



## Public Competition Assessment

4 August 2014

### BlueScope Steel Ltd – proposed acquisition of Orrcon Steel

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#### Introduction

1. On 5 December 2013, the Australian Competition and Consumer Commission (**ACCC**) announced its decision not to oppose the proposed acquisition of certain Orrcon pipe and tube manufacturing and distribution assets and other associated assets (**Orrcon**) from Hills Holding Limited (**Hills**) by BlueScope Steel Ltd (**BlueScope**) (the **proposed acquisition**). The ACCC decided that the proposed acquisition would be unlikely to have the effect of substantially lessening competition in any market in contravention of section 50 of the Competition and Consumer Act 2010 (the **Act**).
2. The ACCC made its decision on the basis of information provided by the merger parties, information arising from its market inquiries and other relevant industry sources of publicly available and confidential information. This Public Competition Assessment outlines the basis on which the ACCC 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 proposed acquisition is opposed;
  - a proposed acquisition is subject to enforceable undertakings;
  - the merger parties seek such disclosure; or
  - a proposed acquisition is not opposed but raises important issues that the ACCC considers should be made public.
4. This Public Competition Assessment has been issued because the proposed acquisition was not opposed but raises important issues that the ACCC considers should be made public.
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.

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 Public Competition Assessments 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.
8. This Public Competition Assessment outlines the circumstances and assessment at the time of the ACCC decision. Events that have occurred post the ACCC decision that are relevant to this matter are clearly identified.

## **The parties**

### **The acquirer: BlueScope**

9. BlueScope is a vertically integrated steel manufacturer and distributor listed on the Australian Securities Exchange (**ASX**).
10. BlueScope is the only manufacturer in Australia of steel slab, at its Port Kembla steelworks. The steelworks has a capacity of 2.6 million tonnes per annum. Through its subsidiary, Coated and Industrial Products Australia (**CIPA**), BlueScope processes steel slab into a range of steel products classified as 'flat steel' products. Further information on the flat steel product supply chain is provided below.
11. In addition to CIPA, BlueScope has a number of businesses at various levels of the flat steel supply chain, including in steel products distribution and businesses carrying out additional manufacturing functions.
12. BlueScope's steel and tube distribution subsidiary is BlueScope Distribution. It distributes mainly long steel products, for example pipe and tube products, and steel plate. Pipe and tube products are regarded in the Australian industry as a form of long steel products, however they differ from other long products in that they are manufactured from flat steel products such as hot rolled coil (**HRC**), galvanised coil and cold rolled coil (**CRC**). BlueScope CIPA is the only domestic manufacturer of these inputs.

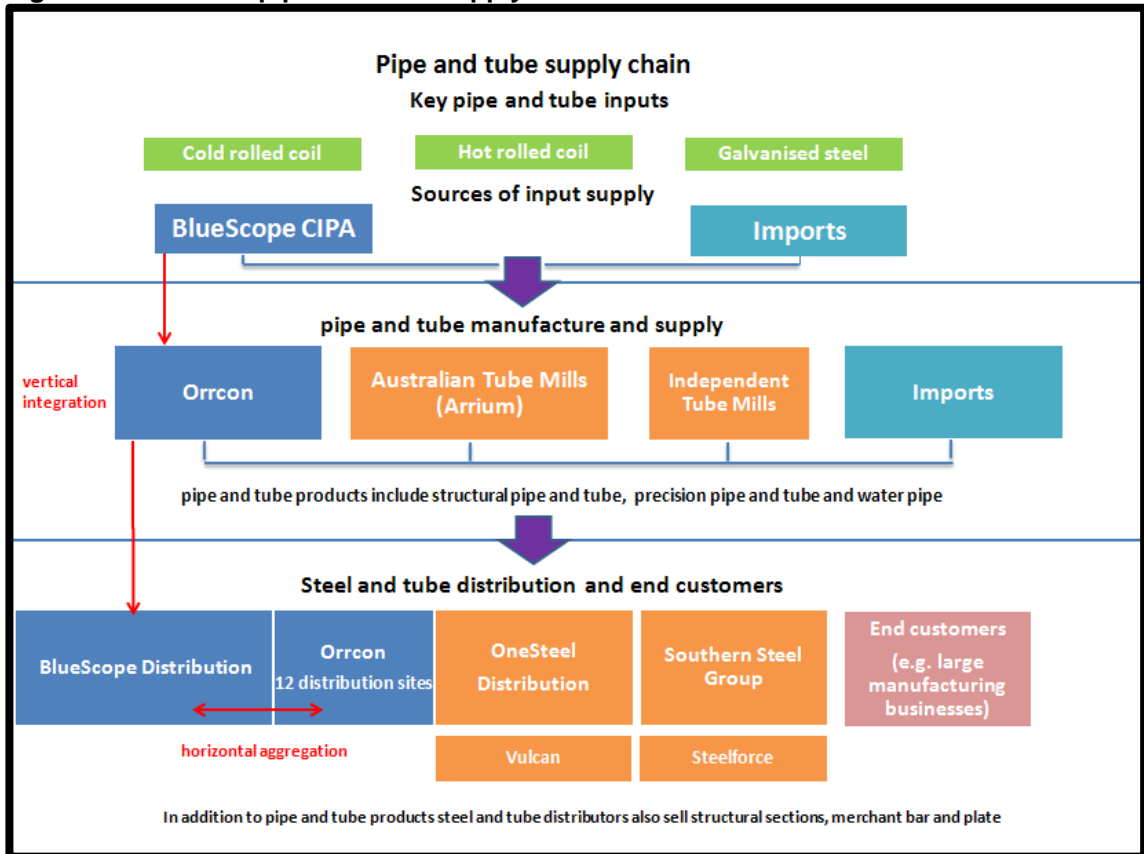
### **The target: Orrcon**

13. At the time of the ACCC's review, Orrcon was a wholly owned subsidiary of Hills. Of most relevance to the proposed acquisition, Orrcon operated a vertically integrated pipe and tube manufacturing business and a steel and tube distribution business. Orrcon manufactured pipe and tube products at facilities at Salisbury, Queensland, and O'Sullivan's Beach, South Australia. Orrcon was the only Australian manufacturer of precision steel and pipe. Orrcon distributed steel and tube products through 12 sites across Australia.

## Industry background

14. The steel supply chain in Australia is complex with a number of functional levels, numerous types of steel products, various manufacturing processes and a global dynamic through imports and exports.
15. There are two broad forms of steel products: flat and long. As stated above, BlueScope, through its subsidiary CIPA, is the only Australian manufacturer of flat steel products. Arrium Ltd (**Arrium**) is the only Australian manufacturer of long products.
16. Steel producers use inputs such as iron ore, coal and steel scrap to form raw steel either through using a basic oxygen furnace, or an electric arc furnace. Raw steel is then passed through a casting machine which moulds and solidifies the steel into semi-finished steel products known as 'slab', 'billets' or 'blooms'. Steel slab, billets and blooms then undergo further processing to produce a range of flat or long steel products.
17. Flat steel products are steel products produced from steel slab. Specifically, steel slab is reheated and passed through a rolling mill to produce HRC or a form of 'steel plate'. HRC may be subject to further processing to manufacture CRC and coil plate.
18. As noted previously, pipe and tube products are regarded in the Australian industry as a form of long steel products, but they differ from other long products in that they are manufactured from flat steel products such as HRC, galvanised coil and CRC. BlueScope CIPA is the only domestic manufacturer of these inputs.
19. Customers of steel and tube distributors typically include fabricators, engineering workshops and construction companies. Examples include manufacturers of products for residential buildings (frames, beams, posts etc.), and automotive components (such as tow bars and bull bars). **Figure 1** below illustrates the pipe and tube supply chain and the place of the proposed acquisition in the supply chain.

Figure 1: Structural pipe and tube supply chain



## Pipe and tube manufacturing

20. Pipe and tube products fall into four broad categories:
  - structural pipe and tube;
  - precision pipe and tube;
  - oil and gas pipe; and
  - water pipe.
21. Structural pipe and tube products are used in building, manufacturing and engineering applications and are manufactured at separate mills from precision pipe and tube. Orrcon, Australian Tube Mills (**ATM**) and Independent Tube Mills (**ITM**) are the only manufacturers of structural pipe and tube products.
22. The ACCC understands that, in respect of structural pipe and tube, the three domestic manufacturers represent approximately 60–65 per cent of total 2011/12 industry sales with the balance supplied via imports.
23. Precision products are used in furniture, home improvement, agricultural and automotive applications (for example, exhaust pipes). Orrcon is the only precision pipe and tube manufacturer in Australia.
24. Oil and gas pipe is used in pipeline construction and is not currently manufactured domestically with both Orrcon and ATM ceasing production in the past two years. Water pipelines are cement lined steel pipes with the only Australian manufacturer being Pentair.

## **Steel and tube distribution**

25. Pipe and tube products are one of the main product categories distributed by steel and tube distributors along with structural sections, merchant bar and steel plate. As noted above, distributors source pipe and tube products, merchant bar and structural sections from domestic manufacturers or via imports and in the case of steel plate from either BlueScope CIPA or via imports.
26. Distributors form a link between steel mills and steel product manufacturers and their customers that, due to limited scale, are not able to obtain viable supply directly from a steel mill. The other features or characteristics of steel and tube distribution, compared with supply direct from a steel mill or manufacturer, are:
  - distributors are located close to customers (there are distribution outlets in each of the major metropolitan and regional centres);
  - distributors provide a wide product range, short order-to-delivery times, low minimum volumes and other associated services such as product support, and less onerous credit terms than if the customer were to acquire steel direct from a manufacturer; and
  - some distributors offer processing services.
27. Steel and tube distributors can be vertically integrated with a manufacturer, as is the case with Orrcon and ATM, or they can be aligned with a manufacturer from which they agree to purchase the bulk of their inputs. Alternatively, they may be independent purchasers of steel products that source from a mix of domestic manufacturers and imports or solely from imports.
28. Steel and tube distributors in most cases do not stock flat steel products, such as painted coil. These products are distributed by what the industry refers to as 'sheet and coil' distributors. In some limited cases, particularly in regional areas, a distributor may stock both flat and long products, however these instances appear to be rare due to different customer profiles and distinct storage and processing equipment requirements.

