



EUROPEAN COMMISSION

DG Competition

***Case M.9162 - FINCANTIERI /
CHANTIERS DE L'ATLANTIQUE***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERCER PROCEDURE**

Article 22

Date: 08.01.2019



Brussels, 08.01.2019
C(2019) 45 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the Bundeskartellamt:

Subject: **Case M.9162 – Fincantieri/Chantiers de l’Atlantique**
Request for referral of 22 November 2018 by the French *Autorité de la concurrence* to the Commission pursuant to Article 22(1) of Council Regulation (EC) No. 139/2004¹ and Article 57 of the Agreement on the European Economic Area²

Ref.: Letter of the *Autorité de la concurrence* of 22 November 2018
 Letter of the *Bundeskartellamt* of 30 November 2018

Dear Sir or Madam,

1. INTRODUCTION

- (1) By its request of 22 November 2018, the French Competition Authority (the “*Autorité de la concurrence*”) formally requested the Commission to examine, in application of Article 22(3) of the Merger Regulation, the acquisition of sole control by Fincantieri over Chantiers de l’Atlantique (the “Transaction”). In your letter of 30 November 2018, you have expressed your wish, pursuant to Article 22(2) of the Merger Regulation, to join the initial request by the *Autorité de la concurrence*. Fincantieri and Chantiers de l’Atlantique are hereafter referred to as the “Parties”.
- (2) Pursuant to Article 22(1) of the Merger Regulation, one or more Member States may request the Commission to examine any concentration, as defined in Article 3 of the Merger Regulation, that does not have a Union dimension within the meaning of Article 1 of the Merger Regulation but affects trade between

¹ OJ L 24, 29.1.2004, p. 1 (the “Merger Regulation”). With effect from 1 December 2009, the Treaty on the Functioning of the European Union (“TFEU”) has introduced certain changes, such as the replacement of “Community” by “Union” and “common market” by “internal market”. The terminology of the TFEU will be used throughout this decision.

² OJ L 1, 3.1.1994, p.3 (the “EEA Agreement”).

Member States and threatens to significantly affect competition within the territory of the Member State or States making the request. Such a request must be made within 15 working days of the date of the notification of the concentration, or if notification is not required, otherwise made known to the Member State. Pursuant to Article 22(2) of the Merger Regulation, any other Member State may join the initial request within a period of 15 working days of being informed by the Commission of the initial request. Pursuant to Article 6(3) of Protocol 24 to the EEA Agreement, any EFTA State may join the request within a period of 15 working days from the day on which the Commission informed the EFTA Surveillance Authority of the initial request.

- (3) In the present case, Fincantieri notified the Transaction to the *Autorité de la concurrence* and the German Competition Authority (the “*Bundeskartellamt*”) on 9 November 2018. The Transaction would not be notifiable in any other Member State.
- (4) On 22 November 2018, the Commission received a referral request pursuant to Article 22(1) of the Merger Regulation from the *Autorité de la concurrence*.
- (5) The Commission informed, in accordance with Article 22(2) of the Merger Regulation, the competent authorities of the other Member States on 22 November 2018 and Fincantieri on 23 November 2018 of the request made by the *Autorité de la concurrence*.
- (6) On 30 November 2018, the *Bundeskartellamt* joined the referral request.

2. THE PARTIES AND THE OPERATION

- (7) **Fincantieri** is an Italian shipbuilding group, majority-owned by *Cassa depositi e prestiti*, which is in turn majority-owned by the Italian State. Fincantieri is mainly active in the design and manufacture of merchant ships, military ships, and high-tech off-shore vessels. It also provides services to shipowners, and designs and manufactures systems and components. With almost 19 000 employees and 20 shipyards on four continents, Fincantieri is the leading European shipbuilder.³
- (8) **Chantiers de l’Atlantique** (“CAT”) is a French shipbuilding company majority-owned by the French State through its *Agence des participations de l’État*. CAT is mainly active in the design and manufacture of passenger ships. It also provides services to shipowners. Before its nationalisation, CAT was formerly part of the bankrupt South Korean group STX and operated under the name STX France. The latter sold in 2016 the shipyard located in Lorient (France) to a joint venture between Piriou and Naval Group (both of France) active in military shipbuilding.
- (9) The Transaction, as notified to the *Autorité de la concurrence* and the *Bundeskartellamt*, consists in the acquisition of sole control by Fincantieri over CAT.
- (10) Pursuant to the share purchase agreement signed on 2 February 2018, Fincantieri will acquire a 50% stake in CAT from the French State and will be lent a 1%

³ Fincantieri also operates a joint venture with China State Shipbuilding Corporation (“CSSC”), which aims to promote the construction of cruise ships for the Chinese market. In addition to that, cooperation with the French Naval Group in the military sector is being implemented.

stake by the French State. Under the terms of the shareholders' agreement, (i) the casting vote given to Fincantieri within the Board of directors of CAT, and (ii) the limited veto rights granted to the French State (which are akin to the normal protection of the interests of a State minority shareholder) will result in Fincantieri alone being able to exercise decisive influence over CAT.

- (11) The Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.
- (12) The Transaction does not have Union dimension within the meaning of Article 1 of the Merger Regulation. According to information provided by the *Autorité de la concurrence* and the *Bundeskartellamt*, CAT achieves a turnover of more than EUR 25 million in only two Member States (France and Germany).

3. ASSESSMENT OF THE REFERRAL REQUEST

- (13) In addition to constituting a concentration without a Union dimension, one procedural and two substantive conditions must be fulfilled pursuant to Article 22(1) of the Merger Regulation before one or more Member States may request the Commission to examine the concentration.
- (14) As to the procedural condition, the referral shall be made at most within 15 working days of the date on which the concentration was notified, or if no notification is required, otherwise made known to the Member State concerned, and any other Member State shall have the right to join the request within a period of 15 working days of being informed by the Commission of the initial request.
- (15) As to the substantial conditions, the concentration must: (i) affect trade between Member States; and (ii) threaten to significantly affect competition within the territory of the Member State(s) making the request.⁴
- (16) If these requirements are met and pursuant to Article 22(3) of the Merger Regulation, the Commission may, at the latest 10 working days after the expiry of the period set out in Article 22(2) of the Merger Regulation, decide to examine the concentration.

3.1. Procedural criteria

- (17) The *Autorité de la concurrence* was notified of the Transaction on 9 November 2018. On 22 November 2018, the *Autorité de la concurrence* requested a referral of the Transaction to the Commission pursuant to Article 22 of the Merger Regulation. Having been informed by the Commission of that request on 22 November 2018, the *Bundeskartellamt* joined the referral request on 30 November 2018.
- (18) Therefore, the initial referral request has been made within the deadline set out in Article 22(1), second indent, of the Merger Regulation and the request to join has been made within the deadline of Article 22(2), second indent, of the Merger Regulation.

⁴ See also Commission Notice on Case Referral in respect of Concentrations (OJ C 56, 5.3.2005, p. 2) (the "Referral Notice"), paragraphs 42-44.

3.2. Substantive criteria

3.2.1. *Effect on trade between Member States*

- (19) According to paragraph 43 of the Referral Notice, a concentration fulfils the criterion of effect on trade between Member States laid down in Article 22 of the Merger Regulation if it is liable to have some discernible influence on the pattern of trade between Member States.
- (20) The *Autorité de la concurrence* submits that the Transaction affects trade between Member States, considering that the relevant markets, notably the market for cruise shipbuilding which is the most affected by the Transaction, have been defined previously by the Commission as EEA-wide or worldwide in scope.
- (21) The *Bundeskartellamt* is also of the view that this criterion is met. In addition to the worldwide geographic scope of the market for cruise shipbuilding, the *Bundeskartellamt* notes that the Parties' and their competitor's cruise shipyards are located in several Member States (France for CAT, Italy for Fincantieri, Germany and Finland for Meyer Werft).
- (22) In the present case, it appears that the relevant markets, that is to say (i) cruise shipbuilding, (ii) the provision of services incidental to shipbuilding, and (iii) repair, conversions, and maintenance of merchant ships, are likely to be at least EEA-wide. In particular, as regards cruise shipbuilding, cruise ship operators place orders globally and the cruise ships manufactured in the EEA are sold globally.⁵
- (23) In light of the above, it appears that the Transaction would affect trade between Member States within the meaning of Article 22 of the Merger Regulation and paragraph 43 of the Referral Notice.

3.2.2. *Threat to significantly affect competition within the territory of the Member State(s) making the request*

- (24) According to paragraph 44 of the Referral Notice, with respect to the second criterion, a referring Member State should demonstrate that, based on a preliminary analysis, there is a real risk that the transaction may have a significant adverse effect on competition and thus deserves close scrutiny, without prejudice to the outcome of a full investigation.
- (25) The *Autorité de la concurrence* and the *Bundeskartellamt* submit that, *prima facie*, the Transaction would likely give rise to horizontal effects on the market for cruise shipbuilding and, as a consequence, significantly affect competition in France, Germany and within the territory of the Union, as a result of horizontal unilateral effects on the market for cruise shipbuilding.
- (26) The worldwide market for cruise shipbuilding is highly concentrated, with only three undertakings significantly active on the market: CAT, Fincantieri and

⁵ See for example Cases M.4956 – *STX/Aker Yards*, paragraph 36; M.4104 – *Aker Yards/Chantiers de l'Atlantique*, paragraph 28.

Meyer Werft.⁶ The Transaction would thus bring together two of the three manufacturers of cruise ships at worldwide level, thus essentially resulting in a duopoly. In the *STX/Aker Yards* case, cruise ship owners had indicated that they call for quotes from various producers to preserve competition and consider that at least three competitors are necessary to maintain an adequate level of competition.⁷

- (27) In addition, it appears that the Parties' estimated combined share of the worldwide market for cruise shipbuilding would be at least [50-60]% (in value).
- (28) Moreover, as pointed out by the Commission in the *STX/Aker Yards* case, there appear to be significant barriers to entry to the cruise ship market in terms of technology and the know-how needed for the significant level of complexity involved in cruise ship building projects.⁸
- (29) On the basis of the above and without prejudice to the outcome of the investigation by the Commission, the initial referral request by the *Autorité de la concurrence* and the request to join the referral by the *Bundeskartellamt* indicate that the Transaction threatens to significantly affect competition at least within the territory of the Union, hence in France and Germany, within the meaning of Article 22 of the Merger Regulation and paragraph 44 of the Referral Notice.

3.3. Appropriateness of the referral

- (30) Pursuant to paragraph 45 of the Referral Notice, referrals of concentrations already notified should normally be limited to those cases that appear to present a real risk of negative effects on competition and trade between Member States and where it appears that these would be best addressed at Union level.
- (31) Furthermore, pursuant to paragraph 8 of the Referral Notice, in exercising its discretion to accede to a referral, the Commission must respect the general principles guiding referrals, notably the "one-stop-shop" principle and the principle that, by preference, the most appropriate authority should carry out the investigation, bearing in mind the need to ensure effective protection of competition in all markets affected by the transaction.
- (32) In this case, given the oligopolistic nature of the market and the combined market share of the Parties post-Transaction, the Transaction appears to present a real risk of negative effects on competition and trade between Member States.
- (33) Second, the cross-border nature of the affected markets matches the type of cases for which a referral to the Commission offers the efficiencies of a "one-stop-shop" system for both the Parties and the competition authorities. In particular, it appears more effective for a single European authority to carry out the investigative efforts and undertake the substantive assessment of the Transaction,

⁶ Based on estimates provided by Fincantieri, these three cruise shipbuilding companies account for [90-100]% in value and [80-90]% in volume of the market for cruise shipbuilding.

⁷ Case M.4956 – *STX/Aker Yards*, paragraph 153.

⁸ Case M.4956 – *STX/Aker Yards*, paragraph 15.

given that the Parties and their competitor operate worldwide and there are no distinctive features related to their sales in France or Germany.

- (34) Third, given the cross-border nature of the Transaction, the Commission is better placed to ensure that any potential competition concerns will be efficiently addressed by way of coherent remedies.
- (35) Fourth, while the *Autorité de la concurrence* and the *Bundeskartellamt* have dealt with concentrations regarding shipbuilding more recently than the Commission,⁹ these cases did not have the magnitude or the cross-border character of the Transaction.
- (36) In light of the above, the Transaction falls within the category of cases referred to in paragraph 45 of the Referral Notice.
- (37) As a result, the Commission considers that it is appropriate to accept the referral of the Transaction pursuant to Article 22 of the Merger Regulation.

4. CONCLUSION

- (38) On the basis of the above considerations, the Commission has concluded that the Transaction, as described by the *Autorité de la concurrence* in its referral request, is a concentration within the meaning of Article 3 of the Merger Regulation.
- (39) The Commission considers that the request by the *Bundeskartellamt* to join the initial referral request made by the *Autorité de la concurrence* for the application of Article 22(3) of the Merger Regulation is admissible as it meets the requirements laid down in Article 22(2) and 22(3) of the Merger Regulation and paragraphs 42-44 of the Referral Notice.
- (40) Moreover, pursuant to paragraph 45 of the Referral Notice and given the circumstances of the case, the Commission considers that it is appropriate to accept the referral of the Transaction pursuant to Article 22 of the Merger Regulation.
- (41) The Commission therefore has decided to examine the Transaction under the Merger Regulation. This decision is based on Article 22(3) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Member of the Commission

⁹ The *Bundeskartellamt* approved the acquisition of STX Finland by Meyer Werft in 2014 and the nationalisation of STX France in 2018. The *Autorité de la concurrence* reviewed the acquisition of the STX shipyard in Lorient by the joint venture between Piriou and Naval Group in 2016. The Commission's most relevant decisions in the sector date back 2008 (Case M.4956 – *STX/Aker Yards*) and 2006 (Case M.4104 – *Aker Yards/Chantiers de l'Atlantique*).