



SteelBenchmarker™

Operations Manual

October 27, 2023

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SteelBenchmarker™ is a World Steel Dynamics Inc. company.

World Steel Dynamics® is the world's leading steel information service.

World Steel Dynamics is a leading analytics, research and consulting firm specializing in global steel industry trends, pricing forecasts and competitive cost analysis. WSD regularly analyzes and publishes reports on global steel prices, steelmakers' costs, steel supply/demand dynamics, and strategic industry developments. WSD also undertakes customized steel research assignments and supports investors, lenders and other groups in steel industry-related transactions.

See www.worldsteeldynamics.com

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*SteelBenchmarker*TM Operations Manual

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*SteelBenchmark*TM Operations Manual

Background

The *SteelBenchmark*TM is designed to provide a reliable index of the current “standard” or “base” transaction prices for use by participants in the steel industry. The steel benchmark prices generated by the *SteelBenchmark*TM system are ultimately expected to be derived from at least 1,000 price assessment providers – consisting of steel mills, steel traders, steel service centers, large and small steel users and steel scrap processors. The steel products for which we are asking price assessments are the benchmark (generic) ones that are discussed, day in and day out, when steel buyers and sellers are seeking to “discover” the base market price for the commodity in question. The reported “standard” transaction prices reflect the price provider’s most recent actual transaction prices adjusted to eliminate any surcharges or add-ons that may have impacted the actual price paid.

Once established, the steel industry and the financial trading industry will have investable and robust steel benchmark prices.

- By investable, we mean that exchanges and firms engaged in over-the-counter (non-exchange based) transactions will be able to use the steel benchmark prices to create financially settled steel prices – i.e., no physical delivery – that permit the forward hedging of the steel price risk.
- By robust, we mean that there will be so many providers that the results will not be able to be manipulated.

Substantial product depth and geographic breadth is necessary, if steel mills, traders, service centers and users are to depend on the system. The salient features of the *SteelBenchmark*TM include:

- Product coverage – benchmark prices for commodity-grade hot-rolled band, cold-rolled coil, rebar, standard plate and steel scrap.
- Regional coverage – for steel products, regions of the world include the USA (east of the Mississippi), Western Europe and the world export market. For steel scrap, #1 heavy melting and #1 busheling, the region is the United States east of the Mississippi; and for shredded its for all USA markets but the West Coast (California, Oregon and Washington).
- Detailed product definition – for steel products, transaction price assessments for the generic commodity-grade products for a mid-sized buyer as outlined in the “product specifications” on page 4.

SteelBenchmarkTM

- Processing of the information – in a way that is assured to be reliable, confidential, consistent and transparent.
- Available – non-providers are able to subscribe FREE to the twice per month benchmark price releases.
- Easy access – with all providers and designated others receiving the benchmark prices at the same time when they are released.

The designated processes and procedures are designed to assure that: a) the *SteelBenchmark*TM data input by provider is kept confidential from all sources; b) the data is being processed correctly by a third-party computer to create benchmark prices; c) the benchmark prices are being dispensed in a manner that gives all designated groups access to them at the same time; and d) the policies and procedures set forth in this Operations Manual are being adhered to. Yet, the price assessment providers will have the opportunity to speak, if they wish, with *SteelBenchmark*TM staff members about the steel benchmark system in general (but never discuss, or even give a hint about, their specific price inputs).

Here is what will, and will not, be known about the providers and the price assessments that they are submitting:

- The specific providers of specific price inputs by product will never be known by any person or group at any time (not even the designated auditor). *(Note: The computer program will be monitored regularly to be sure that the price inputs are handled properly.)*
- The distribution of the price inputs, but not the sources of the individual inputs, will be seen only by the independent computer operator/statistician at a third party location, the independent auditor of the *SteelBenchmark*TM system and, five days after the benchmark prices are published, by a designated WSD employee, who will be responsible for ensuring that the *SteelBenchmark*TM system is working as expected.
- The names of the price assessment providers and the steel products (or scrap) for which they are submitting the price assessment, but not the individual price assessments, will be known to a select group of employees at World Steel Dynamics. This group of people will receive notice, after the benchmark prices are published, which providers did or did not provide the price inputs that they agreed to. Hence, if a provider failed to provide its price assessment, it may receive an e-mail or a telephone call asking what happened. *(Note: There will never be a discussion of the provider's price input.)*

The data to be provided by the price assessment providers is their most recent standard transaction price granted that the price comes under definition of that for a mid-sized buyer (as per the product specification on the following page).

SteelBenchmarkTM

1. The “standard” or “base” price is a generic, commonly understood price benchmark that is used by market participants as the key price reference for pricing customized transactions.
2. Price providers are to adjust transaction prices to the standard transaction prices so that they do not reflect any one-time discount prices, secondary or off-grade steel prices, lower prices for excess-prime steel material or lower prices for hot-rolled band produced from excess slab in a mill’s inventory.
3. The participant will NOT discuss or disclose his or her input with anyone outside of his or her company, or discuss how the reported benchmark price varied from his or her input.
4. The participant will provide his or her price input to the third-party computer via the “data submission” e-mail for the second and fourth Mondays of the month. No other data will be provided, or disseminated, by the provider to the third-party collector, or anyone else, that would permit identification of suppliers, customers, products, dates or quantities of actual transactions.
5. The price assessment provider will not reveal to anyone outside his/her company that it is a price assessment provider.

If the person who is the price assessment provider (at a company) is having discussions about the steel market with any person outside his or her company, including those at World Steel Dynamics, the price assessment submitted must never be revealed or discussed even on an approximate basis.

Product Coverage

The *SteelBenchmark*TM gathers assessments on the “standard” transaction prices reflecting the price provider’s most recent actual transaction price adjusted to eliminate any surcharges or additions that may have impacted the actual price paid for these products in U.S. dollars per metric tonne, 500 to 2,000 tonnes transaction size. For the USA also on a net ton or cwt basis and for Western Europe also on a Euros per metric tonne basis.

- Hot-rolled band – standard-sized and commodity-grade for near-term delivery ex-works (FOB mill) or FOB port of export.
- Cold-rolled coil – standard-sized and commodity grade for near-term delivery ex-works (FOB mill) or FOB port of export.
- Rebar – #5 (5/8” in diameter) and commodity grade for near-term delivery ex-works (FOB mill) or FOB port of export.
- Standard plate – standard-sized and commodity grade for near-term delivery ex-works (FOB mill) or FOB port of export.
- Steel scrap – standard grade, delivered to steel plant on a near-term basis, normally from two days to a month.

#1 heavy melting – demolition scrap that is at least ¼” thick and surface dimension no larger than 60 by 24 inches. This grade does not include the heavy “p & s” (plate and structural) category that includes the very thick scrap items.

Shredded – largely old cars and some appliances – for all USA markets but the West Coast (California, Oregon and Washington). Shredded scrap is homogeneous iron and steel scrap magnetically separated, no. 1, no. 2 steel, miscellaneous bailing and sheet scrap with an average weight from 50 to 70 pounds per square foot.

#1 busheling – new sheet steel scrap.

Product Specifications

| | | |
|------------------------------|--------------------------|--------------------|
| Hot-rolled band | Cold-rolled coil | Steel scrap |
| 0.2" thick x 48-60" wide | 0.03" x 48-60" wide | #1 Heavy melting |
| 5mm thick x 1200-1500mm wide | 0.7mm x 1200-1500mm wide | Shredded |
| | | #1 Busheling |
| Rebar #5 | Standard plate | |
| 5/8" in diameter | 1" x 96" x 240") | |
| 16mm in diameter | 24mm x 2400mm x 6000mm | |

Note: Hot-rolled band is the first product off the hot strip mill with:

- (1) a thickness of about 0.20 inch (but no less than 0.10 inch or more than 0.50 inch);
- (2) a coil size of 10 to 20 tons; (3) a width of 48 to 60 inches; and
- (4) a carbon component of 0.08% to 0.13%.



