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Case No IV/M.152 - VOLVO / ATLAS

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION
OF THE EUROPEAN
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MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

VERSION FOR THE PUBLIC

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To the notifying parties

Dear Sirs,

Subject: Case No. IV/M152 - Volvo/Atlas
Council Regulation No. 4064/89

1. The notification of 6.12.1991 pursuant to Article 4 of Council Regulation No. 4064/89 (Merger Regulation) concerns the creation of a joint venture (VOAC Hydraulics AB, "VOAC") by Volvo Flygmotor AB ("VFA") and Atlas Copco ("ATLAS"), to which the parties intend to transfer all of their respective worldwide activities for hydraulic components.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation, and that it does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

3. VFA is a wholly owned subsidiary of AB Volvo which is the ultimate parent of the Volvo group. Volvo's activities include the manufacture and retailing of motor vehicles and parts and accessories thereto.

   VFA is the parent company in a group active on a worldwide scale in the design, manufacture and distribution of air and space propulsion products, vehicle components and hydraulic products. It conducts its activities in the market of hydraulic equipment through a wholly owned subsidiary, Volvo Hydraulic AB, the activities of which will be transferred to VOAC.

4. Atlas is the ultimate parent company of the Atlas Copco group. It is active on a worldwide scale in the design, manufacture and distribution of air and gas compressors, construction and mining equipment and power tools, including hydraulic and pneumatic components. Atlas conducts its activities in the market for hydraulic components through Monsun-Tison AB, a wholly owned subsidiary.

II. COMMUNITY DIMENSION

5. The combined aggregate worldwide turnover of AB Volvo and Atlas in the last financial year was above 5 billion ECU. Both parties meet the requirements of Article 1(2)(b), each having had an aggregate Community-wide turnover in excess of 250 million ECU, the parties do not achieve more than two-thirds of their turnover within one and the same Member State. The proposed concentration thus has a Community dimension.

III. CONCENTRATION

Joint Control

6. Upon completion of the proposed transaction, each of the notifying parties will hold a 50% interest in VOAC. The Shareholders Agreement provides for unanimous decisions on Shareholders Meetings. In addition to Board Members appointed by the trade unions by virtue of law, the Supervisory Board shall consist of four members, each party nominating two, its Chairman being elected by the Board. The Managing Director of VOAC shall be approved by both parties.

   It follows from the 50/50 shareholding and the Shareholders Agreement that the two parties have to agree on all major decisions concerning VOAC. Thus, VOAC is jointly controlled by VFA and Atlas.

Autonomous economic entity

7. VOAC will perform on a lasting basis all the functions of an autonomous economic entity with its own accounts, assets, staff, management, Supervisory Board, etc. All new products will be marketed under the name of the joint venture, "VOAC Hydraulics".

   Products currently marketed under the Volvo and Atlas trade names will continue to be marketed under these names for a period of 4 years due to an exclusive license given by the parents to VOAC for the relevant products. Thereafter, they too will be sold under the VOAC Hydraulics trade name. Although some sales will be made to both Volvo and Atlas, approximately 90% of VOAC's sales will be external.

8. The Shareholders Agreement is valid for five years, and thereafter extended for subsequent periods of three years unless terminated by either party. This will not, however, affect the status of VOAC as an autonomous economic entity on a lasting basis. The possible withdrawal of either of the parties from the Shareholders Agreement affects only this party's participation in VOAC as a shareholder, i.e., the party (parties) can sell their holding to the other party or third parties, but VOAC will continue as a full functioning

company.

Absence of risk of coordination

9. The notifying parties intend to transfer all their activities and assets in the sector for hydraulic components to the joint venture, VOAC, including all intangible assets such as general goodwill, patents, patent applications, licences, logos, model nominations, copyrights, etc. The parties will also transfer all their marketing, sales and service operations concerning the affected products to VOAC.

There is no realistic possibility for the parents to re-enter the joint venture markets. In addition to that the parties are bound by the Shareholders Agreement which foresees that they will not conduct operations which compete, directly or indirectly, with the businesses transferred to the joint venture.

10. Volvo and Atlas will withdraw from the markets of VOAC, but certain vertical relations will remain in the form of sales between VOAC and its parents. For example, some of the products concerned can be installed in Volvo trucks. However, none of Volvo's trucks are supplied with the hydraulic components concerned as standard equipment.

The parties have informed the Commission that between 5% and 11% of the products concerned are sold to the parent companies, without any exclusive sales agreement, and that such sales take place on normal market conditions.

Due to the fact that:

- approximately 90% of VOAC's sales will be external;
- the sales by VOAC to the parent companies represent respectively less than 0,05% and 0,5% of the purchases of Volvo and Atlas;

the vertical relationships are considered insignificant. Thus it can be reasonably assumed that there will not be coordination of the competitive behaviour as between the parents themselves or between any one of them and the JV.

11. In view of the above it can be concluded that the notified operation constitutes a concentration within the meaning of Article 3 of the Merger Regulation.

