

EN

Case No
COMP/M.5518-Fiat /
Chrysler

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 7(3)
Date: 29.5.2009



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.5.2009
C(2009) 4292 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 7(3) DECISION

To the notifying party

Dear Sir/Madam,

Subject: Case No COMP/M.5518-Fiat / Chrysler

Request for a derogation pursuant to Article 7 (3) of Council Regulation (EC) No 139/2004

1. We refer to your application of 15 May 2009 for a derogation from the suspension obligation provided for in Article 7(1) of Council Regulation (EC) No 139/2004 ("the EC Merger Regulation") with regard to the proposed acquisition by Fiat S.p.A. ("Fiat", Italy) of sole control over Chrysler LLC ("Chrysler", United States) submitted pursuant to Article 7(3) of the EC Merger Regulation (Fiat and Chrysler are together referred to as "the Parties").

I. THE PARTIES AND THE OPERATION

2. **Fiat** is engaged principally in the manufacture and sale of cars, commercial vehicles, agricultural machinery, construction equipment, automotive components and metallurgical products.
3. **Chrysler** is a US-based vehicle manufacturer that produces and sells cars and trucks under the brand names Chrysler, Jeep and Dodge. Chrysler's business is focused on the NAFTA region where it derives more than 90% of its revenues. It does not have any relevant manufacturing facilities in the EEA. Chrysler is currently in Chapter 11 bankruptcy proceedings.
4. The operation comprises two components (together referred to as "the Transaction"): (i) an 'Equity Component' consisting of the initial acquisition by Fiat of a 20 % shareholding in 'New Chrysler' (a newly-established limited liability company to which substantially all of Chrysler's business will be transferred at completion of the Transaction) and (ii) Fiat sharing its rights in various engine and

platform technologies with Chrysler as well as providing the latter with access to Fiat's procurement programme and distribution network outside NAFTA.

5. Fiat may ultimately increase its equity interest in New Chrysler to a maximum of 51 %. In the first instance, Fiat shall have the right to receive an additional 15 % equity interest in New Chrysler in tranches of 5 % provided that the company meets certain technical, distribution and/or ecological performance targets. Thereafter, Fiat shall hold an option to acquire up to an additional 16 % interest in New Chrysler which shall be exercisable between 1 January 2013 and 30 June 2016.
6. Although Fiat will not initially own the majority of the shares and voting rights in Chrysler, or appoint the majority of the members of Chrysler's Board of Directors, it will have extensive governance rights in relation to Chrysler that no other shareholder will enjoy. In this respect, Fiat is deemed to acquire sole control over New Chrysler on a de jure basis.
7. On 30 April, Chrysler filed voluntary petitions in the United States Bankruptcy Court for the Southern District of New York seeking relief under Chapter 11 of the United States Bankruptcy Code to facilitate the company's planned restructuring and alliance with Fiat.
8. Subject to the receipt of regulatory approvals and/or derogations, the Parties intend to close the transaction no later than 15 June 2009, as imposed by the US government. This will enable new Chrysler to have access to additional loan funding of USD 6 billion from the US Treasury and the Canadian Government.

II. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million [Fiat EUR 59.4 billion, Chrysler EUR 33.2 billion]. Each of them has a Community-wide turnover in excess of EUR 250 million [Fiat EUR 35.8 billion, Chrysler EUR 2.2 billion], and they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The proposed Transaction therefore has a Community dimension within the meaning of Article 1(2) of the EC Merger Regulation.

III. THE APPLICATION FOR DEROGATION

10. On 15 May 2009 Fiat applied for a derogation from the suspension obligation provided by Article 7(1) of the EC Merger Regulation in order to close the transaction no later than 15 June 2009, as agreed with Chrysler's stakeholders, and to use its governance rights to implement Chrysler's restructuring. Subsequently, Fiat informed the Commission that the US Treasury had requested the Parties to close the Transaction on 29 May 2009.
11. The Parties submit that any delay in completing the Transaction would cause significant harm to Chrysler, its suppliers and its distributors. At present, Chrysler is in bankruptcy and its manufacturing plants have been idled to conserve resources. Suppliers have ceased supplying their products to Chrysler. Moreover, the Parties argue, the uncertainty about whether or not and when Chrysler could resume

manufacturing cars will also have severe negative effects on customers' perception of the Chrysler brand and its ability to maintain its distribution network.

