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Case No IV/M.360 - ARVIN / SOGEFI

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REGULATION (EEC) No 4064/89 MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION
OF THE EUROPEAN
COMMUNITIES

Brussels, 23.09.1993

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)b DECISION

REGISTERED WITH ADVICE OF DELIVERY

To the notifying parties

Dear Sirs,

Subject: Case No. IV/M.0360 - ARVIN/SOGEFI
Notification of 23.8.1993 pursuant to Article 4 of Council Regulation No. 4064/89.

1. The above mentioned notification concerns an agreement between Arvin Industries Inc. ("Arvin") and Sogefi S.p.A. ("Sogefi") to form a joint venture in which the parties would concentrate their interests in the manufacture and sale of exhaust systems for the free aftermarket ("AM") which is the replacement market serviced by independent repairers.

2. After examination of the notification, the Commision 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.

I. THE PARTIES AND THE OPERATION

3. Arvin is a US company which manufactures original equipment ("OE") and replacement automobile components and precoated metal coils for architectural and furniture uses. Apart from subsidiaries manufacturing shock absorbers in France and Spain, Arvin's EC activities include two companies based in the UK, Timax Exhaust Systems ("Timax") which makes AM exhaust systems and Cheswick which makes OE exhaust systems, and Masterparts B.V. a Netherlands distributor of automotive and motorcycle parts.

4. Sogefi is an Italian company which manufactures filters, rear view mirrors and springs for automobiles as well as having two subsidiaries making AM exhaust systems - Ansa Marmitte ("Ansa") in Italy and Etablissements Rosi S.A. ("Rosi") in France. Sogefi is owned by the Compagnie Industriali Riunite ("CIR") which is part of the de Benedetti Group. CIR has a 36% stake in Valeo, an important supplier of automotive parts, such as clutches and electrical components.

5. Through the notified agreements, the parties intend to form a joint venture holding company for the manufacture, sale and distribution of AM exhaust systems and components. The JV will own Ansa and Rosi outright and 75% of the shares of Timax and Masterparts.

II. COMMUNITY DIMENSION

6. The aggregate worldwide turnover of Arvin and Sogefi (including other companies in the De Benedetti group) in their respective last financial year exceeded 5.000 million Ecus. Their respective Community-wide turnover exceeded 250 million Ecus. The parties did not achieve more than two thirds of their Community-wide turnover within one and the same Member State. Consequently, the proposed operation has a Community dimension.

III. CONCENTRATION

Joint Control

7. Under the terms of a Shareholders' Agreement, each party will own 50% of the shares of the joint venture company and will appoint three directors to the board of the JV, with the appointment of a seventh director who is also the Managing Director to be agreed jointly. Decisions are by simple majority except that the agreement of both parties is required for the approval of major business decisions, including the budget and long range business plan.

8. Whilst the JV will hold 100% of Ansa and Rosi, it will hold only 75% of the shares of Timax and Masterparts. The boards of these latter two subsidiaries will consist of two directors appointed by Sogefi and two by Arvin. Under the terms of the shareholders' agreement the Sogefi directors will, however, vote in accordance with the votes cast by the Arvin shareholders on the following matters:

- long-term strategic plan (but not the operating plans or budgets);
- any change in accounting policy, auditors, bankers, accounting reference date or bank mandates;
- certain taxation decisions; and
- decisions relating to the technical/product information to be developed or acquired by Timax.

The above elements are strong indicators of the fact that Arvin will continue to exercise sole control over Timax and Masterparts, in spite of the 75 % shareholding of the JV in these two subsidiaries. In addition Arvin is expected to take a leading role in the management of the JV. [...][(1)].

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(1) Deletion - business secret

9. In the light of this, it is concluded that Ansa and Rosi will be jointly controlled by Arvin and Sogefi through the JV but that Arvin keeps sole control over Timax and Masterparts.

Autonomous full function joint venture

10. The parents will contribute four existing businesses to the joint venture, which will thus have the necessary assets (notably manufacturing facilities and distribution network), personnel and expertise (Arvin is to license to the JV its AM exhaust technology and manufacturing know-how for an indefinite period terminable only in limited circumstances such as insolvency/liquidation, termination of the JV)) to perform on a lasting basis all the functions of an autonomous economic entity.

Absence of coordination

11. Sogefi will completely withdraw from the AM car exhaust market in Western Europe by contributing its relevant subsidiaries to the joint venture.

12. As to the possibility of Sogefi re-entering the market, it would make little commercial sense for it, having contributed its subsidiaries to the JV, then to re-enter the market in competition with the JV. Sogefi will no longer have any expertise in the sector. Furthermore, should [...][(2)] the joint venture be otherwise terminated, Sogefi has committed itself not to compete with Arvin in the AM exhaust business for five years.

Arvin will remain active in the AM exhaust systems market in Western Europe. However, Arvin is expected to take a leading role in the management of the JV.

13. Arvin will also remain active in the OE exhaust system market in Europe, and will thus retain expertise relevant to the AM market. However, while OE and AM exhausts are functionally similar, they are considered to constitute two separate markets because of the different production processes and distinct supply and demand characteristics. For the reasons set out at paragraph 15 below, it is not reasonable to expect that there will be any appreciable coordination between Arvin and the JV company on the neighbouring market for OE exhaust systems as a result of Arvin's involvement in both markets.

