

Final Report of the Hearing Officer ⁽¹⁾
(Case M.8713 – Tata Steel/ThyssenKrupp/JV)

(Text with EEA relevance)

(2021/C 24/11)

1. On 25 September 2018, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ('the Merger Regulation') by which Tata Steel Limited ('Tata') and thyssenkrupp AG ('ThyssenKrupp') would acquire, within the meaning of Article 3(1)(b) and Article 3(4) of the Merger Regulation, joint control of a newly created joint venture (the 'Transaction'). Tata and ThyssenKrupp are designated hereinafter as the 'Parties'.

2. Based on the results of the Phase I market investigation, the Commission raised serious doubts as to the compatibility of the Transaction with the internal market and adopted a decision pursuant to Article 6(1)(c) of the Merger Regulation on 30 October 2018. The Parties submitted their written comments on the Article 6(1)(c) decision on 19 November 2018.

3. On 13 November 2018, 19 March 2019 and 25 April 2019, the second phase period for reviewing the Transaction was extended pursuant to Article 10(3) of the Merger Regulation by a total of 20 working days.

4. On 5 December 2018, the Commission adopted two decisions, addressed respectively to Tata and ThyssenKrupp, pursuant to Article 11(3) of the Merger Regulation, requesting the supply of certain documents no later than 21 December 2019 and suspending the merger review time limit until the receipt of the complete and correct information ('information request decisions'). On 11 December 2018, the Parties addressed a letter to the Hearing Officer, expressing their dissatisfaction with the adoption of the information request decisions, arguing, in essence, that the requests were too broad, that the deadline initially given for the Parties to respond was very short and that the suspension of the Commission's review timetable pursuant to Article 10(4) of the Merger Regulation was disproportionate, unjustified and unreasonable. The Parties complained that the information request decisions (and consequent suspension of the merger review time limit which was made public) had led to significant negative consequences, *e.g.* in terms of press inquiries and stock exchange reactions. As a first point, I note that Decision 2011/695/EU does not allow the Hearing Officer to take specific action with regards to the Parties' concerns ⁽²⁾. Given the explanations that were provided by DG Competition in relation to the information request decisions, the subsequent prompt response by the Parties to the information request decisions ⁽³⁾ and the absence of any further complaints by the Parties to me in relation to the information request decisions, I do not consider that the effective exercise of the Parties' procedural rights was impacted by the adoption of the information request decisions.

5. On 13 February 2019 the Commission adopted a Statement of Objections ('SO') pursuant to Article 18(1) of the Merger Regulation. In the SO, the Commission came to the preliminary view that the Transaction would likely significantly impede effective competition in the internal market within the meaning of Article 2 of the Merger Regulation due to (i) horizontal non-coordinated effects by eliminating an important competitive constraint in the market for the production and supply of hot dip galvanised steel for the automotive industry ('automotive HDG') in the EEA; (ii) the creation of a dominant position, or at least due to horizontal non-coordinated effects resulting from the elimination of an important competitive constraint in the markets for the production and supply of metallic coated (i.e. tin plate and electrolytic chromium coated steel) and laminated steel products for packaging in the EEA; and (iii) horizontal non-

⁽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⁾ While the Hearing Officer is competent to decide on a deadline extension in respect of decisions requesting information under Article 18(3) of Regulation (EC) 1/2003, there is no similar provision in Decision 2011/695/EU in relation to decisions requesting information under Article 11(3) of the Merger Regulation. The information request decisions could, however, have been the subject of annulment applications before the General Court.

⁽³⁾ Tata and ThyssenKrupp responded to the information request decisions on 4 and 9 January 2019 respectively.

coordinated effects by eliminating an important competitive constraint in the market for the production and supply of grain oriented electrical steel in the EEA. The Commission's preliminary conclusion was therefore that the notified concentration would be incompatible with the internal market and the functioning of the EEA Agreement.

6. The Parties were granted access to the Commission's file on 14 February 2019 and subsequently on 1 March, 21 March, 17 April, 3 May and 17 May 2019. A data room was organised between 14 February and 21 February 2019 allowing the economic advisors of the Parties to verify confidential information of a quantitative nature, which formed part of the Commission's file. A non-confidential report of the data room was provided to the Parties on 21 February 2019 and a revised version of this report was provided to the Parties on 22 February 2019. Another data room was organised from 21 to 25 March 2019. A second non-confidential data room report was provided to the Parties on 26 March 2019.

7. The Parties submitted their comments to the SO on 27 February 2019. The Parties did not request to be heard orally.

8. Five undertakings (ArcelorMittal, Ardagh, IG Metall, IndustriAll and Salzgitter AG) were admitted as interested third persons in the proceedings. All interested third persons were provided with a non-confidential version of the SO and Ardagh Group and Salzgitter AG submitted written comments to the SO, pursuant to Article 16(2) of the Commission Regulation (EC) 802/2004.

9. On 20 March 2019, the Commission addressed a Letter of Facts ('LoF') to the Parties. The Parties submitted their observations to the LoF on 25 March 2019.

10. On 1 April 2019, the Parties submitted commitments pursuant to Article 8(2) of the Merger Regulation. The commitments were market tested as of 2 April 2019. On 23 April 2019, the Parties submitted revised commitments (the 'Revised Commitments'). On 25 April 2019, the Commission launched a market test of the Revised Commitments.

11. In the draft decision, the Commission concludes that the Transaction would significantly impede effective competition in a substantial part of the internal market in relation to (i) the production and supply of automotive HDG in the EEA and (ii) the production and supply of metallic coated (i.e. tin plate and electrolytic chromium coated steel) and laminated steel products for packaging in the EEA. The objections concerning the production and supply of grain oriented electrical steel in the EEA were not maintained in the draft decision. The draft decision also concludes that the commitments submitted by the Parties did not entirely eliminate the significant impediment to effective competition brought about by the Transaction.

12. 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 known their views.

13. Overall, I consider that the effective exercise of procedural rights has been respected in this case.

Brussels, 29 May 2019.

Joos STRAGIER
