

***Case No COMP/M.3388 -
FORD MOTOR
COMPANY LTD /
POLAR MOTOR GROUP
LTD***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 30/04/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30/04/2004

SG-Greffe (2004) D/201905

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3388 – Ford Motor Company Ltd / Polar Motor Group Ltd. Notification of 26 March 2004 pursuant to Article 4 of Council Regulation No 4064/89¹

1. On 27/02/2004 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89, as last amended by Regulation (EC) No 1310/97, by which the Ford Motor Company Limited (“Ford”, UK), belonging to the Ford Motor Company group (USA), acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Polar Motor Group Ltd (“Polar”, UK), by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified 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 functioning of the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. Ford manufactures and distributes automotive passenger cars and commercial vehicles, provides financial services, leasing of vehicles and car rental services. Polar is an authorised Ford dealer chain in the UK, selling new and used vehicles (under the Ford,

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).

Mazda and Iveco brands). Polar also provides servicing and repair services, finance, insurance and vehicle rental services.

4. Polar is currently jointly owned by Ford (49%) and Jardine Motors Group plc. (51%), and on the basis of their Shareholders Agreement, it can be concluded that at the present they jointly exercise influence over their Polar joint venture. Ford will acquire Jardine's 51% and such will give Ford complete ownership and operational control of Polar.

II. CONCENTRATION

5. Pursuant to the Share Sales Agreement, Ford will acquire 100 % of the shares and of the voting rights over the whole of Polar's business, and thus sole control over that company. The operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

6. The combined aggregate world wide turnover of the undertakings concerned exceeds € 5000 million² (Ford: € [...], Polar € [...]). The aggregate Community-wide turnover of the parties exceeds € 250 million (Ford € [...], Polar € [...]). The parties do not achieve more than two-thirds of their aggregate Community-wide turnover in one and the same Member State. The notified operation, therefore, has a Community dimension according to Article 1(2) of the Merger Regulation.

IV. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product markets

7. According to the parties and in line with previous Commission decisions³, the product markets relevant for this case are the market for the manufacturing and supply, for wholesale and for retail distribution of new vehicles, which can be subdivided into (a) passenger cars and (b) light commercial vehicles ("LCV"). Upstream of retail, Ford, but not Polar, is active in the markets for manufacturing/wholesale (including imports) distribution of passenger cars and LCV, with only LCV being a vertically affected market. Both parties are active in retail as well as in a number of related markets⁴.
8. In any case, for the purpose of this case, it is not necessary to further define the market as the concentration would not result in the creation or the strengthening of a dominant position in the EEA or any substantial part of it on any alternative market definition considered.

B. The relevant geographic markets

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).

³ Most recently in COMP/M. 3352-Volkswagen / Hahn & Lang

⁴ Such as the sale of used passenger cars and used LCV, the market for production of original spare parts and accessories, the market for distribution and sale of such spare parts and accessories, the markets for the provision of automobile related services, e.g. repair and maintenance, rental, financing.

9. The Parties propose that there are reasons to consider the markets to be EEA-wide, with the market for retail of new vehicles possibly being national in scope. They do not consider the existence of a regional market for retail a reasonable alternative, since competitive conditions are submitted to be homogeneous within a given Member State.
10. In previous vehicle retail cases, the Commission has left open whether these markets are regional, national or European-wide in scope, although a tendency towards a more European market can be taken into account due to the effects of the new block exemption for vertical agreements in the motor vehicle sector⁵. Previous cases have however not ruled out the existence of markets that are narrower than national, specifically for the retail sale of vehicles to end customers⁶.
11. However, for the purpose of the present decision it is not necessary to define the geographic markets, since the transaction will not raise competitive concerns based on any alternative market.

V. ASSESSMENT

12. Ford is active in the market of manufacturing and supply (wholesale distribution) of passenger cars under the Ford, Jaguar, Aston Martin, Volvo, Land Rover and Mazda brands and LCV under the Ford and Mazda brands. This transaction amounts to vertical integration of retail outlets by a manufacturer and will not lead to important changes in the market situation. In addition, the transaction is a mere transition from joint to sole control of the target. Adding Polar's [...] retail outlets to the present [...] Ford- controlled retail outlets, it does not lead to any horizontally affected markets, with combined retail sales of passenger cars and LCV not exceeding a 15% market share within the UK, for all above brands combined (all shares based on number of units).

Vertical relationship

13. Secondly, it should be taken into consideration that the business relations between Polar and Ford have already been very close in the past, Polar being an authorised Ford dealer. Since Ford's market share for wholesale distribution of new passenger cars (all brands combined) on an EU basis was [10% - 15%] and in the UK was [15% - 20%] in 2002, no vertically affected markets for cars are involved. Ford's market share for the wholesale distribution of LCV (Ford and Mazda brands combined) on an EU basis was [5% - 10%] in 2002 and in the UK was [25% - 30%] in 2003, constituting a vertically affected market on a national basis. However, the transaction will not lead to additional foreclosure of the market as Polar's distribution network was already reserved almost exclusively for Ford associated brands⁷. As such, the transaction does not bring about any change.
14. In any case, Ford's retail presence in the form of Ford controlled outlets will only increase slightly. In 2002 these controlled outlets accounted for [0% - 5%] of all LCV sales (i.e. all brands) in the UK market, compared to Ford's [0% - 5%] prior to the

⁵ Block exemption for vertical agreements in the motor vehicle sector (Regulation 1400/2002 – "BER")

⁶ inter alia, the Commission's most recent decision in these markets: COMP/M.3352–Volkswagen/Hahn + Lang

⁷ Apart from Ford, Polar sells the Mazda brand (controlled by Ford). Only 2 out of 40 Polar outlets also sell Iveco (independent from Ford).

transaction. The expected combined share for 2003 is [0% - 5%]. For retail of new passenger cars in the UK, shares were [0% - 5%] and [0% - 5%], making a combined share of [0% - 5%]. As to non-Ford brands, only [0% - 5%] of Polar's total business was related to retail of Iveco-branded vehicles and less than [0% - 5%] was related to Mazda vehicles. After the acquisition, [...] Ford dealerships will remain independent from Ford, compared to [...] prior to the transaction. Therefore, the slight market share addition concerning the retail of vehicles is not likely to affect competition in the market.

15. With regard to the geographical scope of the market possibly being regional, the Parties have also submitted information regarding retail presence in a number of urban areas in the UK. The transaction leads to overlaps only in one area, Wakefield, where 2 Polar outlets are added to one Ford-controlled outlet, while in that area [15 – 20] retailers are independent outlets.
16. In view of the foregoing, it can be concluded that the proposed operation would not, in any of the markets considered, create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

VI. CONCLUSION

17. For the above reasons, the Commission decides not to oppose the notified operation and to declare it 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 Council Regulation (EEC) No 4064/89.

For the Commission

(Signed)

Mario MONTI
Member of the Commission