



EUROPEAN COMMISSION
DG Competition

***Case M.10702 - KPS CAPITAL PARTNERS / REAL
ALLOY EUROPE***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) in conjunction with Art 6(2)
Date: 19/10/2022

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EUROPEAN COMMISSION

Brussels, 19.10.2022
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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

KPS Capital Partners, LP
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United States of America

Subject: Case M.10702 – KPS CAPITAL PARTNERS / REAL ALLOY EUROPE
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²

Dear Sir or Madam,

- (1) On 31 August 2022, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which [...], a fund managed by KPS Capital Partners, LP (**'KPS'** or **'Notifying Party'**, USA) [...], acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of Evergreen Holding Germany GmbH (**'Evergreen'**, Germany) and Real Alloy UK Holdco Ltd., (**'Real Alloy UK'**, UK) (together referred to as **'Real Alloy Europe'** or **'Target'**) from Real Alloy Holding, LLC

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

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

(‘**Real Alloy Holding**’, USA). The proposed acquisition takes place by way of purchase of shares (the ‘**Transaction**’)³.

1. THE PARTIES

- (2) KPS manages investment funds on a global scale through its affiliated management entities, focussing inter alia on manufacturing and industrial companies, across a diverse array of industries, including several manufacturers of aluminium products, which are also active in the EEA and worldwide.
- (3) Speira GmbH (‘**Speira**’) is a manufacturer of advanced flat rolled aluminium products (‘FRPs’), also active in the production of recycled aluminium, ultimately controlled by KPS. FRPs are a group of semi-finished flat aluminium products that can be used for a number of applications, including in the automotive, packaging, printing, engineering, building and construction industries.
- (4) Real Alloy Europe is active in the recycling of aluminium products and the production of foundry and wrought alloys in Europe and North America. Real Alloy Europe is, through its subsidiaries and various plants in Germany, France, Norway and the UK, engaged in the sourcing, processing and recycling of aluminium and magnesium scrap, dross, salt slag and by-products thereof, and produces recycled aluminium alloys and recycled magnesium. Real Alloy Europe can therefore be described as third-party aluminium and magnesium recycler and specification alloy producer.
- (5) Speira and Real Alloy Europe are designated hereinafter as the ‘Parties’.

2. THE OPERATION

- (6) Pursuant to an Equity Purchase Agreement signed [...] and Real Alloy Holding on 18 February 2022, KPS, [...], will acquire 100% of the shares with all rights attaching to them in Real Alloy Europe from Real Alloy Holding.
- (7) Therefore, the Transaction is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

- (8) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Real Alloy Europe: EUR [...] in 2021; KPS: EUR [...] in 2021)⁴. Each of them has a Union-wide turnover in excess of EUR 250 million (Real Alloy Europe: EUR [...] in 2021; KPS: EUR [...] in 2021), but each does not achieve more than two-thirds of its aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension.

³ Publication in the Official Journal of the European Union No C 346, 9.9.2022, p. 5.

⁴ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.4.2008, p. 1).

4. INTRODUCTION TO WROUGHT ALUMINIUM

4.1. Production of wrought aluminium and FRPs

- (9) A simplified overview of the Notifying Party's production process of wrought aluminium is illustrated in Figure 1 below.

Figure 1 – Speira production process

[...]

Source: [...]

- (10) The manufacturing of liquid aluminium is the first step in production of wrought aluminium. Liquid aluminium is produced in one of three ways: (i) (primary) aluminium is produced from alumina in an electrolysis process (smelter), (ii) recycled (i.e. secondary) aluminium is produced from scrap in recycling furnaces, or (iii) aluminium ingots are re-melted in re-melting furnaces.⁵
- (11) In a second step, the liquid aluminium is transferred to casting furnaces, where sheet ingots are casted. Before casting, alloying elements are added to achieve the required chemical composition.⁶
- (12) Afterwards, slabs (i.e. sheet ingots) are hot rolled, cold rolled and slitted / finished to FRPs (or 'coils').
- (13) Finally, FRPs are sold on the merchant market.⁷
- (14) FRPs are a group of semi-finished flat aluminium products that, depending of their composition, can be used for a number of applications, for example in automotive, packaging (for example can ends and can bodies), printing, engineering, building and construction industries.

4.2. Dross and salt slag recycling

- (15) Dross is a by-product of the production of recycled aluminium. Dross, which is a by-product that also contains aluminium, is recycled itself in rotary furnaces to obtain recycled aluminium.
- (16) The recycling process of dross is done through salts, which after the process generate a by-product, 'salt slag'. The recycling of salt slag results in various products: aluminium granules, aluminium-oxide rich fraction, salt, and ammonium-sulphates.⁸

4.3. Industry trends and developments.

- (17) The Transaction happens against the background of broader industry developments within the 'green' transition, which sees an increasing demand for recycled aluminium.

⁵ Notifying Party's reply to RFI 12, question 3.

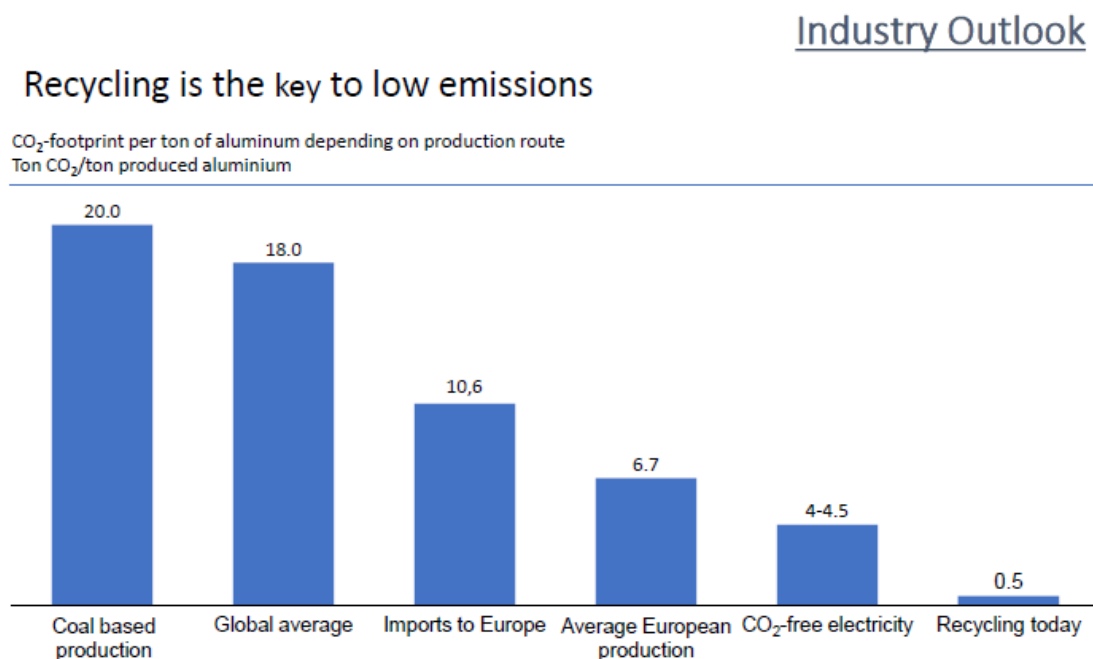
⁶ Notifying Party's reply to RFI 12, question 3. In addition, wrought aluminium can also be sold in liquid or in form of re-melt sow ingots ('RSIs'), as done for example by the Target.

⁷ Notifying Party's reply to RFI 12, question 3.

⁸ Form CO, paragraph 406.

- (18) First, aluminium, which can easily be recycled, is a significant lever for the European industry to reduce its carbon footprint, helping to achieve the EU’s Green Deal objectives. The recycling of aluminium is key to reduce the CO₂-footprint of the aluminium product. According to the Target’s industry outlook reflected in Figure 2 below, recycling aluminium produces 0.5 tonnes of CO₂-footprint per ton of produced aluminium, while average European production emit 6.7 tonnes of CO₂-footprint per ton of produced aluminium.⁹

Figure 2 – Recycling is the key to low emissions



Source: Form CO, Annex 5.4.b.8, page 10

- (19) This trend of carbon emission reduction by recycling aluminium is widely acknowledged by industry players, as reflected by a presentation of the consultancy CRU in relation to the ‘outlook for aluminium recycling’. It notes that ‘*Lowest carbon = recycled aluminium*’.
- (20) Second, the demand for recycled aluminium has been increasing and is expected to further increase, as exemplified by the Target’s industry outlook for Europe in Figure 3 below. The proportion of recycled aluminium in the overall European aluminium demand (including also primary aluminium) is predicted to also increase from 39% in 2025 to 49% in 2050, while the proportion of primary aluminium will decrease.¹⁰

Figure 3 – Target’s industry outlook

[...]

Source: [...]

⁹ Form CO, Annex 5.4.b.8, page 10.

¹⁰ Form CO, Annex 5.4.b.8, page 9.

- (21) Third, different downstream industries employing aluminium are shifting to secondary / recycled aluminium at different paces. There are industries which source FRP, such as the beverage can industry, where this trend is already well established. The Notifying Party expects a strong growth in demand for aluminium cans, ‘*driven by the substitution of plastics and glass*’ (see Figure 4 below).¹¹ According to the Notifying Party, [...].¹²

Figure 4 – Notifying Party’s outlook for can demand

[...]

Source: [...]

5. THE PARTIES’ ACTIVITIES – HORIZONTAL OVERLAPS AND VERTICAL RELATIONSHIPS

- (22) Against these industry backgrounds, the Target established itself as a leading supplier of recycled aluminium, including for can ends and can bodies, and provider of recycling services that are instrumental in the manufacturing of this product. Speira has some recycling activities, but it is mainly active downstream, as a significant player in the market for FRP, particularly used in different beverage can applications.
- (23) First, both Parties are active in the procurement of aluminium scrap, which is an input in the recycling process.
- (24) Second, the Parties’ activities overlap in relation to the production of wrought aluminium alloys. On the one hand, the Target produces recycled wrought aluminium alloys, including for can ends and can bodies, which it sells to customers (such as rolling mills or extruders) either in liquid or in form of re-melt sow ingots (‘RSIs’). On the other hand, the Notifying Party uses wrought aluminium alloys captively to ultimately produce FRPs, which it sells on the merchant market.
- (25) Third, the Target is also active in dross recycling and salt slag recycling services. Dross recycling and salt slag recycling are vertically related to the production of aluminium.
- (26) For completeness, the Target produces also recycled aluminium and magnesium cast alloys and specification alloys for automotive OEMs, foundries and casters. The Notifying Party submits that while it uses magnesium as an alloying material, it uses only primary magnesium in its production and, therefore, does not use recycled magnesium as produced by the Target.

¹¹ Form CO, Annex 5.4.a.4, page 90.

¹² Form CO, Annex 5.4.a.4, page 90.

6. RELEVANT MARKETS

6.1. Product market definitions

6.1.1. Upstream market. Primary and recycled aluminium. Cast and Wrought aluminium

- (27) Cast and wrought aluminium are the result of different upstream manufacturing processes, which affect the product properties and are largely used in different downstream applications. Both production processes relate to both primary aluminium and to secondary (recycled) aluminium.
- (28) The Notifying Party did not provide its view as to whether the market could be segmented between cast and wrought aluminium. The Notifying Party only argues that recycled aluminium and non-recycled aluminium form part of the same product market.¹³
- (29) In past decisions, the Commission also considered that primary (non-recycled) aluminium products and secondary (recycled) aluminium products were part of different product markets and as such the market should be defined according to the production process.¹⁴ In more recent decisions, however, the Commission found evidence of substitutability between the two types of products (in particular given the trend of more recycling and thus recycled production) and ultimately left the question open.¹⁵ The Commission has never assessed whether cast and wrought belong to separate markets but typically assessed in the past some specific end use products made from cast separately.¹⁶
- (30) **Segmentation between cast and wrought aluminium.** The fundamental difference between the two is that cast aluminum is melted in a furnace and poured into a mould, which is used to shape the final product. When the aluminum metal is mechanically deformed or forged or rolled to required shape, it is rather called wrought aluminum. Wrought aluminum is typically worked in a solid form through methods such as rolling, forging and extrusion to shape the final product. Cast aluminum contains larger percentages of other alloying elements compared to wrought aluminum.¹⁷
- (31) First, the results of the market investigation strongly corroborate the finding that cast aluminium and wrought aluminium are not substitutable. A majority of market participants consider that there are significant intrinsic differences between cast and wrought alloys.¹⁸ This is due to their diverging chemical composition making cast aluminium alloys particularly hard and wrought aluminium alloys deformable.¹⁹ One competitor explained that ‘*cast alloys are alloys with a maximum hardness. Wrought alloys are deformable*’.²⁰

¹³ Form CO, paragraphs 189-192.

¹⁴ M.4827 - Rio Tinto/Alcan, paragraph 21.

¹⁵ M.7342 - Alcoa/Firth Rixson, paragraphs 90-94; M.4441 EN+/Glencore/Sual/UC Rusal – paragraph 23.

¹⁶ M.7796 - LINAMAR / MONTUPET, paragraph 10.

¹⁷ Form CO, paragraphs 127.

¹⁸ EQ1 – Questionnaire to competitors secondary wrought aluminium – Q14.

¹⁹ EQ1 – Questionnaire to competitors secondary wrought aluminium – Q14.1.

²⁰ EQ1 – Questionnaire to competitors secondary wrought aluminium – Q14.

- (32) Second, from a demand side perspective, customers explained that cast alloys and wrought alloys are not substitutable since they address different needs.²¹ A customer explained that *‘The main difference is the deformability. As a rule, cast alloys should be hard and non-deformable, whereas wrought alloys rolled (sheet) or pressed (extrusion)’*.²² This is confirmed by the Target’s internal documents, which distinguish in the ordinary course of business between cast alloys and wrought alloys as they address different needs.²³

Figure 5 – Real Alloy’s overview of aluminium recycling industry distinguishing cast and wrought alloys



Source: Response to RFI 2, Annex 5.4.a, p.199.

- (33) Third, from a supply side perspective, customers and competitors stressed existence of differences in the manufacturing process between cast and wrought alloys. One competitor explained that *‘Cast alloys cannot be cast into rolling slabs and extrusions and hence cannot be processed in rolling mill or extrusion presses’*.²⁴ A customer also stressed that *‘[c]hemical composition is very different*

²¹ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs – Q6.

²² EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs – Q6.1. Courtesy translation: *‘Der wesentliche Unterschied ist die Verformbarkeit. Gusslegierungen sollen i.d.R. hart und nicht verformbar sein, wohingegen Knetlegierungen gewalzt (Bleche) oder gepresst (Extrusion) werden’*.

²³ See for instance: response to RFI 2, Annex 5.4.1 p.30.

²⁴ EQ1 – Questionnaire to competitors secondary wrought aluminium – Q14.

*as refiners produce casting alloys including a high percentage of silicium. Remelters produce wrought alloys that are cast into rolling slabs or extrusion billets’.*²⁵

- (34) In view of the above, the Commission concludes that wrought aluminium constitute a separate product market.
- (35) **Segmentation of wrought aluminium according to end uses.** Wrought aluminium, depending on the chemical content and properties, is distinguished into different qualities or ‘series’. These are used in different end applications in view of their wide-ranging properties.
- (36) First, from a demand side perspective, the majority of respondents to the Commission’s market investigation indicates that for the production of FRPs for a given use (i.e. can ends, can bodies, food can etc.) a specific series of wrought aluminium is needed.
- (37) In particular, a majority of competitors confirmed that wrought aluminium alloy series 3xxx allow to produce FRPs for beverage can body stock (**‘FRPs for can body’**) and only wrought aluminium alloy series 5xxx allow to produce FRPs for can end and tab stock (**‘FRPs for can end’**).²⁶ A competitor further explained that *‘[i]n the packaging industry, there [are] different alloys that are used and which are not substitutable. For instance for foils, series 8000 are used and these cannot be used for cans. The series that are used for aerosols (1000 series – pure aluminium) cannot be used for cans. For cans only 3104 and 5182 are the main alloys that are used’.*²⁷ Therefore, when buying scrap from the open market, a majority of respondent competitors declare to always take into consideration the alloy series of the final recycled aluminium.
- (38) From a supply side perspective, a majority of competitors indicated that furnace technology has to be adapted to scrap characteristics such as wrought alloy series, contamination levels and purity levels²⁸ although the overall production assets for wrought aluminium are typically used in a flexible manner to produce different alloy series according to a majority of competitors.²⁹
- (39) In view of the above, the Commission concludes that wrought aluminium for the production of beverage can bodies constitutes a separate product market distinct from the market for wrought aluminium for the production of beverage can ends.
- (40) As regards the possible distinction according to the type of input (recycled vs non-recycled) this is not decisive for the purpose of defining the relevant market. As a preliminary point, the Commission recalls that recycled aluminium accounts for a significant part of the input mix used by the products that are manufactured in the downstream-related markets and for which Speira holds an important share (i.e. FRPs for can bodies and FRPs for can ends). Specifically, recycled aluminium

²⁵ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs – Q5.1.

²⁶ EQ1 – Questionnaire to competitors secondary wrought aluminium – Q18.

²⁷ Non-confidential minutes of a call with a competitor, 13 May 2022, paragraph 19.

²⁸ EQ1 – Questionnaire to competitors secondary wrought aluminium – Q8.

²⁹ EQ1 – Questionnaire to competitors secondary wrought aluminium – Q19.

represents, as shown by Speira's production figures, [...]% of the input mix for FRPs for can bodies and [...]% of the input mix for FRPs for beverage can ends.³⁰

- (41) Given (i) the importance of recycled aluminium for the concerned downstream products, (ii) that the Target only produces recycled aluminium, and (iii) the fact that, for beverage cans, non-recycled aluminium is complementary rather than substitutable with recycled aluminium, the competitive assessment will focus on the recycled aluminium as it is the key input for the concerned downstream markets where [...]% of the aluminium is recycled.
- (42) Another possible segmentation is depending on the shape of wrought aluminium (solid vs liquid). However, also a segmentation by shape is not decisive for the purposes of the present case. This is in particular because for the purpose of the specific applications on which the Parties have a significant vertical link, the Commission considers that downstream FRPs players use recycled wrought aluminium regardless of its form or its shape, the Target's ability to foreclose this input should be assessed in an overall market covering recycled wrought aluminium without segmentation by shape and/or form. Therefore, the precise product market definition may however be left open.
- (43) In conclusion, for the purposes of the present case, the Commission finds that wrought aluminium constitutes a distinct market from cast aluminium. This market should be further distinguished according to the specific aluminium series, which are used in different end uses. For the specific beverage cans' end-use where the Parties have a significant vertical link, recycled aluminium is, to the difference of non-recycled aluminium, a significant input. A segmentation by shape is however not relevant in the sourcing of upstream aluminium for the production of the specific downstream products at hand as downstream manufacturers can produce both from solid or liquid aluminium.
- (44) The Commission will therefore assess the Transaction on the basis of an upstream market for wrought recycled aluminium for can bodies (series 3xxx) and for can ends (series 5xxx), irrespective of the shape or form.

6.1.2. *Upstream market: Dross recycling*

- (45) The Parties submit that there is no separate product market for dross recycling³¹, as dross is only one of multiple input products for the production of recycled aluminium (and substitutable with other scrap types) in rotary furnaces.
- (46) The Parties submit that dross can be substituted by other scrap types and is processed in the same furnaces in the production of recycled aluminium. Therefore, the Parties submit that dross recycling should be considered as an input for the production of recycled aluminium.
- (47) The parties argue that the Target and all other recyclers of dross are capable of recycling all forms of dross (i.e., dross with all forms of alloy specifications) in their rotary furnaces.³²

³⁰ Reply to RFI 13 - Q14.

³¹ Form CO, paragraph 322.

³² Form CO, paragraph 329.

