

NON-CONFIDENTIAL VERSION

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**Completed acquisition of the UK sheet piling commercial activities of Corus
group Plc by Arcelor SA**

MAIN SUBMISSION FROM ARCELOR SA

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A. Executive Summary

This transaction concerns the acquisition by Arcelor SA of the UK sheet piling commercial activities of Corus group Plc. Whilst it does give rise to some overlap as regards the production of hot rolled steel sheet piling, Arcelor considers that it should not be regarded as leading to a substantial lessening of competition in the UK. In particular:

- Even if hot rolled steel sheet piling is to be treated as a discrete description of goods, other forms of retaining structures should be seen as part of the same product market.
- In this relevant market for retaining structures, combined market shares are very low (less than 10% both in the UK and the EFTA region overall). Turnover figures are also very low – eg the parties' combined UK turnover in the relevant products was only [CONFIDENTIAL] in 2003.
- Even if other forms of non-metallic retaining structures are not strictly regarded as part of the same product market as hot rolled steel sheet piling, it is clear that they exert substantial competitive pressure on hot rolled steel sheet piling (as recognised by the European Commission in its decisional practice). Indeed, they are increasingly replacing sheet piling in many applications.
- Geographically, it is clear that hot-rolled sheet piling is traded on at least a Europe-wide basis (as also previously accepted by both the European Commission, as well as by the OFT). On this basis, this transaction leads to only a [CONFIDENTIAL]% increment in Arcelor's share of supply of hot rolled steel sheet piling considered in isolation (from [CONFIDENTIAL]%). The European Commission has also noted previously that this level of market shares need not be problematic in the steel sector.
- The supply of sheet piling is also characterised by a highly competitive international tendering process, a concentrated demand side, high price-sensitivity of customers and a cyclical nature of demand, as well as a lack of any price transparency (thereby preventing any prospect of price co-ordination). These are all additional factors that will prevent this transaction giving rise to any substantial lessening of competition in the UK.
- Overall this transaction will not result in any significant change to the structure of hot rolled sheet piling supply at the European level. This is because, viewed from a European perspective, the Corus sheet piling business was essentially a fringe supplier, as it was restricted by its own technological weakness and a lack of technically advanced product, and so best regarded as a largely passive player. Thus following this transaction the European structure of supply will remain essentially as before, with two large players (Arcelor and Salzgitter), two significant East European producers (Vitkowice and Huta Katowice) and imports competing for business.
- It also follows from this that considerable benefits will flow to UK customers as a result of this transaction, as Arcelor offers a more advanced and economical product than was the case for Corus, and is a considerably more innovative player overall.
- In the UK, Arcelor's presence has traditionally been very limited and its hot rolled sheet piling sales have been sporadic (totalling [CONFIDENTIAL]). Additionally, the Corus UK Business' share of that segment has dropped from [CONFIDENTIAL]% in 1995 to [CONFIDENTIAL]% in 2003. This underscores the weakness of its position prior to this transaction.

- Arcelor is convinced that Corus would have exited the UK market in any event – i.e. regardless of this transaction.
- As noted, Arcelor faces very strong competition from other suppliers of hot rolled sheet piling, in addition to competition from alternative types of retaining structure (and also suppliers of reused sheet piling).

B. The Company – Arcelor SA

1 Overview

- 1.1 The Arcelor group was created in 2002 through the merger of three European steelmakers: Aceralia, Arbed and Usinor. It is an international group with activities primarily in Europe and the Americas. The holding company for the Arcelor group, Arcelor SA (“Arcelor”), is headquartered in Luxembourg.
- 1.2 The purchasing entity in this transaction is ProfilARBED SA, which is a subsidiary of Arcelor.

2 Organisation and Principal Activities

- 2.1 Arcelor’s shares are listed on the Luxembourg stock exchange, the Euronext Brussels Premier Marché, the Euronext Paris Premier Marché and the Madrid, Barcelona, Bilbao and Valencia stock exchanges.
- 2.2 In 2003, Arcelor generated turnover of €25,923m. Approximately 77% [CONFIDENTIAL] of this related to sales within the EU 25 countries, of which [CONFIDENTIAL] was in the UK¹. Of the remaining turnover, 8% related to sales to North America, 5% to South America, 4% to elsewhere in Europe and 7% to the rest of the world.
- 2.3 Arcelor has four operational sectors:
- *Flat Carbon Steel.* This business covers the entire range of thin flat steels: hot coils, cold coils and coated steel sheet. These products are used in automobile production and industrial applications (such as household appliances, packaging, civil engineering, mechanical construction and engineering).
 - *Long Carbon Steel.* Long steel products include bar, rod and structural products that are "long" rather than "flat". This Arcelor sector is organised into five distinct operational units: sections (beams, sections, and heavy angles), RPS (rails, piles and special sections), bars and rods (concrete reinforcing bars, wire rods and merchant bars), wire drawing (steel cords, mesh and other drawn wires) as well as the “Americas” operational unit, grouping together all South American long carbon operations.
 - *Stainless Steel.* Stainless steels are resistant to corrosion, and are used in four principal markets: household appliances, automobiles (eg exhausts), buildings and street furniture and industry (eg food, chemicals and petroleum).
 - *DTT: Steel Distribution, Transformation and Trading.* These business activities comprise the processing, finishing and distribution of steel that is either produced by the Arcelor group or bought from third parties. The division also possesses an international sales network and an important trading arm.
- 2.4 This transaction concerns Arcelor’s Long Carbon Steel division, and specifically hot rolled steel sheet piling. No other long steel products (including sections) are relevant.

¹ Although Arcelor’s UK turnover as regards the product relevant to this transaction – i.e. hot rolled steel sheet piling - has been very small to date ([CONFIDENTIAL]).

C. The Relevant Market

3 Product Dimension

- 3.1** Arcelor considers that the relevant product market is for all retaining structures (as explained in more detail below). On this basis, combined market shares are less than 10% (at both the European and UK levels).
- 3.2** Arcelor has acquired the UK hot rolled sheet piling commercial activities of Corus Group Plc (the "Corus UK Business"). Sheet piling is a type of retaining structure. In more detail, it is a manufactured steel construction product with a mechanical connection "interlock" at both ends of the section. These mechanical connections interlock with one another to form a continuous wall of sheeting.
- 3.3** Sheet piling can either be hot rolled or cold formed (see further below). As noted, this transaction concerns hot rolled steel sheet piling only. Hereafter, the term "HRSSP" is used to describe hot rolled steel sheet piling.
- 3.4** Retaining structures are products which are typically used to create a rigid barrier for earth (terrestrial applications) or water (maritime and river applications), while resisting the horizontal pressures and the bending forces induced by the retained material. Terrestrial applications involve either holding back imported earth (fill construction) or keeping earth in place (excavation)². Applications for retaining structures include domestic and non-domestic buildings (eg basement construction, underground car parks and foundations), roads and bridges and infrastructure (eg airports, railways, tunnels, leachate barriers, bridge abutments, river walls, canals and harbours).
- 3.5** A variety of materials besides new HRSSP can be used as retaining structures. These include concrete-based structures in particular: indeed, as discussed further below, Arcelor considers that only c.10% by value of the UK's retaining structures requirement for 2003 was met by structures constructed from new sheet piling, and so c.90% of demand was met by alternative structures (as constructed from, for example, concrete, wood, masonry, reinforced earth, cold formed steel sheet piling, reused steel sheet piling, vinyl or a mixture of products).
- 3.6** In order to illustrate this substitutability across different types of retaining structure Arcelor provides further detail below on:
- the wide range of alternative products;
 - the decision-making process by which one type is selected; and
 - their overall interchangeability.

Alternative products

- 3.7** Each of the wide range of alternative products to HRSSP is more fully described below:

² Arcelor estimates that approximately [CONFIDENTIAL]% of retaining structure sales are intended for terrestrial/excavation use, around [CONFIDENTIAL]% of sales are for terrestrial/fill and around [CONFIDENTIAL]% of sales are intended for maritime and river work. However, and as discussed more fully below, HRSSP suppliers may not know the application for which the retaining structure will be used when prices are quoted. Thus these figures are Arcelor's broad estimates only as to how sales are split according to end application.

(i) Concrete bored piles

Concrete bored piles (i.e. cast *in situ*) are used when a soil replacement rather than a soil displacement method of piling is required and also when there is a need to minimise vibration. They are unsuitable where the ground water level on the retained side is high. Their best application is for cohesive soils.

The advantage of the bored pile is that only one pile need be bored at a time. Therefore when working close to a foundation only a short length of the foundation need be exposed to any risk at a given time. It is also easier to overcome ground obstructions using this type of retaining structure than with HRSSP or diaphragm walls. Also bored piles are able to penetrate moderately hard bedrock materials more easily than other methods.

Bored piles are very competitive against sheet piles in cohesive ground with a low water table, especially if the contractor has access to the right installation equipment.

(ii) Diaphragm walls and other rigid and semi-rigid cutoffs

Diaphragm walls are vertical concrete walls built without sheeting or formwork by excavating from the ground surface. The trench is dug by machines adapted to different soil types; as a result of very fast technological development, the machines are able to dig even deeper with increasing precision. The walls of the trench are supported by filling the trench with a thixotropic mud, i.e. one that will liquefy when moved and attain a firm consistency when left to rest. The wall is concreted by injecting a very fluid, slow-setting concrete into the bottom of the trench. This concrete displaces the lighter mud towards the surface. If the diaphragm wall is to be a permanent structure, steel reinforcement will be lowered into the mud before concreting begins.

Alternatively, precast reinforced concrete walls can be used: these make it possible to reduce the wall thickness by making better use of concrete, and also simplify jointing and provide a more elegant finished appearance. The trench is excavated in the same way as for conventional diaphragm walls, and the precast wall units are lowered into it and grouted in with cement.

