

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and
Consumer Act 2010* (Cth) by BlueScope Steel
Limited ACN 000 011 058

1) Person giving the Undertaking

- 1.1. This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by BlueScope Steel Limited ACN 000 011 058 on behalf of itself and its subsidiaries (together referred to as **BlueScope** in this Undertaking).

2) Background

The Parties

- 2.1. BlueScope is a vertically integrated steel manufacturer and distributor and is listed on the Australian Securities Exchange. BlueScope is the only domestic manufacturer of steel coil products (also referred to as "flat" steel products). BlueScope also distributes steel coil products through its sheet and coil distribution businesses, Sheet Metal Supplies and Impact Steel (together **SMS**). These businesses process and distribute a range of flat steel products including hot rolled coil, light gauge plate, cold rolled coil, galvanised coil, aluminium zinc coated coil, and painted coil. SMS operates from sites in Melbourne, Sydney, Brisbane, Adelaide and Perth.
- 2.2. Arrium Limited (**Arrium**) is an international mining and materials company listed on the Australian Securities Exchange. Arrium's OneSteel Sheet & Coil business processes and distributes a range of domestically manufactured and imported flat steel products from sites in Sydney, Brisbane, Adelaide and Perth.

The Proposed Acquisition

- 2.3. On 14 October 2013, BlueScope announced that it had agreed to acquire from Arrium certain of Arrium's OneSteel Sheet & Coil processing and distribution assets in Sydney, Brisbane, Adelaide and Perth (**Proposed Acquisition**). Completion of the Proposed Acquisition is conditional on the ACCC granting informal clearance to the Proposed Acquisition.

The ACCC's review

- 2.4. The ACCC commenced its review of the Proposed Acquisition on 15 October 2013 under the Merger Process Guidelines.
- 2.5. The ACCC conducted market inquiries and considered information provided by BlueScope, Arrium, industry participants and others. The ACCC's inquiries were aimed at assessing whether or not the Proposed Acquisition would have the effect or be likely to have the effect of substantially lessening competition in any market in Australia, in contravention of section 50 of the *Competition and Consumer Act 2010* (Cth) (the **Act**).

The ACCC's competition concerns

- 2.6. The ACCC has concluded that, in the absence of this Undertaking, the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in sheet and coil distribution in Western Australia.

- 2.7. The ACCC has concluded that the Proposed Acquisition would remove BlueScope's main competitor and the only significant alternative distributor of sheet and coil products in Western Australia with processing capability.
- 2.8. The ACCC has concluded that post-acquisition BlueScope would be unlikely to be constrained by:
- a) existing sheet and coil alternative distributors - the lack of processing capability would limit these distributors' ability to be a strong alternative;
 - b) imports - for most sheet and coil distribution customers direct imports of processed and unprocessed sheet and coil products are not a viable alternative due to logistical and scale issues; and
 - c) the likelihood of entry or expansion - barriers to entry and expansion are high and are likely to be increased by the proposed acquisition.

The Undertaking remedy

- 2.9. BlueScope does not consider or accept that the Proposed Acquisition will, or is likely to, result in a substantial lessening of competition in any relevant market. BlueScope does not agree with the ACCC's conclusions, and does not consider or accept that the proposed Acquisition will otherwise give rise to competition concerns. However, without admission, BlueScope offered this Undertaking to the ACCC pursuant to section 87B of the Act in order to address the ACCC's competition concerns.
- 2.10. The objective of this Undertaking is to address the ACCC's competition concerns, which may otherwise arise as a consequence of the Proposed Acquisition. The Undertaking aims to achieve this objective by:
- (a) ensuring the maintenance of a viable, effective, stand-alone, independent and long term competitor of the merged business in sheet and coil distribution in Western Australia which is able to provide processing services to third parties using equipment located in Western Australia;
 - (b) ensuring the Approved Purchaser has the necessary assets to compete effectively with BlueScope to supply processing services to sheet and coil distribution customers using equipment located in Western Australia;
 - (c) ensuring the continuous supply by BlueScope to the Approved Purchaser of any goods or services that are required by the Approved Purchaser to be established as a viable, effective, stand-alone, independent and long-term competitor;
 - (d) ensuring the provision of any Technical Assistance by BlueScope required by the Approved Purchaser to operate the Divestiture Assets;
 - (e) preserving the Divestiture Assets prior to divestiture; and
 - (f) providing for the effective oversight of BlueScope's compliance with this Undertaking.

3) Commencement of this Undertaking

Commencement

- 3.1. This Undertaking comes into effect when:
- (a) this Undertaking is executed by BlueScope; and
 - (b) this Undertaking so executed is accepted by the ACCC
- (the **Commencement Date**).

4) Cessation of Ongoing Obligations

Withdrawal

- 4.1. This Undertaking is taken to be withdrawn on the date the ACCC consents in writing to the withdrawal of this Undertaking in accordance with section 87B of the Act.

Revocation

- 4.2. The ACCC may, at any time, revoke its acceptance of this Undertaking if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

Waiver

- 4.3. The ACCC may, at any time, expressly waive in writing any of the obligations contained in this Undertaking or amend the date by which any such obligation is to be satisfied.

Completion

- 4.4. Clauses 1, 2, 3, 4, 9, 11, 12, 13, 14, 15 and 16 survive completion of the obligations in clauses 5, 6, 7, 8, Schedule 4 and Confidential Schedule 5. The obligations in clause 10 cease once the ACCC provides written notice to BlueScope that it has satisfied all applicable obligations in clauses 5, 6, 7 and 8.

