

***Case No COMP/M.1784 -
DELPHI AUTOMOTIVE
SYSTEMS / LUCAS
DIESEL***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 05/01/2000

*Also available in the CELEX database
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 5.01.2000
SG (2000) D/100125

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

Subject: Case No IV/M. 1784 Delphi Automotive Systems/Lucas Diesel

Notification of 25.11.1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 25.11.1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertaking Delphi Automotive System Corporation (Delphi) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of Lucas Diesel Systems by way of purchase of shares and of assets.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) 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' ACTIVITIES AND THE OPERATION

3. Delphi is a supplier of automotive components. It is a former General Motors subsidiary which recently has been spun off to the General Motors shareholders. In the past, Delphi was a captive supplier to General Motors, it now tries to develop and to broaden its customer base. Lucas Diesel belongs to the Lucas Variety Group which is controlled by TRW Inc. Lucas Diesel develops, manufactures and sells diesel fuel injection equipment worldwide.

4. The operation is a concentration in the meaning of Article 3 (b) of the Merger Regulation as Delphi acquires sole control of Lucas Diesel.

II. COMMUNITY DIMENSION

5. Delphi and Lucas Diesel have a combined aggregate worldwide turnover in excess of EUR 5,000 million¹ (Delphi, EUR 25,403 million; and Lucas Diesel, EUR 994 million). Each of them has a Community-wide turnover in excess of EUR 250 million (Delphi, EUR 4,334 million; and Lucas Diesel, EUR 815 million), 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, but does not constitute a cooperation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

III. COMPETITIVE ASSESSMENT

A. Relevant product market

6. The business acquired concerns the manufacture and sale of diesel fuel injection equipment. Delphi states that Diesel fuel injection systems are not substitutable by gasoline fuel injection systems due to the fundamental differences between diesel and gasoline engines. It can be left open whether diesel fuel injection equipment for different types of engines (light duty, medium duty, heavy duty, heavy industrial applications) constitute separate product markets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

B. Relevant geographic market

7. Delphi states that the relevant geographic market for diesel fuel injection equipment is at least EEA wide. It is not necessary to further delineate the relevant geographic markets because, in all alternative geographic market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

C. Assessment

8. Delphi's current product portfolio does not include diesel injection systems. Therefore, the operation does not lead to any overlap. The market leader in Europe in diesel injection technology is Bosch. In view of the absence of any addition of market shares the operation does not raise any competition concerns.

¹ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

IV. ANCILLARY RESTRICTIONS

9. Delphi and TRW have concluded a non-compete clause according to which TRW will not be engaged in the diesel fuel injection equipment business for a period of five years. The non compete obligation is limited in scope to the business acquired and to those geographical areas in which the business was previously carried out by the vendors. The parties have justified the length of the period with the necessity of the buyer to assimilate the new technology and the anticipated life cycle of the technology. This clause is directly related and necessary for the implementation of the concentration as it serves to guarantee the transfer to the acquirer of the full value of the assets acquired.
10. TRW through Lucas Limited (LAE) has concluded with Lucas Diesel the 'Electronics Supply and Development Agreement' which deals with [...]. These agreements are explained as necessary in the context of the separation of Lucas Diesel from the vendors and the allocation of certain intellectual property rights between LAE and Lucas Diesel. As far as these rights are allocated to LAE, LAE grants to Lucas Diesel licences to use these rights. As far as these rights are allocated to Lucas Diesel, Lucas Diesel grants certain back licences to LAE. In so far these licence agreements contain restrictions these are directly related and necessary for the implementation of the concentration. In the case of licences from LAE to Lucas Diesel they serve to guarantee the transfer to the acquirer of the full value of the assets acquired and in the case of licences from Lucas Diesel to LAE they serve to cope with the break up of a former economic entity. The agreement also contains purchase and supply obligations for electronic control units, usually until the end of life or marketing cycle of the particular product. These particular products are only produced by LAE for Lucas Diesel and are not available from other sources in this configuration. The purchase and supply obligations are directly related and necessary for the implementation of the concentration as they serve to cope with the break up of a former economic entity and maintain continuity of supply.
11. The parties have agreed that Delphi will not sell or market certain hand hold diagnostic devices it has obtained from Lucas Aftermarket Operations division. As a reason it is given that Lucas wishes to retain control of the sale and the marketing of the device. This provision is not necessary for the implementation of the operation.

V. CONCLUSION

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

For the Commission,

Signed by
Michaela SCHREYER
Member of the Commission
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