above considerations on the safeguard measures are further validated by recent developments observed for imports from China that quickly reached a 'critical' status as described in Section 9.4.3.5.d.

Figure 68 – HDG imports 2015-2017[362]



(438) Therefore, on the basis of the results of the market investigation and of all evidence available to it, the Commission finds that the relevant geographic market for the production and supply of automotive HDG is at most EEA-wide. In addition, there is evidence of geographic differentiation within the EEA, which will be considered in the competitive assessment.

(439) Any competitive constraints exercised by imports into the EEA market for automotive HDG are nonetheless considered in the competitive assessment.

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359 Reply to question 31.1 of Q3 – Questionnaire to Customers (Automotive), DocID2168.

360 Reply to question 31.1 of Q3 – Questionnaire to Customers (Automotive), DocID2168.

361 DocID3318.

362 Commission's calculations based on DG TAXUD surveillance data. The chart consider HDG import and does not necessarily reflects the quota established in the Safeguard measure Regulation that introduced two distinct categories for metallic coated steel.

8.3.4. Production and supply of metallic-coated and laminated steel products for packaging

(440) Contrary to the Notifying Parties' claim that the relevant geographic market is global, the Commission considers that its analysis and the results of the market investigation as regards the relevant geographic market definitions for TP, ECCS and laminated steel products for packaging are in line with the conclusions set out in Section 8.3.2.

(441) First, the market structure appears to be different in the EEA than in the rest of the world. Non-EEA companies accounted in 2016 for 77% of sales of metallic-coated steel for packaging globally (TP: 77%, ECCS: 78%),[363] but for only 18% (TP) and 25% (ECCS) of sales in the EEA. The Commission remarks that this share of non-EEA suppliers in 2016 was the highest observed in the period for which it has data available (2014–17). In 2017, the shares of non-EEA suppliers decreased to 16% for TP and 18% for ECCS.[364]

(442) The Parties themselves, in the ordinary course of business when they observe market dynamics for metallic-coated and laminated steel products for packaging, […]. This is for instance illustrated in Figure 69, […]. The Commission understands however that ArcelorMittal has a local presence outside the EEA, for instance in the US.

Figure 69 – […][365]

[…]

(443) Second, the conditions of demand as regards steel products for packaging are differentiated in the EEA, as opposed to other global regions, in particular in light of the preference of customers to source from EEA-suppliers.

(444) In the first place, during the market investigation, a majority of customers of especially TP and laminated packaging steel[366] indicated to source mostly from suppliers in the same or nearby countries within the EEA and also to have a preference to source domestically at the EEA-level.[367] Customers point to lead times, quality levels and delivery performance as reasons for their preference for EEA or domestic sourcing.

(445) In the second place, while transport costs to a certain extent determine the effective area range where they can viably purchase significant quantities,[368] customers also expressed other reasons like quality, supply security and lead times.[369] A customer explains that '*Transport costs are an important cost-driver factor but other costs can be decisive, such as lead-time/flexibility, currency, payment terms, supply chain (warehousing, infrastructure, etc.) and technical support to the manufacturing plant. … [the customer]buys some volumes from steel companies outside the region, but those are limited volumes. The highest share of the volumes is bought within the region where the mills are operatin'*.[370]

(446) In the third place, while the Notifying Parties argue that any additional lead time on imported metallic-coated steel for packaging does not prevent importsfrom

363 Annex 19A to Form CO.
364 Parties' rev reply of RFI28, annex 1.
365 […].
366 Reply to question 23 of Q4 – Questionnaire to Customers (Packaging), DocID2169.
367 Reply to question 24 of Q4 – Questionnaire to Customers (Packaging), DocID2169.
368 Reply to question 8 of Q13 – Questionnaire to Customers (Packaging), DocID2954.
369 Replies to question 25.1 of Q4 – Q4 – Questionnaire to Customers (Packaging), DocID2169.
370 Reply to question 8 of Q13 – Questionnaire to Customers (Packaging), ID2954.

remaining competitive in the EEA, based on the Parties' *own experiences* of their lead times for deliveries inside and outside the EEA,[371] customers explained that the longer lead times are a crucial factor. For instance, a customer explains that lead times significantly differ for EEA and non-EEA suppliers.[372] The same customer also explains that '*[w]hile overall demand for packaging is more or less predictable, demand for different types of steel specifications (thickness, strength, coating, elongation) is very versatile and can only be determined at short notice. The reason is that different end products (e.g. corn or tomatoes) require a different specification and in turn several products are subject to crop seasonality (in other words the production is harvest related). In addition, every region might have individual packaging steel products specifications. Therefore, customers are able to place their orders only at a very late stage when they are in the position to assess their need of the different specifications. This limits the recourse to imports as a reliable and competitive supply option. Further, stocking is not viable as the demand specification of the final products can change. … [t]he normal production time of the 8-12 weeks to produce steel starting from the upstream crude steelmaking until the final coated product can be reduced. EEA suppliers can guarantee lead times of two to four weeks from the final order, while non-EEA suppliers have much longer lead times (12 to 16 weeks), and it is therefore technically not feasible to source from them*'.[373]

(447) Third, the market investigation also indicates that packaging steel competitors in the EEA supply mostly in the area around their production plants.[374] […]. As indicated in Figure 207 and in Figure 208 and recitals (1405)–(1406), in fact when considering only EEA sales, […].

(448) Fourth, unlike for several other flat carbon steel products, there is no global index that tracks the price for metallic-coated or laminated steel for packaging at the worldwide level. The market investigation has rather indicated that pricing is likely different in the EEA compared to the rest of the world. A major packaging steel customer that is active both in the EEA and globally for instance indicates: '*If comparing sourcing conditions between the EEA and the rest of the world, price conditions are not the same in all regions.*'[375] […].

Figure 70 – […][376]

[…]

(449) The Commission notes that differences in competitive conditions are also evidenced by the spread between the HR and the TP price, which not only differs, but has a divergent evolution in the EEA as opposed to the rest of the world. […].

Figure 71 – […][377]

[…]

Figure 72 –[…][378]

[…]

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371 Comments on the Article 6(1)(c) decision, paragraph 1.15.

372 Reply to question 26 of Q4 – Questionnaire to Customers (Packaging), DocID2169.

373 Minutes of the meeting with a customer on 17.10.2018, DocID2298.

374 Annex to the reply to question Q1 – Questionnaire to Competitors, DocID2166.

375 Minutes of a call with a customer, 4.6.2018, DocID693.

376 […].

377 […].

378 […].

(450) Fifth, the above indications of different competitive conditions in the EEA and the rest of the world are confirmed in the market investigation, which shows that customers are significantly restricted in their ability to resort to non-EEA suppliers. In particular, it appears that (i) lead times significantly restrict customers' ability to source from non-EEA suppliers (see Section 9.5.4.1), (ii) imports are not able to offer the qualities that customers require (see Section 9.5.4.2), and (iii) imports do not provide the required security of supply (see Section 9.5.4.4). Accordingly, also for TP, ECCS and laminated steel for packaging, imports do not exercise an effective constraint on domestic suppliers in the EEA.

(451) Sixth, as concerns the relevance of the limitations resulting from trade measures in place in the EEA, the Notifying Parties submit that the safeguard measures will not have a significant impact because any imports into the EEA below the thresholds of the last three years' average annual import volume will not be affected, meaning that there is still material room for an increase in imports of metallic-coated steel for packaging before the threshold is hit.

(452) The Commission takes note […], but observes that this is not indicative of the extent to which EEA customers are able to have their needs fulfilled by non-EEA suppliers. The Commission for instance understands that for the US, EEA suppliers are able to offer products of a particular quality standard that local US suppliers cannot meet, as explained in Section 9.5.5.2.

(453) The Commission further observes that the current developments in trade instruments, such as the Commission's response to the imposed US 232 measures, have made it more important to source from EEA suppliers in terms of security of supply, which is particularly relevant in a market where customers buy mostly or only under long-term supply agreements (see Section 9.5.4.4).

(454) Accordingly, on the basis of the results of the market investigation and of all evidence available to it, the Commission finds that the relevant geographic markets for the production and supply of TP, ECCS and laminated steel are at most EEA-wide.

(455) Any competitive constraints exercised by imports into the EEA markets for TP, ECCS and laminated steel are nonetheless considered in the competitive assessment.

8.4. Conclusion

(456) On the basis of the results of the market investigation and of all evidence available to it, the Commission finds that the relevant geographic market for the production and supply of automotive HDG is at most EEA-wide. In addition, there is evidence of geographic differentiation within the EEA which will be considered in the competitive assessment.

(457) On the basis of the results of the market investigation and of all evidence available to it, the Commission finds that the relevant geographic markets for the production and supply of TP, ECCS and laminated steel for packaging are at most EEA-wide, including as regards potential sub-segments for beverage and non-beverage applications.

9. COMPETITIVE ASSESSMENT

9.1. Introduction

(458) The Commission successively assesses in the following sections the impact of the Transaction on the relevant EEA markets for automotive HDG steel and metallic coated steel for packaging.

(459) Before these sections, the Commission provides some explanations on the legal framework it applied and the market shares it used in its investigation and assessment.

9.2. Legal Framework of the Competitive Assessment

(460) This section sets out the analytical framework which the Commission will apply in assessing horizontal overlaps in this Decision.

(461) Under Articles 2(2) and (3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position.

(462) The Merger Regulation recognises that in oligopolistic markets, it is all the more necessary to maintain effective competition.[379] This is in view of the consequences that mergers may have on those markets. For this reason, the Merger Regulation provides that under certain circumstances, concentrations involving, first, the elimination of important constraints that the Parties had exerted on each other, and, second, a reduction of competitive pressure on the remaining competitors may result in a significant impediment to effective competition, even in the absence of a likelihood of coordination between the members of an oligopoly.[380]

(463) Under the substantive test of the Merger Regulation, the Commission is not necessarily required to show the creation or strengthening of a dominant position in order to declare a merger incompatible with the internal market on the grounds that it would significantly impede effective competition: according to recital 25 of the Regulation, the notion of 'significant impediment to effective competition' in Articles 2(2) and (3) of that Regulation should be interpreted as extending, beyond the concept of dominance, to the anti-competitive effects of a concentration that result from the non-coordinated behaviour of undertakings which do not have a dominant position on the market concerned.[381]

(464) Other than the creation or strengthening of a dominant position, the Commission guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (the 'Horizontal Merger Guidelines') distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated and coordinated effects.[382]

(465) Non-coordinated effects may significantly impede effective competition by eliminating important competitive constraints on one or more firms, which consequently would have increased market power, without resorting to coordinated behaviour. In that regard, the Horizontal Merger Guidelines consider not only the direct loss of competition between the merging firms, but also the reduction in competitive pressure on non-merging firms in the same market that could be brought about by the merger.[383]

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379 Recital 25 of the Merger Regulation.

380 Recital 25 of the Merger Regulation.

381 Recital 25 of the Merger Regulation.

382 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, (OJ C 31, 5.2.2004, p. 5).

383 Horizontal Merger Guidelines, paragraph 24.

(466) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force. Not all of these factors need to be present to make significant non-coordinated effects likely and it is not an exhaustive list such that other factors may also be relevant.[384]

(467) Market shares and concentration levels provide useful first indications of the market structure and of the competitive importance of both the merging parties and their competitors. The larger the market share, the more likely a firm is to possess market power. The larger the addition of market share (the increment), the more likely it is that a merger would lead to a significant increase in market power. The larger the increase in the sales base on which to enjoy higher margins after a price increase, the more likely it is that the merging firms would find such a price increase profitable despite the accompanying reduction in output. Although market shares and additions of market shares only provide first indications of market power and increases in market power, they are normally important factors in the assessment.[385]

(468) The Horizontal Merger Guidelines clarify that the Commission uses current market shares in its competitive analysis. However, current market shares may be adjusted to reflect reasonably certain future changes, for instance in light of exit, entry or expansion. In any event, the Commission interprets market shares in light of likely market conditions, for instance if the market is highly dynamic in character and if the market structure is unstable due to innovation or growth.[386]

(469) In general, the Commission assesses the economic outcome which is most likely to ensue from the concentration.[387]

(470) As regards the evidence used in this Decision, the Commission notes that its assessment of the Transaction must be supported by a sufficiently cogent and consistent body of evidence that must be factually accurate, reliable and consistent. The body of evidence must contain all the information required to be taken into account in order to assess a complex situation and it must be capable of substantiating the conclusions drawn from it.[388] Against this background, the Commission has assessed all available sources of evidence in this case, including: (i) the data gathered throughout the market investigation; (ii) the reports and contributions produced by third parties and the sectorial press;[389] and (iii) the submissions made by the Notifying Parties, including their replies to the Commission's requests for information, and the analysis of internal documents submitted by each of the Parties.

9.3. Market structure and market shares

(471) Market shares are a first indicator of whether firms in a given market may possess market power. Consistent case law has established that a dominant position can be presumed from market shares exceeding 50 percent. Indeed, although the importance of market shares may vary from one market to another, the view may legitimately be

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384 Horizontal Merger Guidelines, paragraph 25.
385 Horizontal Merger Guidelines, paragraph 27.
386 Horizontal Merger Guidelines, paragraph 15. See also C-413/06
387 C-413/06 P, *Bertelsmann v. Impala*, [2008] ECR I-4951, paragraph 52.
388 C-12/03 P, *Commission v Tetra Laval*, [2005] ECR I-987, paragraph 39.
389 For instance, Platt's SSB data.

taken that very large market shares are in themselves, and save in exceptional circumstances, evidence of the existence of a dominant position.[390]

(472) The choice of the relevant market share measure depends on the circumstances of the specific industry in question. Moreover, different market share measures may have different advantages and shortcomings in indicating market power. It may therefore be useful to analyse a combination of different market share measures as complementary indicators for market power. As explained further below, in this case the Commission considers two market share measures to be relevant indicators for market power: (i) sales, or merchant market shares on the basis of sales to third parties; (ii) shares of capacities at the relevant level of the value chain or for the production of a particular product.

(473) Merchant sales shares provide a measure of the relative positions of the different producers, including importers, as suppliers to third parties. Merchant sales shares, as they are based on observed sales in a specific geographic region, can also provide first useful information on the ability, readiness and incentive to serve specific geographic areas.

(474) However, due to the vertical value-chain described in Section 5.3, market shares based on sales may not fully reflect actual market power in the flat carbon steel industry. This is because sales shares do not account for the captive volumes of intermediate products that are passed down the value-chain for further transformation (for instance volumes of HR that are internally converted into CR or further downstream products). Such captive volumes may, in turn, represent an indirect competitive constraint due to the trade-off producers face between further transforming those volumes down the value-chain themselves or selling them to customers or other third parties.

(475) More generally, competition in the flat carbon steel industry is largely driven by primary steelmaking (crude steel) capacity, which is closely linked and can be approximated to HR capacity.

(476) The control of capacity upstream is also key to understanding the competitive dynamics for downstream products. Indeed, a steel producer that is capacity constrained upstream, for example at the HR stage, would likely have less possibility to expand its capacity downstream, for example in HDG. This is because the expansion of the downstream capacity would require also an expansion of the upstream capacity, necessarily increasing the costs.[391] On the contrary, a steel producer with ample spare capacity upstream could more easily add further finishing lines to expand its downstream production. Therefore, the competitive constraint exerted by a producer with higher capacity (and spare capacity) upstream is likely to be higher than the constraint exerted by another player with similar downstream capacity but less upstream capacity.

(477) More in general and at all levels of the value chain, the importance of capacity as a competitive parameter is also reflected by how steel manufacturers assess the market.[392] In the present case the Commission also finds that the Parties to the Transaction take

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390 Judgement of 13 February 1979 in Case 85/76 *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 41.

391 Another option would be to source the additional upstream inputs from the merchant market but this would mean losing control over the production process at the crucial stage of liquid steel and would not represent a viable option especially for automotive HDG and metallic packaging steel as explained in Sections 9.4.3.6 and 9.5.7.

392 M.8444 – *ArcelorMittal/Ilva*, recitals 454, illustrates how flat steel producers consider capacity in their assessment of the market.

into account their capacity and the capacity of their competitors in the ordinary course of business.[393]

(478) For the above reasons, sales shares alone may not capture the full competitive constraint exerted by each producer, as a producer with a low level of sales but a high share of capacity might exert a competitive constraint that is higher than what is suggested by its share of (merchant) sales.

(479) Capacity shares provide a direct indication of overall production possibilities at the EEA level, which the Commission regards as an important driver of the competitive dynamics among EEA suppliers. The Commission considers therefore that capacity shares are an appropriate and informative additional metric of market power in the steel industry.

(480) Moreover, capacity shares, and particularly changes thereof, reflect lasting changes in the structure of a market as well as the magnitude of such structural changes.

(481) In conclusion, and in line with Commission precedents, in order to capture the full market power of flat carbon steel suppliers, the Commission considers capacity shares in addition to (merchant) sales shares.[394]

(482) Further, as explained in each relevant section, the Commission considers other quantitative indicators to the extent that they might better reflect at least some aspect of market power in the flat carbon products affected by the Transaction. As also explained in the Horizontal Merger Guidelines (recitals 28–38), such other factors include closeness of competition, the elimination of the competitive force exerted by Tata, the likely reaction of competitors, countervailing buyer power and the competitive constraint of imports.

(483) The market shares in this section are presented at the EEA-wide level. However, the Commission, as referred to in Section 8.4, does not exclude that the effects of the Transaction could be even more significant in certain parts of the geographically differentiated EEA market, as further described in the competitive assessment (Sections 9.4 and 9.5).

(484) Table 8 presents market shares based on merchant sales in the EEA computed on the basis of the Notifying Parties' data. On that basis, the Parties would be the second most important player in most of the relevant markets. In the HDG market, the combined entity would have a market share of [20-30]% and together with ArcelorMittal would represent about [60-70]% of HDG sales in the EEA. The third player would be Voestalpine with a [5-10]% market share. The post-merger HHI in HDG would be [2000-2500] and the delta brought by the Transaction would amount to [150-250].

(485) Further, the combined entity would be the market leader in TP with a market share of [40-50]%. In ECCS, the Parties would have a combined share of [30-40]%. In TP, the combined entity together with ArcelorMittal would control more than [70-80]% of merchant sales; in ECCS they would control more than [80-90]% of the market.

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393 See the document prepared by Tata in the ordinary course of business to analyse competitors' capacity utilisation (Figure 168) and the document prepared in the context of the Transaction by the Notifying Parties assessing competitors' capacity increases (Figure 170).

394 M.8444 – *ArcelorMittal/Ilva*, recitals 445ff and M.6471 – *Outokumpu/Inoxum*, para 282ff. In both cases, which assessed a merger in the flat steel industry, the Commission considered merchant market sales as well as capacity shares at the EEA level at each level of the value chain.

(486) At the level of these products the HHI increment resulting from the Transaction would range from [450-550] in ECCS to [850-950] in TP.

Table 8 – EEA market shares based on merchant sales (2017)

Company	HDG (kt)	HDG (share)
Tata	[…]	[5-10]%
ThyssenKrupp	[…]	[10-20]%
Combined	[…]	***[20-30]%***
Arcelormittal	[…]	[30-40]%
Arvedi	[…]	[0-5]%
Voestalpine	[…]	[5-10]%
Salzgitter	[…]	[0-5]%
Ssab	[…]	[0-5]%
U.S. Steel	[…]	[0-5]%
Metinvest	[…]	[0-5]%
Nlmk	[…]	[0-5]%
Isd	[…]	[0-5]%
Non-Eurofer	[…]	[0-5]%
Other	[…]	[0-5]%
Imports	[…]	[10-20]%
Total	[…]	100%
HHI pre-merger	[2000-2500]	
HHI post-merger	[2000-2500]	
HHI increment	[150-250]	

Company	TP (kt)	TP (share)	ECCS (kt)	ECCS (share)
Tata	[…]	[20-30]%	[…]	[5-10]%
ThyssenKrupp	[…]	[20-30]%	[…]	[20-30]%
Combined	[…]	***[40-50]%***	[…]	***[30-40]%***
Arcelormittal	[…]	[30-40]%	[…]	[40-50]%
U.S. Steel	[…]	[10-20]%	[…]	[0-5]%
Stalprodukt	[…]	[0-5]%	[…]	[0-5]%
Imports	[…]	[10-20]%	[…]	[10-20]%
Total	[…]	100%	[…]	100%
HHI pre-merger	[2000-2500]		[3000-3500]	
HHI post-merger	[3000-3500]		[3500-4000]	
HHI increment	[850-950]		[450-550]	

Source: Commission's calculations based on Notifying Parties's reply to RFI 28

(487) The Parties submit in their Response to the Statement of Objections that the market shares of the Parties in metallic coated steel for packaging have decreased to [30-40]% for TP and [30-40]% for ECCS in 2018.[395] This is based on the Notifying Parties' corrected response to the Commission's request for information RFI 28,

395 Response to the SO, paragraph 4.18.

where they indicate that Tata's EEA […], allegedly due to (i) switching from TP to aluminium by customers in the beverage segment, (ii) increased competition from EEA and non-EEA suppliers, (iii) […].[396]

(488) The Commission has reconstructed the Parties' sales market shares for the full year of 2018 and concludes that the market share of the combined entity has not decreased materially to the extent claimed by the Parties, but remains at [40-50]% for TP and [30-40]% for ECCS.[397]

(489) In addition, the Commission notes that Tata […]. Therefore, the market shares presented in Table 8 likely underestimate the competitive constraint which Tata would exert in ECCS once the line would become active (the same would also apply to laminated products for which Tata and ThyssenKrupp are the only EEA producers). The Parties submit that the lamination line has a capacity of […] and the TCCT line of […],[398][…].[399]

(490) For laminated steel, in 2017 Tata had EEA sales for […] whereas ThyssenKrupp's sales amounted to […]. The Parties are the only EEA producers of laminated steel for packaging and the market investigation has not revealed any material volumes supplied by non-EEA producers to the EEA (see recital (1387)). On this basis the merged entity would have 100% of the market for laminated steel in the EEA and the Transaction would imply an increment of [40-50]% (Tata's share in laminated steel). Further, in terms of comparison, laminated steel sales in the EEA represent less than 1% of the total sales of TP and ECCS.

(491) Table 9 shows the market shares in terms of merchant sales in the market of automotive HDG in the EEA. Notably, and according to the Notifying Parties, the merged entity's market share for sales of HDG in the automotive sector would be between [20-30]% and [30-40]% depending on the sales considered.[400] The Commission has performed two market reconstructions that lead to similar figures. One market reconstruction, based on data collected from a sample of automotive customers, resulted in a combined market share of the Notifying Parties of [20-30]%. Another market reconstruction, based on sales data provided by EEA competitors, resulted in an estimated combined share of [30-40]%. Overall, the Commission notes that the Parties' market shares for automotive HDG exceed the corresponding market shares at the overall HDG level depicted in Table 8. This shows a relative higher presence and overlap of the Parties in the sales of HDG to the automotive market as compared to their presence and overlap if considering all sales of HDG irrespective of the final customers.

(492) The HHI increment implied by these shares would range between [250-350] and [450-550].

(493) As further explained in Section 9.4.3.1, the Commission observes that there is a certain degree of variation in the available estimates of the Notifying Parties' sales to the automotive sector. For this reason, in Section 9.4.3.1 the Commission also presents and discusses other metrics collected during the investigation.

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396 Parties' revised reply to RFI 28.

397 Commission's calculation based on request for information to Eurofer, and DG TAXUD's import surveillance data, Doc ID4473 and Doc ID4472.

398 Parties' reply to RFI 38.

399 Form CO paragraph 6.309, Parties' reply to RFI 38.

400 In particular depending on how sales to automotive customers through the related and independent steel service centres ('SCCs') are treated and estimated.

Table 9 – HDG EEA market shares based on sales to automotive customers (2017)

	Notifiying Parties		Market reconstruction			
			Based on customers' purchases		Based on suppliers' sales	
Company	**Vol (kt)**	**Share**	**Vol (kt)**	**share**	**Vol (kt)**	**share**
Tata	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
ThyssenKrupp	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Combined	[…]	[20-30]%	[…]	[20-30]%	[…]	[30-40]%
Sales to tk MX distribution centres	[…]	[0-5]%				
ThyssenKrupp sales to other distributors	[…]	[0-5]%				
Tata sales to other distributors	[…]	[0-5]%				
Combined incl. sales to 3rd party distr.	[…]	[30-40]%				
Other	[…]	[70-80]%	[…]	[70-80]%	[…]	[70-80]%
Total	[…]	100 %	[…]	100 %	[…]	100 %
HHI increment	[300-500]		[350-450]		[350-450]	

*Source: * Notifying Parties reply to Q. 16 of RFI 23; ** Commission's calculations based on customers' data collected in the market investigation (18 customers), *** Commission's calculations based on Notifying Parties data and competitors' data (8 competitors) collected in the market investigation (excluding competitors outside the EEA).*

(494) Table 10 shows the capacity shares in the EEA in 2017. These capacity shares reflect the capacity figures submitted by the Parties and the outcome of the Commission's market investigation. However, even if the Commission were to rely only on the capacity shares provided by the Notifying Parties, the conclusions reached would not materially change.

(495) The merged entity would reach a combined capacity share of [20–30]% in the main upstream product (for both automotive steel and steel for packaging), namely HR in the EEA. The HHI increment related to HR would be [350–450]. The Parties would also control a significant portion of the HR spare capacity with a share of [40–50]% in the EEA. Further, the Commission observes that this share computation does not consider Tata's temporarily mothballed assets in Llanwern (United Kingdom). This is a significant HR mill with capacity in excess of 3 000 kilotonnes that was recently mothballed (2015) and that could be brought back to the market. If these assets were to be included, the capacity market share of the combined entity would likely be above [30-40]% and the share of spare capacity would also exceed [50-60]%.[401] However, for

401 The Llanwern facility is the only mothballed HR mill in the EEA that could be brought back to the market. This can be derived from a difference of the Notifying Parties' definition of nominal operating and nominal capacity as indicated […].

consistency in its approach in this case (that does not consider mothballed assets), the Commission does not include the HR mill of Llanwern in its assessment.

(496) In terms of HDG the Parties would have a capacity share of [20-30]% in the EEA. As the Parties […]. Indeed, the Commission finds that most of the available spare capacity in HDG is either in the hands of ArcelorMittal or in the hands of some fringe players that are not relevant in terms of sales shares. The HHI increment related to HDG capacity would be [150-250]. Capacity for HDG products sold to automotive customers would be a subset of the overall HDG capacity available. Table 11 presents the Commission calculation of the HDG capacity that is capable of producing steel for automotive customers. The Commission finds that for this product market the combined capacity share of the Parties ([20-30]% in the EEA) would significantly exceed the combined capacity at the broader HDG level ([20-30]% in the EEA), further denoting a higher overlap of the Parties in this product market also in terms of capacity. Further capacity figures related to the automotive market are described in more detail in Section 9.4.

(497) In terms of metallic-coated packaging steel, the Parties would hold [60-70]% of TP capacity and [40-50]% of ECCS capacity in the EEA. Despite working at a relatively high utilisation rate, in TP the combined entity would also control more than [70-80]% of the spare capacity in the EEA. In metallic-coated packaging steel, the HHI increment brought by the Transaction would range from [950-1050] (ECCS) to almost [1950-2050] (TP).

Table 10 – EEA market shares based on capacity (2017)

HR	**vol (kt)**	**share**	**cap. utilis.**	**spare capacity**	**Spare capacity share**	**HHI delta**
Tata	[…]	[10-20]%	[…]	[…]	[…]	
ThyssenKrupp	[…]	[10-20]%	[…]	[…]	[…]	
Combined	[…]	[20-30]%	[…]	[…]	[…]	
Total market	[…]	100%	[…]	[…]	100%	[350-450]
HDG	**vol (kt)**	**share**	**cap. utilis.**	**spare capacity**	**Spare capacity share**	**HHI delta**
Tata	[…]	[5-10]%	[…]	[…]	[…]	
ThyssenKrupp	[…]	[10-20]%	[…]	[…]	[…]	
Combined	[…]	[20-30]%	[…]	[…]	[…]	
Total market	[…]	100%	[…]	[…]	100%	[150-250]
TP	**vol (kt)**	**share**	**cap. utilis.**	**spare capacity**	**Spare capacity share**	**HHI delta**
Tata	[…]	[20-30]%	[…]	[…]	[…]	
ThyssenKrupp	[…]	[30-40]%	[…]	[…]	[…]	
Combined	[…]	[60-70]%	[…]	[…]	[…]	
Total market	[…]	100%	[…]	[…]	100%	[1850-1950]

ECCS	vol (kt)	share	cap. utilis.	spare capacity	Spare capacity share	HHI delta
Tata	[…]	[10-20]%	[…]	[…]	[…]	
ThyssenKrupp	[…]	[30-40]%	[…]	[…]	[…]	
Combined	[…]	[40-50]%	[…]	[…]	[…]	
Total market	[…]	100%	[…]	[…]	100%	[1050-1150]

Source: Commission's calculations based on: Form CO Annex 21 A and Reply to RFI 1 Annex 13 (production 2016), Parties' reply to RFI 6 Annex 2 (capacity 2017 for the Parties), Competitors' reply to Phase I Questionnaire 2017 and Form CO Annex 20 A (capacity and production 2017 for competitors)[402]

(498) For laminated steel, Tata and ThyssenKrupp are the only EEA producers and they have capacity of […] and […] respectively. In comparison to other metallic-coated steel products for packaging, the total EEA laminated steel capacity (that coincides with the laminated steel capacity of the merged entity) would represent about 5% of the total EEA capacity of TP and ECCS combined.

(499) Regarding HDG sold to automotive customers, Table 11 presents the results of the Commission's market investigation with respect to nominal production capacities that each steel supplier identified as capable of producing HDG steel suitable for the automotive industry. The Notifying Parties' combined market share in this respect would amount to [20-30]%, behind only the market leader ArcelorMittal, and between two and three times larger than the capacity market share of the third largest producer post-Transaction. Further capacity metrics on HDG for automotive customers are discussed in Section 9.4.3.1.

Table 11 – Share of nominal automotive-capable HDG capacities

	ThyssenKrupp	Tata	Combined	Others EEA	Total
Volume (kt)	[…]	[…]	[…]	[…]	[…]
Share	[10-20]%	[10-20]%	[20-30]%	[70-80]%	100%

Source: Commission's calculations based on its market investigation on competitors' automotive capabilities[403]

9.4. Finished flat carbon steel: automotive HDG – Horizontal non-coordinated effects

9.4.1. Introduction

(500) Within galvanised flat carbon steel products, the Notifying Parties only overlap with regard to the production and supply of HDG as Tata is not active in EG.

(501) As explained in more detail in Section 7.5.4.2, HDG constitutes by far the majority of all GS supplied in the EEA, including supplies to the automotive industry. While EG is also significantly sold to automotive customers in the EEA, it overall accounts

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402 Capacity is measured as the reported effective capacity for the Parties and competitors that replied to the Commission's market investigation. For competitors that did not reply to the Commission's market investigation, the effective capacity is computed as the nominal capacity provided by the Notifying Parties, discounted for the average nominal/effective capacity ratio computed at the product level on the basis of the data provided by the Notifying Parties. Spare capacity is computed as the difference between effective capacity and production.

403 All automotive HDG capacity estimates (Table 11, Table 13, Table 14, Table 15 and Table 16) as well as automotive HDG sales in Table 9 are based on the most recently available data provided by each respondent to the market investigation (2017/2018).

for less than 10% of all GS sold to the automotive industry in the EEA. As explained in that section, the outcome of the competitive assessment would thus remain the same regardless of whether a distinct market for HDG or a combined GS market (HDG+EG) were considered. For the sake of simplicity, only HDG is discussed in this assessment of the competitive effects of the Transaction. The outcome of the assessment nonetheless applies to a potential GS (HDG+EG) market as well.

9.4.2. The Notifying Parties' views

(502) The Parties are of the view that the Transaction would not give rise to non-coordinated effects on the market for galvanised steel generally. The Parties in essence argue (i) that the market would have a global dimension and be characterised by global trends (imports and global spare capacities) benefitting the automotive industry, (ii) that through the expansion of Ilva, ArcelorMittal would have significant spare capacities to serve automotive customers, (iii) that automotive customers are large companies which would enjoy significant buyer power and would be able to counter any price increase attempt by the merged entity, and (iv) that automotive customers would also be in a trend of switching to other materials, and in particular aluminium, in order to produce lighter cars with lower fuel consumption.[404]

(503) Regarding steel used in the automotive sector, especially automotive HDG, the Parties consider that the Transaction could not have any significant effect on competition in the EEA, in essence because: (i) automotive steel is not a product market separate from steel for other applications; (ii) the Parties' market positions in automotive steel are limited and they face many significant competitors both within the EEA and from outside of the EEA; (iii) the existing and planned expansion in spare capacity would defeat any hypothetical price increases; (iv) automotive customers are large players with significant buyer power, in particular because they can switch supplier relatively easily and quickly; (v) the Parties are also constrained by alternative materials such as aluminium, the importance of which will grow in view of the needed reduction of vehicle weight; (vi) in the specific case of the low-volume advanced high strength steel products with a tensile strength of 800 MPa and above ('AHSS') – which require specialised production assets – the overlap between the Parties is limited, they face significant competition, there are large production overcapacities and automotive customers are able to leverage their overall purchase volumes to defeat hypothetical price increases; and (vii) the Commission would have significantly exaggerated Tata's growth, relevance and closeness with ThyssenKrupp as a player in automotive steel, notably in the more advanced products and in comparison with other players and their recent investments.[405]

(504) In their Response to the Statement of Objections, the Parties placed particular focus on the Commission's allegedly flawed assessment of the existence of spare capacity in the hands of competitors, which they could in the Parties' view use to defeat any hypothetical price increase resulting from the Transaction. Specifically, the Parties notably claim: (i) that HDG production lines which are currently unable to produce automotive HDG could generally be upgraded to acquire these capabilities at a relatively '*minimal*' cost ('[…]'); and (ii) that competing steelmakers have '*significant capacity*', a '*material share*' of which is not currently used to supply

404 See the Form CO.

405 Comments on the Article 6(1)(c) decision, Sections 1.C and 4.

automotive HDG and could therefore be used to defeat an attempted price increase.[406]

(505) The Parties also reiterated a number of their criticisms of the Commission's assessment already mentioned above, including the allegedly: (i) undue characterisation of Tata as a growing competitive force, especially in view of its market share not having increased; (ii) undue dismissal of re-rollers as significant competitive constraints since vertical integration would in fact not be a significant competitive advantage; (iii) undue dismissal of imports as a significant competitive constraint in spite of the technical capabilities and capacities of non-EEA suppliers as well as their allegedly significant sales to at least some OEMs, including in the EEA; (iv) undue dismissal of OEMs' buyer power; (v) undue characterisation of what the Parties describe as the Commission's conclusion that '*the Parties are each other's closest competitor*'.[407]

9.4.3. The Commission's assessment

(506) Based on the results of the market investigation and all the evidence available to it, the Commission finds that the Parties' arguments cannot be upheld and that concerns arise for automotive HDG in the EEA for the reasons explained in the following Sections 9.4.3.1 to 9.4.3.8.

9.4.3.1. Market share metrics show that the Transaction would significantly increase concentration in an already concentrated market

(507) As explained in Section 9.2, market shares provide a useful first approximation of market power. The Parties claim that there is no definition of 'automotive HDG' and that it is challenging to determine the size of this market and the relative weight of each supplier.[408] However, they have produced for the Commission an estimate of their market share in this market.

(508) The Parties submit that there might not be a fully reliable and independent third party provider that estimates the size and relative position of each supplier in the automotive HDG market in the EEA. However, the Commission considers that it is possible to derive several useful indicators that are good proxies for the companies' competitive positions in this market and its sub-segments.

(509) Therefore, in order to complement the market shares provided by the Parties, as provided above in Table 8 in Section 9.3, which are largely based on their sales and an estimate of the steel consumed by automotive customers, the Commission has relied on several different approaches and metrics as detailed in this section.

(510) In particular, the Commission constructed a number of different market share metrics from different sources, namely data on sales and capacities from competitors and data on purchases from customers, in order to draw a robust picture of the competitive dynamics in the supply of HDG to automotive customers in the EEA. The results have also been provided in Table 9 and recital (491) in Section 9.3 and are further explained in Sections 9.4.3.1.a and 9.4.3.1.b.

(511) Further, the Commission has also found several estimates of the automotive HDG market and the Parties' shares in that market produced by the Parties in their ordinary

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406 Response to the SO, notably paragraphs 1.6(i)(c), 1.8(ii)(b), 3.8 to 3.13 and 3.157 to 3.163. See also the First Data Room Report and the Parties' reply to RFI 37.

407 Response to the SO, notably paragraph 1.8(ii)(b). See also the Parties' reply to RFI 37.

408 Form CO, Annex 72.

course of business as well as for the purposes of the Transaction. This other set of evidence is presented in Sections 9.4.3.1.c and 9.4.3.1.d.

(512) Overall, the Commission finds that where many different metrics indicate a similar range of values, even when accounting for the possible data shortcomings of each single metric, this common indication is likely to be an accurate approximation of the Parties' position. This is the case here as will be shown below.

(513) As regards the Parties' position in the automotive HDG market in the EEA, the Commission considers that all available metrics show that the Transaction would result in a significant increase in concentration in an already concentrated market for automotive HDG in the EEA, leaving only the market leader ArcelorMittal as a large competitor to the combined entity, and a fringe of significantly smaller producers as remaining competitors.

a. The Parties' assessment of automotive HDG shares

(514) The Parties have submitted two assessments of sales market shares in the automotive HDG market. The first set of estimates was submitted as part of the notification and the second was submitted in reply to a Commission request for information.[409]

(515) Both submissions estimate the market size based on the production of vehicles and an estimate of the average content of steel per vehicle. This calculation notably excludes trucks. The first estimate only looked at vehicle production in the EEA and thus did not consider steel that could be sold in the EEA and used for car production outside the EEA. It also did not include steel sold for spare parts and steel sold but that is scrapped due to production errors by car or part manufacturers. However, in its second submission the Notifying Parties corrected these sources of underestimation.

(516) Furthermore the Commission does not consider critical the omission of truck production as that would likely only account for less than 1 million tonnes of flat carbon steel on a yearly basis, less than half of which would be HDG.[410] The Parties estimate a total automotive market size for flat carbon steel (HR, CR, HDG, EG) of about 19 million tonnes of which 11.9 million tonnes accounted for by HDG sales.[411]

(517) The Commission considers this estimate to be plausible as it is also consistent with the estimates of ACEA and of the Association of European Steel Producers ('Eurofer').[412]

(518) The sales of the Parties are estimated on the basis of the Parties' own records and the Parties are unable to estimate the shares of their competitors as they do not have access to their competitors' data. As regards the Parties' sales, the Commission had asked the Parties to also identify their sales to automotive customers that are channelled through SSCs related or not to the Parties. In the second set of estimates, the Parties have indicated an estimate for these sales.

(519) The Parties' assessment of their shares for automotive HDG in the EEA are presented above in Table 9 and show that the Parties estimate the market share of the

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409 Respectively Annex 72 of the Form CO and the reply to question 16 of RFI 23.

410 DocID2850-50319 (TSE0181529.pdf), slide 4.

411 See Table 9 and Reply to RFI 23, Table 16.1.

412 Eurofer estimates the market size for flat carbon steel sold to the automotive industry to be 19.6 million tonnes and ACEA estimates it to be 23 million tonnes including long products. Minutes of a meeting with a competitor on 9.1.2019, DocID3571.

merged entity in automotive HDG in the EEA to be between [20-30]% and [30-40]%.

b. The Commission's market share estimates

(520) In its assessment the Commission considered indicators based on: (i) competitors' production capacities and sales of products to automotive customers; (ii) automotive customer purchases; and (iii) available statistics produced by third parties. These metrics are described in the following sections.

i. Shares based on a survey of the Parties' competitors

(521) First, the Commission considered the sales and the production capacities of the EEA HDG producers that serve the automotive sector. These metrics capture the most significant players in the competitive landscape for the automotive HDG market. The Commission considers that a possible under-representation due to other suppliers not being surveyed would not significantly affect the results of the analysis as such other players are much smaller and hence their sales would not materially affect the estimates, while imports, as explained in Section 9.4.3.5, based on reliable estimates, have very limited shares (for instance, ACEA estimates the share of imports for steel used by the automotive sector to be 6%).[413]

(522) The Commission's market reconstruction in this respect covers all vertically integrated steel manufacturers in the EEA as well as the most prominent re-rollers that specialise in producing high-value steel products and partly cater to the automotive industry. The Commission therefore considers that this exercise is comprehensive as it includes all key players in supplying HDG steel products to the automotive industry. These players represent 11.6 million tonnes of HDG sales to automotive customers, roughly 97% of the relevant market as estimated by the Notifying Parties.

(523) Table 12 presents the results of the Commission's market investigation with respect to steel suppliers' HDG sales to automotive customers. According to this metric, the Notifying Parties' sales combine for a total market share of [30-40]%, slightly above the corresponding capacity-based shares, second only to the current market leader ArcelorMittal.

Table 12 – Share of HDG sales to automotive customers

	TK	Tata	Combined	Others EEA	Total
Vol (kt)	[…]	[…]	[…]	[…]	[…]
Share	[10-20]%	[10-20]%	[30-40]%	[70-80]%	100%

Source: Commission's calculations based on its market investigation on competitors' sales to automotive customers

(524) Table 13 presents the results of the Commission's market investigation with respect to nominal production capacities that each steel supplier identifies as capable of producing HDG steel suitable for addressing the requirements of the automotive industry. The Notifying Parties' combined market share in this respect would amount

413 Commission computation on the basis of a statement made by ACEA, see https://www.acea.be/press-releases/article/steel-import-restrictions-now-definitive-leaving-eu-auto-manufacturers-extr (available online on 04.05.2019). Notably this estimate refers to the total steel purchases of the automotive sector. The share for automotive HDG, which is mostly specialty products with customer tailored features, might be lower as imports are more likely to be related to commodity products, see recitals (394) and (1008)-(1009).

to [20-30]%, behind only the market leader ArcelorMittal, and between two and three times larger than the capacity market share of the third largest producer post-Transaction.

Table 13 – Share of nominal automotive-capable HDG capacities

	TK	Tata	Combined	Others EEA	Total
Vol (kt)	[…]	[…]	[…]	[…]	[…]
Share	[10-20]%	[10-20]%	[20-30]%	[70-80]%	100%

Source: Commission's calculations based on its market investigation on competitors' automotive capabilities

(525) During the data-gathering process, the Commission asked respondents to detail the range of technical capabilities of each production line. The Commission is therefore able to compile capacity shares for a number of specific sub-segments that the investigation identified as being particularly relevant for the automotive sector, namely (i) automotive HDG for exposed car parts; (ii) automotive HDG products with widths equal to or greater than 1 650 mm; and (iii) automotive HDG products with widths equal to or greater than 1 850 mm. These shares are presented in Table 14, Table 15 and Table 16. The Notifying Parties' combined (nominal) capacity shares in these important automotive HDG segments are [30-40]%, [30-40]% and [30-40]% respectively, that is higher than their shares for overall automotive HDG capacities.

Table 14 – Share of nominal automotive-capable HDG capacities, exposed parts

	TK	Tata	Combined	Others EEA	Total
Vol (kt)	[…]	[…]	[…]	[…]	[…]
Share	[10-20]%	[20-30]%	[30-40]%	[60-70]%	100%

Source: Commission's calculations based on its market investigation on competitors' automotive capabilities

Table 15 – Share of nominal automotive-capable HDG capacities, >= 1 650mm

	TK	Tata	Combined	Others EEA	Total
Vol (kt)	[…]	[…]	[…]	[…]	[…]
Share	[20-30]%	[10-20]%	[30-40]%	[60-70]%	100%

Source: Commission's calculations based on its market investigation on competitors' automotive capabilities

Table 16 – Share of nominal automotive-capable HDG capacities, >= 1 850mm

	TK	Tata	Combined	Others EEA	Total
Vol (kt)	[…]	[…]	[…]	[…]	[…]
Share	[10-20]%	[10-20]%	[30-40]%	[60-70]%	100%

Source: Commission's calculations based on its market investigation on competitors' automotive capabilities

ii. Shares based on a survey of customers

(526) Second, the Commission considered the sourcing pattern of automotive customers in the EEA. The Commission contacted both car manufacturers and their component suppliers and collected information on their actual sourcing during the past years. This reconstruction can be used as a direct approximation of sales shares.

(527) The sample gathered by the Commission is representative, not only because the largest consumers of automotive HDG have been sampled, but also because, even

based on the Parties' own estimate of the size of the market,[414] the reconstructed volumes would cover more than 70% of the HDG sales to automotive customers in the EEA.

(528) Table 17 presents the results of the Commission's market investigation. The Commission collected evidence on purchases by automotive customers in the EEA for 8.3 million tonnes of HDG from a total of 18 respondents during year 2017. Of these respondents, 13 are car manufacturers and the rest are suppliers to car manufacturers.

(529) On the basis of this survey, the Commission finds that the combined share of the Parties would be [20-30]%. The rest of the EEA steel suppliers would account for [60-70]% of the deliveries, with ArcelorMittal accounting for most of these deliveries. Imports would represent only [5-10]% of deliveries, in line with the import penetration figure also estimated by ACEA.[415]

(530) Further, these shares have been relatively stable during the past four years, as shown in Table 18.

Table 17 – Share of HDG purchases by EEA automotive customers (2017)

Customers	TK	Tata	Comb.	AM	Voest	Salzg	SSAB	USSK	Ilva	SSCs	Others*	Imports	Total
OEM01	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	100%
OEM02	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	100%
OEM03	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	100%
OEM04	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	100%
OEM05	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	100%
OEM06	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	100%
OEM07	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	100%
OEM08	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	100%
OEM09	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	100%
OEM11	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	100%
OEM12	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	100%
OEM13	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	100%
OEM14	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	100%
Other01	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	100%
Other03	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	100%
Other05	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	100%
Other06	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	100%
Other07	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	100%
Total	[10-20]	[10-20]	[20-30]	[30-40]	[5-10]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[5-10]	[5-10]	100%
Total Vol (kt)	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

414 The Commission investigation collected information on purchases of HDG by automotive customers for 8.3 million tonnes. The Parties estimate the total size of the EEA automotive HDG market to be 11.8 million tonnes (Notifying Parties' reply to question 16 of RFI 23).

415 Commission computation on the basis of a statement made by ACEA, see https://www.acea.be/press-releases/article/steel-import-restrictions-now-definitive-leaving-eu-auto-manufacturers-extr (available online on 04.05.2019).

*Source: Commission's calculations based on its market investigation on automotive customers purchases. *The supplier category 'others' also include sales made by the EEA competitors of the Parties that could not be distributed.*

Table 18 – Share of HDG purchases by EEA automotive customers 2015–2018

Supplier	2015	2016	2017	2018
TK	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Tata	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Combined	[20-30]%	[20-30]%	[20-30]%	[20-30]%
Other EEA	[60-70]%	[60-70]%	[60-70]%	[60-70]%
Imports	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Total	100%	100%	100%	100%
Count respondents	16	18	18	18
Total Vol (kt)	[…]	[…]	[…]	[…]

*Source: Commission's calculations based on its market investigation on automotive customers purchases. *The supplier category 'others' also include sales made by the EEA competitors of the Parties that could not be distributed.*

(531) With respect to the mix of respondents to the Commission's investigation, the Commission acknowledges that car manufacturers (OEMs) are better represented in its survey than their component suppliers. The Commission compared the purchases of car manufacturers to the purchases of their suppliers and has found the following differences as shown in Table 19. The merged entity has a lower combined share when looking at component suppliers only, […]. The combined market share at the supplier level is [20-30]%, whilst the combined share at the OEM level increases to [30-40]%. However, in terms of total sales the surveyed component suppliers do not account for a large proportion of steel purchases compared to purchases by OEMs directly. Consequently, the Commission considers that the Parties' overall market share is credibly estimated at [20-30]%, which is in line with the estimates based on the other metrics mentioned above.

Table 19 – Share of HDG purchases by automotive customer type (2017)

Type of customers	TK	Tata	Combined	Other EEA	Imports	Total
OEM	[10-20]%	[10-20]%	[30-40]%	[60-70]%	[5-10]%	100%
Supplier	[20-30]%	[0-5]%	[20-30]%	[70-80]%	[0-5]%	100%
Total	[10-20]%	[10-20]%	[20-30]%	[60-70]%	[5-10]%	100%
Total Vol (kt)	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's calculations based on its market investigation on automotive customers purchases

(532) In the context of this survey, the Commission notes that a number of customers identified SSCs as suppliers. However, the Commission understands that SSCs sell HDG sourced from mills and therefore should not appear as a distinct category. In particular, this means that the above figures may underestimate the sales of the Parties as these may have been attributed to SSCs, given that the Parties sell also via SSCs. In any case, having a separate category for SSCs is not likely to affect significantly the overall market share estimates because of the low volumes involved (4% of the sales in our sample) and because the Commission has not found any evidence indicating that SSCs might on-sell only steel from a subset of mills.

(533) On the relevance of imports, the Commission's investigation supports the estimates of ACEA that imports account for 6% of sales. Further, the Commission finds that a

small number of customers account for a disproportionate share of imports. Also, the collected data shows that reliance on imports might be related to geographic location or the origin of the car manufacturer and its relations with steel mills in its market of origin.

iii. Shares based on Eurofer's end-user survey

(534) The Commission understands that Eurofer collects data on a regular basis from its members on their sales to some pre-defined end-user groups. One of these groups is automotive customers. As a survey on sales to automotive end-users, this survey does not capture the sales made to SSCs or distributors unless the SSCs are physically integrated in the steel mill. However, not covering the sales to SSCs is not likely to affect the main results as SSCs appear, on the basis of the Commission analysis discussed in recital (532), to account for only 4% of sales.

(535) Eurofer estimates a total automotive end-user flat carbon steel market of 13.7 million tonnes in 2017 and a market for automotive HDG of 8.3 million tonnes in the same period. This market size would exclude sales from steel producers to SSCs and distributors and imports as these are not part of Eurofer's assessment.

(536) On the basis of this survey, the combined share of the Parties in the sale of HDG to customers in the automotive sector in the EEA is [30-40]%.

c. In the ordinary course of business, the Parties rely on metrics for automotive HDG which point to a high concentration of the EEA market

(537) The Parties explained in their Comments on the Article 6(1)(c) decision that market shares for hypothetical automotive steel markets are difficult to gather, in particular in view of the absence of an agreed definition for such a product market.[416]

(538) Nonetheless, the Commission finds that in the ordinary course of business the Notifying Parties often rely on estimates for the automotive HDG market, with specific figures for market shares and market size.

(539) For example, Figure 73 shows an extract from a ThyssenKrupp internal document that clearly distinguishes '*[a]uto*' and '*[n]on-[a]uto*' segments and quantifies the volume of HDG ('*Feuer*') sold to the automotive industry at approximately […] in 2016. In comparison, the Commission's market investigation on customers counted 8.3 million tonnes of HDG sold to automotive customers (in year 2017). This further indicates that the Commission's investigation covers a high proportion of the whole market (approximately 80%).

Figure 73 – […][417]

[…]

(540) Similarly, Figure 74 shows Tata's assessment in September 2018 of the *'current market environment*' for *'automotive HDG*' in the '*EU28*', with specific figures for *'demand'*[418] as well as capacity (split by steel supplier). It also provides details on the number and location of *'automotive capable*' production lines for each HDG supplier in the EU28. In addition to pointing to the fact that not all nominal capacity is in fact available in practice for the production of automotive HDG, Tata's internal estimates

416 Comments on the Article 6(1)(c) decision, paragraphs 4.79 to 4.87.

417 […].

418 *Sic*. More accurately, this probably means the quantity demanded at expected equilibrium prices, namely sales.

for capacities contained in this document suggest a combined market share for the merged entity similar to the one obtained in the other metrics described above. Indeed, on the basis of these figures, the merged entity would have a capacity share for automotive HDG in the EEA of approximately [30-40]%, behind ArcelorMittal ([40-50]%) but significantly ahead of the third player Voestalpine ([10-20]%) or the other smaller suppliers.

Figure 74 – […][419]

[…]

(541) Figure 75 shows a Tata internal document where the company discusses market shares with particular automotive customers and in certain geographies. The document shows current or estimated future market shares of [20-30] with a number of major OEMs, including […].

Figure 75 – […][420]

[…]

(542) Figure 76 shows an extract from a Tata internal document that discusses segment analyses as well as the attractiveness of certain segments and Tata's competitiveness in them. […].

Figure 76 – […][421]

[…]

(543) Similarly, the ThyssenKrupp internal email from 7 January 2016 captioned in Figure 77 shows market share estimates for ThyssenKrupp and competitors (including Tata) for automotive steel in the EU28. For automotive HDG ('*Feuer*'), the market share for ThyssenKrupp is estimated to be [40-50]%; for Tata [5-10]%.

Figure 77 – […][422]

[…]

(544) Moreover, with reference to the estimates captioned in Figure 77, the ThyssenKrupp internal email captioned in Figure 78 […][423] […].[424]

Figure 78 – […][425]

[…]

d. The synergy documents prepared in view of the Transaction also contain market share metrics based on a number of assumptions

(545) The Commission considers that other relevant metrics on the sales of HDG to the automotive sector are provided by the synergy documents prepared in the context of the Transaction.

(546) Figure 79 is an internal Tata document describing the volume of steel required for car-making, which indicates that […] of flat carbon steel purchases for automotive applications are influenced directly or indirectly by automotive OEMs. The

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419 […].
420 […].
421 […].
422 […].
423 Courtesy translation. The German original reads […].
424 Courtesy translation. The German original reads […].
425 […].

remaining […] of the sales are not influenced by OEMs, which are not involved in the negotiations, but are purchased freely from steel mills by SSCs/distributors.

Figure 79 – […][426]

[…]

(547) Further, the document in Figure 80 shows that the combined market share of the Parties would be above [30-40]% at 6 out of the 10 customer positions considered.

Figure 80 – […][427]

[…]

(548) Similarly, the Tata internal assessment of the Parties' individual and combined *'share of wallet*' of steel suppliers at the OEM level in each EEA country captioned in Figure 81 reveals higher individual and combined steel shares for the Parties than in the EEA overall, especially in Germany and the United Kingdom.

Figure 81 – […][428]

[…]

(549) Another internal Tata document captioned at Figure 82 illustrates the kind of background analysis that was done inside Tata to collect market share information at customer level. This chart done for […] indicates that Tata alone has a very high market share ([40-50]) at […] and that the combined share of the Parties at […] would be in excess of [60-70].

Figure 82 – […][429]

[…]

(550) Moreover, another synergy document submitted by the Parties and captioned in Figure 83 estimates the automotive sales (presumably of all flat carbon steel) of the Parties at […] million tonnes in the year 2014–2015. The Commission notes that this figure is significantly higher than the figures reported to the Commission by the Parties, for example in Annex 72 of the Form CO, in which the total sales of the Parties for HR, CR, EG and HDG amounted to […] million tonnes.[430]

Figure 83 – […]

[…]

(551) Figure 84 is a more recent synergy document prepared in May 2017. This document shows the likely strip delivery of the combined entity post-Transaction. For total deliveries of about […] million tonnes, the document identifies [30–40]% as belonging to the automotive sector. This means that the sales to automotive customers in the synergy assessment of May 2017 were estimated at […] million tonnes, consistent with the previous estimate made in 2014–2015 and discussed in the preceding recital, and significantly above what the Parties suggested in the Form CO.

426 […].
427 […].
428 […].
429 […].
430 […].

Figure 84 – […][431]

[…]

(552) Overall, the Commission considers that, although only a few of these internal documents are specific to HDG sold to automotive customers (as other documents discuss the overall volume of flat steel sold to automotive customers), these documents indicate some significant discrepancies between the Parties' internal estimates of sales to the automotive sector and the Parties' submissions to the Commission because the former in some instances show higher sales and shares than the latter, thereby indicating a possible underestimation of the Parties' market shares in their submissions to the Commission.

e. Conclusions on market share metrics

(553) On the basis of the evidence discussed in recitals (507)-(553), the Commission considers that the Parties have a significant market position in the EEA automotive HDG market. In general, the combined market share of the Parties is, according to all available metrics, at least [20-30]% (as also estimated by the Parties in the context of this notification). Based on ordinary course of business documents and synergy documents, however, the Commission finds that the Parties' internal estimates of their own combined share is often higher ([…]). It is worth noting that this difference appears to be largely driven by the Commission's market reconstruction been overly inclusive in terms of steel suppliers considered, whereas the Parties' internal documents focus mainly on a much narrower group of automotive capable suppliers, in line with the Commission's assessment of the limited competitive constraint exercised by some of the smaller actors.[432] The Commission's market share estimates therefore likely underestimate the Parties' market positions.

(554) In terms of its own assessment, the Commission also finds that the Parties' combined market share is likely to be higher ([30–40]%) in certain product segments (notably automotive HDG for wide or exposed car parts) or in some countries (notably in the United Kingdom and Germany). Moreover, the share of wallet analysis performed by the Parties in the ordinary course of business, confirming the Commission's market reconstruction, would point to a combined market share for the Parties at individual OEMs which in some cases exceeds 40%.

(555) Further, the Commission considers that concentration in the EEA automotive HDG market would increase significantly as post-Transaction the merged entity and ArcelorMittal would control between [60–70]% and [70-80]% of the sales and production capacity for automotive HDG in the EEA and the few other remaining competitors would follow with market shares below 10%.

9.4.3.2. In view of their size and capabilities, the Parties are important competitors in the automotive HDG market

(556) The Parties' market shares described in Section 9.4.3.1 highlight that the Parties are large players in automotive HDG in the EEA and that the Transaction would significantly increase concentration in this market, thereby significantly increasing the Parties' already existing market power.

(557) Moreover, beside their share of automotive HDG, the Parties are important players in this market also for other reasons. In particular, the Parties are two of the three

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431 […].

432 See Sections 6.3.4.4 and 6.3.4.5.

largest integrated steel players in the EEA and have specific capabilities, which, together with their size, make them important competitors in this market. Smaller competitors are not equally important because they are limited by size and because a significant investment would be required to invest across all those capabilities.

a. The Parties are integrated players and control large upstream capacities

(558) As sizeable integrated players, the Parties control, with ArcelorMittal, the largest upstream capacities in the EEA.

(559) It is worth recalling that, as described in Section 5.2, steel production – particularly as regards high-end products – is a vertically-integrated process in which quality levels are monitored throughout, starting with the production of liquid steel, continuing with the production of intermediate products such as hot-rolled and cold-rolled products, and ending with the production of downstream products such as automotive HDG.

(560) Integration is an important feature of competition in the relevant markets, and affects competitive dynamics throughout the value chain.

(561) Indeed, the flat carbon steel industry in the EEA is characterised by the presence of a limited number of steel producers, which are all integrated throughout the value chain.[433] Such companies in essence include for instance the Notifying Parties – Tata and ThyssenKrupp – as well as ArcelorMittal, Voestalpine, SSAB, Salzgitter and US Steel Kosice. Within that group, the Parties and ArcelorMittal are significantly stronger competitive forces, as explained in Section 9.4.3.2.c.

(562) These integrated players have significant advantages over non-integrated players in several respects, which the Commission details in the following sections.

i. Limited availability of upstream substrate

(563) To compete in processed finished steel products, downstream steel producers can either benefit from their in-house upstream production or procure upstream steel products on the merchant market (or both). In line with the overall structure of the industry, a significant share of upstream products produced in the EEA are used captively in the production of downstream products by the incumbent major steel producers such as the Parties.

(564) Non-integrated downstream competitors – commonly referred to as 're-rollers' – need to source their inputs from the integrated EEA suppliers (and/or from imports), while at the same time competing in the downstream markets with the same integrated suppliers.

(565) This situation is likely to make non-integrated steel producers less competitive than integrated producers since the former rely on the availability of the necessary input from third parties, which would typically also be their competitors for downstream products.

(566) In that regard, as noted in recital (182), a steel competitor confirmed the practical difficulty of procuring adequate substrate – in particular to produce automotive HDG – by explaining that *[i]t is important for a steelmaker to be vertically integrated and able to control the quality and consistency of the slabs and HR substrate. While in principle HR can be purchased on the market, including also with the characteristics needed for automotive products; in practice this remains difficult particularly for the*

433 M.8444 – *ArcelorMittal/Ilva*, for instance recitals 79–92.

more special grades. This is due to, for instance, to [sic] the non-availability of such grades and the unwillingness of other competing steel producers to supply such HR coils as they themselves compete in the downstream HDG market for automotive customers'.[434]

(567) Indeed, in their internal documents, the Parties consider their ability to feed downstream production lines with upstream production as an integral part of their competitiveness. This is for instance illustrated in Figure 85 and Figure 86, where the Parties explain that they can […].

Figure 85 – […][435]

[…]

Figure 86 – […][436]

[…]

(568) In their Response to the Statement of Objections, the Parties claimed that high-quality HR substrate and slabs would be readily available to non-integrated players.[437] For the following reasons, the Commission nonetheless does not find the Notifying Parties' submission to be persuasive.

(569) First, the evidence presented either (i) relates to non-integrated players but remains very general (claiming for instance that some competitors are *'becoming more and more competitive'* without presenting concrete evidence in this regard) and aspirational (mentioning for instance a competitor's public announcement of its '*plan to grow significantly*'[438]) or (ii) relates to vertically integrated players.

(570) Second, the non-integrated players the Notifying Parties mention refer to difficulties in sourcing HR that is suitable for the production of downstream automotive HDG and in their competitiveness in the very same pieces of evidence that the Notifying Parties are referring to in their Response to the Statement of Objections. One of the re-rollers mentioned is also not a producer of HDG but a producer of CR.

(571) In the first place, and as already noted, one of these re-rollers is a producer of high-end CR and not of HDG. The company nonetheless requires HR as in input in its production process. In this respect, the company explains that integrated steel suppliers *'prefer to consume their own HR coils in the downstream activity because it is more profitable'*, further noting that *'[o]nly the remaining part of HR coils is then sold to the market'* and that *'companies as [name of the respondent] receive quantities that are left over after usage of what the Parties can consume internally*'. The company further notes that it is *de facto* confined to sourcing from EEA-suppliers, due to for instance trade barriers and logistics reasons, and that it takes a long time to develop new HR supply relationships because *'automotive customers demand information in case of a change of raw material suppliers and certain release procedures in these cases'*. The company is also concerned of the Transaction and notes that *'Tata was the only remaining white spot left on the*

434 Minutes of a meeting with a competitor on 9.1.2019, DocID3571.
435 […].
436 […].
437 Response to the SO, paragraphs 3.82 to 3.87.
438 Response to the SO, paragraph 3.83.

European roadmap. Other than Tata, there are no other suppliers [name of the respondent] can resort to for shifting material volumes.' [439]

(572) In the second place, the other re-roller mentioned by the Notifying Parties in their Response to the Statement of Objections is a producer of HDG and also supplies some volumes to the automotive industry. Nonetheless, that re-roller also explains that there are limits to the sourcing of HR and to the re-rolling business model in general, explaining that it *'is limited due to - - the lack of control over the substrate obtained in the hot rolling process'*. It also further clarifies that its HDG product portfolio is limited in that it *'does not produce exposed parts'* and that this is in part because *'it does not have its own hot rolled substrate'*. It also notes that it would like to participate in more developed products, such as high-strength and special-quality steel, but that *'it needs to be able to source the appropriate substrate'*. While the company confirms that it would nonetheless like to grow in supplying to the automotive industry, it clarifies that it *'expects to be able to expand its market share a little in automotive steel, but not much and would still remain a small player'*. Finally, while the company notes that it has some supply sources outside the EEA, it explains that it *'has difficulty sourcing hot rolled steel in Europe as it competes with its potential suppliers downstream'* and that it *'sees no alternative suppliers of hot rolled steel for automotive in Europe since special grade hot rolled steel is scarce'*.[440]

ii. Integration enables full control of the production chain, enabling the supplier to meet customer needs

(573) Only integrated players such as the Parties, ArcelorMittal and Voestalpine are able to fully control their product mix and production, with a considerable competitive advantage compared to other players. In *ArcelorMittal/Ilva*, which concerned predominantly commodity products, it was noted that vertical integration enables suppliers to better ensure stable quality of the final product.[441] The investigation conclusively indicated that this is even more important in the case of high-quality and advanced products such as automotive HDG than is already the case for more commoditised HDG products.[442]

(574) The majority of customers and competitors responding to the market investigation overwhelmingly confirmed that full control of the entire production chain from liquid steelmaking to finished HDG products is particularly crucial for automotive HDG, for several reasons.[443]

(575) First, integration enables steel producers to monitor and control product quality throughout the value chain, providing greater assurances to automotive customers that the end product will meet their strict specifications and be delivered in a timely manner.

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439 Minutes of a call with a market participant on 12 July 2018, DocID 1859.

440 Minutes of a call with a market participant on 8 January 2019, DocID 3790.

441 M.8444 – *ArcelorMittal/Ilva*, recital 889.

442 Replies to question 63 of Q1 – Questionnaire to Competitors, DocID2166; Replies to questions 59 and 63 of Q3 – Questionnaire to customers (Automotive), DocID2168; Replies to question 47 of Q12.a and Q12.b – Questionnaire to Customers Phase II (Automotive), DocID2952 and DocID2953.

443 Replies to questions 8, 10 and 12–14 of Q1 – Questionnaire to Competitors, DocID2166; Replies to questions 7, 21–23 and 39 of Q3 – Questionnaire to customers (Automotive), DocID2168.

