

***Case No COMP/M.5617 -
GENERAL MOTORS/
DELPHI
CORPORATION***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 02/10/2009

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EUROPEAN COMMISSION

Brussels, 2.10.2009

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.5617 – General Motors/ Delphi
Notification of 01.09.2009 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 01.09.2009, the Commission received a notification of a proposed concentration by which the undertaking General Motors Company ("GM", United States) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of parts of the undertaking Delphi Corporation ("Delphi", US) by way of purchase of shares and assets.

I. THE PARTIES AND THE OPERATION

2. GM is mainly active in the manufacture and sale of automobile vehicles.
3. Delphi is a global supplier of automotive components. Delphi supplies products to the major global automotive vehicles manufacturers such as GM, Ford and Volkswagen. Delphi is the successor to the parts business of GM, having been separated from GM in 1999.
4. Delphi has been subject to chapter 11 U.S. bankruptcy proceedings since 2005. On 30 July 2009, the U.S. Bankruptcy Court approved a series of transactions in order to allow Delphi

¹ OJ L 24, 29.1.2004 p. 1.

Corporation to emerge from Chapter 11. The Commission already unconditionally cleared the acquisition of Delphi's steering business and four of its U.S. plants by GM.²

5. GM intends to acquire sole control of Delphi's remaining business³ with the exception of certain residual non-core and non-strategic assets and liabilities which will be retained by a reorganised entity, DPH Holdings Co. The remaining business ("NewDelphi") is active in the global supply of mobile electronics and transportations systems for the automotive industry. GM makes this investment together with other investors, creditors to Delphi (i.e. the investment funds Silver Point Capital Fund, L.P., Silver Point Capital Offshore Fund Ltd. (together "Silver Point") and Elliott Associates, L.P. ("Elliott Global")).
6. Delphi's remaining business will be acquired via a vehicle company ("NewCo"). All strategic business decisions like the annual budget, the business plan and major investments are decided by the Board of Managers composed of nine members. Each of the creditors determines two of the members of the Board. GM determines four of the nine members of the Board of Managers and can veto the appointment of the ninth manager. Since the Board of Managers decides, by a simple majority, on the strategic business decisions, GM can block these decisions in the Board of Managers and will therefore acquire sole control over NewCo.
7. Consequently, the proposed transaction constitutes a concentration within the meaning of Art. 3(1)(b) EC Merger Regulation.

II. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion⁴ (GM: EUR [...] million, Delphi: EUR [...] million). Each of them has a Community-wide turnover in excess of EUR 250 million (GM: EUR [...] million, Delphi: EUR [...] million), and 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.

III. COMPETITIVE ASSESSMENT

9. Both GM and Delphi are active in the market for manufacture of car components for the automotive industry, more precisely in the aftermarket for replacement parts. The transaction therefore results in horizontal overlaps, but as these overlaps are very limited, no markets are horizontally affected by the transaction.

² See Case No COMP/M.5588 – *GM/Delphi Steering II*, Commission decision of 12.08.2009.

³ Delphi's assets GM intends to acquire now are identical with those which initially the Platinum Equity Group wanted to buy (See the clearance decision in Case No COMP.M/5570 – *Platinum Equity Group/Delphi Corporation*, Commission decision of 05.08.2009). The latter transaction was abandoned, since the U.S. Bankruptcy Court decided that the present bid made by GM together with the major debtors, Elliott Management Corp and Silver Point Capital LP, was to be the "preferred bid", while the Platinum bid was given the status of an "alternate transaction".

⁴ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

10. The Parties are also active in vertically related markets. GM's vehicle business is downstream of Delphi's market, i.e. the manufacture and sale of a number of automotive components. GM also sources some components from Delphi for its "Powertrain business line" ("GMPT"). However, the significance of these vertical relationships is limited.