12. As Chrysler is in financial distress, the Parties argue that there is an urgent need for the Transaction to be implemented in both aspects, i.e. the provision of financial support by the US Treasury and the Canadian Government as well as technological support by Fiat to Chrysler. Stressing the urgency, the Parties argue that any delay on the implementation of the Transaction would put the entire transaction at risk, and that this would threaten Chrysler's ability to maintain its activities, which would affect its dealers and suppliers, and ultimately the entire US car industry.

IV. THE CONDITIONS FOR DEROGATION PURSUANT TO ARTICLE 7(3) OF THE EC MERGER REGULATION

13. Pursuant to Article 7(1) of the EC Merger Regulation, a concentration falling under that Regulation shall not be implemented either before its notification or until it has been declared compatible with the common market. Pursuant to Article 7(3) of the EC Merger Regulation, the Commission may, on reasoned request, grant a derogation from the obligation imposed in Article 7(1).
14. Derogation from the obligation to suspend concentrations is granted only exceptionally, normally in circumstances where suspension provided for in the EC Merger Regulation would cause serious damage to the undertakings concerned by a concentration, or to a third party.
15. In deciding on the request, the Commission must take into account, *inter alia*, the effects of the suspension on one or more undertakings concerned by the concentration or on a third party and the threat to competition posed by the concentration.

A. THE OPERATION FALLS UNDER THE SUSPENSION OBLIGATION PURSUANT TO ARTICLE 7(1) OF THE EC MERGER REGULATION

16. The proposed transaction constitutes a concentration within the meaning of Article 3 of the EC Merger Regulation and has a Community dimension according to Article 1 thereof. Hence the operation falls under the suspension obligation laid down in Article 7(1) of the EC Merger Regulation.

B. THE EFFECTS OF THE SUSPENSION ON THE UNDERTAKINGS CONCERNED AND THIRD PARTIES

17. The Parties submit that absent the grant of a derogation from the suspension obligation by the Commission, the very survival of Chrysler, its suppliers and its distributors is at risk. An extended period of uncertainty regarding the closing of the Transaction, the Parties argue, would remove Chrysler as a competitor in a number of automobile related markets worldwide, result in the loss of 38 500 Chrysler jobs in the United States, and eliminate an additional 140 000 jobs due to the closing of 3 200 Chrysler dealers.
18. This contention, the Parties submit, reflects the US Treasury Auto Task Force's conclusion that Chrysler is incapable of surviving as a stand alone business, and that

a prompt closing of the Transaction is the only realistic means to address the very strategic and operational weaknesses that have resulted in Chrysler's dire financial situation. Chrysler's production facilities have been idled, and it will not have the funding to reopen the plants unless and until the Transaction is closed and it can benefit from the resources and skills that Fiat can provide. Moreover, implementation of the Transaction in an expedited manner is the only way to ensure Chrysler will receive further funding from the US and Canadian governments to finance its viability plans. This access to funding is critical to survival of Chrysler, as it is losing an estimated [...]. For these reasons, the US Government has imposed on the Parties a "drop-dead" date of 15 June 2009 to complete the Transaction. Any delay beyond 15 June 2009 in closing the Transaction would jeopardize access to further funding, undermining the efforts to return Chrysler to viability.