Regional Coverage

The pricing assessments are generated for these countries/regions:

- The USA, East of the Mississippi. This region is the location of major integrated mills, mini-sheet mills and ports to which foreign steel is delivered. This is also the region in which steel scrap generation is the most substantial and usage the greatest.
- Western Europe. This is a major steel-consuming region.
- The world steel export market. Assessments on the export price of the aforementioned products for nearby and distant customers, FOB the port of export.

For domestic markets, for hot-rolled band, cold-rolled coil, rebar and standard plate, the providers are to give their assessment of the current “standard” or “base” transaction price, on a new bookings basis, for near-term delivery (normally two to six weeks) of commodity-grade product, ex-works (the same as FOB mill) for the mid-sized buyer. Note: Hot-rolled band is the first product off the hot strip mill.

The steel scrap price assessment for #1 heavy melting and #1 busheling is for the USA, east of the Mississippi, delivered to the steel plant on a near-term basis, normally from two days to a month. For shredded it is for all USA markets but the West Coast (California, Oregon and Washington).

For the world export market, it is the price assessment of the average export price for nearby and distant customers, FOB the port of export.

Given that the range of product prices being booked in the marketplace may be substantial at times, each provider will be expected to exercise its best judgment when providing its assessment. The reported “standard” transaction prices are to reflect the price provider’s most recent actual transaction prices adjusted to eliminate any surcharges or add-ons that may have impacted the actual price paid.



Step-by-Step Procedures

Registration

Companies agreeing to participate as price assessment providers to the *SteelBenchmarker*TM are requested to have the designated provider/providers sign up on the third-party host computer <http://www.steelbenchmarker.com>.

- Each company will determine whether it will be a single or multi assessment provider. A company may choose to submit a number of primary assessment provider registrations based on product specialty or facility location.
- For each registration, a participating company is asked to designate three individuals, each of whom is a market participant familiar with developments in the actual transaction prices for the commodity in question to be the price providers. One individual will be the designated primary provider, and the other two the back-ups.
- For each registration, a confidential code number will be created by a secure third party computer that is not located at World Steel Dynamics.
- Each provider's price inputs by product will never be matched up with the provider at any time (not even by the designated auditor). *(Note: The computer program will be tested regularly to be sure that the price inputs are handled properly.)*
- The distribution of the price inputs will be seen only by the independent computer operator/statistician at a third party location, the independent auditor of the *SteelBenchmarker*TM system and, five days after the *SteelBenchmarker*TM prices are published, by a designated WSD employee, who will be responsible for ensuring that the *SteelBenchmarker*TM system is working as expected.
- The name of providers and the steel products (or scrap) for which they are submitting the price assessment, but not the individual input prices, will be known to a select group of employees at World Steel Dynamics.

SteelBenchmarkTM Participation Agreement

The purpose of the *SteelBenchmarkTM* is to provide a reliable set of benchmark prices for use by participants in the steel industry. To assure reliability and prevent misuse, World Steel Dynamics (WSD) agrees that participants will provide their price assessment inputs to an independent third party computer system and not directly to *SteelBenchmarkTM*, and that no person or group will ever be able to connect a price input to a specific provider. Aggregated average prices will be published only if at least 10 inputs are provided per product, with the expectation that there will eventually be many times this figure.

The *SteelBenchmarkTM* output will consist of objectively calculated averages of price assessment inputs. So that the input data will be as reliable and confidential as possible, as a condition to its participation as a data provider to *SteelBenchmarkTM* each participant agrees to the following:

1. The data provided by the participant is their most recent transaction price granted that the price comes under definition of that for a mid-sized buyer (as per the product specifications).
2. The participant will NOT discuss or disclose its input, including how the reported benchmark price varied from its input, with or to any other provider of *SteelBenchmarkTM* input or anyone else, and, in particular, the participant will NOT discuss or disclose its input with or to any competitor or any employee of *SteelBenchmarkTM*.
3. The participant will not disclose to anyone outside its own operation that it is a provider of input to the *SteelBenchmarkTM*, what the nature of its input is or what products or geographic markets that input encompasses.
4. The participant will not provide the third-party collector of *SteelBenchmarkTM* input with any information that would permit identification of suppliers, customers, products, dates or quantities of actual transactions.

Participating company
Register at:

<http://www.steelbenchmark.com>

World Steel Dynamics





To register please go to <http://www.steelbenchmarker.com> and submit data.
Do not mail this form.

SteelBenchmarker™ Provider Registration Form

Note: Multi-registrations are permitted per company by product or location of facilities,
i.e., a company may designate more than one primary assessment provider.

Name of company: _____

Category of provider:

Steel mill _____ Scrap processor _____
Steel user _____ Other _____
Steel trader or service center _____

Title of Provider: _____

Primary provider (e-mail): _____
Back-up person #1 (e-mail): _____
Back-up person #2 (e-mail): _____

*Sample
Only*

Please check below the price assessments that are to be provided.
See pages 4 and 11 for product specifications.

USA – East of Mississippi

Hot-rolled band _____
Cold-rolled coil _____
Rebar _____
Standard plate _____
Steel scrap
 #1 Heavy melting _____
 Shredded _____
 #1 Busheling _____

Western Europe – Germany/France

Hot-rolled band _____
Cold-rolled coil _____
Rebar _____
Standard plate _____

World export market

Hot-rolled band _____
Cold-rolled coil _____
Rebar _____
Standard plate _____



Data Submittal

The price assessment providers at each participating company, when it comes to providing the price assessment, will communicate only with the secure third-party computer that is not located at the offices of World Steel Dynamics. The third-party computer is programmed to: a) notify each price provider when the pricing inputs are needed; b) send additional notices when the price has not been provided; and c) send a confirming notice when the price has been provided.

(Note: The name of the price providers at each company, but not the price provided, will be known to a select group of people at World Steel Dynamics. This group will be assigned to maintain communications with the providing company. It will stay on top of whether or not the providing company is continuing to provide the price assessment quotes. It will communicate to people at the company via telephone and e-mail – always making it clear that the subject of price must never come up. This group will save all of the e-mail communications and keep a log of all telephone calls – including the time of the call, the length of the call and the subject discussed.)

Regarding the communication with the third-party offsite computer, here are the circumstances that we expect:

- On the Fridays preceding the second and fourth Mondays of the month, the primary price assessment provider for each registration at each participating company will be sent an e-mail message that the pricing assessment is, or assessments are, due on Monday.
- The pricing inputs will be based on your company's assessment of the actual transaction bookings price for near-term delivery to mid-sized buyers for the various products in which you are involved in the marketplace.
- If the requested price input has not been received by 9:00 a.m. on the second and fourth Mondays of each month, New York time, the primary and secondary providers will be e-mailed a second request by the host computer.
- If the input is not received by 9:00 a.m. on Tuesday, a final request will be made to the tertiary provider. Submissions are due by 5:00 p.m. Tuesday, New York time. *(Note: These notices will be sent automatically by the third-party computer – although its operation will be monitored by a computer person at the off-site location.)*
- The submitted price, will be processed by a secure third-party computer.

SteelBenchmarkerTM Price Assessment Provision Form

Spot Market New Booking Prices for Near-Term Delivery Commodity-grade product to mid-sized buyers

(Dollars per Metric Tonne, 500 to 2,000 tonnes transaction size)

*Sample
Only*

USA Market East of the Mississippi

| FOB mill |
|--|
| Hot-rolled band * (0.2" thick x 48-60" wide) |
| Cold-rolled coil * (0.03" x 48-60" wide) |
| Rebar #5 * (5/8" in diameter) |
| Standard plate * (1" x 96" x 240") |
| Steel scrap ** #1 Heavy melting Shredded - all but West Coast #1 Busheling |

Western Europe Market Germany/France

| Ex-works |
|--|
| Hot-rolled band * (5mm thick x 1200-1500mm wide) |
| Cold-rolled coil * (0.7mm x 1200-1500mm wide) |
| Rebar #5 * (16mm in diameter) |
| Standard plate * (24mm x 2400mm x 6000mm) |

World Export Market Atlantic and Pacific Basin

| FOB port of export |
|--|
| Hot-rolled band *** (5mm thick x 1200-1500mm wide) |
| Cold-rolled coil *** (0.7mm x 1200-1500mm wide) |
| Rebar #5 *** (16mm in diameter) |
| Standard plate *** (24mm x 2400mm x 6000mm) |

Note: Near-term delivery is normally two to six weeks.

