EN

Case No COMP/M.4104 - AKER YARDS / CHANTIERS DE L'ATLANTIQUE

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 27/03/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

Subject: Case No COMP/M.4104 - Aker Yards/ Chantiers de l'Atlantique Notification of 20.02.2006 pursuant to Article 4 of Council Regulation No 139/2004

1. On 20.02.2006 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004[1] (the Merger Regulation), by which Aker Yards France Holding AS, which is ultimately controlled by the Norwegian group Aker ASA, acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of most of the assets and activities of the French undertaking Chantiers de l'Atlantique ("CAT").

2. After examining the notification, the Commission has concluded that the notified operation falls within the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

3. Aker Yards ASA ("Aker Yards") is an international shipbuilding group focusing on sophisticated vessels. Its product range includes cruise vessels and ferries, merchant vessels, offshore and specialised vessels. Aker Yards comprises 13 yards in Norway, Finland, Germany, Romania and Brazil. Aker Yards is controlled by Aker ASA ("Aker"), the parent company of the Aker Group, a Norwegian industrial group with

[1] OJ L 24, 29.1.2004 p. 1.

wide-spread activities in Europe, North and South America and in the Asia-Pacific region.

4. CAT is a French shipyard, located in Saint-Nazaire, active in the high value-added shipbuilding sector. CAT produces various types of commercial ships, mainly cruise ships, LNG tankers, research vessels and military vessels. CAT is currently owned by Alstom Holdings, which in turn is a wholly owned subsidiary of Alstom SA.

II. THE OPERATION

5. As a result of the proposed transaction, CAT, together with its two subsidiaries AMR and Alstom Leroux Naval, will transfer the major part of their business (apart from a limited number of assets, contracts and liabilities) into a new entity set up for the purposes of the transaction. The shipbuilding businesses will be transferred as a going concern including existing shipbuilding contracts but with the exclusion of certain assets, liabilities and existing contracts for LNG ships,[…].

III. THE CONCENTRATION

6. Aker Yards will, through its wholly-owned holding company Aker Yards France Holding, acquire control of the new entity by way of an acquisition of 75% of its share capital, the remaining 25% non-controlling interest will initially be kept by Alstom Holdings[2]. Alstom Holdings, Aker Yards France Holding and New CAT will enter into a shareholders' agreement relating to New CAT. Under this agreement New CAT will be solely controlled by Aker Yards France. Consequently, the proposed transaction constitutes an acquisition of sole control within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[3] [EUR 6 176 million for Aker in 2004; EUR […] million for CAT in 2004]. The aggregate Community-wide turnover of each of the undertakings exceeds EUR 250 million [EUR […] million for Aker in 2004; EUR […] million for CAT in 2004) and they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

V. COMPETITIVE ASSESSMENT

A. RELEVANT PRODUCT MARKET

8. The parties submit that the relevant product market should be defined as commercial shipbuilding in general. They claim that (i) on the supply-side there is a significant substitutability between the various types of commercial vessels and that (ii) on the demand side there are a number of large integrated ship owners which operate a variety of commercial vessels.

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2 […].

3 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25).

9. In previous Commission decisions the Commission has left open as to whether all commercial vessels belong to one relevant product market. However, in e.g. Case No COMP/M.2772 - HDW/Ferrostaal/Hellenic Shipyard[4], the Commission indicated that the market for commercial shipbuilding could be divided into several separate product markets according to the main groups of ships such as oil tankers, bulk carriers, container ships, product and chemical carriers, LNG tankers, LPG tankers, roll-on roll-off vessels, ferries, cruise ships, offshore/specialised vessels etc. The market investigation in the current case also supported such a segmentation of the market.

10. The market investigation has shown that it is appropriate to distinguish cruise ships from the overall commercial shipbuilding market both on the basis of demand and supply side considerations. On the demand side, most cruise operators do not order other kinds of commercial ships. On the supply side, the market investigation has revealed that companies building cruise ships can produce less sophisticated vessels, whereas companies building less sophisticated vessels would find it difficult to move into the production of cruise ships. This limitation of supply side substitutability is explained by the following:

    a. Cruise ships are significantly more sophisticated than the other commercial vessels, involving complex engineering and specialized construction techniques. Therefore appropriate design, engineering, and construction know-how is required, although it has to be noted that often these services are provided by specialist marine consultants and are, therefore, universally available on a commercial basis.

