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Case No IV/M.1519 - RENAULT / NISSAN

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 12/05/1999

Also available in the CELEX database
Document No 399M1519

Office for Official Publications of the European Communities
L-2985 Luxembourg

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.05.1999

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

Subject: Case No IV/M. 1519 – RENAULT/NISSAN
Notification of 15/04/1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 15/04/1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which Renault SA ("Renault") acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of Nissan Motor Co. Ltd ("Nissan Motor"), Nissan Diesel Motor Co., Ltd ("Nissan Diesel") and Nissan European Financing Subsidiaries ("Nissan Financing") by way of purchases of shares.

I. THE PARTIES

2. Renault is a diversified automobile group divided into three divisions. The Automobile Division designs, produces and sells cars, light commercial vehicles, farm machinery, and handles related business. The Commercial Vehicles Division designs, produces and sells trucks, buses, coaches, military vehicles and special transport vehicles. The Finance Division brings together over forty vehicle sales financing and credit companies, as well as banks and a holding company, Compagnie Financière Renault, and contributes to Renault's development by providing financial and commercial support.

3. Nissan Motor manufactures and distributes vehicles and vehicle components and parts. Nissan is also engaged in certain vehicle financing activities, and sells other products such as rockets, forklifts, yachts and boats. Nissan Motor's shareholding is widely dispersed between some 111,090 shareholders, with major shareholders including Japanese bank and insurance companies. None of these shareholders currently holds more than 6% of Nissan Motor's capital.

4. Nissan Diesel manufactures and markets a wide range of light, medium and heavy trucks as well as buses and bus chassis, engines, vehicle components and special-purpose vehicles. It also manufactures products such as cogeneration systems and engines for marine equipment for use in various transportation and energy-related industries. Nissan Motor currently holds 39,9% of the shares of Nissan Diesel. The rest of the shareholding is widely distributed

between Japanese bank and insurance companies. None of these companies holds more than 6% of Nissan Diesel's capital.

5. Nissan Financing provide financing for consumer and wholesale purchases of new and used vehicles, financing for Nissan dealers, and insurance. Nissan European Financing Subsidiaries are only active in Europe and are composed of the following companies: Nissan Bank GmbH, Nissan Finance (GB) Ltd, Nissan Finanziaria SpA, Nissan Financiación SA and Nissan Finance B.V.. All these companies are currently wholly owned (100%) by Nissan Motor.

II. CONCENTRATION

6. The transaction consists in the acquisition by Renault of a 36,8% equity participation in Nissan Motor (amounting to [voting shares]), by means of a reserved capital increase, a 22,5% equity participation in Nissan Diesel, and 100% of Nissan European Financing Subsidiaries.

Nissan Motor

7. Renault will acquire an initial shareholding in Nissan Motor (36,8%) that amounts to [voting shares]. Furthermore, Renault will also acquire Nissan Motor bonds with detachable warrants [details concerning voting shares]. Furthermore, Renault and Nissan Motor have agreed on certain anti-dilution measures that will allow Renault to maintain its shareholding in Nissan Motor at a minimum of 33,4%. Pursuant to the Japanese law, such a shareholding will give a veto over decisions that require a super-majority (two-third)-shareholder vote [details concerning veto rights]. Renault will be the only shareholder having such veto rights and, thus, have, inter alia, a strong control over the capital of Nissan Motor[1].

8. […] the Board of Directors of Nissan Motor comprises 37 members, including […]. However, it is expected that the number of Directors will be significantly reduced in the near future. Renault will have the right to appoint 3 members and will be the only shareholder represented. [Details concerning the functioning of the Board] the three members of the Board appointed by Renault will be three key members: the first executive Vice-President and Chief Operating Officer (COO), the executive Vice-President for Product Planning and strategy, and the Deputy Chief Financial Officer.

9. The COO will be number two, after the President, in Nissan Motor's hierarchy and will oversee and supervise all management and operations of Nissan. The Board of Directors Regulations will be amended such that each Executive Vice president of Nissan Motor shall report directly to the COO. [Details concerning the role of the COO]. Renault's second representative will be responsible for ensuring convergence between Renault and Nissan Motor and the third representative will implement a system to control management. Renault will thus have a considerable influence, not only over the day-to-day management, but also over the business conduct of Nissan Motor.

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[1] Furthermore, it has to be noted that Renault will have to monitor very carefully the future strategy of Nissan Motor as the acquisition of shares in this company costs EUR 5 billion and the Nissan motor's debt is estimated [ ].

10. The analysis of voting at the shareholders' meetings for the previous three years shows that Renault will not have a majority with [voting shares]. However, the remaining votes are widely dispersed the other shareholders do not represent homogeneous interests. [Details concerning voting at the previous shareholders' meetings]. These factors, together with the fact that Renault will have a strong influence on the business conduct of Nissan and thus on the establishment of the shareholders' meetings' agenda, render highly unlikely that Renault's initiatives would be outvoted at shareholder level.