Hot-rolled band is the first product off the hot strip mill with: (1) a thickness of about 0.20 inch (but no less than 0.10 inch or more than 0.50 inch); (2) a coil size of 10 to 20 tons; (3) a width of 48 to 60 inches; and (4) a carbon component of 0.08% to 0.13%.

* Ex-works (the same as FOB mill).

** Steel scrap delivered to steel plant on a near-term basis, normally from two days to a month.

#1 heavy melting – demolition scrap that is at least ¼" thick and surface dimension no larger than 60 by 24 inches. This grade does not include the heavy "p & s" (plate and structural) category that includes the very thick scrap items.

Shredded – largely old cars and some appliances – for all but the West Coast (California, Oregon and Washington).

Shredded scrap is homogeneous iron and steel scrap magnetically separated, no. 1, no. 2 steel, miscellaneous bailing and sheet scrap with an average weight from 50 to 70 pounds per square foot.

#1 busheling – new sheet steel scrap.

*** FOB port of export



Data Management

- The third-party computer, as programmed, starting on Tuesday afternoon, will start to calculate the benchmark prices for all of the product categories based on the inputs already received. During this time, the computer person/statistician who is monitoring the operation of the off-site computer will be cross-checking that the computer is working as expected/programmed.
- On Wednesdays following the second and fourth Mondays of each month, the off-site computer, supervised by a computer person/statistician dedicated to this effort, will finalize the benchmark prices to be released.
- Our goal for each product category is to have at least 25 to 50 inputs.
- No individual company's reported assessments will represent more than fifteen (15) percent of the assessments used to calculate any reported benchmark price. In order to ensure that this is the case, if, for any product, fewer than fourteen (14) price inputs are reported by companies providing assessments, no single company will be allowed to designate more than one assessment provider with respect to that product.
- The provided assessments will be gathered by category and averaged. In the process, some of the provided prices may be rejected as outliers.
- Providers to the *SteelBenchmarker*TM will not be informed that their price assessment has been rejected as an outlier if this has been the case.
- The steel benchmark price figures will never be restated or adjusted after the fact.
- The *SteelBenchmarker*TM seeks to eliminate an upward or downward bias in the benchmark prices by including steel mills, large and small buyers, steel traders and steel service centers (and steel scrap processors in the case of steel scrap) in the assessment providing groups.
- "Fall back" procedures will be established, as required, in the case that there are some shortcomings in the system.



Benchmark Price Release

- The steel product and steel scrap benchmark prices will be published simultaneously on Wednesdays following the second and fourth Mondays of each month.
- Steel benchmark prices will not be disseminated for any product category in which fewer than ten (10) price inputs are reported by providers. In the event that, with respect to any particular product, between 10 and 20 providers have provided assessments, a benchmark price for such product will be released with a notation stating that fewer than 20 providers provided assessments with respect to such product. It is the goal of WSD to gather the assessments of 20 or more assessment providers with respect to each product for which a benchmark price is generated and if, within a reasonable period of time following the date of first publication of the benchmark price for such product, fewer than 20 assessment providers, after elimination of outliers, are providing assessments on a regular basis, WSD will discontinue publication of the benchmark price with respect to such product.
- On Wednesday morning at 9:00 a.m. New York time, the third-party computer will e-mail the benchmark prices to the designated recipients.
- Steelbenchmarker™ pricing analysis update will be posted by noon on the release Wednesdays.
- No one will receive the benchmark prices until they are e-mailed to the designated list at the same time. All price providers will be on the designated list.
- Some select groups may receive the benchmark prices on a time-delayed basis.
- The steel benchmark prices will not be seen in advance by any party except for the computer person/statistician who is tracking the operation of the third-party computer.

STEELBENCHMARKER PRICES October 23, 2023
 Dollars per Metric Tonne -- Pct Change
 (net ton) [gross ton] {Euros}

| | | | |
|--------------------------------------|-------|---------|-----|
| Region: USA, East of the Mississippi | | | |
| Hot-rolled band: | 793 | (720) | 4% |
| Cold-rolled coil: | 1,032 | (936) | 5% |
| Standard plate: | 1,637 | (1,485) | -2% |
| Shredded scrap*: | 379 | [385] | -3% |
| #1 Heavy melting scrap: | 325 | [330] | 0% |
| #1 Busheling scrap: | 398 | [404] | 0% |
| Region: Mainland China*** | | | |
| Hot-rolled band: | 446 | | 0% |
| Cold-rolled coil: | 558 | | 1% |
| Rebar: | 437 | | 1% |
| Standard plate: | 451 | | -1% |
| Region: Western Europe | | | |
| Hot-rolled band: | 640 | {600e} | -4% |
| Region: World Export Market | | | |
| Hot-rolled band: | 570 | | 3% |

SteelBenchmarkerTM pricing analysis update available by noon at
<http://steelbenchmarker.com/history.pdf>

NOTES:

Released October 25, 2023 at 9:00 a.m. to Price Assessment Providers.
 The first price release was for April 10, 2006.

If a product is not listed or a price is not indicated, fewer than ten (10) price inputs were received at this time.

** Development Stage - fewer than 20 assessment providers.

Prices are: USA -- FOB mill; Western Europe and China -- Ex-works; and World Export Market - - FOB port of export. For USA steel scrap -- delivered to the steel plant. *For shredded scrap the region is "for all but the West Coast".

For product specifications go to <http://www.steelbenchmarker.com/specifications>.

*** SteelHome's non-steelbenchmarker derived average price for each product is the determinant of the Chinese ex-works benchmark price. It is published for comparative purposes.



Confidentiality and Security

- The provider's price assessments will be sent to a secure third-party computer that converts the identity of each price provider to a coded number. No person will ever connect a price input to the name of the provider. The distribution of price inputs, but not the sources of the individual inputs, will be seen only by the independent computer operator/statistician at a third party location, the independent auditor of the *SteelBenchmarker*TM system and, five days after the benchmark prices are published, by a designated WSD employee, who will be responsible for ensuring that the *SteelBenchmarker*TM system is working as expected.
- The providing company must never reveal that it is a *SteelBenchmarker*TM provider. And, in their regular discussions with outside contacts, the staff members who are the price providers must never reveal that this is the case. Even if a staff member is a price provider and, by chance, he or she is on the telephone with WSD employees discussing the steel price outlook, the subject of the *SteelBenchmarker*TM submission and the price must never come up.
- All *SteelBenchmarker*TM price input related questions are to be forwarded to the host computer operator.
- If there are general questions and the provider does not want to identify themselves, they can e-mail the question to *SteelBenchmarker*TM via the confidential server. The question will arrive anonymously at *SteelBenchmarker*TM, and we will attempt to answer the question.
- Selected *SteelBenchmarker*TM staff members, who will have access to the names of the companies and the products for which they are providing the price assessments, will communicate with the assessment providers as necessary.
- The *SteelBenchmarker*TM staff may contact non-responding providers after the benchmark prices are published to determine what happened.
- The World Steel Dynamics employees will never see any of the specific inputted price assessment data, nor the distribution of inputs.
- WSD will have its internal information-gathering processes and procedures audited on a regular and unannounced basis by a respected auditor, such as an accounting firm with expertise in risk management procedures. The designated processes and procedures are designed to assure that: a) the *SteelBenchmarker*TM data input by provider is kept confidential from all sources; b) the data is being processed correctly by a third-party computer to create benchmark prices; c) the benchmark prices are being dispensed in a manner that gives all designated groups access to them at the same time; and d) the policies and procedures set forth in this Operations Manual are being adhered to.

