



4 October 2019

The Director - Investigations 2
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

BY EMAIL: investigations2@adcommission.gov.au

Dear Director,

Public Record Case Nos. 499 and 505 - Hot rolled structural steel sections from Japan, Korea, Taiwan and Thailand

AUSTRALIAN INDUSTRY RESPONSE TO HYUNDAI STEEL'S SUBMISSION

OneSteel Manufacturing Pty Limited, trading as 'Liberty Primary Steel' (**Liberty Primary**), the applicant for *Review of anti-dumping measures*¹ and *Continuation of a Dumping Duty Notice*² in this matter refers to the latest submission of Hyundai Steel Co. Ltd (**Hyundai**) dated 26 September 2019.³ For the avoidance of doubt Liberty Primary responds as follows.

Hyundai's framing of the test for continuation of measures

Hyundai seeks to suggest that the "impact on the Australian market"⁴ of the InfaBuild Group's acquisition of Steelforce Holdings Pty Ltd (**Steelforce Group**) is a relevant consideration for the Commission when assessing whether "the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent" under s.269ZHF(2). With respect, Hyundai is urging the Commission to ask the wrong question. The correct question as established by the Panel in *United States – DRAMS from Korea (WT/DS99/R)*:

"We also note that 'likelihood' or 'likely' carries with it the ordinary meaning of 'probable'. That being so, it seems to us that a **'likely standard' amounts to the view that where recurrence of dumping is found to be probable as a consequence of revocation of an anti-dumping duty,**

¹ Refer ADN No. 2019/02 (3 January 2019).

² Refer ADN No. 2019/021 (11 February 2019).

³ EPR Folio No. 505/054 (26 September 2019).

⁴ EPR Folio No. 505/054, p. 1.

this probability would constitute a proper basis for entitlement to maintain that anti-dumping duty in force.⁵

Applied here, it may clearly be said that not only is the recurrence of dumping by Hyundai probable as a consequence of revocation of the measures, but indeed, a statistical certainty. Hyundai has distinguished itself within the Australian market as a serial exporter of the goods at dumped prices. At every review of its variable factors it has consistently returned export prices with dumping margins of 2.52⁶ to 9.9⁷ per cent. Currently, the preliminary findings of the Commission suggest a margin of 9.5⁸ per cent. Prospectively, there is no evidence that Hyundai's pricing behaviour toward the Australian market will change. Indeed, the evidence we led in a recent submission⁹ suggests a renewed probability of recurrence of dumping as a consequence of any decision to discontinue the measures, specifically, the impact of the s. 232 tariffs in the United States, the safeguards measures introduced by the European Union (EU) and other jurisdictions. We explained in that submission how 53,000 tonnes displaced from the U.S. market were unable to be diverted to the EU, and how these tightening market access conditions are significantly affecting South Korea's capacity utilisation, with over 426,000 tonnes of excess capacity available for export.¹⁰ Simple supply/demand economic price modelling would suggest that market equilibrium can only be achieved in such circumstances at reduced prices, as there is no evidence of the shedding of excess Korean production capacity.

In its submission Hyundai offers no substance to its claim that the acquisition will have an "impact on the Australian market" apart from feigning 'astonishment' that the Steelforce Group will likely increase competition between Liberty Primary and InfraBuild Steel Centre (formerly Metalcentre).¹¹ The suggestion that Liberty Primary indiscriminately "reduce its prices to its other related company, "InfraBuild", at the ex-factory level" is entirely wrong and unsupported by the consistent verified findings of the Commission that Liberty Primary operates within a competitive price model to related and independent customers based on import parity prices.¹² Furthermore, Hyundai's conclusion overlooks the verified reality that since transitioning from a public company ownership to a private company there has been no fundamental change in the trading relationship between Liberty Primary and any related customers at the distribution level of trade. Internal prices have not become decoupled from market forces - it has been consistently found by the Commission that the sales prices of both related and external customers are equally suppressed by Hyundai's dumped goods. Indeed, even Tung Ho; a Taiwanese competitor of Hyundai and Liberty Primary; states that the dumped goods exported by Hyundai and others are suppressing their prices:

⁵ *United States – Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMs) of one Megabit or above from Korea*, WT/DS99/R, Report of the Panel adopted 29 January 1999, para. 6.48, fn 494

⁶ Dumping Investigation No. 223.

