



DETERMINATION OF MERGER NOTIFICATION M/08/030 – Celsa/BRC/McMahon

Section 21 of the Competition Act 2002

Proposed acquisition by Celsa Steel Service (UK) Limited of joint control of BRC McMahon Reinforcements Limited

Dated 23/10/08

Introduction

1. On 25 September 2008, the Competition Authority (“the Authority”) was notified on a mandatory basis of the proposed acquisition by Celsa Steel Service (UK) Limited (“Celsa UK”), of a jointly controlling interest in BRC McMahon Reinforcements Limited (“BRC McMahon”). The other undertaking holding the remainder of the shares and a jointly controlling interest in BRC McMahon is James McMahon Limited (“McMahon”), a subsidiary of Derevoia Holdings Limited. The proposed transaction was notified under section 18(1)(a) of the Competition Act 2002 and meets the monetary thresholds set out in that provision.

The Undertakings Involved

The incoming acquirer of joint control: Celsa UK

2. Celsa is a Spanish-based company which is active throughout the EEA in the manufacture of a range of steel products. The purchasing subsidiary for the purposes of the proposed transaction is Celsa UK. Celsa UK, whose operations are based in Cardiff, is a subsidiary of Celsa (UK) Holdings, which is the holding company for subsidiaries active in the manufacture of certain types of steel products, in particular, reinforcing steel products.
3. Celsa sells reinforcing steel products (i.e. mesh wire rods (“MWR”), reinforcing bars (“rebar”) and reinforcing coil (“coil”)) and other steel products to fabricators in the State, such as BRC McMahon.
4. Celsa also processes/distributes reinforced steel products in Spain, Scandinavia and, through BRC UK, from locations in Great Britain. BRC UK also exports a limited amount of processed reinforcing steel product into the island of Ireland, which is distributed by BRC McMahon and others.

The other holder of joint control: McMahon

5. McMahon, the holder of the other jointly controlling interest, is active as a timber importer and builders provider with sales made to the trade, building contractors and private customers. The timber engineering division of McMahon is located in Limerick and manufactures roof designs.

6. It also holds a 50% jointly controlling interest in BRC McMahon. McMahon distributes a limited amount of processed reinforcing steel product to its customers in the island of Ireland, with BRC McMahon being its principal supplier of this product. The value of reinforcing steel product supplied by BRC McMahon to McMahon in its last financial year was approximately €[...].

The target: BRC McMahon

7. BRC McMahon processes MWR (manufactured by upstream suppliers such as Celsa) into reinforcing mesh. BRC McMahon has two processing facilities in Co. Tipperary and Co. Tyrone. At these facilities, reinforcing mesh is processed and then distributed by BRC McMahon to building and construction industry customers, largely in the State, although some customers are located in Northern Ireland. Occasionally, sales are made outside the island of Ireland. BRC McMahon also distributes a limited amount of reinforcing steel product (i.e. rebar) to its building industry customers.

Analysis

8. The proposed transaction does not give rise to any significant horizontal overlap between the activities of the parties in the State¹. Celsa supplies reinforcing steel products at the upstream level and BRC McMahon is involved in the processing/distribution of reinforcing steel products for the building and construction industry at the downstream level.
9. In terms of vertical overlap, the parties operate at different levels of the supply chain in that Celsa supplies reinforcing steel products at the upstream level and BRC McMahon is involved in the processing/distribution of reinforcing steel products for the building and construction industry at the downstream level.
10. In analysing a non horizontal merger such as the instant case, the key question is whether or not either of the undertakings involved has market power in any of the vertically related markets in which they operate.² Such market power is a necessary but not a sufficient prerequisite for competitive harm from foreclosure. An anticompetitive effect of the transaction is only present if the merged entity has the ability and incentive to foreclose³ a product/service from its competitors and if this results in demonstrable harm to consumers.

¹ While BRC UK does supply a limited amount of processed reinforcing steel product into the island of Ireland (i.e. in 2007, it made approx. €[...] of sales to BRC McMahon and approx. €[...] of sales to other distributors), this has no discernible impact on the competitive conditions as a result of the proposed transaction. This is because, based on figures provided by the parties, the Authority estimates the total value of the processing/distribution of reinforcing steel product sector in the State to be approximately €310 million.

² The Authority considers that it is not necessary to define the relevant product and geographic markets in the present case, since the proposed acquisition does not raise competition concerns.

³ Two separate types of foreclosure are examined – input foreclosure and customer foreclosure. These are examined in more detail below.