SteelBenchmarkerTM

- Any information leaks will be immediately reported to the auditor.
- *SteelBenchmarker*TM staff members engaged in outside research will continue to speak to their industry contacts about the developments in the steel market. However, when a *SteelBenchmarker*TM staff member speaks to a *SteelBenchmarker*TM assessment provider, there will be no discussions, or hints, about the price assessment that the provider has e-mailed to the third-party offsite computer.

*SteelBenchmarker*TM **Website**

<http://www.steelbenchmarker.com>

If you would like to register as a price assessment provider go to:
<http://www.steelbenchmarker.com/Agreement>

*SteelBenchmarker*TM
USA and EU
Antitrust Opinions

By
Covington & Burling

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July 2, 2007

Peter F. Marcus
Managing Partner
World Steel Dynamics
456 Sylvan Avenue
Englewood Cliffs, NJ 07632

Dear Mr. Marcus:

This responds to your request for Covington & Burling LLP's opinion as to whether World Steel Dynamics' (WSD) global benchmark steel price system (*SteelBenchmarker*TM), as described in Exhibits A, B and C to WSD's June 25, 2007, License Agreement with the New York Mercantile Exchange, Inc. (the "NYMEX License"), and in the *SteelBenchmarker*TM Operations Manual dated June 29, 2007, complies with United States federal antitrust standards. For the reasons set out below, it is our opinion that, as so-described, the *SteelBenchmarker*TM benchmark pricing system does comply with U.S. federal antitrust standards.

In reaching the opinions expressed, we have relied on the description of the benchmark steel price system contained in Exhibits A, B and C of the NYMEX License and the Operations Manual dated June 29, 2007, and we have assumed that WSD will implement and maintain the system and its procedures as described therein. This letter provides no opinion as to any revision of the system that does not conform to the procedures so-described.

We are members of the bar of the District of Columbia and other jurisdictions within the United States of America. We do not express any opinion herein on any laws other than the federal laws of the United States of America.

Summary of the *SteelBenchmarker*TM System

WSD is a steel information service with an international client list that includes major integrated and non-integrated steel companies, steel users, equipment and raw material suppliers, financial institutions, government agencies, metal traders, steel service centers and trade associations. Beginning in early 2006, WSD has developed a benchmark pricing system, called the *SteelBenchmarker*TM, for the purpose of providing base points to enable buyers, intermediaries, and producers to engage in hedging and futures transactions and thereby ameliorate their steel price risk for some key steel products and encourage investment in the industry.

July 2, 2007

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As illustrated in Exhibits A, B and C to the NYMEX License and in the Operations Manual, WSD gathers opinions of the current booking prices of five key steel products in two major regions of the world and the world export market. These opinions are provided twice a month by a broad group of providers consisting of steel mills, steel traders, steel service centers and processors, and steel users. The identity of individual price providers is known only to a select group of WSD employees and is not shared with other price providers or third parties. The identity of the providers responsible for individual inputs is concealed from WSD personnel and other input providers. The input consists of opinions and not actual transaction prices, and the output consists of objectively calculated averages of opinions received from at least 10 sources. As described in more detail below, the *SteelBenchmarker*TM system incorporates numerous safeguards to prevent collusion, manipulation or other misuse.

United States Antitrust Law and Information Exchanges

Information exchanges, including price surveys and benchmarking, are analyzed under Section 1 of the Sherman Act,¹ a U.S. federal statute that prohibits contracts, combinations or conspiracies in restraint of trade. The Federal Trade Commission (FTC) also has concurrent jurisdiction to bring proceedings under the Sherman Act or under Section 5 of the Federal Trade Commission Act,² which prohibits unfair methods of competition in interstate commerce.

Exchanges of price information are not considered *per se* unlawful under the Sherman Act because it is recognized that they can have many procompetitive benefits.³ Establishing a violation under Section 1 of the Sherman Act requires that multiple parties enter into an “agreement” or “conspiracy” to engage in conduct that, on balance, has anticompetitive consequences. Establishing an “unfair trade practice” under the Federal Trade Commission Act does not require proof of a conspiracy, but it does require proof of likely anticompetitive effect.

¹ 15 U.S.C. § 1.

² 15 U.S.C. § 45.

³ *United States v. United States Gypsum Co.*, 438 U.S. 422, 441 n.16 (1978) (“The exchange of price data and other information among competitors does not invariably have anticompetitive effects; indeed such practices can in certain circumstances increase economic efficiency and render markets more, rather than less, competitive. For this reason, we have held that such exchanges of information do not constitute a *per se* violation of the Sherman Act.”); *see also Maple Flooring Mfrs. Ass’n v. United States*, 268 U.S. 563, 582-83 (1924).

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Historically, the FTC has used the FTC Act to attack practices found to be anticompetitive that do not involve joint action or otherwise do not rise to the level of a full-fledged Sherman Act violation.

An information exchange that was perceived as having the effect of increasing prices or dampening price competition could lead to government antitrust action under one statute or the other. For example, the U.S. Department of Justice (DOJ) has stated that “[e]xchanges of future prices [in the hospital context] are very likely to be considered anticompetitive.”⁴ Also, the Supreme Court noted in a 1978 opinion that “[e]xchanges of current price information . . . have the greatest potential for generating anticompetitive effects and although not *per se* unlawful, have consistently been held to violate the Sherman Act.”⁵ There has been greater acceptance of ancillary conduct having only indirect effects on prices since 1978, but exchanges of pricing information are still carefully scrutinized by federal antitrust authorities.

Guidelines for Information Exchanges

In 1996 the DOJ and FTC issued a revised version of their joint antitrust guidelines for the health care industry, the “Statements of Antitrust Enforcement Policy in Health Care.”⁶ In this document, the agencies created various antitrust “safety zones,” including a safety zone that describes exchanges of price and cost information that will not be challenged by the agencies under antitrust laws, absent extraordinary circumstances.⁷ According to the Enforcement Policy in Health Care, an exchange of price or cost information will fall within the antitrust safety zone if the following conditions are satisfied:

- (1) the survey is managed by a third-party (*e.g.*, a purchaser, government agency, health care consultant, academic institution, or trade association);

⁴ U.S. Department of Justice & Federal Trade Commission, *Statements of Antitrust Enforcement Policy in Health Care*, 1996 WL 495164 (D.O.J.), available at <http://www.ftc.gov/reports/hlth3s.htm> [hereinafter *Enforcement Policy in Health Care*].

⁵ *Gypsum Co.*, 438 U.S. at 441 n.16.

⁶ *Enforcement Policy in Health Care*, 1996 WL 495164 (D.O.J.).

⁷ *Id.* at sec. 6, 21-22.

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(2) the information provided by survey participants is based on data more than 3 months old; and

(3) there are at least five providers reporting data upon which each disseminated statistic is based, no individual provider's data represents more than 25 percent on a weighted basis of that statistic, and any information disseminated is sufficiently aggregated such that it would not allow recipients to identify the prices charged or compensation paid by any particular provider.⁸

Although this antitrust safety zone was originally created specifically for the health care industry, later Business Review Letters and antitrust articles indicate that these guidelines also apply to price exchanges in other industries.

Courts and antitrust authorities consider multiple factors when examining information exchange proposals to determine whether they are likely to have anticompetitive effects that would necessitate antitrust enforcement action. Generally, these factors include (1) who is participating in the exchange, (2) the market's concentration, (3) the type of information being exchanged, (4) the purpose of the exchange, and (5) whether there are safeguards to protect the integrity of the exchange. For example, information exchanges between companies that are not direct competitors raise less risk of price collusion and anticompetitive effects than exchanges between direct competitors. In addition, in unconcentrated markets that are subject to easy entry and where the participants in the information exchange do not possess market power, an exchange of information is unlikely to be anticompetitive.

