Canberra
6/2 Brindabella Circuit
Brindabella Business Park
Canberra International Airport
Australian Capital Territory 2609

Brisbane
Level 4, Kings Row Two
235 Coronation Drive
Milton, Brisbane
Queensland 4064

Melbourne
Level 39, 385 Bourke Street
Melbourne
Victoria 3000

Australia

Canberra +61 2 6163 1000
Brisbane +61 7 3367 6900
Melbourne +61 3 8459 2276

www.moulislegal.com

moulislegal
commercial + international

26 September 2019

The Director
Investigations 2
Anti-Dumping Commission
55 Collins Street
Melbourne
Victoria

By email

Dear Director

Hyundai Steel Company
Review 499 and Continuation 505 –OneSteel Manufacturing's latest remarks

As you know we represent Hyundai Steel Company ("Hyundai Steel") with respect to Review 499 and Continuation 505 (collectively, "the inquiries").

OneSteel Manufacturing Pty Limited (hereafter "the Applicant" or "OneSteel Manufacturing") has submitted remarks[1] to the Anti-Dumping Commission ("the Commission") in reply to recent Hyundai Steel submissions in the inquiries.[2]

The Applicant takes a typically contrarian view. This is not unexpected. However, on this occasion the Applicant's remarks have reached a level of absurdity that starkly exposes the manipulative nature of its anti-dumping actions.

A continuation inquiry is a forward-looking exercise that relies on evidence of the past and present to make assessments about the probability of certain specified events occurring in the future. Those events are that expiration of the measures would lead, or would be likely to lead, to a continuation or recurrence of dumping and the material injury that the measures are intended to prevent.

It is in that context that Hyundai Steel has highlighted the importance of considering the impact on the Australian market of the acquisition by the Applicant's group of companies (hereafter the "Liberty Steel Group") of its major competitor Steelforce Holdings Pty Ltd ("Steelforce").

In reply the Applicant says the following:

> *Furthermore, Hyundai's conflation between Liberty Primary, and the acquisition of Steelforce Holdings Pty Ltd by the InfraBuild Group of companies, is misleading. The Steelforce business has an entirely different Australian ultimate holding company to that of the Australian industry member. The two businesses operate entirely separately in the Australian market for the goods*

1 Please see Review 499 Doc 58 (also Review 505 Doc 49).

2 Please see Review 499 Docs 49 and 46 (also Review 505 Docs 37 and 40).

and like goods. <u>Indeed, the acquisition of the Steelforce business will only increase competition between Liberty Primary, and its related Australian customer, InfraBuild Steel Centre, as it (InfraBuild Trading Pty Ltd)</u> is also xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx.[3] [underlining supplied]

In other words, the Applicant's defence to the suggestion that the acquisition will increase its power in the market for HRSS at the distribution level is based on the proposition that the concentration of market power will actually cause the Applicant to reduce its prices to its other related company, "InfraBuild", at the ex-factory level. This is astonishing. A major independent competitor is purchased by the Liberty Steel Group and the Applicant represents this as an event that will *increase* competition within its *own* related companies.

The Applicant and its related entities have an opaque company structure. The Liberty Steel Group is comprised of a web of companies, and of business units with business names that are not companies, and of amalgams of these companies and units that are also given business names and are not companies. Some of the companies operate side-by-side on the same level of trade, and others operate on different levels of trade. They supply and sell raw materials and finished goods to each other. Whether intended or not, this masks how the various entities do business, both with each other and with external parties. It allows what we might call "internal" prices to become unhinged from market forces.

For example, in undertaking the forward-looking exercise involved in the continuation inquiry Hyundai Steel has agitated for the Commission to closely explore the relationship between the Applicant and OneSteel Trading (now "InfraBuild"). As stated in the relevant financial reports:

- OneSteel Manufacturing and OneSteel Trading shared the same directors during the investigation period.[4]
- OneSteel Trading is the "head entity" for the Liberty Steel Group's Australian *"consolidated tax group"*, which allows the Liberty Steel Group to be taxed as a single entity.[5]
- OneSteel Manufacturing is a member of this same consolidated tax group, which is headed by OneSteel Trading.[6]

Considering that Steelforce has been purchased by the *"InfraBuild Group of companies"*,[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.

And what has that interaction looked like? The Commission has confirmed that:

3 Please see Review 499 Doc 58 (also Review 505 Doc 49) at page 9.

4 Please see, OneSteel Manufacturing Pty Ltd FY2018 Financial Report, at page 3 and OneSteel Trading Pty Limited FY2018 Financial Report, at page 2.

5 Please see, OneSteel Trading Pty Limited FY2018 Financial Report, at page 10.

6 Please see, OneSteel Manufacturing Pty Ltd FY2018 Financial Report, at page 12.

7 Please see Review 499 Doc 58 (also Review 505 Doc 49) at page 9.

- the *"significant proportion"* of the Applicant's sales were made to related party customers;[8] and
- the HRSS market is predominantly supplied by distributors, including Liberty Metalcentre, which was a business name owned by OneSteel Trading.[9]

Further, according to the relevant financial reports made available only recently, we note that:

- OneSteel Manufacturing made a gross *loss* of AUD48m in FY 2018;[10]
- whereas OneSteel Trading made a gross *profit* of AUD137m in the same year.[11]

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.

The Applicant's representation that a difference in ultimate holding company between OneSteel Manufacturing and the newly acquired Steelforce will result in increased competition between OneSteel Manufacturing and OneSteel Trading might be founded on the superficial suggestion that the Applicant now has the ability to sell direct to two related parties, rather than one. At that level, at the manufacturing to distribution level, we have seen no inclination on the part of the manufacturing arm of Liberty OneSteel Group to earn profits on HRSS, or to "compete" with its own distribution arm. Indeed, the opposite seems to be the case.

There is strong irony here. The Applicant says that its acquisition of Steelforce will increase competition between the Applicant, which now seems to be called "Liberty Primary", and its distribution arm. Economic theory dictates that such competition would be expected to result in reduced prices, because that is what market competition achieves. However a request for continuing anti-dumping protection is directed towards, or *should* be directed towards, increasing prices, such that dumping and injury said to be caused by dumping will not continue or recur.

Hyundai Steel, and other importers, want higher prices in the Australian market. So why are the Applicant's prices suppressed, as it constantly argues in the dumping procedures that it constantly initiates against exporters like Hyundai Steel?

The Applicant says its purchase of Steelforce will increase competition at the ex-factory level. Competition is intended to create efficiencies and reduce prices to the customer, to the benefit of the successful competitor and ultimately the overall economy. The ordinary view would be that Steelforce *has been* competing with the Applicant and its distribution arm OneSteel Trading over the years, *up until* the acquisition. 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.

---

8 Please see Review 505 Doc 08 – Liberty Steel Verification Report at page 7.

9 Please see Review 505 Doc 34 – SEF at page 12.

10 Please see, OneSteel Manufacturing Pty Ltd FY2018 Financial Report, at page 9.

11 Please see, OneSteel Trading Pty Limited FY2018 Financial Report, at page 9.

Notwithstanding those economic and commercial realities, the Applicant now argues that by expanding its distribution arm to also include Steelforce it is introducing more competition into the market between itself and its expanded distribution arm.

This leads us to a consideration of recently announced machinations within the Liberty OneSteel Group, which have achieved a segregation of certain parts of the Group, now including Steelforce, from other parts. The Applicant has a newly-named Australian customer, "InfraBuild Trading Pty Ltd". This is a rebranded version of the distribution company "OneSteel Trading Pty Limited", or of that company and other parts of Liberty OneSteel Group (collectively, "InfraBuild").

The Applicant did not mention InfraBuild in its submissions to the Commission until recently challenged by Hyundai Steel to do so. The context and intent of the rebrand is now clear. The Liberty Steel Group is moving towards a public float, pursuant to which it intends to sell parts of the Liberty Steel Group business.[12] The corporate entities that have undergone this public rebranding are expected to be included in the sale. Importantly, the Applicant and its Whyalla manufacturing entities are not included in InfraBuild.

Basic commerce tells us that the higher the value of the underlying asset, the higher its subsequent sales value. 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.

It is a fundamental tenet of the anti-dumping framework that injury caused by "other factors" must not be attributed to dumped products. We submit that long-standing price manipulation within the Liberty OneSteel Group has suppressed the price of its products, HRSS included, at the ex-factory level, and is the direct cause of the injury it claims to have been caused at that manufacturing level of its overall business.

Despite that, the Applicant, being the manufacturing facility at Whyalla, which is not part of the anticipated InfraBuild entity to be publicly listed, expects continuing protection against imports of HRSS through these inquiries. At the same time it looks forward to future profitability built upon the ongoing and increasing volumes of rail that will need to be manufactured in upcoming years to supply government infrastructure needs, evidence of which we have also provided to the Commission. FY 2018 was only the beginning of the boom in rail upgrades and construction in Australia. Once the rail contracts are in full effect the Applicant will earn consistent revenues and profitability based on local preferences that are guaranteed to the Whyalla facility for so long, we imagine, as it is still in operation.

And in the same context, we cannot allow the following remarks by the Applicant to go unanswered:

> *Hyundai is correct to observe that Liberty Primary (that is, OneSteel Manufacturing Pty Limited) no longer comprises:*

---

12 Please see https://www.afr.com/markets/equity-markets/gfg-alliance-targets-1b-australia-ipo-for-steel-unit-20190629-p522gu.

- *"two electric arc furnaces (EAFs) located in Newcastle, New South Wales and Laverton, Victoria;*
- *bar mills at Sydney and Laverton;*
- *rod mills at Newcastle and Laverton; and*
- *wire mills located in various locations in Australia",*

> *however, there is no suggestion that in assessing the economic conditions of the Australian industry producing the like goods, that the Commission assessed anything but those assets, expenses and revenues relevant to the like goods only.*[13] [underlining supplied]

The Australian industry producing the like goods, which are HRSS, is a productive asset situated at Whyalla. It is a steelmaking operation with one production line for HRSS. The same production line is used to manufacture a form of HRSS called rail. This one facility that manufactures HRSS is the asset to which the Applicant refers in the above remarks. We submit that the "carve-out" of rail from the scope of the goods also represents anti-competitive conduct on the part of the Applicant. The Applicant sells rail at monopoly prices to governments that have no political options other than to "buy Australian". At the same time it depresses prices of non-rail HRSS in its sales to related parties, and then blames imported HRSS as being dumped when imports are forced to compete at the Applicant's low prices for non-rail HRSS. Behind that anti-dumping wall the Applicant can use its profits on rail HRSS to subsidise its losses on non-rail HRSS, and its distribution/trading arm can continue to make profits on the resale of the non-rail HRSS sold to it at a loss by the Applicant.

The Applicant's latest remarks only serve to highlight the misleading and ultimately barren narrative that the Applicant has continually presented to the Commission in order to sustain the unjustified anti-dumping measures from which it benefits.

Hyundai Steel repeats its request that the Commission give these matters the further consideration they evidently warrant before any final recommendations are made to the Minister.

Yours sincerely

Charles Zhan
Senior Associate
+61 2 6163 1000

[13] Please see Review 499 Doc 58 (also Review 505 Doc 49) at pages 8-9.