Case No COMP/M.3789 - JOHNSON CONTROLS / ROBERT BOSCH / DELPHI SLI

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REGULATION (EC) No 139/2004 MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 29/06/2005

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Office for Official Publications of the European Communities
L-2985 Luxembourg
Dear Sir/Madam,

To the notifying parties

Subject: Case No. COMP/M.3789 – Johnson Controls / Robert Bosch / Delphi SLI Notification of 26/05/2005 pursuant to Article 4 of Council Regulation No 139/2004¹

1. On 26/05/2005, the US company Johnson Controls Inc. (“JCI”) and the German company Robert Bosch GmbH (“Bosch”) notified their intention to acquire, through the intermediary of their Joint Venture VB Autobatterien GmbH (“VB”, Germany), control of the European Starting, Lighting and Ignition automotive battery business of the US company Delphi Corporation (“Delphi SLI”) within the meaning of Article 3(1)b of the EC Merger Regulation (“the Merger Regulation”).

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No 139/2004 and does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. JCI is a global supplier of automotive (seating, interior and batteries) and building control systems. Robert Bosch is a supplier of automotive technology, power tools, security, automation and packaging technology. Delphi SLI comprises the Starting, Lighting and Ignition lead acid automotive batteries activities of US car component supplier Delphi.

4. JCI and Robert Bosch intend to acquire the European Delphi SLI activities through their full function, jointly controlled automotive battery joint venture, VB\(^2\). The acquisition of the US and Asian operations of Delphi SLI, excluding Delphi SLI’s manufacturing facilities in the US and Canada, is the object of a separate transaction, only involving JCI.

II. COMMUNITY DIMENSION

5. The combined aggregate world wide turnover of the undertakings concerned exceeds €5000 million (JCI: €21,346 million, Bosch €40,007 million, Delphi SLI €[...]. million in 2004). The aggregate Community wide turnover of two of the parties exceeds €250 million (JCI: €[...]. million, Bosch €[...]. million). These parties do not achieve more than two-thirds of their aggregate Community wide turnover in one and the same Member State. The notified operation, therefore, has a Community dimension according to Article 1(2) of the Merger Regulation.

III. RELEVANT MARKETS

The relevant product market

6. JCI/Bosch and Delphi SLI manufacture Lead Acid starter batteries that are used in a number of applications, including automobiles, light commercial vehicles, trucks, motorcycles, wheelchairs, camping applications and marine. As competitive overlaps only occur for automotive applications, only these starter batteries will be further addressed. Batteries are, from the point of view of performance, distinguished on the basis of capacity, cranking performance and charge acceptance.

7. The Commission has found in a number of automotive decisions that it may be appropriate to define the relevant product market by reference to the vehicles for which that particular product is supplied. Such a split is generally made between passenger cars, light commercial vehicles and heavy commercial vehicles. Several respondents to the market investigation have confirmed that the distinction between batteries for passenger cars, light commercial vehicles and heavy commercial vehicles is important to segment the market as there are differences in terms of demand, product characteristics and services. However, while some smaller suppliers are not present in each segment (i.e. Delphi SLI does not offer batteries for heavy commercial vehicles), the major players that account for the bulk of overall supply are able to serve the different needs of the demand as they

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\(^2\) See Case COMP/M. 2939: JCI/Bosch/VB JV. Whilst it will be the VB JV that will incorporate the Delphi activities, the following elements demonstrate that the parent companies are in fact the real players behind the operation. [...] Therefore it can be considered that VB’s parent companies need to be considered for assessing the community dimension of the operation.
provide a full range of battery types. As such, there is a high level of supply-side substitutability and it is therefore not appropriate to identify distinct markets for passenger cars and light commercial vehicles.

8. The Commission has further stated in a number of decisions that the markets for automotive components are to be divided into (i) products supplied to original equipment manufacturers (“OEM”) as first install equipment, (ii) products supplied to the original equipment service (“OES”) businesses, and (iii) the independent aftermarket (“IAM”) which consists of retailers, fast-fitters such as Kwik Fit and supermarkets such as Carrefour and Metro. The parties submit that a clear distinction ought to be made between OEM and OES on the one hand and IAM on the other hand. The parties submit that this distinction is justified as customers and procurement procedures are different. In line with the JCI/Bosch/VB JV decision\(^3\), the parties consider that it is appropriate to treat battery sales to vehicle manufacturers as part of a single OEM/OES market, on the basis of similar technical specifications, centralised purchasing by the OEMs – also for the volumes sold by dealers, and overall supply/demand – side substitutability. Still according to the parties, IAM batteries are less tailored to specific vehicles than OEM/OES batteries, and do not need to conform to individual OEM standards.

9. The market investigation has shown that only part of the OES market is under the control of the OEMs. However, some OEMs have confirmed that they no longer procure OEM and OES separately, and that this trend is becoming established. In any case, as most of the respondents consider that OES volumes should be allocated to the OEM market rather than the aftermarket, for the purpose of this case, it is not necessary to consider an alternative market definition.

