

***Case No IV/M.1368 -
FORD / ZF***

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

Article 6(1)(b) NON-OPPOSITION
Date: 21/12/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21/12/1998

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 companies

Dear Sirs,

Subject: Case No IV/M.1368 - FORD/ ZF

Notification of 20.11.1998 pursuant to Article 4 of Council Regulation No 4064/89

1. On 20.11.1998 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) N° 4064/89 by which the undertakings Ford Motor Company and ZF Friedrichshafen AG within the meaning of Article 3(2) intend to set up a joint venture company in the field of automatic transmissions for the automotive industry.

I. THE PARTIES AND THE OPERATION

2. The Ford Motor Company ("Ford") is involved in the manufacture and distribution of automotive vehicles; the provision of financial services; the leasing of vehicles through credit subsidiaries and the car rental business.
3. ZF Friedrichshafen AG ("ZF") is a German company operating worldwide in the business of developing, manufacturing and selling motor vehicle components such as transmission systems.
4. The notified operation concerns the setting up of a joint-venture company to produce and sell automatic transmissions for passenger cars and light trucks, and in particular a new line of continuously variable transmissions ("CVTs"). The joint venture will be set up at the beginning of 1999 and will operate a plant in Ohio (USA). It will manufacture

and sell a new line of CVT's (the "CFT23"), which will be launched in June 2001. The joint venture will also keep manufacturing certain automatic transmissions developed by Ford (the CD4E) until the end of their current product life cycle.

II. THE CONCENTRATION

Joint control

5. ZF and Ford will own, respectively, 51 % and 49 % of the joint venture's equity capital. The joint venture will be managed by a board of directors consisting of equal number of directors for each of the parents, (i.e. the President and three members appointed by each Ford and ZF). Decisions on key matters will require either unanimity or a majority including the vote of at least one director appointed by Ford and one appointed by ZF. Key matters cover the appointment of senior management and the adoption of business plans and budget. In the case of deadlock at the board's level a qualified majority of two thirds will be required but should the deadlock persist recourse would be made to mediation and arbitration procedures. Therefore, the joint venture will be jointly controlled by the parents as none of them will be in a position to determine unilaterally its behaviour.

Full functionality

6. The joint venture will have access to sufficient resources including finance , staff manufacturing assets and technology in order to conduct on a lasting basis its business activities on the market. In particular, Ford will contribute its industrial plant in Batavia, Ohio, as well as equipment and skilled staff while ZF's contribution will consist mainly of CVT technology and design as well as some cash. The joint venture will be fully capitalised and will have a balanced financial structure. During a start-up period personnel will be seconded from Ford and some services (such as accounting or legal counsel) will be obtained from the parents.
7. The joint venture will produce both the new CFT23s and the existing Ford's CD4Es. Sales to Ford will be at arm's length and Ford will have the right to use alternative sources of supply in case the joint venture's product is not competitive in terms of technology , price, quality and delivery. The CFT23s are expected to be launched by June 2001 (the parties are already seeking orders, and a first important order is being negotiated with [...]).
8. The parties expect that around 2006, once the new product has been fully commercialised, at least 1/3 of all the CVTs produced by the joint venture will be sold to third parties. This percentage applies to all its world-wide production. Moreover [between 50 and 70%] of the JV's total sales in the European market are expected to be allocated to car manufacturers others than Ford.
9. As the joint venture is geared to play an active role on the market the fact that the parents provided transitional services to it does not call into question the full function nature of the joint venture. It can therefore be concluded that the joint venture will operate on a lasting basis and will perform all the functions of an autonomous economic entity.

10. The notified operation is a concentration within the meaning of Article 3(1) (b) of Council Regulation N° 4064/89.

III. COMMUNITY DIMENSION

11. The combined aggregate worldwide turnover of the undertakings concerned exceeds ECU 5,000 million(ECU 135,473 millions for Ford and ECU 4,541 millions for ZF). Each of the undertakings has a Community –wide turnover in excess of ECU 250 million (ECU [...] for Ford and ECU [...] for ZF in 1997) 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 has therefore a Community dimension in accordance with Article 1(2) of the Merger Regulation.