(576) The feedback received from market participants during the Commission's investigation strongly supports this view.[444] For instance, two respondents explained that integration is important because '*[i]ntegrated producers are less vulnerable and not dependent of others'* and '*[i]ntegration means better control over duration of production process, which results in better deliver times'*.[445]

(577) Moreover, a customer confirmed the importance of full control throughout the production chain by explaining that it is '*[i]mportant to control cost and quality of the product*'.[446] A competitor similarly explained that *'automotive customers want to control the whole supply-chain of their production in order to ensure the final quality*'.[447]

(578) Competitors also confirmed that the full control of the production chain as enabled by and usually achieved through vertical integration is necessary for a meaningful market presence in the EEA market for automotive HDG by explaining that: '*[t]he poducer of flat carbon steel for the automotive appliations must guarantee an high level of contol [sic] in all the production flow*';[448] '*[a]utomotive industry is not keen to import carbon steels for its applications as the complete supply chain performance is of the highest importance and cannot be guaranteed from non-EEA sources*';[449] '*[h]igh technical requirements on chemical analysis, mechanical-properties and surface requirements in the automotive-specifications lead to a fully integrated steel process. A non or partly integrated producer would not be able to meet automotive requirements for a wide range of products. To supply European automotive customers, a producer should be located within the European Union*';[450] '*[t]he technical parameters of the steel are set during the steel making process*';[451] and '*[t]he requirements set by Automotive OEM require control of total production chain.* […] *To [a] large degree, alloy content including variation, size,morpholology and frequency of non metallic inclusions are defined upstreams*'.[452]

(579) In their Response to the Letter of Facts, the Parties argued that, while this evidence may support the need to have '*control over the production chain and access to high quality substrate*', these '*can be and are achieved without vertical integration, through supply agreements which include provisions on certification, technical data sharing and testing*'. In their view, the only response explicitly mentioning an advantage of vertical integration itself would be from Salzgitter – which would have '*an obvious agenda*' – and would in any event concede that '*it is possible to compete in Packaging Steel through long term supply agreements*' without explaining why this would not also be the case for automotive HDG. Moreover, other players such as Marcegaglia and USSK would have explicitly responded to the same question that vertical integration is not necessary or important. [453]

(580) In this regard, the Commission notes that it never claimed that vertical integration is the only possible way to secure control of the entire production chain (see

444 See, for instance replies to question 41 of Q2 – Questionnaire to Customers, DocID2167.
445 Replies to question 41.1 of Q2 – Questionnaire to Customers, DocID2167.
446 Reply to question 59 of Q3 – Questionnaire to customers (Automotive), DocID2168.
447 Reply to question 8 of Q1 – Questionnaire to Competitors, DocID2166.
448 Reply to question 45.1 of Q1 – Questionnaire to Competitors, DocID2166.
449 Reply to question 34.1 of Q1 – Questionnaire to Competitors, DocID2166.
450 Reply to question 63.1 of Q1 – Questionnaire to Competitors, DocID2166
451 Reply to questions 64 of Q1 – Questionnaire to Competitors, DocID2166.
452 Replies to questions 63.1 and 64 of Q1 – Questionnaire to Competitors, DocID2166.
453 Response to the Letter of Facts.

recital (575)). At the same point in time, as evidenced in the present section, the investigation largely confirmed that vertical integration – in addition to conferring other advantages – is one way to achieve this, and likely the most effective one. Indeed, recital (581) shows that non-integrated players – such as specifically Marcegaglia – face challenges in competing effectively in automotive HDG.

(581) The benefit of integration is further evidenced by the challenges faced by non-integrated players. One non-integrated player explained that it does not '*produce exposed parts*' (particularly used for automotive applications) because of '*the technical problem that it can produce at most a width of 1500-1550 mm*' and '*the fact that it does not have its own hot rolled substrate or sufficient surface control of the cold rolling process. –[…] The width could be increased only with an entirely new line (at all steps of the value chain), not with an upgrade*'.[454] Further, '*the final quality and performance of a downstream product such as HDG depend largely on the substrate quality (HRC)*'.[455]

(582) Indeed, the Commission recalls the findings made in Section 7.5.4.3 that the automotive industry has specific requirements for HDG and demands specific grades, for example as regards strength and formability. In this respect, the Commission further recalls that the chemical composition of steel is much determined upstream at the liquid steel phase and, overall, the whole production chain affects the quality of the final HDG product.

(583) The Parties themselves confirmed that many of the technical parameters of a number of downstream automotive HDG products are set at the upstream steelmaking stage by explaining that some of the steel products sold to automotive customers *'require slabs with a specific micro structure (that is determined prior to slab casting)*'.[456]

(584) More generally, Tata confirmed the importance of a fully integrated production chain for automotive HDG in its press release of 18 November 2015 titled '*Tata Steel puts automobile customers in the spotlight*', which states that '*Tata Steel is improving all levels of the steel product so that body panels, doors, side panels or tailgates of the highest quality can also be manufactured from hot-dip galvanized steels. The basis of this full-finish offer is a substrate with a high surface quality, which ensures a uniform appearance after forming and painting. One of these substrates is the highly malleable DX57-GI HyperForm®, which enables vehicle manufacturers to create highly complex, expressive body panels.'; "To be able to produce premium products such as Serica or MagiZinc Auto Full Finish for body panels, they must pass through stricter quality requirements than normal hot-dip galvanized grades in every single production step, from casting to hot rolling and pickling to cold rolling and galvanizing. We achieve this through extremely precise and tight processing parameters both at our steel mill in IJmuiden, the Netherlands, and at Port Talbot and Llanwern in the UK", said Hans Fischer, Tata Steel's Chief Technical Officer in Europe.*'[457]

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454 Minutes of a call with a competitor on 8.1.2019, DocID3790.

455 Reply to question 64 of Q1 – Questionnaire to Competitors, DocID2166.

456 Comments on the Article 6(1)(c) decision, paragraphs 4-44 and 4.45.

457 Courtesy translation. The German original reads: '*Tata Steel rückt die Automobilkunden in den Fokus'; 'Damit Außenhautteile wie Motorhauben, Türen, Seitenteile, oder Heckklappen in höchster Qualität auch aus feuerverzinkten Stählen gefertigt werden können, verbessert Tata Steel sämtliche Ebenen des Stahlprodukts. Die Basis dieses Full-Finish-Angebots ist ein Substrat mit einer hochwertigen Oberflächenqualität, die für eine gleichmäßige Optik nach Umformung und Lackierung sorgt. Eines dieser Substrate ist das besonders formbare DX57-GI HyperForm®, mit dem Fahrzeughersteller sehr*

(585) Second, integration provides a significant cost advantage. On the one hand, the transport and processing costs incurred when using intermediate products are saved. On the other hand, integration – as well as a large production network of several lines – enables steelmakers to optimise production across the network. The Parties appear to have considered this as a possible advantage of the merged entity, as illustrated in Figure 87 entitled […].

Figure 87 – […][458]

[…]

(586) Third, integration enables the reactivity requested by customers, notably in case of unexpected problems during production. Indeed, since these players are active throughout the value chain, they can identify the production step where the issue arises – and take the necessary measures to correct it – likely much quicker than players which may need to investigate this throughout a supply chain possibly involving several players globally.

(587) In that regard, a steel competitor confirmed the greater reactivity and reliability of integrated suppliers by explaining that '*[i]ntegrated steelmakers as opposed to re-rollers are able to guarantee a certain level of security of supply, which is considered essential by automotive customers. Should a steel producer not be able to supply, it could cause a line stoppage at the automotive manufacturing site, which is expensive*'.[459]

(588) Fourth, only integrated players are able to meet the automotive customer need for a broad portfolio of products. As noted above, the technical parameters of downstream products are largely set at the steelmaking stage, and the rest through heating and cooling processes in downstream steps. Integrated players are thus much more able than non-integrated players to plan and implement the production of a variety of automotive HDG products from the starting point of liquid steelmaking.

(589) Accordingly, the majority of customers confirmed that integrated players can offer a wider product range.[460] A customer notably explained that integration '*is especially important for Producers [sic] serving the high-end market like automotive, where Special steel grades are applicable, which are not easy to be sourced. Tolling of value added processes (like coating) often do not make sense due to freight cost and Quality aspects'*.[461]

(590) Fifth, as explained in recital (184), when asked directly in the market investigation, 93% of automotive customers providing an answer considered the vertical

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komplex geformte, ausdrucksstarke Außenhautteile herstellen können'; "Damit wir Premium-Produkte wie Serica oder MagiZinc Auto Full Finish für Außenhautteile herstellen können, müssen diese in jedem einzelnen Produktionsschritt noch strengere Qualitätsanforderungen als die normalen feuerverzinkten Stahlsorten durchlaufen, angefangen beim Gießen über das Warmwalzen und Beizen bis hin zum Kaltwalzen und Verzinken. Dies erreichen wir durch extrem genaue und enge Verarbeitungsparameter sowohl in unserem Stahlwerk im niederländischen IJmuiden als auch in den Werken Port Talbot und Llanwern in Grossbritanien", sagte Hans Fischer, Chief Technical Officer von Tata Steel in Europa.' DocID002850-031488 (*TSE0162698.pdf*).

458 […].

459 Minutes of a meeting with a competitor on 9.1.2019, ID3571.

460 Replies to question 44 of Q2 – Questionnaire to Customers, DocID2167.

461 Reply to question 41 of Q2 – Questionnaire to Customers, DocID2167.

integration of their suppliers somewhat important or very important; and the majority considered it very important (57%).[462]

(591) Sixth, as noted in recital (186), the need to control the whole value chain is also reflected in the automotive industry's homologation requirements: automotive customers do not limit the homologation requirement to the final products and HDG production lines. Instead, they typically require homologation throughout the whole steel production chain. A flat carbon steel supplier for instance explained that *'[h]omologation is done from Blast furnace to finishing line'*.[463]

(592) Similarly, an automotive customer clarified that '*[a]ll steel products must pass through a homologation process which aims at assessing both the production process and the quality of steel at the galvanization level and upstream thereof. Not only the upstream hot-rolling production has to be qualified, but also the overall steel production process. [The respondent's] steel suppliers are not allowed to change the HR substrate without its prior approval. For this reason also, [the respondent] today only sources from vertically integrated suppliers'*.[464]

(593) Seventh, even if one could acquire substrate of good quality in spite of the difficulties described in Section 9.4.3.2.a.i., the supplier would also need to be able to fine-tune the production process at all stages so that the different steps to produce high-end HDG work well together.

(594) An integrated flat carbon steel manufacturer confirmed this need to fine-tune production to adapt it to the specific characteristics of each substrate by explaining that: *'[i]n addition, the production of high-end HDG is not a question of only acquiring HR substrate of a suitable grade and high enough quality, but the substrate and the downstream lines will need to work together. This means in practice that, even if the substrate was in principle of the same grade but came from varying different origins, production process on the downstream lines would need to be slightly tailored for each different substrate coil origin – and ideally such tailoring should be made at both upstream and downstream levels. In this respect, an integrated steel manufacturer can more efficiently fine-tune its production process to match the characteristics of the steel substrate and the downstream production.'*[465]

(595) In their Response to the Statement of Objections, the Parties claimed that the Commission erred in concluding that vertical integration is required to compete effectively in automotive HDG in the EEA, in essence because all the benefits offered by vertical integration in the supply of automotive HDG could also be obtained through alternative means.[466]

(596) In the first instance – as also detailed in their Response to the Letter of Facts (see recital (579)) – the Parties claimed that vertical integration is not necessary to control product mix and production. On this point, reference is made to recitals (580) and following.

(597) In the second instance, the Parties claimed that vertical integration would not provide any material cost advantage, in essence because transport costs also apply to

462 Replies to question 59 of Q3 – Questionnaire to Customers (Automotive), DocID2168.
463 Reply to question 41 of Q1 – Questionnaire to Competitors, DocID2166.
464 Minutes of a call with a customer on 15.6.2018, DocID596.
465 Minutes of a meeting with a competitor on 9.1.2019, DocID3571.
466 Response to the SO, Section 3.E.

vertically integrated players and '*de-coupled production is, in fact, more efficient than vertically integrated production*'.[467]

(598) On this point, the Commission observes that, while transport cost advantages may not be necessarily related to vertical integration – although by construction a fully integrated production plant in a single location such as the Parties' flagship plants in IJmuiden and to a great extend also Duisburg will likely have very small transport costs – vertical integration also provides other cost advantages, most notably the removal of margins at each step of the value chain.

(599) Moreover, regarding the alleged benefits of de-coupled production, the Commission notes that the elements submitted by the Parties: (i) are of a very general or even theoretical nature, (ii) are unrelated to the EEA or (iii) in fact relate to integrated players (Liberty House). Accordingly, the Commission considers them unpersuasive.

(600) In the third instance, the Parties claimed: (i) that non-integrated suppliers can react to unexpected problems as well as integrated suppliers, notably by relying on stocks; (ii) that it is not the case that only integrated players are able to meet the automotive customer need for a broad portfolio of products; (iii) that it is not necessary to fine tune the production process at all stages of the production process; and (iv) that non-vertically integrated players are able to meet the homologation requirements of the automotive industry.[468] On this point, the Commission notes that again the Parties' arguments are quite general and in contradiction with the evidence gathered by the Commission in its market investigation, in particular evidence supplied by automotive customers, and with the current market positions of different steel suppliers in automotive HDG in the EEA. Accordingly, the Commission considers them unpersuasive.

(601) Overall, the results of the market investigation support the view that integration is particularly important for high-quality products such as automotive HDG.

iii. Upstream market shares are illustrative of market power downstream

(602) In the context of integration being a particularly important feature of competitiveness in steel production, it is likely that market shares at HR level (as a proxy for liquid steel production) in the EEA reflect the degree of control each steelmaker has on the different EEA markets for steel, irrespective of how this basic steel is transformed downstream into specific products and sold to end-users.

(603) In particular, to the extent that production capacities at this upstream stage are at least equal to the demand for the different kinds of downstream products and that these suppliers have the corresponding downstream processing capacities, players active in upstream steel production would be able to fully address downstream steel demand in the EEA. In addition, even if these upstream players would not have the corresponding downstream capacities, they would control part of the input supply of players active downstream.

(604) Against this background, the merged entity would control a significant part of upstream capacity and production in the EEA post-Transaction. As shown in Table 10, in terms of capacity for HR – which also serves as a proxy for upstream liquid steel production – prior to the Transaction ThyssenKrupp is the second largest

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467 Response to the SO, paragraphs 3.91 and 3.101 to 3.106.

468 Response to the SO, paragraphs 3.93 to 3.100.

producer in the EEA with a [10-20]% share, followed by Tata as the third largest with an [10-20]% share.

(605) The Parties have significant spare capacity upstream (in HR), thus enabling them to in fact increase production of automotive HDG downstream by using their spare automotive HDG capacity. By contrast, competitors have more limited HR spare capacity, such that – even if they had automotive HDG spare capacity, which they mostly do not – it would likely be more difficult for them than for the Parties to increase their production of automotive HDG downstream.

(606) Following the Transaction, concentration in the market would significantly increase, with the merged entity being the second largest producer (holding a [20-30]% combined capacity share for HR in the EEA) behind ArcelorMittal (with [40-50]%, as estimated by the Notifying Parties). Other producers would lag far behind: the largest other competitor would be Voestalpine with a share significantly below 10% (at [5-10]% as estimated by the Notifying Parties).[469]

(607) These shares likely offer a sound reflection of the strength of each steelmaker in the EEA steel markets generally, which would be compounded by the increase in concentration downstream in automotive HDG capacities. […].

Figure 88 – […][470]

[…]

(608) In consequence, both Parties are large integrated players, which enjoy a strong position in downstream markets also by means of their significance as integrated players in upstream markets. This means that (i) downstream shares may not fully reflect the strength of the Parties due to their significant upstream presence; and (ii) any increased market power resulting from the Transaction in downstream markets would be magnified by the Parties' upstream position, since they control significant capacities at the level of production at which barriers to entry are the highest due to the significant investments required to establish upstream steelmaking capabilities.

(609) In their Response to the Statement of Objections, the Parties disagreed with this conclusion, for the reasons detailed in the following recitals.[471]

(610) In this regard, the Commission first notes that – contrary to the Parties' claim – it never concluded '*that the merger will not result in a significant impediment to effective competition ("SIEC") in the HR market*'.[472] For the purpose of this Decision, it, however, is not necessary to further discuss the market for HR separately, as explained in recital (94).

(611) Second, as far as the Commission understands, the Parties claim that their upstream shares could not reinforce their downstream position because the shares would be the same ([20-30]%) at both levels.[473] The Commission is however of the view that there is no need for the Parties' upstream combined share to be larger than their downstream combined share for them to have market power upstream (since their upstream market power depends solely on their upstream market shares). However, considering that their upstream market share is higher than for most competitors, this

469 Form CO, Annex 20.
470 DocID10-93 *(20170607 Discussion on project Xanadu with TSN stakeholders v2.pdf).*
471 Response to the SO, paragraphs 3.63 and 3.64.
472 Response to the SO, paragraph 3.64(iii). See also the Response to the SO, paragraph 3.146.
473 Response to the SO, paragraph 3.64(i).

would amplify their market power downstream. Accordingly, the Commission cannot accept the Parties' claim.

(612) Third, the Parties claim that the Commission's HR capacity shares would '*significantly overstat[e] the competitive position of the Parties*' since they do not include imports.[474] The Commission disagrees with this view as the investigation confirmed imports to be a limited constraint for HR suitable for the production of downstream steel products for the automotive sector.

(613) Fourth, the Parties claim that there would be ample spare capacity of HR, such that downstream competitors would not be constrained by upstream market power.[475] The Commission notes, on the one hand, that spare capacity in HR is – like for HDG – largely in the hands of ArcelorMittal and the Parties. On the other hand, not all HR can be used to make automotive HDG, and only fewer players are able to make such automotive HR and have spare capacities to do so. Accordingly, the Commission disagrees that downstream competitors would not be constrained by the availability of the upstream HR substrate, as separately evidenced in Section 9.4.3.2.a.i.

(614) In sum, the Commission considers that the Parties' claims do not undermine the Commission's conclusion that the Parties' upstream position would magnify their downstream position.

b. At the downstream level, the Parties would control a significant part of the EEA production and spare capacity for automotive HDG

(615) The Parties combined would post-Transaction have a significant position in the downstream sales, capacities and spare capacities of automotive HDG in the EEA, in which concentration would significantly increase.

(616) First, prior to the Transaction and according to the Parties' own data (see Table 9), ThyssenKrupp is the second largest producer and supplier of automotive HDG in the EEA with a [10-20]% sales share ([10-20]% when including its sales made through distributors), followed by Tata as the third largest with an [10-20]% share ([10-20]% when including its sales made through distributors). Following the Transaction, the merged entity would remain the second largest supplier with a [20-30]% combined market share ([30-40]% including sales through its own distributors), behind ArcelorMittal.

(617) Similarly, the Commission's market reconstruction with respect to sales and capacities presented in Table 12 to Table 16 (see Section 9.4.3.1.b) shows that the merged entity's sales based market share would be [30-40]% post-Transaction. The merged entity would also control a significant portion of automotive HDG production capacity with a combined share of [20-30]% with respect to the production capacities of all automotive-capable HDG production lines, and as much as [30-40]% and [30-40]% of the capacities of automotive HDG lines capable of producing extra wide steel products (>= 1 650 mm and >= 1 850 mm) and steel for exposed car parts.

(618) The investigation thus suggests that, post-Transaction, ArcelorMittal would remain as the only large competitor to the merged entity and Voestalpine as a third, much smaller, player. Together, the merged entity and ArcelorMittal would control over

474 Response to the SO, paragraph 3.64(ii).

475 Response to the SO, paragraph 3.64(iv) and First Data Room Report.

[70-80]% of the EEA automotive HDG market, leaving a very limited number of competitors in a much more concentrated market.

(619) As an illustration, a competitor suggested that the Transaction would significantly increase concentration in the EEA automotive HDG market, leaving in essence only two major players: *'[i]n the Auto segment, the combined share of the here-above mentioned companies [the combined Tata and ThyssenKrupp, as well as ArcelorMittal] will exceed 85%, leaving almost no room to small and medium-size producers'*.[476]

(620) The significant change in concentration levels is well represented by the HHI delta in the EEA automotive HDG market, which would see an increase in HHI of approximately [350-450], as indicated by Table 9, illustrating the importance of the Parties in this market.

(621) Second, as explained in Section 9.4.3.1 and suggested by the comment by a competitor in recital (619), it is possible that these shares would underestimate the Parties' actual market positions on the automotive HDG market in the EEA, as suggested by the Parties' internal assessments captioned in Figure 89, where the share estimated in the Europe pie-chart for the Parties appears to exceed 50% of the automotive steel market […]. This document was prepared by a consultant retained by the Parties in view of the Transaction with access to information from both Tata and ThyssenKrupp.

Figure 89 – […][477]

[…]

(622) Similarly, the internal Tata document captioned in Figure 90 is based on information available to Tata and estimates that its share of the automotive market combined with ThyssenKrupp would be approximately [30-40]%, very close to the market leader ArcelorMittal with an estimated share of [30-40]%.

Figure 90 – […][478]

[…]

(623) In their Response to the Statement of Objections, the Parties disagreed with the Commission's conclusion that its market share estimates likely underestimate the Parties' market positions, for the reasons detailed in the following recitals.[479]

(624) In the first instance, the Parties claimed that EEA capacity shares for narrow product types would not be an appropriate metric to assess market power. In particular, they would '*fallacious[ly]*' presuppose that the relevant production lines are '*fully utilised – or even close to fully utilised – for producing the high width or exposed finish product types in respect of which capacity shares have been calculated*',[480] which is not the case since these lines are in fact currently used to predominantly produce other types of steel.

(625) In this regard, the Commission maintains its view that holding a higher capacity share in particularly relevant product segments of a differentiated product market likely reveals greater market power than suggested by capacity or sales shares on the

476 Reply to question 40 of Q1 – Questionnaire to Competitors, DocID2166.
477 […].
478 […].
479 Response to the SO, Section 3.C.
480 Response to the SO, paragraph 3.49(ii).

overall market. The Commission further notes that, by definition, capacity-based shares assess production capabilities rather than actual production levels but they remain highly relevant and informative in assessing the competitive position of the various market particicpants.

(626) In the second instance, the Parties claimed that the Commission should have used the more relevant sales shares instead of capacity shares. In this regard, the Commission reiterates its view that capacity shares are particularly relevant in industries with significant fixed costs such as the steel industry, which the Parties themselves acknowledge by emphasising the need to '*consider the role that capacity plays in these markets*'.[481] The Commission also notes that only capacity shares – not sales shares – were available to it for these specific product types.

(627) In the third instance, the Parties claimed '*that a correct interpretation of the Eurofer data would lead to […] lower shares for the Parties*'.[482] The Commission disagrees with this view. Although the Eurofer data does not include sales for instance from non-Eurofer members and importers, in the Commission's view this is likely reflective of the real competitive dynamics in the EEA market for automotive HDG, not a mere flaw in the data. For instance, Eurofer's exclusion of imports simply reflects the fact – separately confirmed by a large and consistent body of evidence – that automotive HDG import volumes are very low and only constitute a limited competitive constraint on EEA suppliers, such that there is no need to take them into account to provide a sufficiently accurate picture.

(628) In the fourth instance, the Parties claimed that shares internally estimated in the ordinary course of business '*are overstated*' notably because they '*are produced for senior individuals with the aim of presenting an optimistic and ambitious picture of the business*'. They would in any event be less accurate than shares compiled by the Commission on the basis of actual competitor data.

(629) In this regard, the Commission understands that internal business presentations may paint a somewhat optimistic or ambitious picture. At the same point in time, the Commission cannot assume that this would be the case to a point where these documents would no longer reasonably reflect business reality, since they need to be reliable enough to inform strategic business decisions. Moreover, the Commission notes that these internal estimates may often differ from its own estimates because the subject-matter is different, notably in terms of the number of competitors considered, time period, product group or geography. For instance, Tata's internal […], and are therefore significantly more granular than the Commission's estimates at EEA level.

(630) In addition, the Commission emphasises that its conclusion is that estimated shares – a quantitative measure – likely underestimate market positions – a more qualitative criterion designed to assess the competitive relevance of given market players based on a number of different elements. The Parties' attempt to undermine the Commission's conclusion is not convincing, as explained above, since the Parties rely themselves on shares, which they moreover at least initially claimed would not be reliable.

(631) Furthermore, the Parties appear to largely consider that the legal test for the Commission to find competition concerns would simply be the fact of having market

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481 Response to the SO, paragraph 3.29(i).

482 Response to the SO, paragraph 3.51.

shares above 30% – in particular without regard to the overall competitive structure of the relevant markets – since they consider that such market shares would correspond to *'levels which would typically give rise to competition concerns'*.[483] However, the appropriate legal test under Article 2 of the Merger Regulation is whether the Transaction would significantly impede effective competition in one or more product markets in the EEA or a substantial part thereof. As amply supported by the evidence presented in this Decision, the Commission considers in this case that the Transaction would likely significantly impede effective competition in the EEA markets for automotive HDG and packaging steel.

(632) Third, spare capacities are important in the market for automotive HDG, as they enable competitors to increase supply to their customers, notably when these customers face price increases from other suppliers. As detailed in Section 9.4.3.2.c.iii, the Parties (and ArcelorMittal) have spare capacities in automotive HDG, while other competitors do not significantly. Accordingly, competitors other than ArcelorMittal would likely be unable to react to possible negative effects of the Transaction on EEA competition in automotive HDG.

(633) Overall, the EEA market for automotive HDG is already significantly concentrated today and the Transaction would likely significantly increase that concentration.

c. The Parties are two of only three key large integrated steel players with the capabilities and scale required to meet customers' demand in the EEA

(634) The investigation shows that the Parties are two of three large players able to meet the needs of customers in the EEA automotive HDG market to the necessary extent, mainly with regard to their technical production capabilities (portfolio, quality) as well as their service level and proximity to automotive customers.

(635) Indeed, the Parties' internal documents captioned in Figure 91 to Figure 94, which assess competition in the automotive market or in specific segments thereof, only mention […] as competitors of the Parties.

Figure 91 – […][484]

[…]

Figure 92 – […][485]

[…]

Figure 93 – […][486]

[…]

Figure 94 – […][487]

[…]

i. Only the Parties and ArcelorMittal have all technical capabilities required to meet automotive customers' demand

(636) As already explained in Section 7.5.4.7, the investigation confirmed that only a limited number of EEA steel suppliers have HDG production lines which are

483 Response to the SO, paragraph 3.55.
484 […].
485 […].
486 […].
487 […].

'automotive capable', meaning that they have the technical capabilities needed to produce automotive quality.[488]

(637) The Parties closely consider these technical capabilities of HDG production lines as part of their assessment of the automotive HDG market – […] – as illustrated by the internal documents captioned in Figure 95 and Figure 96 (see also Figure 74).

Figure 95 – […][489]

[…]

Figure 96 – […][490]

[…]

(638) The Commission will present, in the following recitals, its assessment of the Parties' capabilities for specific supply-side requirements, which correspond to the main specific features demanded by automotive customers with regard to automotive HDG. In the Commission's assessment, the Parties' capabilities in respect of these features make the Parties particularly important competitors beside the position suggested by their market share in the overall automotive HDG market in the EEA.

(639) First, as confirmed by the Parties in their Comments on the Article 6(1)(c) decision,[491] to cover the full spectrum of automotive HDG products, HDG production lines need to handle certain **strip thicknesses** (set in the HR and CR mills, where particular rolling force is needed to make very thin strips), in particular at the lower and upper ends of the thickness spectrum, namely very thin or very thick strips.

(640) However, contrary to the Parties' claims in their Comments on the Article 6(1)(c) decision that '*most of the HDG production lines in the EEA can be considered automotive grade*',[492] only a limited number of HDG production lines in the EEA appear to be able to handle the thinnest or thickest strips, a significant number of which are in the hands of the Parties and ArcelorMittal. For example, [30-40]% of automotive HDG lines capable of achieving strip thicknesses between 0.6 and 2 mm are currently in the hands of the Parties and together with ArcelorMittal this share would even exceed the [60-70]% threshold.

(641) Second, as confirmed by the Parties in their Comments on the Article 6(1)(c) decision,[493] to cover the full spectrum of automotive HDG products, HDG production lines need to handle certain **strip widths** (set in the HR and CR mills, which need to be able to make these widths). This is particularly true for very wide strips (above 1 550 mm according to the Parties, but especially and more likely above 1 650 mm or 1 850 mm as confirmed by the investigation), which are increasingly important to enable car manufacturers to use a single steel part for example for side panels.

(642) However, contrary to the Parties' claims that the vast majority of HDG lines in the EEA can already handle the large widths required by automotive customers – on the likely misconceived assumption that this maximum width would be 1 550 mm – only

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488 Replies to question 63 of Q1 – Questionnaire to Competitors, DocID2166; Replies to questions 39 and 59 of Q3 – Questionnaire to customers (Automotive), DocID2168.

489 […].

490 […].

491 Comments on the Article 6(1)(c) decision, paragraphs 4.56 and 4.57.

492 Comments on the Article 6(1)(c) decision, paragraph 4.72.

493 Comments on the Article 6(1)(c) decision, paragraphs 4.58 and 4.59.

a limited number of HDG production lines in the EEA appear to have the ability to handle very wide strip (equal to or wider than 1 750 or even 1 850 mm), a significant number of which are in the hands of the Parties and ArcelorMittal.

(643) For example, [30-40]% of automotive HDG lines capable of producing strips of a width equal to or larger than 1 550 mm are currently in the hands of the Parties and together with ArcelorMittal this share would even exceed the [60-70]% threshold. Similarly, the Parties currently own [30-40]% of automotive HDG lines capable of producing strips of a width equal to or larger than 1 650 mm and 1 750 mm, and together with ArcelorMittal these shares would even exceed the [70-80]% threshold.

(644) In this regard, and in view of the fact that the Commission has to undertake a forward-looking assessment, it is important to note that the demand for large passenger cars requiring wide panels has been increasing steeply and is expected to continue increasing. For example, the share of new vehicle registrations that were 4x4 (four-wheel drive) cars – which require such wide panels – almost doubled from 7.8% in 2009 to 14.8% in 2017 in Western Europe. In Germany, a region where the Parties are particularly strong (see recital (694)), the increase was even more pronounced, from 7.8% to 19.8% in the same period. Based on industry sources, such as ACEA, there are no indications that this trend would be slowing down.[494]

(645) In this regard, it seems that only very few players – including the Parties and ArcelorMittal – are significantly able to make and handle automotive HDG strip equal to or wider than 1 850 mm. At the very least, competitors such as Voestalpine and Salzgitter are unable to make strip with the largest widths (at least at one stage of the production chain): '*the steel portfolio [competitor] is offering to automotive customers is limited to 1750 mm width. [competitor] considers this portfolio gap to be its biggest disadvantage in the automotive steel market. [...] This segment offers attractive margins for steel producers, as the number of suppliers is limited. Supplying these larger widths would require very large investments throughout the production chain*'.[495]

(646) In their Response to the Statement of Objections, the Parties considered that the '*Commission is mistaken to take the view that the considerable competitive constraint posed by these and other competitors does not apply in relation to wide width*'. This would be in essence because: (i) these product types would be available from many more suppliers than considered by the Commission; (ii) produced volumes are limited and current capacity could therefore significantly increase output of these products if needed; and (iii) these product types would be typically used in low proportions, and for convenience rather than necessity, and could thus be replaced with alternatives.[496] As shown above in recital (640) and (644) et seq, respectively, the first two points are not new, are taken into account in the Commission's assessment and do not undermine the Commission's conclusions.

(647) On the third point, the Commission on the contrary notes that the Parties' themselves acknowledged that wider coils may represent 15% to 20% of the weight of certain vehicle classes. This is not an insignificant figure in the Commission's view.

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494 ACEA website, consulted on 6 February 2019: https://www.acea.be/statistics/tag/category/4x4-penetration (Western Europe refers to EU15 plus EFTA).

495 Minutes of a call with a competitor on 28.1.2019, DocID3893. See also the minutes of a call with a competitor on 8.1.2019, DocID3790.

496 Response to the SO, paragraph 3.76.

(648) In addition – contrary to the Parties' claim that the Commission '*misinterpreted [an internal document captioned as Figure 115 of the Statement of Objections] to state that Automotive HDG can only be produced in larger widths by 2020*'[497] – the Commission observes that its conclusion on that caption in the Statement of Objections was only that a shift of demand towards larger widths by 2020 could be expected.

(649) In fact, the Commission considers that the Parties' reading of the document in their Response to the Statement of Objections is ambiguous. Indeed, the Parties' description could give the impression of demand shifting […]. However, the Commission understands that the Parties do not dispute that the document shows […], thereby confirming the Commission's conclusion of a shift of demand towards larger width products by 2020.[498]

(650) Also, there appears to be some tension between, on the one hand, the Parties' claim that '*at least part of this potential movement would actually not be caused by automotive customers' needs for Wide Coils*' but rather increased productivity for steelmakers and, on the other hand, their claim that '*[m]ost demand for Wide Coils is a result of customer preference rather than necessity. Wide Coils can reduce waste and throughput by allowing OEMs to tessellate and press multiple parts across the width of the coil. As this choice is driven by (marginal) efficiency, rather than by necessity […]*'. This adds to the rest of the investigation on the basis of which the Commission concludes that automotive HDG with larger widths is a growingly important segment.[499]

(651) Third, as confirmed by the Parties in their Comments on the Article 6(1)(c) decision,[500] automotive HDG products typically require **thinner zinc coating** than HDG for other industries.

(652) Contrary to the Parties' claims, however, only a limited number of HDG production lines in the EEA appear to be able to make sufficiently thin coating, a significant number of which are in the hands of the Parties and ArcelorMittal, as detailed in recital (656).

(653) Fourth, as confirmed by the Parties in their Comments on the Article 6(1)(c) decision,[501] automotive HDG products typically require **particular oils**, which are different from the ones used for other industries and some of which may be proprietary or be difficult to procure.

(654) The Tata internal document captioned in Figure 97 presenting to management the case for procuring a particular automotive oil illustrates that automotive HDG players may need to invest in the procurement of particular oils specifically required by the automotive industry.

Figure 97 – […][502]

[…]

(655) In view of these necessary investments in particular chemicals, it is likely that only a limited number of HDG producers in the EEA have access to these special oils.

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497 Response to the SO, paragraph 3.76(iv).
498 Response to the SO, paragraph 3.76(iv).
499 Response to the SO, paragraph 3.76(iv) and (vi).
500 Comments on the Article 6(1)(c) decision, paragraphs 4.62 and 4.63.
501 Comments on the Article 6(1)(c) decision, paragraph 4.64.
502 […].

(656) Overall, [20-30]% of automotive HDG lines that meet the automotive industry's coating and oiling requirements are currently in the hands of the Parties and together with ArcelorMittal this share even exceeds the [60-70]% threshold. As also acknowledged by the Parties in their Comments on the Article 6(1)(c) decision, upgrading lines to provide thinner coating requires some investment of around […] according to the Parties' own estimates.[503]

(657) Fifth, as confirmed by the Parties in their Comments on the Article 6(1)(c) decision,[504] automotive HDG products require a **particularly high level of surface quality**. This is especially true for HDG products used for exposed car parts on the surface of vehicles, which need to be flawless. In particular, such high surface quality requires a strict process and quality control, as well as good housekeeping practices.

(658) A customer thus explained that '*[t]he automotive industry consumes specific grades of steel that are not used in other sectors. There are even HDG production lines that are specific for the automotive industry. This is because automotive companies face particular dimension and surface issues making cars production very complex. For instance, the steel surface requires extra operations in order to make it suitable for the specific types of painting'* (emphasis added).[505]

(659) Contrary to the Parties' claims, however, only a limited number of HDG production lines in the EEA appear to meet these strict quality control requirements with good housekeeping practices, a significant number of which are in the hands of the Parties and ArcelorMittal. For example, [20-30]% of automotive HDG lines that meet the automotive industry's quality control requirements for surface quality are currently in the hands of the Parties and together with ArcelorMittal this share exceeds the [60-70]% threshold. As also acknowledged by the Parties in their Comments on the Article 6(1)(c) decision,[506] upgrading lines to provide the needed surface quality requires significant investments estimated at […] by the Parties.

(660) Indeed, in their Response to the Statement of Objections, the Parties claimed that '*[w]ith the exception of certain legacy lines, all HDG lines are capable of producing exposed parts if (which can be done at low cost) the correct procedures for process and quality control are in place on the production line*'.[507] Be that as it may, the Commission notes that in the same paragraph the Parties confirmed the undisputed fact that even a quality supplier such as SSAB is unable to produce automotive HDG for exposed parts.

(661) Sixth, as confirmed by the Parties in their Comments on the Article 6(1)(c) decision,[508] the production of automotive HDG typically requires **higher and better-controlled production temperatures**, particularly for the most advanced products.

(662) Contrary to the Parties' claims, however, only a limited number of HDG production lines in the EEA appear to have such temperature capabilities.

(663) Indeed, the fact that the coating line is vertical also appears to be an advantage in this regard by providing better control, as explained by the Parties: '*[i]n a vertical HDG*

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503 Comments on the Article 6(1)(c) decision, paragraph 4.63.
504 Comments on the Article 6(1)(c) decision, paragraphs 4.65 to 4.68.
505 Minutes of a call with a customer on 7.6.2018, DocID3613.
506 Comments on the Article 6(1)(c) decision, paragraphs 4.66 and 4.68.
507 Response to the SO, paragraph 3.77.
508 Comments on the Article 6(1)(c) decision, paragraph 4.255.

line, a coil travels up and down (i.e. vertically) on multiple routes within the accumulator and continuous furnace, with the advantage that it can be heated for a longer time. Moreover, the vertical design provides better adjustability of the furnace atmosphere and temperature curves (which assist in processes such as quenching and portioning)'.[509]

(664) A competitor also mentioned a '*vertical oven on the HDG lines*' as a specific production capability needed to produce automotive steel.[510]

(665) Even fewer of these vertical lines exist in the EEA, again many of which in the hands of the Parties and ArcelorMittal. For example, [20-30]% of vertical automotive HDG lines are currently in the hands of the Parties and together with ArcelorMittal this share even exceeds the [60-70]% threshold. As also acknowledged by the Parties, building vertical HDG lines instead of the more traditional horizontal lines, notably to provide higher temperatures and better temperature control, entails an additional cost of […].[511]

(666) Seventh, as largely confirmed by the Parties in their Comments on the Article 6(1)(c) decision and explained in Section 9.4.3.2.a.i., the production of automotive HDG requires **access to the adequate HR/CR substrate**. Because many of the technical features of steel – and thus suitability of the HR/CR substrate to make automotive HDG – are determined during liquid steelmaking and then refined in secondary metallurgy, the suitability of steel for automotive use is set already at this upstream stage. In line with this, were a batch of steel to be designed or to prove unsuitable for automotive use, it would be downgraded and diverted to other applications already at the upstream stage. The features of steel are then refined throughout processing in HR and CR mills, notably through rolling, heating and cooling (where further downgrading can happen for instance if the product proves not to meet the required quality standards for use in automotive applications).

(667) Similarly, producing HDG strips of a particular width, thickness or even surface quality of course requires that the substrate also meets these specifications, since width, thickness and (to a certain extent) surface quality cannot be restored in HDG production lines.

(668) Contrary to the Parties' claims, adequate substrate – in terms of composition, structure, width, thickness, surface quality – is available on the market only to a limited extent, such that in essence only integrated players – and most notably the Parties and ArcelorMittal – appear to have significant access to it and the corresponding ability to produce automotive HDG.

(669) A competitor confirmed these requirements throughout the production chain for HDG lines to be able to produce automotive HDG by explaining the need for *'[p]recise process control throughout the production chain. Good control of alloying levels (max/min), good steelmaking praxis for avoiding non metallic inclusions, defect free casting, robust and precise control of temperature in hot rolling and heat treatment in processing line (CGL/CAL)'*.[512]

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509 Parties' response to question 41 of RFI 21.

510 Reply to question 45 of Q1 – Questionnaire to Competitors, DocID2166.

511 Parties' response to question 41 of RFI 21.

512 Reply to question 45.1 of Q1 – Questionnaire to Competitors, DocID2166.

ii. Automotive HDG lines and products need to be homologated by customers

(670) As largely confirmed by the Parties in their Comments on the Article 6(1)(c) decision[513] and illustrated in Figure 98 (that shows a ThyssenKrupp homologation list for each of its HDG lines), **automotive HDG lines and products need to be homologated by customers**. This also reflects customers' attention to ensuring that the necessary technical requirements described above are met.

Figure 98 – […][514]

[…]

(671) A customer for instance confirmed the requirement for automotive HDG lines to be homologated by explaining that '*[e]ach process in each steel maker's production facility needs to be homologated*'.[515]

(672) Other customers further confirmed that EEA automotive HDG customers preferentially source from homologated customers by explaining that: '*[w]e try to keep one supplier for car life. Very difficult and risky to any change*';[516] '*[h]omologation does not facilitate switching, it is a minimum requirement (on top of the manufacturing trial of the new material)*';[517] and '*[w]ithout homologation a supplier is not allowed to deliver our plants*'.[518]

(673) The Parties themselves confirmed in their submissions that EEA automotive HDG customers preferentially source from homologated suppliers by explaining that: '*steel is predominantly sourced based on the location of homologated suppliers*';[519] '*[f]or each part that is designed, there will be a range of materials that may be utilised depending on what is homologated and available (in the region)*';[520] '*OEMs may even decide to apply different concepts with respect to the same model, <u>depending on the place of production</u>: […] has steel doors in China and aluminium doors in Europe. When devising the materials concept, designers will take care that there are at least <u>two</u> steel producers who can supply a specific product for a given part and who are <u>already homologated</u>*' [emphasis added];[521] '*when an OEM already has a set of suppliers in its purchasing systems that satisfy its purchasing needs, the willingness of this OEM to spend resources and budget to approve more suppliers for similar grades is low*';[522] '*[a]s the process for a new supplier which the OEM has not sourced any material from is rather timeconsuming, the OEM usually only decides to start the homologation process if it is in principle willing to source from the new supplier on a longer term basis*';[523] and '*[w]hen switching suppliers during the lifecycle of a model, OEMs will only switch to homologated suppliers*'.[524]

(674) Only a limited number of HDG production lines in the EEA appear to be homologated by automotive customers, a significant proportion of their combined

513 Comments on the Article 6(1)(c) decision, notably paragraph 4.180.
514 […].
515 Reply to question 86 of Q3 – Questionnaire to customers (Automotive), DocID2168.
516 Reply to question 29 of Q12(b) – Questionnaire to Customers Phase II (Automotive), DocID2953.
517 Reply to question 37 of Q12(b) – Questionnaire to Customers Phase II (Automotive), DocID2953.
518 Reply to question 37 of Q12(b) – Questionnaire to Customers Phase II (Automotive), DocID2953.
519 Parties' Reply to RFI 20, paragraph 1.5.
520 Parties' Reply to RFI 20, paragraph 17.4.
521 Parties' Reply to RFI 20, paragraph 20.2.
522 Parties' Reply to RFI 20, paragraph 30.2.
523 Parties' Reply to RFI 20, paragraph 30.3(i).
524 Parties' Reply to RFI 20, paragraph 33.5.

capacity being in the hands of the Parties and ArcelorMittal. Indeed, the Parties' Comments on the Article 6(1)(c) decision captioned in Figure 99 show that only the Parties and ArcelorMittal are homologated by all – with the exception of ThyssenKrupp […] – the […] OEMs deemed most relevant by the Parties. Voestalpine, POSCO and Salzgitter significantly lack homologation by 4, 5 and 6 OEMs respectively, meaning that they are on average homologated only for about one-half of all OEMs. SSAB and the other non-EEA suppliers lag far behind with only one or two homologations each.

(675) From the perspective of each OEM, […].

Figure 99 – […][525]

[…]

(676) The homologation matrix depicted in Figure 99 is also reflected in the actual sale matrix depicted in Figure 100. The sale matrix is based on automotive customers' replies to the Commission market investigation on automotive steel purchases. In particular, the figure reports as green cells the actual sales of HDG products recorded for a total of 18 respondents accounting for about [8–9] million tonnes of HDG in the EEA. A blank cell would mean that there was no recorded sale at that specific customer/supplier combination. In terms of actual sales pattern, the Commission finds that ThyssenKrupp supplies all customers but one (namely 17 customers out of 18). Tata supplies 14 out of 18 customers. ArcelorMittal serves at least 15 customers out of 18 and Voestalpine serves at least 14 customers. Of these four players, Voestalpine is the one with the lowest amount of sales: less than 1 000 kilotonnes to the sample of 18 respondents. In contrast, Tata and ThyssenKrupp have sales in excess of 1 000 kilotonnes and ArcelorMittal has sales in excess of 3 000 kilotonnes.

(677) Aside from the four biggest players, other players are of a much smaller scale, as illustrated by their recorded amount of sales (last line of Figure 100). For instance, Salzgitter serves only at least 8 customers out of 18 and has total recorded sales of about […] kilotonnes. USSK is mentioned as a supplier only for at least 5 customers out of 18 and has sales of about […] kilotonnes. Ilva (before its acquisition by ArcelorMittal) has actual sales only with at least […] and minimal sales of about […] kilotonnes. As regards importers, Posco only sells to 5 customers (sales of about […] kilotonnes) and Hyundai steel supplies only to […].[526] Further, all other importers (captured by the category 'other imports') serve a total of only 6 customers at most.

(678) Finally, Figure 100 also presents the sales at the SSC level, although SSCs only provide services and purchase HDG coils from European mills or to a lesser extent from outside the EEA, which entails that the share represented by SSCs should likely more realistically be attributed to the main mills rather than being presented separately.

525 Comments on the Article 6(1)(c) decision, Figure 4.20.

526 This is due to its relationship with the customer, which belongs to the same group.

Figure 100 – Automotive customers' purchases pattern (2017)[527]

ease p	TK	Tata	AM	Voest	Salzg	SSAB	USSK	Ilva	SSCs	Others	Posco	Hyundai S	Other imports
OEM01	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
OEM02	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
OEM03	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
OEM04	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
OEM05	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
OEM06	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
OEM07	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
OEM08	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
OEM09	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
OEM11	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
OEM12	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
OEM13	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
OEM14	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Other01	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Other03	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Other05	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Other06	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Other07	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total Vol (kt)	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

*Source: Commission's calculations based on its market investigation on automotive customer purchases. *The supplier category 'others' also include sales made by the EEA competitors of the Parties that could not be distributed.*

(679) Similarly, the investigation shows that typically only the Parties and ArcelorMittal are qualified across a large number of products for each OEM.

(680) By contrast, other EEA steel suppliers appear to be qualified by significantly fewer customers, and for fewer products.

(681) A customer confirmed this limited number of capable lines and homologated production lines and products by explaining that '*automotive grades of HDG cannot be produced on all HDG lines, which limits supply for this type of steel compared to the overall HDG market. This makes it difficult to develop and approve steel grades e.g. for new car models, which require homologating the grade and the supply chain and often additional capacity from steel suppliers*'.[528]

(682) Because ArcelorMittal and the Parties are the only EEA players to be extensively homologated by EEA automotive customers, they are likely the most significant or even only players to have market power on a sizeable portion of the EEA automotive HDG market, namely the total EEA purchases of HDG products by automotive

527 Commission's computation based on the replies to its request for information to customers of 3 January 2019 - 18 respondents.

528 Minutes of a call with a customer on 19.6.2018, DocID3087.

OEMs for which they are homologated and can therefore compete. The activities of other steel suppliers are significantly more limited, and they are accordingly likely unable to significantly influence the conditions of competition on the EEA automotive HDG market.

(683) As explained in Section 7.5.4.4, homologating HDG lines (and products made on a given line) requires a significant amount of time and costs between a few thousand and several hundred thousand euros depending on the specific homologation.[529]

(684) In their Comments on the Article 6(1)(c) decision,[530] the Parties claimed that the internal document captioned in Figure 95 does not evidence the limited number of lines capable of producing automotive HDG in the EEA, in essence because it only describes the Parties' lines and would not be up-to-date.

(685) The Commission does not draw inferences from this document regarding the specific technical capabilities of each line of third parties. However, such an assessment of the technical capabilities of each individual line by each of the Parties confirms that not all production lines are capable of producing automotive HDG, which is a general industry feature.

(686) Moreover, the Commission separately asked the Parties and their competitors for this information.[531] This exercise largely confirmed that, […], only certain lines have the overall needed capabilities to produce automotive HDG (that is to say, are 'automotive capable'), with details on each of the technical features described above.

(687) Likewise, the Parties themselves directly confirmed in their Comments on the Article 6(1)(c) decision[532] that specific capabilities are needed to meet the requirements of automotive customers in automotive HDG. On the one hand, this appears to be particularly true for the most advanced automotive HDG products such as AHSS. On the other hand – contrary to what the Parties appear to claim in their Comments on the Article 6(1)(c) decision in spite of the evidence they put forward – this is also the case for less advanced automotive HDG products, and potentially for all automotive HDG products. This is because, as detailed in the preceding recitals, the production of the bulk of (if not of all) automotive HDG appears to require certain specific features, such as a special microstructure of the substrate, the ability to make certain product widths and thicknesses, a particularly thin coating, as well as very strict surface and quality control; of course in addition to homologation.

(688) In their Response to the Statement of Objections, the Parties considered that *'the Commission is incorrect in its unsubstantiated claim that only the Parties and ArcelorMittal have the required technical capabilities to serve automotive customers*', in essence because in the Parties' view many other competitors would have the required capabilities, notably Voestalpine, Salzgitter and SSAB (but also Posco and Baosteel as non-EEA players).[533]

(689) The Commission does not dispute that players other than the Parties and ArcelorMittal – and in particular Voestalpine, Salzgitter and SSAB – are capable of producing and selling automotive HDG in the EEA, for which the Parties reiterate some arguments. However, the Commission has extensively demonstrated in this

529 Reply to question 86.2 of Q3 – Questionnaire to customers (Automotive), DocID2168.
530 Comments on the Article 6(1)(c) decision, paragraphs 4.71 and 4.74.
531 RFI 21 and Questionnaire 11 to Competitors.
532 Comments on the Article 6(1)(c) decision, paragraphs 4.45 to 4.70 and 4.255.
533 Response to the SO, paragrahs 3.65 to 3.69.

Decision (Section 9.4.3.2) that these players are unable to meet customer requirements to the fullest extent, as ArcelorMittal and the Parties are able to do.

(690) Specifically, in terms of product capabilities, it is undisputed that Voestalpine and Salzgitter are for instance unable to do the largest widths (wider than 1 850 mm), while SSAB is unable to make automotive HDG for exposed parts. This is in addition to their limitations in other areas such as capacity and asset network.

(691) In sum, the investigation confirms that the production of automotive HDG typically requires specific capabilities, which only certain lines have, many of which are in the hands of the Parties or ArcelorMittal.

iii. In key segments for the automotive industry, the Parties are more important players than their overall EEA automotive HDG market share suggests

(692) Market shares for automotive HDG in the EEA seem to underestimate the Parties' combined market position and importance in certain particularly relevant – product and/or geographic – segments of that market.

(693) Indeed, as shown in Table 14 to Table 16, the Parties' combined capacity shares for two specific automotive HDG products – **exposed parts and widths equal to or above 1 650 mm** – are significantly higher than the capacity share for automotive HDG overall.

(694) Similarly, the internal document captioned in Figure 131 – as well as those captioned in Figure 118 and Figure 132 to Figure 135 – captures the geographic differentiation in suppliers' footprint and their shares in key geographies. It shows that in Germany, the largest market by size and a key centre of demand for automotive production, the Parties' combined share is significantly larger than at general market level, with the merged entity leading at approximately [40-50]%, almost twice the share of general market leader ArcelorMittal, which comes second with an estimated share of [20-30]%. As detailed in Section 9.4.3.4, […]. The document also shows a negligible level of import penetration in Germany of likely at most [0-5]%, and suggests that enhancement of the Notifying Parties' market position in Germany is expected to […].

(695) ThyssenKrupp's internal document captioned in Figure 101 also suggests that it is the *'[m]arket leader for automotive'* in […] and the number two player *'[a]mong market leader [sic] in Europe with strong focus on automotive steel'* in *'[c]oated products'*.

Figure 101 – […][534]

[…]

iv. Spare capacity is scarce and largely in the hands of ArcelorMittal and the Parties

(696) Spare capacity to address unplanned demand is a key requirement of steel suppliers from the cyclical and made-to-order automotive industry, which must be able to quickly produce and deliver vehicles even in case of an unexpectedly high level of orders.

(697) As detailed in Section 9.4.3.6, the investigation overwhelmingly confirmed the pervasive understanding that there is little spare capacity in the industry and limited planned expansion or entry.

534 […].

(698) In particular, a line by line analysis of the Notifying Parties' and ArcelorMittal's HDG capacities and production along with an analysis of other competitors' capacities and production figures shows that the spare capacities in EEA automotive HDG lines are limited and mostly in the hands of ArcelorMittal and the Parties.[535]

(699) In their Second Data Room Report, the Parties argued that the Commission's conclusions regarding this line by line analysis would be flawed, and that a proper reading of the analysis would on the contrary confirm that '*the auto-capable HDG spare capacity held by the Parties' competitors, excluding ArcelorMittal, is not immaterial – and indeed greater than the volumes that would be expected to divert away from the Parties (based on their estimated elasticity) in the alleged event of a 5% price increase by the Parties*'.[536]

(700) In this regard, the Commission notes that the Parties' conclusion appears to be based on an analysis of nominal spare capacities but does not hold when the more relevant and appropriate effective spare capacities[537] are considered.[538] The Commission therefore considers that its conclusions from the line by line analysis are not undermined by the Parties' claims.

(701) Accordingly, the Parties' access to spare capacity likely makes them important players in automotive HDG in the EEA.

(702) As regards the Parties' claim that competitors could re-direct capacity that is not currently being used to produce automotive HDG to defeat any price increase in automotive HDG (see Section 9.4.2), the Commission refers to the detailed analysis and evidence presented in Section 9.4.3.6.[539]

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535 In Table 3.4 of the Response to the SO, the Notifying Parties question the conclusion in Section 8.3.3.2.c.iii. of the SO that automotive HDG spare capacities in the EEA are scarce and largely in the hands of ArcelorMittal and the Parties, by pointing out that the conclusion was based on customer feedback and on Tata's estimates of spare capacities in the overall HDG segment, instead of on a quantitative assessment of spare capacities for automotive-capable HDG lines in the EEA. To address this criticism, the Commission collected information on competitors' HDG production and capacities (see the replies to Questionnaire 11 to Competitors and the RFI sent to ArcelorMittal and SSAB on 28 February 2019) and carried out the quantitative assessment of spare capacities for automotive-capable HDG lines in the EEA the Notifying Parties considered necessary, on a line-by-line basis. This analysis, that was made available to the Notifying Parties' economic advisors in the second data room, confirmed that automotive HDG spare capacities are rare and largely in the hands of ArcelorMittal and the Parties.

536 Second Data Room Report.

537 In Annex 1 of Questionnaire 11 to Competitors, respondents were provided with the following instructions with respect to estimating nominal and effective capacities: 'nominal' capacities for given products should be provided under the assumption that production of that product would be fully prioritised over the production of other products on that line, that is the absolute nominal maximum of that product which can be produced on that line; 'effective' capacities should take into account intrinsic technical constraints but also operational/commercial constraints such as regulations for personnel and an efficient use of production lines for maximum value extraction. Nominal capacities are typically larger than effective capacities and in determining the spare capacities that are available to market participants in the ordinary course of business it is more appropriate to consider effective spare capacities rather than nominal spare capacities.

538 See also recitals (1096)-(1097) for a more detailed discussion of the errors in the Second Data Room Report.

539 The Commission further notes that Section 7.5.4 also provides indirect evidence in this respect, particularly Sections 7.5.4.4 and 7.5.4.11.

v. Only the Parties and ArcelorMittal have the necessary scale to efficiently address the needs of EEA automotive customers

(703) The investigation confirmed that only a few – integrated – automotive steel suppliers in the EEA – namely the Parties and ArcelorMittal – have the necessary scale to efficiently address the needs of EEA automotive customers, for a number of reasons detailed in the following recitals.

(704) Indeed, at a general level, Figure 102 and Figure 103 drawn from a Tata internal document confirm the advantage of '*scale*' for steel suppliers, […].

Figure 102 – […][540]

[…]

Figure 103 – […][541]

[…]

(705) More specifically, first, only players with large overall production capacities are able to **supply a large number of different automotive HDG products in significant volumes**.[542]

(706) In that regard, only ArcelorMittal, ThyssenKrupp, Tata and – to a somewhat lesser extent – Voestalpine were mentioned by most respondents as significant automotive steel players, with important volumes and a broad product portfolio.

(707) Fewer respondents also mentioned SSAB and Salzgitter, as suppliers (competitors) with more limited production capacities.

(708) For example, a competitor confirmed that the number of relevant automotive steel players was limited largely to the Parties and ArcelorMittal by explaining that *'ArcelorMittal, TATA, Thyssen, are able to supply [the] full range of products in large volumes, other steel mills have capabilities but are not able to supply in similar volumes, thus being disadvantaged compared to large player'*.[543]

(709) Another competitor provided a similar view that '*there are only a few companies that are able to produce and supply the full range (or close to it) of automotive steel products. The main producers are ArcelorMittal, ThyssenKrupp, and Tata Steel. Voestalpine and Salzgitter also supply steel to automotive manufacturers in the EEA, […]. To an even lesser extent, supply SSAB and US Steel Kosice automotive customers in the EEA. As a consequence, the European automotive steel market is basically limited to the market leaders ArcelorMittal, ThyssenKrupp and Tata Steel, followed at a distance by the smaller producers Voestalpine and Salzgitter*'.[544]

(710) Other competitors also described the competitive advantage of the Parties and ArcelorMittal in automotive HDG in the EEA as being '*[p]rimarily linked to specific technical abilities but naturally also the overal production volume as the ArcelorMittal, Tata Steel Europé and Thyssen Krupp combined accounts for 60% of supply in EEA market*';[545] as well as the fact that '*the ability to address EEA*

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540 […].

541 […].

542 Replies to question 46 of Q1 – Questionnaire to Competitors, DocID2166; Replies to questions 24 and 38 of Q3 – Questionnaire to customers (Automotive), DocID2168. See also DocID2932-27852, slide 9 (*TSE0358350.pptx*).

543 Reply to question 46 of Q1 – Questionnaire to Competitors, DocID2166.

544 Competitor position paper, ID3569.

545 Reply to question 11.3 of Q11 – Questionnaire to Competitors, DocID2951.

automotive customers is linked to overall steelmaking production volumes/capacity, specific technical abilities, the breadth of their product portfolio, overall quality level, geographic advantages and their R&D capabilities'.[546]

(711) ThyssenKrupp's internal document captioned in Figure 104 shows an overview of profits generated for four individual automotive customers, specifically highlighting the contribution made by […]. This highlights that players with a broad portfolio can […], further showing that competition in the EEA market for automotive HDG operates on the basis of a portfolio of products, both on the side of customers and on the side of suppliers.

Figure 104 – […][547]

[…]

(712) As shown in Table 11 on the basis of the Commission's market reconstruction, the Parties' combined EEA capacity share in automotive HDG would likely be around [20-30]% (ThyssenKrupp [10-20]%; Tata [10-20]%), which is significantly higher than in HDG overall, at [20-30]%, as can be seen from Table 8. ArcelorMittal would likely remain the largest player post-Transaction.

(713) By contrast, the third largest player post-Transaction – Voestalpine – would likely be only a fraction the size of these market leaders, supplying significantly lower volumes to the automotive industry.

(714) Accordingly, suppliers with smaller scale of operations such as Voestalpine and Salzgitter can only supply smaller overall volumes compared with the Parties and ArcelorMittal, likely of disproportionately fewer different products. This is because switching the production of a given line from one product to another comes with production down time and thus effective capacity losses. While a certain level of arbitrage can in theory take place, this level is strongly limited by the fact that overall effective capacity and efficiency/profitability quickly deteriorate with an increasing number of switches, and that steel suppliers are contractually bound to make certain deliveries and are therefore only to a limited extent able to arbitrage production.

(715) In particular, players with a network of production lines have a lower level of down times and productivity losses because they do not need to make the necessary adjustments to switch a line from the production of one product to another but rather allocate the production of different products optimally across their lines, thus avoiding the corresponding loss.

(716) In this respect, the Commissio notes that only the three large players have a sufficient number of production facilities and sufficient geographic coverage across the EEA to be able to optimise production and supply to their automotive customers – generating a competitive advantage – and also to deal with unexpected production difficulties.

(717) A competitor explains how larger steelmakers are more efficient due to the availability of a variety of production equipment: '*[competitor] only has two HDG production lines. If it wants to produce zinc- magnesium coated steel, it is able to do so on its existing lines, but requiring half a dayshift to "swing" the line between different coatings (such a swing requires switching the line to use another coating pot [...] This is less efficient than larger steel producers, which are able to dedicate lines to the production of either regular HDG or other HDG products, such as zinc-*

546 Reply to question 11.3 of Q11 – Questionnaire to Competitors, DocID2951.

547 Response to the SO, Figure 3.7.

magnesium coated products. This effect is also reflected in [competitor]'s own HDG capacity utilization. [...] However, with only two lines available, the possibilities of capacity maximization are very limited. The same switching time question in principle also holds for the production coils of different widths. Tata Steel and ThyssenKrupp are bigger players with multiple HDG lines available and, hence, they are able to keep lines dedicated to a portfolio of similar products achieving better utilization rates. This let them offer cheaper material to the market than [competitor]'.[548]

(718) The Parties' internal document captioned in Figure 105 confirms the '*attractive proposition*' which large-scale players like the merged entity would have over smaller players, due to its *'expanded product range, asset capabilities and network'*. It further explains that *'[p]roduct quality', '[d]elivery performance & lead time', '[r]esponsiveness'* and *'[s]tock availability'* will *'improve'* while *'[p]roduct range will broaden'*.

Figure 105 – […][549]

[…]

(719) Specifically, only Tata, ThyssenKrupp and ArcelorMittal appear to have a portfolio of products able to cover the bulk of automotive customers' needs. This provides customers with a one-stop shopping solution avoiding having to procure steel from a large number of suppliers each providing only a few products, thereby reducing complexity, uncertainty and costs. With regard to the currently fourth largest player Voestalpine, it appears that it lacks capabilities notably with regard to the largest widths (as described in recital (645)), as well as the ability to deliver large volumes across a large number of products.

(720) Second, another – related – advantage of steel suppliers above a certain scale having several production facilities across the EEA is their ability to optimally allocate the production and delivery of different products across a network of several production plants and lines, resulting in higher capacity utilisation rates; more efficient, reliable and resilient production; and – ultimately – higher revenues.

(721) In their Response to the Statement of Objections, the Parties confirmed the competitive advantage of being able to optimise the production of automotive HDG across a network of assets in the EEA: […].[550]

(722) Moreover, in their Response to the Letter of Facts, the Parties argued that [0-5]*% is such an insignificant "advantage" that it cannot be used to support the view that, as a result of their economies of scale, TSE and tk SE are more important competitors than other suppliers with smaller asset footprints*'. [551]

(723) In this regard, the Commission on the contrary considers that – applied over the Parties' significantly larger production compared to the production of other smaller suppliers – such a [0-5]% advantage in production value would not be insignificant, especially in terms of overall profits.

(724) Indeed, with regard to the Transaction, the Parties' internal documents in fact highlight '*the opportunity consolidation provides to optimise across the Parties'*

548 Minutes of a meeting with a competitor on 9.1.2019, DocID3571.
549 […].
550 Response to the SO, paragraph 3.70(iii)(c) and footnote 73.
551 Response to the Letter of Facts.

asset footprint. This means bottlenecks and imbalances can be improved across the TSE and tk SE assets, increasing efficiency by reducing costs and emissions'.[552]

(725) A competitor confirmed the competitive advantage of being able to optimise production across a network of production assets by explaining that '*[t]he Proposed JV will enable ThyssenKrupp and Tata Steel to optimize the utilization of their production lines, especially in the hot-dip galvanized steel market as they can dedicate certain lines on certain products, which will increase productivity on these lines*'.[553]

(726) The importance of such an optimised network is in fact highlighted in the Parties' internal documents captioned in Figure 106 to Figure 107, which consider possibilities for the merged entity's best production network post-Transaction to enable growth, in particular in '*[h]igh quality auto HDG*'.

Figure 106 – […][554]

[…]

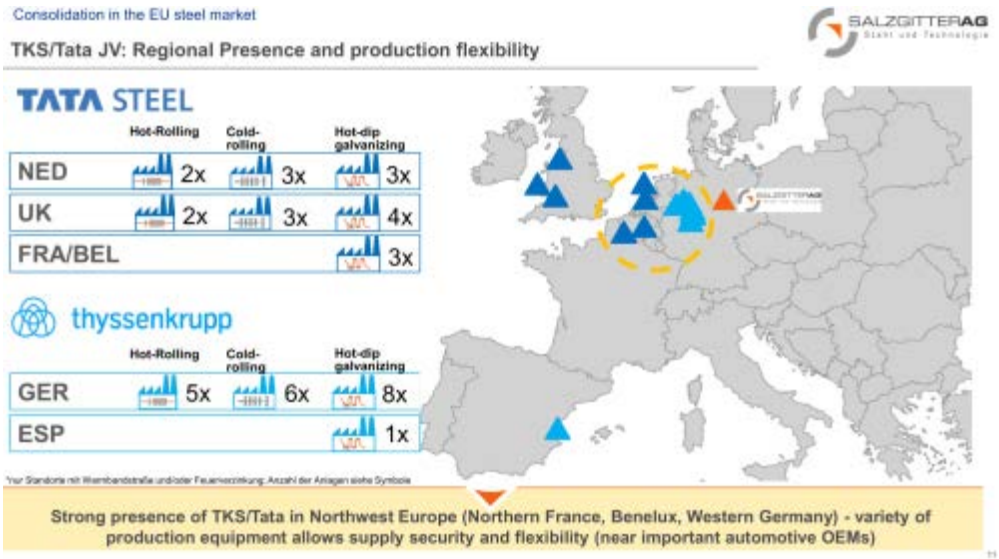
Figure 107 – […][555]

[…]

(727) Importantly, a network of production assets is more robust and better able to address any production disruption in a given plant or line.

(728) The benefit of a network of production assets in terms of '*supply security and flexibility*' is confirmed in a competitor's presentation provided to the Commission and captioned in Figure 108, in which it emphasises the fact that both Parties have a number of production facilities in Northwest Europe, which is also '*near important automotive OEMs*'.

Figure 108 – A network of production assets *'allows supply secrutiy and flexibility'*[556]



(729) Third, a competitor confirmed the high level of complexity in providing the required level of service to automotive customers – even in comparison with other

552 Response to the SO, footnote 93.
553 Competitor position paper, DocID3569.
554 […].
555 […].
556 Competitor presentation to the Commission, DocID3433.

sophisticated steel product customer groups such as the packaging industry – by explaining that '*[t]he automotive industry has component-related logistics, which are known to the supplier. The supplier must ensure that there is always sufficient material available in the warehouses for each component in the production process – even in the event of production errors of individual batches. [Competitor] believes that the situation is different in the packaging sector, where the complexity is lower. It appears easier to keep stock of material and provide for safety stocks'*.[557]

(730) In line with this finding, Tata's internal document captioned in Figure 109 considering *'Customer and Quality*' illustrates the level of attention steel suppliers such as the Parties need to have to the satisfaction of their customers, and in particular the possible interruption of vehicle production due to issues with steel quality. This attention is also evidenced in other internal documents, which similarly report […].[558]

Figure 109 – […][559]

[…]

(731) Fourth, automotive customers demand just-in-time delivery. In view of their larger production capacities and greater flexibility, larger suppliers such as the Parties and ArcelorMittal are better able to meet this requirement than smaller players, especially ones with only a single production facility.

(732) For example, recitals (729) and (750) show a competitor's emphasis on the significant competitive advantage in terms of just-in-time delivery of having a large production network across the EEA – especially with several plants able to make the same products.

(733) Fifth, automotive customers require steel suppliers to provide significant R&D efforts to continuously develop novel products for increasingly safe and efficiently performing vehicles.[560]

(734) A customer illustrated this need for innovation for the automotive industry by explaining that: *'[a]s to innovation, the transaction would bring together two important innovators in the market. Even if Tata Steel and Thyssen have not been the top innovators, they have nonetheless brought innovation to the market and also contributed to incentivising the leading innovators ArcelorMittal and Voestalpine to continue innovating. The transaction is likely to limit the overall innovative effort in the market. This will in turn impact the automotive industry's own innovation potential due to certain interlinkage to innovations in the steel industry. Such innovation is among others needed to improve car safety'*.[561]

(735) Only larger companies with significant revenues are able to sustain a large number of R&D projects in parallel, because they have more revenues to finance projects, more researchers from which synergies can emerge, as well as a broader portfolio of sales and customers to which they can sell such new products.

(736) Approximately […] of Tata's R&D projects are dedicated to automotive applications, ahead of any other end-industry and each with a careful determination of customer

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557 Competitor response to a Commission RFI, DocID3838.

558 […].

559 […].

560 Replies to question 107 of Q1 – Questionnaire to Competitors, DocID2166; Replies to question 89 of Q3 – Questionnaire to customers (Automotive), DocID2168.

561 Minutes of a call with a customer on 30.5.2018, DocID700.

needs, market prospects and project cost. In R&D for HDG, the automotive sector accounts for […] at Tata.[562]

(737) For instance, Figure 110 drawn from a presentation seeking management approval to move a project to '*Development*' illustrates the level of detail considered in Tata's R&D projects focused on automotive HDG.[563]

Figure 110 – […][564]

[…]

(738) Similarly, approximately […] of ThyssenKrupp's R&D projects are dedicated to automotive ([…] when including projects applying both to automotive and general industry), with a similar level of detailed assessment as Tata's projects. […] R&D for HDG is accounted for by the automotive sector at ThyssenKrupp ([…] when looking more broadly at all projects which also apply to HDG).[565]

(739) Figure 111 drawn from the Parties' synergy assessment documents shows that both Parties spend a significant share of their R&D budgets on automotive, namely […] for Tata and […] for ThyssenKrupp, and that both Parties have more than […] automotive R&D projects each.

Figure 111 – […][566]

[…]

(740) The investigation confirmed that small steel players are unlikely to have the financial means – in view of their limited sales – to pursue similarly ambitious R&D efforts. In fact, some of them appear to be concerned that the merged entity and ArcelorMittal would dominate R&D in automotive HDG to such an extent that the smaller players would eventually become unable to compete, thus enabling the two large players to dictate the conditions of competition on the automotive HDG market.

(741) Overall, large-scale integrated automotive HDG players like the Parties are only moderately constrained by smaller players lacking the necessary scale – and in particular by non-integrated players – which are unable to fulfil customer needs to the same extent, as summarised in the internal documents captioned in Figure 112 and Figure 113. The former describes eight competitive strengths of ThyssenKrupp, mentioning several of the elements discussed above, notably a network of assets with an adequate product portfolio and '*[l]eading R&D capabilities*'. […].

Figure 112 – […][567]

[…]

Figure 113 – […][568]

[…]

(742) In conclusion, based on the above and generally on the results of the market investigation, the Commission finds that only the Parties and ArcelorMittal are capable of meeting automotive customers' qualitative and quantitative requirements

562 RFI 17, Annex 1.
563 […].
564 […].
565 RFI 17, Annex 1.
566 […].
567 […].
568 […].

(breadth of product portfolio, quality control, large volumes, reactivity in case of issues, logistics, proximity to vehicle manufacturing plants, R&D capabilities, etc.) and thus able to compete closely on the market for automotive HDG in the EEA, while smaller players such as Voestalpine and Salzgitter have more limited capacity and capabilities to serve them and are thus less effective competitors.

(743) A competitor thus explained that '*[e]ven though other competitors address the needs of EEA automotive customers in many products supplied by Tata Steel, ThyssenKrupp and ArcelorMittal, the three companies mentioned are the only ones that can do it fully and in in terms of quality, quantity, dimensional ranges and R&D with competitive transport costs'*.[569]

(744) The investigation directly confirmed that automotive customers consider that the Parties and ArcelorMittal are able to address their '*EEA needs to an extent not possible for other suppliers'*: this statement was agreed to by all respondents providing a non-confidential response.[570]

(745) Similarly, as described above, only ArcelorMittal and the Parties have large enough production capacities – in automotive HDG but also in the production of upstream liquid steel and HR – to supply the volumes of different products required by automotive customers.

(746) In that regard, a steel competitor for instance explained that it is not viable – notably in view of logistic and supplier management costs – for an automotive customer to procure too low volumes of steel from a given supplier: '*[f]or automotive companies, accepting new suppliers comes with an administrative burden and with risks in terms of homologation. Therefore, they are generally not considering steel suppliers that can only provide smaller volumes or only a limited portfolio'*.[571]

(747) Moreover, only the three large players have a sufficient number of production facilities and sufficient geographic coverage across the EEA to be able to optimise production and supply to their automotive customers – generating a competitive advantage – and also to deal with unexpected production difficulties.

(748) For instance, as detailed below, these three players' facilities are located relatively close to the main automotive production locations in the EEA, typically more so than the production facilities of smaller competitors such as Voestalpine or Salzgitter.

(749) In parallel, this broad network and sales base enables them to spread the cost of their high-quality and reactive customer assistance, which is highly valued in the automotive industry.

(750) Sixth, the investigation showed that EEA automotive customers, and in particular OEMs, tend to source mostly from the same few suppliers. This is because, in the words of one steel supplier, '*[s]teel represents only a small part of the total cost of production of a car. As an example, [competitor] mentions that the cost of steel in a Volkswagen Golf (approximately 1 tonne) would amounts to ca. EUR 600. This compared to the final cost of the car of about EUR 20 000 would explain that automotive customers are not willing to risk having quality issues and to that end*

569 Reply to question 11.1 of Q11 – Questionnaire to Competitors Phase II, DocID2951.

570 Replies to question 24 of Q12.a and Q12.b – Questionnaire to Customers Phase II (automotive), DocID2952 and DocID2953.

571 Minutes of a meeting with a competitor on 9 January 2019, ID3571.

prefer having a secure and reliable steel source even if this means forgiving some short term savings in purchases from less reliable sources'.[572]

(751) This attitude of EEA automotive customers strengthens the market power of the largest current incumbents such as ArcelorMittal and the Parties that are *de facto* unavoidable suppliers because of their capabilities and size.

(752) Conversely, this barrier to switching is a significant disadvantage for smaller suppliers or potential new entrants that have similar quality although they lack both the size and portfolio of the main producers, because EEA automotive customers are reluctant to 'take a chance' on them to provide a large part of their HDG supplies.

(753) In sum, since ArcelorMittal and the Parties appear to likely be the only three key integrated and large automotive HDG suppliers in the EEA to which automotive customers mostly turn to support their vehicle production, the loss of competition due to the Transaction would be significant as it would remove one of the three main suppliers of automotive HDG in the EEA in a context in which the smaller players are not an equal alternative as the three main suppliers.

d. The Parties' production facilities are typically located near those of the main EEA automotive customers, making them particularly important steel suppliers

(754) The Parties are likely important suppliers for automotive HDG in the EEA also because their production facilities are located close to automotive manufacturing facilities, as illustrated in Figure 114 and Figure 115. The former states that Tata *'has great presence in regions where our customers cluster, supporting both our and their logistics'* by showing (i) the proximity of Tata's sites to high '*demand density*' areas of Europe; (ii) the supply routes from the Tata plant in IJmuiden to […]; and (iii) the supply routes from Tata's United Kingdom plants to […].

(755) Figure 115 explains that, while ThyssenKrupp's Sagunto plant can produce up to […] width, it is located inconveniently for Northern Europe in the long run ('*liegt für Nordeuropa aber langfristig ungünstig'*). It further explains that supplying the Central European automotive industry from this plant gives rise to high logistics costs ('*Versorgung der mitteleuropäischen Autoindustrie von Sagunto aus mit hohen Logistikkosten verbunden*'). This is despite the location of the facility essentially inside the industrial port of Sagunto on the Mediterranean Sea, a comparative advantage which Voestalpine and Salzgitter do not have.

Figure 114 – […][573]

[…]

Figure 115 – […][574]

[…]

(756) As discussed in more detail in Section 8.3.3, this proximity provides a competitive advantage in two respects.

(757) First, transport costs are likely a relevant consideration in the competitiveness of steel, a heavy material expensive to transport, in particular by truck. Accordingly, being located closer to customer facilities typically entails lower transport costs and

572 Minutes of a meeting with a competitor on 9 January 2019, ID3571.
573 […].
574 […].

thus – all else being equal – a competitive advantage compared to steel suppliers located further away.

(758) A competitor confirmed these high transport costs by explaining that '*[s]teel is a bulky and heavy material that is subject to high transportation costs, regardless of how the steel is actually transported (e.g., by lorry, ship or train). While the ratio of transportation costs may be considered to be assumable on a unitary basis, they are considerable when steel products are destined to meet continuous demand, such as in the automotive sector*'.[575]

(759) This is further illustrated by the many considerations of transport costs in the synergy document captioned in Figure 116, which considers ways to address demand in key European growth regions post-Transaction.

Figure 116 – Considerations of logistics to acces key growth regions post-Transaction[576]

[…]

(760) Second, beyond pure costs, a shorter distance with customers also limits logistics issues such as the risk of damage during transport – especially for the higher qualities and where an impeccable surface is important – as well as the duration of transport.

(761) A competitor confirmed the reluctance of automotive customers to source from suppliers too far away also in view of risks other than higher transport costs by explaining that '*[t]he farther that steel products have to be delivered, the more likely it is that suppliers face higher risks related to the transportation of steel products. These risks are not only safety risks, but also product-related risks regarding, for example, the safeguard of the qualities of the products exposed to particular meteorological or ambience conditions during transportation*'.[577]

(762) This is also illustrated in Figure 117 captioned from a Tata internal document which notably deals with the complications in terms of logistics of transporting over long distances, and which discusses rail transport interruptions and an […] road transport market.

Figure 117 – Tata update on logistics issues[578]

[…]

(763) Simpler logistics and transport are key in an industry where production is done just-in-time, short lead times are requested, and the ability to quickly react and deliver in case of unexpected events (including damage during transport) is considered a key feature of reliable suppliers to automotive customers.

(764) Several respondents to the investigation confirmed that the Parties' facilities are importantly close to automotive manufacturing sites.[579]

(765) In particular, a competitor highlighted the competitive advantage of customer proximity by explaining that '*[t]he two post-merger market leaders [the merged entity and ArcelorMittal] will be particularly strong in the region comprising the Western part of Germany, Benelux, and Northern France due to the proximity of*

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575 Competitor position paper, ID3569.

576 […].

577 Competitor position paper, ID3569.

578 […].

579 Q1 questions 38 and 39; Replies to questions 33 and 34 of Q3 – Questionnaire to customers (Automotive), DocID2168.

their production sites to the large number of important automotive plants in this region' (emphasis added).[580]

(766) The Parties' own submissions further confirmed that EEA automotive HDG customers source on the basis of the location of suppliers: '*[f]or each part that is designed, there will be a range of materials that may be utilised depending on what is homologated and available (in the region)*';[581] and '*OEMs may even decide to apply different concepts with respect to the same model, depending on the place of production: the* […] *has steel doors in China and aluminium doors in Europe. When devising the materials concept, designers will take care that there are at least two steel producers who can supply a specific product for a given part and who are already homologated*' (emphasis added).[582]

(767) Similarly, the Parties' internal documents themselves illustrate that the Parties' facilities are clustered near automotive sites, namely in the 'automotive heart' of Europe in West Germany, the Benelux and Northern France, but also in other strategic locations near automotive sites such as the United Kingdom and Spain, as for instance illustrated in Figure 118. This figure describes ThyssenKrupp's '*strategic location at the heart of the German manufacturing industry'*, thanks to which it is '*well positioned to serve the German market'*. It also shows that ThyssenKrupp earns […]% of its revenues in Germany, […]% within 250 kilometres of its main location in the Ruhr (presumably Duisburg) and […]% within 500 kilometres thereof.

Figure 118 – […][583]

[…]

(768) In their Response to the Statement of Objections, the Parties contested the advantageous location of their assets, in essence because transport costs would not be significant.[584]

(769) The Commission notes that – contrary to what the Parties claimed – even if certain non-EEA importers can supply certain OEMs in the EEA, it does not follow that all EEA suppliers can supply all OEMs in the EEA in an equally competitive manner. On the one hand, this is because the only OEM which is significantly supplied from imports is FCA, which is located in Southern Europe, far from the Parties' main assets and the bulk of OEM production facilities in the EEA (and thus EEA automotive HDG demand). On the other hand, this is because transport costs do not increase linearly with distance, but depend on the specific route and transport method (transport by ship or rail is significantly less expensive than transport by road). Accordingly, the fact that one specific OEM is being supplied to some degree by imports does not imply that this is true for all customers. The investigation largely confirmed the relevance of transport costs, including within the EEA.

(770) Moreover, the Parties confirmed that price differences due to transport costs would likely exist among EEA suppliers.[585] While the Parties considered that these would be less than […]%, the Commission notes that such differences are not insignificant, especially when they entail structural cost advantages for players such as the Parties.

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580 Competitor position paper, ID3569.
581 Parties' reply to RFI 20, paragraph 17.4.
582 Parties' reply to RFI 20, paragraph 20.2.
583 […].
584 Response to the SO, paragrah 3.74.
585 Response to the SO, paragrah 3.74(i).

The Commission also notes that – contrary to what may be implied by the Parties' reference to this difference being inferior to what is required in a SSNIP test – it does not conclude that Germany would be a distinct geographic market: the Commission defines the relevant geographic market for automotive HDG as EEA-wide, albeit a differentiated one.

e. Smaller integrated players are constrained notably by their limited steelmaking capacities and abilities, likely making them lesser competitive forces

(771) The investigation suggests that Voestalpine, Salzgitter and – to a somewhat lesser extent – SSAB supply automotive HDG in the EEA, but to a much less significant extent than ArcelorMittal and the Parties.

(772) Specifically, these niche players are in essence limited by their steelmaking capacities: they often have only one or very few production facilities and lines at each level of the production chain, which they seem to typically be running at virtually full capacity in light of much smaller total capacities than the three market leaders ArcelorMittal, Tata and ThyssenKrupp, and also in order to maximise profitability.

(773) One of these competitors thus explained that it '*strives to have the highest possible capacity utilisation rate to maximise profitability*'.[586]

(774) Similarly, this limited number of lines entails that such niche players are typically unable to provide the full portfolio of automotive HDG products – especially in significant volumes – and that they are unable to optimise their production mix across a significant network of facilities in the EEA, as explained in the preceding section.

(775) Moreover, these niche players appear to focus on higher-value, more technical steel products for all of their customers, including other industries than automotive customers. Accordingly, a higher proportion of their non-automotive customers tend to be sophisticated and demanding customers, compared with the three largest EEA steelmakers ArcelorMittal and the Parties.

(776) This entails that their customer mix is likely already optimised and fully committed, making it more difficult for them than the Parties or ArcelorMittal to reallocate volumes to the benefit of certain customers as automotive customers sometimes require. This is particularly the case because these niche players appear to operate at full production capacity and could not increase production even if they wanted to – absent very significant investments in additional production capacities throughout the production chain, which appear uneconomical for them to make.

(777) Indeed, one of these competitors confirmed that it '*is a high-end niche supplier which also has contractual relationships with its non-automotive customers ([...]). As [it] is largely focusing on high-quality products, it is typically not active in the steel spot market*'.[587]

(778) Of these niche players, Voestalpine is considered the most significant supplier in the EEA, as also evidenced by the market shares presented in Section 9.4.3.1.

(779) In their Response to the Statement of Objections, the Parties contested the Commission's conclusions, in essence because: (i) automotive customers would not

586 Minutes of a call with a competitor on 28.1.2019, DocID3893.

587 Minutes of a call with a competitor on 28.1.2019, DocID3893.

one-stop-shop and therefore '*do not request or require a full range of products from one steel supplier*'; and (ii) the Commission would have taken at face value Salzgitter's '*overstated […] commercial disadvantages it may face from having to "swing" lines to change coatings or widths*'.[588]

(780) On the first point, the Commission considers that the undisputed fact that automotive customers do not – and in fact strongly wish to avoid having to – one-stop-shop does not at all entail that they do not wish to source from suppliers which are able to supply a (relatively) full range of products. This is because, although automotive customers do not wish to one-stop-shop and therefore be dependent on a single supplier, they also do not wish to have too large a number of suppliers to handle, especially with these sophisticated products and supply chains. It should also be reiterated that automotive customers homologate their suppliers, which comes with a cost and takes time, and thus necessarily limits the number of suppliers retained by the customers.

(781) Moreover, the broader the portfolio of their limited number of suppliers, the higher the likelihood that at least two of them would both supply a given product, thereby enabling customers to make them compete against one another. If OEMs only have one supplier for a given need, they will be in a very fragile bargaining position.

(782) Automotive customers' preference for multisourcing but only from a limited number of players with extensive portfolios and volumes is already described in Section 9.4.3.2.c.

(783) On the second point, the Commission notes that the Parties themselves confirmed that changing production on a given line takes some time – at least […] for Tata; […] for ThyssenKrupp[589] – thereby impacting productivity and profitability (see also recital (721)), and that Tata […] (emphasis added). In fact, the Parties '*refer to the opportunity consolidation provides to optimise across the Parties' asset footprint. This means bottlenecks and imbalances can be improved across the TSE and tk SE assets, increasing efficiency by reducing costs and emissions*'.[590]

(784) The Parties' claim that the '*impact of this switching can be minimised by proper scheduling which allows for any downtime to be used for routine maintenance*'[591] is less applicable to players with fewer lines among which to optimise production – also in light of routine maintenance stops. In this regard, steelmakers other than Salzgitter also confirmed the impact of having to swing lines – which is greater for a player with fewer lines and thus less scope for optimisation – on productivity.[592]

(785) In sum, Voestalpine, Salzgitter and, to an even lesser extent, SSAB appear to be niche suppliers of automotive HDG in the EEA, rather focusing on higher-value and lower-volume products, and as such likely constitute a lesser competitive constraint on the Parties and ArcelorMittal because they are unable to provide automotive customers with the bulk of their steel needs.

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588 Response to the SO, paragrah 3.70.

589 Response to the SO, paragraph 3.70.

590 Response to the SO, footnote 93.

591 Response to the SO, paragrah 3.70(iii)(c).

592 See for instance the replies to the Commission's RFI to competitors of 28 February 2019, DocID4343, DocID4545 and DocID4504.

f. Other automotive HDG suppliers are even less likely to significantly constrain the Parties

(786) The investigation suggests that, while the remaining EEA steelmakers, such as Marcegaglia, Arvedi, NLMK and USSK, supply some volumes of HDG to automotive customers, these are likely mostly opportunistic lower-volume and lower-value sales.

(787) Indeed, these players themselves explained that they typically lack at least some technical capabilities to fully serve the EEA automotive HDG market: '*[a]s regards automotive steel, [competitor's] annual production volume is only […]. It is limited due to some technical limitations as well as the lack of control over the substrate obtained in the hot rolling process. Thereof, around […] are high-grade and […] are standard grades. [competitor] does not produce exposed parts*'.[593]

(788) Moreover, their production capacities are more limited than those of the leaders ArcelorMittal, ThyssenKrupp and Tata, and their production facilities are typically located further away from automotive manufacturing plants than those of the three large producers, thereby placing them at a strong competitive disadvantage.

(789) Furthermore, non-integrated suppliers, such as Marcegaglia, typically offer a smaller range of automotive HDG and are in general less able to meet the requirements of automotive customers. When asked directly during the investigation, market participants confirmed that non-integrated players typically offer a smaller range of automotive HDG products and lesser quality than integrated players, and in any event do not fulfil customer needs to the same extent.

(790) In addition to more limited capacity, this would also be because non-integrated players need to rely on competitors to supply the upstream substrate.[594]

(791) For example, a customer confirmed this more limited competitiveness of non-integrated players in the EEA by explaining that *'[s]lab is not easy to get in the market, so non-integrated steelmakers are not able to offer a similar product range as integrated steelmakers. Especially the zinc-coated product portfolio is missing and the available coil width'*.[595] Another similarly confirmed that *'a re-roller cannot directly influence the quality of a slab; the fully integrated mill can fine-tune their chemical composition'*.[596]

(792) Similarly, non-integrated players have confirmed that there is limited availability of such substrate in the EEA, especially from players other than the Parties and ArcelorMittal. One such non-integrated player explained that it '*has difficulty sourcing hot rolled steel in Europe as it competes with its potential suppliers downstream. [It] has a long-term contract to purchase hot-rolled steel for the automotive sector from ArcelorMittal and also buys from […] and smaller quantities from Salzgitter. It sees no alternative suppliers of hot rolled steel for automotive in Europe since special grade hot rolled steel is scarce*'.[597] This dependence on competitors for needed inputs limits the strength of the competitive constraint non-

593 Minutes of a call with a competitor on 8.1.2019, DocID3790.

594 Replies to questions 66–67 of Q1 – Questionnaire to Competitors, DocID2166; Replies to questions 60-63 of Q3 – Questionnaire to customers (Automotive), DocID2168.

595 Reply to question 61 of Q3 – Questionnaire to customers (Automotive), DocID2168.

596 Reply to question 62 of Q3 – Questionnaire to customers (Automotive), DocID2168.

597 Minutes of a call with a competitor on 8.1.2019, DocID3790.

integrated players would likely constitute for the merged entity post-Transaction, as explained in Section 9.4.3.2.a.i.

(793) In their Response to the Statement of Objections, the Parties contested the Commission's conclusion that '*steelmakers such as Marcegaglia, Arvedi, NLMK and USSK are "likely mostly opportunistic"*'.[598]

(794) The Commission considers that the specific evidence provided by the Parties in this regard in fact confirms that Marcegaglia generally does not supply OEMs directly, with the exception of FCA. In the Commission's view, this confirms the Commission's conclusion that Marcegaglia constitutes a limited competitive constaint on the Parties in EEA automotive HDG, in which OEMs are by far the largest customer group.

(795) Overall, these opportunistic suppliers appear to have limited competitiveness in the EEA automotive HDG market.

g. Internal evidence acknowledges that the importance of the merged entity would exceed what is suggested by its market share

(796) The significance of the Parties' capabilities in the automotive HDG market is such that their combination would afford them a superior competitive strength than their market shares combined would suggest. This is also recognised by internal evidence. For example, in a document assessing synergies specifically relating to the automotive sector, there is an assessment of the combination of Tata and ThyssenKrupp, and in particular of how their synergies would apply to the automotive market.

(797) […].[599]

9.4.3.3. Closeness of competition

(798) Based on the results of the market investigation and on all evidence available to it, the Commission finds that the Parties compete closely in the automotive HDG market in the EEA.

(799) As explained in Section 7.5, the demand of automotive customers is articulated in several different specific products, accompanied by specific service requirements, which make the market for automotive HDG products strongly differentiated.

(800) As explained in Section 8.3.3, the market for automotive HDG in the EEA is also geographically differentiated.

(801) On this basis, there are several parameters of competition which are relevant for the assessment of closeness of competition between the Parties, and which include their product capabilities, portfolios, the degree of commonality between their respective customers and their geographic locations.

a. The Parties have similar technical capabilities and large capacities

(802) First, as explained in Section 9.4.3.2.c, the Parties appear to be two of only three automotive HDG players (with ArcelorMittal) able to fully meet the needs of automotive customers, notably with large production capabilities and capacities.[600]

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598 Response to the SO, paragrah 3.70.

599 […].

600 Replies to question 46 of Q1 – Questionnaire to Competitors, DocID2166; Replies to questions 24 and 38 of Q3 – Questionnaire to customers (Automotive), DocID2168.

This is because they have the necessary specific high-end production lines homologated by customers to make automotive products.[601]

(803) In particular, both Tata and ThyssenKrupp are fully integrated steelmakers with a network of several advanced and fully 'automotive capable' – in terms of product thickness and width, coating thickness, vertical lines, oiling, surface quality, quality control, grades, volumes, etc. – production plants in the EEA where they can optimise production to efficiently and reliably deliver automotive HDG to their customers in the EEA.

(804) As such, both Parties appear to be two of only few players the portfolio of which in essence covers the broadest spectrum of EEA automotive customer needs, and likely only two of three players (with ArcelorMittal) able to provide the overall large volumes across a portfolio of different products needed by the automotive industry.

(805) In this context, it should be noted once again that all automotive customers providing a view consider that the Parties and ArcelorMittal are able to address their '*EEA needs to an extent not possible for other suppliers'*.[602]

(806) Indeed, Tata's and ThyssenKrupp's similarly high current market shares in EEA automotive HDG reflect their similar roles in the market.

(807) This closeness is similarly shown by the relative importance of the Parties' respective sales of automotive HDG in the EEA as a share of their overall steel sales, which is also comparable […].

Figure 119 – Tata/ThyssenKrupp portfolio comparison[603]

[…]

(808) Second, as also explained in Section 9.4.3.2.c.iv, the Parties similarly provide R&D capabilities which are necessary and specifically targeted to develop new products for automotive customers, and more generally provide the level of service (quality control, reactivity with possible additional supply, etc.) they require.

(809) In that regard, the Commission's investigation largely confirmed the importance of R&D capabilities for automotive customers, particularly to develop and bring to market novel products offering new possibilities and addressing evolving needs.

(810) In particular, the Parties both have significant R&D investments and a significant number of R&D projects, which specifically target the automotive HDG segment. From the data provided by the Parties, it appears Tata currently has […] ongoing projects, while ThyssenKrupp has […] ongoing projects.[604]

(811) Third, the Parties are both active in technology spaces such as direct-rolling (which combines casting and hot-rolling in a more efficient process) or continuous casting, in which few other competitors are active. Beside evidence from the Parties, this is largely confirmed by both competitors and customers.[605]

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601 Replies to question 63 of Q1 – Questionnaire to Competitors, DocID2166; Replies to questions 39 and 59 of Q3 – Questionnaire to customers (Automotive), DocID2168.

602 Replies to question 24 of Q12.a and Q12.b – Questionnaire to Customers (Automotive), DocID2952 and DocID2953.

603 […].

604 Parties' response to RFI 17, Annex 1.

605 See for instance the replies to question 59 of Q1 – Questionnaire to Competitors, DocID2166; and to question 44 of Q3 – Questionnaire to customers (Automotive), DocID2168.

(812) Fourth, even beside these specific capabilities, market participants largely confirm the closeness of the Parties on a number of generally important parameters of competition. In particular, some respondents identified the Parties as close or even the closest competitors in terms of their general portfolio, lead times, on-time delivery, pricing, quality, R&D, new grade development capabilities, their portfolio of flat carbon steel for automotive applications, extensive homologation services or close involvement in automotive production process.[606]

(813) Overall, the Commission considers that the Parties have similarly large technical production capabilities and capacities needed to address the needs of customers of automotive HDG in the EEA.

b. The Parties have a similar focus on important specific products or segments

(814) The Commission considers that the investigation confirmed that the Parties have a similar focus on specific products or segments, at least some of which are particularly important in the automotive HDG market in the EEA.

(815) First, the bulk of both of the Parties' sales appear to be in similar products. Indeed, approximately […]% of Tata's sales of dual-phase HDG – a particular type of advanced automotive HDG – in the EEA is for products with a yield strength between […]. Similarly, approximately […]% of ThyssenKrupp's dual-phase HDG sales in the EEA is for products with a yield strength between […].[607]

(816) In their Response to the Statement of Objections, the Parties contested the Commission's conclusion, in essence because '*the Commission has failed to consider that dual-phase HDG steel accounts for only [5-10]% of TSE's Automotive HDG sales volumes and [5-10]% of tk SE's Automotive HDG sales volumes*' and that '*the Parties' sales data actually suggests that they have a relatively differentiated HDG product offering for automotive customers, with both focusing on different HDG product types*'. The Parties also emphasised that Tata '*does not (and cannot currently) produce Coated High Strength AHSS for hot-forming, a particular type of advanced automotive steel. As noted in the Article 6(1)(c) Response, this is because* […]*. This further disproves the Commission's claim that the Parties* "have a similar focus on important specific products or segments"'.[608]

(817) However, as shown in this section and already in the Statement of Objections, the fact that the Parties are close competitors is evidenced by several elements and occurs on several levels: in addition to a similar focus on certain other types of automotive HDG, closeness flows from similar technical capabilities and capacities, a significant commonality of customers and geographic proximity.

(818) Moreover, as regards the Parties' claims contesting their similar focus on certain types of HDG, the Parties only challenge one aspect (their closeness in terms of yield strength of their dual-phase products), as detailed in the following recitals. The Parties do not contest the Commission's conclusions in relation to the closeness of the Parties in terms of other specific product types, such as automotive HDG for exposed parts and products with large widths.

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606 Replies to questions 56–57 of Q1 – Questionnaire to Competitors, DocID2166; Replies to questions 41 to 43 of Q3 – Questionnaire to customers (Automotive), DocID2168.

607 Parties' response to RFI 21, Tables 40.1 to 40.4.

608 Response to the SO, paragraphs 3.206 to 3.209.

(819) On the Parties' focus on Coated High Strength AHSS for hot-forming – which Tata does not produce – this appears to be of limited relevance since […].

(820) The Commission also emphasises that its assessment is that the Parties were pre-Transaction close competitors, not '*each other's closest competitor*' as wrongly presented by the Parties.[609] In that regard, the fact that the Parties have somewhat different portfolio mixes at the aggregate level of automotive HDG types (as illustrated by Figure 3.13 of the Response to the Statement of Objections) notably reflects the fact that ThyssenKrupp is at the moment likely a higher-end supplier than Tata. However, as detailed in Section 9.4.3.4, Tata is a growing competitive force, with its strategic focus likely to make it an even closer competitor to ThyssenKrupp.

(821) The Commission therefore does not consider the Parties' arguments and evidence in this respect to be persuasive or to undermine its conclusions.[610]

(822) Second, closeness between the Parties in terms of their focus on important specific product segments is confirmed by their own analysis in the ordinary course of business. Figure 120 drawn from Tata's post-Transaction planning documents and comparing the Parties' and their competitors' automotive HDG portfolios shows that the Parties have an equally strong portfolio of automotive HDG products, with many common product types.

Figure 120 – Tata assessment of automotive HDG portfolios in the market[611]

[…]

(823) Indeed, the Parties' internal documents captioned below confirm the Parties' common focus on similar product segments and overlapping portfolios, especially as Tata expands its presence in higher value automotive HDG products. For instance, Figure 121 […].[612]

Figure 121 – […][613]

[…]

(824) This closeness is further underlined by the ThyssenKrupp internal document captioned in Figure 122. The document discusses […].

Figure 122 – […][614]

[…]

(825) In addition, Tata's internal email captioned in Figure 123 shows that […].

Figure 123 – […][615]

[…]

609 Response to the SO, Section J; cf. SO, section 8.3.3.3, in particular paragraphs 709 and 774.

610 There appears to be a clerical error in either paragraph 3.209 or Figure 3.13 (or both) of the Response to the Statement of Objections since the two provide different figures for the share of Coated High Strength AHSS for hot-forming as a share of ThyssenKrupp's automotive HDG sales in the EEA in 2017 ([20-30]% in the text, [20-30]% in the figure).

611 […].

612 Courtesy transaltion. The German original reads […].

613 […].

614 […].

615 […].

(826) Third, each Party appears to perceive the other as a significant competitor in automotive HDG. This is illustrated by the fact that, when setting prices in specific contract offers, […].

(827) For instance, in an internal document describing a sale opportunity at an automotive customer, Tata observes that […].[616]

(828) Fourth, the Parties appear to be particularly close competitors in a number of key segments of the differentiated automotive HDG market, such as automotive HDG for exposed parts or products with large widths.

(829) Noticeably, when specifically asked for *'parameters or products for which Tata and ThyssenKrupp compete closely*', automotive customers mentioned '*[s]urface aspect suitable for exposed parts'* in addition to the general explanation that '*[t]here is a huge overlap in the products offered , therefore [we] judge the overlap for 90% of products*'.[617]

(830) Indeed, in view of the several automotive applications of HDG products, there are several market segments that require specific product capabilities and differentiate the product market. In this context, the Parties often have strong capabilities in similar segments.

(831) The similarity in product capabilities and focus of the Parties is confirmed by quantitative evidence. In particular, when assessing shares of capacities for specific automotive HDG segments that are of paramount importance in the automotive industry, the Parties' combined share is higher than at the overall automotive HDG market level.

(832) In the first place, and most significantly, such products include exposed parts, which are used for the flawless large outer panels on the surface of vehicles. In that segment, the merged entity would, post-Transaction, have a capacity share of [30-40]%.[618]

(833) In the second place, HDG products of large widths (above 1 650 mm or even above 1 850 mm) are another recognised key automotive HDG product segment, with high growth prospects as vehicles become larger. This growth potential is illustrated by ThyssenKrupp's internal document captioned in Figure 124, which points to expected increasing demand by 2020 for larger widths […].

Figure 124 – […][619]

[…]

(834) In the segment of products with a width equal to or greater than 1 650 mm, the closeness of competition is confirmed by the fact that the merged entity's capacity share at [30-40]% would be higher than in the general automotive HDG market at [20-30]%.

(835) In fact, for the widest products, comments received from market participants in the investigation suggest that only the Parties and ArcelorMittal would be active. The Transaction would thus possibly create a duopoly for this increasingly important segment.

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616 DocID2852-49742 (*TSE0558788.msg*).

617 Replies to question 43 of Q3 – Questionnaire to Customers (Automotive), DocID2168.

618 See Table 14.

619 […].

(836) The importance of this segment and the limited number of other competitors, which make Tata and ThyssenKrupp closer than other competitors, is for instance represented in internal Tata exchanges […].[620]

(837) The Commission however notes that the quantitative information it obtained from competitors appears to contradict these comments, in the sense that other steel producers indicated that they are able to produce these very wide products. Nevertheless, focusing on automotive HDG lines capable of producing products wider than 1 850 mm (> 1 850 mm), the Parties' combined EEA capacity share would be [40-50].

(838) Fifth, the investigation confirmed an overall understanding amongst both competitors and customers that the automotive market is gradually moving to ever higher-end products. Although the current sales of these advanced products are typically limited in terms of volumes in comparison with the overall market, demand for such products is projected to increase significantly in the next five years, notably due to the need to reduce car weight to meet CO_2 emission targets.[621]

(839) A customer for instance confirmed this move to higher-end products by explaining that '*[f]or sure, the fraction will increase in the next 5 years, in order to lighten the body structure of the cars (mandatory to succeed C02 emission constraints). Main providers should be European mills for Europe*'.[622]

(840) Moreover, given that automotive customers have a portfolio approach to their procurement of HDG and need at least some of these advanced products, the impact of being capable of producing such advanced products on the competitive dynamics of the overall automotive HDG market is likely disproportionately greater than their volumes of sales would suggest.

(841) The investigation suggests that the Parties are close competitors in this smaller space of more advanced products, for the reasons detailed in the following recitals.

(842) In the first instance, these higher-end products require even stronger technical production capabilities than less advanced automotive HDG. Because, as explained in Section 9.4.3.2.c.i, not all steel players have these capabilities, the Parties face fewer competitors in that space than in automotive HDG overall – in particular, the investigation suggests that both Voestalpine and Salzgitter have limitations for products of the largest widths.

(843) In the second instance, Figure 120 shows that the Parties are both significantly active in several types of advanced products which are particularly relevant for the automotive industry, including sometimes in spite of limited overall volumes.

(844) In the third instance, as also further detailed for Tata in Section 9.4.3.4 and shown in the details provided in the Parties' respective internal documents referenced in recital (937), Figure 154 and Figure 125, a number of the Parties' R&D projects in automotive HDG appear to target the same or similar customer needs[…]. In particular, ThyssenKrupp's […].

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620 DocID2851-38038 (*TSE0269248.msg*).

621 Replies to questions 40, 46, 47 and 50 of Q1 – Questionnaire to Competitors, DocID2166; Replies to questions 18–20 and 50 of Q3 – Questionnaire to customers (Automotive), DocID2168.

622 Reply to question 19 of Q3 – Questionnaire to customers (Automotive), DocID2168.

Figure 125 – […][623]

[…]

(845) More generally, the Parties' submission captioned in Figure 126 confirms that the Parties have overlapping R&D projects to develop novel automotive HDG products.

Figure 126 – […][624]

[…]

(846) Moreover, a press report states that *'ThyssenKrupp is intensively working on new solutions to keep steel competitive and open new [application] markets for steel. Between 25 and 30 new steel products – for example for […] new surfaces are developed annually, according to an estimate of Oliver Hoffmann, leader of application technology at ThyssenKrupp Steel Europe. "Of the 2 000 types of steel existing today, three-quarters did not exist 20 years ago", according to him. Innovation driver is in this instance as well the automotive industry. For example, [ThyssenKrupp's] project* Incar plus *develops more than 40 new solutions for powertrain, chassis, steering and body. The goal: thorough light building in order to save energy without compromising on safety or comfort.'* Oliver Hoffmann also stated that *'[w]e are constantly expanding the spectrum. There are many ideas enabling further leaps with steel in light construction.'*[625]

(847) The same article also mentions Tata's research lab in IJmuiden, where new lightweight automotive steel is being crash tested. Tata's marketing boss Sander Heinhuis is quoted saying *'we have approx. 100 to 150 different ideas, to make a body lighter.'* A picture showing an unfinished car body is captioned *'in the research labs of Tata Steel: In the Dutch [city of] Ijmuiden everything revolves around the topic of light construction.'*[626]

(848) Sixth, the assessment of automotive customers' purchase patterns represented by the Commission in Figure 100 on the basis of real commercial interactions between the Parties and the main automotive customers is also known to the Parties, as documented in their ordinary course of business documents also presented in that section. Hence, the Parties are aware of the fact that they are close competitors, which would therefore likely be reflected in their market behaviour.

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623 […].

624 […].

625 DocID2850-19517 (*Handelsblatt article of 1 July 2015, issue 123, TSE0150727.pdf*). Courtesy translation. The original text reads: *'Auch Konkurrent Thyssen-Krupp arbeitet intensiv an neuen Lösungen, um Stahl konkurrenzfähig zu halten und dem Werkstoff neue Märkte zu erschließen. Zwischen 25 und 30 neue Stahlprodukte – beispielsweise Stahlsorten für die Kalt- und Warmumformung sowie neue Oberflächen – verlassen Jahr für Jahr die Labore in Duisburg und Dortmund, schätzt Oliver Hoffmann, Leiter der Anwendungstechnik bei Thyssen- Krupp Steel Europe. „Von den gut 2 000 Stahlsorten gab es vor 20 Jahren drei Viertel noch gar nicht", sagt er. Innovationstreiber ist auch hier die Autoindustrie. So hat der Essener Konzern das Projekt Incar plus aufgelegt, das über 40 neue Lösungen für die Bereiche Antrieb, Fahrwerk, Lenkung sowie Karosserie entwickelt hat. Das Ziel: konsequenter Leichtbau, um Energie zu sparen, ohne Abstriche bei Sicherheit und Komfort machen zu müssen."* And further*: „Wir erweitern ständig das Spektrum. Da gibt es noch viele Ideen, die weitere Sprünge im Leichtbau mit Stahl möglich machen.'*

626 DocID2850-19517 (*Handelsblatt article of 1 July 2015, issue 123, TSE0150727.pdf*). Courtesy translation. The original text reads: *'Wir haben rund 100 bis 150 verschiedene Ideen, eine Karosserie leichter zu machen'* and *'In den Forschungslabors von Tata Steel: Im niederländischen Ijmuiden dreht sich alles um das Thema Leichtbau.'*

(849) In their Comments on the Article 6(1)(c) decision, the Parties contested that they would be close competitors, notably in the more advanced automotive HDG products, where Tata's capabilities would – contrary to the Commission's allegedly flawed conclusions – be limited.

(850) The Commission observes that an assessment of closeness does not require that Tata's technical capabilities be identical to ThyssenKrupp's, especially in more advanced products.

(851) The Commission finds that an important indication of closeness can, however, be derived from the fact that, as further detailed in Section 9.4.3.4, […] which make the Parties close already today as discussed in the previous recitals, is evidenced by ample internal evidence, such as the internal Tata document captioned in Figure 127. […].

Figure 127 – […][627]

[…]

(852) The Parties heavily emphasised in their Comments on the Article 6(1)(c) decision and their Response to the Statement of Objections[628] the current trend to reduce the weight of vehicles, for which the most advanced steel products such a the ones being developed by Tata in competition with ThyssenKrupp would allegedly also at least partly compete with alternative materials such as aluminium and plastics.

(853) As explained in Section 7.5.4.13, the constraint exercised on automotive HDG by these alternative materials appears to be limited. By contrast, the likely significance of weight reduction is confirmed by the investigation, and both Parties in fact appear to have several R&D projects in this space, where few players overall have the general capabilities to make products, not to mention develop a large number of new products.

(854) Seventh, the closeness between Tata and ThyssenKrupp in the EEA automotive HDG market is more generally confirmed by the significant number of common elements in Tata's internal description of each Party in the synergy document captioned in Figure 128, […].

Figure 128 – […][629]

[…]

(855) Overall, the Commission considers that the Parties have a similar focus on specific products or segments, at least some of which are particularly important in the automotive HDG market in the EEA.

c. The Parties have large sales at common customers

(856) The Commission considers that the investigation confirmed that the Parties' closeness is also reflected by the very large share of sales of automotive HDG they achieve at common customers.

(857) Based on data directly gathered by the Commission in the course of the market investigation from 18 major purchasers of automotive HDG in the EEA and summarised in Table 20, in the case of ThyssenKrupp, a very large share of its automotive HDG sales ([….]%) is achieved at customers who also source from Tata.

627 […].
628 Response to the SO, paragraphs 3.35 to 3.37.
629 […].

(858) The share is even higher for Tata, with […] of its sales made to customers who also source from ThyssenKrupp.

(859) Based on this sample, that accounts for more than 70% of the Parties' estimated sales of HDG to automotive customers in the EEA, the two Parties thus almost always compete head-to-head with each other in the EEA automotive HDG market.

Table 20 - HDG auto sales, shares of total sales to common and non-common customers

	TK	TATA
Sales to common customers (kt) *Share of total sales*	[…]	[…]
	[…]%	*[…]%*
Sales to non-common customers (kt) *Share of total sales*	[…]	[…]
	[…]%	*[…]%*
Total sales (kt) *Share of total sales*	[…]	[…]
	[…]%	*[…]%*

Source: Commission's calculations based on its market investigation on automotive customer purchases.

(860) In their Response to the Statement of Objections, the Parties contested the Commission's conclusion, in essence because: (i) the Commission's own analysis would allegedly show that EEA automotive customers multi-source and therefore typically each source from a number of other players in addition to the Parties such that they '*are in no way dependent on the Parties*'; and (ii) the Commission's analysis is flawed because '*it fails to exclude instances where a customer only sources a negligible proportion of their purchases from one of the Parties*' and, properly corrected, would show a lesser level of common customers between the Parties.[630]

(861) However, the undisputed fact that EEA automotive customers multi-source has no bearing on the assessment of the extent to which two given EEA suppliers directly compete head-to-head for specific customers and their corresponding closeness. In that respect, while the Parties submitted that they separately have a high share of common customers also with other steel suppliers and inaccurately claimed that '*the Parties' share of sales to common customers with other competitors is similar to the Parties' share of sales to common customers*', the share of common customers is consistently and significantly higher between the Parties: for ThyssenKrupp, […]% of common customers with Tata, to be compared with […]% with Voestalpine and […]% with ArcelorMittal; for Tata, […]% of common customers with ThyssenKrupp, to be compared with […]% with Voestalpine and […]% with ArcelorMittal. Even the share of common customers between each of the Parties and at least one of Voestalpine, ArcelorMittal and Salzgitter ([…]% for ThyssenKrupp;

630 Response to the SO, paragraphs 3.210 to 3.216. See also the First Data Room Report.

[…]% for Tata) remains lower than the share of common customers between the Parties.

(862) While this particularly high commonality of customers between the Parties may not entail full dependence on the Parties for the steel requirements of EEA automotive customers, it is likely that the merged entity would post-Transaction have significant market power in automotive HDG in the EEA, in particular with respect to automotive customers which sourced from both Parties pre-Transaction. For instance, in the Commission's market investigation presented in Section 9.4.3.1.b.ii, out of 18 automotive customers […] purchased from both Parties and for […] of these customers the combined share of the Parties was in excess of 30%.

(863) The Parties themselves claimed that '*across those customers defined as "common" in the SO, an average of* […] *of these customers' purchases are from suppliers other than the Parties. This finding is corroborated in the Parties' Data Room Report*'.[631] Contrary to their conclusion that '*even amongst those customers that purchase from TSE and tk SE it is clear that such customers are not dependent on the Parties for their Automotive HDG requirements*' in the Commission's view this suggests an average combined share of wallet for the Parties with common customers of […] and, correspondingly, significant market power. This share would likely be even higher at some individual customers or considering only some subset of products within HDG for automotive customers.

(864) Finally, the Parties' claim that the Commission should discount from its analysis those customers at which the Parties have less than 5% of sales individually is flawed. The fact that one of the Parties is supplying some volumes, although small, to a customer is a clear indication that that Party is competing for volumes at that customer and the level of competitive constraint exerted is not necessarily represented by the volumes sold (even if below 5%). Therefore, it is appropriate to consider a more comprehensive measure, such as the one used by the Commission.

(865) The Commission therefore does not consider the Parties' arguments and evidence in this respect to be persuasive or to undermine its conclusions.

(866) Overall, the Commission considers that the Parties' closeness is also reflected by the very large share of sales of automotive HDG they achieve at common customers.

d. The Parties' activities are geographically close

(867) The Commission consider that the Parties' activities are geographically close.

(868) In addition to the closeness of their technical capabilities and the significant evidence of head-to-head competition in automotive HDG in the EEA, the closeness between the Parties is also illustrated by the fact that respondents to the market investigation typically pointed out that both Parties' production facilities are located close to each other.[632] In the context of relatively high transport costs, this geographic closeness entails that the Parties likely particularly compete for the same customers, located near their production facilities, also confirming the quantitative data presented in Table 20.

(869) Indeed, the proximity of the Parties' plants to each other and to the manufacturing sites of their customers may explain why the Parties appear to be particularly strong

631 Response to the SO, paragraph 3.214.

632 Replies to questions 38–39 of Q1 – Questionnaire to Competitors, DocID2166; Replies to questions-33-34 of Q3 – Questionnaire to customers (Automotive), DocID2168.

and close competitors in certain countries within the EEA, as also explained in Section 9.4.3.2.d. This strategic location of the Parties' plants close to the main automotive production hubs in the EEA is illustrated in internal documents created by the Parties in the ordinary course of business as well as for the assessment of the Transaction, two of which are captioned in Figure 129 and Figure 130.

(870) These documents describe both Parties' proximity to key demand centres for automotive HDG in the EEA (in North-West Europe and in Germany in particular). They show, among other things, that ThyssenKrupp has a market share of [60-70]% in automotive steel in Germany, […]. Tata thus appears to likely be ThyssenKrupp's closest competitor for automotive HDG in Germany. They also show that Tata considers that […].[633]

Figure 129 – […][634]

[…]

Figure 130 – Majority of ThyssenKrupp's steel assets located in North-West Europe[635]

[…]

(871) The document captioned in Figure 131 captures the geographic differentiation in suppliers' footprint and their shares for strip steel products in key geographies. It shows that in Germany, the largest market by size and a key demand centre for automotive production, the Parties' combined strip steel share is significantly larger than at the EEA level, with the merged entity leading at approximately [40-50]%, almost twice the share of EEA market leader ArcelorMittal, which comes second with an estimated share of [20-30]%. The document also shows a negligible level of import penetration of at most [0-5]%, and suggests that the enhancement of the market position in Germany is expected to […].

Figure 131 – […][636]

[…]

(872) Further, the Tata internal assessments […][637] – reveal higher individual and combined steel shares for the Parties than in the EEA overall, thereby emphasising the closeness of the competition between them in given countries, […].

(873) According to these figures, the Parties' combined shares of wallet – that is to say their combined share of the OEM's steel supplies – would confirm the geographic closeness of the Parties as they would for instance have a high combined share for the following OEMs:

[…]

(874) Figure 135 also shows that the overall combined share of wallet by country is […]. By contrast, the Parties appear to be comparatively less close and overall less significant competitors in other countries, […].

Figure 132 – […][638]

[…]

633 […].
634 […].
635 […].
636 […].
637 […].
638 […].

Figure 133 – […][639]

[…]

Figure 134 – […][640]

[…]

Figure 135 – […][641]

[…]

(875) Market respondents confirmed the closeness of competition between the Parties in light of the proximity of their plants by describing the situation of the Parties' plants close to the manufacturing plants of automotive customers as a significant competitive advantage for both Parties.[642]

(876) By contrast, alternative steel suppliers other than ArcelorMittal are typically less ideally placed to deliver automotive customers in the EEA. For instance, in the case of Voestalpine, the fact that it has a single production facility in the EEA in Austria – not located close to a port – means that it is likely uneconomical for it to supply automotive HDG to EEA customers located too far from it.

(877) Overall, the Commission consider that the Parties' activities are geographically close.

(878) In their Response to the Statement of Objections, the Parties contested the Commission's conclusion, in essence because: (i) other steel suppliers also make a large proportion of their automotive HDG sales to OEMs based in Germany, simply because that is where many of the European production facilities are located; and (ii) the evolution of Tata's sales in Germany would not evidence the significant increase which would be expected if Tata were indeed focusing on Germany as claimed by the Commission.[643]

(879) On the first point, the undisputed fact that other EEA steelmakers significantly supply automotive customers in Germany has no bearing on the assessment of the extent to which automotive customers in Germany are a particular focus for the Parties and their corresponding closeness. In that respect, the Parties' own submissions confirm the Commission's conclusion that – while Salzgitter may also be making a significant share of its HDG sales in Germany – Germany is a key geographic focus for ThyssenKrupp, accounting for [60-70]% of its HDG sales in the EEA. This is with the caveat that the figures relate to overall HDG sales, and not automotive HDG specifically.

(880) As regards the second point, the Parties claimed that […]. However, the evidence they submitted in fact confirms a significant increase of Tata's automotive HDG sales share to […]. This increase is similarly confirmed by the Parties' provision of sales (both in volume and value) to Germany in addition to the corresponding sales share.[644] Moreover, the Commission explains further in Section 9.4.3.4.a why past market share data likely does not adequately reflect Tata's current and future focus, and *a fortiori* evidence an alleged failure of Tata's strategy.

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639 […].

640 […].

641 […].

642 Replies to questions 38 and 39 of Q1 – Questionnaire to Competitors, DocID2166; Replies to questions 33 and 34 of Q3 – Questionnaire to customers (Automotive), DocID2168.

643 Response to the SO, paragraphs 3.217 to 3.219.

644 Parties' reply to RFI 37.

(881) The Commission therefore does not consider the Parties' arguments and evidence in this respect to be persuasive or to undermine its conclusions.

(882) In conclusion, ample internal evidence and the responses to the market investigation confirmed that the Parties are particularly close competitors in automotive HDG in the EEA in a number of respects. The Transaction would thus result in the removal of an important competitive constraint on the Parties.

9.4.3.4. Tata was pre-Transaction an important competitive force in the EEA automotive HDG market investing to further gain market share to the likely detriment of ThyssenKrupp

a. Tata pursued for years a strategy targeting market share growth in the automotive HDG segment, as documented by ample internal evidence

(883) The Commission's market investigation suggests that the currently available market shares in Section 9.4.3.1 may significantly underestimate Tata's competitive importance because Tata was pre-Transaction a growing competitive force, with increasing shares and large investments in recent years with the specific target of increasing sales and capturing market share in the EEA automotive HDG market.

(884) Ample internal evidence confirms that Tata decided approximately ten years ago to leverage its size and shift its business towards higher-value differentiated products, particularly the automotive segment. In the execution of this strategy, Tata has […], with a very likely impact on ThyssenKrupp.

(885) Tata internal documents – some of which are captioned in Figure 136 and Figure 137[645] – provide illustrations of this strategic ambition in automotive steel in the EEA by showing Tata's key commitment to and focus on growing in the automotive segment, with specific planned automotive HDG market share growth: […].

(886) The documents also confirm that Tata saw a particular opportunity in the automotive HDG market in […].

(887) […].

Figure 136 – […][646]

[…]

Figure 137 – […][647]

[…]

(888) Some of the documents illustrate market participants' general view gathered in the investigation that, while ThyssenKrupp has long been a prominent player in automotive HDG, Tata entered the area only in more recent years and has been an 'up-and-coming' supplier ([…]) that has consistently developed its capabilities and capacity in automotive HDG to focus on more advanced differentiated products.[648] In parallel, ThyssenKrupp appears to have increased its focus on higher value products such as the automotive segment.[649]

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645 […].

646 […].

647 […].

648 […].

649 Replies to questions 94–96 of Q1 – Questionnaire to Competitors, DocID2166; Replies to questions 35-37 of Q3 – Questionnaire to customers (Automotive), DocID2168.

(889) Other Tata internal documents – notably the one captioned in Figure 138[650] – further illustrate Tata's progress in achieving good positions in target markets and in particular *'faster than market growth'* in the automotive segment, while going after perceived growth '*opportunities*' as its market strategy notably in the automotive segment across the EEA.

Figure 138 – […][651]

[…]

(890) These documents consistently show that Tata plans significant growth of its sales and share in the EEA automotive HDG market, and commits large efforts to do so. For instance, the documents illustrate that […].

(891) Other internal documents captioned in Figure 139 to Figure 145 confirm Tata's development of differentiated products in the specialised, high value segments of the automotive HDG market. […];[652] […].[653] These captions show that over the past years Tata developed a number of new products targeting the automotive market including attributes such as high strength and wide products; improved surface quality and formability; improved corrosion resistance and process efficiency; weight savings; cost reductions and so on.

Figure 139 – […][654]

[…]

Figure 140 – […][655]

[…]

Figure 141 – […][656]

[…]

Figure 142 – […][657]

[…]

Figure 143 – […][658]

[…]

Figure 144 – […][659]

[…]

Figure 145 – […][660]

[…]

(892) Overall, these internal documents confirm that the automotive segment is one clear and growing focus […] for Tata, for which they invest in the improvement of

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production lines and the development of new products. The Commission finds that they confirm Tata to have been a significant and growing competitive force in automotive HDG in the EEA, and a strong opponent to the incumbent suppliers ThyssenKrupp and ArcelorMittal. Tata's competitors, including ThyssenKrupp, indeed were aware of Tata's growing focus on automotive HDG, as further discussed in Section 9.4.3.4.d.

(893) In their Response to the Statement of Objections, the Parties reiterated the claims contained in their Comments on the Article 6(1)(c) decision that the Commission would be mistaken in finding that Tata is a growing competitive force. This would be in essence because: (i) Tata's relevant investments would be at best comparable to those of its competitors and aim to catch-up to these competitors; (ii) economic evidence would clearly show that – in spite of this strategy, which the Parties claimed has failed – Tata is in fact not a growing competitive force, notably because it would not have increased its market share in automotive HDG in the EEA, or its share of sales to automotive customers; (iii) and […].[661]

(894) In the first instance, the Parties do '*not disput[e] that TSE [Tata] has made a strategic decision to put a focus on sales to the automotive sector in recent years, from a low starting point*'.[662] In the Commission's view, such a strategic decision from a capable and large steelmaker already active in the production and sale of automotive HDG in the EEA, committing the accompanying investments, is in itself strong evidence of Tata being a growing competitive force which would be eliminated by the Transaction. It further seems that Tata has continued on this path without dropping its strategic target and accordingly, in the Commission's view, concluding that Tata would have failed in its strategy would require compelling and concurring evidence. As explained in the following recitals and already in the Statement of Objections, the Commission does not consider the Parties' arguments and evidence in this respect to be persuasive or to undermine its conclusions.

(895) In the second instance, the Parties do not deny the existence of the significant investments from Tata described by the Commission, or their purpose of growing sales with automotive customers, thereby confirming the Commission's conclusions.[663]

(896) In the third instance, the claim that other steelmakers would allegedly be making similar investments contradicts the feedback received both from steelmakers themselves and automotive HDG customers (see Section 9.4.3.4.d). Moreover, the examples provided by the Parties: (i) are in essence limited to ArcelorMittal, Voestalpine, SSAB, Salzgitter, Marcegaglia, NLMK and Posco (outside of the EEA); and (ii) often do not relate specifically to automotive HDG or do not target capacity and capability expansion (as opposed to more 'maintenance' investments). In any event, the claim that other steelmakers would also be making allegedly '*comparable*' investments – which the Commission disputes as being unsupported by the investigation – is only indirectly relevant to the assessment of Tata as a growing competitive force, which should mainly focus on Tata's behaviour, not its competitors'.

(897) In the fourth instance, the Commission finds that the evidence presented by the Parties – similar to the evidence already presented in their Comments on the

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661 Response to the SO, Section I.

662 Response to the SO, paragraph 3.189.

663 Response to the SO, paragraphs 3.190 to 3.196.

Article 6(1)(c) decision – does not support their claim that Tata's strategy was only to catch up with competitors. In particular, the Parties' relatively old evidence is limited to an assessment of Tata's investment levels (regarding which Figure 3.9 of the Response to the Statement of Objections, captioned from a 2016 document, states that […]. In that regard, the Parties claimed – without pointing to any persuasive evidence – that the consequence of such continued lower investments would be […], but acknowledged that '*this is not explicitly stated in*' the evidence they referred to in support of their argument in their Response to the SO.[664] The additional evidence they submitted – although in part quite old – on the contrary confirms the Commission's point that Tata is making significant investments to enhance its technical capabilities.

(898) In the Commission's view, financial indicators such as average investment levels compared with the industry cannot constitute a direct and reliable estimate of the evolution of Tata's technical capabilities and general ability to meet automotive customer needs – also in comparison with other suppliers.

(899) Further, as detailed in recital (923) and already in the Statement of Objections, even only catching up to competitors – and even only in terms of capex investments and not technical capabilities – would still make Tata a growing competitive force. In that regard, the Commission disagrees with the Parties' claim that '*as a matter of logic […] catching up to competitors in terms of investment levels and capabilities does not necessarily mean achieving a higher share of sales*' (emphasis added). On the contrary, the Commission considers it a reasonable assumption that a player with enhanced investments and/or capabilities would generate larger sales and sales shares than it did previously on the basis of its inferior investment levels and capabilities – irrespective of whether the improved capabilities are on par with or better than those of its competitors.

(900) In the fifth instance, the Parties claimed that economic evidence would clearly show that Tata is not a growing competitive force. However, the economic evidence presented by the Parties is limited to (i) the evolution of Tata's automotive HDG market share in the EEA between 2012 and 2017 and (ii) the evolution of the percentage of its total flat carbon steel sales that was made to automotive customers between 2013 and 2017. On the one hand, this evidence suffers from several flaws: (i) it is in both cases already somewhat outdated; (ii) the automotive HDG market share is only an estimate and relates to volumes, whereas Tata's growing focus on higher value products could translate into more high-value sales and profits without growing its volume share; and (iii) the automotive share among Tata's total sales relates to flat carbon steel overall and not only HDG. On the other hand, these flaws nothwithstanding, the evidence – contrary to what appears to be the Parties' reading – does in fact show a significant increase of: (i) Tata's automotive HDG market share (and sales) in the EEA between 2012 and 2015; (ii) the share of sales to automotive customers in Tata's EEA flat carbon steel sales between 2013 and 2017;[665] and (iii) the absolute volumes of EEA flat carbon steel sold by Tata to automotive customers between 2012 and 2017.[666]

(901) In addition to the fact that the Parties' own submissions show that Tata is focusing investments on enhancing its production capabilities for automotive HDG in the EEA

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664 Parties' reply to RFI 37.

665 Response to the SO, paragraph 3.199.

666 Parties' reply to RFI 37.

in order to expand its presence in this area, the Parties themselves specifically provide insights as to why Tata's automotive HDG market share in the EEA may not have significantly increased recently in spite of these investments, namely because some of the assets will likely only start upgraded production at the earliest in 2019–2021: […].[667]

(902) In the sixth instance, the Parties failed to provide persuasive evidence for their claim that Tata's own internal documents would also indicate that […]. On the one hand, the evidence should be read in context: while the captioned Tata internal documents may reveal […].

(903) […]. It therefore seems, overall, difficult to draw firm conclusions on the basis of these documents with regard to Tata's growing competitive force.

(904) […]. Again, this highlights the limitations of short-term considerations, as well as further evidences that OEMs do consider Tata as a capable supplier.

(905) In their Response to the Letter of Facts, the Parties further argued that Tata's '*investments in the automotive sector are primarily aimed at* […] such that '*it is incorrect to assume that there will be a jump in TSE's market share in Automotive HDG come 2019-2021*'. Moreover, the Parties consider that a future increase in Tata's market share is unlikely because Tata could increase its automotive HDG sales already today if it chose to: although '*not disputed that TSE has put some focus on sales to the automotive sector in recent years*', '*the fact that certain returns will be delayed (2019-2021) is the result of strategic decision-making on TSE's part, rather than lack of existing capacity. If so desired, TSE (as well as many other Automotive HDG producers who also have spare Automotive HDG capacity) could immediately increase its sales to the automotive sector by simply redirecting the HDG operating capacity of certain lines, for* […]*, towards serving automotive customers*'. Finally, a future increase in Tata's EEA automotive HDG market share would be unlikely in view of the fact that '*a number of the Parties' competitors have made, or are planning to make, significant investments to expand their automotive-capable galvanising capacity in the EEA*' and that Tata's '*investments in Automotive HDG are in many cases smaller than the investments its competitors have made and continue to make*'.[668]

(906) In this regard, the Parties again acknowledged the existence of […]. They thus directly confirm the Commission's finding of Tata being a growing competitive force in automotive HDG in the EEA.

(907) In particular, the Commission highlights that its concerns are not strictly and only premised on Tata's ability to increase its market share of automotive HDG in the EEA, but more generally on its growing relevance as a supplier of automotive HDG, notably in terms of product quality and portfolio, overall sales, and its more general ability to meet customer needs.

(908) Finally, the Commission disagrees with the Parties' claim that the Parties' competitors are planning or making '*significant*' (when compared with the Parties' capacities and sales) expansion, as detailed in Section 9.4.3.6.a.

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667 Parties' reply to RFI 20, paragraphs 37.1 and 37.2.

668 Response to the Letter of Facts.

(909) In sum, the investigation shows that Tata was pre-Transaction pursuing a strategy to target market share growth in automotive HDG in the EEA, notably to the detriment of ThyssenKrupp. Tata's strategy to target expansion in automotive HDG in Germany, where ThyssenKrupp is the largest competitor, is further discussed in Section 9.4.3.4.e.

b. Tata has made large investments to significantly expand in automotive HDG in the EEA, and was pre-Transaction pursing these investments for the future

(910) On the basis of the evidence gathered in its investigation, the Commission finds that Tata's strategy of expansion in the automotive space was not merely a theoretical target but was also actively pursued through very significant investments targeting the expansion of its capabilities and production so as to achieve increasing sales with automotive customers in the EEA.

(911) First, Tata's […] – designed to upgrade its production capabilities – was largely intended to address the needs of, among others, the automotive market. As illustrated in the presentation of the rationale for an investment to senior management, a key target of […] for automotive was […].[669] […]. Tata was thus expanding precisely in ThyssenKrupp's areas of strength, […].

(912) The […] programme engages an overall investment of approximately EUR […] from […] to […]. A second phase is planned to follow […].[670]

(913) Thus, although Tata's ongoing improvements are not necessarily fully dedicated to the production of automotive HDG, […] will significantly bolster Tata's production capabilities for automotive products. This improvement of Tata's capabilities is, according to the same management investment presentation, aimed at […].[671]

(914) Figure 146 and Figure 147, drawn from Tata's recent management investment presentations, similarly illustrate the rationale for Tata's continued large investments by explaining that this ongoing move upscale is needed to address the future advanced product needs of the EEA automotive HDG market, which account for a significant part of what Tata sees as […].

Figure 146 – […][672]

[…]

Figure 147 – […][673]

[…]

(915) Second, Tata more specifically made investments in the framework of […] to improve HDG production capabilities […] for an approximate total of EUR […], and is continuing to plan further investments still to […].[674]

(916) These presentations provide the details of the specific improvements to be made and the underlying business rationale for them: […].[675]

(917) […].[676]

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670 […].
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672 […].
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674 […].
675 […].

(918) Tata separately confirmed that its […] HDG line has only recently become '*automotive capable*'.[677]

(919) Third, several other Tata internal documents confirm Tata's growing and strategic focus on automotive HDG, and in particular on the more advanced differentiated products within that market,[678] […]. For example, Figure 148, drawn from a management presentation regarding specific R&D projects targeting the *'automotive market for HDG*' illustrates Tata's ambition to […].

Figure 148 – […][679]

[…]

(920) In their Comments on the Article 6(1)(c) decision, the Parties claimed that these investments would be geared for Tata to only catch-up to the present capabilities of other suppliers […] and not to continue its development as an automotive HDG player also looking forward, and therefore not to further build capabilities, develop new products, etc.[680]

(921) The Commission finds, however, that a number of investments are still ongoing and the time window indicated in the documents for the investments support an ongoing effort, rather than a past effort to catch up which would no longer be relevant. […].[681] […].[682]

(922) Moreover, the ample evidence on file about Tata's plans, its investments and their stage of execution do not support the Parties' claim. The claim that Tata's efforts are solely geared to catching-up to other suppliers is not plausible especially because of the significant investment which has been made, and continues to be made to improve Tata's automotive HDG capabilities in the EEA.

(923) Furthermore, even assuming – *quod non* – that Tata's expansion strategy were only a 'catching-up strategy' as erroneously claimed by the Parties, it would still – on a proper construction – constitute a strategy which, consistent with the Commission's assessment and irrespective of the alleged starting point from which Tata initiated its efforts, would confirm that Tata was planning to expand its existing presence and capabilities, thus likely achieving a higher share with EEA automotive customers than it previously held. The Commission therefore considers that even this alleged 'catch-up strategy' would still give Tata a significant role in the competitive process vis-à-vis other established players, which is potentially underrepresented by its current share of supply.

(924) The Commission's findings are supported by ample evidence from the Parties' internal documents, such as in particular Tata's internal documents captioned in Figure 149 to Figure 152.[683] […].

(925) The documents are particularly significant as they demonstrate that the investments made by Tata were anticipated by Tata, independently of the Transaction, to make it the only player to grow its market share of steel – and specifically the product under

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676 […].
677 Comments on the Article 6(1)(c) decision, paragraph 4.73.
678 […].
679 […].
680 Comments on the Article 6(1)(c) decision, paragraphs 4.164 and following.
681 […].
682 […].
683 […].

assessment, HDG sold to automotive OEMs […] Tata is an important competitive force with the capabilities and resources to affect and change the competitive dynamics in a significant way, particularly in an already concentrated market.[684]

Figure 149 – […][685]

[…]

Figure 150 – […][686]

[…]

Figure 151 – […][687]

[…]

Figure 152 – […][688]

[…]

(926) In particular, Figure 152 illustrates Tata's estimated market share changes between 2017 and 2026 in the supply of automotive steel to automotive OEMs. […], capturing this additional share mainly from […]. This further confirms that Tata was not just planning to catch up to its competitors' technical capabilities but was planning to continue growing its sales and market share at their expense.

(927) Tata's recent and ongoing development of new, state-of-the-art capabilities specifically dedicated to the automotive sector – focussing in particular on […] segments characterised by even higher concentration than the overall automotive HDG market and where ThyssenKrupp is particularly strong – is further confirmed by a newspaper article from 2015 explaining Tata's innovation in HDG for large, exposed automotive parts: '*[t]he appearance of the varnish affects the value of a car. Tata therefore developed a surface for HDG steels that promises a higher varnishing quality'; '[a] high-quality varnishing with lower varnish use should be allowed by Tata's new surface "Serica". Its main area of use are large exposed parts, such as hood, doors, fender and side panels'; '[t]he surface finish of car parts and especially of exposed parts has a high priority [at Tata]'; '[t]he first available steels with the optimised Serica-surface are the forming steels DX5B and DX57, used particularly for side panels, as well as the high strength BH180, BH220 and BH260, that are mainly used for fenders and doors. Other steels are to follow according to Tata.*'[689]

(928) A Tata press release titled '*Tata Steel puts automotive customers into the focus*' and dated 18 November 2015 also explains that '*Tata Steel in future concentrates further*

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684 Horizontal Merger Guidelines, paragraph 37.

685 […].

686 […].

687 […].

688 […].

689 Courtesy translation. The German original reads: *'Das Erscheinungsbild des Fahrzeuglackes beeinflusst die Wertigkeit eines Autos. Tata Steel hat deshalb eine Oberfläche für feuerverzinkte Stähle entwickelt, die eine höhere Qualität der Lackierung verspricht.'; 'Eine hochwertige Lackierung mit geringerem Lackauftrag soll die neue Oberfläche Serica von Tata Steel ermöglichen. Ihr vorrangiges Einsatzgebiet sind große Außenhautteile, wie Motorhaube, Türen, Kotflügel und Seitenteile'; 'Die Oberflächenveredelung von Fahrzeugkomponenten und insbesondere von Außenhautteilen hat bei uns einen hohen Stellenwert'; 'Als erste Stähle mit der optimierten Serica-Oberfläche sind die Umformstähle DX5B und DX57 erhältlich, die vornehmlich für Seitenteile verwendet werden, sowie die hochfesten BH180, BH220 und BH260, die vor allem für Kotflügel und Türen eingesetzt werden. Weitere Stähle folgen laut Tata Steel nach.'* DocID002661-076026 (*E06191-E0002-00084943.pdf*).

on the flat steel sector, in which the company's automotive sector plays a strategically important role. In order to optimally satisfy current and future trends in the automotive industry, the steelmaker [Tata] is continuously expanding its offer of advanced steel products and services in close cooperation with its customers. In the past 4 years alone, Tata Steel brought 32 new automotive products to the market, invested in R&D and production sites and optimised its logistics chain.'; 'Tata Steel develops a broad portfolio of advanced products specifically for the automotive industry. While the first steels are already available, the range is being continuously expanded with new products tailored to the specific requirements of automotive customers for their respective fields of application: exposed body parts […;] crash structures […;] chassis.' [690]

(929) For exposed body parts specifically, the same press release continues: '*Tata Steel is improving all levels of the steel product so that body panels, doors, side panels or tailgates of the highest quality can also be produced from hot-dip galvanised steels. The basis of this full-finish offer is a substrate with a high surface quality, which ensures a uniform appearance after forming and painting. One of these substrates is the highly malleable DX57-GI HyperForm®, which enables vehicle manufacturers to produce highly complex, expressive body panels. In zinc coating, the steel manufacturer is currently launching a full-finish variant of MagiZinc® Auto, so that*

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690 Courtesy translation. The German original reads: '*Tata Steel rückt die Automobilkunden in den Fokus'; 'Tata Steel konzentriert sich zukünftig vermehrt auf den Flachstahlbereich, in dem der Automobilsektor des Unternehmens eine strategisch wichtige Rolle spielt. Um aktuelle und zukünftige Trends in der Automobilindustrie optimal zu erfüllen, erweitert der Stahlhersteller sein Angebot an fortschrittlichen Stahlprodukten und Services kontinuierlich in enger Zusammenarbeit mit seinen Kunden. Alleine in den letzten vier Jahren hat Tata Steel 32 neue Automobilprodukte auf den Markt gebracht, in Forschung und Entwicklung sowie Herstellungsanlagen investiert und Optimierungen in der Logistikkette vorgenommen.'; 'Tata Steel entwickelt ein breites Portfolio an fortschrittlichen Produkten speziell für die Automobilindustrie. Während die ersten Stähle bereits verfügbar sind, wird das Angebot kontinuierlich mit neuen Produkten ausgebaut, die auf die spezifischen Anforderungen der Automobilkunden für die jeweiligen Anwendungsbereiche abgestimmt sind: Karosserie-Außenhautteile […] Crash-Strukturen […] Fahrwerk'; 'Damit Außenhautteile wie Motorhauben, Türen, Seitenteile, oder Heckklappen in höchster Qualität auch aus feuerverzinkten Stählen gefertigt werden können, verbessert Tata Steel sämtliche Ebenen des Stahlprodukts. Die Basis dieses Full-Finish-Angebots ist ein Substrat mit einer hochwertigen Oberflächenqualität, die für eine gleichmäßige Optik nach Umformung und Lackierung sorgt. Eines dieser Substrate ist das besonders formbare DX57-GI HyperForm®, mit dem Fahrzeughersteller sehr komplex geformte, ausdrucksstarke Außenhautteile herstellen können. Bei der Zinkbeschichtung bringt der Stahlhersteller aktuell eine Full-Finish-Variante von MagiZinc® Auto auf den Markt, damit die Vorteile der Zink-Magnesium-Beschichtung – der deutlich höhere Korrosionsschutz und das stabilere Verhalten der im Presswerk – auch für Außenhautteile verfügbar werden. Mit Serica® hat Tata Steel außerdem eine Premium-Oberfläche für seine feuerverzinkten Stähle entwickelt, die durch eine optimierte Oberflächenbeschaffenheit mit garantiert geringer Welligkeit nach der Umformung für ein hochwertiges Lackierergebnis sorgt. Dies ermöglicht einen modernen Lackaufbau mit weniger oder dünneren Schichten und verbessert damit die Effizienz und den Materialeinsatz im Lackiervorgang.'; ‚Damit auch Leichtbau-Frontstrukturen des Fahrzeugs bei einem Aufprall die gewünschte Energieabsorption leisten können, benötigen die Hersteller eine gute Umformbarkeit. So lassen sich höherfeste Materialien für diese komplex geformten Crash-Bauteile einsetzen und die Aufprallenergie über die Knautschzone kontrolliert abführen. Deshalb erweitert Tata Steel seine HyperForm®-Familie. Mit diesem Angebot war der Stahlhersteller als erster Anbieter auf dem europäischen Markt und arbeitet jetzt an der höherfesten Güte DP1000-GI HyperForm®. Dieser neue fortschrittlich höherfeste Stahl wird die gleiche oder sogar eine bessere Umformbarkeit als ein DP800 Stahl besitzen, allerdings bei einer höheren Festigkeit von 1.000 MPa. Damit lassen sich die Materialstärken der crash-relevanten Bauteile um bis zu 10 Prozent reduzieren und so die Leichtbaupotenziale des Werkstoffs Stahl ausschöpfen – und gleichzeitig auch komplexe Bauteilgeometrien realisieren'*, DocID002850-031488 (*TSE0162698.pdf*).

the advantages of the zinc-magnesium coating - the significantly higher corrosion protection and the more stable behavior of the press shop - are also available for exterior body parts. With Serica®, Tata Steel has also developed a premium surface for its hot-dip galvanised steels, which ensures a high-quality finish by optimising surface finish with guaranteed low ripple after forming. This allows a modern paint system with fewer or thinner layers and thus improves the efficiency and the use of materials in the painting process.' [691]

(930) For crash structures specifically, the same press release explains that: *'So that even lightweight front structures of the vehicle in a collision can afford the desired energy absorption, manufacturers need a good formability. This makes it possible to use higher-strength materials for these complex shaped crash components and to remove the impact energy via the crumple zone in a controlled manner. That's why Tata Steel is expanding its HyperForm® family. With this offer, the steel manufacturer was the first supplier on the European market and is now working on the higher-strength grade DP1000-GI HyperForm®. This new advanced high strength steel will have the same or even better formability than a DP800 steel, but with a higher strength of 1000 MPa. This allows the material thicknesses of crash-relevant components to be reduced by up to 10 percent, thereby exploiting the lightweight construction potential of steel - and at the same time realising complex component geometries.'* [692]

(931) […].

Figure 153 – […] [693]

[…]

(932) As detailed in Section 9.4.3.4.d, the perception of the market is that Tata would have more than moderate ambitions and would seek to challenge the current leaders ArcelorMittal and ThyssenKrupp.

(933) In sum, the investigation shows that Tata was pre-Transaction making significant investments to target market share growth in automotive HDG in the EEA, notably to the detriment of ThyssenKrupp.

c. Tata has specific R&D projects to significantly expand in automotive HDG in the EEA, and was pre-Transaction pursuing these projects for the future

(934) In addition to investments in capabilities, also a number of Tata's ongoing R&D projects specifically focus on the automotive sector.

(935) First, as explained in Section 9.4.3.2.c.iv, approximately […]% of Tata's HDG R&D projects are dedicated to automotive – each with a careful determination of customer needs, market prospects and project cost – ahead of any other end-industry.[694]

(936) Figure 110 above illustrates the level of detail considered in Tata's R&D projects focused on automotive HDG.[695]

(937) Second, Tata management updates – one of which is captioned in Figure 154 and dated 27 June 2016 – provide details on market prospects and competitor analysis on

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691 Idem.
692 Idem.
693 […].
694 RFI 17, Annex 1.
695 RFI 17, Annex 1.

new products and R&D projects.[696] These documents – which assess in detail several aspects such as '*market & competitor analysis*', '*product value proposition*' or '*sector strategic fit*' – further illustrate Tata's specific commitment to develop new, differentiated automotive HDG products largely in view of making vehicles lighter, and to gain a '*competitive edge*' and *'market share*' over mainly […] with automotive OEMs.

Figure 154 – […][697]

[…]

(938) Third, Tata considered building a position in the market for […].[698] Although it appears that this specific project has been put on hold for the time being in view of other significant investments being funded by priority, the existence of the R&D project – even if currently on hold – confirms Tata's strong ambitions and growing focus on automotive HDG in the EEA.

(939) Fourth, Tata's internal documents considering the automotive industry more generally show a number of novel products specifically developed for automotive customers, often in close collaboration with them, as detailed in Figure 155 and Figure 156 drawn from internal management presentations. […].

Figure 155 – […][699]

[…]

Figure 156 – […][700]

[…]

(940) Fifth, Tata's specific R&D efforts in automotive HDG implement its strategic shift towards more advanced and higher-value products, which is further illustrated by […].

Figure 157 – […][701]

[…]

Figure 158 – […][702]

[…]

(941) In sum, the significant number and focus of relevant Tata R&D projects confirm the fact that Tata was likely pre-Transaction a growing competitive threat to market leaders ThyssenKrupp and ArcelorMittal in automotive HDG in the EEA.

d. Tata's strategy was known to market participants, including customers and competitors

(942) Tata's ongoing and future expansion as a supplier of automotive HDG in the EEA is clearly confirmed by third parties, including most prominently ThyssenKrupp itself in its internal documents.

696 […].
697 […].
698 […].
699 […].
700 […].
701 […].
702 […].

(943) First, ThyssenKrupp's assessment of steel competition in the business area management presentations captioned in Figure 159 and Figure 160 confirms its perception of Tata's growing focus on automotive HDG and differentiated products […].

Figure 159 – […][703]

[…]

Figure 160 – […][704]

[…]

(944) In their Comments on the Article 6(1)(c) decision, the Parties disagreed with the Commission's reading of Figure 160, in essence because it would not be specific to competition in automotive steel and because the caption would itself highlight that ThyssenKrupp considers Tata's strategy […] to have been unsuccessful.[705]

(945) The Commission notes that – while the Parties contest that the caption would support the Commission's conclusion that ThyssenKrupp would perceive Tata as an important competitor in automotive steel – they acknowledged that the caption confirms ThyssenKrupp's view that automotive is one of three focus segments for Tata.

(946) In that regard, the Commission is of the view that the competitive significance of Tata's strategy is demonstrated by the fact that it was aggressive in […], which had a significant competitive impact at least on ThyssenKrupp.

(947) […], as detailed in Section 9.4.3.8.b.

(948) Similarly, ThyssenKrupp's internal assessment of innovation efforts in steel (with a notable focus on automotive steel, which accounts for a large part of steel R&D efforts) as reported in management presentations partly captioned in Figure 161 and Figure 162 shows that ThyssenKrupp considers that […], thereby once more confirming Tata's ambitions in automotive steel.

Figure 161 – […][706]

[…]

Figure 162 – […][707]

[…]

(949) Second, the market investigation more generally confirmed a pervasive perception in the market that Tata strategically planned to become an even larger automotive steel supplier in the next years – also specifically for automotive HDG – benefitting from its greater capacity and shifting its product portfolio upscale to make more higher-value products and fewer lower-value products.[708]

(950) For instance, a customer confirmed Tata's expansion in automotive steel by explaining that *'Tata grow [sic] regularly till 2017 in terms of share. The growth was*

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703 […].

704 […].

705 Comments on the Article 6(1)(c) decision, paragraph 4.171.

706 […].

707 […].

708 Replies to questions 94–96 of Q1 – Questionnaire to Competitors, DocID2166; Replies to questions 35-37 of Q3 – Questionnaire to customers (Automotive), DocID2168.

driven by overall good quality and service and quality/price trade-off'.[709] Another customer explained that: '*[a]ccording to my view Tata's strategy is to increase the business as well in automotive as in the AHSS grades and develop new AHSS grades*'.[710]

(951) Similarly, a competitor confirmed Tata's growing relevance in automotive steel by explaining that '*[t]hey actively try to increase their share in automotive'*.[711] Another competitor further confirmed this by explaining that '*[t]heir HDG share increased continously [sic]'*,[712] while others explained that '*Tata look to increase share of high-end products in all product groups. Automotive seems to be the key development segment*'[713] and that Tata had '*[i]ncredible growth in all assets of automotive steels*'.[714]

(952) Some customers indicated that they also expected Tata to grow in the near future and they would welcome its presence to counterbalance the existing market power of the two major incumbents ThyssenKrupp and ArcelorMittal. Referring to the possible effect of the Transaction on competition in automotive HDG, a customer for instance confirmed Tata's growing threat to ThyssenKrupp in particular in the most advanced products by explaining that '*[f]or high strength material the present market situation will not change. However, Tata could have entered this market in the near future as an independent player*'.[715]

(953) Another large customer similarly explained that '*Tata Steel has been an upcoming producer for automotive grades. [The respondent]'s volumes sourced from Tata Steel have doubled since 2010*'[716] and '*[w]e develop TATA Steel as a partner for HDG Exposed parts to have a competitor against TKS/AM/SZAG. TATA was a strategic partner as a compotator to ArcelorMittal and ThyssenKrupp. We grow with TATA from 190.000 tons (2012) to 320.000 (2018)*'.[717]

(954) Yet another customer highlighted that Tata's growing strategic focus on the automotive market may in fact reflect some alignment on ThyssenKrupp's earlier strategy by explaining that '*Tata Steel in the last 6 years expanded its activity in the automotive industry, offering similar prices as ThyssenKrupp. Its former CEO was previously the CEO of ThyssenKrupp, who upon joining Tata has changed the company's course to focus on becoming a stable supplier in automotive steel. However it never supplied automotive companies at the same quantity and quality level of ThyssenKrupp. After the merger, only ThyssenKrupp will be active in the automotive industry*'.[718]

(955) Overall, the Commission finds that, as demonstrated by the feedback of market participants, as well as by internal documents, Tata's strategy focused on automotive HDG; its large investments, R&D projects and expansion targets indicate that it has more of an influence on the competitive process than its market share suggests. As a result, Tata was a growing competitive threat in automotive HDG in the EEA,

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709 Reply to question 37 of Q3 – Questionnaire to customers (Automotive), DocID2168.
710 Reply to question 35 of Q3 – Questionnaire to Customers (Automotive), DocID2168.
711 Reply to question 94 of Q1 – Questionnaire to Competitors, DocID2166.
712 Reply to question 96 of Q1 – Questionnaire to Competitors, DocID2166.
713 Reply to question 94 of Q1 – Questionnaire to Competitors, DocID2166.
714 Reply to question 35 of Q11 – Questionnaire to Competitors, DocID2951.
715 Minutes of a call with a customer on 29.6.2018, DocID2115.
716 Minutes of a call with a customer on 7.6.2018, DocID3613.
717 Reply to question 34 of Q12.b – Questionnaire to Automotive customers, DocID2953.
718 Minutes of a call with a customer on 6.7.2018, DocID724.

notably to market leaders ArcelorMittal and ThyssenKrupp, in an already concentrated market. A merger involving the elimination of such a constraint is likely to change the competitive dynamics in a significant anticompetitive way, in particular when the market is already concentrated.[719]

(956) In addition, Tata's strategy of expansion in automotive HDG in the EEA through […], as is detailed in the next section.

e. Tata's strategy was targeting expansion in automotive steel in Germany, where ThyssenKrupp is the largest competitor

(957) The results of the market investigation and the evidence presented by the Commission in the preceding sections point to the fact that Tata's efforts specifically targeted automotive HDG and particularly so in a geographic area (Germany) where ThyssenKrupp is the largest competitor.

(958) First, internal Tata documents clearly show that Germany was a key target area of share expansion for Tata, […].[720]

Figure 163 – […][721]

[…]

Figure 164 – […][722]

[…]

(959) Second, ThyssenKrupp is currently the largest supplier with a significant position in a product and geographic area (namely automotive HDG in Germany) targeted by Tata through its expansion. This is illustrated by the synergy document in Figure 165 presenting a very large [60-70]% 'automotive' share for ThyssenKrupp in Germany (see also Figure 131 to Figure 135 for synergy documents presenting large combined shares for the Parties in Germany).[723]

Figure 165 – ThyssenKrupp automotive sales share in Germany and the rest of the EU[724]

[…]

(960) An automotive customer confirmed that ThyssenKrupp's *'geographic focus is mainly on customers in Germany'*.[725]

(961) Third, ThyssenKrupp […].

(962) Indeed, an automotive customer confirmed that: *'[p]rice: Tata has shown a cost benefit versus competitors'*.[726] This confirms the Commission's finding that Tata's expansion strategy in automotive HDG in the EEA would in particular be based on aggressive prices and specifically target Germany, where ThyssenKrupp is strong.

(963) Fourth, market participants confirmed that '*Tata's strategy is to increase the business as well in automotive as in the AHSS grades and develop new AHSS grades. Especially these grades show a better profitability*' and that '*[d]uring the years Tata*

719 See Horizontal Merger Guidelines, paragraph 37.
720 […].
721 […].
722 […].
723 […].
724 […].
725 Replies to question 36 of Q3 – Questionnaire to customers (Automotive), DocID2168.
726 Replies to question 37 of Q3 – Questionnaire to customers (Automotive), DocID2168.

tryed to establish and incrase the Shares [sic] in the automotive sector. Prior focus was more on the industry. Geographic focus is Europe'.[727]

(964) Fifth, as further detailed in Section 9.4.3.8, the fact Tata was pre-Transaction pursuing an expansion strategy notably based on […] to the particular detriment of ThyssenKrupp is consistent with the expectation from customers that the Transaction would result in higher prices for automotive HDG in the EEA.

(965) In light of all the evidence set out in Section 9.4.3.4, the Commission finds that Tata was pre-Transaction an important competitive force even beyond what its current market share would suggest, in particular because it was […] that did impact and were bound to further impact ThyssenKrupp's share and pricing in a significant way. This important competitive force would likely be removed as a result of the Transaction.

(966) Accordingly, the Commission considers it likely that the Transaction would result in the elimination of an important competitive force in the EEA automotive HDG market.[728]

9.4.3.5. Imports constitute a limited competitive constraint on EEA suppliers in automotive HDG

a. Compared to other flat carbon steel products, imports account for a very limited share of automotive HDG sales in the EEA

(967) Imports from outside the EEA account for only 6% of all automotive steel sales within the EEA, according to ACEA. This is in contrast to an import share of 18% in overall HDG sales in the EEA.[729] This statistic is confirmed by the Commission's market reconstruction exercise that collected information on EEA steel suppliers' automotive HDG sales. The total EEA automotive HDG sales of these suppliers correspond to 97% of total EEA automotive HDG demand, based on the Parties' estimate of the latter, suggesting that imports in this market may be even as limited as [0-5]%.[730]

(968) In their Response to the Statement of Objections, the Parties claimed that the '*SO significantly understates the shares of imports in the supply of automotive HDG customers in the EEA*'.[731] However, the Commission emphasises that the Parties' arguments – aside from unsubstantiated general assertions – in essence revolve around denying the reliability of the Commission's evidence without substantiation, as well as a mistaken and contradictory reading of the Commission's analysis of EU safeguard measures.

(969) Indeed, on the one hand, these measures do not '*set a quota for automotive steel*' but for non-passivated products – which, as the Parties appear to acknowledge while at the same point in time wrongly accusing the Commission of conflating the two – are a broader category of products which typically includes automotive HDG products. Therefore, the fact that the quota for non-passivated products is larger than the share of imports as estimated by the Commission (and notably ACEA) is irrelevant. At the very least, the Parties fail to substantiate why such a very indirect way of estimating

727 Replies to questions 35 and 37 of Q3 – Questionnaire to customers (Automotive), DocID2168.
728 Horizontal Merger Guidelines, paragraph 37.
729 See recital (217).
730 See recital (522).
731 Response to the SO, paragraphs 3.108 to 3.113 and 3.126.

the share of imports for automotive HDG in the EEA would be more reliable than the Commission's reconstruction or the informed estimate of industry representatives.

(970) On the other hand, the Commission cannot agree with the Parties' statement that '*the true level of imports may even well exceed the quota*'. On the contrary, when the quota is full – and possibly even significantly before that, as explained in Section 9.4.3.5.d – the imposition of a 25% tariff makes it unlikely that any further significant quantities of automotive HDG would be imported. Such is precisely the goal of the safeguard measures.

(971) Moreover, the Commission considers that the fact that most OEMs currently choose not to significantly (or at all) source from imports in spite of being theoretically able to do so confirms the limited competitive relevance of imports – not the opposite, as the Parties claimed.[732] In that respect, the Commission's assessment must consider the current and foreseeable situation of the relevant markets, not mere purely theoretical possibilities as the Parties appear to consider in several of their arguments.

(972) The Commission's investigation more generally suggests that imports likely do not currently constitute a significant competitive constraint on EEA suppliers of automotive HDG, and that they are likely to become an even lesser constraint in the future given recent safeguard measures. In that regard, it should be noted that these recent measures explicitly identify and target specialty steel (which includes automotive HDG) as a specific category of steel products (see Sections 5.4 and 7.5.4.9).

(973) As already explained in Section 8, the investigation overwhelmingly indicated that imports would exercise at most only moderate competitive pressure on EEA players, especially for automotive HDG.[733] Import pressure would appear to be even more limited for higher-end automotive HDG products.[734]

(974) The vast majority of automotive customers who replied to the market investigation submitted that they do not source any significant quantities from imports, nor do they plan to do so in the future. Several customers do not source from imports at all.[735] A customer illustrated this by reporting that '*[d]uring 2016 and 2017 the price of a steel coil has increased significantly. Imports were not able to stop this*'.[736]

(975) Contrary to the Parties' claims in their Comments on the Article 6(1)(c) decision that imports would be a significant constraint on EEA producers for automotive HDG,[737] Tata's latest internal assessments of competitive conditions and notably import pressure – an example of which is captioned in Figure 166 – explicitly confirm […].

Figure 166 – […][738]

[…]

(976) The Parties contested the Commission's reliance on this document,[739] in essence arguing again that the Commission would have cherry-picked one monthly update

732 Response to the SO, paragraph 3.113.
733 Replies to question 30 of Q3 – Questionnaire to customers (Automotive), DocID2168.
734 Replies to question 30 of Q3 – Questionnaire to customers (Automotive), DocID2168. Compare responses for commodity products and for high-end products.
735 Replies to questions 81–82 of Q3 – Questionnaire to customers (Automotive), DocID2168.
736 Reply to question 30.1 of Q3 – Questionnaire to customers (Automotive), DocID2168.
737 Comments on the Article 6(1)(c) decision, paragraph 2.74.
738 […].

confirming its propositions while many other internal documents would on the contrary confirm the significant pressure constituted by imports.[740]

(977) However, the Commission used in the Statement of Objections (adopted on 13 February 2019) the most up-to-date version of the […] it had at the time: the following update, although dated 4 February 2019, was only submitted by the Parties to the Commission on 5 March 2019.

(978) In any event, in many cases the internal documents referred to by the Parties to evidence strong import pressure (i) relate to products other than HDG (and *a fortiori* automotive HDG) […] or (ii) evidence growing and sometimes reportedly '*significant*' import levels rather than significant import pressure. […].

(979) The Commission therefore does not consider the Parties' arguments and evidence in this respect to be persuasive or to undermine its conclusions.

(980) As an illustration of the fact that the Parties themselves consider imports to be associated with a number of disadvantages and thus to be a limited competitive constraint, the Parties' submissions […].[741]

(981) OEMs separately confirmed the limited competitive constraint constituted by imports, noting for instance the safeguard measures that also target HDG used by the automotive industry: '*[Company name] may need to diversify its supply base (which may however be difficult in a context of tight capacity), but will only very unlikely resort to more imports from outside the EEA since these would be much more expensive*';[742] '*[t]he safeguard measures are expected to have a heavy negative impact on the Company's ability to source flat carbon steel – in particular HDG – from non-EEA suppliers, hence also its sourcing strategy. This would in particular affect the Company's ability to resort to imports to counteract possible price increases from EEA suppliers. The earlier antidumping measures did not have any impact on the Company so far for two reasons. Firstly, the Company agreed on the current prices before the measures were adopted and therefore the measures were not taken into account during negotiations. Secondly, the measures only apply to hot rolled steel which represents only a minor part of the overall purchases of the Company. The Company assumes that other competitors already had to take price increases. In the future the antidumping measures will surely also have a significant impact on the Company and its sourcing strategy.*'[743]

(982) Other automotive customers also explained that: '*[a] warehouse is needed solution for non EEA suppliers, where the lead time takes several weeks. Nevertheless the flexibility of non-EEA suppliers can be limited in case of a sudden supply short fall and technical changes*';[744] and that '*[Company name] operates in a Just-In-Time (JIT) production philosophy. Therefore additional lead time on top of the long steel manufacturing lead time is not desirable*'.[745]

(983) Similarly, a competitor confirmed that the '[a]*utomotive industry is not keen to import carbon steels for its applications as the complete supply chain performance is*

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739 Parties' Reply to RFI 37.
740 Response to the SO, paragraph 3.130.
741 Parties' Reply to RFI 20, paragraph 7.1.
742 Minutes of a call with an OEM on 11.7.2018, DocID1788.
743 Minutes of a call with an OEM on 7.3.2019, DocID4500.
744 Reply to question 21 of Q12(b) – Questionnaire to Customers Phase II (Automotive), DocID2916.
745 Reply to question 20 of Q12(b) – Questionnaire to Customers Phase II (Automotive), DocID2953.

of the highest importance and cannot be guaranteed from non-EEA sources. Thus the majority of the volumes in this segment are supplied by EEA producers'.[746]

(984) The Commission sets out in the following sections evidence explaining why imports constitute a limited competitive constraint on EEA suppliers in the EEA automotive HDG market.

b. Factors limiting the role of imports in EEA automotive HDG

(985) First, automotive customers appear generally reluctant to use imports in view of longer lead times, lack of reactivity, the risk of damage during transport and recent safeguard measures and duties which impact security of supply.[747]

(986) For instance, a customer confirmed the limited competitive constraint constituted by imports into the EEA by explaining that '*from a commercial and technical perspective foreign suppliers were not able to meet [its] needs. Moreover, the company consumes high quantities of HDG which is even more difficult and expensive to transport than HR/CR because of the high risk of surface damage during transport, which is critical given the use of this steel for the surface of cars*' (emphasis added).[748]

(987) Another customer illustrated this reluctance and limited competitive pressure from imports as follows '*[c]ertain importers can also match all the requirements for automotive steel, but there are only a limited number of companies on a global base which can do so. This counts especially for the high end automotive grades. […] From the quality aspect I can find importers who can match our demands, but due to the imposed duties and the safeguard measures my options are vanishing so that I currently have only very few opportunities for imports'* (emphasis added).[749]

(988) In their Comments on the Article 6(1)(c) decision, the Parties argued that lead times were not credibly a significant consideration for automotive customers, in essence because production is planned sufficiently in advance and importers have large stocks, thus enabling global deliveries to be used effectively.[750]

(989) The Commission's further investigation of this point however clearly confirms its initial conclusions. In the first instance, this appears to be because automotive customers generally prefer just-in-time delivery, for which EEA supply is more reliable.

(990) In the second instance, this is because – while vehicle production is usually planned well in advance – this is not the case for all production. In particular, short lead times are necessary to address unexpected production events, for instance an unexpected increase in demand or an issue with a steel product.

(991) It should be reiterated here that the cost of steel accounts for a small share of a car's value: as mentioned by a competitor in recital (178), a Volkswagen Golf with a value of approximately EUR 20 000 contains approximately one tonne of steel at a value of approximately EUR 600. An OEM would therefore be reluctant to purchase from distant suppliers in order to make moderate savings on a small cost item if this increases the risk of supply issues or transport damage.

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746 Reply to question 34.1 of Q1 – Questionnaire to Competitors, DocID2166.

747 Replies to questions 83–84 of Q3 – Questionnaire to customers (Automotive), DocID2168.

748 Minutes of a call with a customer on 19.6.2018, DocID3087.

749 Reply to questions 83–84 of Q3 – Questionnaire to customers (Automotive), DocID2168.

750 Comments on the Article 6(1)(c) decision, paragraph 4.205.

(992) A customer confirmed this importance of lead times, notably in case of problems, by explaining that '*[l]ead time is very important in case of urgency. Once there is no problem with material, all good. Once there is a problem with material production lead time becomes the most important point*'.[751]

(993) Another customer also explained that '*[t]he suppliers with long lead time are less flexible in case of changes such as volume increase/decrease, technical modifications or phase out steel grades*'.[752]

(994) Similarly, short lead times are necessary for shorter production cycles, such as those used for the homologation of suppliers and products or in R&D projects, for which the ability to quickly and sequentially conduct different rounds of tests on products is key.

(995) For example, a competitor illustrated the lesser competitiveness of imports in this context by explaining that '*[d]uring the launch phase various engineering changes might take place. Also engingeering [sic] changes for the purpose of cost reduction would result in late implementation. In case of quality topics, it takes too long to react and it cost more money as more material to be rejected*'.[753]

(996) In their Response to the Statement of Objections, the Parties reiterated their argument on lead times being irrelevant and in any event addressed by stocks.[754] However, the Parties did not substantiate this old argument with new evidence. In fact, in spite of the Parties' criticism, the Commission considers that basing its assessment of the extent to which '*imports are […] a credible source of supply <u>for automotive customers</u>*' (emphasis added) in part on '*customers' responses*' is a sensible approach. Again, the Commission's assessment must consider the current and foreseeable situation of the relevant markets, not just purely theoretical possibilities. The Commission therefore does not consider the Parties' arguments and evidence in this respect to be persuasive or to undermine its conclusions.

(997) Second, automotive customers explained that in any event only a few non-EEA players could technically provide similar products as EEA players, particularly advanced automotive HDG.[755]

(998) It appears that, among a large number of non-EEA steelmakers, in essence only Posco, Hyundai Steel and BaoSteel would have the technical capabilities to produce and deliver automotive HDG to EEA customers.

(999) Notwithstanding these technical capabilities, these non-EEA players would likely constitute a limited competitive constraint on the merged entity, especially in light of the fact that EEA automotive customers are not a strategic focus for them.

(1000) On the one hand, EEA automotive customers appear not to be the key customer base of non-EEA steelmakers (including Posco, Hyundai Steel and BaoSteel), which – in a market for products which are difficult and expensive to ship globally – is rather focused on local customers.

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751 Reply to question 20 of Q12b – Questionnaire to Automotive Customers, DocID2953.

752 Reply to question 20 of Q12a – Questionnaire to Automotive Customers, DocID2952.

753 Reply to question 20 of Q12.b – Questionnaire to Automotive Customers, DocID2953.

754 Response to the SO, paragraphs 3.114 to 3.118.

755 Replies to question 84 of Q3 – Questionnaire to customers (Automotive), DocID2168; Replies to question 25 of Q12.a and Q12.b – Questionnaire to Automotive Customers, DocID2952 and DocID2953.

(1001) Indeed, the Parties' submissions themselves confirm – notably taking Tata as an example – that non-EEA steel suppliers preferentially focus on their domestic demand: […] (emphasis added) and *'the joint ventures' plants are located close to Chinese automobile manufacturers' plants and strategically focus on the supply of these plants'*.[756]

(1002) As illustrated by the limited share of imports as reported in Table 8, the supply of automotive HDG to the EEA from non-EEA steelmakers thus seems to consist of limited volumes opportunistically sold when their production planning and main delivery commitments enable them to do so, and not a key strategic focus.

(1003) On the other hand, as explained above at recital (985) *et seq.*, EEA automotive customers have themselves expressed a clear preference for sourcing within the EEA for a number of reasons, notably transport costs, lead times and just-in-time delivery, transport damage risks, reactivity in case of issues and generally the preference for a close relation with steel suppliers.

(1004) In consequence, non-EEA steel players appear unable or to lack the incentive to significantly contribute to competition for automotive HDG in the EEA.

(1005) The Commission notes that this inability or lack of incentive of non-EEA steelmakers to significantly affect the competitive dynamics of the market for automotive HDG in the EEA may be less true for Posco in view of its possibly growing commitment to establish a physical presence in the EEA.

(1006) For instance, the Parties claim that Posco '*has been expanding in the EEA through a number of SSCs, distribution warehouses and offices*' and would have recently benefitted from a number of OEMs switching their supply to it.[757] Posco's nascent focus on the EEA with a growing physical presence is also illustrated in ThyssenKrupp's management update document on automotive steel captioned in Figure 167.

Figure 167 – ThyssenKrupp's view of Posco's growing physical presence in the EEA[758]

[…]

(1007) In the Commission's view, however, these elements illustrate a growing commitment from Posco to turn into a (quasi) EEA-based supplier rather than a strong competitive constraint from imports and do not contradict the Commission's conclusion that imports constitute a limited competitive constraint on EEA suppliers in automotive HDG in the EEA.

c. Most importers lack the technical abilities and required presence to supply automotive customers in the EEA

(1008) First, compared to commodity steel, for which many companies outside the EEA are opportunistic suppliers,[759] the supply of automotive HDG in the EEA requires the capability to produce specialty grades and the reliability to deliver it through a sustained period of time at stable conditions.

(1009) These requirements are not met by most companies established outside of the EEA even if in some cases they do import commodity grade steel.

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756 Parties' reply to RFI 4, paragraphs 94.1 and 94.2.

757 Comments on the Article 6(1)(c) decision, for instance paragraphs 4.122, 4.216 and 4.228.

758 […].

759 See Commission Decision in Case M.8444 – ArcelorMittal/Ilva, recitals 655–672.

(1010) In the first place, in the market investigation customers generally indicated that importers are not able to provide the product qualities and service demanded by EEA automotive customers, with very few exceptions (essentially Posco and to a lesser extent Hyundai Steel and BaoSteel). Automotive customers thus explained that '*[s]ome AHHS [sic] [products are] not available on no[n] EEA market[s]*' and that '*[f]rom the quality aspect I can find importers who can match our demands, but due to the imposed duties and the safeguard measures my options are vanishing so that I currently have only very few opportunities for imports*'.[760]

(1011) In the second place, this is corroborated by the fact that even the very limited quantities sourced from importers by automotive customers are essentially accounted for by Posco and Hyundai Steel.[761]

(1012) Second, even importers need to establish a presence in the EEA in order to be able to supply automotive customers.

(1013) Indeed, the example of Posco described in previous recitals illustrates that, although some non-EEA players may be technically able to produce automotive HDG, supplying to EEA automotive customers requires them to build a presence in the EEA. In particular, they would need to build a commercial presence to advertise and sell products to customers. They would also need to build a physical presence of steel stocks to be able to address variations in demand from automotive HDG customers which require just-in-time delivery, particularly so given the great distances of their steelmaking facilities. This comes at an additional cost, which may make these suppliers uncompetitive in terms of prices.

(1014) Third, even those suppliers with some local presence, which can supply some quantities to automotive customers, cannot replace large and integrated suppliers established in the EEA for large volumes because of structural limitations.

(1015) In the first place, non-EEA suppliers carry a foreign currency risk, which may significantly affect their competitiveness and profitability when doing business in the EEA from outside it.

(1016) In the second place, as detailed in Section 5.4.2, Section 7.5.4.9 and below, current uncertainties regarding trade barriers and the regulatory environment in the EEA make reliance on imports more risky for steel importers and EEA automotive customers, to a point where most customers simply do not source from non-EEA suppliers. This trend is likely to grow stronger with the currently increasing uncertainties on the development of trade barriers globally.

(1017) In the third place, the limited competitive pressure exercised today by imports from outside the EEA on the EEA automotive HDG market – particularly in light of the trade defence measures recently adopted by the European Union and third countries – is largely confirmed by customers responding to the market investigation.[762]

(1018) In their Response to the Statement of Objections, the Parties reiterated their argument that large non-EEA suppliers would be a competitive constraint on EEA suppliers in relation to the supply of automotive HDG. This would be in essence because: (i) they

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760 Replies to question 84 of Q3 – Questionnaire to customers (Automotive), DocID2168. See also, for instance, replies to question 25 of Q12.a and Q12.b – Questionnaire to Customers Phase II (Automotive), DocID2952 and DocID2953.

761 Commission's estimates on the basis of the replies to the market investigation to automotive customers.

762 Replies to question 103 of Q1 – Questionnaire to Competitors, DocID2166; Replies to questions 30.1 and 31 of Q3 – Questionnaire to customers (Automotive), DocID2168.

would have demonstrated capabilities and growing capacities; (ii) they would have a track record of EEA sales, including recently capturing demand until then served by EEA suppliers (evidence with which the Commission would allegedly not have engaged); (iii) the Commission was selective in its interpretation of the market investigation since many responses would allegedly point to imports as a capable and relevant competitive constraint; and (iv) the fact that their main focus would, as alleged by the Commission, be on local customers would be irrelevant and they would still be a constraint for EEA suppliers.[763]

(1019) In this regard, the Commission reiterates that it does not question the technical capabilities of some non-EEA suppliers to make automotive HDG. However, technical capabilities, investments and increased capacities are not the same as significant or growing sales in the EEA.[764]

(1020) The investigation largely confirmed – including directly from customers and their procurement data, and contrary to the Parties' unsubstantiated claims – that imports account for only limited volumes and a very small aggregate market share in the EEA for automotive HDG. Specifically, in the Commission's view, the evidence brought forward by the Parties in paragraphs 3.128 and 3.129 of their Response to the Statement of Objections fails to support their proposition: the evidence is sometimes entirely irrelevant (for instance regarding CR and not HDG, and *a fortiori* automotive HDG) and mainly relates to the technical production capabilities of a few non-EEA players (which are undisputed) rather than their actual ability to serve EEA automotive customers and the willingness of the latter to source from them.

(1021) Indeed, the fact that importers mainly focus on local customers is relevant to the extent that this necessarily affects their level of commitment and investment to compete intensely in the EEA. The Commission also did not – contrary to the Parties' statement – claim that importers are not a competitive constraint on EEA suppliers at all, but rather concluded on the basis of the evidence that they constitute a limited competitive constraint on EEA suppliers, as is likely illustrated by their estimated aggregate market share of only 6%.

(1022) The Commission therefore does not consider the Parties' arguments and evidence in this respect to be persuasive or to undermine its conclusions.

d. The current regulatory environment makes reliance on imports less secure and more risky (trade barriers, currency risks, security of supply, quality / value risk), thereby largely disqualifying them from supply to EEA automotive customers

(1023) First, a majority of respondents explained that recent American or European trade defence measures did not make sourcing within the EEA either more or less important when asked for their views on the impact of such measures on import pressure on steel competition in the EEA in the future.[765] The Commission emphasises these responses to be in the context of already very limited supply from non-EEA sources, and prior to the most recent implementation of safeguard

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763 Response to the SO, paragraphs 3.119 to 3.123, and 3.128 to 3.129.

764 The Commission notes that the Parties do not explain to what extent the South Korean exports '*for selected HDG steel types to the EU*' (Response to the SO, Figure 3.6) are or are not automotive HDG, and thus relevant for the assessment or not. Moreover, the Commission refers to Section 9.4.3.5.d with regard to the likely effect of safeguard measures on imports (and EEA customers' willingness to use imports) going forward.

765 Replies to question 103 of Q1 – Questionnaire to Competitors, DocID2166; Replies to question 31 of Q3 – Questionnaire to customers (Automotive), DocID2168.

measures (quotas by product categories and tariffs for imports above the quotas) in the EU.

(1024) A customer explained that '*[t]his situation cannot be offset by increasing the imported volumes because of the tariffs adopted by the EU and because of quality issues. If faced with a price increase of approximately 5% [the respondent] would threat to switch to non-EEA suppliers but this threat might not be credible as there are not many viable alternative suppliers available for automotive grades*'.[766]

(1025) In any event, several customers indicated that these measures have increased the importance of sourcing from within the EEA for reasons of security of supply.[767] For example, a customer confirmed this change by explaining that '*[t]he already introduced trade defense measures already caused supply difficulties in the European Union like increase in lead times of HDG beginning 2017 from 14 up to 26 weeks and several mills have been booked out*'.[768]

(1026) Indeed, the Commission observes that the provisional quota for metallic-coated steel (which includes automotive HDG) under the provisional safeguard measures imposed on 18 July 2018 (that became definitive with certain modifications on 2 February 2019) was nearly full as of mid-January 2019. With this critical status, prospective importers had to make a deposit for potential tariffs – in case upon actual verification it were considered that those volumes would be beyond the quota – likely making these imports uncompetitive in terms of price.[769] This provides an illustration of the typical risks that make imports not a dependable source of supply which can on a lasting basis reliably replace sourcing from suppliers established in the EEA.

(1027) More specifically, after just about a month of the application of the EU definitive safeguard measures, the 4b category imports (including especially products imported by automotive customers) have already reached 90% – which is 'critical' status within the meaning of Article 53 of Commission Implementing Regulation (EU) 2015/2447[770] – in respect of imports from China.[771] Therefore, only limited additional volumes can be imported from China into the EEA before the 25% tariff becomes applicable.

(1028) The current quota allocation is valid until the end of June 2019. As of 1 July 2019, the new annual quota will apply.[772]

(1029) The Commission notes that several market operators (including the European association of car producers) interpret the episode described in recital (1027) as indicative of a likely shortage of imports and consequent deterioration of the competitive conditions in the EEA domestic market.[773] Even if the current quota might eventually not be exhausted, already the existence of the quota and the

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766 Minutes of a call with a customer on 7.6.2018, DocID3613.

767 Replies to question 103 of Q1 – Questionnaire to Competitors, DocID2166; Replies to question 31 of Q3 – Questionnaire to customers (Automotive), DocID2168.

768 Reply to question 31 of Q3 – Questionnaire to customers (Automotive), DocID2168.

769 SBB DAILY BRIEFING Friday, 18 Jan 19, 'EU HRC imports drop in November, HDG quota nearly critical', DocID4086.

770 OJ L 343, 29.12.2015, p. 558.

771 SBB DAILY BRIEFING 'EU import quota on HDG from China goes critical', Tuesday, 5 Mar 19, DocID 4444.

772 *Ibidem.*

773 *Ibidem.*

condition of a preventive deposit – when imports reach 90% of the tariff-free quota – of the 25% tariff for the release of goods can act as a deterrent for import flows.[774]

(1030) As explained by a customer: *'[s]ince at time of order placement it is not clear, whether delivery will be inside the quota or not (due to long lead times), imports from countries outside the EEA are a risk'*.[775] Therefore, as highlighted by another customer, '*[i]ncreased reliance on EEA suppliers is a logical result of trade barriers*'.[776]

(1031) Second, the Commission reiterates its observation that the recent EU safeguard measures specifically identify metallic-coated specialty steel (which includes automotive HDG products) as a separate and identified category, the penetration of which in the EEA is to be contained. It is therefore likely that the competitive relevance of imports for automotive HDG in the EEA will diminish in the foreseeable future, or at least not increase beyond the quotas.

(1032) The Commission therefore finds that the current regulatory framework – notably the recent EU safeguard measures – will likely lead to a further reduction of the already limited competitive constraint previously exerted by imports for automotive HDG in the EEA, as notably illustrated by their limited overall market share.

e. Conclusion: imports would likely not constitute a dependable source of supply to constrain a price increase by the merged entity

(1033) Overall, on the basis of all of the factors set out above, the Commission concludes that imports at most constitute a limited competitive constraint on EEA suppliers in automotive HDG in the EEA.

9.4.3.6. Competitors would have limited incentives and ability to offset negative effects resulting from the Transaction

(1034) The Commission considers that competitors would post-Transaction likely constitute only a limited competitive constraint on the merged entity, lacking the incentives and/or ability to mitigate the likely non-coordinated effects of the Transaction on competition in automotive HDG in the EEA, for the following reasons.

a. The ability of competitors to use spare capacities to increase sales to automotive customers to offset potentially negative effects resulting from the Transaction is limited

(1035) First, competitors generally would likely be unable to undercut a possible price increase by the merged entity post-Transaction by offering additional supply to automotive customers through the use of spare capacities.

(1036) In the first instance, the figures provided in Table 10 illustrate the fact that there are no or only very limited spare capacities in automotive HDG in the EEA since HDG lines in the market are effectively running at full capacity. According to the Parties' estimates, the overall utilisation rate of HDG lines in the EEA is approximately [90-100] and is [90-100] for the Parties – see Table 10.

(1037) Market participants confirmed the limited availability of spare capacity for automotive HDG in the EEA. A customer for instance explained that '*HDG steel supply is currently very tight in EEA region, especially for automotive grades. This is*

774 *Ibidem.*
775 Reply to question 24.1. of Q2 – Questionnaire to Customers, DocID2167.
776 Reply to question 24.1. of Q2 – Questionnaire to Customers, DocID2167.

partly due to rising demand from other sectors (industrial construction,) that compete for production capacity, as well as recent antidumping measures and a generally recovering economy which increases demand'.[777]

(1038) This limited availability of spare capacities in automotive HDG is also in line with the Commission's findings in the *ArcelorMittal/Ilva* case regarding the limited availability of spare capacities in HDG more generally.[778]

(1039) In the second instance, EEA spare capacity in automotive HDG would post-Transaction largely be in the hands of only ArcelorMittal and the Parties, as also confirmed by market participants in the investigation.[779]

(1040) Indeed, the capacity figures presented in the Tata synergy document captioned in Figure 168 and Figure 169 generally confirm not only that HDG spare capacity would be limited in the EEA (Figure 169), but also that (flat steel) spare capacity would largely be in the hands of the Parties and ArcelorMittal since […] are below the indicated average utilisation rate of […]% for all displayed EEA sites (Figure 168), which the Commission conservatively assumes gives an indication of at least some spare capacity.[780]

Figure 168 – […][781]

[…]

Figure 169 – […][782]

[…]

(1041) In the third instance, limitations in terms of spare capacity should be considered both directly at the level of automotive HDG production, but also by taking into account possible capacity bottlenecks upstream in liquid steelmaking, HR and CR.

(1042) Indeed, increasing their downstream production of automotive HDG is only possible if steelmakers have access to the corresponding additional upstream products as an input. To the extent that downstream producers would not have the necessary capacity upstream, they would therefore need to rely – for the use of spare capacity downstream – on upstream supply from third parties.

(1043) However, as presented in Table 10, the EEA production of the main upstream product (HR) – which is the necessary input to produce automotive HDG (typically with production of CR as an intermediate step) and to expand production downstream – also shows relatively high capacity utilisation rates ([80-90]%), and the merged entity appears to command the largest share of spare capacity at this level.

(1044) Accordingly, as explained in Sections 7.5.4.6 and 9.4.3.2.a, it is unlikely that competitors without access to additional upstream products – and in particular non-integrated players – would be able to effectively react to the possibly negative effects of the Transaction on competition in the automotive HDG market in the EEA in view

777 Minutes of a call with a customer on 19.6.2018, DocID3087.

778 M.8444 – *ArcelorMittal / Ilva*, notably Sections 9.4.4. and 9.7.4.1.

779 Replies to questions 97–99 of Q1 – Questionnaire to Competitors, DocID2166; Replies to question 88 of Q3 – Questionnaire to customers (Automotive), DocID2168.

780 See also Figure 74, specifically regarding capacity for automotive HDG.

781 […].

782 […].

of the limited (additional) availability of the upstream substrate needed to make automotive HDG.

(1045) Overall, the Commission considers likely that only ArcelorMittal would have the necessary spare capacities to be able to react to any potentially negative effect of the Transaction on competition in the automotive HDG market in the EEA. However, as explained in recitals (1081) and following, ArcelorMittal is not likely to have any incentive to utilise its spare capacities to counter any price increase by the merged entity.

(1046) A customer for instance illustrated the likely inability of competitors – except perhaps ArcelorMittal – to react to the merged entity's market behaviour post-Transaction because of lacking spare capacities by explaining that '*[r]emaining competitors other than ArcelorMittal, such as Voestalpine, Salzgitter and SSAB, are smaller producers which are unable to exert any competitive pressure because they lack spare capacity. In particular, [we have] tried to work with Voestalpine in the last six to eight years, but they refuse to sell farther than 500 kilometres from their mill. US Steel Kosice is not able to provide the required quality of steel*'.[783]

(1047) The Parties' claim in their Comments on the Article 6(1)(c) decision that several EEA automotive HDG suppliers would have spare capacities or would be planning capacity expansions is thus flawed.[784]

(1048) Likewise, in their Response to the Statement of Objections, the Parties alleged that all rivals would have both the ability and incentive to use capacity not currently used to serve automotive customers to compete agains the merged entity, thereby allegedly undermining the Commission's conclusions that spare capacity would be limited and largely in the hands of ArcelorMittal and the Parties, and that ArcelorMittal would not have the incentive to oppose hypothetical price increases by the merged entity. More specifically, the Parties alleged that: (i) the Commission would not have provided adequate evidence to support its assessment, in particular by relying on hearsay rather than proper investigative measures; and (ii) the properly investigated facts would demonstrate that the Parties are correct in their view that all rivals have the relevant spare capacities and incentives to compete.[785]

(1049) In the first instance, the Commission's market reconstructions all confirm its understanding that current spare capacities – both in automotive HDG and in the related upstream markets, up to liquid steel – are limited.

(1050) Thus, the Commission has duly and fully investigated the points mentioned by the Parties, including by directly asking competing steelmakers for the relevant factual data suggested by the Parties (also in relation to planned capacity expansion). While it is the Commission's duty to protect the confidentiality of this competitively highly sensitive data and in particular not to disclose it to the Parties,[786] the Commission reiterates the obvious point that the investigation – and this competitor data specifically – fully supports its conclusions (which are based on this investigation)

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783 Minutes of a call with a customer on 5.7.2018, DocID1509.

784 Comments on the Article 6(1)(c) decision, paragraphs 4.95 and following and 4.195 and following.

785 Response to the SO, Section 3.H and First Data Room Report. The Commission considers that the Parties' reference to hearsay is inappropriate since that legal concept is not directly applicable in this procedure.

786 The Parties acknowledge that they were given access to the relevant data in the form of a Data Room to protect both the Parties' rights of defence and the right of third parties not to have their confidential information disclosed (Response to the SO, paragraph 3.156).

that EEA spare capacity in automotive HDG is very limited and largely in the hands of the Parties and ArcelorMittal, which would likely have every incentive not to defeat an attempted price increase by the merged entity post-Transaction.[787]

(1051) In the second instance, the bulk of the planned capacity expansions described by the Parties in their Comments on the Article 6(1)(c) decision appear to come from ArcelorMittal (also taking into account possible plans for the Ilva assets recently acquired by ArcelorMittal), the Parties and possibly Salzgitter.[788]

(1052) As explained in the preceding recitals, Salzgitter itself appears to consider its expansion plans insufficient to compensate for the possibly negative effects of the Transaction, and the Commission considers that ArcelorMittal would likely not have any incentive to undercut price increases by the merged entity post-Transaction.

(1053) The Commission further emphasises that the Parties' argument regarding the availability of spare capacity in automotive HDG in the EEA relies on a set of flawed assumptions dispelled in this section (and already in the Statement of Objections): (i) consideration of spare capacity with reference to nominal capacity rather than effective capacity; (ii) the assumption that 100% of an asset's nominal capacity could be used to produce any given automotive HDG product; and (iii) the assumption that any EEA capacity not currently used for the production of automotive HDG sold in the EEA could be considered spare without regard to its current use to produce other products and serve other customers.[789]

(1054) In this regard, the Commission only considers as 'spare' capacity available effective production capacity which is not currently used for any production. In parallel, the (in)ability of steelmakers to re-orient production to make automotive HDG instead of the other products currently made on a given asset is assessed in Section 9.4.3.6.b.

(1055) In addition, the Parties appear to have assumed – in contradiction with their own criticism of doing so – that 100% of an asset's nominal capacity could be used to produce any given automotive HDG product, without taking into account the fact that effective capacity will vary significantly in particular in view of actual product mix. Similarly, they appear to have assumed that an automotive HDG line could make any automotive HDG product; which is not the case in view of differentiated technical capabilities.[790]

(1056) The fact that not all nominal capacity is in fact available in practice for the production of automotive HDG is further evidenced by the Parties' statements that effective capacity highly depends on actual production constraints, with overall yield typically being inferior to 100%: '*[t]he Parties believe that it is not possible to provide the data on* hypothetical *capacities which has been requested at the level of steel sub-product. The nominal and effective capacities can only be reliably estimated at a line level, reflecting their actual output. Many factors affect the output of a production line, which means that it is not possible to calculate its capacity without reference to its* actual *output – measuring capacity is therefore effectively an empirical rather than a hypothetical exercise. For example: (a) the nominal and effective capacities of various products within HDG depend on the exact grade mix*

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787 See for instance the Response to the SO, paragraphs 3.158 and 3.192(iii) and the First Data Room Report.

788 Comments on the Article 6(1)(c) decision, paragraphs 4.95 and following and 4.195 and following.

789 See for instance the Response to the SO, paragraphs 3.158 and 3.192(iii) and the First Data Room Report.

790 Response to the SO, Section 3.H and First Data Room Report.

being considered, as each grade requires different operational capabilities like rolling speeds and force, and hence differ in the time taken for production. This affects the maximum quantity of the steel type that can be produce; and (b) even within a particular steel product (say AHSS), the capacity depends, amongst other things, on the width and thickness of the steel being produced';[791] '*[i]n some instances the yield cannot technically reach exactly 100% for a given product, because there will be some failure rate in the production of that product (for example in the case of steel for exposed parts where a small proportion of the output wil fail the finish requirements on inspection)*';[792] '*non-prime and scrap volumes make up* […] *of TSE's HDG production lines*';[793] and '*[n]on-prime volumes (declassified shipping and unplanned scrap) […] only account for* […] *of the output of tk SE's HDG lines*'.[794]

(1057) A competitor further evidenced this fact by explaining the benefit of a broad portfolio of customers to sell production batches which are downgraded since they do not meet the original production requirements: '*[i]f high surface requirements are not matched, the material can be sold to other customers with lower surface requirements, the same with requirements for chemical analysis or mechanical properties. Downgraded batches can be marketed on various markets. The sales organization (e.g. related SSC) of an integrated supplier is prepared to do so*'.[795]

(1058) Moreover, the Commission notes that it rightly focused its assessment of spare capacity from competitors on those steelmakers which it found to be the most relevant players in the market for automotive HDG in the EEA: these are in essence ArcelorMittal, Voestalpine, Salzgitter and SSAB. The Commission considers the Parties' inclusion of spare capacity from other suppliers (which in any event is included in the assessment and would not undermine the Commission's conclusions) to less accurately reflect the real competitive dynamics of the market.

(1059) The Notifying Parties further claimed that the needed 'buffer' of non-automotive volumes to meet unexpected demand changes from automotive customers could also come from the use of stocks or less valuable automotive HDG production (as opposed to less valuable non-automotive HDG production).[796]

(1060) On the one hand, the Commission clarifies that it did not – contrary to what the Parties' arguments could suggest – consider this 'buffer' requirement to necessarily apply for each and every automotive HDG line, but rather for a steelmakers' HDG production overall. The fact nevertheless remains that many steelmakers (other than the Parties and ArcelorMittal) only have a limited number of HDG lines in the EEA (even more so for automotive-capable lines), such that this distinction may not be fully relevant in practice (especially when considering optimal production allocation within the network of assets). Indeed, large steelmakers such as the Parties have a *de facto* buffer due to the fact that they have several automotive HDG production lines, with a significant part of production used for non-automotive customers.

(1061) On the other hand, the Commission observes that the Parties' themselves acknowledged that Tata would have an upside risk […], but still conclude '*that the*

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791 Parties' reply to RFI 21, paragraph 17.1(iii).
792 Parties' reply to RFI 21, paragraph 17.3(ii).
793 Parties' reply to RFI 21, paragraph 25.3.
794 Parties' reply to RFI 21, paragraph 25.8.
795 Reply to question 69.1 of Q1 - Questionnaire to Competitors, DocID2166.
796 Response to the SO, paragraphs 3.164 to 3.175 and First Data Room Report.

minimum necessary buffer of non-automotive production needed is likely to be materially below […]%' (emphasis added) without explaining what the typical (as opposed to '*minimum*') buffer would likely be, or why this likely minimum buffer would be […].[797]

(1062) Finally, the Parties claimed that '*some lines can operate effectively at 100% automotive production if required*' and that '*[c]laims in the SO […] that individual lines require "relaxation" time on non-automotive production […] are unsupported and flawed*'. However, when prompted, the Parties clarified that, while ThyssenKrupp's '[…] *line operates at* […]*% automotive production*' (emphasis added), this still only represents '[…]*% utilisation of the line's effective capacity in 2017 (*[…] *kt) and* […]*% of its nominal capacity (*[…] *kt)*'.[798] The Parties' statements thus confirm the Commission's understanding – which the Parties nevertheless contest – that 'relaxation' is needed,[799] such that nominal capacity (and likely even effective capacity) can in practice never be fully used, especially to produce the same very high quality automotive HDG product.

(1063) The Commission therefore does not consider the Parties' arguments and evidence in this respect to be persuasive or to undermine its conclusions.

(1064) In sum, the Commission considers that there likely is no realistic prospect of the use of spare capacity, or capacity expansion or entry, to compensate possible negative effects on competition caused by the Transaction in the automotive HDG market in the EEA.

b. The ability of competitors to expand capacities to increase sales to automotive customers to offset potentially negative effects resulting from the Transaction is limited

(1065) First, competitors generally would likely be unable to undercut a possible price increase by the merged entity post-Transaction by offering additional supply to automotive customers by expanding capacities.

(1066) In the first instance, as detailed notably in Section 9.4.3.2c.i, the investigation confirmed that barriers to entry and expansion in the production of automotive HDG are high. Indeed, being a significant supplier of automotive HDG in the EEA seems to require very large capital-intensive production capacity, and in particular a network of advanced and homologated production lines with specific features throughout the production chain.

(1067) For example, a competitor confirmed these high barriers to entry by listing as the largest investments needed to expand in automotive steel '*[m]ore advanced secondary steelmaking capacity, more annealing and galvanizing capacity, increased R&D capacity*'.[800]

(1068) The Parties' own submissions themselves confirmed that expansion of EEA automotive HDG capacity with the construction of new lines or the upgrade of existing facilities requires significant investments: '*[t]he investment costs for [ThyssenKrupp's new HDG line, construction of which* […]*] amount to* […] *for the line as such*' and '*the Parties are doubtful whether it would be technically feasible to*

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797 Response to the SO, paragraphs 3.172 and 3.173.

798 Parties' reply to RFI 37.

799 See Section 7.5.4.7 and recital (1111). See also replies to the Commission's RFI to competitors of 28 February 2019, DocID4343, DocID4545 and DocID4504.

800 Reply to question 100 of Q1 – Questionnaire to Competitors, DocID2166.

increase the width of an existing HDG line and would in any event assume that it would be cheaper to build a new HDG line than to increase the width of an existing line'.[801]

(1069) In the second instance, because of these high barriers to entry and expansion and the corresponding investments needed to build or upgrade HDG lines (but also the necessary HR mills and CR mills upstream) and to homologate lines and products – the investigation confirmed that only limited expansion or entry, if any, is planned.[802]

(1070) Importantly, Voestalpine – which would post-Transaction be the third largest EEA automotive HDG player – appears to be running at full capacity, and does not appear to have significant capacity expansion plans, notably at the upstream level. It thus explained that it '*strives to have the highest possible capacity utilisation rate to maximise profitability'* whereas an '*[i]nvestment into additional capacity would likely result in the capacity utilisation rate going down, at least in the short term*'.[803]

(1071) The CEO of Voestalpine is also quoted in a Reuters News story of 28 February 2019 saying that '*[e]xpansion in steel has for a long time not been part of our strategy*'.[804]

(1072) More generally, competitors' statements largely show that entry and expansion are either not currently foreseen by any EEA supplier or would require substantial investments, and that – beyond specific competitors stating that they have no intention to expand capacity – the overall '*investment climate*' is '*negative*' or '*cooling down*', meaning that the likelihood or prevalence of investments is decreasing (from an already low level): '*[g]enerally investment climate is cooling down*';[805] '*[n]o Major Investments in Europe; plant makers fully booked with orders from Middle East, Mexico and Asia*';[806] '*[r]ather negative investment climate*';[807] '*[g]oing wider than the existing […] however require substantial investments also in upstream facilities (e.g. pickling or even in hot rolling) that would not be viable for [Company name]'*.[808] Another competitor explained that it would need *'basically a new line'* to convert its non-automotive HDG lines into an automotive HDG line.[809]

(1073) Indeed, Tata's assessment of planned capacity expansion in HDG in the EEA considered in the synergy document captioned in Figure 170 confirms this view that planned expansion is limited since it identifies only a limited level of planned capacity expansion, much of which with […].

Figure 170 – Tata view of planned HDG capacity increases in the EEA[810]

[…]

(1074) In this regard, Salzgitter itself explained the limited competitive relevance of its current expansion plans, which, although it has '*budget approval for more metal coating capacities*' would '*not [be] enough to eliminate merger concerns*'.[811]

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801 Parties' reply to RFI 20, paragraphs 26.1 and 26.4.

802 Replies to questions 63 and 97–100 of Q1 – Questionnaire to Competitors, DocID2166; Replies to questions 39, 59 and 88 of Q3 – Questionnaire to customers (Automotive), DocID2168.

803 Minutes of a call with a competitor on 28.1.2019, DocID3893.

804 REUTERS '*Voestalpine not keen on Tata, ThyssenKrupp assets'*, 28 February 2019, DocID4435.

805 Reply to question 102 of Q1 – Questionnaire to Competitors, DocID2166.

806 Reply to question 102 of Q1 – Questionnaire to Competitors, DocID2166.

807 Reply to question 102 of Q1 – Questionnaire to Competitors, DocID2166.

808 Minutes of a meeting with a competitor on 9.1.2019, Doc ID3571.

809 Reply of a competitor to the Commission's RFI of 28 February 2019, Doc ID4504.

810 […].

