

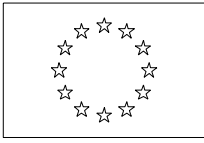
***Case No IV/M.1245 -
VALEO / ITT
INDUSTRIES***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 30/07/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.07.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

**Subject: Case No IV/M.1245 – Valeo/ITT Industries
Notification of 26/06/98 pursuant to Article 4 of (EEC) Council
Regulation No 4064/89**

1. On 26.6.1998 the French company Valeo S.A. notified an operation by which it will acquire the electrical automotive parts and systems business of the US company ITT Industries Inc. (ITTI).

I. THE PARTIES AND THE OPERATION

2. Valeo is an independent industrial group which designs, manufactures and sells components for cars and trucks in Europe, America and Asia.
3. ITTI is the parent company of a diversified manufacturing group active in the field of automotive systems and components, defence and electronics, and fluid technology. The electrical business to be sold to Valeo (“The Business”) designs, develops, manufactures and sells electrical motors, air management and engine cooling products, wipers, lamps, switches and sensors to the automobile industry world-wide. The primary brand of ITTI in Europe is SWF. SWF Autoelectric GmbH & Co KG is a German subsidiary of ITTI.
4. The sale will take place through a transfer of stocks and assets. Valeo will finance the acquisition in part through an increase of its capital by issuing shares. ITT will retain its distribution organisation for automotive parts, which is also used for sales of products such as brakes. For the products of The Business, distribution may continue to take place through this sales organisation. These arrangements are further analysed under the heading “ancillary restraints” below.

II CONCENTRATION

5. The take-over of The Business constitutes the acquisition of control of part of an undertaking and can therefore be qualified as a concentration within the meaning of Article 3 (1) (b) of Council Regulation 4064/89 (“the merger regulation”).

III COMMUNITY DIMENSION

6. The combined aggregate turnover of the undertakings concerned exceeds ECU 5 000 million (Valeo alone ECU 5 126 million). The aggregate Community turnover of each of the undertaking concerned exceeds ECU 250 million (Valeo ECU 3 676 million, The Business ECU 483 million). They do not achieve more than two-thirds of their turnover in a single Member State. Therefore, the operation has a Community dimension within the meaning of Article 1 (2) of the merger regulation.

IV COMPATIBILITY WITH THE COMMON MARKET

a. Relevant product markets

7. The economic sector involved in the concentration is the supply of parts to the automotive industry. The Business produces five types of automobile parts: 1) wiper and washer products, 2) lamps, 3) air management and engine cooling products, 4) small electrical motors and actuators, 5) switches and sensors. The activities of The Business only partly overlap with the activities of Valeo. As a result, the merger will only affect the markets of certain products, as analysed below.

i Wiper and washer products

8. A first distinction to be considered is that of front and rear windscreen wiper products. A front wiper system is made up of the following components: an electric motor which provides movement, a linkage which transforms the rotation movement, wiper arms (usually in pairs) which support the wiper blades and a pair of blades which wipe the windscreen. A rear wiper system usually consists of the same parts as a front wiper system, be it that the linkage element is smaller and incorporated in the motor and this system usually has only one arm. Wiper motors are normally sold with the linkages, and arms and blades are also sold together. Increasingly, whole wiper systems, i.e. motor/linkage and arms/blades are supplied to car manufacturers in a package for installation on new cars. The Business further produces washers that are used and sold in conjunction with wiper systems, but Valeo has no activities in washer products. Due to the part that motors/linkages and arms/blades are generally sold on a separate basis (despite the fact that they may be delivered as a single system) they may be considered as belonging to separate product markets.
9. Another difference considered important for market definition purposes is that between wiper products for “light vehicles” (passenger cars and light trucks) and “heavy vehicles” (heavy duty trucks, buses and coaches, off the road and agricultural vehicles). Such products have different technical characteristics and are sold to different customers.
10. A further distinction can be made in relation to the sales channel of these products: either they are sold directly to automobile manufacturers for installation on new vehicles (“OEM” channel), or as replacement products to those same manufacturers and their authorised dealers (“OES”-original equipment spare parts). Replacement sales also take place to the so-called independent after market (“IAM” sales), where customers are auto repair shops, supermarket chains, etc. IAM sales of wiper

products generally only concern wiper blades, which need replacement relatively frequently, whereas other components do not often break down or wear out.