5) Divestiture of the Divestiture Assets

Divestiture

- 5.1. BlueScope must, in accordance with this Undertaking, divest, or cause the divestiture of, the Divestiture Assets to an Approved Purchaser.
- 5.2. BlueScope must divest, or cause the divestiture of, the Divestiture Assets by:
- (a) the sale, assignment, transfer and/or licence of all of the assets in Schedule 4 to the Approved Purchaser, pursuant to the Approved Sale and Purchase Agreement and within the Initial Sale Period, otherwise clause 8) applies; and

- (b) the transfer or grant to the Approved Purchaser of all Consents pursuant to clause 5.3.

Consents

- 5.3. BlueScope must:
 - (a) obtain or assist the Approved Purchaser to obtain as expeditiously as possible, all Consents as required before completion of the divestiture of the Divestiture Assets;
 - (b) comply with all requirements necessary to obtain any Consents, including by promptly providing all information necessary for the Consents to be given;
 - (c) act in good faith in its negotiations with the Approved Purchaser in relation to obtaining any Consents; and
 - (d) promptly pay the costs and expenses of any third party reasonably incurred in providing the Consents.
- 5.4. If, seven Business Days before the end of the Initial Sale Period, the Approved Purchaser fails to obtain or is unable to obtain one or more Consents, then BlueScope must immediately provide to the ACCC, in writing details of the:
 - (a) Consents that have not been obtained;
 - (b) reasons why the Consents have not been obtained; and
 - (c) information or material required to obtain the Consents.
- 5.5. Even if BlueScope has complied with clauses 5.3 and 5.4, it remains a breach of this Undertaking if BlueScope is unable to effect the divestiture of the Divestiture Assets by reason of a failure to obtain Consents.

Interim Supply Agreements

- 5.6. At the option of the Approved Purchaser, BlueScope must ensure the continuous supply by BlueScope to the Approved Purchaser, under an Approved Interim Supply Agreement, of any goods or services that are required by the Approved Purchaser in order for the Approved Purchaser to be established as a viable, effective, stand-alone, independent and long-term competitor.
- 5.7. BlueScope must ensure that any Approved Interim Supply Agreement and any renewal or extension of an Approved Interim Supply Agreement:
 - (a) is for a reasonable period, which period is to be nominated by the Approved Purchaser and approved in writing by the ACCC;
 - (b) provides for the supply, re-supply or toll processing of the included goods and services at commercial terms agreed to by BlueScope and the Approved Purchaser; and
 - (c) is on such terms other than price which are no less favourable to the Approved Purchaser than arm's length terms for other distributors; and

- (d) is approved by the ACCC.
- 5.8. To avoid doubt, BlueScope must seek prior written approval from the ACCC of any renewal or extension of an Approved Interim Supply Agreement. Without limiting the ACCC's discretion, in making a decision on whether to approve a renewal or extension of an Approved Interim Supply Agreement, the ACCC will have regard to the criteria set out in clauses 5.6 and 5.7.

Technical Assistance

- 5.9. At the option of the Approved Purchaser, BlueScope must supply to the Approved Purchaser, under an Approved Technical Assistance Agreement, any Technical Assistance that is required by the Approved Purchaser in order to operate the Divestiture Assets.
- 5.10. BlueScope must ensure that any Approved Technical Assistance Agreement, and any renewal or extension of an Approved Technical Assistance Agreement, provides for the supply of Technical Assistance:
- (a) on a transitional basis for no more than 6 months, which period is to be nominated by the Approved Purchaser, or such other period as agreed in writing by the ACCC; and
 - (b) at cost and otherwise on arm's length terms; and
 - (c) approved by the ACCC.
- 5.11. To avoid doubt, BlueScope must seek prior written approval from the ACCC of any renewal or extension of an Approved Technical Assistance Agreement. Without limiting the ACCC's discretion, in making a decision on whether to approve a renewal or extension of an Approved Technical Assistance Agreement, the ACCC will have regard to the criteria set out in clauses 5.9 and 5.10.

6) Divestiture of the Divestiture Assets to an Approved Purchaser

Divestiture only to an Approved Purchaser

- 6.1. BlueScope must divest the Divestiture Assets to an Approved Purchaser. If an Approved Divestiture Agent is appointed, BlueScope must not authorise the Approved Divestiture Agent to divest the Divestiture Assets to a purchaser other than an Approved Purchaser.

Provision of a notice for a Proposed Purchaser

- 6.2. To seek approval for a Proposed Purchaser in accordance with clause 6.4, BlueScope must provide the ACCC with a Proposed Purchaser Notice in the form prescribed in Schedule 2 to this Undertaking (**Proposed Purchaser Notice**).
- 6.3. The Proposed Purchaser Notice must be provided to the ACCC at least 20 Business Days prior to the end of the Initial Sale Period.

Purchaser approved before the Commencement Date

- 6.4. Prior to the Commencement Date, and as a condition of the ACCC's acceptance of this Undertaking, the ACCC:
- (a) received a Proposed Purchaser Notice for Selection Steel; and
 - (b) based on the information in the Proposed Purchaser Notice, information provided by BlueScope, Selection Steel and other information before it, approved:
 - (i) Selection Steel as the Approved Purchaser; and
 - (ii) the Proposed Sale and Purchase Agreement attached to the Proposed Purchaser Notice.

