



EUROPEAN COMMISSION

The Hearing Officer

FINAL REPORT OF THE HEARING OFFICER¹
IN THE ARJOWIGGINS/M-REAL ZANDERS CASE
(COMP/M.4513)

The draft Decision gives rise to the following observations:

INTRODUCTION

On 31 October 2007, the Commission received a notification of a proposed concentration pursuant to Article 4(1) and following a referral pursuant to Article 4(5) of Regulation (EC) No 139/2004. The proposed concentration consisted of the acquisition of sole control by Arjowiggins SAS ("Arjowiggins") in France over certain assets of M-Real Zanders GmbH ("M-Real Zanders"), i.e. all assets of the Reflex mill situated in Düren, Germany, as well as a 25% shareholding in Zhejiang Minfeng Zanders Paper Company Ltd., China. Arjowiggins is controlled by Sequana Capital and M-Real Zanders by the Finnish Metsäliitto group.

The Commission initiated proceedings on 7 December 2007 on the basis that the concentration raised serious doubts as to its compatibility with the common market (Article 6(1)(c) of Regulation (EC) No 139/2004).

WRITTEN PROCEDURE

Statement of Objections and time to reply

The Commission issued a Statement of Objections ("SO") on 4 March 2008, to which Arjowiggins responded on 18 March 2008.

Access to file

Access granted to Arjowiggins

Arjowiggins as notifying party received access to the file via CD-ROM on the day after the issuance of the SO.

Subsequently, it obtained access on several occasions to documents that had been added to the file during the procedure.

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. ("Mandate")

Access granted to M-Real Zanders

Upon its request, M-Real Zanders as the seller in the proposed transaction received the non-confidential version of the SO on 12 March 2008 and the opportunity to comment thereon. As an other involved party within the meaning of the Implementing Regulation² the seller subsequently requested access to the file. The relevant Commission service therefore granted M-Real Zanders access to the non-confidential versions of key documents, such as Arjowiggins' business plan relating to the Reflex mill in accordance with the DG Competition's Best Practices rules for merger cases. Furthermore, M-Real Zanders received the non-confidential version of Arjowiggins' reply to the SO.

Involvement of third party

I admitted the Ministry of Economic Affairs and Energy of the State of North Rhine-Westphalia to the proceeding as a third party, upon its reasoned request, in accordance with Article 6(1) of the Mandate.

ORAL PROCEDURE

Oral Hearing

An Oral Hearing was held on 31 March 2008. It was attended by representatives of the notifying party and the other involved party, as well as the third party and three Member States.

At the Oral Hearing, the representatives of Arjowiggins focused on and elaborated some of their written comments on the findings of the Commission in the Statement of Objections. They argued that the Commission did not take full account of, inter alia, the dynamics on the carbonless paper market. In this respect, they emphasized the growing importance of import competition from non-European producers, especially from the United States. They also criticized the cursory analysis of some of the national carbonless markets. With regard to the tracing paper and premium fine paper markets, Arjowiggins rejected the product market definitions and claimed that competition effects of the proposed transaction would be insignificant.

Arjowiggins also expressed concern with regard to some of the results of the Commission's market investigation, citing the partially imperfect machine translations of the Commission's questionnaires.

POST-HEARING PROCEDURE

Commitments

Arjowiggins submitted commitments to the Commission on 7 April 2008 which it revised on 28 April 2008. The commitments mainly concerned the divestiture of the carbonless business of the Reflex mill.

² Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.

Letter of Facts

The Commission sent out additional questionnaires after the issuance of the SO in order to gather more information about the carbonless paper market. It also cross-checked the replies obtained on the basis of translated questionnaires. In order to ensure Arjowiggins' rights of defence the Commission sent a Letter of Facts summarizing its additional fact-finding to Arjowiggins on 18 April 2008 and granted further access to file by way of two CD-ROMs on 18 and 24 April 2008. Arjowiggins responded to the Letter of Facts on 25 April 2008.

Additional access to the file

Arjowiggins requested, by letter dated 14 April 2008, that I review the access that it had received to the replies of certain non-European producers. The notifying party claimed that the CD-ROM it received did not contain certain replies which are mentioned in other documents and that the non-confidential versions it saw led it to conclude that the Commission did not sufficiently investigate the constraining effects of import competition on Arjowiggins' market position. After reviewing the relevant part of the file, I took a decision under Article 8 of the Mandate on 21 April 2008 that Arjowiggins had received proper access to the requested documents, taking account of the confidentiality claims of the respondents. However, in order to provide Arjowiggins with more substantiated excerpts of the replies, and thus with a better understanding of how the Commission reached its preliminary conclusions, I requested the relevant Commission service to ask respondents to review their confidentiality claims. The result of this inquiry was that additional information was disclosed to Arjowiggins (one of the respondents completely waived confidentiality, while another did partially).

THE DRAFT DECISION

In the draft Decision, the Commission has come to the conclusion that the commitments submitted by the notifying party are sufficient to remove the competition concerns raised by the transaction in the carbonless paper market. Contrary to its preliminary assessment, the Commission states for graphic tracing paper, industrial tracing paper and premium fine paper that the concentration does not significantly impede effective competition on the relevant markets and is thus compatible with the common market and the EEA Agreement.

I conclude that the rights of the parties to be heard in writing and orally have been respected in the present case.

Brussels, 23 May 2008

(signed)
Michael ALBERS