

***Case No COMP/M.6320 -
GKN/ GETRAG
CORPORATION/ GETRAG
ALL WHEEL DRIVE***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 28/09/2011

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EUROPEAN COMMISSION

Brussels, 28.09.2011
C(2011) 7072

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.6320 - GKN/ GETRAG CORPORATION/ GETRAG ALL WHEEL DRIVE
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹**

1. On 24 August 2011 the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking GKN plc ('GKN', United Kingdom) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertakings Getrag Corporation ('GC', United States) and Getrag All Wheel Drive ('GAWD', Sweden) by way of purchase of shares.² GC and GAWD are together hereinafter referred to as "the Target Companies". GKN and the Target Companies are together referred to as "the Parties".

I. THE PARTIES AND THE OPERATION

2. GKN is a United Kingdom public listed company active in the powder metallurgy, land systems, aerospace and automotive industries. Within its automotive business, GKN manufactures drive shafts, geared driveline components, torque management products, chassis parts and cylinder liners which it supplies to automotive original equipment manufacturers ("OEMs").

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

² Publication in the Official Journal of the European Union No C 257, 1.9.2011, p. 9.

3. The Target Companies are both indirectly majority held subsidiaries of GETRAG Getriebe- und Zahnradfabrik Hermann-Hagenmeyer GmbH & Cie. KG ('Getrag').
4. GAWD is a private Swedish company active in the manufacture and supply of certain all-wheel drive ("AWD") components to OEMs located in the EEA. It also has a legacy business supplying a limited range of chassis components to Volvo Car Corporation. ('VCC').
5. GC, a private US company, manufactures and supplies certain AWD components and final drive unit products to OEMs located in North America and Asia.

II. THE OPERATION

6. Getrag owns a 60% stake in GAWD through a special purpose vehicle, Getrag Dana Holding GmbH (of which the two shareholders are Getrag and Dana). The remaining 40% interest in GAWD is held by VCC.
7. Getrag has through its holding company Getrag US Holding GmbH a 51% interest in GC. The remaining 49% interest in GC is owned by Dana.
8. On 21 July 2011, Getrag entered into a Share Purchase Agreement to purchase all of the shares held by Dana in the Target Companies. Subsequently on 27 July 2011, GKN entered into two Share Purchase Agreements to acquire (i) the shares held by Getrag Dana Holding GmbH and VCC in GAWD and (ii) the shares held by Getrag US Holding GmbH and Getrag in GC.
9. The acquisition of GC and GAWD constitutes a single concentration within the meaning of the Commission's Consolidated Jurisdictional Notice.³ Both GC and GAWD will ultimately be acquired by the same undertaking: GKN. GC and GAWD are the companies in which Getrag's all-wheel-drive (AWD) components business are housed. GKN wishes to acquire Getrag's AWD components business and, in order to do this it needs to acquire both GC and GAWD. Therefore, these transactions have been made interdependent, so that neither transaction would take place without the other. This interdependency has been assured by the use of inter-linked conditions in the transaction documents. Although control of GC and GAWD is being transferred to GKN by two Share Purchase Agreements ('SPAs'), each SPA is conditional on the other. This is evidenced in an overarching Framework Agreement which contractually provides that one transaction cannot take place without the other.

III. CONCENTRATION

10. As a result of then notified operation GKN will acquire sole control of the Target Companies. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

³ Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C 95, 16.4.2008, p. 1.

IV. EU DIMENSION

11. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2 500 million⁴ (GKN: EUR 6 340 million; Target Companies: EUR [...] million). In each of at least three Member States, the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million [...]. Moreover, the aggregate turnover of each of at least two of the undertakings concerned in the aforementioned Member States is more than EUR 25 million [...](and their aggregate EU-wide turnover is more than EUR 100 million (GKN: [...]; Target Companies: [...]) but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

V. COMPETITIVE ASSESSMENT

12. The business activities of the Parties to the proposed transaction overlap in relation to certain components for AWD systems and chassis components. The Parties sell these components to OEMs as first install equipment and to their original equipment service (“OES”) businesses.
13. While GKN sells a small volume of automotive components to the independent aftermarket, the Target companies are not active in this market. The Commission has considered in previous decisions that sales of automotive components to OEM/OES customers and sales of automotive components to the independent aftermarket constitute separate markets.⁵ As the Target Companies do not sell components to the independent aftermarket, this decision deals only with the Parties' sales to OEM/OES.
14. The following competitive assessment addresses the five areas of current and potential overlap between the Parties' activities, namely (i) components for AWD systems, (ii) crossaxle torque management devices, (iii) AWD disconnect systems, (iv) drive trains for electric and certain hybrid vehicles and (v) chassis components.

A. COMPONENTS FOR AWD SYSTEMS

Hypoid-geared drive units

Product market

15. Hypoid-geared drive units are used to transfer torque through a 90° angle. The various types of hypoid-geared drive units are: power transfer units (“PTUs”), independent final drive units (“FDUs”), rigid axles and transaxles. However, since the notifying party submits that their activities only overlap in relation to PTUs and FDUs the competitive analysis will focus only on these kinds of hypoid-geared drive units.
16. PTUs, which are only used in front-wheel-drive based all-wheel-drive, are attached to the drive shaft of a vehicle with a transverse engine to route torque to the rear axle of a front-wheel driven (“FWD”) car while FDUs are used to change the direction of power flow from the vehicle's propshaft to the wheels.

