

***Case No COMP/M.5518 -
FIAT/ CHRYSLER***

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**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 24/07/2009

***In electronic form on the EUR-Lex website under document
number 32009M5518***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.07.2009

SG-Greffe(2009) D/4534
C(2009)6011

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.5518 - Fiat/ Chrysler
Notification of 23.6.2009 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 23 June 2009, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Fiat S.p.A. ('Fiat', Italy) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Chrysler LLC ('Chrysler', USA) by way of acquisition of shares.

I. THE PARTIES

2. Fiat is active 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 North America where it derives more than 90% of its revenues.

¹ OJ L 24, 29.1.2004, p. 1.

II. THE OPERATION

4. On 30 April 2009, Chrysler, Fiat and NewCarCo Acquisition LLC, a Delaware limited liability company formed by Fiat for the purposes of the transaction, entered into a Master Transaction Agreement, which together with certain ancillary agreements, contemplates the sale of substantially all the assets of Chrysler to Fiat following an expedited sales process under Chapter 11 of the United States Bankruptcy Code.²
5. The Transaction comprises two components: (i) an 'Equity Component' consisting of the initial acquisition by Fiat of a 20 % shareholding in a newly-established company ('New Chrysler') to which substantially all of Chrysler's business will be transferred at completion of the Transaction and (ii) Fiat contributing rights to New Chrysler 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 (the 'Fiat Contributions').
6. Fiat may ultimately increase its equity interest in New Chrysler to a maximum of 51 % (through provisions of the LLC Agreement). In the first instance, Fiat shall have the right to receive an additional 15 % equity interest ('Performance Equity') 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 ('the Incremental Equity Option') which shall be exercisable between 1 January 2013 and 30 June 2016. If Fiat acquires the Performance Equity and exercises the option to acquire the Incremental Equity, Fiat's total shareholding in New Chrysler would amount to 51%.³ However, Fiat's interest in Chrysler may not exceed 49.9% so long as Chrysler has not repaid the loan granted by the United States Treasury and the Canadian Government.⁴

III. CONCENTRATION

7. 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.

² On 10 June 2009, after a judicial procedure, the company formerly known as Chrysler LLC sold substantially all of its assets, without certain debts and liabilities, to a new company that will operate as Chrysler Group LLC. According to the Master Transaction Agreement, in the first instance, all the assets of New Chrysler will be acquired by NewCarCo Acquisition LLC, a wholly-owned subsidiary of Fiat. Immediately after closing, Fiat shall cause its subsidiary to issue shares to the U.S. Treasury (9.85%), the Canadian government (2.46%) and the Voluntary Employee Benefit Association ('VEBA') (67.69%). Fiat will therefore retain 20% of Chrysler.

³ Assuming Fiat acquires the Performance Equity, the shareholdings will be Fiat 35%, the U.S. Treasury 8%, the Canadian government 2%, VEBA 55%. The exercise of the Incremental Equity Option would result in the following shareholding structure: Fiat 51%, US Treasury 6.01%, Canadian government 1.51%, VEBA 41.46%. These further steps, however, will not lead to a change in control as Fiat in addition to its initial 20% stake will have extensive governance rights in relation to New Chrysler leading to sole control on a de jure basis (see recitals 7-9).

⁴ Section [...]of the Amended and Restated Limited Liability Company Operating Agreement of Chrysler Group LLC ('the LLC Agreement'), 10 June 2009.

8. The New Chrysler CEO may only be appointed with the approval of Fiat and may ultimately be a Fiat employee. Fiat will also have a veto over so-called Major Decisions of New Chrysler.⁵ The list of Major Decisions covered by Fiat's veto right includes decisions such as the opening or reopening of a major production facility as well as capital investment and commitment by New Chrysler exceeding USD 250 million, decisions with importance for the long-run production strategy and the economic recovery of New Chrysler. In addition, Fiat will have a right of veto over the initial annual operating budget and the business plan to be adopted by New Chrysler.
9. In light of these factors and other elements of the Transaction Agreements that form part of the proposed transaction⁶, the Commission considers that Fiat will acquire sole control over New Chrysler on a *de jure basis*. The proposed operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the EC Merger Regulation.

IV. COMMUNITY DIMENSION

10. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁷ [Fiat 59 380 million, Chrysler 33 238 million]. Each of them has a Community-wide turnover in excess of EUR 250 million [Fiat [...] million, Chrysler [...] 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.

V. COMPETITIVE ASSESSMENT

11. Both Fiat and Chrysler are active in the manufacture and supply of passenger cars. In view of Chrysler's limited market presence in the EEA, however, the transaction would only result in a limited number of horizontally affected markets if separate product markets were considered in respect of particular model segments of cars and each Member State were considered to constitute a distinct geographic market. At the same time, Fiat, via a number of group companies including Magneti Marelli, is active in certain products that are upstream to the manufacture of passenger cars.