Diaphragm walls are generally used in the terrestrial segments, as well as in river and maritime applications. They are readily substitutable for HRSSP.

(iii) Concrete piles

Concrete piles can be prefabricated as well as cast *in situ* (i.e. for bored piles, as above). Prefabricated piles have a high bearing capacity. Due to the roughness of their exterior, they mobilise friction with the surrounding soil. Prefabricated piles are installed by hammering - i.e. a similar method as can be used for sheet piles.

(iv) Concrete caissons

Concrete caissons are hollow cubes with sides of up to several meters long. They can be shipped to the right place and then secured by filling them with water or soil. They are used mainly in maritime environment for harbour or breakwater construction. Due to their huge mass, they are often preferred to HRSSP for maritime constructions where there is strong tidal movement (i.e. waves).

(v) Gravity retaining walls

Gravity retaining walls (as constructed from plain or reinforced concrete, or masonry), use their weight to resist the overturning momentum exerted by the ground. They are used

essentially for retaining purposes and waterproofing. They have a trapezoidal vertical cross-section designed to ensure that they stand up to earth pressure and that the stresses in the masonry and on the foundation are acceptable. Gravity retaining walls can be used across all types of retaining structure requirements, and so are ready substitutes for HRSSP.

(vi) Prefabricated units

Reinforced concrete or prefabricated steel units are stacked up, making walls with a substantial upwardly receding slope. The key advantages of this structure relate to the architectural elegance resulting from the flexibility of layout and economic factors. Prefabricated units are generally used in the same way as caissons (described above). They are used mainly in the maritime environment for harbour or breakwater construction but are also suitable for terrestrial fill applications. Due to their huge mass, they are often preferred to HRSSP for maritime constructions where there is strong tidal movement (i.e. waves). Thus once more they can easily be substituted for HRSSP.

(vii) Crib walls

Crib walls are constructed by interlocking individual boxes made from timber (for temporary works), pre-cast concrete or metal units. The boxes are filled with crushed stone or other coarse granular materials to create a free-draining structure. The units are spaced so that the fill material is contained within the crib, is not affected by climatic change and acts in conjunction with the crib to support the retained earth.

There are two basic types of crib wall: timber and reinforced precast concrete. Timber crib walls are commonly built from logs and so the required design life must be taken into account. Reinforced pre-cast concrete crib units can be brought on site fully finished and ready for use. The infill is built in as each course is assembled and therefore the crib wall is essentially a fully operating structure at each stage of its construction. Crib walls use less concrete than a concrete gravity wall and are rapidly constructed. Crib walls are commonly used with compacted embankments, cuttings and bridge approaches. They can be used for permanent or temporary structures but cannot be used for retaining slopes which are liable to slip. Similarly to gabions, crib walls are often preferred to HRSSP because of their permeability, their appearance, their easier installation and their possibility of easy naturalisation by plants.

(viii) Reinforced earth

Reinforced earth is frequently used for retaining walls and bridge abutments. The principle of reinforced earth relies in associating reinforcement with tensile strength and loose soil; friction between the soil particles and the reinforcement induces anisotropic cohesion along the reinforcement in the composite material obtained. The face of the slope is held back by cross-shaped precast concrete panels. Reinforced earth is generally a very economical technique. Although it is used to some degree in the terrestrial excavation segment, it is primarily used in the terrestrial fill construction segment. For technical reasons, it is not used in the maritime/river work segment. With this exception, it can easily be substituted for HRSSP.

(ix) Cold formed sheet piling

Cold formed sheet steel piling is manufactured out of hot rolled coil of suitable width and thickness. The coil is decoiled, straightened and then passed through a number of rolls

that form the strip into the shape of a sheet pile. This is done at an ambient temperature, hence the name cold formed sheet piling.

Its lower thickness (down to 3mm, whereas the lower limit for HRSSP is around 7mm) means cold formed sheet piling will be preferred to HRSSP where lower bending forces have to be resisted. This thinness means that it is not as strong as some other types of retaining structure, meaning cold formed sheet piling has primarily been used in river applications to protect river banks (where HRSSP can also be used), though it is sometimes also used in terrestrial applications. However, technological developments in cold forming mean that cold formed sheet piling of higher thickness (up to 9mm) may also be produced, which overlaps directly with the use of HRSSP.

(x) Combi walls

There are applications where there is need to resist vertical loads and at the same time serve as a retaining structure. Typical examples are harbour quays that have to bear the vertical load resulting from cranes, trucks, railcars, the weight of the products on the quay, etc and at the same time retain water and earth.

This may be achieved through “combi walls”, in which structural elements (usually tubes with a HRSSP interlock welded onto them) are driven into the ground to take up the vertical and horizontal load. The space in-between the tubes is then closed with HRSSP to fulfil the retaining function.

To a lesser extent, HZ type bearing piles are sometimes used instead of tubes. The HZ bearing pile is a special type of bearing pile rolled so as to present a bulb at the end of each flange. Again, the HRSSP links to the HZ bearing piles through a special interlock threaded onto the bulb at the end of the bearing pile’s flange.

Thus whilst HZ bearing piles may in principle be used in a “stand-alone” way, their main purpose is to be used as structural elements in conjunction with HRSSP in a combi wall³. As combi walls are able to take high bending moments and have an important vertical bearing capacity, they may often be preferred over all-HRSSP structures, particularly in the maritime segment.

(xi) Berlin walls / Soldier piles

Soldier piles, also known as Berlin walls, are made out of wide flange steel H sections spaced about 2-3m apart, which are driven into the ground prior to excavation. As the excavation proceeds, horizontal timber sheeting (lagging) is inserted between the H pile flanges. The horizontal earth pressures are concentrated on the soldier piles because of their relative rigidity compared to the lagging. Soil movement and subsidence is minimised by maintaining the lagging in firm contact with the soil.

Soldier piles are most suitable in conditions where building walls will not result in subsidence, eg over consolidated clays and soils above the water table which can be drained such as sands. Unsuitable soils include soft clays and weak running soils that allow large movements, such as loose sands. Berlin walls are often used instead of HRSSP in soils above the water table. Some contractors also prefer Berlin walls to HRSSP because they are easier to use from a technical point of view.

³ Thus Arcelor has taken the decision to declare them under the customs code 730110 “sheet piling”, although a separate customs code 721633 “H sections with a height \geq 80 mm” also exists.

(xii) Masonry

Unreinforced masonry is suitable for small retaining walls, especially where the finished appearance is important. This type of masonry requires minimal construction. A simple stem wall is suitable for retained heights up to 1.5m. For greater heights a stepped or buttress wall is used. Masonry can thus be a substitute for sheet piles in various situations, and is often preferred to HRSSP because of its appearance.

(xiii) Soil nailing

Soil nailing provides ground support by reinforcing the earth with bars grouted into the soil and tied to a confining membrane at the surface of the excavation. For technical reasons, this approach is usually used for terrestrial excavation purposes and in this application can easily be substituted for HRSSP.

(xiv) Gabions

Gabions are free-draining walls constructed by filling large baskets with broken stone. The baskets are made from galvanised steel mesh, woven strips or plastic mesh. They can also be made from wickerwork, bamboo slats, nylon or polypropylene. A typical basket is rectangular with dimensions of about 50cm by 15cm. Retention is achieved by a combination of the stones' weight and its interlocking and frictional strength. The maximum height is approximately 10m.

The permeability and flexibility of gabions makes them suitable where the retained material is likely to be saturated and where the bearing quality of the soil is poor. Wire mesh gabions have two forms: baskets, which are used for walls, and mattresses, which are used for revetments and river linings. Gabions are often preferred to HRSSP, eg in relation to river work and to prevent coastal erosion, because of their permeability (i.e. they permit water to drain away which might otherwise contribute to landsliding), their appearance, their easier and cheaper installation and the fact that they can be easily naturalised by plants.

(xv) Wooden piles/ timber piles

Wooden piles are typically made from imported hard wood and can be used in a number of specialised areas. They are often the preferred option where erosion is significant, eg sea defences. In such areas, they are a ready substitute for HRSSP.

(xvi) Other techniques

The techniques referred to above are those most frequently encountered. However, this list is not exhaustive – i.e. there is a large number of other techniques which can also be substituted for HRSSP, such as:

- jet grouting, which can be used in conjunction with other methods such as intermittent piles or piles within the jet-grouted columns and acts as vertical “nails”;
- concrete or steel pipes;
- retaining structures based on geotextiles;
- retaining structures based on vinyl;
- earth retaining structures using natural rock/soil embankments (“berms”), i.e. with no use of specialist materials; and

- retaining structures using scrap motor tyres or other hollow structures made from a broad range of materials and weighted down with an infilling material.

3.8 In summary, Arcelor has broadly estimated the total value of the UK retaining structures market to be approximately [CONFIDENTIAL] million in total in 2003, divided between the different segments as follows:

	Turnover (£m)	%
Concrete	[..]	[..]
• Bored pile construction	[..]	[..]
• Other concrete solutions, eg diaphragm walls and reinforced concrete walls	[..]	[..]
<i>Total concrete</i>	[..]	[..]
Sheet piling	[..]	[..]
• New HRSSP	[..]	[..]
• Reusable sheet piling	[..]	[..]
<i>Total sheet piling</i>	[..]	[..]
Others	[..]	[..]
TOTAL MARKET	[..]	100

[ALL FIGURES DELETED AS CONFIDENTIAL]

3.9 It is clear from the above table that concrete-based solutions are very much more frequently chosen than HRSSP. To generalise, there is a very high probability that concrete will be chosen over HRSSP when space for construction is limited and when deflections of the proposed solution need to be minimised (as there is an industry perception that HRSSP is relatively flexible and so likely to deflect more under load). Concrete is also seen as being considerably more durable than steel (i.e. the cost of extra measures to combat steel corrosion may make a steel-based solution uncompetitive). Concrete also has a considerable advantage where noise and vibration requirements at installation are important – eg because the silent driving of HRSSP can approximately double the installation costs, whilst concrete bored piles can be installed with much less noise and vibration.

