

*Case No IV/M.1470 -
GOODYEAR /
SUMITOMO*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 23/07/1999

*Also available in the CELEX database
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.07.1999
SG(99) D/5705

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Subject: Case No IV/M. 1470 – GOODYEAR/SUMITOMO

Notification of 22.06.1999 pursuant to Article 4 of Council Regulation N/ 4064/89

1. On 22.06.1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ by which Goodyear Tyre & Rubber Company (“Goodyear”) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the Sumitomo Rubber Industries, Ltd. (“SRI”) operations in Europe and North America within the framework of a Global Alliance between Goodyear and SRI signed on 14 June 1999.
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 functioning of the EEA Agreement.

I. THE PARTIES’ ACTIVITIES AND THE OPERATION

¹ OJ L 395, 30.12.89 p. 1; corrected version OJ L 257 of 21.9.1990, p. 13; as last amended by Regulation (EC) No 1310/97, OJ L 180, 9.7.1997, p. 1, corrigendum in OJ L 40, 13.2.1998, p. 17.

3. Goodyear is a U.S.-based manufacturer and distributor of tyres. Goodyear also manufactures certain engineered products and other rubber products. SRI is a Japanese-based manufacturer and distributor of tyres. SRI also manufactures certain sports and industrial goods, both mainly rubber-based.
4. The Alliance involves the creation of six companies: one in Europe; one in North America; two in Japan; and two U.S.-based support ventures, one for global joint purchasing and one for technology exchange and asymmetric crossed-shareholding (Goodyear will acquire a non-controlling 10% shareholding in SRI, while SRI will acquire around 1% of Goodyear's stock).
5. Goodyear will hold 75% of the equity interests and 70% of the voting rights, and will appoint seven of the ten members of the board of the European and American ventures including the Chairman, the rest being hold or appointed by SRI. [...] Goodyear will exercise sole control, for the purposes of Council Regulation 4064/89 of the European and North American production and distribution ventures.
6. The European and American Venture Companies will hold substantially all of Goodyear's and SRI's current European and American tyre-related manufacturing, distribution, and sales operations, together with SRI's European and American technical centres.² Aircraft tyres are excluded from the scope of the present transaction
7. SRI will hold 75% of the equity interests and 70% of the voting rights in each of the Japanese ventures and will hold sole control in the same manner than Goodyear in the European and American ventures. Further, two U.S.-based support ventures will be created, one for global joint purchasing and one for technology exchange. These support ventures are not full functioning.
8. Thus, only the European together with the North American venture triggers the application of the Merger Regulation.

II. COMMUNITY DIMENSION

9. Goodyear and SRI's European and American businesses (according to Article 5.2) have a combined aggregate worldwide turnover in excess of EURO 5,000 million (Goodyear, EURO 12,626 million; and SRI, EURO 2,210 million). Each has a Community-wide turnover in excess of ECU 250 million ([...]), but 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.

² The American venture will include original equipment but it will exclude other tyre activities, which will remain wholly-owned by Goodyear.

III. COMPETITIVE ASSESSMENT

Relevant product markets

10. This transaction involves the manufacture of tyres for OEMs and replacement or AM applications. The principal tyre categories recognised in the industry are:

Consumer Tyres

- (i) Passenger cars; (ii) light trucks; (iii) motorcycles; (iv) bicycles; (v) racing cars and go-karts; and (vi) all terrain vehicles.

Commercial Tyres

- (i) medium and heavy trucks; (ii) farm vehicles; (iii) earth-moving equipment; and (iv) aircraft.

