

***Case No COMP/M.2046 -
VALEO / ROBERT
BOSCH / JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 28/07/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28/7/2000
SG(2000)D/105595

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(a), 6(1)(b)
DECISION

To the notifying parties:

Dear Sirs,

Subject: Case No COMP/M.2046 – VALEO/BOSCH

Notification of 26 June 2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 26. 06. 2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (“Merger Regulation”)¹ by which
 - (1) the Japanese undertaking Valeo Climatisation S.A. (“VCC”), controlled by VALEO, acquires joint control of Zexel Climate Control Corporation (“JointCo”), from the Japanese Zexel Corporation (“ZEXEL”), controlled by Robert Bosch GmbH (“BOSCH”), Germany.
 - (2) JointCo and Valeo acquire joint control of EC JointCo, a newly created company constituting a joint venture.
 - (3) VALEO acquires control of ZEXEL’s air conditioning business outside of Asia by way of purchase of assets.
2. After examination of the notification, the Commission has concluded that the creation of the joint ventures JointCo and EC JointCo constitute operations with Community dimension, which fall within the scope of the Merger Regulation. The Commission,

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17), herein referred to as “Merger Regulation”

however, has come to the conclusion that the proposed concentration does not raise serious doubts as to its compatibility with the Common Market and the functioning of the EEA agreement.

I. THE PARTIES

3. VALEO is a French based supplier of automotive components and systems and holds indirectly 100 % of the shares of VCC, which is active in automotive heating, ventilation and air conditioning systems and components.
4. BOSCH is a German corporation, with business activities in the fields of automotive equipment, communications technology, power tools, household appliances, thermotechnology and automation technology. BOSCH controls ZEXEL, which is active in the fields of automotive heating, ventilation and air conditioning systems, as well as fuel injection equipment.
5. VALEO and BOSCH want to establish through JointCo a joint venture in Japan for the development, manufacture, distribution and sale of air conditioning systems in Asia as well as compressors worldwide. The joint venture EC JointCo shall be set up to develop engine cooling systems in Asia.

II. THE OPERATION

6. The parties notified three transactions:
 - In one transaction VALEO, through VCC, acquires joint control of JointCo from ZEXEL, which was formerly solely controlled by BOSCH. The acquisition agreement between the parties provides for the acquisition by VCC of an initial 40 % share interest in JointCo and includes an option for VCC to acquire an additional 10 % share interest in JointCo. JointCo will be full-function joint venture, with ZEXEL (BOSCH) holding 60 % and VCC (Valeo) holding 40 % of the shares and voting rights.
 - Further, JointCo and Valeo acquire joint control of EC JointCo, a newly created company constituting a joint venture. In EC JointCo, Valeo will be the main shareholder, holding 60 % of shares and voting rights, while JointCo will hold the remaining 40 %.
 - In a third transaction VALEO acquires control of ZEXEL's air conditioning business outside of Asia by purchasing all assets of Zexel GmbH, Weiterstadt, Germany.²
7. The notified transactions are part of an agreement between the parties, to restructure their global business activities. The third operation constitutes a concentration separate from the first two transactions, because the nature of control acquired by the undertaking concerned is different on the one hand for the joint ventures JointCo and EC JointCo and on the other hand for the acquisition of Bosch's air conditioning business by Valeo. The operation thus involves the acquisition of joint control of one

² With the exception of assets, used by Zexel GmbH for its compressor business.

part of an undertaking and sole control of another part, which is in principle regarded as constituting two separate concentrations under the Merger Regulation.³

8. The operations constituting JointCo and EC JointCo can not be considered a single concentration, either, because both operations follow different objectives. Although they are pursued under the same strategical business plan they could stand alone and they do not mutually depend on each other.

III. CONCENTRATION WITH COMMUNITY DIMENSION

9. Bosch and Valeo will exercise joint control of the joint ventures with regard to a number of matters relating to the strategic conduct of both JointCo and EC JointCo. As to both joint ventures, decisions such as the adoption or alteration of the annual business plan, significant investments or other financial commitments, long term contracts or business relations, as well as strategic business decisions are reserved for the affirmative vote of two thirds of all members of the board of Directors. Given that in JointCo both parties appoint three directors each and in EC JointCo the board consists of five directors, three of which are nominated by Valeo and two of which are appointed by Bosch, the parties can only jointly agree to important business decisions.
10. The joint ventures will both have their own facilities and resources with which they will operate on the market. JointCo and EC JointCo will perform on a lasting basis all the functions of an autonomous economic entity.
11. Both, the creation of JointCo and of EC JointCo are concentrations of Community dimension. In both cases, the undertakings concerned have a combined aggregate world-wide turnover of more than €5 billion⁴. Each of them has a Community-wide turnover in excess of €250 million, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State.
12. The acquisition of Zexel's air conditioning business, however, does not meet the threshold of Art. 1(2)(b) of the Merger Regulation as the turnover of the acquired business (EUR 40 mio.) is below EUR 250 mio. Also the threshold of Art. 1(3)(c), (d) of the Merger Regulation is not met, as the acquired business does not generate EUR 25 mio. in at least three Member States and as the aggregate Community-wide turnover of this business is below EUR 100 mio. Valeo's acquisition of Zexel's air conditioning business is therefore not a concentration with Community dimension.

IV. COMPETITIVE ASSESSMENT

13. The parent companies have created JointCo to develop, manufacture and distribute air conditioning systems exclusively in Asia. Outside of Asia, in particular in Europe, the

³ Commission Notice on the concept of concentration under Council Regulation (EEC) No 4069/89 on the control of concentrations between undertakings (OJ C 66 of 2. 3. 1998), par. 16.

⁴ 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.

competitive situation will not change after the proposed concentration. According to the parties, Valeo will retain its significant activities in Europe in the air conditioning sector.

14. In the market for compressors, JointCo will be active on the world-market, as Zexel transfers its worldwide activities to JointCo. However, Valeo is presently not active in this field. Therefore, the concentration will not change the competitive situation in Europe.
15. With regard to EC JointCo in the market for engine cooling systems, the parties claim that EC JointCo will exclusively operate in Asia and thus the concentration would only have an impact on Asian markets. The Parties state that they will not contribute any of their European activities to EC JointCo. Both, Bosch and Valeo, have substantial business activities in this sector, particularly in the fan system sector and in upstream and downstream markets. According to the information provided by the parties, Bosch and Valeo will continue to compete on the European market. Therefore, the market for engine cooling systems does not constitute an affected market within the scope of the merger regulation.
16. Summarising it can be said that the two joint ventures do not create or strengthen a dominant position as regards the competitive situation in Europe.

V. CONCLUSION

17. For the above reasons, the Commission has decided that the notified transaction concerning Valeo's acquisition of Zexel's air conditioning business does not fall within the scope of the Merger Regulation as it does not have a Community dimension within the meaning of Article 1 of that Regulation. This decision is adopted in application of Art. 6(1)(a) of the Merger Regulation.
18. The Commission has also decided not to oppose the notified operations with regard to the two joint ventures JointCo and EC JointCo and to declare them compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Art. 57 of the EEA-Agreement.

For the Commission,
(Signed)
Mario Monti