The DOJ has broadly permitted cooperative information exchanges between competitors when safeguards are imposed that reduce the risk that the participants will engage in concerted pricing. In recent DOJ Business Review Letters approving various proposals for information exchanges, the DOJ approvingly highlighted the following characteristics of such proposals:⁹

⁸ *Id.*

⁹ See, e.g., Dept. of Justice Bus. R. Letter to Robert M. Langer (June 19, 2006), available at <http://www.usdoj.gov/atr/public/busreview/216720.htm> (Noting with approval that "factories will not have access to competitor wage and hour information in the database, except in an aggregated form that will not enable entity-specific information to be ascertained"); Mark D. Alcorn (Aug. 20, 2003), available at <http://www.usdoj.gov/atr/public/busreview/201239.htm> (continued...)

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(1) Exchange Participants¹⁰

- Results copyrighted, but available to anyone for purchase.

(2) Market Structure

- Unconcentrated market with strong competition.
- Easy entry.

(3) Type of Information Exchanged

- No pricing information.
- No requests for, or reference to, forecasted data.
- No information concerning future plans for equipment or marketing.
- At least five companies must submit data on each point for which information will be disseminated.
- No individual company's data will represent 25 percent or more, on a weighted basis.
- Any price or cost information to be disseminated will be historical.

(4) Procompetitive Purpose

- Exchange has procompetitive purposes, such as reducing costs, improving efficiency and improving quality, services and prices for customers.

(Noting that “the limited nature of the proposed cooperation — historic cost information on an aggregated basis with no discussion of pricing or other sales-related conduct — should limit any risk that the data exchanged could lead to concerted pricing.”); Dept. of Justice Bus. R. Letter to Joseph F. Haas (June 22, 1992), *available at* <http://www.usdoj.gov/atr/public/busreview/211191>. *See also*, FTC Commissioner Mary L. Azcuenaga, Remarks before the 8th Annual Legal Symposium of the American Society of Association Executives, Price Surveys, Benchmarking and Information Exchanges (Nov. 8, 1994) <http://www.ftc.gov/speeches/azcuenaga/ma11894.pdf> (citing principles in order to protect an association and its members from antitrust liability when conducting a price survey, including using historical prices and aggregating the data so that individual firm data are not readily identifiable).

¹⁰ The Business Review Letters addressing information exchanges generally involve exchanges among direct competitors.

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(5) Integrity Safeguards

- Concealing the identity of the participating companies.
- Disseminating the collected data in an aggregate fashion.
- No direct exchange of information between or among market participants.
- Information will be submitted to an independent third party who will compile and perform statistical analysis on the data and publish it.
- Use of the resulting data will be voluntary.

The *SteelBenchmarker*TM's Antitrust Safeguards

Although the *SteelBenchmarker*TM seeks opinions as to current price levels, and thereby does not meet the second criterion of the antitrust "safety zone" promulgated by U.S. antitrust authorities, it clearly satisfies the first and third of those criteria. The fact that the participants' price opinions are collected and statistically analyzed by an independent third party satisfies the first condition of the safety zone, and the requirement that any published average be based on at least 10 anonymous inputs meets the third. The remaining question, therefore, is whether sufficient additional safeguards against misuse are provided to permit collection of anonymous opinions regarding current price levels and publication of averages of those inputs.

The fact that the *SteelBenchmarker*TM system does not perfectly fit within the parameters of the antitrust authorities' conservatively designed "safety zone" does not mandate a finding that it violates U.S. antitrust laws. The system contains numerous safeguards designed to limit the risk or opportunity for data collection to lead to concerted pricing in violation of U.S. antitrust laws. The remainder of this discussion addresses those safeguards in light of the factors considered by the courts and antitrust authorities when evaluating information collection and exchanges.

(1) Nature and Number of Participants

*SteelBenchmarker*TM participants are not limited to a small number of direct competitors. Instead, WSD draws opinions as to market prices from a broad array of steel producers, traders, service centers and processors, as well as steel consumers. All basing points issued by *SteelBenchmarker*TM draw on pricing opinions from no less than 10 providers.

Disclosure of the benchmark prices is not confined to survey participants. *SteelBenchmarker*TM results are available to anyone for purchase soon after they are released to survey participants.

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(2) Market Structure

Notwithstanding a trend towards greater consolidation, the global steel industry remains relatively unconcentrated and competitive.¹¹ Indeed, faced with stiff international competition and a worldwide glut of steel in recent years, the United States imposed temporary safeguard measures with respect to steel imports, which were only terminated in December 2003.¹² Even accounting for the subsequent Mittal/Arcelor and Tata/Corus mergers, the top five producers of steel in 2006 accounted for only 19 percent of global market share¹³ and the top 15 producers for 34 percent.¹⁴

(3) Type of Information Exchanged

The data provided by participants in the system are not actual prices. Instead, each participant provides its best judgment as to what the new bookings price is on the spot market for mid-sized buyers of four types of steel products and three types of scrap in specified geographic areas. Thus, the data collected represents the participants' best opinions of the current going market price without revealing any actual transaction price or prices.

¹¹ See OECD Steel Committee Sees Market Outlook Bright But Slower Demand Expected in 2007, Statement by Mr. Risaburo Nezu, Chairman of the OECD Steel Committee (http://www.oecd.org/document/41/0,3343,en_2649_34221_37658025_1_1_1_1,00.html) (“Though consolidation will strengthen steel companies’ influence in world markets, the industry remains very fragmented as compared to the concentrated iron ore industry for example.”).

¹² See Remarks by Robert B. Zoellick, United States Trade Representative, on the Decision by the President to Terminate Steel Safeguards (Dec. 4, 2003) (http://www.ustr.gov/Document_Library/Press_Releases/2003/December/Statement_by_USTR_Zoellick_on_Termination_of_Steel_Safeguards.html).

¹³ See Consolidation in the World Steel Industry, Presentation to the OECD Steel Committee Meeting and Roundtable (Istanbul, May 17-18, 2007) by Scott MacDonald, Corus (<http://www.oecd.org/dataoecd/52/5/38681248.pdf>).

¹⁴ See Effects of Consolidation on the Global Steel Market: Implications of Cross-Border Trade M&A and Intra-Company Trade, Presentation to the OECD Steel Committee Meeting and Roundtable (Istanbul, May 17-18, 2007) by Chanakya Chaudhary, Tata Steel (<http://www.oecd.org/dataoecd/51/57/38680802.pdf>).

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The Operations Manual anticipates that opinion prices may differ from actual current transaction prices for a number of reasons. Actual transaction prices are typically the result of confidential negotiations taking into account a wide variety of variables and, are, in effect, unique transactions. As these actual transaction prices are generally not known to other buyers and sellers, they do not provide a means for policing a price agreement.

The fact that opinions on the market price are gathered anonymously not just from steel producers, but also traders, consumers and others, and that at least 10 inputs are obtained, creates an orchestrated balance to the opinions collected such that no one group participant or group of participants is likely to be able to “game” the system or misuse the *SteelBenchmarker*TM for concerted pricing activities. No individual company’s input, regardless of whether there are multiple input providers within one company, represents more than 15 percent of the reported benchmark price.

(4) Procompetitive Purpose

The purpose of the *SteelBenchmarker*TM system — to create a set of benchmark steel prices that enables steel market participants to manage their steel price risk through steel futures transactions for five key steel products in multiple regions of the world — is a procompetitive and valuable goal. In the legislation establishing the Commodity Futures Trading Commission, Congress recognized that futures transactions serve a national interest. “[Commodity exchanges] are entered into regularly in interstate and international commerce and are affected with a national public interest by providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair and financially secure trading facilities.”¹⁵

The benchmark pricing system is not intended and does not appear to have any restraining effect on the ability of individual steel market participants to set prices at will. Any use of the resulting benchmark prices as a reference point accordingly remains within a context of complete freedom by market participants to price as they choose.

