EN

Case No COMP/M.3486 - MAGNA / NEW VENTURE GEAR

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION

Date: 24/09/2004

In electronic form on the EUR-Lex website under document number 32004M3486

Office for Official Publications of the European Communities
L-2985 Luxembourg

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.09.2004

SG-Greffe(2004) D/204270

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sir/Madam,

Subject: Case No COMP/M.3486 - MAGNA / NEW VENTURE GEAR
Notification of 20.8.2004 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 20.8.2004, the Canadian company Magna International Inc. ("Magna") notified its intention to acquire the US company New Venture Gear ("NVG") within the meaning of Article 3(1)b of the EC Merger Regulation.

2. On 21.6.2004, the parties submitted a Reasoned Submission under Article 4(5) of the EC Merger Regulation. The transaction was consequently referred to the Commission to be reviewed under the EC Merger Regulation.

I. THE PARTIES

3. **Magna** is a globally operating automotive supplier who designs, develops and manufactures automotive components, assemblies, modules and systems, and engineers and assembles complete vehicles. Its products and services are sold primarily to manufacturers of cars and light trucks in North America, Europe, South America and Asia.

[1] OJ L 24, 29.1.2004 p. 1.

4. **NVG** is a designer, manufacturer and distributor of automotive transfer cases, compounders and other automotive components. NVG's primary products are transfer cases.

II. THE OPERATION

5. Magna will acquire from DaimlerChrysler Corporation ("DaimlerChrysler") all of the assets and liabilities of NVG. In addition, Magna intends to acquire the shares of NVG's German subsidiary, New Venture Gear Manufacturing GmbH, Roitzsch, Germany, ("NVG Germany"). The transaction is therefore structured as an acquisition of assets and shares conveying NVG's business and certain of its assets as well as sole control over NVG Germany to Magna.

6. Magna and DaimlerChrysler intend to create a limited-term joint venture to complete the acquisition of NVG's assets. Accordingly, prior to the completion of such acquisition, DaimlerChrysler will purchase a 20% equity interest in the limited-term joint venture. DaimlerChrysler will sell and Magna will purchase all of the shares held by DaimlerChrysler […]. The 20% shareholding will not, however, confer joint or sole control by DaimlerChrysler over the limited-term joint venture or NVG.

III. CONCENTRATION

7. Magna will acquire sole control over NVG. The transaction is therefore an acquisition within the meaning of Article 3(1)b of the EC Merger Regulation.

IV. COMMUNITY DIMENSION

8. Community dimension within the meaning of Article 1(3)(b) of the EC Merger Regulation is not met in this case. On 21.6.2004, the notifying parties submitted a Reasoned Submission under Article 4(5) of the EC Merger Regulation. The notifying parties submitted that the operation is capable of being reviewed under national competition laws of at least three Member States and that the Commission is best placed to review the concentration. Since no Member State objected to the request, the case was referred to the Commission. The concentration therefore has Community dimension pursuant Article 4(5) of the EC Merger Regulation.

V. COMPETITIVE ASSESSMENT

A. Relevant product markets

9. Magna manufactures transfer cases and power transmission units (PTUs) as well as a variety of other automotive components and assemblies. NVG only manufactures transfer cases in Europe and as well compounders, manual transaxles, control modules, extensions, adaptors and pinions in the USA.

10. According to the parties their activities overlap only in the segment of all-wheel drive solutions - specifically transfer cases. Both parties supply transfer cases exclusively for use in passenger cars and light trucks (pick-up trucks, sports utility vehicles, sports activity vehicles and minivans).

11. Both parties supply transfer cases to original equipment manufacturers ("OEMs"). NVG sells transfer cases to the independent aftermarket ("IAM") in the United Kingdom, USA and in Canada, but its aggregate sales in all these jurisdictions did not

exceed 1 million USD in 2003. Magna is not active in the IAM for transfer cases. Therefore only all-wheel drive solutions for passenger cars and light trucks supplied to OEMs will be addressed below.

12. A **transfer case** is an automotive assembly that allows power to be delivered to both axles of a vehicle. Transfer cases are installed on vehicles with longitudinal engines (which are generally used in a rear-wheel drive configuration) to convert them to four-wheel drive. A transfer case distributes power between the front and rear axles via separate propeller shafts, ultimately enabling the front and rear wheels to turn at different speeds. Transfer case is connected to the transmission and also to the front and rear axles by means of drive shafts. It is an added assembly which is not integrated into other parts of vehicle.