811 Competitor presentation, DocID4025.

(1075) Similarly, automotive customers who replied to the market investigation appear to believe that no expansion is planned in carbon steelmaking capacity (a necessary upstream input for automotive HDG) and only limited expansion is planned for HDG.[812]

(1076) A customer confirmed that spare capacity is limited and planned expansion insufficient by explaining that *'[c]apacity in the European steel market is tight at the moment, particularly for HDG and especially automotive grades. Some suppliers like Salzgitter are investing in new HDG lines which will however be operational only in 2019 (end of 2019). Voestalpine is also developing a new HDG line. ArcelorMittal will have access to a new automotive line through the acquisition of Ilva. However, if the market situation remains the same, such planned expansion will not be enough to absorb the tightness'*.[813]

(1077) Another customer explained the limited capacity expansion plans in the market by highlighting the differentiated capabilities of different steel suppliers to meet the needs of automotive customers: '*while Tata may be capacity constrained, they would absent the transaction have an incentive to increase capacity. If an automotive customer makes an order today, delivery would typically be in two years or more, which would give Tata the necessary time and incentive to increase its capacity. For Tata Steel the obstacle to increase capacity would also have been lower than for any smaller supplier, let alone for a supplier that is currently not supplying the automotive industry in any real volume'*.[814]

(1078) In their Response to the SO, the Notifying Parties allege that competitors have planned expansion of their capacity.[815] In that respect, the Commission notes that the plans mentioned by the Parties confirm the Commission's conclusions, in particular that relevant competitors are likely limited to ArcelorMittal, Voestalpine, Salzgitter and SSAB. Moreover, the Commission reiterates that many of these plans appear to be unconfirmed, unspecific to automotive HDG, or with commissioning dates at least two years into the future (likely without any significant effect on competitive dynamics in the meantime).

(1079) Specifically, the Parties claimed that '*[t]he Commission has also chosen not to mention in the SO that a number of new HDG lines are currently being built – which demonstrates the feasibility of doing this in practice and – by steel industry measures – the relatively low level of investment needed*'.[816] The Parties however acknowledged in their reply to RFI 37 that they have in fact not provided evidence of lines '*currently being built*', but rather only of lines recently built or currently planned. In addition, in their different submissions the Parties made numerous references to general and vague statements on competitors or drawn from competitors' websites regarding their capacities and capabilities. By contrast, they only made a limited number of references to somewhat specific expansion plans, which were largely limited to: (i) for EEA suppliers, ArcelorMittal, Salzgitter, Voestalpine and Liberty House (having acquired the ArcelorMittal divestitures from the ArcelorMittal/Ilva transaction); and (ii) for non-EEA suppliers, Posco and

812 Replies to question 88 of Q3 – Questionnaire to customers (Automotive), DocID2168.

813 Minutes of a call with a customer on 9.7.2018, DocID1874.

814 Minutes of a call with a customer on 30.5.2018, DocID700.

815 Response to the SO, paragraph 3.162. See also the Parties' reply to RFI 37.

816 Response to the SO, paragraph 3.10. See also the Parties' reply to RFI 37, in turn referring to the Parties' Comments on the Article 6(1)(c) decision, paragraphs 4.92 and following and 4.195 and following (notably Table 4.4).

Baosteel. The Commission adequately – taking into account the Commission's assessment of *inter alia* the strength of the competitive constraint constituted by different steel suppliers, notably in view of whether or not they are vertically integrated and EEA or non-EEA suppliers, and their technical capabilities – assessed these specific expansion plans in the Statement of Objections, and again in this Decision. Indeed, the Commission examined particularly closely current (spare) capacity and expansion plans of the likely four closest competitors to the Parties in EEA automotive HDG: ArcelorMittal, Voestalpine, Salzgitter and SSAB.[817]

(1080) Overall, the Commission considers unlikely that planned capacity expansions would enable competitors to react to any potentially negative effect of the Transaction on competition in the automotive HDG market in the EEA.

c. ArcelorMittal has no incentive to increase sales to automotive customers to offset potentially negative effects resulting from the Transaction

(1081) Even assuming that ArcelorMittal would have the ability to react to the merged entity's market behaviour post-Transaction, in the Commission's view, it is unlikely – considering the oligopolistic structure of the market and the concentration of spare capacity within the hands of the largest players (ArcelorMittal and the merged entity) – that ArcelorMittal would have any incentive to react to price increases by the merged entity post-Transaction by increasing supply at lower prices to automotive customers.

(1082) Quite on the contrary, ArcelorMittal – as the market leader – would rationally have every incentive to accompany price increases, such as to generate higher revenues across its EEA automotive HDG sales. This is because – if ArcelorMittal were not to accompany a price increase by the merged entity – any additional margins that ArcelorMittal would gain by increasing its supplies and thereby generating additional sales would be offset by earning lower margins on its large base of existing supplies compared to the scenario where it would also increase its own prices. ArcelorMittal, as the market leader, thus has much more to lose by countering a price increase than smaller players.

(1083) ThyssenKrupp's internal email captioned in Figure 171 – which discusses the potential effects of ArcelorMittal's acquisition of Ilva – evidences that ThyssenKrupp itself understands it not to be in ArcelorMittal's interest to […].[818] ThyssenKrupp further estimates the risk for its sales resulting from ArcelorMittal's acquisition of Ilva to be […]. The risk associated with ArcelorMittal's acquisition of Ilva is contained to […].

Figure 171 – ThyssenKrupp internal email on potential effect of ArcelorMittal's acquisition of Ilva[819]

[…]

Figure 172 – ThyssenKrupp internal document on the analysis of risks due to ArcelorMittal's [820]

[…]

(1084) In their Response to the Statement of Objections, the Parties put forward an economic analysis[821] allegedly showing that ArcelorMittal would on the contrary

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817 See for instance the replies to the Commission's RFI to competitors of 28 February 2019, DocID4343, DocID4545 and DocID4504.

818 […].

819 […].

820 […].

have an incentive to expand output in the case of a post-Transaction price increase by the merged entity.

(1085) Contrary to what the Parties conclude, the Commission considers that the economic analysis of the Parties shows that ArcelorMittal would have an incentive to accommodate a price increase rather than expand output and defeat such a price increase, when applied to the correct volumes. The reasoning underlying this finding is detailed in the following recitals.

(1086) Further, for the reasons explained below, the Commission also considers that the economic analysis put forward by the Parties cannot substitute direct observation of ArcelorMittal's actual market conduct, which is one of price maintenance rather than market share maximisation.

(1087) First, as regards the Parties' economic analysis, they compare – on the one hand – their estimate of the incremental variable profit (estimated in EUR [...]) of ArcelorMittal in the event it chose to fully utilise its total spare capacity on its automotive HDG lines, which they estimate to be […] tonnes, to – on the other hand – the variable incremental profit (estimated in EUR […]) from enjoying a 5% price increase on its current sales, which they estimate to be […] tonnes. In this analysis, they assume an average price of […] EUR/tonne and an average variable profit margin of […]%, based on the Parties' data.

(1088) Even within the simplified modelling proposed by the Parties, this is not the correct comparison. Based on the Parties' estimate of the merged entity's own price elasticity of -[….] (see footnote 163 of the Response to the Statement of Objections), in order to defeat the 5% price increase ArcelorMittal would need to expand output by no more than […][822] tonnes rather than the […] tonnes which the Parties use as the comparison benchmark. The variable incremental profit of ArcelorMittal of expanding output would then be no more than EUR […], that is lower than the variable incremental profit of a 5% price increase on ArcelorMittal's current sales, estimated by the Parties to be approximately EUR […]. This indicates that ArcelorMittal would receive a higher pay-off by accommodating the price increase.

(1089) Moreover, even within the simplified context proposed by the Parties, the capacity expansion of […] tonnes is an overestimation since it assumes that the merged entity's elasticity would reflect the assumed own elasticity of the respective Party (of […]). However, since the merged entity would internalise the competitive constraints that the Parties currently exercise on each other, the own elasticity of the merged entity would by definition be higher than […]. It follows that […] tonnes is an upper bound and that ArcelorMittal would most likely only need to expand its capacity by less than that, further increasing the amount by which the strategy of accommodating a price increase by the Parties would be preferable to ArcelorMittal compared with a strategy of sufficiently expanding output so as to defeat the price increase.

(1090) Similarly, even within the simplified context proposed by the Parties, ArcelorMittal's incentive to accommodate a price increase grows in parallel with the price increase that would be introduced by the merged entity. Indeed, according to the Parties' analysis, while for a 5% price increase the difference in incremental variable profits

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821 See paragraphs 3.180 to 3.186 of the Response to the SO.

822 Assuming an elasticity of [...], a 5% price increase would lead to an […]% decrease in the Parties' quantities. On the basis of the Parties' combined sales of […] (footnote 163 of the Parties' reply to the Statement of Objection), the fall in the Parties' sales would amount to […] tonnes.

for the two strategies ($\Delta\Pi_{\text{accommodate price increase}} - \Delta\Pi_{\text{expand output}}$) is approximately ([…]) EUR […], in the case of a 10% price increase the difference would be approximately ([…]) EUR […]. In other words, in the case of a 5% price increase ArcelorMittal would profit EUR […] *more* by accommodating the price increase compared with sufficiently expanding output so as to defeat that price increase, whereas in the case of a 10% price increase ArcelorMittal would profit EUR […] *more* by accommodating this even higher price increase compared with sufficiently expanding output so as to defeat this even higher price increase. In fact, the added benefit of accommodating the price increase grows as the size of the price increase grows.

(1091) Importantly, the Commission's conclusion that ArcelorMittal's assumed profits from accommodating a price increase would be larger than its assumed profits from sufficiently expanding output in order to defeat such a price increase holds also when applied to ArcelorMittal's actual HDG sales to automotive customers, a figure the Parties' economic advisors were able to verify during the two data room exercises.

(1092) Second, the Commission maintains that the economic analysis put forward by the Parties cannot substitute direct observation of ArcelorMittal's actual market conduct, which, as detailed in recital (1103), appears to be one of price maintenance rather than market share maximisation. Even the simple observation that at current prices ArcelorMittal is not selling all its available capacity means that it is optimal for ArcelorMittal to withhold some capacity and earn a higher price. Therefore, the modelling proposed by the Parties by which ArcelorMittal would be offering all its capacity at current prices is not supported by any evidence and would not correctly represent the facts of the industry.

(1093) In their Response to the Letter of Facts, the Parties argued that: (i) their economic analysis is based on correct assumptions – following a price increase by the Parties, prices would increase market-wide and ArcelorMittal would be faced with the opportunity to keep increasing its sales and market share, at the expense of both the Parties and other market participants alike, until it exhausts its spare capacities; (ii) the Parties' analysis is in fact conservative because it ignores the fact that any attempt by ArcelorMittal to maintain high prices would be further undermined by other rivals which also – even on the Commission's own analysis – have material spare capacity with which to defeat high prices; (iii) ArcelorMittal's announcements, as published in industry press releases, are not an analysis of AreclorMittal's actual market conduct and cannot overcome robust economic evidence; and (iv) the economic analysis put forward by the Parties analyses what would be unilaterally profitable for ArcelorMittal and is therefore the correct analysis since the Commission has made no finding of horizontal coordinated effects.[823]

(1094) In this regard, the Commission notes that in their Response to the Letter of Facts, the Parties not only fail to directly address or rebut the Commission's reply in the Letter of Facts with respect to the economic analysis put forward by the Parties in the Response to the SO, but also introduce arguments that appear to contradict the Parties' own analysis.

(1095) More specifically, and related to point (i) of recital (1093), in their Response to the SO the Parties propose comparing ArcelorMittal's additional variable profit margin from, on the one hand, expanding output by 1 Mt at <u>current market prices</u> and therefore defeating any supply cuts inducing price increases that the Parties might

823 Response to the Letter of Facts.

introduce to, on the other hand, accommodating a 5% price increase on their current sales. In their Response to the Letter of Facts, the Paries appear to erroneously conflate these two values and to suggest that ArcelorMittal's capacity expansion strategy would be trigerred following a market-wide 5% price increase, and therefore ArcelorMittal would have every incentive to fully utilise its spare capacity for the whole market so as to capitalise on this price increase, meaning expanding output by 1 Mt at 5% above current market prices. This is a new argument that departs from the economic test initially proposed by the Parties in the Response to the Statement of Objection. More importantly, it makes no economic sense even in the modelling proposed by the Parties in the Response to the Statement of Objection. It is of course the case that if ArcelorMittal could increase market-wide supply of automotive HDG by a whole 1 Mt without negatively impacting the market price it would have every incentive to do so, but that is neither the case nor the relevant question, and not the economic test originally proposed by the Parties. The relevant question is whether ArcelorMittal would have an incentive to expand output to the degree necessary to *defeat* rather than *accommodate* a price increase. As explained in recitals (1088)-(1090), following the modelling proposed by the Parties, ArcelorMittal would rather accommodate a price increase of 5% triggered by the Parties rather than expand its output sufficiently so as to defeat such a price increase.[824]

(1096) Secondly, and related to point (ii) of recital (1093), the Commission notes that the Parties appear to confuse the question of whether ArcelorMittal would have an incentive to expand output so as to defeat a price increase introduced by the Parties with the question of whether ArcelorMittal itself would have an incentive to cut production so as to trigger market price increases, which again is not the relevant question. In any event, the Parties' argument that even based on the Commission's own analysis rivals other than ArcelorMittal have material spare capacities and would therefore defeat any price increases introduced by ArcelorMittal is also incorrect. The Commission's own analysis referred to by the Parties is an analysis of market shares based on nominal spare capacities,[825] the underlying data of which the Parties' economic advisors had access to during the two data room exercises. Although this analysis focused on nominal spare capacities, in assessing the spare capacities that are actually available on the market for defeating a potential price increase it is more appropriate to consider effective rather than nominal spare capacities.[826] If one were to consider effective capacities,[827] the Parties' statement that '*rivals other than ArcelorMittal have material spare capacities*' is not correct. Indeed, while competitors other than ArcelorMittal appear to hold [400-500] kt of nominal spare capacities (and that largely in the hands of the less capable competitors – See Sections 9.4.3.2e. and 9.4.3.2.f.), these competitors have together less than 100 kt of effective spare capacities. During both data room exercises the Parties' economic advisers had access to both nominal and effective capacity figures for all competitors (with the exception of the effective capacity of one competitor).

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824 Also the futher arguments in footnote 23 of the Parties' reply to the Letter of Facts are flawed. Indeed, once it is established that ArcelorMittal would not have the incentive to defeat a price increase as explained in recitals (928)-(930), then it would also follow that ArcelorMittal would accommodate even higher price increases.

825 See Section 9.4.3.1.b.i..

826 See Footnote 537.

827 Even including the entire nominal spare capacity of the one competitor that did not provide an estimate of its effective capacity and assuming that its capaticy would actually be immediately available.

(1097) In the Second Data Room Report, the Parties also argue that: (i) the Comission has cherry picked capacity and production figures from different submissions of the Parties' competitors (for example Salzgitter) without any justification; (ii) the Commission has inconsistently used 2018 capacity data for ThyssenKrupp whilst using 2017 data for ThyssenKrupp's production as well as other competitors; and (iii) correcting for these two issues shows that the spare capacity held by competitors is even greater, both in absolute terms and as a share of total spare capacity in the market. The Commission notes that on the first of those two points, the Parties' claim is wrong. The Commission always combined in its analysis information from the same submission whenever the information was available and only combined different sources when it was not possible to do so. Specifically in the case of Salzgitter, mentioned by the Parties in the Second Data Room Report, both capacity and production figures were extracted from Salzgitter's replies to Questionnaire 11 (Annex 1 and Annex 2). With respect to the second point raised in the Second Data Room Report, the Commission notes that while it is true that in its analysis of nominal spare capacity shares it combined 2018 capacity figures with 2017 production figures in the case of ThyssenKrupp since those were the most recently available data points for the respective variables, the conclusion that automotive HDG capacities are scarce and largely in the hands of ArcelorMittal and the Parties holds even if one were to consider ThyssenKrupp's 2017 capacity figures instead.[828]

(1098) Related to point (iii) of recital (1093), the Commission considers that ArcelorMittal's public announcements concerning their pricing intentions are an element of ArcelorMittal's market conduct. It is not clear what further analysis the Parties allude to. In any event, as explained in recitals (1088) to (1090), the economic analysis proposed by the Parties, when applied to the correct volumes, is in line with ArcelorMittal's announcements, namely one of prioritising price increases over market share increases.

(1099) Related to point (iv) of recital (1093), the Commission agrees that one should analyse ArcelorMittal's rational profit-maximising strategy, as is the case in recitals (1088) – (1090).

(1100) On balance, the Commission does not consider the arguments put forward by the Parties in their Reply to the Letter of Facts persuasive and considers that its conclusion on ArcelorMittal's incentives are not undermined by them.

(1101) A customer also illustrated these likely limited incentives for competitors – in this case specifically ArcelorMittal – at least to fully undercut price increases by the merged entity by explaining that '*[t]he effects also depend on the behaviour of ArcelorMittal. Normally EEA suppliers keep the prices high enough to increase profits but low enough to avoid a switch to imports by their customers.*',[829] while another more generally explained that '*[the Transaction] will create an oligopolistic market for flat carbon steel*'.[830]

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828 Indeed, while the Notifying Parties together with ArcelorMittal hold approximately [70-80]% of total nominal automotive HDG spare capacities when considering ThyssenKrupp's 2018 capacity figures, the percentage drops only to [70-80]% when considering ThyssenKrupp's 2017 capacities instead. In term of effective automotive HDG spare capacities, the Notifying Parties together with ArcelorMittal hold approximately a [90-100]% share.

829 Minutes of a call with a customer on 15.6.2018, DocID596.

830 Reply to question 94.1 of Q3 – Questionnaire to customers (Automotive), DocID2168.

(1102) As regards specifically the expansion of the legacy Ilva assets by ArcelorMittal, as alleged by the Notifying Parties in their Comments on the Article 6(1)(c) decision,[831] the Commission notes that that the considerations on ArcelorMittal's incentives not to react to a hypothetical price increase by the merged entity apply in full also in relation to the legacy Ilva assets.

(1103) In fact, the Commission's assumptions in this regard appear to be confirmed in this specific case by recent announcements from ArcelorMittal that it would (i) reduce production on some of its HDG production lines in parallel with possibly investing in the legacy Ilva assets, and (ii) increase its flat steel prices significantly (by approximately EUR 30 per tonne).[832]

(1104) Indeed, the fact that ArcelorMittal is generally aiming at price increases or price maintenance rather than gaining volume and market share with its spare capacity is further evidenced by the finding that ArcelorMittal on 20 February 2019 has tried again to increase sheet prices across all European regions by EUR 30/tonne.[833] This public move comes only few weeks after the first publicly announced price increase move of 1st February 2019 described in the preceding recital.

(1105) On the other hand, the Ilva assets are in any event likely geographically less competitive than the Parties' as they are located far from their customers' production facilities. These new capacities would also need to be homologated by automotive customers, which takes time.

(1106) Overall, the Commission considers that the Parties' argument that ArcelorMittal will be bringing significant additional automotive capacity to significantly constrain the merged entity post-Transaction following the acquisition of Ilva should be assessed against the background of the significantly concentrated structure of the market post-Transaction, where ArcelorMittal would remain market leader ahead of the merged entity and would likely have limited incentives to constitute a competitive constraint for the merged entity post-Transaction.

d. The ability of competitors to reorient production to HDG for automotive customers to offset potentially negative effects resulting from the Transaction is limited

(1107) In the absence of spare or additional capacity, competitors could in theory also reallocate their production to the benefit of automotive HDG and away from non-automotive HDG. Nevertheless, the investigation shows that this potential shift in volumes is likely to be in practice too limited to offset potentially negative effects resulting from the Transaction.

(1108) First, to reallocate their production in this way, steelmakers would require access to upstream substrate of adequate quality in sufficient volumes, which – as explained in Section 9.4.3.2.a.i – appears difficult in the current market context, especially for non-integrated players.

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831 Comments on the Article 6(1)(c) decision, paragraph 4.93.

832 (i) SBB DAILY BRIEFING: *'ArcelorMittal Espana plants to close several days in Q1*', Friday, 28 Dec 18, DocID4056. The days affected will be all Fridays: January 18 and January 25; February 1 and February 15; and March 15 and March 29 with four production sites at Asturias, Vizcaya, Lesaka and Sagunto closing for those days; (ii) SBB DAILY BRIEFING 'ArcelorMittal raises European flats prices by Eur30/mt', Friday, 1 Feb 19, DocID4084.

833 SBB DAILY BRIEFING 'ArcelorMittal pushes for Eur30/mt hike on flats again', Wednesday, 20 February 19, DocID 4445.

(1109) Second, the investigation showed that steelmakers need to manage a balanced production mix and cannot overly rely on a single customer group. This is for several reasons.

(1110) In the first instance, production lines can typically economically produce the most demanding products only for part of their overall production, because an adequate production mix enables the most effective utilisation of fixed costs.

(1111) In the second instance, any production comes with an unavoidable level of 'out-of-specification' production, such that production output cannot be fully controlled and determined *ex ante*. Furthermore, the Commission understands that even if steel producers may strive to prioritise the production of high-end products where possible, it is in practice difficult to achieve 100% high-end product production on a given line. Instead, periods of 'relaxation' will be needed for technical and commercial reasons, for instance because the zinc (or other alloy) bath conditions are not stable or rolling cylinders get worn and are no longer suitable for high-end production even if they can be used for producing products that require less-demanding surface quality.[834]

(1112) Moreover, as detailed in recitals (1117) and following, it has been suggested in the market investigation that automotive HDG suppliers reserve capacity 'buffers' on their automotive HDG lines so that they can quickly meet additional demand required by automotive HDG customers, if needed by sacrificing less profitable sales to non-automotive customers. Because of this, an automotive HDG supplier could not dedicate in practice all of the capacity of its automotive HDG lines to producing automotive HDG under normal operating situations.[835]

(1113) These two elements combined mean that the maximum practical level of production of a given product on a given line can never be the same as that line's theoretical production capacity for that product (namely the volumes which the line could produce on the basis of its technical specifications if it could viably produce only that product, without any waste).[836]

(1114) A competitor confirmed the fact that steelmakers cannot produce exclusively high-end products (such as automotive HDG products) on their respective lines and that, hence, competitors cannot redirect their whole HDG capacity to automotive HDG even when it comes to lines that as such are capable of producing automotive HDG by explaining that it *'believes that it is possible to dedicate at least 80% of installed line capacity towards high products. In a continuous line there is a need for transition coils when changing the heat treatment profile or coating applications and thus 100% of installed capacity cannot be utilized for high-end steel products requiring specific temperature settings or different coating applications.'*[837]

(1115) In the third instance, irrespective of line-by-line considerations, several steel suppliers – including the Parties – explained that it is not viable for them to increase their overall sales to the automotive industry beyond a certain level.

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834 See, for example M.8444 – *ArcelorMittal/Ilva*, recitals 294 and 521. See also replies to the Commission's RFI to competitors of 28 February 2019, DocID4343, DocID4545 and DocID4504.

835 Minutes of a meeting with a competitor on 9.1.2019, DocID 3571.

836 Reply to RFI 21, question 17.

837 Competitor's reply to the Commission's RFI of 28 February 2019, DocID4504.

(1116) On the one hand, this is because of the general reluctance to being overly dependent on too few customers or a given industry overall, with the corresponding downturns in these industries.

(1117) On the other hand, there is a specific consideration that – while they usually have a production stock to afford some flexibility in production planning and delivery – steel suppliers need to have a 'buffer' of less valuable short term or spot customers, which they can decide to de-prioritise in case of production difficulties to continue to honour commitments under longer-term and more valuable contracts, which are typical of automotive customers.

(1118) In that regard, a steel competitor confirmed this need for a buffer of non-automotive customers to accommodate unplanned requests for additional supply from automotive customers by explaining that '*a steelmaker is required to be able to supply additional volumes on a relatively short notice when a fluctuation in automotive demand requires so. This together with the fact that steelmakers generally operate nearly at full capacity, requires a steelmaker supplying the automotive industry to also have a portion of its sales allocated to other industries which it can on a relatively short demand reduce its sales to, in order to redirect this to the needs of the automotive customers. A steelmaker can therefore not fully commit to selling only to the automotive industry as it would then have no buffer*' and that '*some automotive customers demand a flexibility of up to 20% in their contracts, i.e., the supplier is obliged to deliver up to 120% of the contracted volume. Therefore, in order to avoid the risk of overbooking, the maximum automotive capacity has to be limited to 80%*'.[838]

(1119) Indeed, the difficulty in planning automotive HDG production associated with the downstream vehicle manufacturing chain, and the resulting inability of steel suppliers to only sell to automotive customers is illustrated by the Tata internal […].

Figure 173 – […][839]

[…]

Figure 174 – […] [840]

[…]

Figure 175 – […][841]

[…]

Figure 176 – […][842]

[…]

(1120) ThyssenKrupp's synergy planning document captioned in Figure 177, which considers the utilisation rates of the Parties' '*modern*' HDG lines, also explicitly describes the need for such a '*buffer due to seasonality of business*'.

838 Minutes of a meeting with a competitor on 9.1.2019, DocID3571. See also the minutes of a call with a competitor on 28.1.2019, DocID3893.

839 […].

840 […].

841 […].

842 […].

Figure 177 – […][843]

[…]

(1121) The Commission thus considers that competing steel suppliers in fact likely have only a limited ability to switch part of their production to automotive HDG in response to requests for additional deliveries from customers. This limitation may, however, apply to a more limited extent to ArcelorMittal in view of its large network of production facilities, taking however into account that ArcelorMittal already has large spare capacities, and likely no incentive to offset price increases by the Parties post-Transaction.

(1122) By contrast, as explained in Section 9.4.3.4, the investigation confirmed that – despite the limitations described in the preceding recitals, which also apply to Tata although to a lesser extent because of its broader production network – Tata grew significantly in automotive HDG in recent years, and was pre-Transaction anticipated to continue expanding. In parallel, ThyssenKrupp focused increasingly on automotive steel (as well as packaging and other high-end markets) and independently decided to invest to expand in the segment.

(1123) On the basis of the above, the Commission considers that other steel suppliers would not be able to significantly reorient their production to automotive HDG such as to compensate any possible negative effects of the Transaction on competition in automotive HDG in the EEA.

(1124) In their Response to the Statement of Objections, the Notifying Parties argue that a significant proportion of EEA HDG capacity which is currently unable to produce automotive HDG could easily and at a low cost (in the region of at most […]) be upgraded to produce automotive HDG.[844]

(1125) The Parties' claim that '*to convert an existing HDG line into one that is capable of producing steel with the characteristics preferred by automotive manufacturers […] should require no more than* […] *per line*'[845] is unsubstantiated and appears to be misleading. Indeed, the Parties themselves acknowledge that this figure only covers a few – and typically the least expensive and least complex – of the upgrades which may be needed to make an HDG line capable of producing some automotive HDG products, the specific amount of which will vary significantly depending on the initial condition of a given line and the specific production capabilities which the upgrades are designed to enable: '*The Commission is correct that the* […] *figure would depend on the current condition of the line to be upgraded*'.

(1126) For instance, the production of some automotive HDG products such as the largest widths may require much more substantial investments, to a point where the Parties accept that building a new line at a cost of approximately […] would likely be less expensive: '*The* […] *figure does not include the structural changes required to upgrade a line to process greater strip widths*'; '*it is not possible to accurately quantify the cost of upgrading a line's width in the abstract. This is because – unlike upgrading a line to be capable of producing thin zinc coating, multiple types of oiling and high surface quality (which, as explained above, are simple upgrades) - the cost of upgrading a line's width will depend on many variables, such as the maximum width being upgraded from and to, the layout and structure of the line*

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843 […].

844 Response to the Statement of Objections, paragraphs 3.8 and 2.9.

845 Response to the SO, paragraphs 3.158 and 3.192(iii) and First Data Room Report.

being upgraded (e.g. the size of the existing frames) and the furnace and/or temper mill being used by that line. […] the Parties agree that increasing the maximum strip width of a HDG line from 1,200 mm to 2,100 mm would likely prove uneconomical (and certainly more than […]*) in most cases, and that building a new HDG line capable of producing HDG coils of widths up to 2,100 mm would be cheaper*'.[846]

(1127) In sum, the Commission considers that the reaction of competitors would likely be insufficient to significantly mitigate the likely non-coordinated effects of the Transaction on competition in automotive HDG in the EEA.

9.4.3.7. The buyer power of customers would likely be insufficient to offset potentially negative effects resulting from the Transaction

(1128) The Horizontal Merger Guidelines explain that countervailing buyer power '*should be understood as the bargaining strength that the buyer has vis-à-vis the seller in commercial negotiations due to its size, its commercial significance to the seller and its ability to switch to alternative suppliers*' (emphasis added).[847]

(1129) The Commission considers that automotive customers have limited buyer power, and are largely unable to significantly avoid or even significantly reduce price increases requested by automotive HDG suppliers in the EEA.[848]

a. Automotive customers largely describe 'take-it-or-leave-it' situations and do not appear to have credible switching possibilities

(1130) First, several automotive customers described 'take-it-or-leave-it' situations during recent price negotiations.

(1131) For example, a customer explained that it '*does not believe there is overcapacity in the steel market, since suppliers reduced capacity years ago. All companies are ordering steel from the same suppliers and now they appear to be completely booked. Therefore, steel suppliers are in a very strong position in negotiations, and offer the supply conditions on a 'take it or leave it' basis*'.[849]

(1132) Second, as explained in Section 9.4.3.2.c.iii, the investigation confirmed the limited availability of spare capacity for HDG in the EEA, particularly automotive HDG.

(1133) Accordingly, the majority of automotive customers explained that they would likely be unable to mitigate or even negotiate price increases proposed by the merged entity post-Transaction given their inability to credibly threaten to move volumes to other suppliers.[850]

(1134) For instance, a customer explained that *'[i]f faced with significant price increases [we] will look for alternative suppliers to diversify its supply, although it does not seem possible to find players able to fully replace ArcelorMittal and Tata Steel/ThyssenKrupp, especially in terms of volumes. The company might shift its production out of Europe*.[851]

(1135) Another customer explained that it was '*doubtful about finding adequate alternative suppliers with adequate available volumes if the merged entity decided to increase*

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846 Parties' reply to RFI 37.
847 Horizontal Merger Guidelines, paragraph 64.
848 Replies to questions 57, 85 and 87 of Q3 – Questionnaire to customers (Automotive), DocID2168.
849 Minutes of a call with a customer on 6.7.2018, DocID724.
850 Replies to questions 85 and 87 of Q3 – Questionnaire to customers (Automotive), DocID2168.
851 Minutes of a call with a customer on 9.7.2018, DocID1874.

prices',[852] while a further customer similarly explained that '*[a]s OEM we are very limited in changing supplier*'.[853] Other automotive customers added that '*[Company name] may need to diversify its supply base (which may however be difficult in a context of tight capacity), but will only very unlikely resort to more imports from outside the EEA since these would be much more expensive*';[854] '*it was the case in the past years that the capacities on the EEA market were limited, the utilized capacities at the EEA mills is very high, so that many European steel mills rejected additional volumes*';[855] and that '*[n]o we had to bear the price increases presented from the steel produceres. We could not reduce the exposure by changing to other materials. To a quite low extent we could reduce the full impact of the increase by some resourcing activities*'.[856]

(1136) Third, beyond the scarce availability of additional supply from other steelmakers, the limitations on customers' ability to switch uncovered by the investigation are (i) the need to homologate new suppliers, production lines and given products produced with new lines; (ii) the need to often adapt production chains to different products and (iii) in the case of Tier-1 suppliers, the need to often have OEM approval for any change, which reflects the homologation requirements put in place by the OEMs.

(1137) These additional limitations are illustrated by an automotive customer's explanation that '*[w]e need to consider customer approval, homologations, availabilities*'.[857]

(1138) The Parties themselves confirmed that automotive customers source automotive HDG virtually only from homologated suppliers – which currently have very tight capacity except for ArcelorMittal and, more limitedly, the Parties – and thus find it difficult to switch suppliers, also because of the need to adapt production processes and to ask OEMs for approval (in the case of tier 1 suppliers): '*steel is predominantly sourced based on the location of homologated suppliers*';[858] '*[f]or each part that is designed, there will be a range of materials that may be utilised depending on what is homologated and available (in the region)*';[859] '*substitutions of material are uncommon in the production phase*';[860] '*OEMs may even decide to apply different concepts with respect to the same model, <u>depending on the place of production</u>: the Mercedes C class has steel doors in China and aluminium doors in Europe. When devising the materials concept, designers will take care that there are at least <u>two</u> steel producers who can supply a specific product for a given part and who are <u>already homologated</u>*' (underlining added);[861] '*when an OEM already has a set of suppliers in its purchasing systems that satisfy its purchasing needs, the willingness of this OEM to spend resources and budget to approve more suppliers for similar grades is low*';[862] '*[a]s the process for a new supplier which the OEM has not sourced any material from is rather timeconsuming, the OEM usually only decides to start the homologation process if it is in principle willing to source from the new*

852 Minutes of a call with a customer on 30.5.2018, DocID700.
853 Reply to question 85.1 of Q3 – Questionnaire to customers (Automotive), DocID2168.
854 Minutes of a call with an OEM on 11.7.2018, DocID1788.
855 Reply to question 24.3 of Q12(b) – Questionnaire to Customers Phase II (Automotive), DocID2916.
856 Reply to question 57.1 of Q3 – Questionnaire to Customers (Automotive), DocID2168.
857 Reply to question 85.1 of Q3 – Questionnaire to customers (Automotive), DocID2168.
858 Parties' reply to RFI 20, paragraph 1.5.
859 Parties' reply to RFI 20, paragraph 17.4.
860 Parties' reply to RFI 20, paragraph 17.8.
861 Parties' reply to RFI 20, paragraph 20.2.
862 Parties' reply to RFI 20, paragraph 30.2.

supplier on a longer term basis';[863] '*[w]hen switching suppliers during the lifecycle of a model, OEMs will only switch to homologated suppliers*'.[864]

(1139) Overall, the limited availability of spare capacity – together with the homologation and other requirements of automotive customers – makes it unlikely that automotive HDG customers in the EEA would have the ability to exercise sufficient countervailing buyer power and constrain their steel suppliers by switching significant parts of their demand to alternative suppliers.

(1140) In their Comments on the Article 6(1)(c) decision, the Notifying Parties strongly disagreed with the Commission's initial and preliminary finding that customers would likely not have significant buyer power, in essence by arguing that (i) automotive manufacturers are sophisticated and significant customers, that (ii) the homologation process is flexible and in customers' hands and also that (iii) there are numerous recent examples of customers switching suppliers.[865] However, for the reasons set out below, these arguments have not been confirmed by the results of the market investigation.

(1141) In the first instance, the Commission considers that the anecdotal evidence of switching provided by the Parties does not convincingly show that customers have significant buyer power. Rather, it illustrates the normal and limited movements present in any market.

(1142) Indeed, this is confirmed by the EEA automotive HDG sales data collected by the Commission relating to several years, which shows that steelmakers' market shares were very stable in the period 2015–2018 in spite of such anecdotal switching (Table 18 in Section 9.4.3).

(1143) In the second instance, the Commission understands from the overall investigation and comments by automotive customers that – while some limited exceptions may exist – the predetermined homologation process is usually followed and relied-on by customers, without significant waivers or derogations.[866]

(1144) A competitor also confirmed the limited level of switching by automotive customers by explaining that '*OEMs generally apply the "never change a running system" approach so that substitution will only occur in very rare specific cases. This is caused by the fact that the flexibility to source steel from various suppliers is very low, because of restrictions in homologation, process safety, formability, crash-performance. It is only in case of ongoing quality problems, when the steel producer is not able to solve quality problems in due course, that a change from one homologated steel supplier to another by the OEM may occur. Substitution may therefore be possible in specific cases, which occur rarely, e.g., where significant problems with AHSS-Steels have occurred in the production process, for instance, with respect to formability*'.[867]

(1145) In their Response to the Statement of Objections, the Parties reiterated their argument that automotive customers have significant buyer power and that switching is easy. This would be in essence because: (i) OEMs can and do significantly switch;

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863 Parties' reply to RFI 20, paragraph 30.3(i).

864 Parties' reply to RFI 20, paragraph 33.5.

865 Comments on the Article 6(1)(c) decision.

866 Replies to questions 44 of Q12.a and Q12.b – Questionnaire to Customers Phase II (Automotive), DocID2952 and DocID2953.

867 Competitor position paper, DocID3569.

(ii) homologation is in the hands of customers and would therefore not be a barrier to switching; (iii) margins as well as the respective shares of wallets of automotive HDG customers and suppliers would confirm customers' significant buyer power; and (iv) in any event customers would know that only small volumes of high value products account for the bulk of steelmarkers' profits, and would thus be able to threaten switching on these products to exert significant pressure on their suppliers.[868]

(1146) The Commission notes that the Parties failed to provide new or persuasive evidence in support of these claims, which are directly contradicted by the Commission's market investigation.

(1147) Moreover, as detailed in Section 9.4.3.7.b, the Commission considers that the available margin information (including after correction of the Parties' initially inaccurate submission) overall does confirm higher margins for automotive HDG in spite of some counter-examples.

(1148) Similarly, the Commission does not agree with the Parties' contention that the Commission did not evidence the fact that '*the share of a steel producers' Automotive HDG output that goes to an individual automotive customer is typically smaller than the share of an automotive customer's steel purchases that come from that individual steel producer*'.[869] On the contrary, the Commission notes that – in addition to confidential procurement data from automotive customers – the Parties' own documents and information confirm this statement. […].[870] […].[871]

(1149) In addition to these relative comparisons, the Parties themselves explained that '*[w]hat matters regarding bargaining power is the quality of the outside option to each side of the negotiation, i.e., is their ability to secure an as-good alternative if no deal can be agreed*'.[872] In this case, contrary to the Parties unsubstantiated claims,[873] the market investigation confirmed that automotive customers are not in a position to credibly threaten to switch, largely because of the absence of spare capacities.[874]

(1150) Furthermore, the Commission disagrees with the Parties' argument that automotive customers could exert significant pressure by threatening to switch away the limited high-value volumes where steel suppliers would allegedly make the bulk of their profits.

(1151) First, the Commission notes that the Parties' argument confirms the Commission's assessment – disputed by the Parties – that competition in automotive HDG operates on a portfolio of products, which creates a significant competitive disadvantage for smaller steelmakers (see Section 9.4.3.2).

(1152) Second, it appears from Tata's automotive steel price list that […]. This suggests a lack of buyer power and refutes the Parties' claim that customers can (credibly) threaten to switch. This lack of ability to switch is also confirmed by the fact that these high-value and low-volume products are likely precisely those for which fewer suppliers exist and competition is less intense.

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868 Response to the SO, paragraphs 3.131 to 3.148.
869 Response to the SO, paragraph 3.135.
870 Calculations based on the market investigation on automative customer purchases.
871 See for instance Response to the SO, Table 3.3.
872 Response to the SO, paragraph 3.137(ii).
873 Response to the SO, paragraph 3.138.
874 See for instance Section 9.4.3.6.

(1153) The Commission therefore does not consider the Parties' arguments and evidence in this respect to be persuasive or to undermine its conclusions.

(1154) Fourth, contrary to the Parties' claims in their Comments on the Article 6(1)(c) decision,[875] the investigation confirmed that alternative materials – and most prominently aluminium – appear not to be dependable and significant alternatives able to significantly constrain automotive HDG for use in the production of vehicles, as already explained in Section 7.5.4.13.

(1155) In the first instance, switching to alternative materials once a car model is in production is considered practically impossible because of the need to carry out re-homologation, re-design of the car and production as well as cost.[876]

(1156) In the second instance, switching still at the design phase would only be possible in theory for some car parts, but appears to be limited. In particular, a large supplier of aluminium to automotive customers expects that the use of aluminium in vehicles will likely grow in the coming years, but that the use of aluminium will at best account for only a small fraction of the use of automotive HDG: '*[supplier] estimates the share of aluminium to grow to a maximum of 15% by 2025. This is highly dependent on aluminium penetrating into structural elements, where aluminium is not currently as present as in hang-on parts*'.[877]

(1157) This would in particular be the case because switching to aluminium requires to re-design and homologate production capabilities.[878] Another challenge is the need to ensure that aluminium parts are safely welded to steel parts, as explained by an aluminium supplier: *'the ability to combine aluminium with steel will gain in importance'*.[879]

(1158) In the third instance, aluminium is so much more expensive than steel for the same use that any switch to aluminium would likely only be viable in the context of such large price increases in steel that they appear wholly unreasonable in the current context, with the exception of very high-end vehicles where aluminium use is reflected in significantly higher prices.

(1159) A customer confirmed the general inability to viably switch to aluminium by explaining that *'[a]luminium could technically be used as an alternative to steel but only in some applications, especially in the engine block, but this is only possible at the very early stage of a car's design. It is not possible to switch from aluminium to steel or vice versa for cars already in production phase, and in any case it would not be feasible or commercially viable to completely substitute steel for aluminium in mass car production due to aluminium's significantly higher price*'.[880] A major car manufacturer further explained: *'The obvious gain from aluminium is weight-saving. However, this has to be weighed against the significantly higher price of aluminium: in practice aluminium costs at least twice as much as steel and this would in practice be prohibitive in mass production'*.[881]

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875 Comments on the Article 6(1)(c) decision.

876 Replies to question 54 of Q3 – Questionnaire to customers (Automotive), DocID2168.

877 Minutes of a call with an aluminium supplier on 22.1.2019, DocID3853.

878 Replies to question 55 of Q3 – Questionnaire to customers (Automotive), DocID2168.

879 Minutes of a call with an aluminium supplier on 22.1.2019, DocID3853.

880 Reply to question 54.1 of Q3 – Questionnaire to customers (Automotive), DocID2168.

881 Minutes of a call with a customer on 30.05.2018, DocID700.

(1160) A majority of automotive customers which provided a view responded that they are unable to viably switch to aluminium consumption such as to effectively impede or offset any price increases in automotive steel.[882]

(1161) Accordingly, all steelmakers responding to the Commission's questionnaire confirmed that they do not monitor aluminium prices when setting steel prices in the EEA.[883]

(1162) Therefore, the Commission considers that automotive customers likely cannot effectively use the threat of switching to alternative materials as an efficient negotiation tool to counter price increases by steel suppliers.

(1163) Overall, the Commission considers that customers likely have limited buyer power, in particular because they lack credible alternative inputs into vehicle production – either from other automotive HDG suppliers or alternative materials.

b. The significant margins of automotive HDG sales in the EEA likely reflect significant market power from steel suppliers and correspondingly limited buyer power

(1164) First, as already noted in Section 7.5.4.12, the Notifying Parties are able to price discriminate and achieve significantly higher margins in the sale of HDG to the automotive industry compared to sales to other applications. This also applies when comparing 'like for like' categories of steel.

(1165) Table 21 – which reproduces Table 3 – shows Tata's variable margins for different types of HDG sold to the automotive and non-automotive industries, as submitted by the Notifying Parties. The table shows that for those types of HDG that Tata sold to both automotive and non-automotive industries it constantly and for all types of such HDG achieved […] margins in sales to the automotive industry than in sales to non-automotive industries during 2015–17.

Table 21 - Tata's variable profit margin for HDG sold to automotive and non-automotive customers, 2015–17[884]

[…]

(1166) Table 22 – which reproduces Table 4 – shows ThyssenKrupp's variable margins for different types of HDG it sells to the automotive and non-automotive industries, as submitted by the Notifying Parties. The table shows that for those types of HDG that ThyssenKrupp sold to both automotive and non-automotive industries, it constantly and for most types of such HDG achieved […] in sales to the automotive industry than in sales to non-automotive industries during 2015–17. The only exception is […].

Table 22 - ThyssenKrupp's variable profit margin for HDG sold to automotive and non-automotive customers, 2015–17[885]

[…]

(1167) In their Response to the Statement of Objections, the Parties provided an amended version of this table to account for errors in the data they had originally submitted, thereby allegedly '*lead[ing] to a different conclusion*'. This would be in essence because margin data would vary significantly over time and for different steel types

882 Replies to question 56 of Q3 – Questionnaire to customers (Automotive), DocID2168.
883 Replies to question 79 of Q1 – Questionnaire to Competitors, DocID2166.
884 Reply to RFI 20, Table 38.1.
885 Reply to RFI 20, Table 38.2.

and margin differences between automotive and non-automotive customers would be small at best, thus making any conclusion unreliable.[886]

(1168) The corrections made to the data do not change the qualitative implications the Commission drew from it in the Statement of Objections: […].

(1169) Similarly, updated versions of these tables and analyses in reply to RFI 37 confirm for 2018 – in addition to many apparently unexplained changes in the figures for earlier years, which however do not affect the general trends and conclusions – that […].

(1170) The Commission therefore does not consider the Parties' arguments and evidence in this respect to be persuasive or to undermine its conclusions.

(1171) Second, the Commission reconstruction – based on the Parties' data – of flat carbon steel sales profit margins by end-industry captioned in Figure 178 illustrates the fact that automotive – which consists mostly of HDG – is the […].

Figure 178 – […]

[…]

Source: Commission's computation on the basis of Parties' reply to RFI 22 Annex 2

(1172) Such a difference in margins across different customer groups in all likelihood reflects the limited buyer power of automotive customers – in addition to pointing to the definition of a separate product market as detailed in Section 7.5.4.12.

(1173) In their Comments on the Article 6(1)(c) decision, the Notifying Parties claimed that the Commission would have erred in coming to such a conclusion, in essence because the margin information provided by the Parties would not account for product mix and in particular a likely greater consumption of capital in the production of automotive HDG.

(1174) The Commission notes that these considerations in any event likely do not significantly apply to the comparison of margin information for sales to automotive and non-automotive customers by relatively narrow specific product groups.

(1175) In addition, the fact that automotive sales generally provide higher margins than sales to other sectors even accounting for possibly greater capital consumption is in the Commission's view confirmed by the fact that EEA steel suppliers all seem to want to increasingly focus on automotive customers – to the extent that they are able to do so and without going beyond a given overall proportion of their sales as explained in Section 9.4.3.6.b.

(1176) This is for instance illustrated […].

Figure 179 – […][887]

[…]

Figure 180 – […][888]

[…]

886 Response to the SO, paragraphs 3.24 to 3.26, 3.143 and Annexes 2 and 5. Also see the Parties' reply to RFI 37.

887 […].

888 […].

(1177) In line with the above findings, a steel competitor also confirmed that '*it is more profitable for steelmakers to sell to the automotive industry than to most other steel consuming industries*'.[889]

(1178) Overall, the Commission considers that the higher margins from sales of steel (including specifically HDG) to the automotive sector compared with margins from sales to other industries likely confirm the relatively limited buyer power of automotive customers.

c. Automotive customers individually account for a more limited share of the Parties' overall EEA steel sales (or even only EEA automotive HDG sales) than the share accounted for by the Parties as suppliers of individual EEA automotive customers

(1179) First, the supplier base of automotive HDG is more concentrated than the customer base, as detailed in Figure 100. Such market structures are not indicative of customers being able to wield significant purchaser power.

(1180) Second, the investigation shows that automotive customers do not individually account for such a significant portion of the Parties' EEA steel sales that it would be indicative of an ability to exercise significant buyer power.

(1181) In the first instance, steelmakers – especially the largest integrated players such as the Parties – are generally able to sell to many different industries, and intentionally avoid having to rely too much on a single customer or customer group, for obvious reasons of risk management.

(1182) In the second instance, the data collected by the Commission for its market reconstruction presented in Section 9.4.3.1 shows that automotive customers individually typically do not account for a large share of the EEA steel sales of the Parties (or even their EEA automotive HDG sales), and in any event not a larger share of sales than customers from other industries, such as packaging or construction.

(1183) Accordingly, it is unlikely that steel suppliers would be dependent on individual automotive customers.

(1184) Third, by contrast, automotive manufacturers typically each need large volumes of steel to produce vehicles. Therefore, even if steel accounts for only a part of the overall production costs of a car, the lack of alternatives – or their significantly higher price – makes steel producers an unavoidable supplier group to the automotive industry.

(1185) In particular, a competitor highlighted the key importance of steel for automotive manufacturers by explaining that '*[s]teel products are fundamental for the automotive sector. 60-80% of the weight of a car stems from steel (on average 900 kg per car), mostly hot-dip galvanized products. For trucks, 80-90% of the weight stems from steel*'.[890] Moreover, it was mentioned by a major automotive producer in the market investigation that steel is the biggest single cost component in car manufacturing.[891]

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889 Minutes of a meeting with a competitor on 09.01.2019, DocID3571.

890 Competitor position paper, DocID3569.

891 Minutes of a call with a customer on 30.05.2018, DocID700.

(1186) The likely importance of the Parties as suppliers to automotive OEMs in the EEA is specifically confirmed by the Parties' share of steel supply to EEA OEMs shown in […] discussed in Section 9.4.3.3.d.

(1187) Accordingly, it is likely that EEA automotive customers are relatively dependent on EEA automotive HDG suppliers such as the Parties as the providers of a key input.

d. Any residual buyer power of customers would be further reduced by the Transaction

(1188) The Transaction brings together two suppliers of automotive HDG that are, as detailed for instance in Section 9.4.3.3, closely competing before the Transaction. Overall, the Transaction increases concentration in the supply of automotive HDG in the EEA.

(1189) Therefore, any buyer power that may remain with the customers – as already limited by for instance the scarcity in alternative sources of supply and the difficulty in switching to alternative materials – would be further reduced due to the increased concentration on the upstream level of automotive HDG suppliers and, hence, further reduced possibility to seek alternative suppliers.

(1190) Therefore, the Commission considers that EEA automotive HDG customers likely have limited buyer power, and any buyer power they have would be further reduced due to the Transaction. Consequently, automotive customers would likely be largely unable to significantly avoid or even to significantly reduce price increases by the merged entity post-Transaction.

9.4.3.8. The Transaction would likely have negative effects on prices and innovation for automotive HDG in the EEA

(1191) In light of the results of its investigation, the Commission considers that the Transaction is likely to significantly affect competition in automotive HDG in the EEA.

a. Complaints from customers and concerns from competitors

(1192) First, the investigation gave rise to significant concerns by EEA automotive customers that the Transaction would likely have negative effects on prices and innovation for automotive HDG in the EEA.

(1193) Indeed, of the nine EEA automotive customers which expressed a view in the market investigation (which include the largest European car manufacturers), a clear majority (approximately 89%) expect the Transaction to result in price increases for automotive HDG in the EEA, some respondents emphasising that these increases would likely be significant.[892]

(1194) For instance, a large customer explained that '*[t]he transaction will have an impact on [the respondent] because the company would lose one important supplier and because it expects, as a consequence, prices to rise*'.[893] Another customer confirmed this likely effect on prices by explaining that '*[t]hrough the consolidation in the EU market we expect less competition and as a consequence increasing prices*'.[894]

(1195) In addition, a third customer supported the finding of likely price increases as a result of the Transaction by explaining that '*[t]he transaction will have an impact on [the*

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892 Replies to questions 93–96 of Q3 – Questionnaire to customers (Automotive), DocID2168.

893 Minutes of a call with a customer on 7.6.2018, DocID3613.

894 Reply to question 93 of Q3 – Questionnaire to customers (Automotive), DocID2168.

respondent] because the company would lose one supplier and this will certainly make negotiations more difficult. […] Hypothetically, if faced with a future price increase of 5% from the merging companies, [the respondent] will have to absorb it in the short term, but in the long term it will try to find alternative solutions outside the EEA area. This might be difficult, as even the Turkish mills are at full capacity today, and the current forex balance further makes it hard to do business outside Europe' and that '*[t]he potential merger will possibly have an impact on innovation as well. ThyssenKrupp and Tata are currently both developing new steel grades, ThyssenKrupp even being the market leader. Currently they are for instance developing new steel grades to fight the usage of aluminium. [The respondent] believes these new grades will be more expensive but it may be willing to pay the price if the product is good. Nonetheless, [the respondent] believes that the Transaction could see some of the Parties' research efforts to be cut as they no longer compete, and one R&D site of Tata Steel post-transaction will likely be closed. [The respondent] does not see possible synergies flowing from the potential transaction. It rather believes that rationale behind the transaction is to exploit their market power*'.[895]

(1196) A fourth customer similarly explained that it '*expects prices to increase, and to have less choice. Cost synergies may exist in this kind of transactions, but they are not always passed-on to customers. Indeed, cost synergies may imply reducing the number of available products or plants/production lines. If the parties consolidate production to a plant which is not homologated by [the respondent], [the respondent] would need to homologate it, which would cause a significant delay (up to three years)*'.[896]

(1197) Other comments by automotive customers included: '*[t]he transaction at hand may have a substantial impact on [Company name]. In the last year [Company name] sourced […] of its total needs from Tata Steel, […] from ThyssenKrupp (and […] from ArcelorMittal). However, ThyssenKrupp was used to have a bigger share and, since it is able to supply every type of steel grade, [Company name] does not exclude that they would have increased the supplied quantities in the upcoming years. Moreover, there will be one less supplier on the market and therefore one less negotiation partner able to provide the entire spectrum of products*';[897] '*from a steel customer point of view we don't see any positive effects of less competitors able to supply steel in EEA*';[898] '*[w]ould be almost imposs. to source such a volume from others*' and '*[w]e try to keep one supplier for car life. Very difficult and risky to any change*';[899] '*[Company name] may need to diversify its supply base (which may however be difficult in a context of tight capacity), but will only very unlikely resort to more imports from outside the EEA since these would be much more expensive*';[900] '*[Company name] does not expect any efficiencies or synergies from the transaction*';[901] '*[b]ecause of the hugeness of these suppliers may the prices could increase*' and '*We believe that due to uncertainty in the market, prices are already*

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895 Minutes of a call with a customer on 15.6.2018, DocID596.

896 Minutes of a call with a customer on 11.7.2018, DocID1788.

897 Minutes of a call with an OEM on 31.5.2018, DocID4098.

898 Reply to question 102 of Q3 – Questionnaire to Customers (Automotive), DocID2168.

899 Reply to questions 24.1 and 29 of Q12(b) – Questionnaire to Customers Phase II (Automotive), DocID2953.

900 Minutes of a call with an OEM on 11.7.2018, DocID1788.

901 Minutes of a call with an OEM on 7.6.2018, DocID4095.

increase';[902] '*[i]f the expected increases would be realised, the endcustomer of the final product (especially products highly depending on steel as cars, white goods,..) will have to bear at least a part of these costs as we also see currently in the US*' and '*[t]he merger will have a significant impact on the European market in regards to pricing in combination with the import restrictions. It will be a high accelerator in case of markets with supply shortages. There the impact to my expectations would be much bigger than under circumstances where the two companies operate independently. With a reduction of the import restrictions the effect would be much lower*'.[903]

(1198) Customers also explicitly expected that the Transaction would have a negative effect on innovation: '*[…] the transaction will be detrimental for steel prices, innovation and quality […] [a]s to innovation, the transaction would bring together two important innovators in the market. Even if Tata Steel and Thyssen have not been the top innovators, they have nonetheless brought innovation to the market and also contributed to incentivising the leading innovators ArcelorMittal and Voestalpine to continue innovating. The transaction is likely to limit the overall innovative effort in the market. This will in turn impact the automotive industry's own innovation potential due to certain interlinkage to innovations in the steel industry. Such innovation is among others needed to improve car safety*';[904] and '*innovation would decrease as less competition in EU would effect their efforts to innovative products*', '*we would loose one supplier in EU; lower competition = potential higher price and lower innovation, reduced capacity*' and '*finally two competitiors (incl. Ilva) will disappear after the JV has been established; only the announcent created reaction on the market so that prices have not fallen down to a normal level. Still the margin of e.g. Voest or AM is very high (s. there annual reports)*'.[905]

(1199) Second, several players were able to provide estimates of the magnitude of these price increases. For example, one large customer explained: '*[o]nly three players with strong automotive HRC portfolio left (ArcelorMittal, TKS, Salzgitter) pricing power for nearly 50-60 percent of HRC automotive market within two players estimated […] Expected and estimated [price increase for HDG] of about min. 50-80 Euro/to*'.[906]

(1200) Third, a number of market players in fact considered that the Transaction would in essence be a four-to-three or even three-to-two merger, having regard to the portfolio and capabilities required to supply automotive HDG in the EEA.

(1201) For instance, a customer explained that '*In [the respondent's] view the proposed transaction will have a negative impact on the market because there will be fewer supply options and prices will increase accordingly. Moreover, there will be two big players (i.e. ArcelorMittal/Ilva and ThyssenKrupp/Tata Steel) dictating the conditions in the market. This market consolidation must be read together with the trade measures imposed by the EU, which will indeed worsen even more competitive conditions in the market. If faced with significant price increases [the respondent] will look for alternative suppliers to diversify its supply, although it does not seem possible to find players able to fully replace ArcelorMittal and Tata Steel/ThyssenKrupp, especially in terms of volumes. The company might shift its*

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902 Reply to questions 93 and 101.1 of Q3 – Questionnaire to Customers (Automotive), DocID2028.
903 Reply to questions 100 and 102 of Q3 – Questionnaire to Customers (Automotive), DocID2168.
904 Minutes of a call with an OEM on 30.5.2018, DocID700.
905 Replies to questions 92-93 and 101.1 of Q3 – Questionnaire to Customers (Automotive), DocID2168.
906 Reply to questions 94.1 and 96.2 of Q3 – Questionnaire to customers (Automotive), DocID2168.

production out of Europe, since it has plants in Latin America and Asia as well. For instance, [the respondent] is developing a plant in Morocco (for which steel currently comes from Europe however)'.[907]

(1202) Another customer similarly explained that: '*[t]his creation could create an oligopolistic situation for the flat steel in Europe. The top 2 producers market shares would be 70% for the flat steel in Europe*';[908] '*[t]he merger of TATA and TKS will limit competition on the European market. There would be 2 main players -> ArcelorMittal and TATA/TKS JV followed later by smaller player , where the customers would not be able to build a viable treat to defend the price increases and the dominant position of 2 players on the entire market. Therefore we do not support this merger to get approved*',[909] '*2 suppliers becomes 1 supplier, maybe their competitive power can increase*' and '*Most of our raw material are HDG, so big impact to us. +30-50 euros*',[910] while yet another lamented that its *'supply base is impacted*'.[911]

(1203) A competitor also explained that the '*TKS/Tata JV will result in joint dominance, particularly in automotive and in Northwest Europe!*' and that '*TKS/Tata with high market shares (35%) – together with ArcelorMittal, two leading suppliers will dominate the EU automotive market (65% market share)*'.[912] The same competitor reiterated in a separate submission that '*[i]n the market for automotive steel, […] the Proposed JV will become the new No. 1 supplier. ArcelorMittal will be the No. 2 supplier*'.[913]

(1204) Fourth, although competitors generally did not articulate explicit concerns regarding the effects of the Transaction on their business, several nevertheless expressed the view that it would likely lead to significantly increased concentration and prices in automotive HDG in the EEA.[914]

(1205) A competitor thus explained that *'CRC-HDG - Automotive Sector in North Central Europe may have an impact on prices*'.[915] Another competitor explained more at length that '*[w]e foresee a difficult market for HDG products given the dominant position of AM and the new combination Tata/TKS. In the Auto segment, the combined share of the here-above mentioned companies will exceed 85%, leaving almost no room to small and medium-size producers. Given the total HDG production capacity (including for industrial applications), the share of these companies still remains at extreme high level (>67%). The remaining companies will not be able to compete on equal footing. This is specifically true for the EU-6 area, where the combined HDG capacity of the named producers is 87%*'.[916] A third competitor similarly explained that '*[w]e thinck [sic] that in the EEA North and central the prices could be influenced for the whole product range that TATA and TKS are producing'*.[917]

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907 Minutes of a call with a customer on 9.7.2018, DocID1874.
908 Reply to question 102 of Q3 – Questionnaire to customers (Automotive), DocID2168.
909 Reply to question 102 of Q3 – Questionnaire to Customers (Automotive), DocID2168.
910 Reply to questions 95.1 and 96.2 of Q3 – Questionnaire to Customers (Automotive), DocID2168.
911 Reply to question 93 of Q3 – Questionnaire to customers (Automotive), DocID2168.
912 Competitor presentation, DocID4025.
913 Competitor position paper, DocID3569.
914 Replies to questions 40 and 113 of Q1 – Questionnaire to Competitors, DocID2166.
915 Reply to question 113 of Q1 – Questionnaire to Competitors, DocID2166.
916 Reply to question 40 of Q1 – Questionnaire to Competitors, DocID2166.
917 Reply to question 113 of Q1 – Questionnaire to Competitors, DocID2166.

(1206) A competitor also identified likely effects on innovation: '*it is rarely the case that 1+1 makes 2 in terms of R&D as major steelmakers are racing in the same kind of development areas. Moreover the increased market share in HDG the combination would have could decrease the appetite to expand product portfolio's*' and '*[i]n HDG (and this can also be true for other products) we foresee a very large market share for the JV TATA/TKS and AM (all gathering 80%) which could lead to big price pressure or exclusion from customers when growth will be in the down-cycle*'.[918]

(1207) Fifth, the Parties' internal documents – as illustrated for instance by Figure 181 and Figure 182 – show that the Parties were and are aware of […].

(1208) Figure 181 captions […].

(1209) Figure 182 captions […].

Figure 181 – […][919]

[…]

Figure 182 – […][920]

[…]

(1210) In sum, the Commission considers that there is ample evidence of a pervasive expectation in the market that the Transaction would likely result in significant price increases and reduce innovation for automotive HDG in the EEA.

b. The Parties' post-Transaction planning documents suggest likely […]

(1211) The Commission considers that the likelihood of negative effects on competition in automotive HDG in the EEA as expressed by almost all EEA customers – in particular significant price increases and a reduction of innovation – is confirmed by the Parties' post-Transaction planning documents, which the Parties produced to assess possible synergies resulting from the Transaction since they began to consider it around […].

(1212) First, the Parties' post-Transaction planning documents captioned in Figure 183 and Figure 184 consider the fact that the Transaction would […].

Figure 183 – […][921]

[…]

Figure 184 – […][922]

[…]

(1213) Second, the Tata synergy document presented in Figure 185 specifically modelled a […].

Figure 185 – […][923]

[…]

(1214) The internal document, captioned in Figure 186 further underlines […].[924]

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918 Reply to questions 112.1 and 113 of Q1 – Questionnaire to Competitors, DocID2166.
919 […].
920 […].
921 […].
922 […].
923 […].

Figure 186 – […][925]

[…]

(1215) Similarly, the ThyssenKrupp […].[926]

Figure 187 – […][927]

[…]

(1216) In their Response to the Letter of Facts, the Parties viewed this statement as '*sensible compliance advice to avoid possible gun-jumping risks, given that the Parties must continue to conduct themselves as separate entities before clearance*'. [928] Be that as it may, the Commission nevertheless considers that the statement reveals a clear understanding from ThyssenKrupp personnel that the Transaction could at least be perceived as potentially leading to detrimental price increases.

(1217) Third, the synergy document captioned in Figure 188 […].

Figure 188 – […][929]

[…]

(1218) Fourth, over the entire period during which the Transaction was considered, […] according to some estimates (Figure 190).

(1219) In practice, the optimal reallocation of production to generate synergies would likely involve […].

Figure 189 – […][930]

[…]

Figure 190 – […][931]

[…]

(1220) It appears that […], which evolved in time likely as the Parties refined their vision of the merged entity's future business focus and as market conditions changed. It also appears that […], as would make sense under compliance rules.

(1221) In any event, all of the likely […]. In that context, the synergy documents captioned in Figure 191 and Figure 192 make the explicit assumption that, […].

Figure 191 – […][932]

[…]

Figure 192 – […][933]

[…]

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924 […].
925 […].
926 […].
927 […].
928 Response to the Letter of Facts.
929 […].
930 […].
931 […].
932 […].
933 […].

(1222) In a context of already very tight supply of automotive HDG in the EEA and several customers having already been refused additional supply, it is likely that […]. It is also reasonable to assume that, in turn, […] with overall stable (but possibly slightly increasing) demand would result in significantly higher prices, which virtually all automotive customers expect to result from the Transaction.

(1223) Fifth, the Parties' internal documents on synergies show […].

Figure 193 – […][934]

[…]

(1224) Sixth, the Parties' synergy documents also evidence […].

Figure 194 – […][935]

[…]

(1225) The envisaged R&D synergies from the Parties appear to target specifically also R&D projects aimed at the automotive market, […] points to a likely decrease in innovation efforts post-Transaction, […].

Figure 195 – […][936]

[…]

(1226) Seventh, the synergy documents evidence a strong likelihood that the merged entity would significantly reduce capital expenditures post-Transaction, affecting capacities in the market but possibly also discontinuing improvements in capabilities which competed pre-Transaction to produce more advanced products, […].

Figure 196 – […][937]

[…]

(1227) In sum, the Parties' synergy planning documents confirm a strong likelihood that the Transaction would result (i) in production capacity reductions, likely affecting also automotive HDG, in a context of already tight supply, (ii) in the elimination of competing R&D efforts and (iii) at the very least in significant price increases in the EEA steel markets.

(1228) In their Response to the Statement of Objections, the Parties contested the Commission's interpretation of the JV rationale, in essence because: (i) the Commission's view would be based on a misinterpretation of preliminary versions of post-Transation planning documents; and (ii) the final business plan would on the […].[938]

(1229) On the first point, the Parties do not convincingly point to a single instance where the Commission would have presented an implausible reading of an internal document. Moreover, the Parties provide misleading representations of the Commission's conclusions. For instance, the Commission did not conclude that the Transaction would be likely to result in higher prices merely on the basis of an internal document evidencing the Transaction's impact on the concentration level, but on the combined reading of this document with another showing that more concentrated steel markets

934 […].
935 […].
936 […].
937 […].
938 Response to the SO, paragraph 3.220 and Annex 4.

generate higher margins, which the Commission reasonably assumes to come at least partly from higher prices.

(1230) More generally, the Parties appear to contest the Commission's conclusions because they would not be supported by a captioned internal document in isolation, whereas the conclusions are reached on the basis of the balance of the available evidence, and in particular several internal documents together. The Parties explicitly claimed that this approach would be inappropriate, notably when captions are taken from different documents. The Commission is of a different view, so long as the assumptions underlying each document and the Commission's conclusions drawn from them are not incompatible.

(1231) On the second point, the Parties' clarifications as to which synergy estimates are the latest and should be considered the most accurate do not undermine the Commission's conclusion with regard to the significance of certain planned synergies, for instance production network optimisation.

(1232) […].

(1233) Furthermore, […] confirms the Commission's assessment that the merged entity's share of wallet and corresponding market power would likely be too large for customers to accept. However, contrary to the Parties' claims that they could switch to alternative suppliers, the investigation confirmed switching possibilities to be limited.

(1234) The Parties also acknowledged that […], thereby confirming the Commission's conclusions that automotive HDG capacity and supply is tight in the EEA.

(1235) The Commission therefore does not consider the Parties' arguments and evidence in this respect to be persuasive or to undermine its conclusions.

c. Margins in automotive HDG are already high, likely reflecting some degree of market power for EEA automotive steel suppliers

(1236) First, as already described in Sections 7.5.4.12 and 9.4.3.7.b, the margins for automotive HDG are generally higher than those for HDG generally (sold to other customers). This is typically the case also when looking at specific products or product categories that are sold both to automotive customers and non-automotive customers.

(1237) It is likely that these higher margins reflect the existence of market power for the EEA suppliers of automotive HDG, at least more so than in comparison with customers in other end-use industries.

(1238) Second, the investigation shows that margins for certain types of products for which the Parties are particularly close competitors are significantly higher than for other automotive HDG products. This is for instance the case for products with a width greater than 1 850 mm, although sales volumes are much smaller than for less advanced products.

(1239) Third, as explained in Section 9.4.3.2c.iv, automotive customers require a broad mix of products in varying volumes to meet their full needs, and therefore need to significantly rely on steel suppliers able to provide the full range of relevant products.

(1240) Accordingly, it is likely that the large market power that certain EEA steel suppliers would have in specific segments of the EEA automotive HDG market – as reflected by very high margins – would also confer at least some degree of market power on the broader EEA automotive HDG market.

(1241) On the contrary, the Parties claimed in their Comments on the Article 6(1)(c) decision that customers would be able to defeat any attempted price increase in advanced high strength steel ('AHSS') products – where they acknowledge competition could be more limited – in view of the small volumes and value accounted for by these sales in comparison with the overall steel purchases of automotive customers.[939]

(1242) However, the Parties failed to provide any specific example of such leveraging by customers of their overall steel purchases to limit price increases for advanced products for which competition may be more limited, in particular in view of the limited spare capacity available in the market, especially among integrated EEA-based mills with automotive capability.

(1243) On balance, the Commission finds that the current level of margins in automotive HDG in the EEA suggests that steel suppliers in that market already today have a certain level of market power, which the Transaction would likely significantly enhance by increasing concentration.

d. Current prices appear increasingly disconnected from raw material prices and are similar between steel suppliers, which suggests that already pre-Transaction competition may not be functioning optimally in the EEA market for automotive HDG

(1244) During the investigation, market participants pointed out that, unlike in the past, prices for HDG in the EEA appear to no longer follow the evolution of the main raw material components into steelmaking (iron ore and coking coal). They suggest that this may be explained by the ongoing consolidation in the European steel industry, which is happening at a time where imports are subject to trade defence measures.

(1245) For instance, a customer indicated this increasing independence of automotive HDG prices in the EEA compared with raw material price evolutions by explaining that it *'noticed that since 2016, prices have significantly increased without being related to any raw material cost increase (iron ore and coking coal), whereas these used to be incorporated in price formulas in contracts: steel suppliers are price makers*'.[940]

(1246) Therefore, it is likely that already pre-Transaction competition in automotive HDG may not have been intense in the EEA.

(1247) For instance, several market participants explained that the past consolidation illustrated by […] captioned in Figure 197 has already significantly affected the competitiveness of the EEA market for automotive HDG: '*[t]hrough the consolidation in the EU market we expect less competition and as a consequence increasing prices*'.[941]

Figure 197 – […][942]

[…]

939 Comments on the Article 6(1)(c) decision.
940 Minutes of a call with a customer on 9.7.2018, DocID1874.
941 Reply to question 93 of Q3 – Questionnaire to customers (Automotive), DocID2168.
942 […].

(1248) It is likely that the further consolidation caused by the Transaction would only further decrease the level of competition.

(1249) In sum, the Commission considers that the Transaction is likely to have significant negative effects on competition in automotive HDG in the EEA.

9.4.4. Conclusion

(1250) Considering all evidence available to it, and in light of the considerations explained in this Section 9.4, the Commission considers that the Transaction would significantly impede effective competition in relation to the production and supply of automotive HDG in the EEA due to horizontal non-coordinated effects by eliminating an important competitive constraint.

9.5. Finished flat carbon steel: Metallic coated steel products for packaging – Horizontal non-coordinated effects

9.5.1. Introduction and Notifying Parties' views

(1251) ThyssenKrupp and Tata are both active in the production and supply of metallic coated steel for packaging, including TP, ECCS and laminated steel for packaging.

(1252) The market for metallic coated steel for packaging is characterised by large buyers, extensive homologation requirements and long-term (typically with a duration of a year) contracts.

(1253) The Parties submit that there is a significant amount of concentration of buyers in the market for metallic coated steel for packaging.[943] This is also the case for the Parties' customers, whereby for instance the two largest customers […] make up a significant amount of the Parties' sales of packaging steel in the EEA ([…] TP, […] ECCS).[944]

(1254) Customers typically homologate producers of metallic coated and laminated steel for packaging before accepting supplies from them.[945] Homologation typically takes six to twelve months.[946] The homologation can be quite extensive (involving several qualification steps) and not only involve the homologation of the product but also to the homologation of the plant or production line where it is produced.[947] A flat carbon steel manufacturer indicates that '*[a]ny change in the process route from upstream (different hot rolling mill for instance) until finishing (tin plate coating) has to be shared, validated by our customers.*'[948] Another flat carbon steel manufacturer concurs in that the whole production route affects the quality of the final products: '*The quality of any product is depending on quality of each step of the production*'.[949]

(1255) Customers in the markets for metallic coated steel for packaging typically source on long-term contracts.[950] […].[951]

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943 Form CO, paragraph 6.764.

944 Commission's calculation based on Form CO, tables 6.40 and 6.41. Please note that data provided for ThyssenKrupp relates to 2016 and for Tata Steel to 2017.

945 Replies to question 67 of Q4 – Questionnaire to Customers (Packaging), Doc ID2169.

946 Replies to question 67.2 of Q4 – Questionnaire to Customers (Packaging), DocID2169.

947 Replies to question 67.1 of Q4 – Questionnaire to Customers (Packaging), DocID2169.

948 Reply to question 41 of Q1 – Questionnaire to Competitors, DocID2166.

949 Reply to question 71.1 of Q1 – Questionnaire to Competitors, DocID2166.

950 Replies to question 49 of Q4 – Questionnaire to Customers (Packaging), DocID2169.

951 Form CO, tables 6.69 and 6.70.

(1256) TP represents the bulk of the Parties' EEA sales of metallic coated steel for packaging ([…]), followed by ECCS ([…]). The Parties' EEA sales of laminated steel for packaging are more limited ([…]).

(1257) The Notifying Parties submit that despite their higher combined market shares, the Transaction does not raise competition concerns related to horizontal overlaps in packaging steel. In particular, they submit that (i) their product portfolios are complementary in that Tata is de facto not active in steel for beverage packaging while ThyssenKrupp is; (ii) the Parties are not geographically close to each other (ArcelorMittal being, ostensibly, closer to the Parties); (iii) vertical integration is not a requirement to be a competitor in packaging steel; (iv) customers multi-source and have several producers readily homologated; (v) customers have significant buyer power; (vi) all EEA producers export significant volumes of packaging steel and have significant spare capacity and (vii) packaging steel faces strong competition from other packaging materials.

(1258) As regards laminated steel for packaging, the Notifying Parties submit that (i) there are also non-EEA suppliers present with this product in the relevant market, and (ii) that the Parties have a different focus in that […].

(1259) The Commission investigated these elements. The results of the market investigation however indicate that the Transaction is likely to raise competition concerns as set out below.

9.5.2. Market structure and market shares

(1260) Prior the Transaction, ThyssenKrupp is the second largest producer and supplier of TP and ECCS in the EEA, followed by Tata as the third largest for both TP and ECCS. Tata Steel and ThyssenKrupp are the only EEA suppliers of laminated steel.

9.5.2.1. Tin plate

(1261) As shown in Table 8, the merger would significantly increase the concentration in the already concentrated market and create a market leader for TP, with a sales market share of [40-50]%. ArcelorMittal would follow with a market share of [30-40]%. Post-merger, the two largest players in the market would control more than [70-80]% of sales shares. The only other EEA producer is US Steel Kosice that would have a market share of [10-20]%.

(1262) The significance of the increase in concentration is best represented by the HHI, which would amount to [3000-3500] post-merger, with an increment of [850-950].

(1263) As regards capacity, as shown in Table 10, the merged entity would reach a combined capacity share of [60-70]% in the EEA. The HHI increment in terms of capacity shares, brought by the Transaction would be [1850 – 1950].

(1264) Moreover, despite working at a relatively high utilization rate, in TP the combined entity would also control more than 70% of the spare capacity, as shown in Table 10. In their reply to the SO, the Notifying Parties claim that the Commission's assessment of the spare capacity in packaging steel is not accurate because the Commission's assessment would fail to take into account the system bottlenecks. Taking into account the Notifying Parties's proposed correction, it is claimed that the merged entity's spare capacity share would drop significantly and ArcelorMittal's spare capacity share would increase. The Commission considers that this claim is immaterial to the competitive assessment. Indeed, adopting the Notifying Parties'

proposed correction, there would be even less spare capacity in the market and such available spare capacity would be only in the hand of ArcelorMittal[952] the current market leader. As explained further below (Section 9.5.4) this spare capacity is not material and not likely to constraint the merged entity post merger. [953]

(1265) Therefore, the Transaction is likely to significantly impede effective competition in relation to the production and supply of TP in the EEA, because it would create a dominant position of the JV, in particular based on its large capacity share (above 60%, see also recitals (474) – (481) for the relevance of capacity shares).[954] In addition, the JV would also have a significant sales share (above 40%), and there would only be one sizable competitor remaining in an already concentrated market, which is characterised by high barriers to entry, limited switching possibilities and no countervailing buyer power as explained in Sections 9.5.3 – 9.5.9 below.

(1266) In any event, the Transaction is likely to significantly impede effective competition in relation to the production and supply of TP in the EEA, because it would remove an important competitive constraint. This conclusion is also based on the high market shares of the merged entity and its resulting market power, the elements set out in Sections 9.5.3 – 9.5.9, as well as the facts that the Parties are close competitors and that the market investigation revealed significant concerns by customers that the Transaction would likely have negative effects on prices and innovation, as set out in Sections 9.5.11-9.5.12 below.

9.5.2.2. ECCS

(1267) In ECCS, the merged entity would have a combined sales share of [30-40]% with ArcelorMittal owing a share of [40-50]%. No other EEA producers is active in ECCS beyond these two entities, which would together control more than 80% of the sales, with imports accounting for the rest. The Transaction would thus be a three-to-two merger in ECCS.

(1268) The significance of the increase in concentration as represented by the HHI would be [3500-4000] with an increment of [450-550].

(1269) In terms of capacity, the merged entity would reach a combined capacity share of [40-50]%. The HHI increment in capacities brought by the Transaction would be [1050 – 1150].

(1270) In ECCS, the share of spare capacity in the hands of the merged entity would be [30-40]%, as shown in Table 10.

(1271) Therefore, the Transaction is likely to significantly impede effective competition in relation to the production and supply of ECCS in the EEA because the JV would have substantial sales and capacity shares, and (i) as set out in Sections 9.5.3 - 9.5.9 below, there would only be one sizable competitor remaining in an already concentrated market, which is characterised by high barriers to entry, limited

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952 The data submitted by the Notifying Parties in the Form CO (Annex 20A, 21A) indicate that the only other EEA competitor in TP beyond ArcelorMittal, namely USSK, has no spare capacity in TP.

953 These same arguments would also apply for ECCS.

954 In this respect, the Commission notes that a large market share above 50% allows a presumption of dominance: see for instance judgments of 1 December 2013, Cisco Systems and Messagenet v Commission, T 79/12, EU:T:2013:635, paragraph 65, and of 9 July 2007, Sun Chemical Group and Others v Commission, T-282/06, ECR, EU:T:2007:203, paragraph 135, of 13 February 1979, Hoffmann-La Roche v Commission, 85/76, EU:C:1979:36, paragraph 41 and of 3 July 1991, AKZO v Commission, 62/86, EU:C:1991:286, paragraph 60.

switching possibilities and no countervailing buyer power, (ii) as explained in Sections 9.5.11 – 9.5.12 below, the market investigation revealed significant concerns by customers that the Transaction would likely have negative effects on prices and innovation.

9.5.2.3. Laminated steel for packaging

(1272) The Parties are the only EEA producers of laminated steel for packaging. Further, the market investigation has not revealed any material volumes supplied by non-EEA producers (see recital (1387)). The merger would thus likely result in a monopoly in the EEA for laminated steel for packaging.

(1273) No information putting into question the finding in the preceding paragraph has been brought to the Commission's attention, whether by the Parties or third parties. The total of the Parties' sales, assumed to constitute the total market size, amount to […].[955] To the best of the Commission's knowledge, and also as submitted by the Parties, there are no information sources available that would indicate the market size and thus market shares in laminated steel for packaging.

(1274) Therefore, the Transaction is likely to significantly impede effective competition in relation to the production and supply of laminated steel for packaging in the EEA, because it would create a dominant position of the JV, in particular based on its large sales and capacity shares.[956] The JV would in fact hold a monopoly in this market, which is characterised by high barriers to enetry, limited switching possibilities and no countervailing buyer power as explained in Sections 9.5.3 – 9.5.9 below.

(1275) In any event, the Transaction is likely to significantly impede effective competition in relation to the production and supply of laminated steel for packaging in the EEA, because it would remove an important competitive constraint. This conclusion is also based on the high market shares of the merged entity and its resulting market power, the elements set out in Sections 9.5.3 – 9.5.9, as well as the fact that the Parties are close competitors and that the market investigation revealed significant concerns by customers that the Transaction would likely have negative effects on prices and innovation, as set out in Sections 9.5.11-9.5.12 below.

9.5.2.4. Segmentation by end-application: beverage and non-beverage

(1276) The above conclusion would not be affected by a possible further segmentation by end-application: beverage and non-beverage. Considering the potential split between beverage and non-beverage, the Commission observes that, according to information provided by the Notifying Parties, they would reach a combined sales market share of [60-70]% in beverage TP (Tata: [10-20]%; ThyssenKrupp: [50-60]%) and [40-50]% in non-beverage (Tata: [10-20]%; ThyssenKrupp [20-30]%) in sales volume in 2017.[957] The respective HHI increments would be [1250-1350] for beverage and [750-850] for non-beverage. This shows that, given the small volume

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955 Form CO annex 98 and table 19.1 of the response to RFI 28.

956 In this respect, the Commission notes that a large market share above 50% allows a presumption of dominance: see for instance judgments of 1 December 2013, Cisco Systems and Messagenet v Commission, T 79/12, EU:T:2013:635, paragraph 65, and of 9 July 2007, Sun Chemical Group and Others v Commission, T-282/06, ECR, EU:T:2007:203, paragraph 135, of 13 February 1979, Hoffmann-La Roche v Commission, 85/76, EU:C:1979:36, paragraph 41 and of 3 July 1991, AKZO v Commission, 62/86, EU:C:1991:286, paragraph 60.

957 Annex 67 to Form CO, Table 2.

of beverage TP compared to TP overall,[958] the merged entity's position in the TP market without the beverage segment ([40-50]%) would be very similar to that in the overall TP market (beverage plus non-beverage) ([40-50]%).[959] Therefore, the above considerations made concerning the overall TP market would equally apply.

(1277) Considering the beverage segment in particular, the Commission further notes that out of the TP producers, only the Notifying Parties and ArcelorMittal are active in beverage applications. The Transaction would thus be a three-to-two merger in beverage TP were it considered as a distinct relevant market, and the JV would have a market share of [60-70]%.

(1278) There are no material sales of ECCS and laminated steel for beverage packaging and, hence, such segmentation is not meaningful for these products.

9.5.3. Customers only have limited possibilities to switch suppliers within the EEA

(1279) For the reasons set out in this section, the Commission finds that, post Transaction, the merged entity would not face significant constraints from other EEA suppliers, as customers would only have ArcelorMittal as a credible switching option for TP and ECCS, and no alternative switching option for laminated steel.

9.5.3.1. TP

(1280) The only producers of TP in the EEA are the Parties, ArcelorMittal and US Steel Kosice ('USSK'). The results of the market investigation show that only ArcelorMittal could be a viable option for a number of customers if they wished to switch away from the Parties.

a. USSK

(1281) The results of the investigation show that USSK is not a viable option for customers to turn to. While USSK produces TP, customers see limitations in its product portfolio and geographic location. It also seems to be capacity constrained.

(1282) First, customers find it important that a TP supplier has a certain quality and a large product portfolio to cater for the customer's needs.[960] As also mentioned in recital (1307), there are in fact a multitude of product specifications and applications under the overall denominators 'TP' and 'ECCS'. Customers prefer to have suppliers that can provide them with the entire spectrum of specifications for their needs. This not only allows them to optimise their supply chain, it also reinforces their negotiation position. Even when shifting away smaller volumes to other suppliers (EEA or non-EEA), customers still remain dependent on the few European suppliers that can offer them the entirety of their needs.While the Parties submit in the Reply to the SO that their two largest customers consider USSK as a supplier that competes on equal footing, these customers considered in the market investigation that USSK is not comparable with the Parties with regard to their requirements in terms of

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958 As also noted in Section 9.4.9, non-beverage constitutes by far the majority of the overall TP production and supply in the EEA. Based on figures provided by the Notifying Parties, the total volume of beverage TP supplied in the EEA was […] in 2017 while the total volume of TP supplied was […]. Beverage TP thus constituted [5-10]% of the total TP volume, making non-beverage account for [90-100]%.

959 The Parties stated that producers may supply beverage or non-beverage customers from the same production lines (Form CO paragraph 6.287), which means that capacity shares of TP overall would be identical to those of TP non-beverage.

960 Replies to question 35 of Q4 – Questionnaire to Customers (Packaging), DocID2169.

quality and product portfolio.[961] One of these customers explain that '*[t]he only third player, USSK, […] cannot produce all material and specifications*'[962] '*USSK only produces ETP and can only supply certain grades of product, and have width limitations, […].'*[963]'. Similarly, another customer submits that '*[i]n the past the company also sourced from US Steel Kosice and US Steel Serbia (now Hesteel Serbia) but not anymore because of price, costs, specifications (i.e. no TFF and ICCF grades), quality and portfolio reasons.*'.[964] As regards food applications, only minority of responding customers indicated that USSK can offer the qualities that are necessary for food applications, while a majority indicated that it can offer only some (emphasis added).[965]

(1283) While the Parties submitted that USSK would be capable of expanding its product portfolio by relying on the expertise of its parent entity, US Steel, it nonetheless appears that there have been attempts by US Steel to divest its European business.[966] Therefore, the Commission expresses moderate doubts that US Steel will instead invest in expanding the capabilities of USSK.

(1284) With regard to product portfolios, the Commisison further observes that there are a multitude of product specifications and applications under the denominators 'TP' and 'ECCS'. Customers prefer to have suppliers that can provide them with the entire spectrum of specifications for their needs. This not only allows them to optimise their supply chain, it also reinforces their negotiation position. When for instance shifting away smaller volumes to other suppliers (EEA or non-EEA), customer remain dependent on the few European suppliers that can offer them the entirety of their needs. Some customers explain (underlining added): '*It is very important to have a broad portfolio because it allow to swap specifications between vendors when necessary, supply chain is only optimized with large amount of volumes, allows for leveraging of technical and other resources.*', '*Price negotiations are linked to volume (higher volume drives better prices). Our packaging portfolio is diverse meaning that we need suppliers having broad portfolio to be able to supply large volumes to us and therefore offer competitive prices.*', '*Becouse [sic] there are many different specs /qualities required for the different packages , and I have the possibility to have competitive prices only if I buy important volumes. If I buy poor quality from China and go to the 2 big EU suppliers (AM, TATA+Thyssen) for a high quality material in small volumes, I'll get very high prices.'*[967]

(1285) Second, in addition to the limitations in the company's capabilities, the location of USSK in Eastern Slovakia is not logistically optimal for serving all customers in the EEA. A customer explains: *USSK is more of a regional player, and its plant is located in the very east of Slovakia. […].*'[968]

(1286) Third, USSK seems to be capacity constrained. As indicated in Table 8, USSK produced […]kt of TP in 2017. This would mean that it is operating close to full

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961 The Comission sees no reason why a customer's feedback to the Parties would be given more weight than the same customer's feedback to the Commission.

962 Minutes of a call with a customer on 4.6.2018, DocID693.

963 Minutes of a call with a customer on 6.6.2018, DocID549.

964 Minutes of a call with a customer on 5.6.2018, DocID2009.

965 Replies to question 13 of Q13 – Questionnaire to Customers (Packaging), Doc ID2954.

966 MetalBulletin, 'US Steel confirms expressions of interest in Slovakian flat steel subsidiary, China's Hesteel in running (27.9.2017), DocID4368.

967 Replies to question 37 of Q13 – Questionnaire to Customers (Packaging), DocID2954.

968 Minutes of a call with a customer on 6.6.2018, DocID549.

capacity utilization, as its nominal operating capacity as estimated by the Parties amounts to […]kt.[969] This indicates that even if USSK were to improve its product portfolio, it would have limited scope to expand its sales and therefore to exert a competitive constraint on the merged entity.

b. ArcelorMittal

(1287) The results of the market investigation do not call into question the ability of ArcelorMittal to supply a wide range of TP products and to be able to serve customers in the EEA.

(1288) Nonetheless, ArcelorMittal being the only other major player in TP, the Commission considers it unlikely that ArcelorMittal would constraint the merged entity and would counter possible price increases by the Parties. The Commission notes that ArcelorMittal already has a large share of sales and it will unlikely have the ability and incentive to expand its volumes. In terms of ability, customers already exposed at ArcelorMittal may not want to give further volume to this player as to avoid to rely too much on this supplier. At the same time ArcelorMittal might not have the incentive to grow volume by lowering prices or by defeating a price increase because if it were to lower prices it would probably have to translate the same pricing to the entirety of its TP sales, at least in Europe. This latter option would be less attractive to ArcelorMittal than the alternative strategy of following possible price increases by the combined entity.

(1289) Furthermore, upon the results of its market reconstruction, the Commission does not deem ArcelorMittal's spare capacity of TP to be sufficient to offset potential price increases brough about by the transaction, even when including its Ilva assets.[970] As indicated in Table 10 the total spare capacity of the other market participants (which is mostly accounted for by ArcelorMittal) would amount to only […]kt when the Notifying Parties's EEA sales amounted to […] in 2017.

c. ArcelorMittal's divestment

(1290) The Parties indicate that ArcelorMittal is divesting its packaging lines in Tilleur. The Parties assert that the business being divested contain also non-operational production lines that could be reactivated and as such would bring additional capacity to the market. This assertion does not reconcile with ArcelorMittal's submission, where it has confirmed to the Commission that the divestment contains only 1 TP production line as regards packaging steel.[971] This is also in line with the Parties internal assessment of the Tilleur facility, as illustrated in Figure 28.

Figure 28 – […][972]

[…]

(1291) In addition, the Parties in their internal documents also indicate that […]. As illustrated for instance in Figure 29, […].

Figure 29 – […][973]

[…]

969 Annex 20A to the Form CO.
970 Annex 4 to Q11 – Questionnaire to Competitors, Doc ID2736.
971 Competitor's reply to the Commission's RFI of 4 March 2019, Doc ID4383.
972 […].
973 […].

(1292) This is also corroborated by customers: '*Available volume: Very limited total production volume in 2019 of 130kt (equivalent to 3.5% of EU demand and 3% of EU production). ; Potential full capacity up to 200kt requiring special investments and 2-3 years lead-time.*'[974]

(1293) In addition, customers have indicated that the production portfolio of this divested business is for the production and supply of TP not competitive with those of the Parties and other ArcelorMittal assets. While one customer notes that this business can provide good quality products, it does not consider the product portfolio for metallic coated steel for packaging to be competitive: '*Product portfolio: LDSI is not competitive versus Tata, TKS or AM.; One single CA line, no ECCS (TFS), no tab stock, no BA, limited range of temper.; Steel service center, 3 cutting lines.*'[975]. Another customer remarks '*Furthermore, the LDSI assets are also not a credible competitive alternative to Tata and ThyssenKrupp in light of the limited available production capacity of these assets, their limited product portfolio and the lower quality of the TP produced. Finally, it is [Company name]'s view that Liberty House does not have the same knowhow, R&D capabilities and experience to either produce the required high quality HR or TP as ArcelorMittal which ultimately means that the TP products produced by the LDSI assets will, for that reason also, be less efficient and of a lower quality in comparison with those produced by the merging parties.*'[976]

9.5.3.2. ECCS

(1294) Following the Transaction, the only remaining EEA suppliers of ECCS would be the JV and ArcelorMittal. USSK is not active in this market. Nonetheless, the Commission considers that it is unlikely that ArcelorMittal would be a viable option for customers to turn to as a supplier if they wanted to avoid price increases by the merged entity.

(1295) First, even if accounting for imports, the JV and ArcelorMittal would together amount to [80-90]% for ECCS and the oligopolistic market structure would likely to be further strengthened as a result of the Transaction. Given that ArcelorMittal would post-Transaction remain the market leader, its incentives to engage in price competition would likely be limited even further – as it would be the one to lose most in such a scenario. In contrast, ArcelorMittal would likely gain most from a price increase by the JV.

(1296) It is therefore questionable to what extent ArcelorMittal as a large player would itself have incentives to compete for share rather than benefit from a post-transaction price increase.

(1297) Second, it seems that ThyssenKrupp in the ordinary course of business considered that […][977].[978] The Parties subsequently submit that this was due to […].

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974 Reply to the Commission's RFI of 4 March, Doc ID4442.

975 Reply to the Commission's RFI of 4 March, Doc ID4442.

976 Reply to the Commission's RFI of 4 March, Doc ID4533.

977 In German: […].

978 Also observed in for instance E06191-E0004-00596733.pptx, DocID2965-14072, slide 6 and E06191-E0002-00136011.pdf, DocID2662-3860, slide 18 and E06191-E0004-00403884.pptx, DocID2662-86852, slide 4.

Figure 198 – […][979]

[…]

Source: Parties' internal document

9.5.3.3. Laminated steel for packaging

(1298) The parties are the only EEA players active in the production and supply of laminated steel for packaging. There would thus be no alternative EEA suppliers for customers to turn to post-merger.

9.5.3.4. Metallic coated steel for packaging applications in general

(1299) On top of the limitations as to available sources to switch to, it appears that customers consider that the switching as such would not be easy.[980] They indicate that homologation would be required,[981] which in many cases can take from six to twelve months.[982] While the Notifying Parties submit that this in practice can be sped up to 2–3 months, the market investigation indicates that this timeframe is not different when considering the shortest time feasible for customers to homologate.[983]

(1300) While it appears that customers can multi-source and have several producers readily homologated, the number of alternative suppliers is evidently limited in the EEA (as set out in the current section 9.5.3) and outside the EEA (as set out in Section 9.5.4).

(1301) Finally, the Commission observes that the Notifying Parties themselves appear to internally consider that there are only […] real players in the markets for metallic coated steel for packaging. For instance, Figure 199 shows an internal document of Tata Steel, indicating that the European market for packaging steel is dominated by […]. Other players are quoted to be […].

Figure 199 – […]

[…]

Source : Tata Steel internal document[984]

(1302) Therefore, the Commission considers that there are limited or no switching possibilities for customers to resort to within the EEA as regards TP, ECCS and laminated steel for packaging.

9.5.4. Imports are unlikely to adequately constrain the merged entity

(1303) The Commission notes that there are some imports of TP and ECCS into the EEA. As shown in Table 8, imports had a 16% market share in TP and 18% market share in ECCS in the EEA in 2017. The Commission notes that this includes all various importers, and any singular non-EEA supplier is bound to be smaller.

(1304) In the market investigation, customers expressed numerous reservations as to the suitability of imports to meet their requirements. In particular, it appears that customers only consider imports suitable for some low-end applications, and even there the role of imports is limited due to factors such as security of supply and lead times.

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979 […].

980 Replies to question 66 of Q4 – Questionnaire to Customers (Packaging), DocID2169.

981 Replies to question 66.1 of Q4 – Questionnaire to Customers (Packaging), DocID2169.

982 Replies to question 67.2 of Q4 – Questionnaire to Customers (Packaging), DocID2169.

983 Replies to question 30 of Q13 – Questionnaire to Customers Phase II (Packaging), DocID2954

984 […].

(1305) Overall, the majority of customers taking a position mentioned in the market investigation that the competitive pressure exerted by imports is limited for TP and ECCS alike.[985] Most respondents regard imports as presenting differences from EEA-based suppliers in terms of capabilities to meet their needs.[986] While half of customers responding to the Commission's questionnaire indicate that transport costs determine the effective area where customers can viably purchase significant quantities of packaging steel,[987] customers indicated that other factors play a decisive role in their decision not to source from non-EEA suppliers such as lead times, payment terms, service levels, delivery distance, delivery costs, conformity to European standards and technical support.[988]

9.5.4.1. Lead times significantly restrict sourcing from imports

(1306) The Notifying Parties submit that the impact of non-EEA steel producers' longer lead times is limited due to lengthy contract durations and high predictability of sales in the packaging market. This does not reconcile with responses from customers to the Commission's market investigation, who consider that these lead times play a decisive role for not sourcing from non-EEA suppliers.[989]

(1307) First, it appears that for food packaging, which represents the largest packaging application of the Parties' TP sales and ECCS sales, demand requirements are not predictable on the level of individual product specifications. These product specifications are numerous and dependent on the content being filled, which in itself is subject to crop seasonality. A major customer explains: '*[…]. While overall demand for packaging is more or less predictable, demand for different types of steel specifications (thickness, strength, coating, elongation) is very versatile and can only be determined at short notice. The reason is that different end products (e.g. corn or tomatoes) require a different specification and in turn several products are subject to crop seasonality (in other words the production is harvest related). In addition, every region might have individual packaging steel products specifications. Therefore, customers are able to place their orders only at a very late stage when they are in the position to assess their need of the different specifications. This limits the recourse to imports as a reliable and competitive supply option. Further, stocking is not viable as the demand specification of the final products can change.*'[990] Another major customer concurs: '*While the demand for some food cans is stable (for instance […] cans and pet food), there are several food products dependent on seasonal climatic conditions. The tomato production in the Southern Europe was for instance off by 30% this year.*'[991]

(1308) Another customer explains: '*[…] is compelled to make monthly adjustments on the basis of customer demand. Indeed, demand can vary, especially for the packaging of*

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985 Replies to question 64 of Q4 – Questionnaire to Customers (Packaging), DocID2169

986 Replies to question 63 of Q4 – Questionnaire to Customers (Packaging), DocID2169

987 Replies to question 8 of Q13 – Questionnaire to Customers Phase II (Packaging), DocID2954

988 Replies to questions 25.1 and 63.1 of Q4 – Questionnaire to Customers (Packaging), DocID2169

989 Replies to questions 25 and of 35 Q4 – Questionnaire to Customers (Packaging), DocID2169; and replies to question 26 of Q13 – Questionnaire to Customers Phase II (Packaging), DocID2954. In the latter, responses were invited in an open format (non multiple-choice). On the Commission's reading, 5 confirmed lead time restrictions in regard to demand volatility (and lack of predictability) while 2 were negative on this matter. Other responses were either inconclusive or while confirming lead times to be a factor restricting ability to source from non-EEA suppliers did not specify whether this would be due to this particular volatility in demand.

990 Minutes of a meeting with a customer on 17.10.2018, DocID2298.

991 Minutes of a meeting with a customer on 6.12.2018, DocID3706.

those products heavily exposed to the effects of the weather, such as vegetables and fruits. This is also one of the reasons for [name of the customer]'s decision to source only from EEA suppliers'.[992] Other customers concur: '*We have a high number of different specs and we don't get a long-term forecast from our customers, only short-term purchase orders. Therefore it is a risk of availability of the right specs in time and we are expecting a negative influence for our Cash flow … We need flexible suppliers which hold material on their own stock. If we need the material we place "call offs" and we get the material within 1-2 days or within one week. If we place orders at non-EEA suppliers you have to place fixed orders with a very long lead time approx. 6-8 weeks longer than the EEA suppliers … Leadtime for sourcing from non-EEA suppliers is 14 to 16 weeks for TP which is a lot longer than for EEA suppliers. Limiting factors which make non EEA supplier less viable are longer lead-times. Forecasting is quite difficult in our market which leads to the need of higher stocks to reduce the risk of running out of material. The shorter lead time of EEA suppliers makes them more flexible to react to our changing forecasts.*'[993]

(1309) This volatility appears to be characteristic to a larger fraction of customers' sourcing: '*we estimate that a large part of our food business (foodcans, fishcans and caps) are subject to volatility (weather conditions, fish catches...) […] Variations of volume between +/-30% of initial forecasts. Paint sales were down -10% in 2018 partly due to poor weather conditions in France, Spain and Portugal until may 2018*'[994], '*It applies for a large fraction of the company consumption*'[995], '*High volatility due to crop / weather / filling goods availability is prevalent in the case of vegetables, tomatoes, fish and export.*'[996]

(1310) Second, the importance of lead times is further corroborated by the Parties' internal documents used in the ordinary course of business. An example is shown in Figure 200 below where […].

Figure 200 – […]

[…]

Source: internal document[997]

(1311) Third, results of the market investigation show that customers' requirements as regarding lead times cannot be addressed by resorting to warehousing to stock imported steel. Not only would warehousing entail higher working capital requirements, it also would create the risk for stock obsolescence given the unpredictable nature of demand described above.[998]

9.5.4.2. Imports are not able to offer the qualities that customers require

(1312) Customers indicated in the market investigation that non-EEA players are not able offer the qualities that they require for several applications, including three piece can bodies, closures and easy open ends.

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992 Minutes of a call with a customer on 1.6.2018, DocID664.

993 Replies to question 26 of Q13 – Questionnaire to Customers Phase II (Packaging), DocID2954.

994 Customer's reply to the Commission's RFI of 4 March 2019, Doc ID4438.

995 Customer's reply to the Commission's RFI of 4 March 2019, Doc ID4339.

996 Customer's reply to the Commission's RFI of 8 March 2019, Doc ID4474.

997 […].

998 Replies to question 27 of Q13 – Questionnaire Customers (packaging). See also minutes of a meeting with a customer on 17.10.2018, DocID2298.

(1313) A major customer explains: '*The reason behind the choice of sourcing mainly from EEA-established suppliers is, first of all, steel quality standard. […] The majority of imported material is used in general line [applications other than beverage and food].'*[999] Another major customer concurs with: *'Non-EEA suppliers can generally not meet the required specifications for high-grade products. They are therefore mostly used for commodity grades […]. Two exceptions, who can produce high-grade material, are suppliers from Japan and South-Korea. Those Japanese suppliers are however not present in Europe (apart from laminated steel, to a certain extent). […]. None of the importers into the EEA supply large enough volumes, or a diverse enough product range, to exercise a competitive constraint over the three existing EEA-based players (i.e. ArcelorMittal and the merging parties).*'[1000] *'Only […] players in Asia would have available spare capacity, but due to quality differences are not able to fulfil [Company name]'s needs.'*[1001]

(1314) Furthermore, this difference in quality seems to extend beyond the finished packaging steel product (TP, ECCS, laminated) at least onto the upstream HR substrate. In an internal e-mail correspondence of […]:

(1315) […].[1002]

(1316) This has to be seen in light of (i) the quality of a product already being defined in the upstream substrate (meaning that poor quality of HR leads to poor quality of TP/ECCS/laminated steel for packaging),[1003] and (ii) that Chinese imports account for the largest share of imports (meaning that this dynamic is therefore representing a large fraction of what is typically denoted under 'imports'):

Table 23 – Imports by origin[1004]

	TP				ECCS			
Origin	2016	%	2017	%	2016	%	2017	%
China, P. Republic	341.970	56%	260.030	52%	72.833	54%	52.087	53%
Other	63.035	10%	50.583	10%	6.469	5%	9.773	10%
South Korea	67.739	11%	25.027	5%	17.893	13%	4.422	4%
Taiwan	51.594	8%	31.161	6%	7.539	6%	10.025	10%
Serbia	60.104	10%	93.346	19%	-	0%	-	0%
India	27.348	4%	39.722	8%	-	0%	-	0%
Brazil	-	0%	-	0%	18.599	14%	18.674	19%
Japan	-	0%	-	0%	12.384	9%	4.123	4%
TOTAL	611.789	100%	499.869	100%	135.717	100%	99.104	100%

9.5.4.3. ThyssenKrupp internal documents depict competition from imports as weak

(1317) The Commission observes that ThyssenKrupp depicts competition by imports as weak in its internal documents. For instance, […].

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999 Minutes of a call with a customer on 4.6.2018, DocID693-

1000 Minutes of a call with a customer on 6.6.2018, DocID549.

1001 Minutes of a meeting with a customer on 7.12.2018, DocID3706.

1002 […].

1003 See for instance, Reply to question 47 of Q4 – Questionnaire to Customers (Packaging): '*the quality of the products produced by steelmakers will depend on the quality of their upstream supplies of HR and CR*', Doc ID2169.

1004 Parties' reply to RFI 28, Annex 1.

Figure 201 – […][1005]

[…]

9.5.4.4. Imports do not provide the required security of supply

(1318) The results of the market investigation show that customers consider that imports do not provide the adequate security of supply and that sourcing from EEA suppliers has become even more important due to trade defence measures.

(1319) First, customers indicate that non-EEA suppliers are not willing to commit to long-term supply agreements.[1006] This is of considerable significance for customers who buy mostly or only under long-term supply agreements,[1007] and need to perform extensive homologation before being able to source from a supplier (see recital (1299)).

(1320) Second, the vast majority of customers has indicated in the market investigation that the recently adopted trade defence measures have made it more important to source from EEA suppliers in terms of security of supply.[1008] A customer explains: '*Importers have recently become less and less enthusiastic, as they consider themselves at risk for trade defence investigations and tariffs if their volumes increase.*'[1009] Another customer: '*For a general line products we have made several spot business at a good Price, but as non-EEA suppliers are not able to sign a supply agreement valid for a year or a semester, at the end you need to be in the hands of EEA producers for stable business in a significant porcentaje [sic]*'.[1010]

(1321) Third, a large majority of customers indicate that there are additional transport risks when sourcing from non-EEA suppliers compared to EEA suppliers.[1011] A major customer of the Parties for instance quotes risks of force majeure, accidents during transhipments and loading/unloading operations, risks of material damage or corrosion due to long transit times, risks of port strikes, customs clearance. Another customer quotes: '*transport risks are very important. if we don't receive the material because of transport issues (maritim, port strikes,...) then we have to stop our factories.*'.[1012]

9.5.4.5. Conclusion

(1322) For the reasons set out in this section 9.5.4, it is considered that imports only exert a limited competitive pressure in metallic coated steel for packaging in the EEA and are not an adequate alternative for the Parties' customers to resort to with a view of constraining the merged entity post-Transaction.

9.5.5. Unlikely entry or expansion of suppliers

9.5.5.1. Substantial barriers to entry and expansion exist

(1323) Based on the information available to it, the Commission considers that expansion or the entry of new suppliers into the markets for metallic coated and laminated steel for packaging is unlikely.

1005 […].
1006 Replies to question 24 of Q13 – Questionnaire to Customers Phase II (Packaging), DocID2954
1007 Replies to question 49 of Q4 – Questionnaire to Customers (Packaging), DocID2169
1008 Replies to question 27 of Q4 – Questionnaire to Customers (Packaging), DocID2169.
1009 Minutes of a call with a customer on 4.6.2018, DocID693.
1010 Replies to question 33 of Q13 – Questionnaire to Customers Phase II (Packaging), DocID2954.
1011 Replies to question 28 of Q13 – Questionnaire to Customers Phase II (Packaging), DocID2954
1012 Replies to question 28.1 of Q13 – Questionnaire to Customers Phase II (Packaging), DocID2954

(1324) First, the results of the market investigation suggest that for an entry into metallic coated steel for packaging to be successful, a new supplier would have to be integrated into the upstream production of HR and semi-finished products. Customers indicated that it is essential for their suppliers to have precise control over the production process throughout the value chain, including crude steelmaking, secondary steelmaking, rolling and coating.[1013] They point out that non–integrated steelmakers (re-rollers) are not able to offer the same product range and product quality as integrated steelmakers.[1014] Furthermore, for a large majority of customers, non–integrated steelmakers cannot fulfil their needs equally as integrated steelmakers.[1015] The Commission does not consider it likely that an entrant would start upstream production facilities such as blast furnaces, as this would entail significant investments, and recalls that the last blast furnace in Europe was built in 2000.[1016]

(1325) A customer explains the need for integration: '*[…] the integrated nature of the supply chain leads to a higher degree of quality and reliability which is critical for customers and represents a key advantage that cannot be replicated by the non-integrated steel producers.*'[1017] Another customer clarifies further: *'To the best of [Customer name]'s understanding, all non-EEA based re-rollers are part of a larger corporate structure through which they source the upstream HR and CR. In any event, [Customer name] cannot rely on these producers for its requirements (in terms of quality, volume and supply reliability) and therefore [Customer name] does not consider the re-rollers to constitute a competitive constraint on the EEA suppliers.*'[1018] A third customer concurs: '*Competitive tinplate producers needs to be in control of their supply chain, and not dependent on other company (and competitor) for the substrate.*'[1019] Further, '*It is important in term [sic] of quality, the development of new Steel grades, lead times and cost.*'[1020]

(1326) In addition, also flat carbon steel manufacturers who have upstream steelmaking capacity indicate that downstream investments are not sufficient for them to enter the market of metallic coated steel for packaging.[1021] In that regard, a large non-integrated competitor in flat carbon steel that is today not active in the production and supply of metallic coated steel for packaging, noted that, whilst lacking the necessary finishing lines, its cold-rolling production facilities are not suitable to handle packaging steel. This competitor further mentions that, the substrate for this product is not easily available on the market.[1022]

(1327) Another competitor notes: '*We have no intention to enter this market as already divided bij AM/Tata/TKS and it would need a complete overhaul of our installations + additional investments in tinning etc*'.[1023]

1013 Response to question 35 of Q4 – Questionnaire to Customers (Packaging), DocID2169.
1014 Replies to questions 46 and 47 of Q4 – Questionnaire to Customers (Packaging), DocID2169.
1015 Replies to questions 48 of Q4 – Questionnaire to Customers (Packaging), DocID2169.
1016 Annex 2 to the Parties' response to RFI 1 (tranche 1).
1017 Replies to question 43 of Q4 – Questionnaire to Customers (Packaging), DocID2169.
1018 Replies to question 45 of Q4 – Questionnaire to Customers (Packaging), DocID2169.
1019 Replies to questions 43 of Q4 – Questionnaire to Customers (Packaging), DocID2169.
1020 Replies to questions 43 of Q4 – Questionnaire to Customers (Packaging), DocID2169.
1021 Replies to question 101 and 101.1 of Q1 – Questionnaire to Competitors, DocID2166.
1022 Minutes of a call with a competitor on 8.1.2019, DocID3790.
1023 Reply to question 101.1 of Q1 – Questionnaire to Competitors, Doc ID2166.

(1328) Another competitor that already is active in the entire steel production process value chain including liquid steel, cold-rolling and annealing, but excluding packaging steel further notes: '*[Competitor name] currently doesn't produce metallic coated steels for packaging. A direction to enter that market would require significant investments (300-500 MEuro)*'.[1024] Another similarly integrated competitor notes: '[Competitor name] *believes that a non-integrated tinplate producer would depend on steel substrate from the few existing European tinplate producers and, accordingly, their willingness to deliver the substrate. Given the particular requirements for substrates for TP (e.g. cleanliness, supply security), any long-term agreement for the supply of substrates for TP should be concluded at market terms (possibly reflecting cost elements) and secure supply of the necessary specifications and volumes.*'.[1025]

(1329) Furthermore, the market investigation did not indicate that other integrated steelmakers based in the EEA would be considering entering the market of metallic coated steel for packaging.[1026]

(1330) Second, entry would furthermore require a lengthy homologation process, as explained for instance in Section 9.5.1.

(1331) Third, while the Parties submit that Tosyali Toyo JV, located in Turkey, has a TP production capacity of 250kt, which is currently being expanded with another 255kt,[1027] the market investigation revealed that this entity would not be able to offset the effects brought about by the Transaction.

(1332) Firstly, the Commission observes there to be no material imports of TP from Turkey in 2017 and 2018.[1028]

(1333) Secondly, it furthermore appears that this would be a 're-roller' or non-integrated producer (that is, a producer, without its own liquid steel and HR production): '*For example there is now a new Turkish player that produces TP as a re-roller but they source hot rolled coil from quality producers in Japan and South-Korea, but this is a special case as it is a JV with a high quality Japanese producer and the same material might not be easily sourced in the market.*'[1029] Other market participants however indicate that while this company does not have its own HR production, it is able to source HR from its Japanese JV partner therefore is different from a re-roller that would need to buy HR on the market.[1030] Yet, it appears that it may not be evident under this business model that a secure supply of the required HR is guaranteed. Internal Tata Steel correspondence dated April 2017 for instance reports on […]:

[…][1031]

1024 Reply to question 101.1 of Q1 – Questionnaire to Competitors, Doc ID2166.

1025 Competitor's follow-up to meeting minutes on 9 January 2019, Doc ID3840.

1026 Replies to questions 99 of Q1 – Questionnaire to Competitors, DocID2166.

1027 Parties' Comments on the Article 6(1)(c) decision, paragraph 5.57.

1028 Commission's calculation on the basis of TAXUD surveillance data and COMEXT data, Doc ID4473 and Doc ID4472.

1029 Minutes of a call with a customer on 6.6.2018, DocID549.

1030 Replies to question 36 of Q13 – Questionnaire to Packaging customers, Doc2954.

1031 […].

(1334) A minority of customers to the Commission's in-depth market investigation do point out that Tosyali Toyo will be a credible entrant in the EEA.[1032] A majority even indicated that it will have a material presence in the EEA.[1033]

(1335) Nonetheless, the Commission remarks that, even if Tosyali Toyo JV's planned capacity increase were also taken into account, it would remain a smaller player with a capacity less than 20% of the Parties' combined capacity. The Commission considers that a player with a rather limited capacity can only be a regional player. Moreover, Tosyali Toyo JV does not appear to be larger than USSK, for which customers already indicated that it was capacity constrained and too remote geographically: '*The fundamental issue for [Company name] is that USSK does not venture outside Central and Eastern Europe. This is because it is capacity constrained, and it finds more than sufficient demand in a range of 300 km around its plant. So it has no incentives to supply elsewhere (also in light of transport costs).*'[1034] Tosyali Toyo JV is located even further from the Parties' European geographical focus area, and is likely incentivised to sell locally. All this appears to be in line with customers' responses to the market investigation, where a majority indicates that Tosyali Toyo JV would not have sufficient volumes available for customers to switch to in the event of a hypothetical price increase brought about by the Proposed Transaction.[1035] Further, Tosyali Toyo and in general Turkey's export of TP to the EEA have been insignificant in the period 2015-2017, therefore due to the safeguard measure in place the export from Turkey are in any case limited by the allocation quota to 'other countries'[1036] and if they were to grow they would necessarily imply that other countries would export less to the EEA.

(1336) Fourth, the Parties also refer to Hebei Steel having acquired a packaging steel plant located in Serbia. Similarly to Tosyali Toyo JV, the Commission notes that this entity does not have own HR capacity and is actually dependent on HR from Chinese plants of its parent, [1037] has limited capacity, and is geographically distant from the Parties.

(1337) The Parties asserted in the Reply to the SO that Hebei Steel supplies [150-200]kt of TP in the EEA. The Commission notes that this would indicate that this supplier is already supplying at full capacity.[1038] Nonetheless, even when considering this supplier to supply a smaller fraction of its production into the EEA, such as the 93kt of Serbian imports indicated in Table 23 for 2017 or 119kt in 2017 according to the Commission's own computation,[1039] then the volumes that Hebei Steel Serbia would be able to redirect would remain limited compared to the Parties' sales and capacity.

(1338) Furthermore, the safeguard measures adopted by the European Commission impose a quota of 82kt of Serbian imports of tin mill products,[1040] which is below the level of Serbian imports in 2017 on which market shares have been computed for the SO's

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1032 Replies to question 35.1 of Q11 – Questionnaire to Packaging customers

1033 Replies to question 35.2 of Q11 – Questionnaire to Packaging customers

1034 Minutes of a meeting with a customer on 7.12.2018, DocID3706.

1035 Replies to Question 35.4 of Q11 – Questionnaire to Packaging customers

1036 Indeed there is no Turkey specific quota in the Definitive safeguard measures.

1037 Comments on the Article 6(1)(c) decision, paragraph 5.55.

1038 Annex 20A to the Form CO.

1039 Commission's calculation on the basis of TAXUD surveillance data and COMEXT data, Doc ID4473 and Doc ID4472.

1040 Commission Implementing Regulation (EU) 2019/159 of 31 January 2019 imposing definitive safeguard measures against imports of certain steel products, OJ L 31, 1.2.2019, p. 27.

assessment. After reaching this quota, Serbian imports would be subject to a 25% tariff, thereby making additional volumes less competitive.

(1339) In addition, Hebei Steel Serbia is only active in TP, and not in the other products for which concerns are raised (ECCS, laminated steel for packaging).

(1340) This demonstrates that Hebei Steel Serbia, either on its own or in conjunction with Tosyali Toyo JV's planned capacity increase, would not act as a competitive constraint were the combined entity to increase prices post-transaction.

(1341) Fifth, the Commission recalls that ArcelorMittal is in the process of acquiring Ilva, the Commission having approved the acquisition subject to commitments on 7 May 2018, and might increase Ilva's production of packaging steel. As set out in recital (1288), the Commission does not consider ArcelorMittal to be incentivised to challenge a price increase brought about by the Transaction. Furthermore, Ilva is geographically active in Southern Europe where ArcelorMittal is already considered to have a strong market presence […]. This is also supported by the market investigation, where a large majority of customers responding to the Commission's questionnaire also do not expect Ilva's volume in packaging steel to be expanded materially.[1041] This is also confirmed in the Commission's market reconstruction, as indicated in recital (1289).

(1342) The market investigation did not point to any other potential entrants (whether from EEA or neighbouring countries).[1042]

(1343) Sixth, European export redirect is unlikely, as set out in the section below.

9.5.5.2. European export redirection appears as unlikely

(1344) European producers export significant quantities, in particular to the US. The Notifying Parties submit that such exports could be redirected back to the EEA. Nonetheless, the results of the Commission's investigation do not support that submission.

(1345) First, customers indicate that a re-direction of these exports following the recently imposed US 232 measures is unlikely. A customer explains: *'On the other side EEA suppliers will keep exporting into the USA because that market still needs to rely on EEA exports, particularly for high-grade products for which the US is a net-importer. Even if prices are 25% higher as a result of the recent imposition of import restrictions in the form of a tariff by the US government, EEA exports to the US will still be profitable.'*[1043] Another customer clarifies: *'The quality of steel in the US is different from that in Europe. There is about a 10–20% difference in thickness on a can comparing US and EU steel. […] The importance of competition for innovation is testified by the fact that in Europe, where three credible packaging steel producers have been competing, the quality of the product in terms of thickness, softness, purity and consistency, is higher compared to the quality of packaging steel produced in the US. For this reason, despite US232 measures, US based metal packaging manufacturers (including [Customer name] in the US) continue to source high quality packaging steel from European producers for quality reasons.*[1044]

1041 Replies to question 38 of Q11 – Questionnaire to Packaging customers.

1042 Replies to Q4 and Q13 – Questionnaires to Packaging customers.

1043 Minutes of a call with a customer on 6.6.2018, DocID549.

1044 Minutes of a meeting with a customer on 7.12.2018, DocID3706.

(1346) The position of customers is supported by reports in specialist media that disagree with the idea of significant swing back to Europe. An article in S&P Global Platts explains: '*The 25% tariff on European steel exports to the US will have limited impact, as many products cannot be easily replaced domestically, sources said Thursday. […] The most exported product was tinplate, a product not easy to replace from local sources in the US as suppliers are limited. Tata Steel is the largest source of foreign tinplate, selling 272,000 mt in 2017 primarily to packaging companies. Sources suggested Tata supplies drawing-quality grades that can save can-makers around five cents per can, while US producers have largely moved out of the product sector in recent years.*'[1045]

(1347) Second, Tata's internal documents do not support the Notifying Parties submission. […].

Figure 202 – […]

[…]

[…][1046]

(1348) […]:

Figure 203 – […]

[…]

Source: […][1047]

(1349) Nevertheless, it appears that the Parties are the only EEA producers exporting material volumes to the US. A major customer that is active globally indicates that ArcelorMittal for instance does not export to the US: '*ArcelorMittal does not export from its plants in Europe to the US to avoid competing with its North American own mills but rather to Africa. Tata and ThyssenKrupp are the most important exporters to the US.*'[1048]

(1350) This is further confirmed by data from Eurofer, which indicates that the total volumes of TP and ECCS exported from the EU28 to the US in 2017 amounted to 536kt and 31kt respectively.[1049] In comparison, the Parties indicate having exported […] of TP and […] of ECCS to the US in 2017.[1050]

9.5.6. Buyer power unable to address price increases

(1351) The Notifying Parties submit that packaging customers have significant buyer power. Nonetheless, the Commission's market investigation does not confirm that submission but, to the contrary, suggest that customers do not have significant buyer power.

(1352) First, the significance of purchases of packaging steel for packaging customers exceeds the significance of packaging steel sales for steelmakers. Figure 204 for instance shows that the material cost of a steel can would account for more than half of the production cost of a beverage can. The sales of TP, ECCS and laminated steel for packaging however only account for a fraction of the Parties' overall steel sales.

1045 S&P Platts 9.3.2018: 'EU exporters expect US trade to continue despite tariff plan', DocID3686.

1046 […].

1047 […].

1048 Minutes of a meeting with a customer on 17.10.2018, DocID2298.

1049 Based on Comext public data, DocID3678.

1050 Annex 1 to the Parties' reply to RFI 33.

Steel suppliers are in that regard more important to can makers than can makers are to steel suppliers.

Figure 204 – Breakdown of costs involved in the production of steel and aluminium beverage cans[1051]

[…]

Source: Notifying Parties

(1353) Second, there appear to be limitations on the extent to which customers can resort to other EEA suppliers or non-EEA suppliers, as discussed in Sections 9.5.3 and 9.5.4, and significant barriers to switching are involved as also discussed in Section 9.5.3. Without credible alternatives to switch if faced with a price increase by their supplier, customers would struggle to exert any buying power.

(1354) Third, there are certain barriers for customers to switch that emanate from the requirement by customers to homologate the production lines so as to ensure the quality of the products, as explained in recital (1299).

(1355) Fourth, buyer power would become even less likely as a result of the transaction, as it would result in a very significant overall market share levels, and very significant increases in concentration levels, with only one credible alternative source of supply remaining across the spectrum of packaging steel products, with the exception of laminated steel where the merged entity would not face any other competitor in the EEA.

(1356) Fifth, consistent with the previous findings, customers in the market investigation are observing increasing steel prices independently of the evolution of the cost of raw materials: *'ThyssenKrupp, ArcelorMittal and Tata Steel increased their prices simultaneously with a more or less similar explanation that was not related to fluctuations of raw materials. Indeed, they explained that, since TP production has the lowest contribution in the group, in order to secure capacity for packaging companies they have to increase the prices.'*[1052] […].

(1357) While the Parties submit that the increase in the price premium of TP to HR (substrate) in 2018 is only observed when using as benchmark 2016 and 2017. The Parties argue that the premium would in fact be lower when comparing with 2015, because the period 2016-2017 has been characterised by an unusually low premium.

(1358) The Commission understands however that it is not likely that 2015 would in that regard be a better reference year to compare the price premium in 2018. […].

Figure 30 – […][1053]

(1359) In any event, this development of the price premium of metallic coated steel for packaging over the HR substrate again calls into question the Parties' claim that EEA competitors would have sufficient spare capacity, as well as incentive, to offset price increases such as those brought about by the Transaction. If a current competitor had the incentive and the spare capacity to serve additional volumes it could have reduced its price (and consequently the spread over HR) to gain volumes.

(1360) Therefore, considering that customers would not have other options to resort to, the Commission considers that it appears not likely for customers to use significant

1051 Reply to RFI 7, question 23.

1052 Minutes of a call with a customer on 5.6.2018, DocID2009.

1053 […].

countervailing buyer power to balance the effects of the concentration, and that any residual possibility from buyers to constrain upstream market power would decrease as an effect of the transaction in view of the significant increase in market concentration. This is even more relevant in a situation in which customers have a clear preference and need to multisource as the available sourcing options would be further reduced.

9.5.7. European spare capacity unlikely to offset price increases

(1361) The Notifying Parties claim that ArcelorMittal would have significant spare capacity that could be increased to constrain the merged entity.

(1362) The Commission finds, however, that competitors, and particularly ArcelorMittal as the only competitor with portfolio and capabilities to compete with the Parties, to the extent that it would have spare capacity, would have no incentives to offset any price effects of the transaction.

(1363) First, the Commission notes that based on the data submitted by the Notifying Parties, the competitor USSK would not have any spare capacity for TP (and is not active in ECCS), and ArcelorMittal would have […]kt of spare capacity for TP and […]kt for ECCS, whereas the combined entity would have […] and […] of spare capacity for TP and ECCS respectively.[1054]

(1364) Second, the Commission notes that the market for metallic coated steel for packaging is oligopolistic, with EEA sales market shares of the Merged Entity and ArcelorMittal together amounting to [70-80]% for TP and [80-90]% for ECCS. It is therefore questionable to what extent ArcelorMittal as a large player would itself have incentives to compete for share rather than benefit from a post-transaction price increase.

(1365) This is corroborated by the market investigation where the majority of customers indicated that following a price increase of the Parties post-Transaction, they would not be able to shift volumes to their competitors to counter such a price increase.[1055] While a majority of customers replying to the market investigation indicate that they would be able to switch (35% indicated they could not), customers explanations seem to indicate that they took into account the technical ability of resorting to ArcelorMittal, but had reservations as to whether ArcelorMittal would itself not follow a price increase. For instance, a customer explains that '*yes we would be able to switch most of our volume to Arcelor but Arcelor is already our major supplier and I think they would also increase their prices.*' Another customer concurs: '*Yes, we would be able to switch volumes to ArcelorMittal however: - this market is limited to only 3 to 4 important steel producers, with limited capacity. In the event of a price increase (above the evolution of iron ore & coking coal) driven by Tata/ThyssenKrupp, there is a good chance that ArcelorMittal & other producers follows that same price trend. - ArcelorMittal does not have an infinite capacity to absorb all new customers' requirements*'.[1056]

(1366) Third, as shown in Table 10, the Parties themselves control the largest spare capacity of TP ([70-80]%) and a significant amount for ECCS ([30-40]%). As a result of the Transaction, the Parties may have the incentive to optimise such spare capacity, and therefore making price effects from the transaction more likely. The Commission

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1054 This on the basis of Annex 20A and Annex 21A to the Form CO.

1055 Replies to question 68 of Q4 – Questionnaire to Customers (Packaging), DocID2169.

1056 Replies to question 40 of Q13 – Questionnaire to Customers Phase II (Packaging), DocID2954

considers that, as a result, the Parties would be less able to (i) competitively challenge competitors' price increases and (ii) respond to a demand growth with increases sales volumes rather than price increases.

(1367) For the reasons set out above, it is considered that European spare capacity is unlikely to offset any price increases. Moreover, it is considered that the presence of significant spare capacity at the Parties might further support price increases brought forward by the Transaction in light of potential optimizations of this spare capacity.

9.5.8. Limited possibilities for customers to switch to other materials such as plastic and aluminium

(1368) The Commission finds, based on the arguments set out below in this section that the merged entity would face only limited constraints from suppliers of other materials such as plastics and aluminium because, both technically and commercially, the possibility that customers switch to these alternative materials is limited.

(1369) First, the vast majority of customers indicated that they cannot or only to a limited extent switch from metallic coated steel for packaging to alternative materials such as plastic and aluminium. This is for instance because can-makers are not able to use alternative materials, including aluminium, in their can-making equipment. Furthermore, it appears that particular characteristics of steel cans enable long shelf-life and an efficient filling process which other materials cannot provide.

(1370) Customers explain: *'We cannot use plastic in our process. It will mean a radical change of our activity that forced us to make huge investments. On the other hand limitation to shift to aluminium are based on that all our production lines and machinery is based on the magnetic properties of the Steel. In the case we shift to aluminium we have to substitute all magnetic conveyor systems by vacuum.', 'Our technical equipment is not prepared to use other materials than steel for the products we fill and the customers we serve', 'Cans are used as our products require long shelf life, long distance for export and difficult supply chain. Plastic & Aluminium packaging does not provide equivalent performance therefore change is difficult.'*[1057] *'Aluminium is generally not an option for food products, except for some premium products such as some canned fish products. Furthermore, existing conveyor lines that process steel are not able to process aluminium without retooling.'*[1058]

(1371) Second, only a few of responding customers indicated that they could mitigate exposure to price increases in TP/ECCS by switching to aluminium.[1059]

(1372) Firstly, it appears that the trend to switch to alternative materials is only documented for beverage applications, but limited in all other applications. A major customer explains: '*The beverage cans industry is moving towards the complete replacement of steel with aluminium ('Al'). Al has decoration advantages (i.e. shiny surface, modern aspect) and it also enables companies to hedge the variations in the price of the metal forward for 3–5 years, unlike for steel. As regards food cans, this trend is much more limited for technical and commercial reasons. Considering that food is often processed and cooked within the can, Al cannot meet the required strength properties. As a result, Al in food packaging is mainly only used for fish canning (e.g. tuna, sardines) but not for other types of food. Finally, the market of aerosol packaging is divided in approximately 50% TP and 50% Al. However, given its*

1057 Replies to questions 39, 40 and 41 of Q4 – Questionnaire to Customers (Packaging), DocID2169.

1058 Minutes of a meeting with a customer on 7.12.2018, DocID3706.

1059 Replies to question 40 of Q4 – Questionnaire to Customers (Packaging), DocID2169.

specific pressure performance characteristics and the requirements in applicable norms, TP is sometimes better suited for this purpose. Some packaging producers are even switching back to TP because of price.'[1060]

(1373) Another major customer concurs: '*As regards the beverage can unit, over a number of years, [name of the company] has almost entirely switched to aluminium production for the body of beverage cans (the ends of beverage cans are already universally produced from aluminium). This is reflective of a wider trend specific to beverage can bodies over the past 15-20 years, whereby aluminium has become the industry-standard packaging material for beverage can bodies.* […] *However, the same is not happening in respect of food cans and specialty cans. In this sector TP is used for the overwhelming majority of cans for a number of reasons. TP is typically the cheapest packaging solution, it is also often most efficient in terms of protection of the contents (allowing a long shelf life and e.g. protection from UV damage) as well as in terms of filling (which can be done at high speed with low levels of waste). Furthermore, TP can be used to make 2-piece and 3-piece cans. For larger sized cans, 3-piece cans must be used and ETP is required to weld the can body. Aluminium, for example, can technically not be used in this case. TP is also capable of containing aggressive contents e.g. solvent paint materials, that other packaging material may be unable to contain. Finally, TP may be preferred by a customer for other reasons […]. Therefore, there is currently no change to aluminium for this application.*'[1061]

(1374) Secondly, in any event the Commission recalls that even if aluminium and steel cans in the potential segment for beverage applications were regarded as substitutable, this would not necessarily mean that the input materials are substitutable. This is in particular due to the can-makers production lines being tooled to a particular raw material and production lines that make beverage cans from TP cannot use aluminium, or vice versa.[1062] Thus, even to the extent that there has been a trend where customers switch to aluminium for beverage cans, such switching by can-makers seems difficult because this requires investments into different production lines that are non-reversible without substantial investments.[1063]

(1375) Thirdly, as to the potential beverage segment, the Commission observes that the Notifying Parties' sales volumes have not decreased between 2016–2017: In 2016 they sold […] of beverage TP in the EEA (Tata: […]; ThyssenKrupp […]) while in 2017 they sold […] (Tata: […]; ThyssenKrupp […]). It therefore appears that, even if aluminium might gradually be taking over the use of steel in beverage packaging, this process would in any event take time and demand for beverage steel will remain until and if the beverage packaging production lines are converted into aluminium (see recital (289)).

(1376) Fourthly, steel for beverage packaging would only be a small fraction of the total putative market for TP (estimated at 251 kt out of 3 179 kt or 8% in 2017 in the EEA), and not relevant for ECCS as it is not technically suitable to for instance make DWI cans that are typical in the beverage segment. Also, the Parties' volumes in beverage packaging are limited compared to their overall TP volumes. The combined entity would have sold […] kt of beverage packaging out of a total of [...] kt or

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1060 Minutes of a call with a customer on 4.6.2018, DocID693.

1061 Minutes of a call with a customer on 6.6.2018, DocID549.

1062 Minutes of a meeting with a customer on 17.10.2018, DocID2298.

1063 Minutes of a meeting with a customer on 17.10.2018, DocID2298.

[…]% of TP sales in 2017 in the EEA.[1064] Any substitutability in beverage packaging taken as a putative relevant market, even if it existed, would thus not affect the competitive assessment for the overall relevant market for TP.

(1377) Third, the Parties further submit that customers of can-makers ('fillers') are free to choose from alternative materials and thereby exercise an indirect competitive constraint to the merged entity, including in applications other than beverage.

(1378) The Commission's market investigation did not clearly demonstrate the extent to which the cost of packaging steel is eventually reflected as a material cost component for customers of can-makers ('fillers'), as a slight majority of direct customers indicated either that this depends on other factors or that they do not know. However, among the customers who took a position, a majority estimates that the cost of steel accounts for more than 41% of the total cost of a can for fillers, and some indicated that this would be even as high as 61-80%.[1065] While the evidence does thus not necessarily allow for a definitive conclusion on this, it at least seems that a significant number of customers would indicate that this share is substantial.