Approval of a Proposed Purchaser if the sale of Divestiture Assets to Selection Steel is not completed

- 6.5. If at any time it becomes apparent that the sale of the Divestiture Assets to Selection Steel cannot be completed by the end of the Initial Sale Period, BlueScope must seek approval for an alternative Proposed Purchaser by providing the ACCC with a Proposed Purchaser Notice as soon as practical after it becomes apparent that the sale of the Divestiture Assets to Selection Steel cannot be completed.
- 6.6. After receiving a Proposed Purchaser Notice, the ACCC must decide whether to:
- (a) approve the person named in the Proposed Purchaser Notice as the Approved Purchaser, which includes approving the Proposed Sale and Purchase Agreement attached to the Proposed Purchaser Notice; or
 - (b) not approve the person named in the Proposed Purchaser Notice as the Approved Purchaser.
- 6.7. Without limiting the ACCC's discretion, in making the decision described in clause 6.6, the factors to which the ACCC may have regard include whether the:
- (a) Proposed Sale and Purchase Agreement is consistent with this Undertaking and otherwise acceptable to the ACCC;
 - (b) Proposed Purchaser will complete the transaction as contemplated by the Proposed Sale and Purchase Agreement;
 - (c) Proposed Purchaser is independent of, and has no direct or indirect interest in, BlueScope;
 - (d) Proposed Purchaser is of good financial standing;
 - (e) Proposed Purchaser has an intention to maintain and operate the Divestiture Assets;
 - (f) Proposed Purchaser is able to maintain and operate the Divestiture Assets effectively; and

- (g) divestiture of the Divestiture Assets to the Proposed Purchaser will address any competition concerns of the ACCC, including in relation to the likely long-term viability and competitiveness of the business which will use the Divestiture Assets if those Divestiture Assets are owned by the Proposed Purchaser.
- 6.8. Within 10 Business Days after receiving a Proposed Purchaser Notice, the ACCC must notify BlueScope in writing of its decisions made pursuant to clause 6.6.
- 6.9. The ACCC may extend the period within which it will provide the notice described in clause 6.8 by notifying BlueScope in writing of the extension within 10 Business Days after receiving the Proposed Purchaser Notice.
- 6.10. Any extension of time by the ACCC pursuant to clause 6.9 extends the Initial Sale Period by the same length of time.
- 6.11. The ACCC may revoke an Approved Purchaser's status as the Approved Purchaser if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

7) Divestiture Assets Protection

Protection of the Divestiture Assets

- 7.1. From the Commencement Date, BlueScope must not sell or transfer its interest in, or any assets comprising part of, the Divestiture Assets (other than the sale of goods and services in the ordinary course of business) or make any Material Change, except in accordance with this Undertaking or as required to allow completion of the Proposed Acquisition.

BlueScope's obligations in relation to the Divestiture Assets prior to completion of divestiture

- 7.2. Without limiting this clause 7, BlueScope must, from the Commencement Date until completion of the divestiture of the Divestiture Assets, take all steps available to it to:
 - (a) continue to maintain the Divestiture Assets in the ordinary and usual course (including any ordinary and usual course preventative maintenance or repairs);
 - (b) ensure that the Divestiture Assets are operated and used in the ordinary and usual course (including in material compliance with BlueScope's relevant operating procedures); and
 - (c) allow the Approved Purchaser to undertake periodic inspections of the Divestiture Assets, in order to confirm their maintenance in accordance with this clause.

Direction to personnel of BlueScope

- 7.3. As soon as practicable after the Commencement Date, BlueScope must direct its personnel, including directors, contractors, managers, officers, employees and agents not to do anything inconsistent with BlueScope's obligations under this Undertaking.

Confidential Information

- 7.4. Subject to clause 7.5, BlueScope must not, at any time from the Commencement Date, use or disclose any confidential information about the Divestiture Assets gained through:
- (a) ownership and/or management of the Divestiture Assets; or
 - (b) fulfilling any obligations pursuant to this Undertaking.
- 7.5. Clause 7.4 does not apply to information that BlueScope requires to:
- (a) comply with legal and regulatory obligations including obligations relating to taxation, accounting, financial reporting or stock exchange disclosure requirements; or
 - (b) carry out its obligations pursuant to this Undertaking;

provided such information is only used for that purpose and is only disclosed to those officers, employees, contractors and advisers of BlueScope who need to know the information to carry out the permitted purpose.

8) Failure to divest the Divestiture Assets within the Initial Sale Period

Divestiture of the Unsold Assets

- 8.1. In the event that the divestiture of the Divestiture Assets to an Approved Purchaser is not completed by the end of the Initial Sale Period, the unsold Divestiture Assets become unsold assets (**Unsold Assets**) and the provisions of clause 8) apply.

Obligation to appoint an Approved Divestiture Agent

- 8.2. From the end of the Initial Sale Period, BlueScope must appoint and maintain an Approved Divestiture Agent to effect the divestiture of the Unsold Assets.
- 8.3. Without limiting its obligations in this Undertaking, BlueScope must from the end of the Initial Sale Period:
- (a) comply with and enforce the Approved Terms of Appointment for the Approved Divestiture Agent;
 - (b) maintain and fund the Approved Divestiture Agent to carry out his or her functions; including:
 - (i) indemnifying the Approved Divestiture Agent for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Divestiture Agent of his or her functions as the Approved Divestiture Agent except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Divestiture Agent;

- (ii) providing and paying for any external expertise, assistance or advice required by the Approved Divestiture Agent to perform his or her functions as the Approved Divestiture Agent;
 - (iii) paying such fees as are agreed between the Approved Divestiture Agent and BlueScope (but not fees contingent on the price to be obtained for the Unsold Assets); and
 - (iv) if an agreement as to fees cannot be reached between the Approved Divestiture Agent and BlueScope within 15 Days after the end of the Initial Sale Period, BlueScope agrees to pay such fees as are directed by the ACCC;
- (c) not interfere with, or otherwise hinder, the Approved Divestiture Agent's ability to carry out his or her functions as the Approved Divestiture Agent, including:
- (i) directing BlueScope's personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 8);
 - (ii) providing access to the Unsold Assets as required by the Approved Divestiture Agent; and
 - (iii) providing to the Approved Divestiture Agent any information, documents or other assistance requested by the Approved Divestiture Agent that he or she considers necessary for carrying out his or her functions as the Approved Divestiture Agent or for reporting to or otherwise advising the ACCC;
- (d) within three Business Days after receiving notice from the ACCC pursuant to clause 6.6, instruct the Approved Divestiture Agent to complete the divestiture of the Unsold Assets to the Approved Purchaser in accordance with the documents approved by the ACCC pursuant to clause 6.6(a); and
- (e) other than in accordance with clause 8.3(d) of this Undertaking, not instruct the Approved Divestiture Agent to divest the Unsold Assets.

