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*Case No IV/M.253 -
BTR / PIRELLI*

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

Article 6(1)(b) NON-OPPOSITION
Date: 17.08.1992

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

Subject: Case No. IV/M253 - BTR/Pirelli
Notification of 16 July 1992 pursuant to Article 4 of
Council Regulation No. 4064/89

1. The notification concerns the proposed acquisition by BTR Plc ("BTR") of the EC automotive weatherseals, antivibration systems and automotive coolant hoses businesses of Pirelli SpA ("Pirelli"), excluding Pirelli's Italian subsidiaries involved in these businesses.

2. After examination of the notification the Commission has concluded that the proposed operation falls within the scope of the Council Regulation No. 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES AND THE PROPOSED OPERATION

3. BTR is a conglomerate group with activities in the industrial, transportation (including automotive components), construction, control systems and electrical and consumer related sectors. Pirelli's principal activities include the manufacture and sale of tyres and cables, together with other automotive components.

4. By the proposed transaction, BTR will acquire production facilities for automotive weatherseals, antivibration systems and automotive coolant hoses in [...] ⁽¹⁾, where it has only a limited presence to date. Production facilities will also be added for both automotive weatherseals and antivibration products in [...] ⁽¹⁾ and for antivibration products in [...] ⁽¹⁾.

(1) Deleted. Details of production facilities are business secrets.

II. CONCENTRATION

5. The acquisition by BTR of the EC antivibration systems, automotive weatherseals and automotive coolant hoses businesses of Pirelli (excluding its Italian subsidiaries involved in these businesses) is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

6. The proposed operation has a Community dimension. The combined aggregate worldwide turnover of BTR and the EC antivibration systems, automotive weatherseals and automotive coolant hoses businesses of Pirelli (excluding the Italian businesses) in the last financial year exceeded 5000 million ECU (9.6 million ECU⁽²⁾ for BTR, and 380 million ECU for Pirelli), and the aggregate Community turnover of each exceeded 250 million ECU. The parties do not achieve more than two-thirds of their turnover in one and the same Member State.

IV. COMPATIBILITY WITH THE COMMON MARKET

a. Automotive weatherseals

Relevant product market

7. Automotive weatherseal products include weatherseals for vehicle doors, windows, sunroofs, boots and tailgates, providing a barrier against wind, rain, dust and noise. Most manufacturers produce a range of both window and other weatherseals.

8. All sales by BTR and the acquired businesses are in the OEM (original equipment market) or OES (sales as spare parts via the vehicle industry's own sales system to authorised dealers and workshops) markets. Thus to the extent that any aftermarket exists in this sector it is not relevant to the present case.

Geographic reference market

9. The market for automotive weatherseals can be considered to be the Community. The major vehicle producers have plants in a number of Member States and purchase on a European-wide basis. International price comparisons are therefore possible and in fact prices are broadly comparable even if they vary within individual Member States. Moreover, a number of vehicle producers have recently introduced common European or even global purchasing policies for their group or in alliance with another group.

Proximity of the supplier to vehicle producers is becoming increasingly irrelevant. Producers are not prepared to pay any premium in order to be supplied locally. Transport costs within the Community are lower than 5%.

As a result, suppliers take into account demand from all over Europe. A significant part of total sales is made on a cross-border basis.

⁽²⁾ Typographical error: 9.6 billion ECU.

10. Spain can be included in this Community market from 1 January 1993 when import duties currently imposed on rubber based car components will be abolished. In fact duties have already been reduced to 1.5%. A number of the major vehicle producers and principal suppliers are already present in this country and prices are generally considered to be the lowest in Europe. Thus it would seem that conditions of competition in Spain are already comparable with other Member States and this will certainly be the case as from 1 January 1993.

Assessment

Horizontal effects

11. BTR estimates the total EC market for automotive weatherseals to be [...] ⁽³⁾. As a result of the proposed acquisition, BTR will become the leader for this market in the Community with a market share of around [...] ⁽⁴⁾, overtaking Laird, the current leader [...] ⁽⁵⁾. While these two companies will be the strongest competitors in the market, BTR will also have to compete with a large number of other smaller but significant players, including Standard Product, Contitech (a subsidiary of the German Continental group), Hutchinson (part of the French Total group) and Saargummi. In addition, some vehicle producers manufacture themselves a certain proportion of their own requirements.

12. Moreover, suppliers are under increasing pressure to be competitive as vehicle producers are seeking to reduce costs of components, as illustrated by the trend toward central purchasing or common purchasing structures, which is intended to reduce the number of their suppliers and the prices of components.

13. Taking into account both supply and demand side considerations, therefore, the proposed acquisition will not lead to a dominant position on the OEM/OES weatherseals market.