13. There are various types of transfer cases in the market, depending on the functions and characteristics required for a particular type of a vehicle. The prices of the different solutions vary depending on the technical and functional requirements of the vehicle manufacturer and, in particular, on the amount of electronic components contained in a particular technical solution. The primary application for transfer cases is in light trucks and sport-utility vehicles.

14. An **integrated transfer case** is an automotive assembly which performs the same functions as a transfer case. Unlike a transfer case however, which is a separate component added on to a front drive shaft, the integrated transfer case is integrated directly in the transmission of the vehicle. This technical solution was specifically developed for vehicles with limited space on the axle, such as some of the Audi passenger cars. It is generally technically more sophisticated than a transfer case and more costly. The price of an integrated transfer case in relative terms is generally double to triple the price of a transfer case because it is sold together with the transmission[2]. The integrated transfer cases are traditionally offered by transmission manufacturers who offer transmission assemblies with an integrated all-wheel drive function.

15. The Commission's investigation revealed that the specific component (a TORSEN differential) added to the transmission to enable the all-wheel drive function is outsourced by the transmission manufacturers from a third party – Zexel Torsen, Inc. – a company which is a part of the Toyoda group. In addition, the TORSEN (TORque SENsing)[3] differential has a number of other functions in torque distribution. For this reason, this component is sometimes added to transfer cases (add-on solutions) to improve their performance and provide for other functions.

16. An "integrated transfer case" offered by Magna[4] is a technical solution different from an integrated transfer case described above. It is a separate assembly which is added on the drive shaft, like a transfer case and which performs the same functions as a transfer

---

2 In fact, the transmission is sold together with the all-wheel drive function. According to the notifying parties, the average price of a transfer case is € 500 (the price varies depending on the technical solution chosen and a size) while the price for an integrated transfer case from Getrag amounts to € 1000 EUR and for integrated transfer case from ZF to € 1400.

3 Wallentowitz, Automotive Engineering 1, Lecture Book, ika, 3rd. edition, 2003, p. 185.

4 For a technical description see Magna's website www.magnasteyr.com/antriebsstrang/578_593_ENG.asp

case. The difference between the Magna's integrated solution and an integrated transfer case is that some of the functions of the "integrated transfer case" offered by Magna are integrated (it may as well contain the TORSEN differential), but unlike the integrated transfer case it is not integrated in the transmission.

17. A **power transmission unit** (PTU) is attached to the drive shaft of a vehicle with a transverse engine (generally used in a front-wheel drive configuration) to route torque to the rear axle of a front-wheel driven car. For the torque control to the rear axle, an all-wheel drive coupling is necessary. There exist a number of types of PTUs depending on the technical requirements of the vehicle manufacturer. The price of the PTU generally depends on its technical content, e.g. a multi-shaft PTU is more expensive than a single-shaft PTU.

18. All the above all-wheel drive solutions provide the same function - divide power between the front and the rear axle - although the manner in which each accomplishes this differs depending on the position of the engine (longitudinal versus transverse), the drive configuration of a vehicle (i.e. typically, rear-wheel drive versus front wheel-drive, respectively) and on the level of integration of the function with other vehicle components, such as the transmission. There are other differences as well, for example, transfer cases and integrated transfer cases are generally more technically sophisticated than PTUs since transfer cases usually include both mechanical and electronic components[5], whereas PTUs are solely mechanical assemblies with no electronic components. In relative terms, the cost of a transfer case is roughly double the cost of a PTU. The price difference between a PTU and an integrated transfer case (together with transmission) is even bigger.[6] Due to this engine and drive configuration and other differences, the notifying parties have submitted that transfer cases and PTUs are not substitutable from the demand side. As regards the integrated transfer cases, the notifying parties regard them substitutable with transfer cases from the *demand side*.

19. On the other hand, the parties have submitted that there is *supply side* substitutability between transfer cases (including integrated transfer cases) and PTUs. More particularly, the parties have submitted that a supplier of one such type of assembly could manufacture the other as well and vice versa. Consequently, the parties have argued that there is high supply side substitutability for manufacturers with drivetrain expertise.

20. Therefore, the parties have submitted that since transfer cases and PTUs are installed on different types of vehicles and perform different technical functions, transfer cases and PTUs may be seen as separate markets. However, the parties have further submitted that since the end result is the same whether a transfer case or a PTU is used, it may make sense to proceed on the assumption that there is a single market for all-wheel drive systems.