Approval of the Approved Divestiture Agent

- 8.4. At least 15 Business Days prior to the end of the Initial Sale Period, if the divestiture of the Divestiture Assets has not been completed, BlueScope must provide the ACCC with a notice for a Proposed Divestiture Agent in the form of Schedule 3 to this Undertaking (**Proposed Divestiture Agent Notice**).
- 8.5. After receiving a Proposed Divestiture Agent Notice, the ACCC must decide whether to:
- (a) approve the appointment of the person named in the Proposed Divestiture Agent Notice as the Approved Divestiture Agent which includes approving the:
 - (i) terms of appointment attached to the Proposed Divestiture Agent Notice;

- (ii) Proposed Sale and Purchase Agreement attached to the Proposed Divestiture Agent Notice; and
 - (iii) draft marketing and sale plan attached to the Proposed Divestiture Agent Notice; or
 - (b) not approve the person named in the Proposed Divestiture Agent Notice as the Approved Divestiture Agent.
- 8.6. If clause 8.5(b) applies, the ACCC may, at its absolute discretion:
- (a) direct BlueScope to submit a Proposed Divestiture Agent Notice that:
 - (i) names a person identified by the ACCC as the Proposed Divestiture Agent; and/or
 - (ii) includes attachments that:
 - (A) relate to the person identified by the ACCC under clause 8.6(a) (if applicable); and/or
 - (B) address any issues identified by the ACCC in relation to the terms of appointment, Proposed Sale and Purchase Agreement, and/or draft marketing and sale plan; or
 - (b) identify and approve a person as the Approved Divestiture Agent together with the:
 - (i) terms of appointment
 - (ii) Proposed Sale and Purchase Agreement and/or
 - (iii) draft marketing and sale plan.
- 8.7. As soon as practicable, and within two Business Days after any direction by the ACCC under clause 8.6(a), BlueScope must submit a Proposed Divestiture Agent Notice in accordance with the direction.
- 8.8. Without limiting the ACCC's discretion, in making the decisions described in clause 8.5 or 8.6, the factors to which the ACCC may have regard include whether the:
- (a) person named in Proposed Divestiture Agent Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Divestiture Agent;
 - (b) person named in the Proposed Divestiture Agent Notice or identified by the ACCC is sufficiently independent of BlueScope;
 - (c) terms of appointment, Proposed Sale and Purchase Agreement and draft marketing and sale plan are consistent with this Undertaking; and
 - (d) terms of appointment, Proposed Sale and Purchase Agreement and draft marketing and sale plan are otherwise acceptable to the ACCC.

- 8.9. Within 10 Business Days after receiving a Proposed Divestiture Agent Notice, the ACCC must notify BlueScope in writing of its decisions and any direction made pursuant to clause 8.5 and/or 8.6.
- 8.10. The ACCC may extend the period within which it will provide notice of the decision or direction (if applicable) described in clause 8.9 by notifying BlueScope in writing of the extension within 10 Business Days after receiving the Proposed Divestiture Agent Notice.
- 8.11. Any extension of time by the ACCC under clause 8.10 extends the Initial Sale Period by the same length of time.
- 8.12. If the Approved Divestiture Agent has not been appointed:
- (a) within 10 Business Days after the Divestiture Assets becomes Unsold Assets;
 - (b) within 17 Business Days after the Approved Divestiture Agent resigns or otherwise ceases to act pursuant to clauses 8.18, 8.19, or 8.20; or
 - (c) if the ACCC has not received a Proposed Divestiture Agent Notice pursuant to clause 8.21;
- then the provisions of clause 8.13 apply.
- 8.13. If clause 8.12 applies, the ACCC may, at its absolute discretion:
- (a) identify and approve a person as the Approved Divestiture Agent;
 - (b) approve the terms of appointment of the Approved Divestiture Agent;
 - (c) approve the Proposed Sale and Purchase Agreement; and
 - (d) approve the draft marketing and sale plan.

Appointment of the Approved Divestiture Agent

- 8.14. After receiving notice from the ACCC of its decisions pursuant to clause 8.5, 8.6(b), or 8.13, BlueScope must within two Business Days:
- (a) appoint the person approved by the ACCC as the Approved Divestiture Agent on the Approved Terms of Appointment; and
 - (b) forward to the ACCC a copy of the executed Approved Terms of Appointment within one Business Day of execution.

Obligations and powers of the Approved Divestiture Agent

- 8.15. BlueScope must procure that any proposed terms of appointment for the Approved Divestiture Agent include obligations on the Approved Independent Divestiture Agent to:
- (a) maintain his or her independence from BlueScope, apart from appointment to the role of Approved Divestiture Agent, including not form any relationship

of the types described in paragraph 2(c) of Schedule 3 to this Undertaking with BlueScope for the period of his or her appointment;

