



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24/10/1997

PUBLIC VERSION

**MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION**

Registered with advice of delivery

To the notifying parties:

Dear Sirs,

Subject: Case No IV/M.1011- Ingersoll-Rand / Thermo King

Notification of 23.09.1997 pursuant to Article 4 of Council Regulation N° 4064/89

1. The above mentioned operation concerns the acquisition by Ingersoll-Rand Company (I-R) of Thermo King Corporation (T-K).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Council Regulation N° 4064/89 and does not raise serious doubts as to its compatibility with the Common Market and with the functioning of the EEA Agreement.

I. THE PARTIES

3. I-R is a U.S. corporation which together with its subsidiaries is active in the manufacture and sale of non-electrical machinery and equipment, including construction and mining machinery, compressors, turbomachinery, industrial pumps, bearings and other items.
4. T-K is a U.S. company active in the transport temperature control market. It designs, manufactures and distributes a broad range of transport temperature control equipment for a variety of mobile applications, including trailers, trucks, sea-going containers and buses and light rail cars.

II. THE OPERATION

5. The case was notified on 23.09.1997. The proposed operation consists in the acquisition by I-R of T-K by way of purchase of shares from Westinghouse Electric Corporation.

III. CONCENTRATION

6. The acquisition of T-K by I-R constitutes a concentration within the meaning of article 3(1) (b) of the merger regulation.

IV. COMMUNITY DIMENSION

7. I-R and T-K have a combined aggregate worldwide turnover in excess of ECU 5,000 million. Each of them has a Community-wide turnover in excess of ECU 250 million, but they do not both 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

A. Relevant product markets

8. -K designs, manufactures and distributes a broad range of transport temperature control equipment for a variety of mobile applications, including principally trailers and trucks, sea-going containers, and buses and light rail cars.
9. Transport temperature control units are powered by diesel, gasoline or propaned fuelled engines, or electric motors. These products not only preserve food and provide comfort to passengers, but also by heating and cooling as necessary, preserve pharmaceuticals, flowers, blood plasma, film, cosmetics, electronic gear and many other temperature-sensitive goods.
10. Whether from the demand-side or from the supply-side point of view the degree of substitutability between the types of temperature control equipment used in the three main areas of application (trucks and trailers, sea-going containers, and buses and light rail) is not immediately evident. However it is not necessary to delineate the relevant product markets exactly because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.(See below).

B Relevant geographic markets

11. The notifying party states that the transport temperature control equipment market is European-wide (perhaps wider for sea-going containers). Customers tend to be large industrial companies who will be prepared to purchase internationally. T-K itself serves the EEA mostly from manufacturing facilities in four different Member-States.
12. It is not necessary to delineate the relevant geographic market exactly because, in all alternative geographic market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.(See below).

C. Impact of the concentration

13. There is no horizontal overlap between the businesses of I-R and T-K. I-R is not present in T-K's transport temperature control market and operates in entirely different markets.
14. Within the EEA T-K is a market leader within the truck and trailer segment with a market share of [...]¹. However T-K faces strong competition from a U.S. company Carrier Transicold Corporation which has a [...]² share of this segment. Carrier Transicold is the market leader in the EEA in the sea-going container segment ([...] ³) and the bus and light rail segment ([...] ⁴), in which segments T-K is [...] ⁵ (with [...] ⁶) and [...] ⁷ (with [...] ⁸ respectively).
15. There is no vertical link between the parties' businesses and I-R does not supply T-K or any of its competitors in the transport temperature control market products. The only products manufactured by I-R which bear a resemblance to products used in the transport temperature control market are compressors. However, I-R does not sell any of its compressors to T-K nor to any other party active in the transport temperature control market. This is because the types of compressors manufactured by I-R cannot be used in the transport temperature control market which uses refrigerant compressors. Refrigerant compressors are used to raise pressure of a refrigerant gas within the process for temperature control. Typically refrigerant compressors operate at 380PSI. The compressor pressurises a refrigerant which, by regulation in a number of countries, can not be released into the atmosphere and therefore uses a closed loop hermetically sealed system. Different types of refrigerant compressors are used depending on the market segment. I-R does not manufacture or sell any of these types of refrigerant compressors for use in the transport temperature control business.
16. I-R manufactures air compressors and has interests in power gas compressors. Air compressors can not be used in transport temperature control units because the seals and compression ratio are significantly different in refrigerant applications. Significant modification and redesign would be required to assure the integrity of the design so as to prevent refrigerant leaking to the environment and to achieve the higher pressures required by refrigerant compressors.

1 Deleted business secrets.

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17. Process gas compressors are used within a variety of chemical and physical processes, predominantly to raise pressure within the process or to transfer certain gases to downstream processes. Process gas compressors are typically large machines tailor made for a certain application i.e. more than 1000HP. Accordingly, they cannot be used in transport temperature control units where compressors are of a much smaller size not exceeding 40HP. Process gas compressors use different materials and can work with gases other than air. They cannot be used for the same application as air compressors nor for transport temperature control applications.
18. Finally, there will be no significant enhancement of T-K's market position by reason of I-R's financial strength since the seller, Westinghouse Electric Corporation, has itself very considerable financial strength.

VI. ANCILLARY RESTRAINTS

19. The notifying party has notified the following obligation as an ancillary restraint:
20. The Stock Purchase Agreement provides that, for a period of three years from completion, Westinghouse shall not engage in any business that is in competition with the T-K business. Nevertheless, Westinghouse is entitled to own an aggregate of 5% of capital stock of a person engaged in a business that is in competition with T-K business or less than 10% in value of any instrument of indebtedness of a person engaged in a business that is in competition with the T-K business. Westinghouse may also acquire any person which derives less than US\$ 25 million in revenues from businesses in competition within the T-K business; or the predominant business of which is not in competition with the T-K business.
21. The restriction is directly related to the acquisition by I-R of T-K as it has been entered into for the sole purpose of facilitating the acquisition. It is necessary because, in the absence of the restriction, I-R could not be guaranteed to obtain the full value of the T-K business, including its goodwill and know-how. The restriction does not exceed what the implementation of the concentration reasonably requires as it is limited to a period of three years and concerns only the business carried out by T-K.

VII. CONCLUSION

22. 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 functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) N°4064/89.

For the Commission,