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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party

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Subject: **Case M.8130 – Imerys / Alteo certain assets**
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

(1) On 9 September 2016, the Commission received notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of the Merger Regulation by which the undertaking Imerys S.A. ('Imerys', France) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertakings Alteo ARC (France) and Alufin GmbH Tabularoxid ('Alufin', Germany) formerly owned by Alteo Holding SAS ('Alteo', France) by way of purchase of shares (the 'Transaction').[3] Imerys is hereinafter designated as the 'Notifying Party'. Alteo ARC and Alufin are collectively referred to as the 'Target', and together with Imerys as the 'Parties', whilst the undertaking resulting from the Transaction is referred to as 'the new entity' or 'the merged entity'.

I THE PARTIES

(2) Imerys is a multinational mining company operating in four business groups: (i) energy solutions and specialties, (ii) filtration and performance additives, (iii) ceramic materials, and (iv) high resistance minerals.

(3) Alteo is a fully integrated, global producer and supplier of non-metallurgical and specialty aluminas for a wide range of sectors. In particular Alteo operates in the refractories, abrasives, glass and flame retardants markets and the chemical industry. Alteo ARC operates two specialty alumina plants in France (La Bâthie, in the Alps, focused on white fused alumina, and Beyrède, in the Pyrenees, focused on brown fused alumina). Alufin operates one plant in Teutschenthal, Germany, focused on the production of tabular alumina. Alteo Gardanne, a wholly owned subsidiary of Alteo, constituting its headquarters and operating a plant in Gardanne producing non-metallurgical grade alumina, is not part of the Transaction.

(4) The Target is active in the production of specialty aluminas for refractory and abrasive applications.

II THE OPERATION

(5) The operation will consist of the acquisition by Imerys of 100% of the shares and voting rights of the Target. After the completion of the Transaction, the Target will be solely controlled by Imerys. The operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

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

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

3 Publication in the Official Journal of the European Union No C 342, 17.09.2016, p. 12.

III UNION DIMENSION

(6) The operation does not have a Union dimension within the meaning of Article 1 of the Merger Regulation as it does not meet the thresholds of Article 1(2) or Article 1(3).[4]

(7) However, on 7 July 2016 the Parties informed the Commission by means of a reasoned submission that the concentration was capable of being reviewed under the national competition laws of three Member States[5] and moreover, its competitive effects would likely go beyond the territory of one Member State. On that basis, and under Article 4(5) of the Merger Regulation, the Parties requested the Commission to examine the concentration. None of the Member States competent to examine the concentration under its national law expressed their disagreement within 15 working days of receiving the reasoned submission.

(8) Therefore, the concentration is deemed to have a Union dimension pursuant to Article 4(5) of the Merger Regulation.

IV RELEVANT MARKETS

IV.1. Description of products

(9) The operation concerns the markets for the production and supply of certain kinds of bauxites and aluminas. For the purposes of this decision, the following terms are used.

IV.1.1. Bauxite and alumina

(10) *Bauxite* is an ore rich in aluminium minerals. It is obtained through mining at various sites across the world. The majority of bauxite is further processed into (calcinated) alumina, but a certain amount of mined bauxite is processed directly for use in non-metallurgical applications without first refining it into calcinated alumina.

(11) *Alumina* is a common name for aluminium oxide (Al_2O_3). It is commonly produced by refining bauxite in the five-stage Bayer thermo-chemical process that includes grinding, digestion, clarification, precipitation and calcination. The final product of the Bayer process is also known as *calcinated alumina*, and it is a white sugar-like granular material.[6]

(12) Calcinated alumina has two main uses: (i) metallurgical use for the smelting of aluminium, that is the extraction of aluminium metal, and (ii) non-metallurgical applications. Over 90% of calcinated alumina is used in the production of aluminium metal, in which case it is referred to as 'smelter grade alumina'. However, only the non-metallurgical segment is relevant for the present case.

(13) Within the non-metallurgical applications, calcinated alumina can be consumed in two main ways: (i) as such without further refining and (ii) after further refining through fusing or sintering. Only the processed products are relevant for the present case.

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4 The thresholds in Article 1(2) of the Merger Regulation are not met since the combined worldwide turnover of the Parties in 2015 was EUR 4 181 million. The Parties also do not meet the turnover thresholds in at least three Member States required by Article 1(3)(c) of the Merger Regulation.

5 Germany, Spain and Austria.

6 See, for instance M.1003 – *Alcoa / Inespal*, paragraph 12, and M.1693 – *Alcoa / Reynolds*, recital 9.

IV.1.2. Specialty aluminas

(14) *Specialty aluminas* is a term used by the Notifying Party to refer to high-purity aluminas that, having been produced from calcinated alumina or calcinated bauxite, are used for specific non-metallurgical applications, namely in abrasive or refractory materials.

- Abrasive materials are used to shape or finish a work piece through rubbing, which leads to part of the work piece being worn away by friction. While finishing a material often entails polishing it to gain a smooth or reflective surface, the process can also involve roughening. Abrasives are used very extensively in a wide variety of industrial, domestic and technological applications.
- Refractory materials are inorganic non-metallic materials that can withstand high temperatures without undergoing physical or chemical changes, while remaining in contact with molten slag, metal or gases. They are used, for instance, in linings for furnaces, kilns, incinerators and reactors, as well as to make crucibles and moulds for casting glass and metals, and for surfacing flame deflector systems for rocket launch structures.

(15) The Notifying Party has included fused aluminas, bubble alumina and tabular alumina but not zirconia alumina within the category of specialty aluminas.

(16) *Fused aluminas* (or 'artificial corundums') are obtained by fusing calcinated alumina or bauxite in electric arc furnaces at high tempatures. Fused aluminas have high Al_2O_3 content or purity and are suitable, for instance, for refractory and abrasive applications. Fused alumina is produced in two types: white fused alumina and brown fused alumina.

- Brown fused alumina ('BFA') is produced by calcinating bauxite directly (without refining it in the Bayer process) and then fusing it. Its Al_2O_3 content is high (around 95%) but slightly less than in white fused alumina.
- White fused alumina ('WFA') is produced through fusing calcinated alumina (that is, following refining in the Bayer process). Its Al_2O_3 content is typically slightly higher than in BFA, usually above 97%, and it is thus purer than BFA.

(17) *Bubble alumina* is a type of WFA. However, at the end of the production process, the hot material is poured out from the furnace through a high pressure air stream. The molted stream of material is transformed into a barrage of particles that are cooled rapidly. The spraying process typically causes the particles to form hollow spheres or 'bubbles'.

(18) *Tabular alumina (also known as 'sintered alumina')* is obtained by applying a sintering process to calcinated alumina rather than fusing it. It is characterised by high purity and high refractoriness, and it is highly resistant to thermal shocks, wear and chemical reactions. Tabular alumina is typically used for refractory purposes.

IV.1.3. Other products

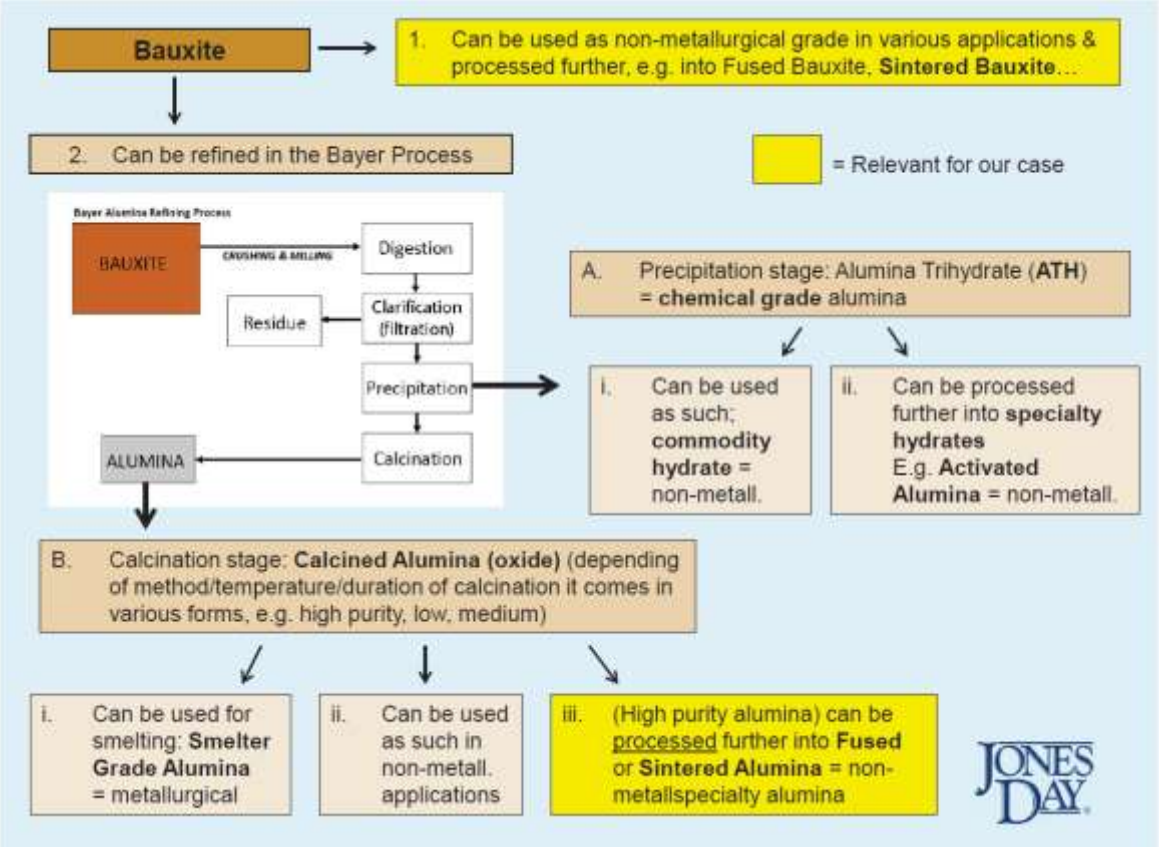
(19) *Sintered bauxite* is bauxite that has been directly calcinated (without being purified in the Bayer process) and then sintered. Sintered bauxite consists of grains that are very dense and tough.

(20) *Zirconia alumina* is produced through the fusion of calcinated alumina and certain compounds containing zirconium. Zirconia alumina has a strong ability to fracture

when heat from the surface of work reaches critical levels. Zirconia alumina contains a relatively high Al_2O_3 content and is predominantly used in abrasive applications due to its superior hardness but can also be used in certain refractory applications.

(21) An overview of the value chain and the products concerned is shown in Figure 1.

Figure 1 - Overview of the value chains and products in question



Source: Form CO

IV.2. Product market definitions

IV.2.1. The Notifying Party's proposed product market definitions

(22) In the light of previous Commission decisions,[7] the Notifying Party suggests segmenting the product markets by kind of mineral and by end-use application of such minerals.[8] This is due to the fact that minerals either hardly ever provide properties which exactly match the features and properties of another mineral and there are other constraints which make substitution practically unfeasible (for instance price or scarcity of the resource). Following this approach, the Notifying Party submits that the Parties' activities overlap horizontally in the following segments:

- specialty aluminas for abrasive applications (including WFA, BFA and bubble alumina),

7 See the summary in section IV.2.2.

8 See Form CO, paragraph 98.

- specialty aluminas for refractory applications (including tabular alumina, WFA, BFA and bubble alumina),
- zirconia alumina for abrasive applications,
- zirconia alumina for refractory applications,
- sintered bauxite for abrasive applications.

(23) The Notifying Party argues that a further sub-segmentation of the markets for specialty aluminas both for abrasive and refractory applications is not appropriate for the reasons set out in sections IV.2.1.1 to IV.2.1.3.[9]

(24) As regards vertical relationships, the Notifying Party identifies a vertical link between the Parties' upstream activities in aluminas for refractory applications and Imerys' downstream activities in the market for refractories, see section IV.2.1.4.

IV.2.1.1. Sub-segmentations in specialty aluminas for refractory applications

(25) Concerning specialty aluminas for refractory applications, the Notifying Party submits that WFA and BFA might differ in respect to purity and therefore also in price. While BFA has an Al_2O_3 content around or above 95 % and is slightly less friable, WFA usually has an Al_2O_3 content above 97 % and thus is slightly purer. The Notifying Party emphasises, however, that WFA and BFA are interchangeable in view of their important similarities, in particular hardness (grade 9 on the Mohs scale of hardness), thermal stability and toughness. According to the Notifying Party, both WFA and BFA are used for the same functions (heat resistance) in the same refractory applications. The Notifying Party submits further that the higher the level of purity of the produced BFA, the higher the level of substitutability with WFA.

(26) Regarding tabular alumina, used typically in refractory applications, the Notifying Party argues that (i) it has the same production process as WFA and only differs in terms of its finishing, (ii) has a very high purity (Al_2O_3 of around 99 %) and (iii) acts as a substitute for fused alumina in refractory applications. According to the Notifying Party, the substitutability is particularly clear when looking at the demand-side given that in refractory applications the most important quality of the alumina-product is its level of alumina content, this being very high in tabular alumina.

IV.2.1.2. Sub-segmentations in specialty aluminas for abrasive applications

(27) The Notifying Party argues that, like in refractory applications, WFA and BFA for abrasive applications are produced based on the same production process and therefore share for instance a particular hardness (grade 9 on the Mohs scale), strong thermal and chemical stability, and a high degree of thermal shock resistance. Therefore, according to the Notifying Party, WFA and BFA for abrasive applications are included in the same product market.

IV.2.1.3. Bubble alumina as a separate product market

(28) The Notifying Party argues further that bubble alumina – regardless of whether it is used in abrasive or refractory applications – is a mere variation of WFA and is only used in certain niche applications. The Notifying Party submits that bubble alumina consists of the exact same raw materials and follows the same production process, except that WFA is atomised or sprayed with compressed air at the very end of the

9 See Form CO, paragraphs 118, 124, 132, 135, 140, 141.

process. The Notifying Party submits further that the same furnace can be used for the production of WFA and bubble alumina and that only the pouring system needs to be adapted. According to the Notifying Party, all bubble alumina producers also manufacture and supply fused aluminas, and all suppliers of fused aluminas can easily manufacture and supply bubble alumina.

IV.2.1.4. Downstream market for refractories

(29) The Notifying Party submits that specialty aluminas for refractory applications are an important input for the downstream markets for refractories where Imerys is active through its subsidiary Calderys.

(30) The Notifying Party defines refractories as non-metallic materials, produced by the mixing of aggregates (including inter alia specialty aluminas) with chemical or hydraulic binders. They are primarily employed as heat buffers or linings in industrial devices such as kilns, furnaces and ovens.[10] The Notifying Party submits that the market for refractories can be segmented by:

- Form-type, thereby distinguishing between:
  - shaped refractories and
  - unshaped refractories.
- Raw-material and chemical composition, thereby distinguishing between:
  - basic refractories and
  - non-basic/acid refractories.

(31) Concerning a form-based segmentation the Notifying Party explains that shaped refractories are supplied in a form that can be readily used by customers (for instance bricks). Unshaped refractories, namely monolithic (powder-based) products, are used for linings and are usually processed and applied in the equipment itself.[11]

(32) Concerning a segmentation by raw-material and chemical composition, the Notifying Party concludes that basic refractories are made mainly of magnesium and calcium oxide and are not attacked or affected by alkaline materials. Non-basic/acid refractories are not attacked or affected by acidic materials and are based mainly on alumina and silica.[12]

IV.2.2. Previous Commission decisions

(33) In *Starck/Wienerberger* the Commission concluded that there is a common market for natural and artificial corundum (alumina), as both are substitutable regarding many applications.[13] The Commission further divided the market for aluminas in separate sub-segments by application: for abrasive applications, refractory

10 See Form CO, paragraph 180.

11 See Form CO, paragraph 181.

12 See Form CO, paragraph 181.

13 See M.702 – *Starck/Wienerberger*, paragraph 12.

applications and other applications.[14] The Commission left open whether the market for aluminas used in refractory applications included tabular alumina.[15]

(34) In *Creditanstalt-Bankverein/Treibacher* the Commission sub-segmented the overall market for artificial corundum (artificial alumina) in separate markets for abrasive applications, refractory applications and other applications.[16] Whether there are separate markets for BFA and WFA due to the different qualities of the products was left open.[17] The Commission has however decided that zirconia alumina has to be distinguished from the other types of alumina. It forms a separate market as it differs in its production process, price and product characteristics and is therefore only used in special grinding applications.[18]

(35) In *EN+/Glencore/Sual/UC Rusal* the Commission again left open whether BFA and WFA constitute separate product markets.[19]

(36) In *Cookson/Foseco* the Commission discussed the market for refractories, that is to say the market downstream of the production of specialty aluminas for refractory applications. The Commission segmented the markets for refractories by form and raw material / chemical composition. The Commission thus defined a separate segment for unshaped non-basic refractories.[20]

IV.2.3. The Commission's assessment

IV.2.3.1. General observations

(37) The results of the market investigation confirm the Notifying Party's submissions and the findings in previous cases concerning the segmentation of aluminas according to their end use into abrasive and refractory applications.[21]

(38) Nonetheless, what the Notifying Party calls 'specialty alumina' should be segmented into narrower markets. In particular, (i) tabular alumina should not be considered to belong to the same relevant market as fused alumina (see section IV.2.3.2) and (ii) fused alumina should be further segmented into BFA and WFA (see section IV.2.3.3).

(39) Furthermore, bubble alumina could be considered to constitute a separate sub-market within WFA (see section IV.2.3.4) and further sub-segmentations within both WFA and BFA could be considered (see section IV.2.3.5).

(40) As regards zirconia alumina (see section IV.2.3.6) and sintered bauxite (see section IV.2.3.7), both of those products constitute separate product markets while additional sub-segmentations can be left open for the purposes of this case.

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14 See M.702 – *Starck/Wienerberger*, paragraph 13.

