



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.11.1997

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sirs,

Subject: Case No IV/M.1015 - Cummins/Wärtsilä

Notification of 15.10.1997 pursuant to Article 4 of Council Regulation N/ 4064/89

1. On 15.10.1997 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No. 4064/89 by which Cummins Engine Company Inc. of the US ("Cummins") and Wärtsilä NSD Corporation of Finland ("Wärtsilä"), controlled by Metra Corporation of Finland ("Metra"), will acquire joint control over a newly created joint venture Cummins Wärtsilä SAS.

I THE PARTIES

2. Cummins is active in the design, production and marketing of diesel engines for marine and land-based applications and is especially involved in the design, production and marketing of high-speed engines for applications such as small and large trucks, earth moving equipment and stand-by power generation.
3. Wärtsilä, which is controlled by Metra, is also active in the design, production and marketing of diesel engines for marine and land-based applications. Wärtsilä produces especially medium-speed diesel engines. In 1989 Wärtsilä acquired Société Alsacienne de la Construction Mécanique ("SACM"), a small regional producer of high-speed engines for marine and other applications. In addition to the production of diesel engines through Wärtsilä, Metra is mainly active in bathroom ceramics.

II THE OPERATION

4. In 1995 Cummins and Wärtsilä formed two cooperative joint ventures for the R&D and production of two types of high-speed engines the W 170 and the W 200. The engines were sold by the joint ventures to the parent companies on

non-arm's length terms and marketed under the parents brand names. The current operation consists of the merging these cooperative joint ventures and the Wärtsilä subsidiary Wärtsilä France into a full-function joint venture. The parties have agreed to withdraw from the market of the joint venture by way of a non-compete clause. By this clause it is agreed that for the duration of the joint venture and for a period of five years from which it ceases to have an interest in the shares of the joint venture, each of the parties will not carry on activities relating to the design, development and manufacture of diesel and natural gas engines, that would compete with the W-170 and/or W-200 engines. This agreement reflects the lasting withdrawal of the parties from the market of the joint venture and can, therefore, be considered an integral part of the operation.

III CONCENTRATIVE JOINT VENTURE

A. Joint control

5. Cummins and Wärtsilä will jointly control the new joint venture. Each of the parties will appoint an equal number of Board members of the new joint venture and modifications to the business plan must be approved by both shareholders. The annual operating plan must be approved by the Board of Directors. Similarly, Board approval of the joint venture's production plan is required. Furthermore, the Shareholders Agreement lists a number of matters that require the Board's consent, including i) approval of annual operating plan and budget, ii) the appointment and discharge of executives, iii) the granting of licenses and iv) the execution of distribution agreements. Therefore, both parties will have the possibility to exercise decisive influence over the new joint venture.

B. Full-function joint venture

6. The new joint venture will be of unlimited duration. It will have more than 1.000 employees and all the necessary assets in terms of production facilities, technology, finances, marketing, distribution and servicing of the engines it produces to be a full functioning joint venture.
7. The joint venture will itself deal directly with either independent third-party distributors or with Wärtsilä's distribution and service subsidiaries. The joint venture's contractual relationships with the subsidiaries of the parent companies will be at arm's-length and will be concluded on normal non-exclusive commercial terms, reflected in the joint venture's own standard form agreements, in the joint venture's name and for its own account. The subsidiaries will act as agents for the joint venture.
8. The joint venture will occupy and use its own manufacturing facilities. Normally, the joint venture will be owner and sole occupier of these facilities. Only in two cases the joint venture will use part of a Cummins facility. In these cases, the joint venture will enter into a lease or other arrangement on arm's length terms with Cummins. The part of the facility operated by the joint venture will be identifiably separated from that operated by Cummins and all operations will be carried out by the joint venture itself.

9. Therefore, the Commission concludes from the above that the joint venture will operate on a lasting basis and that it will perform all the functions of an autonomous economic entity.

C. Absence of coordination

10. The parties submit that the joint venture will not lead to a coordination of the competitive behaviour of the parents, because neither Cummins nor Wärtsilä will retain activities outside the joint venture that will compete with the activities of the other party.
11. The engines of the joint venture, the W 170 and the W 200, are large high speed engines with a maximum output of 1.7 MW for the W 170 engine and 3.6 MW for the W 200. These engines are designed for continuous power generation and marine application requiring high speed engines. Cummins' activities outside the joint venture are centred on high-speed engines with an output of up to 1.5 MW for applications such as trucks, buses, light commercial vehicles and construction equipment and standby and prime power generation. Cummins will continue to produce outside of the joint venture a model in the higher output range of high-speed engines, the K-50, and its successor the Q model. However these engines are not substitutable with the W-170 or W-200 engines of the joint venture or with Wärtsilä's medium and slow-speed engines, because the K model and Q model engines are not primarily intended for continuous, long term operation as are the W-170 and the W-200. They are smaller, lighter and have a relatively high fuel consumption. Therefore, they do not compete with the W-170 and W-200 despite the fact that they cover the same output range.
12. Wärtsilä is essentially a producer of medium-speed and low-speed engines, with particular expertise as concerns larger engines with an output in excess of 5.2 MW. These engines are designed for power generation and marine applications particularly in larger ships. After its acquisition of SACM in 1989 Wärtsilä added to its portfolio a family of high-speed engines, including the UD 33 and UD 45. However, Wärtsilä has decided to stop production of these models.
13. From the above the Commission concludes that the engines produced by Cummins, the joint venture and Wärtsilä are not in the same relevant product market and that the activities Cummins and Wärtsilä retain outside the joint venture do not compete with each other nor do they compete with the activities of the joint venture. Therefore, the joint venture will not lead to a coordination of the competitive behaviour of the parents.

