COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 53/LM/Jun06

In the matter between:

MITTAL STEEL COMPANY N.V. Acquiring Firm

and

ARCELOR SA Target Firm

Panel	:	D Lewis (Presiding Member), Y Carrim (Tribunal Member), and M Mokuena (Tribunal Member)
Heard on	:	16 August 2006
Order issued on	:	16 August 2006
Reasons issued on	:	24 November 2006

REASONS FOR APPROVAL

Approval

[1] The Competition Tribunal issued a Merger Clearance Certificate on 16 August 2006 approving without conditions the proposed merger between Mittal Steel Company N.V. ("Mittal Steel") and Arcelor SA ("Arcelor").[1]

The parties and the merger transaction

[2] Mittal Steel is a public company listed on the New York and Amsterdam stock exchanges. Mr Lakshmi Mittal and his wife, Mrs Ursha Mittal, together control Mittal Steel.[2] In South Africa, Mittal Steel currently owns approximately 52% of Mittal Steel South Africa Ltd ("Mittal SA").

[3] Arcelor is a public company listed on the Paris, Brussels, Madrid and Luxembourg Stock Exchanges. No individual shareholder or group of shareholders exercises direct or indirect control over Arcelor (whether on an

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[1] The proposed transaction is referred to by Arcelor in its merger filing as an 'unsolicited (and hostile) takeover bid' launched by Mittal Steel. *See page 608 of the merger record.*

[2] Both Mr and Mrs Mittal exercise control over Mittal Steel through direct ownership of Mittal Steel class A common shares and through indirect ownership of holding companies that own both Mittal Steel class A common shares and Mittal Steel class B common shares.

individual or collective basis).[3] Arcelor controls a number of firms worldwide. In South Africa, Arcelor controls 1 operational subsidiary, being Arcelor International South Africa (Pty) Ltd ("Arcelor South Africa"). Arcelor has recently registered a further company in South Africa known as AMSA Steel Service Centre ("AMSA"). AMSA had not commenced operations and had no business activities or premises as at the date of the hearing of this merger notification.[4]

[4] In terms of the proposed transaction, Mittal Steel will acquire the majority of the outstanding share capital, voting rights in, and convertible bonds of Arcelor. Mittal Steel intended to implement the proposed deal / offer by way of a public bid to Arcelor shareholders through three (3) offers.[5] As a result, if the bid is consummated and if the condition is not waived, Mittal Steel will acquire sole control over Arcelor.[6]

Rationale for the transaction

[5] From Mittal Steel's perspective, the proposed transaction will combine two largely complementary businesses, both in terms of geographic presence and product offerings,[7] and thus resulting in the creation of a European-based global steel supplier with approximately 10% of worldwide crude steel production. Mittal Steel further claimed that the proposed transaction would lead to lower costs, enhanced research and design (R&D), better service to a globalising customer base, better resistance to business cycles, and improved access to growth opportunities in emerging economies. Based on its considerable experience in integrating acquired businesses, Mittal Steel anticipates the proposed transaction to generate cost synergies in the region of US$ 1 billion annually by 2009 (approximately 1.5% of the combined entity's 2005 sales). Mittal Steel further averred that this would also benefit customers.

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[3] As at 31 December 2005, the major shareholders in Arcelor's entire share capital are the State of Luxembourg (5,62%); Corporation JMAC BV, Aristrain (3,55%); Walloon Region (SOGEPA) (2,4%); various Arcelor employees (0,9%); and the remainder of Arcelor's shares (87,48%) are held by members of the public.
[4] See pages 585 and 596 of the merger record.
[5] These being (1) a primary mixed cash and exchange offer for Arcelor shares consisting of 4 new Mittal Steel shares and €35.25 in cash for every 5 Arcelor shares; (2) a secondary cash offer consisting of €28.21 per Arcelor share; and (3) a secondary exchange offer consisting of 16 new Mittal Steel shares for every 15 Arcelor shares. Mittal Steel's offer is subject, *inter alia*, to Arcelor shareholders' tendering more than 50% of Arcelor's total issued share capital and voting rights on a fully diluted basis. Mittal Steel has the right to waive this condition at its discretion. See page 552 as well as pages 611-613 of the merger record.
[6] See page 552 of the merger record. It is submitted that Arcelor's shareholders initially contested the Mittal Steel takeover bid which resulted in the proposed bid being treated as a hostile one. According to the Commission, Arcelor's shareholders later accepted a revised bid and thus effectively eliminating the hostile takeover. *See footnote 6 of the Commission Recommendation.*
[7] Arcelor is principally active in Western Europe and South America, with only minor operations in North America (excluding Dofasco), Eastern Europe, and Asia. In contrast, Mittal Steel is active principally in North America, Central and Eastern Europe, Africa, and Kazakhstan, with only a minor presence in Western Europe and no presence in South America.