15 See M.702 – *Starck/Wienerberger*, paragraph 15.

16 See M.811 – *Creditanstalt-Bankverein/Treibacher*, paragraph 15.

17 See M.811 – *Creditanstalt-Bankverein/Treibacher*, paragraph 15.

18 See M.811 – *Creditanstalt-Bankverein/Treibacher*, paragraph 18.

19 See M.4441 – *EN+/Glencore/Sual/UC Rusal*, paragraph 21.

20 See M.4961 – *Cookson/Foseco*, paragraphs 9 – 12.

21 See, for instance replies to question 3 of Q1 – Questionnaire to Customers (refractory applications) and replies to question 3 of Q2 – Questionnaire to Customers (abrasive applications).

(41) On the downstream market for refractories, the markets for unshaped non-basic/acid refractories can be considered separate from other types of refractories for the purposes of this case (see section IV.2.3.8).

IV.2.3.2. Tabular alumina

(42) The Notifying Party submits that tabular alumina[22] belongs to the same market of specialty alumina (for refractory applications) together with fused alumina (for refractory applications).

(43) However, the Commission considers that there is no or only limited substitutability between tabular alumina and fused alumina.

(44) First, tabular alumina and fused alumina are produced in different production processes and require different machinery to produce. To this effect, the Commission notes that the Target produces fused alumina and tabular alumina at different sites: it produces fused alumina in Beyrède and La Bâthie while its tabular alumina production is located in Teutschenthal. Due to the different machinery needed for the production of tabular alumina and fused alumina, it also appears that a producer of one of them cannot switch to producing the other without acquiring the necessary machinery and incurring the associated substantial costs.

(45) Second and following from the different production processes, not all suppliers supply both types of aluminas. That includes Imerys, which supplies fused alumina but not tabular alumina.

(46) Third, a number of customers noted that tabular alumina and fused alumina differ in terms of technical characteristics and price. Although some respondents did consider tabular alumina and fused alumina to be substitutable from their perspective, substitutability appears to be limited to specific applications. A customer noted in this respect that *'market is 1/3 tabular, 1/3 is WFA and 1/3 can be tabular or WFA'*.[23]

(47) Therefore, for the reasons set out in paragraphs (44) to (46) and in light of the outcome of the market investigation and the information available to it, the Commission considers that tabular alumina does not form part of the same relevant market as fused alumina.

IV.2.3.3. White and brown fused alumina

(48) The Notifying Party submits that no distinction between WFA and BFA is necessary. However, for the main reasons set out in paragraphs (49) to (53), the Commission considers that there is no or only limited substitutability between WFA and BFA.

(49) First, suppliers responding in the Commission's market investigation reported that switching production between the two products on the same production line is not straightforward. This appears to apply, in particular, to switching from BFA to WFA, the latter of which is purer. A competitor writes: *'It's impossible to produce BFA together with WFA as BFA will soil the whole scheme'*.[24] Accordingly, both Parties appear to separate the production of WFA and BFA in most of their plants. The Target produces BFA in its plant in Beyrède while it produces WFA in its

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22 Imerys does not produce tabular alumina while the Target does.

23 Replies to question 4 of Q1 – Questionnaire to Customers (refractory applications).

24 See, for instance replies to question 14 of Q3 – Questionnaire to Competitors (specialty alumina).

plant in La Bâthie. Similarly, Imerys produces BFA and WFA together in only two of its seven plants while five plants specialise either in the production of WFA or BFA.

(50) Second, not all producers seem to supply both WFA and BFA but there are suppliers that specialise in one of them. For instance Motim, which is a European competitor of the Parties, supplies WFA but not BFA.[25]

(51) Third, market participants' relative market positions in WFA and BFA seem to differ from each other. For instance, the Notifying Party has indicated that its main competitors in BFA include Chinese producers while its most important competitors in WFA are companies such as Motim (Hungary) and Rusal (Russia).

(52) Fourth, the Parties' internal documents indicate that they follow BFA and WFA separately in their internal reporting and planning, and that they can earn significantly different margins on BFA and WFA.[26] Also third parties separate BFA and WFA in their market analyses.[27]

(53) Fifth, a clear majority of all customers that responded in the Commission's market investigation considered WFA and BFA not to be substitutable with each other in terms of technical characteristics and price.[28] For instance, a refractory customer notes that *'[w]hite and brown corundum cannot be exchanged in our applications because of the difference in quality (Al2O3 content). Brown corundum is more attractive in price but cannot be used in all applications'*[29] while an abrasive customer responds that *'[t]he products is [sic] not equal in quality and have different characteristics. The types is [sic] used for different sanding operations.'*[30]

(54) Therefore, for the reasons set out in paragraphs (49) to (53) and in light of the outcome of the market investigation and the information available to it, the Commission considers that WFA and BFA constitute separate relevant product markets (both of which are to be further segmented according to the end use abrasive / refractory as set out in paragraph (37)).

IV.2.3.4. Bubble alumina

(55) In addition, and contrary to the Notifying Party's submission, the results of the market investigation further indicate that bubble alumina should be considered a distinct market within WFA as there is no or only limited substitutability between bubble alumina and other WFA.

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25 See the information published on Motim's website, www.motim.hu.

26 See, for instance Imerys internal document […], page 12.

27 See, for instance the document *'Supply trends and prospects for fused alumina'* by Roskill Information Services, pages 8–10 and 17, and document *'Non-Metallurgical Bauxite and Alumina – Global Industry, Markets and Outlook to 2021 – Ninth Edition, 2016*' by Roskill Information Services, pages 26–7 and 266–7.

28 See, for instance replies to question 5 of Q1 – Questionnaire to Customers (refractory applications) and replies to question 4 of Q2 – Questionnaire to Customers (abrasive applications).

29 Original in German reads: *'Weißer und brauner Korund können in unseren Anwendungen nicht untereinander ausgetauscht werden, da der Qualitätsunterschied (Al2O3- Gehalt) unterschiedlich ist. Preislich is5t [sic] der braune Korund attraktiver, jedoch qualitativ nicht in allen Anwendungen einsetzbar.'*, reply to question 5 of Q1 – Questionnaire to Customers (refractory applications).

30 Reply to question 4 of Q2 – Questionnaire to Customers (abrasive applications).

(56) First, the market investigation has not confirmed the Notifying Party's submission that know-how on bubble alumina production is widely available. In contrast, one of the companies the Notifying Party had identified to be the Parties' main competitors in WFA indicated that it does not even know the technology required to produce bubble alumina.[31]

(57) Second, market participants' relative market positions in bubble alumina and other WFA seem to differ significantly from each other. For instance, the Notifying Party has submitted that the Parties' combined market shares in bubble alumina for refractories was [60-70]% while the combined market share for all WFA for refractories (including bubble alumina) was [30-40]% in 2015. For abrasive applications the figures were [40-50]% and [20-30]%. Moreover, the Notifying Party has submitted that the Parties' main competitors in the EEA for bubble alumina are different from those for other WFA.

(58) Third, a clear majority of customers replying in the Commission's market investigation submitted that bubble alumina and other WFA are not substitutable in terms of technical characteristics and price.[32] For instance, a refractory customer has explained that *'[b]bubble alumina is a high purity, low density insulating product while white fused alumina is a dense material. The two are used to produce entirely different ranges of refractory products so are not interchangeable'*[33] and an abrasive customer noted that *'[b]ubble alumina is a special higher priced product for certain abrasive applications'*[34].

(59) Therefore, for the reasons set out in paragraphs (56) to (58) and in light of the outcome of the market investigation and the information available to it, the Commission considers that bubble alumina constitutes a distinct market separate from the remaining types of WFA (and further segmented according to the end use abrasive / refractory as set out in paragraph (37)).

IV.2.3.5. Potential further sub-segmentations of WFA and BFA

(60) During the market investigation, market participants indicated a number of additional potential sub-segmentations or differentiations within WFA and BFA.

(61) Semi-friable vs. regular BFA: Semi-friable BFA is a type of BFA that typically has a lowered titanium oxide content and that is sometimes referred to have characteristics that are somewhere between BFA and WFA[35].

(62) Treated BFA vs. regular BFA: BFA can further be treated, such as heat-treated or ceramic-coated, to achieve specific characteristics for the product. Some market customers replying to the Commission's market investigation indicated that such

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31 Reply to question 15 of Q3 – Questionnaire to Competitors (specialty alumina).

32 See, for instance replies to question 6 of Q1 – Questionnaire to Customers (refractory applications) and replies to question 5 of Q2 – Questionnaire to Customers (abrasive applications).

33 Reply to question 6 of Q1 – Questionnaire to Customers (refractory applications).

34 Reply to question 5 of Q2 – Questionnaire to Customers (abrasive applications).

35 See, for instance, https://www.alteo-alumina.com/en/business/product_line/semi-friable-brown-fused-alumina, quoted on 13.10.2016. See also https://www.alteo-alumina.com/en/corundum, quoted on 13.10.2016. See also document *'Non-Metallurgical Bauxite and Alumina – Global Industry, Markets and Outlook to 2021 – Ninth Edition, 2016'* by Roskill Information Services, page 50.

characteristics can be important for particular applications or climatic conditions of use.[36]

(63) Grit size and shape: the size and shape of alumina particles appear to have an impact on their use in some abrasive applications. For instance, the Parties' internal documents indicate that certain of their production facilities tend to produce a particular shape of product and that customers purchase different shapes of products from different suppliers. Market participants seem to distinguish 'blocky' grit shape from 'angular' grit shape. The Parties' internal documents also follow macro and micro grit sizes sometimes separately in their reporting and planning, also noting that micros are higher-value compared to macros.[37] The Commission understands from the Parties' internal documents, as well as concurring evidence from market participants, that micro and macro grit size are frequently measured on the FEPA scale. On this scale, sizes F8 to F220 are commonly referred to as 'macro-grit', while sizes F230 and above are referred to as 'micro-grit'. One customer explained: '*[g]rit sizes are a particularly important product specification in the abrasive industry since they will achieve different end results. Macro-grit abrasives will be used to achieve a rough finish, while micro-grit will yield a polished, glass-like finish. The two are therefore not substitutable from a demand-side point of view*'.[38]

(64) Therefore, for the reasons set out in paragraphs (37), (61) to (63), and in light of the outcome of the market investigation and the information available to it, the Commission concludes that the markets for WFA and BFA are differentiated at least according to the various additional criteria discussed in this Section: application (abrasive or refractory applications), purity, grit size, and grit shape. On the other hand, for the purposes of the present decision, the exact product market definition as regards other possible segmentations of BFA and WFA discussed in paragraphs (37), (61) to (63) can be left open as the outcome of the competitive assessment remains the same under those alternative delineations.

IV.2.3.6. Zirconia alumina

(65) As set out in paragraph (22), the Notifying Party submits that zirconia alumina could constitute a distinct market, separate from fused alumina (or other 'specialty alumina'). According to the Notifying Party, the market could further be segmented according to the end use of the product (abrasive / refractory).

(66) The results of the market investigation support the view that zirconia alumina constitutes a market separate from fused alumina.

(67) From the supply side-perspective, the production process and technologies appear to differ. A major fused alumina producer indicated that it does not even know the technology required for zirconia alumina production.[39]

(68) Moreover, a clear majority of customers responding in the Commission's market investigation noted that zirconia alumina and fused aluminas are not comparable in

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36 See, for instance replies to question 10 of Q2 – Questionnaire to Customers (abrasive applications).

37 See, for instance Imerys internal document […], page 2, Imerys internal document […], pages 11–3, and Imerys internal document […], page 7, and […], page 4, […], page 8, […], tab […].

38 Confirmed minutes of a call with an abrasive customer on 23.9.2016.

39 Reply to question 16 of Q3 – Questionnaire to Competitors (specialty alumina).

terms of technical characteristics or price.[40] A refractory customer explained that *'zirconia is 4X the price of fused alumina. It would not be considered for standard refractory applications. It would only be used in areas of high corrosion, or in small quantities to help control thermal expansion. It is rather cost prohibitive*'.[41] An abrasive customer notes that *'zirconia alumina is considerably more tough as fused alumina. Substitution of zirconia alumina by fused alumina would result in a significant performance drop, whereas a substitution of fused alumina by zirconia alumina (possible in only a limited number of applications) would result in a significant cost increase'*.[42]

(69) Therefore, for the reasons set out in paragraphs (66) to (68) and in light of the outcome of the market investigation and the information available to it, the Commission considers that zirconia alumina may constitute a distinct product market which does not fall in the same product market as fused alumina.

(70) On the other hand, it is not necessary for the purposes of the present decision to conclude whether the market for zirconia alumina should be further segmented according to the end use of the product as the outcome of the competitive assessment remains the same under the alternative market delineations.

IV.2.3.7. Sintered bauxite

(71) As set out in paragraph (22), the Notifying Party submits that sintered bauxite could constitute a distinct product market which is separate from specialty alumina or zirconia alumina. According to the Notifying Party, sintered bauxite is only used for abrasive applications.

(72) The results of the market investigation support the view that sintered bauxite constitutes a distinct market.

(73) In particular, some suppliers of fused and/or tabular alumina indicated in the market investigation that they do not have the ability to produce sintered bauxite.[43] Moreover, the Commission notes that, according to the Notifying Party, the market structure in sintered bauxite in the EEA is unlike that for other products concerned by the case, with Showa Denko holding over 60% of the market for sintered bauxite but not being a notable competitor in any other product discussed.

(74) Further, customers have submitted in the market investigation that sintered bauxite is not comparable to other products such as fused alumina in terms of technical characteristics or price.[44] For instance, an abrasive customer explained that sintered bauxite and fused alumina have *'[d]ifferent mechanical and abrasive characteristics. Sintered bauxite is much more expensive'*.[45]

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40 See, for instance replies to questions 7 and 8 of Q1 – Questionnaire to Customers (refractory applications) and replies to question 6 and 9 of Q2 – Questionnaire to Customers (abrasive applications).

41 Reply to question 7 of Q1 – Questionnaire to Customers (refractory applications).

42 Reply to question 6 of Q2 – Questionnaire to Customers (abrasive applications).

43 Replies to question 17 of Q3 – Questionnaire to Competitors (specialty alumina).

44 See, for instance replies to questions 8 and 9 of Q2 – Questionnaire to Customers (abrasive applications).

45 Reply to question 8 of Q2 – Questionnaire to Customers (abrasive applications).

(75) Therefore, for the reasons set out in paragraphs (72) to (74) and in the light of the outcome of the market investigation and the information available to it, the Commission considers that sintered bauxite may constitute a distinct product market and concludes that sintered bauxite does not fall in the same product market as fused alumina.

IV.2.3.8. Downstream market for refractories

(76) In accordance with its past practice,[46] and seeing that this practice is not contested by the Notifying Party in this case, the Commission considers unshaped non-basic/acid refractories to constitute a distinct product market. In any case, the product market definition in this case can be left open since no competition issue would arise even in the narrowest possible segment where the vertical link between the Parties would lead to the highest concentration levels.

IV.2.4. Conclusion on the relevant product markets

(77) Therefore, in light of the above and for the purposes of this decision, the Commission concludes that it is appropriate to carry out its assessment of the effect of the Transaction with reference to the following markets:

- WFA for abrasive applications,
- WFA for refractory applications,
- bubble alumina for abrasive applications,
- bubble alumina for refractory applications,
- BFA for abrasive applications,
- BFA for refractory applications,
- tabular alumina,
- zirconia alumina,
- sintered bauxite and
- unshaped non-basic/acid refractories.

IV.3. Geographic market definition

IV.3.1. The Notifying Party's proposed geographic market definitions

(78) The Notifying Party submits that the geographic scope of the relevant alumina markets is global (for fused alumina [WFA, bubble alumina and BFA], tabular alumina and zirconia alumina).[47] The Notifying Party refers to low relative transport costs and emphasises significant imports coming from outside the European Economic Area ('EEA') and in particular from Brazil, the United States, Ukraine, Russia, and most importantly China. According to the Notifying Party, the imports have increased notably following the expiry of certain anti-dumping measures by the European Union in 2002. According to the Notifying Party, increasing presence of Chinese suppliers in the EEA as well as continuing commoditization of even the most niche segments of specialty alumina are among the main drivers for the Transaction.

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46 See M.4961 – *Cookson/Foseco*, paragraphs 17.

47 See Form CO, paragraph 155.

(79) Similarly, the Notifying Party submits that the geographic market for sintered bauxite is global in scope.

(80) As regards the downstream markets for refractories, the Parties consider the markets, including the segment for unshaped non-basic/acid monolithic (powder-based) refractories, to be EEA-wide in scope.[48]

IV.3.2. Previous Commission decisions

(81) In previous decisions concerning fused alumina for abrasive and refractory applications the Commission left open whether the relevant markets were global or EEA-wide in scope.[49]

(82) For alumina in general, the Commission concluded in *Alcoa/Inespal*[50] that the market possessed all the features of a global market. In contrast, in *Starck/Wienerberger* and *Creditanstalt-Bankverein/Treibacher,* the Commission considered the geographic market for artificial corundum (fused alumina) for abrasive and refractory applications to be at least EEA-wide, but left the precise market definition ultimately open.[51] The same applies for zirconia alumina.[52] In *EN+/Glencore/Sual/UC Rusal* the market investigation indicated that WFA was traded at a global level. The Commission however left the precise market definition open.[53]

(83) As regards the downstream market for refractories, in past decisions the Commission considered the relevant geographic markets for refractories, including unshaped non-basic/acid monolithic (powder-based) refractories, to be EEA-wide in scope.[54]

IV.3.3. The Commission's assessment

(84) The Commission acknowledges that there are notable imports into the EEA of at least some of the alumina products concerned by the Transaction. Nonetheless, the Commission recalls that a relevant geographic market is an area in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas. In this context, actual trade flows may give useful information for the assessment but are alone not decisive.[55]

(85) In the present case, the Commission notes that there are indications that suggest that the market is rather EEA than worldwide. For instance, the relative market positions of different market participants vary between the EEA and the rest of the

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48 See Form CO, paragraph 182.

