



## **Final Report of the Hearing Officer<sup>1</sup>**

### **Zimmer / Biomet**

#### **(COMP/M.7265)**

1. On 3 June 2014, the European Commission received a notification of a proposed transaction (the "Proposed Transaction") by which Zimmer Holdings, Inc. ("Zimmer") would acquire sole control of Biomet, Inc. ("Biomet"). On 11 June 2014, the Commission declared the notification of 3 June 2014 incomplete. Zimmer submitted a revised draft notification on 4 July 2014. On 15 August, 18 August and 29 August 2014, Zimmer submitted complementary information in response to a request for information dated 14 July 2014. The notification was deemed effective as of 29 August 2014.
2. On 3 October 2014, the Commission adopted a decision initiating proceedings pursuant to Article 6(1)(c) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings<sup>2</sup> (the "Merger Regulation"). In that decision, the Commission indicated that the Proposed Transaction falls within the scope of the Merger Regulation and that it raised serious doubts as to its compatibility with the internal market and the EEA Agreement.
3. On 9 October 2014, at Zimmer's request and pursuant to Article 10(3), second subparagraph, first sentence, of the Merger Regulation, the second phase period for reviewing the Proposed Transaction was extended by 15 working days.
4. On 22 October 2014, Zimmer submitted written comments on the decision initiating proceedings dated 3 October 2014.
5. On 17 November 2014, the Commission adopted a decision to extend that review period by five further working days, pursuant to Article 10(3), second subparagraph, third sentence, of the Merger Regulation.
6. On 18 November 2014, the Commission sent a request for information to Zimmer pursuant to Article 11(2) of the Merger Regulation. The deadline initially set by the Commission to supply the information sought was 24 November 2014. At Zimmer's request, the Commission extended this deadline to 1 December 2014. In the absence of a timely complete response to that request for information, on 3 December 2014 the Commission adopted a decision under Article 11(3) of the Merger Regulation to suspend proceedings as from 2 December 2014. Proceedings resumed on 10 February 2015, following Zimmer's submission to the Commission of the information sought.

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<sup>1</sup> 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 ("Decision 2011/695/EU").

<sup>2</sup> OJ L 24, 29.1.2004, p. 1.

7. There were no applications to be heard as an interested third person in the present proceedings.
8. Zimmer submitted a first set of proposed commitments on 3 December 2014. The relevant Commission services discussed their evaluation of these commitments with Zimmer and Biomet in a "state of play meeting" held on 18 December 2014. Zimmer submitted an informal revised package of proposed commitments on 24 January 2015. On the basis of feedback from the Commission's targeted market testing of this package, Zimmer formally offered revised commitments on 9 February 2015.
9. The Commission did not issue a statement of objections pursuant to Article 13(2) of Commission Regulation (EC) No 802/2004<sup>3</sup>. There was no formal oral hearing in accordance with Article 14 of that regulation.
10. The draft decision declares the Proposed Transaction, as modified by the commitments offered by Zimmer on 9 February 2015, compatible with the internal market and the EEA Agreement, subject to conditions and obligations intended to ensure that Zimmer complies with these commitments.
11. Pursuant to Article 16 of Decision 2011/695/EU, I have examined whether the draft decision deals only with objections in respect of which the parties have been afforded the opportunity of making known their views. I conclude that it does.
12. Overall, I consider that the effective exercise of procedural rights has been respected during the present proceedings.

Brussels, 20 March 2015

*(Signed)*

Joos STRAGIER

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<sup>3</sup> Commission Regulation (EC) No 802/2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ L 133, 30.4.2004, p.1; corrigendum OJ L 172, 6.5.2004, p. 9).