---

5 There are fundamentally two types of transfer cases active and passive transfer cases: active transfer cases are electronically controlled and interact with other vehicle systems to provide performance and handling improvements. Passive transfer cases are typically not electronically controlled and require driver intervention to provide improvements in traction.

6 According to the notifying parties the average price for a PTU is € 280 (the prices depend on the actual technical solution). As mentioned above the average price for transfer case is € 500 and for an integrated transfer case € 1000 or € 1400, respectively, depending on the manufacturer.

21. The Commission has conducted an extensive market investigation as regards the demand and supply side substitutability of transfer cases, integrated transfer cases and PTUs. Based on the Commission's investigation it appears that from the point of view of the *demand side* the three technical solutions are not substitutable. In particular, as the notifying parties submitted, the PTUs and transfer cases/integrated transfer cases are not substitutable due to technical differences between them. As regards the integrated transfer cases and transfer cases, it appears that these two all-wheel drive systems are not substitutable from the demand side. This is so in particular due to the specificity of the integrated transfer cases, which were developed as a specific solution for certain Audi passenger cars and at present, continue to be used only on those cars. There have been attempts to promote this solution for other passenger cars and sports utility vehicles, but these attempts have not been accepted by the vehicle manufacturers mainly due to the technical sophistication of the solution and due to its price.

22. From the point of view of the *supply side* it appears that, for the time being, most companies manufacture either transfer cases or PTUs, although there are exceptions who manufacture both, such as Magna. As regards PTUs and transfer cases, rather different technical and engineering skills and capacity are needed to manufacture each of them (in particular gear manufacturing skills). Some third parties have indicated that in case a PTU or a transfer case manufacturer posses the technical skills to manufacture the other solution it would indeed be possible for it to manufacture as well the other solution (for instance some axle manufacturers posses the full range of technical and engineering skills to manufacture both solutions).

23. Given however that even on the narrowest possible relevant product market definition (i.e. a separate relevant product market for transfer cases) the operation will not significantly impede effective competition in the common market or substantial part of it, the relevant product market definition in this case can be left open.

B. Relevant geographic markets

24. The parties have submitted that the market for the manufacture and supply of all-wheel drive solutions and in particular transfer cases is at least EEA-wide, possibly global. The parties have submitted that it is more accurate to argue that EEA-wide sourcing is the norm, with global supply being an available alternative in specific circumstances. At the bare minimum, the parties have argued, OEMs can solicit quotations from suppliers supplying on a global basis in addition to the quotations solicited from suppliers supplying on a local basis. To the extent that an overseas supplier can offer superior terms in the bidding process, there will be no barriers for the OEM to source on a global basis.

25. The Commission has found in a number of previous decisions that the geographic market for automotive components in the OEM/OES market is at least EU or EEA-wide, and in many cases is probably global[7].

---

[7] Case IV/M.872 *TRW/Magna*, Case IV/M.937 *Lear/Keiper,* Case IV/M.1196 *Johnson Controls/Becker*, IV/M.1189 *Teksid/Norsk Hydro,* Case IV/M.1207 *Dana/Ecklin*, Case IV/M.1481 *Denso/Magnetic Marelli*, Case IV/M.1587 *Dana/GKN* and Case IV/M.1789 *INA/LuK*; Case COMP/M.2901 *Magna/Donnelly.*

26. The Commission has conducted an extensive market investigation in order to determine the geographic dimension of the relevant market. There are indications that in relation to all the tree all-wheel drive solutions the relevant geographic market may be wider than EEA-wide. Most of the third parties addressed by the Commission indicated that all-wheel drive manufacturers are invited to submit bids on a worldwide basis, transportations costs are rather low or do not play substantial role in the selection of the all-wheel drive supplier. As regards the prices for the all-wheel drive solutions in the main regions where the suppliers are located (EEA, USA, Japan), some of the third parties indicated that there are no substantial price differences. Some third parties submitted that they base pricing of their products on the comparison of prices in the mentioned regions or that they look at a "worldwide price".

27. On the other hand, it appears that the OEMs usually either require or prefer local supplies, either for technical reasons (e.g. communication with engineering department of the supplier or certain amount of local contents of the product) or due to timing of production and deliveries. Some OEMs indicated that they require the production facility of the supplier be placed close to the production site of the OEM or at least have a buffer stock of the products in the neighbourhood. As regards the price considerations, some third parties indicated that differences in exchange rates, hedging of exchange rate changes and to some degree as well transportation costs play role in their selection of a supplier.

