

***Case No IV/M.1335 -
DANA / GLACIER
VANDERVELL***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 11/12/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.12.1998

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sirs,

Case No IV/M.1335 - DANA/GLACIER VANDERVELL

Notification of 10 November 1998 pursuant to Article 4 of Council Regulation (EEC) No 4064/89 ("the Merger Regulation"), as last amended by Council Regulation (EEC) No 1310/97.

1. On 10.11.1998, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which Dana Corporation ("Dana") will acquire sole control over the Glacier Vandervell Bearings Group ("Glacier Vandervell") by way of purchase of shares in combination with purchase of assets.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

3. Dana is a publicly listed company in USA, which is active in the manufacture of components and systems for vehicle and industrial manufacturers. Furthermore, Dana provides financial leasing services. The company operates plants in the U.S., South America, Asia, and in several EU Member States.
4. The Glacier Vandervell business formed part of the assets of the T & N Group, which was acquired by Federal-Mogul Corporation ("Federal-Mogul"), USA, in March 1998. Federal-Mogul's acquisition of T & N was investigated by various competition authorities and has been the subject of divestiture requirements in a number of jurisdictions with

regard to the T & N's thinwall and dry bearings business. Federal-Mogul is disposing of Glacier Vandervell to Dana in order to fulfil these divestiture requirements.

5. In the US, Federal-Mogul is currently in discussion with the Federal Trade Commission ("FTC") to agree to the terms of a consent order providing for the divestiture of the Glacier Vandervell and related businesses by 21 December 1998. It must be noted that Federal Mogul is not required to divest the European aftermarket activities of T&N. Once finalised, the consent order will be placed on the public record, and it is then for the FTC Commissioners to approve the disposal of the business to Dana. In the UK, on 26 June 1998, Federal-Mogul and T&N gave undertakings to the Secretary of State for Trade and Industry for the divestiture of T&N's thinwall bearings business. Federal-Mogul and T&N are required to obtain the prior approval of the Secretary of State in respect of the disposal of the business to the buyer. In Germany, on 3 and 4 March 1998 Federal-Mogul and the Federal Cartel Office entered into a Public Law Contract under which Federal-Mogul is required to dispose of the various T&N companies specified in the FTC's Consent Order, and notify the Federal Cartel Office of the disposal. In France, the undertakings given by Federal-Mogul and accepted by the Ministry of the Economy on 6 March 1998, require Federal-Mogul to report to the Ministry within two months of the termination of the proceedings pending before other national competition authorities.

II. THE OPERATION

6. The acquisition will be brought about by a Master Purchase Agreement between various T&N entities and Dana. There are several local asset sales and share sale agreements under which the Glacier Vandervell business will be transferred to various entities in the Dana Group. The transaction involves a mixture of asset and share purchases from various companies involved in thinwall and dry bearings activities previously within the T&N Group. The transfer of shares and assets does not include any other activities of the former T&N such as the heavywall bearings business, which is being retained by Federal-Mogul.

III. COMMUNITY DIMENSION

7. The worldwide turnover of Dana in 1997 was in excess of 10 500 million ECU and Glacier Vandervell's turnover was in excess of ECU 300 million. With Glacier Vandervell's Community-wide turnover being below ECU 250 million, the parties do not meet the thresholds set forth in Article 1(2) of the Merger Regulation. However, the thresholds set forth in Article 1(3) of the Merger Regulation are met. First, the parties combined worldwide turnover is greater than ECU 2 500 million. Second, Dana's Community-wide turnover was ECU 1 500 million and Glacier Vandervell's was ECU [above 100] million. Thirdly, the individual 1997 turnover of both Dana and Glacier Vandervell exceeded ECU 25 million in France, Germany, Italy and the UK. In those four Member States, their combined turnover also exceeded ECU 100 million. Finally, neither Dana nor Glacier Vandervell achieved more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. This notification does not fall to be treated as an EFTA co-operation case.

IV. COMPATIBILITY WITH THE COMMON MARKET

8. The parties argue that there are no appreciable competitive overlaps or vertical relationships resulting from the operation. The following product areas have been identified: thinwall and dry bearings, kits of automotive components, heavy-duty piston rings and financial leasing.

A. *Relevant product market*

- Kits of automotive parts

9. Glacier Vandervell distributes in the USA kits of pistons, piston rings and cylinder linings. It is not involved in this line of business in the EU. In 1997 sales amounted to USD [less than 50] million. These products are also sold by Dana. While Dana produces the kit components, Glacier Vandervell has no own production of the components. Given the absence of competitive overlap, it has not been necessary to define precisely the relevant product market.