11. As indicated above, purchases by car manufacturers more and more concern complete wiper systems instead of the individual components. The notifying party has submitted that on some 60% of the more than 100 car types currently in production, complete wiper systems are sourced from the same supplier, i.e. the combination of motor/linkage, arms and blades. However, from the information obtained during the investigation, it appears that although it is more convenient to source a complete system from a single source, this is certainly not a precondition for successfully selling motors/linkages and arms/blades. This also appears from the fact that certain suppliers only produce motors and linkages and others only arms and blades.
12. The combination of all of the above factors leads, according to the parties, to seven product markets for wiper products, which are affected by the merger:
 - a) OEM/OES sales of front wiper motors for light vehicles,
 - b) OEM/OES sales of rear wiper motors for light vehicles,
 - c) OEM sales of arms/blades for light vehicles,
 - d) OES sales of wiper blades for light vehicles,
 - e) OEM/OES sales of front wiper motors for heavy vehicles,
 - f) OEM sales of arms/blades for heavy vehicles.
 - g) IAM sales of wiper blades for light vehicles.
13. This product market delimitation has been confirmed by most of the competitors and customers during the investigation. The Commission considers that, for rear and front wiper motors, a single market may exist, since the products are very similar from a technical point of view and suppliers all produce both systems. However, it is not necessary to provide a precise definition of the product markets involved as the competitive assessment will not be modified in alternative (broader) market definitions.

ii) *Lamps*

14. The business makes and sells rear lamps for light vehicles in Europe (including centre high mounted stop lamps). It only sells such lamps to OEM/OES customers. Valeo produces and sells a full range of rear lamps, which it sells to OEM/OES- and to a small degree IAM customers. Rear lamps can be distinguished from front lamps, since the latter are different in design and technology due to the requirement to produce more powerful and directed beams of light. It therefore appears correct to view rear lamps as a distinct product market. Within rear lamps, one can again distinguish between rear lamps for heavy and light vehicles. The notifying party has therefore submitted that markets may exist for OEM/OES sales of rear lamps for light and for heavy vehicles. IAM sales of rear lamps are marginal and too small to be considered a distinct market. Due to the fact that the operation will only affect the OEM/OES market for rear lamps for light vehicles, the analysis below will focus on these products only. In any event, a more precise definition of the product market(s) for rear lamps, and notably if rear lamps for light and heavy vehicles may constitute one

market, can be left aside, because even on the basis of the narrower market definition of rear lamps for light vehicles, the operation does not raise competitive concerns.

iii) *Air management and engine cooling products*

15. The Business and Valeo produce a variety of fans and blowers for engine cooling, heating, etc. However, The Business only sells such products in the North America, whereas Valeo sells such products only in Europe. Therefore, in view of the geographic scope of the market (see below), the operation will have no effect on competition. The exact definition of (a) product market(s) for these products can therefore be left aside.

iv) *Small electrical motors and actuators*

16. The Business makes a variety of small fractional horsepower DC motors that have numerous applications, such as windowlift motors, sunroof motors, etc. It could be that such motors can be grouped into one or more product markets, but since Valeo has no activities in this field, the operation will not have an influence on the competitive environment for these products. Therefore, a more detailed market definition can be left aside for the purpose of the decision in this case.
17. As regard doorlock actuators (components used in doorlocks), which are produced by The Business as well as by Valeo, the impact of the operation will also not be such as to lead to competition concerns, as further explained below. Therefore, it is not necessary to make a further assessment of the exact definition of (the) product market(s) for actuators.

