

***Case No IV/M.1589 -
MERITOR / ZF
FRIEDRICHSHAFEN***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 02/08/1999

*Also available in the CELEX database
Document No 399M1589*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 02-08-1999

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M. 1589 – Meritor/ZF Friedrichshafen

Notification of 01.07.1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 01.07.1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the German undertaking ZF Friedrichshafen AG („ZF“) and the U.S. company Meritor Heavy Vehicles Systems, LLC ("Meritor") acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the ZF Meritor LLC, by way of purchase of shares in a newly created company constituting a joint venture.
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' ACTIVITIES AND THE OPERATION

3. ZF is active in the development, manufacture and sale of motor vehicles components such as transmissions. Meritor's activities lie in the development, manufacture and sale of drivetrain-systems and components for medium and heavy-duty trucks, trailers, off-highway equipment and specialty vehicles.
4. The joint venture, ZF Meritor LLC, will be set up by the parties with the purpose of developing and manufacturing clutches and transmissions for medium and heavy-duty trucks. These components can only be used in trucks which are mainly in use in the NAFTA countries. Such trucks are not in use in Europe.
5. The purpose of the joint venture is to make use of ZF's European technology for the development of Meritor's transmission products used in the NAFTA countries. The

joint venture will manufacture and sell the former Meritor transmissions and clutches. For this purpose Meritor intends to contribute its Laurinburg facility, its 60% interest in Meritor Clutch Co., the required equipment, a skilled workforce and the intellectual property relating to the Meritor's transmissions to the joint venture. ZF will transfer certain technology for those products.

II. CONCENTRATION

6. The joint venture will be jointly controlled by the parties. Meritor and ZF will have joint control; each of them will hold 50% of the membership units and voting rights. The joint venture will have its own facilities and resources with which it will operate on the market. The joint venture will perform on a lasting basis all the functions of an autonomous economic entity.

III. COMMUNITY DIMENSION

7. Meritor and ZF have a combined aggregate worldwide turnover in excess of EUR 5,000 million¹ (Meritor EUR 3,419 million; and ZF EUR 5,179 million). Each of them has a Community-wide turnover in excess of EUR 250 million (Meritor, EUR 952 million; and ZF, EUR 3,886 million). 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, but does not constitute a cooperation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

IV. COMPETITIVE ASSESSMENT

8. There is no demand within the EEA territory for the products to be developed, manufactured and distributed by the joint venture company, because the trucks for which they are designed are not used in Europe. Transmissions for NAFTA-style trucks differ substantially from European-style trucks. NAFTA-style trucks are subject to different road and regulatory requirements, i.e. longer straight hauls with less gear shift activity and no prescribed maximum length for the vehicle. Therefore, the concentration will not have any effects on the European market.
9. 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.

V. ANCILLARY RESTRICTIONS

10. The parties notified a non-competition clause, by which they agreed not to compete with the joint venture in its area of activity; i.e. specified transmissions and clutches for

¹ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

NAFTA style trucks. This clause is covered by this decision according to chapter V.A. of the Commission note regarding restrictions ancillary to concentrations².

VI. CONCLUSION

11. 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,

² Commission notice regarding restrictions ancillary to concentrations (OJ C 203, 14.08.1990, p. 5)