Decision-making process

3.10 As indicated by their technical descriptions above, the choice between the wide range of alternative types of retaining structures will depend mainly on a “total cost of ownership” analysis, taking into account:

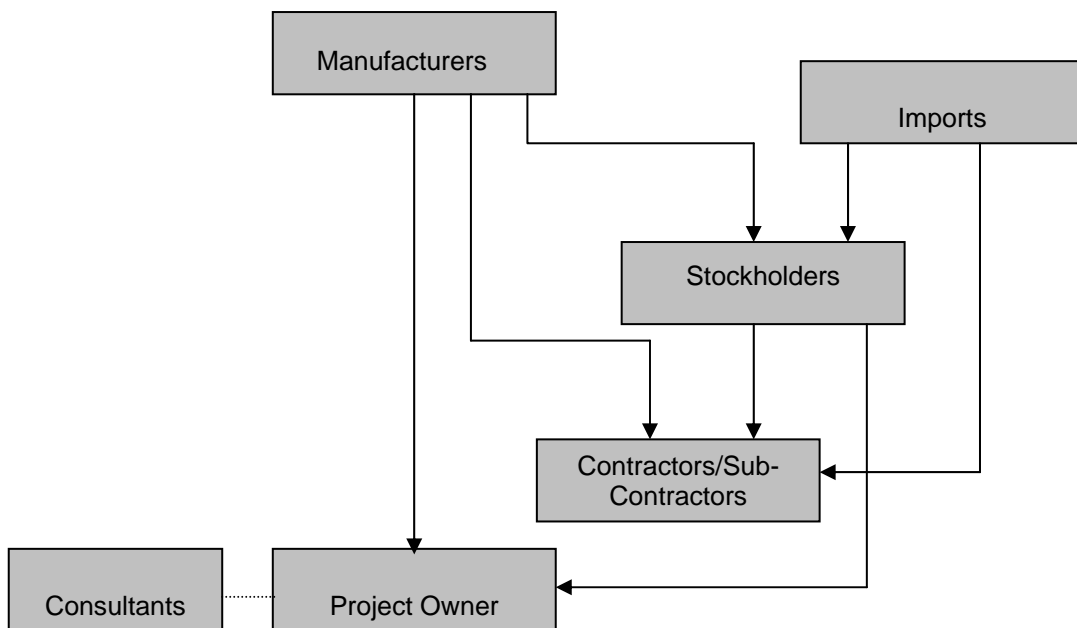
- engineering costs;
- cost of materials;
- cost of fabrication;

- cost of maintenance during the expected life span; and
- cost of disposal after the expected lifespan.

The specifications elaborated by the project owner will also need to be taken into account. These will typically include:

- technical considerations, such as ground conditions, speed of construction, depth of the excavation, structural loadings, mechanical and hydraulic characteristics (in maritime and river work);
- aesthetical and environmental considerations (such as noise and vibration requirements);
- reliability, quality and lifespan of product;
- speed and practicality of maintenance;
- reliability of supplier; and
- the previous experience of the contractor/project owner with a particular material.

3.11 The competitive pressure upon HRSSP (which should be seen as a typical “project business” product) is indicated by the way in which contracts are let. By way of background here, the diagram below illustrates the chain of supply in the HRSSP segment in Europe and the UK:



3.12 As described below, it is typical for there to be four stages in the bidding process involved in deciding which retaining structure to use. There is fierce price competition at each of these stages. Since new HRSSP is only used for approximately 10% of retaining structures, alternative methods (and in particular concrete-based solutions) will usually be chosen over sheet piles at each stage of the bidding process.

3.13 A typical decision-making scenario is as follows:

- The first stage of the decision-making process involves a project owner approaching a number of consultant designers who tender to run the contract. At this stage the requirement will be set very broadly, with all options open as regards the type of retaining structure to be used.
- At stage two, each consultant would usually contact a large number of contractors (eg perhaps around seven, but sometimes up to twenty for larger projects). Viewed overall, these contractors can be expected to put forward solutions in a number of materials. The consultant will typically put at least four solutions up for further consideration before selection and final design. Thus a material choice will exist between concrete-based, steel-based and other types of retaining structure.
- At stage three, and even if the consultant's chosen design utilises HRSSP (which is only true in a minority of cases), the competing contractors will not only put forward "compliant" bids based on HRSSP but will commonly also offer "non-compliant" bids in other products if they believe it to be a more economical or effective solution – i.e. a material choice will remain. The proposal of such non-compliant bids may be the result of contractors' specific strengths and knowledge in the use of particular material and temporary conditions, such as the availability at that moment of particular construction machines, etc.
- Stage four involves the contractor entering into further negotiations with suppliers and subcontractors. Even at this stage, it is possible that a material choice will remain between the different types of retaining structure available (and in any event there will be intense competition between the suppliers of the preferred product).

3.14 In this way, even if HRSSP is the preferred option at any stage of the process, there is always a very good chance that concrete or another material will eventually be chosen at a later stage. Indeed, and as noted, in approximately 90% of cases new HRSSP will *not* be chosen.

3.15 Specifically as regards stage two, in practice it can be expected that a consultant will contact one or more contractors specialising in: (i) steel; (ii) concrete and/or (iii) both concrete and steel (and indeed any of the other alternatives available). Thus even if one of these contractors chooses only to work with a particular technique other contractors invited to tender by the project owner can be expected to work with other techniques. In that way, the competing tenders submitted by the contractors will reflect the competition between the different types of retaining structure⁴.

3.16 As regards price (which, as indicated above, is only one consideration taken into account when choosing a type of retaining structure), Arcelor can only provide a rough overview of some comparative prices for the principal types of structure, namely that the price of diaphragm walls can range from [CONFIDENTIAL] per m² (depending on thickness and other factors), and that of bored piles from [CONFIDENTIAL] per m². HRSSP, and also cold formed sheet piling, typically ranges from [CONFIDENTIAL] per m² and combi walls range from [CONFIDENTIAL] per m². However, calculating such prices is very difficult (and it is not possible to provide similar examples for other types of retaining structure) because overall the installation of retaining structures involves very many other project-specific

⁴ Arcelor considers that the Competition Commission should bear this important point in mind when reviewing third party submissions. In particular, some submissions may be from steel-specific contractors, who will indicate that they do not work with other materials. However, this will not be representative of the overall picture described above.

factors for which the cost must be taken into account. These include access to the site (for example, in a waterside site costs will increase dramatically if access is not possible from the land side), required limits on noise and vibration and available transport and technology. Thus pricing information in its simplest form should be seen as only one of a range of relevant factors.

- 3.17** The OFT's referral decision, at paragraph 10, makes the point that Arcelor does not monitor the price of concrete on a systematic basis. Presumably the OFT's inference here is that this indicates that concrete-based retaining structures are not in the same product market as steel-based. However, that is an incorrect interpretation of the facts: whilst indications on the overall price evolution of concrete and certain concrete structures are easily available, from experience Arcelor considers that these indicators are of very limited use. This is because, as noted above, the simple mass unit price of concrete is insufficient to compare the cost of concrete retaining structures against that of HRSSP retaining structures, given the variability of pricing in individual cases and the variety of alternative technical solutions with different cost structures available for every project. In consequence, Arcelor has found it to be a waste of management resources to attempt to track general concrete prices very closely. The fact that it is not done does not, therefore, indicate the lack of competitive pressure from alternative types of retaining structures.

Interchangeability

- 3.18** As noted above, a wide range of alternative products substitute for each other within the overall market for retaining structures. Therefore previous European Commission decisions have, at the very least, recognised the existence of significant competitive constraints on the supply of HRSSP in the form of other products. Most recently, they have left precise market definition open, and acknowledged the level of competition from other products.

- 3.19** For instance, in Decision 88/461 (relating to a specialisation agreement between Arbed and Unimétal), the European Commission stated:

"For sheet piling, Arbed and Unimétal together cover 43% of Community production (240 000 tonnes). [...] Despite the apparently large market share, it should be emphasised that the situation on the market is bad, which means that the agreement will help to restructure the Community market for the products in question. The parties concerned also have to compete with imports from third countries and substitute products, eg concrete and tubular constructions. This competition will prevent Arbed and Unimétal from determining prices". (paragraph 15)

- 3.20** Similarly, in Decision C93/2033 (relating to a concentration between Arbed and Usinor), the European Commission stated:

"On its traditionally "reserved" market, sheet piling is increasingly subject to the competitive pressure of other products, such as gravity retaining walls or reinforced concrete walls, diaphragm walls, reinforced earth, pre cast unit walls, products which offer better solutions for impermeability problems, corrosion problems, or even geometry problems or stability problems." (paragraph 34)

- 3.21** Again, in a case from 2000 (Case ECSC 1328 HSP/Salzgitter), the European Commission stated:

“Sheet piling [...] is increasingly facing competition from alternative solutions involving competing materials such as cold rolled sheet piles.” (paragraph IV)