A. Relevant product markets

Downstream market – manufacture and supply of passenger cars

12. In previous decisions concerning the passenger car market, which has been distinguished from the market for commercial vehicles, the Commission has left open the question of whether the

⁵ See sections [...] of the LLC Agreement respectively. Although VEBA will initially hold almost 68% of the membership interests in Chrysler, it will not exercise control (either sole or joint) over the company given that it will not be free to determine how it exercises its voting rights (see Section 2.4 of the Shareholders' Agreement).

⁶ In addition to the Master Transaction Agreement dated 30 April 2009, the Transaction Agreements comprise: (i) the LLC Agreement, which deals with the management structure and governance issues of New Chrysler, (ii) a Master Industrial Agreement which gives details of the nature of the Fiat Contributions, (iv) a Management Service Agreement which provides details of the types of services to be provide to New Chrysler by Fiat 'to facilitate the efficient and expeditious implementation and execution' of New Chrysler's initial business plan and (v) a Shareholders Agreement by and among Fiat North America LLC, the United States Department of the Treasury, UAW Retiree Medical Benefits Trust, the VEBA Holdcos Signatory Hereto and 7169931 Canada Inc.

⁷ Turnover calculated in accordance with Article 5(1) of the Merger Regulation.

market for passenger cars can be considered a single relevant product market or whether individual segments, defined by reference to objective criteria, such as engine size or length of vehicle, could constitute separate product markets.⁸ In this regard, the narrowest segmentation considered by the Commission has been the following:

- A: mini cars
- B: small cars
- C: medium cars
- D: large cars
- E: executive cars
- F: luxury cars
- S: sport coupés
- M: multi purpose cars
- J: sport utility cars (including off-road vehicles).

13. The notifying party submits that for the purposes of the present case, the question of product market definition can again be left open as whether the proposed transaction is analysed on the basis of a broad market definition encompassing all passenger cars or by treating each of the segments listed above as a separate product market, there is no risk that the proposed transaction would give rise to a significant impediment to effective competition.⁹
14. The market investigation has shown that whereas some car manufacturers sub-divide the car market according to the segmentation described above, others use different criteria to segment the market or indeed make no segmentation at all on the grounds that manufacturers compete with each other with complete product ranges in all segments. For the purposes of the present case, however, the precise scope of the relevant product market can be left open as, under any alternative market definition, including the narrowest across basis whereby each segment would constitute a distinct product market, the transaction does not raise competition concerns.

Upstream markets

15. Fiat is also active on certain markets that are upstream of the manufacture of passenger cars including passenger car engines, transmissions, automotive lighting, electro-mechanical components for power train applications, electronic systems, cast components, automated production systems and dies. In most instances, Fiat's share of these markets on the basis of the product market definitions considered by the Commission in previous cases concerning the automotive sector, or if not previously considered, the narrowest potential product market as suggested by the notifying party, is well below 30% and therefore in a range where it is unlikely that concerns would arise. In addition, none of the special circumstances identified in recital 26

⁸ See for example, IV/M 416 BMW/Rover, IV/M.741 – Ford/Mazda, IV/M.1204 Daimler-Benz/Chrysler, IV/M.1326 – Toyota/Daihatsu, IV/M.1452 – Ford/Volvo, COMP/M.1519- Renault/Nissan, COMP/M.2832- General Motors/Daewoo, COMP/M.5061 Renault/Russian Technologies/Avtovaz and COMP/M.5250 Porsche/Volkswagen.

⁹ It is to be noted that neither of the parties is present on any market that is downstream of the manufacture of passenger cars such as the market for the wholesale or retail distribution of motor vehicles.

of the Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings¹⁰ are met.

16. In view of these facts, the absence of Chrysler in any of the upstream markets and its only insignificant presence in the passenger car markets in the EEA as well as the absence of any concerns in the market investigation concerning possible input foreclosure, these upstream products are not considered further in this decision. The Commission however examined one area of electro-mechanical components for power train applications, namely automated manual transmission ('AMT') automation systems where Fiat would have a market share above 30% were this product considered to be a distinct relevant product market.
17. AMT systems are systems based on an electronic transmission control unit which manages an electro-hydraulic device and automate a manual transmission. When fitted to a manual transmission, the AMT system converts it to an AMT with the electro-hydraulic device automatically managing the clutch pedal and gear engagement, thereby eliminating the use of the clutch pedal, both in automatic and manual mode. The type of AMT system produced and sold by Fiat comprises several components: a transmission control unit ('TCU'), a hydraulic control module, a gearbox actuator and a clutch actuator as well as the associated electric wires and hydraulic hoses.
18. In previous cases, the Commission has segmented the transmissions market so as to distinguish transmissions for passenger cars and light commercial vehicles from transmissions for trucks and heavy vehicles, and to distinguish manual transmissions for passenger cars and light commercial vehicles from automatic transmissions for passenger cars and light commercial vehicles.¹¹ The Commission has also considered AMT systems and individual components of such systems including TCUs.¹² The notifying party submits that AMT systems are merely one of several different technologies that can be used for automated transmissions and therefore should be included in a broader product market of automated transmissions.
19. The majority of respondents to the market investigation in the present case consider that automated transmissions should be distinguished from manual transmissions. At the same time, it was suggested that because of certain supply-side considerations, AMT systems should be distinguished from other types of automated transmissions. Nevertheless, as the transaction would not give rise to competition concerns whether the relevant product market is considered to be no broader than AMT systems or indeed components of such systems, the precise product market definition can be left open in the present case.