**The relevant geographic market**

10. The parties submit that the OEM / OES battery market is, in line with the Varta/Bosch and the JCI/Bosch/VB JV decisions\(^4\), EEA-wide in scope. The parties base that conclusion on the pan-European centralised production and relatively limited transport costs (<5% of the battery base price). The parties argue that OEMs ask quotations from suppliers outside the EEA. That was confirmed. Whilst the level of imports from outside the EEA is increasing, it is currently less than 10%. Also, OEMs have stated that logistics and just-in-time delivery put imports from outside the EEA, and specifically Asia and the Far East, at a significant disadvantage. The geographic scope of the OEM / OES market can therefore be considered as the EEA.

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\(^3\) In the Varta/Bosch decision of 1991, the CE considered a combined OES/IAM market distinct of the OEM market.

\(^4\) Case COMP/M, 2939 : JCI/Bosch/VB JV. The Commission has found in a number of previous decisions that the geographic market for automotive components in the OEM/OES market is at least EU or EEA-wide, and in many cases is probably global: Case IV/M.872 TRW/Magna, Case IV/M.937 Lear/Keiper, Case IV/M.1196 Johnson Controls/Becker, IV/M.1189 Teksid/Norsk Hydro, Case IV/M.1207 Dana/Ecklin, Case IV/M.1481 Denso/Magnetic Marelli, Case IV/M.1587 Dana/GKN and Case IV/M.1789 INA/LuK; Case COMP/M.2901 Magna/Donnelly.
11. In the Varta/Bosch decision, the Commission considered the IAM market to be national in scope. That was broadened to an EEA market in the more recent JCI/Bosch/VB JV decision. The parties consider in support of an EEA-wide market, (i) the homogeneity of products with EU wide branding, (ii) the fact that buyers operate on an international scale and consolidate (iii) and significant cross border sales.

12. The market investigation indicates elements that could suggest a national scope for the IAM market. There are differences in prices, which can only to a certain degree be explained by local distribution costs. These differences may reflect the circumstances in which retailers (also the ones associated in group) sign contracts with the suppliers at local level. National markets still seem to differ to some degree in terms of distribution structures (i.e. the presence and the importance of independent wholesalers, purchasing groups, fast-fit network, etc), logistics, relative cost of transport and environmental rules (governing for example the collection of used batteries). Moreover, whilst the suppliers concentrate their OEM/OES business in one country, they have sales organizations distributed in most of the different Member States to address the needs of IAM customers not purchasing centrally, which remain an important part of the IAM purchases.

13. On the other hand, indications pointing towards a EEA-wide scope, which emerged in the JCI/Bosch/VB JV decision, are confirmed. The batteries sold in the different countries are increasingly similar, customers are increasingly buying centrally as mass volume retailers become more important than specialised outlets, imports and cross-border sales increase and the major IAM battery producers offer a full battery range with production increasingly centralised in a few production plants. Finally, transport costs can be offset by lower production costs in the new Member States and outside the EEA.

14. In any case, for the purpose of this decision, the precise geographic scope of the market can be left open, since on neither a national basis nor on a EEA-wide basis will the proposed operation significantly impede effective competition in the common market or a substantial part of it.

IV. COMPETITIVE ASSESSMENT

(a) OEM and OES market

15. The transaction will combine the number 1 and number 3 battery supplier to OEM/OES customers. On the basis of the parties’ 2004 figures, the new entity would have a combined market share of [50% - 60%] (JCI/Bosch [40% - 50%] and Delphi SLI [0% - 10%]). The US company Exide has a market share of [20% - 30%] and the Italian company Fiamm holds the number 4 position with [0% - 10%]. Yuasa, a Japanese player ([0% - 10%] market share), is number 5, but will exit the market in 2005. The Austrian company Banner and the German producer Moll are relatively small producers, each with a market share of less than [0% - 10%]. Imports account for around 5% and emanate from Turkish and East European suppliers. As a result of this merger, the OEM/OES battery supply market will reach a high level of concentration, which is further accentuated by Yuasa’s exit from the European market. New market entry is unlikely. The existing excess capacity and the need for very large production plants make new entry unviable.
16. However, the parties state that the transaction will not raise significant competition concerns because of the presence of viable alternatives and the OEM’s buying power. The parties also submit that these market shares only reflect the present contracts under which actual supplies are taking place. In that context, the loss of a single OEM/OES customer can dramatically affect a supplier’s market share. Indeed, whilst the above market shares clearly point to JCI/Bosch as the leading player, OEMs consider Exide and Fiamm to be viable alternatives, capable of meeting their demands with an aggressive pricing policy. That is reflected in some recent bidding success of these players. Without exception, the high volume car manufacturers multi-source their demand for car batteries. Through bidding procedures, the OEM will award supply contracts to different suppliers. Both Exide and Fiamm have been able to displace JCI/Bosch and Delphi SLI for important volumes. Whilst JCI/Bosch is an important supplier for almost every OEM, it has lost important volumes in recent competitions. In contrast, Delphi SLI has not been able to win significant volumes and has lost important competitions to JCI/Bosch, Exide and Fiamm, but also to Banner, Rombat and Mutlu. One of Delphi SLI’s major customers, Rover Car, has ceased operations in May 2005. Apart from the fact that Delphi SLI’s established position is being eroded by aggressive offers from its competitors, the bidding data shows a consistent decrease in prices. Notwithstanding the significant price increase of battery raw materials, such as lead, OEMs have secured price reductions up to [>5%].

17. In order to pursue their multi-sourcing strategy, those OEMs that have both Delphi SLI and JCI/Bosch as important suppliers have all indicated that this merger will require them to select alternative suppliers. Whilst all OEMs point to the concentrated nature of the battery supply market, none of the OEMs consider that the concentration would make them overly dependent on JCI/Bosch. To this effect, OEMs have pointed to the relative ease with which suppliers can be switched, the significant level of spare capacity in the industry (up to 30%) and the possibility to introduce new suppliers. Whilst these new suppliers (Mutlu with Ford, Toyota and Fiat, KSB with GM, Rombat with Renault-Nissan) generally account for less than 10% of the OEMs’ demand, they could be considered as effectively putting pressure upon the established players. Also, the OEMs have confirmed that Delphi SLI was a supplier in decline, suffering from a lack of focus. […]

18. Furthermore, the market investigation has confirmed that the OEM/OES market remains a buyer market, with significant buyer power that has increased over the years as a result of the consolidation in the car manufacturing market and the OEMs cross brand sourcing strategy. The OEMs feel confident that stringent cost and quality audits, on-line auctions, combined demand across platforms and unilateral renegotiation of supply contracts is sufficient to counter this level of concentration.

19. Also from the supply-side, the competitors of the new entity consider that the multi-sourcing strategy of the OEMs will provide opportunities to displace the enlarged JCI/Bosch for certain volumes.

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5 Exide has successfully emerged from US Chapter 11 proceedings. Whilst it has faced financial difficulties, the market investigation has not questioned its long term ability to compete in the market.
20. Johnson Controls is a major car components producer and supplies. Apart from batteries, it supplies OEMs with seating, interiors and certain electronics. It has been verified whether the procurement procedures could allow JCI/Bosch to leverage its strengthened battery market position into these adjacent car component markets. The market investigation has not confirmed this as the procurement procedures and strategies are significantly different. Rather, OEMs have indicated that they could leverage their broader relationships with JCI/Bosch.

(b) IAM market

21. In the IAM market, the competitive overlap is more limited. JCI/Bosch would remain the EEA market leader with [30% - 40%] (with Delphi SLI adding [0% - 10%]). Exide has a comparable market share of [20% - 30%] and Fiamm has [10% - 20%]. As IAM customers buy small volumes, which are less restrained to (quality) standards than in the OEM market, a large number of smaller players (including Moll, Banner and Midac) compete and these represent around 20% of the market. The remainder is accounted for by imports.

22. The Member States where the transaction would lead to an accretion of market share are France (combined market share of [30% - 40%], with Delphi SLI adding [0% - 10%]), Germany (combined market share of [40% - 50%] with Delphi SLI adding [0% - 10%] at most), Spain (combined market share of [40% - 50%], with Delphi SLI adding [0% - 10%]). These market shares stem from the parties’ local production capacity in these countries. Whilst the transaction significantly strengthens JCI/Bosch’s position in France and Spain, it will continue to face strong competition from Exide in these countries. Also, in these countries, mass retailers that buy European-wide are becoming the most important player in the IAM market. Other Member States where the new entity has market shares in excess of 40% (but without the merger creating competitive overlaps) are Austria ([40% - 50%]), Czech Republic ([40% - 50%]), Denmark ([60% - 70%]), Finland ([40% - 50%]), Hungary ([50% - 60%]) and Slovakia ([40% - 50%]).

23. With regard to IAM, the disappearance of Delphi SLI as a supplier is not likely to have an important impact as small competitors appear to be able to meet the quality and cost requirements of value driven mass retailers, wholesalers and fast-fitters. In addition, the parties can be expected to loose part of this business as the Delphi brand will not be taken over. The market investigation has confirmed Delphi SLI’s weak position in the aftermarket, mainly due to its more restricted product range.

V. CONCLUSION

24. It can therefore be concluded that the concentration will not significantly impede effective competition in the common market or in a significant part of it, in particular as a result of the creation or strengthening of a dominant position.

25. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.
For the Commission

signed
Neelie KROES
Member of the Commission