49 See M.702 – *Starck / Wienerberger*, paragraphs 16–18; and M.811 – *Creditanstalt-Bankverein / Treibacher*, paragraph 19.

50 See M.1003 – *Alcoa/Inespal*, paragraph 23.

51 See M.702 – *Starck / Wienerberger*, paragraph 16–18; and M.811 – *Creditanstalt-Bankverein / Treibacher*, paragraph 19.

52 See M.811 – *Creditanstalt-Bankverein / Treibacher*, paragraph 19.

53 See M.4441 – *EN+/Glencore/Sual/UC Rusal*, paragraph 22.

54 See M.4961 – *Cookson/Foseco*, paragraphs 27 – 30, M.472 – *Vesuvius/Wuelfrath*, paragraphs 22 - 24.

55 See, for instance the Commission Notice on the definition of relevant market for the purposes of Community competition law, OJ C 372, 9.12.1997, p. 5, paragraphs 8 and 49.

world and market participants have reported significant issues related to sourcing from outside of the EEA.

(86) As to the relative market positions, the Commission notes that the Notifying Party submits that the relative market position of Imerys and the Target is significantly different within the EEA than globally. This applies particularly to the various segments of fused alumina where Imerys and the Target achieve significantly higher market shares in the EEA than globally. For instance, the Notifying Party submits that the combined market share of Imerys and the Target was approximately [30-40]% in WFA for refractory applications in volume in 2015 while the share globally was only circa [10-20]%. In bubble alumina for refractory applications, the figures were [60-70]% EEA and [30-40]% globally, and in BFA (all types) [20-30]% EEA and [5-10]% globally.

(87) The results of the market investigation indicate that the customers face significant issues related to sourcing from outside the EEA. This applies in particular to WFA and bubble alumina.

IV.3.4. Markets for WFA alumina, bubble alumina and tabular alumina

(88) Many customers of WFA reported issues related to sourcing from outside the EEA. In particular, the majority of customers for abrasive WFA considered that they can only with difficulty or with great difficulty source the product from outside the EEA, and nearly half of them also considered that there are specific reasons limiting their ability source to from outside the EEA.[56] In case of WFA for refractory applications, more customers considered that sourcing is at least fairly easy; however, some of them still saw even great difficulty in sourcing from outside the EEA, and the majority of them considered there to be specific reasons that limit their ability to source from outside the EEA.[57]

(89) Many customers for bubble alumina also reported issues related to sourcing from outside the EEA. In particular, the majority of customers of bubble alumina reported that they can only with difficulty or with great difficulty source the product from outside the EEA. This applies to both bubble alumina for abrasive and to bubble alumina for refractory applications. A number of particularly refractory customers of bubble alumina also indicated that there are specific reasons that limit their ability to source from outside the EEA.[58]

(90) The reasons cited by customers for the difficulty of sourcing from outside the EEA included, for instance, lead times, import duties (currently at 5.2% for WFA and bubble alumina) and transport costs as well as issues with quality and reliability. For instance, a customer for refractory WFA explains that *'[f]or products that are not from Europe, we often have quality problems in our products for special applications. Should we need material for a quick delivery, the sources outside of Europe are not always able to deliver accordingly*'[59] while a customer for abrasive

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56 Replies to questions 14 and 16 of Q2 – Questionnaire to Customers (abrasive applications).

57 Replies to questions 18 and 20 of Q1 – Questionnaire to Customers (refractory applications).

58 Replies to questions 26 and 28 of Q1 – Questionnaire to Customers (refractory applications), and replies to questions 22 and 24 Q2 – Questionnaire to Customers (abrasive applications).

59 The original in German reads: *'Bei Produkten, die nicht aus Europa stammen haben wir oftmals Qualitätsprobleme in unseren Produkten für Spezialanwendungen. Sollten wir schnell Material für unsere Produktion benötigen, sind die außereuropäischen Quellen manchmal nicht entsprechend lieferfähig.'* Reply to question 20 of Q1 – Questionnaire to Customers (refractory applications).

WFA notes that *'WFA have a lot of different size and different grades - - for our job (distributor of raw material) to organize the stock with a lead time of 3 month can be impossible'*[60]. Some customers of bubble alumina also referred to issues related to sourcing volumes, noting that bubble alumina is often used in small volumes and that sourcing from outside the EEA involves large batches.[61]

(91) The same would hold true for tabular alumina. From a supply-side perspective both WFA and tabular alumina stem from the same raw material and differentiate only in the processing method. Regarding that tabular alumina constitutes a high purity product, quality issues, as well as the other issues mentioned for WFA and bubble alumina are likely to occur in the sourcing of tabular alumina as well. But for the purposes of this decision it is unnecessary to conclude on the issue.

IV.3.5. Markets for BFA, zirconia alumina and sintered bauxite

(92) With respect to BFA, zirconia alumina and sintered bauxite, the customers were generally more split on the question of the relevant geographic market definition. Nonetheless, the replies suggest that issues related to sourcing from outside the EEA are likely, or at least cannot be excluded, also with respect to these products.[62]

IV.3.6. Markets for refractories

(93) In accordance with its past practice[63], and given that this is not disputed by the Parties, the Commission considers the market for unshaped non-basic/acid refractories to be EEA-wide in scope.

IV.3.7. Conclusions on the relevant geographic markets

(94) Therefore, for the reasons set out in paragraphs (84) to (91) and in light of the outcome of the market investigation and the evidence available to it, the Commission considers that the relevant market for WFA, and bubble alumina, including their sub-segments, is EEA-wide.

(95) With respect to tabular alumina, BFA, zirconia alumina and sintered bauxite, it cannot be excluded that the market is wider than the EEA. It can, however, be left open for the purposes of this decision whether the market is wider than the EEA as the outcome of the competitive assessment remains the same under those alternative market delineations.

(96) Finally, the Commission considers the market for unshaped non-basic/acid refractories to be EEA-wide in scope.

V COMPETITIVE ASSESSMENT OF HORIZONTAL OVERLAPS

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

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60 Reply to question 16 of Q2 – Questionnaire to Customers (abrasive applications).

61 Replies to questions 22 of Q2 – Questionnaire to Customers (abrasive applications).

62 Replies to questions 22, 24, 30 and 32 of Q1 – Questionnaire to Customers (refractory applications), and questions 18, 20, 26, 28, 30 and 32 of Q2 – Questionnaire to Customers (abrasive applications).

63 See M.4961 – *Cookson/Foseco*, paragraph 30, M.472 – *Vesuvius/Wuelfrath*, paragraphs 22–24.

(98) In this respect, a merger may entail horizontal and/or vertical effects. Horizontal effects are those deriving from a concentration where the undertakings concerned are actual or potential competitors of each other in one or more of the relevant markets concerned. The Commission appraises horizontal effects in accordance with the guidance set out in the relevant notice, that is to say the Horizontal Merger Guidelines.[64]

(99) With particular regard to non-coordinated effects, the Horizontal Merger Guidelines list a number of factors which may influence whether or not significant horizontal non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force. That list of factors applies equally regardless of whether a merger would create or strengthen a dominant position, or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore, not all of these factors need to be present to make significant non-coordinated effects likely and it is not an exhaustive list.[65]

(100) In addition, the Horizontal Merger Guidelines describe a number of factors, which could counteract the harmful effects of the merger on competition, including the likelihood of buyer power, entry and efficiencies.

(101) Finally, the Horizontal Merger Guidelines mention factors specifically relevant for assessing mergers creating or strengthening buyer power in upstream markets. According to the guidelines, harm to competition would in particular incur if the merged firm may be in a position to obtain lower prices by reducing its purchase of inputs which could, in turn, lead to lower levels of output in the final product market, thereby harming consumer welfare.[66] However, the Horizontal Merger Guidelines also state that increased buyer power may be beneficial for competition if it lowers input costs without restricting downstream competition or total output as in such case a proportion of these cost reductions are likely to be passed onto consumers in the form of lower prices.[67]

(102) In this case, the Transaction gives rise to horizontal overlaps in the following markets where both Imerys and the Target are active:

- WFA for abrasive applications in the EEA,
- WFA for refractory applications in the EEA,
- bubble alumina for abrasive applications in the EEA,
- bubble alumina for refractory applications in the EEA,
- BFA for abrasive applications in the EEA and worldwide,
- BFA for refractory applications in the EEA and worldwide,
- Zirconia alumina in the EEA and worldwide,

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64 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ('Horizontal Merger Guidelines'), OJ C 31, 05.02.2004.

65 Horizontal Merger Guidelines, paragraph 26.

66 Horizontal Merger Guidelines, paragraph 61.

67 Horizontal Merger Guidelines, paragraph 62.

- sintered bauxite in the EEA and worldwide.

(103) In contrast, the Transaction does not give rise to horizontal overlaps in tabular alumina as only the Target but not Imerys is active in tabular alumina in the EEA.

V.1. White fused alumina for abrasive applications

V.1.1. The Notifying Party's arguments

(104) The Notifying Party emphasises that the Target holds a small market share in WFA for abrasive applications at the worldwide level, resulting in a limited horizontal overlap between the Parties. The Notifying Party also submits that the market is very competitive and characterised by the presence of many suppliers.[68]

(105) Although at EEA level the market is more concentrated, the Notifying Party emphasises that the EEA market remains competitive due to the presence of a number of important alternative European suppliers (Motim and Rusal) as well as due to imports from Chinese suppliers.[69]

(106) Thus, the Notifying Party concludes that the Transaction does not raise competition concerns in the market for WFA for abrasive applications.

V.1.2. The Commission's assessment

V.1.2.1. Concentration levels

(107) Imerys is the main supplier in the EEA of WFA for abrasive applications. The Target is also a significant supplier to EEA customers with its La Bâthie plant in the French Alps. The combined market shares of the Parties in the market for WFA for abrasive applications in the EEA are high in a market that is already concentrated.

(108) The Parties' methodology for the calculation of market shares and market sizes is not laid out in detail in the Form CO. The Parties submit that they were computed based on the Parties' industry intelligence, Eurostat data as well as on an industry report by the consultancy company Roskill (the Roskill 2016 Report).

(109) Based on information gathered during its market investigation, the Commission has doubts about the accuracy of certain market estimates submitted by the Parties, in particular for WFA. For example, based on the Roskill 2016 Report, the Parties have estimated that the total market size in terms of volume of WFA (abrasive and refractory applications combined) worldwide would be approximately [700-800] kT ([300-350] kT for WFA refractory, and [400-450] kT for WFA abrasive). The Parties' main source of market data, Roskill, explained during the market investigation that its report is mostly based on capacity figures reported by competitors as opposed to actual production figures,[70] which indicates that the output figures of the Roskill 2016 Report overestimate the actual size of the worldwide merchant market for WFA.

(110) Similar uncertainties exist with regards to the quantities of WFA imported into the EEA as reported by the Parties in market share tables. The quantities of WFA (for both abrasive and refractory applications) imported into the EEA in 2015 provided by the Parties in the market share tables of the Form CO is 85–120 kT, among

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68 See Form CO, paragraphs 220, 223.

69 See Form CO, paragraph 224.

70 Confirmed minutes of a call with Roskill on 4.10.2016.

which 55–65 kT imported from China. In response to requests for information from the Commission, the Parties later identified in the Eurostat import data which categories correspond to WFA (also for both abrasive and refractory applications, since Eurostat does not segregate). The Eurostat data[71] reports that a total of 61 kT of WFA was imported into the EEA in 2015 (around 50-70% of what the Parties report in the market share tables of the Form CO, for which they based themselves on the Roskill 2016 Report), among which 34 kT from China (at best less than two-thirds of what the Parties report in the market share tables of the Form CO).

(111) The Parties claim that such discrepancies originate from mistakes in customs data reported to Eurostat. Yet, this discrepancy between the figures used by the Parties in the Form CO based on the Roskill 2016 Report, and those reported by Eurostat is also confirmed at individual competitor level. Indeed several competitors have reported that their sales of WFA for abrasives in the EEA were significantly lower than what the Parties estimated.[72]

(112) The Commission therefore considers that the sales of WFA for abrasive applications by non-EEA competitors are much more limited than originally estimated by the Parties.

(113) The Commission therefore considers that the market sizes presented by the Parties, based on the Roskill 2016 Report, for various WFA sub-segments may have been overestimated. Considering that imports into the EEA are two thirds of what the Parties have estimated, the Parties' combined shares are likely higher than those presented in the table below, likely above 40%.

WFA - Abrasive Applications (Parties' estimates)												
EEA												
Company	2013				2014				2015			
	Volume		Value		Volume		Value		Volume		Value	
	Sales (kT)	Market share %	Sales (EUR Mio)	Market share %	Sales (kT)	Market share %	Sales (EUR Mio)	Market share %	Sales (kT)	Market share %	Sales (EUR Mio)	Market share %
Imerys	[…]	[20-30]%	[…]	[30-40]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Target	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Combined	**[…]**	**[30-40]%**	**[…]**	**[30-40]%**	**[…]**	**[30-40]%**	**[…]**	**[30-40]%**	**[…]**	**[20-30]%**	**[…]**	**[30-40]%**
CHINA:	[…]	[20-30]%			[…]	[20-30]%			[…]	[30-40]%		
Yufa	[…]	[0-5]%			[…]	[5-10]%			[…]	[5-10]%		
Mountai	[…]	[0-5]%			[…]	[5-10]%			[…]	[5-10]%		
Other Chinese	[…]	[10-20]%			[…]	[10-20]%			[…]	[10-20]%		
Motim	[…]	[10-20]%			[…]	[10-20]%			[…]	[20-30]%		
Rusal	[…]	[5-10]%			[…]	[5-10]%			[…]	[5-10]%		
Others	[…]	[20-30]%			[…]	[20-30]%			[…]	[10-20]%		
Total Market	**[…]**		**[…]**		**[…]**		**[…]**		**[…]**		**[…]**	

Source: Parties' estimates

71 Parties' submission of 6 October 2016, Artificial Corundum Eurostat Data worldwide & from China BFA v WFA.

72 Competitors' confidential replies to requests for information on detailed sales data.

(114) As explained, because customers for abrasive applications have specific requirements in terms of grit size, it is also informative to assess competition in the sub-segments of WFA for abrasive applications for macro and micro grit WFA. The Parties have provided market share estimates for the micro and macro grit WFA for abrasive applications segments and report a combined market share close to [30-40]% in both of these. As explained above, this likely overstates the market sizes, the presence of several competitors in these high end segments and underestimates the market shares of the Parties.

(115) Therefore, in the light of the market investigation and based on market shares alone, it cannot be excluded that non-coordinated anticompetitive effects would arise from the Transaction with respect to WFA for abrasive applications. This risk is further increased by the elements described below.

V.1.2.2. Closeness of competition between the Parties

(116) The Parties' activities overlap in almost all possible segments of WFA for abrasive applications (apart from some niche applications only supplied by Imerys such as pink and ruby WFA), making them particularly close competitors in terms of portfolio. This is evidenced by the fact that [30-40]% of the Target's top 10 customers are common to Imerys.

(117) The close competition between the Parties is widely acknowledged by the respondents to the Commission's abrasive customers questionnaire: 80% of respondents view the Parties as particularly close competitors for WFA for abrasive applications, mostly due to similar portfolio, and similar lead times.[73]

(118) Several customers noted that Imerys and the Target are particularly close competitors in the EEA, especially when looking at some sub-segments, for instance high purity WFA or micro-grit WFA.

(119) One customer noted that *'Due to the specificity of those sub-segments, in Europe there are only two companies that have the capabilities, plants and facilities to produce micro grits, namely Imerys and Alteo. A third entity situated in China potentially producing a suitable micro grit – Mount Tai – exists; but uses an outdated facility and therefore potentially cannot achieve the requested quality*.'[74]

(120) Another customer explained that only two or three producers are capable of consistently supplying high purity WFA: Imerys and the Target, and to some extent Rusal. This customer also considered that Washington Mills was capable of supplying high purity WFA but that their focus is not the EEA.[75]

(121) Imerys' internal documents show that, to resist competitive pressure, it has focused its commercial strategy on […]. For example, Imerys notes that […].[76] In a similar strategy document, Imerys notes that […].[77]

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73 Replies to question 52 of Q2 – Questionnaire to Customers (abrasive applications).

74 Confirmed minutes of a call with an abrasive customer on 23.9.2016.

75 Confirmed minutes of a call with an abrasive customer on 29.9.2016, in the original French: '*Seuls deux ou trois producteurs sont capables de fournir de manière régulière du corindon blanc d'une pureté élevée: Imerys et Alteo, plus accessoirement Rusal. Washington Mills, aux Etats Unis ne les diffuse pas de manière régulière en Europe.*'

76 Annex 7 Imerys […].

77 Imerys […].

(122) The Commission understands that the Target has made a structured effort in the recent years to compete in these same high-end segments and has invested to establish itself as a reliable supplier of quality products. In a recent interview to the specialised press, the commercial director of the Target's BFA and WFA division explained that strategy. Concerning opportunities in the market, he indicated that '*although there is oversupply of FA* [Fused Alumina] *in general, some qualities and grades are in tight supply. This might be because there is difficulty in sourcing a particular quality or consistency of product*.' When asked how the Target is managing to claim market shares from competitors, he explained that *'We are focusing on quality, consistency and reliability in our products and services. Reliability used to be one of our weaknesses as a business and we lost customers as a result. We have invested heavily in improving this over the last two years and Alteo is now a trusted supplier of all the products we manufacture. We achieved this by working closely with our customers – both by inviting customers to our plants and by sending our people to customer sites to help understand each other's needs. Based on what we have learned, we have worked to ensure that the quality of our products remains consistent while also expanding our range in accordance with what our buyers want. In 2014, we launched seven new products and have another eight in the pipeline for 2015. Our number one sales application is bonded abrasives (grinding wheels), but we are looking to increase our sales in ceramics, blasting and coated abrasives applications. Last year we invested a few million euros in R&D and in hiring new people and buying new laboratory equipment. We are also launching several partnerships with our customers. All of our innovation comes from working with our customers and developing products and solutions based on their needs. These tend to be higher in quality and more cost efficient*.'[78]

(123) Evidence gathered by the Commission therefore suggests that the Parties compete closely by focusing on higher value products and applications within WFA for abrasives.