IV. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product market

12. The joint venture will produce and sell automatic transmissions and, in particular, CVTs. CVTs are innovative highly sophisticated automatic transmissions featuring two variable diameter pulleys connected by a metal belt which allows for the continuously variable ratio feature so that the driver perceives “no shift”. Given their technical features CVTs belong to the market for automatic transmissions for passenger cars and light trucks less than 6 tons. This is a distinct market from that of manual transmissions for passenger cars in the light of prices (automatic transmissions are more expensive than manual ones), customer preferences, and supply-side substitutability (i.e. equipment, production lines and technology differ significantly). It is also distinct from the markets for transmissions of heavy trucks, which uses a different technology.

B. Relevant geographic market

13. The parties have taken the view that the relevant geographic market is world-wide in scope. The players have world-wide operations and customers do not have a limited geographic pattern of purchases. In line with the position taken by the Commission in a number of decisions concerning automotive systems and components, the geographic market is at least the EEA since there are no technical standards or other regulatory barriers to trade within its territory.¹ The operation is, therefore, assessed on an EEA level.

C. Competitive assessment

14. The parties have explained that the aim of the joint venture is to combine ZF’s expertise in the engineering of CVTs with FORD’s manufacturing volumes. As a result the parents expect the joint venture to become an efficient and competitive supplier of innovative automatic transmissions to the automotive industry.

¹ See e.g. case IV/M. 1196 – Johnson Controls/Becker

15. Approximately half of the automatic transmissions sold in Europe are produced and used internally by car manufacturers. The largest non-integrated manufacturers of automatic transmissions are ZF, with an EEA market share, excluding in-house production, of [between 35 and 45%] in 1997. The next largest players are two Japanese companies, Aisin AW and Jatco, with EEA market shares of [between 15 and 25%] and [less than 5%], respectively. The only car manufacturer holding a significant market position is GM-PT with an EEA market share of [between 10-20%]. Some other car manufacturers are using their captive production facilities to offer automatic transmissions to third party customers; however, leaving aside in-house production, their market shares are negligible. If, in calculating the size of the market, in-house production were to be excluded, FORD's market share would be equal to zero since it does not sell automatic transmissions to third parties. Therefore, if captive production were disregarded the establishment of the joint venture would lead to no increase in ZF's market share.
16. If, on the contrary, in-house production were taken into account the parties would achieve a combined market share of [between 20 and 30%] ([between 20 and 30%] for ZF + [less than 5%] for FORD) in the EU in 1997. The remainder of the market would be in the hands of the integrated car manufacturers, such as Mercedes Benz with [between 20 and 30%], GM-PT with [between 5 and 15%], and VW with [between 5 and 10%], and of the two above mentioned Japanese companies (Aisin AW with [between 15 and 25%] of the EEA market and Jatco with [less than 5%]). Therefore, the parties would not be dominant as they would be subject to effective competition from the in-house producers and the independent suppliers.

V. ANCILLARY RESTRAINTS

17. The parties have agreed not to compete with the joint venture with regard to the CFT23s for the duration of the joint venture and, in the case of withdrawal by one of the parents, for a further five years from the date of the withdrawal. On the one hand, the Commission considers that this non-compete clause, insofar as it applies for the duration of the joint venture, is directly related and necessary to the establishment of the joint venture and therefore is covered by the present decision. On the other hand, the Commission considers that the extended five years' period of non competition following the withdrawal of one of the parents is neither an integral part of the notified transaction nor ancillary to it. The justification of this clause would have to be assessed in relation to future transactions upon termination of the present joint venture. Therefore, the five years' extended clause is not covered by the present decision.

VI. CONCLUSION

18. 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 EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission