

*Case No COMP/M.1623 -
ALLIED SIGNAL / MTU*

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

Article 6(1)(b) NON-OPPOSITION
Date: 20/09/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.09.1999
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.1623 - AlliedSignal/MTU

1. On 18.08.1999, the Commission received a notification of a proposed concentration by which the undertakings AlliedSignal Inc. ("AlliedSignal"), USA, and Motoren- und Turbinen-Union München GmbH ("MTU") set up a joint venture for the development, marketing, sales and customer support of small (0.5-15 MW) aeroderivative industrial and marine gas turbines.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA agreement.

I. THE PARTIES

3. AlliedSignal is a US based company with worldwide activities essentially grouped around three main sectors: aerospace products, automotive products and engineered materials. In particular, AlliedSignal manufactures propulsion engines for civil and military aircraft, marine and industrial application.

4. MTU is part of the German Group DaimlerChrysler and is active in the design, development, production, sales and support of aero engines for commercial and military applications and in the maintenance of aero engines and industrial gas turbines of more than 25 MW.

II. THE OPERATION

5. The notified operation concerns the creation of a JV, Vericor Power Systems LLC (“Vericor” or “JV”) in which AlliedSignal and MTU will each hold 50% of the shares and to which AlliedSignal will license its technology for aeroderivative gas turbines and associated trademarks.
6. The activities of the JV will include the development, marketing, sales and customer support of small (0.5-15 MW) aeroderivative industrial and marine gas turbines. The JV will also provide value-added engineering services and it is planned that the JV will expand its gas turbine product line by developing new products.

III. CONCENTRATION

JOINT CONTROL

7. Each of AlliedSignal and MTU will hold 50% of the shares in the JV. They will have to agree on all decisions requiring a majority vote, including approval of annual budgets and business plans of the JV. Therefore the JV will be jointly controlled by its parent companies.

AUTONOMOUS FULL FUNCTION UNDERTAKING

8. The JV will have its own dedicated management and financial resources. The JV will direct preliminary engine design, engineer customer technical requirements and provide engineering support for field introduction and ongoing technical support. Manufacture of engine components for the JV will be outsourced to AlliedSignal and MTU on arm’s length basis and to third parties and engine assembly will be undertaken by AlliedSignal and/or MTU on arm’s length basis. The JV will therefore perform on a lasting basis all the functions of an autonomous economic entity.

IV. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion¹ (AlliedSignal 13500 Mio EUR, DaimlerChrysler 131800 Mio EUR). Each of them have a Community-wide turnover in excess of EUR 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.

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, p.25). 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.

V. COMPETITIVE ASSESSMENT

Relevant product markets

10. The notifying parties submit that the relevant product market is the market for small gas turbines in the 0.5 to 15 MW range. Aero-derivative gas turbines are turbine-based internal combustion engines developed from proven aircraft engine designs. Gas turbines in the 0.5-15 MW range are relatively small, light and high-powered units with fairly high fuel consumption.
11. In previous cases² the Commission has examined the market for gas turbines and made a sub-division between small gas turbines and heavy duty gas turbines. As to the exact delineation between these gas turbines the Commission has in recent cases left open the question whether or not the dividing line of 10 MW established in its earlier cases had gone up from 10 MW to somewhere between 10 and 20 MW.
12. Given the fact that there is no horizontal overlap between AlliedSignal and MTU in respect of small gas turbines in the range of 0.5 to 15 MW (even up to 25 MW) the exact delineation between small gas turbines and heavy duty gas turbines can be left open.
13. In previous cases the Commission also examined the substitutability between non-aero-derivative gas turbines and aero-derivative gas turbines, but did not take a definitive view as to whether they constitute separate markets.
14. Given the absence of any horizontal overlap between AlliedSignal and MTU in respect of small gas turbines in the range of 0.5 to 15 MW, it is not necessary to decide whether or not aero-derivative gas turbines and non-aero-derivative gas turbines belong to the same product market.
15. Small gas turbines can, according to the parties, be further segmented into gas turbines for industrial and marine applications, although such segmentation may not be justified on the basis of supply-side analysis, since both industrial and marine gas turbines are based on a common engine platform. In 1998 [...] small gas turbines were sold in the EEA; [>90%] were for industrial applications whereas the remaining [<10%] were for marine applications.
16. Small marine gas turbines are well-suited for applications that require high speed and specialised mission capability and where space is at a premium and power density must be maximised. Small industrial gas turbines are used for cogeneration³, mechanical drive and auxiliary power generation.
17. Given the fact that there is no horizontal overlap between AlliedSignal and MTU in respect of small gas turbines for marine and industrial applications in the range of 0.5 to 15 MW, it is not necessary to decide whether or not small gas turbines for industrial and for marine applications have to be further segmented.

² Cases Nos IV/M.440 – GE/ENI/Nuovo Pignone (II) , IV/M. 731 – Kvaerner/Trafalgar, IV/M.1404 – General Electric/Alstom and IV/M.1484 – Alstom/ABB.

³ i.e. the combined generation of heat and electricity.