v. *Switches and sensors*

18. The Business produces and sells a range of switch products to automobile producers, such as single function switches, multi-function switch cassettes and steering column switches, for heavy and light vehicles. Valeo only produces these products for light vehicles. The Business, but not Valeo, produces a variety of sensor products.
19. For neither of these types of products would the risk of dominance arise on any potential product market. Consequently, there is no need at this stage to further discuss an exact definition of (a) product market(s) for these products.

b. Relevant geographic markets

20. The relevant geographic market to consider for all of the above products sold on an OEM/OES basis is the EEA. According to the notifying party the main reasons are the following:
 - transportation costs within the EEA are not significant;
 - there are no other obstacles to intra-EEA trade;
 - prices are similar throughout Europe, given that OEM/OES sales are usually made to the European production sites of the automobile manufacturers;

- suppliers tend to serve the entire EEA from only a few plants located within the EEA
- there is extensive inter-state trade and similar conditions of competition apply throughout the EEA;
- suppliers tend to treat the EEA as a distinct product market in planning their production, sales and marketing activities.
- imports from outside the EEA represent only a small percentage of trade.

The definition of an EEA market for automotive parts is in line with previous Commission decisions¹.

21. An exception to the above may be the OES (replacement) market for wiper blades, where imports from outside the EEA are growing, due to low transport costs for these products. Nevertheless, such imports are still rather limited (1-2%), so that for OES sales the EEA may still be considered as the relevant market. In any event, for the assessment of the operation, a definition of a larger geographic market would not alter the conclusion described below. For IAM sales of wiper blades, it appears that the geographic scope of the market is national, rather than EEA, in spite of the fact that transport costs are limited and no other barriers to intra-EEA trade exist. The main reasons are that distribution of wiper blades on the Independent After Market is organised on the basis of national structures (via national distributors), important divergences of sales prices for wiper blades and the strong differences in market share per Member State of the different EEA suppliers of wiper blades (see also assessment below). Most competitors and customers have agreed with the geographic market definition.

c. Assessment

i Wiper products

OEM/OES sales of front wiper motors for light vehicles on the EEA market

22. The market position of Valeo and The Business and their main competitors on the EEA market is as follows. These market shares are based on information submitted by the notifying party. Verification of these figures in the course of the investigation has confirmed that they reflect the market positions of the various competitors. It is noted that in this sector no independent market surveys exist.

¹ E.g. case IV/M.768 – Lucas/Varity (Commission Decision of 11.7.1996).

EEA market share in value	1995 (282mECU)	1996 (305mECU)	1997 (326mECU)
Valeo	[15-25%]	[15-25%]	[15-25%]
The Business	[15-25%]	[15-25%]	[15-25%]
Total	[35-45%]	[35-45%]	[35-45%]
Bosch	[30-40%]	[30-40%]	[30-40%]
AC Tridon	[<20%]	[<20%]	[<20%]
Magneti Marelli	[<10%]	[<10%]	[<10%]
Others	[<5%]	[<5%]	[<5%]

Source: notification

23. The market for wiper products is generally considered as a mature market and no particularly important innovations are expected. The client base on the market consists of automobile manufacturers, which normally purchase large quantities of goods for insertion into cars. Generally, suppliers such as Valeo have a longstanding relation with their customers, amongst other due to the particular development of wiper motors, arms and blades, which need to be adapted individually for each type of car. This explains the relative stability of market shares. The notifying party has stated however that market position are vulnerable, given that the loss of a particular client or the loss of a contract for a particular car type will have a strong incidence on market share.
24. From the above it appears that Valeo will become the new market leader for front wiper motors for light vehicles. One of its largest competitors will be removed from the market as a result of the transaction. Nevertheless at least one particularly strong competitor will remain on the market: measured in market share, Bosch will be nearly as strong as Valeo post-transaction. Furthermore, in addition to Bosch, the parties will continue to compete with some other strong actors such as AC Tridon, an UK-based company which has manufacturing facilities in the United Kingdom and Italy, Champion, a European subsidiary of Cooper (which is one of the largest supplier of wiper products in the USA) or Trico, another leading supplier of wiper products in the USA. Especially these two last companies may be considered to have the technological capacity and financial resources to strengthen their activities in Europe. The investigation has confirmed this.
25. As regards new entry by producers into the automotive parts market for OEM sales, this is restricted by the fact that any new supplier would have to engage in important R&D and product development and would have to be able to supply large quantities of a particular product for insertion in a particular car type. This would be especially true where a particular vehicle is produced in the EEA for more than one regional car market (e.g. intended for sale in Europe and Asia). Also, given the new trend in customer demand, a producer would have to be able to deliver complete wiper systems (i.e. including linkages, arms and blades). Therefore, for any new entrant