## **The proposed transaction**

29. BlueScope proposed to acquire certain Orrcon pipe and tube manufacturing and distribution assets from Hills.

## **Areas of overlap**

30. The merger parties overlapped in the distribution of steel and tube products. BlueScope's distribution business has sites in each Australian state and territory, with the exception of the Australian Capital Territory. Orrcon's distribution business has sites in Victoria, New South Wales, South Australia, Western Australia and Queensland.
31. The merger parties did not overlap horizontally at other levels of the supply chain. However, the proposed acquisition will result in the vertical integration of BlueScope's CIPA business with Orrcon's pipe and tube manufacturing assets and with both parties' distribution businesses.

## **Other industry participants**

### **Pipe and tube manufacturers**

#### **Australian Tube Mills**

32. ATM is a wholly owned subsidiary of Arrium. ATM manufactures structural pipe and tube products from facilities at Acacia Ridge in Queensland, Newcastle in New South Wales, and Somerton in Victoria. ATM supplies customers directly or through distributors, including its related steel and tube distribution businesses OneSteel (trading under the Metalcentre and Metaland brands).

#### **Independent Tube Mills**

33. ITM is a privately owned Australian company. ITM commenced pipe and tube manufacturing in 2010, from a production facility in Ravenhall, Victoria. ITM distributes its structural pipe and tube products predominantly through BlueScope Distribution.

#### **Import traders**

34. There are a number of import traders that acquire finished pipe and tube products from overseas suppliers. Import traders include Minmetals, Toyota Tsusho Australasia, Metal One, CMC Metals, Southern Steel Group and Steelforce.

### **National steel and tube distributors**

#### **OneSteel**

35. OneSteel, owned by Arrium, distributes steel and tube products trading under the Metaland, Metalcentre and Midalia Steel (in Western Australia) brands. Metaland, Metalcentre and Midalia deliver a wide range of steel products and associated processing services. OneSteel has 77 distribution sites nation-wide.

#### **Southern Steel Group**

36. Southern Steel Group (**Southern Steel**) is the largest privately owned distributor of steel and tube products in Australia. Southern Steel distributes and processes steel and tube (as well as sheet and coil) products throughout Australia. Southern Steel's subsidiaries include Brice Metals, Southern Steel Sheet and Coil, Southern Steel Supplies and Australian Rollforming Manufacturers.

#### **Steelforce**

37. Steelforce manufactures pipe and tube products in China. Steelforce primarily distributes steel and tube from its Sydney, Brisbane, Melbourne and Perth distribution sites.

#### **CMC Australia**

38. CMC Australia distributes long steel products, sheet and coil products and provides processing services for sheet and coil, steel plate and long products. CMC distributes steel and tube products from its distribution sites in Sydney, Melbourne, Perth and Brisbane.

### **Regional distributors**

39. Regional based steel and tube distributors include Vulcan Steel, Apex Steel, Nubco, GAM Steel and Central Steel.

## Review timeline

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

Date	Event
04-Sept-2013	ACCC commenced review under the Merger Process Guidelines. Market inquiries commenced.
25-Sept-2013	Closing date for submissions from interested parties.
15-Oct-2013	Former proposed decision date of 31 October 2013 delayed pending receipt of further information from the merger parties. ACCC timeline suspended.
11-Nov-2013	ACCC received further information from the merger parties. ACCC timeline recommenced.
05-Dec-2013	ACCC announced that it would not oppose the proposed acquisition.

## Market inquiries

41. The ACCC conducted market inquiries with a range of market participants including rival pipe and tube manufacturers, importers of pipe and tube inputs and pipe and tube products, rival steel and tube distributors, industry associations and government departments.

## Future with/without the proposed acquisition

42. Section 50 of the Act prohibits mergers or acquisitions that would have the effect or be likely to have the effect of substantially lessening competition in a market. In assessing a proposed acquisition pursuant to section 50 of the Act, the ACCC considers the effects of the acquisition by comparing the likely future competitive environment post-acquisition if the acquisition proceeds (the “with” position) to the likely future competitive environment if the acquisition does not proceed (the “without” position) to determine whether the proposed acquisition is likely to substantially lessen competition in any relevant market.

43. The ACCC assessed the proposed acquisition against the status quo. Orrcon had been the subject of a sale process. In the event that BlueScope did not acquire Orrcon, Hills may have retained the business or may have sold Orrcon to another party.