⁴ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.4.2008, p.1).

⁵ See for instance COMP/M.3789 - *Johnson Control/Robert Bosch/Delphi SLI*, recitals 8 and 9.

17. The notifying party submits that a relevant product market comprises all hypoid-gear drive units, since all hypoid-gear drive units provide the same function of transferring torque through a 90° angle. The notifying party suggests that transfer cases, which transfer torque through a 180° angle, should not be included in this market definition⁶. Even though it admits that OEMs cannot switch spontaneously between different types of hypoid-gear drive units when the architecture of a vehicle is already in production, it points out that there is still demand side substitution at the time when a new car is planned as OEMs consider different hypoid-gear drive units.
18. Furthermore, the notifying party argues that the basic components and technologies of these devices are similar and that the majority of manufacturers supplies more than one type of hypoid-gear drive units. Thus, the notifying party suggests, suppliers can switch between the manufacture of certain types of hypoid-gear drive units within the lead time for the introduction of new vehicle models by OEMs (typically 24 to 30 months). The notifying party estimates that the cost of switching a plant from the manufacture of PTUs to the manufacture of FDUs is approximately EUR [...] million and that it could be achieved within 24 months. Moreover, it claims that even if PTUs are only used in FWD-AWD vehicles, they are functionally exactly the same as FDUs, except that FDUs in comparison with PTUs do not need a differential due to their position in the drive line.
19. In a previous decision, the Commission raised the question whether PTUs constitute a separate product market from transfer cases, but eventually left it open.⁷
20. The market investigation did not confirm the notifying party's submission that the relevant product market comprises all hypoid-gear drive units. First, the price of each of the various hypoid-gear drive units differs significantly⁸. Second, a large majority of the respondents to the market investigation consider that the different types of hypoid-gear drive units (PTUs, FDUs, rigid axles and transaxles) are not substitutable⁹. Third, a majority of the respondents to the market investigation deem that it is not possible for one manufacturer of one type of hypoid-gear drive unit (e.g. PTU) to start manufacturing another type of hypoid-gear drive unit (e.g. FDU) without having to make substantial additional investments/modifications of the production process and without incurring substantial time delays¹⁰.

⁶ Of the Parties, only GKN supplies transfer cases.

⁷ See COMP/ M.3486-*Magna/New Venture Gear*, recital 23.

⁸ Replies to the questionnaire sent by the Commission to OEMs as customers of all-wheel drive components on 29 August 2011, question 3. Replies to the questionnaire sent by the Commission to suppliers of all-wheel drive components as competitors on 29 August 2011, question 3.

⁹ Replies to the questionnaire sent by the Commission to OEMs as customers of all-wheel drive components on 29 August 2011, question 4. Replies to the questionnaire sent by the Commission to suppliers of all-wheel drive components as competitors on 29 August 2011, question 4.

¹⁰ Replies to the questionnaire sent by the Commission to OEMs as customers of all-wheel drive components on 29 August 2011, question 5. Replies to the questionnaire sent by the Commission to suppliers of all-wheel drive components as competitors on 29 August 2011, question 5.

21. The market investigation confirmed that PTUs and transfer cases are not substitutable from a technical and economic point of view¹¹. Each of them serves a certain vehicle architecture: a transfer case is normally used in a longitudinal platform to channel the power to the front axle (rear-wheel-drive based AWD) whereas PTUs are attached to the driveshaft of a vehicle with a transverse engine to route torque to the rear axle of a front-wheel-drive AWD.
22. The notifying party submits that the market is not narrower than PTUs (i.e. it considers that there is no relevant market for different types of PTUs or for components of PTUs), although GKN supplies [...] which are components for PTUs. The notifying party argues that all other suppliers in the EEA supply only complete PTUs as for OEMs it would be neither convenient nor cost effective to source PTU components separately. It submits that [...] is an exceptional case from which it cannot be concluded that there is a distinct market for PTU components.
23. The market investigation indicated that the market for PTUs may be further segmented according to technical specifications (including torque and the presence or not of a disconnect system) but was not conclusive in this regard¹².
24. Likewise the market investigation revealed that the market for FDUs may be further segmented according to whether the FDU is used in front-wheel-drive AWD (the so called "East/West" architecture) or in rear-wheel-drive AWD (the so called "North/South" architecture) but was not conclusive in this regard¹³. The market investigation also suggested the possibility that the market for FDUs may be further segmented according to the technology used (e.g. open differential vs. Limited Slip Differential, or aluminium technology vs steel technology) but was not conclusive in this regard¹⁴.
25. It may in any event be left open whether the markets for PTUs and FDUs should be further segmented since the competitive assessment would not change under any of the alternative definitions of the product markets¹⁵.
26. The notifying party submits that it supplies OEMs with "rear drive modules". Rear drive modules consist of an FDU and are assembled with an "AWD coupling", which is fitted to

¹¹ Replies to the questionnaire sent by the Commission to OEMs as customers of all-wheel drive components on 29 August 2011, question 6. Replies to the questionnaire sent by the Commission to suppliers of all-wheel drive components as competitors on 29 August 2011, question 6.

¹² Replies to the questionnaire sent by the Commission to OEMs as customers of all-wheel drive components on 29 August 2011, questions 7, 8 and 9. Replies to the questionnaire sent by the Commission to suppliers of all-wheel drive components as competitors on 29 August 2011, questions 7, 8 and 9.