V.1.2.3. Remaining competitors

(124) As explained in paragraphs (109) to (112), several elements lead the Commission to doubt the accuracy of the market shares attributed to various competitors by the Parties as set out in the above market share table in paragraph (113).

(125) In that table, important market shares are attributed to Chinese competitors importing WFA for abrasive applications in the EEA. Aside from the fact that the volume of such imports is questionable, several customers have raised quality issues when ordering WFA for abrasive applications from Chinese suppliers. One respondent explained that *'Chinese suppliers in general has* [sic] *big problems to deliver a stable and good quality that can satisfy our requirements. We have not found any supplier in China that can supply us with material that can be used in our production*.'[79]

(126) Customers seem to note the presence of Chinese suppliers of WFA in standard quality for abrasive applications, but do not perceive them as competitors to the Parties for high-end, specific applications (for instance high purity or micro grit).[80]

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78 Interview of Mr. Audemard by the industry publication 'Industrial Minerals' in June 2015 (https://www.alteo-alumina.com/sites/default/files/Ressources/im_june_2015_alteoarc.pdf).

79 Reply to question 97.1 of Q2 – Questionnaire to Customers (abrasive applications).

80 Confirmed minutes of a call with an abrasive customer on 23.9.2016.

One customer explained (in the original French) that '*Alteo et Imerys sont les seuls à maîtriser la "haute pureté" avec un lavage à l'acide chlorhydrique. Cette maîtrise peut faire la différence: un corindon blanc chinois peut atteindre au mieux 99,4% de pureté quand Alteo atteint 99,8% de pureté ou plus. Une pureté de 99,4% n'est pas acceptable pour une prothèse médicale. Motim ne sait pas faire de macro grain en haute pureté.*'[81]

(127) The only competitor of the Parties which is also based in the EEA, Motim, is not regarded as on par with the Parties by several customers for the high-end segments, in particular in micro-grit WFA.[82]

(128) Rusal, while regarded by some customers as a source of quality WFA, is not always considered a reasonable alternative. This is probably best explained by Rusal in its own words: *'Import duty 5.2% and logistics costs limit competiveness of our goods in Western and Southern Europe*.'[83]

(129) All customers who responded to the market investigation indicated that they were not aware of any spare capacity for WFA for abrasive applications currently.[84]

(130) In addition, contrary to what is explained below at paragraphs (185) to (187) in the BFA section, the Parties' internal documents show little evidence of intense competition in WFA for abrasive applications.

V.1.2.4. Effects of the Transaction

(131) A majority of customers of specialty alumina for abrasive applications anticipate that the Transaction would have a negative effect on competition and prices.[85] This is because the two major EEA competitors are merging. The Target is seen as the most reliable alternative to Imerys, since Motim is not considered as a good alternative by all.

V.1.3. Conclusion

(132) In view of the foregoing and in the light of the results of the market investigation and the information available to it, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market concerning unilateral effects from the horizontal overlaps between the Parties' activities in WFA for abrasive applications (and possible sub segmentations). This conclusion is based, in particular, on the following elements: (i) the Parties' combined shares post-Transaction will be high in a highly concentrated market; (ii) the Parties were, prior to the Transaction, particularly close competitors; and (iii) after the Transaction, there will be limited competitive constraints from competitors, and customers will face limited alternatives (if any in certain sub-segments). More particularly, within the EEA, Motim is not considered on par with the Parties in certain sub-segments (micro-grit). As regards competition from outside the EEA

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81 Confirmed minutes of a call with an abrasive customer on 29.9.2016.

82 Confirmed minutes of a call with an abrasive customer on 23.9.2016. Confirmed minutes of a call with an abrasive customer on 29.9.2016, in the original French: ' *Motim (Hongrie) n'est pas comparable en termes de qualité.* [customer] *estime que cela ne changera pas à court terme. En effet, etant donnée que le corindon blanc de qualité est le segment qui génère le plus de marges, si Motim avait pu transférer sa production vers ces segment, cela aurait déjà été fait*.'

83 Reply to question 19.1 of Q3 – Questionnaire to Competitors (specialty alumina).

84 Replies to question 53 of Q2 – Questionnaire Customers (abrasive applications).

85 Replies to question 106 of Q2 – Questionnaire to Customers (abrasive applications).

faces several disadvantages compared to the Parties (import duties and logistic issues). Chinese importers in particular are not seen as able to deliver the desired quality in certain sub-segments. In any case there would be little spare capacity by suitable alternative suppliers to compensate a hypothetical increase in price of WFA for abrasive applications by the Parties after the Transaction.

V.2. White fused alumina for refractory applications

V.2.1. The Notifying Party's arguments

(133) The Notifying Party submits that the overlap in the worldwide market for WFA for refractory applications is very small and their sales are trivial.[86]

(134) The Notifying Party emphasises that although at EEA level the market is slightly more concentrated, it is still very competitive due to the presence of a number of important suppliers (in particular Rusal and Motim) including Chinese importers.[87]

(135) Thus, the Notifying Party concludes that the Transaction does not raise competition concerns in the market for WFA for refractory applications.

V.2.2. The Commission's assessment

(136) There are some slight but notable differences between the EEA markets for WFA for abrasive and refractory applications. Grit size and shape for example are much less important for refractory customers who tend to value more purity, as acknowledged by the Parties, see paragraph (26). However, the competitive dynamics in these two markets in terms of identify and strength of the suppliers are broadly similar. In particular, the remarks made above in section V.1.2.3 concerning the limited competitive constraints from Russian and Chinese competitors apply mutatis mutandis.

V.2.2.1. Concentration levels

(137) Imerys is the main supplier in the EEA for WFA for refractory applications. The Target is also a significant supplier to EEA customers with its La Bâthie plant in the French Alps. The combined market shares of the Parties in the market for WFA for refractory applications in the EEA are high in a market that is already concentrated.

(138) Similarly as already set out for WFA for abrasive applications in section V.1.2.1, the Parties' methodology for market shares and market sizes is not laid out in detail in the Form CO. The Parties state that they were computed based on the Parties' industry intelligence, Eurostat data, as well as the Roskill 2016 Report.

(139) The doubts raised at paragraphs (108) to (111) on the reliability of market sizes and volumes of imports into the EEA, based on the Roskill 2016 Report, apply across the board for WFA for both abrasive and refractory applications. Likewise, individual competitors have reported imports into the EEA that are significantly lower than the volumes estimated by the Parties and presented below.

(140) In view of the results of the market investigation, the Commission considers that the sales of WFA for refractory applications by non-EEA competitors are much more limited than originally estimated by the Parties, based on the Roskill 2016 Report.

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86 See Form CO, paragraph 208.

87 See Form CO, paragraph 209.

(141) The Commission also considers that the market sizes presented by the Parties, based on the Roskill 2016 Report, for various WFA sub-segments may have been overestimated. Considering that imports into the EEA are two-thirds of what the Parties have estimated, the Parties' combined shares are likely higher than those presented in the table below, likely above 40%.

WFA - Refractory Applications (Parties' estimates)												
EEA												
Company	2013				2014				2015			
	Volume		Value		Volume		Value		Volume		Value	
	Sales (kT)	Market share %	Sales (EUR Mln)	Market share %	Sales (kT)	Market share %	Sales (EUR Mln)	Market share %	Sales (kT)	Market share %	Sales (EUR Mln)	Market share %
Imerys	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Target	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Combined	**[…]**	[30-40]**%**	**[…]**	[40-50]**%**	**[…]**	[30-40]**%**	**[…]**	[30-40]**%**	**[…]**	[30-40]**%**	**[…]**	[40-50]**%**
CHINA:	[…]	[30-40]%			[…]	[40-50]%			[…]	[40-50]%		
Mountai	[…]	[5-10]%			[…]	[10-20]%			[…]	[10-20]%		
Yufa	[…]	[10-20]%			[…]	[10-20]%			[…]	[10-20]%		
Kaifeng	[…]	[5-10]%			[…]	[5-10]%			[…]	[5-10]%		
Other Chinese	[…]	[5-10]%			[…]	[5-10]%			[…]	[5-10]%		
Rusal	[…]	[10-20]%			[…]	[10-20]%			[…]	[10-20]%		
Motim	[…]	[10-20]%			[…]	[10-20]%			[…]	[10-20]%		
Others	[…]	[0-5]%			[…]	[0-5]%			[…]	[0-5]%		
Total Market	**[…]**		**[…]**		**[…]**		**[…]**		**[…]**		**[…]**	

Source: Parties' estimates

(142) Even according to the Parties' favourable estimates, in WFA for refractory applications, the Parties' combined shares in the EEA would be [30-40]%, with an increment of [10-20]% in terms of volume. This in a concentrated market where prior to the Transaction already [60-70]% of the market is in the hands of the top 4 competitors, rising to [80-90]% for the top 4 competitors after the Transaction. Even only taking into account the five largest competitors identified in the table above (excluding other Chinese imports claimed by the Parties), the HHI level after the Transaction will be above 2000, with a delta above 150. Taking into account all of the competitors above, the post-Transaction HHI would be [2500-3000], which indicates a concentrated industry.

(143) Therefore, in the light of the market investigation and based on market shares alone, it cannot be excluded that non-coordinated anticompetitive effects would arise from the Transaction with respect to WFA for refractory applications. This risk is further increased by the elements described below.

V.2.2.2. Closeness of competition between the Parties

(144) Almost two-third of the respondents to the market investigation view Imerys and the Target as each other's closest competitors in WFA for refractory applications.[88] Customers explain that '[t]*hey are located in the same region and have the same product portfolio in fused alumina*.' Another customer added that '[t]*hese two suppliers are the main and market leading suppliers of White Fused Alumina in Europe. Currently both are supplying our company with no quality alternatives*.'[89]

(145) This is especially true in high purity WFA for refractory applications where the Parties are the only two suppliers in the EEA. One customer explained that it '*has very strict quality requirements and needs WFA with a 99.9% degree of purity, which is considered very high end material. […] For this quality, in Europe, Imerys and Alteo are the only two possible suppliers.*'[90]

V.2.2.3. Remaining competitors

(146) The remaining competitors will not exert sufficient competitive pressure on the Parties after the Transaction.

(147) Competitors in the EEA and the neighbouring area (Russia, Ukraine) are not always considered on par with the Parties. One customer found that '*Motim, produces a quality that does not fully comply with the needed standards, mainly due to a deviating particle distribution in the smaller grain sizes*' and has '*tried sourcing from Rusal but the material is also not compliant with its standards*.'[91] The same customer noted that '*Traders can also secure supplies from these countries but only to a limited extent, as their storage capacity is usually limited*' and that '*Imports for China are usually compliant when a test batch is sent, but not when a large quantity, e.g 500 mT is required. In addition the long lead times (up to 60 days) makes it inflexible and not practical*.'

(148) Another customer noted that '[i]f we buy from China we have here same general difficulties as mentioned on the other raw materials before concerning quality control and logistics.'[92]

(149) In addition, contrary to what is explained below at paragraphs (185) to (187) in the BFA section, the Parties' internal documents show little evidence of intense competition in WFA for refractory applications.

V.2.2.4. Effects of the Transaction

(150) A clear majority of respondents to the market investigation thought that the Transaction would have a negative impact on competition and prices in WFA for refractory applications.[93]

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88 Replies to question 61 of Q1 – Questionnaire to Customers (refractory applications).

89 Replies to question 61 of Q1 – Questionnaire to Customers (refractory applications).

90 Confirmed minutes of a call with a customer on 27.9.2016.

91 Confirmed minutes of a call with a customer on 27.9.2016.

92 Replies to question 18.1 of Q1 – Questionnaire to Customers (refractory applications).

93 Replies to question 108 of Q1 – Questionnaire to Customers (refractory applications)

(151) One customer explained that it 'would probably not look for alternatives in the event of a 5 to 10% price increase by Imerys, since alternative suppliers from outside the EEA, note earlier remarked quality issues, are currently offering at higher price levels than Imerys' and Alteo's.'[94]

V.2.3. Conclusion

(152) In view of the foregoing and in the light of the results of the market investigation and the information available to it, the Commission considers that Transaction raises serious doubts as to its compatibility with the internal market concerning unilateral effects from the horizontal overlaps between the Parties' activities in WFA for refractory applications. This conclusion is based, in particular, on the following elements: (i) the Parties' combined shares post-Transaction will be high in a concentrated market; (ii) the Parties were, prior to the Transaction, particularly close competitors., and (iii) after the Transaction, there will be limited competitive constraints from competitors, and customers will face limited alternatives (if any in certain sub-segments). In particular, within the EEA, Motim is not considered on par with the Parties. As regards competition from outside the EEA faces several disadvantages compared to the Parties (import duties and logistic issues). Chinese importers in particular are not seen as able to deliver the desired quality in certain sub-segments.

V.3. Bubble alumina

V.3.1. The Notifying Party's arguments

(153) The Notifying Party submits that with respect to the small volume of bubble alumina it is very difficult for them to submit estimates of hypothetical market shares.[95] Furthermore, the Notifying Party emphasises that their submitted, relatively high market shares can be explained by the fact that bubble alumina does not constitute a market on its own. The hypothetical market would be generally rather unattractive for other producers to supply due to its trivial size and low customer demand, though competitors could easily do so.[96]

V.3.2. The Commission's assessment

(154) Given that bubble alumina can only be produced by a sub-set of producers of WFA, the concerns raised by the Transaction in the markets for WFA for abrasive applications and refractory applications are also applicable to the market for bubble alumina.

(155) Given the similarities in the suppliers and the limited amount of information available, the two markets for bubble alumina for abrasive and refractory applications will be assessed within the same section below.

V.3.2.1. Concentration levels

(156) If anything, concerns are even greater in the market for bubble alumina given the high market share of the Parties in the EEA and the very limited number of competitors.

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94 Confirmed minutes of a call with a customer on 27.9.2016.

95 See Form CO, paragraphs 210, 211.

96 See Form CO, paragraph 212.

(157) One competitor has reported larger sales than estimated by the Parties. However, even taking that into account, the concentration levels reported below would not change, based on the fact that the Commission has not found confirmation of Chinese imports of bubble alumina into the EEA.

Bubble Alumina for Refractories (Parties' estimates)												
EEA												
Company	2013				2014				2015			
	Volume		Value		Volume		Value		Volume		Value	
	Sales (kT)	Share %	Sales (€M)	Share %	Sales (kT)	Share %	Sales (€M)	Share %	Sales (kT)	Share %	Sales (€M)	Share %
Imerys	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[20-30]%	[…]	[20-30]%
Target	[…]	[20-30]%	[…]	[30-40]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[30-40]%	[…]	[30-40]%
Comb.	**[…]**	**[40-50]%**	**[…]**	**[40-50]%**	**[…]**	**[40-50]%**	**[…]**	**[40-50]%**	**[…]**	**[60-70]%**	**[…]**	**[60-70]%**
Washington Mills	[…]	[10-20]%			[…]	[10-20]%			[…]	[10-20]%		
Chinese suppliers	[…]	[20-30]%			[…]	[10-20]%			[…]	[10-20]%		
Others	[…]	[20-30]%			[…]	[20-30]%			[…]	[10-20]%		
Total Market	[…]		[…]		[…]		[…]		[…]		[…]	

Source: Parties' estimates

(158) Even according to the Parties' favourable estimates, in bubble alumina for refractory applications, the Parties' combined shares in the EEA would be [60-70]%, with an increment of [20-30]% in terms of volume. This in a concentrated market where prior to the Transaction already [70-80]% of the market is in the hands of the top 3 competitors, rising to [70-80]% in the hands of the top 2 competitors after the Transaction. Even only taking into account the three largest competitors identified in the table above (excluding other Chinese imports claimed by the Parties), the HHI level before the Transaction is above 2000, and after the transaction, will be above 3700, with a delta above 1000. This level of HHI already indicates a very concentrated market. Taking into account Chinese and other competitors reported in the table above, the HHI would rise to [4000-4500], indicating an even more concentrated market (however the exercise is limited by the fact that the Parties failed to provide a breakdown by competitor in these two last broad categories).

Bubble Alumina for Abrasives (Parties' estimates)												
EEA												
Company	2013				2014				2015			
	Volume		Value		Volume		Value		Volume		Value	
	Sales (kT)	Share %	Sales (€M)	Share %	Sales (kT)	Share %	Sales (€M)	Share %	Sales (kT)	Share %	Sales (€M)	Share %
Imerys	[…]	[30-40]%	[…]	[30-40]%	[…]	[30-40]%	[…]	[30-40]%	[…]	[30-40]%	[…]	[30-40]%
Target	[…]	[5-10]%	[…]	[5-10]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Comb.	**[…]**	**[30-40]%**	**[…]**	**[40-50]%**	**[…]**	**[40-50]%**	**[…]**	**[40-50]%**	**[…]**	**[40-50]%**	**[…]**	**[40-50]%**
Washington Mills	[…]	[10-20]%			[…]	[10-20]%			[…]	[10-20]%		
Chinese suppliers	[…]	[20-30]%			[…]	[20-30]%			[…]	[20-30]%		
Others	[…]	[20-30]%			[…]	[10-20]%			[…]	[10-20]%		
Total Market	[…]		[…]		[…]		[…]		[…]		[…]	

Source: Parties' estimates

(159) Even according to the Parties' favourable estimates, in bubble alumina for abrasives, the Parties' combined shares in the EEA would be [40-50]%, with an increment of [10-20]% in terms of volume. This in a concentrated market where prior to the Transaction already [60-70]% of the market is in the hands of the top 3 competitors, rising to [60-70]% in the hands of the top 2 competitors after the Transaction. This level of concentration post-Transaction puts the Parties beyond the safe harbours identified in the Commission's Horizontal Merger Guidelines. Indeed, even only taking into account the three largest competitors identified in the table above (excluding other Chinese imports claimed by the Parties), the HHI level after the Transaction will be above 2000, with a delta above 150. Taking into account Chinese and other competitors reported in the table above, the HHI would rise to [2500-3000], indicating an even more concentrated market (however the exercise is limited by the fact that the Parties failed to provide a breakdown by competitor in these two last broad categories).