⁷ Review of Measures No. 465.

⁸ SEF 499.

⁹ EPR Folio No. 505/049 (19 September 2019), p. 10.

¹⁰ EPR Folio No. 505/049 (19 September 2019), pp. 10-11.

¹¹ EPR Folio No. 505/054, pp. 1-2.

¹² EPR Folio No. 505/008, pp. 9-10.



“We submit the contrary would apply, due to the measures recommended in SEF for other exporters. Business acumen would evoke THS (likewise Liberty Steel) to be in a position to charge a higher competitive price to Australia...”¹³

Hyundai all but confirms that sales from Liberty Primary to the Steelforce Group will be arm’s length transactions when it states:

“Considering that Steelforce has been purchased by the ‘InfraBuild Group of companies’, [fn 7] as stated by the Applicant, there is little basis to believe it will operate, in its interaction with the Applicant, any differently to OneSteel Trading.”¹⁴

The arm’s length nature of sales by Liberty Primary to InfraBuild Steel Centre (formerly Metalcentre) were confirmed in this review and inquiry by the Commission.¹⁵ In any event, for the avoidance of doubt we attach the current organisational structures for Liberty Primary¹⁶ and the InfraBuild Group.¹⁷

Claims of unsubstantiated “loss-making”

Hyundai’s representative continues to lead the misleading narrative that *“OneSteel Trading made a gross profit of AUD137m”¹⁸*, even though Liberty Primary discredited the basis for this assertion in its previous submissions, which remains (to date) uncontested by Hyundai:

“what the representative fails to disclose is that the earnings before tax (EBT) result is a more sobering, [REDACTED] [EBT result] for InfraBuild Trading Pty Ltd (formerly OneSteel Trading Pty Limited). Liberty Primary observes that the Commission’s assessment of the economic conditions of the Australian industry always occurs at the EBT level, so it is unclear why on this occasion, the exporter seeks to assert an “unsubstantiated ‘loss-making” narrative on the basis of the gross margin of a customer of the Australian industry member, albeit a related party. If it is the exporter’s intention to assert an allegation of ‘profit shifting’ from manufacturer to related customer, then its argument is misguided.”¹⁹

Not unsurprisingly, by ignoring the distinction between gross profits/margins and EBT, Hyundai nevertheless attempts to again pedal the now baseless allegation of ‘profit shifting’:

“In other words, the very great likelihood is that Liberty OneSteel Group sold HRSS to itself at a loss, and then sold it externally at a profit.”²⁰

¹³ EPR Folio No. 505/039, p. 2.

¹⁴ EPR Folio No. 505/054, p. 2.

¹⁵ EPR Folio No. 505/008, p. 7.

¹⁶ CONFIDENTIAL ATTACHMENT 1.

¹⁷ CONFIDENTIAL ATTACHMENT 2.

¹⁸ EPR Folio No. 505/054, p. 3.

¹⁹ EPR Folio No. 505/053, p. 1.

²⁰ EPR Folio No. 505/054, p. 3.



Irrespective of whether the significance of ‘gross’ versus ‘net’ margins was lost on Hyundai’s legal representative, we observe that Liberty Primary’s related customer, InfraBuild Steel Centre trades in a greater range of products and (processing) services than just HRS, to suggest that the latter’s financial result is made almost exclusively of on-sales of the goods is simply incorrect.

Hyundai’s competition arguments

We are confused by Hyundai’s following statement:

“The very purpose and effect of an acquisition is to reduce competition between two independent competitors. The competition created by an independent competitor is not increased by acquiring that competitor. The Applicant has never been in competition with its very own distribution arm. That arm of its business relies entirely on supply by the Applicant except in circumstances where the Applicant is unable to meet the market demand.”