IV. COMPATIBILITY WITH THE COMMON MARKET

Affected Product Market

12. The notifying parties will transfer to VOAC their respective operations in the area of hydraulics: Volvo will transfer its pump and motor activities, and Atlas will transfer its valve and cylinder operations.

13. Hydraulic is a technology based on the use of an incompressible fluid to transmit energy in a controlled manner so that hydraulic components will behave in a predictable way. Hydraulics are normally divided into industrial hydraulics and mobile hydraulics. The former are normally used in industries such as plastics, the latter are used in, inter

alia, larger road and off road vehicles (e.g. trucks and excavators) and other work functions.

14. The notifying parties are predominantly working for the mobile hydraulic industry. A mobile hydraulic system normally consists of the following components which are linked together by tubes, hoses or electrical wiring:

- one or several pumps to establish a pressure in the oil circuit;
- one or several valves to give direction to the oil flow, restrict pressure, etc.;
- one or more motors causing wheels to revolve;
- oil tanks, filters, accumulators, etc.;
- one or more cylinders causing shovels to tip, etc.

The notifying parties consider that each of these components represent a unique product which perform a specific function. They are sold separately to manufacturers of certain machines, e.g., excavators, forest machines, etc. The affected relevant product markets are therefore the following mobile hydraulic components: pumps, motors, valves and cylinders.

Geographic Reference Market

15. The geographic reference market appears to be the Community. According to the notifying parties, the majority of the hydraulic components are made to meet international standards accepted throughout the Community. There are no tariff or non-tariff barriers to trade within the EC, and transport costs seem to be insignificant for the final price of the products. Price differences are mainly due to the degree of service demanded such as stockholding, installation service or financial conditions.

Furthermore, there is considerable cross-border trade. According to figures available to the Commission, imports coming from Member States or third countries represented in 1988 more than 60% of the Community's market value for the relevant products.

16. Finally, there is a significant number of manufacturers involved in the distribution of the relevant products due to the technical and customized character of the products which are normally sold to original equipment manufacturers and other intermediaries throughout the Community.

Assessment of compatibility

17. The estimated value of the relevant product markets within the Community in 1990, and the annual growth for the period 1988-1990, were approximately the following:

Pumps	- 550 million ECU and -1,1%
Motors	- 220 million ECU and -0,7%
Valves	- 600 million ECU and -0,9%
Cylinders	- 375 million ECU and +0,1%

The notifying parties do not expect these markets to grow in the near future; on the contrary the downward trend is likely to continue.

18. The Commission has examined the horizontal and vertical relationships between the product ranges of the parties concerned.

i) Horizontal

19. In view of the fact that Volvo is active in the pump and motor markets, and Atlas is active on the markets for valves and cylinders, the market position of VOAC will be that currently held by each party as the products in question are complementary and not substitutable or overlapping.

The shares of the parties within the Community on the relevant product markets are between 0,2% and 9,4%.

ii) Vertical

20. As regards the vertical links, the concentration is not likely to significantly strengthen the market position of VOAC on the markets of hydraulic pumps, motors, valves or cylinders for the following reasons:

-only a small percentage of valves and cylinders (11%) is sold to the Atlas Copco group; such sales to the Volvo/Renault joint venture in the field of trucks(1) are insignificant;

- the percentage of sales of pumps and motors to the Volvo/Renault group is less than 5%; such sales to the Atlas Copco group are insignificant.
- the concentration will not lead to an appreciable foreclosure effect on the markets where VOAC will operate.
- in any case the Volvo/Renault joint venture is controlled by Volvo and Renault which means that its JV will have less incentive to favour VOAC than in the case of a Volvo fully owned subsidiary.

21. It is very unlikely that the proposed operation will strengthen the market position of the parent companies significantly. Atlas does not hold a market share above twenty-five % in any product incorporating the relevant products. As regards VOAC's relationship with the Volvo/Renault joint venture

- none of the products of the Volvo/Renault joint venture are supplied with hydraulic products as standard equipment;
- products such as pumps can be installed at clients' request after or before delivery;
- 50% of those pumps are installed after delivery;

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(1) Commission's Decision of 6.11.1990, case No. IV/M004: Volvo Lastvagnar AB is owned by Volvo AB (55%) and Renault (45%).

- the clients have the choice to have that done either by the Volvo/Renault joint venture or independent companies;
- the sale of valves and cylinders to the Volvo/Renault joint venture is insignificant.

V. ANCILLARY RESTRAINTS

22. The Shareholders Agreement contains a non-competition covenant by which the parties are prohibited from directly or indirectly conducting operations in competition with the businesses of VOAC for as long as they are bound by this Agreement and this for a minimum period of five years. This non-competition clause is aimed at expressing the reality of the lasting withdrawal of the parents from the market assigned to the joint venture and is therefore recognised as an integral part of the concentration.

VI. FINAL ASSESSMENT

23. Based on the above findings the Commission has come to the conclusion that the proposed operation does not raise serious doubts as to its compatibility with the common market.

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For the above reasons the Commission has decided not to oppose the notified concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)(b) of the Council Regulation No. 4064/89.

For the Commission,