



Brussels, 22 June 2018

FINAL REPORT OF THE HEARING OFFICER¹

(M.8451 – TRONOX / CRISTAL)

Introduction

1. On 15 November 2017, following referral under Article 4(5) of Council Regulation No 139/2004 (the "Merger Regulation"), the Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Tronox Limited ("Tronox" or "the Notifying Party") would acquire, within the meaning of Article 3(1)(b) of the Merger Regulation, control of the titanium dioxide business of The National Titanium Dioxide Company Ltd ("Cristal") by way of a purchase of shares (the "Proposed Transaction"). For the purposes of this Final Report Tronox and Cristal are jointly referred to as "the Parties".

Procedure

2. The Commission's first phase investigation raised serious doubts as to the compatibility of the Proposed Transaction with the internal market and with the functioning of the EEA market. On 20 December 2017, the Commission adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation, to which Tronox responded on 8 January 2018.
3. On 19 January 2018, at Tronox's request, the Commission adopted a decision extending the deadline for taking a final decision in this case by 10 working days.
4. On 22 February 2018, the Commission adopted a decision pursuant to Article 11(3) of the Merger Regulation and Article 9(1) of Commission Regulation No 802/2004 suspending the time limit referred to in Article 10(3) of the Merger Regulation as of 20 February 2018. The suspension of the time-limit expired on 27 February 2018, following the Notifying Party's submission of the required information.
5. On 14 March 2018, the Commission convened a state of play meeting to inform the Notifying Party of the preliminary results of the Phase II market investigation.

¹ Pursuant to Articles 16 and 17 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings, OJ L 275, 20.10.2011, p. 29 (the "Terms of Reference").

6. On 16 March 2018, the Commission adopted a Statement of Objections ("SO") which was notified to the Notifying Party on the same day. According to the SO, the Proposed Transaction would significantly impede effective competition within the meaning of Article 2(3) of the Merger Regulation and Article 57 of the EEA Agreement: (i) in the EEA market for chloride-based titanium dioxide pigment for use in paper laminate as a result of non-coordinated effects, and (ii) in the EEA markets for rutile titanium dioxide pigment for use in coatings and plastics (and their possible sub-segmentations) and in the EEA market for chloride-based titanium dioxide pigment for use in paper laminate as a result of coordinated effects. The Commission's preliminary conclusion was, therefore, that the notified concentration was not compatible with the internal market and the functioning of the EEA Agreement.
7. The Notifying Party was granted access to the file on 19 March 2018 and thereafter on a rolling basis.
8. Subsequently, by various emails to the Directorate General for Competition ("DG Competition"), the Notifying Party raised queries regarding further access to certain documents on the Commission's file. Following the Notifying Party's complaints regarding insufficient access, DG Competition granted further access to some of the documents in question.
9. On 16 April 2018 I received an email from the Parties bringing to my attention rights of defence issues, in particular, asking me, pursuant to Article 7 of the Terms of Reference, to provide further access to certain specific information. In response to this, in the first instance, I asked DG Competition to (re-)examine the Parties' request. On 18 April 2018 DG Competition provided further access to some of the requested information and on 25 April 2018 the Parties informed me that they no longer insisted on access for the remainder of their request.
10. I have admitted two undertakings, both customers of Tronox and Cristal, as interested third persons in these proceedings. Both interested third persons were provided with a non-confidential version of the SO and given a time-limit within which to submit their responses.
11. The formal oral hearing was held on 10 April 2018 and was attended by the Parties, as well as their external legal and economic advisers, relevant Commission services and representatives of the competition authorities of three Member States (Belgium, Germany and the United Kingdom) and the EFTA Surveillance Authority. Neither of the two interested third persons admitted in these proceedings participated in the formal oral hearing.
12. On 24 April 2018, at the request of the Notifying Party, the Commission extended the deadline for its final decision by 10 working days in order to facilitate remedies discussions.

Draft Decision

13. On 16 May 2018, the Notifying Party submitted a first set of commitments. Consequently, the review period was further extended pursuant to Article 10(3), first

paragraph of the Merger Regulation. On the basis of feedback obtained from the market testing of these commitments, the Notifying Party submitted a final set of commitments on 1 June 2018 ("Final Commitments").

14. In the draft Decision, the Commission concludes that the Proposed Transaction would significantly impede effective competition in the EEA market for chloride-based titanium dioxide pigment for use in paper laminate within the meaning of Article 2(3) of the Merger Regulation and Article 57 of the EEA Agreement as a result of non-coordinated effects. The draft Decision finds that the Final Commitments are sufficient in scope and suitable to eliminate the significant impediment to effective competition to which the Proposed Transaction would give rise. The Final Commitments therefore render the Proposed Transaction compatible with the internal market and the EEA Agreement.
15. I have reviewed the draft Decision pursuant to Article 16(1) of Decision 2011/695/EU and I conclude that it deals only with objections in respect of which the Parties have been afforded the opportunity of making known their views.

Conclusion

16. I conclude that the Parties have been able to effectively exercise their procedural rights in the present proceedings.

Joos STRAGIER