- 3.22** Most recently, in a decision from 2003⁵, the European Commission left the product market open, recognising that other kinds of retaining structures such as wood, reinforced concrete, plastic piles, vinyl and cold-rolled sheet piles can be used as an alternative to hot rolled sheet piles.
- 3.23** In the UK, too, Government guidelines stipulate the standards necessary in certain types of public construction projects, and define the range of alternatives which are available. For example, as regards embedded retaining walls and bridge abutments in the road and bridge sector the relevant Government Standards document (BD 42/00) refers throughout to sheet piling, concrete diaphragm walls and various types of concrete piled walls⁶. The specified standards apply to all construction and improvement schemes for trunk roads in the UK.
- 3.24** Similarly, Arcelor’s experience confirms that there are substantially no situations where HRSSP is the only feasible choice (although, and as indicated in the product descriptions given above, there are some situations where its physical characteristics may give it an advantage over some other types of retaining structure). In other words, in substantially all cases there is a technically acceptable alternative which may be preferred from the start or which will be selected if the cost of HRSSP becomes excessive. Moreover, and as discussed further below, sheet piles are increasingly being superseded by other types of retaining structures (even in their traditional maritime and river work applications), eg because of their lack of rigidity and susceptibility to corrosion and leaks.
- 3.25** The OFT’s referral decision cited only one example of an application where third parties had maintained that HRSSP was the *only* viable option. This was for retaining structures used in temporary excavation works⁷. This advantage arises because HRSSP can be removed when the works are finished without being destroyed (which would not be the case for concrete structures). Even here, however, new HRSSP faces competition from recycled sheet piling – eg as previously removed from other temporary excavation works, and as rented out by trading companies (Arcelor considers it could easily be reused at least 5-6 times, and could sometimes be reused up to 20 times). This widespread use of recycled sheet piling is indicated in the table of “UK market shares” of the different types of retaining structures provided above. Cold formed sheet piling could also be used for temporary applications. Further consideration of competitive conditions specifically as regards the temporary structures segment is provided in paras 10.15-10.18 below.
- 3.26** The OFT’s referral decision also cites some third party views that HRSSP would be the “typical” choice in marine and river work. Once again, Arcelor considers this goes too far: although this is a traditional field of use for HRSSP, concrete solutions easily dominate overall, and the balance appears to be shifting still further in favour of concrete over time (see further below).
- 3.27** Arcelor therefore considers that the relevant product market is for retaining structures overall, and not for HRSSP considered in isolation.

⁵ Case M.3192 Thyssenkrupp/HSP/Hoesch/JV, para 11.

⁶ See <http://www.official-documents.co.uk/document/deps/ha/dmrb/vol2/sect1/bd4200.pdf>

⁷ i.e. retaining structures can either be used for permanent or temporary construction applications. A permanent application is “stay-in-place” where the structure is driven and remains in the ground. A temporary application provides access and safety for construction in a confined area. Once the work is completed, the structure is removed.

3.28 In order to explore in more detail the interchangeability between HRSSP and other retaining structures, in September 1999 Arcelor commissioned Coyne et Bellier (an international civil engineering company) to prepare a survey on the European market for HRSSP and alternative products ("the Survey"). Although this Survey considers the retaining structures market on a European level, Arcelor considers that the highlighted characteristics of the market are equally applicable to the UK (and still hold good today). These findings clearly support Arcelor's view that HRSSP and alternative retaining structures are part of the same product market.

3.29 The main findings of the Survey can be summarised as follows:

- Project owners (which are mainly public authorities) increasingly either only specify the functions to be fulfilled by the works or explicitly provide that "sheet piles or alternatives" may be used. This means that the choice of retaining structure type is nowadays generally left to private contractors, who are even more price-sensitive (and open to innovative products) than public authorities have been in the past. Contractors will therefore choose between the wide range of alternative retaining structures available for a given project on the basis of numerous technical and economic factors.
- In the application of *terrestrial excavations* (which, as noted, is easily the most common application of retaining structures), alternative retaining structures (mainly diaphragm walls, Berlin walls, soil nailing and bored piles) may be preferred over HRSSP (and this preference is increasing over time), in particular for the following reasons:
 - (i) HRSSP is normally prohibited in densely populated towns, because of the noise and vibrations associated with its installation, as well as its lack of rigidity (which can compromise the stability of adjacent buildings). As noted, if silent driving is required then this can double HRSSP installation cost (whilst this is not the case with concrete);
 - (ii) many project owners or contractors do not use HRSSP because of problems with corrosion and leaks, as well as for aesthetical considerations;
 - (iii) the limited life span of HRSSP (eg in contrast to concrete structures) renders it less competitive for works involving long duration (and such works are becoming increasingly common); and
 - (iv) fire protection and safety regulations constitute a considerable barrier to using sheet piles in works such as underground car parks, cut-and cover-tunnels, etc.
- HRSSP is also losing ground in the segment for *terrestrial applications for fill structures*, mainly for reasons of height, adaptability, cost and visual appearance. Alternative products include gravity retaining walls made from reinforced concrete units, masonry, gabions and crib walls, as well as reinforced earth. For instance, the use of reinforced earth structures increased world-wide by almost 1300% in the last 20 years. As a result of the competing products available in both the terrestrial fill and excavation segments, HRSSP has drawn no or little benefit from either the increase in civil engineering work or from the concomitant rise in work in the non-residential sector. This clearly indicates the strength of alternative products.

- In the traditional field of application of HRSSP – *maritime and river work* - too, substitutes for HRSSP are increasingly popular, as follows:
 - (i) with regard to major harbour works, the depth of quays is becoming increasing large, so that major container ships can be accommodated. In this segment, diaphragm walls and combi-walls offer the most appropriate solutions and, as such, they are increasingly preferred over sheet piles. Concrete caissons are also increasingly being used in the harbour segment because they are considered to be more economical and safer than sheet piles (as noted, sheet piles are sensitive to corrosion and thus have a shorter life span than concrete structures); and
 - (ii) even for works of reduced height/depth covering long lengths (such as long canals), which have traditionally been a stronghold of HRSSP, there is a growing resistance to using steel in the natural environment. This is because of a range of aesthetical and technological issues associated with HRSSP in this segment - eg HRSSP's sensitivity to corrosion and its less-than-perfect impermeability. Thus in this segment too other methods, such as wooden, PVC or concrete piles, or cold-formed sheet piling, are increasingly preferred over HRSSP.
- The Survey also pointed out that as many specialists consider alternative solutions to HRSSP, it is becoming less common for HRSSP techniques to be taught to young engineers. Thus overall knowledge of HRSSP is decreasing in the civil engineering community.

3.30 Arcelor considers that the findings of the Survey are particularly relevant to the UK, as follows:

- As is the case across Europe, UK project owners increasingly either only specify the functions to be fulfilled by the retaining structure works or explicitly provide that "sheet piles or alternatives" may be used.
- The concrete industry is particularly strong in the UK, and in fact the market volume for HRSSP in the UK dropped from 84,460 tonnes in 1990 to 71,000 tonnes in 2003. This is despite the fact that there has been a significant increase in construction/civil engineering work in the UK, for instance for the period 2001 to 2003 by 4 to 16% each year (depending on the segment)⁸.
- Arcelor is also aware that from 1997 to 2000 the use of (new) HRSSP for retaining wall application dropped by 11.5%, whereas the use of precast concrete and *in situ* concrete increased by 20.5 and 40.1% respectively⁹. Even in the period 2001-2003, when there was a slight increase in sales of HRSSP (5.4% overall), this increase was proportionately less than that experienced even in the most static of the construction/civil engineering segments. Arcelor therefore considers that this data evidences the ongoing shift from steel solutions to concrete solutions in the UK. However, Arcelor considers that its more technologically advanced and economic HRSSP product range will allow it to compete more effectively with the alternative forms of retaining structures than was the case for Corus.

⁸ Source: New Civil Engineer Contractors File magazine – July 2003.

⁹ Source: Construction Markets, March 2001 (more recent data is unavailable).

- In the UK, contractors (who, as noted, are particularly price-sensitive and so open to alternative and innovative products) account for approximately [CONFIDENTIAL]% of the demand for HRSSP. As discussed further below, these leading contractors are typically major international construction companies with considerable buying power, eg Edmund Nuttall, Dew Pichmastic, Mowlem, Birse and Volker Stevin (trading as Steel Foundations).
- In general, UK contractors work with the full range of retaining structures described above (although, as noted, some will have preferred approaches and/or specialise in one particular type). For instance, most of the contractors in the UK who are members of the European Federation of Foundation Contractors (“EFFC”) offer a variety of “retaining walls”¹⁰. Similarly, the Federation of Piling Specialists (“FPS”) lists its UK members and the kind of “piling” systems offered by each of them¹¹.

3.31 Arcelor therefore considers that the weight of evidence clearly supports a product market definition for retaining structures overall. At the very least, and as acknowledged on several occasions by the European Commission, it is entirely clear that the wide range of alternatives available to HRSSP exercise a very considerable competitive restraint on the HRSSP segment.

4 Geographic Dimension

4.1 Given that combined market shares are below 10% at both the European and UK levels on the basis of a product market for all retaining structures (which, as above, Arcelor considers to be the correct approach), the correct geographic market definition is only of relevance in the event that the Competition Commission identifies a distinct market for HRSSP. In this case, the appropriate geographic frame of reference is clearly European-wide.

4.2 In its preliminary investigation, the OFT acknowledged that imports into the UK from Europe have placed increasing competitive pressure on UK HRSSP prices, and so that competition now takes place on a European level. Arcelor agrees with this approach. More specifically, Arcelor consider that the segment for HRSSP is, at the least, EFTA-wide (i.e. EU 25, Iceland, Liechtenstein, Norway and Switzerland).

4.3 This is further evidenced by the fact that over 20% of the UK’s consumption of HRSSP in each of the last three years was imported into the UK, and that following this transaction the UK has been entirely supplied by producers based in Europe, i.e.:

- Arcelor (Luxembourg);
- Salzgitter (Dortmund, Germany);
- Huta Katowice (Katowice, Poland); and
- Vitkovice (Ostrava-Vitkovice, Czech Republic).