(5) Integrity Safeguards

As described in the Operations Manual, the *SteelBenchmarker*TM system includes the following additional safeguards:

¹⁵ Commodity Exchange Act, 7 U.S.C. § 5.

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- All input providers sign a participation agreement to assure the reliability and confidentiality of the input data and to foreclose collusion.
- Input providers send their data to a secure, offsite, third-party computer which assigns codes to each of the providers so that their input data remains anonymous.
- The *SteelBenchmark*TM's information-gathering processes and procedures are to be audited on a regular and unannounced basis by an independent auditor with expertise in risk management procedures.
- The distribution of price inputs by product — but not the identity of the providers of specific inputs — are seen only by the independent statistician, the independent auditor, and five days after the publication of benchmark prices, a designated WSD employee responsible for ensuring that the system is working as expected.
- No *SteelBenchmark*TM-related data of any kind is exchanged directly between or among the individual providers.
- There is no direct communication concerning the input data between or among the providers and WSD.
- The collected data is disseminated only in an aggregate fashion.
- The input providers, the public and — other than the one designated employee who sees the distribution of price inputs after the publication of benchmark prices — WSD, have access only to the aggregated benchmark price data. They do not see any specific price input, nor the distribution of inputs.

Because the intended purpose of the *SteelBenchmark*TM system is procompetitive, because its structure, input, output and other safeguards make collusion or other misuse of the information to be collected and generated highly unlikely, and because this data collection and benchmark publication activity takes place in what is currently a relatively unconcentrated and competitive market, we are of the opinion that the *SteelBenchmark*TM system, as described in Exhibits A, B and C of the NYMEX License and the Operations Manual, does not violate current U.S. antitrust standards.

Sincerely,

Charles Buffon
59
/

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July 3, 2007

Peter F. Marcus
Managing Partner
World Steel Dynamics
456 Sylvan Avenue
Englewood Cliffs, NJ 07632

Dear Mr. Marcus:

This letter responds to your request for Covington & Burling LLP's opinion as to whether World Steel Dynamics' (WSD) global benchmark steel price system (*SteelBenchmarker*TM), as described in Exhibits A, B and C to WSD's June 25, 2007, License Agreement with the New York Mercantile Exchange, Inc. (the "NYMEX License"), and in the *SteelBenchmarker*TM Operations Manual dated June 29, 2007, complies with European Community ("EC") competition law. For the reasons set out below, it is our opinion that, as so-described, the *SteelBenchmarker*TM benchmark pricing system does comply with EC competition law.

In reaching the opinions expressed, we have relied on the description of the benchmark steel price system contained in Exhibits A, B and C of the NYMEX License and the Operations Manual dated June 29, 2007, and we have assumed that WSD will implement and maintain the system and its procedures as described therein. This letter provides no opinion as to any revision of the system that does not conform to the procedures so-described.

We are members of the bar of the District of Columbia and other jurisdictions within the United States of America as well as the bar of England and Wales. This opinion has been

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prepared with the assistance of a partner in our Brussels office who practices EC competition law. We do not express any opinion herein on any laws other than EC competition law.

1. Summary of the *SteelBenchmarker*TM System

WSD is a steel information service with an international client list that includes major integrated and non-integrated steel companies, steel users, equipment and raw material suppliers, financial institutions, government agencies, metal traders, steel service centers and trade associations. Beginning in early 2006, WSD has developed a benchmark pricing system, called the *SteelBenchmarker*TM, for the purpose of providing base points to enable buyers, intermediaries, and producers to engage in hedging and futures transactions and thereby ameliorate their steel price risk for some key steel products and encourage investment in the industry.

As illustrated in Exhibits A, B and C to the NYMEX License and in the Operations Manual, WSD gathers opinions of the current booking prices of five key steel products in two major regions of the world and the world export market. These opinions are provided twice a month by a broad group of providers consisting of steel mills, steel traders, steel service centers and processors, and steel users. The identity of individual price providers is known only to a select group of WSD employees and is not shared with other price providers or third parties. The identity of the providers responsible for individual inputs is concealed from WSD personnel and other input providers. The input consists of opinions and not actual transaction prices, and the output consists of objectively calculated averages of opinions received from at least 10 sources. As described in more detail below, the *SteelBenchmarker*TM system incorporates numerous safeguards to prevent collusion, manipulation or other misuse.

2. EC Competition Law and Information Exchanges

Information exchanges, including price surveys and benchmarking, are analyzed under Article 81 of the Treaty Establishing the European Community (“EC Treaty”),¹ which governs agreements between undertakings. Article 81(1) prohibits agreements between undertakings, decisions by associations of undertakings and concerted practices with an anti-competitive object or effect. Article 81(3) carves out an exemption to this prohibition for agreements which “contribute[] to improving the production or distribution of goods or to promoting technical or economic progress,” provided that:

- a fair share of the resulting benefit goes to consumers;

¹ Treaty Establishing the European Community, OJ 1997 C340/3.

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- the agreement in question is no more restrictive than necessary to achieve the desired benefit; and
- the agreement does not give participating undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

In deciding whether to take enforcement action under Article 81, the European competition authorities² consider first whether an agreement has an anti-competitive object or effect and therefore falls within the scope of Article 81(1). If they conclude that an agreement is caught by the Article 81(1) prohibition, the authorities next consider whether it qualifies for an exemption under Article 81(3).³

The European Commission (the “Commission”) scrutinizes information exchanges between competitors closely and, on a number of previous occasions, has found that particular systems were incompatible with Article 81. In general, the Commission’s concern is that the exchange of commercial information among competitors can undermine competition in certain circumstances, by eliminating uncertainty and creating a degree of transparency conducive to collusive or coordinated conduct.⁴ However, as discussed below, whether a particular information exchange system will be found to violate Article 81 in a given case depends on a fact-intensive analysis, taking account of all relevant circumstances.

² Until recently, the European Commission was solely responsible for enforcement of EC competition law, with its decisions subject to review by the European Courts. Since 1 May 2004, the national competition authorities and Member State courts have also been empowered to apply the EC Treaty’s competition provisions. *See* Council Regulation (EC) No. 1/2003, OJ 2003 L1/1. In ruling on EC competition matters, however, the national authorities and courts are required to follow Commission precedents. *Id.* at Art. 16. The new EC enforcement arrangements do not therefore affect the authority of the Commission decisions and related European Court judgments cited in this opinion.

³ Until 1 May 2004, agreements had to be notified to the Commission in order to be considered for an exemption under Article 81(3). Council Regulation (EC) No. 1/2003 makes the exemption directly applicable so that it may be applied by national courts and national competition authorities. *Id.* at Art. 1.

⁴ *See, e.g., UK Agricultural Tractor Registration Exchange*, OJ (1992) L68/19, upheld in Case T34/92 *Fiatagri UK Ltd. and New Holland Ford Ltd. v. Commission*, [1994] ECR II-905, Case C-8/95 *New Holland Ford Ltd. v. Commission*, [1998] ECR I-3175, and Case T-35/92 *John Deere v. Commission*, [1994] ECR II-957.

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3. Factors Determining Whether Information Exchange is Prohibited Under Article 81(1)

The Commission has not issued comprehensive guidelines on the kinds of information exchanges it believes to be prohibited by Article 81(1), or those that it considers permissible under it. The case law makes clear that information exchange systems used in furtherance of such collusive practices as price fixing or market allocation are uniformly prohibited under Article 81(1).⁵ Information exchanges not coupled with such illegal collusive behavior are considered on a case-by-case basis. The Commission's previous decisions in relation to information exchange arrangements, and the associated case law of the European Court of First Instance and the European Court of Justice (together, the "European Courts"), point to a number of factors that the Commission and courts will take into account in determining whether a particular information exchange system falls within the prohibition of Article 81(1).⁶

(a) Market Structure

The risk that an information exchange arrangement will restrict competition is greater in concentrated markets, where it is easier for producers to reach anticompetitive agreements or otherwise align their conduct. In contrast, in competitive markets characterized by many buyers and sellers, the transparency created by such an arrangement can increase competition by giving

⁵ See, e.g., *Cartonboard*, OJ 1994 L243/1. Although none of the cases address the issue, given the lack of redeeming virtues of such hardcore antitrust violations, it is hard to imagine circumstances in which a facilitating exchange of information would qualify for an exemption under Article 81(3).