## Competition Analysis

### Market definition

44. The ACCC considered the proposed acquisition in the context of the following markets:

- the national markets for the supply of the following inputs to pipe and tube manufacturers and other users:
  - HRC;
  - CRC;
  - galvanised coil;

(collectively **pipe and tube inputs**)

- the national market for the supply of structural pipe and tube products;
- the distribution of steel and tube products in the following regions:
  - northern Queensland (centred around Townsville);
  - south-eastern Queensland and northern New South Wales (centred around Brisbane);
  - central and southern New South Wales (centred around Sydney);
  - central and eastern Victoria (centred around Melbourne);
  - South Australia and western Victoria (centred around Adelaide);
  - Western Australia (centred around Perth); and
  - Tasmania.

## **The supply of HRC, CRC and galvanised coil to pipe and tube manufacturers and other users**

### **Product dimension**

45. The ACCC notes that flat steel products, including HRC, CRC and galvanised coil, are supplied to a wide range of customers, including manufacturers and distributors. Relevant to the proposed acquisition is the use of these flat steel products by pipe and tube manufacturers.
46. The ACCC considered the appropriate product markets for considering the supply of pipe and tube inputs to be separate markets for each of HRC, CRC and galvanised coil, being the three main flat steel products utilised by Australian pipe and tube manufacturers. HRC constitutes a significant proportion of the overall pipe and tube inputs utilised by manufacturers.
47. The ACCC recognised that pipe and tube manufacturers require specific differentiated pipe and tube inputs. This differentiation is based on chemical properties and other factors which result in specific mechanical properties or grades. Due to customer requirements for specific end-use pipe and tube products, manufacturers would not substitute between different types of input (for example, HRC and galvanised coil) and grades and dimensions of coil.
48. The ACCC understands that overseas manufacturers of pipe and tube inputs typically supply a large range of HRC, CRC and galvanised coil inputs in the specific grades and dimensions required by Australian pipe and tube manufacturers. Information provided by market participants and other publicly available information, such as decisions by the Anti-Dumping Commission (**ADC**), indicated that steel and tube inputs are manufactured overseas to the same or similar grades and dimensions as supplied by BlueScope CIPA. The ACCC considered that these overseas-manufactured pipe and tube inputs are substitutable with those manufactured by BlueScope CIPA.
49. For the purpose of its competition analysis, the ACCC assessed the proposed acquisition in the context of separate markets for each of HRC, CRC, and galvanised coil. However the ACCC did not consider product market definition to be determinative of its assessment of the proposed acquisition.



### **Geographic dimension**

50. The ACCC considered that the geographic scope of the markets is national. BlueScope CIPA and other suppliers, such as import traders and overseas steel mills, supply to pipe and tube manufacturers and other users across Australia.

### **Supply of structural pipe and tube products**

#### **Product dimension**

51. The steel industry generally classifies steel and tube products into the following four categories: structural pipe and tube; precision pipe and tube; water pipe; and oil and gas pipes. The ACCC's view is that only the supply of structural pipe and tube products is relevant to the proposed acquisition.
52. Oil and gas pipe products are not manufactured in Australia. Water pipe and tube products are only manufactured by Pentair and it is not possible to manufacture structural or precision pipe and tube products using water pipe and tube machinery.
53. Orrcon was the only manufacturer of precision pipe and tube products and manufactured relatively small volumes of these products. Due to their smaller diameters and thinner walls, precision pipe and tube products are not substitutable with structural pipe and tube products from a customer perspective. Market feedback also indicated that precision pipe and tube products are imported in significant volumes. No market participants raised concerns in respect of the potential impact of the proposed acquisition on the supply of precision pipe and tube products.
54. Structural pipe and tube suppliers, such as Orrcon, offer a wide range of structural pipe and tube products intended for numerous end-use applications. Broadly these products are differentiated by whether they are square hollow, circular hollow, or rectangular hollow, and the coating or finish on the product. Within each category a supplier would offer a wide range of gauges and diameters to suit the specifications of customers. Products are often supplied by reference to relevant Australian Standards. The ACCC understands that generally customers would not consider one form of structural pipe and tube product to be a close substitute with another due to their specific end-use requirements.
55. Structural pipe and tube suppliers, including manufacturers, are able to supply a wide range of structural pipe and tube products without the requirement for additional or specialty machinery. Manufacturing equipment can be adjusted to produce structural pipe and tube products in various shapes and measurements.
56. Based on the ease of supply side substitution, the ACCC formed the view that the appropriate product dimension is the supply of structural pipe and tube products. Market inquiries indicate that imports of structural pipe and tube products are substitutable with Australian manufactured structural pipe and tube products.

### **Geographic dimension**

57. The ACCC considered that the geographic scope of the market was national. Orrcon, ATM and other suppliers, such as import traders and overseas steel mills, supply structural pipe and tube products to users across Australia.

