



## ***Public Competition Assessment***

28 January 2011

### ***OneSteel Limited - proposed acquisition of Moly-Cop Group S.a.r.l***

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#### **Introduction**

1. On 17 December 2010, the Australian Competition and Consumer Commission (ACCC) announced its decision not to oppose the proposed acquisition of Moly-Cop Group S.a.r.l by OneSteel Limited (**proposed acquisition**), subject to a court enforceable undertaking accepted by the ACCC under section 87B of the *Trade Practices Act 1974* (the **Act**) on that date. The ACCC decided that the proposed acquisition, in conjunction with the undertaking, would be unlikely to have the effect of substantially lessening competition in the relevant markets in Australia in contravention of section 50 of the Act.
2. The ACCC made its decision on the basis of the information provided by the merger parties and information arising from its market inquiries. This Public Competition Assessment outlines the basis on which the ACCC has reached its decision on the proposed acquisition, subject to confidentiality considerations.

#### **Public Competition Assessment**

3. To provide an enhanced level of transparency and procedural fairness in its decision making process, the ACCC issues a Public Competition Assessment for all transaction proposals where:
  - a merger is opposed;
  - a merger is subject to enforceable undertakings;
  - the merger parties seek such disclosure; or
  - a merger is not opposed but raises important issues that the ACCC considers should be made public.
4. This Public Competition Assessment has been issued because OneSteel Limited's proposed acquisition of Moly-Cop Group S.a.r.l is subject to a court enforceable undertaking.
5. By issuing Public Competition Assessments, the ACCC aims to provide the public with a better understanding of the ACCC's analysis of various markets and the associated merger and competition issues. It also alerts the public to the

circumstances where the ACCC's assessment of the competition conditions in particular markets is changing, or likely to change.

6. Each Public Competition Assessment is specific to the particular transaction under review by the ACCC. While some transaction proposals may involve the same or related markets, it should not be assumed that the analysis and decision outlined in one Public Competition Assessment will be conclusive of the ACCC's view in respect of other transaction proposals, as each matter will be considered on its own merits.
7. Public Competition Assessments outline the ACCC's principal reasons for forming views on a proposed acquisition at the time the decision was made. As such a Public Competition Assessment may not definitively identify and explain all issues that the ACCC considers arise from a proposed acquisition. Further, the ACCC's decisions generally involve consideration of both non-confidential and confidential information provided by the merger parties and market participants. In order to maintain the confidentiality of particular information, Public Competition Assessments do not contain any confidential information or its sources.

### **The parties**

*The acquirer: OneSteel Limited*

8. OneSteel is a vertically integrated mining, steel manufacturing and steel products distribution company, with operations in Australia, New Zealand, the United States and Asia. OneSteel's operations include the manufacture and supply of grinding media in Australasia for use in mining and mineral processing.

*The target: Moly-Cop Group S.a.r.l*

9. Moly-Cop Group S.a.r.l. (Moly-Cop) is owned by Anglo American plc, a global mining company. Moly-Cop holds a 40% shareholding in Donhad, an Australian manufacturer and distributor of grinding media.

### **The proposed transaction**

10. OneSteel proposed to acquire the Moly-Cop business from Anglo American plc.

### **Areas of overlap**

11. Moly-Cop's only interest in Australia is its 40% interest in Donhad.
12. OneSteel and Donhad are the only two manufacturers of grinding media in Australia.

13. Grinding media is the term used to describe various shapes (but usually spheres) of iron, steel chromium and high alloy used for crushing or grinding coarse rock containing particles of precious metal. Grinding media is added to a mill with ore and the action of the grinding media coming into contact with the ore inside the mill reduces the ore to a particle size (talcum powder type consistency) so that the precious metal component can be liberated from the worthless rock.

### **Timing**

14. The following table outlines the timeline of key events in this matter.

Date	Event
15-Nov-2010	ACCC commenced review under the Merger Review Process Guidelines.
08-Dec-2010	ACCC commenced market inquiries on the draft 87B undertaking proffered by OneSteel.
10-Dec-2010	Closing date for submissions relating to draft 87B undertaking.
17-Dec-2010	ACCC announced it would not oppose the proposed acquisition, subject to the court enforceable undertaking offered by OneSteel. 87B undertaking accepted by ACCC.