19. The Parties also argue that Chrysler's supplier base is highly dependent upon a prompt closing of the Transaction, as these suppliers cannot survive an extended period of uncertainty. Chrysler's financial difficulties, particularly the idling of its production facilities, have adversely affected its relationship with its suppliers, many of whom manufacture parts specifically designed for Chrysler vehicles. As long as Chrysler's production facilities remain shutdown, any prolonged delay in closing the Transaction exposes Chrysler's suppliers to the risk of insolvency. This risk extends to Chrysler itself, as the elimination of its supplier base increases the likelihood that Chrysler will have difficulty sourcing key components for its automobiles. Chrysler contends it cannot produce and sell cars without the unique, specially-designed parts produced by its suppliers.
20. Finally, the Parties submit that derogation from the suspension obligation would mitigate the likely harm to Chrysler's distribution network, which is being adversely impacted by the prolonged period of uncertainty surrounding the Chrysler business. The Chrysler dealer network is the first point of contact for potential Chrysler customers. Thus, the dealer network, which Chrysler has developed over many decades, is a critical component of Chrysler's business. The Parties claim that the timely closing of the Transaction would facilitate consumer confidence in the Chrysler brand, and would therefore enable Chrysler to support its distribution network. Maintenance of Chrysler's distribution network would also enhance the likelihood of Chrysler's own future viability by ensuring it will have an outlet to sell its vehicles.
21. From the above information, which appears plausible a priori and has been confirmed in documents presented to the US bankruptcy court and discussions with US Treasury officials, the Commission considers that, in the absence of the requested derogation, the proposed Transaction cannot, in all likelihood, take place. Under the exceptional circumstances of the present case, in view notably of Chrysler's financial distress and the bankruptcy proceedings concerning this company, this could prevent Chrysler from having timely access to sufficient funds and technological support to re-start operations, which in turn could have significant detrimental effects on this company and its suppliers and distributors. Moreover, recalling the drop dead date of 15 June 2009 imposed by the US Treasury and the fact that Chrysler can be considered a wasting assets it would not be feasible in the present case for the Parties to notify and await a decision pursuant to Article 6 of the EC Merger Regulation. Against this background, it may be concluded that the

suspension imposed by Article 7 (1) could lead to serious harm to Chrysler and third parties.

C. THE THREAT TO COMPETITION POSED BY THE CONCENTRATION

22. The Parties submit that the Transaction does not raise any competitive concerns. They argue that Chrysler and Fiat are more complementary than competitive in both geographic scope and the range of products they offer. The bulk of Chrysler's business, in effect, is generated in North America, which accounts for 90% of its turnover, while only 6.5% of Chrysler's turnover is generated in the EEA. Fiat, on the other hand, generated approximately 60% of its turnover in the EEA, and less than 1% in North America. The complementarities extend as well to the Parties' products, as Fiat is relatively stronger in smaller car model segments where Chrysler is not present at all.

(a) *Horizontal competitive analysis*

23. The only horizontal overlap between the Parties appears to be in the manufacture and supply of passenger vehicles. Where there is overlap, it is however minor given Chrysler's modest presence in the EEA and the different market segments focused on by Chrysler and Fiat. For example, while Fiat's strength lies in small cars, Chrysler's product range in the EEA is focused on sports utility vehicles ("SUVs") and multi-purpose vehicles ("MPVs"). Fiat has a limited presence in SUVs and MPVs.

24. The horizontal overlap between the Parties, therefore, does not appear to raise competitive concerns, irrespective of whether the market is considered a single relevant market for passenger cars or narrower markets are defined by criteria such as engine size or vehicle length. Indeed, on an EEA-wide basis¹, the combined market share of the firm in a putative market for the manufacture and supply of passenger vehicles would be 8.6% (Fiat 8% and Chrysler 0.6%). If the markets are viewed more narrowly, except for the mini car segment, the combined firm would have less than 10% market share in every category EEA-wide. In the mini car segment, where Fiat currently holds a 32.2% EEA-wide market share, there is no overlap with Chrysler. Likewise, an analysis of passenger vehicle markets by each Member State does not appear to signify that the Transaction would raise horizontal competitive problems as the only affected market would be in Italy where the merged entity would have a combined market share of 32.4% for all passenger car segments combined (Fiat 31.6%, Chrysler 0.8%). Looking at individual segments at Member State level, the only Member State in which the Parties' combined share in any overlapping model segments would exceed 15% is Italy, where post merger they would achieve (i) 27.5% in the MPV segment, (ii) 26.9% in the large car segment and (iii) 24.1% in the medium car segment. In each of these segments the increment arising from the proposed transaction would not be significant, ranging between 0.2% in the case of the large car segment and 1.3% in the MPV segment.

¹ In previous cases, the Commission has left open whether the relevant geographic market for the manufacture and supply of passenger vehicles is international (at least EEA-wide) or national. See, for example, IV/M.1452 *Ford/Volvo* and COMP/M.5061 *Renault/Russian Technologies/Autovaz*.