## Distribution of steel and tube products

### Product dimension

58. Steel and tube distributors supply a range of long steel products, including structural pipe and tube products, merchant bar, reinforcing steels and steel plate. Distributors also offer processing services (for example, cutting) to provide steel products to the specifications of the customer. Customers have no incentive to substitute between the different products offered by distributors due to specific end-use requirements.
59. To the extent that distributors do not offer certain steel and tube products, it appears they can readily expand utilising established warehousing and processing equipment to offer a wider range. The ACCC's view was therefore that the relevant market was the market for distribution of steel and tube products.
60. As noted above, distributors also offer a range of processing services to tailor steel product to specific customer requirements. Processing services include length cutting, plate profiling and beam processing. The ACCC considered the ease with which steel and tube distributors without processing capability could acquire processing equipment and thereby expand to offer processing services. The ACCC concluded that the investment and time required to commence the processing of steel and tube products was not substantial.

### Geographic dimension

61. Market feedback indicated that, due to customers' 'just in time' delivery requirements and the cost associated with transporting steel and tube products, steel and tube distributors are generally located within 2 – 3 hours drive of customers. As a consequence, the ACCC considered that the markets for steel and tube distribution are regionally based. As noted above in the **Areas of Overlap** section, BlueScope and Orrcon overlapped in five geographical areas. The ACCC's view was that these regions constituted relevant geographic markets for considering the proposed acquisition.
62. The ACCC also considered that Tasmania was likely to be a relevant geographic market due to the potential for Tasmanian distributors to be impacted by the proposed acquisition. Market inquiries indicated that steel and tube distributors based in Victoria distribute products in Tasmania only to a limited extent.

## Competition Assessment

63. The ACCC's assessment focussed on whether BlueScope's increased vertical integration as a result of the proposed acquisition would provide it with the ability and incentive to foreclose competition in the relevant markets leading to higher prices or reduced quality.
64. In particular, the ACCC considered whether the acquisition would enable BlueScope to raise its rivals' costs (input foreclosure) by:
  - no longer supplying, or supplying at higher prices or lower quality, pipe and tube inputs to rival pipe and tube manufacturers; and/or
  - no longer selling to, or increasing the price or reducing the quality of structural pipe and tube products supplied to, rival steel and tube distributors.

65. The ACCC also considered whether the proposed acquisition would enable BlueScope to foreclose its upstream rivals' access to customers (customer foreclosure), thus reducing rivals' expected revenues by:
- ceasing to source pipe and tube inputs from rival upstream suppliers; and/or
  - ceasing to distribute structural pipe and tube products manufactured by rival manufacturers.
66. The ACCC also considered the potential competitive impact of horizontal aggregation of the BlueScope and Orrcon steel and tube distribution businesses in the relevant steel and tube distribution markets listed above.

### **Foreclosure of rival pipe and tube manufacturers' access to pipe and tube inputs**

67. BlueScope is the only domestic manufacturer of the pipe and tube inputs supplied to ATM and ITM. The acquisition of the Orrcon pipe and tube manufacturing business will mean that BlueScope will be both the main supplier of inputs to, and a competitor of, the other pipe and tube manufacturers.
68. As a consequence, the ACCC considered whether, as a result of acquiring the Orrcon pipe and tube manufacturing assets, BlueScope would have the ability and incentive to use any upstream market power in the manufacture of structural pipe and tube input products to raise downstream rival pipe and tube manufacturers' costs. Post-acquisition, BlueScope may have the ability and incentive to foreclose the downstream manufacturing markets by, for example, ceasing to supply inputs to rival manufacturers, or raising the price or reducing the quality of inputs supplied. This may have the effect of reducing the competitive constraint that rival manufacturers place on the merged firm, potentially resulting in a substantial lessening of competition in the market(s) for the supply of structural steel and tube products, leading to higher prices and/or reduced quality.
69. In assessing this potential competition concern, the ACCC focussed on the role of imports in constraining any attempted input foreclosure strategy by BlueScope.
70. The ACCC received information that indicated that the volume of imports of pipe and tube inputs is significant. Both ATM and ITM have utilised imports of pipe and tube inputs as a substitute to supply from BlueScope CIPA. Further, the price that BlueScope CIPA sets for pipe and tube inputs is related to the price of imports.
71. Nevertheless, in the course of the ACCC's market inquiries, competing manufacturers stated that issues around anti-dumping applications/duties and logistical challenges impact the competitive constraint that imports of pipe and tube inputs place on BlueScope. Thus, competing manufacturers argued that they only had a limited ability to defeat an input foreclosure strategy by switching to imports.

### **Anti-dumping applications and duties**

72. Based on publicly available data and information provided by the merger parties, successful anti-dumping applications have had the effect of increasing the price and reducing the volume of imports from steel mills and countries subject to the imposed duties.

