



EUROPEAN COMMISSION

Hearing Officer

Final Report¹ in the Arsenal/ DSP Case

COMP/M.5153

The draft decision gives rise to the following observations:

Introduction

Following a referral pursuant to Article 22(1) of the Merger Regulation² from Spain and Germany, the Commission received, on 17 June 2008, a notification of a proposed concentration whereby Arsenal Capital Partners (Arsenal) acquires sole control over DSM Special Products B.V. (DSP) by way of purchase of shares.

On 6 August 2008 the Commission initiated proceedings on the basis that the concentration raised serious doubts as to its compatibility with the common market³.

Subsequently, on 7 October 2008, a Statement of Objections was notified to Arsenal in which the Commission concluded that the concentration gives rise to horizontal competition concerns on the market for solid benzoic acid and sodium benzoate as well as vertical competition concerns on the market for benzoate plasticizers, which are produced from benzoic acid.

Arsenal replied to the Statement of Objections on 21 October 2008.

Access to file

The notifying party was granted access to the Commission's investigation file as it existed on the day of notification of the Statement of Objections on 8 and 9 October 2008. The remaining part of the file became accessible subsequently together with non-confidential

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 L24, 29.1.2004, p.1

³ Article 6(1)(c) of Regulation (EC) No 139/2004.

information received after the notification of the Statement of Objections. Further access was thus granted 22 October as well as on 4 and 5 November 2008.

Oral Hearing

Upon request by the notifying party an Oral Hearing was held on 27 October 2008, which was attended by both Arsenal and DSP.

Post-hearing procedure

In view of the party's written and oral submissions the Commission re-assessed some of its preliminary findings in the Statement of Objections and narrowed the relevant product market for benzoate plasticizers to only cover di-benzoate plasticizers and, as a consequence thereof, adapted the objection based on vertical foreclosure effects.

Subsequently, on 4 November 2008, a Letter of Facts explaining the modified objection was sent to the notifying party, which was granted the opportunity to provide its comments on the new elements and conclusions put forward in that letter. Access to the information on which the Commission based its modified objection was given on 4 and 5 November 2008.

In my view the Letter of Facts was both necessary and sufficient in order to ensure that the notifying party's right to be heard was respected while providing it with the opportunity to propose adequate remedies to remove the modified competition concerns.

Commitments

In view of rendering the concentration compatible with the common market the notifying party submitted a proposal for remedies on 6 November 2008, which was market tested by the Commission.

The notifying party was granted access to non-confidential replies of the market test on 21 November 2008.

Following the market test the Commission considered that the remedies were insufficient to remove the identified competition concerns and, subsequently, on 3 December 2008, Arsenal provided an improved remedy proposal.

The draft Decision

In the draft Decision, the Commission has abandoned its objection with regard to the market for sodium benzoate and benzoate plasticizers. It also concludes that the improved remedies are sufficient to remove the identified competition concerns with regard to the market for solid benzoic acid. Accordingly the Commission finds that, subject to compliance with the remedies, the notified concentration is compatible with the common market pursuant to Article 8(2) of the Merger Regulation.

No queries or submissions have been made to me by the notifying party or any other third party. In view thereof and taking into account the observations mentioned above I consider that this case does not call for any particular comments with regard to the right to be heard.

Brussels, 12 December 2008

(signed)
Michael ALBERS