

***Case No COMP/M.2066 -
DANA / GETRAG***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION

Date: 07/11/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, SG (2000) D/108195
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 COMP/M.2066 – DANA/GETRAG

Notification of 29.09.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 29.09.2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation No 4064/89¹ by which the US undertaking Dana Corporation (DANA) Toledo/USA and the German undertaking Tobias Hagenmeyer Industriebeteiligungsgesellschaft mbh (TH) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of GETRAG Getriebe- und Zahnradfabrik Hermann Hagenmeyer GmbH&Cie. (GETRAG) in Germany by contract.

I. THE PARTIES

2. DANA is a manufacturer of a range of components and systems for the automotive industry as well as for other industrial applications including axles, propeller shafts, structural components and steering and suspension components. DANA derives approximately [70 - 80%] of its total turnover from its operations outside Europe.
3. GETRAG is primarily engaged in the manufacture and sale of transmissions as well as related components primarily for the European passenger car market. In the US, GETRAG is active through GETRAG Gears of North America (GGONA) which

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).

markets transmissions and passenger car axles for the US market and related components.

4. TH is a holding without any operational business activity. The shares in TH are held solely by Tobias Hagenmeyer.

II. THE OPERATION

5. The notified transaction involves a combination of share acquisitions and other agreements which in the aggregate, ensure effective joint control over GETRAG, exercised by DANA and TH. Through the European part of the notified concentration, DANA acquires a [<50%] shareholding in GETRAG, about [50 - 60%] of the remaining shares will be held by TH. Through the U.S. part of the notified transaction, DANA acquires [<50%] of the shares of GGONA, the remaining shares being held by GETRAG US Holding GmbH, which in turn is controlled by TH and GETRAG. In this connection, the notifying parties will also establish a joint venture, GETRAG Gears Distribution Company Inc. which will be the exclusive distributor of the products manufactured by GGONA to the North American markets and world wide. DANA will hold [>50%] of the shares in GGDC and GETRAG US Holding GmbH will hold the remaining shares. In addition, DANA and GETRAG will also establish an industrial partnership in the fields of the products manufactured by GETRAG. This partnership provides for a constant collaboration which shall be institutionalised by the establishment of several advisory councils and a strategy board all of which will be composed of on equal number of representatives.

III. CONCENTRATION

6. Consequently, all the above mentioned contractual relations have made DANA and GETRAG commercially linked on an ongoing basis and presupposes that each party takes the other party's interest into consideration in order to reach the jointly agreed objectives of the operation. It is inconceivable under the given circumstances that one party might act independently from the other even if it might have contractually the power to do so. This effectively results in a jointly controlled corporate structure between DANA and GETRAG.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5,000 million².in 1999(DANA: EUR 12,344 million; GETRAG: EUR 720 million). Each of them have a Community-wide turnover in excess of EUR 250 million (DANA: EUR [...] million, GETRAG: EUR [...] million), but they do not achieve

² 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.

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.

V. COMPETITIVE ASSESSMENT

8. The main product markets in which GETRAG is active are manual transmissions for passenger cars, automated transmissions for passenger cars, motorbike transmissions and synchronising systems and components for transmissions. According to the parties product portfolios of Dana and GETRAG are complementary. There is no horizontal overlap in Europe. GETRAG manufactures axles to a limited extent in the US but these are passenger car axles whereas Dana manufacturers primarily axles for sport utility vehicles (SUV), vans, trucks and off-highway vehicles. There is thus no competitive overlap between the parties' activities in this field either. There are also no vertical relationships between the products of Dana and GETRAG. The concentration, therefore, does not give rise to any affected markets in the meaning of the Form CO. Furthermore, the investigation carried out by the Commission also showed that the automotive manufacturers do not buy and will not buy in future any of the products of DANA on the one hand and those of GETRAG on the other in the form of an integrated system. Therefore, the proposed concentration will not lead to a specific competitive advantage in the view of the complementarity of the parties' products.

ANCILLARY RESTRICTIONS

European Transaction

9. Pursuant to § 9(1) of the GETRAG New Partnership Agreement each partner itself is prohibited from operating in GETRAG's line of business, from acquiring a company which carry on the same business as GETRAG and from acquiring interest or providing any other support to any such company. This prohibition shall also apply for [...] years after the partner leaves GETRAG.
10. With regard to the rationale behind this non-compete, the parties have explained to the Commission that the non-compete covenant will ensure that GETRAG can develop its activities free from any real competition from its parent companies. The covenant merely reflects the fact that the parties are looking to GETRAG to develop the European transmissions business and that GETRAG is entitled to protection against exploitation of its know-how or good-will by its parents companies. 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 joint venture.
11. The duration of this non-compete covenant is limited to the period of each partners' shareholding, and [...] years thereafter. If either partner will leave GETRAG, the remaining partner has a legitimate interest in ensuring that its continued involvement in GETRAG is not undermined by competition from the leaving partner. A period of [...] years following withdrawal is reasonable having regard to the fact that the departing partner would have derived considerable information with regard to GETRAG's competitive strategy, its products, its costs and prices as well as customers, and would be able to exploit this knowledge to its competitive advantage.

12. The post-contractual non-compete covenant is restricted to those countries where GETRAG has business at the point of time of the partner's departure, and thus to GETRAG's geographical field of activity.
13. Each partner is obliged to maintain confidentiality concerning trade or company secrets belonging to GETRAG and its personally liable partner, even after leaving GETRAG. This obligation is also reasonable as regards its duration for the period after a partner having left the company.

US Transactions

14. Regarding the US transactions the parties entered into several agreements providing for restrictions which are, however, directly related to the intended project and are necessary for its implementation.
15. Each stockholder in GGONA shall at times while he owns GGONA's common stock and for a period of [...] years thereafter not engage in activities competitive with those of GGONA or otherwise operate in GGONA's line of business. These restrictions shall apply only to those products manufactured by GGONA and only to those countries in which GGONA manufactures products and/or in which its products are sold by any third party.
16. GGONA shall serve as the joint venture pooling the parties' experience and expertise in the fields of transmissions in the US and Canadian markets. The purpose of the non-compete covenant therefore is to ensure that GGONA may develop this business without being hindered by competitive actions of its parent companies that as a consequence of the implementation of the project will have facilitated access to the relevant know-how and goodwill. The duration of the clause is limited to the period of each partner's shareholding and [...] years thereafter.
17. GGONA shall have the exclusive right to manufacture transmissions in the US and Canada for the US and Canadian market. Furthermore GGONA shall have the exclusive right to manufacture and market passenger car axles world wide, except Australia and India exclusive right. There are some further exceptions concerning Dana's current independent passenger car axles business which is only of minor importance.
18. The GGDC Stockholders Agreement provides for a non compete covenant corresponding to the GGONA Stockholders Agreement which for the reasons outlined above are directly related and necessary to the implementation of the intended project.
19. In this context, and to the extent that the clauses are limited to the lifetime of the JV the Commission considers that the non-competition clauses described above can be seen as necessary for the implementation of the concentration³.

³ See case No IV/M.1569- Gränges/ Norsk Hydro.

VI. CONCLUSION

20. 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,