¹³ Replies to the questionnaire sent by the Commission to OEMs as customers of all-wheel drive components on 29 August 2011, question 12. Replies to the questionnaire sent by the Commission to suppliers of all-wheel drive components as competitors on 29 August 2011, question 12.

¹⁴ Replies to the questionnaire sent by the Commission to OEMs as customers of all-wheel drive components on 29 August 2011, questions 7, 8 and 9. Replies to the questionnaire sent by the Commission to suppliers of all-wheel drive components as competitors on 29 August 2011, questions 7, 8 and 9.

¹⁵ No concerns were raised in the course of the market investigation with regard to the competitive impact of the transaction on any potential sub-segments of the markets for PTUs and FDUs.

the particular FDU. However, the notifying party does not consider a market for rear drive modules exists, but rather a separate market for the supply of AWD couplings on the one hand and FDUs on the other hand. The Parties supply assembled rear drive modules, but only GKN currently supplies AWD couplings, so that the planned acquisition creates a vertical link.

27. The Commission found in earlier cases that each automotive component forms a separate product market to the extent that it is not substitutable with another.¹⁶ However, none of these precedents related to AWD couplings or rear drive modules. The market investigation confirmed the notifying party's view in relation to rear drive modules: a majority of the respondents to the market investigation indeed confirmed that FDUs are supplied separately from AWD couplings¹⁷.
28. In any event, the precise product market definition with regard to hypoid-gear drive units can be left open for the purposes of this decision since the competitive assessment would not change under any of the alternative definitions of the product markets discussed above.

Geographic market

29. 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 probably global. The market investigation in the case Magna/New Venture Gear found indications that in relation to all-wheel drive solutions the relevant geographic market may be wider than EEA, since requests for quotations are usually conducted on a worldwide level, transportation costs are low and no substantial price differences exist.¹⁸ However, it also revealed that OEMs usually either require or prefer local suppliers mainly for technical reasons or due to timing of production. Ultimately the Commission left the precise market definition open.
30. The notifying party considers the market for the manufacture and supply of hypoid-gear drive units or different types of hypoid-gear drive units to be EEA-wide. It assumes that even if bids usually take place on a global level, OEMs in the EEA eventually almost always procure hypoid-gear drive units from suppliers manufacturing and supplying within the EEA. The notifying party points out that inter-regional transport would be less economical as PTUs and similar devices are bulky and heavy components. Moreover it notes that the necessary engineering and technical support by the supplier from the early stages of a vehicle development programme onwards is quicker and more efficient if the supplier is located in the EEA. The notifying party suggests that the hypoid-gear drive units, which are imported into the EEA from other regions, are in fact in-house productions by Asian OEMs, which only assemble within the EEA.

¹⁶ Case M.164 - *Mannesmann/VDO*, Case M.139 - *Viag/EB Brühl*, Case M.536 - *Torrington/NSK*, Case M.666- *Johnson Controls/Roth Frères*, Case M.861 - *Textron/Kautex*.

¹⁷ Replies to the questionnaire sent by the Commission to OEMs as customers of all-wheel drive components on 29 August 2011, question 14. Replies to the questionnaire sent by the Commission to suppliers of all-wheel drive components as competitors on 29 August 2011, question 14.

¹⁸ Case M. 3486 – *Magna/New Venture Gear*, recital 26.

31. The market investigation provided indications that the geographic market for hypoid-gear drive units may be wider than the EEA. First, it widely confirmed that tenders for hypoid-gear drive units are opened by OEMs to all suppliers irrespective of the location of their production sites¹⁹. Second, a number of OEMs do source hypoid-gear drive units from outside the EEA for the AWD vehicles they produce in the EEA²⁰. One of the Parties' competitors is even producing outside the EEA the entirety of the hypoid-gear drive units it is selling for AWD vehicles manufactured in the EEA²¹. Third, logistics costs represent less than 8% of the final cost of a hypoid-gear drive units sold for AWD vehicles produced in the EEA whether supplied from within the EEA or from outside the EEA²². Finally, a majority of the respondents to the market investigation indicated that they do not observe significant price differences for hypoid-gear drive units between the EEA and the rest of the world²³. However, while not all OEMs demand that their suppliers of hypoid-gear drive units have local warehousing, engineering and aftersales support services, some OEMs do make this demand²⁴.
32. In any event, the precise geographic market definition with regard to hypoid-gear drive units can be left open for the purposes of this decision as the assessment of the transaction would not change whichever geographic market definition is retained (EEA wide or worldwide).

Competitive assessment

(1) Horizontal effects of the transaction

33. Assuming that there is an overall market for hypoid-gear drive units in the EEA, this market would not be affected by the concentration²⁵. However, the situation is different if separate markets are considered for FDUs and PTUs.

(i) PTUs

¹⁹ Replies to the questionnaire sent by the Commission to OEMs as customers of all-wheel drive components on 29 August 2011, question 35. Replies to the questionnaire sent by the Commission to suppliers of all-wheel drive components as competitors on 29 August 2011, question 33.

²⁰ Replies to the questionnaire sent by the Commission to OEMs as customers of all-wheel drive components on 29 August 2011, question 37.

²¹ Replies to the questionnaire sent by the Commission to suppliers of all-wheel drive components as competitors on 29 August 2011, question 35.

²² Replies to the questionnaire sent by the Commission to OEMs as customers of all-wheel drive components on 29 August 2011, question 38. Replies to the questionnaire sent by the Commission to suppliers of all-wheel drive components as competitors on 29 August 2011, question 36.

