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*Case No IV/M.182 -
INCHAPE / IEP*

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

Article 6(1)(b) NON-OPPOSITION
Date: 21.01.1992

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MERGER PROCEDURE
ARTICLE 6(1)b DECISION

PUBLIC VERSION

Registered with advice of delivery

Notifying party

Subject: Case No IV/M.182 - INCHCAPE/IEP
Notification subject to Article 4 of Council Regulation
No 4064/89

1. The above mentioned operation, notified on 11 December 1991, concerns the acquisition by Inchcape Overseas Limited, a wholly owned subsidiary of Inchcape plc (Inchcape), of all the issued share capital of IEP (Automotive) Ltd from Brierly Investments Ltd, a New Zealand investment company. IEP is a holding company which has as its sole subsidiary Tozer Kemsley and Millbourn (Holdings) plc (TKM).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No 4064/89 (the Merger Regulation) and that it is compatible with the common market.

I. THE PARTIES

3. Inchcape is a major British conglomerate with a wide variety of activities including principally: motor vehicle distribution within and outside the Community, marketing and distribution of consumer and industrial products and business machines particularly in the Far East and Australia, international insurance broking services and international shipping agency services.

4. TKM is a British company whose principal activities are: motor vehicle distribution and retailing in the UK, France, Australia and the Far East; car and van contract hire, leasing and rental in the UK, tire servicing in the UK and car transportation and storage.

II. CONCENTRATION OF COMMUNITY DIMENSION

5. Inchcape, through the purchase by Inchcape Overseas Limited of all the issued share capital of IEP, will acquire control of TKM. The operation is therefore a concentration within the meaning of Article 3(1)b of the Merger Regulation.
6. The combined aggregate worldwide turnover of Inchcape and TKM for 1990 exceeds 5000 MECU (Inchcape: 4611 MECU; TKM: 1602 MECU). The Community wide turnover of both Inchcape and TKM exceed 250 MECU. The parties did not achieve more than two-thirds of their Community wide turnover in one and the same Member State. The concentration thus has a Community dimension within the meaning of Article 1(2) of the Merger Regulation.

III. COMPATIBILITY WITH THE COMMON MARKET

Product markets

7. Product markets concerned by the proposed concentration are the wholesale distribution of passenger cars, the wholesale distribution of commercial vehicles, and the contract hire and leasing of passenger cars.

A. Motor vehicle distribution

Wholesale/retail distribution

8. The distribution of motor vehicles is normally operated by means of a pyramidal structure which includes manufacturers, importers/distributors and dealers/subdealers. Major domestic vehicle manufacturers typically arrange their own distribution whilst foreign vehicle manufacturers often arrange distribution through independent distributor/importers.

Commission Regulation No 123/85⁽¹⁾ recognizes that motor vehicles require specialized servicing requirements. As such it allows the establishment of selective or exclusive distribution agreements. Consequently motor vehicle distribution is organized on strongly vertical lines with strong inter-brand competition. The distributor at the first level, usually the car manufacturer or the independent importer/distributor, retains very considerable influence over the subsequent distribution pyramid reaching down to the individual dealers at the retail level.

Consequently in terms of control over the overall distribution arrangements this wholesale level is much more important than distribution at intermediate and retail levels.

⁽¹⁾ OJ L 15, 18.1.85, p.16.

In addition to their wholesale distribution, Inchcape and TKM also have retail distribution activities for passenger cars and commercial vehicles. They have dealerships holding franchises for a wide variety of marques at the retail level. For the purposes of the present decision it is not necessary to analyse these as a separate product market for the following reasons: The vast majority of these marques relate to marques for which neither Inchcape nor TKM have control over the more important wholesale level of distribution. Their dealerships are widely spread, with no local concentrations and are subject to strong inter-brand competition in any given area.

Product market segmentation for passenger car and commercial vehicles

9. As far as the variety of passenger cars and commercial vehicles is concerned it is common to divide these into a number of different market segments according to the size or characteristics of particular models reflecting differing consumer needs. Whilst the different segments are important in terms of establishing product substitutability they are very much less important in relation to product distribution. The distinction between the distribution of passenger cars and commercial vehicles is sufficient for the purposes of this decision:

As regards passenger cars most major car manufacturers have a range of models covering those market segments which are economically most important. These are the small, medium and large product market segments. They cover over 80 per cent of new passenger car registrations. In some cases their model range also extends into more specialized market segments e.g. covering sports cars and multi purpose vehicles. For a given marque, a model range which covers different market segments is normally distributed under the same distribution channel. Consequently it is not necessary to analyse distribution channels by product market segment of the passenger car distributed. Similar features apply to commercial vehicle distribution.