18. The notifying parties further submit that generally diesel engines and small gas turbines are not substitutable given their very different performance, physical characteristics and initial costs. In 1998 7200 diesel engines were sold in the EEA or more than 35 times the volume of small gas turbines that were sold in the EEA in the same year.
19. The market investigation did not permit the Commission to reach a definitive view on this. However, for the purpose of this case it is not necessary to decide whether or not diesel engines and small industrial gas turbines belong to the same market, since in all alternative definitions considered above, the operation does not lead to the creation or strengthening of a dominant position.

Relevant geographic markets

20. In previous decisions with regard to gas turbines the Commission has concluded that the relevant geographic market was at least the EEA. The same conclusion was reached in cases involving diesel engines.
21. However, for the purpose of the present case it is not necessary to decide whether the geographic scope of the market is wider, since in all alternative market definitions considered above, the operation will not lead to the creation or strengthening of a dominant position.

Assessment

22. All market shares are volume data based on the parties' estimates. These data were not contradicted by the market investigation.
23. According to the notifying parties the operation does not give rise to any affected market.
24. On the market for small gas turbines in the 0.5 to 15 MW power range all market shares attributed to the JV are coming from AlliedSignal, given the fact that there is no horizontal overlap between AlliedSignal and MTU. On this market the JV will have a market share of [$<10\%$] in the EEA and [$<10\%$] world-wide. Its main competitors are Solar Turbines (belonging to Caterpillar) (EEA [40%-50%], world [40%-50%]), ABB Alstom Power (EEA [10%-20%], world [10%-20%]), Rolls-Royce-Allison (EEA [10%-20%], world [10%-20%]) and GE/Nuovo Pignone (EEA [10%-20%], world [$<10\%$]).
25. On the basis of the above the operation will not lead to the creation or strengthening of a dominant position on the market for small gas turbines.
26. In the segment for small industrial gas turbines the JV will have a share of sales of [$<10\%$] in the EEA and [$<10\%$] in the world. In the segment for small marine gas turbines the JV will have a share of sales of [30%-40%] in the EEA and [50%-60%] in the world.
27. However, given the absence of horizontal overlap on the above segments and that no other elements have appeared during the market investigation which might lead to competition concerns, the operation will not lead to the creation or strengthening of a dominant position.

28. With regard to diesel engines in the power range from 0.5 to 7.5 MW, MTU-Friedrichshaven, also part of the DaimlerChrysler group, has a share of sales of [10%-20%] facing strong competitors such as Caterpillar [(20%-30%)], Cummins [(20%-30%)], Wärtsilä, Paxman and Ruston Diesel.
29. Given the small volume of the market for small gas turbines, the combined share of sales of the JV and MTU-Friedrichshaven with regard to small gas turbines and small diesel engines, does not differ from the share of sales of MTU-Friedrichshaven with regard to small diesel engines.
30. Although the market investigation has shown that it can be an advantage if a company can offer small gas turbines and small diesel engines, it has to be noted that Caterpillar also is in a position to offer diesel engines and small gas turbines.
31. On the basis of the above, it can therefore be concluded that the operation will not lead to the creation or strengthening of a dominant position in the EEA.

VI. ABSENCE OF CO-ORDINATION

32. AlliedSignal and MTU are both active in the commercial aero engine business, but at different levels. AlliedSignal designs and manufactures engines with an output up to 10 MW and is an OEM (“Original Equipment Manufacturer”) engine supplier for aircraft manufacturers. MTU supplies engine components and systems to aero engine development consortia - in which MTU is a risk-sharing partner - with Pratt & Whitney, the OEM engine supplier and systems integrator. According to the parties the JV will not give rise to a risk of co-ordination between AlliedSignal and MTU in the aero engine sector since MTU is prevented by a “General Collaboration Agreement” with Pratt & Whitney from co-operation with other aero engine suppliers in the engine segment in which AlliedSignal is active. Given the importance of R&D for aero engines, AlliedSignal will take all necessary steps to ensure that its JV with MTU will not have any spill-over effects as regards aero engines.
33. Moreover the parties submit that the design and development of an aero engine differ in nature and scope from the design and development tasks required to convert an aero engine into a small gas turbine, i.e. the JV’s activity, and that the technology flows will be one way, from the aero engine sector to aeroderivative gas turbines.
34. On the basis of the above it can therefore be concluded that the operation is not likely to lead to any co-ordination between the notifying parties in the aero engine sector.

VII. ANCILLARY RESTRAINTS

35. The parties have requested to consider their non-compete arrangements as ancillary to the operation. According to these arrangements the parties agree not to compete with the business of the JV for [...].
36. To the extent that the non-compete obligation agreed by the parties would be limited to the situation where the parent companies enjoy a controlling stake in the JV, the non-compete clause would aim at expressing the reality of the lasting withdrawal of the parents from the market assigned to the joint venture. Therefore, this decision only covers this non-compete clause for so long as the parent companies hold a controlling stake in the JV.

VIII. CONCLUSION

37. 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,