73. Market inquiries indicated that anti-dumping applications have had some impact on pipe and tube manufacturers' ability to source HRC and galvanised coil from overseas sources at competitive prices. Consistent with the ACCC's review of the Smorgon Steel acquisitions in 2008, it appears that the lodging of applications has some 'chilling effect' on the competitive constraint of imports. Namely, it is not just the imposition of duties that have an impact but also the lodging of the application and the commencement of the investigation by the ADC.
74. It appears that once an anti-dumping investigation commences, overseas mills, import traders, and importers become reluctant to engage in transactions due to the potential for duties to be levied. For example, a trader may agree to supply a customer but the terms of supply are that the price is exclusive of any duty that is imposed and to the extent duty is imposed the customer agrees to bear this. The result is that importers become reluctant to source supply from a country/mill that is under investigation due to the uncertainty of the final pricing outcome.
75. However, some market participants noted that in a number of instances the quantum of the duties imposed on particular mills was not large enough to significantly impact their competitiveness. For example, it was noted that in the case of HRC, South Korean mills had minimal duties (two to five per cent) imposed and at that level supply from those mills was still price competitive.
76. The ACCC considered that anti-dumping applications by BlueScope do reduce the strength of imports as an alternative to supply from BlueScope CIPA. However, based on market feedback and information obtained by the ACCC, the ACCC considered that imports of pipe and tube inputs would continue to be a significant source of supply, with pipe and tube manufacturers demonstrating sophistication in obtaining imported supply even when anti-dumping measures have been imposed.

### **Inventory and logistical issues**

77. Some industry participants submitted to the ACCC that it would not be feasible for pipe and tube manufacturers to significantly expand import volumes due to the need for greater storage, additional capital tied up in inventory and increased complexity in attempting to align import volumes with customer demand.
78. Some market participants suggested that managing the long lead times of imports of pipe and tube inputs, often three to four months, are exacerbated by the delivery requirements of downstream pipe and tube customers. Customers of pipe and tube manufacturers generally expect short delivery times from the time of order, depending on the quantity and the specificity of the structural pipe and tube products required. Market participants indicated that BlueScope CIPA's competitive advantage lies with shorter delivery times compared to imports. These shorter lead times assist manufacturers in more accurately matching pipe and tube input requirements with demand for structural pipe and tube products from customers.
79. The ACCC noted the complexities associated with imports, including additional storage and inventory management issues. However, based on publicly available data, market feedback and information provided by the merger parties, the ACCC considered that these challenges can be and have been overcome by pipe and tube manufacturers and, post-acquisition, imports would continue to represent a significant alternative to BlueScope for the supply of pipe and tube inputs. This would reduce BlueScope's ability and incentive to pursue an input foreclosure strategy that sought to raise rival manufacturers' costs.

80. Additionally, the ACCC considered that BlueScope would continue to have an incentive to supply inputs to rival manufacturers of pipe and tube products due to the need to operate the blast furnace at BlueScope's Port Kembla steelworks at full capacity and the greater profits it earns on downstream domestic sales over exporting excess production.

### **Conclusion**

81. The ACCC considered that anti-dumping applications and associated duties and logistical issues reduce to some extent the competitive constraint provided by imports. However, the ACCC concluded that despite these issues imports are a viable alternative source of supply of inputs for pipe and tube manufacturers.
82. The strength of imports is reflected in the significant volumes over a number of years and BlueScope's pricing and its correlation to import prices. Any attempt by BlueScope to engage in a foreclosure strategy (either by refusing to supply coil inputs or by increasing prices for these inputs above the current premium over import parity) would be expected to be defeated by an increase in the volume of imports.

### **Foreclosure of rival distributors' access to structural pipe and tube products**

83. The ACCC concluded that BlueScope is not likely to have significant market power in the supply of structural pipe and tube products. Nevertheless, due to concerns raised by distributors of structural pipe and tube products, particularly in Tasmania, the ACCC considered whether, through acquiring the Orrcon pipe and tube manufacturing assets, BlueScope would have the ability and incentive to raise rival steel and tube distributors' costs.
84. Such foreclosure could involve ceasing to supply its structural pipe and tube products to rival distributors, or raising the price or reducing the quality of structural pipe and tube products supplied. This may have the effect of reducing the competitive constraint that rival distributors place on the merged firm, potentially resulting in a substantial lessening of competition in the markets for the distribution of steel and tube products, leading to higher prices and/or reduced quality.
85. Market inquiries confirmed that steel and tube distributors obtain supply of structural pipe and tube products from either domestic manufacturers (Orrcon, ATM or ITM) or via imports. Steel and tube distributors often operate a dual sourcing strategy where the majority of structural pipe and tube is sourced from one domestic manufacturer with the remainder sourced from either an alternative domestic manufacturer or via imports. Industry feedback indicated that the source of supply fluctuates based on product availability and price. It is rare for distributors to have formal supply agreements.
86. The ACCC noted that the proposed acquisition would not alter the number of potential alternative sources of supply of structural pipe and tube products for steel and tube distributors. Further, it is likely that rival distributors would be able to bypass BlueScope and thus defeat an input foreclosure strategy if BlueScope sought to use the Orrcon assets to raise rival distributors' costs by foreclosing their access to structural pipe and tube products. BlueScope could be bypassed by rival distributors obtaining supply from:
- other domestic structural pipe and tube manufacturers – principally ATM and to a lesser extent ITM; and/or
  - imports, either via import traders or direct from overseas steel mills.

