

***Case No COMP/M.2939 -
JCI / BOSCH / VB
AUTOBATTERIEN JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 18/10/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18/10/2002

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sir/Madam,

**Subject: Case No COMP/M.2939 – JCI/BOSCH/VB JV
Notification of 17 September 2002 pursuant to Article 4 of Council
Regulation No 4064/89¹**

On 17 September 2002, the Commission received a notification of a proposed concentration whereby Johnson Controls, Inc. (“JCI”) will acquire both the shares of Varta Automotive GmbH (“Varta”) and Varta’s shares in VB Autobatterien GmbH (“VB”), a joint venture currently controlled jointly by Varta and Robert Bosch GmbH (“Bosch”). JCI will then have sole control over Varta and joint control over VB.

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 with the EEA Agreement.

I. THE PARTIES

JCI is a worldwide manufacturer of automotive interior equipment and other automotive components on both sides of the Atlantic. JCI’s automotive business includes the manufacture and supply of automotive starter batteries (both original equipment and replacement parts) to manufacturers of vehicles and independent customers. While JCI is a recognised provider of starter batteries in the US, it has until recently had only a modest presence in Europe through the German Johnson Controls Batterien GmbH & Co KG, formerly Hoppecke, and the Swedish company Gylling Optima Batteries AB.

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).

Bosch is a worldwide supplier of automotive technology, consumer goods, building technology and industrial technology. Bosch's presence in the automotive batteries business arises from its 20% stake in VB.

Varta is a wholly owned subsidiary of Varta AG and has an 80% holding in VB, a European joint venture with a 20% holding by Bosch². VB is active in the manufacture and supply of a wide range of batteries, among them automotive starter batteries (original equipment and replacement parts) for the manufacturers of vehicles and for independent customers.

II. THE OPERATION

The proposed transaction consists of a change in control of Varta, through a transfer of both Varta and its 80% stake in VB to JCI. Bosch's current position in the joint venture would remain the same after the completion of the planned transaction.

III. CONCENTRATION

The transaction will result in JCI acquiring sole control of Varta and majority participation in the joint venture VB.

A. Joint control

As a result of the proposed operation, JCI will take over Varta's 80% interest in VB, leaving Bosch with the same 20% as it held prior to the transaction. JCI and Bosch will control the new company jointly. A specific agreement concluded by Varta and Bosch will continue to operate, with JCI replacing Varta. Important business decisions of VB can only be made at a shareholder's meeting and require the approval of [...] % of the shareholders. Such decisions include, for example, the approval of detailed budget plans for the joint venture and the appointment and dismissal of directors and members of the executive and supervisory boards of the new company. Given that [...] % approval requires both the votes of the 80% owner and the 20% owner, it can be concluded that both parties will have the ability to veto strategic commercial decisions and thereby will jointly control VB.

B. Full function entity

VB is of unlimited duration and has its own assets in terms of management, organisation, financial resources and staff. VB has successfully operated since 1991, producing and selling batteries under brands including both Varta and Bosch as well as performing research and development activities. VB has thus been performing, and will continue to perform on a lasting basis, all the functions of an autonomous economic entity.

The notified operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

² See case No. IV/M.12 Varta/Bosch, Commission decision of 31 July 1991.

IV. COMMUNITY DIMENSION

The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 billion³ (JCI EUR 20,565 million, Bosch EUR 34,060 million and VB EUR 590 million). Each of JCI, VB and Bosch have a Community-wide turnover in excess of EUR 250 million (JCI EUR [...] million, Bosch EUR [...] million and VB EUR [...] million), but they do not achieve 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

A. Relevant Product Market

In line with the Commission's decision in the Varta/Bosch case, quoted above, the economic sector involved in the present transaction is the manufacture and supply of automotive starter batteries⁴. In the said decision it was considered that the so-called Original Equipment Manufacturer ("OEM") segment constitutes a single product market (EEA-wide in scope) comprising the manufacture and supply of original equipment to automotive manufacturers for inclusion in new vehicles. The Varta/Bosch decision also identified a different market for replacements including supplies to both automotive manufacturers (Original Equipment Suppliers – "OES") and customers on the Independent Aftermarket ("IAM"). The OES and IAM segments formed part of a single and distinct product market described by the Commission as national in scope.

However, the notifying parties state that the markets defined by the Commission have significantly evolved since the Varta/Bosch decision was adopted, with this shift resulting into a different product and geographic market segmentation⁵. For the purposes of the present operation JCI and VB identify as relevant markets the OEM/OES and IAM segments.

OEM/OES Market

The OEM/OES markets would comprise the supplies to automotive manufacturers of both original equipment and replacements, with an EEA-wide geographic scope.

According to JCI and VB both segments are sufficiently homogeneous in order to form part of a single product market, as a result of certain factors:

³ 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.