    b. A significant part of the components (up to 70-80%) of a cruise ship are not produced by the company building it, but purchased from hundreds of suppliers. The construction therefore requires a very important supplier's network and the capability to manage and maintain it. Project management, supply chain management, and logistics are indispensable skills to integrate suppliers in the production process.

    c. As the size of the cruise ships during the last years has been increasing large facilities are required, notably appropriate dimensions of dry-docks and crane capacity. For the same reason, a yard's location plays a role, although it has to be noted that even very large cruise ships are not bigger than the largest tankers or container ships for which ample production capacity exists.

    d. As the value of each individual cruise ship is considerable (several hundreds of million), and the study and construction period is long, the financing of the construction requires important financial resources. However, the problem of shipyard financing applies also to other ship types and is not confined to cruise ship construction.

    e. The sophistication and the value of cruise ships means that cruise operators will not risk costly delays in the delivery by awarding the construction of a ship to an inexperienced yard and references are needed. Thus, a proven track-record plays a significant role in order for a ship yard to be credible from a commercial point of view.

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4 Commission decision of 25/04/2002.

11. The market investigation has also demonstrated that it is appropriate to distinguish ferries from the overall commercial shipbuilding market both on the basis of demand and supply side considerations (see further below).

12. On the basis of the foregoing, the proposed concentration could lead to affected markets, i.e. markets in which the parties combined market share would be above 15%, for two segments within commercial shipbuilding: cruise ships and ferries.

(i) Construction of Cruise Ships

13. Cruise ships are ships primarily intended for passenger leisure purpose only, i.e. not for transportation between two geographical locations. The length of a cruise typically varies from a 3 to 4 day short cruise to a 10 or 14 day long cruise.

14. According to the parties, the various types of cruise ships are largely substitutable from a demand-side perspective: all types of cruise ships, regardless of size, geographical area of operation, or standard, are intended for the same use and serve the same purpose, namely cruise traffic for passenger leisure purposes. In addition, several operators have a diversified fleet covering the entire range of vessel sizes and standards in all main geographical areas. From a supply side perspective, all requirements for different types of cruise ships can be provided by any shipyard active in the cruise segment. These shipbuilders can readily offer cruise ships of various sizes and standards, without having to make any significant adjustments to existing facilities and without incurring significant additional costs. Thus, in the parties view it is not appropriate to further segment cruise ships according to size or type of vessel.

15. During the course of the Commission's market investigation it was suggested that the cruise ship market could be further divided between small luxury cruise ships and large cruise ships. On the customers' side, there are operators present only in the former segment and not in the latter. On the supply side, several smaller yards can build small cruise ships but not the larger ones. The parties have suggested that the relevant market for large cruise ships could start at ships sizes of 30,000 gt and above. The Commission notes that only two ships between 30,000 gt and 59,000 gt have been ordered during the last five years, and none during the last three years. It is therefore not necessary for the purpose of the current transaction to conclude on the exact lower size for defining the relevant product market for large cruise ships.

16. Regarding further segmentation of the large cruise ships on the basis of the size, cruise operators generally distinguish between panamax ships (approximately up to 100,000 gt) and post panamax ships (approximately 100,000 gt and above). The distinction panamax/post-panamax refers to the limits imposed by the Panama Canal: post-panamax ships can not pass through the Panama Canal locks[5]. Post-panamax cruise ships currently represent the majority of new orders for large cruise ships). It was therefore suggested that the relevant market for large cruise ships should be divided along those lines.

17. The market investigation has, however, not provided conclusive evidence that this industry practise of market segmentation should be used for market definition purposes. Indeed data show that both on the demand and supply side there is no clear demarcation

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[5] Vessels exceeding any of the following dimension – length 294.1 metres, width 32.3 metres, draft 12.4 metres and height 57.9 metres – cannot cross the canal and are referred to as post-Panamax vessels.

line around 100,000 gt since operators order different sizes of ships and compete with those in the same market. The ability to cross the Panama channel is also becoming less relevant. It does not appear that post-panamax ships would allow the operator to benefit from economies of scale dramatically larger than with panamax ships. This finding is also consistent with an analysis made by GP Wild[6] provided by the parties, which concludes that the cruise operator realises important economies of scale when increasing the size of the ship up to a level of 2000-2499 lower berths[7]. Above this size, additional economies of scale seem more limited.