²³ Replies to the questionnaire sent by the Commission to OEMs as customers of all-wheel drive components on 29 August 2011, question 39. Replies to the questionnaire sent by the Commission to suppliers of all-wheel drive components as competitors on 29 August 2011, question 37.

²⁴ Replies to the questionnaire sent by the Commission to OEMs as customers of all-wheel drive components on 29 August 2011, question 36. Replies to the questionnaire sent by the Commission to suppliers of all-wheel drive components as competitors on 29 August 2011, question 34.

²⁵ Even if the market share of [...] would be attributed to GKN, the combined market share of the total EEA hypoid-gear drive unit market (including in-house supply) would be approximately [10-20]%.

34. Table 1 presents the Parties' combined market share for PTUs at worldwide and EEA level. An overlap arises in the EEA only if [...] in-house supply is attributed to GKN in which case, the Parties' combined market shares reach [40-50]% in the EEA post-transaction.

Table 1: Worldwide and EEA market shares for the supply of PTUs for 2010 (in volume),

	Including in-house supply ²⁶		Excluding in-house supply	
	World	EEA	World	EEA
GETRAG	[10-20]%	[40-50]%	[20-30]%	[40-50]%
GKN	[10-20]%	[0-5]%	[20-30]%	-
Combined	[20-30]%	[40-50]%	[40-50]%	[40-50]%
WIA	[10-20]%	-	[10-20]%	-
LINAMAR	[10-20]%	-	[10-20]%	-
MAGNA	[5-10]%	[40-50]%	[10-20]%	[50-60]%
OERLIKON GRAZIANO	[0-5]%	[5-10]%	[0-5]%	[5-10]%
IN-HOUSE-OEMs	[30-40]%	[0-5]%	-	-
Others	[10-20]%	[0-5]%	[10-20]%	[0-5]%

Source: GKN analysis based on IHS Automotive Forecast 2011.

35. The notifying party emphasises that the transaction will result in only a limited increment in combined shares. Furthermore it claims that in value terms the market share, which can be attributed to GKN, would be lower than [0-5]%. GKN supplies certain components to [...], which account according to the notifying party, for only [...] of the total manufacturing cost²⁷).
36. Moreover the notifying party puts forward that there exists a number of credible competitors in the PTU and hypoid-gear drive unit market in the EEA such as Magna, Graziano, ZF and Linamar.
37. Finally, the notifying party concludes from the limited number of OEMs, which are large international companies, that they are sophisticated procurers of hypoid-gear drive units, PTUs and other automotive components. They have extensive experience of employing competitive multi-stage tenders to ensure they obtain the most competitive terms from their suppliers. Finally the notifying party claims that these OEMs have a strong bargaining power, since for the suppliers winning or losing can have a significant impact on the number of PTUs since contract periods are usually long.

(ii) *FDUs*

38. GETRAG accounts for [10-20]% of the worldwide market for FDUs²⁸ whereas GKN's market share is [0-5]%. Hence, through the proposed transaction GKN would achieve a

²⁶ The Parties consider that this in-house supply arising from OEM's importing for their own use PTUs manufactured outside the EEA, represents an additional competitive constraint on independent suppliers of PTUs in the EEA. However, they do not consider that this supply should be seen as part of an addressable EEA market.

²⁷ [...] estimated this proportion to be closer to [70-80]%. Non-confidential minutes of the conference call with [...] on 11 August 2011.

²⁸ Excluding in house supply. If in house supply is included GETRAG accounts for [5-10]% of the worldwide market for FDUs and GKN's market share is [0-5]%. Through the proposed transaction GKN would achieve a market share of [5-10]% and the market would not be affected.

market share of [10-20]% and, the market would be affected. As GKN supplies FDUs only in Asia, there is no overlap in the EEA.

39. The market investigation indicated that usually contracts for hypoid-gear drive units last for the lifetime of the programme (i.e. for the lifetime of a given vehicle) and that only in exceptional circumstances (e.g. major quality issue) do they witness early termination of the contract. While prices are revised yearly (e.g. according to rules mentioned in the initial contracts and evolution of raw material prices), the risk associated with fluctuating volumes is usually supported by the component supplier.
40. The market investigation confirmed that OEMs typically invite at least three manufacturers to bid for the supply of a given hypoid-gear drive unit²⁹ and that a number of credible alternatives will remain for both PTUs (e.g. Magna, Linamar, AAM, Oerlikon Graziano, ZF) and FDUs (e.g. Magna, ZF, AAM, Dana)³⁰. A large majority of the respondents to the market investigation also indicate that the hypoid-gear drive units of GKN and Getrag are not technologically, technically or know-how wise more advanced than those of their competitors³¹. In addition, for a limited number of OEMs, in-house supply is also a credible alternative³².
41. Most of the respondents to the market investigation confirmed that OEMs have buyer power with respect to manufacturers of hypoid-gear drive units³³. In particular, a number of these respondents indicated that OEMs buy a whole range of products from these suppliers and can therefore use their leverage on one area to negotiate on another³⁴. One of the OEMs indicated that this would enable it to retaliate in case of a proposed price increase in the field of hypoid-gear drive units. However, the market investigation also indicated that smaller OEMs have less buyer power than the main car manufacturers.
42. While a number of respondents to the market investigation indicated that the transaction creates a strong global player for the production of hypoid-gear drive units, only very few of them pointed to the possibility of reduced competition – without substantiating their concerns – and a large majority indicated to the contrary that the transaction would have no

²⁹ Replies to the questionnaire sent by the Commission to OEMs as customers of all-wheel drive components on 29 August 2011, question 63. Replies to the questionnaire sent by the Commission to suppliers of all-wheel drive components as competitors on 29 August 2011, question 58.