1. Relevant product markets

a. Manufacture of car components

11. Both Delphi and GM (through the four Delphi US plants previously acquired⁵) manufacture a great number of various automotive components such as: airbags, crash sensors, warning systems, airmeters, engine air control valves, canisters, gas control modules, gasoline fuel injection, ignition electronics, transmission products, HVAC modules, valvetrain, pressure sensors, radios (including reception systems/antennas and satellite radios).
12. A number of possible market delineations for the upstream markets were considered in previous Commission decisions⁶, but the market definition can be left open in this case, as there are no competition concerns even under the narrowest product market definitions.
13. For the following products, the Parties submit that Delphi's market share is near to or above [20-30]⁷: (i) electric distribution systems ('EDS')/electric and electronic distribution systems ('EEDS'), (ii) within the broader category of body security products: antitheft ultrasonic intrusion sensing and alarm sirens, (iii) mechatronics, i.e. switches and modules containing switches, (iv) within the broader segment of peripherals: integrated antennas, communication antennas and digital DAB/TV receivers.
14. Product group (i) has already been investigated in previous Commission decisions⁸ without it being necessary to draw a final conclusion on the market definition. As, under any possible market definition, the present transaction does not raise concerns in this product category either, the market definition will also be left open in the present case.
15. The market investigation was not conclusive on the question of further segmentations within the broader categories listed above under (ii)-(iv). However, in the present case, the precise definition of these component markets can be left open, since the proposed

⁵ See Case No COMP/M.5588 – *GM/Delphi Steering II*, Commission decision of 12.08.2009.

⁶ See for example Case No COMP/M.5221 – *Kenwood/JVC/Holdco*, Commission decision of 19.08.2008, Case No COMP/M.4878 – *Continental/Siemens VDO*, Commission decision of 29.11.2007, Case No COMP/M.3972 – *TRW Automotive/Dalphi Metal Espagne*, Commission decision of 12.10.2005 Case and Case No COMP/M.1332 – *Thompson/Lucas*, Commission decision of 21.12.1998.

⁷ To the extent that GM is at all active in any of these markets, the market shares of the company (through the Assets) are below [...]%.

⁸ See for example Case No COMP/M.5570 – *Platinum Equity Group/Delphi Corporation*, Commission decision of 05.08.2009, Case No COMP/M.4932 – *Leoni/Valeo CSB*, Commission decision of 17.12.2007, Case No COMP/M.4161 – *SEI/VWBN*, Commission decision of 30.03.2006 and Case No COMP/M.2440 – *Siemens/Yazaki/JV*, Commission decision of 06.08.2001

transaction will not give rise to serious doubts as to its compatibility with the common market under any of the potentially relevant market definitions.

16. The Parties are also active on the independent aftermarket for replacement parts⁹.

b. Manufacture of certain motor vehicles

17. GM sells passenger cars and Light Commercial Vehicles ("LCVs") in the EEA. In past decisions concerning these markets,¹⁰ the Commission distinguished a market for the manufacture and supply of motor vehicles and a market for the wholesale and retail distribution of these products. Concerning the market for the manufacture and supply of passenger cars, the Commission envisaged a further sub-segmentation based on the type of car,¹¹ but left the exact market definition open. As regards LCVs, the Commission did not consider any narrower segmentation of the market for the manufacture and supply of these products.¹²

18. Also for the purpose of the present case, the exact market definition can be left open, since the proposed transaction will not give rise to serious doubts as to its compatibility with the common market under any of the potential relevant market definitions.

c. Engines and transmissions for automotive vehicles (powertrain)

19. GM develops, assembles and supplies primarily engines and transmissions for automotive vehicles through its "Powertrain business divisions" ("GMPT"), while Delphi is active in the production of components which are integrated into these power train products. Some of Delphi's products in the Electrical / Electronic Architecture division and in its Powertrain Division could potentially be provided for transmissions and secondary (high voltage) wiring for ignition systems, which are both part of GM's powertrain business. In past decisions, the Commission considered a possible distinction between manual and automatic transmissions as well as between diesel and gasoline engines (along with applications and certain additional parameters).¹³ As under any possible sub-segmentation, the transaction will not lead to any affected market, the exact product market definition can be left open in the present case.

2. Geographic markets

⁹ The Commission considered 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"). See for example Case No COMP/M.3789 – *Johnson Controls/Robert Bosch/Delphi SLI*, Commission decision of 29.06.2005.

¹⁰ See for example Case No COMP/M.5250 - *Porsche/Volkswagen*; Commission decision of 23.07.2008.

¹¹ Mini cars, small cars, medium cars, large cars, executive cars, luxury cars, sport coupés, multi purpose vehicles and sports utility vehicles.

¹² See for example Case No COMP/M.2832 – *GM/Daewoo Motors*, Commission decision of 22.07.2002.

¹³ See for example Case No COMP/M.2127 – *DaimlerChrysler/Detroit Diesel Corporation*, Commission decision of 09.10.2000, and Case No COMP/M.1368 – *Ford ZF*; Commission decision of 21.12.1998.

a. Upstream markets

20. The Parties submit that the geographic scope of all upstream product markets concerning automotive systems and components is at least EEA-wide. This is in line with previous Commission decisions.¹⁴
21. Even though the market investigation showed indications of the markets possibly even being worldwide, the exact scope of the geographic market can be left open in the present case since the market position of the Parties would not give rise to competition concerns even if the markets are defined as EEA-wide.

b. Downstream market

22. In previous decisions concerning the manufacture and supply of passenger cars,¹⁵ the Commission has either considered the relevant geographic market to be national in scope or left open the precise definition. As regards LCVs,¹⁶ the Commission also left open the question whether the market for the manufacture and supply of these products is EEA-wide or national in scope.
23. With respect to the engine/transmissions markets, GM submits that the relevant geographic markets are at least EEA-wide.
24. For the purpose of the present case, the exact scope of the geographic market can be left open since the market position of the Parties would not give rise to competition concerns even if the market is more narrowly defined than the EEA.

3. Competitive assessment

a. Horizontal overlap

25. GM is only to a minor extent active on the market for the manufacture of automotive components through the four Delphi US plants acquired previously¹⁷. The Parties estimate that for each component type, the market shares of the Assets in the EEA in 2008 are below [0-5]%

¹⁴ See for example Case No COMP/M.5570 – *Platinum Equity Group/Delphi Corporation*, Commission decision of 05.08.2009 and Case No COMP/M.5294 – *Schaeffler/Continental*, Commission decision of 19.12.2008.

¹⁵ See for example Case No COMP/M.5250 – *Porsche/Volkswagen*, Commission decision of 23.07.2008.

¹⁶ See for example Case No COMP/M.2832 – *General Motors/Daewoo Motors*, Commission decision of 22.07.2002.

¹⁷ See Case No COMP/M.5588 – *GM/Delphi Steering II*, Commission decision of 12.08.2009..

26. The proposed transaction also gives rise to a minor overlap on the independent aftermarket for replacement parts for two product types: brakes and "sparks"¹⁸. The Parties' combined market share does not exceed [10-20]% for any of these products even on the narrowest potential relevant geographical markets.
27. Based on the above, the proposed transaction does not raise serious doubts in the market for the manufacture of automotive components or in the independent aftermarket for replacement parts.

b. Vertical links

28. In the *upstream* market for the manufacture of car components, Delphi's market share exceeds - or is close to – [20-30]% in the following markets: EDS/EEDS, body security products, mechatronics and peripherals.
29. In the case COMP/M.5570 – *Platinum/Delphi*, the question of whether or not EDS and EEDS form part of the same product market was left open and so was the question of whether or not to distinguish between EDS for passenger cars/light commercial vehicles (LCV) and EDS for trucks/heavy commercial vehicles (HCV). As Delphi's market shares in the EEA are below [20-30]% irrespective of the potential segmentation, except for EDS for LCV, a segment on which Delphi holds a market share of [20-30]% on the upstream market¹⁹ and GM [5-10]% on the downstream market, the transaction does not raise concerns in this respect²⁰. The combined entity would continue to face competition from competitors with significant market shares, such as Leoni ([10-20]%), Yazaki ([10-20]%), Sumitomo ([10-20]%), Draexlmaier ([5-10]%) and Lear (about [5-10]%).
30. Considering body security products, Delphi's market share within the EEA is below [20-30]% with the exception of the potential sub-segments for antitheft ultrasonic intrusion sensing ([70-80]%) and alarm sirens ([30-40]%). Irrespective of the parties' market shares, the combined entity will continue to face competition from companies such as Cobra ([10-20]% for ultrasonic intrusion sensing, [20-30]% for alarm siren), Metasystems ([10-20]% and [10-20]%, respectively), Bosch ([0-5]% and [10-20]%, respectively) and Helbako ([0-5]% and [0-5]%, respectively). GM submits that since its "Saab" business is being divested, the number of GM vehicles that would be offered with integrated antitheft ultrasonic intrusion solutions and alarm siren is very limited and this significantly lessens the importance of this vertical relationship.
31. With respect to mechatronics, Delphi has a market share of approximately [20-30]% in the EEA and will continue to face competition from competitors such as Kostal ([10-20]%), Valeo ([10-20]%) and Alps ([0-5]%).
32. As far as peripherals are concerned, Delphi has an EEA market share of [40-50]% in the potential sub-segment of reception systems and faces competition from competitors such as

¹⁸ As GM sells glow plugs together with spark plugs (and does not track sales of glow plugs and spark plugs separately), the market shares submitted refer to the overall "Spark" product line (glow plugs and spark plugs together).