18. On the supply side, there are four suppliers building large cruise ships: the two parties (Aker and CAT), the Italian shipyard Fincantieri and the German Meyer Werft (Meyer). All can produce and have secured orders for delivery of both panamax and post-panamax ships. Thus, there is also supply side substitutability between panamax and post-panamax cruise ships.

19. However, the market investigation has shown that when it comes to meeting demand of large cruise ships above 180,000 gt, Meyer is constrained due to the geographical location of its main yard. For that reason, it has been argued during the market investigation that the market for large cruise ships should be divided around 180,000 gt.

20. Regarding the current demand for ships above 180.000gt, RCCL, which is the second biggest cruise operator, ordered in February 2006 the first ship - with an option for its sister ship – which exceeds that size[8]. Regarding potential future demand for such very large ships, it can be noted that contrary to RCCL's strategy, Carnival – the biggest cruise operator - appears to have put on hold a similar project called Pinnacle[9].[…]. It should also be taken into account that there are a number of constraints associated with very large ships; ship length limits port availability and excessive width lowers the percentage of outside cabins. Meanwhile, deck space does not grow proportionally to gross tonnage, so very large cruise ships have reduced open deck space per passenger, which is not much appreciated by passengers. In addition, the aforementioned study of GP Wild indicates that economies of scales generated by increasing the size to that level seem to be negligible, if not non-existent. Thus, ships larger than 180,000 gt represent a limited part of the current order backlog and there is no indication that such ships would represent the bulk of the demand in the future.

21. In addition to the foregoing, an analysis of existing orders indicates that the very large ship is a modified version of existing post-panamax ships, through elongation and additional decks. They are also used for the same purpose, to provide cruise vacations, and compete in the same market as other large (panamax or post-panamax) ships. There is therefore a chain of substitution from the smaller to the very large ships. The Commission therefore concludes that there is not sufficient evidence to suggest that there

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6 Source: *Implications of fleet changes for cruise market prospects to 2014*, June 2005, GP Wild.

7 A level of 2000 lower berths can already be accommodated in a ship of a size of 70,000gt (e.g. the three ships ordered by Aida Cruises (Carnival) to Meyer Werft will have 2030 lower berths and 68,500gt.

8 This so-called the Genesis project, a ship of 220,000gt. The second largest ships currently on the order books are the 158,000 gt large Freedom of the Seas class, ordered from RCCL to Aker.

9 Source: Lloyd's Register – Fairplay, 16 March 2006.

is a distinct market for ships larger than 180,000 gt (or very large ships) but this should rather be considered as a sub-segment of the large cruise ship market.

22. Some respondents in the market investigation have also argued that the cruise ships market could be further segmented on the basis of luxury standard and geographical area of operations. However, despite the fact that cruise ships are customer made the large cruise ships built during the last years have a significant number of common features and they all have important services and amenities. The market investigation has also confirmed that they are all purchased by the customers for the same use, that is, to offer cruise vacations. Finally, as well as on the supply side as on the demand side, the same companies build, respectively purchase, these different categories of ships. It is therefore not appropriate to segment the cruise ship market further on the basis of these elements.

23. The Commission's investigation has shown that there is a chain of substitution between different sized cruise ships both on the demand and the supply side. However, it appears that due to the specific demand and supply considerations indicated above, one could distinguish a possibly market for cruise ships larger than around 30,000 gt. However, since for the purpose of the current decision it is not necessary to conclude where a possible segmentation should be, the relevant product market definition can be left open (see further below).

(ii) Construction of Ferries

24. Ferries are ships designed for transporting passengers and often goods and vehicles between two (in rare cases more) fixed locations (ranging from domestic short distance travel to international overnight travel).

25. According to the parties, the various types of ferries are largely substitutable from a demand-side perspective: all types of ferries, regardless of size or standard, are intended for the same use and serve the same purpose, namely to transport passengers, sometimes with their vehicle, from one fixed point to another. In addition, several operators have a diversified fleet consisting of conventional, cruise and/or high speed ferries. From a supply side perspective, all requirements for different types of ferries can be provided by any shipyard active or potentially active in the ferry segment. These shipbuilders can readily offer ferries of various sizes and standards, without having to make any significant adjustments to existing facilities and without incurring significant additional costs. Thus, in the parties view it is not appropriate to further segment ferries according to size or type of vessel.