investment costs are significant. Nevertheless, the parties have stated that a number of recent or potential entrants are expected to exert competitive pressure on the current leading suppliers like Visteon, which is controlled by Ford Motor Company, PAL, a Czech firm or Asmo, the largest Japanese wiper product supplier. Still, it does not seem that market entry is foreseen within the medium term (2-3 years).

26. On the demand side, in the particular field of automotive parts for OEM sales, the customer base is concentrated and consists of a small group of large clients, i.e. major car manufactures, which generally purchase high volumes of a particular product. Due to the consolidation, which is taking place at the level of the car manufacturers and the increasing trend toward global sourcing of these manufacturers, the client base will become even more concentrated in the future. Purchases by the car manufacturers usually take place through a bidding process, whereby products are first developed on the basis of specifications of the car manufacturers. Usually, car manufacturers retain intellectual property rights on any products developed for them. After the development stage, orders are often placed with two or more suppliers, who are given orders for the delivery of particular quantities at set times. As a result of this system, fierce price competition between suppliers of wiper products takes place. These factors indicate that a considerable amount of buying power is present. The Commission's investigation has shown that, although some clients have noted the point of competition becoming very restricted, the merger generally does not raise concerns.
27. In conclusion, even though Valeo will become market leader following of the merger, it seems unlikely that the operation will lead to the creation or strengthening of a dominant position for Valeo, as a result of which competition would be significantly impeded.

OEM/OES sales of rear wiper motors for light vehicles on the EEA market

28. The market position of Valeo and The Business and their main competitors on the EEA market is as follows.

EEA market share in value	1995 (132mECU)	1996 (141mECU)	1997 (157mECU)
Valeo	[20-30%]	[20-30%]	[20-30%]
The Business	[30-40%]	[30-40%]	[30-40%]
Total	[55-65%]	[55-65%]	[55-65%]
Bosch	[20-30%]	[20-30%]	[20-30%]
Magneti Marelli	[<20%]	[<20%]	[<20%]
AC Tridon	[<10%]	[<10%]	[<10%]
Others	[<10%]	[<10%]	[<10%]

Source: notification

29. The market for rear wiper motors for light vehicles is about half of the size of the market for front wiper motors. The analysis of the competitive environment for rear wiper motors is similar as in the market for front wiper motors, with the exception that purely in terms of market share Valeo will be notably stronger after the merger, and Bosch's market share will be smaller. As regards the supply and demand side arguments presented above, these also apply to this market. Therefore, the conclusion can be the same as for the front wiper motors market, i.e. that a dominant position would not be created or strengthened for Valeo itself.

OEM sales of arms/blades for light vehicles in the EEA

30. The market position of Valeo and The Business and their main competitors on the EEA market is as follows.

EEA market share in value	1995 (157mECU)	1996 (172mECU)	1997 (184mECU)
Valeo	[20-30%]	[20-30%]	[20-30%]
The Business	[35-45%]	[30-40%]	[30-40%]
Total	[50-60%]	[50-60%]	[50-60%]
Bosch	[30-40%]	[30-40%]	[30-40%]
Champion/Coopers	[<10%]	[<10%]	[<10%]
Trico	[<10%]	[<10%]	[<10%]
Others	[<5%]	[<5%]	[<5%]

Source: notification

31. Again, the competitive situation is very similar as on the wiper motors markets described above and the operation appears not to lead to the creation of a dominant position for Valeo itself.