- (b) not use any confidential information gained through the divestiture of the Unsold Assets other than for performing his or her functions as Approved Divestiture Agent;
- (c) follow the Approved Marketing and Sale Plan;
- (d) divest the Unsold Assets only to an Approved Purchaser, with no obligation imposed by BlueScope to achieve a divestiture at a minimum price;
- (e) use his or her best endeavours to enter into a binding agreement for the divestiture of the Unsold Assets as quickly as possible using the Approved Sale and Purchase Agreement;
- (f) co-operate with the requests of any Approved Independent Manager or Approved Independent Auditor appointed pursuant to this Undertaking;
- (g) every 30 Business Days following appointment of the Approved Divestiture Agent, provide written reports directly to the ACCC which include:
 - (i) information regarding the implementation of the Approved Sale and Purchase Agreement and the Approved Marketing and Sale Plan including any previous changes approved by the ACCC;
 - (ii) information regarding any suggested changes to any Approved Marketing and Sale Plan including any previous changes approved by the ACCC;
 - (iii) an account and explanation of all disbursements, fees and charges incurred by the Approved Divestiture Agent in undertaking his or her duties by month and to the date of the report;
 - (iv) a schedule of agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 8.16(d));
 - (v) the efforts made to sell the Unsold Assets;
 - (vi) the identity of any advisers engaged;
 - (vii) the identity of any persons expressing interest in the Unsold Assets; and
 - (viii) any other information required by the ACCC;
- (h) within 30 Business Days after the completion of the divestiture of the Unsold Assets, provide a written report directly to the ACCC which includes a final accounting of:
 - (i) any moneys derived from the divestiture of the Unsold Assets;
 - (ii) all disbursements, fees and charges incurred by the Approved Divestiture Agent in fulfilling his or her duties; and

- (iii) all agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 8.16(d);
- (i) immediately inform the ACCC of:
 - (i) any issues that arise in relation to the implementation of the Approved Sale and Purchase Agreement and any Approved Marketing and Sale Plan;
 - (ii) non-compliance with this Undertaking by any person named in this Undertaking;
 - (iii) any offers for the Unsold Assets;
 - (j) accept any offer for the Unsold Assets upon instruction from BlueScope given in accordance with clause 8.3(d); and
 - (k) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Divestiture Agent pursuant to this Undertaking.
- 8.16. BlueScope must procure that any proposed terms of appointment for the Approved Divestiture Agent contain an irrevocable grant of power of attorney conferring all necessary power and authority on the Approved Divestiture Agent to:
- (a) negotiate with purchasers to divest the Unsold Assets on terms considered by the Approved Divestiture Agent in his or her sole discretion to be consistent with this Undertaking and the Approved Marketing and Sale Plan;
 - (b) execute any agreements with the Approved Purchaser required pursuant to clause 6.6;
 - (c) upon instruction pursuant to clause 8.3(d), complete the divestiture of the Unsold Assets to the Approved Purchaser in accordance with the Approved Sale and Purchase Agreement; and
 - (d) engage any external expertise, assistance or advice required by the Approved Divestiture Agent to perform his or her functions as the Approved Divestiture Agent.
- 8.17. Any irrevocable power of attorney granted pursuant to clause 8.16 will end upon resignation or termination of the Approved Divestiture Agent in accordance with clauses 8.18, 8.19 and 8.20, or in the event that the Unsold Assets are divested in accordance with this Undertaking.

Resignation, revocation or termination of the Approved Divestiture Agent

- 8.18. BlueScope must immediately notify the ACCC in the event that an Approved Divestiture Agent resigns or otherwise stops acting as an Approved Divestiture Agent before the completion of the divestiture of the Unsold Assets.
- 8.19. The ACCC may revoke an Approved Divestiture Agent's status as the Approved Divestiture Agent if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

- 8.20. The ACCC may approve any proposal by, or alternatively may direct, BlueScope to terminate an Approved Divestiture Agent's appointment if in the ACCC's view the Approved Divestiture Agent acts inconsistently with the provisions of this Undertaking or the Approved Terms of Appointment.
- 8.21. If clause 8.18, 8.19 and 8.20 applies then BlueScope must provide the ACCC with a Proposed Divestiture Agent Notice within five Business Days, otherwise clause 8.13 applies.

9. Provision of information

Provision of information

- 9.1. BlueScope must notify the ACCC in writing of the proposed date of each of the following events at least five Business Days before each is proposed to occur:
- (a) the Control Date; and
 - (b) the completion of the divestiture of the Divestiture Assets.
- 9.2. BlueScope must notify the ACCC in writing of the occurrence of each of the following events within one Business Day after the date the event occurs:
- (a) the Control Date; and
 - (b) the completion of the divestiture of the Divestiture Assets.
- 9.3. The ACCC may direct BlueScope in respect of its compliance with this Undertaking to, and BlueScope must:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within BlueScope's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 9.4. Any direction made by the ACCC under clause 9.3 will be notified to BlueScope, in accordance with clause 15.2.
- 9.5. In respect of BlueScope's compliance with this Undertaking or the Approved Divestiture Agent's compliance with its Approved Terms of Appointment, the ACCC may request the Approved Divestiture Agent to:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within the Approved Divestiture Agent's custody, power or control in the time and in the form requested by the ACCC; and/or

- (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 9.6. BlueScope will use its best endeavours to ensure that an Approved Divestiture Agent complies with any request from the ACCC in accordance with clause 9.5.
- 9.7. Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 9 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.
- 9.8. The ACCC may in its discretion to be exercised in good faith:
 - (a) advise the Approved Divestiture Agent of any request made by it under this clause 9; and/or
 - (b) provide copies to the Approved Divestiture Agent of any information furnished, documents and material produced or information given to it under this clause 9.
- 9.9. Nothing in this clause 9 requires the provision of information or documents in respect of which BlueScope has a claim of legal professional or other privilege.

10. Reporting on compliance with this Undertaking

- 10.1. The National Manager of SMS must provide a written notice to the ACCC within 5 Business Days of the last Business Day of each calendar month during which this Undertaking is in effect.
- 10.2. Each written notice must report on BlueScope's compliance with this Undertaking during the preceding calendar month. If the Undertaking was only in effect for part of the preceding calendar month, the written notice must cover that part of the calendar month for which the Undertaking had effect.
- 10.3. Each written notice must:
 - (a) describe the steps taken by BlueScope to comply with, and to monitor compliance with, this Undertaking during the period addressed by the notice; and
 - (b) if BlueScope is aware of any non-compliance by it with this Undertaking during the period addressed by the notice, identify and describe all known instances of BlueScope's non-compliance with this Undertaking during that period and the steps taken by BlueScope to address those issues of non-compliance.
- 10.4. BlueScope must comply with any direction of the ACCC in relation to matters arising from a written notice within 10 Business Days of being so directed (or such other period as agreed in writing with the ACCC).