(160) Therefore, in the light of the market investigation and based on market shares alone, it cannot be excluded that non-coordinated anticompetitive effects would arise from the Transaction with respect to bubble alumina for abrasive and refractory applications. This risk is further increased by the elements described below.

V.3.2.2. Closeness of competition between the Parties

(161) The Parties are the only two producers of bubble alumina based in the EEA. Therefore, they enjoy several advantages over non-EEA-based producers of bubble alumina: no import duties (5,2%), more attractive lead times, less transport costs, and no exchange rate issues. As such, they are each other's closest competitors for bubble alumina in the EEA.

(162) In addition, the aspects discussed in WFA for abrasive and refractory applications at paragraphs (116) to (122) and (144) to (145) above are also applicable.

V.3.2.3. Remaining competitors

(163) The competitors reported by the Parties are all based outside the EEA and, as such, they face several disadvantages compared to the Parties. These disadvantages have been discussed above in the WFA for abrasive and refractory applications sections, at paragraphs (124) to (130) and (146) to (149): import duties, fluctuating exchange rates and costs of shipping, and longer lead times that are incompatible with smooth production management for customers.

(164) One customer noted that, although Washington Mills is an alternative to the Parties in terms of quality, its products are more expensive than the Parties in the EEA.[97]

(165) Not all WFA competitors are capable of producing bubble alumina. One competitor explained that it is because they *'don't know technology of bubble alumina production*.'[98]

V.3.2.4. Effects of the Transaction

(166) The market investigation only included very few actual bubble alumina customers. It is therefore difficult to draw aggregate conclusions without reaching a critical mass. Some respondents did raise concerns. Three refractory customers anticipated prices to go up.[99] One abrasive customer estimated that, with the merger of the only two bubble alumina competitors in the EEA, customers would have to turn to Chinese producers who face a number of disadvantages which make them uncompetitive on price.[100]

V.3.3. Conclusion

(167) In view of the foregoing and in the light of the results of the market investigation and the information available to it, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market concerning unilateral effects from the horizontal overlaps between the Parties' activities in bubble alumina in the EEA. This conclusion is based, in particular, on the following elements: (i) the Parties' combined shares post-Transaction will be very high in a highly concentrated market; (ii) the Parties were, prior to the Transaction, particularly close competitors; and (iii) after the Transaction, there will be limited competitive constraints from competitors, and customers will face limited alternatives. In particular, within the EEA, the Parties face no competition from domestic suppliers. As regards competition from outside the EEA, it faces several disadvantages compared to the Parties (in particular in terms of import duties and logistic issues).

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97 Confirmed minutes of a call with a customer on 27.9.2016.

98 Reply to question 15.1 of Q3 – Questionnaire to Competitors (specialty alumina).

99 Replies to question 110.1 of Q1 – Questionnaire to Customers (abrasive applications).

100 Replies to question 108.1 of Q2 – Questionnaire to Customers (refractory applications).

V.4. Brown fused alumina for abrasive applications

V.4.1. The Notifying Party's arguments

(168) The Notifying Party submits that the overlap in the worldwide market for BFA for abrasive applications is small and that the Parties' sales are trivial. In addition, the Notifying Party submits that the market is clearly dominated by Chinese suppliers.[101]

(169) Furthermore, the Notifying Party emphasises that the competitive picture in BFA for abrasive applications at the EEA level is by and large comparable to the situation in the market for specialty alumina, where the Target holds a small share, thus giving rise to a modest overlap.[102]

V.4.2. The Commission's assessment

V.4.2.1. Concentration levels

(170) The Parties' methodology for market shares and market sizes is not laid out in detail in the Form CO. The Parties state that they were computed based on the Parties' industry intelligence, Eurostat data, as well as the Roskill 2016 Report.

(171) While some discrepancies exist between the total volumes of imports of BFA (both refractory and abrasives) in the EEA in 2015 reported in the Form CO (190-200 kT) and in Eurostat (157 kT), the volumes imported from China reported in the Form CO (105–115 kT) more closely match those reported in Eurostat (120 kT).

(172) Therefore, the Parties' estimates for BFA (both abrasive and refractory applications) appear to be more accurate than for WFA (as discussed above in paragraphs (108) to (112)).

BFA - Abrasive Applications (Parties' estimates)												
WW												
Company	**2013**				**2014**				**2015**			
	Volume		**Value**		**Volume**		**Value**		**Volume**		**Value**	
	Sales (kT)	**Market share %**	**Sales (EUR Mln)**	**Market share %**	**Sales (kT)**	**Market share %**	**Sales (EUR Mln)**	**Market share %**	**Sales (kT)**	**Market share %**	**Sales (EUR Mln)**	**Market share %**
Imerys	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[5-10]%	[…]	[10-20]%
Target	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Combined	**[…]**	**[10-20]%**	**[…]**	**[10-20]%**	**[…]**	**[10-20]%**	**[…]**	**[10-20]%**	**[…]**	**[5-10]%**	**[…]**	**[10-20]%**
CHINA	[…]	[50-60]%			[…]	[60-70]%			[…]	[70-80]%	-	
Bosai	[…]	[10-20]%			[…]	[10-20]%			[…]	[10-20]%		
Yichuan Dongfeng	[…]	[0-5]%			[…]	[0-5]%			[…]	[5-10]%		
Dengfeng Mayi	[…]	[0-5]%			[…]	[0-5]%			[…]	[5-10]%		
Art Abrasives	[…]	[5-10]%			[…]	[5-10]%			[…]	[5-10]%		
Runbao	[…]	[5-10]%			[…]	[5-10]%			[…]	[5-10]%		

101 See Form CO, paragraph 229.

102 See Form CO, paragraph 230.

BFA - Abrasive Applications (Parties' estimates)												
WW												
Company	2013				2014				2015			
	Volume		Value		Volume		Value		Volume		Value	
	Sales (kT)	Market share %	Sales (EUR Mln)	Market share %	Sales (kT)	Market share %	Sales (EUR Mln)	Market share %	Sales (kT)	Market share %	Sales (EUR Mln)	Market share %
Washington Mills	[…]	[0-5]%			[…]	[0-5]%			[…]	[0-5]%		
Elfusa	[…]	[0-5]%			[…]	[0-5]%			[…]	[0-5]%		
Zaporoshky	[…]	[0-5]%			[…]	[0-5]%			[…]	[0-5]%		
Others	[…]	[10-20]%			[…]	[5-10]%			[…]	[0-5]%		
Total Market	[…]		[…]		[…]		[…]		[…]		[…]	

Source: Parties' estimates

(173) Based on the estimates above, if the geographic market for BFA for abrasive applications is defined as worldwide, there is no affected market, since the Parties' combined shares would be well below 20%.

BFA - Abrasive Applications (Parties' estimates)												
EEA												
Company	2013				2014				2015			
	Volume		Value		Volume		Value		Volume		Value	
	Sales (kT)	Market share %	Sales (EUR Mln)	Market share %	Sales (kT)	Market share %	Sales (EUR Mln)	Market share %	Sales (kT)	Market share %	Sales (EUR Mln)	Market share %
Imerys	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[10-20]%	[…]	[20-30]%
Target	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Combined	[…]	[20-30]%	[…]	[30-40]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
CHINA	[…]	[40-50]%			[…]	[40-50]%			[…]	[50-60]%	-	
Art	[…]	[10-20]%			[…]	[10-20]%			[…]	[10-20]%		
Runbao	[…]	[10-20]%			[…]	[10-20]%			[…]	[10-20]%		
Bosai	[…]	[5-10]%			[…]	[5-10]%			[…]	[10-20]%		
White Dove	[…]	[5-10]%			[…]	[5-10]%			[…]	[5-10]%		
Other Chinese	[…]	[10-20]%			[…]	[10-20]%			[…]	[10-20]%		
Zaporozhsky	[…]	[10-20]%			[…]	[10-20]%			[…]	[10-20]%		
Elfusa	[…]	[10-20]%			[…]	[10-20]%			[…]	[10-20]%		
Washington Mills	[…]	[5-10]%			[…]	[5-10]%			[…]	[5-10]%		
Others	[…]	[5-10]%			[…]	[5-10]%			[…]	[0-5]%		
Total Market	[…]		[…]		[…]		[…]		[…]		[…]	

Source: Parties' estimates

(174) In BFA for abrasive applications, the Parties' combined shares in the EEA would be [20-30]%, with an increment of [0-5]% in terms of volume. This in a market that is not too concentrated, with no competitor having a market share above [20-30]%. This level of concentration post-Transaction puts the Parties well within the safe harbours identified in the Commission's Horizontal Merger Guidelines.[103] The post-Transaction HHI level will be below [1500-2000], which indicates a moderately concentrated industry, with a delta of only [150-250].

(175) As discussed above in section IV.2.3.5, some customers contacted in the market investigation evoked potential sub-segments within BFA for abrasive applications. First, a potential segmentation of the BFA market between regular BFA and semi-friable BFA. Second, a potential sub-segmentation by kinds of treatment, such as 'ceramic-coating' or 'blue-fire' treatment, which the Commission understands can be applied to both the regular BFA and semi-friable BFA.

(176) The Parties have provided market shares at the level of some of these potential sub-segments where their activities overlap. The Commission assessed whether any competition concerns could arise at the level of these sub-segments at the narrowest geographic level, the EEA, where the concentration levels are the highest.

All Semi-friable BFA for Abrasives (Parties' estimates)			
EEA - 2015			
Company	**Volume**		**Value**
	Sales (kT)	**Market share (%)**	**Sales (EUR Million)**
Imerys	[…]	[20-30]%	[…]
Target	[…]	[10-20]%	[…]
Combined		**[40-50]%**	
Elfusa	[…]	[20-30]%	
Cumi	[…]	[10-20]%	
W.Mills	[…]	[10-20]%	
Chinese Competitors (Art Abrasives, Xuchang Great Abrasives, Runbao…)	[…]	[20-30]%	
Total Market	**[…]**		

Source: Parties' estimates

103 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ('Horizontal Merger Guidelines'), OJ C 31, 05.02.2004.

Non-treated Semi-friable BFA for Abrasives (Parties' estimates)			
EEA - 2015			
Company	Volume		Value
	Sales (kT)	Market share (%)	Sales (EUR Million)
Imerys	[…]	[10-20]%	[…]
Target	[…]	[20-30]%	[…]
Combined		**[30-40]%**	
Elfusa	[…]	[10-20]%	
Cumi	[…]	[5-10]%	
W.Mills	[…]	[5-10]%	
Chinese Competitors (Art Abrasives, Xuchang Great Abrasives, Runbao…)	[…]	[20-30]%	
Total Market	**[…]**		

Source: Parties' estimates

Ceramic coated Semi-friable BFA for Abrasives (Parties' estimates)			
EEA – 2015			
Company	Volume		Value
	Sales (kT)	Market share (%)	Sales (EUR Million)
Imerys	[…]	[20-30]%	[…]
Target	[…]	[10-20]%	[…]
Combined		**[30-40]%**	
Elfusa	[…]	[10-20]%	
Cumi	[…]	[10-20]%	
W. Mills	[…]	[10-20]%	
Chinese Competitors (Art Abrasives, Xuchang Great Abrasives, Runbao…)	[…]	[20-30]%	
Total Market	**[…]**		

Source: Parties' estimates

(177) The Parties' combined market shares in these potential sub-segments are higher (from [30-40] to [40-50]%). However, a closer look at each Party's activity at the level of these sub-segments shows that the Parties focus on different segments and therefore do not compete intensively. This differing focus of the Parties' activities will be set out in the next section V.4.2.2.

V.4.2.2. Closeness of competition between the Parties

(178) As explained, some market participants have claimed that high-end specialty products within BFA for abrasive applications (ceramic-coated BFA or semi-friable alumina, blue-fired BFA or semi-friable alumina) exist which can be sourced in Asia only with difficulty due to quality problems.

(179) However, the Commission finds it is unlikely that the competitive situation could deteriorate because of the Transaction. Indeed, when looking at further potential sub-segments within BFA for abrasive applications, it is apparent that the Parties are not close competitors. Imerys sells the bulk of its BFA for abrasives volumes in the segment of regular, non-treated BFA, where the Target is entirely absent as shown in the table below.

Parties' sales of BFA for abrasive applications in the EEA in 2015 (volume – in kT)				
		Imerys	**Target**	**Combined market share**
All Regular BFA for abrasive applications		[…]	[…]	
	Of which: Untreated regular BFA for abrasive applications	[…]	[…]	
	Of which: Ceramic coated regular BFA for abrasive applications	[…]	[…]	
	Of which: Blue Fired regular BFA for abrasive applications	[…]	[…]	
All Semi-friable BFA for abrasive applications		[…]	[…]	[40-50]%
	Of which: Untreated Semi-friable BFA for abrasive applications	[…]	[…]	[30-40]%
	Of which: Ceramic-coated Semi-friable BFA for abrasive applications	[…]	[…]	[30-40]%
	Of which: Blue-fired Semi-friable BFA for abrasive applications	[…]	[…]	
Total BFA for abrasive applications		**[…]**	**[…]**	**[20-30]%**

Source: the Parties

(180) Likewise, while both Parties sell similar volumes of semi-friable alumina, Imerys makes a significant part of its semi-friable alumina sales in high-end, further treated segments (ceramic coated and blue fired semi-friable alumina), whereas almost all of the Target's semi-friable alumina sales are of the regular, non-treated kind (the Target has trivial sales of ceramic coated semi-friable BFA: [0-5] kt, i.e. EUR […] in value sales in 2015 in the EEA).

(181) On that basis, the Commission considers that concerns raised by customers in the market investigation on BFA for abrasive applications appear unfounded. Apart from non-treated semi-friable BFA, the Parties' activities do not overlap in any of the high-end segments of BFA.

V.4.2.3. Remaining competitors

(182) Competition from CUMI, Washington Mills, and Elfusa in the EEA, in particular in the sub-segment of semi-friable BFA for abrasive applications was confirmed individually by these competitors, although some reported slightly lower volumes imported then estimated by the Parties.

(183) Competition from outside the EEA in BFA for abrasive applications is confirmed in Imerys' internal documents: customer visit reports frequently report loss of BFA

volumes to US, Brazilian, Chinese or Ukrainian competitors, including in the higher end BFA segments, such as semi-friable or treated BFA.

(184) In the United States, anti-dumping duties against the import of Chinese BFA are in place since March 2009, which may evidence the competitive constraints exerted by Chinese BFA competitors on the worldwide markets.

(185) In an internal budget forecast presentation, Imerys mentions Chinese competition (particularly from Art Abrasives and Runbao) in segments like semi-friable BFA, heat-treated (i.e. blue fired) BFA and ceramic-coated BFA.[104]

(186) In its internal customer visit reports, Imerys' sales personnel often notes competition with (and sometimes loss of accounts to) Chinese competitors, Elfusa, Washington Mills or a Ukrainian competitor, for example:

- Report […], 21 January 2014: Elfusa is named as Imerys' direct competitor in blue-fired and ceramic coated BFA, traded through […];
- Report […], 3 May 2016: in the segment for semi-friable BFA (FRSK) Elfusa is the main supplier;
- Report […], 18 July 2012: Imexco (Elfusa products) supplies BFA, Art Abrasives (from China) provides blue-fired BFA and ceramic-coated BFA, and Elfusa directly supplies semi-friable BFA;
- Report […]: where sales personnel reports volumes lost to […], in Ukraine;
- Report […], 14 January 2016: where the sales personnel reports […];
- Report […], 25 November 2015: where the sales personnel reports […].

(187) By contrast, the Target is almost never mentioned as a competitor in these customer reports, indicating little intensity in competition between the Parties.

V.4.2.4. Effects of the Transaction

(188) A majority of respondents to the market investigation did not expect the Transaction to have any impact on the market for BFA for abrasive applications in the EEA.[105]

V.4.3. Conclusion

(189) In view of the foregoing and in the light of the results of the market investigation and the information available to it, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market concerning unilateral effects from the horizontal overlaps between the Parties' activities in BFA for abrasive applications. This conclusion is based, in particular, on the following elements: (i) the Parties' combined shares post-Transaction will be moderate, apart from certain potential sub-segments; (ii)The market is quite fragmented, with several competitors from outside the EEA (China, Brazil, Ukraine, and the United States), (iii) the Parties were, prior to the Transaction, not particularly close competitors, apart from the potential sub-segment of semi-friable BFA; and (iv) Imerys' internal documents show that it faces significant competitive constraints in BFA for abrasive applications and its potential sub-segments. This

104 Imerys' […], slide 14.

105 Replies to question 106 of Q2 – Questionnaire to Customers (abrasive applications).

competitive constraint does not come from the Target to any significant extent and will remain after the Transaction.

V.5. Brown fused alumina for refractory applications

V.5.1. The Notifying Party's arguments

(190) The Notifying Party submits that the overlap in the worldwide market for BFA for refractory applications is small and that the Parties' sales are trivial. In addition, the Notifying Party submits that the market is clearly dominated by Chinese suppliers.[106] Furthermore, the Notifying Party emphasises that the competitive situation in BFA for refractory applications at the EEA level is by and large comparable to the situation in the market for specialty alumina, where the Target holds a small share, thus giving rise to a modest overlap.