### **Domestic sources of supply**

87. The ACCC concluded that ATM represented the strongest alternative for the supply of structural pipe and tube products were BlueScope to pursue an input foreclosure strategy. Market inquiries indicated that ATM had a comparable range of structural pipe and tube products to Orrcon and offered competitive pricing and service support.
88. The ACCC considered that in some cases ITM may represent an alternative source of supply for steel and tube distributors. Market feedback indicated that ITM's competitive advantage is its location in Victoria, close to a number of steel and tube distributors and the corresponding lower transport costs it incurred compared to the other manufacturers.
89. The ACCC considered that the ability of rival distributors to source structural pipe and tube products from alternative domestic manufacturers, particularly ATM, would likely reduce BlueScope's ability and incentive to pursue an input foreclosure strategy and instead provide a competitive discipline on BlueScope such that it will have an incentive to maintain supply of structural pipe and tube products to rival distributors at competitive prices and terms.

### **Imports as a source of supply**

90. The ACCC also recognised that for a number of steel and tube distributors, imports are also a viable alternative to domestic supply. However, the ACCC noted market feedback that issues associated with anti-dumping applications/duties, Australian Standards and logistical challenges impact the strength of imported structural pipe and tube products as an alternative to supply from Orrcon, ATM or ITM.
91. The ACCC considered that anti-dumping applications and the imposition of duties have a 'chilling effect' on imports' competitive constraint in the short-term. Overseas manufacturers and mills become reluctant to supply to Australia when an ADC investigation is initiated and terms of supply often come with clauses that make the end customer liable for any duty that may be applied. Further, for manufacturers that have had a significant duty imposed, their ability to offer competitively priced supply to Australian customers is severely impacted.
92. It appears, therefore, that there is an initial period of disruption while importers find alternative sources of structural pipe and tube products. Nevertheless, based on information provided by market participants and data collected by the ACCC, in the medium term it appears that anti-dumping applications may not significantly reduce the competitive constraint provided by imports.
93. Some market participants raised concerns about BlueScope and Arrium using the Australian Standards process to impose additional barriers to imports. The ACCC considered that adhering to Australian Standards adds additional complexity to importing structural pipe and tube products. Further, these standards may change from time to time which would add to the complexity.
94. The ACCC understood that the Australian Standards' amendment process, which is managed by Standards Australia, is a lengthy and transparent process and that comment is sought from all potential affected stakeholders, including importers, in respect of any proposed changes to an industry standard. For an existing Australian Standard to be changed, a party must demonstrate a benefit to the community as a whole that exceeds the costs likely to be imposed from its development and implementation.

95. The ACCC was satisfied that in the case of steel standards the process undertaken by Standards Australia should ensure that BlueScope and Arrium are not able to influence the amendment of relevant structural pipe and tube standards as a means of reducing the strength of imports as a potential alternative to domestic supply.
96. Market inquiries indicated that managing the importation of structural pipe and tube products does add a degree of complexity to the supply chain. Lead times can be long (three to four months) with resulting issues in matching supply with demand and potential cash flow implications. However, despite these logistics challenges the volume of structural pipe and tube imports indicated that they can be overcome by some distributors and direct customers.

### **Tasmanian distributors' access to structural pipe and tube products**

97. A number of market participants raised concerns about the potential impact of the proposed acquisition on Tasmanian distributors' access to structural pipe and tube products. In particular, some market participants considered that BlueScope would have the ability and incentive to foreclose rival Tasmanian distributors' access to structural pipe and tube products, potentially leading to a substantial lessening of competition in that regional distribution market.
98. Unlike elsewhere in Australia, the number of steel and tube distributors in Tasmania is limited with BlueScope, OneSteel (through the Metaland and Metalcentre brands) and Nubco being the major distributors. With the exception of GAM Steel, Victorian based steel and tube distributors generally do not supply into Tasmania.
99. The ACCC gave particular consideration to the potential impact of the proposed acquisition on the Tasmanian distribution market due to Nubco obtaining significant volumes of structural pipe and tube products from Orrcon. In particular, post-acquisition Nubco would be the only significant non-integrated distributor in Tasmania. Market inquiries suggested that Nubco's ability to bypass BlueScope to obtain supply from alternative sources of structural pipe and tube products may be more limited than steel and tube distributors located in the other markets due to the role of the Tasmanian Freight Equalisation Scheme (TFES).
100. The TFES is intended to compensate Tasmanian manufacturing and mining businesses for the cost of shipping raw materials, machinery and equipment from mainland Australia to Tasmania. To be eligible for compensation, the goods must be a raw material or equipment to be used in a production or manufacturing process, be produced or manufactured in mainland Australia (or if imported undergone a manufacturing process in mainland Australia), have a sea freight cost disadvantage and be transported across the Bass Strait as 'non-bulk' cargo.
101. Some Tasmanian steel and tube distributors submitted that the TFES limited the extent to which they could source structural pipe and tube products from import traders or via overseas steel mills because imported products are not eligible for subsidy under the TFES and therefore distribution customers could not claim a rebate.
102. In market inquiries, downstream customers indicated that the TFES only has limited influence in their decision making process when deciding which distributor to acquire structural pipe and tube from. In particular, customers of structural pipe and tube products in Tasmania indicated that the time and complexity associated with applying for subsidies under the TFES and the

limited financial benefits available meant that it had minimal bearing over decision making in sourcing structural pipe and tube products.