Vertical effects

14. Both wire carrier and stamped metal are used to manufacture weatherseals. BTR is a significant producer of wire carrier in the Community. However, since virtually all weatherseals suppliers use both technologies and could easily increase the use of one over the other, no significant vertical effects are likely to occur as a result of the proposed acquisition.

Conclusion

15. For the above reasons, the proposed acquisition would not lead to the creation or reinforcement of a dominant position in the Community.

(3) less than 1,500 million ECU.

(4) less than 35%.

(5) less than 35%.

b. Antivibration systems

Relevant product market

16. Antivibration products are rubber-based components designed to reduce or eliminate vibration in a variety of applications. A number of different products are supplied for the various applications. Some suppliers tend to specialise in particular product groups. However, each of the principal suppliers already produces a full range of products or possesses the design and technical capacities to do so.

17. BTR estimates that around 75% of sales of antivibration products in the EC are for automotive applications, the remaining sales being for industrial application (general industrial, rail and marine). For the purposes of the present case, it is not necessary to determine whether the automotive and industrial sectors constitute distinct markets because even on the narrowest market definition no dominant position arises.

18. In the automotive sector, all sales by BTR and virtually all by Pirelli are in the OEM or OES markets. Thus, to the extent that any aftermarket exists in this sector, it is not relevant to the present case.

Geographic reference market

19. For the same reasons as given for automotive weatherseals above, the antivibration systems market is the Community, including Spain, again for the same reasons.

Assessment

20. As a result of the proposed acquisition, BTR will attain a market share of less than 25% [...] ⁽⁶⁾ within the Community for antivibration products as a whole, the total EC value of which is estimated by BTR at [...] ⁽⁷⁾.

21. If the automotive and industrial sectors are distinguished, BTR's market share will also be less than 25% [...] ⁽⁶⁾ for the former and less than 10% for the latter [...] ⁽⁸⁾.

Conclusion

22. In the light of these market shares, and given the significant countervailing power of the vehicle producers referred to above, the proposed acquisition will not result in a dominant position in the Community.

c. Automotive coolant hoses

Relevant product market

23. Automotive coolant hoses are hoses used for radiators, cooling and heating systems including passenger vehicle turbo

⁽⁶⁾ between 10% and 20%.

⁽⁷⁾ less than 1,500 million ECU.

⁽⁸⁾ deleted business secret.

coolers. Although some suppliers of automotive hoses tend to specialise in particular products, practically all suppliers of automotive cooling or turbo hoses could manufacture both hoses.

24. All sales by BTR and Pirelli are in the OEM and OES markets. Thus, to the extent that any aftermarket exists in this sector, it is not relevant to the present case.

Geographic reference market

25. For the same reasons as given above, the automotive coolant hoses market is the Community, including Spain, again for the same reasons.

Assessment

26. As a result of the proposed acquisition, BTR will attain a market share of less than 25% [...] ⁽⁹⁾ for automotive coolant hoses in the Community, the total EC value of which is estimated by BTR at [...] ⁽¹⁰⁾.

Conclusion

27. As a result of these low market shares, and again considering the countervailing power of the vehicle producers, the proposed acquisition will not create or strengthen a dominant position in the common market.

V. ANCILLARY RESTRAINTS

28. The parties accept certain obligations as to the disclosure and use of confidential information.

29. Pirelli agrees for the period between the date of the agreement and completion to ensure that the acquired businesses will not carry on business other than in the normal course.

30. It is envisaged the acquired businesses may continue to supply the businesses retained by the Pirelli group, and vice versa, with a certain quantity of rubber compound for a period up to five years.

31. BTR agrees that it will not object to the use by the Pirelli group of certain patents and pending patent applications and the "Elephant" trademark for a period of five years. Pirelli agrees that it will not object to the use by BTR of certain patents and patent applications for the life of such patents. There is also provision for the exchange of information in connection with know-how for a period of five years.

32. In addition, the parties have agreed to the permission and prohibition on the use of certain trademarks, registered and unregistered, and corporate names. In addition, BTR agrees that the Pirelli group will be vested with exclusive rights of certain trademarks, whether by ownership of those marks or otherwise, with respect to certain tyre related products.

⁽⁹⁾ deleted business secret.

⁽¹⁰⁾ less than 500 million ECU.

33. Furthermore, a non-competition agreement has been concluded whereby the businesses retained by the Pirelli group agree, for a period of five years, not to compete (including the non-solicitation of employees and customers) with the businesses being sold. The sale involves the transfer of know-how as well as goodwill.

34. These agreements are directly related and necessary to the implementation of the concentration and are, therefore, ancillary within the meaning of the Regulation.

VI. FINAL ASSESSMENT

33. Based on the above findings, the Commission has come to the conclusion that the proposed concentration does not raise serious doubts as to its compatibility with the common market.

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

For the Commission