V.5.2. The Commission's assessment

(191) As noted in the market definition section above, in section IV.2.1.1, there are some slight but notable differences between the markets for BFA for abrasive and refractory applications. However, the competitive dynamics in these two markets are broadly similar.

V.5.2.1. Concentration levels

V.5.2.1.a. Market share methodology and reliability

(192) The remarks on the reliability of market share estimates for BFA made above at paragraphs (171) to (172) are also applicable to this section.

BFA - Refractory Applications (Parties' estimates)												
WW												
Company	**2013**				**2014**				**2015**			
	Volume		**Value**		**Volume**		**Value**		**Volume**		**Value**	
	Sales (kT)	**Market share %**	**Sales (EUR Mln)**	**Market share %**	**Sales (kT)**	**Market share %**	**Sales (EUR Mln)**	**Market share %**	**Sales (kT)**	**Market share %**	**Sales (EUR Mln)**	**Market share %**
Imerys	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Target	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Combined	**[…]**	**[0-5]%**	**[…]**	**[5-10]%**	**[…]**	**[0-5]%**	**[…]**	**[0-5]%**	**[…]**	**[5-10]%**	**[…]**	**[5-10]%**
CHINA	[…]	[40-50]%			[…]	[50-60]%			[…]	[50-60]%		
Bosai	[…]	[5-10]%			[…]	[10-20]%			[…]	[10-20]%		
Great Wall	[…]	[5-10]%			[…]	[5-10]%			[…]	[5-10]%		
Dengfeng Songshan	[…]	[0-5]%			[…]	[5-10]%			[…]	[5-10]%		
Jingshan	[…]	[5-10]%			[…]	[5-10]%			[…]	[5-10]%		
Other Chinese	[…]	[20-30]%			[…]	[20-30]%			[…]	[10-20]%		
Elfusa	[…]	[0-5]%			[…]	[0-5]%			[…]	[0-5]%		
Washington Mills	[…]	[5-10]%			[…]	[5-10]%			[…]	[5-10]%		

106 See Form CO, paragraph 214.

BFA - Refractory Applications (Parties' estimates)												
WW												
Company	2013				2014				2015			
	Volume		Value		Volume		Value		Volume		Value	
	Sales (kT)	Market share %	Sales (EUR Mln)	Market share %	Sales (kT)	Market share %	Sales (EUR Mln)	Market share %	Sales (kT)	Market share %	Sales (EUR Mln)	Market share %
Zaporozhsky	[…]	[0-5]%			[…]	[0-5]%			[…]	[0-5]%		
Orient	[…]	[0-5]%			[…]	[0-5]%			[…]	[0-5]%		
CUMI	[…]	[0-5]%			[…]	[0-5]%			[…]	[0-5]%		
Others	[…]	[20-30]%			[…]	[20-30]%			[…]	[20-30]%		
Total Market	**[…]**		**[…]**		**[…]**		**[…]**		**[…]**		**[…]**	

Source: Parties' estimates

BFA - Refractory Applications (Parties' estimates)												
EEA												
Company	2013				2014				2015			
	Volume		Value		Volume		Value		Volume		Value	
	Sales (kT)	Market share %	Sales (EUR Mln)	Market share %	Sales (kT)	Market share %	Sales (EUR Mln)	Market share %	Sales (kT)	Market share %	Sales (EUR Mln)	Market share %
Imerys	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Target	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Combined	**[…]**	**[10-20]%**	**[…]**	**[10-20]%**	**[…]**	**[10-20]%**	**[…]**	**[20-30]%**	**[…]**	**[10-20]%**	**[…]**	**[20-30]%**
CHINA	[…]	[30-40]%			[…]	[30-40]%			[…]	[40-50]%		
Bosai	[…]	[10-20]%			[…]	[10-20]%			[…]	[10-20]%		
Great wall	[…]	[5-10]%			[…]	[5-10]%			[…]	[5-10]%		
Dengfeng Songshan	[…]	[0-5]%			[…]	[0-5]%			[…]	[5-10]%		
White dove	[…]	[5-10]%			[…]	[5-10]%			[…]	[5-10]%		
Other Chinese	[…]	[5-10]%			[…]	[5-10]%			[…]	[5-10]%		
Elfusa	[…]	[10-20]%			[…]	[10-20]%			[…]	[10-20]%		
Washington Mills	[…]	[10-20]%			[…]	[10-20]%			[…]	[10-20]%		
Zaporozhsky	[…]	[5-10]%			[…]	[5-10]%			[…]	[5-10]%		
Others	[…]	[10-20]%			[…]	[10-20]%			[…]	[10-20]%		
Total Market	**[…]**		**[…]**		**[…]**		**[…]**		**[…]**		**[…]**	

Source: Parties estimates

(193) Based on the estimates above, the Transaction would only lead to an affected market in the EEA, and only with market shares by value. Otherwise, regardless of which geographic market for BFA for abrasive applications is defined (worldwide or EEA), there is no affected market, since the Parties' combined shares by volume would be well below 20%.

(194) The Commission however has doubts as to the accuracy of the volumes of imports into the EEA reported for certain individual competitors in the table above. While volumes of Chinese imports of BFA for refractory applications seem accurate, the Parties seem to have significantly overstated the volumes imported into the EEA for BFA for refractory applications from other competitors. The Commission therefore cannot excluded that the Parties combined market share for BFA for refractory applications in the EEA may be significantly higher and above 20%.

(195) As discussed above in section IV.2.3.5, some customers contacted in the market investigation have evoked potential sub-segments within BFA for refractory applications. First, a potential segmentation of the BFA market between regular BFA and semi-friable BFA. Second, a potential sub-segmentation by kinds of treatment, such as 'ceramic-coating' or 'blue-fire' treatment, which the Commission understands can be applied to both the regular BFA and semi-friable BFA.

V.5.2.2. Closeness of competition between the Parties

(196) The Commission assessed whether any competition concerns could arise at the level of these sub-segments at the narrowest geographic level, the EEA, where the concentration levels are the highest.

(197) At the level of these narrowest possible sub-segments, the horizontal overlap between the Parties' activities would disappear, since Imerys makes all of its EEA sales of BFA for refractory applications in the segment of regular BFA, where the Target is entirely absent. And the Target makes all of its EEA sales of BFA for refractory applications in the segment for semi-friable BFA, where Imerys is entirely absent.

Parties' sales of BFA for refractory applications in the EEA in 2015 (volume – in kT)			
	Imerys	**Target**	**Combined market share**
Regular BFA for refractory applications	[…]	[…]	
Semi-friable BFA for refractory applications	[…]	[…]	
Total BFA for refractory applications	**[…]**	**[…]**	**[10-20]%**

Source: Parties

(198) On that basis – and similar to what has been set out with respect to BFA for abrasive applications in section V.4, the Commission considers that any concerns raised by customers in the market investigation on BFA for refractory applications are not supported by the results of the Commission's investigation, because the Parties' activities do not overlap on the main segments within BFA on which concerns were raised.

V.5.2.3. Effects of the Transaction

(199) The majority of respondents to the market investigation did not expect the Transaction to have any impact on the market for BFA for refractory applications

in the EEA.[107] This is notably because of the availability of competitively priced alternatives from China and the Ukraine.

V.5.3. Conclusion

(200) In view of the foregoing and in light of the results of the market investigation and the information available to it, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market concerning unilateral effects from the horizontal overlaps between the Parties' activities in BFA for refractory applications. This conclusion is based, in particular, on the following elements: (i) the Parties' combined shares post-Transaction will be moderate, even if some doubts exist as to the accuracy of market shares attributed to some competitors; and (ii) he Parties were, prior to the Transaction, not close competitors, since they focus on different sub-segments.

V.6. Zirconia alumina for abrasive applications and sintered bauxite for abrasive applications

(201) Two other markets are technically affected in the EEA but are unlikely to raise concerns (zirconia alumina for abrasive applications, sintered bauxite for abrasive applications) because the overlap is small, and, in each of them there is already an existing dominant player which would constrain the behaviour of the Parties post-Transaction.

Zirconia alumina - Abrasive Applications (Parties' estimates)												
EEA												
Company	2013				2014				2015			
	Volume		Value		Volume		Value		Volume		Value	
	Sales (kT)	Market share %	Sales (EUR Mln)	Market share %	Sales (kT)	Market share %	Sales (EUR Mln)	Market share %	Sales (kT)	Market share %	Sales (EUR Mln)	Market share %
Imerys	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[10-20]%	[…]	[10-20]%
Target	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Combined	**[…]**	**[20-30]%**	**[…]**	**[20-30]%**	**[…]**	**[20-30]%**	**[…]**	**[30-40]%**	**[…]**	**[20-30]%**	**[…]**	**[20-30]%**
Saint-Gobain	[…]	[70-80]%			[…]	[70-80]%			[…]	[70-80]%		
Chinese Suppliers (Xuchang Great Abrasive, White Dove, Runbao, Zghenzhou)	[…]	[5-10]%			[…]	[5-10]%			[…]	[5-10]%		
Others	[…]	[0-5]%			[…]	[0-5]%			[…]	[0-5]%		
Total Market	**[…]**		**[…]**		**[…]**		**[…]**		**[…]**		**[…]**	

107 Replies to question 109 of Q1 – Questionnaire to Customers (refractory applications).

Sintered Bauxite - Abrasive Applications (Parties' estimates)												
EEA												
Company	2013				2014				2015			
	Volume		Value		Volume		Value		Volume		Value	
	Sales (kT)	Market share %	Sales (EUR Mio)	Market share %	Sales (kT)	Market share %	Sales (EUR Mio)	Market share %	Sales (kT)	Market share %	Sales (EUR Mio)	Market share %
Imerys	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Target	[…]	[20-30]%	[…]	[20-30]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[5-10]%
Combined	**[…]**	**[40-50]%**	**[…]**	**[30-40]%**	**[…]**	**[20-30]%**	**[…]**	**[20-30]%**	**[…]**	**[20-30]%**	**[…]**	**[20-30]%**
Showa Denko	[…]	[60-70]%			[…]	[60-70]%			[…]	[60-70]%		
Others	[…]	[10-20]%			[…]	[10-20]%			[…]	[10-20]%		
Total Market	**[…]**		**[…]**		**[…]**		**[…]**		**[…]**		**[…]**	

V.7. Other non-affected markets

V.7.1. Tabular alumina for refractory applications

(202) Tabular alumina is produced by the Target, and Imerys only has a trivial amount of sales outside the EEA. The Target has approximately a [10-20]% share in value and volume of the EEA market. Therefore, serious doubts are unlikely in relation to this relevant market which is not affected by the Transaction.

V.7.2. Zirconia alumina for refractory applications

(203) Zirconia alumina for refractory applications is produced by the Target, and Imerys only has a trivial amount of sales outside the EEA. The Target has approximately a [5-10]% share in value and volume of the EEA market. Therefore, serious doubts are unlikely in relation to this relevant market which is not affected by the Transaction.

VI COMPETITIVE ASSESSMENT OF RELATED VERTICAL MARKETS

(204) The Transaction gives rise to a vertical relationship in the upstream market for alumina for refractory applications where the Parties are active and the downstream market for refractories (in particular monolithics) where Imerys is active through its subsidiary Calderys.

(205) Alumina for refractory applications (tabular alumina, BFA, WFA and bubble alumina) are important inputs for refractories. Therefore, since Calderys – a wholly owned subsidiary of Imerys – is present on the downstream refractories market, the Transaction also gives rise to vertical effects to the extent that Imerys will increase

its market share post-Transaction in the upstream markets for specialty alumina for refractory applications.[108]

VI.1. The Notifying Party's arguments

(206) Concerning a potential input foreclosure, the Notifying Party submit that post-Transaction the Parties' market shares on a global market for specialty alumina would be below 10 % and they would therefore hold no market power in the upstream market. The Notifying Party argues that customers acting on the downstream market for refractories would be able to source from any other specialty alumina supplier around the world. The Notifying Party further argues that the same argument holds true, should the market be considered EEA-wide in scope.

(207) The Notifying Party also submits that Imerys (through its subsidiary Calderys) holds market shares not exceeding 20% under any possible market definition for the downstream market for unshaped acid refractories.[109] Imerys would therefore have no market power in the relevant downstream market. According to the Notifying Party, the market for unshaped acid refractories is very competitive.

(208) The Notifying Party further argues that the downstream market for refractories is small in revenue and provides low margins. The Notifying Party concludes that the merged entity would therefore have no economic incentive to foreclose the upstream market for specialty alumina, as the losses caused by such strategy would not be compensated by any gains resulting from an increase of sales in the downstream market which will remain competitive.[110]

(209) Concerning a potential customer foreclosure, the Notifying Party submits that Calderys does not hold a dominant position in the downstream markets for refractory products and already procures its specialty alumina requirements captively. The Notifying Party argues that the Transaction has no impact in this respect and that specialty alumina suppliers would have the possibility to keep supplying their products to plenty of customers.[111]

VI.2. The Commissions' assessment

VI.2.1. Framework for the assessment of non-horizontal effects

(210) Foreclosure concerns a situation where actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing these companies' ability and/or incentive to compete. Two forms of foreclosure can be distinguished. The first is where the merger is likely to raise the costs of downstream rivals by restricting their access to an important input (input foreclosure). The second is where the merger is likely to foreclose upstream rivals by restricting their access to a sufficient customer base (customer foreclosure).[112]

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108 See Form CO, paragraph 179.

109 See Form CO, paragraph 184.

110 See Form CO, paragraphs 186–188.

111 See Form CO, paragraph 189.

112 Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2008/C 265/07), paragraphs 29–30.

(211) 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.[113]

(212) 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. In turn, this may raise downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger.[114]

(213) For an input or customer foreclosure scenario to raise competition issues, three factors need to be taken into account: 1) the ability of the merged entity to engage in foreclosure; 2) the incentives of the merged entity to do so: and 3) whether a foreclosure strategy would have a significant detrimental effect on competition on the downstream market.

VI.2.2. Input foreclosure

(214) Contrary to what the Notifying Party submits, the relevant upstream product market for specialty alumina for refractory applications is further sub-segmented into separate markets: WFA for refractory applications, bubble alumina for refractory applications, BFA for refractory applications and tabular alumina. The Parties' combined market shares on the upstream markets are substantially higher than the market shares submitted by the Notifying Party for the vertical assessment.

(215) In particular, the Parties' combined market shares are high with respect to WFA and bubble alumina for refractory applications. In the market for WFA for refractory applications in the EEA, the Parties have a combined market share of around [30-40]% according to the Notifying Party – and close to [50-60]% according to the Commission's investigation. Concerning the market for bubble alumina for refractory applications, the Parties have a post-combined market share of around [60-70]% in the EEA.

(216) However, as described in Sections VII.3 to VII.5, the Notifying Party has entered into commitments that include the divestment of the whole of Alteo's WFA and bubble alumina businesses. Therefore, the Transaction will not affect Imery's vertical integration in this respect.

(217) With respect to tabular alumina and BFA for refractory applications, the Notifying Party has submitted that the merged entity's market shares would remain below 20% regardless of whether the market is considered to be EEA- or worldwide and even in monolithics on which Imerys' downstream activities concentrate. As discussed in Section V.5.2.1, the Commission has some doubts about the reliability of the market shares for BFA and cannot exclude that they might be higher.

(218) As discussed in Section V.5.2.2, the Commission nonetheless notes that the Parties are not particularly close competitors to each other and supply different types of

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113 Guidelines on the assessment of non-horizontal mergers, paragraph 31.

114 Guidelines on the assessment of non-horizontal mergers, paragraph 58.

BFA for refractory applications. Therefore, even if some customers were concerned about not having an adequate number of alternative suppliers for certain sub-segments of specialty alumina for refractory applications[115], the situation is unlikely to be significantly worsened by the Transaction.

(219) In general, a number of competing suppliers appear to be present in the refractory BFA markets, including those located in China and Ukraine. Customers of refractory BFA could therefore likely turn to other suppliers if the merged entity attempted a foreclosure strategy. This view is supported by customers of refractory BFA, the clear majority of whom were not concerned of the Transaction with respect to the supply of BFA.[116]

(220) Therefore, and in light of the information available to it, the Commission concludes that the merged entity will likely not have the ability to engage into input foreclosure with respect to BFA and tabular alumina.

(221) In addition, the Commission considers that the market investigation did not reveal any significant incentive for the merged entity to engage into input foreclosure even if it had the ability to do so. The Commission notes in this respect that Imerys' (Caldery's) market share in the downstream markets for refractories are below 20%.

VI.2.3. Customer foreclosure

(222) With respect to customer foreclosure, Imerys' market share in the downstream markets remain low at below 20% according to the Parties. Given the low market share and its internal production of the upstream inputs, it is unlikely that Imerys would even at present be a significant purchaser of specialty aluminas for refractory purposes. This view is supported by the majority of upstream rivals that indicated Imerys to have sourced no or only limited volumes from them.[117]

(223) It is therefore unlikely that the merged entity would have the ability to engage into customer foreclosure. This finding is supported by the results of the market investigation where a clear majority of market participants indicated that there would be adequate remaining customers even if the merged entity stopped purchasing specialty alumina for refractory purposes. This included respondents that are currently supplying Imerys.[118]

VI.3. Conclusion

(224) In view of the foregoing and in light of the outcome of the market investigation and the information available to it, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to its effects on vertically linked markets.

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115 Replies to question 105 of Q1 – Questionnaire to Customers (refractory applications).

116 Replies to question 109 of Q1 – Questionnaire to Customers (refractory applications).

117 See, for instance replies to question 111 of Q3 – Questionnaire to Competitors (specialty alumina). See also replies to question 104 of Q1 – Questionnaire to Customers (refractory applications).

118 See, for instance replies to question 105 of Q3 – Questionnaire to Competitors (specialty alumina), and replies to question 112 of Q3 – Questionnaire to Customers (refractory applications).

VII MODIFICATIONS OF THE TRANSACTION

(225) In order to render the Transaction compatible with the internal market, the Notifying Party has modified the Transaction by entering into commitments.

