

***Case No COMP/M.2772 -  
HDW / FERROSTAAL /  
HELLENIC SHIPYARD***

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**REGULATION (EEC) No 4064/89  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 25/04/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 25.04.2002  
SG (2002) D/229581

PUBLIC DECISION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

**To the notifying parties**

Dear Sir/Madam,

**Subject: Case No COMP/M.2772 - HDW/Ferrostaal/Hellenic Shipyard  
Notification of 19.03.2002 pursuant to Article 4 of Council Regulation  
No 4064/89<sup>1</sup>**

1. On 19.03.2002, the Commission received a notification of a proposed concentration whereby the undertakings Howaldtswerke-Deutsche Werft AG (“HDW”) and Ferrostaal AG acquire joint control of Hellenic Shipyards S.A. (“HSY”), by way of purchase of shares.
2. After examining the notification, the Commission has concluded that the notified operation falls within the Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common markets and with the EEA Agreement.

**I. THE PARTIES**

3. HDW is jointly controlled by the Preussag AG group and the Babcock Borsig AG group.
4. HDW is active in construction of conventionally powered submarines, naval surface vessels, merchant vessels and ship repair services.
5. Ferrostaal is a subsidiary in the MAN group and is active in facility construction, industrial equipment and systems (including merchant and naval ships and steel trading). Ferrostaal is well known for its role in offsetting deals connected with naval orders for German shipyards.

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<sup>1</sup> OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

6. HSY is active in ship building, repair and industrial constructions (e.g. rolling stock). The yard was privatised partly in 1995 as the employees acquired 49% of the shares from the state owned Hellenic Bank of Industrial Development S.A. (“ETBA Bank”). Thus, currently the shareholders of HSY are the ETBA Bank (51%) and the co-operative of employees (49%).

## **II. THE OPERATION**

### *The privatisation of HSY*

7. [...]. In 1992 HSY was put into liquidation and after two unsuccessful efforts to sell HSY the liquidation process was revoked in 1993. In 1995 HSY was partly privatised through a take-over by an employees' co-operative of HSY of 49% of the share holding. ETBA Bank kept the remaining 51% of the shares of HSY. [...].
8. In 2001 the Greek State decided to privatise the ETBA Bank and as part of this process it was also decided to fully privatise HSY. The Greek State initiated an open bidding competition. A tender document, which included the financial statements of HSY, was produced [...]. Prior to and in order to facilitate the bidding process and make HSY marketable, the Greek State had enacted a law dealing with, among other things, special pension and special benefit programs for the present employees of HSY (see below). The aim of this law was to reduce the number of employees of HSY to be taken over by the purchaser of HSY. [...].
9. HDW and Ferrostaal formed a consortium in order to be able to bid for HSY. HDW and Ferrostaal were awarded the contract because they had offered the highest total consideration for HSY. [...]. None of the other bidders offered a higher consideration than the €[...] million offered by HDW/Ferrostaal.
10. The current transaction focuses on submarine activities. The strategic rationale of the deal is to focus HSY, which currently mainly build and repairs small naval vessels for the Hellenic Navy, as a specialised shipyard for the assembly of conventionally powered submarines bought by the Hellenic Navy. The parties claim that the capacity of HSY will be targeted on the assembly of the submarines already ordered by the Hellenic Navy and possible future orders from the Navy in relation to submarines.
11. It has to be noted that the Hellenic Navy has already issued an order to HDW for three submarines. In 2000, HSY was awarded the contract to assemble the material packages for two of these submarines.

## **III. CONCENTRATION**

12. [...], the HDW and Ferrostaal signed an agreement with the Greek State, the ETBA Bank and the workers co-operative, whereby the two German undertakings will jointly acquire 100% of HSY. Consequently, the transaction constitutes an acquisition of joint control within the meaning of Article 3(1)(b) of the Council Regulation.

## **IV. COMMUNITY DIMENSION**

13. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>2</sup>. Each of the undertakings have a Community-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

## V. PRODUCT MARKET AND GEOGRAPHIC DEFINITIONS

14. The current transactions will give rise to potential horizontal overlaps in relation to naval shipbuilding, commercial shipbuilding (ferries) and rolling stock.

