COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.03.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

**Subject : Case No IV/M.1009 - GEORG FISCHER/DISA**
Notification of 09.02.1998 pursuant to Article 4 of Council Regulation No 4064/89.

1. On 9 February 1998, the Commission received a notification of a transaction whereby the Swiss company Georg Fischer AG ("GF") and the Danish company Dansk Industri Syndikat A/S ("DISA") acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of Georg Fischer Disa Holding AG ("GF DISA"). The operation concerns foundry equipment.

2. After examination of the notification the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

## I. THE PARTIES AND THE OPERATION

3. DISA is worldwide active in the development, manufacture and sale of air filters and belongs to the Danish A.P. Møller Group, the latter having wide interests, among other things, in maritime activities such as container shipping, tankers etc.

4. GF is active in the development, manufacturing and marketing of technologically advanced processes, systems and plants as well as components. Its main businesses are within automotive engineering, pipeline systems, production engineering and plant construction.

5. GF DISA is a newly created joint venture to which the two parents have contributed their entire activities for the development, manufacture and sale of foundry equipment. The joint venture was formed in October 1995 and became operative on

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1 January 1996. The Commission will therefore consider a possible application of Article 14 of the Merger Regulation.

## II. CONCENTRATIVE JOINT VENTURE

### A. Joint control

6. GF DISA is a joint venture owned 50/50 by the parents. The resolutions of the shareholders meeting of GF DISA shall be passed only if agreed by both shareholders. Furthermore, the board of directors of GF DISA shall be composed of four members, each shareholder having the right to propose the election of two members. The board of directors shall pass its resolutions with at least three votes in favour. In addition, both the chairman and the vice chairman, being appointed by each shareholder, have to consent to such resolutions. Therefore, GF DISA is jointly controlled by its parents.

### B. Full-function joint venture

7. GF DISA encompasses all former activities of the parents in foundry equipment. The world-wide turnover of GF DISA was ECU 232 million in 1996. GF DISA will have all the necessary resources for the development, manufacture and sale of foundry equipment, including finance, staff, plants, equipment and other assets together with intellectual property rights. Furthermore, the joint venture is established for an indefinite period. GF DISA will thus perform on a long-lasting basis all the functions of an autonomous economic entity.

### C. Absence of coordination

8. Neither of the parties will be active in the joint venture's market, since they have transferred all their activities and capabilities to the joint venture. Furthermore, the parents have no activities in the markets upstream or downstream from the joint venture. Therefore, there is no scope for co-ordination of competitive behaviour between the parents.

9. Based on the above, the Commission concludes that the operation constitutes a concentration within the meaning of Article 3(1)(b) of Council Regulation No 4064/89.

## III. COMMUNITY DIMENSION

10. The parties have a combined aggregate worldwide turnover in excess of ECU 5,000 million (A.P. Møller: ECU [...][1] million; GF Group: ECU 1,565 million). Each of them has a Community-wide turnover in excess of ECU 250 million (A.P. Møller: ECU [...][1] million; GF Group: ECU [...][1] million), 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 has therefore a Community dimension.

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[1] Deleted for publication.

## IV. COMPETITIVE ASSESSMENT

### A. Relevant product markets

11. According to the parties the foundry equipment developed, manufactured and sold by GF DISA consists of four categories of production units: (i) moulding lines, (ii) sand preparation equipment to prepare the recycled sand used in the foundry process, (iii) core shooting equipment to make the core for the individual casting units and (iv) shot blast equipment to remove rust, scale and contamination from semi-finished and finished cast products. The parties submit that each of these product categories constitutes a separate product market. According to the parties, the products serve different functions in the production line of a foundry. However, in order to give an optimal product flow in the foundry they are normally linked together. The products are compatible between the different suppliers so that all four categories can be substituted with competitor equipment. In general, a foundry does not use one sole supplier for the four categories but will choose the supplier with the best suitable price/technology for the specific application.

12. The investigation carried out by the Commission confirms that both competitors and customers generally consider the products as constituting separate markets. However, for the assessment of the present case it is not necessary to delineate the relevant product markets because, whatever the market definition, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

### B. Relevant geographic markets

13. The parties submit that the geographic markets for the respective products are worldwide, at least EEA-wide. They base this, *inter alia*, on the fact that the sales prices for the respective products in for example Latin America and Asia are not significantly different from sales prices in the EEA. Furthermore, GF DISA achieves about [...][2]% of its sales outside the EEA and most of the sales are made out of production sites in Germany, Denmark and Switzerland. Also, there appear to be no significant barriers.

14. Competitors and customers asked by the Commission generally consider the market to be world-wide. Among other things, it has been pointed out that prices for equipment of comparable quality in Europe, USA and Japan are roughly the same. Furthermore, the existence of worldwide active foundry groups and worldwide active suppliers for foundries has been noted. However, for the assessment of the present case the exact determination of the geographic scope of foundry equipment can be left open since even if the analysis is carried out at the EEA-level which according to the parties and the Commission investigation, is the narrowest geographic scope to be taken into account, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

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[2] Deleted for publication: between 55-65%.

## C. Assessment

15. On the basis of the information provided by the parties, GF DISA's market shares in each of the four foundry categories, *i.e.* moulding lines, sand preparation, core shooting and shot blast, were below 15% at EEA level estimated on the basis of 1996 sales. According to the parties the market volume worldwide is extremely difficult to quantify as limited information is available for major East European and Asian markets. However, the parties estimate that the market shares worldwide are on the same level as the market shares in Europe.

16. The foundry equipment sector is highly fragmented and characterised by the presence of several large competitors, such as Sintokogio from Japan (and its subsidiary HWS in Germany), Simpson from Switzerland, Hunter from the USA, Loramendi from Spain as well as Laempe, Eirich and Hottinger from Germany. The competitors and customers contacted by the Commission generally confirmed the fragmented character of the market and expressed no serious concerns about the transaction.

17. In view of the market position of the joint venture and the large number of competitors active herein, the notified operation does not appear to have a significant impact on competition in the EEA. Consequently, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

# V. ANCILLARY RESTRICTIONS

18. The parties have requested a non-compete clause to be considered ancillary to the operation. According to this clause the parents shall not compete with the businesses transferred to GF DISA on a worldwide basis for the term of the joint venture agreement. The provision aims at expressing the reality of the lasting withdrawal of the parents from the market assigned to the joint venture and therefore it is covered by the present decision.

# VI. CONCLUSION

19. 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 functioning of the EEA Agreement. This decision is adopted in application of Article 6 (1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,