14. Therefore the proposed operation constitutes a concentration in accordance with Article 3 of the Regulation.

IV. COMPATIBILITY WITH THE COMMON MARKET

Relevant product market

15. The businesses being combined in the joint venture are active in the production of car exhaust components and systems for the free aftermarket (Timax, Ansa and Rosi) and the distribution of motor vehicle spare parts in the Netherlands (Masterparts). The free aftermarket consists of the supply of spare parts to independent wholesalers and distributors or direct to end-users, such as fitting centres, which are outside the car manufacturers' franchised dealer network. This aftermarket for automotive components is distinct from the market for the supply of components to car manufacturers for inclusion

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(2) Deletion - business secret

in a new car or distribution as a spare part through its franchised dealer network [3]. The different conditions of competition in the two markets are based on distinctions between

- customers (OE - a few large car manufacturers; AM - numerous wholesalers, distributors and fitters);
- production (OE suppliers produce large numbers of a small range of parts for a limited number of models; AM suppliers produce a vast range of components for a wide range of different makes and models);
- product (AM exhausts are generally made to a lower material specification than OE exhausts);
- delivery (just-in-time delivery to a car manufacturer's plant as opposed to a sophisticated distribution system to numerous customers).

16. Exhaust systems comprise a number of different parts, many of which are unique in their exact dimensions and thus specific to a particular model of car. Generally these parts are sold on the AM as components and not as systems which means that a full-line supplier might have over 5.000 different parts, although a number of these parts might be sourced from other manufacturers. Given that the majority of manufacturers have the technical ability to manufacture most of these components, it is not necessary to examine the market position of each individual component but rather to look at the market as a whole. The relevant product market is thus that for car exhaust components for the free aftermarket.

Relevant geographic market

17. The parties state that the geographic market for AM car exhaust components extends over Western Europe (EEC + EFTA), with a number of major suppliers (eg Walker, Bosal, Sogefi and to a lesser extent Timax) with market positions in most EC and EFTA Member States, including countries where they have no production facilities. That said there are differences in the market between some Member States, notably in Germany and Italy where a higher quality product closer in specification to an OE product, is demanded and there are domestic industries specialising in the supply of such products to the home market. Although the parts most in demand vary from country to country according to the car population, the need to supply a wide range of parts means that product lines broadly overlap. Imports from outside Western Europe are minimal and tend to be for speciality products (eg for US-made cars). There are also differences in the channels of distribution with the traditional route of manufacturer - third party distributor wholesaler - garage being replaced by direct sales to fitting chains in the UK, France and Benelux. Notwithstanding these differences, the issue of relevant geographic market definition can, however, be left open since the conclusions of the competitive analysis would be the same in either case.

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[3] See the decision of the ECJ in Case No 322/81 NV Nederlandsche Banden- Industrie Michelin v Commission (1983) ECR 346 and the Commission decision Mannesmann/Boge, Case No IV/M134 of 23.09.91

Assessment

18. Market shares for AM exhaust components in Western Europe (EEC + EFTA) by volume are estimated by the parties to be as follows [4]:

Walker	[..
Bosal	
Timax	
Sogefi	
Eberspacher/CIA	
Others*	..]

	100%

* (more than 12, only six of which have shares above 1% and none above 3%).

19. Market shares in Member States where there is an overlap between the parties are estimated by the parties to be as follows [5]:

	Timax	**Sogefi**	**Total**
Denmark	[...	...	...
Germany			
Netherlands			
Spain			
UK	...	...	...]

20. As can be seen, at a European level this operation will give the merging parties a market share of [...][6], bringing it alongside the two market leaders, Bosal and Walker. The table shows that with regard to the market share increments in Member States, the merger is broadly complementary in terms of geographical presence, the main overlaps occurring in Germany, Denmark and the Netherlands although in none of these Member States will the JV have more than a [...][7] share. Timax's strong position in the UK predated the concentration and is not appreciably changed by it.

21. With market shares resulting from the concentration at both EC and Member State level below 25%, it would seem highly unlikely that this operation would give rise to the creation of a solely dominant position.

22. At the EC level the three largest competitors will have symmetrical market shares totalling [...][8] of the market. However, the creation or strengthening of a jointly dominant position between these three companies, whether at an EC or Member State level would appear very unlikely given the characteristics of the market:

- the very large number of smaller competitors, particularly the specialists with good positions in regional markets such as Germany, Italy and Spain;

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(4) Business secrets
(5) Business secrets
(6) Business secret - under 25%
(7) Business secret - under 25%
(8) Business secret - over 50%

- a highly fragmented product range with components varying between not only different models of car but also between different versions of the same model;

- the increasing use of catalytic converters which will involve products with a much higher technological input;

- the fact that the product range offered is only one element of competition between AM suppliers; other areas in which suppliers also compete include innovation, distribution (daily delivery); Timax, for example, delivers daily to over 2.000 customer sites in the UK.

V. CONCLUSION

23. For the above reasons, the Commission has decided not to oppose the notified concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)b of Council Regulation 4064/89.

For the Commission

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