### *V.1 Naval vessels*

#### *Product Market definitions*

15. Naval vessels belong to defence equipment which is bought by government controlled purchasing organisations ordered and authorised by governments usually represented by the respective Ministry of Defence. The buyers determine demand and set the requirements to be fulfilled with the contract to be concluded. The award of contracts is mainly based on political (ex. creation of labour, technology transfer) and other considerations than necessarily the lowest prices. The markets in a specific country are also typically characterised by the fact that a given government takes its purchase decision only once in a decade or two.
16. Based on a previous Commission decision<sup>3</sup> the parties have submitted that separate markets exist for the following four basic kinds of naval vessels:
- Conventionally powered submarines<sup>4</sup>,
  - Frigates,
  - Mine counter measure vessels (MCMV), and
  - Small naval vessels.
17. It could be argued that small naval vessels should be further divided into segments all belonging to the same product market. However, there exists a great degree of substitutability between the different kinds of small naval vessels, both on the demand side and the supply side. The Commission's market investigation has shown that small naval vessels are normally regarded as belonging to the same product market. This is due to the fact, that demand side substitution makes it possible to substitute one type of vessel with another for conducting a mission. It is for example possible to use a

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<sup>2</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

<sup>3</sup> Case No COMP/M.1709 – Preussag/Babcock/Celsius. Commissions decision 19.01.2000.

<sup>4</sup> The term “conventionally powered submarines” refers to submarines with a surface displacement beyond 300 tons.

gunboat instead of a corvette, a fast attack missile craft or a coastal patrol boat for a number of missions. Furthermore, from a supply side there are no substantial differences between the different kinds of small naval vessels. Based on this, it is the view of Commission, that no further division of small naval vessels is necessary and that small naval vessels should be regarded as one overall product market.

New built vessels, delivery of material packages, used naval vessels and mid-life conversions

18. In addition, the parties are of the view, that for each category of naval vessel, there is one single product market which comprise of the following three segments:
  - (i) A market for new-built vessels and the sale/delivery of complete material packages for production in the buyer's country,
  - (ii) A market for used naval vessels,
  - (iii) A market for substantial reconstructed and modernised naval vessels (mid-life conversion).
19. The parties have explained that the sale of fully assembled new vessels and the sale of complete material packages for assembly in the buyer's country belongs to the same overall product markets. From the point of view of the customer, i.e. the national navy, a vessel that is delivered fully assembled by a foreign supplier is completely substitutable to a vessel that is assembled in the navy's home country based on a material package delivered by the foreign supplier. The parties have submitted that the reason why a given navy may prefer to buy a material package rather than fully assembled vessels is the following. The navy wants in particular to increase the local content, i.e. the proportion of the total value of the final submarine that is created in its home country. A higher local content is generally desirable from a political point of view, because it creates jobs in the navy's home country and it decreases the price to be paid by the taxpayers to the foreign supplier.
20. However, the parties have stressed that from a technological point of view, delivering a material package is much more sophisticated than assembling it. This is because the material package for a naval vessel does not just consists of parts and materials needed to construct the vessels. The material package also contains detailed construction drawings and related instructions that are needed to assemble the different parts in order to ensure that the final product is a fully operational vessel. Thus, the foreign supplier of the material package has all the proprietary rights to the technological know-how needed for the construction of a vessel. Only a company that could also deliver fully assembled vessels can make the alternative of delivering the same vessels in unassembled form.
21. The parties argue that from the viewpoint of the purchasing entities, new and used naval vessels are largely substitutable because the life span of a vessel is up to 20-50 years. The parties further claim, that it is not the vessel as such but only its technological equipment that becomes outdated. Furthermore, the parties have informed the Commission, that customers in previous bidding procedures have seriously considered to buy used vessels, but ultimately decided to buy new ones and vice versa. However, it can be left open, whether the sale of used vessels forms part of the same product market since neither of the parties have sold any used vessels.

22. With regard to mid-life conversions, the technical installations in small naval vessels are not expensive enough and do not become outdated quickly enough to justify the cost and efforts of such a conversion. Thus, small naval vessels are normally replaced as a whole as soon as they become outdated. According to the parties mid-life conversion involves a partial deconstruction and rebuilding of the hull of the vessels and a nearly complete exchange of all technical systems. The parties have submitted that refurbishment comprises less rebuilding of the hull but equally involves an exchange of large part of the installations and technical systems of the vessel. Furthermore, they have stressed that the objective of mid-life conversion normally is to readjust the vessel to the newest technological standards and/or a different intended use. In conclusion, the parties are of the opinion that mid-life conversion is largely comparable to new building as far as the construction work and the required technology is concerned.
23. The Commission regards the sale of new-built vessels, the sale of complete material packages and substantial reconstructed and modernised naval vessels (mid-life conversions) belong to the same product market. The Commission considers that it can be left open whether the sale of used naval vessels forms a part of the same product market.
24. Furthermore, the parties have identified product markets consisting of:
  - (i) assembly of material packages for naval vessels.
  - (ii) repairs and minor conversions of submarines and naval surface vessels respectively (naval surface vessels comprise all the types of naval vessels apart from submarines).