Input Foreclosure

11. Paragraph 31 of the European Commission's *Guidelines on non horizontal mergers*⁴ ("NHM Guidelines") defines input foreclosure as follows: "Input foreclosure arises where, post-merger, the new entity would be likely to restrict access to the products or services that it would have otherwise supplied absent the merger, thereby raising its downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger."
12. In the instant case the issue is whether the merged entity would have (a) an incentive and (b) the ability to foreclose access by the competitors of BRC McMahon to reinforcing steel products, in particular MWR, and (c) if so, whether such a strategy would have a significant detrimental effect on competition downstream. For input foreclosure to be a concern, the merged entity must have a significant degree of market power in this upstream activity.
13. In relation to the supply of MWR (the input used by BRC McMahon for processing/distribution of reinforcing mesh in the State), Celsa estimates that it has a share of approximately [20-30]% in the State. However, there are no suppliers of reinforcing steel products based in the State; all such products are imported. As such, the parties contend that the market is at least EEA-wide and state that supplies are sourced from a range of countries inside and outside the EEA, such as the UK, Spain and Turkey. They also cite the European Commission decision *Celsa/Fundia* M.4225 in support of their contention. Celsa's share of supply of MWR on an EEA-wide basis is estimated to be [0-10]%.
14. In light of the fact that all of the supply of MWR is imported, the Authority agrees that the sector is wider than the State and is probably at least EEA-wide⁵.
15. Because of the international spread of suppliers and Celsa's small share of MWR supply on an EEA-wide basis, the merged entity would have no significant power upstream and would be constrained post-transaction given the alternative input providers located across Europe. Celsa lists companies from the UK, Latvia and Spain as being its largest competitors in the State.
16. Also, contracts between reinforcing steel producers and processors/distributors such as BRC McMahon are generally non-exclusive and short term and processors/distributors can switch suppliers frequently. Therefore, any attempt by the merged entity to raise input prices or refuse to supply BRC McMahon's competitors would be constrained by the ability of Celsa's competitors to react.
17. The proposed transaction would not give the merged entity the ability to foreclose access to BRC McMahon's competitors to the reinforcing

⁴ European Commission 2007, *Guidelines on the Assessment of Non-Horizontal Mergers under the Council Regulation on the Control of Concentrations between Undertakings*.

<http://ec.europa.eu/comm/competition/mergers/legislation/legislation.html>

⁵ The Authority however, does not have to come to a definitive conclusion on the geographic market as the proposed transaction does not raise competition concerns.

steel product inputs required to compete in processing/distribution of reinforcing steel products in the State. In addition, Celsa does not have a significant degree of market power in this upstream activity.

Customer Foreclosure

18. The issue of customer foreclosure relates to the possible anticompetitive activities of the merged entity in the downstream market. More specifically the *NHM Guidelines* define customer foreclosure as follows:

“Customer foreclosure may occur when a supplier integrates with an important customer in the downstream market. Because of this downstream presence, the merged entity may foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market (the input market) and reduce their ability or incentive to compete... (Paragraph 58)

When considering whether the merged entity would have the ability to foreclose access to downstream markets, the Commission examines whether there are sufficient economic alternatives in the downstream market for the upstream rivals (actual or potential) to sell their output. For customer foreclosure to be a concern, it must be the case that the vertical merger involves an undertaking which is an important customer in the downstream market. If, on the contrary, there is a sufficiently large customer base, at present or in the future, that is likely to turn to independent suppliers, the Commission is unlikely to raise competition concerns on that ground.” (Paragraph 61)

19. BRC McMahon’s share of the processing/distribution of reinforcing steel products sector in the State is approximately [10-20]%. Its share of the narrower reinforcing mesh sector in the State is approximately [40-50]%. BRC McMahon currently sources reinforcing steel products from a number of steel producers, predominantly at this point in time, from Celsa. Therefore, the proposed merger would not have a significant practical implication even if Celsa continued to be BRC McMahon’s main supplier. Also, as Celsa does not have sole control of BRC McMahon, BRC McMahon may continue to purchase most of its product from Celsa, or may obtain its product from other sources.
20. In addition, there are alternatives in the downstream sector in the State for Celsa’s rivals to sell their outputs, such as Brazil & Co. (Steel) Limited, James Street Steel Manufacturing Limited and Midland Steel Reinforcement Supplies Limited. Finally, the upstream supply of MWR and rebar/coil takes place on an international level and e.g. across the EEA there are a large number of other processors/fabricators/distributors that competitors of Celsa can supply. BRC McMahon’s requirements are a small amount of this overall EEA total. As a result, even if BRC McMahon’s total requirements were foreclosed to competitors of Celsa, the foreclosure of these volumes would be insignificant to Celsa’s competitors.
21. In light of the fact that neither input nor customer foreclosure will arise as a result of the proposed transaction, the Authority therefore

considers that the proposed transaction does not raise competition concerns.

Determination

22. The Competition Authority, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the proposed acquisition by Celsa Steel Service (UK) Limited of a jointly controlling interest in BRC McMahon Reinforcements Limited will not be to substantially lessen competition in markets for goods and services in the State and, accordingly, that the acquisition may be put into effect.

For the Competition Authority

Dr. Paul K. Gorecki
Member of the Competition Authority