

**Final Report of the Hearing Officer in case
COMP/M.2416 – TETRA LAVAL/SIDEL**

(pursuant to Article 15 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 procedure in this Article 8(4) case gave rise to the following issues:

A statement of objections was sent to the parties in this case on 19 November 2001. The deadline for the parties to reply was 3 December 2001 (two weeks is the standard time limit set for replies in merger cases). Access to the file was made available to Tetra Laval B.V. (“Tetra”) on 22 November. The file related to the Article 8(4) procedure, that is, from 30 October to that date. Tetra requested, but was refused, access to the portion of the file assembled between 20 September and 30 October 2001, covering, among other things, the market testing of Tetra’s proposed undertakings in the previous Article 8(3) procedure.

On 22 November 2001 Tetra wrote to the Hearing Officer restating the request for additional access set out above. Tetra also requested the Hearing Officer to extend the deadline for its written response to the statement of objections until a date at least two weeks after the date on which full access to the file was granted and in any event no earlier than 12 December 2001. Tetra stated that it would like to present evidence on whether the divestiture of the whole of Sidel S.A. (“Sidel”) within the period set out in the statement of objections was necessary and reasonable in order to restore effective competition on the market. Presentation of such evidence would likely involve the consultation of outside experts and the collection of evidence.

With regard to the request for additional access to file, I informed Tetra on 27 November that this request was rejected (confirmed in writing on 29 November) referring to the final report of the Hearing Officer in the Article 8(3) (prohibition) decision, dated 24 October 2001. In this report the Hearing Officer stated that the rights of the parties had been fully respected in that procedure. In particular, with regard to replies from third parties to the market test, the Hearing Officer confirmed that the summary of the replies provided to the parties truly reflected the answers received by the Commission. In these circumstances, I considered that questions relating to access to file up to 30 October, the date of the Article 8(3) decision, were exhausted and should not be revisited in the context of the Article 8(4) procedure.

With regard to the request for an extension to the time period to provide a written reply to the statement of objections, I also informed Tetra on 27 November that the two-week time limit should be retained. This was the normal time period given in merger cases, including those raising complex issues of fact and/or law, that Tetra had been informed by the Commission service of the essential content of the statement in a meeting with the parties on 13 November and also that the press release issued by

the Commission on 30 October had specifically announced that an Article 8(4) procedure would follow. However I also made clear that supplementary documentation would be accepted for a short period after this time. On request, however, I agreed to await an additional written submission from Tetra setting out the special circumstances of this case. A letter was sent by Tetra later that day. In the letter of 29 November I confirmed my provisional conclusion on the deadline but also confirmed that “expert opinions further supporting Tetra’s contention that the Commission’s proposal was disproportionate” and the “development of alternative methods of divestiture” referred to by Tetra in their letter, could be provided after this date. In addition, Tetra was given full opportunity to develop its arguments orally in the oral hearing, which took place on 14 December 2001. Tetra was accompanied at the hearing by its merchant bankers and independent financial analysts. In these circumstances, I consider that Tetra’s rights to be heard have been respected in this case.

The draft decision only contains objections in respect of which the parties have been afforded the opportunity of making known their views.

Karen WILLIAMS