#### Assembly of material packages for naval vessels

25. The parties have argued that the assembly of the material package is a much more straightforward operation involving less technological know-how and skill in comparison to the delivery of a material package. In view of the parties the assembly of the material package for a naval vessel means to fit the parts and materials supplied in the material package together in strict accordance with the construction drawings and other instructions in the material package. According to the parties, the assembly does neither involve any design or similar work for the vessel itself nor the development or design of any individual parts or components. In view of the parties, the work consists primarily of welding all the delivered parts together and to subsequently install the delivered components. The parties have submitted that the price for a material package for a naval vessel is usually only about 1/5 lower than the price for a fully assembly naval vessel. Furthermore, the parties state that the price paid for the assembly is lowered further by the fact that the most confidential sections of the vessel are normally installed by the supplier of the material packages. The parties have outlined that when a navy decides to buy a naval vessel in unassembled form, it makes two business decisions. First, the navy chooses the supplier and the model of the naval vessel that it wants to buy. Secondly, the navy decides in what way the assembly can be executed in its home country. The assembly can either be carried out by the Naval Arsenal or by a shipyard in the navy's home country.
26. If the navy decides to buy the material package from a foreign manufacturer and have the assembly carried out by a national shipyard, the following business relationships are

in view of the parties entered into. Firstly, the navy enters into contractual obligations with the manufacturer of its choice. Secondly, the navy decides which national shipyard should assemble the material package in question and concludes a contract with that shipyard. Finally, the national shipyard and the foreign manufacturer enter into agreements over the terms and conditions of the supply of the material package including the know-how required for the assembly.

27. Based on the above, the Commission is of the view, that the assembly of material packages constitutes a separate product market. However, it can be left open, whether there exist separate product markets for the assembly of material packages for each type of naval vessels, as this will not change the competitive assessment.

#### Repairs and minor conversions

28. The parties have further identified two separate product markets for repairs and minor conversions of submarines and naval surface vessels respectively. Repairs and minor conversions consist of exchange of simple components or technical systems. Such repairs do not involve substantial reconstruction of the hull and are generally much less extensive. However, a separation of the repairs of submarines and naval surface vessels is necessary. This is due to the fact that only some shipyards have the know-how and the physical installations required for the repairs of submarines. In contrast, the repair of naval surface vessels of all types is similar and offered by all shipyards conducting repair services.
29. The Commission considers that the repair and minor conversion of submarines is a separate product market. Furthermore, the Commission has identified a separate product market for repairs and minor conversion of naval surface vessels.

#### *Geographic market definitions*

##### *Naval Vessels*

30. Defence markets are national in geographic scope, if domestic producers exist and are able to meet the national demand. There is a national market as governments wish to support national supplies and thereby the country's military independence. However, a market can only be considered as entirely national (i.e. not open for competition from suppliers from other countries) if the national producer has the ability to design and produce himself products satisfying actual and future demand.
31. . The parties submit, that the markets for submarines in France, Germany, Italy, the Netherlands, Spain, Sweden and United Kingdom are national markets, because domestic producers exists and are able to satisfy the domestic demand. Furthermore, outside EU the market for submarines in Australia, China, Japan, Russia and USA should also be regarded as national. Moreover, countries such as North Korea, Iran and Libya are markets inaccessible to western manufactures. The open world market for submarines consists of all countries except for the national markets identified above and markets mentioned above which are inaccessible to western manufactures of naval vessels.
32. In relation to frigates the open world market consist according to the parties of the following countries: Algeria, Bahrain, Brazil, Egypt, Estonia, Greece, India, Malaysia, Morocco, Norway, Pakistan, Saudi Arabia, South Africa, Taiwan, Thailand and

Turkey. In relation to MCMV the parties argue that the open world market consist of the following countries: Greece, Indonesia, Pakistan, Singapore, Thailand, Turkey and Uruguay. Finally the open world market for small naval vessels consist according to the parties of the following countries; Algeria, Bahamas, Brazil, Brunei, Chile, Colombia, Egypt, Fiji Island, Ghana, Greece, Indonesia, Ireland, Kuwait, Malaysia, Mauritania, Mauritius, Morocco, Oman, Poland, Qatar, Tonga and Turkey.