³⁰ Replies to the questionnaire sent by the Commission to OEMs as customers of all-wheel drive components on 29 August 2011, questions 58 and 59. Replies to the questionnaire sent by the Commission to suppliers of all-wheel drive components as competitors on 29 August 2011, question 66.

³¹ Replies to the questionnaire sent by the Commission to OEMs as customers of all-wheel drive components on 29 August 2011, question 74. Replies to the questionnaire sent by the Commission to suppliers of all-wheel drive components as competitors on 29 August 2011, question 67.

³² Replies to the questionnaire sent by the Commission to OEMs as customers of all-wheel drive components on 29 August 2011, question 72. Replies to the questionnaire sent by the Commission to suppliers of all-wheel drive components as competitors on 29 August 2011, question 66.

³³ Replies to the questionnaire sent by the Commission to OEMs as customers of all-wheel drive components on 29 August 2011, question 60. Replies to the questionnaire sent by the Commission to suppliers of all-wheel drive components as competitors on 29 August 2011, question 56.

³⁴ Replies to the questionnaire sent by the Commission to OEMs as customers of all-wheel drive components on 29 August 2011, question 62. Replies to the questionnaire sent by the Commission to suppliers of all-wheel drive components as competitors on 29 August 2011, question 57.

impact on competition or a positive impact³⁵. Some respondents indeed believe that the merged entity will be able to be more aggressive in bids, offering lower prices and better technologies, forcing other suppliers to be more aggressive as well.

43. For the reasons set out above, it is concluded that the notified concentration is not likely to raise serious doubts as to its compatibility with the internal market in relation to the supply of hypoid-gear drive units or the potential sub-segments of PTUs and FDUs.

(2) Vertical links

Inputs for hypoid geared drive units

44. [...] are components of a hypoid-gear drive unit. GKN supplies these components to [...], rather than supplying a complete hypoid-gear drive unit. According to the notifying party, this situation is exceptional³⁶. All other suppliers of hypoid-gear drive units in the EEA supply the complete units to customers. Therefore, according to the notifying party, there is no independent market for the supply of components for hypoid-gear drive units.

45. None of the respondents in the market investigation raised concerns with respect to the supply of components for hypoid-gear drive units. In particular, [...] indicated that it was not concerned by the competitive impact of the transaction³⁷ and on the contrary believed that it would have a positive impact.

46. It is therefore concluded that the notified concentration is not likely to raise serious doubts as to its compatibility with the internal market in relation to the supply of inputs for hypoid-gear drive units.

Inputs for rear drive modules

47. GKN supplies AWD couplings and the Target Companies supply FDUs. Sometimes FDUs and AWD couplings are supplied together as a rear drive module. However, GKN's market share in the market for AWD couplings is below 25% at EEA- and worldwide level. Respectively, the Parties' market share in relation to FDUs is below 25% at EEA and worldwide level. Therefore the transaction does not give rise to a vertically affected market in relation to AWD couplings and FDU.

B. CROSSAXLE TORQUE MANAGEMENT DEVICES ("CROSSAXLE TMDS")

Product market

48. Torque management devices (TMDs) are used to control the flow of power in a vehicle's driveline. They can be used to control torque flow between the front and rear of the vehicle

³⁵ Replies to the questionnaire sent by the Commission to OEMs as customers of all-wheel drive components on 29 August 2011, questions 95 and 96. Replies to the questionnaire sent by the Commission to suppliers of all-wheel drive components as competitors on 29 August 2011, questions 86 and 87.

³⁶ The reason for it is that [...].

³⁷ Non-confidential minutes of the conference call with [...] on 11 August 2011.

("AWD TMDs") or to control slip across a vehicle's axles ("crossaxle TMDs")³⁸. As the Target Companies do not manufacture AWD TMDs, the remainder of this section focuses on crossaxle TMDs.

49. Crossaxle TMDs are used to provide enhanced performance or mobility to appeal to certain customers. They are essentially optional technology, in that OEMs do not necessarily need to incorporate any form of device in a vehicle to control crossaxle slip. According to the notifying party, there are a number of options an OEM can choose if it decides to incorporate some form of device to control crossaxle slip. These are:
- a locking device which provides full axle lock-up following either some predetermined wheel slip or the driver's selection of a particular mode by means of an electric switch;
 - a passive crossaxle TMD: such as a multiplate clutch, conical clutch or helical gear limited slip differentials (LSD)
 - an active crossaxle TMD: such as an electronic-magnetic, electronic-hydraulic or electro-mechanical LSD;
 - active yaw control (or "torque vectoring"): which allows different amounts of torque to be routed to each wheel independently.
 - electronic brake actuation and traction control systems: which can be used instead of TMDs to control slip between the wheels (applying the brake at each wheel as necessary in response to signals from the vehicle's electronic management systems).
50. In the notifying party's opinion the relevant product market comprises at least all crossaxle TMDs (that is to say passive and active LSDs, locking differentials and active yaw control/torque vectoring devices). The notifying party does not take a position as to whether competing, non-TMD, technologies (namely electronic brake actuation and traction control systems) form part of this market as neither GKN nor the Target Companies are active in the manufacture or supply of such non-TMD devices.
51. The notifying party further submits that it would not be appropriate to define separate product markets for each type of crossaxle TMD as OEMs consider a range of technologies when sourcing components to control crossaxle slip.
52. The market investigation in the present case has confirmed the appropriateness of making a distinction between AWD TMDs and crossaxle TMDs with customers indicating that they are not substitutable given the different torque level applicable to each. At the same time, the majority of competitors have confirmed that there is limited if any supply-side substitutability between the two categories of TMD.