11. Disclosure of this Undertaking

- 11.1. BlueScope and the ACCC agree that Schedule 5 will remain confidential at all times.
- 11.2. BlueScope acknowledges that the ACCC may on a strictly confidential basis provide the Approved Divestiture Agent with a copy of this Undertaking which includes unredacted versions of Confidential Schedule 5.
- 11.3. BlueScope acknowledges that the ACCC may, subject to clause 11.1:
- (a) make this Undertaking publicly available; and
 - (b) publish this Undertaking on its Public Section 87B Undertakings Register and Public Mergers Register; and
 - (c) from time to time publicly refer to this Undertaking.
- 11.4. Nothing in clause 11.1 or the confidential parts of this Undertaking referred to in clause 11.1 prevents the ACCC from disclosing such information as is:
- (a) required by law;
 - (b) permitted by s 155AAA of the Act;
 - (c) necessary for the purpose of enforcement action under section 87B of the Act; or
 - (d) necessary for the purpose of making such market inquiries as the ACCC thinks fit to assess the impact on competition arising in connection with this Undertaking.
- 11.5. Nothing in clause 11.1 or the confidential parts of this Undertaking referred to in clause 11.1 prevents the ACCC from using the information contained in this Undertaking for any purpose consistent with its statutory functions and powers.

12. Obligation to procure

- 12.1. Where the performance of an obligation under this Undertaking requires a Related Body Corporate of BlueScope to take or refrain from taking some action, BlueScope will procure that Related Body Corporate to take or refrain from taking that action, as the case may be.

13. No Derogation

- 13.1. This Undertaking does not prevent the ACCC from taking enforcement action at any time whether during or after the period of this Undertaking in respect of any breach by BlueScope of any term of this Undertaking.
- 13.2. Nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the Act for penalties or other remedies in the event that BlueScope

does not fully implement and/or perform its obligations under this Undertaking or in any other event where the ACCC decides to take action under the Act for penalties or other remedies.

14. Costs

- 14.1. BlueScope must pay all of its own costs incurred in relation to this Undertaking.

15. Notices

Giving Notices

- 15.1. Any notice or communication to the ACCC pursuant to this Undertaking must be sent to:

Email address: mergers@accc.gov.au
Attention: Executive General Manager
Mergers and Adjudication Group

With a copy sent to: mergersucu@accc.gov.au
Attention: Director, Undertakings Compliance Unit
Coordination and Strategy Branch
Mergers and Adjudication Group

- 15.2. Any notice or communication to BlueScope pursuant to this Undertaking must be sent to:

Name: c/o Ashurst Australia
Address: Level 35, 225 George Street, Sydney, NSW 2000
Email: peter.armitage@ashurst.com and alice.muhebach@ashurst.com
Attention: Peter Armitage and Alice Muhlebach

- 15.3. If sent by post, notices are taken to be received three Business Days after posting (or seven Business Days after posting if sent to or from a place outside Australia).

- 15.4. If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent.

Change of contact details

- 15.5. BlueScope or the ACCC must notify the other party of a change to its contact details within three Business Days.

- 15.6. Any notice or communication will be sent to the most recently advised contact details and subject to clause 15.3 and 15.4, will be taken to be received.

16. Defined terms and interpretation

Definitions in the Dictionary

16.1. A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Part 1 of Schedule 1 (Dictionary), has the meaning given to it in the Dictionary; or
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

Interpretation

16.2. Part 2 of Schedule 1 sets out rules of interpretation for this Undertaking.

Executed as an Undertaking

Executed by BlueScope Steel Limited ACN 000 011 058 pursuant to section 127(1) of the Corporations Act 2001 by:



Signature of director

PAUL O'MALLEY

Name of director (print)

28/2/14

Date



Signature of a ~~director~~/company secretary


M G BARRON

Name of ~~director~~/company secretary

28/2/2014

Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* on:



Date

And signed on behalf of the Commission:

Chairman

Rod Sims

Date

5/3/14

Schedule 1

1. Dictionary

ACCC means the Australian Competition and Consumer Commission.

Act means the *Competition and Consumer Act 2010* (Cth).

Agreements means any contract, arrangement or understanding, including any contract, arrangement or understanding to renew, amend, vary or extend any contract, arrangement or understanding.

Approved Divestiture Agent means the person appointed under clause 8.14 of this Undertaking.

Approved Interim Supply Agreement means any agreement, for the supply of goods or services (other than Technical Assistance) by BlueScope to the Approved Purchaser, approved by the ACCC in accordance with the terms of this Undertaking.

Approved Marketing and Sale Plan means the plan approved by the ACCC in accordance with the terms of this Undertaking, as amended from time to time by ACCC direction given under clause 8.15(k) of this Undertaking, by which the Approved Divestiture Agent will market and effect the divestiture of the Unsold Assets.

Approved Purchaser means the person approved by the ACCC under clauses 6.4 or 6.6 of this Undertaking.

Approved Sale and Purchase Agreement means the contract approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Purchaser will acquire the Divestiture Assets or Unsold Assets (as applicable) from BlueScope.

Approved Technical Assistance Agreement means any agreement, for the supply of Technical Assistance by BlueScope to the Approved Purchaser, approved by the ACCC in accordance with the terms of this Undertaking.

Approved Terms of Appointment means the terms of appointment for the Approved Divestiture Agent, as approved by the ACCC in accordance with the terms of this Undertaking.

