

***Case No IV/M.416 -
BMW / ROVER***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 14.03.1994

*Also available in the CELEX database
Document No 394M0416*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14th March 1994

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notified parties

Dear Sirs,

Subject : Case No IV/M.416 - BMW/Rover

Notification of 02.02.1994 pursuant to Article 4 of Council Regulation No 4064/89

1. The above-mentioned notification concerns the proposed acquisition by BMW AG, München, of 100% of the share capital of Rover Group Holdings plc, Birmingham, from British Aerospace plc.
2. After examination of the concentration, the Commission has concluded that the notified operation falls within the scope of the application of Council Regulation (EC) No. 4064/89 and does not raise serious doubts as to the compatibility with the common market.

I. THE PARTIES

3. BMW AG (BMW) is a Bavarian based German manufacturer of cars, motorcycles and aircraft engines. The company is family controlled.
4. Rover Group Holdings plc. (Rover) is 100% owned by British Aerospace plc. Honda Motor Company Ltd., Tokyo, holds a minority interest of 20% in Rover Group Ltd, the core subsidiary of Rover Group Holdings. Furthermore several cooperation agreements exist between Honda and Rover Group Ltd relating to the production and development of specific car models.

II CONCENTRATION WITH A COMMUNITY DIMENSION

5. The operation is a concentration within the meaning of Article 3 (1) of the Merger Regulation, since BMW will acquire full control of Rover. The concentration has a

Community dimension. The aggregate worldwide turnover of BMW (15.4 bn ECU) and Rover (4.9 bn ECU) exceeds 5 bn ECU. The aggregate Community wide turnover of each of the two undertakings concerned amounts to more than 250 mio ECU (8.7 and 3.8 bn ECU respectively). The two companies do not achieve more than two-thirds of their turnover in one and the same Member State.

III COMPETITIVE ASSESSMENT

6. In the car industry a distinction is often made between two different strategic groups of companies: generalist and specialist producers. Generalist producers are companies competing on a full range of cars, i.e. companies like GM, Ford, PSA etc. Specialist producers are companies focusing on a particular part of the market, for example companies like Mercedes-Benz and (so far) BMW, who are exclusively active in the larger size ranges. From BMW's point of view the merger will change BMW from a specialist to a generalist producer competing with a full range of cars.

The relevant product markets

7. The concentration affects the passenger car and spare parts sector.
8. BMW defines the relevant product market as the market for *all* passenger cars, including all four-wheel vehicles used in the sectors of transport and leisure. It is argued that the traditional segmentation into different classes based on objective criteria like the length of car is increasingly losing its significance due to the use of similar technology in cars of different sizes. In addition, even some quite small cars today have technical features which were earlier reserved for large cars such as powerful engines, ABS, central locking, air bags etc.
9. BMW further contends that spare parts can be considered as an integral part of the car market, since cars and parts form an integrated package and it is this package which the customer buys.

Passenger cars

10. The car market has traditionally been segmented on the basis of a number of objective criteria like engine size or length of car. In the car price surveys carried out by the Commission the following segmentation is used, which corresponds to a large extent to the one generally used in the industry:

Mini	(e.g. Nissan Micra, Seat Marbella)
Small	(e.g. Fiat Uno, Opel Corsa, VW Polo, Rover Metro)
Medium	(e.g. Fiat Tipo, VW Golf, Rover 200)
Large	(e.g. BMW 3 series, VW Passat, Honda Accord, Rover 400)
Executive	(e.g. BMW 5 series, Opel Omega, Audi 100, Rover 800)
Luxury	(e.g. BMW 7 series, Mercedes-Benz S Class, Jaguar)
Multi purpose/sports	(e.g. Land Rover, Porsche)

A slightly different segmentation has been used by the Monopolies and Mergers Commission.⁽¹⁾

⁽¹⁾ MMC Report into the supply of cars in the UK, 1992

11. BMW also uses a segmentation for marketing purposes. With the exception of some very minor differences⁽¹⁾, this segmentation corresponds to the segmentation applied by the Commission in its price survey:

U1 (Unterklasse 1)	=	mini + small
U2 (Unterklasse 2)	=	medium
KKL (kleine Klasse)	=	large
MKL (mittelklasse)	=	executive
GKL (grosse Klasse)	=	luxury + sports
Sonderklasse	=	multi

purpose

12. The boundaries between segments are blurred by factors other than size or length of car. These factors include price, image and the amount of extra accessories. Also, the tendency to offer more and more options like ABS, airbags, central locking etc. in small cars further dilutes the traditional segmentation. Even the smallest BMW model would, for example, hardly be considered as a typical city car, which competes directly with the VW Polo.
13. On the other hand the traditional 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 or engineering requirements between the top and bottom end of the car market. In the end it can however be left open whether, for the purposes of the competitive analysis, the car market should be considered as one product market. Even on the basis of the narrowest market definition, the concentration will not lead to the creation or strengthening of a dominant position, as explained under point 16.