⁴ For use, primarily, in automobiles, motorcycles and trucks (plus certain marine applications). None of the notifying parts are present in the manufacture of motorcycle batteries, which they do not consider to form part of the same product market, given the particular characteristics presented in terms of size, weight and shock-resistance.

⁵ In this respect, the parties refer to other previous Commission's decision such as those in cases No. IV/m. 2535 SOGEFI/Filtrauto (decision of 29 October 2001), No. IV/M.2366 Denso/MMC (decision of 27 March 2001), No. COMP/M.2036 – Valeo/Labinal (decision of 4 August 2000), COMP/M.1789 – INA/LUK (decision of 22 December 1999) and IV/M.768 – Lucas/Varity (decision of 11 July 1996).

- I.** Buyer power and product sourcing - customers (the same for both segments) are a limited number of large, knowledgeable and price sensitive companies with a considerable power to obtain more favourable purchasing conditions and the ability to switch suppliers or support new market entries. Procurement mechanisms are based on auctions and multi-sourcing schemes.
- II.** Similarity of product lines - OEM and OES products present basically the same qualitative characteristics and are substantially interchangeable, with certain additional support offered in the OES segment not constituting a difference in product, but mere add-on services linked to a small surcharge in price.
- III.** Product launching and purchasing/distribution strategies - both lines of product are put on the market on the same day and are subject to centralised mechanisms for distribution and sales.

The Commission investigation substantially confirmed the fact that the OEM/OES segments constitute a single product market:

- Like OEM batteries, the OES batteries have to meet the technical specifications established by the vehicle manufacturers, which are similar for both OEM and OES batteries.
- Since the Varta/Bosch decision, manufacturers have centralised their purchases for Original Equipment Supplier (OES) batteries that are sold by their auto dealerships.
- Supply-side and demand-side substitutability have been confirmed for OEM and OES batteries, and the only differences are the add-on-services (additional labels, logistics, etc.) required by some car manufacturers.

It should be noted that Regulation 1400/2002⁶, on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector, aims to increase the freedom of auto dealerships and authorised repairers to source “original” spare parts and parts of matching quality from suppliers other than the car manufacturers. On the basis of the current role of vehicle manufacturers in this market, it is not likely that there will be a significant change in the effect of centralised purchasing by manufacturers in the foreseeable medium-term.

As to the geographic scope of the OEM/OES batteries, the market investigation supports the EEA-wide dimension confirmed by the Commission investigation:

- Transport costs for batteries are relatively modest. Very large purchasers pay just [<5] % of the base price for transportation. Thus it is not necessary for battery manufacturing plants to be located very close to the battery purchasers.

In fact, significant consolidation has occurred among battery production facilities, with a decrease in the number of manufacturing facilities in Europe (from about 50 in 1991 to about 20 currently.) This decrease has led to a more pan-European production and delivery scheme. In light of the factors above, the Commission finds that the geographic market for OEM/OES batteries is at least EEA-wide.

⁶ Entry into force: 1 October 2002.

IAM Market

According to the parties, the IAM market would comprise the manufacture and supply of replacement parts to customers in the independent aftermarket. IAM batteries are those sold by supermarkets, general auto-parts shops, and fast-fitters/autocentres.

They also claim that in spite of the approximate similarity of market conditions, there are still differences in terms of technical specifications and branding that militate in favour of a separation between the OES/OEM market and the IAM market. There are qualitative differences between OEM/OES and IAM batteries. IAM batteries do not need to conform to the standards set by automotive manufacturers. Current practice has been that auto manufacturers often insisted that their logo be placed on OEM and OES supplies alongside or instead of the battery manufacturer. Furthermore JCI and VB consider the IAM market to have an EEA dimension, given the scope of factors such as customers' operative basis, standardisation and labelling systems, branding, product homogeneity and cross-border distribution.

The results of the Commission investigation have confirmed that there is a distinct IAM product market.

- Respondents to Commission questionnaires have confirmed that IAM and OEM/OES are not interchangeable products from their perspectives.
- IAM batteries are less tailored to specific vehicles than are either OEM or OES batteries and are generally built to less exacting standards than vehicle manufacturer-ordered batteries.
- Under the new Regulation 1400/2002, the customer cannot force the battery manufacturer to place only the customer's logo but the regulation does not impede the customer from having its logo placed on the battery in addition to the manufacturer logo.