³⁸ TMDs can be "passive", "active" (electronically controlled) or "locking":

- passive TMDs react to relative speed or torque differences, distributing torque to the axle or wheel with the higher traction potential according to defined characteristics, without external control;
- active TMDs react to input signals, distributing torque to the axle or wheel with higher traction potential through "intelligent" (electronic) control (which can be used to control torque or speed);
- locking devices can be installed to provide longitudinal or crossaxle "lock-up", either passively when the vehicle detects slip or in response to driver intervention (by selecting a particular mode when the vehicle is at low speeds or stationary).

53. The results of the market concerning the appropriateness of making an additional segmentation between the various types of crossaxle TMDs have been less conclusive. Whilst many customers and competitors indicated that the different types of crossaxle TMDs are not interchangeable, others suggested that all the products provided a suitable solution for crossaxle torque distribution and that as a result OEMs, at least in the design phase of a vehicle, could choose between the various types depending on their requirements. For the purposes of the present decision, however, the question whether a single relevant product market exists comprising all types of crossaxle TMDs or whether narrower markets should be defined can be left open as this proposed transaction does not raise serious doubts under either scenario.

Geographic market

54. The notifying party considers the relevant geographic market for the supply of crossaxle TMDs to be at least EEA-wide although the exact scope of the geographic market in each case depends on the volumes supplied to OEMs and the extent to which the OEM demands local warehousing, engineering and after sales support services.³⁹

55. The market investigation has indicated that the market for the supply of crossaxle TMDs is EEA-wide in scope as tenders for the supply of crossaxle TMDs are typically open to all suppliers irrespective of their geographic location and there are no significant price differences between the various Member States. For the purposes of the present decision, however, the precise scope of the market can be left open as the proposed transaction does not raise serious doubts either at an EEA-wide or global level.

Competitive assessment

56. The proposed transaction would not result in any overlap between the Parties in the manufacture and supply of crossaxle TMDs in the EEA-wide as the Target Companies currently have no activities in the region.

57. If the market is considered to be global in scope, the Parties' combined market shares would be [20-30]% (GKN [20-30]% + GC [0-5]%) or including in-house supply [20-30]% (GKN [20-30]% + GC [0-5]%). GAWD is currently not active in the manufacture and supply of crossaxle TMDs of any sort. In each case, the increment resulting from the proposed transaction is limited at less than [0-5]% and a number of suppliers are present including Eaton, Dana and American Axle and Manufacturing (AAM) with market shares (excluding in-house supply) of [30-40]%, [5-10]% and [5-10]% respectively.

58. Within the overall market for crossaxle TMDs, the Parties' current activities only overlap in relation to passive crossaxle LSDs though this overlap only arises if the market is considered to be global in scope as neither of the Target Companies has any crossaxle TMD

³⁹ According to the notifying party, for certain crossaxle TMDs supplied in low volumes to OEMs, manufacturers will tend to establish a “centre of excellence” in one region from which they serve OEMs both in the relevant region and from which they may also seek to supply into other regions.

When crossaxle TMDs are supplied in higher volumes, it is more common for Tier 1 suppliers to establish manufacturing facilities in each region where they supply significant volumes. The “critical mass” required in each case to justify regional manufacturing facilities will vary according to the value of the product supplied and the demands made by particular OEMs.

activities in the EEA. In this case, the proposed transaction would lead to a combined market share of [10-20]% (GKN [10-20]%, GC [0-5]%).

59. It should be noted that the passive crossaxle TMDs manufactured by GC are not sold on a standalone basis but incorporated in the FDUs manufactured by the company and sold to OEMs in North America.⁴⁰ According to the notifying party, where the OEM wishes to incorporate a crossaxle TMD, the supply of the crossaxle TMD is selected separately from the supply of the FDU as a result of separate competitive tenders. As such, the notifying party submits there is no vertical relationship and no risk of input or customer foreclosure because the decision as to which crossaxle TMD will be used with which FDU is entirely controlled by the OEM. The market investigation in the present case has shown that of the OEMs purchasing crossaxle TMDs, the majority do so as part of the FDU rather than on a standalone basis. Moreover, no respondent has raised any concerns relating to potential foreclosure concerns resulting from the proposed transaction.
60. The market investigation in the present case has also shown that GKN and the Target Companies are not viewed as each other's closest competitors by major OEMs. In addition, respondents to the market investigation have also indicated that the crossaxle TMDs of GKN and Getrag are not technologically more advanced than those of their competitors
61. Therefore, it is concluded in view of the relatively limited increment in market shares resulting from the notified operation and the presence on the market of a number of credible competitors that will continue to constrain the merged entity that the proposed transaction does not raise serious doubts as to its compatibility with the internal market in relation to the manufacture and supply of crossaxle TMDs.

C. AWD DISCONNECT SYSTEMS

Product market

62. The notifying party submits that AWD disconnect systems are electronically controlled devices which disconnect the components providing drive to one of the axles when four-wheel-drive is not required. A majority of respondents in the market investigation agreed with this definition.
63. The Parties are active in developing disconnect technology, as a number of other companies including Magna, ZF, Linamar and American Axle & Manufacturing (AAM).
64. The notifying party considers that a separate market for AWD disconnect systems does not exist at this stage, but that they rather form part of the AWD coupling market. The notifying party argues that OEMs would not issue a competitive tender for the disconnecting device alone and claims that it is not possible to provide market shares for the market for the manufacture and supply of disconnect technology as commercial supply is yet to begin.
65. The majority of the respondents confirmed that a separate market for AWD disconnect systems does not exist at this stage. However, relying on the evidence of recent tenders only for disconnect systems and the fact AWD coupling systems manufacturers can not easily

⁴⁰ [...].

manufacture disconnect systems it seems that a separate market will probably emerge in the near future.

66. The market investigation confirmed the information provided by the Parties that a few tenders were issued for AWD disconnect systems⁴¹, the earliest starting operation date being planned for 2013. Contrary to what the notifying party submits, the vast majority of the respondents stated that, for the manufacturer of AWD coupling systems, large and complex investment would be required in order to manufacture disconnect systems. This constitutes an indication that disconnect AWD systems will not form part of the AWD coupling market.
67. For the purposes of the present decision, however, the question whether a single relevant product market for AWD disconnect systems already exists or will emerge in the near future can be left open as the proposed transaction does not raise serious doubts on AWD disconnect systems.

Geographic market

68. The notifying party did not propose a geographic market definition for AWD disconnect systems but submitted information relating to tenders for AWD disconnect systems that it believes to have taken place in the EEA and worldwide.
69. The market investigation in the present case has not been conclusive with regard to the issue of the geographic scope of the market for AWD disconnect systems (if one is deemed to exist). Whilst on the one hand, producers of AWD disconnect systems based outside the EEA do not produce disconnect systems for vehicles produced in the EEA, the market investigation indicated on the other hand that tenders are opened by OEMs to all suppliers irrespective of the location of their location though local warehousing, engineering and after sales support services are required by some OEMs. In addition, the market investigation was inconclusive as to whether the conditions of competition in the EEA in terms of prices differed to a significant extent from the rest of the world.
70. It therefore appears that the geographic market is most likely EEA wide in scope but the precise market definition can be left open for the purposes of this decision as the proposed transaction does not raise serious doubts as regards AWD disconnect systems whether the market is considered to be EEA-wide or global.

Competitive assessment

71. According to the notifying party, to date there have been relatively few contracts awarded for disconnect systems in the EEA and worldwide⁴². Moreover the start of production for disconnect systems awarded under these contracts will only be from 2013 onwards.
72. According to the information on the most recent tenders submitted by the notifying party, two or more suppliers have competed in each tender. In addition, GKN and the Target companies have never been the only bidders in a tender for AWD disconnect

⁴¹ Tenders were already issued for AWD disconnect systems by GM, Ford, Chrysler and JLR to which several competitors participated, such as AAM, ZF and Magna. Form CO, p. 30.

⁴² See foot note 38.

systems. These suppliers which include AAM, ZF and Magna will continue to exert a constraint on the merged entity post-transaction. In addition, none of the respondents to the market investigation has raised concerns regarding the market for AWD disconnect systems.

73. For the reasons set out above, it is concluded that the notified concentration does not raise serious doubts as to its compatibility with the internal market in relation to the supply of AWD disconnect systems.

D. DRIVE TRAINS FOR ELECTRIC AND CERTAIN HYBRID VEHICLES ("EDRIVE")

Product market

74. The Parties are active in the development of potential future solutions relating to the progressive electrification of AWD systems. However, the notifying party submits that the products developed in this area are mostly not yet in full commercial production, although prototypes and test vehicles using an eDrive system are already used.
75. The market investigation revealed that there are different types of eDrive systems which are not interchangeable, since most eDrive are designed to a specific vehicle, and price and functionality are different. Moreover, a significant number of tenders were issued in the recent years in which several competitors participated, such as ZF, Linamar, Magna and Dana. The market investigation indicated that the starting operation date for a number of the contracts already awarded is 2011 while others have later starting dates. Therefore, the market investigation provides some evidence of the possible existence of a market for eDrive, contrary to what was indicated by the notifying party.
76. For the purposes of the present decision, however, the question whether a single relevant product market for eDrive systems already exists or will emerge in the near future can be left open as the proposed transaction does not raise serious doubts on eDrive systems.

Geographic market

77. The notifying party did not propose a geographic market definition for eDrive systems. The market investigation indicated that tenders for eDrive are opened by OEMs to all suppliers irrespective of the location of their production sites though a local warehousing, engineering and after sales support service is frequently requested by OEMs. The market investigation also indicated that prices in the EEA differ from rest of world.
78. In view of the results of the market investigation, it is considered that the geographic market is most probably EEA wide but for the purposes of this decision the precise market definition can be left open as the proposed transaction does not raise serious doubts as regards eDrive systems whether the market is considered to be EEA-wide or global.

Competitive assessment

79. According to the notifying party, the products developed in the area of eDrive are mostly not yet in full commercial production, although prototypes and test vehicles using an eDrive system are already in use. However a number of tenders were issued in recent years and some have start of production dates in 2011.
80. The market investigation confirmed that the Parties' products do not have technological or technical advantages when compared with their competitors' offerings. According to the information on recent tenders provided by the notifying party, there will still be post-transaction a number of competitors such as ZF, Linamar, Magna and Dana. Moreover, none of the respondents to the market investigation has raised concerns on the market for eDrive.
81. For the reasons set out above, it is concluded that the notified concentration does not raise serious doubts as to its compatibility with the internal market in relation to the supply of eDrive systems.

E. CHASSIS COMPONENTS

Product market

82. In addition to components for AWD systems, the Parties' activities, or more precisely the activities of GKN and GAWD, also overlap in the manufacture of chassis components. GKN manufactures and supplies single piece under-body chassis, the front sub-frame and the rear sub-frames. GKN also manufactures chassis rails which are stiffeners running the entire length of the body of the chassis floor.⁴³
83. GAWD, on the other hand, supplies one single customer with knuckles under a legacy Chassis Supply Agreement. According to the notifying party, knuckles are fittings which hang off the under-body of the vehicle and to which the wheels are attached.
84. The notifying party submits that it is not aware of any decisions of the Commission dealing with chassis or chassis components but note that the parties in *Teksid/Norsk Hydro Produksjon/Meridian*⁴⁴ considered that each automotive component forms a separate relevant product market as there is no possible substitutability between components from the customers' perspective. In the more recent *Gestamp/TKMF* decision which considered *inter alia* structural chassis assemblies, the Commission again left open the precise market definition in the absence of competition concerns whilst considering four different sub-segments.⁴⁵

⁴³ GKN submits that these are only used on light commercial vehicles to provide added strength.

⁴⁴ See Case No IV/M.1189, recital 13. It is noted that one of the parties to the transaction produced knuckles. The Commission however did not reach a conclusion as to the scope of the relevant product markets as the operation would not lead to the creation or strengthening of a dominant position even on the narrowest product market definition.

⁴⁵ See COMP/M.6207 – *Gestamp/TKMF*. Structural chassis assemblies were defined as consisting of a number of already preassembled components (modules or assemblies) which are delivered as a single unit. The decision notes at recital 15 that if each of the modules, systems and assemblies included in structural chassis assemblies were to be regarded as separate product markets, the four sub-segments

85. The notifying party submits that the products manufactured by GAWD, namely knuckles, are not in fact "chassis components" but rather part of a vehicle's suspension system. Notwithstanding this fact and the absence of any horizontal overlap in its opinion between itself and the Target Companies, it submits that a relevant market exists comprising all chassis and chassis components.
86. A majority of respondents in the market investigation consider, contrary to the notifying party's submission, that knuckles should be categorised as chassis components. For the purposes of the present decision, however, the precise market definition for chassis components can be left open as it would not significantly alter the competitive assessment of the proposed transaction.

Geographic market

87. The notifying party submits that the relevant geographic market for the supply of chassis and chassis component is at least EEA-wide. They refer to the lack of technical, regulatory or tariff barriers to the supply of chassis parts within the EEA. Moreover, they submit, that even if OEMs tend to prefer regionally based suppliers (that is to say within a radius of 600 to 800 miles from their plant), they would be prepared to source further away if necessary and typically invite manufacturers located across the EEA to quote for business in order to extract the best price.
88. The market investigation has indicated that market for chassis components is EEA-wide in scope. A majority of respondents (both customers and competitors) have confirmed that there are no significant price differences between Member States and that transport costs are not a significant element in the overall cost of these products. Moreover, even though there is a preference on the part of some customers for their suppliers to be located near to their plant(s), this requirement does not preclude suppliers being invited to quote for business regardless of their location.
89. For the purposes of the present decision, however, the precise scope of the geographic market can be left open as this would not significantly alter the competitive assessment of the proposed transaction.

Competitive assessment

90. GKN produces single piece under-body chassis, front sub-frames and rear sub-frames as well as chassis rails whereas GAWD produces knuckles under an agreement with one customer (Volvo Cars) for one model (XC90).⁴⁶ Therefore, there is no overlap between the Parties' activities at the level of individual components.
91. Even if knuckles were to be considered part of the chassis, the merged entity's share on a market consisting of all under-body chassis components in the EEA would be minimal at around [0-5]% and even less on a wider market for the supply of all chassis and

would be: (i) subframes/cross members; (ii) links and control arms; (iii) large frames and (iv) chassis components that do not belong directly to the other categories.

⁴⁶ The supply of this part to Volvo Cars by GAWD is within the framework of a Chassis Frame Manufacturing Agreement concluded in 2003. [...]GAWD is not active in seeking new contracts and has not bid for new chassis business in the last five years.

chassis components (namely, the underbody, the side, rear and front frames and also the entire monocoque chassis).⁴⁷

92. It is therefore concluded that the proposed transaction does not raise serious doubts as to its compatibility with the internal market in relation to the manufacture and supply of chassis components.

VI. CONCLUSION

93. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission
(signed)
Joaquín ALMUNIA
Vice-President

⁴⁷ According to the notifying party, the single piece under-body chassis effectively forms the under frame of the vehicle. This is supplied in one piece, onto which the body-shell (the sides, front, back and top – sometimes in various pieces and sometimes in one piece) is fitted. It is relatively rare for a vehicle to have a single piece under-body chassis. It provides additional durability and is only needed where a vehicle will regularly be operated in very demanding conditions. It is more common that vehicles have a separate front and rear sub-frame, which fit directly into the monocoque design of the vehicle's body-shell.