4.4 In its previous decisions the European Commission has also defined the geographic scope of the segment for HRSSP as (at least) EU wide¹².

¹⁰ see <http://www.foundationworld.org.uk/jsp/effc.jsp?lnk=210&country=united%20kingdom> for a list of EFFC members in the UK.

¹¹ see www.fps.org.uk.

¹² eg Case IV/ESCS.1243 - *Krupp Hoesch / Thyssen*, para 25.

- 4.5** In the recent *Thyssenkrupp/HSP Hoesch/JV* decision, for example, the European Commission acknowledged the parties' arguments as to why the geographic market was at least EU-wide: transport costs were not a determining factor¹³, there were only three main production plants across the EU 15 (which, together with the competing plants in Poland and the Czech Republic, served all European customers) and there was a substantial level of cross-border trade.
- 4.6** The international nature of trade is also evidenced by the high level of exports outside Europe made by most of the European-based players. For instance, Arcelor exports about [CONFIDENTIAL]% of its sales to the US, Asia, Middle East and South America. Before its closure, Corus also made significant exports outside the EFTA region, eg to Asia, the Middle East and the US.
- 4.7** Against this background, Arcelor considers that the appropriate geographic frame of reference for the HRSSP segment of the overall retaining structures market is, at the least, EFTA-wide.

¹³ This was also recognised in Case ECSC 1328 *HSP/Salzgitter*, where the appropriate geographic market was left open. Arcelor estimates transport costs at c.5-10% of sales price, depending on the distance over which the products are transported.

D. The Acquisition

5 Description of the Transaction

- 5.1** On 27 April 2004 Corus agreed to sell the Corus UK Business to Arcelor. The transaction completed on 30 April 2004.
- 5.2** The Corus UK Business comprised goodwill, 13 sales personnel, know-how and techniques relating to the following aspects of Corus' UK steel HRSSP business:
- supplier and customer lists including UK mailing lists;
 - product development and design information for the UK;
 - UK sales, marketing and promotional information;
 - specifications, drawings, data, instruction and training manuals, handbooks, plans, instructions, formulae, test results, reports, project reports, testing procedures and tables of operating conditions for the UK;
 - UK market forecasts, UK customer credit limits, UK customer payment history and UK transport rates; and
 - technical and other expertise.
- 5.3** The Corus UK Business has now been fully integrated into Arcelor's activities in the UK.
- 5.4** For the year ended 3 January 2004, the Corus UK Business' turnover was £[<70] million. However, Arcelor acquired no ongoing contracts from Corus¹⁴, meaning all the existing customers of the Corus UK business were free to switch suppliers if they so wished – eg to Salzgitter (which has a more long-standing UK presence than Arcelor).
- 5.5** The total consideration for the acquisition was [CONFIDENTIAL].
- 5.6** The acquisition did not include Corus' HRSSP mill at Scunthorpe (where Corus had produced the product previously sold by the Corus UK sales team). This was because that capacity was not required by Arcelor, which has its own production plant in Esch-Belval, Luxembourg. This plant has sufficient capacity to meet the demands of the UK market and is more efficient than Corus' Scunthorpe mill. It was therefore clear from the outset of negotiations that Arcelor would not need to acquire the Scunthorpe mill. Throughout the negotiations, therefore, Arcelor assumed that Corus would close its heavy sections mill in Scunthorpe and, since this was the only Corus mill that produced HRSSP, exit the segment. Indeed, Corus closed the mill on 6 July 2004.
- 5.7** In order to be able to guarantee the effective transfer of the entire goodwill of Corus' UK commercial operations, and in line with standard contractual practice, the parties included a non-compete clause in the agreement. In the absence of such a clause, it would theoretically have been possible for Corus to produce HRSSP through substantial investment in some of its other mills (such as its heavy section mill at Teesside or its remaining Profiles mill at Scunthorpe). However, Arcelor had no reason to suspect Corus would do so in practice – i.e. the non-compete was included simply as a standard contract term.

¹⁴ This was agreed so as to ensure supplies to current Corus customers were not disrupted and also to allow Corus to close the mill in an orderly fashion (i.e. it needed to run down production gradually).

5.8 The Competition Commission's request for a main submission from Arcelor also queries the history of any previous relationships between Arcelor and Corus. [CONFIDENTIAL].

5.9 [CONFIDENTIAL]

E. Purpose and Effect of the Acquisition

6 Purpose of the Acquisition

- 6.1** As has been widely publicised, Corus has experienced considerable financial difficulties in recent years. In May 2003, it launched its “Restoring Success” initiative, which included a significant UK restructuring programme. Arcelor understand that this transaction represented a part of that Corus restructuring programme. Although Corus can no doubt provide the Commission with further details, Arcelor believes that Corus has been looking for a purchaser for at least part of its HRSSP activities for some time.
- 6.2** As discussed more fully below, Arcelor believes that the Corus HRSSP business had made significant losses for some time. Whilst it was probably still profitable in the UK considered in isolation, limiting the business to the UK market alone would have increased these losses even more (due to economies of scale foregone). Thus Arcelor believes that Corus would have exited HRSSP manufacturing altogether in the near future in any event, i.e. even in the absence of this transaction. For example, Corus’ press release upon the divestiture includes a comment by Andrew Page (MD of Corus Construction & Industrial) that: “We are taking action to focus on those areas that offer us scope for growth and profitability”, and the press release adds that Corus will be making a substantial investment in steelmaking and production facilities for rod and plate products at Scunthorpe, but that the heavy section mill (which produced the HRSSP) will be closed.
- 6.3** From Arcelor’s perspective, the transaction offered the chance to obtain a significant and steady presence in the UK. Prior to the transaction, Arcelor had only made sporadic and minor sales of HRSSP in the UK ([CONFIDENTIAL]).
- 6.4** It is of course the case that, had Corus simply exited, Arcelor would have expected to pick up a share of the business previously satisfied by Corus. However, Arcelor’s presence in the UK market prior to this transaction was in absolute terms minor and sporadic, and in relative terms significantly smaller than that of Salzgitter. By acquiring Corus UK’s commercial operations in the way provided for by this transaction, Arcelor addressed this by obtaining a specialised and competent sales team with good customer introductions. This was intended to enable Arcelor to obtain within a short time span a significant and steady presence in the UK.

7 Counterfactual

- 7.1** Although Corus will clearly be able to supply the Commission with more detailed information here, Arcelor is convinced that Corus would have exited from HRSSP absent this transaction. So far as the economic difficulties facing Corus are concerned, Arcelor would note:
- The Corus mill was old and inefficient with high running costs. No investment had been made in the plant for a considerable period of time.
 - In consequence, Corus was progressively falling behind in the technical development of sheet piles. In particular, it failed to develop the wider, and so more

economical, Z shaped product¹⁵ despite the investment of substantial time and resources in the attempt. Arcelor is aware that Corus underwent three years of trials in trying to develop this product and Arcelor further believes that it is becoming increasingly difficult for a manufacturer to compete effectively if it is unable to produce the wider, more economical Z shapes.

- Corus' own management acknowledged the difficulty it faced at the time of the announcement of the closure of the Scunthorpe mill: a Corus management spokesman said Corus had an inferior product range in this area, and there were a number of new entrants moving into what was already a situation of oversupply¹⁶.
- Although Arcelor has not seen Corus' figures, it is convinced that its HRSSP activities were loss making overall (i.e. whilst probably profitable in the UK, this would not compensate for losses elsewhere). The OFT's referral decision notes Corus' confirmation of this. The fierce price competition initiated by Salzgitter in mid-2003 will only have exacerbated those losses.
- The speed with which Corus closed the mill (within 10 weeks after sale of the UK commercial operations to Arcelor) is a clear indicator that it had previously decided upon closure. Closure of a rolling mill has a long lead time: since orders for steel rolls are often placed up to a year in advance, considerable foresight is needed to be able to adequately reduce or cease purchases, correct employment procedures must be followed (eg union consultation, etc), contracts with energy suppliers must be given sufficient notice of a cessation of supply and a re-orientation of semi-product flows and allocations must be carried out and completed.
- Furthermore, Arcelor understands that as early as October 2003 Corus announced its intention to move all activity other than sheet piles (eg beams) away from the Scunthorpe mill to other mills and to reduce its shifts, so that Arcelor believes the Scunthorpe plant was operating at just [CONFIDENTIAL] capacity from 1 January 2004. The trade press confirms that Corus' Scunthorpe mill was operating at less than half of its annual capacity last year. From experience, Arcelor knows that it is almost impossible to keep a mill running profitably under such conditions. Finally, on 28 April, a spokesman for Corus' management suggested that an exit from the sheet piles sector was inevitable: "We are investing an amount of money which has not been invested for almost 10 years in this site and it's to underpin a competitive position for this site in some products. Sadly, that means products we don't see a means of attaining a competitive position in we have to exit, and the consequence is a mill closure"¹⁷. Consequently, preparation for closure must have been under way for many months before that, and would also have become increasingly irreversible over time.

¹⁵ The advantage of the Z product is that it has a greater strength/weight ratio, which makes it more efficient, cheaper and faster to install. However, each type has specific advantages and disadvantages, and so the decision between them depends on the project concerned and may also be influenced not only by purely technical considerations but also by past experiences, regional habits and preferences, etc.

¹⁶

<http://www.thissscunthorpe.co.uk/displayNode.jsp?nodeId=152576&command=displayContent&sourceNode=152559&contentPK=9750726>

¹⁷

<http://www.thissscunthorpe.co.uk/displayNode.jsp?nodeId=152576&command=displayContent&sourceNode=152559&contentPK=9750497>

- Thus the fact that the mill would be closed was clearly anticipated by both sides during the negotiations for the transfer of the commercial activities. Indeed, its closure formed a necessary part of the planning for the orderly transfer of Corus' commercial operations to Arcelor: for example, it had to be reflected in the terms of the sale of the business because provision was made for Arcelor to supply Corus with the HRSSP that it required to fulfil any uncompleted orders after closure of the mill.

7.2 Had Corus exited HRSSP in the absence of this transaction, then – as the OFT points out – the result would have been competition between the other players for its previous customers. Thus the Corus UK business would have been allocated amongst Arcelor, Salzgitter, Vitkovice, Huta Katowice and importers into the EU. Given that on the correct Europe-wide geographic market definition this transaction led to Arcelor's [CONFIDENTIAL]% EFTA share of supply of HRSSP increasing by only [CONFIDENTIAL]% (see further paragraph 9.3 below), it follows that if this transaction had not taken place Arcelor's share would still have increased above [CONFIDENTIAL]% to at least some extent – i.e. the resulting structure of supply at the EU level would not have been significantly different.

8 Effect of the Acquisition on Competition – Overview

8.1 Arcelor considers that this transaction cannot be expected to lead to a substantial lessening of competition. This is because of the very low market shares as regards the overall market for retaining structures, the limited competitive impact even as regards the segment for HRSSP in the UK (given Arcelor's limited presence there, and the fact that Corus was a largely passive player), the strong levels of competition (both from other forms of retaining structures and other producers of HRSSP) and other characteristics of the HRSSP segment, including a highly competitive bidding process and considerable buyer power. Arcelor also considers that the transaction will result in considerable customer benefits in the UK, eg as a result of its better product quality and overall level of technological development.

8.2 Each of these points is considered in more detail below.

9 Market Shares

Retaining structures

9.1 On an overall retaining structures market, Arcelor and the Corus UK Business' activities can be summarised as follows:

- the Corus UK Business was active only in HRSSP (although Corus itself may be active in cold formed); and
- Arcelor is active in:
 - (iii) HRSSP, at the Esch-Belval plant in Luxembourg;
 - (iv) cold rolled sheet piling, at the Messempre mill in France (although its output here is very small, at c.[CONFIDENTIAL] tonnes pa); and
 - (v) HZ-type bearing piles, at the Differdange mill in Luxembourg, though output here is again quite small (up to [CONFIDENTIAL] tonnes pa).

- Arcelor’s sales of cold rolled and HZ-type bearing piles into the UK have been marginal [CONFIDENTIAL]
- All three production units are wholly owned by ProfilARBED. Each product is rolled on a dedicated production line that does not afford the possibility of switching between these products without prohibitive investment¹⁸.
- Thus this transaction concerns only HRSSP – i.e. that is the only area where there was any overlap between Arcelor and the Corus UK Business.

9.2 On this basis, Arcelor estimates the parties’ combined market shares at less than 10% at both the UK and European levels. Turnover figures are also low – eg the parties’ combined UK turnover was only [CONFIDENTIAL].

HRSSP activities

9.3 As noted already, Arcelor considers the correct geographic frame of reference for HRSSP to be at least the EFTA region. On this basis, the parties’ (and their competitors’) sales and shares of supply over the last five years are estimated as follows¹⁹:

Company	1999		2000		2001		2002		2003	
	Sales (t)	Share	Sales (t)	Share	Sales (t)	Share	Sales (t)	Share	Sales (t)	Share
Arcelor ²⁰	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]
Corus UK	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]
[Corus non-UK]	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]
Salzgitter/HSP ²¹	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]
Vitkovice	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]
Huta Katowice	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]
Others	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]
TOTAL		100%		100%		100%		100%		100%

Source: Based on Arcelor own delivery figures, Eurofer, amtliche Ausfuhrstatistik and Arcelor’s estimates.

[ALL FIGURES DELETED AS CONFIDENTIAL]

¹⁸ Nor could any of Arcelor’s other sections-production facilities be expected to switch to HRSSP production, again for technical reasons.

¹⁹ NB These EFTA market share figures differ slightly from those previously supplied to the OFT as Arcelor has checked the underlying Eurofer data and saw that it included several non-EFTA countries (Russia, Turkey, Croatia, Ukraine, Byelorussia). Thus Arcelor has removed sales to these countries in the table above.

²⁰ Also including HZ-type bearing piles (although, as above, Arcelor’s sales of these are much less significant than for HRSSP). Arcelor is unable to provide figures for HRSSP alone as it does not know how whether or not its competitors also include these products in their figures (in particular, Salzgitter is active in HZ-type).

²¹ These figures combine the data for Salzgitter and HSP prior to their merger in 2000.

- 9.4** Thus the increment arising from this transaction is only [CONFIDENTIAL]%. It should be noted that Corus' non-UK share of supply (i.e. [CONFIDENTIAL]%) should not be aggregated with Arcelor's, as Arcelor only acquired assets relating to the UK business. It did not contract to buy the non-UK commercial operations.
- 9.5** It is also notable from these share of supply figures that, prior to this transaction, the Corus UK Business was not one of the major EU players: its share of EFTA supply was only [[CONFIDENTIAL]% (compared with [CONFIDENTIAL]% held by Arcelor and [CONFIDENTIAL]% held by Salzgitter). Furthermore, its weak product range and declining efficiency have already been described above. In other words, Arcelor considers that overall the previous Corus business should be regarded as a largely passive player, rather than a strongly competitive force on the market.
- 9.6** As the previous Corus UK Business is best regarded as being a largely passive player, as a result of this transaction the UK's market structure has simply become more like that existing in the rest of Europe – i.e. with two large players, two significant East-European based competitors and a range of importers. As EU prices have not exceeded UK prices to date, it therefore follows that there is no reason to suppose that this transaction can be expected to have an adverse impact on UK prices.
- 9.7** Considering only the segment for HRSSP in the UK, the parties' (and their main competitors') sales and shares of supply over the last five years are estimated as follows:

Company	1999		2000		2001		2002		2003	
	Sales (t)	Share	Sales (t)	Share	Sales (t)	Share	Sales (t)	Share	Sales (t)	Share
Arcelor ²²	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]
Corus UK Business	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]
Salzgitter/HSP ²³	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]
Vitkovice	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]
Others	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]	[..]
TOTAL		100%		100%		100%		100%		100%

Source: Based on Eurofer, amtliche Ausfuhrstatistik and Arcelor's estimates.

[ALL FIGURES DELETED AS CONFIDENTIAL]

- 9.8** From the above, it will be seen that Arcelor's UK share of supply was [CONFIDENTIAL]% in 1999 and again in 2002, [CONFIDENTIAL]% in 2000 and 2001, and only rose to [CONFIDENTIAL]% in 2003. In other words, Arcelor's presence has traditionally been very limited in the UK and its sales have been sporadic.

²² Also including cold formed and HZ-type bearing pile (although, as above, Arcelor's sales of these are much less significant than for HRSSP, and particularly so in the UK). Arcelor is unable to provide figures for HRSSP alone as it does not know how whether or not its competitors also include these products in their figures (in particular, Salzgitter is active in HZ-type and Corus cold formed).

²³ These figures combine the data for Salzgitter and HSP prior to their merger in 2000.

- 9.9** Indeed, Arcelor's total HRSSP sales in the UK from [CONFIDENTIAL] accounted for [CONFIDENTIAL], the vast majority of which was achieved from [CONFIDENTIAL]. 2003 was the first year in which Arcelor was able to supply significant output to the UK. This was due to the fact that demand in the Netherlands (a key market for HRSSP, together with Germany) fell considerably in that year²⁴, thus freeing up capacity for business expansion into the UK. Arcelor was further motivated by the fact that the construction of a new beam mill in Belval would free up further capacity in the near future at the existing mill.
- 9.10** Other imports into the UK have come mainly from the Czech Republic (Vitkovice), as well as from Poland (Huta Katowice) and various non-EU companies based mainly in Japan, South Korea and the US.
- 9.11** The decline over time in Corus' share of the UK HRSSP segment (which was previously as high as [CONFIDENTIAL]%, in 1995) is indicative of high competition and the increasing internationalisation of the industry – eg HSP (now Salzgitter) entered the UK in 1996 and very quickly established its presence in the market. In recent years, it has maintained a significant share (eg [CONFIDENTIAL]% in 2003). The OFT's referral decision also notes that Corus' weak product range resulted in it being unable to compete effectively with other suppliers.

10 HRSSP Competitors

- 10.1** Even leaving aside competition from other types of retaining structures, the share of supply figures for HRSSP given above illustrate that Arcelor also faces considerable competition from several other producers of HRSSP, both in the UK and the EFTA region. These competitors, their levels of overall EU capacity and their sales in 2003 can be summarised as follows (with competitor capacity and sales figures taken from the OFT's referral decision):

EU 2003 sales/capacity of steel piling

Producer	Capacity	EU Sales
Arcelor	[500-600,000]	[CONFIDENTIAL]
Corus UK	[150-250,000]	[CONFIDENTIAL]
Salzgitter	[300-400,000]	[CONFIDENTIAL]
Vitkovice	[100-200,000]	[CONFIDENTIAL]
Huta Katowice	[100-200,000]	[CONFIDENTIAL]
Others	-	[CONFIDENTIAL]
Total:	[1,000,000-1,500,000]	[CONFIDENTIAL]

- 10.2** Moreover, all of these producers have considerable spare capacity. Arcelor's own capacity utilisation in 2003 was [CONFIDENTIAL]%, and it estimates the equivalent figures for the above competitors as follows: Corus UK ([CONFIDENTIAL]%), Salzgitter ([CONFIDENTIAL]%) Vitkovice ([CONFIDENTIAL]%) and Huta Katowice ([CONFIDENTIAL]%)²⁵. However, as regards these competitors the figures are Arcelor's

²⁴ For instance, the sales volume for HRSSP in the Netherlands was 183,501 in 2001, but only 103,602 tonnes in 2003.