26. The market investigation has shown that customers of ferries do not consider all types of ferries substitutable since ferries are ordered for a specific route / purpose by the customer. In particular, day ferries (used for short day crossings) are not substitutable to night ferries which are intended for overnight crossings and have in addition to public rooms dedicated cabins etc. In this regard, it has also been argued that the so-called cruise ferries could be considered as a separate market. No consistent definition of cruise-ferries came out of the Commission's market investigation. One proposed definition was that such ferries have a larger number of cabins (one berth per passenger ratio) and are of "cruise-ship standard". As regards the supply side, the market investigation has shown that not all competitors in the ferry market construct all types of ferries. Particularly night ferries which require other know-how and outfitting than day ferries. Nevertheless, suppliers of night ferries and the more sophisticated night ferries,

cruise ferries, are generally able to build all types of ferries since such vessels are generally more sophisticated than the day ferries.

27. For the purpose of the current investigation it is not necessary to determine whether a distinction should be made between day and night ferries and/or possibly day, night and cruise ferries since irrespective of market definition the proposed transaction would not lead to serious doubts (see further below).

B. RELEVANT GEOGRAPHIC MARKET

28. The parties submit that the relevant geographic market for commercial shipbuilding is global in scope. The Commission's market investigation has supported the view that the relevant geographic market for commercial shipbuilding is generally global in scope with suppliers in both Europe and Asia taking orders from customers around the world. In particular, the market investigation has supported the view that the market for production of cruise-ships is global.

29. With regard to ferries the market investigation has supported the view that the relevant geographic market is at least European-wide and very likely global. It is not necessary to conclude on this issue since even on a European wide market the proposed transaction would not lead to serious doubts.

C. ASSESSMENT - HORIZONTAL OVERLAPS

30. The parties estimate their combined market share in the overall commercial shipbuilding market to between [0-10]% based on gross tonnage and around [0-10]% on the basis of turnover. On the basis of narrower product market definitions, the proposed transaction would only lead to market shares around and above 15% for two markets, the market for the construction of large cruise ships (above 30,000 gt) and the market for construction of ferries. Thus, the Commission's assessment of the proposed transaction is limited to those two markets.

(i) Construction of Large Cruise Ships

a) Non-coordinated effects

31. On a 16 year period average (1990 to 2005) approximately 8 cruise ships have been delivered each year worldwide. During the last five years (2001-2005), an average of 6 to 7 cruise ships have been ordered each year.

32. It should be noted that a number of cruise ships are "sister ships", based on the same design as the "prototype ship". Ordering of such sister ships offers to the customer advantages in terms of price and speed of delivery (less time spent on negotiating the design and the price). If one excludes sister ships and look only at new prototypes, there have been only 11 prototype orders since 2001 or an average of 2 per year. Indeed, in case of sister ships, historical data show that the order is allocated to the shipbuilder that has built the corresponding prototype. There is therefore limited competition for the sister ship orders, even if sometimes the purchaser consults other shipbuilders for price. Nevertheless, if one takes into account the value of the sister ships, each “tender” for a prototype has generated an average (since 2001) value of 1,327 EUR million for the winning yard. Thus, to win the contract for the prototype ship is important.

33. When a cruise operator plans to acquire a new ship or consider making that step, it makes contact with one, or possibly two, shipyards. On the basis of the requirements of the operator, discussions start. The shipyard makes proposals regarding the design and the price. At a certain stage, the cruise operator will normally ask for a quote/bid from one other shipyard (in some cases two) in order to compare the price proposed by the first shipyard. Completion of contracts takes approximately three years on average from contract to delivery (normally a little bit less for sister ships). As indicated, turnover under each awarded contract accounts for a significant proportion of a shipbuilder's turnover in the sector for the period of the contract.

34. Given that there are few orders and deliveries each year, annual market shares are not a good proxy of market power. This justifies taking a longer perspective in order to assess the impact of the planned concentration in the market. The notifying parties have proposed that an average based over a five year period is appropriate and there is no indication that this would not be reasonable. Therefore the Commission's assessment has focused on orders placed in the period from 2001 up to today.

