



EUROPEAN COMMISSION

Hearing Officer

FINAL REPORT OF THE HEARING OFFICER¹
COMP/M.6101 – UPM/MYLLYKOSKI AND RHEIN PAPIER

BACKGROUND

On 28 January 2011 the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation² by which the undertaking UPM-Kymmene Corporation ("UPM" or the "Notifying Party") acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control over Myllykoski Corporation ("Myllykoski") and Rhein Papier GmbH ("Rhein Papier") (also jointly referred to as the "other involved parties"). On 4 March 2011 the Commission adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation.

WRITTEN PROCEDURE

A Statement of Objections ("SO") was sent to the Notifying Party on 5 May 2011 in which the Commission set out its preliminary conclusion that the notified concentration would significantly impede effective competition in relation to super calendered ("SC") paper. The concerns existed whether or not SC paper would be considered a separate market or part of a larger product market comprising other types of magazine paper (SC, machine finish coated ("MFC") and coated mechanical reels ("CMR")). UPM replied to the SO by the set deadline, on 20 May 2011.

Access to file

Access to file was granted in part on 6 May 2011. Supplementary documents were provided to UPM on 12, 18 and 19 May. UPM complained to DG Competition about such allegedly late access to the file. However, as UPM has neither referred this to me, nor made any convincing argument as to why it could not defend itself effectively, I consider that the delay in accessing parts of the file was not prejudicial to UPM's rights of defence.

¹ Pursuant to Articles 15 and 16 of Commission Decision (2001/462/EC, ECSC) of 23 May 2001 on the terms of reference of Hearing Officers in certain competition proceedings – OJ L162, 19.06.2001, p.21.

² Council Regulation (EC) No 139/2004 of 20 January 2004, OJ L 24, 29.1.2004, p.1.

Hearing of third parties

I granted interested third party status to a customer of the parties, namely Bertelsmann AG and certain of its subsidiaries, including Gruner + Jahr AG & Co, Mohn media Mohndruck GmbH and Prinovis Ltd & Co KG (hereafter jointly referred to as "Bertelsmann").

I also granted interested third party status to certain creditors of Myllykoski³ and Rhein Papier⁴, after they had explained to me their exceptional involvement in this transaction, and how their interest would be specifically affected by the outcome of the proceedings.

One day before the oral hearing I also received an application by a customer of Myllykoski to attend the oral hearing. In light of the insufficiently reasoned application, the fact that the request was submitted at such a late stage, and that the customer had not contributed to the investigation thus far⁵, I had serious doubts that this customer would be able to contribute significantly to the clarification of the relevant facts of the case. I therefore decided not to invite this customer to the oral hearing. I nevertheless informed the customer that it could be granted interested third party status and be given the opportunity to be heard in writing, subject to filing a formal application, which, however, the customer did not do.

The Oral Hearing

In its reply to the SO, the Notifying Party requested to be heard in an oral hearing, which was held on 27 May 2011. Upon their request, I also invited the interested third parties (Bertelsmann, and the Myllykoski and Rhein Papier lenders), whom I considered could usefully contribute to the clarification of the relevant facts.

Upon reasoned requests of each UPM, Myllykoski and the Myllykoski and Rhein Papier lenders, parts of their presentations were held *in camera*.

THE DRAFT DECISION

The draft decision provides for an unconditional clearance of the proposed concentration. The objections set out in the SO have been reviewed – and abandoned – by the Commission in light of, *inter alia*, the written comments of the Notifying Party, the contribution of all participants in the oral hearing, and further investigation carried out post-SO.

³ Bayerische Landesbank, Sampo Bank plc, Skandinaviska Enskilda Banken AB (publ) and Nordic Investment Bank ("Myllykoski Lenders (Lead Banks)"), on behalf of the Myllykoski lenders.

⁴ Nordea Bank Finland plc (in its capacity as facility agent for the financial institutions that are creditors of Rhein Papier)

⁵ Notably, the customer had not responded to questionnaires sent by DG Competition during the proceedings.

CONCLUSION

I have not received any complaint from the Notifying Party, the other involved parties, or any interested third party about the exercise of their right to be heard. In view thereof and taking into account the observations mentioned above, I consider that the right to be heard of all participants to the proceedings has been respected in this case.

Brussels, 4 July 2011

(signed)

Michael ALBERS