²⁵ [CONFIDENTIAL]

broad estimates only, as Arcelor does not have any detailed knowledge of their actual output and additional sales above those cited by the OFT (i.e. outside the EU).

- 10.3** As noted by the OFT, from the figures in the table above it is clear that Salzgitter's spare capacity alone (at [CONFIDENTIAL] tonnes) comfortably exceeds total UK HRSSP demand (at [CONFIDENTIAL] tonnes).
- 10.4** Also on capacity utilisation, [CONFIDENTIAL] indicated that European HRSSP consumption in 2003 amounted to only [CONFIDENTIAL]% of available capacity (at maximum shift operation) owned by Arcelor, Corus and Salzgitter. Even allowing for closure of the Corus Scunthorpe mill (with [CONFIDENTIAL]% of the capacity owned by Arcelor, Corus and Salzgitter), European HRSSP consumption in 2003 would only have amounted to [CONFIDENTIAL]% of the capacity retained by Arcelor and Salzgitter (and [CONFIDENTIAL] of consumption was supplied by Huta Katowice and Vitkovice).
- 10.5** In addition to these other suppliers of new steel sheet piling, and as noted already, Arcelor also faces competition from suppliers of reused steel sheet piling – eg for use in temporary retaining structures.
- 10.6** Each of these sources of competition are considered in more detail below.
- 10.7** **Salzgitter** is a very well established competitor in the HRSSP business with an excellent reputation in the market. It has considerable financial resources and very good access to customers in the UK and the EFTA region as a whole. In the UK, Salzgitter sells through the stockist Rainham Steel. In other EFTA markets it sells through Thyssen Krupp GfT. In 2000, Salzgitter acquired Hoesch Spundwand und Profil GmbH ("HSP"). [CONFIDENTIAL].
- 10.8** **Huta Katowice** is a subsidiary of Ispat Polska Stal ("IPS"), formerly known as Polskie Huty Stali SA ("PHS"). The PHS group was formed in 2002 when four Polish steel companies merged (Huta Katowice S.A., Huta T. Sendzimira S.A., Huta Florian S.A. and Huta Cedler S.A). The PHS group was acquired by LNM Holdings ("LNM") in February 2004. LNM is the second largest steel producer in the world and operates integrated steel plants in Algeria, Kazakhstan, Romania and the Czech Republic. LNM has indicated that it plans to invest €450 million in the PHS group between now and 2009. [CONFIDENTIAL].
- 10.9** **Vitkovice** is a State-owned Czech company which has 1,600 employees. Last year, it achieved sales of Czkr 9.1 billion (approx £192 million) and gross profits in excess of Czkr 200 million (approx. £4.2 million). The Czech National Property Fund has indicated that it intends to privatise Vitkovice by the end of October 2004²⁶. LNM launched a bid for the company earlier this year but this was rejected. LNM nevertheless remains interested and has indicated it is ready to participate again in the privatisation process. Severstal (Russia's second largest steel producer) and Ukraine's Industrial Union of Donbass ("IUD"), with the support of Czech steelmaker Trinecke Zelezarny, have also declared an interest in bidding for the company.
- 10.10** Considering both Huta Katowice and Vitkovice together, the OFT's decision did cite some third parties as querying the quality of their output and their available capacity. Arcelor considers this to be entirely unfounded: [CONFIDENTIAL]

²⁶ The privatisation of Vitkovice was postponed after the collapse of the former Social Democrat-led coalition Government in the Czech Republic. The new Government, also led by the Social Democrats, "is expected to put [the company] up for sale in the next of months", according to the trade press (Steelweek, 24/09/04).

10.11 [CONFIDENTIAL]

10.12 [CONFIDENTIAL].

10.13 Other Imports. In addition to Salzgitter, Vitkovice and Huta Katowice, imports into the UK/EFTA represent another effective competitive constraint. There are a number of suppliers from Japan (eg Kawasaki Steel Corp, Nippon Steel Corp, NKK Corp, Tokyo Steel, Sumitomo), South Korea (eg INI Steel), the US (eg Chaparral, Nucor) and Thailand (eg Siam Yamato Steel) which compete on the EFTA market, including the UK. For instance, in 2001 and 2002 imports from Japan (2,016 tonnes and 2,907 tonnes respectively) accounted for [CONFIDENTIAL] respectively of sales in the UK.

10.14 The OFT's referral decision notes some submissions to the effect that US imports are not viable in the EU due to their use of a different interlocking system. Arcelor considers this to be incorrect – whilst a different interlocking system is used in the US, there is no reason why it cannot be used in the EU (and the fact that US imports do come in demonstrates this). Similarly, Salzgitter's product uses a different interlocking system for Z-piles. Furthermore, by cutting off the interlock of a sheet pile of one manufacturer and welding it onto the sheet pile of a second supplier, one may at minimal cost allow a switch between two suppliers.

10.15 Suppliers of reused sheet piling. As noted already, retaining structures can be used for temporary as well as permanent construction applications. As discussed in paragraph 3.25 above, temporary applications are the only type cited in the OFT's referral decision where third parties had maintained that HRSSP was the only viable option. However, whilst HRSSP does have an inherent advantage over concrete in the temporary structures sub-segment, there is a strong competitive constraint on new HRSSP prices arising from the widespread use of reused and rental sheet piles for temporary applications. These reused sheet piles are supplied by stockists/trading companies such as Evans 2000, Beaver 84, Raynham, Steel Foundations²⁷, Hy-ten, Allied Piling²⁸ and Sheet Piling UK. Indeed, Arcelor estimates that around [CONFIDENTIAL]% of overall sheet piling sales in the UK relate to used sheet piling.

10.16 With particular regard to retaining structures used in temporary applications, Arcelor would also add that:

- the product ("simple piles") is very much standard, eg with reusability, rather than weight and quality advantages²⁹, being the main selection criteria. The contractor will also be able to consider design at a point in time much closer to the start of construction. This is in contrast to other applications, which require a range of much more engineering-based solution to be considered and offered well in advance;
- sales can be quickly and easily made through a local stockist - i.e. these stockists act as further competitors, and are readily accessible sources of supply of sheet piling product for use in temporary applications in the UK and elsewhere; and
- the supply through stockists means that ability of the manufacturer to achieve "Just in Time" delivery is of secondary importance.

²⁷ Also trading as Volker Stevin, and part of the Volker Wessels Group.

²⁸ [CONFIDENTIAL].

²⁹ Indeed, less economical sizes of piling may actually have an advantage for temporary uses, as they tend to be sturdier and so withstand repeated use better than lighter, more economical shapes.

10.17 Thus even if HRSSP is selected for a temporary structure, there is likely to be fierce competition from across Europe for its supply from contractors own stocks (both new and second-hand), stockholder materials (new and second-hand), subcontractor stocks (new and second-hand) and imports (new and second-hand).

10.18 Indeed, it is not uncommon for stockholders to offer used sheet piling for some projects for permanent application, thereby putting additional competitive constraints on the price of new sheet piling overall.

11 Barriers to Entry

11.1 The construction of a new HRSSP mill would require significant investment, of several million pounds. However, such a mill would only be necessary to compete within the permanent segment of the HRSSP sector – i.e. new entry into the temporary uses segment of HRSSP would be very much cheaper.

11.2 Whilst the costs of initial entry into permanent applications are significant, the costs of expansion and diversification (once initial entry has been achieved) are relatively low. Thus:

- firms can free ride on many of the R&D activities of their competitors and copy most of their successful products³⁰;
- firms can similarly free ride on the pre-sales activities of their competitors: for example, if one supplier works with a contractor to develop an appropriate technical solution, that contractor can readily invite competitors to quote against that solution;
- stockists are available as a means of securing physical distribution and representation;
- frequent selling opportunities arise because jobs are awarded on a project-by-project basis following a tender procedure;
- customer lists can easily be obtained through trade associations and the like; and
- there are no particular legal or regulatory barriers to entry.

11.3 Therefore further expansion and product diversification by existing HRSSP producers clearly remains viable. As noted, other suppliers also have substantial spare capacity - eg Salzgitter, as well as Huta Katowice and Vitkovice (who have of course recently gained full access to the expanded EU). Similarly, it is very easy for a producer based in one country to expand its sales elsewhere – eg as evidenced by Arcelor's and Salzgitter's growing of their UK sales.

12 Customers and Buyer Power

12.1 As explained above, in general terms manufacturers of HRSSP sell to building contractors, stockists and end users (such as governmental agencies). In the UK, however, contractors account for approximately [CONFIDENTIAL]% of the demand for HRSSP. The role of contractors and stockists is very significant because, in addition to being major customers

³⁰ Corus' inability to copy Arcelor's Z-profile reflected the technical inability of its mill to cope with that product: see paragraph 7.1 above.

of the manufacturers, they also compete with the manufacturers in the supply of HRSSP to other suppliers/users.