- Financial leasing

10. Dana is active in the area of providing financial leasing services. GlacierVandervell does not have any activities in this field. It has therefore not been necessary to define precisely the relevant product market.

- Thinwall and dry bearings

11. Glacier Vandervell manufactures and sells thinwall bearings and dry bearings for use in the automotive industry and other industries. Thinwall bearings are lubricated friction bearings. They are used in engine and non-engine applications. Dry bearings are not lubricated and are used in industrial applications and non-engine automotive components. Thinwall bearings and dry bearings are sold to original equipment manufacturers (“OEM”) and to undertakings active on the aftermarket. In previous decisions¹, the Commission made a distinction between the OEM-market and the aftermarket for automotive components. The competition agencies involved in the Federal Mogul / T& N transaction have defined thinwall bearings and dry bearings as two distinct relevant product markets and have made a distinction between the OEM and aftermarket activities. In the present case, it was not necessary for the Commission to delineate the relevant product market because the notified transaction would not create or strengthen a dominant position on any possible relevant market.

- Heavy-duty piston rings

12. Dana manufactures and sells heavy-duty piston rings. It was not necessary for the Commission to delineate the relevant product market because the notified transaction would not create or strengthen a dominant position on any possible relevant market.

B. *Relevant geographic market*

¹ see e.g. IV/M.726 - Bosch/Allied Signal, IV/M.360 - Arvin/Sogefi, IV/M.337 - Knorr-Bremse/Allied Signal, IV/M.134 - Mannesmann/Boge

13. According to the parties, the relevant geographic market for automotive and industrial components can be considered as at least Western European and possibly even global for some of the automotive product markets. In previous decisions², the Commission considered that the relevant geographic market in the automotive sector is at least EEA-wide. The Commission has not identified any reasons to deviate from its prior assessment. Hence, the relevant geographic market can be regarded as at least EEA-wide.

V. ASSESSMENT

- Thinwall bearings and dry bearings
14. Glacier Vandervell has an EEA market share in the area of thinwall and dry bearings of greater than 25 %. Dana does not produce any types of thinwall or dry bearings. There are thus no competitive overlaps between the parties in the areas of thinwall bearings and dry bearings. In 1997 Dana bought own label bearings for resale in USA for USD [less than 5] million. In the same period Dana bought bearings for incorporation into its own automotive products for USD [less than 1 million], whereof USD [less than 500 000] for use in Dana's European divisions. Sales of USD [less than 500 000] being very low there are no significant vertical relationships between the parties.
- Portfolio effects
15. As a consequence of the acquisition, Dana will increase the range of its product portfolio offered to automotive manufacturers. While major automotive manufacturers are moving increasingly towards the sourcing of comprehensive product packages, it seems unlikely that the addition of bearings to Dana's product range would create any dominant position.

VI. ANCILLARY RESTRAINTS

16. The parties have submitted a number of contractual obligations they wish to be cleared as ancillary restrictions. Some of these agreements can be considered as constituting an integral part of the transaction while the others are either entirely or partially ancillary to the operation.

A. Agreements forming an integral part of the transaction

17. The parties submitted that two patent agreements, a trade mark license agreement and an agreement concerning use of trade marks should all be cleared as ancillary restrictions. However, all of these agreements were contemplated by the US Federal Trade Commission draft consent order. As it was necessary for Federal Mogul to comply with the requirements of the FTC and other competition authorities, these four agreements can be considered as forming an integral part of the transaction.

B. Ancillary agreements

- **Distribution Agreement**

² see e.g. IV/M.149 - Lucas/Eatron, IV/M.666 - Johnson Controls/Roth Freres, IV/M.686 - Nokia/Autoliv, IV/M.726 - Bosch/Allied Signal

18. Under this agreement Federal Mogul grants to Dana exclusive distribution rights in certain EC countries and non-exclusive distribution rights in other countries (non EC Member States) to distribute specialist industrial bearings. It has an initial term of two years, after which it is terminable on twelve months' notice. The parties explain that prior to the disposal, Federal-Mogul's subsidiary, Deva-Werke (formerly part of the T&N group), relied on Glacier Vandervell as its "in-house" distribution and sales arm in respect of its specialist industrial bearings. The parties argue that in view of the disposal of Glacier Vandervell's business, it is necessary for Deva-Werke to ensure that it would continue to have access to an effective distribution network for its products, at least for an interim period following which it could make alternative arrangements.
19. The Commission believes that in this case, the transfer of the Glacier Vandervell's business would entail the disruption of traditional lines of distribution. The immediate loss of this business at the time of the sale would have an adverse impact on the value of Glacier Vandervell and on the ability of Dana to compete effectively by offering a full product range. To enable the transaction to be completed under reasonable conditions, it is necessary to maintain for at least a transitional period of two years this commercial link between vendor and purchaser. However to maintain the full value of the transferred business it is not necessary for the distribution arrangement to be exclusive. This exclusivity may even prevent the setting up of an alternative distribution network. Therefore the Commission considers the Distribution Agreement as ancillary to the concentration for a period of two years provided that the clauses concerning exclusivity are deleted.

- **European Aftermarket Agreement**

20. Prior to the notified transaction, T&N sourced bearings from Glacier Vandervell, and supplied them in boxed sets for sale in the aftermarket business. The divestment requirements imposed on Federal Mogul did not concern the aftermarket activities. The European Aftermarket Agreement contains several provisions to facilitate Dana's entry into the business of supplying thinwall bearings to the European aftermarket. These provisions are in particular the following. The first category of provisions concerns a transitional period during which : (i) Federal Mogul will sell a certain quantity of boxed sets to Dana within three months of the completion of the transaction; (ii) Dana will be able to market these sets on the aftermarket only after this period of three months; and (iii) Federal Mogul will not be able to use the Glacier Vandervell's trade marks on the aftermarket after another period of three months. Secondly, Federal-Mogul undertakes for a period of three years to purchase at least a minimum quantity of the relevant bearings. Thirdly, during the same period, Dana will buy back, if requested to do so, from Federal Mogul the boxed sets for the aftermarket.
21. The parties argue that as T&N's European aftermarket business is not included in the divestment to Dana and a significant proportion (about [more than 20] %) of the capacity of the European manufacturing plants of Glacier Vandervell is sold into the aftermarket via what is now Federal-Mogul's aftermarket distribution network, the viability of those plants depends on maintaining the pre-existing lines of supply. They add that the purpose of this agreement is to provide Dana with the opportunity to establish its own business for the supply of thinwall bearings to the European

aftermarket and to facilitate its entry into the aftermarket sector as an independent competitor to Federal Mogul/T&N.

22. The Commission can accept that the provisions explained above relating to the transitional period and to the supply of bearings by Dana to Federal Mogul are necessary and directly related to the implementation of the concentration. However, the provision according to which Federal Mogul can require Dana to purchase boxed sets do not appear to be directly related to the implementation of the transaction since Federal Mogul is retaining its aftermarket activities. The Commission considers therefore that the provision according to which Federal Mogul can require Dana to purchase boxed sets is not ancillary to the transaction.

- **Visual 023 Software Licence**

23. Federal-Mogul is granting to Dana a non-exclusive, royalty-free licence to copy and use software to design, manufacture and sell thinwall bearings. This Software Licence is necessary for the completion of the transaction because it relates, inter alia, to the activities of Glacier Vandervell transferred to Dana. Federal-Mogul will remain the owner of the rights in order to exploit them for activities related to non-automotive heavywall bearings. The Commission considers that to the extent it constitutes a restriction, this agreement is ancillary to the operation.

- **Software Licence Agreement**

24. Federal-Mogul has assigned certain intellectual property rights and software to Dana under the Assignment of Software. Dana has agreed to grant to Federal-Mogul a non-exclusive, royalty-free licence in relation to the design, manufacture and sale of non-automotive heavywall bearing.
25. In view of the fact that Federal-Mogul requires access to the assigned softwares for its non-automotive heavywall bearings business this agreement can be considered as directly related and necessary to the present operation.

- **Supply Agreements**

26. Two T&N's heavywall bearing facilities (which are not being sold to Dana) have historically purchased metallic strips from the Glacier Vandervell activities being sold to Dana. The supply agreements make provision for Federal-Mogul to continue to source such products from Dana. In order to manufacture such products, Federal-Mogul will supply the metal to Dana. Dana is obliged to use reasonable endeavours to maintain sufficient facilities and inventory to meet Federal-Mogul's orders, but Federal-Mogul is not obliged to place orders. These Agreements are for an initial period of two years. They can be then be terminated at six month's written notice.
27. To make possible the transaction under reasonable conditions, it is necessary to maintain, at least for a transitional period the previously intra-group supply relationship between the parties for these products. The above obligations ensure the continuity of supply of products necessary to the activities retained and taken over. These Supply Agreements are therefore directly related and necessary to the notified transaction for the initial period of two years.

VII. CONCLUSION

28. 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