We prefer to reach our conclusions concerning the likely effect of the acquisition of the Steelforce Group based on the informed view of the *Australian Competition and Consumer Commission*:

“The ACCC concluded that the proposed acquisition would be unlikely to result in a substantial lessening of competition in any relevant market.

...

“Despite the acquisition leading to Liberty having a substantial market share in each state, the ACCC considered that the continuing presence of a number of competing distributors in each state, and the ability of these distributors to expand their operations, would act as a constraint on Liberty post-acquisition. In reaching this conclusion, the ACCC had regard to the fact that most customers regularly seek quotes from multiple distributors, and that there are limited barriers to customers switching between distributors.”²¹

Firstly, the Commission cannot lose sight that it must assess price injury to Liberty Primary, and that Hyundai’s insistence on assessing or predicting price and competition in the downstream on-sales market is completely irrelevant (especially since the sales by Liberty Primary to its related customer have been found to be arm’s length). Secondly, by virtue of the price-taking status of Liberty Primary, the presence of numerous exporters, and the ever present Hyundai (as the market price maker/leader at consistently dumped prices) means that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure intended to prevent, especially in the form of price suppression and lost sales volume.

²¹ <https://www.accc.gov.au/public-registers/mergers-registers/public-informal-merger-reviews/gfg-alliance-australia-liberty-house-group-steelforce-holdings-pty-ltd> (accessed 23 September 2019)



Hyundai's public listing theorem

We find Hyundai's theory concerning the decision to pursue public listing of the InfraBuild Group, but not the Mining and Primary Steel Group as almost conspiratorial:

*"We submit that the activities of the Liberty Steel Group have been motivated by a desire to prioritise the value of OneSteel Trading/InfraBuild over that of OneSteel Manufacturing, or at least that is what they have led to. That prioritisation has been going on for some time already because, as we have pointed out, the Applicant has been supplying OneSteel Trading with cheap HRSS and presumably cheap other steel long products as well. This practice will have improved the financial position of the distribution and trading entities which have now been packaged-up as InfraBuild. The supposed injury to the manufacturing arm has actually improved the sale value of the distribution entity and helped the manufacturing arm to present a picture of "injury" that it then blames on imports. We doubt that this has been unintentional."*²²

There are several problems with Hyundai's theorem, not the least that the business would have need to have known at the time of lodging the original application for *Investigation No. 223* in 2013, that at some point in the future it would be de-coupling Liberty Primary from the distribution business. Furthermore, to accept this hypothesis by Hyundai one would need to suspend their basic knowledge of accounting and equate a "gross" financial result with a "net" financial result.

Hyundai's unorthodox view of establishing a goods description

We continue to be surprised by Hyundai's view that entirely different products, sold into starkly different markets with completely substitutable end uses should form part of the same goods description simply because they are produced within the same facility. However, Hyundai must insist on this entirely maverick approach to establishing a goods description, so that it may then pedal its factually baseless proposition that the Australian industry has attempted to "carve-out" of rail from the scope of the goods" to achieve an "anti-competitive" outcome for the goods, as it "sells rail at monopoly prices to governments that have no political options other than to 'buy Australian'."²³

It remains for Liberty Primary to lead the following evidence of its [REDACTED],

[REDACTED] [sales officer],

*"I can confirm that Liberty Primary Steel is required to tender for Government rail projects and rail supply contracts for Government owned operators. Recent direct tenders include the supply of rail to [REDACTED] and [REDACTED] whilst for large projects such as [REDACTED], Liberty Primary Steel participated in a [REDACTED] / EOI for rail supply."*²⁴

²² EPR Folio No. 505/054, p. 4.

²³ EPR Folio No. 505/054, p. 5.

²⁴ Statement dated 2 October 2019.



Should the Commission seek clarification of any of the matters raised in this submission, please do not hesitate to contact the Australian industry representative on record.

FOR AND ON BEHALF OF

THE AUSTRALIAN INDUSTRY APPLICANT