(b) *Vertical competitive analysis*

25. The Transaction also does not appear to raise vertical competitive concerns, such as the risk of customer or input foreclosure. Neither Chrysler nor Fiat are present in any markets downstream of passenger vehicle manufacturing, such as the wholesale or retail distribution of vehicles. Chrysler is also not present in any market upstream of the manufacturing of passenger vehicles. Fiat, however, is present upstream through a number of subsidiaries that manufacture and sell various automotive components for Fiat, other OEMs and to the aftermarket. Among these subsidiaries are Fiat Powertrain Technologies (engines and transmissions), Magneti Marelli (automotive lighting, electro-mechanical components for powertrain applications, and electronic systems), Teksid (cast components), and Comau (dies and automated production systems). Chrysler does not appear to be supplied by any of these subsidiaries within the EEA.
26. An evaluation of Fiat's market shares on an EEA-wide basis in the various upstream markets indicates that, even using the narrowest product market segmentations previously considered by the Commission, Fiat's shares would not exceed the "safe harbour" threshold of 30% provided for in point 25 of the Guidelines on the assessment of non-horizontal mergers under the EC Merger Regulation.² Thus, in any of the potential relevant passenger car engine markets, Fiat has no more than 15% market share. In potential relevant markets for electro-mechanical components for powertrain applications Fiat's share is at most 13%. In electronic systems, Fiat's share does not exceed 15%. Fiat's share in any relevant cast components market would not exceed 12%. Fiat's most significant share in automated productions systems would be no more than 21%. In the automotive dies market, Fiat's share is only 6%. Finally, in any narrowly defined automotive lighting market, Fiat maintains at most 30% market share.
27. For a number of reasons, the Transaction does not appear to raise vertical competitive concerns despite Fiat's presence in numerous upstream markets. First, the transaction does not appear to enhance Fiat's market share in any of the upstream markets, as Chrysler is not present in any of those markets. Second, Fiat's market shares in the upstream markets, as presented thus far, fall generally within the "safe harbour" threshold of 30%, a level where it is generally presumed vertical concerns are unlikely to arise. Third, the Commission has concluded in previous cases involving automotive parts sectors that vehicle manufacturers generally possess countervailing purchasing power³. Fourth, the Transaction will not significantly cause Fiat to become more vertically integrated than it already is, given the modest increases in market share it would achieve in the downstream passenger vehicle markets.

² Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 265, 18.10.2008, p. 6.

³ See IV/M.1175 *Magna/Steyr*, IV/M.1196 *Johnson Controls/Becker*, COMP/M.2901 *Magna/Donnelly* and COMP/M.3486 *Magna/New Venture Gear*.

Conclusion

28. Therefore, on the basis of the information provided by the Parties, the Transaction is not likely, *prima facie*, to significantly impede effective competition within the EEA.

D. BALANCE OF INTERESTS

29. Based on the above, it appears that the suspension obligation could seriously affect the financial interests of Chrysler, its suppliers and distributors and could result in threatening Chrysler's survival. Moreover, at this stage and on the basis of the available information, no threat to competition caused by the operation can currently be identified, and the derogation does not appear to have adverse effects on one or more of the Parties or on any third party. Therefore the Commission finds that derogation can be granted in accordance with the application and to the extent specified below.

V. TERMS AND CONDITIONS

30. According to Article 7 (3), 4th sentence, of the EC Merger Regulation, a derogation from the suspension obligation laid down by Article 7 (1) thereof may be made subject to conditions and obligations in order to ensure effective competition.
31. Based on the preceding considerations, the Commission has decided to grant a derogation from the suspension obligation with regard to the proposed concentration subject to the following condition:

Fiat shall submit within 10 working days after closing of the Transaction a complete notification to the Commission in order to allow the assessment of the compatibility of the proposed concentration with the common market.

VI. CONCLUSION

32. Based on the above considerations and in accordance with Article 7(3) of the EC Merger Regulation, Fiat is granted a derogation from the obligations imposed by Article 7(1) of the EC Merger Regulation subject to the condition set out in paragraph 31 above until the Transaction has been declared compatible or incompatible with the common market.

For the Commission

signed
Neelie Kroes
Member of the Commission