- (48) The Commission has not previously assessed a market for dross recycling.
- (49) First, considering demand side substitutability, the result of the market investigations shows that different type of dross are not substitutable as the majority of customers consider that all dross types (e.g. aluminium content, purity, type of alloy or any other relevant metric) are not interchangeable to obtain a given alloy series³³. A customer further explains *‘Every individual dross type has its own characteristics (analysis, metal content, variations in both, purity, quantity available,...). These characteristics determine which type of furnace is needed, melting procedure, which type of endproduct (alloy series) can be obtained after melting. Especially analysis can differ considerably for each individual dross type and has a major influence on the endproduct.’*³⁴
- (50) Second, considering supply side substitutability, dross recyclers are specialised by dross type, typically wrought or cast, but also aluminium content, purity, or other relevant metric. When asked if all dross recyclers recycle all types of dross a majority of competitors explain that dross recyclers typically recycle only some type of dross, depending on the aluminium content, purity, or other relevant metric³⁵. A competitor further explains *‘were using drosses for casting alloys mainly’*.³⁶
- (51) More specifically, the dross recyclers select the dross based on the intended end-use as the majority of competitors who expressed a view indicated in the Commission’s market investigation that they always check the intended end-use for the recycled aluminium when sourcing dross³⁷. A competitor further explains that dross resulting from a certain alloy production is recycled into the same type of alloy *‘[the company] explains that aluminium extracted of dross from, for example, Lxxx series melting is typically used for the production of Lxxx series alloys.’*³⁸ Similarly customers expect to receive the aluminium output corresponding to the recycled dross *‘we segregate input per alloy family in order to receive segregated output’*³⁹
- (52) Third, the Target internal documents show that wrought and foundry/cast alloys are handled by different teams internally. As a recycler, the Target uses dross and other scrap to produce recycled aluminium, therefore those input depending on whether they are wrought or cast by nature are handled by different business units. One of the Target’s internal document⁴⁰ shows that the corporate organisation is split by wrought and foundry alloys.

Figure 6 – Real Alloy organisational chart

[...]

Source: [...]

³³ EQ5 – Questionnaire to customers dross and salt slag – Q4.

³⁴ EQ5 – Questionnaire to customers dross and salt slag – Q4.1.

³⁵ EQ4 – Questionnaire to competitors dross and salt slag – Q7.

³⁶ EQ4 – Questionnaire to competitors dross and salt slag – Q7.2.

³⁷ EQ4 – Questionnaire to competitors dross and salt slag – Q4.

³⁸ Non-confidential minutes of a call with a competitor, 17 May 2022, paragraph 19.

³⁹ EQ5 – Questionnaire to customers dross and salt slag – Q4.1.

⁴⁰ RFI 14 – Annex to Q2 – Orga-Charts.

- (53) The document shows that the purchasing managers and their respective teams are separated between wrought and cast (spec alloys). Similarly, the document shows that the supply chain teams are also split by foundry alloys and wrought alloys having separate commercial and administrative staff.
- (54) Fourth, the Target is heavily focused on wrought alloys. In the first place, dross recycling through tolling is done by the Target exclusively for wrought dross and represents more than [...] in 2021. Similarly dross processed outside of a tolling agreement is predominantly wrought dross ([...] in 2021). In comparison only [...] of cast dross was processed outside of a tolling agreement in 2021 and this dross was only processed in one single plant, namely the [...].
- (55) In the second place, competitors also seem specialised in cast or wrought alloys as explained by a dross recycler listed by the Parties as a competitor of the Target *‘the company is specialised in cast alloys contrary to Real alloy which is active in wrought alloys’*⁴¹. It is also to be noted that this market participant considers that the Target focuses on different customers and therefore, does not consider itself as a direct competitor of the Target given the different focus. *‘Considering KPS, their focus is on wrought alloy and rolling therefore they are not customers of the Company. The company have customers focused on cast alloys [...]’**‘Real Alloy are not direct competitors.’*⁴² Similarly another competitor does not consider itself as closely competing with the Target given the Target’s focus on wrought alloys *‘[the company] indicates that it does not compete closely with Real Alloy, as [the company] is only a marginal player in wrought alloys.’*⁴³ Based on the above, the Commission concludes that recycling services for wrought dross and recycling services for foundry/cast dross constitute separate product markets. The Commission concludes that there is sufficient supply-side substitutability for the recycling all types of wrought drosses. Therefore, the product market includes all types of wrought drosses.

6.1.3. Upstream market: Salt slag recycling

- (56) The Notifying Party submits that salt slag recycling could constitute a separate product market.⁴⁴ The Notifying Party indicates that while the vast majority of salt slag recyclers in the EEA have a zero-waste technology, two facilities do not recycle all components of the salt slag: (i) K+S in Germany only recycles one component of the salt slag (KCl), while other components as well as the aluminium-oxide rich fraction is land-filled in a mine pile, and (ii) the Target’s facility in Raudsand recovers the metal fraction and the aluminium-oxide rich fraction, but doesn’t recycle the salt.⁴⁵
- (57) Salt slag is a by-product of the recycled aluminium production and a hazardous waste. The recycling of salt slag results in various products: aluminium granules, aluminium-oxide rich fraction, salt, and ammonium-sulphates.⁴⁶ The generated salt as well as the aluminium-granules are re-used by recycled aluminium producers.⁴⁷

⁴¹ Non-confidential minutes of a call with a competitor, 11 May 2022, paragraph 4.
⁴² Non-confidential minutes of a call with a competitor, 11 May 2022, paragraph 12.
⁴³ Non-confidential minutes of a call with a customer, 17 May 2022, paragraph 26.
⁴⁴ Form CO, paragraph 379.
⁴⁵ Form CO, paragraph 388.
⁴⁶ Form CO, paragraph 406.
⁴⁷ Form CO, paragraph 406.

Aluminium-oxide rich fractions are sold as valuable raw materials to cement producers, rockwool producers or steel plants as slag-conditioners.⁴⁸ Aluminium-sulphates are sold to fertilizer producers.⁴⁹ The salt slag recycling service can vary from just salt slag conversion up to full scale recycling services including the return of salt and aluminium-granules to the customer.⁵⁰

- (58) The Commission has not previously assessed a market for salt slag recycling.
- (59) Salt slag recycling services could be differentiated by technology. While most companies that are active in the EEA have a so-called zero-waste technology and recycle all components of the salt slag, some companies landfill some components in a mine pile or release saltwater into the sea. The zero-waste technology allows to yield aluminium granules, aluminium-oxide rich fraction, salt, and ammonium-sulphates. Aluminium and salt can be further used in the recycling of aluminium. Therefore, it is an advantage for many customers to recover those components. However, both zero-waste and non-zero-waste technologies allow the customer to get its salt slag processed, which is the key criteria.
- (60) The majority of customers who expressed a view indicated in the Commission's market investigation that zero waste recycling of salt slag is very important.⁵¹ A customer notes that regard that *'[i]t is very important for our company to reuse salt from recyclers as well as getting back aluminium granules. In terms of sustainability, it is important for our company that the residual oxydes are not landfilled but reused in the construction market or other applications.'*⁵²
- (61) The Commission finds that while there are strong indications that zero-waste and non-zero-waste salt slag recycling services are highly differentiated, both technologies seem to be viable options for customers who are able, at least to a certain extent, to shift their demand to one or the other technology. Therefore, the product market's scope is salt slag recycling, irrespective of the technology used. The highly differentiated nature of the market for salt slag recycling is assessed in the competitive assessment (see Section 7.5).

6.1.4. Downstream market: FRPs

- (62) Speira is active on a downstream market for the manufacturing of FRPs.
- (63) The Notifying Party did not provide its views as to a possible product market definition for FRPs.
- (64) In previous decisions, the Commission concluded that FRPs constitute distinct product markets based on their end application. These include (i) beverage can bodies, (ii) beverage can ends, (iii) food cans, (iv) aluminium foil, (v) automotive body sheets ('ABS') and (vi) lithographic sheets.⁵³ Furthermore, the Commission

⁴⁸ Form CO, paragraph 406.

⁴⁹ Form CO, paragraph 406.

⁵⁰ Form CO, paragraph 407.

⁵¹ EQ5 – Questionnaire to customers dress and salt slag, Q48.

⁵² EQ5 – Questionnaire to customers dress and salt slag, question 48.1.

⁵³ Case M.9076 – *Novelis / Aleris* paras. 92 et seq. and para 322; M.4605 – *Hindalco / Novelis*, paragraph 13.; M.3226 – *Alcan / Pechiney (II)*, paragraphs 58–65; M.2702 – *Norsk Hydro / VAW*, paragraph 12; and M.1663 – *Alcan / Alusuisse*, recital 54.

found that there is a distinct product market for standard FRPs, which includes all FRPs that do not constitute separate product markets.⁵⁴ In addition, the Commission has considered that FRPs used for a number of other applications, such as for aerospace, may constitute distinct product markets but has left the question ultimately open.⁵⁵

- (65) In line with this previous decisional practice, the Commission considers that a segmentation of the FRPs by applications is relevant. The results of the market investigation confirm that this decisional practice is still valid, since a majority of customers agreed with the Commission's decisional practice segmenting FRPs by end-application.⁵⁶
- (66) With regard to the specific end uses relevant for the present case, the Commission considers the case concerns FRPs for (i) beverage can bodies; (ii) beverage can ends; (iii) food cans and (iv) ABS, which constitute separate product markets distinct from other FRPs products markets. As further explained in paragraph (116) and following, the Transaction results in only one affected market (involving FRPs for can ends) but the Commission still investigated the vertical relationship involving FRPs for can bodies given the importance of recycled aluminium to this type of FRPs and the Parties' market share [...] to the 30% thresholds indicated in the non-horizontal merger guidelines⁵⁷

6.2. Geographic market definition

6.2.1. Upstream market: Recycled Wrought aluminium

- (67) The Notifying Party submits that while it considers the geographic market for recycled wrought aluminium to be worldwide, the geographic market definition can be left open, since the Transaction does not give rise to any competition concerns even on the basis of a much narrower market definition.⁵⁸
- (68) The Commission has previously considered the geographic scope of the various markets for recycled aluminium to be worldwide, without, however, assessing a geographic market for wrought aluminium specifically.⁵⁹
- (69) According to the Commission's Notice on Market Definition, the '*relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those area*'.⁶⁰

⁵⁴ Case M.9076 – Novelis / Aleris para. 323; M.4605 – *Hindalco /Novelis*, paragraph 13; M.3226 – *Alcan /Pechiney (II)*, paragraph 61; and M.2702 – *Norsk Hydro / VAW*, paragraph 11.

⁵⁵ For example, Case M.2111 – *Alcoa / British Aluminium*, paragraph 9.

⁵⁶ EQ3 – Questionnaire to customers FRPs – Q3.

⁵⁷ Guidelines on the assessment of non-horizontal mergers under the Council regulation on the control of concentrations between undertakings, OJ 2008/C 265/07, 'Non-horizontal Guidelines, paragraph.25.

⁵⁸ Form CO, paragraphs 191-192.

⁵⁹ Case M.7019 - TRIMET/ EDF/ NEWCO, paragraph 30.

⁶⁰ Commission Notice on Market Definition (97/C 372/03), paragraph 8.

- (70) The Commission observes that the trade flows for secondary wrought aluminium specifically seem to be largely limited to the EEA and the United Kingdom.
- (71) First, from a demand-side perspective, customers prefer to source mainly from suppliers in the EEA or the United Kingdom. This is confirmed by the market investigation. The majority of customers who expressed a view are sourcing recycled wrought aluminium from suppliers located in the EEA.⁶¹ A majority of customers who expressed a view even indicated that they source mostly from suppliers in the same country within the EEA.⁶² The majority of customers who expressed a view indicated that the average distance from which they typically source recycled wrought aluminium is 500 km or less.⁶³ Notably for liquid recycled wrought aluminium, the majority of customers who expressed a view state that the maximum transport distance is within a radius of 300 km.⁶⁴
- (72) Furthermore, a majority of market participants consider to be ready and able to purchase recycled aluminium from the Target's plant located in Swansea (in the United Kingdom).⁶⁵
- (73) Second, from a supply-side perspective, the Parties' competitors all have production plants in the EEA. In addition, the majority of competitors who expressed a view in the Commission's market investigation indicate that they sell recycled wrought aluminium mostly to customers in the EEA.⁶⁶ In relation to the importance of transport costs, a customer explained that *'transport cost has of course an impact but production capability, know-how and expertise in chemistry have a major impact'*.⁶⁷
- (74) Third, there are certain import barriers. In this regard, the majority of customers who expressed a view indicate that there are barriers that prevent or make difficult the import of recycled wrought aluminium in the EEA.⁶⁸ Accordingly, all customers who expressed a view in the market investigation confirmed that they source only 0-5% of recycled wrought aluminium for consumption in the EEA from outside the EEA, if any.⁶⁹ As explained by a customer, the barriers to source recycled wrought aluminium from outside EEA are *'likely import duties (...) Lead-times and transportation costs'*.⁷⁰
- (75) In light of the above, the Commission concludes that the geographic market for recycled wrought aluminium is at most EEA+UK wide, with a geographic differentiation.

⁶¹ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q14.

⁶² EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q14.

⁶³ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q15.

⁶⁴ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q16.

⁶⁵ Questionnaire on remedies, question C.2.

⁶⁶ EQ1 - Questionnaire to competitors secondary wrought aluminium - Q24.

⁶⁷ EQ2 - Questionnaire to customers secondary wrought aluminium and competitors FRPs – Q17.1.

⁶⁸ EQ2 - Questionnaire to customers secondary wrought aluminium and competitors FRPs – Q20.

⁶⁹ EQ2 - Questionnaire to customers secondary wrought aluminium and competitors FRPs – Q18.

⁷⁰ EQ2 - Questionnaire to customers secondary wrought aluminium and competitors FRPs – Q20.1.

6.2.2. Upstream market: Dross recycling

- (76) The Parties consider the geographic scope of dross recycling to be EEA-wide. The Commission has not previously assessed a market for dross recycling.⁷¹
- (77) The Parties argue that dross recycling can be offered, and is being offered, to customers all over the EEA (i.e. there are no restrictions such as for instance distance between the place of recycling and a customer's plant).
- (78) The Commission has not previously assessed a market for dross recycling.
- (79) There are indications that the distance at which dross can be transported, being a by-product of the production process that needs to be recycled and transported back, are significantly constrained by transport cost. A majority of competitors⁷² and customers⁷³ consider that transport cost is the main factor defining the delivery area of dross recycling. However, market participants point at other factors influencing the choice of a recycling site such as CO₂ footprint as explained by a customer *'to keep the CO₂-footprint to a minimum, the recycler with the shortest distance is the most interesting one (if all the other aspects are equal).'*⁷⁴
- (80) Considering the Target's sites, the distance from the recycling plant to the customers varies depending on the plant.
- (a) For the Grevenbroich plant, 80% of dross recycling is within [...] km distance from the plant. Note that this distance actually covers [...]% of the plant's dross recycling).⁷⁵ Nevertheless the longest distance to customer is [...] km.⁷⁶
 - (b) For the Töging plant, 80% of dross recycling is within [...] km of the plant. Note that this distance actually covers [...]% of the plant's dross recycling.⁷⁷
 - (c) For the Rød plant, 80% of dross recycling is within [...] km of the plant. Note that this distance actually covers [...]% of the plant's dross recycling.⁷⁸
 - (d) For the Swansea plant, 80% of dross recycling is within [...] km distance from the plant. Note that this distance actually covers [...]% of the plant's dross recycling. This is because the largest customer, [...] with a volume share of nearly [...]% in 2021 is furthest away from the plant.
- (81) These differences are to a certain extent confirmed by feedback of market participants, which also reflects discrepancies between the customers. When asked the typical distance over which they transport the majority of their dross to the respective dross recycling plants, a small majority replies 300 km or less. However, several customers reply 500 km or less and other customers reply either more than 1000 km or more than 2000 km.

⁷¹ Form CO, paragraph 323.

⁷² EQ4 – Questionnaire to competitors dross and salt slag – Q14.

⁷³ EQ5 – Questionnaire to customers dross and salt slag – Q11.

⁷⁴ EQ5 – Questionnaire to customers dross and salt slag – Q10.1.

⁷⁵ From CO, paragraph 339.

⁷⁶ From CO, table 18.

⁷⁷ From CO, paragraph 339.

⁷⁸ From CO, paragraph 339.

- (82) The varying replies can be explained by several factors as explained by a customer *‘Transportation cost is a big factor, but there are other commercial, operational and environmental factors that may make a site more attractive.’*⁷⁹ Another customer explains that key elements are *‘transport cost + other elements like analysis, purity, metal content, capacity and technical installations of the dross recycler, etc’*.⁸⁰
- (83) The first key aspect for long distance dross shipping is availability of dross recycling service, as pointed by customers. The availability can be a key factor in defining the delivery area of dross recycling. A customer explains, *‘Transport cost is v.important but the most important factor is the availability of such service (very limited number of recyclers have capacity to offer)’*⁸¹ Similarly, another customer points at availability but also at technical expertise of specific suppliers as a limiting factor *‘availability and technical expertise of a supplier’*⁸².
- (84) The second key aspect is the performance of the recycler, as a higher metal yield from a recycler further away may compensate a higher transport over long distances. A customer explains that metal yield is a key element when choosing a dross recycler *‘Metal yield from conversion the biggest value in dross conversion.’*⁸³ Another customer explains that transport cost can be compensated by the performance of the supplier *‘A longer distance will have to be compensated by positive differences on the other requests (f.ex. better quality, etc)’*⁸⁴
- (85) The third key aspect is the ability to transport dross through sea shipping instead of road shipping. In this context, shipping over longer distances can be economically interesting as evidenced by customers shipping from long distances. For example, [...] used exclusively the Swansea site out of all the Target’s sites in 2021⁸⁵. Sea shipping allows avoiding multiple border crossing and the associated national waste regulations.
- (86) Focusing on the UK more specifically it appears that the Target’s recycling plant in Swansea does serve customers from continental Europe⁸⁶ processing dross from customers in [...] and therefore competes with alternatives in the EEA.
- (87) In light of the above, the Commission concludes that the geographic market for dross recycling services is at most EEA+UK wide, with a strong geographic differentiation.

6.2.3. Upstream market: Salt slag recycling

- (88) The Notifying Party submits that the geographic market for salt slag recycling should be defined as EEA-wide, as recycling services are being offered in the EEA without limitation beyond the usual restrictions applying to the transfer of waste.⁸⁷

⁷⁹ EQ5 – Questionnaire to customers dross and salt slag – Q11.1.

⁸⁰ EQ5 – Questionnaire to customers dross and salt slag – Q11.1.

⁸¹ EQ5 – Questionnaire to customers dross and salt slag – Q11.1.

⁸² EQ5 – Questionnaire to customers dross and salt slag – Q11.1.

⁸³ EQ5 – Questionnaire to customers dross and salt slag – Q11.1.

⁸⁴ EQ5 – Questionnaire to customers dross and salt slag – Q10.1.

⁸⁵ Reply to RFI 13 – Annex to Q1.

⁸⁶ Reply to RFI 14 – Annex to Q4.

⁸⁷ Form CO, paragraph 380.

- (89) The Commission has not previously assessed a market for salt slag recycling.
- (90) Salt slag is a hazardous waste, its transport, notably cross-border, is costly, requires permits and is subject to certain limitations, such as the restricted use of tunnels.
- (91) From the demand side, this translates into significant transport costs. Half of the customers that expressed a view in the market investigation indicate that the effective delivery area range that can be reached by a plant in the EEA is determined mainly by transport costs.⁸⁸ A competitor notes in this regard that *'[t]ransport cost is very important as you ship salt slag to the recycler and get salt back'*.⁸⁹ The significance of salt slag transportation costs is also exemplified by Speira's cost to transport salt slag from its plant in [...] to [...]. Over this distance of approximately 1,000 km, the transport cost for the salt slag is [...], whereas the processing cost would be lower with [...].⁹⁰ Other factors mentioned by market participants are the availability of plants and capacities.⁹¹ Furthermore, the majority of customers who expressed a view note that there are factors limiting the customer's ability to recycle salt slag in any country in the EEA.⁹² A customer mentions in this context that *'[t]ransport costs and reducing our CO2 footprint is one factor. Cross-border shipments complexity within Europe (e.g. tunnel prohibited, legal authorization for hazardous substances transport in different countries, ...) is another.'*⁹³
- (92) From the supply side, the constraining transportation factors affect the range of distance at which it can be transported. The vast majority of the Target's clients ([...] % in volume) are located within [...] km distance from its RVA plant in France.⁹⁴ This is broadly in line with the feedback of market participants. The majority who expressed a view state that the typical distance over which the majority of salt slag is transported is [...] km or less.⁹⁵
- (93) Nevertheless, a number of customers do not have a salt slag recycling service within this reach and have to transport over longer distances. A competitor notes for example that *'[t]here [are] no salt slags plants in some countries so they have to export to countries with salt slags facilities, independently of the distance'*.⁹⁶ As illustrated by Figure 7 below, the salt slag plants in the EEA are mainly located in Germany, the north of Italy and the north east of France. Therefore, customers located for example in Central and Eastern Europe have to transport salt slag over longer distances.

⁸⁸ EQ5 – Questionnaire to customers dross and salt slag - Q51.

⁸⁹ EQ4 – Questionnaire to competitors dross and salt slag - Q46.1.

⁹⁰ Form CO, Annex 5.4.a.5. page 10. The Notifying Party submits in paragraph 114 of the Form CO that the comparison of transport cost and processing cost may be misleading here, because under this arrangement Speira did not receive the recovered metal back from [...]. This means an important stream of income for [...] is the recovered metal from the salt slag. This cost advantage for [...] is included in the processing cost which it charges to Speira.

⁹¹ EQ4 – Questionnaire to competitors dross and salt slag - Q48.1; EQ5 – Questionnaire to customers dross and salt slag - Q51.1.

⁹² EQ5 – Questionnaire to customers dross and salt slag - Q54.

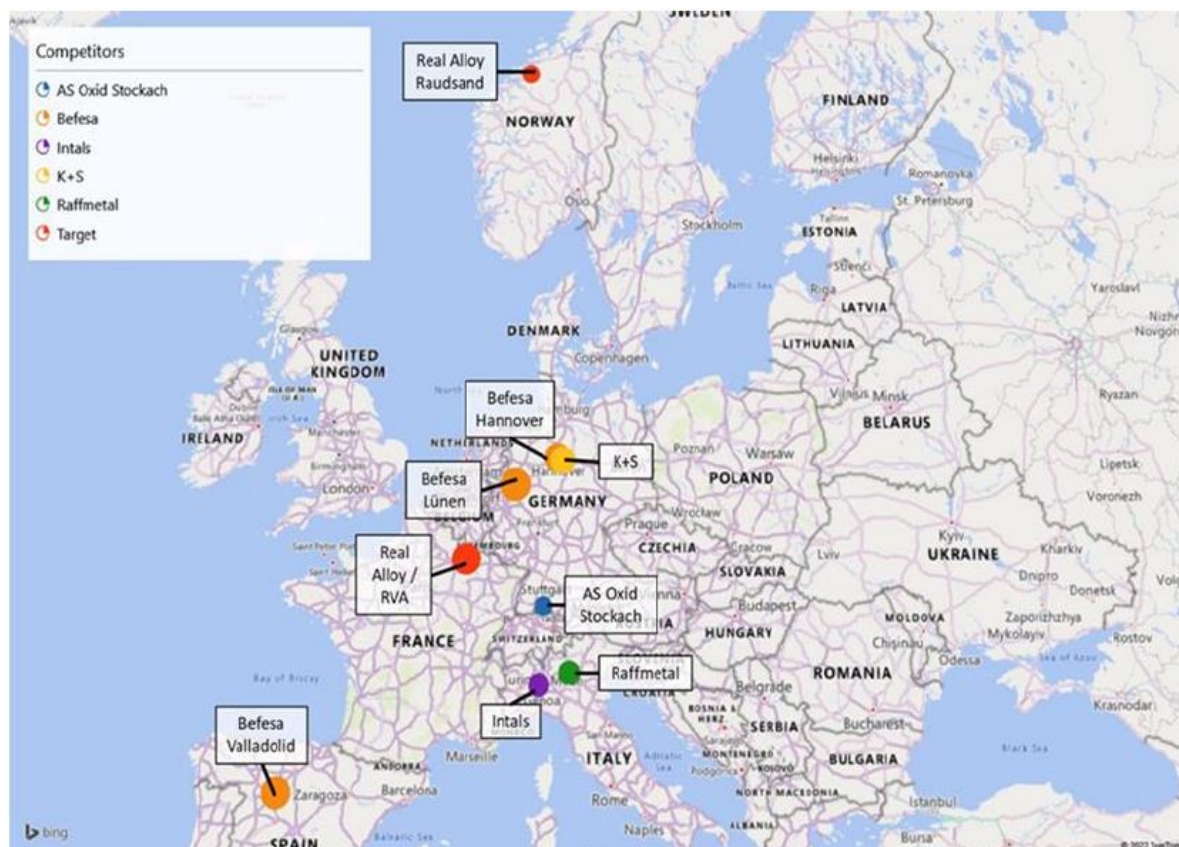
⁹³ EQ5 – Questionnaire to customers dross and salt slag - Q54.1.

⁹⁴ From CO, paragraph 392. The Target's other salt slag plant, which is located in Raudsand (Norway), does not provide salt slag services to third parties.

⁹⁵ EQ5 – Questionnaire to customers dross and salt slag - Q50; EQ4 – Questionnaire to competitors dross and salt slag - Q46.

⁹⁶ EQ4 – Questionnaire to competitors dross and salt slag - Q46.1.

Figure 7 – Salt slag plants EEA



Source: Form CO, paragraph 381

- (94) In addition, there are no salt slag recycling plants in the United Kingdom. While none of the Target’s third-party customers are located in the United Kingdom, the Target recycles the salt slag of its plant in the United Kingdom in its plant in Norway. In addition, other companies in the United Kingdom have their salt slag recycled in the EEA.⁹⁷
- (95) In light of the above, the Commission concludes that the geographic market for salt slag recycling services is at most EEA+UK wide, with a strong geographic differentiation. The geographic differentiation will be further considered in the competitive assessment (see Section 7.4.4).
- 6.2.4. *Downstream market: FRPs*
- (96) The Notifying Party has not provided any views on the scope of the geographic market for FRPs.
- (97) The Commission has previously considered the geographic scopes for FRPs for (i) beverage can bodies and (ii) and beverage can ends to encompass the EEA (at the time including the United Kingdom) and Switzerland.⁹⁸

⁹⁷ Non-confidential minutes of a call with a competitor, 3 October 2022, paragraph 4.

⁹⁸ Case M.4605 – Hindalco/Novelis, paragraph 13. Furthermore, the geographic market for FRPs for food cans was defined to be at least EEA-wide (Case M.10284 – KPS / CROWN EUROPEAN TINPLATE, paras. 7 et seqq.). The geographic market for FRPs for ABS was defined to be EEA-wide (Case M.9076 – NOVELIS / ALERIS, paras. 334 et seqq.).

- (98) The results of the Commission’s market investigation are in line with this market definition. While FRPs for beverage cans could be transported over long distances, the purchase patterns of customers in the EEA are largely limited to the EEA and suppliers point out some barriers.
- (99) First, from a demand-side perspective, the market investigation confirms that while some customers purchase FRPs for beverage cans also outside the EEA, those volumes are limited. The majority of customers who expressed a view indicated that they source less than 10% of their demand for FRPs for beverage can bodies and can ends from outside the EEA.⁹⁹
- (100) Second, from a supply-side perspective, competitors note that there are certain barriers that prevent or make difficult the import of FRPs into the EEA due to ‘*lead-times (and) import duties in respective countries*’.¹⁰⁰ Another competitor explains that the main barriers are ‘*technical standards and certifications according to the different characteristics and final application of the products*’.¹⁰¹
- (101) Therefore, the Commission concludes that the geographic markets for FRPs for (i) beverage can bodies and (ii) beverage can ends encompass the EEA and at most also the United Kingdom and Switzerland. The Notifying Party is not active in FRPs for can bodies or can ends in Switzerland. Therefore, the competitive assessment for the purpose of this case will be carried out on a market comprising the EEA and the United Kingdom.

7. COMPETITIVE ASSESSMENT

7.1. Introduction

- (102) The Commission assesses in the following Sections the impact of the Transaction on the vertically affected markets, notably in relation to (i) recycled wrought aluminium upstream and FRPs markets downstream, (ii) dross recycling upstream and FRPs markets downstream, (iii) salt slag recycling upstream and FRPs markets downstream.
- (103) The Transaction is mainly assessed with respect to the FRPs markets, in particular FRPs for beverage cans (i.e. FRPs for can ends where Speira is a market leader with a production share of [30-40]% at EEA level+UK and FRPs for can bodies where it is a sizeable player with a [20-30]% production share at EEA level+UK¹⁰²), which are oligopolistic markets. In addition to Speira, only three additional players (i.e. Novelis, Constellium and Elval) are active therein and rely on various upstream input products and services provided by the Target as discussed below.
- (104) Dross recycling and salt slag recycling services are directly vertically related with the production of recycled wrought aluminium. However, while downstream FRPs competitors (i.e. Novelis, Constellium and Elval), who are customers of dross and salt slag recycling services, also produce internally part of their recycled wrought

⁹⁹ EQ3 – Questionnaire to customers FRPs - Q7.

¹⁰⁰ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs – Q60.1.

¹⁰¹ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs – Q60.1.

¹⁰² At EEA level, Speira’s share as based on CRU data report is of [20-30]%.

aluminium, this is not where they are typically active as suppliers on the merchant market. Therefore, the downstream merchant markets that would be affected by the foreclosure of access to dross recycling or salt slag recycling services are the FRPs markets.

- (105) Since the Transaction does not give rise to customer foreclosure concerns as explained in paragraphs (122), (165) and (202) below, the assessment focuses on input foreclosure concerns.

7.2. Legal framework

- (106) 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.
- (107) In this respect, a merger may entail horizontal and/or non-horizontal effects. Non-horizontal effects are those deriving from a concentration where the undertakings concerned are active in different relevant markets.
- (108) Pursuant to the Non-Horizontal Merger Guidelines, a vertical merger may result in anticompetitive foreclosure effects where actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing these companies' ability and/or incentive to compete. Such foreclosure may discourage entry or expansion of rivals or encourage their exit. Foreclosure can thus be found even if the foreclosed rivals are not forced to exit the market: it is sufficient that the rivals are disadvantaged and consequently led to compete less effectively.¹⁰³
- (109) Foreclosure may also take more subtle forms, such as the degradation of the quality of input supplied. In its assessment, the Commission may consider a series of alternative or complementary possible strategies.¹⁰⁴
- (110) More specifically, the Non-Horizontal Merger Guidelines distinguish between two main ways in which vertical mergers may significantly impede effective competition, namely input foreclosure and customer foreclosure.
- (111) *Input foreclosure* arises where, post-merger, the combined entity would be likely to restrict access to the products or services that it would have otherwise supplied absent the merger, thereby raising its actual or potential downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger.¹⁰⁵ For a transaction to raise input foreclosure competition concerns, the combined entity must have a significant amount of market power upstream.¹⁰⁶ In assessing the likelihood of an anticompetitive input foreclosure strategy, the Commission has to examine whether (i) the combined entity would have the ability to substantially foreclose access to inputs, (ii) whether it would have the incentive to do so, and (iii) whether a foreclosure strategy would

¹⁰³ Non-horizontal Merger Guidelines, paragraph 29.

¹⁰⁴ Non-horizontal Merger Guidelines, paragraph 33.

¹⁰⁵ Non-horizontal Merger Guidelines, paragraph 31.

¹⁰⁶ Non-horizontal Merger Guidelines, paragraph 35.

have a significant detrimental effect on competition downstream.¹⁰⁷ In addition, when competition in the input market is oligopolistic, a decision of the merged entity to restrict access to its inputs reduces the competitive pressure exercised on remaining input suppliers, which may allow them to raise the input price they charge to non-integrated downstream competitors.¹⁰⁸

- (112) *Customer foreclosure* may occur when a supplier integrates with an important customer in the downstream market. Because of this downstream presence, the combined entity may foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market (the input market) and reduce their ability or incentive to compete.¹⁰⁹ According to the Non-Horizontal Merger Guidelines, for a transaction to raise customer foreclosure competition concerns, it must be the case that the vertical merger involves a company which is an important customer with a significant degree of market power in the downstream market.¹¹⁰ In assessing the likelihood of an anticompetitive customer foreclosure scenario, the Commission has to examine whether (i) the combined entity would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals, (ii) whether it would have the incentive to reduce its purchases upstream, and (iii) whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.¹¹¹
- (113) Finally, the Non-Horizontal Merger Guidelines also provide that the effect on competition of a vertical merger needs to be assessed in light of the efficiencies substantiated by the merging parties, if any. For the Commission to take account of efficiency claims in its assessment of a vertical merger, the efficiencies have to be (i) to the benefit of consumers, (ii) merger-specific and (iii) verifiable.¹¹²

7.3. Vertical relationship between recycled wrought aluminium upstream / FRPs downstream

- (114) Recycled wrought aluminium material, as produced by the Target, is a critical input for the production of some FRPs, namely FRPs for beverage can bodies and FRPs for can ends (recycled content represent approx. [...]% of the input mix in FRPs for can body and [...]% for FRPs for can end).¹¹³
- (115) Recycled wrought aluminium is also used in the input mix for the production of FRPs for food cans (**'FRPs for food cans'**) and FRPs for automotive body sheets (**'FRPs for ABS'**) but to a much lower extent (approx. [...]% of the input mix in FRPs for food cans and [...]% for FRPs for ABS). This makes recycled material less critical to manufacturers of FRPs for food cans and for ABS.

¹⁰⁷ Non-horizontal Merger Guidelines, paragraph 32. Each of these points will be analysed separately, although the Commission recognises that they are intertwined.

¹⁰⁸ Non-horizontal Merger Guidelines, paragraph 38.

¹⁰⁹ Non-horizontal Merger Guidelines, paragraph 58.

¹¹⁰ Non-horizontal Merger Guidelines, paragraph 61.

¹¹¹ Non-horizontal Merger Guidelines, paragraph 59.

¹¹² Non-horizontal Merger Guidelines, paragraphs 52-53.

¹¹³ Reply to RFI 13 - Q14.

- (116) Therefore, the Transaction results into four vertical relationships, namely between:
- (a) the supply of recycled wrought aluminium for can ends and FRPs for can ends;
 - (b) the supply of recycled wrought aluminium for can bodies and FRPs for can bodies;
 - (c) the supply of recycled wrought aluminium for food cans and FRPs for food cans; and
 - (d) the supply of recycled wrought aluminium for ABS and FRPs for ABS.
- (117) First, with respect to the last two vertical relationships, the Commission notes that none of the concerned markets is a vertically affected market¹¹⁴. In particular, while some of Speira's downstream competitors in these markets expressed concern with respect to access to recycled wrought aluminium for these end applications, the Commission notes that the proportion of non-recycled wrought aluminium in these two FRPs products is significantly higher (approx. [...] % for FRPs for food cans and [...] % for FRPs for ABS) than for FRPs for can body and FRPs for can ends (respectively [...] % and [...] % of non-recycled wrought aluminium). The Commission further notes that Speira has limited market shares in these two downstream market ([5-10] % sales share at EEA level +UK for FRPs for food cans and [10-20] % sales market share at EEA level + UK in the downstream market for FRPs for ABS) which provide limited incentive and opportunities to recoup foregone sales upstream. In view of this, the Commission will not assess any further these two vertical relationships.
- (118) Second, with respect to the first vertical relationship (i.e. the supply of recycled wrought aluminium for can ends and FRPs for can ends), the Commission observes that the Parties' production market shares at both levels are above 30% (above [50-60] % at the upstream level and [30-40] % downstream both at EEA+UK level) giving rise to vertically affected markets.
- (119) Finally, with respect to the second vertical relationship (i.e. the supply of recycled wrought aluminium for can bodies and FRPs for can bodies), the Commission observes that Speira's 2021 downstream production shares is of [20-30] % at EEA + UK level while the Parties' 2021 upstream market share in the production of recycled wrought aluminium for can bodies is of [20-30] % at EEA + UK level. These market shares do not give rise to a vertically affected market. Nevertheless, the Commission stresses that, given that (i) the Parties' upstream market share is close to the 30% thresholds indicated in the Non-Horizontal Merger Guidelines¹¹⁵, (ii) that the Parties' have not been able to identify any other competitors in the upstream market ('Other' category represents [70-80] % of an EEA+UK market), (iii) that recycled wrought aluminium represents [...] % of the input mix used for the production of FRPs for can bodies and that (iv) downstream competitors will be

¹¹⁴ Speira's 2021 sales market share in the downstream market for FRPs for food cans is of [5-10] % at EEA + UK level while the Target's production share in the upstream market for recycled wrought aluminium for food cans was of [10-20] % in 2021 EEA level +UK. Speira's 2021 sales market share in the downstream market for FRPs for ABS is of [10-20] % EEA level +UK while the Target's production share in the upstream market for recycled wrought aluminium for ABS was of [10-20] % in 2021 EEA level +UK.

¹¹⁵ Guidelines on the assessment of non-horizontal mergers under the Council regulation on the control of concentrations between undertakings, OJ 2008/C 265/07, 'Non-horizontal Guidelines, paragraph.25.

affected by other potential input foreclosure strategies (Section 7.4 and 7.5), including in the other neighbouring beverage can market (i.e. can ends), the Commission has investigated this vertical relationship.

- (120) For input foreclosure to be a concern, the combined entity needs to, among others, have market power upstream. As discussed in paragraphs (126) below, the combined entity would have an important market share and market power in the supply of certain series of recycled wrought aluminium. Downstream competitors in the markets for FRPs for can bodies and FRPs for can ends have also raised concerns with respect to their access to this raw material.¹¹⁶
- (121) In addition to ability, the combined entity will need to have an incentive to foreclose for a foreclosure to be a concern. Essentially, the combined entity may face a trade-off between profits lost in the upstream market due to reduction of input sales to rivals and the profit gain in the downstream market.¹¹⁷ In the present case, the Commission considers it likely that the combined entity could be post-Transaction in a position to increase its sales or prices in the downstream markets for FRPs for can bodies and FRPs for can ends.
- (122) With respect to customer foreclosure in relation to the supply of recycled wrought aluminium, the Commission considers that the combined entity will not be in position to implement any such a strategy. Speira's main recycled aluminium supplier in the merchant market is the Target, and Speira, which is also active in the upstream market for recycled wrought aluminium (no sales on the merchant market), meets its remaining recycled aluminium needs through self-supply of scrap upstream and internal recycling. Also in view of the growing importance of recycled aluminium in downstream market, and the fact that some of the series can be sold into different end-applications, it is not likely that Speira will have the ability and incentive to curtail access of competing upstream players to downstream customers post-Transaction. Accordingly, customer foreclosure in relation to recycled wrought aluminium will not be analysed any further.

7.3.1. *Recycled wrought aluminium for can ends (serie 5xxx) and FRPs for can ends*

7.3.1.1. Notifying Party's view

- (123) The Notifying Party argues that, given the Target's moderate market share in the upstream market for the supply of recycled aluminium, the combined entity will not have the ability to foreclose access of Speira's competitors to this input post-transaction.¹¹⁸ In particular, the Notifying Party stresses that, regarding the production and supply of recycled aluminium, the Target has a moderate market share in 2021 not exceeding [5-10]% at EEA level.. The Notifying Party further argues that Speira's sales-side market share for beverage can ends only moderately exceeds the threshold for an affected market and only in terms of capacity numbers, while Speira's share of sales and production is below [20-30]%.¹¹⁹

¹¹⁶ See non-confidential minutes of a call with a customer, 13 may 2022. See also EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q45.

¹¹⁷ See, e.g. Non-horizontal Guidelines, paragraphs 40–6.

¹¹⁸ Form CO, paragraph 532.

¹¹⁹ Form CO, paragraph 537.

- (124) The Notifying Party also argues that recycled aluminium can always be replaced by non-recycled aluminium (which neither the Target nor Speira produce). Customers could, according to the Notifying Party, thus always switch to non-recycled aluminium as an input for their production.¹²⁰ Furthermore, the Notifying Party explains that the Parties will not have the ability to foreclose recycled wrought aluminium whether for can ends (serie 5xxx) or can bodies (serie 3xxx) since customers often have long-term contracts with the Target, which cannot be terminated on short notice.¹²¹
- (125) As to the incentives to foreclose input, the Notifying Party explains that whilst downstream margins are larger in cash terms per tonne of aluminium, it is nonetheless clear that the total profit loss upstream from attempted foreclosure would far exceed the total profit that could realistically be recaptured by Speira at the downstream level. According the Notifying Party, this is because (i) a very small proportion of the downstream production would be affected since the Target has a small presence in the relevant upstream markets while (ii) downstream competitors could easily and cost-effectively find alternative sources for that small part of their respective input mix affected by switching to alternative sources such as internally recycled aluminium, other recycled aluminium available on the market and use more non-recycled aluminium.¹²²

7.3.1.2. Ability to foreclose input

- (126) As explained in paragraph (117) above, recycled aluminium accounts for a large proportion of the produced FRPs for can ends (approx. [...]%).¹²³ Given the importance of recycled wrought aluminium for the downstream production of FRPs for can ends, the combined entity's ability to foreclose input (recycled wrought aluminium for can ends) to downstream rivals is not function of the form and/or shapes of the input recycled wrought aluminium. Downstream customers indeed use all forms and shapes of recycled wrought aluminium for their production of FRPs for can ends¹²⁴ so that any foreclosure strategy would apply across the board.
- (127) First, the Parties have provided their 2019 production shares for recycled wrought aluminium for beverage can ends at EEA + UK level, which is of approx. [40-50]% and [30-40]% at EEA level only.¹²⁵ In view of the Notifying Party's inability to quantify its shares in the subsequent years, the Commission estimated these based on estimates on growth of the market size. The combined entity's 2021-production share for recycled wrought aluminium for beverage can ends both at EEA + UK level and at EEA level only would thus be above [50-60]% since the Parties' production volumes have [description of development] between 2019 and 2021.¹²⁶

¹²⁰ Form CO, paragraph 536.

¹²¹ Form CO, paragraph 536.

¹²² Form CO, paragraph 550.

¹²³ Reply to RFI 13 - Q14.

¹²⁴ This also holds true for FRPs of can bodies.

¹²⁵ Reply to RFI 7 – Annex to Q24, as amended by the Notifying Party in the notified Form CO, footnote 27.

¹²⁶ 2021 production shares for can ends has been computed by the Commission based on the Parties' production figures and a conservative growth rate for the market size of 10% from 2019 to 2020 and similarly (10%) from 2020 to 2021. The assumed 10% yearly growth rate for the market of recycled wrought aluminium for can ends is conservative since the Notifying Party estimates that demand for can ends downstream will grow by an average of [...] % over a period of 5 years from 2020 to 2025

Furthermore, given that Speira's downstream competitors would be affected by other potential input foreclosure strategies discussed below (Sections 7.4 and 7.5), the combine entity's ability to foreclose input would be larger than its market share.

- (128) This quantitative exercise is corroborated by the qualitative feedback from the market. Results of the market investigation confirm the Target's important position with respect to recycled wrought aluminium in general¹²⁷ and for can ends in particular.¹²⁸ Most of the respondents to the Commission's market investigation confirmed that Real Alloy Europe is either the market leader or a very strong player in terms of (i) sufficient capacity to provide certain quantities, (ii) of network of production assets, and (iii) in terms of EEA based production.¹²⁹ One competitor explained that the Target is *'the only not-integrated recycling company within the EEA and also with the largest capacity'*¹³⁰. Similarly, one customer explained that *'[r]eal Alloy has by far the biggest secondary wrought alloys capacity in Europe. The company also enjoys a great geographical situation (central in Europe) in addition to a great technical expertise'*.¹³¹
- (129) Second, market participants also confirmed that there are only very few available alternatives to the Target with respect to the production and supply of recycled wrought aluminium for can ends. A majority of customers that expressed a view confirmed that there are not enough suppliers of recycled wrought aluminium for beverage can ends (5xxx).¹³² In this respect, one customer explained that there is *'[N]o known suppliers for 5xxx alloys, except Real Alloy'*.¹³³ Similarly, another customer stressed that *'[v]olumes for 5xxx secondary wrought alloys are limited'*.¹³⁴
- (130) Third, recycled wrought aluminium for can ends (serie 5xxx) is an important input for the downstream FRPs for can ends.
- (131) In the first place, a majority of respondents to the Commission market investigation explained that, in view of the green transition and the increased use of recycled content, demand of recycled wrought aluminium including for can ends has increased over the last 3 years.¹³⁵ Similarly, a majority of respondents to the Commission's market investigation still expect the demand for recycled wrought

while the Commission's estimate are based on a yearly growth of 10% (See: Form CO, Annex 5.4.a, page 245). The Commission assumed yearly growth of the market size is significantly larger and thus more conservative for the purpose of computing the Parties' market shares. The Commission has however not been able to estimate shares of the Parties' upstream competitors since the Notifying Party has not been able to list its upstream competitors, let alone their production figures. The resulting high production shares of the Parties are however consistent with the results of the market test which confirmed that there are almost no known alternative suppliers to the Target.

¹²⁷ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q23.

¹²⁸ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q23.2.

¹²⁹ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q23.

¹³⁰ EQ1 – Questionnaire to competitors secondary wrought aluminium - Q31.

¹³¹ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - 22.1.

¹³² EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q34.

¹³³ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs – Q34.1.

¹³⁴ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q34.2.

¹³⁵ EQ1 – Questionnaire to competitors secondary wrought aluminium - Q40 and EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q27.

aluminium to continue to significantly increase over the coming 3 years, including for the recycled aluminium for can ends.¹³⁶

- (132) In the second place, respondents to the Commission's market investigation also stressed the importance of recycled wrought aluminium in order to lower products' carbon footprint.¹³⁷ In this respect, one competitor explained that *'due to increasing demand for low carbon Aluminium it became and becomes more and more important[t] to increase the scrap input in products, e.g. cans'*.¹³⁸
- (133) In the third place, a majority of customers explained that recycled wrought aluminium for can ends represents a significant cost factor of up to 30% of the total cost of FRPs for beverage can ends.¹³⁹ Some respondents even indicated a higher proportion of the total cost.¹⁴⁰
- (134) Fourth, the market investigation confirmed that there are no available alternatives or complementary strategies that manufacturers of FRPs for can ends could deploy.
- (135) In the first place, a majority of customers that expressed a view confirmed that they would not be able to switch to non-recycled aluminium in order to replace recycled wrought aluminium for beverage can ends (5xxx) sourced from Real Alloy Europe.¹⁴¹ Market participants have put forward two main reasons for this. On the one hand, customers pointed to the carbon footprint of non-recycled aluminium in the production of can ends, which goes against the green trend in aluminium. As explained by one competitor, recycled wrought aluminium *'[c]an only be replaced with primary aluminium if the end customer accepts this would. However, due to the subsequent increase in the carbon footprint unlikely'*.¹⁴² On the other hand, customers also highlighted the fact that non-recycled wrought aluminium is much more expensive than recycled one and therefore not an economically viable option. A customer explained that the use of non-recycled wrought aluminium for the production of can bodies and can ends is *'[t]echnically feasible, but economically not viable (huge cost increase linked to both primary aluminium and alloying elements). Moreover the CO2 content of our products would increase and make them less attractive to our customers'*.¹⁴³
- (136) In the second place, a majority of customers that expressed a view confirmed that they would not be able to increase the share of imported recycled wrought aluminium in order to replace recycled wrought aluminium for beverage can ends (5xxx) sourced from Real Alloy Europe on the merchant market.¹⁴⁴ In this respect, one customer explained that *'[n]o alternative supplier identified as of to date Perhaps alternative suppliers outside EEA are not interested in supplying the EEA*

¹³⁶ EQ1 – Questionnaire to competitors secondary wrought aluminium - Q41 and EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q28 and Q28.2.

¹³⁷ EQ1 – Questionnaire to competitors secondary wrought aluminium - Q51 and EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q39.

¹³⁸ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q27.1.

¹³⁹ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q62.

¹⁴⁰ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q62.

¹⁴¹ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q39.

¹⁴² EQ1 – Questionnaire to competitors secondary wrought aluminium - Q51.

¹⁴³ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q39.

¹⁴⁴ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q38.

market because of import duties'.¹⁴⁵ Another customer explained that increasing the share of imports is unlikely given the *'import duties due to the shape of sows Lead-times and transportation costs*'.¹⁴⁶ An additional customer confirmed that *'tax rules*' and the limited *'reach*' of imports are limiting factors with respect to imports.¹⁴⁷

- (137) In the third place, the market investigation also confirmed that customers could not replace recycled wrought aluminium sourced from Real Alloy Europe by increasing the share of internal scrap. A majority of customers and competitors that expressed a view confirmed that they would not be able to increase the share of internally recycled wrought aluminium in order to replace recycled wrought aluminium for beverage can ends (5xxx) sourced from the Target on the merchant market.¹⁴⁸ This is because, the limited availability of internal scrap limits in turn the possibilities to increase its share in the production of can ends.¹⁴⁹
- (138) In the fourth place, several competitors in the downstream market for FRPs for can ends explained that they cannot circumvent an input foreclosure strategy targeting recycled wrought aluminium for can ends by importing FRPs for can ends directly since there are various barriers such as lead-time and also import duties that prevent this.¹⁵⁰
- (139) In the fifth place, contrary the Notifying Party's argument that customers often have long-term contracts with the Target, which cannot be terminated on short notice, the Commission notes that several players source recycled wrought aluminium from the Target based on spot contracts. This is for instance the case of [...] ¹⁵¹ and [...] ¹⁵².
- (140) Given that recycled wrought aluminium for cans ends represents a critical input for FRPs for can ends, that the combined entity would have high market shares both at the upstream and downstream levels (above [50-60]% upstream at EEA level +UK and [30-40]% downstream at EEA + UK level), and in view of the limited number of alternatives available to customers, the Commission concludes that the combined entity would have the ability to leverage its strong position in the upstream market for recycled wrought aluminium for can ends to foreclose downstream rivals in their access to this input.

7.3.1.3. Incentive to foreclose input

- (141) In addition to ability, the combined entity will need to have an incentive to foreclose for a foreclosure to be a concern. Essentially, the combined entity may face a trade-off between profits lost in the upstream market due to reduction of input sales to rivals and the profit gain in the downstream market.¹⁵³

¹⁴⁵ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q38.1.1.

¹⁴⁶ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q20.

¹⁴⁷ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q20.

¹⁴⁸ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q37 and EQ1 – Questionnaire to competitors secondary wrought aluminium - Q49.1.

¹⁴⁹ EQ1 – Questionnaire to competitors secondary wrought aluminium - Q49.1.1.

¹⁵⁰ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q60.1.

¹⁵¹ Form CO, Annex 6.1.

¹⁵² Non-confidential minutes of a call with a customer, 13 May 2022.

¹⁵³ See, e.g. Non-horizontal Guidelines, paragraphs 40–6.

- (142) In the present case, the Commission concludes that it is likely that the combined entity could increase its sales in the downstream market for FRPs for can ends.
- (143) First, the combined entity would find an input foreclosure strategy profitable. The contribution margin data suggests that a foreclosure strategy could be profitable since both the contribution margin ratio and the absolute cash contribution margin are higher in Speira's downstream market than in the Target's upstream markets. [Comparison between Parties' margin data]. The downstream margins are larger in cash terms per tonne of aluminium.¹⁵⁴ The absolute cash contribution margin is significantly higher on the downstream markets for FRPs [reference to margin data for FRP product] than for the upstream market for recycled wrought aluminium ([...]).¹⁵⁵
- (144) Second, Speira is the market leader in the downstream market for FRPs for can ends where it had in 2021 a production share of [30-40]% at EEA + UK level and has also a large position in the other downstream beverage can market (i.e. FRPs for can bodies (see paragraph (159))). Speira's production share in the downstream market for FRPs for can ends is even higher at EEA level only and reaches [30-40]%.¹⁵⁶ Such a leading position downstream where only three additional players (i.e. Novelis, Constellium and Elval) are active and rely on various upstream input product and services provided by the Target, provides an additional incentive to the combined entity to recoup foregone sales upstream.

7.3.1.4. Impact on effective competition

- (145) While the Notifying Party considers that attempting foreclosure would have only a marginal impact since only a very small proportion of the overall recycled aluminium market could be foreclosed, the Commission notes that Speira has a significant presence in the downstream market for FRPs for beverage can end and would be expected to capture sales at least equivalent to its downstream share (approx. [30-40]% at EEA +UK level or [30-40]% at EEA level only). Furthermore, Speira's competitors would be affected by other input foreclosure strategies discussed below (Sections 7.4 and 7.5) thus making the recoupment opportunities for Speira larger than its market share.
- (146) A majority of respondents to Commission's market investigation also confirmed that they expect the price of recycled wrought aluminium to increase post-transaction.¹⁵⁷ Similarly, a majority of respondents to the Commission's market investigation also expect a decrease in available recycled wrought aluminium post-transaction.¹⁵⁸ In this respect, one customer explained that '*[t]he transaction*

¹⁵⁴ Reply to RFI 7 - Q2.

¹⁵⁵ Reply to RFI 7 - Q2.

¹⁵⁶ These market share estimates are based on CRU data report. The Notifying Party has also provided market shares based on CRU report but for which Speira's production volumes have been revised downward. However, Speira's competitors production volumes have not been amended which resulted in Speira having smaller shares than those initially estimated by CRU report. The Commission considers that any overestimate in production volume by CRU report would apply equally to all players. Therefore, the Commission relied on the non-amended shares based on the CRU report.

¹⁵⁷ EQ1 – Questionnaire to competitors secondary wrought aluminium - Q55 and EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q44.

¹⁵⁸ EQ1 – Questionnaire to competitors secondary wrought aluminium - Q56 and EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q45.

represents a significant risk for Speira's competitors by potentially reducing the amount of secondary wrought aluminium available on the market and increasing its price'.¹⁵⁹

- (147) In light of the above assessment, the Commission finds that the Transaction raises serious doubts as to its compatibility with the internal market and with the functioning of the EEA Agreement, because of foreclosure of competitors of FRPs for can ends.

7.3.2. *Recycled wrought aluminium for can bodies (serie 3xxx) and FRPs for can bodies*

- (148) As a preliminary point, the Commission notes that the above findings with respect to ability, incentive and impact for recycled aluminium for can ends (Section 7.3.1) apply *mutatis mutandis* to can bodies since the market investigation confirmed that market dynamics are not different for can ends and can bodies. Respondents to the Commission's market investigation generally confirmed that their conclusions are not different for can ends compared to can bodies.¹⁶⁰ This is understandable in the light of the fact that can ends and can bodies are neighbouring markets, which the Notifying Party categorizes in its internal documents as part of the overall beverage can market.¹⁶¹ Therefore, in what follows, the Commission will discuss only specific elements to can bodies whenever relevant.

7.3.2.1. Notifying Party's view

- (149) The Notifying Party's arguments discussed above in paragraph (123) and following apply *mutatis mutandis* to the present vertical relationship since most of these arguments cover recycled wrought aluminium in general including both can ends and can bodies.

7.3.2.2. Ability to foreclose input

- (150) First, the Parties have provided their 2019 production shares for recycled wrought aluminium for beverage can bodies, which is of approx. [20-30]% at EEA + UK level and of [20-30]% at EEA level only.¹⁶² In view of the Notifying Party's inability to quantify its shares in the subsequent years, the Commission estimated these based on estimates on growth of the market size. The combined entity's 2021-production share for recycled wrought aluminium for beverage can bodies would thus be at approx. [20-30]% at EEA +UK level and of [20-30]% at EEA level only.¹⁶³ As explained in paragraph (127) above, this quantitative exercise is further corroborated by the qualitative feedback from the market which confirmed

¹⁵⁹ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q58.

¹⁶⁰ See EQ1 – Questionnaire to competitors secondary wrought aluminium - Q31.2, Q32.2, Q39.1, Q40.2 and Q41.2. See also: EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q22.2, Q23.2, Q27.2 and Q28.2.

¹⁶¹ See Form CO, Annex 5.4.a, page 239.

¹⁶² Reply to RFI 7 - Annex to Q24.

¹⁶³ 2021 production shares has been computed by the Commission based on the Parties' production figures and an assumed growth rate for the market size of [...] % from 2019 to 2020 and similarly ([...]) % from 2020 to 2021. The Notifying Party estimates that demand for can bodies downstream will grow by an average of [...] % (See: Form CO, Annex 5.4.a, page 245) over a period of 5 years from 2020 to 2025 while the Commission's estimate is based on a yearly growth of [...] %. At EEA + UK level, the total market size increased by 5% each year from 2019 to 2021 while the Parties' production volume increased by [...] % over the same period.

the Target's important position with respect to recycled wrought aluminium in general¹⁶⁴ and that the situation is not different with respect can bodies in particular.¹⁶⁵ Furthermore, given that Speira's downstream competitors would be affected by other potential input foreclosure strategies discussed below (Sections 7.4 and 7.5), the combined entity's ability to foreclose input would be larger than its market share.

- (151) Second, similarly to recycled aluminium for can ends, a majority of customers that expressed a view confirmed that there are not enough suppliers of recycled wrought aluminium for beverage can bodies (3xxx).¹⁶⁶ In this respect, one customer explained that there is a *'very limited number of suppliers in Europe able to meet 3xxx quality and price expectations'*.¹⁶⁷ This is further confirmed by the Notifying Party's submission, which did not list any alternative suppliers for this particular series of recycled wrought aluminium.
- (152) Third, similarly to FRPs for can ends for which recycled wrought aluminium for can ends (series 5xxx) is key, recycled wrought aluminium for can bodies (series 3xxx) is also an important input for the downstream FRPs for can bodies.
- (153) In the first place, a majority of respondents to the Commission's market investigation explained that, in view of the green transition and the use of more recycled content, demand of recycled wrought aluminium including for can bodies has increased over the last 3 years.¹⁶⁸ Similarly, a majority of respondents to the Commission market investigation still expect the demand for recycled wrought aluminium to continue to increase significantly over the coming 3 years, including for the 3xxx series.¹⁶⁹
- (154) In the second place, a majority of customers specifically explained that recycled wrought aluminium for can bodies represents a significant cost factor ranging between 10% to 30% of the total cost of FRPs for beverage can bodies.¹⁷⁰ Some respondents even indicated a higher proportion of the total cost.¹⁷¹
- (155) Fourth, the market investigation confirmed that neither the use of non-recycled aluminium nor the increase of imports of recycled wrought aluminium or the increase of the share of internal scrap¹⁷² are effective strategies that downstream suppliers of FRPs for can bodies can deploy. Specifically, on the latter point, one customer explained that *'[f]or the 3000 series [the Company] considers that it*

¹⁶⁴ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q23.

¹⁶⁵ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q23.2.

¹⁶⁶ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q34.

¹⁶⁷ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q34.1.

¹⁶⁸ EQ1 – Questionnaire to competitors secondary wrought aluminium - Q40 and EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q27.

¹⁶⁹ EQ1 – Questionnaire to competitors secondary wrought aluminium - Q41 and EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q28 and Q28.2.

¹⁷⁰ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q61.

¹⁷¹ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q61.

¹⁷² EQ1 – Questionnaire to competitors secondary wrought aluminium - Q49.1. and EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q37.

could not replace Real Alloy's know-how with internal scrap, which in any event are not very available'.¹⁷³

- (156) Fifth, the market investigation also confirmed that remaining alternative suppliers of recycled wrought aluminium for can bodies lack the ability to expand output in response to the supply restriction since they face binding capacity constraints.¹⁷⁴ One customer explained that some of these suppliers of recycled wrought aluminium for can bodies *'don't have the right network to source the right scrap quality for the expected volumes'*.¹⁷⁵ Another customer stressed that for recycled wrought aluminium *'capacities are very limited contrary to cast alloys which correspond to uses which are completely different'*.¹⁷⁶
- (157) Given that recycled wrought aluminium for can bodies represents a critical input for FRPs for can bodies, that the combined entity has an important market position both at the upstream and downstream levels, which is set to further increase in the coming years, and in view of the limited number of alternatives available to customers, the Commission concludes that the combined entity would have the ability to leverage its strong position in the upstream market for recycled wrought aluminium for can bodies to foreclose downstream rivals in their access to this input.

7.3.2.3. Incentive to foreclose input

- (158) For the same reasons as in Section 7.3.1.3 above, the Commission concludes that it is likely that the combined entity could increase its sales in the downstream market for FRPs for can bodies.
- (159) Specifically, with respect to the downstream market for FRPs for can bodies, the Commission further notes that Speira's production share of [20-30]% in the downstream market for FRPs for can bodies at EEA + UK level ([20-30]% at EEA level only) still provides an additional incentive to the combined entity to recoup foregone sales upstream. This incentive appears even more acute in view of the Notifying Party's [reference to intended market behavior by Notifying Party].¹⁷⁷ [Reference to intended market behavior by Notifying Party].¹⁷⁸ [Reference to intended market behavior by Notifying Party].

7.3.2.4. Impact on effective competition

- (160) The Commission notes that Speira is an important player in the downstream markets for FRPs for beverage can bodies that is expected to further grow its market share and would accordingly capture sales at least equivalent to its market share downstream. Furthermore, Speira's competitors would be affected by other

¹⁷³ Non-confidential minutes of a call with a customer. Courtesy translation: *'Pour le 3000, [l'Entreprise] estime qu'elle ne pourra pas remplacer le savoir-faire de Real Alloy avec des chutes et que ces chutes sont d'ailleurs très peu disponibles'*.

¹⁷⁴ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q26 and EQ1 – Questionnaire to competitors secondary wrought aluminium - Q37.

¹⁷⁵ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q26.3.

¹⁷⁶ Non-confidential minutes of a call with a customer. Courtesy translation: *'les capacités sont très limitées contrairement aux alliages de moulages (Cast alloys) lesquels correspondent à des utilisations qui sont totalement différentes'*.

¹⁷⁷ Form CO, paragraph 101.

¹⁷⁸ Form CO, paragraph 101.

input foreclosure strategies discussed below (Sections 7.4 and 7.5) thus making the recoupment opportunities for Speira larger than its market share.

- (161) In line with this, a majority of respondents to Commission's market investigation confirmed that they expect the price of recycled wrought aluminium including for can bodies to increase post-Transaction.¹⁷⁹ Similarly, a majority of respondents to the Commission market investigation expect a decrease in available recycled wrought aluminium for can bodies post-Transaction.¹⁸⁰ In this respect, one customer explained that '*[t]he transaction represents a significant risk for Speira's competitors by potentially reducing the amount of secondary wrought aluminium available on the market and increasing its price*'.¹⁸¹ The Commission has furthermore received consistent market feedback contradicting the Notifying Party's submission with respect to the impact of the Transaction on access to recycled wrought aluminium as well as on competitive landscape.¹⁸²
- (162) In view of the above and the given that the same downstream FRPs players (i.e. Constellium, Elval and Novelis) can also be targeted by an input foreclosure strategy in the adjacent market of FRPs for can ends the Commission finds that the Transaction raises serious doubts as to its compatibility with the internal market and with the functioning of the EEA Agreement, because of foreclosure of competitors of FRPs for can bodies.

7.4. Vertical relationship dross recycling service upstream / FRPs for can ends and can bodies downstream

- (163) The Transaction results into two vertical relationships with regard to dross recycling services: (i) dross recycling upstream and FRPs for can bodies downstream, and (ii) dross recycling upstream and FRPs for can ends downstream.
- (164) Dross is mostly recycled based on tolling agreements, i.e., the dross is provided by an aluminium producer to the recycler that by means of rotary furnaces recycles metal content in the dross and delivers the metal content back to the producer. Therefore, dross recycling allows players downstream to be competitive by recovering the aluminium content of their dross and reusing it in their production process to ultimately produce FRPs and in particular can bodies and can ends.
- (165) As the Notifying Party is not an important customer of dross recycling services in the sense of the Non-horizontal Merger Guidelines,¹⁸³ the assessment of these two vertical relationships is limited to input foreclosure concerns.

¹⁷⁹ EQ1 – Questionnaire to competitors secondary wrought aluminium - Q55 and EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q44.

¹⁸⁰ EQ1 – Questionnaire to competitors secondary wrought aluminium - Q56 and EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q45.

¹⁸¹ EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q58.

¹⁸² Non-confidential minutes of a call with a customer, 13 May 2022 and EQ2 – Questionnaire to customers secondary wrought aluminium and competitors FRPs - Q34.1.

¹⁸³ Non-horizontal Merger Guidelines, paragraph 61.

7.4.1. *Notifying Party's view*

- (166) The Parties claim that there is no foreclosure concern in relation to the vertical relationship between the dross recycling capabilities of the Target and the recycled aluminium production of Speira¹⁸⁴ as:
- (a) First, the vertical relationship already exists, as the casthouses operated by Speira in [locations] supply the dross generated within their respective production to the Target for recycling under long-term tolling agreements. Hence, the respective dross recycling capacities of the Target were used by Speira already pre-transaction. The recycled aluminium delivered to Speira by the Target, per the long-term tolling agreement, is utilized as a raw material input and is not sold on the merchant market
 - (b) The combined entity is not in a position to foreclose additional dross recycling capacity of the Target. The balance of Speira's recycling demand for dross that is currently not recycled by the Target relates to Speira's [plant location] which utilizes its onsite / owned capacity to recycle the majority of the dross it generates.
 - (c) Even if, hypothetically, post-transaction, the Holmestrand dross (of around [...] tons in total) was also recycled by the Target, the addition of this volume would not foreclose third parties, let alone competitors of Speira in the downstream recycled aluminium market, from the Target's dross recycling capacities. With an average market share in the years 2019-2021 of approximately [10-20]%, the Target simply does not have the ability to foreclose third parties, let alone competitors of Speira in the downstream recycled aluminium market.

7.4.2. *Ability to foreclose input*

- (167) The Commission considers that the combined entity would have an ability to foreclose input in relation to dross recycling for several reasons.
- (168) First, the Parties have high market shares for wrought dross recycling services. While the Target's market share for the overall merchant market dross recycling service in 2021 is estimated by the Parties at [20-30]%¹⁸⁵ with Befesa as the main competitor with estimated market share of [10-20]% and the other players having a market share of [5-10]% or less, the market investigation showed that wrought dross recycling should be considered as a separate market as discussed in Section 6.1.2.
- (169) Considering the market shares differentiating between wrought dross and cast dross the Parties provided an estimate in the form of the table below.

Figure 8 – Market shares for dross recycling¹⁸⁶

[...]

Source: [...]

¹⁸⁴ Form CO, paragraph 378.

¹⁸⁵ Form CO, Annex 6.1.

¹⁸⁶ 'Sum' is the convenience translation for 'Ergebnis' in the Figure.

- (170) The above table shows that focusing on wrought dross recycling services the Target has a market share of [40-50]%. However, this market share does not represent the capacity available for third parties as it also includes capacities of competitors that are used internally or booked through a long-term contract by some players and therefore not available on the merchant market.
- (171) Considering the main competitors, the second largest competitor after the Target, Befesa, only has a [10-20]% market share as it is only processing wrought dross in one plant. Moreover, this capacity corresponds, at least partially, to capacity allocated specifically to Novelis through a long term contract as mentioned by the Parties in the remarks column of Figure 8 above. This is also confirmed by public sources that explain that, since the project phase in 2013, Befesa plant was targeted at absorbing Novelis' dross: *'Befesa, has signed an agreement with Novelis, specialized in the production of flat aluminum products, to manage all of the aluminum drosses from the recycling plant that the North American company is building in Nachterstedt, Germany.'*¹⁸⁷ Therefore, this capacity is, at least partially, not available for third parties on the merchant market.
- (172) The other significant competitors identified by the Parties in Figure 8 are Trimet, Constellium and Amag all having a [5-10]% market share in wrought dross aluminium recycling. However, these already limited market shares are not reflective of the capacity available for the merchant market and likely lead to even more reduced market power for these players:
- (a) Considering Trimet, in the remarks column of Figure 8 above Trimet's Gelsenkirchen plant, corresponding to Trimet wrought capacity is described as *'Mainly Internal Tolling for Trimet casthouse, dross exceeding capacity, selling into market'* showing that not only capacity is used internally, but also that internal dross exceeds recycling capacity.
 - (b) Considering Constellium, the remarks column of Figure 8 explains that the capacity is used internally and that Constellium does additional tolling with the Target: *'Rotary furnaces used ofor internal cast house only, aditional tolling with Real Alloy'*.
 - (c) Considering Amag, the remarks column of Figure 8 explains that the wrought dross recycling capacity is used for internal dross. Although some dross from the market are processed by Amag those are identified as being dross for foundry alloys (i.e. not wrought): *'Amag internal dross & market dross for foundry alloys'*.
- (173) Therefore, even taking a conservative approach, considering the capacity available on the merchant market for third parties, the Target market share would be well above [50-60]%.
- (174) Second, the number of alternatives for wrought dross recycling are limited. A majority of customers that expressed a view consider that there is not sufficient number of companies active in dross recycling in the area where it is economically viable for them to recycle dross¹⁸⁸. A customer explains *'No, We know only RealAlloy as a Recycler for third parties in the market'*¹⁸⁹. Another customer

¹⁸⁷ www.solidwaste.com/doc/abengoa-signs-an-agreement-with-novelis-to-manage-all-drosses-0001.

¹⁸⁸ EQ5 – Questionnaire to customers dross and salt slag - Q27.

¹⁸⁹ EQ5 – Questionnaire to customers dross and salt slag - Q25.1.

describes the competitive landscape as presenting limited viable alternatives: *[...] Real Alloy's competitors (Scepter, Tandom Metallurgical Group Ltd, Trimet) are small players and as such cannot recycle all of [the customer]'s drosses. [the customer] further considers that Raffmetal recycles mainly high silicon alloys while Alumetal is a very small player.*¹⁹⁰

- (175) Third, the capacity for wrought dross recycling is very limited. A majority of customers that expressed a view consider that there is not sufficient capacity for dross recycling in the area where it is economically viable for them to recycle dross¹⁹¹. A customer explains, *'that it would need to send the dross to two or three different companies, which entails higher costs. [the customer] further explained that in any event they do not believe that Real Alloy's competitors have available capacity to recycle dross.'*¹⁹²
- (176) Fourth competitors have different capabilities and the Target specifically has advantages compared to other competitors in dross recycling. A majority of customers consider that there are significant differences in the quality, technology and know-how of dross recycling amongst dross recyclers.¹⁹³ A customer explains *'There is mainly comparable technology used, but the performance of different suppliers are different in metal yield.'*¹⁹⁴ Several other customers also focus on the metal yield as a differentiating factor. When asked about the differences between the dross recyclers a customer mentions *'metal yield, chemical composition'*¹⁹⁵. Another explains *'the difference is in the recovery %'*¹⁹⁶. A third one elaborates *'The recovery is very diff[erent] from one supplier to another, linked with type of furnace but mainly knowledge.'*¹⁹⁷ The higher metal recovery is key as the aluminium recovered can be used as a recycled aluminium input for the customer and has implication in the profitability and competitiveness of customers. A customer explains, *'All other companies has not yet the capacity to convert our dross and stay within our specification. This could conduct to higher costs for us'*¹⁹⁸. When asked if changing the dross handling process in such a way to be less reliant on the Target's dross recycling services is possible a customer replies *'partly only we have to conduct a much more intensive research & trials and we must be ready to accept higher costs or lower recovery'*¹⁹⁹. The same customer further explains, *'Most of the players can recover a maximum of 50% aluminium from the dross. This, according to [a customer], makes an important difference in the choice of dross recycler.'*²⁰⁰
- (177) In addition, when asked if the Target has specific advantages compared to other competitors in dross recycling, customers also point at differentiating factors such

¹⁹⁰ Non-confidential minutes of a call with a customer, 13 May 2022, paragraph 9.

¹⁹¹ EQ5 – Questionnaire to customers dross and salt slag - Q27.

¹⁹² Non-confidential minutes of a call with a customer, 13 May 2022, paragraph 9.

¹⁹³ EQ5 – Questionnaire to customers dross and salt slag - Q6.

¹⁹⁴ EQ5 – Questionnaire to customers dross and salt slag - Q6.1.

¹⁹⁵ EQ5 – Questionnaire to customers dross and salt slag - Q6.1.

¹⁹⁶ EQ5 – Questionnaire to customers dross and salt slag - Q6.1.

¹⁹⁷ EQ5 – Questionnaire to customers dross and salt slag - Q6.1.

¹⁹⁸ EQ5 – Questionnaire to customers dross and salt slag - Q29.1.

¹⁹⁹ EQ5 – Questionnaire to customers dross and salt slag - Q32.1.

²⁰⁰ Non-confidential minutes of a call with a customer, 13 May 2022, paragraph 8.

as ‘*Very good experience and processes with regards to dross handling and recycling*’²⁰¹ or ‘*Hug[e] capacities*’²⁰²

- (178) Fifth, in addition to the current capacity limitation, the majority of market participants expect a high or moderate growth of dross recycling volume demand in the next three years.²⁰³ This is likely to tighten even more the available capacity for dross recycling. A customer also explains that this growth is likely to generate issues for the packaging industry (including aluminium cans) that is moving towards aluminium: ‘*[the customer] expects the entire industry to face a dross recycling problem given that the packaging industry will rely more and more on aluminium instead of plastic and as such generate more and more dross.*’²⁰⁴
- (179) Sixth, the dross recycling services are considered as a critical service by customers. A majority of customers consider that dross recycling through tolling agreements constitute a critical service for the production of secondary aluminium.²⁰⁵ Not recovering the aluminium content of dross through dross recycling would hinder the customers’ competitiveness as explained by a customer: ‘*Substitute of dross is more expensive and would reduce the competitiveness.*’²⁰⁶ Other customers explain that the cost impact would be very important ‘*It’s a big part of our cost and very important for us.*’²⁰⁷ and that alternatives to dross recycling are not cost competitive ‘*because the implied cost of switching to alternative such as selling dross on the merchant market or buying new scrap or metal is significant*’²⁰⁸
- (180) Seventh, Real alloy Europe currently provide dross recycling services to two of the main competitors of Speira active in the market of FRPs for can bodies and can ends namely [...] and [...]. Contrary to the claim of the Notifying Party in paragraph (166) that there is no foreclosure concern in relation to the vertical relationship, it appears that there could be input foreclosure as the Target is directly supplying dross recycling services to Speira’s downstream competitors.²⁰⁹
- (a) In 2021 [...] used the Target’s dross recycling services for [...] through the [plant] and [...] through the [plant]²¹⁰.
- (b) In 2021, [...] processed [...] of dross through the [plant], and [...] through the [plant]²¹¹.
- (181) [...], the last main FRPs competitor of Speira, is processing most of its dross internally and would not be affected by a foreclosure strategy in dross recycling.

²⁰¹ EQ5 – Questionnaire to competitors dross and salt slag - Q26.

²⁰² EQ5 – Questionnaire to competitors dross and salt slag - Q26.

²⁰³ EQ5 – Questionnaire to customers dross and salt slag - Q33 and EQ4 – Questionnaire to competitors dross and salt slag - Q28.

²⁰⁴ Non-confidential minutes of a call with a customer, 13 May 2022, paragraph 7.

²⁰⁵ EQ5 – Questionnaire to customers dross and salt slag - Q30.

²⁰⁶ EQ5 – Questionnaire to customers dross and salt slag - Q30.1.

²⁰⁷ EQ5 – Questionnaire to customers dross and salt slag - Q30.1.

²⁰⁸ EQ5 – Questionnaire to customers dross and salt slag - Q30.1.

²⁰⁹ The Commission has also assessed whether Hydro could be effectively subject to an input foreclosure strategy targeting dross recycling services (including dross generated from primary aluminium in Norway). However, given that Hydro is not competing against Speira in the downstream FRPs markets, the Commission considers that the Notifying Party would not be incentivized to target this player.

²¹⁰ Reply to RFI 13 – Annex to Q1.

²¹¹ Reply to RFI 13 – Annex to Q1.

However, it could be affected by input foreclosure in a separate market, namely salt slag recycling, as discussed in Section 7.5 below.

- (182) As to Alunorf, a [...] joint venture between Speira and Novelis, the Commission considers that although the Target recycles dross for this joint venture, the latter could not be affected by an input foreclosure strategy. This is because the Target would not be able to distinguish if dross from Alunorf relates to Speira or Novelis part of the plant and as such could not discriminate between the two partners (i.e. Speira and Novelis) in the joint venture.²¹²
- (183) Eight, there are high barriers for entry and expansion, which make an effective and timely counter-strategy of downstream competitors unlikely.
- (184) In the first place, operating a dross recycling plant requires an operating permit as mentioned by a competitor: *‘Special segment of the whole waste market. Market knowledge necessary, national rules for installing new waste treatments.’*²¹³
- (185) In the second place, the majority of market participants identified capital expenditure as the main barrier for a company to establish and maintain a significant presence in dross recycling.²¹⁴
- (186) In the third place, the majority of market participants estimates that it would take more than two years from the decision to enter the market until the start of the dross recycling activity²¹⁵. When asked to explain why would such entry take time a customer explains: *‘Find the right area and get the authorization’*²¹⁶ and a competitor further elaborates: *‘national requirements concerning waste treatment and air-polution’*²¹⁷.
- (187) In the fourth place, as the dross recycling generates salt slags, the access to salt slag recycling is a barrier to operate on the dross recycling market. A customer point at salt slag recycling as one of the main barriers to entry: *‘en[er]gy costs and salt slag treatment’*²¹⁸. Similarly, another customer explains that in the context of limited capacities for salt slag recycling this constitutes a potential blocking point for new dross recycling capacities: *‘A high hurdle for new capacities is the salt cake recycling. there is not enough capacities available’*.²¹⁹
- (188) In the fifth place, having a global view on the Target’s activities upstream, other input foreclosure possibilities for recycled wrought aluminium as discussed in Section 7.3 and salt slag recycling services as discussed in Section 7.5 contribute to possible success of foreclosure strategy as all other downstream competitors in FRPs for can bodies and can ends can be affected through different products or services.

²¹² Form CO, footnote 92.

²¹³ EQ4 – Questionnaire to competitors dross and salt slag - Q33.1.

²¹⁴ EQ5 – Questionnaire to customers dross and salt slag - Q37 and EQ4 – Questionnaire to competitors dross and salt slag - Q33.

²¹⁵ EQ5 – Questionnaire to customers dross and salt slag - Q38 and EQ4 – Questionnaire to competitors dross and salt slag - Q34.

²¹⁶ EQ5 – Questionnaire to customers dross and salt slag – Q30.1.

²¹⁷ EQ4 – Questionnaire to competitors dross and salt slag - Q33.1.

²¹⁸ EQ5 – Questionnaire to customers dross and salt slag – Q37.1.

²¹⁹ EQ5 – Questionnaire to customers dross and salt slag - Q37.1.

(189) In conclusion, due to (i) the high market share of the Target upstream, (ii) the lack of credible alternative supplier, (iii) the limited available capacity, (iv) the specific and differentiating strengths of the Target (v) the current relationship between Speira's competitors and the Target, the Commission concludes that the combined entity would have the ability to foreclose input in relation to dross recycling services.

7.4.3. *Incentive to foreclose input*

(190) The Commission considers that the combined entity would have an incentive to foreclose input in relation to dross recycling for several reasons.

(191) First, the contribution margin data suggests that a foreclosure strategy could be profitable. [Comparison between Parties' margin data].²²⁰

(192) Second, Speira's competitors (i.e. Novelis, Constellium and Elval) are not typically active as suppliers in the merchant market of recycled wrought aluminium FRPs while the combined entity has important market shares in the markets that would be affected by the foreclosure of access to dross recycling, namely FRPs for can ends ([30-40]% market share) and FRPs for bodies ([20-30]% markets share). In addition, recycled wrought aluminium is a critical input for the production in particular for FRPs for can bodies and can ends as explained in paragraph (114). This market structure would allow the merged entity to foreclose input for its downstream competitors and to harvest increased prices downstream in the markets for FRPs for beverage cans²²¹, which are oligopolistic markets. In addition to Speira, only three additional players are active therein and rely on various upstream input product and services provided by the Target.

(193) Third, the Notifying Party's downstream competitors in FRPs for can ends and can bodies are all dependent on services provided by the Target. The main EEA players competing with the Notifying Party for FRPs can ends and can bodies are Novelis, Elval and Constellium. While [...] and [...] both use the Target's dross recycling services (see paragraph (180) above), [...] uses the Target's salt slag recycling services as explained in Section 7.5. While pre-Transaction the Target is not competing downstream with these companies, post-Transaction the combined entity would be competing downstream with these customers of the Target. Therefore, the Transaction changes the incentive of input foreclosure.

(194) Fourth, [reference to future market behavior] and increase the incentive by recouping an even higher share of demand from foreclosed rivals to the combined entity.

(195) Fifth, the Parties could use dross-recycling assets for alternative use such as used beverage cans recycling and therefore foreclose customers without losing the upstream revenues. As described by a competitor *'The equipment of Real Alloy can treat used beverage cans ('UBC') but also dross. Speira could use this possibility to treat more and more beverage cans by Real Alloy and reduce their cost of*

²²⁰ Form CO, Annexes 6.5.a and 6.5.b.

²²¹ On this market Speira estimates its production share for 2021 at EEA level to be of [20-30]%. The [20-30]% share is based on CRU data report.

*production for cans stock.*²²² This strategy would result in dross recycling capacity being removed from the market as further explained by the same customer ‘[...] Speira will act in such a manner (i.e. by using Real Alloy’s capacity to treat UBC) and as such will take the biggest capacity of Real Alloy, which as a result will only have limited capacity to recycle [the customer]’s dross. It is important to note that Real alloy’s equipment can recycle and treat dross but also UBC therefore Real Alloy switching from dross to UBC recycling will remove capacity for dross treatment from the market.’²²³

- (196) In conclusion, due to (i) the higher margins per ton in absolute value of the downstream market (ii) the position of the Speira on the downstream markets (iii) the fact that downstream competitors are customers of the Target upstream (iv) [reference to future market behavior] (v) the ability for the Target to use the dross-recycling asset for a different purpose, the Commission concludes that the combined entity would have the incentive to foreclose input in relation to dross recycling services.

7.4.4. Impact on effective competition

- (197) The market investigation showed that market participants anticipate price impact of the transaction on the dross recycling market.
- (198) First, the majority of customers think that the Transaction will lead to a price increase in dross recycling services²²⁴. As explained by a customer the lack of alternative could lead to price increase ‘because of not enough available tolling partners the tolling fee will increase.’²²⁵ as the same customer explains that ‘There is not enough competition available. The new company will dominate the dross market.’²²⁶
- (199) Second, a majority of the customers stated that, in case of price increase for dross recycling services, they would pass on the price increase to their customers²²⁷. A customer expressed concerns that those price increase repercussions would be necessary to preserve margins ‘It would be necessary on the long term, to survive, because the margins are too small to absorb additional losses.’²²⁸
- (200) The Commission therefore concludes that the input foreclosure would likely increase the foreclosed downstream rivals’ cost and would in turn lead to higher prices for consumers.

7.5. Vertical relationship salt slag recycling service upstream / FRPs for can ends and can bodies downstream

- (201) The Transaction results into two vertical relationships with regard to salt slag: (i) salt slag recycling upstream and FRPs for can bodies downstream, and (ii) salt slag recycling upstream and FRPs for can ends downstream. As further explained

²²² Non-confidential minutes of a call with a competitor, 13 May 2022, paragraph 10.

²²³ Non-confidential minutes of a call with a competitor, 13 May 2022, paragraph 10.

²²⁴ EQ5 – Questionnaire to customers dross and salt slag - Q43.

²²⁵ EQ5 – Questionnaire to customers dross and salt slag - Q43.1.

²²⁶ EQ5 – Questionnaire to customers dross and salt slag - Q41.1.

²²⁷ EQ5 – Questionnaire to customers dross and salt slag - Q44.

²²⁸ EQ5 – Questionnaire to customers dross and salt slag - Q44.1.

in this Section, salt slag recycling service is a critical input for the production of recycled aluminium and ultimately also for the production of FRPs. If a producer of recycled aluminium cannot recycle this hazardous production by-product, the producer will in the near future have to stop its recycled aluminium production.

- (202) As the Notifying Party is not an important customer of salt slag in the sense of the Non-horizontal Merger Guidelines,²²⁹ the assessment of these two vertical relationships is limited to input foreclosure concerns.

7.5.1. Notifying Party's view

- (203) The Notifying Party explains that the Target does not buy salt slag on the open market, but charges (non-tolling) customers a (processing) fee for treating the customers' salt slag, in addition to the aluminium and salt being kept by the Target.²³⁰ The Notifying Party submits that all of the Target's competitors, with the exception of K+S, run zero-waste processes.²³¹ K+S recycles one component of the salt slag (KCI), but not other components, as the aluminium-oxide rich fraction for example, are land-filled in a mine pile.²³²
- (204) The Notifying Party submits that the Target's share in salt slag recycling to third parties is [10-20]% in the EEA and the United Kingdom and that the Target therefore lacks the ability to engage in input or customer foreclosure.²³³ In addition, the Notifying Party argues that the Transaction produces only minimal change, as the Target already processes the vast majority of Speira's salt slag recycling needs.²³⁴ Furthermore, the Notifying Party submits that there is spare capacity of [...] tons for salt slag recycling in the market.²³⁵ According to the Notifying Party, any attempt at denying capacity to competitor would be highly loss making for the Parties.²³⁶
- (205) The Notifying Party assumes that in the next few years the industry will be facing a modest increase of salt slag volumes, but that the increase will be lower than the predicted growth rates for aluminium demand. The Notifying Party argues that more salt slag recycling capacity could be brought into the market in between 18 to 24 months.²³⁷

7.5.2. Ability to foreclose input

- (206) The Commission concludes that the combined entity would have the ability to foreclose input in relation to salt slag recycling.

²²⁹ Non-horizontal Merger Guidelines, paragraph 61.

²³⁰ Form CO, paragraph 396.

²³¹ Form CO, paragraph 399.

²³² Form CO, paragraph 399.

²³³ Form CO, paragraph 429 et seq.; Reply to RFI 18 - Annex 4.

²³⁴ Form CO, paragraph 427.

²³⁵ Form CO, paragraph 432.

²³⁶ Form CO, paragraph 433.

²³⁷ Form CO, paragraph 432.

- (207) First, the Target operates a full-scale salt slag recycling plant at RVA in France,²³⁸ and another salt slag recycling plant in Norway.²³⁹ As the Notifying Party is the only third party customer of the Target's salt slag recycling services in the Norway plant, the Transaction does not change the ability or incentive to foreclose third-party customers and the analysis below focuses on the Target's RVA plant in France.
- (208) Second, salt slag recycling service is a critical input for the production of recycled aluminium, and ultimately for the production of FRPs. If a producer of recycled aluminium cannot recycle this hazardous production by-product, the producer will in the near future have to stop its recycled aluminium production. The majority of customers confirmed that salt slag recycling constitutes a critical service for the production of recycled aluminium.²⁴⁰ A customer explains in this regard that '*salt slags can be neither stored nor landfilled*'.²⁴¹ The Notifying Party estimates that producers of recycled aluminium typically are able to bridge one to three months without any salt slag outlet at full production. In this regard, a customer explains that it is '*impossible to store salt slag, which is inflammable*'.²⁴²
- (209) The Parties' internal documents confirm that salt slag treatment is critical. For example, the Notifying Party considers in an internal document the ability to '*properly dispose*' of salt slag is as a '*key "license to operate"*'.²⁴³ Speira notes that while in the U.S.A. salt slag is milled or landfilled, in '*Europe, salt slag is not permitted to be landfilled and must be processed (primary treatment companies are Befesa and RVA)*'.²⁴⁴ Furthermore, Speira assesses that salt slag and dross recycling are a '*key constraint in [the] overall aluminium industry*'.²⁴⁵
- (210) Third, the Target has significant market power in a geographically differentiated market.
- (211) In the first place, even at EEA and United Kingdom-wide level, there are only five companies that provide salt slag recycling services for third parties.²⁴⁶ As also confirmed by the Notifying Party, two of which dedicate very limited volumes to third party salt slag recycling: Intals ([...], market share of [5-10]%) and AS Stockach ([...], market share of [5-10]%).²⁴⁷ Furthermore, as noted above (paragraph (203)), K+S does not have the zero-waste technology and is, therefore, not an equivalent alternative for the majority of customers.²⁴⁸ As a result, the Target and Befesa are the largest salt slag recycling service providers in the

²³⁸ A full-scale salt slag recycling plant is composed of a crushing unit for the salt slags, a leaching process for the combined salt and non-metallic fraction, a drying unit for the oxide component and a re-crystallizer for the saltwater fraction.

²³⁹ [Description of equipment in plant].

²⁴⁰ EQ5 – Questionnaire to customers dross and salt slag - Q67.

²⁴¹ EQ5 – Questionnaire to customers dross and salt slag - Q67.1.

²⁴² Non-confidential minutes of a call with a customer, 13 May 2022, paragraph 8. Courtesy translation: '*[...] être dans l'impossibilité de stocker ses scories salines qui sont inflammables*'.

²⁴³ Form CO, Annex 5.4.a, page 310.

²⁴⁴ Form CO, Annex 5.4.a, page 310.

²⁴⁵ Form CO, Annex 5.4.a, page 310.

²⁴⁶ Reply to RFI 18 - Annex 4.

²⁴⁷ Notifying Party's estimates, Reply to RFI 18 - Annex 4.

²⁴⁸ EQ5 – Questionnaire to customers dross and salt slag - Q67.

EEA.²⁴⁹ In 2021, the Target recycled [...] of third party salt slag in its RVA plant in France.²⁵⁰ Befesa operates three salt slag recycling plants in the EEA: two in Germany and one in Spain. According to the Notifying Party's estimate, Befesa recycled [...] of third party salt slag in 2021.²⁵¹ Applying the Notifying Party's estimates for competitors,²⁵² Befesa has a market share of [40-50]% in 2021 in zero-waste only recycling services to third parties in the EEA and the United Kingdom and a market share of [40-50]% including also non-zero-waste recycling. Including Befesa's plant in Hannover, which is currently not operational due to a fire, Befesa's share would be [50-60]% including non-zero waste recycling and [60-70]% excluding non-zero waste recycling.²⁵³ Applying the Notifying Party's estimates for competitors,²⁵⁴ the Target has a market share of [20-30]% in 2021 in zero-waste only recycling services to third parties in the EEA and the United Kingdom and a market share of [10-20]% including also non-zero-waste recycling.

(212) In the second place, the Target's EEA and United Kingdom-wide market share ([20-30]% in zero-waste salt slag recycling and [10-20]% including non-zero-waste recycling) does not reflect its market power, due to geographic differentiation (paragraph (213) below) and capacity constraints (paragraphs (214) and (215) below).

(213) However, the geographic market is highly differentiated see Section 6.2.3 above) and the Target has significant market power within narrower than EEA-wide regions. As explained in Section 6.2.3 above, salt slag is a hazardous waste, its transport, notably cross-border, is costly, requires permits and is subject to certain limitations. The transport of salt slag beyond a certain distance leads to increased transport costs for the customer and salt slag recyclers further away exert less of a competitive constraint on plants that are closer to the customer. Therefore, competitive interactions within narrower radiuses (for example 500km or 750km) are more intense. [...] out of the Target's [...] customers located within 500 km of its RVA plant have maximum one or two other plants in reach of 500km.²⁵⁵ For [number of customers] the Target is the only plant within a 500 km radius.²⁵⁶ For [number of customers], there is only one other plant in addition to the Target within a 500km radius.²⁵⁷ Within a 750 km radius around each of the Target's [number of customers] in total, there are only maximum three other zero-waste salt slag recyclers: Befesa, AS Oxid Stockach, and Intals.²⁵⁸

(214) Importantly, as explained in paragraph (211) above, two of those three competitors have very limited capacity for third party salt slag recycling: Intals ([...]), AS Stockach ([...]). Consequently, while these plants may be in 500 or 750 km reach for some of the Target's customers, these competitors likely do not have sufficient capacity to meet the demand of the Target's customers. The Target's customer

²⁴⁹ There are no third party salt slag recycling services offered in the United Kingdom, see Reply to RFI 18 - Q5.

²⁵⁰ Reply to RFI 18 - Annex 4.

²⁵¹ Notifying Party's estimates, Form CO, Annex 6.1, tab 'Salt slag'.

²⁵² Notifying Party's estimates, Form CO, Annex 6.1, tab 'Salt slag'.

²⁵³ Reply to RFI 18 - Annex 4.

²⁵⁴ Notifying Party's estimates, Form CO, Annex 6.1, tab 'Salt slag'.

²⁵⁵ Form CO, Annex 6.6.b, tab 'Distances – Salt Slag Recycling'.

²⁵⁶ Form CO, Annex 6.6.b, tab 'Distances – Salt Slag Recycling'.

²⁵⁷ Form CO, Annex 6.6.b, tab 'Distances – Salt Slag Recycling'.

²⁵⁸ Form CO, Annex 6.6.b, tab 'Distances – Salt Slag Recycling'; Reply to RFI 18, Annex 4.

[...], for example, recycled [...] of salt slag at the Target's plant in 2021. This is equivalent to almost of all Intals' total capacity for third party recycling and more than half of the capacity of AS Stockach. Therefore, while technically reachable, those competitors exert limited or no competitive pressure on the Target. Consequently, the only competitor that could constitute a competitive constraint for the Target is Befesa, who has a dominant position for zero-waste third party recycling services. [Description of market situation]. In this regard, the majority of customers confirmed that there is an insufficient number of companies active in salt slag recycling in the area in which it is economically viable for the customer to recycle salt slag.²⁵⁹ As per the Non-Horizontal Merger Guidelines, when competition in the input market is oligopolistic, a decision of the merged entity to restrict access to its inputs reduces the competitive pressure exercised on remaining input suppliers, which may allow them to raise the input price they charge to non-integrated downstream competitors.²⁶⁰

- (215) Furthermore, there is a capacity shortage for third party salt slag recycling in the EEA and the United Kingdom, which was further worsened by a fire in one of Befesa's plants in November 2021, which lead to one plant currently not being operational. Befesa expects the capacity to be recovered in 2023, when it re-built its plant.²⁶¹ Befesa will not expand the capacity in the new plant, which would require a new permit.²⁶² Therefore, when assessing the market structure and competitive dynamics in salt slag recycling services, all of Befesa's plants need to be considered, which leads to a market share of Befesa in zero-waste salt slag recycling of [60-70]%. Contrary to the Notifying Party's argument that there is spare capacity in the market, the majority of customers indicated that the capacity is very tight at EEA-level and insufficient in the area in which it is economically viable for the customer to recycle salt slag.²⁶³ A competitor noted that '*[i]n general there is an undercapacity of salt slag recycling and hence some recyclers need to shut down furnaces as they do not get rid of their salt slag*'.²⁶⁴ Furthermore, a customer stated that '*[t]here is only one independent company, Kali und Salz, all the other companies are integrated companies with own Aluminium Refining plants and limited capacity*' and that '*[i]t is impossible to get enough capacity from third parties actually*'.²⁶⁵
- (216) Fourth, in addition to the current capacity limitation, the majority of market participants expect a high or moderate growth of the slag recycling volume demand in the next 2-3 years.²⁶⁶
- (217) Fifth, there are high barriers for entry and expansion, which make an effective and timely counter-strategy of downstream competitors unlikely.
- (218) In the first place, operating a salt slag recycling plant requires an operating permit.²⁶⁷ In addition, due to the fact that salt slag is a hazardous waste, the

²⁵⁹ EQ5 – Questionnaire to customers dross and salt slag - Q61.

²⁶⁰ Non-horizontal Merger Guidelines, paragraph 38.

²⁶¹ Non-confidential minutes of a call with a competitor, 18 May 2022, paragraph 11.

²⁶² Non-confidential minutes of a call with a competitor, 18 May 2022, paragraph 11.

²⁶³ EQ5 – Questionnaire to customers dross and salt slag - Q60 and Q62.

²⁶⁴ EQ4 – Questionnaire to competitors dross and salt slag - Q50.1.

²⁶⁵ EQ5 – Questionnaire to customers dross and salt slag - Q60.1 and Q66.1.

²⁶⁶ EQ4 – Questionnaire to competitors dross and salt slag - Q60 and EQ5 – Questionnaire to customers dross and salt slag - Q70.

operator needs a permit and a close monitoring system in order to transfer this kind of material transboundary.²⁶⁸ According to the Notifying Party's experience, it requires 24 months to obtain the final permit to operate a [...] tons salt slag plant in Germany.²⁶⁹

- (219) In the second place, the majority of market participants identified capital expenditure as the main barrier for a company to establish and maintain a significant presence in salt slag recycling.²⁷⁰ A competitor indicated, for example, that *'CAPEX of ca. 30 m€ for recycling of 50.000 t of salt slag p.a. Other barrier: access to cheap/competitive energy as salt slag recycling is energy intense.'*²⁷¹ Furthermore, a customer noted that *'[t]here is a special knowledge necessary for operating a salt cake recycling plant and this knowledge is limited in the market.'*²⁷² Another competitor explains that *'the capex of a plant is relevant, as not all salt slag treatment plants have the same technology. To build a plant with a technology that provides the best environmental performance [...] an investment of EUR 60 to 70 million (including land and building) is required [...] for a treatment capacity above 120,000 t/year.'*²⁷³
- (220) In the third place, the majority of market participants estimates that it would take more than two years from the decision to enter the market until the start of the salt slag recycling activity.²⁷⁴ A competitor explains that *'it takes minimum 3 to 4 years for a new plant to be operational, including the engineering design stage and the application for the permit. [...] it takes optimistically 12 months to obtain the permit for a salt slag recycling plant. First, the application needs to be submitted, which is then reviewed, which may trigger changes. This is followed by a public consultation. Only after this process the building of the plant starts.'*²⁷⁵
- (221) In the fourth place, neither customers nor competitors that responded to the market test identified any market entrance in the last five years (other than the Target's acquisition of RVA) that would provide recycling services to third parties.²⁷⁶ In addition, the majority of market participants does not expect new entry for salt slag recycling from companies that are not yet present there.²⁷⁷
- (222) In light of the above, the Commission finds that the Target has the ability to foreclose access to this critical input service, as the Target is the second largest provider of salt slag recycling in the EEA and the United Kingdom, customers have very few alternatives, additional transport distances increase the customers' costs, there is a capacity shortage for third party salt slag recycling in the EEA and the

²⁶⁷ Form CO, paragraph 400.

²⁶⁸ Form CO, paragraph 400.

²⁶⁹ Form CO, paragraph 401.

²⁷⁰ EQ4 – Questionnaire to competitors dross and salt slag - Q65 and EQ5 – Questionnaire to customers dross and salt slag - Q74.

²⁷¹ EQ5 – Questionnaire to customers dross and salt slag - Q74.1.

²⁷² EQ5 – Questionnaire to customers dross and salt slag - Q74.1.

²⁷³ Non-confidential minutes of a call with a competitor, 18 May 2022, paragraph 15.

²⁷⁴ EQ4 – Questionnaire to competitors dross and salt slag - Q66 and EQ5 – Questionnaire to customers dross and salt slag - Q75.

²⁷⁵ Non-confidential minutes of a call with a competitor, 18 May 2022, paragraph 14.

²⁷⁶ EQ4 – Questionnaire to competitors dross and salt slag - Q63 and EQ5 – Questionnaire to customers dross and salt slag - Q72.

²⁷⁷ EQ4 – Questionnaire to competitors dross and salt slag – Q64 and EQ5 – Questionnaire to customers dross and salt slag - Q73.

United Kingdom, the demand for salt slag recycling is expected to further increase and the market has high barriers for entry and expansion.

7.5.3. *Incentive to foreclose input*

- (223) The Commission concludes that the combined entity would have an incentive to foreclose input in relation to salt slag recycling.
- (224) First, the contribution margin data suggests that a foreclosure strategy could be profitable. While the Target's [comparison between Parties' margin data].²⁷⁸
- (225) Second, the combined entity has market power downstream both in recycled wrought aluminium for beverage can ends and can bodies and in FRPs for beverage can ends and can bodies. The combined entity would have an incentive to harvest increased prices downstream.
- (226) In the first place, as explained in paragraph (127) above, the Parties' production share in 2021 for recycled wrought aluminium for beverage can ends in the EEA and the United Kingdom is above [50-60]%. The Parties' production share in 2021 for recycled wrought aluminium for beverage can bodies in the EEA and the United Kingdom is [20-30]% (see paragraph (150) above).
- (227) In the second place, Speira's share in 2021 for FRPs for can ends is [30-40]% at EEA and United Kingdom level and [30-40]% EEA-wide. Speira's share in 2021 for FRPs for can bodies is [20-30]% at EEA and United Kingdom level and [20-30]% EEA-wide.
- (228) Third, the Notifying Party's downstream competitors in FRPs for can ends and can bodies are all dependent on services provided by the Target. As noted in paragraph (103) above, the only EEA players competing with the Notifying Party for FRPs can ends and can bodies are Novelis, Elval and Constellium. While [...] and [...] require external dross recycling services (see paragraph (180) above), [...] uses the Target's salt slag recycling services.²⁷⁹ While pre-Transaction, the Target is not competing downstream with these companies, post-Transaction the combined entity would be competing downstream with these customers of the Target. Therefore, the Transaction changes the incentive of input foreclosure. Importantly, Speira's competitors would be affected not only by likely input foreclosure strategies in relation to salt slag recycling, but also with respect to recycled wrought aluminium (Section 7.3) and dross recycling (Section 7.4), which reinforces the merged-entities foreclosure incentives.
- (229) Fourth, [description of Parties' future market behavior and estimates].²⁸⁰ [Description of Parties' future market behavior and estimates].²⁸¹ [Description of Parties' future market behavior and estimates].
- (230) In conclusion, due to (i) the higher margins per ton in absolute value of the downstream market (ii) the position of the Speira on the downstream markets (iii) the fact that downstream competitors are customers of the Target upstream and

²⁷⁸ Form CO Annexes 6.5.a and 6.5.b.

²⁷⁹ Form CO, Annex 6.4.a.