OES sales of wiper blades for light vehicles on the EEA market

32. The market position of Valeo and the Business and their main competitors on the EEA market is as follows.

EEA market share in value	1995 (18,5mECU)	1996 (86mECU)	1997 (88mECU)
Valeo	[25-35%]	[25-35%]	[25-35%]
The Business	[5-10%]	[5-10%]	[5-10%]
Total	[30-40%]	[30-40%]	[30-40%]
Bosch	[40-50%]	[40-50%]	[40-50%]
Champion/Coopers	[<10%]	[<10%]	[<10%]
Trico	[<10%]	[<10%]	[<10%]
Others	[<5%]	[<5%]	[<5%]

Source: notification

33. On the OES market for wiper blades the division of market shares is somewhat different than that in the other markets, be it that the main competitors are the same as on the OEM market. Regarding OES sales of wiper blades, Bosch has a notably stronger position and will remain market leader even after the merger. Again, the merger would eliminate one of the main competitors on the market and as a result Valeo and Bosch would be responsible for the large majority of all EEA sales (1997 figures).
34. As regards sales of wiper blades alone it should be noted that transport costs are not considered as a barrier to trade, neither within the EEA (estimated at some 1-2%) nor from outside the EEA (estimated at 4%). Consequently, for this product, there would appear to be some more pressure from outside EEA suppliers as well.
35. For the same reasons as provided above, it is considered that the operation is not likely to lead to the creation or strengthening of a dominant position for Valeo.

IAM sales of wiper blades for light vehicles (by Member State)

36. Given that the geographic scope of the independent replacement market is national, the figures hereunder are given per Member State.

Market Shares 1997	Total Market (mECU)	Valeo	The Business	Total	Bosch	Coopers (C) or Doga (D)	Other (Fister or Taiwanese)
Austria	4,2	[<10%]	[<10%]	[10-20%]	[50-60%]	[<15%](C)	[<15%]
Belgium/ Luxembourg	3,1	[30-40%]	[<10%]	[40-50%]	[30-40%]	[<20%]	[<10%]
Denmark	3,51	[10-20%]	[<10%]	[20-30%]	[50-60%]	[<20%](C)	[<10%]
Finland	3,84	[10-20%]	[<10%]	[<20%]	[70-80%]	[<10%](C)	[<10%]
France	44	[75-85%]	[<1%]	[70-80%]	[10-20%]	[<10%](C)	[<10%]
Germany	50,4	[<5%]	[10-20%]	[<25%]	[50-60%]	[<10%](C)	[<10%]
Greece	2,1	[10-20%]	[<10%]	[<20%]	[30-40%]	[20-30%](C)	[<10%]
Italy	33,2	[10-20%]	[<10%]	[<25%]	[50-60%]	[20-30%](C)	[<10%]
Portugal	0,84	[20-30%]	[25-35%]	[50-60%]	[30-40%]	[<10%]	
Spain	10,2	[25-35%]	[<10%]	[30-40%]	[40-50%]	[<10%](D) [<10%](C)	
Sweden	6,25	[<10%]	[<10%]	[<20%]	[50-60%]	[<20%](C)	[<20%]
The Netherlands	4,65	[10-20%]	[20-30%]	[30-40%]	[30-40%]	[<20%](C)	[<20%]
UK	20,7	[<10%]	[<1%]	[<10%]	[<20%]	[40-50%](C)	[<10%](F)