(1379) The Commission questioned fillers – customers of packaging solutions that fill the packages with, for instance food or paints – and found that they are not able to switch to packaging of alternative materials to an extent that would potentially offset a price increase brought forward by the transaction. Their replies point out that these fillers themselves face technological and commercial barriers to switching to packaging of alternative materials.

(1380) Firstly, switching in industrial applications, such as paints appears limited and dependent on various matters. In this respect, a respondent to the Commission's market investigation that produces paints and coatings, indicates that it uses both steel (TP-based and polymer-coated) and plastic packaging for its products. The same customer nonetheless also indicates that the suitability of steel or plastic packaging depends on several factors including whether the content is water-based or solvent-based, established customer preferences and climate conditions of the output market. The respondent further indicates that plastic packaging tends to be preferred for water-based products. The suitability of plastic packaging for solvent-based products is however limited due to technological constraints. Moreover, the respondent indicates that in case of a 5-10% increase in the price of steel packaging, it would not be able to substitute with plastic immediately, but this would be possible only in the longer term for several applications.[1066] Another customer explains: '*Solvent-based paints/solvents are for […] % sold in steel packaging, both because of the technical and safety requirements that prevent using canisters or packaging of alternative material. In particular, a plastic based packaging would risk melting into the solvent used in the paints, and also fire-hazard considerations need to be observed*', '*[f]urthermore, as part of its premium brand, the Company uses a solution where the household decorative paint can be tinted on the spot at a retail outlet according to the consumer's demand. This allows a service where the consumer can acquire a multitude of different colours and shades of paint immediately on the spot. To achieve this, the retail outlet needs to have a mixing and shaking machine that will need to be able to punch a hole in the lid of the paint canister in order to add the dyeing elements into the paint. As such punching cannot*

1064 Table 2 of annex 67 to the Form CO.

1065 Responses to question 18 of Q13 – Questionnaire to Customers Phase II (Packaging), DocID2954.

1066 Minutes of a call with a filler on 21.1.2019, DocID3735.

be achieved with plastic, the lid needs to be made from steel even if the canister otherwise was from plastic. In addition, the tinting process involves heavy shaking of the canister and a metallic canister can hold this process better than a plastic one', 'In addition to strict technical considerations, there are further reasons why the Company uses steel instead of plastic packaging even if plastic packaging was technically a possible alternative. These relate in particular to brand image and recyclability: Consumers consider metallic packaging as premium compared plastic and the Company, as a premium supplier, needs to take this into account in some situations. Furthermore, recyclability & sustainability of products is important for consumers – and these considerations are better addressed, and these considerations are better addressed by using steel packaging rather than plastic that is more difficult to recycle and that can even result in actual or presumed microplastic pollution'. The customer concludes that any further switching is unlikely: '*Overall, to the extent possible, the Company has already made any switch from metal to plastic that it from technical and commercial perspective can make. As plastic packaging is typically cheaper than steel packaging, it is already used in all applications possible. If any switching between plastic and metal were to occur in the coming years, it would likely rather be from plastic to steel, for instance because of consumer expectations.'*[1067]

(1381) Secondly, in case of food applications, switching is also far from straightforward. A respondent to the market investigation and a user of steel packaging, a major corporation active in the production and supply of food, indicates that its filling lines cannot readily switch to alternative materials. In addition, customer preference also limit its ability to switch (emphasis added):

'However, from the Company's perspective as a consumer of steel packaging, it cannot easily switch to packaging of alternative materials, as the filling lines are typically made to work with a particular material. Both time and capex investments would be required to make a shift. Hence, no shifting is possible in the short term.

In addition, consumer preferences affect whether steel packaging is preferred. This is for instance the case for European consumers who typically value the sustainability that steel offers from an ecological perspective. In addition, steel packaging is also more adequate to support the 'premium' status of certain brands as metal packaging is considered by consumers as more premium than plastic or paper packaging.'[1068]

(1382) This is further confirmed by another company, active in the production and supply of food, and a user of steel packaging, who iterates that while in the past there has been substitution to other materials than steel, further substitution is limited due to a number of technical and also commercial factors (such as consumer preference) (emphasis added): '*Generally, all packaging materials other than glass are already cheaper than TP. Therefore,* ***any switching away from TP that is feasible from a technical and commercial point of view has already taken place in the past****. There is no further switching occurring. This is also demonstrated by the fact that the Company has not reduced its purchases of TP or switched to other materials despite the prices for metallic coated steel for packaging having significantly increased over the last years (2017: [...]%, 2018: [...]%, 2019: [...]%), also increasing more than prices for other packaging materials.*'[1069]

1067 Minutes of a call with a customer on 17.1.2019, DocID4393.

1068 Minutes of a call with a filler on 11.1.2019, DocID3624

1069 Minutes of a call with a filler on 11.1.2019, DocID3512.

(1383) Thirdly, […].

Figure 205 – […][1070]

[…]

(1384) While the Parties in the Reply to the SO indicate to have received oppositie feedback from their customers, the Commission does not see reason why a customer's feedback to Parties would be given more weight than these customers' feedback to the Commission.

(1385) Therefore, the Commission considers that there are only very limited possibilities for customers to resort to alternative materials and a threat of such switching would therefore likely not be adequate to counter any post-Transaction price increases in metallic coated or laminated steel for packaging.

9.5.9. Even less competitive pressure for laminated steel for packaging

(1386) The Parties are the only EEA steel producers active in the production of laminated steel for packaging.

(1387) The Parties have submitted a number of examples of customers who might potentially have sourced laminated steel for packaging from non-EEA suppliers.[1071] However, the Commission reached out to these customers in its market investigation and found that none of the respondents had in fact sourced laminated steel for packaging from non-EEA suppliers.[1072]

(1388) In addition, a large majority of respondents to the Commission's questionnaire indicate that suppliers outside the EEA are not making competitive offers for laminated steel for packaging, in terms of price and delivery terms.[1073]

9.5.10. The Notifying Parties compete against each other in laminated steel

(1389) The Notifying Parties submit that they are not close competitors in laminated steel for packaging. According to the Notifying Parties, they have limited overlapping customers in laminated steel. Moreover, the Parties would focus on different types of laminated steel for packaging: […].

(1390) Nonetheless, the results of the Commission's investigation do not support the Notifying Parties' submission but rather shows that they are competing against each other as the only EEA-suppliers for laminated steel for packaging.

(1391) First, it seems that both Parties have only supplied non-DWI laminated steel in 2016 and 2017.[1074]

(1392) Second, more than 40% of customers responding to the market investigation that source laminated steel for packaging, source from both ThyssenKrupp and Tata Steel.[1075] A significant share of the Parties' customers are thus common customers.

(1393) Third, a large majority of customers indicate that ThyssenKrupp and Tata Steel have similar and competing product portfolios in terms of laminated steel for packaging.[1076]

1070 […].
1071 Form CO Annex 68.
1072 DocID3629 and DocID3604.
1073 Replies to question 44.3 of Q13 – Questionnaire to Customers Phase II (Packaging), DocID2954.
1074 Parties' response to RFI28.
1075 Replies to question 45 of Q4 – Questionnaire to Customers (Packaging), DocID2169.

9.5.11. Closeness of competition

9.5.11.1. The Parties do not have a materially different focus within TP.

(1394) The Notifying Parties argue that they have a different strategic focus within packaging steel applications due to Tata not being significantly active in steel for beverage packaging (this would apply to TP as ECCS is not used for beverage).

(1395) In this respect, the Commission notes that while the ratio of sales of TP for beverage applications to total TP sales amounts to [5-10]% for Tata, it also amounts to only [10-20]% for ThyssenKrupp either (2016 and 2017, EEA sales only)[1077] – both figures being in line with the Notifying Parties explanation that only approximately 8% of TP sold in the EEA in 2017 was used in beverage applications.[1078] Neither Tata nor ThyssenKrupp produces ECCS for beverage can applications, which is also in line with their submission that ECCS is technically not suitable for most beverage applications.[1079]

(1396) Therefore, it is found that contrary to the Notifying Parties' claims, they do not have a materially different focus within TP and that, in any event, they are both active with regular sales in the potential beverage and non-beverage segments.

9.5.11.2. The Parties are close competitors on several important parameters of competition

(1397) The results of the market investigation suggest that there are a number of competitive parameters that customers consider as important for suppliers of packaging steel.

(1398) First, respondents to the Commission's market investigation identified the relevant parameters of competition as lead times, quality, R&D, new development capabilities, pricing, portfolio of metallic coated steel for packaging and extensive homologation services.[1080]

(1399) Second, when considering Tata and its capabilities, respondents to the market investigation identified ThyssenKrupp as Tata's closest competitor for many of the parameters found important by customers. This applied in particular to lead times, quality, R&D, new grade development capabilities, portfolio of metallic coated steel for packaging and extensive homologation services.[1081]

(1400) When looking at ThyssenKrupp, while its overall size and capabilities are considered by many to be close to ArcelorMittal, customers still regard Tata as equally close when it comes to many of the factors customers find important, including for quality, R&D, new grade development capabilities, portfolio of metallic coated steel for packaging and extensive homologation services. Furthermore, the market investigation indicates that neither USSK (the remaining EEA supplier for TP), nor ArcelorMittal's divested production line in Tilleur nor non-EEA suppliers (including Tosyali Toyo JV and Hebei Steel) are regarded as close for any of those parameters.[1082] The market investigation thus points out that the Parties and ArcelorMittal are close competitors, but that others such as USSK and non-EEA suppliers are not equally close.

1076 Replies to question 46 of Q4 – Questionnaire to Customers (Packaging), DocID2169.
1077 […].
1078 Annex 64 to Form CO, table 3.
1079 Annex 64 to Form CO.
1080 Replies to question 35 of Q4 – Questionnaire to Customers (Packaging), DocID2169.
1081 Replies to question 37 of Q4 – Questionnaire to Customers (Packaging), DocID2169.
1082 Replies to question 38 of Q4 – Questionnaire to Customers (Packaging), DocID2169.

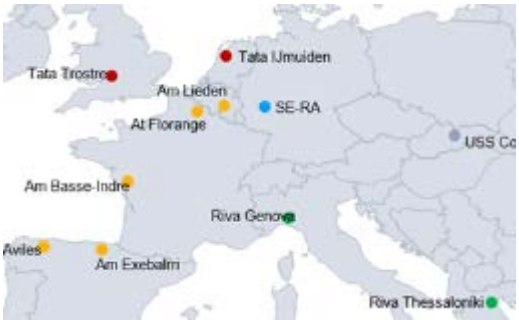
(1401) Third, contrary to their arguments, the Parties have similar portfolio capabilities as regards the specific segments they can serve in a differentiated product market. As shown in Table 5 and Table 6, both Parties are active in the production and supply of packaging steel for a broad range of applications. The Commission further understands that both Parties are for instance able to produce significant volumes of DWI steel for non-beverage applications, as evidenced by their worldwide sales of such products.[1083]

9.5.11.3. The Parties are close competitors also geographically

(1402) Separately, the Commission finds that the Parties' are also geographically close and are thus well-positioned to serve the same customers.

(1403) First, the Parties' production plants are located geographically close to one another, as shown in Figure 206. While competitor ArcelorMittal's production facilities are generally spread across both north-west and south-west Europe, the Parties have a presence concentrated near each other in north-west Europe. While ArcelorMittal is generally a large producer, a significant part of its production facilities (and therefore geographical closeness for the production capacity that this represents) are located further away from where the Parties' production facilities are located. USSK is located further in Eastern Europe.

Figure 206 – Main packaging steel production sites in the EEA[1084]



(1404) Second, the relevance of geographical closeness is supported by the finding in the market investigation that half of customers responding indicate that they source mostly from nearby countries in the EEA.[1085]

(1405) Third, the Parties themselves also sell close to their production sites. The Parties have submitted graphs that show the geographic distribution of sales of their different production sites. These graphs are shown in Figure 207 and Figure 208. Based on their Comments on the Article 6 (1)(c) decision, the Notifying Parties conclude from the graphs that their sales are geographically evenly distributed.

Figure 207 – […][1086]

[…]

Figure 208 – […][1087]

[…]

1083 Annex 134 to the Form CO.
1084 E06191-E0005-00031296.pptx, DocID 2662-91472.
1085 Replies to question 23 of Q4 – Questionnaire to Customers (Pac.kaging), DocID2169.
1086 […].
1087 […].

(1406) The Commission however observes from these figures that in fact when considering only EEA sales, a significant portion of the Parties' sales are located close to the plant of production and the rest of the sales reaches a number of EEA countries. For instance, as shown in Figure 207, Tata's United Kingdom production sites predominantly sell in the United Kingdom whereas Tata's production site in the Netherlands (IJmuiden) makes most of their EEA sales to continental Europe. All three facilities have sales also to Spain and Italy, where significant consumption of steel packaging materials takes place.[1088]

(1407) The Commission acknowledges that both Parties export a part of their volumes to non-EEA countries, including to destinations in other continents. For such sales, the Commission understands that different dynamics are at play, and the Parties are for instance exporting products of a quality standard that cannot be met by local producers at the destination locations. In the US for instance, which is the Parties' largest export market, the market expectation is that European exports will be maintained after the US232 trade measures, because US steelmakers are not able to provide similar quality (see Section 9.5.4). This is further discussed in Section 9.5.5.2.

(1408) […].[1089] In that regard, this means that the Parties are close competitors for customers in Northern Europe / Northwestern Europe.

(1409) Further reference is made to Figure 199, an internal document of Tata Steel. This document quotes […]. This indicates that Tata Steel also […].

9.5.11.4. Conclusion

(1410) For the reasons explained above in this section, the Commission concludes that the Parties are close competitors. Therefore, the Transaction is likely to result in the elimination of a close competitive relationship between the Parties and thus to eliminate the important competitive constraint that both producers exert upon each other pre-Transaction.

9.5.12. Likely negative effect on prices and on innovation

(1411) The market investigation revealed significant concerns by customers that the Transaction would likely have negative effects on prices of metallic coated and laminated steel for packaging. Of those who expressed a view, a clear majority expect the Transaction to result in significant price increases in TP, in ECCS and in laminated steel for packaging.[1090]

(1412) Additionally, some customers appear to expect that innovation efforts decrease due to the Transaction.[1091] First, because customers consider R&D and new product development to be important to compete in metallic coated steel for packaging.[1092] Second, because the Parties are considered to be important innovators. ThyssenKrupp is considered as the most important in terms of R&D capabilities, Tata is regarded as the second most important for both TP and ECCS. For laminated steel for packaging, Tata is considered the most important, followed by ThyssenKrupp.[1093]

1088 […].

1089 DOC-000001977.pdf, DocID1141-1966.

1090 Replies to questions 75–77 of Q4 – Questionnaire to Customers (Packaging), DocID2169.

1091 Replies to question 73 of Q4 – Questionnaire to Customers (Packaging), DocID2169.

1092 Replies to question 70 of Q4 – Questionnaire to Customers (Packaging), DocID2169.

1093 Replies to question 71 of Q4 – Questionnaire to Customers (Packaging), DocID2169.

9.5.13. Conclusion

(1413) As set out in Section 9.5.2 above, the merged entity would have a high share in terms of sales (above 40%) and a very high share in terms of capacity (above 60%) in the EEA market for the production and supply of TP and even higher shares in the EEA market for laminated steel for packaging ([90-100]% for sales and capacity).

(1414) The Horizontal Merger Guidelines state that according to well established case-law, very large market shares – 50% or more – may in themselves be evidence of the existence of a dominant market position.[1094]

(1415) Moreover, as discussed in Sections 9.5.3 – 9.5.9 above, the market investigation showed that the markets for the production and supply of, respectively, TP and laminated steel for packaging are characterised by high barriers to entry and limited possibilities for customers to turn to alternative suppliers in and outside the EEA, or to turn to alternative materials. In addition, to the extent that there would be any buyer power, it would not be sufficient to offset the effects of the Transaction.

(1416) Therefore, the Commission considers that the Transaction will create a dominant position in the EEA markets for the production and supply of, respectively, TP and laminated steel for packaging. This dominant position results from the merged entity's market shares calculated by reference to their sales and capacities, as well as from the elements discussed in Sections 9.5.3 – 9.5.9 above.

(1417) In any event, and considering the findings at Sections 9.5.3 – 9.5.12 in light of the merged entity's high market shares for TP and laminated steel for packaging in the EEA, the Commission concludes that the Transaction will give rise to horizontal non-coordinated effects on the relevant markets for these products as a result of the elimination of an important competitive constraint.

(1418) As regards the production and supply of ECCS in the EEA, considering the findings at Sections 9.5.3 until 9.5.12 and also taking into account the merged entity's substantial market shares, the Commission concludes that the Transaction will give rise to horizontal non-coordinated effects as a result of the elimination of an important competitive constraint.

(1419) Considering all evidence available to it, and in light of the considerations explained in Section 9.5.13, the Commission considers that the Transaction would significantly impede effective competition in relation to the production and supply of TP and laminated steel for packaging in the EEA because the JV will create a dominant position in the relevant markets. In any event, the Transaction will also give rise to horizontal non-coordinated effects in relation to the production and supply of TP, ECCS and laminated steel for packaging in the EEA, resulting from the elimination of an important competitive constraint.

10. EFFICIENCIES

10.1. Framework for the Assessment

(1420) The Commission's framework for assessing efficiencies resulting from a merger is set out in the Horizontal Merger Guidelines, which provide the following:

'The Commission considers any substantiated efficiency claims in the overall assessment of the merger. It may decide that, as a consequence of the efficiencies

[1094] See Horizontal Merger Guidelines, OJ C 31, 5.2.2004, page 5, paragraph 17.

that the merger brings about, there are no grounds for declaring the merger incompatible with the common market pursuant to Article 2(3) of the Merger Regulation. This will be the case when the Commission is in a position to conclude on the basis of sufficient evidence that the efficiencies generated by the merger are likely to enhance the ability and incentive of the merged entity to act pro-competitively for the benefit of consumers, thereby counteracting the adverse effects on competition which the merger might otherwise have.

For the Commission to take account of efficiency claims in its assessment of the merger and be in a position to reach the conclusion that as a consequence of efficiencies, there are no grounds for declaring the merger to be incompatible with the common market, the efficiencies have to benefit consumers, be merger specific and be verifiable. These conditions are cumulative.'[1095]

(1421) The Commission will therefore consider positive effects of efficiencies that benefit consumers as part of its overall assessment of the Transaction, provided the efficiencies are substantiated and satisfy the following three cumulative criteria:

(a) Efficiencies have to benefit consumers in the sense that they should be substantial and timely and should, in principle, benefit consumers in those relevant markets where it is otherwise likely that competition concerns would occur;[1096]

(b) Efficiencies have to be a direct consequence of the concentration and cannot be achieved to a similar extent by less anticompetitive alternatives. Also, it is for the merging parties to timely provide all the information to demonstrate that there are no less anti-competitive alternatives which would preserve the claimed efficiencies. In this assessment the Commission only considers those alternatives that are realistic and attainable, of a concentrative or non-concentrative nature, and that are reasonably practical in the business situations faced by the merging parties;[1097]

(c) Efficiencies have to be verifiable such that the Commission can be reasonably certain that the efficiencies are likely to materialise and be substantial enough to counteract a merger's potential harm to consumers.[1098]

(1422) The Horizontal Merger Guidelines further explain that it is for the Parties to provide evidence to substantiate the claim that efficiencies fulfil the above criteria as most of the information is solely in their possession. It is, for example, incumbent upon the Parties to provide in due time all the relevant information necessary to demonstrate that the claimed efficiencies are merger-specific and likely to be realised. Similarly, it is for the Parties to show to what extent the efficiencies are likely to counteract any adverse effects on competition that might otherwise result from the merger, and therefore benefit consumers.[1099] Furthermore, evidence relevant to the assessment of efficiency claims should include, in particular, internal documents that were used by the management to decide on the merger, statements from the management to the owners and financial markets about the expected efficiencies, historical examples of

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1095 Horizontal Merger Guidelines, paragraphs 77 and 78.
1096 Horizontal Merger Guidelines, paragraph 79.
1097 Horizontal Merger Guidelines, paragraph 85.
1098 Horizontal Merger Guidelines, paragraph 86.
1099 Horizontal Merger Guidelines, paragraph 87.

efficiencies and consumer benefit, and pre-merger external experts' studies on the type and size of efficiency gains, and on the extent to which consumers are likely to benefit.[1100]

(1423) The Commission's practice recognises that reductions in variable costs directly affect a firm's pricing incentive[1101] and are thus more likely to be passed to consumers than reductions in fixed costs.[1102] This is because reductions in fixed costs savings do not affect marginal pricing decisions, and are therefore unlikely to lead to lower prices.

(1424) The Commission notes that the Notifying Parties describe the efficiencies they expect to realise from the Transaction in Section 9 of the Form CO. Further, the Notifying Parties submitted other documentation related to the Transaction's efficiencies in a separate submission on 17 September 2018.

(1425) On 30 October 2018 the Commission adopted its decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation and therein it provided the Notifying Parties with its preliminary assessment of the claimed efficiencies of the Transaction.

(1426) On 19 November 2018, the Notifying Parties submitted their written comments on the Article 6(1)(c) decision and informed the Commission that they did not intend to submit any new analysis to dispel the Commission's preliminary conclusion that none of the claimed efficiencies met the cumulative efficiency test of verifiability, merger specificity and benefit to consumers.

(1427) The Commission further assessed the efficiencies claims made by the Notifying Parties, in Section 9 of the Form CO and the separate submission of 17 September 2018, in its Statement of Objections of 13 February 2019.

(1428) In their reply to the SO the Notifying Parties did not respond to the Commission's assessment of the alledged efficiencies and did not present any new elements to substantiate their efficiency claims or to rebut the preliminary conclusions reached by the Commission.

(1429) The efficiency claims assessment of the Commission is accordingly based on the documentation submitted by the Notifying Parties before the Article 6(1)(c) decision and maintains the same conclusions reached in the Article 6(1)(c) decision and the Statement of Objections given that the Notifying Parties did not provide any further evidence in their replies to the Article 6(1)(c) decision and to the Statement of Objections on their efficieny claims, nor contested the preliminary conclusions reached by the Commission set out in both documents.

10.2. The Notifying Parties' view

(1430) The Notifying Parties estimate that the Transaction will result in several efficiencies amounting to a total run rate amount of […].

(1431) First, the Notifying Parties argue that the Transaction would generate synergies in purchasing […].

(1432) The Notifying Parties explain that these savings could only be obtained via the Transaction since they […].

1100 Horizontal Merger Guidelines, paragraph 88.
1101 Horizontal Merger Guidelines, paragraph 80.
1102 Horizontal Merger Guidelines, paragraph 80.

(1433) Second, the Notifying Parties argue that the Transaction would allow the merged entity to optimise […].

(1434) From such optimisation, the Parties predict that the Transaction will generate […].

(1435) Third, the Notifying Parties argue that the Transaction would allow […].

(1436) Fourth, the Notifying Parties argue that the Transaction would generate […].

(1437) Fifth, the Notifying Parties indicate that the Transaction would […].

(1438) Sixth, the Notifying Parties claim that the Transaction will lead to […].

(1439) Seventh, the Notifying Parties argue that after the merger […].

(1440) Eighth, the Notifying Parties argue that the Transaction would […].

(1441) The Notifying Parties claim that all the above expected savings will benefit EEA consumers. This is because any cost efficiency (variable or fixed) is vital to ensure the viability of the European steel sector and therefore this would benefit consumers.

(1442) Further, the synergies are expected to be fully realised by the JV's FY […].

10.3. The Commission's assessment

(1443) In the below the Commission presents the outcome of its assessment of the claimed efficiencies. In particular, for each claim the Commission considers whether the three criteria of verifiability, merger specificity and benefit to consumers have been met on the basis of the information received by the Commission. As the three tests have to be met cumulatively the Commission does not need to conclude on all the three tests for each efficiency claim. If a single criterion is not met the claimed efficiency cannot be taken into account to counteract the adverse effects on competition which the merger might otherwise have.

(1444) At the outset, the Commission also notes that the submission of the Notifying Parties does not clearly identify the fixed and variable components for each efficiency claim. Therefore, in the absence of this split, the Commission is not in the position to take a view on which synergies are related to variable cost and could consequently be passed to consumers in the form of lower prices. As regards those synergies where a split is proposed, or those synergies that are considered entirely related to variable costs, the necessary information to verify the quantification of the cost reductions is not provided to the sufficient standard, as detailed in the following subsections. In addition to this lack of verifiability, the Parties have not provided any credible description and quantification of the mechanism by which the alleged reductions in fixed costs related to the Transaction would benefit consumers in the specific case.[1103] Therefore, the Commission further considers that the benefit to consumers related to the alleged reductions in fixed costs have not been demonstrated nor quantified. Finally, the Commission also finds that the verifiability and merger specificity criteria of the claimed reductions in fixed costs are not met.

10.3.1. Purchasing

(1445) As regards the claimed purchasing efficiencies arising from the greater scale of the merged entity, the Commission considers that the Notifying Parties each already operate internationally on a very substantial scale. Further, Tata is also part of a wider international group involved in steel and raw material purchases on a global

[1103] No evidence has been provided following the Article 6(1)(c) decision and the Statement of Objections, where the Commission already reached this preliminary conclusion.

level. On this basis, the Commission considers that any efficiency calculation related to scale effects necessarily has to take this starting position into account. The extent to which this has been accounted for by the Notifying Parties is not specified in the submitted documents. Further, the Commission notes that the claimed scale efficiencies are unsubstantiated as the assumed savings are based on non qualified 'expert discussions' that could not be verified on the basis of the information submitted by the Notifying Parties. Further, no documentation was submitted following the Commission's Article 6(1)(c) decision nor following the Statement of Objections where the Commission already reached this conclusion on a preliminary basis.[1104]

(1446) The Commission also considers that among the claimed purchasing synergies the ones […]. However, the Commission notes that the Notifying Parties, following the Article 6(1)(c) decision and the Statement of Objections, […]. Therefore, these claims are not verifiable.

(1447) The synergies related to […][1105] do not meet the merger specificity criteria as such best practices could, in principle, also be adopted by the two standalone entities. […][1106] are not regarded to be merger specific as the Commission considers that also the two separate entities could adopt the same product switch strategy on a standalone basis. For both claims, the Notifying Parties have not substantiated to the required standard the merger specificity of these savings. Further, no documentation was submitted following the Commission's Article 6(1)(c) decision nor following the Statement of Objections where the Commission already reached this conclusion on a preliminary basis.

10.3.2. […]

(1448) […] are not merger specific. In particular, it remains unclear and not explained by the Notifying Parties why the proposed […] could not be carried out absent the merger. At the same time also synergies related to the ThyssenKrupp's […] do not seem to pass the merger specificity criteria as the Notifying Parties have failed to explain why […] would be merger specific.

(1449) […]. Given that this claim does not appear as merger-specific, it is not necessary to conclude on the verifiability […]. However, the Commission notes that a large part of such synergies is the result of […], likely failing also the benefit to consumers test. On this respect the Commission considers that the Notifying Parties have not substantiated the benefit to consumers […].

(1450) […] the Commission notes that no documentation was submitted following the Commission's Article 6(1)(c) decision nor following the Statement of Objections to rebut the Commission's preliminary conclusions.

10.3.3. Overhead and support functions

(1451) The Commission maintains that the Notifying Parties have not provided any supporting documents to enable the Commission to examine the claims related to […]. No document was provided even after the Commission's Article 6(1)(c) decision and the Statement of Objections where the same conclusion had been reached These claims could therefore not be verified.

1104 […].
1105 […].
1106 […].

(1452) The Notifying Parties have also not explained why the two standalone entities would not be able to implement the same or similar […] even absent the merger, thus failing to demonstrate merger specificity. Further, most of these savings appear to be related to […] and therefore would be less likely to benefit consumers, likely failing also the benefit to consumers test. In this respect, the Commission considers that the Notifying Parties have not substantiated the benefit to consumers related to […]. On this basis the Commission does not consider that these synergies would meet the required tests to qualify as efficiencies capable of counteracting the adverse effects on competition which the merger might otherwise have.

10.3.4. Sales

(1453) The Commission considers that […] does not appear to be merger specific […]. The Commission considers that also for these claims the Parties have not demonstrated the benefits to consumers related to […]. Furthermore, the classification of these synergies as related to variable costs is not substantiated.[1107]On the contrary, the Commission considers that the claimed […] is likely to amount to a reduction in fixed costs with no clear expected benefit to consumers. The Notifying Parties do not explain which benefits consumers could derive from these savings in fixed costs.

(1454) […][1108] […]. On this basis, the Commission considers that these synergies cannot be verified and are not demonstrated to be merger specific.

(1455) Overall, as regards the synergies related to sales, no further information was provided following the Commission's Article 6(1)(c) decision and the Statement of Objections where the Commission already reached the same conclusion on a preliminary basis.

10.3.5. Maintenance and Technical services

(1456) The Parties have provided only general aggregate information […]. On this basis the Commission cannot verify the assumptions made by the Notifying Parties to estimate these savings. The Notifying Parties have not provided any more detailed information following the preliminary assessment in the Commission's Article 6(1)(c) decision and in the Statement of Objections where the Commission already reached this conclusion on verifiability on a preliminary basis. Based on the general information the Parties have provided, the Commission does not consider the verifiability criteria met.

10.3.6. R&D

(1457) The Commission notes that the Parties are planning to […]. In addition the Notifying Parties have not identified which parts of […] would allegedly benefits the markets in which the Commission has found competition concerns.

(1458) The Commission observes that in the context of the Comments on the 6(1)(c) decision the Notifying Parties generally re-stated their claim on benefits to consumers […] without addressing the Commission's concerns and without substantiating their claims with any documentary evidence. Further, also in the reply to the SO, the Notifying Parties did not contest the Commission's preliminary assessment. Therefore, absent further detailed information, that have not been provided, the Commission concludes that this claim is not verifiable.

1107 […].

1108 […].

10.3.7. Logistics

(1459) The Commission considers that […] might be plausible and might also be merger specific. The Commission also notes that the Parties have submitted […] to substantiate this claim which would allow to verify the claimed quantification. However, the Commission considers that these synergies would not provide benefits to consumers. […]. The Commission however doubts that these potential cost savings will be passed on to consumers […]. Therefore the Commission considers that […] do not meet the required test.

(1460) The Commission also notes that this conclusion was not contested by the Notifying Parties in their reply to the Commission's Article 6(1)(c) decision nor in their reply to the SO in which the same conclusion was reached on a preliminary basis.

10.4. Conclusion on efficiencies

(1461) On the basis of the above assessment, in recitals (1443)–(1459), the Commission considers that none of the claimed efficiencies meet the cumulative efficiency test of verifiability, merger specificity and benefit to consumers.

11. CONCLUSION ON THE COMPETITIVE ASSESSMENT

(1462) For the reasons set out above in Sections 9.4 and 9.5, the Commission concludes that the Transaction would significantly impede effective competition in each of the following markets:

(a) In the production and supply of **automotive HDG** in the EEA due to horizontal non-coordinated effects by eliminating an important competitive constraint;

(b) In the production and supply of **TP and laminated steel** for packaging in the EEA because the JV will have a dominant position in the relevant markets for TP and laminated steel, or at least due to horizontal non-coordinated effects resulting from the elimination of an important competitive constraint; and

(c) In the production and supply of **ECCS** in the EEA due to horizontal non-coordinated effects by eliminating an important competitive constraint.

(1463) On this basis, the Commission finds that the Transaction, as notified, would significantly impede effective competition in the internal market or in a substantial part of the internal market within the meaning of Article 2(3) of the Merger Regulation and Article 57 of the EEA Agreement.

12. COMMITMENTS

12.1. Introduction

(1464) The Notifying Parties did not submit commitments during the Phase I investigation.

(1465) In order to render the Transaction compatible with the internal market in relation to the markets for the production and supply of packaging steels (TP, ECCS and laminated steel) and automotive HDG in the EEA, the Notifying Parties submitted commitments on 1 April 2019 (the 'Commitments of 1 April 2019'), pursuant to Article 8(2) of the Merger Regulation.

(1466) The Commitments of 1 April 2019 were market tested from 3 April until 10 April 2019.

(1467) On 12 April 2019, a state of play meeting was held, durch which the Commission provided the Notifying Parties with feedback following the market test of the Commitments of 1 April 2019.

(1468) The Notifying Parties submitted revised commitments on 23 April 2019 (the 'Commitments of 23 April 2019').

(1469) Even though the Commitments of 23 April 2019 were submitted later than 65 working days after proceedings were initiated, the Commission exceptionally decided to market test them from 25 April until 29 April 2019.

(1470) On 2 May 2019, a state of play meeting was held, during which the Commission provided the Notifying Parties with feedback following the market test of the Commitments of 23 April 2019.

(1471) It is understood that the Notifying Parties reached out to certain customers and competitors in relation to the Commitments of 1 April 2019 and the Commitments of 23 April 2019. The Notifying Parties made available to the Commission contact logs of their interactions with customers and competitors during which the commitments proposed by the Notifying Parties were mentioned or discussed.[1109] The Notifying Parties state that ThyssenKrupp's outreach was limited to potential purchasers for the commitment assets, while Tata's outreach included emails and calls with customers.[1110] Tata further states that it '*has not seen, nor has it asked to see or be informed of the contents of, the Commission's market testing questionnaires or any responses*'.[1111] A number of customers have also confirmed to the Commission that discussions on the proposed commitments took place with the Notifying Parties.[1112]

12.2. Analytical framework

(1472) The following principles set out in recitals (1473) to (1487) from the Merger Regulation and the Commission's Notice on Remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 ('Remedies Notice')[1113] apply where parties to a concentration offer commitments with a view to rendering a concentration compatible with the internal market.

(1473) Where a concentration raises competition concerns in that it could significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position, the parties may seek to modify the concentration in order to resolve the competition concerns and thereby gain clearance of their concentration.[1114]

(1474) Under the Merger Regulation, the Commission has the burden of showing that a concentration would significantly impede effective competition in the internal market or in a substantial part of it. In contrast, it is for the notifying parties to the concentration to propose appropriate commitments to eliminate the competition concerns identified by the Commission.[1115] The Commission only has the power to accept commitments that are capable of rendering the concentration compatible with the internal market in that they will prevent a significant impediment to effective competition in all relevant markets where competition concerns were identified.[1116]

1109 Reply to RFI 42, Annex 1 and Annex 2.
1110 Reply to RFI 42, recitals 1.1 to 1.6.
1111 Reply to RFI 42, recital 1.5.
1112 Minutes of a call with a customer on 26.04.2019, DocID5377; minutes of a call with a customer on 25.04.2019, DocID5374.
1113 OJ C 267, 22.10.2008, p. 1.
1114 Remedies Notice, paragraph 5.
1115 Remedies Notice, paragraph 6.
1116 Remedies Notice, paragraph 9.

(1475) To that end, the commitments have to eliminate the competition concerns entirely,[1117] have to be comprehensive and effective from all points of view[1118]. The commercial structures resulting from the commitments must be sufficiently workable and lasting to ensure that the significant impediment to effective competition will not materialise. Moreover, commitments must be capable of being implemented within a short period of time as the conditions of competition in the market will not be maintained until the commitments have been fulfilled.[1119]

(1476) In assessing whether the Commission can conclude with the requisite degree of certainty that the commitments are likely to eliminate the competition concerns identified, the Commission has to take into account all relevant factors including the scale and scope of the remedy proposed, judged by reference to the structure and characteristics of the market concerned.[1120]

(1477) The question of whether a remedy and, more specifically, which type of remedy is suitable to eliminate the competition concerns identified, has to be examined on a case-by-case basis. Nevertheless, a general distinction can be made between divestitures, other structural remedies, such as granting access to key infrastructure or inputs on non-discriminatory terms, and commitments relating to the future behaviour of the Merged Entity.[1121]

(1478) Structural commitments and in particular divestitures will meet those conditions only where the Commission can conclude with the requisite degree of certainty that it will be possible to implement them and that it will be likely that the new commercial structures resulting from the commitments will likely ensure that the significant impediment to effective competition will not materialise.[1122]

(1479) The requisite degree of certainty concerning the implementation may for example be affected by risks in relation to the transfer of a business to be divested, including risks of finding a suitable purchaser. It is incumbent on the parties to remove such uncertainties as to the implementation of the remedy when submitting it to the Commission.[1123]

(1480) The divested activities must consist of a viable business that, if operated by a suitable purchaser, can compete effectively with the merged entity on a lasting basis and that is divested as a going concern. The business has to include all the assets which

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1117 Preamble to the Merger Regulation, recital 30. Case C-202/06 P Cementbouw Handel & Industrie v Commission ECLI:EU:C:2007:814, paragraph 54: '*it is necessary, when reviewing the proportionality of conditions or obligations which the Commission may, by virtue of Article 8(2) of Regulation No 4064/89, impose on the parties to a concentration, not to determine whether the concentration still has a Community dimension after those conditions or obligations have been complied with, but to be satisfied that those conditions and those obligations are proportionate to and would entirely eliminate the competition problem that has been identified*'.

1118 Remedies Notice, paragraphs 9 and 61.

1119 Remedies Notice, paragraph 9.

1120 Remedies Notice, paragraph 12.

1121 Remedies Notice, paragraphs 16–7.

1122 Remedies Notice, paragraph 10. See also Judgment of 6 July 2010, *Ryanair v Commission*, T-342/07, ECLI:EU:T:2010:280, paragraph 453: '*it must be held in that regard that commitments proposed by one of the parties to a merger will meet that condition only in so far as the Commission is able to conclude, with certainty, that it will be possible to implement them and that the remedies resulting from them will be sufficiently workable and lasting to ensure that the creation or strengthening of a dominant position, or the impairment of effective competition, which the commitments are intended to prevent, will not be likely to materialise in the relatively near future*'.

1123 Remedies Notice, paragraph 11.

contribute to its current operation or which are necessary to ensure its viability and competitiveness and all personnel which are currently employed or which are necessary to ensure the business' viability and competitiveness.[1124]

(1481) The businesses to be divested have to be viable as such. Therefore the resources of a possible or even presumed future purchaser are not taken into account by the Commission at the stage of assessing the remedy. The situation is different if already during the procedure a sale and purchase agreement is concluded with a specific purchaser whose resources can be taken into account at the time of the assessment of the commitment.[1125]

(1482) Normally, a viable business is a business that can operate on a stand-alone-basis, which means independently of the merging parties as regards the supply of input materials or other forms of cooperation other than during a transitory period.[1126]

(1483) Even though normally the divestiture of an existing viable stand-alone business is required, the Commission, taking into account the principle of proportionality, may also consider the divestiture of businesses which have existing strong links or are partially integrated with businesses retained by the parties and therefore need to be 'carved out' in those respects. In order to reduce the risks for the viability and competitiveness to a minimum in such circumstances, an option for the parties is to submit commitments proposing to carve out those parts of an existing business which do not necessarily have to be divested. In effect, an existing, stand-alone business is being divested in those circumstances although, by way of a 'reverse carve-out', the parties may carve-out limited parts which they may keep[1127].

(1484) In any case, the Commission will only be able to accept commitments which require the carve-out of a business if it can be certain that, at least at the time when the business is transferred to the purchaser, a viable business on a stand-alone basis will be divested and the risks for the viability and competitiveness caused by the carve-out will thereby be reduced to a minimum.[1128]

(1485) The Commission also recalls that it has the legal duty to ensure, when assessing the remedies proposed by the merging parties, that such remedies are effective. In order for the commitments to remove the competition concerns entirely and to be comprehensive and effective, there has to be an effective implementation and ability to monitor the commitments. Whereas divestitures once implemented do not require any further monitoring measures, other types of commitments require effective monitoring mechanisms in order to ensure that their effect is not reduced or even eliminated by the parties. Otherwise such commitments would have to be considered as mere declarations of intentions by the parties and would not amount to any binding obligations, as, due to the lack of effective monitoring mechanisms, any breach of them could not result in the revocation of the decision according to the provisions of the Merger Regulation.[1129]

(1486) Where the parties submit remedy proposals that are so extensive and complex that it is not possible for the Commission to determine with the requisite degree of certainty, at the time of its decision, that they will be fully implemented and that they

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1124 Remedies Notice, paragraphs 23 and 25.
1125 Remedies Notice paragraph 30.
1126 Remedies Notice, paragraph 32.
1127 Remedies Notice, paragraph 35.
1128 Remedies Notice, paragraph 36.
1129 Remedies Notice, paragraph 13.

are likely to maintain effective competition in the market, an authorisation decision cannot be granted.[1130] The Commission may reject such remedies in particular on the grounds that the implementation of the remedies cannot be effectively monitored and that the lack of effective monitoring diminishes, or even eliminates, the effect of the commitments proposed.[1131]

(1487) In terms of timing, pursuant to Article 19(2) of the Commission Regulation (EC) No 802/2004,[1132] the commitments in Phase II have to be submitted in a timely fashion, that is, no later than 65 working days after proceedings were initiated, to allow for an adequate assessment and for proper consultation of the Member States.[1133] The Commission is under no obligation to accept any potential improvements to the commitments after the expiry of that deadline.[1134] If the Commission nevertheless voluntarily agrees to assess such commitments, they will only be accepted where it can clearly be determined – on the basis of the Commission's assessment of information already received in the course of the investigation, including the results of prior market testing, and without the need for any other market test – that such commitments, once implemented, fully and unambiguously resolve the competition concerns identified and where there is sufficient time for proper consultation with Member States[1135]. The Commission will normally reject modified commitments that do not fulfil those conditions.[1136]

(1488) Based in particular on these principles, the Commission assessed the Commitments put forward by the Notifying Party in the present case.

12.3. The Commitments of 1 April 2019

12.3.1. Description of the Commitments of 1 April 2019

(1489) The Commitments of 1 April 2019 consisted of the divestiture of several downstream finishing plants for both metallic coated and laminated steel for packaging and automotive HDG (the 'Divestment Businesses of 1 April 2019') to an independent purchaser or purchasers subject to approval by the Commission. More specifically, the Divestment Businesses of 1 April 2019 consisted of two separate divestment businesses: Packaging Steel Divestment Business of 1 April 2019 and Automotive HDG Divestment Business of 1 April 2019, as detailed in two schedules.[1137] An overview of the finished product capacity of the Divestment Businesses of 1 April 2019 is shown in Table 24.

(1490) The Packaging Steel Divestment Business of 1 April 2019 (Schedule 1 of the Commitments of 1 April 2019) comprises Tata's packaging steel assets in Trostre (United Kingdom, the 'Trostre Plant') and Duffel (Belgium, the 'Duffel Plant'). The business includes operational capacity to produce TP, ECCS and laminated steel for packaging. The Trostre Plant has capacities for pickling input HR (hot rolled flat carbon steel coils) and cold rolling it. At the finishing stages it includes one ECCS

1130 See Case T-87/05 *EDP v. Commission*, [2005] ECR II-3745, paragraph 102.
1131 Remedies Notice, paragraph 14.
1132 Commission Regulation (EC) No 802/2004 of 21 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the 'Implementing Regulation').
1133 Remedies Notice, paragraph 94.
1134 Implementing Regulation, Article 19(2).
1135 Judgment of 21 September 2005, EDP v Commission, T-87/05
1136 Remedies Notice, paragraph 94.
1137 Commitments of 1 April 2019.

line, two TP lines […] and one lamination line. The Duffel Plant has one lamination line.

(1491) The Packaging Steel Divestment Business of 1 April 2019 requires HR as an input in its production process. That HR can be pickled and cold rolled at the Trostre Plant, followed by further processing into the finished packaging steel products at both the Trostre and Duffel Plants. The Trostre Plant is currently sourcing its HR input from Tata's integrated steelworks in Port Talbot. The Duffel Plant, which only consists of a lamination line that requires metallic coated steel for packaging as its input, is currently sourcing its input steel substrate from the Trostre Plant.[1138]

(1492) The Packaging Steel Divestment Business of 1 April 2019 does not include assets for the production of HR input or liquid steel. Instead, it includes the option of a 10-year supply agreement for HR at cost-plus terms (that is cost and an additional margin on top), at the request of the purchaser.

(1493) The Parties also committed […] in an escrow account for the purchaser to drawdown in order to fund capacity expansions of and enhancements to the Packaging Steel Business of 1 April 2019.

(1494) In addition, the Parties offered to supply the purchaser, for a period of three years, with HR (in the event that the 10-year supply agreement is not taken) and with polymer film for the manufacturing of laminated packaging steel. For a transitional period of up to 18 months, the Parties offered the supply of services for the use of testing facilities at Tata's IJmuiden plant and the supply of other services for arrangements under which the Parties and their affiliated undertakings currently supply products or services to the Packaging Steel Divestment Business of 1 April 2019.

(1495) The Parties also offered a transitional arrangement for the supply of the ECCS substrate manufactured in the Trostre Plant from the purchaser to […] for a period until the REACH Regulation would no longer allow the production of ECCS in the EEA.

(1496) The Commitments of 1 April 2019 provided that certain assets be explicitly excluded from the Packaging Steel Business of 1 April 2019. Those exclusions relate mainly to:

- Shared personnel.
- Shared testing and research facilities located in Tata's IJmuiden plant.

(1497) The Automotive HDG Divestment Business of 1 April 2019 (Schedule 2 of the Commitments of 1 April 2019) comprised ThyssenKrupp's plant in Sagunto (Spain, the 'Sagunto Plant') and Tata's plant in Ivôz-Ramet (Belgium, the 'Segal Plant'). Both the Sagunto Plant and the Segal Plant are comprised of one galvanising line for the production of zinc and zinc-magnesium coated HDG as well as one finishing/inspection line.

(1498) The Automotive HDG Divestment Business of 1 April 2019 requires CR (cold-rolled flat carbon steel) as an input in its production process.

(1499) The Automotive HDG Divestment Business of 1 April 2019 does not include assets for the production of CR and inputs further upstream. Instead, it includes an option

[1138] Commitments of 1 April 2019. See also Tata's response to RFI 32, Annex 1.

for a 10-year supply agreement for the required cold-rolled substrate at cost-plus terms (that is cost and an additional margin on top), at the request of the purchaser.

(1500) The Parties also committed EUR 9.8 million in an escrow account for the purchaser to drawdown from in order to fund the establishment of […] and of certain other investments at the Sagunto Plant. The Parties committed a further EUR 5 million in an escrow account for the purchaser to drawdown from in order to fund the establishment of research and development facilities at the Sagunto Plant.

(1501) In addition, the Parties offered to supply the purchaser, for a period of three years, with CR (in the event that the 10-year supply agreement were not taken). For a transitional period of up to 18 months, the Parties offered the supply of services for arrangements under which the Parties and their affiliated undertakings currently supply products or services to the Automotive HDG Divestment Business of 1 April 2019.

(1502) The Commitments of 1 April 2019 provided that certain assets be explicitly excluded from the Automotive HDG Divestment Business of 1 April 2019. Those exclusions relate mainly to:

– Shared personnel.

– Shared testing and research facilities located at ThyssenKrupp's Duisburg North plant (in respect of the Sagunto Plant) and at Tata's IJmuiden plant (in respect of the Segal Plant).

(1503) An overview of the finished product capacity of the divested businesses is illustrated in Table 24.

Table 24 […]

Plant	Product	Line	Effective capacity Form RM (kt)	Effective capacity (Form CO Annex 45 and 52) (kt)
Trostre	TP	[…]	[…]	[…]
Trostre	TP	[…]	[…]	[…]
Trostre	ECCS	[…]	[…]	[…]
Trostre	Laminated	[…]	[…]	[…]
Duffel	Laminated	[…]	[…]	[…]
Sagunto	HDG (incl. auto)		[…]	[…]
Segal (Liege)	HDG (incl. auto)	[…]	[…]	[…]

(1504) Both the Packaging Steel Divestment Business of 1 April 2019 and the Automotive HDG Divestment Business of 1 April 2019 included additional assets in order to support their viability and competitiveness. These are mainly:

- Personnel;
- Licences for use of intellectual property;
- Permits, licences and authorisations;
- Customer contracts and contracts, agreements, commitments, understandings and orders relating to suppliers that supply the Packaging Steel Business;
- Customer, credit and other records.

12.3.2. The Notifying Parties' Arguments

12.3.2.1. General arguments

(1505) According to the Notifying Parties,[1139] the Commitments of 1 April 2019 ensure that the Transaction would not lead to a significant impediment to effective competition. The Parties submit that the Commitments of 1 April 2019 would eliminate the competition concerns entirely, are comprehensive and effective from all points of view, are capable of being implemented effectively within a short space of time, and are sufficiently workable and lasting.

(1506) The divestment of the Packaging Steel Divestment Business of 1 April 2019 would remove the full overlap between the Parties in ECCS and laminated steel for packaging by sales volume in the EEA, and [30-40]% of the overlap in TP.

(1507) Furthermore, the Parties argue that when considering the capacity of the production of metallic coated steel for packaging, also bottlenecks in the upstream production capacities have to be taken into account. To that extent, they submit that […], and that this should be taken into account when considering the amount of overlap covered by the Commitments of 1 April 2019.

(1508) The Parties submit that the Packaging Steel Divestment Business of 1 April 2019 would have the production capabilities to produce a diverse range of metallic coated and laminated steel for packaging products at a variety of widths, gauges and coatings in coil and sheet form, including TP, ECCS and laminated packaging steel. The proposed EUR […] escrow would allow for further expansions of product portfolio and capacities.

(1509) With regard to the production and supply of automotive HDG, the divestment of the Automotive HDG Divestment Business of 1 April 2019 would reduce the increment in the merged entity's combined market share resulting from the Transaction and reduce the merged entity's share in the EEA market for the sale of automotive HDG from [20-30]% as well as its share as regards total EEA capacity from [20-30]%.

(1510) The Parties argue that a combined sales share of [20-30]% with an increment of [5-10]%-points (Tata's automotive HDG sales share excluding the Segal Plant, that is the post-divestment increment) and a combined capacity share of [20-30]% with an increment of [5-10]%-points cannot be considered as resulting in a significant impediment to effective competition.

1139 Form RM of 1 April 2019.

(1511) Further, the Parties submit that the automotive HDG production capacities of both the Sagunto Plant and the Segal Plant are in fact larger than suggested by their submitted recent production figures, due to recent ramp-ups and investments.

(1512) In any case, the Parties argue that the divestment of the Automotive HDG Divestment Business of 1 April 2019 would remove at least [30-40]% of the capacity overlap between the Parties in the production and supply of automotive HDG in the EEA.

(1513) The Parties submit that the Automotive HDG Divestment Business of 1 April 2019 would have the production capabilities to produce a diverse range of HDG products at a variety of widths and gauges, including automotive HDG and in particular material for exposed parts as well as advanced high-strength steel and coils with large widths.

(1514) In addition, according to the Parties, both the Sagunto Plant and the Segal Plant have long-term relationships with global automotive customers and are logistically well connected for the handling of inbound substrate and outbound products.

(1515) Concluding on their suitability to remove the significant impediment to effective competition, the Parties claimed that the Commitments of 1 April 2019 would lead to the creation of a new, viable, independent, substantial and highly competitive supplier of metallic coated and laminated steel for packaging, and automotive HDG in the EEA, or enhance the market position of exisiting suppliers.

12.3.2.2. Comments of the Notifying Parties on the market test

(1516) A state of play meeting was held on 12 April 2019 where the Commission communicated the (negative) results of the market test to the Notifying Parties. In that context, the Notifying Parties raised the following points.

(a) The feedback the Parties had themselves solicited and received from market participants was more positive. For one, the Parties submit that market participants would not consider upstream integration as critically important. Some of the negative feedback may be due to market participants having an agenda.

(b) The Parties submit that market participants do not have detailed knowledge of the cost structure and capabilities of the proposed assets to be divested. In addition, the Parties submit that some market participants reply with self-serving statements and with the aim of harming the Parties.

(c) Addressing the full overlap is not the standard to be met.

(d) The Trostre and Duffel plants are very competitive because they consitute a sizeable up-and-running business with all the necessary equipment and support included. The plants can produce the entire product mix. The R&D department of […] is of a similar size as that of IJmuiden and Rasselstein ([…]). The size of the proposed Packaging Steel Business is big enough to serve the EEA.

(e) […].

(f) The Sagunto Plant had been accepted as a viable remedy before in a precedent case.[1140]

[1140] M.1351 Usinor/Arbed/Aceralia.

(g) There are multiple interested buyers for both the Packaging Steel Divestment Business of 1 April 2019 and the Automotive HDG Divestment Business of 1 April 2019.

12.3.3. The Commission's Assessment of the Commitments of 1 April 2019 – Metallic-coated and laminated steel for packaging

12.3.3.1. Introduction

(1517) On 14 March 2019, having received a preliminary draft, the Commission informed the Notifying Parties that, based on its preliminary assessment, these Commitments (subsequently formally filed on 1 April 2019) were insufficient to solve entirely and effectively the competition concerns identified by the Commission in the SO.

(1518) On 3 April 2019, the Commission nonetheless launched a market test of the Commitments of 1 April 2019.

(1519) The objective of the market test was to assess the market view on whether the proposed divestments were suitable to remove competition concerns in the markets for metallic coated and laminated steel for packaging. In addition, it was tested whether the scale and scope of the Packaging Steel Divestment Business of 1 April 2019 and the proposed supply agreements were sufficient to ensure its viability and competitiveness.

(1520) The Commission has reviewed all individual responses and its assessment of the market test is based on the totality of the replies, taking particular note of the replies that expressed a substantiated opinion. These responses include the feedback from competitors and customers.

(1521) Overall, the results of the market test were very negative. A large majority of the responding customers that took a position do not consider the Commitments of 1 April 2019 to be suitable and adequate to effectively remove the Commission's competition concerns with respect to TP.[1141] With respect to ECCS, a large majority of the responding customers that took a position do not consider the remedies to be suitable and adequate.[1142] With respect to laminated steel for packaging, the results of the market test were more nuanced (see recital (1531)).

(1522) The Commission's assessment of the Commitments of 1 April 2019 on the suitability to address its concerns, corroborated by the results of the market test, are set out below in Sections 12.3.3.2 to 12.3.3.5.

12.3.3.2. Remedy structure and asset perimeter

a. Size

(1523) As regards the production of TP, the Trostre Plant contains two tinning lines: […].[1143] […].[1144] […].[1145]

(1524) In comparison, Rasselstein (ThyssenKrupp) has a total effective tinning capacity of […][1146], and Tata's IJmuiden plant of […].[1147] Even when hypothetically considering

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1141 Replies to question 1.1 of MT3 – Market Test Packaging Customers, Doc ID4946.
1142 Replies to question 1.1.3 of MT3 – Market Test Packaging Customers, Doc ID4946.
1143 […].
1144 […].
1145 […].
1146 […].
1147 […].

[…], the capacity of the Packaging Steel Divestment Business of 1 April 2019 would only be a fraction ([20-30]%[1148]) of the incremental overlap brought about by the Transaction. This is illustrated in Figure 209.

Figure 209 – Comparison of effective tinning capacity Packaging Steel Business

[…]

(1525) The Parties indicate that the total capacity should be defined by the bottleneck units in the system, thus not only considering for instance the tinning capacity, but also the bottlenecks upstream of the tinning production step. In that regard, they submit that […]. The Commission however observes that […][1149] […]. In any event, […][1150] […][1151], indicating that this is fairly representative of the system capacity for the production of TP. This also goes for the […].[1152] Therefore, the overlap removed by the Commitments of 1 April 2019 is also insufficient in terms of effective capacity when considering upstream bottlenecks.

(1526) In terms of TP sales in the EEA, the Packaging Steel Divestment Business of 1 April 2019 would account for less than half of the incremental overlap brought about by the Transaction. As shown in Table 25, the Trostre plant sold […] kt in the EEA, compared to […] kt for Tata and […] kt for ThyssenKrupp in 2017.

Table 25 – […][1153]

[…]

(1527) Despite the Commitments of 1 April 2019, the Transaction would thus still bring about a significant increment in an already concentrated market, both in terms of capacity and EEA sales whilst the divested business would be of a significant smaller scale compared to the merged entity and to the increment brought by the Transaction. This is illustrated in Figure 210 and Figure 211. While the merged entity would hold a sales share of [30-40]% and capacity share of [50-60]%, the Packaging Steel Business of 1 April 2019 would only hold a sales share of [5-10]% and a capacity share of [5-10]%. Both measures are a fraction of the standalone share of Tata pre-merger for sales and capacity, amounting to [20-30]% and [30-40]% respectively.

Figure 210 […]

[…]

Figure 211 […][1154]

[…]

(1528) The limitations in the size of the Packaging Steel Divestments Business of 1 April 2019 have also been highlighted by customers in the market test. A large majority of the customers that took a position do not consider that Packaging Steel Divestment Business of 1 April 2019 would exert a sufficient constraint to replicate the competition that is lost in the markets for TP through the merger.[1155] Customers

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1148 […], for which in that case the capacity Packaging Steel Divestment Business of 1 April 2019 would be [30-40]% of the incremental overlap.

1149 […].

1150 […].

1151 […].

1152 […].

1153 […].

1154 This representation hypothetically assumes that […].

1155 Replies to questions 2.1 of MT3 – Market Test Packaging Customers, Doc ID4946.

explain for instance: *'The new entity Tata Steel/Rasselstein would represent more than 55% of ETP production capacity in continental Europe. Commercially the proposed divestment package would be even worse than no divestment, as it would create a monopoly in the UK reduced to the status of a re-roller and a duopoly North/South (Tata Steel/Rasselstein and ArcelorMittal) with close to 90% market share on the European continent, instead of three big players on the European continent today'*; *'Because of the total capacity that the parties would still have vs the capacity of the rest of the suppliers in the European Union'*; and *'With the merger, the Parties would detain more than 50% of the European Tinplate production capacity (despite the de-investment). This is much more than ArcelorMittal, and therefore limits competition.'*[1156]

(1529) With regard to ECCS and laminated steel for packaging, the Trostre and Duffel Plants are Tata's only plants producing these products. To that extent, the proposed commitments would cover the incremental overlap brought about by the Transaction. The Trostre plant has an electrolytic chromium coating line with effective capacity […] kt/y and a laminated steel coating line of effective capacity […] kt/y. The Duffel Plant has laminated steel coating line of effective capacity […] kt/y. In comparison, ThyssenKrupp has a total electrolytic chromium coating capacity of […] kt/y and laminating capacity of […] kt/y.

(1530) However, Tata is currently […]. In addition, Tata is investing in a new laminated steel production facility with nameplate capacity of […] kt/y.[1157] In that regard, the proposed Commitments of 1 April 2019 would address a large part, but not all of the incremental capacity overlap brought about by the Transaction for ECCS. […]. For laminated steel however, the Trostre and Duffel plant would have a capacity that exceeds that of ThyssenKrupp. Even when considering Tata's new laminated steel production facility, the Packaging Steel Divestment Business of 1 April 2019 would thus account for the overlap brought about by the Transaction.

(1531) This is also reflected in the feedback of customers in the market test. A large majority of customers that took a position do not see the Packaging Steel Divestment Business of 1 April 2019 to exert a sufficient constraint to replicate the competition that is lost in the market for ECCS through the merger, though customers' explanations on this were less clear than for TP.[1158] The results were different for laminated steel for packaging, whereby for responding customers that took a position, a large majority considered the proposed remedies to be suitable and adequate with respect to laminated steel for packaging, while approximately half considered that it would replicate the competitive constraint.[1159]

(1532) The Parties argue that […] do not affect Tata's overall capacity of metallic coated steel for packaging. […]. This implies that to the extent this has […]. The Commission however recalls that it finds there to be separate relevant product markets for TP, ECCS and laminated steel for packaging, and to that extent considers that the capacity increases in ECCS and laminated steel for packaging increases Tata's competitive position in thse products individually.

(1533) In comparison, in the precedent case M.8444 – *ArcelorMittal/Ilva*, which concerned galvanised steel downstream, the Commission had accepted remedy assets from

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1156 Replies to question 2.1.1 of MT3 – Market Test Packaging Customers, Doc ID4946.

1157 […].

1158 Replies to question 2.2 of MT3 – Market Test Packaging Customers, Doc ID4946.

1159 Replies to questions 1.1.4 and 2.3 of MT3 – Market Test Packaging Customers, Doc ID4946.

ArcelorMittal for which the sum of their operational capacity fully matched that of Ilva with respect to galvanised steel.[1160]

(1534) The Commission therefore concludes that the size of the proposed Commitments of 1 April 2019 is not suitable and adequarte to remove the significant impediment to effective competition to which the Transaction would give rise to, in particular as regards TP.

b. Scope

(1535) In terms of product portfolio, the Parties submitted the EEA sales of Packaging Steel Divestment Business of 1 April 2019 by application (such as food, aerosols, closures and beverage) which would show that, ostensibly, by and large, the assets would be active in the same product applications as Tata Steel's packaging business overall.[1161]

(1536) The market test did not confirm this, as a slight majority of respondents indicated that certain critical product offerings of the Parties remained unmatched by the Packaging Steel Divestment Business of 1 April 2019.[1162]

(1537) It was also pointed out that the lack of having control over the HR input would limit the portfolio of Packaging Steel Divestment Business of 1 April 2019 in the future. A customer comments: *'Product issues: the non-integration of HRC in Trostre will limit its product range.'*[1163]

(1538) In addition, some feedback from the market test indicated that the assets in the Packaging Steel Divestment Business of 1 April 2019 were of lower quality than those at Tata's and ThyssenKrupp's retained plants: *'Moreover we would need long time to qualify Troste plant capabilities and as it is very old, the qualifications for our sensitive products are unlikely.'*[1164]*;* and *'Duffel and Troste are uncompetitive mills with old technology'*.[1165]

(1539) One of Tata's largest customers indicate that today, the assets of the Packaging Steel Divestment Business of 1 April 2019 are dependent on Tata's IJmuiden plant to deal with such quality issues*: 'The Trostre plant has always been the "problem mill" of Tata Steel Europe and the problem child of packaging steel plants in Europe. Its quality is inferior to that of other mills and it needs a lot of support from the Ijmuiden plant (R&D and management support). Tata Steel have known about the problems for years and despite of their efforts they haven't been successful to solve them. The only way to solve the inconsistency of quality and delivery is through the support of their sister plant in Ijmuiden.'*[1166] This would thus imply that under the envisaged remedy structure there would be decreased ability of the Packaging Steel Business of 1 April 2019 to mitigate quality issues.

(1540) Another customer remarks that the quality of the assets might be impeded going forward, when also considering that the Packaging Steel Divestment Business of 1 April 2019 would not be integrated upstream: *'Were Trostre to need to source HR coil on the open market, a considerable risk exists that the stability of material could*

1160 M.8444 – *ArcelorMittal/Ilva*, recital 1318.
1161 Parties' response to RFI 28.
1162 Replies to question 16 of MT3 – Market Test Packaging Customers, Doc ID4946.
1163 Replies to question 1.1.1 of MT3 – Market Test Packaging Customers, Doc ID4946.
1164 Replies to questions 1.1.1 and 1.1.3.1 of MT3 – Market Test Packaging Customers, Doc ID4946.
1165 Replies to question 4.1 of MT3 – Market Test Packaging Customers, Doc ID4946.
1166 Replies to question 4.1 of MT3 – Market Test Packaging Customers, Doc ID4946.

be lost and hence quality be affected.'[1167] The importance of upstream integration is discussed further below in section 12.3.3.3.

(1541) In addition, this dependency on Tata's IJmuiden plant seems to also extend to the R&D capabilities of the Packaging Steel Divestment Business of 1 April 2019. Customers explain for instance: *'Quality issues: the management and R&D of Ijmuiden have always played a critical role to maintain Trostre at sustainable quality/efficiency levels; Trostre alone is unable to maintain these levels independently. Without strong support from another integrated mill, in terms of resources and know-how, the future of Trostre in the packaging steel industry is not viable.'*[1168]; *'Business dies without innovation. So having R&D capabilities is key. Chrome VI free passivation is still something in progress in the steel industry. The Divestment group needs knowledge to pursue this development journey. CO2 reduction is an important public concern, the Divestment group should be able to continue working on this and have sufficient knowledge.'; 'Both Tata and Thyssenkrup have a large R&D development centers. By the merger of both a lot the technology and knowledge would be concentrated and the market would suffer if this knowledge would not be shared and passed to the purchaser. Without this technical, quality and R&D functions there would be a set back of one or two decades probably.'*; and *'The brain besides Throstree is in Ijmuiden, so is R&D. left alone, threstree will be a secondary player, while Tata+Th Kr will be a gisnt monster with more than 50% of EU production/requirement'*[1169]. This is further corroborated by the fact that a large majority of customers that took a position considered the current proposal not sufficient to ensure the viability and competitiveness of the Packaging Steel Divestment Business of 1 April 2019 as regards the exclusion of technical, quality and R&D functions.[1170]

(1542) The Commission therefore concludes that the scope of the proposed Commitments of 1 April 2019 is not adequate to guarantee that the Packaging Steel Divestment Business of 1 April 2019 would be viable and competitive for its supply of TP, ECCS and laminated steel for packaging.

c. Geographical location

(1543) The Commission finds that the TP and ECCS production assets included in the Packaging Steel Divestment Business of 1 April 2019 are geographically located in the periphery of the Parties' area of operations for packaging steel products, and due to the location of the key assets in the United Kingdom the location poses significant transportation obstacles. This also applies to the sales of the Packaging Steel Divestment Business, of 1 April 2019 to the extent that, as can be seen in Table 25 that […]% of the TP sales from Trostre are realised in the United Kingdom. This also shows that sales from Trostre are geographically much more 'skewed' than for instance the sales from ThyssenKrupp's Rasselstein plant, which realises only […]% of its sales nationally (in Germany).

(1544) In addition, the fact that all of the TP and ECCS assets of the Packaging Steel Divestment Business of 1 April 2019 are located in the United Kingdom, and that the Duffel Plant sources its input from the United Kingdom, the ongoing uncertainties related to the Brexit process and the extent to which there would be additional trade

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1167 Replies to question 5.2.1 of MT3 – Market Test Packaging Customers, Doc ID4946.
1168 Replies to question 1.1.1 of MT3 – Market Test Packaging Customers, Doc ID4946.
1169 Replies to question 17.1 of MT3 – Market Test Packaging Customers, Doc ID4946.
1170 Replies to question 17 of MT3 – Market Test Packaging Customers, Doc ID4946.

barriers if the United Kingdom were to leave the internal market have also to be taken into account. In that regard, the Commission observes that the Trostre Plant's largest customers have already undertaken measures against a Brexit risk, by refocussing their supply from the Trostre Plant mainly for their United Kingdom needs (and supply from Tata's IJmuiden plant for their needs in continental Europe).[1171] […].[1172]

(1545) Furthermore, the geographical location of the Trostre plant in the United Kingdom (and Duffel's sourcing from the United Kingdom[1173]) also poses additional complications as regards managing currency fluctuations. In that regard, the Commission refers to Figure 212 showing there to be material fluctuations between the GBP and EUR. This has to be seen in light of the considerable lead time in the production of metallic coated steel for packaging. These currency rate fluctuations would result in an uncertainty in the competitiveness or cost position of the remedy assets to compete in the Euro countries where the merged entity will have its main production hubs.