²⁸⁰ Form CO, Annex 5.4.a.4.

²⁸¹ Form CO, paragraph 101, see also Form CO Annex 5.4.a.4, page 82.

(iv) [reference to future market behavior], the Commission concludes that the combined entity would have the incentive to foreclose input in relation to salt slag recycling services.

7.5.4. *Impact on effective competition*

- (231) The market investigation showed that market participants anticipate a price increase of salt slag recycling services and reduced access to this service following the Transaction.
- (232) The majority of customers believe that the Transaction will have a negative impact on the availability of salt slag recycling services and that as a result of the Transaction the price level in the EEA will increase.²⁸² A customer expressed the concern of a *‘[r]eorientation of [RVA’s] capacity to Speira needs, risk of reducing overall capacity available for us to 0’* and that the Transaction bears the *‘risk of stopping [the customer’s] operations’* as a result of input foreclosure.²⁸³ Similarly, another customer states that the *‘[a]vailable capacity for other companies will be limited, because the new company will recycling only their own salt cake’* and that following the Transaction *‘prices will increase’*.²⁸⁴
- (233) The Commission therefore concludes that the input foreclosure would likely increase the foreclosed downstream rivals’ cost and would in turn lead to higher prices for consumers.

7.6. **Conclusion**

- (234) In light of the above assessment, the Commission finds that the Transaction raises serious doubts as to its compatibility with the internal market and with the functioning of the EEA Agreement, because of foreclosure of competitors of FRPs for can ends and can bodies downstream through potentially combined or alternating input foreclosure of (i) recycled wrought aluminium, (ii) dross recycling services, and (iii) salt slag recycling services.

8. **PROPOSED REMEDIES**

8.1. **Framework for the assessment of commitments**

- (235) Where a notified concentration raises serious doubts as to its compatibility with the internal market, the Parties may undertake to modify the concentration to remove the grounds for the serious doubts identified by the Commission. Pursuant to Article 6(2) of the Merger Regulation, where the Commission finds that, following modification by the Parties, a notified concentration no longer raises serious doubts, it shall declare the concentration compatible with the internal market pursuant to Article 6(1)(b) of the Merger Regulation.

²⁸² EQ5 – Questionnaire to customers dross and salt slag - Q78 and Q80.

²⁸³ EQ5 – Questionnaire to customers dross and salt slag - Q77.1 and Q78.1.

²⁸⁴ EQ5 – Questionnaire to customers dross and salt slag - Q77.1 and Q77.2.

- (236) As set out in the Commission's Remedies Notice,²⁸⁵ the commitments proposed by the Parties have to eliminate the competition concerns entirely, and have to be comprehensive and effective from all points of view.²⁸⁶ Moreover, commitments in Phase I can only be accepted where the competition problem is readily identifiable and can easily be remedied. The competition problem therefore needs to be so straightforward and the remedies so clear-cut that it is not necessary to enter into an in-depth investigation and that the commitments are sufficient to clearly rule out 'serious doubts' within the meaning of Article 6(1)(c) of the Merger Regulation.²⁸⁷
- (237) In assessing whether the proposed commitments will maintain effective competition, the Commission considers all relevant factors, including the type, scale and scope of the proposed commitments with reference to the structure and the particular characteristics of the market in which the competition concerns arise, including the position of the Parties and other participants on the market.²⁸⁸
- (238) In order for the proposed commitments to comply with those principles, they must be capable of being implemented effectively within a short period of time.²⁸⁹
- (239) Concerning the type of acceptable commitments, the Merger Regulation gives discretion to the Commission as long as the commitments meet the required standards. Structural commitments will meet the conditions set out above only in so far as the Commission is able to conclude with the requisite degree of certainty, at the time of its Decision, that it will be possible to implement them and that it will be likely that the new commercial structures resulting from them will be sufficiently workable and lasting to ensure that effective competition will be maintained.²⁹⁰ Divestiture commitments are normally the best way to eliminate competition concerns resulting from horizontal overlaps.
- (240) The divested activities must consist of a viable business that, if operated by a suitable purchaser, can compete effectively with the combined entity on a lasting basis and that is divested as a going concern. The divested business must include all the assets which 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.²⁹¹
- (241) The intended effect from the divestiture will only be achieved if and once the divested business is transferred to a suitable purchaser in whose hands it will become an active competitive force in the market. The potential of a business to attract a suitable purchaser is an important element of the Commission's assessment of the appropriateness of the proposed commitments.²⁹²

²⁸⁵ Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (OJ C 267, 22.10.2008, p. 1-27), the 'Remedies Notice'.

²⁸⁶ Remedies Notice, paragraphs 9 and 61.

²⁸⁷ Remedies Notice, paragraph 81.

²⁸⁸ Remedies Notice, paragraph 12.

²⁸⁹ Remedies Notice, paragraph 9.

²⁹⁰ Remedies Notice, paragraph 10.

²⁹¹ Remedies Notice, paragraphs 23-25.

²⁹² Remedies Notice, paragraph 47.

(242) Even though normally the divestiture of an existing viable stand-alone business is required, the Commission, by observing the principle of proportionality, may also advise the parties to 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. Conversely, carving-out a business from the scope of the commitments can only be accepted by the Commission 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.²⁹³

8.2. Procedure

(243) On 21 September 2022, the Commission informed the Parties of the serious doubts arising from the preliminary assessment of the Transaction during a ‘State of Play’ meeting.

(244) In order to render the concentration compatible with the internal market, the Parties have modified the notified concentration by submitting a set of commitments under Article 6(2) of the Merger Regulation (the ‘**Initial Commitments**’).

(245) On 29 September 2022, the Commission launched a market test of the Initial Commitments in order to assess whether they were sufficient and suitable to remedy the serious doubts identified and described under Section 7 above.

(246) Following the feedback received from the market test, the Notifying Party formally submitted amended commitments on 17 October 2022 (the ‘**Final Commitments**’). The Final Commitments are annexed to this decision,²⁹⁴ and form an integral part thereof.

8.3. The Proposed remedies

8.3.1. The Initial Commitments

8.3.1.1. Description of the Initial Commitments

(247) In the Initial Commitments, the Parties proposed to divest the Target’s facility Récupération Valorisation Aluminium in France (‘RVA Business’) and Real Alloy Europe’s facility in Swansea, United Kingdom (‘Swansea Business’) (together the ‘Divestment Business’). The Parties commit to include to the Divestment Business all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:

- (a) all tangible and intangible assets that are necessary to operate the Divestment Business (including intellectual property rights);
- (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;

²⁹³ Remedies Notice, paragraphs 35-36.

²⁹⁴ See Annex.

- (c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business; and
 - (d) all personnel necessary to operate and ensure the viability of the Divestment Business. In relation to the Swansea Business, two employees from the Target's centralised commercial department would be transferred to the Divestment Business.
- (248) The Initial Commitments also include the purchaser criteria, as per the model text, notably regarding the purchaser's independence, as well as its financial resources, expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force.
- (249) In addition the Parties have entered into related commitments, *inter alia* regarding the separation of the Divested Businesses from their retained businesses, the preservation of the viability, marketability and competitiveness of the Divested Businesses, including the appointment of a hold separate manager for the Divested Business, a monitoring trustee and, if necessary, a divestiture trustee.

8.3.1.2. Commission's assessment of the Initial Commitments

8.3.1.2.1. Removal of competition concerns

- (250) As explained in Section 7 above, downstream competitors in the markets for FRPs for can ends and can bodies (i.e. Novelis, Constellium and Elval) can be foreclosed through three potentially combined or alternating three foreclosure strategies of (i) recycled wrought aluminium, (ii) dross recycling services, and (iii) salt slag recycling services.
- (251) While [...] and [...] rely on the Target's dross recycling services and could be foreclosed in their access to that input service, [...] can be rather foreclosed in its access to both of the Target's recycled wrought aluminium as well as salt slag recycling services.
- (252) The Initial Commitments entail the divestment of the Swansea Business, which provides dross recycling services as well as recycled wrought aluminium and the RVA Business, which provides salt slag recycling services. Each of the downstream competitors of FRPs for can ends and can bodies (i.e. Novelis, Constellium and Elval) is or has been recently in a supply relationships with the Divestment Business specifically (as distinguished from the Target in general).
- (253) First, the Divestment Business currently provides (via the Swansea Business) dross recycling services to two of the main competitors of Speira active in the market of FRPs for can bodies and can ends, namely [...].
- (a) In 2021 [...] used the Target's dross recycling services for [...] through the [plant] and [...] through the [plant]²⁹⁵.
 - (b) In 2021, [...] processed [...] of dross through the [plant], and [...] through the [plant]²⁹⁶.

²⁹⁵ Reply to RFI 13 – Annex to Q1.

- (254) Second, the Divestment Business also supplied in 2019 (via the Swansea Business) [...] with recycled wrought aluminium for [...].²⁹⁷
- (255) Third, the Divestment Business currently provides (via the RVA Business) salt slag recycling services to [...]. Recycled salt-slag volumes by the RVA Business for [...] in 2021 were of [...].²⁹⁸ The Target has existing contractual arrangements with [...] for the recycling of [...] salt slag per year in [...] at the RVA Business.²⁹⁹
- (256) In view of the current and past supply relationships between the Divestment Business and each of the downstream competitors of FRPs for can ends and can bodies, the Commitments will ensure that these downstream competitors will have access to available capacity for the three input services and/or products concerned by foreclosure strategies. More specifically:
- (a) The RVA Business has a salt slag recycling capacity of [...] and presents the entirety of the Parties' third-party salt slag recycling service capacity.
 - (b) The Swansea Business, has an output capacity of [...] for recycled wrought aluminium³⁰⁰ and will be able to accommodate the needs of all the three downstream FRPs competitors, namely:
 - [...] entire volume of dross recycled by Real Alloy Europe (including non-divested plants) (approx. [...] in 2021);³⁰¹
 - [...] entire volume of recycled wrought aluminium sourced from Real Alloy Europe (approx. [...] in 2021 from all of Target's plant);³⁰² and
 - [...] entire dross volume ([...]) recycled by Real Alloy Europe ([...] at all of Target's plant).³⁰³
- (257) The market test also confirmed the suitability of the Initial Commitments to address the Commission's serious doubts.³⁰⁴ The majority of customers and competitors that expressed a view considered that the Initial Commitments are suitable to effectively remove the competitive concerns relating to recycled wrought aluminium as well as dross and salt slag recycling services.³⁰⁵

8.3.1.2.2. Viability and competitiveness

- (258) First, the Commission considered that the assets proposed in the Initial Commitments appear to be profitable. Both plants composing the Divestment Business appear viable in terms of financial data. [Description of Swansea Business' profitability compared to other Target plants]. While the RVA Business cannot, given its exclusive focus on salt slag, be directly compared to other plants, such as the Real Alloy Europe site in Norway which has salt slag and dross-

²⁹⁶ Reply to RFI 13 – Annex to Q1.

²⁹⁷ Reply to RFI 14 – Annex to Q.4.

²⁹⁸ Reply to RFI 14 – Annex to Q.5.

²⁹⁹ Reply to RFI 14 – Annex to Q.5.

³⁰⁰ Reply to RFI 14 – Q.14.

³⁰¹ Reply to RFI 13 – Annex to Q1.

³⁰² Form RM, paragraph 20. See also Form CO, Annex 6.2 that mentions a slightly higher volume of [...].

³⁰³ Reply to RFI 13 – Annex to Q1.

³⁰⁴ Questionnaire on remedies, question B.1, B.1.1 and B.1.2.

³⁰⁵ Questionnaire on remedies, question B.1, B.1.1 and B.1.2.

recycling activities, its EBITDA margin of more than [...] % confirms nevertheless the profitability of the business.

- (259) This was also confirmed by the market test since a majority of respondents that expressed a view consider the Divestment Business to be competitive compared to other recycling dross or salt slag plants.³⁰⁶ A competitor explained that the plants have been on the market for a long time and have a wide range of customers: *‘This are long t[e]rm working plants with [a] net of partners.’*³⁰⁷ Another competitor explained that the services provided by the plant are relevant for the market: *‘It is small but its services will be very relevant to a large group of potential customers’*³⁰⁸ while another competitor stressed that *‘you saw it in the past. they earned money. We think so’*.³⁰⁹ A customer confirmed that the plants are currently serving a number of customers and will continue to do so in the future by stressing that *‘the Divestment Business will address the same customers that other recycling dross or salt slag plants address’*.³¹⁰
- (260) Overall, the market investigation confirmed that a remedy perimeter including both plants would be viable and competitive as a majority of market participants that expressed a view considered that the scale and scope of the Divestment Business including both the Swansea Business and the RVA Business was sufficient to ensure its immediate viability and competitiveness.³¹¹
- (261) Second, the Commission considered that a package including both the Swansea plant and the RVA plant is needed to ensure viability and competitiveness. As explained in paragraph (263) there are dependencies between dross recycling and salt slag recycling. In addition, there are insufficient salt slag recycling capacities on the market as described in paragraph (215). Therefore, the Commission considers that a divestment business combining the Swansea Business and the RVA Business would improve Swansea’s viability and create synergies that would improve viability and competitiveness of the remedy package overall once severed from the Real Alloy Europe broader network of plants. Given that Real Alloy Europe is still in the process of obtaining permits to ship dross to the RVA plant, transitional agreements for salt slag processing would be needed until the shipping of salt slag to RVA is effective.
- (262) The overall need to have both assets sold to the same buyer was confirmed by the market test. In terms of viability, the Swansea Business would only be viable if it has a possibility to recycle its salt slag since no salt slag recycler is active in the UK.³¹² More precisely a majority of market participants that expressed a view considered that the scale and scope of a divestment business, which includes only the RVA Business was sufficient to ensure its immediate viability and competitiveness.³¹³ In contrast, a majority of market participants that expressed a view considered that the scale and scope of a divestment business including only

³⁰⁶ Questionnaire on remedies, question E.10.

³⁰⁷ Questionnaire on remedies, question E.10.1.

³⁰⁸ Questionnaire on remedies, question E.10.1.

³⁰⁹ Questionnaire on remedies, question E.10.1.

³¹⁰ Questionnaire on remedies, question E.10.1.

³¹¹ Questionnaire on remedies, question E.1.

³¹² Non-confidential minutes of a call with a competitor, 3 October 2022, paragraph 4 and Questionnaire on remedies, question E.17.1.

³¹³ Questionnaire on remedies, question D.1.

the Swansea Business is not sufficient to ensure its immediate viability and competitiveness.³¹⁴

- (263) When asked about the potential synergies that would be lost if the two plants in the divestment package are divested to different buyers, customers specifically pointed to Swansea's Business dependency on the salt slag recycling capability and capacity at the RVA Business. As explained by a customer, '*If Real Alloy salt slag recycling capacity is no longer available to Swansea, Swansea will have to find a recycler for its salt slags.*'³¹⁵ Similarly when asked if synergies that would be lost if the plants are sold separately, a competitor explains '*This is not viable -Swansea needs salt slag recycling and there are synergies if administrative services (eg sales) are combined*'.³¹⁶ The same competitor further adds that '*[...] salt slag recycling access is mandatory !*'.³¹⁷ This confirms the need to divest the two plants to a single buyer to generate synergies and ensure the viability and competitiveness of the Divestment Business.
- (264) In addition, the majority of respondent to the Commission's market investigation confirmed that the shipment of salt slag from the United Kingdom to continental Europe is extremely limited³¹⁸ due to among other factors transportation costs and regulatory constraints.³¹⁹ In particular, the Commission's investigation revealed that several licences are required to export salt slag from the United Kingdom to continental Europe and that no French port has a licence for salt slag.³²⁰ [...] ³²¹.
- (265) To address these concerns, the market feedback confirmed the need for a transitional agreement for the recycling of salt slag under the current setup of the Target until the transfer of salt slag between the Swansea Business and the RVA Business is effective. A majority of respondents to the Commission's investigation indicated that the inclusion of a transitional period is adequate to ensure the Swansea Business has adequate access to salt slag recycling service and as such ensures the Divestment Business' competitiveness and viability.³²²
- (266) Third, the Commission considered that the two plants are competitive and can serve customers in a significant portion of the EEA+UK area. Considering the Swansea Business, the market investigation showed that the Target has overall significant advantages compared to other competitors in dross recycling (see paragraph (176) above). The market investigation also showed that the Swansea Business has the same performance as the other plants of the Target including a high recovery rate³²³ which is a key metric in dross recycling. In addition, the price point of the Swansea Business dross recycling services is comparable to the other plants of the Target.³²⁴ Therefore, the Swansea Business appears to be competitive.

³¹⁴ Questionnaire on remedies, question D.1.

³¹⁵ Questionnaire on remedies, question E.3.1.

³¹⁶ Questionnaire on remedies, question E.3.1.

³¹⁷ Questionnaire on remedies, question E.22.1.

³¹⁸ Questionnaire on remedies, question E.17.

³¹⁹ Questionnaire on remedies, question E.17.1.

³²⁰ Reply to RFI 17 - Q9 and non-confidential minutes of a call with a competitor, 3 October 2022, paragraph 4.

³²¹ Reply to RFI 17 - Q14.

³²² Questionnaire on remedies, question E.18.

³²³ Reply to RFI 14 - Q18.

³²⁴ Reply to RFI 15 - Q10.

In terms of geographic reach, while the geographic market is highly differentiated, it appears that the Swansea plant currently serves customers in Belgium, Germany, France and Greece therefore competing on a significant portion of the EEA+UK market. Similarly, for the RVA Business, the market investigation showed, in particular in the context of capacity shortage for third party salt slag recycling, that this business appears to be a key player in this market and is serving customers in a broad area due to the limited available alternatives.

- (267) The Commission also identified some additional shortcomings in relation to the viability and competitiveness of the divestment package.
- (268) First, in order to continue gradually improving its assets and process, Real Alloy Europe has a central engineering team. The market investigation showed that, for the Swansea Business [amount] significant CAPEX projects realised or planned between 2017 and 2026 where managed by the central engineering team. Therefore, the Commission considered that some of the personnel of the central engineering team should be transferred to the Divestment Business to ensure follow up on the ongoing projects and future developments. Additionally, some market participants highlighted that central and support function from Real Alloy Europe, were important to ensure the viability and competitiveness of the Divestment Business.³²⁵ One customer explained for instance that *‘[s]ome of the personnel located in Germany is essential for the viability of the Swansea Business. In particular, the central engineering teams which are located in Germany and are essential for the Swansea Business.’*³²⁶
- (269) Based on its assessment, the Commission requested improvement to the Initial Commitments with regard to the transfer of personnel from the central engineering team to the Divestment Business.
- (270) Second, to maintain the competitiveness of the plant, the Target identified several CAPEX projects that would for example increase productivity, reduce energy consumption or improve safety. Those specifically identified projects were planned and budgeted for both the Swansea plant³²⁷ and the RVA plant.³²⁸ The Commission considered that those CAPEX projects, identified by Real Alloy Europe in the ordinary course of business, should be implemented to preserve the viability and the competitiveness of the Divestment Business.
- (271) Based on its assessment, the Commission considered improvements were needed to the Initial Commitments with regard to planned CAPEX projects for both plants.

8.3.1.2.3. Attractiveness and marketability

- (272) The feedback received from the market test on the Initial Commitments confirmed that the Divestment Business is attractive for a potential buyer.³²⁹

³²⁵ Questionnaire on remedies, question E.20.

³²⁶ Non-confidential minutes of a call with a competitor, 7 October 2022, paragraph 7.

³²⁷ Reply to RFI 17 - Q1.

³²⁸ Reply to RFI 17 - Q1.

³²⁹ Questionnaire on remedies, question E.11.

- (273) [Description of interest in Divestment Business].³³⁰ [Description of interest in Divestment Business].³³¹ [Description of interest in Divestment Business].³³² [Description of interest in Divestment Business].³³³ Given that only a limited number of respondents to the market test signalled an interest in purchasing the Divestment Businesses, the Commission considers appropriate to require an amendment of the Initial Commitments to include an upfront buyer clause. Such requirement would mitigate the risks associated with the selection of a suitable purchaser for the Divestment Businesses.
- (274) Additionally, while the results of the market test highlighted that the potential purchaser should preferably have experience in the industry³³⁴ they also stressed that financial investors (such as private equity firms) could be, depending on their experience in the industry and their long-term commitment, suitable purchasers of the Divestment Business.³³⁵ Therefore, in view of the feedback received from the market test relating to potential purchasers and in line with its practice³³⁶, the Commission considers that the Initial Commitments should not be amended by supplementing the purchaser criteria with additional criteria.