As to the geographic scope of the IAM batteries, the market investigation supports the EEA-wide dimension:

- Prices for batteries do vary considerably from one Member State to another. While this might be taken as evidence that Member States face very different market conditions, such differences are in reality due, in large part, to other factors.. One is that in warmer regions of Europe, less powerful batteries are required than in colder regions of Europe. Thus batteries tend to be smaller and lower cost in southern Europe than in northern Europe. In addition, customer size impacts price, and some countries have larger customers than others. While price variation is large between all European countries, it is much smaller when adjustments are made for purchaser size in different regions and for battery type.
- While the shares of the manufacturers still differ significantly from one member-state to another, all automotive starter batteries are now governed by European standards⁷. This increases the ability for a purchaser to substitute from one battery

⁷ European Standards EN 60095-1:1993, EN 60095-2:1993, EN 60095-4:1993, and from 1 April, 2003, the new standard EN 50342.

manufacturer to another without creating any dramatic changes in its stock. In fact, most manufacturers market their batteries in most or all Member States.

- Transport costs for batteries are relatively modest. Very large purchasers pay just [<5] % of the base price for transportation. Thus it is not necessary for battery manufacturing plants to be located very close to the battery purchasers.
- In fact, significant consolidation has occurred among battery production facilities, with a decrease in the number of manufacturing facilities in Europe (from about 50 in 1991 to about 20 currently.) This decrease has led to a more pan-European production and delivery scheme.
- Increasingly, battery purchasers are supermarkets, fast-fitters and autocentres that operate in multiple member-states but with centralised purchasing. These purchasers can and do switch suppliers. Varta and JCI estimate that their sales to customers operating in multiple Member States amounted to [30-40 %] of their total IAM sales.
- Popular battery types are converging across countries. Consider the best-selling battery types in Germany, Spain, France and Italy. Of the parties' 10 best-selling types in each country, there are just [less than 20] different battery types. [<15] types are best sellers in two Member States. [<10] types are among the best sellers in three Member States. [<10] types are best sellers in four Member States.
- Battery imports into the Member States vary considerably from one Member State to another. Nonetheless, it is clear that battery imports for the IAM segment can be quite significant. For example, non-Member State production accounted for [40-50 %] of member-state purchases in 2001. In the case of Germany for example, third-countries import levels account for [50-60 %] of the market.
- The strength of preferences for local brands among purchasers has weakened, as evidenced by the increasing emphasis on EEA-wide brands by battery manufacturers. The Commission investigation did not suggest particularly strong loyalty to brands among consumers.
- Frequently, the purchasers, such as supermarkets, will label the product with their own brand name so that end-consumers may not be aware of the actual manufacturer of their batteries.

Regarding the IAM market, the market conditions, including a significant increase in imports since 1991 and low transport costs, lead us to conclude that the IAM market is EEA-wide.

C. Competitive Factors

OEM/OES

1. In the OEM/OES market, the parties have a horizontal overlap and will have an EEA-wide market share of the merged entity will be [30-40 %] by value [0-10 %] JCI, [30-40 %] VB) and [30-40 %] by volume ([0-10 %] JCI, [20-30 %] VB). Consequently there is an affected market. However, there are a number of countervailing factors that show that the present operation does not lead to significant competition concerns:

- the presence of another strong competitor (Exide, [30-40]%) provides a significant large alternative to the merging parties
- the presence of a number of other smaller competitors such as Delphi supports the conclusion that there is a potential for capacity expansion. From the information provided by the respondents to the Commission questionnaires, it can be concluded that there is excess capacity in the battery manufacturing industry
- there have been significant price decreases over the past ten years, showing that competition has been vigorous
- buyers consist of a limited number of large, knowledgeable and price-sensitive companies that are in a position to obtain more favourable purchasing conditions
- procurement is based on bidding and multi-sourcing strategies that reduce the dependence of purchasers on individual suppliers
- strong supply substitutability between different battery manufacturers because they can all produce a full-range of all types of batteries

Additionally, there are no significant concerns regarding a collectively dominant position of the merging parties and Exide. Although they would have a collective market share of [60-70]%, the above-mentioned factors (except the first) will counteract the possibility of duopolistic dominance:

IAM

In the IAM market, the parties have a horizontal overlap and will have an EEA-wide market share of [30-40]% by volume ([0-10%] JCI, [20-30%] VB) and [30-40]% by value ([0-10%] JCI, [30-40%] VB). Consequently there is an affected market. However, there are a number of countervailing factors confirmed by the investigation that show that the present operation does not lead to significant competition concerns:

- IAM customers could typically switch battery suppliers at a modest cost and within a short time
- there have been significant price decreases over the past ten years, showing that competition has been vigorous
- the presence of another strong competitor (Exide, [20-30]%) provides a significant large alternative to the merging parties
- the presence of a number of other smaller competitors such as Delphi supports the conclusion that there is a potential for capacity expansion
- increasing buying power by large customers such as supermarkets, fastfitters/autocentres
- strong supply substitutability between different battery manufacturers because they can all produce a full-range of all types of batteries

VI. CONCLUSION

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

Franz FISCHLER
Member of the Commission
(signed)