Figure 212 – EUR/GBP fluctuations 2017–2019[1174]

(1546) These considerations are also further reflected in the feedback from customers in the market test where customers commented, for instance: '*The location of the divestment business in the UK entails a significant logistical disadvantage, even absent any Brexit considerations. Reasons for this include a more complex supply chain, the increased lead times for transport by boat to the continent (one week at least) as well as the currency factor.This is compounded by Brexit risks which exist irrespective of a hard or a soft Brexit. There is a real risk of tariffs and customs measures, and non-tariff barriers will remain (currency volatility of GBP / EUR is a significant factor of uncertainty).*'[1175]; '*The Trostre plant is probably suitable for UK canmakers but as our factories are located in continental Europe (France, Spain...),*

1171 Minutes of calls with customers on 5 and 9 April 2019, Doc ID5019 and ID5066 .
1172 […].
1173 Which also affects the competitiveness of this plant already before the proposed Transaction.
1174 ECB statistics.
1175 Minutes of a call with a customer on 25 April 2019, Doc ID5374.

it is very difficult to work with a UK supplier (because of complicated logistics, freight costs, leadtime, Brexit...). With Brexit, the logistics between Trostre and Europe will be even more complicated and it will be probably impossible to rely on a steel supplier in UK.'; *'Commercial issues: the creation of a monopoly in the UK (with a non-integrated re-roller in Trostre), and a quasi-duopoly in continental Europe (with two fully-integrated suppliers, ArcelorMittal in South and Tata Steel/Rasselstein in North) will affect competition and put customers at a disadvantage.'*; *'In case of a hard Brexit the Trostre plant will become a non-Eu supplier and we doubt about the competitiveness in the EU'*; *'Leaving aside the fact that Trostre alone cannot supply such large volumes, the location of the divestment assets away from this region means that substantial trade flows are required in order to supply metallic coated steel to the region, resulting in increased transportation costs, longer lead times, and exposure to Euro/Pound currency risks.'*[1176]; *'As well from our understanding, Trostre results in the last years have not been very good and is in the UK, so basically the concentration in the EU would remain.'*; and *'Due to Brexit issue, there might be however concerns regarding the fact that one of plants i.e. Tata's Trostre is located in UK.'*[1177]

(1547) The geographical location of the assets is therefore not adequate to guarantee that the Packaging Steel Divestment Business of 1 April 2019 would be viable and competitive for its supply of TP, ECCS and laminated steel for packaging.

12.3.3.3. Lack of upstream integration

(1548) The Packaging Steel Divestment Business of 1 April 2019 contains assets for the production process for the laminating, tinning and chromium coating downstream, up until the cold-rolling upstream. It does however not include hot-rolling or further upstream capabilities such as liquid steel making. In that regard, the business concept of the Packaging Steel Divestment Business of 1 April 2019 would break the current supply structure, as the Trostre assets are today supplied with HR captively from Tata's plant in Port Talbot (and the Duffel plant in turn from the Trostre Plant with the substrate it needs, a relationship that would be mainted in the divestment). The Commission considers that this introduces a significant amount of uncertainty as to whether the Packaging Steel Divestment Business of 1 April 2019 would be able to replace the competitive constraint that would be lost through the Transaction and whether the Packaging Steel Divestment Business of 1 April 2019 would operate as a viable business independently from the Parties or from other suppliers in the oligopolistic market structure of TP, ECCS and laminated steel for packaging.

(1549) The Commission takes note that the Notifying Parties have offered a long term supply agreement of up to 10 years to supply the Packaging Steel Divestment Business of 1 April 2019. For the reasons explained in the next subsections the Commission considers this long term supply not sufficient to replicate the vertical integration structure that both Tata and ThyssenKrupp had pre-transaction.

(1550) In that respect, it is instructive to refer to the precedent flat carbon steel case M.8444 – ArcelorMittal/Ilva, in which the Commission accepted commitments of the

1176 Minutes of a call with a customer on 9 April 2019, Doc ID5066.

1177 Replies to question 1.1.1 of MT3 – Market Test Packaging Customers, Doc ID4946.

divestiture that covered the whole production value chain, from liquid steel manufacturing to the production of finished flat carbon steel product.[1178]

a. Uncertainty as to the competitiveness and viability of the Packaging Steel Business

(1551) First, as also set out in section 9.5.5.1, it is important for customers (for instance as regards quality, reliability, developments and cost) that a supplier of metallic coated steel for packaging is vertically integrated, in that they have control also over the upstream HR input for reasons of quality control throughout the production chain. This was also reiterated in the market test by the largest customers: '*HR in packaging steel is mainly used for food cans and food safety is the paramount requirement and cannot be compromised. Thermally-treated (retorted or pasteurised) food and very sensitive products (including cans for infant formula) have to be safe for consumers during the entire shelf life. For example, hot-rolled coil for tinplate for three-piece can bodies. 1. For three-piece cans the control of steel chemistry is critical to ensure good weldability of the steel, while excellent thickness control and very good control of edge waves is needed for low gauge food cans, down to 0.13mm thick. This requires a good* ***match between the hot-rolled coil transverse thickness profile and the cold mill*** *to give a combination of excellent thickness and shape. Such control requires specialised hot mills with a crown profile matched to the ingoing cold mill profile […]'*[1179]; '*The key to produce tinplate ("TP") is to have access to hot rolled coil ("HR") of the appropriate high quality, because no good TP mill can turn bad HR into good TP. It is very important, in order to be a viable competitor on the TP market, to have access to an upstream supply of HR internally in order to* ***ensure continuous volume and quality of supply****. It can cause problems if the HR is purchased from another company, as continuous volume and quality of HR coil cannot be guaranteed.'*[emphasis added][1180]

(1552) Second, one of the largest customers of metallic coated steel for packaging in the EEA further indicates that control over the HR substrate is essential to allow product innovation and improvement, as these require not only developments in the finishing process, but also in the HR input: '*There is a clear ongoing trend that the material needs to become thinner all the time. Hence, also the chemicals need to be changed in the HR coils. This typically requires that the supplier has control of the upstream production phases, including liquid steel.*'[1181]

(1553) Third, HR coil constitutes a major cost component in the production value chain of coated flat carbon steel such as metallic coated steel for packaging. The Parties for instance submit that the transfer price of HR coil to Trostre amounted to […], while conversion costs (costs related to process HR into a finished product) amounted to […].[1182] The Packaging Steel Divestment Business of 1 April 2019 would not have control over this cost component as it would be sourcing it from the merged entity, in contrast to at least the European suppliers it is competing with. Not only does this pose uncertainty over its cost competitiveness, but also as to its viability (see recitals (1565)–(1569) below).

1178 European Commission Press release 7 May 2018: *'Mergers: Commission clears ArcelorMittal's acquisition of Ilva, subject to conditions'*.

1179 Replies to question 7.1 of MT3 – Market Test Packaging Customers, Doc ID4946.

1180 Minutes of a call with a customer on 9.4.2019, Doc ID5066.

1181 Minutes of a call with a customer on 5.4.2019 , Doc ID5019.

1182 […].

(1554) Fourth, the Commission recalls that the re-roller business model for metallic coated or laminated steel for packaging does not exist in Europe, as the Parties, ArcelorMittal and USSK are all integrated suppliers. There is thus no proven business case that could demonstrate the competitiveness and viability of this remedy structure. Further, none of the Parties was working under a re-roller model pre-Transaction and have not showed that they could compete in the same way also under a re-roller model.

b. A structure under supply agreement renders the Packaging Steel Business of 1 April 2019 dependent on European incumbents as regards its competitiveness and viability

(1555) A slight majority of customers that took a position were evenly split on the question whether the inclusion of a HR supply agreement, offered by the Parties to the purchaser of the packaging divestment assets, would be adequate to ensure the Packaging Steel Business' competitiveness and viability in light of the divested business not including liquid steel making or HR facilities.[1183] A large customer explains that to the extent that the divested business or its purchaser does not have its own upstream steel production capabilities, the HR supply agreement would make it dependent on the Parties for what would be a significant part of the packaging steel value chain. Another customer indicates that the required HR might not be competitively available on the market: '*No competitor will give good quality and service to another competitor.*'[1184]

(1556) While there seems to be a certain degree of confidence by customers that a supply arrangement would be adequate[1185], the Commission observes that the Packaging Steel Divestment Business of 1 April 2019 might for this supply agreement be dependent on the Parties or other European producers of metallic coated steel for packaging.

(1557) First, if the HR supply were to originate from outside the EEA, the Commitments of 1 April 2019 would fall short of replicating the competitive constraint exerted by the Parties before the Transaction, as both Parties were integrated suppliers with substrate production capabilities nearby the packaging steel plants and therefore do not share the same supply chain risks (including transport costs, lead time and security of supply in light of trade measures) that the Packaging Steel Divestment Business of 1 April 2019 would have when sourcing its HR from outside the EEA. To that extent, customers indicated in the market test that even when the purchaser would bring its own HR, it should come from a plant located in the EEA and only a clear minority of customers considered that HR imported from outside the EEA would be adequate.[1186] Customers explain: '*Supply from outside Europe is not really a alternative (aside Japan, limited quantity) - quality for packaging steel would be an critical issue*'[1187]; '*In order to have a consistent and suitable supply of Packaging Steel, as the one that has been available until now, the HR supply should come from the EEA. Otherwise could have lead time impacts, quality, environmental*

1183 Replies to question 5.1 of MT3 – Market Test Packaging Customers, Doc ID4946.

1184 Replies to question 5.1 of MT3 – Market Test Packaging Customers, Doc ID4946.

1185 To to the extent they are well acquainted with their suppliers' production process and business model, considering that an equal amount of respondents indicated that a supply agreement would be adequate indicated not having knowledge on the matter (Replies to question 5.1 of MT3 – Market Test Packaging Customers, Doc ID4946).

1186 Replies to question 13 of MT3 – Market Test Packaging Customers, Doc ID4946.

1187 Replies to question 7.2 of MT3 – Market Test Packaging Customers, Doc ID4946.

implications, etc.'; '*If HR is imported from plants outside the EEA, there will be a significant financial risk to be heavily taxed due to the EU safeguard measures, now or in the future.*'[1188]; '*The procurement of HR for packaging steel from outside the EEA, e.g. from Nippon Steel, JFE, Posco, Baosteel and Shougan is unprecedented in the quantities that the divestment business would be required to source and does not seem to be a viable alternative. Purchasing HR from outside the EEA, the supply chain would be very long, which is a huge disadvantage for an intermediate product. Another problem is the large volumes of HR (400-600kt) needed by the divestment business. In Japan there is no such spare capacity. As regards Chinese suppliers, their quality is not as good as the quality from Japan or the EEA. Moreover, there are currency and trade and tariff risks to be considered. […]. Moreover, the long supply chain means that by the time you spot a quality issue, you have a long chain of products "on the water", so it will be costly and time-consuming to fix.*'[1189]

(1558) Second, even sourcing the HR substrate for packaging steel within the EEA would be challenging, considering the concentration in integrated packaging steel suppliers in the EEA. The Commission notes that not every HR producer has the capability to produce HR that is suitable for the production of metallic coated steel for packaging: '*And for ETP production you need a special HR coil quality with higher quality requirements that means you cannot buy it just around the corner. And It would lead to short term up's and down's of prices like it is in China, where many tinplate manufacturers rely on tinplate from large HR coil suppliers. Not a good idea for Europe.*'[1190]; '*HRC for ETP/ECCS/laminate is specific and not a commodity. Only suppliers who are today already producing HRC dedicated to the packaging steel business are capable of providing such quality, therefore the divested entity would be in competition with their own supplier of HRC.*'[1191]; '*[…] there is therefore no merchant market for HR of the required quality for packaging steel and therefore no relevant price […] Even a high-quality supplier like Salzgitter or Voestalpine would need two years to develop HR appropriate for TP production, hence the need of a transitional supply agreement. TP is very high technology material, among the most difficult in the steel industry – therefore re-rollers have disappeared over time as they had to buy the most important input from their downstream competitors.*'[1192] '*After the supply contract ends (or, as discussed above, during the course of the contract in the event of any capacity expansion), it is not clear what would happen. There is no merchant market for the supply of HR for metallic coated steel for packaging; certainly not for the quality and quantity needed and on a continuous basis. At best, the divested business would expect to get a worse deal from the Parties after the contract expires and as set out above, the deal offered already does not allow the divestment business to credibly compete with the merged entity*'[1193] This was further confirmed in the second market test, as explained in recital (1651).

(1559) A major packaging customer of the Parties also explains that sourcing of the HR specific for packaging steel would be limited to the suppliers that are currently already active in this market: '*Besides ThyssenKrupp, Tata Steel, ArcelorMittal and USSK, the Company does not know any other supplier that would be able to produce*

1188 Replies to question 13.1 of MT3 – Market Test Packaging Customers, Doc ID4946.
1189 Minutes of a call with a customer on 9 April 2019, Doc ID5066.
1190 Replies to question 5.2.1 of MT3 – Market Test Packaging Customers, Doc ID4946.
1191 Replies to question 7.1 of MT3 – Market Test Packaging Customers, Doc ID4946.
1192 Minutes of a meeting with a customer on 10 April 2019, Doc ID5063.
1193 Minutes of a call with a customer on 9 April 2019, Doc ID5066.

HR for TP in the EEA.'[1194] The Commission in this regard further recalls that despite these companies being able to produce such HR, the market test has shown there to be no merchant market for this product (see recital (1565)).

(1560) Third, a large majority of customers for instance indicate that the scale and scope of the Packaging Steel Divestment Business of 1 April 2019 would be insufficient to ensure the independence from the Parties, referring to a dependency of the Business on Tata's supply chain. Customers comment, for instance that '*without own HR production, they can never be independet. Addtional costs of transport + dependency on HR supplier make a mill incompetitive and insufficient'*; '*On its overall scheme, by essence, Trostre would never be independent because of its total dependence on its competition for HRC supply.*'; and that '*Trostre plant cannot be independant of the TataSteel welsh steel complex as it is very embedded and integrated altogether.'*[1195]

(1561) On the basis of the above, the Commission concludes that the Packaging Steel Divestment Business of 1 April 2019 would be dependent on the merged entity or other existing European competitors for its competitiveness and viability seriously undermining its viability and competitiveness as regards TP, ECCS and laminated steel for packaging.

c. Challenges for a purchaser to use own upstream steelmaking capabilities

(1562) Assuming that the purchaser has its own upstream operations, a large majority of customers indicate that it could be feasible for the purchaser of the Packaging Steel Divestment Business of 1 April 2019 to bring its own slab or HR capacity to feed the business.[1196] The Commission however recalls that flat carbon steel manufacturers with upstream steelmaking capacity indicate that downstream investments are not sufficient for them to enter the market of metallic coated steel for packaging.[1197] A competitor in flat carbon steel that is not active in packaging steel further explains the challenges of producing the upstream substrate for packaging steel: '*Since the material for packaging is* ***significantly thinner*** *than the material delivered to automotive OEMs, the* ***slabs must have a higher purity*** *to avoid the risk of pitting in the cold strip. [Company name] assumes that for tinplate, thinner cold strips also require thinner hot strips. This could lead to special requirements for the hot rolling process, such as inter alia: (i) monitoring that the sheet thickness remains consistent in width and length; (ii) control of the heat balance of the strip and associated mechanical properties; (iii) special plant layout tailored to reduce the thickness of the pre-strip/hot strip; or (iv) adjustments of the cooling section. […]* ***Currently, [Company name] does not produce substrates for TP and/or ECCS lines****. […] In order to expand [Company name]'s production plant in a way that allows for the production of HR steel substrate to TP and/or ECCS lines, the following investments would have to be made […] [Company name] believes that* ***a non-integrated tinplate producer would depend on steel substrate from the few existing European tinplate producers and, accordingly, their willingness to deliver the substrate****. Given the particular requirements for substrates for TP (e.g. cleanliness, supply security), any long-term agreement for the supply of substrates for TP should be concluded at market terms (possibly reflecting cost elements) and secure supply of the necessary*

1194 Minutes of a call with a customer on 5.4.2019, Doc ID5019.

1195 Replies to question 8 of MT3 – Market Test Packaging Customers, Doc ID4946.

1196 Replies to question 10 of MT3 – Market Test Packaging Customers, Doc ID4946.

1197 Replies to question 101 and 101.1 of Q1 – Questionnaire to Competitors, DocID2166.

specifications and volumes.'[emphasis added][1198] The competitor however notes that this is based on its limited knowledge as it is currently not active in this market.

(1563) Other competitor responses also question this, casting doubts whether a purchaser would indeed be able to feed the Packaging Steel Divestment Business of 1 April 2019 with its own HR/slab production capacity. While only one (non-EEA) competitor indicated it could supply the substrate for the packaging business (although not the whole range), two EEA suppliers indicated they would not be able to.[1199]

(1564) In any event, the problem remains that the proposed Commitments of 1 April 2019 do not bind the Parties to find a buyer that would be able to supply the needs of the Packaging Steel Divestment Business of 1 April 2019 independently from the Parties. In addition, no competitors have in the market test expressed interest in the Packaging Steel Divestment Business of 1 April 2019 as it is. Only if there were certain amendments, ArcelorMittal and Marcegaglia have shown interest. ArcelorMittal would however itself likely not qualify due to the presence of prima facie competition concerns that would arise if it were to acquire the divested business – it being the main competitor in the EEA – and Marcegaglia does not have slab-making or hot-rolling capabilities nor prior expertise in packaging steels. The Parties have subsequently submitted an overview of interested purchasers, which however indicates that all of these would require a supply agreement for HR.[1200]

d. Viability risk

(1565) The lack of of upstream integration furthermore creates a significant risk for the viability of the Packaging Steel Divestment Business of 1 April 2019.

(1566) As indicated above in section (c), the HR used for metallic coated steel for packaging is different from HR used for other applications. Furthermore, no competitors responding to the market test have indicated having sold such HR in the EEA in the period 2017–2019 (other than captively to own operations).[1201] The market investigation has not revealed pricing data of this type of HR that would enable the Commission to assess the impact on the profitability of the Packaging Steel Divestment Business of 1 April 2019 when HR would no longer be sourced internally.

(1567) As indicated in recital (1553), HR constitutes for a very significant part of the costs for producers of metallic coated steel for packaging. Furthermore, steel producers do not typically have a significant margin that would allow for material deterioration in their cost base. […].[1202] A small deviation can therefore render the business unprofitable. Such deviations can occur for instance due to the extent to which incumbent packaging steel producers would be incentivised (or not) to supply an entrant competitor or due to the presence of a double marginalisation that is typically present in production chains where different vertical steps are operated by different entities.

1198 Follow-up to minutes of a meeting with a competitor, Doc ID3638.

1199 Replies to question 19 of MT1 – Market Test Competitors, Doc ID4944.

1200 Overview provided on the meeting with the Parties on 17.4.2019, Doc ID5029.

1201 Replies to question 11 of Market Test Revised Commitments – Competitors, Doc ID5184.

1202 […].

(1568) For instance, the Packaging Steel Divestment Business of 1 April 2019 reported an EBIT of GBP […].[1203] If for example its sourcing of HR had been GBP […] more expensive (which would represent roughly […]% increase)[1204], it would have reported […] in that period. To the extent that an increase in the HR cost would be less pronounced and thereby still result in a positive EBIT, interest expenses as well as the cost of equity, which depend on the purchaser, would also have to be taken into account.

(1569) While the Parties submit that the investments for which they are willing to provide a fund in escrow would significantly increase the profitability of the Packaging Steel Divestment Business of 1 April 2019, and that […], this appears far from certain, also for the market participants in the market test. In any event, the Parties themselves considered in internal documents, […].

Figure 213 - […][1205]

[…]

Figure 214 – […][1206]

[…]

e. Lack of upstream capabilities - conclusion

(1570) On the basis of the above in this section, the Commission considers that the Packaging Steel Divestment Business of 1 April 2019 would be dependent on the Parties or on the limited number of alternative European suppliers of packaging steel[1207] for its viability and competitiveness.

(1571) This has also been confirmed by the market test, where a large majority of customers that took a position do not consider the Packaging Steel Divestment Business of 1 April 2019 to be sufficient in scale and scope to ensure its viability in the production and supply of packaging steel.[1208]

12.3.3.4. Risks regarding potential purchasers

(1572) While Tata submits that it had received interest from several potential purchasers, the market test did not reveal any steel producers that would be interested in purchasing the Packaging Steel Divestment Business of 1 April 2019 as it is foreseen in the commitments.[1209] The Commission notes that an absence of suitable interested buyers (or uncertainty in that regard) poses a potential risk on the ability for the Parties to propose a purchaser that would operate the Packaging Steel Divestment Business of 1 April 2019 as a viable competitive force.

(1573) In addition, it appears that […]. This is shown in Figure 215 which is […].[1210]

Figure 215 – […][1211]

[…]

1203 […].
1204 […].
1205 […].
1206 […].
1207 ArcelorMittal and USSK, to the extent that these have the capacity and incentives (considering also the concentration in these markets for packaging steel).
1208 Replies to question 4 of MT3 – Market Test Packaging Customers, Doc ID4946.
1209 Replies to question 17 of M1 – Market Test Competitors, Doc ID4944.
1210 […].
1211 […].

(1574) In this regard, the Commission points out that to the extent […], it would require a requisite degree of clarity on the viability of the purchaser's business plan, which it is not able to assess under the Commitments of 1 April 2019 (neither on the revised Commitments of 23 April 2019).

12.3.3.5. Conclusion on the Commitments of 1 April 2019

(1575) On the basis of all the above considerations in Sections 12.3.3.1 to 12.3.3.4, the Commission concludes that the Commitments of 1 April 2019 do not entirely remove the significant impediment to effective competition with regard to metallic coated (TP and ECCS) and laminated steels for packaging and are not comprehensive and effective from all points of view. Furthermore, it cannot be concluded with the requisite degree of certainty that the Packaging Steel Divestment Business of 1 April 2019 would be viable under the envisaged remedy structure.

12.3.4. The Commission's Assessment of the Commitments of 1 April 2019 – Automotive HDG

12.3.4.1. Introduction

(1576) On 14 March 2019, having received a preliminary draft, the Commission informed the Notifying Parties that, based on its preliminary assessment, these Commitments (subsequently formally filed on 1 April 2019) were insufficient to solve entirely and effectively the competition concerns identified by the Commission in the SO.

(1577) On 3 April 2019, the Commission nonetheless launched a market test of the Commitments of 1 April 2019.

(1578) The market test was intended to assess whether the proposed divestments were suitable to remove competition concerns in the EEA market for automotive HDG. In addition, the market test was intended to test in particular whether the scale and scope of the Automotive HDG Divestment Business of 1 April 2019 and the proposed supply agreements were sufficient to ensure its viability and competitiveness.

(1579) The Commission reviewed all individual responses, taking particular note of the replies that expressed substantiated opinions. The responses include feedback from both competitors and automotive customers (including both automotive OEMs and other automotive customers).

(1580) Overall, the results of the market test were negative. A large majority of responding customers that took a position did not consider the remedies to be suitable and adequate to effectively remove the Commission's competition concerns with respect to automotive HDG in the EEA.[1212]

(1581) The Commission's assessment of the suitability of the Automotive HDG Divestment Business of 1 April 2019 as included in the Commitments of 1 April 2019, as well as the results of the market test, are set out below in Sections 12.3.4.2 to 12.3.4.5.

12.3.4.2. Remedy structure and asset perimeter

a. Size

(1582) The Sagunto Plant currently has a nominal HDG production capacity of […], while the Segal Plant has a nominal HDG production capacity of […]. The Automotive

[1212] Replies to question 1 of MT2 – Market Test Automotive Customers, DocID4945.

HDG Divestment Business of 1 April 2019 thus currently has a combined nominal HDG production capacity of […].

(1583) Pre-Transaction, Tata's overall nominal capacity in 2017 was […] kt/y and ThyssenKrupp's overall nominal capacity in the same year was […] kt/y.

(1584) The Automotive HDG Divestment Business of 1 April 2019 would therefore account for approximately only [30-40]% of the incremental nominal capacity brought about by the Transaction with regard to the Parties' overlap in automotive HDG in the EEA. The nominal capacity of the Automotive HDG Divestment Business of 1 April 2019 would be approximately [10-20]% of the Parties' current combined nominal capacity, and approximately [10-20]% of the merged entity post-Transaction without counting the divested assets. Figures based on sales shares rather than capacity shares are similar.

(1585) Despite the Commitments of 1 April 2019, the Transaction would thus bring about a significant increment in an already concentrated market with a limited number of full-portfolio competitors, both in terms of capacity and EEA sales.

(1586) The limitations in the size of the Automotive HDG Divestment Business of 1 April 2019 were also pointed out by customers and competitors in the market test. A large majority of customers that took a position consider that the Automotive HDG Divestment Business of 1 April 2019 would not exert a sufficient constraint to replicate the competition that would be lost in the EEA market for automotive HDG through the Transaction.[1213]

(1587) Customers indicate, for instance: '*Even if a certain number of production lines are sold to other steel producers the number of steel suppliers will not increase i.e. competition concerns will remain if the merger Tata+Thyssen will take place.*'; '*the volumes 1MT is very small vs EU production, nothing big to see a new actor raising to rebalance AM & TATA-THYSSEN dominance (they represent 75% of overall production). If the transaction is unconditionally approved, there would be a switch from a 3 major actors in Europe to 2. This is likely to significantly reduce competitiveness, it being specified that the 3rd bigger supplier would be very small*'; '*The remedies doesn't allow the emergence of a 3rd "major" actor in Europe. What would be needed is up-stream phase processes (blast furnace "rolling mills" to enable "independence" of the buyer*' and '*there is today 3 major actors… only 2 tomorrow if the transaction takes place. It would be very difficult to see a 3rd party in EUROPE raise among European steel mills and those remedies will not enable this.*'; '*too high steel producers concentration in Europe*'; '*With the merger we are loosing one competitor in the European Market.*' and '*In our opinion Tata-ThyssenKrupp JV will become leader in central Europe.*'.[1214]

(1588) A competitor points to the plants proposed for divestiture being '*small plants, with limited production capabilities in terms of product range and production volume*'.[1215]

(1589) The Commission therefore considers that the size of the Automotive HDG Divestment Business of 1 April 2019 is not sufficient to be suitable for removing the significant impediment to effective competition to which the Transaction would give rise regarding automotive HDG in the EEA.

1213 Replies to question 2 of MT2 – Market Test Automotive Customers, Doc ID4945.

1214 Replies to questions 1.1, 1.2 and 2.1 of MT2 – Market Test Automotive Customers, Doc ID4945.

1215 Replies to question 1.1 of MT1 – Market Test Competitors, Doc ID 4944.

b. Scope

(1590) The Parties submit that the Automotive HDG Divestment Business of 1 April 2019 would produce a diverse range of HDG products sold to the automotive industry, including material for exposed parts, advanced high-strength steel and coils with large widths.

(1591) However, both the Segal Plant and, in particular, the Sagunto Plant have technical limitations. On the one hand, neither of the two Plants can produce automotive HDG with strip widths greater than […] mm. On the other hand, the Sagunto Plant cannot make products with tensile strengths greater than […] MPa, while the Segal Plant cannot make products with tensile strengths greater than […] MPa.[1216] This is a significant deficiency considering that, as the investigation has revealed, the relevance of such very high-strength and wide automotive HDG products has been constantly growing and is likely to increase in the future (see for instance Section 9.4.3.3.b and Section 9.4.3.4).

(1592) Notwithstanding such technical limitations, a majority of automotive customers that took a position in the market test also expressed the view that the Automotive HDG Divesment Business of 1 April 2019 is not missing any critical capabilities compared to the products that both Tata and ThyssenKrupp can produce.[1217]

(1593) At the same time, at least two automotive customers expressed doubts regarding the quality of the Sagunto Plant in particular. One of them notes that '*Sagunto was idled during crises. Minor facility for TKS*' while the other commented '*Sagunto plant is only a HDG line the is already historically a remedies of AM when Usinor/Arberd/Aceralia did merge. TKS has "closed" the line several years in the past… and now put it for sell again. This question the "profitability" of this kind of acquisition*'.[1218]

(1594) Similarly, a number of competitors pointed to shortcomings in the product portfolio of the Automotive HDG Divestment Business of 1 April 2019. A competitor indicates that the Segal Plant is '*not able to produce all "new generations of automotive steels"*',[1219] while another competitor comments that '*Segal cannot do 2 mtr wide (Ijmuiden). Sagunto, we have no knowledge*'.[1220] A competitor further comments about the Segal Plant that it is '*limited in its capabilities of producing high strength and ultra-high strengths steel*',[1221] while another competitor points to both the Segal Plant and the Sagunto Plant and explains that they are '*small plants, with limited production capabilities in terms of product range and production volume*'.[1222]

(1595) These comments by competitors appear to be correct in light of the Commission's own analysis as laid out in recital (1591) and the Commission therefore concludes that the scale and scope of the Automotive HDG Divestment Business of 1 April 2019 are insufficient.

(1596) In addition, the proposed Automotive HDG Divestment Business of 1 April 2019 excluded existing R&D facilities or assets for automotive HDG. The Parties

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1216 […].
1217 Replies to question 15 of MT2 – Market Test Automotive Customers, DocID 4945.
1218 Replies to questions 1.1, 4.1 of MT2 – Market Test Automotive Customers, DocID 4945.
1219 Replies to question 17.1 of MT1 – Market Test Competitors, DocID 4944.
1220 Replies to question 26.1.1 of MT1 – Market Test Competitors, DocID 4944.
1221 Replies to question 17.1 of MT1 – Market Test Competitors, DocID4944.
1222 Replies to question 1.1 of MT1 – Market Test Competitors, DocID 4944.

proposed – at the purchaser's request – an escrow fund of EUR […] for the purchaser to establish research and development facilities in Sagunto.

(1597) While a significant share of automotive customers did not take a position, the majority of those who took a position considered the escrow fund for R&D as sufficient to ensure the viability and competitiveness of the Automotive HDG Divestment Business of 1 April 2019 and its ability to compete in the long term. However, this view was not shared by everyone and certain automotive OEMs considered the proposed escrow fund likely insufficient.[1223] An automotive OEM that took a negative position explains that it: '*[d]oesn't make any sense to create RxD in Sugunto*'. Another automotive OEM comments: '*No idea of the required amount needed to create R&D facility. Would be however, much more relevant that the takeover is done by a mill which already has R&D deep knowhow*'. A third automotive OEM that took a negative position clarifies that development is also needed further upstream: '*some material-developments and properties are strongly related to the surface. ther [sic] culd result [sic] a gap in developing new alloys etc.*'[1224]

(1598) In any event, regardless of the escrow fund for R&D investments, given the technical limitations of the Automotive HDG Divestment Business of 1 April 2019, the Commission concludes that its scope is inadequate to guarantee its viability and competitiveness.

c. Geographic location of plants

(1599) The Commission notes that in particular the Sagunto Plant is geographically located on the periphery of the Parties' main production and sales hubs for automotive HDG in the EEA. In fact, the Sagunto Plant is the Parties' only HDG line located far away from their production hubs in the United Kingdom, the Netherlands and Germany.

(1600) In 2017, the Sagunto Plant sold […]% of its production to customers located in Spain.[1225] The rest of the sales went to […]. The Sagunto Plant thus appears to be currently dedicated to serving customers in […].[1226]

(1601) In contrast, much of the European automotive HDG demand is located in Germany and countries surrounding it, which is where also the Parties make much of their automotive HDG sales and the impact of the Transaction will be most felt (ThyssenKrupp makes more than […]% of its automotive HDG sales in Germany; Tata more than […]%).[1227] Importantly, based on Tata's internal documents, […].

(1602) As a further illustration and by way of comparison, the Segal Plant – located in Belgium – makes significant sales to customers in […]. The Segal Plant therefore appears to be a significantly more suitable asset than the Sagunto Plant with respect to its geographic location.

(1603) Therefore, the Commission considers that the Automotive HDG Divestment Business of 1 April 2019 is unsuitable to replicate the competitive constraint lost because of the Transaction, due to its scale and scope and the location of the Sagunto Plant.

1223 Replies to qustion 16 of MT1 – Market Test to Competitors, DocID 4944.

1224 Replies to question 16 of MT2 – Market Test Automotive Customers, Doc ID4945.

1225 Commission's calculations based on the data submitted in the Parties' reply to RFI 36 […].

1226 […].

1227 […].

12.3.4.3. Lack of upstream integration

(1604) The Automotive HDG Divestment Business of 1 April 2019 contains assets only for the production of HDG (finishing lines). It does not include cold-rolling, hot-rolling or further upstream capabilities such as liquid steelmaking. This, in spite of the fact that the importance of vertical integration and the difficulty in procuring adequate quality substrate from the market have consistently been communicated by market participants throughout the investigation (see for instance Section 9.4.3.2). In that regard, the business concept of the Automotive HDG Divestment Business of 1 April 2019 would possibly break the current upstream supply structure, since the Sagunto and Segal Plants are today supplied with CR internally by Tata and ThyssenKrupp […].

(1605) The Commission takes note that the Notifying Parties have offered a long-term supply agreement of up to 10 years to supply the Automotive HDG Divestment Business of 1 April 2019. However, for the reasons explained in the following recitals, the Commission considers this long-term supply insufficient to replicate the vertical integration structure that both Tata and ThyssenKrupp had pre-Transaction.

(1606) The Commission considers that the lack of upstream integration introduces a significant amount of uncertainty as to whether the Automotive HDG Divestment Business of 1 April 2019 would be able to replace the competitive constraint that would be lost through the Transaction and whether the Automotive HDG Divestment Business of 1 April 2019 would operate as a viable business independently from the Parties or from other suppliers in the oligopolistic market structure of automotive HDG in the EEA.

(1607) In the market test, the lack of upstream integration was identified as a key concern and shortcoming of the proposed Automotive HDG Divestment Business of 1 April 2019, in particular by automotive customers (and even more so, OEMs).

(1608) First, as already detailed in Section 9.4.3.2, it is important for customers (for instance as regards quality, reliability, developments and cost) that a supplier of automotive HDG is vertically integrated, in that they have control also over the upstream liquid steel, HR and CR input. This was also reiterated in the market test. An automotive OEM comments that '*[n]o as they do not propose "up-stream" process. There is no blast furnace, HR and/or CR Mill in order to produce mother coils for the Galva lines. The buyer will be dependent on the other European mills (AM-ILVA & TATA-THYSSEN who have by far the bigger volumes)*' and further explains that the '*[s]cope is "too small" and without up-stream production process. Which raise concern in terms of viability*'.[1228]

(1609) The importance of upstream integration is supported by the market test in that a number of customers – and in particular a majority of the OEMs that took a position – considered that the CR supply agreement proposed by the Parties would not be adequate to ensure the competitiveness and viability of the Automotive HDG Divestment Business of 1 April 2019 and that upstream production facilities would instead be needed.[1229]

(1610) Similarly, although some respondents replied to the contrary, the majority of automotive customers that took a position considered that the scale and scope of the

[1228] Replies to questions 1 and 4 of MT2 – Market Test Automotive Customers, Doc ID4945.

[1229] Replies to question 5 of MT2 – Market Test Automotive Customers, Doc ID4945.

Automotive HDG Divestment Business of 1 April 2019 is insufficient to ensure its immediate viability and competitiveness.[1230]

(1611) Second, regarding the Parties' proposed inclusion of a CR supply agreement in the Automotive HDG Divestment Business of 1 April 2019, the majority of automotive customers considered that it would not ensure that the remedy would restore competition and address the competition concerns in automotive HDG in the EEA. An automotive OEM comments that '*[b]y the CR supply agreement TKS/TATA could anyway use the position to control and keep the CR price at a high level, limiting the competitiveness of the new owner of the coating lines*' while another automotive OEM concurs that '*[s]labs will be bought to AM or TATA-TKS in EU, therefore those 2 actors will make the prices. […] The rest will be driven by slabs producers. The other slab producers are outside Europe (NLMK…) but with current safeguards measure it it high risk to set a strategy for the new buyer based on slabs outside Europe*'.[1231]

(1612) Third, some of the largest customers of automotive HDG in the EEA further indicated that control over the HR/CR substrate is essential to enable product innovation and improvement, as these require developments not only in the finishing process but also in the HR/CR input. A customer explains that '*R&D is not sufficient, the up-stream process (blast furnace, CR/HR mills) management is also a key element to me mastered by the new owner'* while another customers concurs that *'some material-developments and properties are strongly related to the surface. ther [sic] could result [sic] a gap in developing new alloys etc.'*[1232]

(1613) Fourth, HR/CR substrate constitutes a major raw material cost-component in the production value chain of automotive HDG. A customer explained in this respect that the remedy needs to include '*[e]quivalent volumes capacities from a Blast furnace, CR Mill & HR Mill in order not to be dependant of competitors on 85% of the value chain of their products. To have as much capacities of up-stream process to increase the portion of value chain that the new owner is not dependent of other mills which will be their competitors*'.[1233] In the absence of upstream assets, the Automotive HDG Divestment Business of 1 April 2019 would not have control over this cost component, in contrast to at least the European suppliers it is competing with.

(1614) The Commission therefore considers that the lack of upstream integration creates uncertainties about the viability of the Automotive HDG Divestment Business of 1 April 2019 in terms of its cost base and thus also profitability.

(1615) Fifth, the Commission recalls that re-rollers are marginal players in automotive HDG in the EEA and that the main automotive HDG suppliers are all vertically integrated. There is thus no proven business case that could demonstrate the competitiveness and viability of this remedy structure as a significant automotive HDG supplier, as described in Sections 7.5.4.6 and 9.4.3.2.a.

(1616) Sixth, the proposed Commitments of 1 April 2019 do not bind the Parties to a buyer that would be able to supply the needs of the Automotive HDG Divestment Business of 1 April 2019 independently from the Parties. In that regard, only one competitor –

1230 Replies to question 4 of MT2 – Market Test Automotive Customers, Doc ID4945. See also the replies to question 5.

1231 Replies to question 3 of MT2 – Market Test Automotive Customers, Doc ID4945. See also the replies to question 5.

1232 Replies to question 16 of MT2 – Market Test Automotive Customers, Doc ID4945.

1233 Reply to question 5 of MT2 – Market Test Automotive Customers, Doc ID4945.

a re-roller – expressed interest in the Automotive HDG Divestment Business of 1 April 2019 as it is. While certain integrated EEA steel producers also indicated that they could be interested in it, their interest was conditional on certain amendments to the Automotive HDG Divestment Business of 1 April 2019.

(1617) The Parties have subsequently submitted an overview of interested purchasers, which however indicates that many of these would require a supply agreement.[1234]

(1618) Therefore, the Commission considers that the absence of upstream assets in the Automotive HDG Divestment Business of 1 April 2019 – even when taking into account the Parties' proposed supply of CR – raises serious doubts regarding its adequacy, independence, viability and competitiveness.

12.3.4.4. Other issues

(1619) In addition to the main issues described in Sections 12.3.4.2 and 12.3.4.3, the proposed Automotive HDG Divestment Business of 1 April 2019 raises a number of other issues related in particular to its viability and to the implementation of the commitments.

(1620) First, the limitations of the Sagunto Plant are illustrated by the fact that it had been mothballed in 2013 and was only re-opened in November 2016. This raises the question of the competitiveness of the Sagunto Plant for a possible purchaser, and its incentives to in fact use the line for production and sales to EEA automotive customers. The issues related to the mothballing have also been noted by market participants in the market test.[1235]

(1621) Second, the remedy proposal is a mix-and-match of two production lines, one coming from each of the Parties and located far from one another. This is likely to create additional difficulties (logistic challenges, difficulties to operate both lines in an integrated, flexible and efficient manner) and strongly decreases the likelihood that the remedy could be a viable and competitive force, especially from day one.

(1622) Third, as already explained in recital (1616), the market test revealed very limited buyer interest in the Automotive HDG Divestment Business of 1 April 2019. Furthermore, it is not clear that all of the potential purchaser candidates would likely be suitable purchasers. For instance, ArcelorMittal – the main automotive HDG supplier in the EEA – would likely not qualify due to the presence of *prima facie* competition concerns.

12.3.4.5. Conclusion on the Commitments of 1 April 2019

(1623) On the basis of all the above considerations in Sections 12.3.4.2 to 12.3.4.4, the Commission concludes that the Commitments of 1 April 2019 do not entirely remove the significant impediment to effective competition regarding automotive HDG in the EEA and are not comprehensive and effective from all points of view. Furthermore, it cannot be concluded with the requisite degree of certainty that the Automotive HDG Divestment Business of 1 April 2019 would be viable and competitive under the envisaged remedy structure.

1234 […].

1235 See, for instance, the replies to question 1 of MT1 – Market Test Competitors, DocID 4944; and the replies to question 4 MT2 – Market Test Automotive Customers, DocID 4945.

12.4. The Commitments of 23 April 2019

12.4.1. Description of the Commitments of 23 April 2019

(1624) The Notifying Parties submitted on 23 April 2019 modifications to the Commitments of 1 April 2019 ('Commitments of 23 April 2019').

(1625) The tangible assets to be divested remained unchanged in the Commitments of 23 April 2019 compared to those included in the Commitments of 1 April 2019. The Commitments of 1 April 2019 consisted of two Divestment Businesses of 1 April 2019: the Packaging Steel Divestment Business of 1 April 2019 and the Automotive HDG Divestment Business of 1 April 2019. While the asset scopes of these Divestment Businesses were not modified in the Commitments of 23 April 2019, certain other modifications were included. The Divestment Businesses as modified in the Commitments of 23 April 2019 are hereinafter in Sections 12.4 and 12.5 referred to as the 'Packaging Steel Divestment Business' and the 'Automotive HDG Divestment Business', together the 'Divestment Businesses'.

(1626) Compared with the Commitments of 1 April 2019, an upfront buyer requirement was added for each of the Packaging Steel Divestment Business and the Automotive HDG Divestment Business, obliging the Parties not to complete the proposed Transaction before they or the Divestiture Trustee has entered into a binding agreement for the sale of both of the Divestment Businesses and the Commission has approved the purchaser(s) and the terms of sale.

(1627) With respect to the Packaging Steel Divestment Business, the Commitments of 23 April included the following revisions compared to the Commitments of 1 April 2019.

(1628) The escrow amount for drawdown by the purchaser to fund capacity expansions of and enhancements to the Packaging Steel Divestment Business is increased from […]. On request by the purchaser, technical support during the implementation period for this investment would be available from the Parties on commercially reasonable terms.

(1629) The Parties committed to use commercially reasonable efforts to encourage their existing customers to switch to the Packaging Steel Divestment Business, and therefore strive to bring the total volume of customer commitments which will form part of the Packaging Steel Divestment Business to […].

(1630) For the period before the investments in the Packaging Steel Divestment Business to increase capacity have been completed (by drawing down from the available escrow), the Parties offered an agreement with the purchaser whereby the Parties would either toll manufacture or supply (or both) finished packaging steel products for the Packaging Steel Divestment Business up to a total volume of […] kt per year. The Packaging Steel Business would be granted this contract for a maximum of 3 years, on a cost-plus basis.

(1631) With respect to the Automotive HDG Divestment Business, the Commitments of 23 April remained, with the exception of the added upfront buyer requirement, unchanged compared to the Commitments of 1 April 2019.

12.4.2. The Notifying Parties' Arguments

(1632) With respect to the addition of the upfront buyer requirement, the Parties argue that it would create greater incentives for the Parties to conclude a binding agreement with the purchaser(s) of the Divestment Businesses in order to be able to complete the proposed Transaction.

(1633) With respect to the Packaging Steel Divestment Business, the Parties submit that the increased escrow amount would allow for investments of circa EUR […] to increase the overall effective capacity of the Packaging Steel Divestment Business from circa […] and update the operations, with implementation envisaged to take […].[1236] Such an increase in capacity would provide customers with access to capacity which would not otherwise be available on the market. It would further bring the share of the overlap removed by the divestment of the Packaging Steel Divestment Business to [40-50]% for TP, by both sales and capacity. In addition, the increased escrow would allow the purchaser to set up a new research and development facility costing circa EUR […].

12.4.3. The Commission's Assessment of the Commitments of 23 April 2019 – Metallic coated and laminated steels for packaging

(1634) The Commission does not consider the Commitments of 23 April 2019 to be adequate to remove the significant impediment to effective competition which the Transaction would give rise to as regards TP, ECCS and laminated steel for packaging. The Commission does not agree with the Parties that the revised commitments can address the shortcomings of the Commitments of 1 April 2019 as regards scale and scope through the commitment of investments to upgrade the capacity of the assets being divested. Quite apart from the fact that the tangible assets to be divested remained unchanged compared to those included in the Commitments of 1 April 2019, the Commission does not consider such financial commitment capable of supplementing or substituting a structural divestiture of an existing standalone business.

(1635) The reasons for the Commission's conclusion is that the financial commitment in many ways fails to prevent in a timely, durable and effective way the competition concerns which would be raised by the merger as notified. As set out below, the Commission finds that the Commitments of 23 April 2019 (i) are merely an opportunity for the buyer of the Packaging Steel Divestment Business to make investments with an uncertain outcome, (ii) are uncertain as to the time needed to materialise, (iii) in any case only offer a much delayed possible answer to an immediate competition concern. Furthermore, the Commitments of 23 April 2019 are uncertain to be implemented to their full extent and may not materialise because (iv) the buyer of the Packaging Steel Divestment Business may not have all required means and resources to fully implement the investments that the financial commitment aims to support or (v) the buyer may not have the incentives to do so. In any case, (vi) even if the capacity increase is fully implemented, it is not sufficient, and the financial commitment does not improve the Packaging Steel Divestment Business' geographical location, nor does it address its lack of vertical integration. These issues are set out in more detail below.

(1636) Firstly, such financial commitment is merely offering a possibility to the buyer of the Packaging Steel Divestment Business to invest in a future expansion or improvement of the existing assets, the implementation of which depends on the buyer. This is not comparable to the divestiture of an existing standalone business that is in its present state evaluated as a viable and effective constraint on the merged entity. Such a financial commitment is not capable of preventing the significant impediment of effective competition created by the Transaction.

1236 Form RM, Figure 5.4.

(1637) As explained in Section 12.3.3.2, the Commission considered the size and scope of the Commitments of 1 April 2019 to be not adequate to remove the significant impediment to effective competition which the Transaction would give rise to as regards metallic coated and laminated steel for packaging. In addition, the proposed assets would not guarantee the Packaging Steel Divestment Business' viability and competitiveness to act as an effective and lasting competitive constraint. As regards those shortcomings, the Commitments of 23 April 2019 offer a mere, uncertain, longer term business opportunity for a potential buyer to expand sales in the relevant markets which is not comparable to the divestiture of an existing standalone business.[1237] It is to be noted that the Commitments of 23 April 2019 provide no assurances that the money in escrow will be fully spent. There is no obligation for the buyer to absorb the money that is kept in escrow. Rather, the escrow has a limited […] lifetime after which it expires. There is a roadmap but the milestones are not binding on the buyer executing them, nor is there a monitoring function on the execution of the roadmap or any divergence thereof. This implementation uncertainty is further exacerbated by the fact that the Parties have not commited to a 'fix it first', which would potentially allow the Commission to assess a purchaser's capabilities and incentives prior to adopting its final decision.

(1638) While the Commission has in some previous cases accepted capital expenditure as part of a remedy, this was either to replicate capital expenditure which was already planned on the divested assets, or to address specific and concrete issues. For instance in Accuride/Mefro Wheels, the parties committed to implement remaining investments that had previously been committed.[1238] In Wabtec/Faiveley Transport, the notifying party committed to an investment incentive scheme, but this was not in lieu of a structural divestment.[1239] The situation would be different with the Commitments of 23 April 2019, where a buyer would have to create a large part of the remedy capacity itself, which poses risks and uncertainties that the Commission is not in a position to assess.

(1639) Such uncertainty has also been highlighted in the feedback from respondents to the market test. While only a small minority of customers consider the proposed investments as likely to succeed, many more – a clear majority of those who took a position – indicated it would not be likely to succeed, and a significant share of customers also indicated not knowing.[1240] Further, only a very small minority of customers indicated that a purchaser would have incentives to fully carry out the proposed investments, whereas more numerous respondents replied that it would not and a clear majority indicated that they did not know.[1241] Similarly, a clear majority of competitors indicated that they did not know whether a purchaser of the Packaging Steel Divestment Business would have the incentive in using the escrow to carry out the proposed capacity expansion plans.[1242] Further, one customer suggested that even if theoretically the proposed investment could increase Trostre's capacity, it is not explained how this additional capacity would improve the cost competitiveness of Trostre.[1243]

1237 Remedies Notice, paragraph 61

1238 M.8652 – Accuride / Mefro Wheels, recital 133.

1239 M.7801 – Wabtec/Faiveley Transport, recital 523.

1240 Replies to question 3.3 of Market Test Revised Commitments Packaging Steel Customers, Doc ID5185.

1241 Replies to question 3.2 of Market Test Revised Commitments Packaging Steel Customers, Doc ID5185.

1242 Replies to question 3.2 and 3.3 of Market Test Revised Commitments Competitors, Doc ID5184.

1243 Minutes of a call with a customer on 29 April 2019, Doc ID5570.

(1640) The Commission further highlights that the Parties did not commit to wait for a 'fix it first' buyer before completing the Transaction nor provided for specific purchaser requirements that would ensure that the potential purchaser would also have the incentive to carry out the envisaged investments. While the currently proposed 'upfront buyer' commitment would, in the event of the Parties failing to propose an adequate purchaser, lead to a sale of the Packaging Steel Divestment Business by a Divestiture Trustee (at no minimum price), this would not guarantee a purchaser to be adequate and have satisfactory incentives or business case to carry out the envisaged investments.

(1641) This finding is also corroborated by the market test, where a majority of customers taking a position do not consider the scale and scope of the Commitments of 23 April 2019 to be sufficient to ensure its viability[1244] and competitiveness.[1245] Further, not all of the customers who considered the business to be viable were fully convinced about the effectiveness of the proposed remedy. A customer comments: *'[t]he scale is similar to US Steel Kosice so as long as there is a blast furnace owner connected to Trostre it should be able to survive and compete. Whether the company will provide sufficient competition to the new duoply for the sake of customers is moot.'*[1246]

(1642) Secondly, and quite apart from the foregoing, the replies to the market test indicate that the buyer of the divestment business would require considerable time to fully utilise the committed funds to finance capacity expansions of and enhancements to the Packaging Steel Divestment Business, and in any case more time than […] that the Parties' time table sets out. Respondents to the market test consider that time table to be particularly ambitious. Whilst a number of steel producers and customers considered that they were not in a position to reply since they are not familiar with the assets at stake, the respondents with an informed opinion estimated that it would take at least 3 years or longer than 3 years.[1247] Out of the customers that provided a response, a majority indicated not knowing, while a number of them indicated that this would take three years or longer.[1248] In any event, the envisaged capacity expansion of TP to […] would, according to the Parties' timeline, take around […].[1249] In this regard, the Commitments of 23 April 2019 would not allow competition to be maintained for an extended period of time.

(1643) Thirdly, even if the divestment business could be brought to a higher capacity level according to the time table of the Parties, the fact remains that […] is a long period of time for these additional remedies to have an effect in reply to an immediate competition concern. In the meantime, the Packaging Steel Divestment Business will not maintain competition in the market and act as an effective and present competitive force in the market.

(1644) In order to support more immediate effect on the markets, the Parties propose to transfer additional customers to the Packaging Steel Divestment Business, at '*commercially viable efforts'*, for it to already in the interim period have the

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1244 Replies to question 5 of Market Test Revised Commitments Packaging Steel Customers, Doc ID5185.

1245 Replies to question 6 of Market Test Revised Commitments Packaging Steel Customers, Doc ID5185.

1246 Reply to question 5 of Market Test Revised Commitments Packaging Steel Customers, Doc ID5185.

1247 Replies to question 3.5 (and 1.1 as a general comment) of Market Test Revised Commitments Packaging Steel Competitors, Doc ID5184. Other steel producers indicated either not knowing, except one who indicated that this would take 5 years.

1248 Replies to question 3.5 of Market Test Revised Commitments Packaging Steel Customers, Doc ID5185.

1249 […].

magnitude of sales that would be envisaged after the capacity has been fully expanded. Since the Packaging Steel Divestment Business would in this interim period not have the underlying production capacity to fulfil such volumes, the Parties would provide it with the necessary production volumes under a toll manufacturing agreement at cost (plus) terms. The Commission questions the extent to which the Packaging Steel Divestment Business would be able to compete, considering that it would for these volumes be entirely dependent on the Parties as regards for instance costs and quality. While a small majority of customers responding to the market test indicated generally to be willing to buy under the envisaged arrangement,[1250] only very few customers consider it likely that the Packaging Steel Divestment Business would effectively compete on prices with the Parties.[1251]

(1645) Fourthly, it cannot be taken as a given that the mere availability of financial resources will allow the buyer of the Packaging Steel Divestment Business to enhance the efficiency of the plant and to replicate R&D resources. In effect, the investment plan suggested by the Parties consists of a menu of 10 different actions. Eight of those consist of upgrading existing equipment and two of installing new equipment. Given the time necessary for implementation in combination with the escrow being available only for three years, any purchaser would need to decide between 'freshening up' the plant at no cost (since paid for by the Parties this option is very likely to materialise) or to 'freshening up' the plant plus greatly expanding output by installing new machinery. The second option carries considerable commercial uncertainty given that on day 1 any purchaser would need to ascertain whether three years down the line Trostre would be in a position to acquire and retain roughly double the demand it currently serves. On the basis of the limited information that the Parties have made available at the time of the additional remedies submission, it would appear that […] of hypothetical expansion (or 60% of the projected capacity increase) would depend on the buyer committing to […], which in itself requires the installation of a […]. To the considerable commercial uncertainty flowing from option 2 needs to be added a considerable fixed cost of recruiting the personnel to operating the additional line and the variouble cost of input material and energy. Such costs would not be covered by the financial commitment going forward. Even when assuming that the buyer of the divestment business has all the required expertise to execute and implement the Parties' action plan to its full extent, it is therefore not to be excluded that the buyer would limit itself to option 1, as a result of wich capacity would only expand with 40% of the projected capacity increase.

(1646) Fifthly, as all steel producers invest in capacity expansion in function of demand dynamics, there can be no certainty as to whether and when the investments as envisaged would materialise and give rise to additional production capacity that is competing in the market. To the extent that additional capacity in the Trostre plant may face difficulties in competing for demand outside the United Kingdom, it may be doubtful that a viable business case can be made for the additional capacity projected by the Parties. In that respect, account needs to be taken of the fact that any investment (even investments that seemingly come for free as in option 1) expands the fixed cost base including at the very least labour costs to operate the new lines

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1250 Replies to question 11.3 of Market Test Revised Commitments Packaging Steel Customers, Doc ID5185.

1251 Replies to question 11.4 of Market Test Revised Commitments Packaging Steel Customers, Doc ID5185.

and to maintain them. Therefore, also the incremental capacity increase of option 1 comes with costs. The remedy taker will therefore need to have a reasonable expectation of being able to acquire a sufficient number of customers that can absorb the additional capacity rather than having to keep that capacity idle. In the face of the considerable limitations that the Trostre plant already faces today, ranging from lacking upstream material and its geographic reach, it is therefore uncertain that the remedy buyer would have the incentive to fully implement even the limited capacity increase under option 1.

(1647) Sixthly, even if such additional capacity would promptly be implemented, which is unlikely for the reasons set out above, the Commission notes that the Transaction as amended by the Commitments of 23 |April 2019 would still bring about a significant increment ([20-30]%-points in terms of capacity) in an already concentrated market. While the merged entity would have a combined capacity for the production of TP of […] per year (ArcelorMittal: […]), the Packaging Steel Divestment Business would even upon successful completion of the envisaged investments have a TP production capacity of […] per year, that is significantly less than either the merged entity or ArcelorMittal and would not have the scale to exert the competitive constraint that Tata was exerting pre-Transaction since it would only have about [50-60]% of the scale of Tata pre-transaction.[1252]

(1648) In addition, none of the issues related to the Packaging Steel Divestment Business assets in terms of geographical location and the lack of vertical integration can be addressed by the increased escrow amount that is made available for investments. These reasons are set out in further detail below.

(1649) In the first place, as explained in sections 12.3.3.2 and 12.3.3.3, the Commission did not consider the Commitments of 1 April 2019 to be adequate due to the geographical location of the divested plant in Trostre. In that regard, the investments foreseen by the Parties would not change the location of the assets. In that regard, the Commitments of 23 April 2019 would still leave the Packaging Steel Divestment Business facing transportation obstacles, currency fluctuation risks, and the ongoing uncertainties related to the Brexit process.

(1650) In the second place, the investments foreseen by the Parties would also not provide the Packaging Steel Divestment Business with HR producing (or steelmaking) capabilities.[1253] In that regard, the Commitments of 23 April 2019 would still result in uncertainty as regards the competitiveness and viability of the Packaging Steel Divestment Business (see 12.3.3.3 (a) and (d)) its dependence on the European incumbents (see 12.3.3.3 (b)).

(1651) The market test further confirmed there to be no merchant market for the HR substrate that the Packaging Steel Divestment Business requires as an input. Both competitors (ArcelorMittal and US Steel Kosice) active in the production and supply of metallic coated steel for packaging indicate that the production of packaging steel has specific requirements for its input slabs and HR. ArcelorMittal indicates: '*Steel purity and adequate grades are required*'.[1254] No responding competitor indicated

1252 Form RM.

1253 Form RM.

1254 Replies to question 8 of questionnaire to competitors, Doc ID5184.

having supplied such HR on the market in the EEA in the period 2017–2019.[1255] […].[1256]

(1652) Therefore, the Commission concludes that the Commitments of 23 April 2019 with respect to metallic coated and laminated steel for packaging do not alter the Commitments of 1 April 2019 to allow for a finding that they would remove the significant impediment to effective competition brought about by the Transaction.

12.4.4. The Commission's Assessment of the Commitments of 23 April 2019 – Automotive HDG

(1653) Since the Automotive HDG Divestment Business remains unchanged in the Commitments of 23 April 2019 compared to the Commitments of 1 April 2019 (except for the inclusion of an upfront buyer requirement), the Commission's assessment remains unchanged compared to the assessment presented in Section 12.3.4, except as regards the risk of not finding an adequate purchaser described in recital (1622).

(1654) In particular, the Commission considers that the Commitments of 23 April 2019 do not eliminate the significant impediment to effective competition in automotive HDG brought about by the Transaction. This is due to the size, scope and geographic location of the assets as well as the lack of upstream integration, as detailed in Section 12.3.4.

(1655) This is corroborated by the responses to the market test.

(1656) First, an overwhelming majority of customers which expressed an opinion do not consider the Commitments of 23 April 2019 to constitute a substantive improvement capable of changing their assessment of the Commitments of 1 April.[1257]

(1657) Second, multiple customers – in particular automotive OEMs – consider the Commitments of 23 April 2019 as not suitable or adequate to remove the competition concerns.[1258]

(1658) The lack of upstream integration remains a concern for customers. A customer reminds that '*[a]s explained for the comments on the previous set of commitments, the up-stream process (blast furnace, CR/HR) is necessary for a company to operate autonomously (not being dependant on AM & Tata/Tks for slab; coils supply)*' and continues that '*[i]f the new buyer is dependant on other dominant mills in EU (AM and TATA/TKS) for their supply of CR/HR/Slabs, they will not bring the competitivness on the market*'.[1259] Another customer concurs: '*As already explained, it is important for us that the buyer is a steel maker with his own raw material (CR-Fully Hard)*'.[1260]

(1659) The Commission observes that the purchaser criteria included in the Commitments of 23 April 2019 set no explicit requirements as to existing upstream capabilities, including the scope and location of the purchaser, but are confined to requiring that the purchaser has existing activities '*in the steel industry*' and has '*sufficient*

1255 Replies to question 11 of questionnaire to competitors, Doc ID5184.

1256 […].

1257 Replies to question 1 of Market Test Revised Commitments – Automotive Customers, Doc ID5183.

1258 Replies to question 2 of Market Test Revised Commitments – Automotive Customers, Doc ID5183.

1259 Reply to questions 2.1 and 4.1 of Market Test Revised Commitments – Automotive Customers, Doc ID5183.

1260 Reply to question 1.1 of Market Test Revised Commitments – Automotive Customers, DocID 5475.

capabilities and activities in order to operate successfully the Divestment Business'.[1261]

(1660) In this context, the Commission also recalls that businesses to be divested have to be viable as such. Therefore, the resources of a possible or even presumed future purchaser are not taken into account by the Commission at the stage of assessing the remedy. The situation would be different if already during the procedure a sale and purchase agreement would have been concluded with a specific purchaser, whose resources could be taken into account at the time of the assessment of the commitments[1262] – which is not the situation at hand in this case.

(1661) Therefore, the Commission concludes that the Commitments of 23 April 2019 with respect to automotive HDG do not alter the Commitments of 1 April 2019 to allow for a finding that they would remove the significant impediment to effective competition brought about by the Transaction.

12.4.5. Conclusion on the Commitments of 23 April 2019

(1662) For the reasons set out in Sections 12.4.3 and 12.4.4, the Commission considers that the Commitments of 23 April 2019 do not alter the Commitments of 1 April 2019 in such a way so as to allow for a finding that the commitments would remove the significant impediment to effective competition brought about by the Transaction in (i) metallic-coated and laminated steel for packaging or (ii) automotive HDG.

12.4.6. Timing of submission of the Commitments

(1663) Finally, it should be added that the modifications to the Commitments of 1 April 2019 were submitted on 23 April 2019, that is 13 working days after expiry of the deadline for submitting commitments established by Article 19(2) of Regulation (EC) No 802/2004, and hence at a very late stage of the proceedings.

(1664) As explained in section12.2, the Remedies Notice provides that the Commission can only accept late remedies '*where it can clearly determine – on the basis of its assessment of information already received in the course of the investigation, including the results of prior market testing, and without the need for any other market test – that such commitments, once implemented, fully and unambiguously resolve the competition concerns identified and where there is sufficient time to allow for an adequate assessment by the Commission and for proper consultation with Member States*'.

(1665) The case law of the Court of Justice of the European Union confirms this stricter legal standard for the assessment of late commitments. The General Court stated that '*[i]t is clear from reading Article 8 of the Merger Regulation in conjunction with Article 18 of Regulation No 447/98 that the regulations on concentrations impose no obligation on the Commission to accept commitments submitted after the deadline. That deadline is to be explained primarily by the requirement of speed that characterises the general structure of the Merger Regulation'*. In addition, the General Court ruled that two cumulative conditions must be fulfilled so that commitments which were submitted out of time can be taken into account: *'namely, first, that those commitments clearly, and without the need for further investigation,*

1261 Commitments of 23 April 2019, paragraph 14.

1262 Remedies Notice paragraph 30.

resolve the competition concerns previously identified and, second, that there is sufficient time to consult the Member States on those commitments'.[1263]

(1666) This means that, in principle, the Commission cannot accept the Commitments of 23 April 2019 if, due to significant uncertainties about their actual implementation or effects, it is not able to clearly determine that, once implemented, they will fully and unambiguously resolve all the competition concerns identified.

(1667) Based on the assessment in Section 12.7.3 and 12.7.4, and despite the market test performed by the Commission on 25 April 2019, the Commitments of 23 April 2019 do not allow the Commission to conclude that they would fully and unambiguously resolve the competition concerns identified in this Decision. Consequently, the Commission must reject the Commitments of 23 April 2019.

12.5. Conclusion on commitments

(1668) For the reasons set out above in this Section 12, the Commission concludes that the commitments submitted by the Notifying Parties do not entirely remove the significant impediment to effective competition that would be caused by the Transaction with regard to (i) metallic-coated and laminated steels for packaging in the EEA and (ii) automotive HDG in the EEA, and they are not comprehensive and effective from all points of view. Furthermore, it cannot be concluded with the requisite degree of certainty that the Divestment Businesses would be viable under the envisaged remedy structure.

13. CONCLUSION

(1669) For the reasons set out in Section 9.4, the Commission concludes that the Transaction would significantly impede effective competition in relation to the production and supply of automotive HDG in the EEA due to horizontal non-coordinated effects by eliminating an important competitive constraint.

(1670) For the reasons set out in Section 9.5, the Commission concludes that the Transaction would significantly impede effective competition in relation to the production and supply of TP and laminated steel for packaging in the EEA because the Transaction would create a dominant position in the relevant markets. In any event, the Transaction would also give rise to horizontal non-coordinated effects in relation to the production and supply of TP and laminated steel for packaging in the EEA, resulting from the elimination of an important competitive constraint.

(1671) For the reasons set out in Section 9.5, the Commission concludes that the Transaction would significantly impede effective competition in relation to the production and supply of ECCS for packaging in the EEA, due to horizontal non-coordinated effects by eliminating an important competitive constraint.

(1672) For the reasons set out in Section 12, the Commission concludes that the commitments submitted by the Notifying Parties do not entirely eliminate the significant impediments to effective competition brought by the Transaction.

(1673) The Transaction should thus be declared incompatible with the internal market and with the EEA Agreement.

[1263] Case T-87/05 EDP v Commission [2005], EU: T:2005 :333, paragraphs 161 and 163.

HAS ADOPTED THIS DECISION:

Article 1

The notified operation whereby Tata Steel and ThyssenKrupp would acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control of a newly created joint venture is hereby declared, pursuant to Article 8(3) of that Regulation, incompatible with the internal market and the functioning of the Agreement on the European Economic Area.

Article 2

This Decision is addressed to:

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India

thyssenkrupp AG

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Done at Brussels, 11.6.2019

For the Commission

(Signed)
Margrethe VESTAGER
Member of the Commission