However, on the supply side, all the main categories of tyres designed for the various vehicle classes are produced by each of the main global tyre producers and each category of tyre is generally produced at any given manufacturing facility. All of the major categories of tyres use common raw materials. Broadly speaking, the larger the tyre, the larger the machines required to produce that tyre. The question of whether or not these segments constitute separate relevant product markets could be left open since, in all alternative product market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

B. Relevant geographic markets

11. The relevant geographic market for the manufacture and sale of OE tyres is pan-European in scope. This has been held by the Commission in other automotive OE component markets in cases such as IV/M.937, TRW/Magna, IV/M.872, Bosch/Allied Signal, IV/M.726, Lucas/Eaton and others. The following considerations are relevant: no obstacles to trade, all major OE tyre suppliers distribute in European countries where they have no local production facilities at similar prices. Further, Tyres are easily transported and OEMs purchase on a European-wide basis.
12. The parties submit that the relevant geographic market for the manufacture and sale of most categories of replacement tyres is pan-European. They claim that tyre retailers are increasingly becoming pan-European or have the potential and resources to negotiate the lowest prices available anywhere in Western Europe and that many truck fleets operate on a pan-European basis. However, it is not necessary to further delineate the relevant geographic markets for replacement tyres 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.

C. Assessment

Competitive situation in OE tyres

13. The new entity will account for around [20-25]% of Western European OE tyre sales. Michelin will remain the leading western European supplier, accounting for almost 40% of OE sales. Others competitors include Continental (15%), Pirelli (11%) and Bridgestone/Firestone (11%). Goodyear/SRI will remain subject to strong competition. Like other major competitors, the

merged entity will depend on a diminishing number of powerful and demanding customers with strong buying power. Finally, the European market is open to imports from other regions.

▪ **Competitive situation in replacement tyres**

14. Post-transaction, the merged entity will account for around [20-25]% of all Western European replacement tyres. Michelin will be the leader (25%). All other major multinationals supply replacement tyres across Western Europe: Continental (16%), Bridgestone (12%) and Pirelli (9%). At national level, Goodyear/SRI will account for less than 25% of replacement tyre sales in most countries. Goodyear/SRI's share will be around 30% in Germany and between 25% and 30% in the United Kingdom and Greece. However in these countries there will be strong competition from all the other players, Asian and Eastern European imports and private label tyres. Competition will remain on the market for replacement tyres, characterised by falling prices, increasing imports and growing retail concentration.
15. Consequently, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

IV. ANCILLARY RESTRICTIONS

16. Articles 9.4-9.5 and 9.9 of the Shareholders agreement for the European Venture provide that the company will have the exclusive right to manufacture and sell tyres in Western Europe. Article 9.9 provides that Goodyear and SRI will not compete directly or indirectly with the European Company for the duration of the venture. The withdrawal of the parent undertakings from offering such products is necessary to provide the venture with business and to ensure a separation of functions. These provisions are directly related and necessary to the establishment of the agreements since they protect the assets and investments of the parties.
17. Pursuant to Article 17.05(d) of the Umbrella Agreement, in the event of SRI's withdrawal from the Alliance Agreements and Goodyear's purchase of SRI's shareholding in the European company and the North American company, SRI has agreed for a period of [more than two] years following the date of Goodyear's purchase not to compete, directly or indirectly, with the European, North American companies, or Goodyear or any of their respective affiliates in the European and North American territories. The Commission considers that a period of two years will be enough to protect Goodyear following SRI's possible withdrawal. Consequently this provision is to be considered as ancillary for that period.
18. In Europe, the Parties to the Alliance intend granting trademark licenses to operating entities and subsidiaries of the European Company in respect of the business being transferred. It is intended that the parties will undertake not to grant such trademark licenses to third parties in Europe. These provisions are directly related and necessary to the establishment of the Alliance since they guarantee that the full value of the businesses will be transferred .
19. Under Article 4.05(b) of the Umbrella Agreement, for the period beginning on the date of such Agreement, through the termination of the Alliance, plus additional five years, each party has agreed to keep confidential commercially sensitive information. This provision, to the extent that it constitutes a restriction of competition, is directly related to the establishment of the European and American ventures since it will prevent confidential

information that may have been obtained in the process of negotiation and operation from being disclosed to third parties.

V. CONCLUSION

For the above reasons, the Commission decides 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,