Source: Parties

37. Regarding IAM sales in the different national markets, the only market where as a result of the merger the parties will have a market share of more than 50% will be Portugal. On this market, Bosch has a strong presence ([30-40%]) and other competitors remain such as Doga with [<10%] of the market.
38. As regards potential competition, the Commission inquiry has shown that certain competitors could substantially increase their current production capacities in a relatively short time (less than 1 year). It can be added that transport cost for wiper blades are not an impediment to trade (even from outside the EEA) and that in case distributors should wish to source wiper blades from other suppliers in the EEA or indeed world-wide, sufficient alternatives appear to exist. Such alternative could be Champion (12% market share on an EEA basis) and Trico but also, to a certain extent, producers from low-cost countries (e.g. Dyna, the leading manufacturer of IAM wiper blades with a particularly strong position in South America or certain Taiwanese suppliers which already have significant market shares in Greece, the United Kingdom and Spain/Portugal). As regards the French market, where Valeo has [...] ² of the market, it is noted that the merger only results in a 1% addition of

² Deleted for publication

market shares, since The Business hardly has any sales on this market. One of the major customers in France has stated that it could quite easily switch to a different supplier than Valeo/ITT should it so wish.

39. On the demand side, the parties have stated that IAM wiper blades suppliers derive about 90% of their European turnover from sales to large organisations operating at national or even an European level: about 70% of the European IAM wiper blades are sold to large retail chains (e.g. Carrefour, which represents in France about 22% of Valeo's sales in this market, Auchan, Makro, Aldi, Leclerc), service stations networks (e.g. Shell, Total, Fina), automobile parts centers (e.g. Norauto, ATU) and specialised retail chains (e.g. Speedy, Midas, Euromaster) and about 30% are sold to national or European networks of wholesalers (e.g. Auto Distribution International, Group Auto Union, Auto Teil Ring). The proportion of the independent distributors differs from a Member State to another (e.g. 7% in Germany and 30% in the Benelux). Given the importance of contracting large distributors for the sale of wiper blades, competition between suppliers of IAM wiper blades is quite fierce. This conclusion seems to be supported by the price decrease of wiper blades in certain Member States e.g. France (-24% between 1993 and 1997), Denmark (-18% between 1995 and 1997) and Portugal (-11% between 1995 and 1997). Furthermore, some of the customers have also stressed during the investigation that enough alternative suppliers still exist on the market and that, as mentioned above, they would not hesitate to switch easily to another supplier if necessary.
40. In conclusion, the operation, although reinforcing the position of Valeo for IAM sales on markets of certain Member States, will not lead to the creation or reinforcement of a dominant position.

Other wiper products

41. On the markets for OEM sales of wiper motors and arms/blades for heavy vehicles, the presence of Valeo is not particularly substantial and leads to an addition of a [5-15%] market share for the front wiper motors segment and a [minimal] market share for the wiper arms/blades segment, to The Business' market share of [35-45%] in both segments.
42. Moreover, when considering separately sales of wiper arms/blades for OES sales, the position of The Business is much weaker, covering just a [minimal] market share, while Valeo is stronger, due to its [15-25%] market share.
43. In the investigation, the estimations of market shares for these products provided by certain competitors showed deviations from those supplied by the notifying party, in the sense that the market shares of Valeo and The Business would be higher. However, in spite of these deviations, it has become clear that other viable competitors with significant market shares remain, such as Magneti Marelli for front wiper motors and Bosch and Coopers for wiper arms/blades. Hence the operation will not have the effect of significantly impeding competition as a result of a dominant position on the markets for these products.

ii) *Rear lamps for light vehicles on the EEA market.*

44. As noted, the only lamps being produced by The Business are rear lamps, which are being sold to automobile manufactures for OEM/OES use. The Business does not sell these products on the independent after market.

45. The market shares of Valeo, The Business and the main competitors are given below. Again, these market shares are to a certain degree based on estimates, since no publicity available market studies exist.