IV COMMUNITY DIMENSION

14. The undertakings concerned have a combined aggregate worldwide turnover of more than 5000 million ECU. Each of the undertakings has a Community-wide turnover in excess of 250 million ECU 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 according to Article 1 (2) of the Merger Regulation, but does not constitute a cooperation case under the EEA Agreement.

V COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product markets

15. According to the parties the following relevant product markets can be defined: i) the market for high-speed diesel engines with an output range between 0.5-2.0 MW, ii) the market for medium-speed diesel engines with an output range between 0.5-2.0 MW, iii) the market for high-speed diesel engines with an output range between 2.0-4.0 MW and iv) the market for medium-speed diesel engines with an output range between 2.0-4.0 MW.
16. A distinction can be made between engines of different power ranges. Engines with significantly different outputs are usually not substitutable. Whether there should, like the parties submit, also be made a distinction between engines of different speed ranges is less clear. There are indications that, from the demand side of the market, for certain applications there may be substitutability between high-speed diesel engines and medium-speed diesel engines with the same output range. Although some of the purchasers indicated that the product markets should be defined according to the different applications of the engines, the Commission considers that this is less likely from the supply-side, because of the fact that the producers can easily adapt their engines to different applications.
17. However, basically the choice of engines for a particular application is based on a mix of factors such as size, weight, fuel type, expected usage patterns (continuous use or stand by capacity), cost per kw produced etc. This means, for example, that two high speed engines with exactly the same output capacity may not be substitutes, if one is designed for continuous use and the other for stand by use.
18. However, for the purpose of the present case it is not necessary to define the product markets any further, because on all alternative market definitions, the operation would not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of

B. Relevant geographic markets

19. The parties consider the relevant geographic market to be worldwide for all the relevant product markets. They base this inter alia on the fact that producers are active world wide and that the level of imports as well as of exports is very high. Competitors and customers, asked by the Commission, have unanimously said that the relevant geographic market for diesel engines is global. Trade flows indicate that the market is wider than the EEA. For example a major EEA competitor like Caterpillar does not produce any engines in the EEA. The deliveries of Wärtsilä to non-EEA countries of high-speed engines for power plant applications in the 0.5-2.0 and 2.0-4.0 MW ranges were respectively [...] ¹% and [...] ¹%. For Cummins the corresponding percentages were [...] ¹% and [...] ¹%.

¹ [...] Deleted. Business secrets.

20. The Commission considers that the relevant geographic market for the diesel engines concerned in the present case is at least EEA-wide, but it cannot be excluded that it is even wider and that it is a global market. However, it is not necessary to define the geographic markets in this case any further, because in all alternative market definitions considered, the operation would not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.

C. Competitive assessment

21. Considering the market definitions proposed by the parties, that is the worldwide markets for i) high-speed diesel engines with an output range between 0.5-2.0 MW, ii) medium-speed diesel engines with an output range between 0.5-2.0 MW, iii) high-speed diesel engines with an output range between 2.0-4.0 MW and iv) medium-speed diesel engines with an output range between 2.0-4.0 MW, the operation would not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it, because on all the thus defined markets the market share of the joint venture would be smaller than that of the largest competitors.
22. Assuming that the geographical markets for the four product markets as proposed by the parties should be defined as EEA-wide, the market share of the joint venture would not be larger than [...] ²% in any of those markets. At the same time strong competitors like MAN, Caterpillar, MTU/Mercedes, Perkins/Dorman and others are present in those markets.
23. However, considering the heterogenous nature of the product markets it is very difficult to calculate market shares, which accurately will reflect the competitive positions of the producers of diesel engines. The Commission has examined a wide range of possible different market definitions and the resulting market shares of the parent company and the joint venture according to each of these different definitions. On this basis the Commission has concluded that the operation does not create or strengthen a dominant position in the common market. In this respects it should also be noted that several competitors and customers replied that they considered the operation to be procompetitive, because it will introduce new competition to the market leader Caterpillar.

VI CONCLUSION

24. 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) No. 4064/89.

For the Commission

² [...] Deleted. Business secrets.