⁶ In a recent judgment relating to the exchange of consumer credit information between financial institutions, the European Court of Justice summarized the relevant considerations as follows:

[T]he compatibility of an information exchange system . . . with the Community competition rules cannot be assessed in the abstract. It depends on the economic conditions of the relevant markets and on the specific characteristics of the system concerned, such as, in particular, its purpose and the conditions of access to it and participation in it, as well as the type of information exchanged -- be that, for example, public or confidential, aggregated or detailed, historical or current -- the periodicity of such information and its importance for the fixing of prices, volumes or conditions of service.

Case C-238/05, *Asnef Equifax SL v. Asociación de Usuarios de Servicios Bancarios*, judgment of 26 Nov. 2006 (not yet reported).

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consumers fuller knowledge on which to base their choices.⁷ In weighing this factor, relevant considerations include the degree of market concentration, the number of producers and the structural links between them, the combined market share of the participants in the information exchange, and the barriers to market entry. Although there is no hard-and-fast rule as to what constitutes a concentrated market for this purpose, the Commission held one information exchange system to be in violation of Article 81 where the eight parties to the exchange accounted for 88% of total production,⁸ but raised no objection in another case where the parties held a combined market share of approximately 20%.⁹

(b) Commercial Sensitivity of Data

The Commission tends to be suspicious of exchanges of information normally considered commercially sensitive by the companies in question, particularly when the information exchanged is withheld from consumers and other non-participants in the exchange. Pricing information related to specific sales transactions is regarded as among the most sensitive categories of commercial information. As a general matter, the Commission is more relaxed about exchanges of opinions and general experience,¹⁰ or of estimates,¹¹ than of commercial information based on specific transactions.

(c) Whether Information on Individual Companies Is Revealed

The Commission generally does not challenge exchanges of aggregate data that do not reveal to competitors commercially-sensitive information on individual companies.¹² However, where information is exchanged on a country- or product-specific basis, the Commission will, for each segment, take into account the number of companies supplying data on which the aggregate figure is based, to ensure that information on individual companies cannot be inferred. The minimum number of companies that must be present in the market segment concerned for the Commission to conclude that there is no risk of individual producers' figures being identified depends on the circumstances of the particular case. Thus, in one case the Commission declined to permit exchange of country-specific information where there were fewer than three companies

⁷ *Asnef Equifax SL*, *supra* note 6; *UK Agricultural Tractor Registration Exchange*, *supra* note 4.

⁸ *Id.*

⁹ *Eudim*, OJ 1996 C111/8.

¹⁰ *See, e.g., id.*

¹¹ *See UK Agricultural Tractor Registration Exchange*, *supra* note 4.

¹² *CEPI-Cartonboard*, OJ 1996 C310/3. The Court of First Instance overruled the Commission when it sought to prohibit the exchange of aggregated commercial data in one case. Case T-317/94, *Moritz J. Weig GmbH & Co. KG v. Commission*, [1998] ECR II-1235.

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present on a given country's market, while requiring that order inflow information only be exchanged if there were at least ten companies active on the market.¹³ In another case, the Commission required that at least four companies be active on a market before information could be exchanged.¹⁴

(d) The Age of Information Exchanged

In the Commission's view, the more recent the information exchanged, the more impact it is likely to have on the future behavior of firms in the market. Information that is more than a year old is generally considered historical and therefore unlikely to harm competition if exchanged among competitors, even in a relatively concentrated market.¹⁵ While it may be possible to exchange more recent information in rapidly-changing markets, it is unlikely that the Commission would allow a shorter period if the market is concentrated.

(e) Frequency

Particularly where sensitive and accurate commercial information is concerned, the more frequently it is exchanged, the more transparent market conditions become for participants and -- in concentrated markets -- the more likely competition is to be harmed.¹⁶ How frequently information can safely be exchanged depends to a large extent on how the Commission assesses the other factors listed here. In one instance, for example, the Commission did not object to a proposed information exchange system incorporating numerous other safeguards only after the participants modified the data collection and publication cycle from weekly to every second week.¹⁷

(f) Logistics

The Commission is more likely to find information exchange systems compatible with Article 81 where the participants build in safeguards to guard against the risk of harm to competition. For example, the use of an independent third party to collect, aggregate and disseminate commercially-sensitive data can help ensure that information on individual

¹³ *CEPI-Cartonboard*, *supra* note 12.

¹⁴ See Commission Notice pursuant to Article 19(3) of Council Regulation 17/62 *European Wastepaper Information Service*, [1987] OJ C 399/7.

¹⁵ *Id.*

¹⁶ See Case T-16/98 *Wirtschaftsvereinigung Stahl*, [2001] ECR II-1217, para. 44.

¹⁷ See *CEPI-Cartonboard*, *supra* note 12.

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companies is not revealed to competitors,¹⁸ as well as obviating the need for regular meetings of competitors which could provide a pretext for collusion.¹⁹

4. Analysis of *SteelBenchmarker*TM Under Article 81(1)

Although the *SteelBenchmarker*TM system contains some features liable to raise concerns under the foregoing factors, given its overall design -- in particular its use of aggregated price estimates and the safeguards built into the system to prevent sharing of individual company data -- we do not believe that the system is likely to fall under the prohibition of Article 81(1).

(a) Market Structure

Considered as a whole, the global steel industry remains relatively unconcentrated and competitive. Despite increased consolidation of the industry in the European Union and world-wide,²⁰ steel is increasingly traded globally and the industry remains fragmented at the global level. Even accounting for the Mittal/Arcelor and Tata/Corus mergers, the top five producers of steel in 2006 accounted for only 19 percent of global market share²¹ and the top 15 producers for 34 percent.²² For the purpose of analyzing *SteelBenchmarker*TM, however, the Commission is likely to consider separately the markets for each of the four²³ relevant key steel products

¹⁸ See *Revised TACA*, OJ 2003 L26/53.

¹⁹ See *UK Agricultural Tractor Registration Exchange*, *supra* note 4.

²⁰ See, e.g., Speech by Philippe Varin, Corus Chief Executive, at the National Association of Steel Stockholders Annual Steel Industry Dinner, Oct. 28, 2004, available at <http://www.steelonthenet.com/pdf/Corus%20Speech%2008-Mar-05.pdf> (noting that the top five regional producers account for more than 60% of steel production in Western Europe, 50% in the United States and approximately 80% in Japan).

²¹ See Consolidation in the World Steel Industry, Presentation to the OECD Steel Committee Meeting and Roundtable (Istanbul, May 17-18, 2007) by Scott MacDonald, Corus, available at <http://www.oecd.org/dataoecd/52/5/38681248.pdf>.

²² See Effects of Consolidation on the Global Steel Market: Implications of Cross-Border Trade M&A and Intra-Company Trade, Presentation to the OECD Steel Committee Meeting and Roundtable (Istanbul, May 17-18, 2007) by Chanakya Chaudhary, Tata Steel, available at <http://www.oecd.org/dataoecd/51/57/38680802.pdf>.

²³ Because the *SteelBenchmarker*TM system generates a benchmark price for steel scrap in the United States only, we do not consider that product in this analysis.

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surveyed.²⁴ The more geographically limited the market defined by the Commission for any given product, the more concentrated it will be found to be.