### **Market inquiries**

15. The ACCC's market inquiries focused on consumers of grinding media; that is, mining companies in Australia.
16. At a relatively early stage of the ACCC's investigation, the acquirer elected to offer a court enforceable undertaking, pursuant to section 87B of the Act, to prevent competition concerns being raised by the transaction. This enabled the ACCC to expedite the review and focus remaining market inquiries on whether the proffered section 87B undertaking would resolve any competition concerns that the proposed acquisition may otherwise have caused.

### **Market definition**

17. Targeted market inquiries undertaken by the ACCC provided the following information relevant to market definition:
- Mining companies can source grinding media from manufacturers across Australia. This suggested that the relevant geographic market was likely to be national.
  - While there are different sizes of grinding media and different specifications of the type of steel used in manufacturing grinding media, a manufacturer of one size of grinding media (or grinding media made from a particular specification of steel) could switch to manufacturing other sizes (or use other steel specifications) relatively easily and at relatively low cost. This supply-side substitutability suggested that the product dimension of the market is likely to include steel grinding media of various sizes and specifications.

18. While the ACCC did not consider it necessary to form a definitive view regarding market definition, the ACCC considered the relevant market was likely to be the national market for the supply of steel grinding media.

### **Competition analysis**

19. Targeted market inquiries made by the ACCC revealed concerns associated with the fact that the proposed acquisition, absent the s87B undertaking accepted by the ACCC, would make OneSteel a 40% owner of its only major competitor for the supply of grinding media in Australia, Donhad.
20. The focus of the ACCC's review was on whether OneSteel owning 40% of Donhad would diminish the incentive for the two parties to compete with one another. It was therefore important for the ACCC to understand whether imports of grinding media would be likely to provide a competitive constraint on OneSteel and Donhad since no other domestic manufacturers of grinding media exist.
21. Market inquiries suggested that in limited cases mining companies actively used imports of grinding media. Other mining companies had tested (although not used in ongoing operations) imported grinding media and found it to be technically substitutable for domestically manufactured grinding media.
22. However, the majority of mining companies that provided information to the ACCC indicated that there were difficulties in using imported grinding media in place of that which is made in Australia by OneSteel and Donhad. In particular, the main concern with imported grinding media was that it was not of suitable quality. Customers were concerned that grinding media which was not made to a certain quality would break up more easily when used, leading to a greater quantity of grinding media being used (which would be costly) and, potentially, damage to other equipment such as the mills. Some customers also raised concerns that imports of grinding media were not a practical alternative to domestically-manufactured grinding media because of the lead times in sourcing the product.
23. Overall, the ACCC's market inquiries led it to conclude that the vast majority of competition in Australia for the sale of grinding media occurs between OneSteel and Donhad, and imports of grinding media could not be relied upon to competitively constrain OneSteel if the proposed acquisition proceeded without an undertaking to remedy any competition concerns.

### **Undertaking**

24. At a relatively early stage of the ACCC's investigation, the acquirer elected to offer a court enforceable undertaking, pursuant to section 87B of the Act. A brief summary of the undertaking offered by OneSteel Limited is set out below:
  - OneSteel agrees to divest the shareholding in Donhad which it will acquire as a result of its acquisition of Moly-Cop and, pending the divestiture of its

interest in Donhad, agrees to hold its shareholding in Donhad separately from OneSteel's other assets and businesses.

- The undertaking includes provisions to ensure that the Donhad shareholding is held separate from OneSteel and has a sufficient level of protection during the divestiture period. These provisions prevent OneSteel from having access to or using confidential information relating to the Donhad shareholding and require any representative on the board of Donhad to be independent of OneSteel.
  - The undertaking includes divestiture mechanisms which will be triggered if the sale of the divestiture asset to an ACCC approved purchaser does not occur within the divestiture period. If triggered, these divestiture mechanisms would require OneSteel to appoint an ACCC approved independent divestiture agent to effect the sale of the Donhad shareholding at no minimum price.
  - The undertaking includes auditing provisions requiring OneSteel to engage and maintain an ACCC approved independent auditor to monitor and report on OneSteel's compliance with the undertaking.
25. The ACCC accepted the proposed undertaking on the basis that it remedied the significant competition concerns identified from the market inquiry process. The undertaking is available on the ACCC's public register at [www.accc.gov.au/mergersregister](http://www.accc.gov.au/mergersregister).

### **Conclusion**

26. On the basis of the above the ACCC formed the view that the proposed acquisition of Moly-Cop Group S.a.r.l by OneSteel Limited, subject to the proposed undertaking, would be unlikely to result in a substantial lessening of competition in any relevant market in contravention of section 50 of the Act.