B. Contract hire and leasing

10. The contract hire and leasing of passenger cars can be distinguished from daily car rental. The distinction lies mainly in the duration of the contract. Under contract hire and leasing, contracts will rarely have a duration of less than one year. Typically they are much longer with an average duration of around 30 months. For daily car rental contracts, the duration is usually only a small number of days and rarely exceeds one month.

Geographic reference markets

11. It is not necessary to decide whether there exists a community or national market for the above wholesale distribution services for passenger cars and commercial vehicles since, even in the latter alternative the operation does not raise serious doubts as to its compatibility with the common market.

As regards the contract hire and leasing of passenger cars, current practice in the UK is to provide these services on a

nation-wide basis from a relatively small number of offices. Geographic proximity between customer and supplier is not necessary for market success in contract hire and leasing; whereas daily car rental is characterised by a large number of retail outlets because of the need for greater proximity between customer and supplier. Since the parties only have activities in the UK the geographic reference market can be limited to the UK.

DOMINANCE

12. Market share data of the combined group Inchcape/TKM for passenger car and commercial vehicle distribution in different Member States is as follows

	<u>Passenger cars</u>	<u>Commercial vehicles</u>
UK	5,3%	4,4%
France	0,8%	0,2%
Belgium	7,1%	7,0%
Luxembourg	3,3%	5,1%
Greece	9,7%	16,1%
Ireland	1,9%	1,8%

Horizontal overlap exists only in the UK and to a trivial extent in France.

13. Within the UK, the major vehicle manufacturers with production activities in the country have the highest market shares for the wholesale distribution of both passenger cars and commercial vehicles. These are Ford⁽¹⁾ (25,3% and 35,5%), General Motors (16,1% and 11,8%), Rover Group (14,0% and 7,6%) and PSA (9,2% and 4,5%).
14. Although the combined group will be one of the largest independent distributors in the UK, there still remain other significant independent distributors in the UK. These are: Lonhro for VW and Audi (5,8% and 3,7%); Lex for Volvo (3,3% and 1,8%); Nissan UK for Nissan (5,3% and 2,5%); International Motor for Hyundai, Isuzu, Subaru (0,8% and 1,0%); Heron for Suzuki (0,3% and 1,7%). It is therefore likely that effective competition will be maintained for the provision of motor vehicle distribution services.
15. As regards passenger car hire and leasing, Inchcape and TKM have no activity outside the UK. Their combined UK market share is %⁽²⁾ (Inchcape %⁽²⁾, TKM %⁽²⁾). There exist other competitors with greater market shares e.g. Avis Car Leasing (%)⁽²⁾, PHH Allstar (%)⁽²⁾, Lex Vehicle Leasing (%)⁽²⁾, FMM Group (%)⁽²⁾ and Cowie Group (%)⁽²⁾.

(1) Market share for passenger and commercial vehicles respectively shown in brackets.

(2) Less than 10 per cent.

IV. ANCILLARY RESTRAINTS

16. Clause 9(A) of the sale and purchase agreement contains a number of restrictions on Brierly and its associated companies. These concern, inter alia, an obligation not to compete for 3 years after completion, the use of trade and business names, and the soliciting of the services of former employees of TKM for 3 years after completion. These restrictions can be considered as directly related to the concentration and necessary for its implementation.
17. Furthermore, sub-clause 9(A)(ii) prohibits the disclosure and use of confidential business information relating to TKM. Its duration is not limited in time. The Commission accepts that in an acquisition case it can be necessary to place restrictions on the disclosure and use of confidential business information in order to give the purchaser sufficient time to take over fully the value of the companies purchased and gain the loyalty of existing customers. However, in the present case the indefinite nature of the restriction might unreasonably impede the possible future market re-entry of the vendor at a later date. The notifying party has not put forward any arguments acceptable to the Commission justifying the indefinite nature of this restriction. For these reasons it is considered that the duration of the restriction in sub-clause 9(A)(ii) should be limited to three years, i.e. to the duration of the non competition clause.
18. Therefore the restrictions contained in clause 9(A), are covered by the present decision to the extent described above.

V. FINAL ASSESSMENT

19. Based upon the above findings, the Commission has come to the conclusion that the proposed transaction does not create or strengthen a dominant position which raises serious doubts as to its compatibility with the common market.

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

For the Commission