We consider it unnecessary for our purpose to consider further any of the expected efficiencies proffered by Mittal Steel.[8]

The relevant market

[6] The merging firms are global entities which operate through their respective subsidiaries worldwide, including South Africa. We will for purposes of this transaction outline these parties' activities in the global market (to a limited extent) as well as in South Africa (in greater detail).

[7] Internationally, both Mittal Steel and Arcelor manufacture and distribute steel products in diverse segments of the industry. They produce a range of finished and semi-finished carbon steel products. Mittal Steel sells these products through centralised marketing organisations to customers over 150 countries. Its products are used in a diverse range of applications such as the appliance, engineering, construction, automotive and machinery industries. Mittal Steel has steel operations in sixteen (16) countries covering four (4) continents and sales and marketing offices in a further eleven (11). As already alluded to above, Mittal Steel's operations are located in South Africa, Kazakhstan, North America, and Central and Eastern Europe. It has only a minor presence in Western Europe (in either production or distribution) and no presence in South America. The Arcelor Group's principal activity is the production, processing and distribution of a wide range of steel products. The Arcelor Group operates in four key market segments – flat carbon steel, long carbon steel, stainless steel, and Arcelor Steel Solutions and Services. The Arcelor Group manufactures for different market segments like the automotive industry, construction, household appliances, packaging and general industry. Arcelor is principally active in Western Europe and South America, with only minor operations in North America (excluding Dofasco), Eastern Europe, and Asia.[9]

[8] In South Africa, both Mittal Steel and the Arcelor Group are represented through their respective subsidiaries, viz., Mittal Steel South Africa Ltd ("Mittal SA"), and Arcelor International South Africa (Pty) Ltd ("Arcelor"). The activities of each of the merging parties insofar as it concerns South Africa are described below.

[9] Mittal SA has four (4) production facilities, viz., Vanderbijlpark Steel[10] and Saldanha Steel[11] (which produce flat finished products) and Newcastle (an integrated steel works) and Vereeniging Steel (an electric arc-furnace based

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[8] For a detailed outline of the expected efficiencies, please see pages 556-558 of the merger record as well as pages 24-26 of the Commission Recommendation.

[9] Post-acquisition, the Arcelor-Mittal would have its geographic presence in Western Europe; U.S and Canada; Eastern Europe; Africa; Central and South America.

[10] The merger filing reflected that Mittal Steel currently produces different flat finished steel products at its Vanderbijlpark works from slab to colour coated sheet. A certain percentage **[confidential]** of the steel output is exported, mainly to the Far East.

steel works).[12] The latter two plants produce long finished steel products comprising rolled and forged carbon, alloy and stainless steel profiles.

[10] Most of Mittal SA's output is sold domestically although the share of output sold on international markets is considerable. Asia is its largest export market. Significant quantities of its products are sold to customers in other parts of Africa and Europe. The majority **[% Confidential]** of Mittal Steel's finished steel sales in South Africa are flat finished carbon steel products[13] sold mainly into the construction sector.

[11] Apart from the aforementioned activities, Mittal SA is also involved in a number of other activities in South Africa where it holds various interests. These include a 50% interest it holds in Macsteel International Holdings BV ("Macsteel");[14] a 60% interest in Collect-A-Can (a beverage can recycling and de-tinning); 50% in Consolidated Wire Industries; and a 50% in Ensimbini Terminals (stevedoring).

[12] In South Africa, Arcelor Group is not involved in the manufacturing of steel products. Arcelor Group only imports products for distribution into South Africa via Arcelor International (Pty) Ltd, a South African subsidiary. According to the Commission, Arcelor SA does not run any stocking operations, but sells directly to end users.[15] The Commission further advised that Arcelor SA predominantly supplies specialised material which is either not produced by the local steel mills or, if produced locally, the local steel mills do not have the capacity to cater for the demand of such products in the South African market.[16]

[13] The Commission submitted that there are four broad categories of steel products, viz., carbon steel; stainless steel; highly alloyed steel; and silicon products. It is the Commission's view that within each steel product category,

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[11] The majority of the flat finished steel produced at the Saldanha Steel plant is exported – approximately 45% of the total production is of ultra-thin hot rolled coil ("UTHRC"), (hot rolled products with a thickness of 1,0 to 1,5 mm), for stringent applications in the domestic and select export markets. The remainder of its products is of thicker gauge material.

[12] All of the production facilities of Mittal SA produce blooms, billets, slabs, plates, hot rolled sheet, hot rolled steel plate, hot rolled steel strip, cold rolled steel sheet, cold rolled steel strip, electro-galvanised steel sheet, hot dip galvanised steel sheet, colour coated steel sheet, tin plate, forgings, hot-finished seamless tubes, cold-drawn seamless tubes, reinforcing bar sections, rail (medium), special sections, structural sections, bar, rod, light, medium and heavy sections and manufactured products including window and fencing profiles. An integrated metallurgical by-products division, Mittal Coke and Chemicals, supports such production facilities. This division is primarily involved in the manufacturing of coke (coal used in iron and steelmaking furnaces) and other chemical by-products such as coal tar pitches, which are supplied to the ferroalloy and aluminium industries in Southern Africa.

[13] These being hot-rolled, cold-rolled, galvanised, hot dip, coated steel strips and sheets.

[14] Macsteel is a joint venture company owned in equal parts by Mittal SA and Macsteel Holdings (Pty) Ltd. Macsteel Holdings (Pty) Ltd is the name of the joint shareholder in Macsteel, which through its subsidiaries, operates as a steel merchant in South Africa and abroad.

[15] The Commission indicated that Arcelor SA is basically a trader which sells on a CFR South African Port Basis.

[16] See page 5 of the Commission Recommendation.

there are two main types of steel products, i.e., flat products; and long products.[17]

Product overlap

[14] As can be seen from the above, Mittal SA manufactures and supplies steel domestically, and also supplies steel outside South Africa. Arcelor SA has no manufacturing facilities in this country – it only imports these products ('semi-finished and finished') for distribution purposes only.[18] Having said that, it therefore remains clear that the merged entity's activities in South Africa overlap with regards to the supply of steel products.[19] It therefore follows from the above that the merging parties' activities overlap quite significantly internationally. The merging parties compete internationally at a manufacturing level and effectively on all levels downstream whereas in South Africa they compete at a distribution/supply level.

[15] The Commission's investigation with regards to the South African market revealed that a horizontal overlap exists between the merging parties' activities. That is to say that the merging parties are involved in the supply of finished and semi-finished steel products.[20]

Geographic market

[16] Both the Commission and Mittal SA submitted that the scope of the geographic market in all of the above product segments is at least as wide as South Africa. They further argued that the geographic market could conceivably be international in scope because of the consistent and growing trade flows in relation to most steel products.[21] It is not necessary for us to make a finding in this regard.

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[17] We will not for present purposes describe each product and its production process. For more detail and illustration thereof, please see pages 7-16 of the Commission Recommendation; 559-568, 628-656 of the merger record.

[18] The Commission and the merging –parties advised us that neither party is involved in stockholding or service centre activities in South Africa. It was said that steel manufacturers may generally sell their products directly to customers or through stockholding centres, steel service centres or other distributors (e.g., traders) that are independent or integrated within steel manufacturers. See also pages 8-12 of the transcript dated 16 August 2006.

[19] According to Mittal SA, the overlap between itself and Arcelor for purposes of the present transaction relates to their activities in the area of carbon steel. It further submitted that whilst Arcelor has a presence in the stainless steel segment, neither Mittal nor Arcelor are active in high-alloy steel. From a functional point of view, Mittal submitted that the merged entity's activities overlap with regards to the distribution and/or supply of semi-finished (blooms and billets) and finished steel products (flat finished products and long finished products). The flat finished products being quarto plates, hot rolled strips and sheets, cold rolled strips and sheets, hot-dip galvanised steel, electro-galvanised steel, colour coated steel, and tin plates. Long-finished products being bars, wire rods, and light sections. *See pages 558-559 of the merger record*. .

[20] See footnote 19 *supra*, e.g., Mittal SA's submission on this point, and Commission Recommendation, page 17.

[21] See page 17, paragraph 4.2 of the Commission Recommendation as well as page 568 of the merger record.

Competition analysis

[17] We pointed out above that the merging parties are global steel manufacturers. Internationally, there are quite significant numbers of other steel producers.[22] In South Africa, we have other players which are generally not regarded as significant compared to Mittal SA, such as Highveld Steel, Scaw Metals, Cisco, and Cape Gate. Following the approval of the present transaction (locally and abroad), the merged entity will become a global steel company (Arcelor-Mittal) three times as large as its closest rival, Nippon Steel. In other words, Arcelor-Mittal will be the world's number one steel company, and a leader in all major global markets, including automotive, construction, household appliances and packaging, with leading R&D and technology, as well as sizeable captive supplies of raw materials and outstanding distribution networks. According to the merging parties, Arcelor-Mittal will have a balanced geographic diversity within all the key steel markets (both developing and developed) with an industrial presence in 27 countries across Europe, the Americas, Asia and Africa.

[18] In South Africa, we have already pointed out - as submitted by the merging parties - that Arcelor SA partakes in the local steel industry through imports as it does not have local manufacturing facilities. In comparison, Mittal SA has four (4) production plants locally.

[19] Following its investigation, the Commission provided us with the market shares of the merging parties which relate to their local steel products.[23] The merging parties derived their market share estimates from their respective sales of the year 2005. Mittal SA's semi-finished steel products (i.e., billets and blooms) represents around 73,3% whilst Arcelor SA's is 0,17%. With regard to finished steel products (flat steel products) such as plates, hot-rolled flat finished steel; etc, Mittal SA's market share is approximately 77,74 whilst Arcelor SA has 1,9%. In the long products market segment, Mittal SA has 64,9% market share whilst Arcelor SA enjoys 0,43%.

[20] According to the merging parties, there exist other local suppliers such as Scaw Metal and Davsteel within the semi-finished steel market segment. They further submitted that imports constituted approximately 3,3% of the total domestic supply of which Arcelor's imports constituted only 20%. Mittal SA estimates that 80% of imports into South Africa were from sources other than Arcelor. With regards to the finished steel product in the plates segment for example, Mittal SA submitted that imports constitute approximately 3,1% of domestic supply in *toto*.[24] The Commission and the merging parties further

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[22] These include producers such as Nippon Steel; JFE; Posco; Shanghai Baosteel; US Steel; Corus Group; Nucor; ThysssenKrupp; Riva Acolao; Gerdau; Sumitomo; Evraz Holding; SAIL; Anshan; Magnitogorsk; China Steel; Severstal; and Others.

[23] The estimates of the market shares were based on figures provided by the South African Iron and Steel Institute ("SAISI").

[24] Mittal SA estimates that 84% of imports were from sources other than Arcelor SA. According to the merging parties, there are other local suppliers of plates such as Highveld Steel.

provided market share figures pertaining to the long steel products. In the wire rod segment for example, Arcelor SA's share of the market segment represents around 0,3%.[25] Mittal SA submitted that imports constitute approximately 3,3% of the entire local supply whilst the estimated 90% of imports were from other sources except Arcelor SA.[26]

[21] In light of the above, the Commission argued that the existence of the other local manufacturers mentioned above would help ensure that the merged entity face ongoing competition not only from the local manufacturers, but also from imports which are escalating annually.[27] According to the Commission, the merged entity's market share post-merger would increase by 1,3% with respect to the overlapping products.[28]

[22] Although we agree with the Commission's view that Arcelor SA is a *de minimis* supplier in South Africa as it partakes in the local steel market through imports into South Africa, we note the averment in Arcelor SA's merger filing that *"foreign steel mills (such as Arcelor) find it difficult to compete in the South African market owing to local market conditions such as exclusivity agreements that exist between locally based steel mills and the three largest steel merchants in South Africa (being Macsteel, Trident and Kulungile)"*.[29] However when asked to elaborate this submission, the merging parties averred that no such exclusive arrangements exist.[30] While, for the purposes of deciding this

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[25] Other local producers in this market segment include Dav Steel; Scaw Metal; and Highveld Steel.
[26] The Commission submitted that it has verified the published figures for the determination of market shares and that all the market shares for Arcelor SA were calculated with reference to all imports for long products originating from Belgium, Luxembourg and Spain as well as all imports for flat products originating from Belgium, Luxembourg, Spain and France. According to the Commission, there are at least 10 categories of flat steel products and 21 categories of long steel products categorised under finished and semi-finished steel products. Following its assessment, the Commission found that Arcelor effectively competes in 7 of the finished and semi-finished flat steel categories and in 3 of the 21 long steel products. The Commission concluded that Arcelor's entire market share for all finished and semi-finished flat and long steel product segments would be 0,49%. *See page 18 of the Commission Recommendation*.
[27] According to the Commission, these imports come from countries such as India, Brazil, Japan, Taiwan, Korea, Australia, EU, etc. See also Mr Lafaro's testimony, page 17 of the transcript, where he emphasised the Commission's finding that imports have increased by 26,3%.
[28] It is the Commission's further view that such increment in market share would even be less particularly taking into consideration that there are more finished and semi-finished product categories in which Arcelor SA does not compete. In addition, the Commission argued that the proposed transaction would result in a limited horizontal effect in the local industry given the small increment of the market shares in the affected product categories even without considering substitutable products.
[29] See paragraph 12.1.1 of Arcelor SA's Form CC4(2), page 614 of the merger record. Also referred to on page 20 of the Commission Recommendation.
[30] See page 3 of the transcript. Upon questioning by the Tribunal Panel, the legal representative of the Arcelor SA responded as follows: *"As regards the context of the statement that was in the merger filing the instruction is that at the time of presenting this transaction to the Competition Commission Arcelor was the subject of a hostile takeover. They had incredible limited time within which to put this filing together on top of which the presence of Arcelor in South Africa is negligible as you can see from the filing. So what this represents was their preliminary views on*

matter, it is not necessary to get to the bottom of this issue, we simply observe that both averments cannot be true.

Public Interest

[23] Mittal Steel anticipated that there would be no negative effect on employment in South Africa as a direct result of the proposed merger.[31]

Conclusion

[24] In light of the reasons set out above, we are satisfied that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in the relevant markets. We accordingly approve the proposed transaction unconditionally.

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D Lewis
Presiding Member

Y Carrim and M Mokuena concurring.

Tribunal Researcher: T Masithulela

For Mittal Steel	:	Adv. A. Cockrell instructed by W*ebber Wentzel Bowens*
For Arcelor SA	:	M. Garden (*Edward Nathan Corporate Law Advisors*)
For the Commission	:	HB Senekal (Mergers & Acquisitions) assisted by K Theron (Legal Services)

what they perceive the position in South Africa to be like. The filing was made on the basis that it was really under duress and under extreme time pressure".

[31] Mittal Steel submitted that it is committed to maintaining a strong presence within the geographic scope of Arcelor's present markets, and Mittal Steel intends to respect existing wage and other employment related agreements. *See page 6, 551, (as well as page 69) of the merger record.* Given the nature of the proposed transaction, Arcelor was unable to comment with any degree of certainty on the effects of the proposed transaction on Arcelor's employees in South Africa and employment in the broader South African steel sector. *See page 587 of the merger record.*