- 12.2** Project contractors usually have significant influence over the choice of retaining product. These contractors are particularly price-sensitive, and so are inclined to work with the full range of retaining structures and be open to alternative and innovative products. They also have substantial buying power: Arcelor estimates that the top ten head project contractors would usually account for [CONFIDENTIAL]% of HRSSP sales to contractors overall. In the UK, as well as in Europe overall, these large customers are typically major international construction companies such as Balfour Beatty, Amec, Birse, Kier and Murphy.
- 12.3** Even smaller contractors are under increasing cost pressures from their customers (i.e. public authorities and private investors), and so generally negotiate hard with all their suppliers for better prices.
- 12.4** There is no brand loyalty or any “incumbent suppliers” in the industry – i.e. competition starts afresh with each new tender. Nor are there any long term contracts or pricing arrangements which restrict the freedom of customers to switch.
- 12.5** As noted above, project owners increasingly either only specify the functions to be fulfilled by the works or explicitly provide that “sheet piles or alternatives” may be used. Even where HRSSP is specifically requested by a project owner, the decision to use HRSSP will be based on a number of complex factors and a different project owner could easily have come to a different view and requested a different structure (or not specified at all). In this way, even where HRSSP is specifically required, this does not preclude the fact that other alternative solutions would have been equally appropriate.
- 12.6** Even if it were the case that HRSSP were the only option for a particular application, the competitive significance of that fact would be limited because at the time the quotation is given to a contractor the supplier may not know the purpose for which the product will ultimately be used. Subsequently, if the project proceeds, the supplier may well find out the nature of the project, but by that time the upper limit of its pricing parameters have already been set in its initial quotation. Furthermore, and even if the supplier is aware of end use, the supplier’s need to retain the contractor’s goodwill will discipline his pricing behaviour as regards individual contractual negotiations.

13 Competitive Bidding Process

- 13.1** The vast majority of jobs in the HRSSP/retaining structures industry are awarded in the UK (as well as in the EFTA region as a whole) on a project-by-project basis, following a tender procedure (be it formal or informal). In most cases, contractors approach a number of HRSSP and alternative retaining structure suppliers for quotes. For instance, even a project for which HRSSP has already been selected in principle, and which then goes out to tender to four or five contractors (which is typical), can easily generate around twenty enquiries for HRSSP products and ten “non-compliant” enquiries for alternative products. This is because each contractor would, in turn, approach a number of HRSSP and alternative retaining structure suppliers for quotes, thus normally using prices of competing products to constrain prices of HRSSP.

13.2 Equally, it would not be unusual for an end customer to request quotes from all three “types” of supplier, i.e. from manufacturers, from stockists and from contractors³¹ (although, as noted above, contractors account for c. [CONFIDENTIAL]% of UK demand for HRSSP). Furthermore, once the initial bids come through, it is common for the contractor/project owner to re-submit the enquiry to the cheapest suppliers to obtain the final and most competitive price. This bidding characteristic means that there is renewed fierce competition every time a job is put to tender.

13.3 Thus levels of competition (from both competing products and other suppliers of HRSSP) in projects where contractors are in principle prepared to use HRSSP are extremely vigorous. For instance, Arcelor understands that Corus’ average prices (individual prices are project-tailored and may vary significantly) in the UK dropped by [CONFIDENTIAL]% from 1999 to 2003.

14 Customer Benefits

14.1 As noted already, Arcelor considers that both its product and service offering is considerably superior to that of the previous Corus UK Business. Therefore UK customers will benefit considerably from this transaction.

14.2 In particular:

- Arcelor’s product is of higher quality than Corus’ - eg it is lighter overall, which makes its installation easier and cheaper for the customer;
- Arcelor is a considerably more innovative player than the previous Corus UK business (which, as noted already, had become a largely passive player). For example, Arcelor has successfully developed the more economical, Z-shaped product, which Corus had failed to do; and
- Arcelor is fully committed to continue developing its product range so as to enhance its competitiveness against the wide range of alternative retaining structures available. The volume increase resulting from this transaction will improve the cost recovery in respect of Arcelor’s R&D efforts and thus encourage Arcelor to invest in these activities.

14.3 The Competition Commission’s Merger Reference Guidelines emphasise that where relevant an assessment of competitive conditions in a given market should take account of respective levels of entrepreneurial and innovative skills across competitors, and also stress the importance of higher quality, greater choice and greater innovation to customers³².

15 Current Conditions in HRSSP supply

15.1 With specific regard to the HRSSP segment (as Arcelor does not have access to any detailed pricing information as regards the other types of retaining structures), Arcelor’s recent UK and EFTA prices are set out in the table below. Please note here that:

³¹ As explained above, contractors and stockists compete with manufacturers in the supply to end customers and contractors respectively. This means that they will try to negotiate prices as low as possible so that they can make a margin when they on-sell the goods further down the distribution chain. Generally, stockists obtain the lowest prices from manufacturers, with a discount of around [CONFIDENTIAL] per tonne.

³² See, for example, paras 1.20 and 4.37.

- the table also includes the cost at EBITDA level which Arcelor incurred over this period; and
- the majority of “post merger” prices (which comprise the average figure below) were actually set prior to the merger taking place, as it is standard practice for there to be a time lag of several weeks between quoting prices and completing orders.

£	1999	2000	2001	2002	2003	2004 Q1 & Q2	Post merger
EU/EFTA price	[..]	[..]	[..]	[..]	[..]	[..]	[..]
UK Price	[..]	[..]	[..]	[..]	[..]	[..]	[..]
EBITDA cost	[..]	[..]	[..]	[..]	[..]	[..]	[..]

* [CONFIDENTIAL]

** [CONFIDENTIAL]

[ALL FIGURES DELETED AS CONFIDENTIAL]

- 15.2** The table shows that Arcelor’s prices in the UK have fluctuated as its presence in this country was slowly established. Most recently, there has been an increase in prices from 2003. This has coincided with a significant increase in EBITDA cost, and the main factor affecting the EBITDA cost has been a dramatic increase in the price of raw materials (principally scrap, which may account for c.40-60% of finished product cost³³): [CONFIDENTIAL]. The table also illustrates that the implications of the increase in EBITDA cost (particularly post-merger) were also felt at an EU/EFTA wide level. Furthermore, price increases in HRSSP have lagged behind price increases of scrap, as well as of other steel products, considerably, which is further evidence of the extremely competitive nature of HRSSP supply.
- 15.3** Scrap prices have increased primarily due to an increase in demand (especially from China and other developing countries) which has led to a shortage in world-wide supply. Indeed, the trade press has reported that China is buying approximately one third of all steel scrap sold worldwide, at virtually any price. Freight, energy and iron ore prices have also risen. Those conditions have affected all steel producers and all steel products, and have been widely publicised in the trade press – eg as many mills have been forced to introduce “scrap surcharges” where possible. Arcelor therefore considers that, had Corus remained in the market, it too would have been forced to raise its prices, as it has done in other products. Indeed, Arcelor understands that it was Corus’ intention to introduce sheet piles price increases in July of this year (just as it publicly announced a “supplementary charge” in January 2004).
- 15.4** When scrap prices stopped increasing in March 2004, [CONFIDENTIAL]. However, scrap prices rose strongly again in July and August 2004, renewing the pressure on steel manufacturers to increase prices further.
- 15.5** Additionally, there are inherent lags in the pricing process in the overall retaining structure market. Orders may be placed as long as a year in advance, and thereafter in the event of a steel producer’s raw materials price rise it is very difficult for that supplier to pass on that

³³ Additionally, every scrap price increase of 1 £/t translates into a production cost increase of [CONFIDENTIAL] because of the yield of the manufacturing process.

price rise to the customer – eg as the customer will be constrained by public budgetary limits, and so will not have been prepared to accept any provision for a price increase in the event of a rise in input costs in the original contract. Thus it is only when the next contract is up for tender that the HRSSP producer's quote will reflect his increased costs, and so lead to the customer considering a shift to alternative types of retaining structure, such as concrete. Given that Arcelor had traditionally had only a very limited presence in the UK, but has now acquired a larger number of new customers, it follows that its UK price rises would have been expected to rise more sharply than elsewhere in the EU.

16 No Unilateral Effects

16.1 Arcelor does not believe that the transaction is likely to result in any anti-competitive unilateral effects, in particular for the following reasons:

- Customers will continue to be able to switch to the best rival product to HRSSP in the event of an increase in prices by Arcelor, and/or to competing HRSSP suppliers, such as Salzgitter, Vitkovice, Huta Katowice or importers.
- Furthermore, because jobs are placed in response to tenders on a project-to-project basis, customers can easily switch suppliers and frequently do so.

17 No Coordinated Anti-Competitive Effects

17.1 Equally, Arcelor does not believe that the transaction would result in any coordinated effects.

17.2 Firstly, there is no indication that HRSSP suppliers could find any workable means of establishing terms of coordination. HRSSP is not homogenous - i.e. product varies, in terms of underlying technology (eg U and Z-shaped products), quality, innovation, water-resistance and resistance to corrosion. This is also a bidding market. This environment is inherently hostile to the formation of an arrangement of tacit collusion or coordination.

17.3 Secondly, there are significant differences between Arcelor and its largest competitor, Salzgitter, in particular in terms of shares of supply, geographic strength and cost structure (eg Salzgitter buys some semi-finished input based on iron ore from third parties while Arcelor manufactures this in-house – i.e. relies mainly on scrap). Any coordination is unlikely in such market conditions, as is also evidenced by the fact that there is aggressive price competition across Europe, including in the UK. Arcelor and Salzgitter in particular also offer tailored “solutions” to their customers, rather than just selling quantities of steel, making any co-ordination still more difficult to sustain.

17.4 Thirdly, as outlined above, transactions are individually negotiated and so HRSSP manufacturers can never know with a sufficient degree of certainty the price at which its rivals are selling – i.e. there is no price transparency in the industry, as customers generally ask for specific project-tailored prices. The only real market intelligence available to competitors is from the customers themselves, who have every reason not to provide reliable information. This means that it would be very difficult to detect any deviance from tacit coordination.

17.5 Fourthly, there is a range of effective external constraints and de-stabilising influences in the HRSSP segment, in the form of concrete suppliers and the like, as well as smaller players (such as the importers) that would always be seen as credible players by customers.