#### New built and mid-life conversion of naval vessels

33. As explained above, new built vessels and mid-life conversions belong to the same product market. The parties have pointed out that the degree to which the national shipyards have been able to satisfy the Hellenic Navy's demand is somewhat higher with regard to small naval vessels than with regard to submarines. However, the parties have claimed that the Greek shipyards have not been able to fully satisfy the actual demand and will not be able to satisfy the future demand, and therefore these markets should be considered to be world-wide in scope. Within the last 10 years the Hellenic Navy did not purchase any submarines or mid-life conversions from Greek shipyards. Instead, the Hellenic Navy has as mentioned above bought three submarines from HDW in 2000. Two of these submarines will be assembled by HSY. The same picture emerges in relation to frigates, where the Hellenic Navy has bought frigates from the Netherlands and from the USA. In 1995 the Hellenic Navy purchased two MCMV in Italy. With regard to small naval vessels, a larger number of vessels have been procured on a domestic basis. However, the Hellenic Navy also purchased a substantial amount of units of small naval vessels from foreign producers (Germany, USA, Ukraine and Russia) within the last 10 years.
34. Based on the purchase patterns of the Hellenic Navy, the Commission is of the view that the markets for submarines, frigates, MCMV and small naval vessels are world-wide.

#### Assembly of material packages for naval vessels

35. The situation is different as regards the markets for the assembly of material packages for naval vessels. The parties consider these markets as national in scope. The market for the assembly of material packages for naval vessels is national in scope because the purchasing state's objective is to increase employment in the country. This purpose can only be achieved if a national shipyard assembles the material packages. In conclusion, the Commission considers the market for the assembly of naval vessels to be national in scope.

#### Repair and minor conversions of submarines and naval surface vessels

36. For the same reasons as regards the assembly of material packages, the Commission considers that the market for repair and minor conversions of submarines and naval surface vessels respectively are national in scope.

## **V.2 Commercial vessels**

### *Product market definitions*

37. Shipbuilding of merchant ships can be divided into several main groups of ships such as crude oil tankers, cargo ships, ferries, passenger ships, container ships etc. Each type of

vessel could according to the parties be considered to constitute a separate product market. Furthermore, the parties have identified a separate market for repair and conversion of commercial vessels.

38. However, it is not necessary for the Commission to determine the relevant product market for the purpose of this decision, as the operation would not give rise to any competition concerns under any the above mentioned product market definitions.

*Geographic market definitions*

39. The parties argue, that the market for construction, repair and conversion of all kinds of commercial vessels are world wide in geographic scope, as the transportation costs for ships are comparatively low and there are no significant trade barriers.
40. Third parties have replied that they agree with the geographic market definitions mentioned above for commercial vessels.

**V.3 Rolling stock**

*Product market definitions*

41. HSY is active in the construction of rolling stock and Ferrostaal is active as a trader of rolling stock whereas HDW is not active in rolling stock. According to previous decisions<sup>5</sup> rolling stock can be divided into several subcategories such as electrical and diesel locomotives, electrical and diesel multiple units (EMU and DMUs), passenger coaches and freight wagons, trams and underground trains etc, which constitutes the relevant product markets.

*Geographic market definitions*

42. The Commission has previously found that the rolling stock markets were still national in scope in Member States having very large, domestic rail technology industry, provided that domestic rail technology industry can meet the national demand. This conclusion with regard to the German markets for different types of rolling stock was confirmed recently in the COMP/M.2139 – Bombardier/ADtranz decision.
43. There are two customers for rolling stock in Greece. During the last 10 years, these customers have bought rolling stock from a consortium consisting of one foreign company and one Greek company. It seems unlikely that this would indicate a national market.
44. However, it is not necessary for the assessment of the present transaction to define the relevant product or geographic markets for the purpose of this decision, as the operation would not give rise to any competition concerns under any of the relevant market definitions.

**VI. COMPETITIVE ASSESSMENT**

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<sup>5</sup> Case IV/M.580-ABB/Daimler Benz and COMP/M.2139 – Bombardier/ADtranz

45. Even though the parent groups behind the acquirers of HSY are major German industrial groups the proposed transaction will not in view of the parties have any significant effects in the relevant markets mentioned below due to the limited scope of the activities of HSY

*Naval vessels*

The German and the open world market for conventionally powered submarines

46. HDW is a leading producer of conventionally powered submarines both in the open world market and on the separate German market for such submarines.
47. HDW has a strong market position on the specific German market for conventionally powered submarines. HDW has a market share of [50-60]% on the German market for production of conventionally powered submarines and the transaction does not change HDW's position on the German market.
48. In relation to the German market, it should be noted that the German Navy has its own interest to ensure that all submarines it buys from HDW are completely produced (including assembly) in Germany.
49. On the open world market HDW also has a leading position as the undertaking would account for a market share of [50-60]%. As HSY is not a producer of submarines, the current transaction does not change the position that HDW had on this market prior to the transaction.
50. As HDW has a strong position on both the German and the open world markets for submarines the question is, whether the acquisition of HSY could strengthen HDW's strong position as a manufacturer of submarines. As explained above, HSY's submarine assembly capacity would until 2007-2009 be committed to the assembly of the two submarines, the Hellenic Navy bought from HDW in 2000. If the Hellenic Navy decides to execute its option entered into in 2000 for the purchase of a third material package for a type 214 submarine, and subsequently commissions HSY to assemble such a package, the assembly capacity of HSY would be dedicated to this purpose until about 2010-2012. [...].
51. Based on the limited submarine capacity of HSY, on the fact that HSY will use it for the assembly, not the shipbuilding, of submarines, and bearing in mind that the order for the assembly of three type 214 submarines was concluded prior to the current transaction, the Commission has concluded that HDW would not be able to strengthen its leading position on the German or the open world market for the building of submarines as a result of the merger.

World-wide market for small naval vessels

52. According to the parties the transaction will only give rise to an overlap between the parties in small naval vessels. This is due to the fact that HSY is only building small naval vessels whereas HDW is primarily building submarines.
53. The parties have submitted that the market for naval small naval vessel is not a horizontally affected market. The combined market share for the parties is [5-15]% based on volume and [0-10]% based on value on a world-wide basis. In conclusion, the

Commission finds that the operation will not lead to the creation or strengthening of a dominant position on the world-wide market for small naval vessels.

#### The Greek market for assembly of naval material packages

54. On the Greek market for assembly of naval material packages HSY is the only shipyard commissioned by the Hellenic Navy to assemble material packages for naval vessels and consequently the undertaking has a market share of 100%. However, HSY had this dominant position prior to the current transaction because it had previously been awarded contracts for the assembly of material packages.
55. The parties have submitted that the two material packages for HDW's type 214 submarines that HSY will start assembling at the end of this/beginning of next year will employ HSY's full submarines assembly capacity until about 2007-2009. As mentioned above, should the Hellenic Navy execute its option for the purchase of a third material package for a type 214 submarine and subsequently commission HSY to assemble such a package, HSY's submarine assembly capacity will be primarily employed with this task until about 2010-2012. In conclusion, the current and the possible future order will keep HSY's submarine department quite busy for a long period, there will not be much excess capacity during the coming years for further assembly of submarines.
56. Upon request from the Commission the parties have analysed whether the HSY future submarine assembly activities could have any spill-over effects to any other activities of HSY that would give it an advantage in other markets (ex. assembly or repair of other types of vessels). However, the parties argue that even if there are any spill-over effects they would not be a consequence of the current transaction but merely an effect of the assembly contracts which was awarded to HSY prior to the merger. Moreover, the parties fail to see any appreciable spill-over effects from HSY's assembly activities to the activities regarding small naval vessels. The parties have claimed that the technical specifications that have to be met for the assembly of submarines are quite strict. Furthermore the costs connected to the assembly of submarines are much higher than in relation to other naval vessels. Therefore, the parties are of the view that it would not be cost effective to use the resources required for submarines to offer assembly or repair services for other naval vessels.
57. The parties have also stressed that all the know-how and facilities that HSY could gain from the assembly of submarines and subsequently employ in new building of small naval vessels or in repair and minor conversions of such vessels have already been acquired by the parties. The parties argue that HSY prior to the transaction had gained such expertise in the course of assembly of three material packages for the frigates that HSY assembled for the Hellenic Navy in the period from 1995-1998.
58. In conclusion, it is the view of the Commission that the current transaction does not strengthen the dominant position of HSY on the Greek markets for assembly of the different types of naval vessels.

