

***Case No COMP/M.2091 -
HSBC PRIVATE EQUITY
INVESTMENTS / BBA
FRICTION MATERIALS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 21/08/2000

*Also available in the CELEX database
Document No 300M2091*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.08.2000

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party

Dear Sirs,

Subject: Case No COMP/M.2091- HSBC PrivateEquityInvestments/BBA FrictionMaterials
Notification of 19.06.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. The operation consists of the acquisition by HSBC Private Equity Investments (UK) Limited ("HSBC") of a majority shareholding and sole control of the car and commercial vehicles applications part of the BBA Friction Materials Division ("BBA Friction") of the BBA Group, plc.
2. After examination of the notification, the Commission has concluded that the proposed 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 the functioning of the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. HSBC is a global banking and financial services organization. The target, BBA Friction, manufactures brake disc pads for passenger and light vehicles.
4. HSBC will acquire sole control over BBA Friction through its majority shareholding of [...] in a new Holding Company established to control the BBA Friction businesses being acquired.

II. CONCENTRATION OF A COMMUNITY DIMENSION

5. The operation constitutes a concentration within the meaning of Article 3.1.b. of the Merger Regulation.
6. HSBC and BBA Friction will have a combined aggregate worldwide turnover in excess of €5,000 million (HSBC [...] million; BBA Friction [...] million). Each of them has a

Community-wide turnover in excess of €250 million (HSBC [...] million; BBA Friction [...] million), and they do not achieve more than two-thirds of their respective aggregate Community-wide turnovers within one and the same Member State. The notified operation, therefore, has a Community-wide dimension.

III. COMPATIBILITY WITH THE COMMON MARKET

7. As no HSBC company has a controlling interest in any company which is active in the same business as BBA Friction, or in any upstream or downstream market, the operation will not lead to any affected markets; nor has it raised any other competition concerns.
8. In the circumstances, it is considered that the proposed operation will not lead to the creation or strengthening of a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part thereof.

IV. ANCILLARY RESTRAINTS

9. Under Clause 6 of the Deed of Warranty and Covenant, each Vendor (i.e. BBA Group company) undertakes : a) in relation to the business being transferred (“the Business”), during a 3 year period from Completion, not to be engaged or economically interested in any business which is involved in the manufacture, sale or supply of competing products; not, during a 3 year period from Completion, to solicit or entice away from the Business the custom of any customers it had for its products during the 12 months prior to Completion; and b) during a 3 year period from Completion, not to engage, employ, solicit nor entice away any member or key employee of the Purchasers’ group. Under the same Clause each Vendor undertakes that neither it nor its Group companies will use or disclose any Confidential Business Information it has or acquires.
10. Under Clause 8 of the Shareholders Agreement, each Manager undertakes: for 2 years after ceasing to be employed by the Group, not to, in competition with the Business, seek to procure orders from or do business with any customer of the Group of the year prior to his ceasing; not to employ or seek to employ any senior manager of the Group of the year preceding his ceasing; not to be himself engaged, in any territory in which the Business operates, in any competing business; not to be engaged, at any time after ceasing, in any business under any name likely to be confused with a name used by the Business; not to be, while employed by the Business, concerned or interested in any competing business.
11. The above-mentioned restrictions have been specified by HSBC as essential in order to guarantee the transfer of the full value of the Business, including the goodwill and know-how developed by BBA Friction. To the extent that these restrictions do not concern only purely financial interests in competing companies, they can be considered directly related and necessary to the implementation of the concentration, and, as such, are covered pursuant to article 6.1.b, second subparagraph, of Council Regulation (EEC) No 4064/89.
12. Under Article 15 of the Articles of Association (of the new Holding Company which will indirectly hold the acquired interests), so long as directors or employees are shareholders, and one year thereafter, they may not compete with the Company. This Article relates to the situation after the operation has taken place and is, therefore, not considered ancillary to the operation.

V. CONCLUSION

13. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and the EEA Agreement. This decision is adopted in application of Article 6.1.b. of Council Regulation (EEC) No 4064/89 and Article 57 of the EEA Agreement

For the Commission,
Signed P. BUSQUIN, Member of the
Commission