28. Given however that on all alternative market definitions considered the operation will not significantly impede effective competition in the common market or substantial part of it, the relevant geographic market definition in this case can be left open.

C. Competitive assessment

a) Market position

29. The Commission market investigation targeted all-wheel drive car manufacturers and relevant component suppliers. The market has been reconstructed on the basis of the data provided by the parties, based on the actual production 1999-2003 and forecast production based on nominated[8] contracts until 2008 for the EEA market. This data was verified on the basis of the information obtained from customers. Data was also sought based on the hypothetical world-wide markets.

30. The market shares represent market positions on the merchant markets. A number of OEMs – e.g. Ford and in particular Japanese OEMs – source all-wheel drive systems also in-house. Captive production has been excluded from the market share figures.

31. The following figures therefore only contain the parties' production of all-wheel drive systems. Furthermore, the market shares for all-wheel drive solutions have been calculated in terms of volume to avoid transfer cases from becoming overrepresented due to their higher unit price. Transfer cases will be dealt with separately below.

i) <u>All-wheel drive systems</u>

---

8 i.e. contracts where the supplier has been selected

32. The parties have estimated that the total world-wide production of all-wheel drive systems was [6-8] million units in 2003, including also captive production. Of this figure, transfer cases represented [70-80] %, PTUs [20-30]% and integrated transfer cases [0-10]%. The parties have estimated that the total production will increase to [7-9] million units by 2010, with PTUs increasing their share to [20-30]% and transfer cases decreasing to [60-70]%. With regard to the hypothetical EEA-wide market, the information supplied by the OEMs shows that the total size of the market was some 325,000 units in 1999 and the size of the market will grow to some 1.5 million units by 2008.

33. If considering the wider market comprising all-wheel drive systems (transfer cases, PTUs and integrated transfer cases), the parties reached [40-50] % market share in volume on **world-wide** basis in 2003 according to their own estimate. As NVG accounted for [30-40]% of the market, the increment from Magna [0-10]% can be considered as relatively small. Other producers accounting for the remaining part of the production include the US-based producer Borg Warner, the European-based suppliers Getrag, ZF, Graziano and Visteon and the Japanese producers Fuji Univance, Aisin AI and GKN/Tochigi Fuji Sangyo. The Commission has not been able to obtain reliable estimates for the other market players, but the investigation shows that in particular Borg Warner and Fuji Univance are strong global manufacturers of all-wheel drive solutions.

34. On the hypothetical **EEA-wide** market, the parties have estimated their combined market share in 2003 in terms of volume for the hypothetical merchant market comprising all all-wheel drive systems as [45-55]% (Magna: [25-35]%, NVG: [15-25]%). The Commission has estimated that this share is somewhat higher, [50-60]% (Magna: [30-40] %, NVG: [20-30]%). However, the market share has decreased from [60-70]% in 1999 and will be [55-65]% by 2008 on the basis of the nominated contracts. The largest competitors are ZF with a market share of around [20-30]% until 2008 and Getrag with [0-10]- [5-15]% until 2008. Borg Warner has lost market share since 1999 ([0-10]%) but will re-gain it ([0-10]%) by 2008 (see further below). Fuji Univance has a market share of about [0-10]% until 2004. Graziano accounts currently for some [0-10]% of the market.

ii) Transfer cases only

35. The narrowest hypothetical market, where the parties' activities overlap, are transfer cases only. The parties have estimated that the world-wide production of transfer cases amounted to some [4,5-5,5] million units in 2003 and is expected to increase to [5-6] million units by 2010. With regard to the hypothetical EEA-wide market, the information supplied by OEMs shows that the total size of the market was 27,400 units in 1999 and will grow to some 700,000 units by 2008.

36. The parties' combined market share in the hypothetical **world-wide** market in 2003 was [50-60]%, with a small market share increment attributed to Magna ([0-10]%). The rest of the market share can be attributed to Borg Warner, GKN/Tochigi Fuji Sangyo, Fuji Univance and Aisin AI.