EEA market share in value	1995 (317mECU)	1996 (332mECU)	1997 (362mECU)
Valeo	[25-35%]	[25-35%]	[25-35%]
The Business	[5-15%]	[5-15%]	[5-15%]
Total	[35-45%]	[35-45%]	[35-45%]
Amiclas	[10-20%]	[10-20%]	[10-20%]
Hella	[10-20%]	[10-20%]	[10-20%]
R&S	[10-20%]	[10-20%]	[10-20%]
Britax	[<10%]	[<10%]	[<10%]
Others	[10-20%]	[<10%]	[<10%]

Source: notification

46. The above table shows that on the EEA market Valeo will as a result of the operation strengthen its position as market leader. Its market share will be just over [...]³ (1997). Competitors with significant market shares [...]⁴ will remain active on this market.

47. On the demand side, OEM/OES sales are made by the same car manufacturers who have been described for the wiper products markets above and a significant degree of buying power may be attributed to them.

48. In conclusion, as regards sales of rear lamps for light vehicles on the EEA market, the operation does not raise competition concerns.

iii) *Air management and engine cooling products*

³ Deleted for publication

⁴ Deleted for publication

49. As noted above, there is no geographical overlap in this sector, given that ITTI only sells such products in North America, whereas Valeo only sells these products in Europe. Therefore, the merger will not lead to a change in the competitive position on the respective markets and consequently no competitive concerns will arise.

iv) *Small electrical motors and activators*

50. The Business has an approximate EEA market share of [5-15%]. The estimated market share of Valeo on the EEA market is some [<5%]. Given these market shares, the operation will not lead to the creation or strengthening of a dominant position.

v) *Switches and sensors*

51. For none of these products would the operation lead to market shares of more than 15% within the EEA. Therefore, no competition concerns would arise as a result of the merger.

Oligopolistic dominance

52. On certain of the wiper product markets described above, the market structure will be that the strongest players on the EEA market will have a combined market share of some 70% or more. Therefore, in this decision, the issue of joint dominance of these competitors should be considered.

53. In spite of the high post-merger combined market shares of the main competitors (foremost Valeo and Bosch), it is considered for the following reasons that in this particular sector of industry a situation where these companies will jointly exercise a considerable degree of control over the market is unlikely to appear.

On the OEM/OES markets

54. Firstly, the investigation has not shown the existence of any structural links, such as joint R&D or distribution arrangements between Valeo/ITT and Bosch. Secondly, the buying power at the level of car manufacturers is also of significance in the analysis of potential collective dominance. Such customers have an interest in excluding any collusive behaviour of their suppliers. Thirdly, the transparency of the OEM/OES market is limited, since products are developed through a bidding process where for each individual car type products are designed. This leads to a situation where each product is (slightly) different and different (non-public) prices apply. Finally, car manufacturers have not expressed concern about the operation, and no allegations of oligopolistic behaviour have been voiced. These factors indicate that a risk of collusion or parallel behaviour on the OEM/OES market is limited and that a position of collective dominance is not likely to occur on the OEM/OES market.

On the IAM for wiper blades

55. There are also important indicators why a situation of oligopolistic dominance would not occur on the IAM. Firstly, market shares of the various suppliers are quite different from one Member State to another, so in that sense there is little symmetry in the division of market shares throughout the EEA (for example France, where Valeo has an [70-80%] market share against a [10-20%] market share for Bosch). Secondly, on the IAM, the suppliers who are smaller on the OEM/OES market, sometimes have a bigger share (for example in Spain, where the company Doga holds

a share of [$<10\%$] and in UK where Coopers/Champion has a share of [$40-50\%$]). Thirdly, market entry into the aftermarket appears to be relatively easy, even for firms located outside the EEA, due to the relatively unsophisticated nature of the product from a technical point of view and the limited transportation costs involved. For example, Taiwanese producers have obtained an [$5-10\%$] market share in Germany. Fourthly, the independent aftermarket consists to a degree of own-brand sales by customers such as Carrefour, which indicates that alternative suppliers other than well-known brands may be considered by aftermarket customers. Moreover, as stated above there appear not to exist any structural links between the important suppliers on the market. Competition has been fierce in the past (prices decreases have occurred over the past 5 years) and there are no indications that as a result of the merger collusion or a co-ordination of behaviour would start taking place. Finally, competitors and customers have expressed little or no concern about the operation, neither in respect of single nor in respect of potential joint dominance.