11. Other factors will enhance Renault's influence. [Details concerning the functioning of the new entity].

12. Furthermore, a Global Alliance Committee will be created and will be in charge of the strategic questions regarding the Global Alliance Agreement that provides for the creation of a transnational organisation and defines the global strategy of the new entity. The Global Alliance Committee will be composed of twelve members : the President and 5 executives of Nissan Motor and the Chief executive officer and 5 executives of Renault. Nissan Motor representatives will include the COO. [Details concerning the functioning of the Global Alliance Committee].

13. Finally, Nissan and Renault will set up Cross Companies Teams ("CCTs") in order to maximize the synergies arising out of the Alliance. The CCTs will study, propose and implement synergies between Nissan Motor and Renault. Each CCT will be composed of an equal number of members designated by each party but will be under a single leadership (based on competence and recognised expertise). [Details concerning the functioning of the CCTs].

14. Thus, even if Renault will not have […] the majority […] at the shareholders meetings, the influence of Renault on the day-to-day management and the business conduct of Nissan Motor and, consequently, its ability to determine the content of Nissan Motor's decisions, its control over the capital of Nissan Motor, the functioning of the Global Alliance with Nissan Motor, the fact that Renault is by far the largest shareholder but also the only industrial shareholder taken together with the likelihood of other shareholders supporting management proposals are thus sufficient to allow Renault decisively to influence Nissan Motor, and consequently give it "de facto" sole control.

Nissan Diesel

15. As already mentioned, Renault will acquire [voting shares] of Nissan Diesel. The rest of the shareholders will be Nissan Motor ([voting shares]) and various Japanese insurance and bank groups [voting shares]. The analysis of voting at the shareholders' meetings for the previous three years shows that Renault and Nissan Motor will together have the majority of voted shares (around [voting shares]). As Renault will obtain de facto control of Nissan Motor, it will thus have sole control over Nissan Diesel.

16. Since Renault is acquiring simultaneously sole control of Nissan Motor, Nissan Diesel and Nissan Financing, it is appropriate to regard the operation as a single concentration within the meaning of Article 3(1)(b) of the Regulation.

III. COMMUNITY DIMENSION

17. Renault and the Nissan group have a combined aggregate worldwide turnover in excess of EUR 5,000 million (Renault, EUR 31.4 billion; and Nissan, EUR 50.3 billion). Each of them has a Community-wide turnover in excess of EUR 250 million (Renault, EUR […] billion; and Nissan, EUR […] billion), but 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. It does not constitute a cooperation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

IV. COMPETITIVE ASSESSMENT

A. Relevant product markets

1) Manufacture and supply of passenger cars

18. The concentration affects the passenger car sector. Passenger cars serve the general purpose of individual transport of passengers on public roads, and unlike commercial vehicles, are not primarily designed for commercial use.

19. In previous decisions concerning the passenger car market, the Commission has held it possible to subdivide this market, on the basis of a number of objective criteria like engine size or length of cars, in several segments which could constitute distinct product markets. However, a final definition was not required, and the exact market definition was left open (decisions of 14 March 1994, case no IV/M.416 – BM/Rover; decision of 24 May 1996, case no IV/M.741 – Ford/Mazda; decisions of 22 December 1997, case no IV/M.1036 – Chrysler/Distributors; decision of 22 July 1998, case no IV/M.1204 – Daimler-Benz/Chrysler; decision of 6th November 1998, case no IV/M.1326 – Toyota/Daihatsu; decision of 26 March 1999, Case no IV/M.1452 – Ford/Volvo). The narrowest segmentation previously used by the Commission is the following:

- A: mini cars
- B: small cars
- C: medium cars
- D: large cars
- E: executive cars
- F: luxury cars
- S: sport coupés
- M: multi purpose cars
- J: sport utility cars (including off-road vehicles)

20. The boundaries between segments are blurred by factors other than the size or length of cars. These factors include price, image and the amount of extra accessories. Also, the tendency to offer more options like ABS, airbags, central locking, etc. in small cars further dilutes the traditional segmentation. Customers choose their cars using a combination of parameters, such as brand, size, equipment and price. On the other hand, segmentation is generally used by the industry and it still seems to be regarded as an important indicator for the positioning of a car in the market place. In particular some differences still exist in price, technology and engineering requirements within the market. For the purposes of the competitive analysis of the present case, it is not necessary to further delineate the relevant product market, because

in all the alternative market definitions considered, effective competition would not be significantly impeded, as explained below.

2) Manufacture and supply of commercial vehicles

21. The commercial vehicle market is commonly subdivided into three sub-markets: light commercial vehicles (LCVs), up to about 5/6 tons; "medium trucks" from about 5/6 tons to about 15/16 tons; and "heavy trucks", above 15/16 tons[2]. As far as LCVs are concerned, it seems that each manufacturer is likely to use a somewhat different segmentation, for example "vans", "mini-vans", "pick-ups" and so on. As the Commission noted in its decision Ford/Mazda: "in general, this type of vehicle is bought for commercial services and also for collective and governmental services as for example local deliveries to shops and businesses, courier and parcel delivery services, mobile workshops and service vans, as well as fire, police and ambulance services." For the purposes of the competitive analysis of the present case, LCVs need not be sub-segmented, given significant demand-side substitutability between the different types of vehicles involved.