VII.1. Framework for the assessment of the commitments

(226) The Commission recalls that the following principles, as referred to in the Commission Regulation (EC) No 802/2004 and in the Commission Notice on remedies acceptable under the Merger Regulation (the 'Remedies Notice'),[119] apply where parties to a merger choose to offer commitments in order to restore effective competition following serious doubts identified by the Commission.

(227) Where a concentration raises serious doubts as regards its compatibility with the internal market, the parties may undertake to modify the concentration so as to remove the grounds for the serious doubts identified by the Commission with a view to having the transaction approved in phase I of the merger review procedure. In this respect, the Commission has the power to accept commitments provided that they will remove the grounds for serious doubts as to the compatibility of the transaction with the internal market

(228) As set out in the Remedies Notice, the commitments have to eliminate the competition concerns entirely, and have to be comprehensive and effective from all points of view. The Commission only has power to accept commitments that are capable of rendering the concentration compatible with the internal market in that they will prevent the significant impediment to effective competition in all relevant markets where competition concerns were identified.[120]

(229) In assessing whether commitments will maintain effective competition, the Commission considers all relevant factors, including the type, scale and scope of the proposed commitments, with reference to the structure and particular characteristics of the market in which the transaction is likely to significantly impede effective competition, including the position of the parties and other participants on the market.[121]

(230) In order for the commitments to comply with those principles, they must be capable of being implemented effectively within a short period of time.[122] Where, however, the parties submit commitments proposals that are so extensive and complex that it is not possible for the Commission to determine with the requisite degree of certainty, at the time of its decision, that they will be fully implemented and that they are likely to maintain effective competition in the market, an authorisation decision cannot be granted.[123]

(231) Concerning the form of acceptable commitments, the Merger Regulation gives discretion to the Commission as long as the commitments meet the requisite standard.[124]

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119 Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004, OJ C 267, 22.10.2008, p. 1.

120 Remedies Notice, paragraph 9.

121 Remedies Notice, paragraph 12.

122 Remedies Notice, Paragraph 9.

123 Remedies Notice, paragraphs 13,14 and 61 *et seq.*

124 Case T-177/04, *EasyJet v Commission* [2006] ECR II-1913, paragraph 197.

(232) Divestiture commitments are often the most effective way to eliminate competition concerns resulting from horizontal overlaps. The intended effects of a divestiture will only be achieved if and once the business to divest is transferred to a suitable purchaser in whose hands it will become an active competitive force in the market. In order to ensure that the business is divested to a suitable purchaser, the commitments have to include criteria to define its suitability which will allow the Commission to conclude that the divestiture of the business to such a purchaser will likely remove the competition concerns identified.[125]

VII.2. Commitments submitted by the Notifying Party

(233) The Notifying Party submitted initial commitments on 7 October 2016 (the 'Initial Commitments'). After the Commission had raised certain doubts as to whether the Initial Commitments would be sufficient to entirely remove the serious doubts resulting from the Transaction, the Notifying Party submitted a refinement and improvement of the Initial Commitments on 14 October 2016 (the 'Commitments of 14 October 2016'). The Commission launched a market test on those commitments on the same day.

(234) Following the Commission's feedback on the market test and assessment of the Commitments of 14 October 2016, the Notifying Party submitted further improved commitments on 27 October 2016 ('Final Commitments').

(235) The Commission has analysed the proposed commitments and considers the Final Commitments to be sufficient and appropriate to ensure that the Transaction no longer raises serious doubts as to its compatibility with the internal market and that effective competition is maintained following the Transaction..

VII.3. Initial Commitments

VII.3.1. Description of the Initial Commitments

(236) In order to address the preliminary competition concerns, the Parties committed in the Initial Commitments to divest the Target's entire WFA and bubble alumina business ('the WFA Business') concentrated in the Target's production site in La Bâthie (France), currently owned by Alteo ARC.

(237) The assets of the WFA Business include in particular Alteo's WFA (including bubble alumina) manufacturing operations in La Bâthie. The Notifying Party submitted that the Target produces WFA (including bubble alumina) in two sites of La Bâthie, while Alteo produces Abral® and silicon nitride in a third site of that plant.

(238) The Initial Commitments included all tangible and intangible assets pertaining to the WFA Business. In this context, the Initial Commitments provided for a transfer of know-how used for the production of WFA and all intellectual property rights used. Moreover, the Initial Commitments included the entirety of Alteo's WFA business' customer portfolio, orders and records. Further, the Notifying Party committed to divest all of Alteo's contracts, licenses, permits and authorisations related to the WFA business.

(239) The Initial Commitments did not include the divestment of Alteo's further activities located in La Bâthie, namely its Abral® and silicon nitride businesses. They also did not contain any specific safeguards as regards the WFA Business' access to raw material and in particular to calcinated alumina, including from its former parent

125 Remedies Notice, paragraph 47.

company Alteo. Moreover, the Initial Commitments did not specify the exact means of offering sales and marketing, R&D, IT, accounting and administration services provided by Alteo's staff to the WFA Business as well as related transitional agreements. Also, the exact scope of the divested IP, licences, permits etc. and the specific key personnel to be transferred were not defined in the Initial Commitments.

VII.3.2. Assessment of the Initial Commitments

(240) As set out in sections V.1 to V.3., the Commission concluded that the Transaction raises serious doubts as to its compatibility with the internal market regarding (i) WFA for abrasive applications, (ii) WFA for refractory applications and (iii) bubble alumina in the EEA.

(241) On the basis of the information provided by the Notifying Party and for the reasons set out below, the Commission did not consider that the Initial Commitments could fully remove such serious doubts due to, first, remaining concerns regarding the viability of the WFA Business and in particular in the light of the exclusion of Alteo's Abral® and silicon nitride businesses from the WFA Business, second, the uncertainty to what extent sales personnel would be made available to the WFA Business and, third, the requirement of further appropriate means to safeguard access to raw materials for the WFA Business.

VII.3.2.1. Suitability to remove identified competition concerns

(242) As regards the overlaps of the Parties' activities in WFA for refractory and abrasive applications as well as in bubble alumina, the Initial Commitments included the divestment of the entirety of Alteo's WFA and bubble alumina operations worldwide.

(243) This divestment would thus eliminate any horizontal overlap of the activities of the Parties in the WFA and bubble alumina markets.

(244) On that basis, the Commission considers that the divestment of Alteo's entire WFA and bubble alumina business as proposed in the Initial Commitments could be sufficient to remove the overlaps between the Parties' activities in the markets for WFA and bubble alumina for refractory and abrasive applications.

VII.3.2.2. Divestiture of a viable and competitive business

(245) The Commission considers that there are a number factors which indicate that the WFA Business may be a viable and competitive business in certain respects:

(i) The WFA Business is a profitable business with sales of EUR […], growing by […]% per annum in the past […] years. Although negative growth of […]% is expected in […], a recovery of the lost sales is expected until […] with further growth expectations of additional […]% in the next […] years. The contribution of the WFA Business without variable costs was EUR […] in 2015 and the cash gross margin was EUR […] or […]% of sales in 2015.

(ii) The WFA Business has a production capacity of […] ktpa, which is comparable to other WFA competitors such as Motim, whose capacity is estimated by the Parties to be approximately […] ktpa[126].

126 Similarly, the Roskill 2016 Report, page 49.

(iii) The WFA Business comprises all customer relationships, existing permits, licences and authorisations of Alteo that are necessary to operate the business within a short time.

(246) However, the Commission had doubts as to the viability of the WFA Business, with regard to certain elements. The Commission considered in particular that the WFA Business' direct access to sales and marketing personnel responsible for the WFA Business which is currently employed by Alteo Gardanne and the inclusion of Alteo's Abral® and silicon nitride businesses located in the same La Bâthie plant are necessary for the viability of the WFA Business. Further, the safeguards that a potential purchaser of the WFA Business has sufficient access to raw materials if need be, for instance through the optional succession into a raw material contract concluded between Alteo and Imerys inter alia regarding calcinated alumina, was considered to be crucial to ensure sufficient flexibility of the purchaser to develop the WFA Business as a viable and competitive business. Lastly, further safeguards regarding transitional services such as HR, R&D, accounting and administration appeared to be necessary.

Sales and Marketing Personnel

(247) The WFA Business does not currently employ any own sales and marketing personnel. Such services are rather provided by […] sales forces, […]. These sales forces dedicate currently approximately […]% of their time to the sale and marketing of WFA (the remaining time being primarily devoted to selling and marketing of BFA).

(248) The Commission's assessment is that for a business to function on a stand-alone basis and to develop as a viable and competitive force on the market, it is essential to employ sales forces that are dedicated to the business they work for, who have sufficient expertise of the relevant markets and preferably maintain ongoing customer relations.

(249) Therefore, the Commission considers that it is necessary that the WFA Business would include sufficient sales and marketing personnel that is currently employed by Alteo Gardanne. In particular, in case the purchaser would not own an existing own sales and distribution network and would not be active in the market for WFA, it is questionable whether within a short period of time suitable personnel could be hired and sufficient customer relations could be established to compete effectively for sales on the market.

(250) A mere prolongation of the provision of sales and marketing services by Alteo Gardanne for a transitional period would create less certainty than the transfer of a sales team to the WFA Business, especially in the medium- and long-term, and is thus the less preferable option.

(251) However, the personnel which is currently in charge of Alteo's WFA sales is employed by Alteo Gardanne, and that personnel was not to be transferred to Imerys in the course of the Transaction. Therefore, Imerys can neither commit to transfer such third party personnel to the WFA Business nor do these employees in any way automatically follow the WFA Business. Whether they can be transferred or not, as was submitted by the Parties, depends on the approval of Alteo Gardanne as well as on the salespeople themselves. In any event, the Initial Commitments did not stipulate the specific means of how and under which terms sales and marketing personnel currently dedicated inter alia to Alteo's WFA business would have to be made available to the WFA Business.

(252) Therefore, the Commission was not able to conclude with sufficient certainty that the Initial Commitments were appropriate to ensure the medium to long-term competitiveness and viability of the WFA Business in terms of access to sales and marketing personnel.

Inclusion of Abral® and silicon nitride business

(253) In the Initial Commitments, the Notifying Party excluded Alteo's Abral® and silicon nitride businesses which are currently located also in Alteo's production site in La Bâthie. The Notifying Party submitted that the Abral® and the silicon nitride business could be easily carved out since manufacturing takes place at different facilities within the La Bâthie site.

(254) However, the profit and loss data provided by the Notifying Party of the La Bâthie site suggests that Abral® and silicon nitrides contribute substantially to La Bâthie's gross margin and EBTIDA. For instance, sales of Abral® and silicon nitride accounted for EUR […] of the cash gross margin of overall EUR […].

(255) Thus, it could not be excluded that the exclusion of the Abral® and silicon nitrides activities from the existing La Bâthie business risks to weaken the financial strength and profitability of La Bâthie as it is structured today. Therefore, the Commission considered that the Abral® and silicon nitrides business should be included in the WFA Business to ensure its continuous viability and competitiveness.

Optionality of succession in raw material contract

(256) In the context of the Transaction, Imerys entered into a long-term raw material supply contract with Alteo with fixed terms ([…] years) and prices. This supply contract concerns also raw materials (calcinated alumina), which were meant to be used by Imerys post-Transaction for the WFA Business.

(257) The Initial Commitments stipulated that all of Alteo's contracts related to its WFA (including bubble alumina) Business should be divested. However, it remained unclear (i) whether the supply agreement regarding raw material to be supplied by Alteo to Imerys post-Transaction would fall under this obligation and (ii) under which conditions a potential purchaser should succeed into the supply agreement, considering that Alteo Gardanne would have to agree to such transfer.

(258) Sufficient access to raw materials is a crucial pre-condition for a business to be and develop as a viable and competitive business on the market. The viability of the WFA Business depends thus on whether sufficient calcinated alumina supplies at competitive conditions are available to a potential purchaser or could easily be found. Should this not be the case or only at worse conditions than those negotiated by Imerys with Alteo in the context of the Transaction, a partial succession in the existing raw material supply contract between Imerys and Alteo regarding calcinated alumina could ensure the WFA Business' access to calcinated alumina. On the other hand, should the purchaser already have supply contracts in place or should the purchaser be able to source calcinated alumina at more beneficial terms than those agreed upon between Imerys and Alteo, succeeding into the raw material contract would be detrimental to the WFA Business' potential to develop as a viable and competitive force on the market.

(259) In the light of the above, the Commission indicated to the Notifying Party that under the Initial Commitments the WFA Business' access to calcinated alumina was not sufficiently ensured and that to appropriately safeguard sufficient access without creating a financial burden for the WFA Business, it should be at the

option of the purchaser to partially succeed in the raw material supply contract between Alteo and Imerys.

VII.3.3. Conclusion on the Initial Commitments

(260) Therefore, in view of the above considerations and the information available to it, the Commission was not able to conclude with sufficient certainty that the Initial Commitments were appropriate to ensure the competitiveness and viability of the WFA Business.

VII.4. Commitments of 14 October 2016

(261) On 14 October 2016, the Notifying Party submitted a refined set of commitments ('Commitments of 14 October 2016'), replacing the Initial Commitments, aimed at addressing the shortcomings identified with regards to the Initial Commitments. The Commitments of 14 October 2016 replaced the Initial Commitments.

VII.4.1. Description of the Commitments of 14 October 2016

(262) The Commitments of 14 October 2016 include everything that was included in the Initial Commitments described in Section VII.3.1. In addition, the Commitments of 14 October 2016 contain certain additions and clarifications. The main amendments are listed in paragraphs (263) to (265).

(263) First, the Commitments of 14 October 2016 include the divestment of the Abral® and silicon nitride business and related assets that were outside the scope of the Initial Commitments.

(264) Second, at the option of the purchaser, the purchaser shall be able to partially succeed into the raw material supply contract between Alteo and Imerys regarding calcinated alumina for the production of WFA.

(265) Third, the Commitments of 14 October 2016 include an explicit description of key personnel. In addition, appropriate financial incentives will be offered by the Notifying Party to at least […] among the […] sales forces currently dedicated to Alteo's La Bâthie products. Such incentives shall be offered with priority to the […] and […] of the […] sales managers currently in charge of the sales of the products concerned. In addition, the criteria for suitable purchasers include a clarification that only those purchasers can be approved by the Commission who have the ability to secure sufficient international coverage in terms of sales network.

VII.4.2. Assessment of the Commitments of 14 October 2016

(266) Following the modification of the Commitments explained above the Commission launched a market test on the Commitments of 14 October 2016.

(267) The results of the market test were generally positive. In particular, the majority of market participants that took a position considered that the Commitments of 14 October 2016 were sufficient to eliminate the competition concerns raised by the Transaction and that the divested assets would be viable and constitute a competitive force on the market if purchased by a suitable purchaser.[127] The majority of respondents who were customers also considered that they could purchase WFA and bubble alumina from the divested business.[128] The market test

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127 See, for instance replies to questions 1–3 and 5– 7 of R1 – Market Test.

128 Replies to question 4 of R1 – Market Test.

also confirmed that there was interest from some purchasers from the alumina industry in acquiring the divested business.[129]

(268) Nonetheless, a significant number of market participants clarified that, in order for the divested business to be viable and to constitute an effective competitive force, the purchaser would need to have prior experience in the specialty alumina industry. Reasons for this were explained to be, for instance access to customers and industry knowledge.[130]

VII.4.3. Conclusion on the Commitments of 14 October 2016

(269) Therefore, in view of the replies to the market test and the information available to it, the Commission was not able to conclude with sufficient certainty that the Commitments of 14 October 2016 were appropriate to ensure the viability and competitiveness of the businesses to be divested. This was because the Commission could not ascertain that the viability and competitiveness of the businesses to be divested would not significantly depend on the purchaser having the prior experience identified by market participants in the market test.

VII.5. Final Commitments

(270) On 27 October 2016, and following the Commission's feedback on the results of the market test on the Commitments of 14 October 2016, the Notifying Party submitted a refined set of commitments ('Final Commitments'). The Final Commitments replaced the Commitments of 14 October 2016.

VII.5.1. Description of the Final Commitments

(271) The Final Commitments include everything that was included in the Commitments of 14 October 2016 described in Section VII.4.1 (and everything that was included in the Initial Commitments described in Section VII.3.1).

(272) In addition, the Final Commitments include a requirement that the purchaser shall have prior experience in the specialty alumina industry, namely *'proven expertise in the industry of fused alumina for non metallurgical applications (i.e. refractory and abrasive applications) or in market segments closely related to fused alumina for non metallurgical applications (e.g. a presence in the upstream market for calcined alumina or in the neighbouring market of fused alumina for metallurgical applications)*'[131].

VII.5.2. Assessment of the Final Commitments

(273) As described in Section VII.4, market participants had indicated in the market test on the Commitments of 14 October 2016 that the purchaser would need to have prior industry experience for the divestment to be viable and constitute an effective competitive force. In other respects, the market test was positive and did not raise issues that would have called the suitability of the Commitments of 14 October 2016 into question.

(274) The Commission considers that the Final Commitments adequately address the question raised in the earlier market test, in particular in relation to the purchaser's profile. Given that the Final Commitments have in no other material way been altered from the Commitments of 14 October 2016, the Commission concludes that

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129 Replies to question 11 of R1 – Market Test.

130 See, for instance replies to question 13 of R1 – Market Test.

131 Paragraph 15 of the Final Commitments.

the overall positive results of the market test can be considered valid for the Final Commitments as well.

VII.5.3. Conclusion on the Final Commitments

(275) Therefore, and in view of the considerations in this Section and the information available to it, the Commission considers that the Final Commitments entered into by the Notifying Party are sufficient and appropriate to eliminate the serious doubts as to the compatibility of the Transaction with the internal market with respect to (i) WFA for abrasive applications, (ii) WFA for refractory applications and (iii) bubble alumina.

VIII CONDITIONS AND OBLIGATIONS

(276) Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with internal market.