Arrium means Arrium Limited ACN 004 410 833.

Associated Entity has the meaning given by section 50AAA of the Corporations Act.

BlueScope means the entity referred to in clause 1.1 of this Undertaking.

Business Day means a day other than a Saturday or Sunday on which banks are open for business generally in the Australian Capital Territory.

Commencement Date means the date described in clause 3.1 of this Undertaking.

Control Date means the date on which the Proposed Acquisition is completed.

Consents means any consent from any third party required for the assignment, novation, sale, sub-licensing or transfer of any assets, licences, permits, approval or contracts required in respect of the Divestiture Assets.

Corporations Act means the *Corporations Act 2001* (Cth).

Divestiture Assets means the assets described in Schedule 4 to this Undertaking.

Entities Connected has the meaning given by section 64B of the Corporations Act.

Initial Sale Period is defined in clause 1 of Confidential Schedule 5 to this Undertaking.

Material Change means any change to the structure, attributes, extent or operations of the Divestiture Assets that may affect, or impact on, the competitiveness of a sheet and coil distribution business which uses the Divestiture Assets.

Proposed Acquisition is defined in clause 2.1 of this Undertaking.

Proposed Divestiture Agent means a person named in a Proposed Divestiture Notice.

Proposed Divestiture Agent Notice means a completed notice in the form of Schedule 3 to this Undertaking provided to the ACCC with all required attachments in relation to the Proposed Divestiture Agent.

Proposed Purchaser means a person named in a Proposed Purchaser Notice.

Proposed Purchaser Notice means a completed notice in the form of Schedule 2 to this Undertaking provided to the ACCC with all required attachments in relation to the Proposed Purchaser.

Proposed Sale and Purchase Agreement means the contract attached to the Proposed Purchaser Notice (whether or not in standard form), pursuant to which the Proposed Purchaser proposes to acquire the Divestiture Assets or Unsold Assets (as applicable) from BlueScope.

Public Mergers Register means the ACCC's public register of merger clearances.

Public Section 87B Undertakings Register means the ACCC's public register of section 87B undertakings, available at www.accc.gov.au.

Related Bodies Corporate has the meaning given to it by section 50 of the Corporations Act.

Related Entities has the meaning given to it by section 9 of the Corporations Act.

Related Parties has the meaning given to it by section 228 of the Corporations Act.

Selection Steel means Selection Steel Trading Pty Ltd ACN 005 324 407.

SMS has the meaning given to it in clause 2.1 of this Undertaking.

Subsidiary has the meaning given by section 4A of the Act.

Technical Assistance includes advising on technical knowledge documentation, supporting the Approved Purchaser on acquiring specific assets necessary for the

ongoing conduct of the Divestiture Assets, providing staff with suitable experience and skills to assist and/or advice on technical issues, assisting in training for the Approved Purchaser's staff, and providing guidance on regulatory and legal aspects relating to the transfer of or application for licences.

Undertaking is a reference to all provisions of this document, including its schedules and as varied from time to time under section 87B of the Act.

Unsold Assets has the meaning given to it in clause 8.1 of this Undertaking.

2. Interpretation

- 2.1 In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:
- (a) a reference to this Undertaking includes all of the provisions of this document including its schedules;
 - (b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
 - (c) if the day on which any act, matter or thing is to be done under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;
 - (d) a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
 - (e) a reference in this Undertaking to any company includes its Related Bodies Corporate;
 - (f) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
 - (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;
 - (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
 - (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
 - (j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders;
 - (k) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;

- (l) a construction that would promote the purpose - or object - underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;
- (m) material not forming part of this Undertaking may be considered to:
 - (i) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or
 - (ii) determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking;
- (n) in determining whether consideration should be given to any material in accordance with paragraph (m), or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to the:
 - (i) effect that reliance on the ordinary meaning conveyed by the text of the clause would, have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
 - (ii) need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;
- (o) the ACCC may authorise the Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;
- (p) in performing its obligations under this Undertaking, BlueScope will do everything reasonably within its power to ensure that its performance of those obligations is done in a manner which is consistent with promoting the purpose and object of this Undertaking;
- (q) a reference to:
 - (i) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (ii) a party includes its successors and permitted assigns; and
 - (iii) a monetary amount is in Australian dollars.

Schedule 2 – Proposed Purchaser Notice Form

Please note in relation to information given on or in relation to this form, giving false or misleading information is a serious offence.

The completed form with requested documents attached may be provided to the ACCC using the following method:

Email

Subject line: Proposed Purchaser Notice – BlueScope

Address: mergers@acc.gov.au

Attention: Executive General Manager - Mergers and Adjudication Group

With an email copy sent to:

Address: mergersucu@acc.gov.au

Attention: Director, Undertakings Compliance Unit Merger Coordination and Strategy Branch

- 1) In relation to the Proposed Purchaser, please provide the following information:
 - (a) Name of the Proposed Purchaser:
 - (b) Address:
 - (c) Contact name:
 - (d) Telephone number:
 - (e) Other contact details:
- 2) Please attach a submission containing the following information to this form:
 - (a) a description of the business carried on by the Proposed Purchaser including the locations in which the Proposed Purchaser carries on its business.
 - (b) details of the Proposed Purchaser's experience in the relevant market/s.
 - (c) the names of the owner/s and the directors (as applicable) of the Proposed Purchaser.
 - (d) a section addressing the factors set out in clause 6.7 of this Undertaking, including any information adverse to the Proposed Purchaser, in the power, possession or control of BlueScope.
 - (e) details of any of the following types of relationships between BlueScope and the Proposed Purchaser or confirmation that no such relationship exists whether within Australia or outside of Australia:
 - (i) BlueScope and the Proposed Purchaser are Associated Entities;
 - (ii) BlueScope is an Entity Connected with the Proposed Purchaser;
 - (iii) the Proposed Purchaser is an Entity Connected with BlueScope;