In merger decisions dealing with steel products, the Commission has accepted that the market for hot-rolled flat products comprises “at least the territory of the Community,”²⁵ with the implication that it may be wider. Although, similar precedential decisions do not exist for each of the four relevant products *SteelBenchmarker*TM surveys, the fact that the system draws in each case on price opinions for standard or commodity grade items suggests that there is a good chance that the Commission will consider the relevant markets to be at least Community-wide and possibly global in nature. Given the relatively fragmented and competitive nature of the world market, the Commission is unlikely to find the current level of industry concentration a cause for concern if it defines the market this widely. Moreover, even if, in individual cases, the Commission finds a narrower geographical market, the system’s other safeguards -- in particular the large number of opinions on which each benchmark is based and the safeguards to avoid disclosure of the source of particular opinions -- make it unlikely that the Commission will see any significant risk from this arrangement arising from the current structure of the relevant market.

(b) Commercial Sensitivity of Data

As noted above, pricing information is usually regarded as commercially-sensitive data the exchange of which among competitors can generate anticompetitive risks. However, the safeguards built into the *SteelBenchmarker*TM system go a long way towards mitigating potential competition concerns under this factor. Rather than revealing prices charged in actual transactions, participants merely supply opinions on the current going market price for a standardized hypothetical transaction. Given the numerous reasons outlined in the Operations Manual why a participant’s actual transaction prices may differ from the estimates it provides to *SteelBenchmarker*TM, the system presents no significant risk of eliminating uncertainty or

²⁴ Cf., e.g., Case COMP/M.4137 *Mittal/Arcelor* (Commission decision of June 2, 2006 authorising merger, defining separate markets in carbon steel: semi-finished carbon steel products, six separate product markets in flat carbon steel (hot-rolled flat products excluding quatro plates, quatro plates, cold-rolled flat products, metallic coated steel, organic coated steel, and other flat carbon steel products) and in long products (wire rod, drawn wire products, rebars / reinforcing bars, merchant bars, sections, tubes); Case IV/ECSC.1310, *British Steel/Hoogovens* (Commission decision of July 15, 1999 authorizing merger, defining separate markets in semi-finished products, hot-rolled flat products, uncoated cold-rolled strip, coated cold-rolled sheets, and sheets for packaging).

²⁵ *British Steel/Hoogovens*, *supra* note 24. See also *Mittal/Arcelor*, *supra* note 24 (defining the relevant geographic market for a number of products, including the surveyed rebars, as at least EEA-wide).

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creating transparency among participating steel producers. Moreover, the inclusion of estimates provided by non-producers, including steel traders and users, mitigates any danger of the system being “gamed” or otherwise misused by producers for concerted pricing activities.

(c) Whether Information on Individual Companies Is Revealed

The *SteelBenchmarker*TM system is deliberately designed to avoid any risk of individual company data being shared among competitors. As noted above, participants provide opinions rather than actual transaction data to the third-party collector. Those inputs are aggregated with the inputs of numerous other contributors before an average benchmark price is calculated and published, and no benchmark price is disseminated for any product category in which fewer than ten price inputs are received. No individual company’s reported opinions represent more than 15% of the opinions used to calculate any reported benchmark price. Taking account of the numerous other safeguards built into the system, together with the previous decisions cited above in which information exchange has been approved with a minimum of three, four and ten companies active on a given market, these arrangements appear more than adequate to avoid any threat to competition.

(d) The Age of Information Exchanged

The *SteelBenchmarker*TM system involves the exchange of opinions on current market prices, rather than the historic data on which the Commission has insisted before approving some other information exchange systems. Given the system’s strong showing under the other Article 81(1) factors -- in particular its reliance on aggregated opinions rather than individual and accurate commercial data -- we do not believe that this fact in isolation creates any significant risk of *SteelBenchmarker*TM falling foul of Article 81(1).

(e) Frequency

The system involves collection of opinions and dissemination of average benchmark prices once every two weeks. As noted above, the acceptable frequency of information exchange under Article 81 is heavily dependent on how the competition authorities assess a given system against the other factors outlined here. In this case, the fact that current, rather than historic, information is the subject of the exchange may encourage the authorities to favor less frequent exchange. However, in our judgment, the influence of that factor is more than outweighed by the *SteelBenchmarker*TM system’s other characteristics, in particular its use of aggregated opinions. Indeed, the Commission has previously approved the exchange of aggregated (albeit historic) price information on a more frequent basis than occurs with *SteelBenchmarker*TM.²⁶

²⁶ See *European Wastepaper Information Service*, *supra* note 14.

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(f) Logistics

The *SteelBenchmarker*TM system incorporates an array of logistical safeguards designed to prevent harm to competition:

- All input providers sign a participation agreement to assure the reliability and confidentiality of the input data and to foreclose collusion.
- Input providers send their data to a secure, offsite, third-party computer which assigns codes to each of the providers so that their input data remains anonymous.
- The *SteelBenchmarker*TM's information-gathering processes and procedures are to be audited on a regular and unannounced basis by an independent auditor with expertise in risk management procedures.
- The distribution of price inputs by product -- but not the identity of the providers of specific inputs -- are seen only by the independent statistician, the independent auditor, and, five days after the publication of benchmark prices, a designated WSD employee responsible for ensuring that the system is working as expected.
- No *SteelBenchmarker*TM-related data of any kind is exchanged directly between or among the individual providers.
- There is no direct communication concerning the input data between or among the providers and WSD.
- The input providers, the public and -- other than one designated employee who sees the distribution of price inputs after the publication of benchmark prices -- WSD, have access only to the aggregated benchmark price data. They do not see any specific price input, nor the distribution of inputs.

In combination with the relatively unconcentrated nature of the world steel industry, the fact that *SteelBenchmarker*TM collects and disseminates pricing opinions rather than actual transactional data, and the aggregated nature of *SteelBenchmarker*TM reports, these logistical safeguards provide strong assurance that the proposed information exchange will not harm competition. Accordingly, it is our opinion that the *SteelBenchmarker*TM system, as described in Exhibits A, B and C of the NYMEX License and the Operations Manual, does not fall within the scope of Article 81(1) and, therefore, is compatible with EC competition law.

5. Analysis of *SteelBenchmarker*TM Under Article 81(3)

Even if the *SteelBenchmarker*TM were found to fall within the prohibition of Article 81(1), strong arguments could be put forward that the system qualifies for an exemption under Article 81(3). As we believe that it is likely that the system is not prohibited under Article 81(1), we do not engage here in a detailed analysis of *SteelBenchmarker*TM's claim for an Article 81(3)

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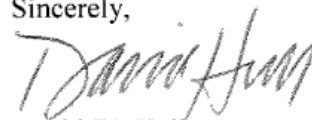
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exemption. We note, however, that many of *SteelBenchmarker*TM's potential economic benefits, as described to us, would support exemption under Article 81(3):

- The *SteelBenchmarker*TM has the potential to make a significant contribution to the production and distribution of steel, and overall economic progress, by helping in the development of a trustworthy pricing index for use in steels futures contracts. A more developed futures market in steel would allow participants in the world steel market to allocate risk more efficiently, thereby reducing transaction costs and potentially improving profitability. More reliable information on world spot prices could also facilitate further growth in the international steel trade, exposing regional markets to increased competition.
- Given the relatively fragmented and competitive nature of the world steel industry, there is every reason to believe that a fair share of economic gains from a more efficient futures market would be passed on to consumers. Moreover, the input of steel users in the benchmarking process demonstrates that, unlike many other information exchange systems approved in the past by the Commission, *SteelBenchmarker*TM is specifically designed to avoid advancing the interests of producers over consumers.
- For many of the reasons described above in relation to Article 81(1), the system is no more restrictive than necessary to achieve the desired benefit.
- Similarly, given the many safeguards built into the system, *SteelBenchmarker*TM does not give participating undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Although, in our opinion, WSD is highly unlikely to be called upon to make these arguments, the likely strength of *SteelBenchmarker*TM's claim for an Article 81(3) exemption further reinforces our view that the system is compatible with EC competition law.

Sincerely,



David W. Hull

Partner