35. The production of large cruise ships is highly concentrated with four players dominating the market: Fincantieri, Meyer Werft, Aker Yards and CAT10. On the basis of orders placed, values and gross tonnage of orders placed since 2001, excluding options not yet exercised, the market shares are:

2001- Feb 2006 market shares[11]	**Aker**	**CAT**	**Aker+CAT**	**Fincantieri**	**Meyer**	**Others**
Based on number of orders	[10-20]%	[10-20]%	**[30-40]%**	[30-40]%	[20-30]%	[0-10]%
Based on value (EUR)	[10-20]%	[10-20]%	**[30-40]%**	[40-50] %	[20-30]%	[0-10]%
Based on gross tonnage (gt)	[20-30]%	[10-20]%	**[30-40]%**	[40-50]%	[20-30]%	[0-10]%

36. On the other hand, customers are also highly concentrated with four customers representing almost the entire demand: Carnival, RCCL, MSC and STAR/NCL. On the basis of value and gross tonnage of orders placed since 2001, excluding options not yet exercised, the shares of total demand are:

2001- Feb 2006 shares of total demand[12]	**Carnival**	**MSC**	**Others**	**RCCL**	**STAR/NCL**
Based on value	[40-50]%	[10-20]%	[0-10]%	[20-30]%	[0-10]%
Based on gross tonnage	[40-50]%	[10-20]%	[0-10]%	[20-30]%	[10-20]%

37. In addition to the concentration on both sides of this market, the investigation has also shown a de facto preferred supplier relationship for each customer. Since 2001, Carnival's demand has been almost entirely supplied by Fincantieri (13 ships out of 16)

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10 Only one order in this reference period has been placed with another shipyard.

11 The calculations are based on data submitted by the notifying parties. Existing but not yet exercised options for sister ships are not taken into account.

12 The calculations are based on data submitted by the notifying parties. Existing but not yet exercised options for sister ships are not taken into account.

the other 3, smaller sized, cruise ships being supplied by Meyer. MSC has ordered all ships in this period from CAT and STAR/NCL all from Meyer. RCCL, however, has ordered most of its ships from Aker (4 out of 6). It has ordered 2 smaller sized cruise ships from Meyer.

38. The immediate effect of the proposed concentration will be to reduce the number of players in the market for the construction of large cruise ships from four to three. During the market investigation, customers have not expressed strong concerns about such a reduction. The concerns expressed are more specifically related to the specific relationships between one of the suppliers, Fincantieri, and the main customer, Carnival.

39. Some customers have indicated that Fincantieri, because of its close relationship with Carnival, may not be considered as a credible alternative by the other cruise operators for commercially sensitive and innovative projects due to the risk of Carnival learning about such projects.

40. The parties have claimed however that ensuring confidentiality is not an issue. First, there are well established procedures that can ensure confidentiality should a supplier build two ships for two competing clients at the same time. In particular, it is possible to establish "Chinese walls" whereby the two design teams are denied all access to information regarding each other's projects. The parties indicate that they have implemented this mechanism on more than one occasion, which shows that the customers have been satisfied with this arrangement. The parties also indicate that Fincantieri could readily set up effective Chinese walls within its structure, particularly given the different geographical locations of its cruise shipbuilding yards and design offices. The Commission observes that Meyer secured orders for a prototype from RCCL in July 2005, whereas Meyer was already working on orders from Carnival and Star. CAT also secured orders from MSC in 2001 for the building of a prototype, while CAT was developing the ships for Carnival, NYK, and Princess Cruises (not yet under the Carnival umbrella). This illustrates that orders from several customers can be secured by one single yard and that confidentiality concerns can be alleviated even if, from the customers' point of view, this remains a sensitive issue.

41. Another argument put forward has been that Fincantieri does not have the incentive to effectively compete for new orders, given its close relationship with the largest cruise operator Carnival. As a response to this argument, the parties have indicated that Fincantieri has tendered for many projects over the last five years for customers other than Carnival, among which[…]. The Commission's investigation has also indicated that Carnival has participated in bids for other customers. Further, Fincantieri does not seem to face any significant capacity constraint to take on new orders.

42. As indicated above, it has also been questioned whether Meyer would be able to meet demand for very large cruise ships. The market investigation is not conclusive about the ability of Meyer to compete for cruise ships above 180,000 gt. The limitation of the Papenburg yard to 180,000 gt large ships is also confirmed by Meyer's own submission and statement on its website. However, it appears that Meyer may have alternative solutions e.g. building parts in Papenburg and assembling them at another place.