¹⁰ OJ C 265, 18.10.2008, p. 6. Special circumstances for instance are: a merger involving a company that is likely to expand significantly in the near future; a situation with significant cross-shareholdings or cross-directorships among market participants; one of the merging firms is a firm with a likelihood of disrupting coordinated conduct or indications of past or ongoing coordination, or facilitating practices.

¹¹ IV/M.1368 – Ford/ZF

¹² See Case No COMP/M.2603 – ZF Friedrichshafen/Mannesmann Sachs, paragraph 34 and Case NO COMP/m.5295 – Schaeffler/Continental, paragraph 47.

B. Relevant geographic markets

Downstream market – manufacture and supply of passenger cars

20. In previous cases the Commission has considered, without reaching a definitive conclusion, whether the relevant geographic market for the manufacture and supply of passenger cars could be national or EEA-wide.¹³ For the purposes of the present decision, the exact definition of the relevant geographic market can again be left open as the transaction does not raise competition concerns under either alternative (i.e. national or EEA-wide).

Upstream markets

21. The Commission has consistently found the markets for automotive components to be at least EEA-wide.¹⁴ This has been confirmed by the market investigation in the present case.

C. Competitive assessment

Horizontal overlaps– manufacture and supply of passenger cars

22. On an EEA-wide basis, the parties' combined market share in the manufacture and supply of passenger cars is [5-10]% (Fiat [5-10]%, Chrysler [0-5]%). In the event that each of the nine model segments is considered to be a distinct product market, the parties' combined share in all segments, with the exception of segment A (mini cars), would be less than 10%. Even in the case of the mini car segment, where the merged entity's market share would be [30-40]%, there is no increment in market share reflecting Chrysler's traditional focus on larger sized vehicles.
23. If the geographic market is considered to be no broader than national in scope, the transaction would result in one affected market in Italy (for all model segments combined) where the merged entity would have a market share of [30-40]% though the increment is not significant at less than 1%.
24. In a similar manner, Italy is the only member state in which the parties' activities would lead to the identification of affected product markets on the basis of distinct model segments, more specifically in segments C, D and M (medium cars, large cars and multi purpose cars respectively). However, the highest market share in these segments is [20-30]% (multi purpose cars) and in all instances the increment is not significant at less than 1.5%.
25. In light of the above elements, it is concluded that the transaction does not raise concerns in any market for the manufacture and supply of passenger cars.

Vertical relationships

26. As noted in recital 15 above, 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 in most instances would not exceed 30%.

¹³ See for example COMP/M.5061 – Renault/Russian Technologies/Avtovaz and COMP/M.5250 – Porsche/Volkswagen

¹⁴ See for example, IV/M.937 – Lear/Keiper, IV/M.1189 – Teksid/Norsk Hydro and COMP/M.3486 – Magna/New Venture Gear.

27. In the case of AMT systems, which the notifying party submits is too narrow to constitute a distinct product market, Fiat estimates its share to be in the region of [30-40]% with other competitors such as Getrag, Luk, Aisin and ZF-Sachs having market shares of [20-30]%, [10-20]%, [10-20]% and [5-10]% respectively.¹⁵ If the relevant product market is considered to comprise all automated transmissions, Fiat estimates that its share of the merchant market at an EEA-wide level would be approximately [5-10]%.
28. However, although on an EEA-wide market for AMT systems Fiat's market share would exceed 30%, the transaction does not change Fiat's ability or incentive to foreclose as it does not add to Fiat's market share in the upstream market, as Chrysler is not active in this market, and only insignificantly increases Fiat's market share by less than 1% in the sole potential downstream passenger car market where the merged entity's share would exceed 30%.¹⁶
29. Therefore, in light of the above factors and in the absence of concerns in the market investigation regarding input foreclosure, it is concluded that the transaction does not raise vertical concerns.

VI. CONCLUSION

30. 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 (EC) No 139/2004.

For the Commission
(*signed*)
Neelie KROES
Member of the Commission

¹⁵ Fiat does not sell TCUs or any other individual components separately from the AMT systems of which they form part. Moreover, Fiat does not sell TCUs for any other type of transmission.

¹⁶ The market for passenger cars in Italy.