



EUROPEAN COMMISSION

Hearing Officer

FINAL REPORT OF THE HEARING OFFICER¹

COMP/M.6106 – CATERPILLAR/MWM

On 14 March 2011, following a referral pursuant to Article 22(3) of the Merger Regulation², the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Caterpillar Inc. (the notifying party) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control over MWM Holding GmbH. The Commission adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation on 5 May 2011.

After the initiation of proceedings, the procedure was marked mostly by two events. First, the Commission carried out inspections pursuant to Article 13(4) of the Merger Regulation.³ Second, the Commission decided to suspend the proceedings, as a result of the notifying party's failure to respond to a request for information. The notifying party complained to me about the lack of fairness of the suspension of proceedings, arguing essentially that it did not possess some of the information requested by the Commission and therefore could not provide it, although it had initially offered to the Commission to obtain such information from third parties. The current Mandate of the Hearing Officers does not provide for any decision-making power in such situations. However, as the notifying party asked me to take into account the aforementioned facts in my assessment of the fairness of the proceedings, I contacted the Directorate General for Competition in order to discuss the issue. Ultimately, DG Competition and the notifying party found a *modus operandi* for collecting a narrowed-down set of information, and the suspension of the proceedings ended when such information was provided. Overall, I consider that the suspension decided by the Commission did not impact the fairness of the proceedings.

On the basis of the additional evidence gathered during the in-depth phase of the investigation, the Commission services concluded that the proposed transaction would not significantly impede effective competition in the common market, and is therefore compatible

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, (the "Mandate of the Hearing Officers").

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

³ According to the draft decision, this inspection was warranted: (i) as evidence existed that either one or both of the merging Parties might have provided misleading information/retained information in the context of the investigation; (ii) to verify a possible theory of harm based on coordinated effects.

with the common market and the EEA Agreement. Accordingly, no statement of objections was sent to the notifying party.

The draft decision provides for an unconditional clearance of the proposed concentration. I have not received any complaint about the exercise of the right to be heard from the merging parties. The draft decision does not contain any objections on which the parties have not had the opportunity to make known their views. In view thereof, I consider that the right to be heard of all participants to the proceedings has been respected in this case.

Brussels, 4 October 2011

(signed)
Michael ALBERS