Potential Entry

43. The parties have claimed that competition from Mitsubishi or the potential entry of other Asian shipyards like Samsung must be taken into account. In particular, they note that

Mitsubishi has delivered several cruise ships in the past13, including two post-panamax ships in 2004, and that this illustrates that they have the technical capability and know-how to do so. Regarding Samsung, the parties refer to its website indicating that the company aims at entering the cruise ship market and currently develop adequate design capabilities.

44. It can not be denied that Mitsubishi may have or could rapidly overcome the technical barriers to entry. However, other barriers to entry remain. The localisation of the sub-contractors in Europe, which results in additional transport costs and exchange rate risk is one factor mentioned in the market investigation. It has also been argued that as long as the demand for other types of ships remain important and price sufficient, there is no indication that the company has an interest to make the important financial investment necessary to overcome the aforementioned barriers and enter again the cruise ship market in the short term. Similar factors apply for Samsung, another shipyard mentioned by the parties. In addition, the latter appears to have limited technical expertise compared to Mitsubishi. Its entry on the market therefore appears further remote.

45. Thus, the potential entry of Asian competitors does not appear to be likely, timely and sufficient to deter any anti-competitive effect of the merger, if any.

Buyer power

46. The parties underline that customers have significant buyer power. In the merger Carnival/P&O (2002)14. It was noted that, "*the construction of large cruise vessels is a concentrated business where only a limited number of players are present, know-how is specific, expertise from different industries plays a significant role and availability of a broad network of subcontractors is essential. These factors would constitute protection with regard to the exertion of buyer power by cruise operators. While a number of the relevant shipbuilders whose main business area is the construction of cruise ships are actually able to produce other ship types such as container ships, ferries, submarines, naval vessels, gas carriers and offshore vessels, they have not been able to attract a sufficient number of orders for those ships (where applicable) due to trade conditions in these segments. There is consequently mutual dependency between the cruise operators and the cruise ship builders.*"

47. This investigation has indicated that there is a sort of dependency of the shipbuilders vis-à-vis the four large cruise operators, which provide those with a certain countervailing buyer power that can help in restraining the possibility of price increases. Given the low frequency and high value of orders for prototypes, losing an order because of uncompetitive pricing is penalizing. It results in substantial under-activity in the shipyard and in a consequent adverse effect on the financial performance. In addition to the low frequency of orders for prototypes, it has been shown that they are generally awarded to the preferred shipbuilder, even if other yards are asked a quote. Benefiting from such a status is therefore very valuable. Accordingly, the risk of losing such a status as preferred shipbuilder is a strong deterrent to propose uncompetitive pricing to its “preferred” customer.

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13 According to the data provided by the parties, Mitsubishi delivered 2 ships (21,903 gt and 46,821 gt) in 1990, one ship (28,717 gt) in 1991 and 2 ships (115, 875 gt each) in 2004.

14 Case No COMP/M.2706, Commission decision of 24/07/2002.

48. Regarding cruise ships above 180,000gt, even if Meyer were to be considered unable to compete for such large cruise ships, the merged entity would continue to face competitive constraints from Fincantieri. Regarding buying power in this segment of the large cruise ships market, first, it should be recalled that a very large ship represents such an important workload and revenue for the yard over several years that losing such an order – to a competitor or simply because the project is dropped - would be penalizing. Secondly, in face of a price increase for such ships by the merged entity, customers would have a strong incentive to approach the other supplier, Fincantieri, and resolve the confidentiality issue. Alternatively, they could approach potential entrants like Mitsubishi, which have the adequate yard facilities. Given that different sized ships are competing with one another, they could also drop the project and order smaller ships.[…], RCCL, represents almost the entire value of the orders recorded by Aker since 2001 and around [50-60]% of the value of the orders recorded by the merged entity during this period. Thus, it is likely that the importance of RCCL for the merged entity would play a role in restraining its ability to raise price or limit other anti-competitive behaviours.

b) Coordinated effects

49. The Commission's investigation has shown that, in this market, products are the result of discussions between suppliers and customers and, as a consequence, exhibit some degree of heterogeneity. Moreover, there are relatively few orders per year and the potential value of each of these orders is very significant for each supplier. Finally, each order involves very intense negotiations between each customer and suppliers.