37. If considering the hypothetical **EEA-wide market**, the Commission notes that in 1999, Borg Warner was the market leader with [50-60]%, Fuji Univance had [25-35]% of the market and NVG had [10-20]% (see Table 1). […]. In 2003, the parties' combined market share amounted to [90-100]% (Magna: [45-55]% NVG: [40-50]%). Fuji

Univance accounted for [0-10]% of the market. As can be seen from Table 1, the parties are expected to retain this market position until 2005, when Borg Warner will start re-gaining market share (it is to be noted that this data does not include contracts where the supplier has not yet been selected but where the supplies are expected to begin by 2007, see further below). The Commission has estimated based on the information supplied by the parties and on the basis of its own investigation that Borg Warner will gradually increase its market share from around [0-10]% in 2005 to some [5-15]% in 2008. The Commission also notes that Fuji Univance is currently supplying transfer cases in the EEA market, although this contract is being phased out. The Commission has estimated that these volumes will account for some [0-10]% of the market until 2004. Therefore, the market shares have changed considerably since 1999, when Borg Warner was the market leader.

[]…

Table 1. EEA-wide market shares in transfer cases

iii) Assessment of market positions

38. The Commission notes that the markets are characterised by bidding procedures for the selection of suppliers. According to the notifying parties, the markets for all-wheel drive systems are bidding markets in which prices for the products are primarily defined through the establishment by the OEM of a target price. On the basis of the target price and technical specifications the bidders submit quotations to the OEM. According to the notifying parties, the bidding process usually takes between 2 to 7 months. The notifying parties submitted that the bidding process usually has the following phases: Approximately 24-36 months before start of production of the new vehicle the OEM invites several (usually 3-5) qualified suppliers with all-wheel drive competence for bidding based on Request for Quotation. The Request for Quotation is a paper which contains technical and economic specifications regarding the product. Then, the invited suppliers quote their different concepts to the OEM. On the basis of that the OEM makes a choice of the supplier. The OEM determines at the beginning of the supply term the productivity gains to be met - in other words price reductions due to improved productivity - for each production year, which normally translates in a declining price over the supply term. The contract is normally valid for the life-time of the vehicle (4-6 years).

39. The Commission has addressed third parties in relation to the functioning of the selection process of a supplier for all-wheel drive system. The submissions of third parties generally confirm the submission by the notifying parties. There are some differences however in a manner in which some of the OEMs conduct the selection process. Namely, some OEMs make no pre-selection of bidders at the beginning of the process; all potential bidders may take part. Some OEMs make a pre-selection of bidders, inviting only pre-selected ones. The pre-selection criteria involve *inter alia* technical know-how of the supplier, quality level of the production, core competence, security of supplies and possibly the price level. The length of the selection process, as well as the number of the phases appears to be specific for each OEM. The length of the selection process varies between 3 to 9 months in total, sometimes even up to 15 months.

40. Although the parties' market position appears to be strong both in the EEA and world-wide in terms of market share, the Commission considers for a number of reasons that

high market shares in this specific industry segment are not a sufficient basis for serious doubts about market power.

41. First, the Commission considers that historical market data shows that there has been considerable volatility of the market positions of the suppliers. The clearest indication of this is the hypothetical market covering EEA, where Borg Warner had a very strong position until 1999 but lost its leadership first to NVG in 2000 and 2001 and later on to Magna. As noted above, the Commission has estimated based on the information supplied by the parties and on the basis of its own investigation that Borg Warner will re-gain market share starting in 2005. In this respect, the Commission notes that Borg Warner has established reputation in manufacturing all-wheel drive solutions and is well-known to the OEMs who were sourcing from Borg Warner until 1999. In addition, Borg Warner has both engineering capacity and a manufacturing facility in Wales, which can be used for deliveries in the EEA.

42. Due to the nature of the industry segment and the length of the contracts, as discussed above, the cycle during which market shares fluctuate appears to be relatively long and can stretch to even up to 6-8 years. In this respect, the investigation shows that winning a few large contracts may radically change the market situation. This is demonstrated by the fact that […].

    […]

    Table2. The parties' customer portfolio in the EEA

43. Second, the Commission notes that the market share estimates until 2008 are only indicative. The parties have submitted information concerning open contracts where the supplier has not yet been nominated but where the production is expected to start at 2007. This information shows that there are at least 9 contracts for both transfer cases and PTUs, where the supplier is still to be nominated. The parties have estimated that the volumes to be awarded for transfer cases amount to some [350,000-450,000] units and for PTUs some [450,000-550,000] units. In view of the total size of the global all-wheel drive market, these volumes correspond to some [5-15]% of the transfer cases and [30-40]% of the PTU segment in 2003. The Commission therefore considers it possible that the market shares may change in the near future due to these open contracts (see further below). In this respect, as will be further discussed below, the Commission considers that post-transaction the parties would not be in position to exercise market power in competing for these contracts.

