

***Case No IV/M.1569 -
GRÄNGES / NORSK
HYDRO***

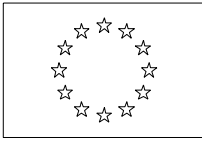
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**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION

Date: 05/07/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 05-07-1999

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sirs,

Subject: Case No IV/M.1569-Gränges/Norsk Hydro

Notification of 3.06.1999 pursuant to Article 4 of Council Regulation No 4064/89¹

1. On 3.06.1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertakings, Gränges AB (“Gränges”) and Hydro Aluminium AS, a subsidiary of Norsk Hydro ASA (“Hydro”), will create a joint venture company within the meaning of Article 3(1)(b) of the Council Regulation. Gränges will transfer to the joint venture company its Plastal group of companies (“the Plastal Group Companies”) in Sweden, Finland, Italy, and Poland, and Hydro will transfer its Hydro Raufoss Automotive plastic related bumper companies (“the Bumper Group Companies”) in Norway, Sweden and Belgium.
2. Following 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. Gränges is a Swedish group active in three main industrial areas, i.e. aluminium extrusion, aluminium rolled products, and autoplastics. The activities of its subsidiaries, the Plastal Group Companies, belong to the autoplastics area of Gränges’ business and consist of the production, processing, and supply of plastic components and plastic

¹ OJ L 395, 30.12.89 p.1; corrigendum OJ L 257 of 21.09.90, p.13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 09.07.97, p.1, corrigendum OJ L 40, 13.02.98, p.17).

systems to the automotive industry. The Plastal product range comprises bumpers, wheel covers, decorative strips, instrument panels, door panels, and various other plastic parts.

4. Hydro, in which the Norwegian State has a 51% shareholding, engages in energy and industrial activities worldwide, principally in agriculture, oil and gas, petrochemicals, and light metal products. Hydro's subsidiaries, the Bumper Group Companies, produce plastic bumpers and plastic trunk lid covers for the automotive industry.

II. THE OPERATION

5. Gränges will transfer to the new joint venture company ("the JV") the totality of its activities and assets in plastic components for the automotive industry, and all the shares of the Plastal Group Companies. Hydro, for its part, will transfer its plastic-related bumper business, including all activities and assets, and all the shares of the Bumper Group Companies. The JV will have sufficient resources to conduct its activities of production, marketing and sale.
6. Following the transfers, Gränges and Hydro will own 60% and 40% of the JV respectively. Gränges will appoint three of the five board members, and Hydro will appoint the remaining two. However, Hydro will have veto rights over certain strategic decisions with regard to the JV, including the [...]. Thus the JV will be jointly controlled by its parents, Gränges and Hydro. Neither of the parents will retain any activities within the sector of plastic components to the automotive industry outside the JV.
7. Given the various characteristics of the operation described above, the proposed new company is considered to constitute a concentrative autonomous full-function joint venture and a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

8. Gränges and Hydro have a combined aggregate worldwide turnover in excess of EUR 5,000 million (Gränges, EUR 1.25 billion; Hydro, EUR 11.5 billion). Each of them has a Community-wide turnover in excess of EUR 250 million (Gränges, EUR 1,084 million; Hydro, EUR 7,441 million). Gränges and Hydro do not achieve more than two-thirds of their aggregate Community-wide turnovers within one and the same Member State. The notified operation has, therefore, a Community dimension.

IV. RELEVANT MARKETS

A. Relevant Product Market

9. Within the respective activities of the parties being transferred to the JV, the only product area in which there is an overlap is that of the manufacture and sale of bumpers (both systems and components) for passenger cars.
10. Bumpers form an integral part of the vehicle's exterior and, consequently, are designed in close cooperation between the vehicle manufacturer and the bumper manufacturer. The bumpers are individually designed for each model of car, and may be painted or unpainted depending on the car manufacturer's requirements. The delivery of bumpers will at least include the plastic cover, but a bumper system will comprise energy absorbing pads and a bumper beam, and may also comprise components such as fog lights and integrated antennas.
11. The parties and their competitors supply bumper systems, bumper covers and components, as required by customers. The parties calculate deliveries of the more complete bumper systems as constituting [...] of all deliveries, with most of the rest consisting of the plastic bumper covers. Deliveries of spare parts for bumpers are taken care of by the original bumper supplier and will generally be included in the same contract as the delivery of the serial production of the particular car model. It seems that the volume of aftermarket delivery of parts is comparatively low, and that the parties, in any case, are not active in it.
12. The parties submit that bumpers for commercial vehicles (particularly those for medium and heavy vehicles) do not belong to the same market as bumpers for passenger vehicles. They base their contention on technical distinctions such as the safety component which characterizes the passenger vehicle bumper, i.e. energy absorption for passenger protection, as opposed to the protection of the other vehicle involved in an accident which characterizes the commercial vehicle bumper. They also point out that, despite supply side possibilities, the manufacturers of bumpers for commercial vehicles are in general different to those for passenger cars. In the case of the parties, only Gränges is active in bumpers for commercial vehicles.
13. Third parties consulted by the Commission during the course of its market investigation corroborated the above-mentioned arguments of the parties with regard to the distinctions between bumpers for passenger and commercial vehicles.

B. Relevant Geographic Market

14. The parties submit that the relevant geographic market for bumpers for passenger cars is at least EEA-wide. In support of this contention the parties, among other factors, point to i) the developments in the car manufacturing industry with the creation of constellations such Daimler-Chrysler, GM-Opel-Saab and Ford-Jaguar-Volvo, and the impact that such developments can be expected to have at the level of procurement, as a result of the car manufacturing industry's quest for cost-effectiveness and multinational deliveries, ii) the general practice of car manufacturers to launch calls for tenders to several potential bumper suppliers in the EEA when the contract for a new model of car is to be awarded, iii) the possibility of bumper suppliers, whose plants are not located sufficiently close to the customer, to respond to "just-in-time" and "in-sequence" requirements (which reduce delivery time to a few hours), through the use of a final

assembly centre located in closer proximity to the car manufacturer's plant, iv) the effective transport of bumpers over considerable distances (approx. 300 to 400 km. both within and between several EEA states, and v) the presence of the main bumper suppliers with plants in several locations in Europe.

15. The Commission's market investigation among third parties confirmed broadly the parties' arguments with regard to the above points. However, as the operation would not give rise to competition concerns, either at an EEA or narrower level, as seen in the assessment below, the Commission does not need to define the geographic scope of the supply of bumpers more precisely in the present case.

V. COMPETITIVE ASSESSMENT

16. The market share achieved by the joint venture in the EU falls substantially short of 15%, as the parties are comparatively small players at a European level, with their respective activities in bumpers for passenger cars concentrated in their deliveries to Saab, in the case of Gränges, and Volvo, in the case of Hydro.
17. At a national level, the only member state in which both of the parties to the JV are active in supplying bumpers for passenger cars is Sweden, where they are currently the only suppliers. This concentration on the supply side in Sweden is matched by the limited demand for bumpers in Sweden, where only two car manufacturers are present, i.e. Saab and Volvo. As contracts for bumpers for a particular model of car are awarded to a given supplier for the whole duration of the production of the model, contracts for bumper supply typically last for 6 years or longer. The result is that long-lasting relationships are built up between supplier and customer. This fact, together with the advantages inherent in the geographic proximity between the parties and their respective customers in Sweden in terms of delivery times and transport costs, and the limited size of the demand in Sweden, are relevant factors in explaining the situation in the bumper supply sector in Sweden.
18. After the proposed operation, the two car manufacturers present in Sweden, i.e. Saab and Volvo, will see the only two bumper suppliers with a presence in Sweden reduced to one. However, consulted by the Commission on the impact of this fact on their respective companies, neither Saab nor Volvo expressed any significant concern. On the one hand, they have each traditionally mainly been supplied by only one of the parties. However, on the other hand, both Saab and Volvo confirmed that they award contracts through calls for tenders in which other European suppliers participate. The customer of one of the parties highlighted the trend towards global sourcing which can be expected as a result of the concentration of the car manufacturing industry, and the degree of countervailing power which the car manufacturer enjoys when it is a member of a world-wide purchasing team. Furthermore, the possibility for European suppliers whose production plants are located outside Sweden to carry out final bumper assembly within Sweden was considered to provide a viable source of potential competition. There were considered to be as many as five or six such potential suppliers.
19. In the course of the Commission's market investigation, the main bumper suppliers of car manufacturers confirmed the existence of pan-European competition in the award of contracts, the ever-growing policy of centralized purchasing by car manufacturers and the resulting countervailing power they enjoy, and the trend for customer loyalty to lose ground to European-wide contracts as a result of such global sourcing. Overall these

competitors expressed no significant concerns with regard to the impact of the present operation on their companies or on the sector concerned in general.

20. In the light of all the fore-going factors, the Commission considers that the proposed operation will not lead to the creation or strengthening of a dominant position in the supply of bumpers for passenger cars to the automotive industry.

VI. ANCILLARY RESTRAINTS

21. Under Section 9.10.1 of the Shareholders Agreement, relating to their joint shareholding, the parties have established a non-competition clause according to which “each Shareholder undertakes that it will not, whether on its own account or as shareholder holding [...] or more of the share capital or in any Person (other than Newco) during the period [...] carry on any manufacturing of plastic bumper systems and other plastic components to the automotive industry in competition with Newco and its subsidiaries”.
22. With regard to the rationale behind this non-competition clause, the parties have explained to the Commission that it is intended to protect the value of their respective economic interests in the JV, in so far as each party needs to be protected against competition from the other party, who could potentially exploit the availability, through the JV, of first-hand information on technical and commercial know-how on the activities and market of the JV. If one party were to exploit such information for its own economic benefit, this would harm the other party’s legitimate interests and expected economic benefit from the JV. In this context, and to the extent that it expresses the reality of the lasting withdrawal of the parents from the market of the JV, the Commission considers that such a non-competition clause can be seen as necessary for the implementation of the concentration.

VII. CONCLUSION

23. 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,