Spare parts

14. The spare parts market can be separated from the car market. Spare parts clearly differ from automobiles in terms of product characteristics, price and intended use. It can not be considered that spare parts form an integral package which is sold with the cars. In contrast, they are sold, at least to a significant extent, by independent suppliers through own distribution networks to the aftermarket. BMW original spare parts, for example, are thus competing with spare parts from independent producers.

The relevant geographic market

15. BMW defines the geographical market as being the EEA due to the entering into force of the conditions of a single market in the EU respectively the EEA. Furthermore, it is argued that the Commission's price surveys shows a general tendency towards further harmonization of prices in the EU, which indicates that markets are becoming more integrated.

⁽²⁾ There are some minor differences in the classification of some cars. BMW considers the Rover 400 to be a medium-sized car (U2), whereas it is treated as a large car in the Commission's price survey. Furthermore, BMW classifies sports cars as belonging to the luxury car segments (GKL), whereas the Commission classifies sports cars in the same group as multi purpose vehicles. However, sports cars are only made in small volumes, and the distortion created by including them in the luxury class is limited.

16. From a supply side perspective, production in the car industry is international or even global in its outlook, and the producers are basically present in the whole EEA. On the other hand certain differences existing in the different Member States in respect of a number of factors including price, car taxation, or national distribution systems might indicate that individual countries in the EEA could still be considered as different geographical markets. For the purposes of this case, however, the exact definition of the relevant geographic market can be left open because even on the basis of the narrowest market definition, the concentration will not lead to the creation or strengthening of a dominant position, as explained under point 17 ff.

IV DOMINANCE

Passenger cars

17. The concentration will only have a limited effect in terms of industry concentration, as the product lines of Rover and BMW only overlap in the executive car segment (MKL: BMW 5 series, Rover 800) and the large car segment (KKL: BMW 3 series, Rover 600). Rover further produces small front wheel drive cars as well as multi-purpose vehicles, segments in which BMW is not active. Likewise BMW manufactures luxury cars for the top end of the market, in which Rover is not present. The aggregate market shares of the new entity resulting from the operation will not exceed 25%, independently of whether the overall car market in the EEA or each individual car segment in each Member or EFTA State were considered to be the relevant market. The only exception applies to the KKL segment where the addition of market shares resulting from the acquisition however is minimal.
18. As a result of the operation the BMW's share in the supply of all passenger cars in the EEA will rise to 6.6% in terms of registered cars in 1993. If each segment was considered to be the relevant product market, the combined market share of the new group in the executive car segment would amount to 10.8% in the EEA and to 11.2% and 21.2% in Germany and the UK respectively. In the KKL segment the new entity would account for about 24.5% in the EEA. In a number of Member States including Germany (26.1%) and the UK (28.4%) BMW's actual market position exceeds 25%, however the addition in market shares resulting from the acquisition of the Rover 600 range is below 1% even in the UK.
19. It is possible that the merger will have some pro-competitive effects on the car market, since BMW will now be able to compete with the large automobile producers on the full range of cars. It might be likely to pursue a strategy of producing cars only for the top end of each of the segments in which it is active. Such a development would contribute to increased competition, since it would lead to an upgrading of the Rover models particularly in the lower end of the market. Furthermore synergies in the Land Rover business resulting from the combination of Rover's know how in the four wheel drive technology and BMW's distribution presence in the EEA will probably increase competitive pressures in the multi purpose vehicle segment.
20. A number of cooperation agreements exist on a project by project basis between Rover and Honda. These agreements have in the past not prevented each of Rover and Honda from marketing the different car models separately. This decision is without prejudice to any assessment of this cooperation under Art. 85 of the EC Treaty.

21. It should further be noted that the state aids issues concerning Rover are unaffected by the merger. According to the contractual agreement between British Aerospace and BMW any claims of repayments of state aids against Rover will have to be assumed by British Aerospace.
22. In the light of the above factors the Commission considers that the proposed operation will not lead to the creation or strengthening of a dominant position for BMW/Rover in the passenger car markets in the EEA.

Spare parts

23. The distribution of spare parts for Rover models is handled through Unipart Group Ltd on the basis of a contractual agreement. Unipart provides similar services to Jaguar and also has an "all makes" range of parts. BMW distributes spare parts for BMW models through its own group. Even if Unipart's all makes range is considered as competing with BMW's original spare parts in the independent after market, BMW does not have the ability to influence Unipart's activities other than that covered by the agreement for Rover parts.

V CONCLUSION

24. The overlap between the product ranges of Rover and BMW is only partial, and the effect of the merger on the level of concentration in the industry seems limited. It appears that the merger will not to any large extent increase entry barriers to the various segments of the industry, but is rather likely to increase competition, particularly in the lower end of the market as well as for multi purpose vehicles, where BMW has a strategic interest in developing its business.
25. Based on the above findings the Commission has come to the conclusion that the proposed concentration does not cause serious doubts as to its compatibility with the common market and the EEA Agreement.
26. The proposed concentration will therefore not create or strengthen a dominant position as a result of which effective competition will be significantly impeded in the common market or in a substantial part of it or in the EEA.

*

* *

For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission,