



EUROPEAN COMMISSION

Hearing Officer for competition proceedings

Brussels, 11 January 2022

Final Report of the Hearing Officer¹

Case M.9343 – Hyundai Heavy Industries Holdings / Daewoo Shipbuilding & Marine Engineering

(Text with EEA relevance)

1. INTRODUCTION

1. On 12 November 2019, the Commission received a notification of a proposed concentration by which Hyundai Heavy Industries Holdings ('HHIH') through its subsidiary Korea Shipbuilding & Offshore Engineering, would acquire, within the meaning of Article 3(1)(b) of Council Regulation (EC) No 139/2004² ('the Merger Regulation'), sole control of Daewoo Shipbuilding & Marine Engineering Co., Ltd. ('DSME') (the 'Proposed Transaction'). For the purpose of this report, HHIH and DSME are together referred to as 'the Parties'.

2. PROCEDURE

2. On 17 December 2019, the Commission adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation, as the Commission's first phase investigation raised serious doubts as to the compatibility of the Proposed Transaction with the internal market.

2.1. Initial extensions and suspensions of the time limit

3. On 10 January 2020, following a formal request by HHIH dated 10 January 2020, the Commission extended the time-period pursuant to Article 10(3), first subparagraph, of the Merger Regulation set for the adoption of a decision pursuant to Article 8 of the Merger Regulation in relation to the Proposed Transaction by 20 working days, as requested, pursuant to Article 10(3), second subparagraph, of the same regulation.

¹ 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').

² Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, 29.1.2004, p. 1.

4. Prior to the adoption of any statement of objections, the procedure was also suspended twice by Commission decisions adopted pursuant to Article 11(3) of the Merger Regulation, due to the failure of HHIH to provide complete and timely responses to requests for information by the Commission. The first decision was adopted on 4 February 2020, which suspended the time limits referred to in the first subparagraph of Article 10(3) of the Merger Regulation between 23 January and 21 February 2020. The second decision was adopted on 1 April 2020, which suspended the proceedings between 31 March and 2 June 2020.

2.2. Statement of objections

5. On 8 June 2020, the Commission adopted a statement of objections addressed to HHIH (the ‘SO’). The SO was formally notified to HHIH on 9 June 2020³ and HHIH was granted a deadline to submit its observations until 26 June 2020, which was later extended until 29 June 2020 by the Directorate-General for Competition (DG Competition). On 10 June 2020, DSME was also informed of the adoption of the SO and offered the opportunity to request a non-confidential version of the SO, should it want to submit (separate) observations pursuant to Article 13(2) of Commission Regulation (EC) 802/2004.⁴
6. In the SO, the Commission came to the preliminary view that the Proposed Transaction is likely to result in a significant impediment to effective competition within the meaning of Article 2(3) of the Merger Regulation as a result of anti-competitive horizontal non-coordinated effects, in particular through (i) the creation of a dominant position and/or (ii) the elimination of important competitive constraints that the Parties had exerted upon each other and a reduction of competitive pressure on the remaining competitors in the worldwide market for the construction of large vessel liquefied natural gas carriers (‘LLNGCs’); and through (i) the strengthening of HHI’s dominant position and/or (ii) the elimination of important competitive constraints that the Parties had exerted upon each other and a reduction of competitive pressure on the remaining competitors in the worldwide market for the construction of very large petroleum gas carriers (‘VLGCs’).

2.3. Access to the file

7. On 9 and 23 of June 2020, HHIH obtained access to the accessible documents in the Commission’s case file. Subsequent access to the file was provided on 21 October 2020, 30 April 2021, 22 November 2021 and on 20 December 2021.
8. I have not received any complaint or request from the Parties regarding access to the file.

2.4. Interested third persons

9. On 15 June 2020, two entities were admitted to be heard as interested third persons in this case.

³ On 8 June 2020, an (informal) advance information copy of the SO and its cover letter were already sent to HHIH’s external lawyers.

⁴ Commission Regulation (EC) No 802/2004 of 21 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ L 133, 30.4.2004, p.1.

10. The interested third persons were both provided with a non-confidential version of the SO and given a time limit within which to submit their observations on it. Each of the interested third persons did so, and non-confidential versions of their written comments were made available to the Parties.

2.5. Reply to the SO

11. On 29 June 2020, HHIH replied to the SO. The Parties did not request a formal oral hearing to be held.

2.6. Further suspension of the time limit

12. On 14 July 2020, following a failure by HHIH to provide complete information in response to an information request, the Commission adopted a third decision pursuant to Article 11(3) of the Merger Regulation. This decision suspended the time limit referred to in the first subparagraph of Article 10(3) of the Merger Regulation from 13 July 2020, the working day following the date on which HHIH should have submitted a complete response to the information request. HHIH submitted a complete response on 18 November 2021, and the suspension accordingly lasted to the end of that day.

2.7. Letters of facts

13. The Commission addressed HHIH two letters of facts, on 28 April 2021 (the ‘First Letter of Facts’) and on 19 November 2021 (the ‘Second Letter of Facts’), where it pointed out additional and/or updated factual elements in support of the preliminary conclusions reached in the SO, which upon further analysis of the file, the Commission had concluded were potentially relevant to substantiate its final decision.
14. HHIH submitted written comments to the First Letter of Facts on 2 June 2021, and to the Second Letter of Facts on 29 November 2021.
15. On 3 December 2021, upon review of HHIH’s response to the Second Letter of Facts, DG Competition sent HHIH a number of additional facts by e-mail, on which it indicated the Commission may rely in its final assessment and to which it wanted to draw HHIH’s attention. HHIH submitted observations to these additional facts by response e-mail of 6 December 2021.⁵

2.8. Draft decision

16. In the draft decision, the Commission only addresses the worldwide market for the construction of LLNGCs, in respect of which the Commission maintains that the Proposed Transaction would significantly impede effective competition as a result of the creation of a dominant position due to horizontal non-coordinated effects. The draft decision no longer maintains that the Proposed Transaction gives rise to a significant impediment of effective competition in the worldwide market for the construction of VLGCs.

⁵ On 6 and 7 December 2021, the Commission also sent further e-mails to HHIH, in which it provided clarifications on a very limited set of facts.

17. I have reviewed the draft decision pursuant to Article 16(1) of Decision 2011/695/EU and I conclude that it deals only with objections in respect of which the Parties have been afforded the opportunity of making their views known.

3. CONCLUSION

18. In view of the above, I consider that the effective exercise of procedural rights has been respected in this case.

Dorothe DALHEIMER
Hearing Officer