50. Therefore, despite the transparency in the market place, coordination seems difficult to sustain and there are no indications that the merger will significantly increase the risk of coordinated effects. Moreover, no respondent to the market investigation raised such an issue.

c) Conclusion

51. The Commission's investigation has shown that there are strong links between the shipyards and the customers. Even if not mutual inter-dependence, these links are important due to the very nature and value of each of the projects undertaken. As indicated above, Fincantieri has the ability to build all types of ships, including the very large cruise ships. Meyer is further an important competitor that can compete for post-panamax ships.

52. As for coordinated effects, there is no evidence that would allow the Commission to conclude that the merger would increase the likelihood of co-ordination.

53. On the basis of the above, it can be concluded that the proposed transaction does not raise serious doubts as to its compatibility with the common market in a market of construction of cruise ships, irrespective of size.

(ii) Construction of Ferries

54. Both Aker and CAT construct ferries. CAT however has limited activities in this market and has only been active or taken orders for delivery of so-called day ferries, and is not active in the night ferries/cruise ferry segment of the market. Thus, the proposed

operation would only lead to an overlap in the parties' activities if a wide product market definition is used or if a day ferry market is defined.

55. Overall, during the period 2001 to 2005 Aker has received orders for a total of 16 ferries (of which 12 in 2005) and CAT 2 orders (one in 2003 and one in 2004). During the same period Aker delivered 3 ferries in 2004 and has orders for delivery of 6 ferries in 2006, 4 ferries in 2007 and 4 ferries in 2008. CAT has delivered one ferry in 2005 and has one more ferry for delivery in 2006.

56. Looking at the parties' estimated market shares on the overall market for ferries on the basis of orders received during 2001-2005, the parties' activities would only overlap for year 2004. In that year the parties' combined market share would be around [0-10]%. On the basis of ferry deliveries for the period 2003-2008, there would only be an overlap in year 2006. Their combined market share for deliveries that year would be around 10-20]% on European-wide basis. Given that ferries takes an average of one and half year to two years to complete, a traditional year-by-year approach when looking at market shares would not necessarily reflect the competitive impact in the market. Taking the parties average market share for a longer period would provide a similar result with a market share of less than or around [10-20]% for the period 2003-2006 on the basis of deliveries. On the basis of orders received (by gross tonnage), the average market share for the period 2001-2005 would be around [20-30]% (Aker [20-30]% and CAT [0-10]%) on European-wide basis and [20-30]% worldwide. The parties' main competitors for the same period are Fincantieri ([20-30]%), Visentini ([10-20]%), Apuania ([0-10]%) and Samsung ([0-10]%).

57. Looking at the proposed transactions impact on a hypothetical market for day ferries, the parties' combined market shares, based on orders in gross tonnage during the period 2001-2005, would be around [10-20]% on a world-wide basis (Aker around [0-10]% and CAT around [0-10-%) and around [20-30]% on a European wide basis. Main competitors for the construction of day ferries are Samsung with an average market share of [20-30]% worldwide and [30-40]% in Europe, Barreras ([10-20]%), Austal ([10-20]%/ [0-10]%) and Remontowa ([0-10]%).

58. As stated above, there is no overlap in the parties' activities for night ferries, including cruise ferries, since CAT is not active in this segment of the market. However, during the market investigation it has been argued that the proposed transaction may lead to concerns on the cruise ferry segment of the ferry market.

59. During the course of the Commission's market investigation it has also been argued that one could distinguish so-called cruise-ferries from other night ferries. The investigation has shown that also on such a hypothetical market the proposed transaction would not lead to competition concerns. First, CAT is not active in this segment of the market. Second, there are a number of important competitors already active in this segment market. In addition to Aker and Fincantieri, also Meyer, Fosen, Flender and Mitsubishi have delivered "cruise ferries" in the past. Therefore, the removal of CAT as a potential entrant into this segment of the ferry market would not lead to competition concerns.

60. On the basis of the above, it can be concluded that the proposed transaction does not raise serious doubts as to its compatibility with the common market for the construction of ferries, irrespective if the market is defined as an overall market or on the basis of day and night ferries, with a possible further segmentation on cruise ferries.

VI. CONCLUSION

61. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission
(signed)
Neelie KROES
Member of the Commission