8.3.2. *The Final Commitments: description and Commission's assessment*

- (275) The Commission considers that, for the reasons set out below, the Final Commitments remove the serious doubts previously identified as to the compatibility of the Transaction with the internal market with respect to the recycled wrought secondary aluminium for can bodies and can ends, recycling of dross and recycling of salt slag, at EEA + UK level.
- (276) First, the Final Commitments allow, as was the case with the Initial Commitments, for the removal of all competition concerns identified by the Commission. The Final Commitments address similarly the Commission's concerns by ensuring that downstream competitors in the markets for FRPs for can ends and can bodies can have access to sufficient available capacity for their recycled wrought aluminium as well as for salt slag and dross recycling services.
- (277) Second, the Commission considers that the Final Commitments remove the remaining uncertainties with respect to the Divestment Business' viability and competitiveness as identified in the Initial Commitments.
- (278) The Commitments include the benefit, for a transitional period of 2 years after the transfer of the legal title of the Divestment Business to a purchaser, of all current arrangements of up to [...] annually under which Real Alloy Europe supplies salt slag recycling services to the Swansea Business, and an additional arrangement to be agreed with the purchaser at arm's length basis of up to [...] annually under which Real Alloy Europe will supply salt slag recycling services to the Swansea Business. Both arrangements could be prolonged for an additional period of 1 year at the discretion of the purchaser or the monitoring trustee, at arm's length basis if

³³⁰ Questionnaire on remedies, question E.12.

³³¹ Questionnaire on remedies, question E.12.1.

³³² Questionnaire on remedies, question E.12.1.

³³³ Questionnaire on remedies, question E.12.1.

³³⁴ Questionnaire on remedies, question E.5.

³³⁵ Questionnaire on remedies, question E.6.

³³⁶ Remedies Notice, paragraph 49.

the export of salt slag from the Swansea Business to the RVA Business is not feasible. The Commission considers that this will ensure that the Divestment Business will have sufficient time to secure an export licence in order to recycle salt slag in the RVA Business.

- (279) CAPEX funding in the amounts specified in the Commitments to fund a list of CAPEX projects identified by the Target in the ordinary course of business for both the RVA business and Swansea Business is also provided for in the Final Commitments. The CAPEX funds will be at the disposal of the purchaser, provided that it demonstrates that the funds will be solely used to fund the investment projects scheduled in the Commitments, and the investment projects are being initiated within 3 years of the date of Closing. As per the Final Commitments, the relevant CAPEX funds for all investment projects identified in the Commitments will be put in escrow at the day of Closing. The Commission considers that the aim of the CAPEX escrow is to provide funding for the Divestment Business to ensure its complete independence and preserve the viability and the competitiveness of the Divestment Business. From this perspective, the Commission considers that the Final Commitments in principle adequately address the need for ensuring the complete independence of the Divestment Business going forward through the provision of a CAPEX escrow arrangement aimed at ensuring the full independence and preserve the viability and the competitiveness of the Divestment Business.
- (280) In relation to the personnel, the Commitments ensure that one member from the Target's centralised engineering department (composed of [...] employees) will be transferred to the Swansea Business. Thus, a relevant employee from the Central Engineering team is part of the Divestment Businesses.
- (281) The Commission also notes that the Final Commitments include an upfront buyer requirement, meaning that the Transaction will not be implemented before the Notifying Party has entered into a final and binding sale and purchase agreement for the implementation of the Final Commitments and the Commission has approved the purchaser. The upfront buyer clause mitigates implementation risks.

9. CONCLUSION OF THE PROPOSED REMEDIES

- (282) For the reasons outlined above, the commitments entered into by the KPS and Real Alloy Europe are sufficient to eliminate the serious doubts as to the compatibility of the transaction with the internal market.
- (283) The commitments in sections B and C of the Annex constitute conditions attached to this decision, as only through full compliance therewith can the structural changes in the relevant markets be achieved. The other commitments set out in the Annex constitute obligations, as they concern the implementing steps which are necessary to achieve the modifications sought in a manner compatible with the internal market.

10. CONCLUSION

- (284) For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full

compliance with the conditions in sections B and C of the commitments annexed to the present decision and with the obligations contained in the other sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)

Margrethe VESTAGER

Executive Vice-President

14/10/2022

Case M. 10702 – KPS – Real Alloy Europe

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the “*Merger Regulation*”), [...], a fund managed by KPS Capital Partners, LP (“*KPS*”) (the “*Notifying Party*”) hereby enters into the following Commitments (the “*Commitments*”) vis-à-vis the European Commission (the “*Commission*”) with a view to rendering the acquisition of “*Real Alloy Europe*”(the “*Concentration*”) compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission’s decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the “*Decision*”), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the “*Remedies Notice*”).

Section A. Definitions

1. For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the “*Consolidated Jurisdictional Notice*”).

Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as indicated in Section B, paragraph 6 (a), (b) and (c) and described more in detail in the Schedule.

Closing: the transfer of the legal title of the Divestment Business to a Purchaser.

Closing Period: the period of [...] months from the approval of the Purchaser and the terms of sale by the Commission.

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

Divestment Business: the business or businesses as defined in Section B and in the Schedule which the Notifying Party/Notifying Parties commit to divest.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by KPS and who has/have received from KPS the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of [...] months from the Effective Date.

Hold Separate Manager: the person appointed by KPS for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule, including the Hold Separate Manager.

Monitoring Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by KPS, and who has/have the duty to monitor KPS' compliance with the conditions and obligations attached to the Decision.

Parties: the Notifying Party and the undertaking that is the target of the concentration.

Personnel: all staff currently employed by the Divestment Business, including staff seconded to the Divestment Business, shared personnel as well as the additional personnel listed in the Schedule.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

Purchaser Criteria: the criteria laid down in paragraph 19 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

Schedule: the schedule to these Commitments describing more in detail the Divestment Business.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

Trustee Divestiture Period: the period of [...] months from the end of the First Divestiture Period.

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KPS: KPS Capital Partners, LP, incorporated under the laws of the United States of America, with its registered office at One Vanderbilt Avenue, 52nd Floor, New York, NY 10017 and registered with the State of Delaware under file number 4274176.

Real Alloy Europe: Evergreen Holding Germany GmbH, a limited liability company incorporated under the laws of the Federal Republic of Germany, and Real Alloy UK Holdco Ltd., a private limited company incorporated in England and Wales.

Section B. The commitment to divest and the Divestment Business

Commitment to divest

2. In order to maintain effective competition, KPS commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 20 of these Commitments. To carry out the divestiture, KPS commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If KPS has not entered into such agreement at the end of the First Divestiture Period, KPS shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 32 in the Trustee Divestiture Period.
3. The Concentration shall not be implemented before KPS or the Divestiture Trustee has entered into a final binding sale and purchase agreement for the sale of the Divestment Business and the Commission has approved the purchaser and the terms of sale in accordance with paragraph 20.
4. KPS shall be deemed to have complied with this commitment if:
 - (a) by the end of the Trustee Divestiture Period, KPS or the Divestiture Trustee has entered into a final binding sale and purchase agreement and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 20; and
 - (b) the Closing of the sale of the Divestment Business to the Purchaser takes place within the Closing Period.
5. In order to maintain the structural effect of the Commitments, the Parties shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from the Notifying Party showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 46 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the internal market.

Structure and definition of the Divestment Business

6. The Divestment Business consists of Récupération Valorisation Aluminium in France (“**RVA Business**”) and Real Alloy Europe’s facility in Swansea, United Kingdom (“**Swansea Business**”). The legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:
 - (a) all tangible and intangible assets (including intellectual property rights);
 - (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
 - (c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business; and
 - (d) the Personnel.

7. In addition, the Divestment Business includes the benefit, for a transitional period of [...] after Closing and on terms and conditions equivalent to those at present afforded to the Divestment Business, of all current arrangements under which KPS or its Affiliated Undertakings supply or procure that the Divestment Business is supplied with continuous access to the Enterprise resource planning (ERP) system currently hosted by Real Alloy North America to the Divestment Business, unless otherwise agreed with the Purchaser. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside of Real Alloy North America.

8. Furthermore, the Divestment Business includes the benefit, for a transitional period of [...] after Closing (i) of all current arrangements of up to [...] annually under which Real Alloy Europe supplies salt slag recycling services to the Swansea Business, and (ii) an additional arrangement to be agreed with the Purchaser at arm’s length basis of up to [...] annually under which Real Alloy Europe will supply salt slag recycling services to the Swansea Business, unless in each of (i) and (ii) otherwise agreed with the Purchaser and approved by the Commission in accordance with the procedure described in paragraph 20 of these Commitments. At the discretion of the Purchaser or the Monitoring Trustee the arrangements under (i) and (ii) above shall be prolonged for an additional period of [...] under the conditions of the current arrangements if the export of salt slag to the RVA Business is not feasible for the Purchaser.

9. The Parties undertake that the Divestment Business will have no more than [...] of salt slag recycling services capacity annually dedicated contractually to Affiliated Companies until [...]; the Parties remain free to agree with the Purchaser at arm’s length basis a higher quantity.

Section C. Related commitmentsPreservation of viability, marketability and competitiveness

10. From the Effective Date until Closing, the Parties shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular the Parties undertake:

- (a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
- (b) to make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;
- (c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to the Parties' remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, the Parties shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. The Parties must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.
- (d) KPS commits to make available to the Purchaser capex funding in the amounts specified below to fund the following ongoing and future investment projects:

Swansea Business (in EUR)

2023	
[...]	361.860
[...]	194.250
[...]	277.500
[...]	499.500
[...]	66.600
[...]	133.200
2024	
[...]	333.000
[...]	439.998
2025	
[...]	610.500

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RVA Business (in EUR)

2023	
[...]	160.000
[...]	970.000
[...]	110.000
[...]	55.000
[...]	70.000
[...]	100.000
[...]	1.650.000
[...]	110.000
2024	
[...]	55.000
[...]	250.000
[...]	30.000
[...]	50.000
[...]	100.000
[...]	15.000
2025	
[...]	1.550.000
[...]	100.000
[...]	600.000

- (e) The capex funds will be at the disposal of the Purchaser, provided that (i) the Purchaser demonstrates that the funds will be solely used to fund the investment projects scheduled above, and (ii) the investment projects are being initiated within 3 years of the date of Closing. The relevant capex funds for all investment projects identified above will be put in escrow at the day of Closing.

Hold-separate obligations

11. The Parties commit, from the Effective Date until Closing, to keep the Divestment Business separate from the business(es) they are retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the business(es) retained by the Parties have no involvement in the Divestment Business; (ii) the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by the Parties and do not report to any individual outside the Divestment Business. With respect to the personnel from the central commercial team and engineering team member in Germany that shall according to the Schedule be transferred from Real Alloy Europe to the Swansea Business or the Purchaser, Parties commit within six month from Closing to transfer such personnel into a location in

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Germany on premises unrelated to Real Alloy Europe and the Notifying Party and any of their Affiliated Undertakings, and adopt strict firewall procedures so as to ensure that any competitively sensitive information related to, or arising from the services of such personnel to the Swansea Business will not be shared with, or passed on to, anyone within the Parties or any of their Affiliated Undertakings.

12. Until Closing, Parties shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the business(es) which Parties is retaining. Immediately after the adoption of the Decision, KPS shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by Parties. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 8(c) of these Commitments. The Commission may, after having heard KPS, require KPS to replace the Hold Separate Manager.
13. To ensure that the Divestment Business is held and managed as a separate entity the Monitoring Trustee shall exercise Parties' rights as indirect or direct shareholder in the legal entity or entities that constitute the Divestment Business (except for its rights in respect of dividends that are due before Closing), with the aim of acting in the best interest of the business, which shall be determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling Parties' and their Affiliated Undertakings obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of Parties. Upon request of the Monitoring Trustee, Parties shall resign as a member of the boards or shall cause such members of the boards to resign.

Ring-fencing

14. The Parties shall implement, or procure to implement, all necessary measures to ensure that they do not, after the Effective Date, obtain any Confidential Information relating to the Divestment Business and that any such Confidential Information obtained by the Parties before the Effective Date will be eliminated and not be used by the Parties. This includes measures vis-à-vis the Parties' appointees on the supervisory board and/or board of directors of the Divestment Business. In particular, the participation of the Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. The Parties may obtain or keep information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or the disclosure of which to the Parties are required by law.

Non-solicitation clause

15. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of [...] after Closing.

Due diligence

16. In order to enable potential purchasers to carry out reasonable due diligence of the Divestment Business, KPS shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:

- (a) provide to potential purchasers sufficient information concerning the Divestment Business;
- (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

17. KPS shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). KPS shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within 5 days of their receipt.
18. KPS shall inform the Commission and the Monitoring Trustee about the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

19. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:
- (a) The Purchaser shall be independent of and unconnected to the Notifying Party and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).
 - (b) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;

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- (c) The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor to give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.
20. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When KPS has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. KPS must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment procedure

21. KPS shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Notifying Party commits not to close the Concentration before the appointment of a Monitoring Trustee.
22. If KPS has not entered into a binding sale and purchase agreement regarding the Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by KPS at that time or thereafter, KPS shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.
23. The Trustee shall:
- (i) at the time of appointment, be independent of the Notifying Party/Notifying Parties and its/their Affiliated Undertakings;
 - (ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and

(iii) neither have nor become exposed to a Conflict of Interest.

24. The Trustee shall be remunerated by the Notifying Parties in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by KPS

25. No later than two weeks after the Effective Date, KPS shall submit the name or names of one or more natural or legal persons whom KPS proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, KPS shall submit a list of one or more persons whom KPS proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 23 and shall include:

- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
- (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
- (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

26. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, KPS shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, KPS shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by KPS

27. If all the proposed Trustees are rejected, KPS shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 21 and 26 of these Commitments.

Trustee nominated by the Commission

28. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom KPS shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

29. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or KPS, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

30. The Monitoring Trustee shall:

- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
- (ii) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by KPS with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 10 and 11 of these Commitments;
 - (b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 12 of these Commitments;
 - (c) with respect to Confidential Information:
 - determine all necessary measures to ensure that KPS does not after the Effective Date obtain any Confidential Information relating to the Divestment Business,
 - in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business,
 - make sure that any Confidential Information relating to the Divestment Business obtained by KPS before the Effective Date is eliminated and will not be used by KPS and

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the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser;

- (ix) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.
31. If the Monitoring and Divestiture Trustee are not the same [legal or natural] persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

32. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 19 and 20 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale (be it via warranty & indemnity insurance or provided that any not insured representations and indemnifications are made after and only subject to a due inquiry with the respective Divestment Business' key personnel). The Divestiture Trustee shall protect the legitimate financial interests of KPS, subject to the Notifying Party/Notifying Parties' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
33. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Notifying Party/Notifying Parties.

III. Duties and obligations of the Parties

34. The Parties shall provide and shall cause its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Real Alloy Europe's or the Divestment Business' books, records, documents, management or other personnel, facilities,

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- sites and technical information necessary for fulfilling its duties under the Commitments and KPS and the Divestment Business shall provide the Trustee upon request with copies of any document. KPS and the Divestment Business shall make available to the Trustee one or more offices on Real Alloy Europe's or the Divestment Business' premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
35. The Parties shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. KPS shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. KPS shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.
36. KPS shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, KPS shall cause the documents required for effecting the sale and the Closing to be duly executed.
37. KPS shall indemnify the Trustee and its employees and agents (each an "***Indemnified Party***") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to KPS for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
38. At the expense of KPS, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to KPS' approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should KPS refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard KPS. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 37 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served KPS during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

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39. The Parties agree that the Commission may share Confidential Information proprietary to the Parties with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.
40. The Notifying Party agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.
41. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

42. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:
 - (a) the Commission may, after hearing the Trustee and KPS, require KPS to replace the Trustee; or
 - (b) KPS may, with the prior approval of the Commission, replace the Trustee.
43. If the Trustee is removed according to paragraph 42 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 21-28 of these Commitments.
44. Unless removed according to paragraph 42 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The review clause

45. The Commission may extend the time periods foreseen in the Commitments in response to a request from KPS or, in appropriate cases, on its own initiative. Where KPS requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. Only in exceptional circumstances shall KPS be entitled to request an extension within the last month of any period.
46. The Commission may further, in response to a reasoned request from the Notifying Parties showing good cause waive, modify or substitute, in exceptional circumstances, one or more of

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the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section G. Entry into force

47. The Commitments shall take effect upon the date of adoption of the Decision.

[signed]

On behalf of KPS Capital Partners, LP

Brussels, 14 October 2022

[signed]

On behalf of Evergreen Holding Germany GmbH and Real Alloy UK Holdco Ltd.

Brussels, 14 October 2022

SCHEDULE

1. The Divestment Business as operated to date has the following legal and functional structure:

Both the RVA Business and the Swansea Business are independent legal structures within Real Alloy Europe. An overview of the entities within the overall Real Alloy organization is attached as Annex 1.

Please note that Real Alloy Europe is comprised of Evergreen Holding Germany GmbH and Real Alloy UK Holdco Ltd. The Divestment Business is incorporated in two legal entities located in France and the United Kingdom.

RVA Business: The entity in France is R.V.A. SA, a French simplified joint stock company (société par actions simplifiée) having its registered offices located at la Tuilerie La Vignette, 51800 Saint-Menehould.

Swansea Business: The entity in the United Kingdom is Real Alloy UK Ltd., a limited company registered in the United Kingdom under company number: 03221771 having its registered offices located at Westfield Industrial Park, Waunarlwydd, Swansea, SA5 4SF.

Real Alloy UK Holdco is also the parent to Real Alloy Norway both of which will remain with the Notifying Party – only the shareholding of Real Alloy UK Holdco in Real Alloy UK Ltd. needs to be undone. Récupération Valorisation Aluminium is likewise held under Evergreen Holdings which is also the parent to Real Alloy Germany GmbH – only R.V.A. SA would be carved out as part of the Divestment Business.

The RVA Business operates independently from a structural and organisational point of view, as it has not been integrated into Real Alloy Europe.

The Swansea Business is supported by [...], but Real Alloy Europe would contribute the relevant Key Personnel [...] to the Swansea Business identified in the Annex 11 to accompany the divestment out of Germany, unless otherwise agreed with the Purchaser and approved by the Commission in accordance with the procedure described in paragraph 20 of these Commitments.

The RVA Business will have sales and engineering personnel with experience relevant for the operating a salt slag business (see Annex 11).

A proposed new organizational chart for the respective facilities is attached as Annex 2.a and 2.b.

- 2. In accordance with paragraph 6 of these Commitments, the Divestment Business includes, but is not limited to:**

The Swansea Business

[...]

A site map for the facility in Swansea is attached as Annex 3.

RVA Business

The site operated by the RVA Business contains a full salt slag recycling unit including milling and re-crystallisation. The RVA Business owns the site and all the buildings on the site.

A site map for the RVA Business is attached as Annex 4.

- (a) the following main tangible assets:**

A detailed register of assets of the Swansea Business is attached as Annex 5.

A detailed register of assets of the RVA Business is attached as Annex 6.

- (b) the following main intangible assets:**

All know-how at the two sites rests with the employees to be included in the Divestment Business.

There is no formal intellectual property that could be or needs to be transferred as part of the Divestment Business.

- (c) the following main licences, permits and authorisations:**

As both sites are separate legal entities all of the required permits and authorisations are already held at the site level and not at the Real Alloy Europe level.

The respective permit for the operation of the Swansea Business is attached as Annex 7.

The respective permit for the operation of the RVA Business is attached as Annex 8.

- (d) the following main contracts, agreements, leases, commitments and understandings:**

All leases, contracts and commitments are also already held by the individual sites' legal entity.

A list of relevant contracts for the Swansea Business is attached as Annex 9.a to 9.b. The Parties undertake to use best efforts during the First Divestiture Period to negotiate market standard extensions of the Swansea Business lease contracts with the landlord.

A list of relevant contracts for the RVA Business is attached as Annex 10.

- (e) **the customer, credit and other records associated with the contracts listed in Annex 9.a to 9.b and 10;**
 - (f) **the Personnel listed in the organizational charts in Annex 2.a, 2.b and 2.c; and**
 - (g) **the Key Personnel listed in Annex 11**
3. **The Divestment Business shall not include any other legal entities than R.V.A SA and Real Alloy UK Ltd..**
 4. **If there is any asset or personnel which is not be covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to potential purchasers.**

Annexes 1-11

[...]