¹⁹ Delphi's share with regard to the overall EDS segment is [20-30]%

²⁰ As GM only sells passenger cars and LCVs in the EEA, segments relative to Heavy Commercial Vehicles ("HCV") have not been addressed.

Hirschmann ([40-50]%), Calero (<[10-20]%) and Wisi (<[5-10]%). On an even narrower market definition based on a further subdivision of the reception systems sub-segment, the market structure is as following:

Table 1: EEA-wide market shares for reception systems by sub-segments, 2008

Products	Company	Market share
1. Antenna solutions	1. <u>Delphi</u>	<u>[50-60]%</u>
	2. Hirschmann	[20-30]%
	3. Calero	[10-20]%
	4. Wisi	[5-10]%
<i>1.1. Integrated antennas</i>	1. <u>Delphi</u>	<u>[50-60]%</u>
	2. Hirschmann	[30-40]%
	3. Laird	[5-10]%
	4. ASK	[0-5]%
<i>1.2. Communication antennas</i>	1. <u>Delphi</u>	<u>[20-30]%</u>
	2. Wisi	[30-40]%
	3. Kathrein	[20-30]%
	4. Calero	[10-20]%
2. Digital receivers	1. <u>Delphi</u>	<u>[30-40]%</u>
	2. Hirschmann	[60-70]%
	3. Lear	[5-10]%
	4. Others	[0-5]%

33. However, the reception systems that Delphi manufactures (receivers and antennas) are mainly used in the premium segment in the automotive industry, a segment on which GM is virtually non-existent in the EEA.
34. GM's market share on the *downstream* markets for the manufacture of vehicles is rather limited. Only in potential national markets, is its market share near to or above [20-30]%. (Mini cars in the Czech Republic ([20-30]%), medium cars in Hungary ([20-30]%), and multi-purpose vehicles in the United Kingdom ([20-30]%) and Bulgaria ([20-30]%).)
35. The Parties submit that in addition to the continued competitive pressure from other suppliers²¹, it must be taken into account that the manufacturers of car components rely on sales to a limited number of automotive companies, all of which have substantial buying

²¹ For instance, one customer stated that the company does not expect an impact on automotive prices, "because of the existing competition".

power. This was confirmed by the customers in the market investigation, who are all large professional companies with sophisticated purchasing procedures (mostly using tenders) and significant buyer power. No customers raised concerns, and they confirmed that they would be able to switch to other suppliers due to their considerable size.²²

36. Based on the above, the proposed transaction does not raise serious doubts in the market for body security products.

c. No risk of input or customer foreclosure

37. Given Delphi's market shares, and the presence of numerous alternative suppliers, the proposed transaction is unlikely to lead to any risk of input foreclosure. Even considering the antitheft ultrasonic intrusion sensing segment where Delphi has an estimated market share of [70-80]%, customers did not view this as a concern as a majority of customers stated that it would not be a problem for them to switch to alternative suppliers if the combined entity were to increase prices by 5-10% for this product. For instance, one customer mentioned Cobra and Metasystem as potential suppliers. No customers raised significant competition concerns regarding this segment.
38. GM's demand for the upstream products in the EEA only represents a limited fraction of total industry demand. In 2008, GM's total demand for EDS components only represented [0-5]% of the total EEA demand. Considering body security electronic components, GM is not a significant purchaser of these products – in 2008 GM's demand was limited to EUR [...] million, while the total industry demand amounted to EUR [...] million. As regards reception systems, Delphi's EEA sales in 2008 amounted to EUR [...] million while GM's total EEA demand was limited to less than EUR [...] million. Moreover, Delphi's EEA total sales of reception systems to GM were limited to EUR [...] million in 2008.
39. Also in the downstream market for engines/transmissions for automotive vehicles, GMPT demand for Delphi's components is very limited: approximately EUR [...] million, while GMPT's total EEA demand in that line of business was about EUR [...] million in 2008. Moreover, supplies from Delphi's Powertrain Division were discontinued in 2008. As a supplier to GMPT in the EEA, Delphi ranked n° [...] in 2008.
40. In light of the above, the transaction is unlikely to raise serious doubts as to its compatibility with the common market.

²² For instance, one customer stated that the company did not expect significant anti-competitive effects, as "we would be able to switch to other players in the market", and another customer was of the same opinion as "we are a customer with big volume".

IV. CONCLUSION

41. 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