(277) The fulfilment of the measures that give rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market is no longer applicable. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 6(3) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

(278) In accordance with the basic distinction between conditions and obligations, the commitments in section B (and the Schedule) of the Final Commitments constitute conditions attached to this decision, as only through full compliance therewith can the structural changes in the relevant markets be achieved. The other commitments set out in the Final Commitments constitute obligations, as they concern the implementing steps which are necessary to achieve the modifications sought in a manner compatible with the internal market. Accordingly, the Decision not to raise objections is made conditional on full compliance by the Notifying Party with Section B of the Final Commitments and the remaining sections of the Final commitments constitute obligations on the Notifying Party within the meaning of Article 6(2) of the Merger Regulation.

(279) The full text of the Final Commitments is attached as an Annex to this decision and forms an integral part of it.

IX CONCLUSION

(280) For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in Sections B and in the Schedule of the commitments annexed to the present decision and with the obligations contained in the remaining sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation and Article 57 of the EEA Agreement.

X APPROVAL OF THE SPA AMENDMENT SUBMITTED ON 27 OCTOBER 2016 PURSUANT TO PARAGRAPH 5 OF THE COMMITMENTS

(281) Paragraph 5 of the Final Commitments provides that the Transaction shall not be closed until Imerys and Alteo have entered into an agreement, and that the Commission has approved the agreement, on (i) the provision of transitional services by Alteo Gardanne to the purchaser of the divested business and (ii) an option for the purchaser of the divested business to partially enter into the supply agreement between Alteo Gardanne and Alteo ARC with a view of ensuring adequate raw material supplies to the divested business (split of the supply agreement between Alteo Gardanne and the divested business).

(282) On 27 October 2016, Imerys and Alteo entered into an agreement on the amendment of the agreements bringing about the Transaction concerning, among other elements, the provision of transitional services and raw materials by Alteo Gardanne to the purchaser of the divested business ('Amendment to the SPA').

(283) With respect to transitional services concerning, among others, back-office functions, Section (iii)(c) of the Amendment to the SPA provides that Alteo Gardanne shall provide the divested business transitional services *'similar to those already appended to the Alteo ARC SPA, relating to the Divestment Business, under the terms and conditions set forth therein applicable mutatis mutandis, subject to the following:*

(i) such transitional services shall continue to be provisionally provided for the entire Divestiture Period plus, upon the closing of the transfer of the Divestment Business, an additional period of […]*, which can be renewed once at the option of the Third Party Purchaser, starting from the closing of the transfer of the Divestment Business, unless the Third Party Purchaser elects to terminate those services before that date;*

(ii) such transitional services shall be terminated by anticipation if the relevant services have been internalized by the Divestment Business before the expiration of any of the periods referred to above'

(284) With respect to transitional sales agent services in particular, Section (iii)(d) of the Amendment to the SPA stipulates that Alteo Gardanne shall continue to act as a sales agent to the divested business *'up to a period of maximum* […] *thereafter, should no member of the old sales team accept to follow the Divestment Business (as per the Commitments). Should the members of the old sales team (at least* […] *in numbers) accept to follow the Divestment Business, the transitional service agreement in respect of the sales forces will terminate within maximum* […] *from the transfer of the members of the old sales team to the Divestment Business'*.

(285) With respect to R&D, Section (iii)(d) of the Amendment to the SPA stipulates that *'upon reasonable request of the Third Party Purchaser, Alteo Gardanne's R&D department shall provide support services to the Third Party Purchaser for a period of up to* […] *(renewable once) after the closing of the transfer of the Divestment Business.'*

(286) Concerning the supply of raw materials by Alteo Gardanne to the divested business, Section (iii)(b) of the Amendment to SPA provides that '[t]*he supply agreement for raw materials between Alteo Gardanne and Alteo ARC, covering both the La Bâthie plant and the Beyrède plant, as appended in agreed form to the Alteo ARC SPA, shall be split accordingly to ensure the supply of the relevant raw materials by Alteo Gardanne to the Divestment Business under the terms and conditions set forth therein applicable mutatis mutandis - - the Beneficiary [Alteo*

Holding] agrees that the Offeror [Imerys] is entitled to assign to the Third Party Purchaser the supply of raw materials to the Divestment Business - -'

(287) The Commission considers that the text of the Amendment to the SPA is in line with paragraph 5 of the Final Commitments. The Amendment to the SPA – which has been signed by a duly appointed representative of Alteo – provides Alteo's agreement to provide to the purchaser transitional services and raw materials as required in paragraph 5 of the Commitments.

(288) Therefore, and in light of the information made available to it, the Commission confirms that the Amendment to the SPA fulfils the requirements set out in paragraph 5 of the Final Commitments.

For the Commission

(Signed)
Phil HOGAN
Member of the Commission

Case M.8130 – Imerys / Alteo certain assets

COMMITMENTS TO THE EUROPEAN COMMISSION

27 October 2016

Pursuant to Articles 6(2) of Council Regulation (EC) No 139/2004 (the "**Merger Regulation**"), Imerys S.A., incorporated under the laws of France, ("**Imerys**" or the "**Notifying Party**"), hereby enters into the following Commitments (the "**Commitments**") vis-à-vis the European Commission (the "***Commission***") with a view to rendering the acquisition of the Target as described in the Form CO (Alteo ARC and Alufin) (the "**Transaction**") compatible with the internal market and the functioning of the EEA Agreement.

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

SECTION A. DEFINITIONS

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

[…]

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

[…];

Alteo Gardanne: A subsidiary of Alteo Holding (the Seller in the Transaction), constituting its headquarters.

[…]

[…]

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

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

Closing Period: the period of 3 months from the approval of the Purchaser and the terms of sale by the Commission.

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

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

Divestment Business: the business as defined in Section B and in the Schedule which Imerys commits to divest.

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

Effective Date: the date of adoption of the Decision.

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

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

Imerys: Imerys S.A., incorporated under the laws of France, with its registered office at 154, rue de l'Université, 75007 Paris, and registered with the RCS at Paris under number 562 008 151.

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

La Bathie: Alteo's manufacturing sites producing WFA, bubble alumina, […].

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

Personnel: all staff currently employed by the Divestment Business as listed in the Schedule.

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

Purchaser Criteria: the criteria laid down in paragraph 15 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

Sale and Purchase Agreement: a final binding sale and purchase agreement for the sale of the Divestment Business […].

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

Transaction: the Notified Transaction under case M.8130 Imerys/Alteo certain assets.

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

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

WFA Business: Alteo's business in WFA and Bubble alumina, subject to divestiture.

SECTION B. THE COMMITMENT TO DIVEST AND THE DIVESTMENT BUSINESS

Commitment to divest

2. In order to maintain effective competition, Imerys commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 16 of these Commitments. To carry out the divestiture, Imerys commits to find a purchaser and to enter into a Sale and Purchase Agreement for the sale of the Divestment Business within the First Divestiture Period. If, at the end of the First Divestiture Period, Imerys has not entered into such an agreement, Imerys shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 28 in the Trustee Divestiture Period.

3. Imerys shall be deemed to have complied with this commitment if:

   (a) by the end of the Trustee Divestiture Period, Imerys or the Divestiture Trustee have entered into a Sale and Purchase Agreement and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 16 and

   (b) the Closing of the sale of the Divestment Business to the Purchaser takes place within the Closing Period.

4. In order to maintain the structural effect of the Commitments, Imerys shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from Imerys showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 42 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the Transaction compatible with the internal market.

5. Imerys commits not to close the Transaction until:

   (a) Imerys has submitted a copy of the executed agreement between Imerys and Alteo Gardanne - which inter alia stipulates the provision of transitional services by Alteo Gardanne to the Divestment Business […]

   (b) the Commission has approved such agreement.

Structure and definition of the Divestment Business

6. The Divestment Business consists of Alteo's WFA Business […]. The legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:

   (a) all tangible and intangible assets (including intellectual property rights) pertaining to Alteo's WFA (including bubble alumina) business […];

(b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;

(c) all contracts, leases, commitments and customer orders of the Divestment Business;

(d) all customer, credit and other records of the Divestment Business; and

(e) the Personnel.

SECTION C. RELATED COMMITMENTS

Preservation of viability, marketability and competitiveness

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

(a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;

(b) to make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;

(c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to Imerys' remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, Imerys shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. Imerys must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

Hold-separate obligations

8. Imerys commits, from the Effective Date until Closing, to keep the Divestment Business separate from the businesses that it is retaining, and to ensure that unless explicitly permitted under these Commitments: (a) management and staff of the businesses retained by Imerys have no involvement in the Divestment Business; (b) the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by Imerys and do not report to any individual outside the Divestment Business.

9. Until Closing, Imerys shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses which Imerys is retaining. Immediately after the adoption of the Decision, Imerys shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the Divestment Business independently and in the best interest of the business

with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by Imerys. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 6(c) of these Commitments. The Commission may, after having heard Imerys, require Imerys to replace the Hold Separate Manager.

Ring-fencing

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

Non-solicitation clause

11. Imerys undertakes, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of […] after Closing.

Due diligence

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

    (a) provide to potential purchasers sufficient information as regards the Divestment Business;

    (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

13. Imerys shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). Imerys shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.

14. Imerys shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

SECTION D. THE PURCHASER

15. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:

    (a) The Purchaser shall be independent of and unconnected to Imerys and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).

    (b) The Purchaser shall have the financial resources, ability to secure sufficient international coverage in terms of sales network, proven expertise in the industry of fused alumina for non metallurgical applications (i.e. refractory and abrasive applications) or in market segments closely related to fused alumina for non metallurgical applications (e.g. a presence in the upstream market for calcined alumina or in the neighbouring market of fused alumina for metallurgical applications), and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with Imerys and other competitors;

    (c) The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

16. The Sale and Purchase Agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When Imerys has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. Imerys must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

SECTION E. TRUSTEE

I. Appointment procedure

17. Imerys shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. Imerys commits not to close the Transaction before the appointment of a Monitoring Trustee.

18. If Imerys has not entered into a Sale and Purchase agreement regarding the Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Imerys at that time or thereafter, Imerys shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

19. The Trustee shall:

(a) at the time of appointment, be independent of Imerys and its Affiliated Undertakings;

(b) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and

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

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

Proposal by Imerys

21. No later than two weeks after the Effective Date, Imerys shall submit the names of one or more natural or legal persons whom Imerys proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, Imerys shall submit a list of one or more persons whom Imerys propose to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 19 and shall include:

(a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;

(b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;

(c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

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

New proposal by Imerys

23. If all the proposed Trustees are rejected, Imerys shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 17 and 22 of these Commitments.

Trustee nominated by the Commission

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

II. Functions of the Trustee

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

Duties and obligations of the Monitoring Trustee

26. The Monitoring Trustee shall:

(a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.

(b) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Imerys with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

(i) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the businesses retained by Imerys, in accordance with paragraphs 7 and 8 of these Commitments;

(ii) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 9 of these Commitments;

(iii) with respect to Confidential Information:

- determine all necessary measures to ensure that Imerys does not after the Effective Date obtain any Confidential Information relating to the Divestment Business;

- in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business;

- make sure that any Confidential Information relating to the Divestment Business obtained by Imerys before the Effective Date is eliminated and will not be used by Imerys;

- decide whether such information may be disclosed to or kept by Imerys as the disclosure is reasonably necessary to allow Imerys to carry out the divestiture or as the disclosure is required by law; and

- monitor the splitting of assets and the allocation of Personnel between the Divestment Business and Imerys or its Affiliated Undertakings;

(c) propose to Imerys such measures as the Monitoring Trustee considers necessary to ensure Imerys' compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;

(d) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:

(i) potential purchasers receive sufficient and correct information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and

(ii) potential purchasers are granted reasonable access to the Personnel;

(e) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;

(f) provide to the Commission, sending Imerys a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;

(g) promptly report in writing to the Commission, sending Imerys a non-confidential copy at the same time, if it concludes on reasonable grounds that Imerys is failing to comply with these Commitments;

(h) within one week after receipt of the documented proposal referred to in paragraph 16 of these Commitments, submit to the Commission, sending Imerys a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser;

(i) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

27. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

28. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both (i) the purchaser and (ii) the Sale and Purchase Agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 15 and 16 of these Commitments. The Divestiture Trustee shall include in the Sale and Purchase Agreement (as well as in any ancillary agreements), such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the Sale and Purchase Agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Imerys, subject to Imerys' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

29. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to Imerys.

III. Duties and obligations of Imerys

30. Imerys shall provide and shall cause their advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Imerys' or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and Imerys and the Divestment Business shall provide the Trustee upon request with copies of any document. Imerys and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

31. Imerys shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. Imerys shall provide and shall cause their advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Imerys shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.

32. Imerys shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture

Trustee, Imerys shall cause the documents required for effecting the sale and the Closing to be duly executed.

33. Imerys shall indemnify the Trustee and its employees and agents (each an "***Indemnified Party***") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Imerys for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

34. At the expense of Imerys, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Imerys' approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Imerys refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Imerys. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 33 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Imerys during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

35. Imerys agrees that the Commission may share Confidential Information proprietary to Imerys and the Divestment Business with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17(1) and (2) of the Merger Regulation apply *mutatis mutandis*.

36. Imerys agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.

37. For a period of ten years from the Effective Date the Commission may request all information from Imerys that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

38. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:

    (a) the Commission may, after hearing the Trustee and Imerys, require Imerys to replace the Trustee; or

    (b) Imerys may, with the prior approval of the Commission, replace the Trustee.

39. If the Trustee is removed according to paragraph 38 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 17 to 24 of these Commitments.

40. Unless removed according to paragraph 38 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However,

the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

SECTION F. THE REVIEW CLAUSE

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

42. The Commission may further, in response to a reasoned request from Imerys showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to Imerys. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

SECTION G. ENTRY INTO FORCE

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

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duly authorised for and on behalf of Imerys S.A.

SCHEDULE

1. The Divestment Business as operated to date has the following legal and functional structure: it consists of Alteo's white fused alumina business (including its bubble alumina business) (the "**WFA Business**") […], located at La Bâthie, (together, the "**Divestment Business**".[1]

2. […]

3. The manufacturing of Alteo's WFA Business […] is located in the plant La Bâthie, a production site which currently operates Alteo's entire production of those products. La Bâthie forms part of Alteo ARC, […]. Alteo ARC is incorporated under the laws of France, registered with the RCS of Aix-en-Provence under number 382 844 470 with its legal place of registration at Route de Biver, F-13120 Gardanne. […].

4. La Bâthie is specialized in the production of white fused alumina and sub-segments thereof, including bubble alumina, […].

5. La Bâthie is located at Usine de La Bâthie, F-73540 La Bâthie. […].

6. There are […] employees working in the La Bathie plant, […].

7. […]:

   […]

8. […]

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

(a) All tangible assets associated to the Divestment Business, namely:

- All tangible assets of Alteo's WFA Business, among which:
  - […];
  - [...];
  - […];

[1] The corporate structure under which the Divestiture of the Divestment Business will take place has not been decided yet. The divestiture may also occur via the Divestment of Alteo ARC and reverse carve-out of the BFA Business. The retained option will be submitted to the Commission approval.

- […];
- […].

- […]:
  - […];
  - […];
  - […].

(b) all intangible assets associated to the Divestment Business, namely:

- All intangible assets of Alteo's WFA Business, among which:

  - Alteo's know-how […];

  - All Intellectual Property Rights used in conducting the WFA Business;

    - The brands associated to Alteo's WFA Business, namely: […], *[...], [...]* and […]*;*

    - The patents associated to […], namely:

      - **[…]:**
        - […]
        - […]
        - […]
        - […]
        - […]
        - […]
        - […]
        - […]
        - […]
        - […]
        - […]

      - **[…]**
        - […]
        - […]

- […]
- […]
- […]

- The goodwill attached to Alteo's WFA Business.

- […]

  - […];
  - […]
    - **[…]**
      - […]
      - […]
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      - […]
      - […]
    - **[…]**
      - […]
      - […]
      - […]
      - […]
      - […]
  - […]

- Should additional IP exist which is currently used by other businesses included in the scope of the Transaction but outside the Divestment Business, and necessary for the functioning of the Divestment Business, such IP shall likewise be included by way of a free irrevocable license, granted to the Divestment Business for an indefinite period.

(c) all licences, permits and authorisations currently used by Alteo's WFA Business, […]

- [..]

(d) all of Alteo's contracts related to its WFA business […]

- […]

- An electricity agreement […]
- All distribution and agency agreements concerning Alteo's WFA Business […]
  - […]
  - […]
    - […]
    - […]
    - […]
    - […]
  - Distribution agreements with […]
- As to the IT licenses and procurement contracts […]:

List of Alteo ARC IT licenses to be split/transferred
[…]
[…]
[…]
[…]
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[…]

Alteo ARC leases to be split/transferred	
[…]	[…]
[…]	[…]

Alteo ARC IT contracts to be split/transferred	
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]

Main procurement contracts to be split/transferred	
Companies	**Activity Concerned**
[…]	[…]
[…]	[…]
[…].	[…]
[…]	[…]
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(e) the entirety of Alteo's WFA Business' […] customer portfolio, orders and records, as well as historic customer orders and records.

- […]

- […]

(f) the Personnel associated to the Business to be divested;

- There are currently […] employees working in the La Bâthie plant[2], […]

- […]

(g) the Key Personnel;

Function	Name
[…]	[…]
[…]	[…]
[…]r	[…]
[…]	[…]
[…]	[…]
[…]	[…]

(h) the arrangements for the supply with the following transitional services;

Back-Office

- All the back office functions […].

Sales Forces

[…]

- […]

R&D

- […]

2 […].

10. Imerys commits not to close the Transaction until:

(i) Imerys has submitted a copy of the executed agreement between Imerys and Alteo Gardanne […] and

(ii) the Commission has approved such agreement.

11. […]