- (iv) BlueScope and the Proposed Purchaser are Related Entities;
- (v) BlueScope and the Proposed Purchaser are Related Parties;
- (vi) any Related Party, Related Entity or Entity Connected with BlueScope is a Related Party, Related Entity or Entity Connected with the Proposed Purchaser;
- (vii) BlueScope and the Proposed Purchaser have a contractual relationship or had one within the past three years, other than those proposed to be established pursuant to the document described in item 3(a) and attached to this form;
- (viii) the Proposed Purchaser is a supplier of BlueScope or has been in the past three years;
- (ix) BlueScope is a supplier of the Proposed Purchaser or has been in the past three years; and
- (x) any other relationship between BlueScope and the Proposed Purchaser that allows one to affect the business decisions of the other.

3) Please also attach to this form:

- (a) the Proposed Sale and Purchase Agreement for approval by the ACCC in accordance with this Undertaking.
- (b) any documents required to support the information provided by BlueScope pursuant to this form.

Schedule 3 – Proposed Divestiture Agent

This form sets out the information required by the ACCC in relation to the proposed appointment of the Approved Divestiture Agent.

Please note in relation to information given on in relation to this form, giving false or misleading information is a serious offence.

Method of Delivery to the ACCC

The completed Proposed Divestiture Agent form, along with the additional requested information is to be provided to the ACCC with the subject line *Proposed Divestiture Agent Form – BlueScope* to the below email addresses:

1) mergers@acc.gov.au
Attention: Executive General Manager
Mergers and Adjudication Group

2) **With a copy sent to:**
mergersucu@acc.gov.au
Attention: Director
Undertakings Compliance Unit
Coordination and Strategy Branch
Mergers and Adjudication Group

Information Required

The ACCC requires the following information in order to assess a Proposed Divestiture Agent.

- 1) Proposed Divestiture Agent Details:
 - (a) the name of the Proposed Divestiture Agent; and
 - (b) the name of the Proposed Divestiture Agent's employer and contact details including:
 - Address;
 - Contact name;
 - Telephone number;
 - Other contact details.
- 2) A submission containing the following information:
 - (a) details of Proposed Divestiture Agent's qualifications and experience relevant to his or her proposed role pursuant to the Undertaking.
 - (b) the names of the owner/s and the directors (as applicable) of the Proposed Divestiture Agent's employer.

- (c) details of any of the following types of relationships between BlueScope and the Proposed Divestiture Agent or the Proposed Divestiture Agent's employer or confirmation that no such relationship exists whether within Australia or outside of Australia:
- (i) BlueScope and the Proposed Divestiture Agent's employer are Associated Entities.
 - (ii) BlueScope is an Entity Connected with the Proposed Divestiture Agent's employer.
 - (iii) The Proposed Divestiture Agent's employer is an Entity Connected with BlueScope.
 - (iv) BlueScope and the Proposed Divestiture Agent's employer are Related Entities.
 - (v) BlueScope and the Proposed Divestiture Agent's employer are Related Parties
 - (vi) any Related Party, Related Entity or Entity Connected with BlueScope is a Related Party, Related Entity or Entity Connected with the Proposed Divestiture Agent.
 - (vii) BlueScope and the Proposed Divestiture Agent or the Proposed Divestiture Agent's employer have a contractual relationship or had one within the past three years, other than those proposed to be established as described in the documents attached to this form as described under item 3) of this section.
 - (viii) the Proposed Divestiture Agent's employer is a supplier of BlueScope or has been in the past three years.
 - (ix) BlueScope is a supplier of the Proposed Divestiture Agent's employer or has been in the past three years.
 - (x) any other relationship between BlueScope and the Proposed Divestiture Agent or the Proposed Divestiture Agent's employer that allows one to affect the business decisions of the other.

3) A document outlining the terms of appointment for the proposed Divestiture Agent.

Specific Information required for proposed Divestiture Agents

The ACCC requires the below information in relation to the relevant proposed Divestiture Agent.

- 1) The Proposed Sale and Purchase Agreement drafted by the Proposed Divestiture Agent in consultation with BlueScope. The Proposed Sale and Purchase Agreement is to provide for the divestiture of the Unsold Assets.
- 2) The Proposed Divestiture Agent's draft marketing and sale plan for the Unsold Assets.

Schedule 4

- 1) **Divestiture Assets** means the following assets installed or located at the Site:
 - (a) the shear line installed at the Site;
 - (b) the slitter installed at the Site;
 - (c) any manuals, maintenance records or other documents exclusively relating to the shear line or slitter referred to in paragraphs (a) and (b) respectively, which are located at the Site;
 - (d) the guillotine located at the Site and any additional assets set out in the asset register attached to the Approved Sale and Purchase Agreement which are located at the Site; and
 - (e) subject to receipt of the Site Landlord's consent to the sublease of the Site Lease, the benefit of the Sublease.

- 2) In paragraph (1) above:
 - (a) **Site** means 10 Glassford Road, Kewdale, Western Australia.
 - (b) **Site Landlord** means Kokomo Holdings Pty Ltd ACN 008 988 690.
 - (c) **Site Lease** means the registered lease D842716 as varied, extended and assigned, including the variation and extension of lease granted by the Site Landlord to BlueScope Distribution Pty Ltd ACN 096 380 068.

Sublease means the sublease of the Site Lease by BlueScope Distribution Pty Ltd to the Approved Purchaser on the terms attached to the Approved Sale and Purchase Agreement or if the Site Landlord requires any amendments to those terms, such amended terms which are satisfactory to BlueScope and the Approved Purchaser, each acting reasonably.

Confidential Schedule 5