56. In conclusion, notably because of existing and potential competition to Valeo and Bosch from suppliers in and outside the EEA, there are insufficient grounds to conclude that a situation of oligopolistic dominance in the respective EEA countries would result from the merger.

V. ANCILLARY RESTRAINTS

57. The parties have requested that a number of ancillary restrictions should be assessed in conjunction with the concentration.

a. Non-Competition and Non-Solicitation clauses

58. Article 6.10 of the Stock and Asset Purchase Agreement requires ITTI to refrain from engaging in the Business in any location for a period of three years after the Closing Date. ITTI may not acquire a business that engages in the Business, unless the competing operations constitute less than 10% of the acquired business's annual sales, or the Seller divests the competing operations within a year after the acquisition. The Seller may continue to design, produce, and sell products outside the Business, or reasonable complements and product line extensions. Under Article 6.11 of the Agreement, ITTI may not solicit or recruit employees of the Business for two years.

59. The non-compete provisions specified for a period of three years are directly related and necessary to the implementation of the transaction as they aim to ensure that the full value of the acquired business is transferred to Valeo. The restriction on soliciting employees for 2 years is also directly related and necessary to the implementation of the concentration. These two provisions may, therefore, be considered as ancillary restraints.

b. Intellectual Property Licenses

60. Under Article 6.15 of the Agreement, ITTI grants Valeo perpetual, irrevocable, paid-up licenses in the to manufacture, use and sell products and service made, used, sold, or under development by the Business under any applicable property rights. ITTI receives parallel licenses to continue to make, use, and sell all products and services

(besides those made, used, or sold by the Business) under any applicable intellectual property rights. The rights licensed exclude trademarks.

61. These intellectual property rights are ancillary restraints as they are necessary to transfer the full value of the business sold to Valeo without negatively affecting the independent operation of the business retain by ITTI.

c. Exclusive Supply and Purchase Agreements

62. Under Article 6.16 (b) of the Agreement, ITTI's subsidiary Alfred Teves GmbH & Co.oHG (« Teves ») will purchase wiper blades from SWF (an ITTI trademark) for Teves' aftermarket business. During the first [...]⁵ of the contract, [...]⁶, SWF will supply wiper blades exclusively to Teves for aftermarket business, except as per SWF's existing commitments, primarily involving OES sales. In return, Teves will design packaging and carry out marketing functions[...]⁷.
63. From the parties' point of view, this supply agreement is necessary to allow the orderly sale of the business formerly integrated with businesses such as Teves, which ITTI will retain.
64. As regards the supply obligation on Valeo, it is intended to secure the value of the Teves operation post-merger and allows for an orderly transition of Teves to become independent as a provider of wiper products. The obligation seems to be reasonable in scope and in time [...]⁸ and can therefore be considered as ancillary to the operation. However, the exclusive purchasing obligation, as it is linked to the sale of a particular brandname of wiper products, on Teves cannot be considered as merely ancillary to the operation, as Teves' business in the after market will be restricted by such an agreement. Therefore, this decision does not cover the exclusive purchasing obligation applying to Teves.

VI. CONCLUSION

65. Even though the operation will significantly alter the competitive environment on the above described markets for wiper products and rear lamps and Valeo's market share will increase to an important degree, it is concluded that the operation, notably as a result of the existence of strong competitors and an important level of buying power, will not lead to the creation or reinforcement of a dominant position for Valeo itself or to a situation of collective dominance with Bosch.
66. For the above reasons, the Commission decides not to oppose the notified operation and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC).

For the Commission

⁵ Deleted for publication. Not more than 3 years.

⁶ Deleted for publication. Timetable.

⁷ Deleted for publication. Timetable.

⁸ Deleted for publication. Not more than 3 years.