## **Conclusion**

103. The ACCC concluded that were BlueScope to attempt to foreclose rival steel and tube distributors' access to structural pipe and tube products then rival distributors would likely be able to bypass it and defeat the attempted foreclosure through obtaining supply from:
- alternative domestic structural pipe and tube manufactures – principally ATM and to a lesser extent ITM; and/or
  - imports, either via import traders or direct with overseas steel mills.
104. In respect of steel and tube distribution in Tasmania, after careful consideration and extensive consultation with rival distributors and customers in Tasmania, the ACCC concluded that were BlueScope to pursue a foreclosure strategy, then rival steel and tube distributors in Tasmania would likely be able to defeat the strategy by bypassing BlueScope and obtaining supply from either:
- import traders or distributors based in other states, such as Steelforce, which supply structural pipe and tube products; and/or
  - to some extent the structural pipe and tube manufacturer, ITM.
105. Further, the ACCC was of the view that to the extent rival Tasmanian distributors, such as Nubco, may be impacted in obtaining competitive supply of structural pipe and tube products, the effect would be unlikely to represent a substantial lessening of competition in that distribution market. Nubco's customers would have competitive alternatives, principally in the form of GAM Steel and other smaller distributors.

## **Foreclosure of rival pipe and tube input suppliers' access to customers**

106. The ACCC also considered whether the loss of Orrcon as an independent customer or potential customer for pipe and tube inputs may reduce the distribution opportunities for BlueScope's rivals, such as import traders, to such an extent that their unit costs increased. This would place them at a cost disadvantage and reduce the competitive constraint on BlueScope.
107. The ACCC concluded, in respect of pipe and tube inputs, that rival suppliers (import traders) would continue to have access to a large pool of alternative customers in the relevant markets and in other steel industry markets. In addition, Orrcon currently acquires a substantial majority of its pipe and tube inputs from BlueScope CIPA.
108. To the extent suppliers are impacted they would continue to have a large range of users of pipe and tube inputs, such as galvanised coil, other than just pipe and tube manufacturers, to which BlueScope's rivals could seek to supply directly.

## **Foreclosure of rival structural pipe and tube suppliers' access to customers**

109. The ACCC anticipated that post-acquisition BlueScope Distribution would obtain a significant volume of its structural pipe and tube products from the Orrcon manufacturing assets. As a consequence, the ACCC also considered whether the potential loss of BlueScope Distribution as a customer of structural pipe and



product suppliers would significantly impact the competitiveness of rival suppliers.

110. In considering the impact on structural pipe and tube manufacturers the ACCC particularly focussed on the potential effect on ITM. The ACCC understood that BlueScope Distribution was a large customer of ITM for the supply of structural pipe and tube products. The ACCC considered that post-acquisition BlueScope Distribution would likely reduce or cease obtaining supply from ITM and instead utilise the Orrcon manufacturing assets.
111. However, the ACCC considered that ITM would continue to have a large number of potential alternative customers, including other steel and tube distributors and end customers of structural pipe and tube products. The ACCC considered that the availability of a large number of alternative customers would also be applicable to other structural pipe and tube suppliers (for example, ATM and importers).
112. The ACCC concluded that it would be unlikely that post-acquisition BlueScope would have the ability and incentive to significantly foreclose rival structural pipe and tube suppliers' access to downstream customers.

### **Horizontal aggregation in steel and tube distribution**

113. BlueScope Distribution and Orrcon overlap in six geographically separate steel and tube distribution markets. While barriers to entry are high, the ACCC concluded that the merged firm would be constrained in the relevant steel and tube distribution markets by the presence of numerous alternatives with excess capacity and the ability of customers to switch easily between these alternatives.
114. In all five markets, the merged firm would be constrained by Southern Steel and OneSteel and numerous smaller distributors. These rival distributors offer comparable product ranges and, importantly, in most cases also have processing capability. Smaller distributors, in particular Vulcan Steel, CMC Coil Steels and Steelforce, use imports, to some extent, as a means to offer lower prices and differentiate themselves from larger distributors.
115. The ACCC concluded that there are low switching costs with a strong market dynamic of customers making orders on a spot or quote basis. Market participants noted that customers generally contact different distributors seeking quotes for a particular order with the expectation of short delivery times. While some customers had a 'preferred' supplier arrangement, market inquiries indicated that it was rare for there to be formal supply agreements between customers and distributors.
116. For these reasons the ACCC concluded that the horizontal aggregation of the BlueScope and Orrcon distribution businesses would be unlikely to result in a substantial lessening of competition.

### **Conclusion**

117. On the basis of the above the ACCC formed the view that BlueScope's proposed acquisition of Orrcon from Hills would not be likely to result in a substantial lessening of competition in any market in contravention of section 50 of the Act.