#### The Greek market for repair and minor conversion of submarines

59. The parties have submitted that neither HSY nor any other Greek shipyards have performed any repairs or minor conversions of submarines in the past. This has been confirmed by the Commission's market investigation. The parties have pointed out that the Hellenic Navy from the outset has ensured that its own Naval Arsenal could

perform all repairs and minor conversion of Greek submarines. Thus, the Naval Arsenal has performed all repairs and minor conversions of Greek submarines in the past. The parties argue that the standard expertise obtained by the Naval Arsenal in this respect is expected to be fully sufficient to prevent any repairs of Greek submarines from being out-sourced in the future. Consequently, the parties have argued that HSY is not expected to obtain orders for such services from the Hellenic Navy in future.

60. The Hellenic Navy is the only customer on this potential market. The Navy has substantial countervailing buyer power, if a market for repairs of submarines would emerge what at any rate does not seem likely in the foreseeable future. It is possible that the Hellenic Navy deliberately would choose to continue to let these tasks be performed by the Naval Arsenal in order not to disadvantage the other Greek competitor. Whether a dominant position of HSY would be created in the long run, depends irrespectively of the merger, solely on the future purchase decisions of the Hellenic Navy.

#### The Greek market for repair of naval surface vessels

61. The repair market for naval surface vessels is very limited due to the fact that the Hellenic Navy carries out 90-95% of these repairs itself. Neorion/Efelsius and HSY perform the remaining 5-10% of all repairs. The parties have estimated that the turnover from repair services performed by the Greek shipyards amounted to approximately €10 million. According to the parties, HSY's market share based on turnover obtained by repairs on the Greek market for repair of naval surface vessels is [65-75]% for the period 1999-2001 and Neorion is the only active competitor in this market.
62. However, it can be concluded that the current transaction does not strengthen the dominant position of HSY on the Greek markets for repair of surface naval vessels, because HDW is not present on this market and at any rate the Hellenic Navy has decisive countervailing power.

#### *Commercial vessels*

63. The parties have only identified an overlap with regard to ferries. The HSY and HDW combined market share for ferries is [5-15]% based on units and [5-15]% based on value.
64. It should be noted that the two acquiring companies, HDW and Ferrostaal, retain activities with regard to shipbuilding of container ships. The container ships built or delivered as material packages by the two undertakings account for less than [0-10]% of the total market for containerships in the period 1997-2000. On no other product market defined on the basis of each type of vessel is there any overlapping activities and on those markets the market share of the party concerned never exceeds [5-15]% based on value or units. The parties estimate their total combined market share for commercial vessels as a whole to be well below [0-10]% on the world-wide market. On this basis, it is the view of the Commission, that the activities of the two undertakings with regard to building of container ships or other commercial vessels does not lead to any co-ordination which could eliminate competition in this or any other market relevant to the current transaction.

#### *Rolling stock*

65. HSY is active as a producer of rolling stock whereas Ferrostaal is active as a trader. HDW is not active in rolling stock. In view of the parties, the activities of Ferrostaal does not give rise to a horizontal overlap as the undertakings only offers its customer the procurement of rolling stock from other suppliers. Moreover, in recent years the undertaking has not delivered any rolling stock to either Greek or German customers.
66. HSY produces passenger wagons/coaches and underground-railway vehicles. It can be considered whether electrical and diesel multiple units (EMU and DMU's) constitutes separate product markets. However, HSY would account for a market share of below 25% on the most narrow geographic level, i.e. a Greek market, regardless of whether the assessment is made on the basis of both categories taken together or separately. Moreover, on a national level HSY would only account for [5-15]% for electric locomotives and [15-25]% for passenger coaches. In the period 1997-2001, Ferrostaal sold a very limited number of locomotives, dining cars and components on the world market and its market share in any continent is negligible.

*Possible subsidies*

67. As described above, the Greek State decided to privatise HSY in 2001. Prior to the bidding process, the Greek State enacted law 2941/2001. All the bidders already knew this legislation. Law 2941/2001 has been notified to the Commission under of Regulation 1540/98<sup>6</sup>.
68. Law 2941/2001 includes several measures, in order to enable the sale of HSY. Firstly, the law gives incentives to the workers to voluntarily leave the company. It includes an extra compensation for the employees for the lay-off, a possible pre-pension or the possibility for the employees to get training. Based on information from the Greek State around [<1000] persons are expected to take advantage of the measures. The total cost for all the measures, including the pension costs for those taking early retirement, retraining etc could amount to an estimated maximum of approximately €([...])<sup>7</sup> million.
69. Secondly, the Greek State will take over some of the one-off pension cost of HSY. According to the notified legislation the state will cover the share of this cost in proportion to the amount of years that the employee has worked in HSY before it was sold to HDW/Ferrostaal, compared with the amount of years worked thereafter. The Greek State has estimated the maximum cost of this measure could be around € ([...]) million, but due to the fact that some workers will not stay until retirement, this estimated maximum cost could be €([...]) million.
70. Thirdly, the law makes it possible for HSY to benefit from a number of tax-exempt reserves if they are set off against losses from previous years. The total amount of the concerned reserves is € ([...]) million. The tax rate for capitalisation of tax-exempt by limited liability companies which have no shares on the stock exchange is 10%. This means that netting tax-exempt reserves with old losses should imply a 10% tax on the amount involved. Based on a worst case scenario, the total amount that could constitute aid could amount to 10% of the € ([...]) million, i.e. an estimated €([...]) million.

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<sup>6</sup> Council regulation no. 1540/1998 of 29 June 1998 establishing new rules on aid to shipbuilding, OJ L 2002/1.

<sup>7</sup> Figures in brackets are estimates.

71. Fourthly, the law contains a provision for the compensation for the workers that were shareholders in the company prior to the privatisation. The Greek State will reimburse the workers for the capital they have put into the company, in order to secure them against any losses when the company is privatised. The value of this subsidy granted to the employees of Hellenic Shipyards is estimated to be € [...] million.
72. At the present moment, the total size of the possible subsidies is not known, and it is the subject of a further investigation by the Commission. However, based on a worst case scenario, an estimate of the possible subsidies included in the law could amount to € [...] <sup>8</sup> million excluding the possible compensation to the workers for their share capital in Hellenic Shipyards.
73. As it can be seen from the provisions of the law, any possible subsidies are aimed at facilitating the privatisation of HSY. The provisions of the law are targeted to the restructuring of HSY in order to facilitate the privatisation.
74. The law was published prior to the Greek State's entering into an agreement of the sale of HSY. Furthermore, the law was intended to apply to any possible buyer of HSY, independently of the identity of the buyer. Therefore, it appears that the subsidies are not directly linked to the present merger so that they cannot be considered inherent in its completion.
75. However, even assuming a causal link between the subsidies of HSY and the present merger case, the competitive effect of any possible subsidies would be marginal.
76. HDW has a strong position on the German and the open world market for conventionally powered submarines. However, the present transaction is not likely to affect HDW's position on these markets, since HSY is not active in any of them.
77. The effects of the subsidies concerns HSY position on (i) the national market for the assembly of naval vessels, (ii) the national market for repairs of submarines, (iii) and the national market for repairs of naval surface vessels. The possible subsidies connected to the privatisation could improve the financial situation of HSY, but the subsidies are not likely to strengthen HSY market position in these markets, because HSY is already the only shipyard commissioned by the Hellenic Navy to assembly naval vessels and its position in the markets for repairs also depends decisively on the decisions of the Hellenic Navy. Furthermore, HSY was in 2000, i.e. prior to the present transaction, awarded the contract for the assembly of the two new class 214 submarines purchased by the Greek State. The Hellenic Navy does already place orders concerning mid-life conversions of naval surface vessels to the same manufacturer, which originally participated in the building of the vessel. Based on this purchase pattern, the merger is unlikely to change the competitive position of HSY or HDW, the latter not being active in any of the three Greek markets mentioned. In any event, any impact of the subsidies on HSY would be independent of the identity of the buyer and the conditions of the merger and therefore it can be concluded that any advantage accruing therefrom wouldn't be the result of the merger.
78. The present decision does not prejudice the outcome of the Commission's investigation under the State aid rules.

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<sup>8</sup> According to the Greek Government, this could be the possible range of subsidies.

## **VI. CONCLUSION**

79. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission  
Mario MONTI  
Member of the Commission