22. It is appropriate to maintain the distinction between "medium trucks" and "heavy trucks" as separate markets, but Nissan is not active in the heavy truck market, which will not therefore be assessed further.

3) Finance

23. Renault and Nissan Financing are active in the provision of loan and lease financing to customers for the purpose of the purchase of vehicles, almost exclusively of their own manufacture, in several EU Member States. In its decision Peugeot/Credipar[3] the Commission left open the relevant product market, but it would clearly include not just the parties' financial services, but also banks, credit unions, independent consumer finance companies and other financial institutions.

B. Relevant geographic markets

1) Manufacture and supply of passenger cars and commercial vehicles

24. From a supply-side perspective, production in the passenger car and commercial vehicle industry is international or even global in its outlook (decision of 24 May 1996, case IV/M.741 – Ford/Mazda). From a customer perspective, recent years have brought a progressive harmonisation of the competitive environment within the Community with respect to technical barriers, restrictions concerning distribution systems, and the transparency of vehicle pricing. However, differences remain with regard to prices, vehicle taxation, distribution systems and penetration rates of major competitors within the Member States. In the present case, the exact definition of the relevant geographic market can be left open since, in all the alternative geographic market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area, as explained below.

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[2] See decisions IV/M.004 – Renault/Volvo and IV/M.741 – Ford/Mazda.

[3] IV/M.1370, 22.12.1998.

2) Finance

25. In the Peugeot / Credipar case the Commission considered the relevant geographic market to be national, in line with other decisions concerning retail financial services.

C. Competitive Assessment

1) Manufacture and supply of passenger cars

26. Both Renault and Nissan are active in the "small cars" (B), "medium cars" (C), "large cars" (D), and "executive cars" (E) segments. There is no overlap in the following segments: "mini cars" (A, only Renault present), "luxury cars" (F, only Nissan present), or "sport utility cars" (J, only Nissan present). In the "sport coupés" (S) segment, neither party has more than a "de minimis" presence […]. In the "multi purpose cars" (M) segment, Renault has a very significant presence with its "Espace" model; Nissan manufactures a model, the "Serena", which may or may not be classified in the "M" segment according the information source, Renault itself classifying it in the "large cars" (D) segment.

27. In the overall market for passenger cars at the EEA level, the parties' combined share would be [10-20%] (Renault [5-15%], Nissan [<5%]). In the overall market for passenger cars at national level, the parties' combined share would significantly exceed 15% only in France with [25-35%] (Renault [25-35%], Nissan [<5%]).

28. In the segments where there is overlap, combined market shares are in general highest in France, as follows:

Segment "B": Renault [20-30%], Nissan [<5%], thus [25-35%] combined
"C": Renault [20-30%], Nissan [<5%], thus [25-35%] combined
"D": Renault [15-25%], Nissan [<5%], thus [15-25%] combined
"E": Renault [25-35%], Nissan [<5%], thus [25-35%] combined
"M": Renault [35-45%], Nissan [<5%], thus [35-45%] combined (assuming the Nissan "Serena" is classified in this segment)

29. The concentration will not, therefore, create a dominant position, particularly in view of the relatively minor presence of Nissan in each segment, and the presence in these segments of strong competitors such as Peugeot, BMW, Mercedes, Audi, Ford and so on. The parties ' relatively high share in the "M" sector is due to the success in France of the Renault "Espace" model, but again the share is not such as to raise dominance concerns, particularly in view of the fact that, as the Commission noted in the Daimler-Benz/Chrysler case[4], "the multi purpose car sector is characterised by strong competition, new market entries and shifts in market shares…. multi purpose vehicles can often be substituted with cars belonging to other segments, for instance estate cars."

2) Manufacture and supply of commercial vehicles

30. As far as LCVs are concerned, there are no significant market shares for vans or mini-vans, and Renault does not manufacture so-called "pick-ups".

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4 IV/M.1204, 22.07.1998.

31. As far as medium trucks are concerned, the highest combined market share is [30-40%] in Spain (Renault [15-25%] plus Nissan [10-20%]). The new entity will have to face competition from many strong manufacturers such as Iveco ([20-30%]), MAN ([10-20%]), Mercedes ([10-20%]).

3) Finance

32. Nissan Financing is active only in Germany, the UK, the Netherlands, Italy and Spain. It is not possible to calculate market shares in view of the wide market base (probably nearly all credit institutions in each country), but such shares would clearly be minor.

V. CONCLUSION

33. For the above detailed 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 (EEC) No 4064/89.

For the Commission,