44. Third, the Commission considers that OEMs have countervailing buying power. This will be discussed in more detail below.

45. Fourth, the past volatility in market shares reflects the fact that Magna as a relatively recent entrant to the European transfer case market […] has gained substantial market share quickly. The Commission therefore considers this to be evidence of possibility to enter the all-wheel drive systems market and especially transfer cases. Potential competition will be discussed further below.

46. Finally, the Commission considers that the specific features of the market need to be taken into account in the assessment of the market positions. More particularly, both OEMs and suppliers have submitted that the market for all-wheel drive systems is growing. As noted above, it has been estimated that the global all-wheel drive market will increase by almost a quarter from [6-7] million units in 2003 to [8-9] million units

in 2010. The EEA-wide market and especially the transfer case segment is expected to more than double in the near future. This means that there will be more contracts and further volumes to be awarded, which is likely to bring new opportunities to all suppliers, potentially affect market positions and also induce new entry. The Commission also considers that the bidding nature of the market needs to be taken into account when assessing market power (see further below). The length of the contracts leads to the market shares reflecting changes over longer time periods compared to some other industries.

b) Countervailing buying power

47. The Commission has noted in previous cases in the automotive components industry that OEMs have buying power towards the component manufacturers[9]. OEMs usually have an excellent knowledge of prices and costs for components on a world-wide basis and seek offers from suppliers prior to contracting component which is often done for the life of the respective car model[10]. The market for tenders is highly competitive at the tender level[11] and the threat to meet internally the whole or part of the OEMs' component requirements is a powerful bargaining tool to gain cost or other concessions from component suppliers[12]. The notifying parties have therefore argued that the market shares are a much less reliable indicator of market strength of automotive component manufacturers than in other industries.

48. The parties have argued that the number of OEMs has been shrinking rapidly, with many OEMs adopting common global vehicle platforms over multiple vehicle lines and reducing the number of suppliers they deal with. As a result, the loss of a competitive bid or desourcing of a production program could have significant competitive and financial effects on the supplier.

49. With regard to transfer cases, where the parties' market position appears to be the strongest in Europe, the information gathered by the Commission shows that the parties' largest customer in volume terms in 2003 was […] of their aggregate transfer case production in Europe (see Table 2 above). The next largest customers were […]. On the basis of the nominated contracts and forecast production volumes, […].

50. The investigation suggests that especially those OEMs sourcing transfer cases, who account for large production volumes, have countervailing buying power, since the loss of high-volume contracts will hurt the supplier over a long period of time. For the rest, the Commission considers that there is a credible threat on the part of OEMs to turn to other global manufacturers, such as Borg Warner and Fuji Univance, or induce new entry from manufacturers located in the EEA, should the new entity attempt to use market power. This assessment appears to be equally valid for customers sourcing PTUs.

---

9 Case COMP/M.2901 *Magna/Donnelly;* Case IV/M.937 *Lear/Keiper;* Case IV/M.1196 *Johnson Controls/Becker;* Case IV/M.1175 *Magna/Steyr*.

10 Case IV/M.937 *Lear/Keiper*, 16.

11 Case COMP/M.2901 *Magna/Donnelly*

12 Case IV/M.1196 *Johnson Controls/Becker*, 14.

51. The Commission takes note of the fact that OEMs have not expressed any substantiated competition concerns over the proposed transaction.

c) *Potential competition*

(i) Barriers to entry

52. The Commission's investigation has revealed that there exist barriers to entry into the transfer cases/integrated transfer cases and PTU segments. A potential entrant would be required to acquire certain technical and engineering skills (in gearing technology, for example), and to invest significant financial resources up-front before production could begin (a figure of upwards of 10 million USD has been indicated), to have good existing automotive component credentials and in relation to contracts for larger volumes to be present in the proximity of the customer.

53. Nevertheless, these barriers to entry are not insurmountable particularly for manufacturers already present in neighbouring product or geographic markets. With regard to the technical expertise required, the investigation suggests that PTU suppliers have the necessary competences to design and manufacture transfer cases and vice versa. With regard to transfer cases, it has been indicated more specifically that know-how related to chain and drive technologies, gearing and clutch control together with an understanding of the interaction between transfer cases, the primary and secondary drive axles and front chassis would be necessary. Know-how in the electronic components also appears to be an advantage, although this part may be outsourced. A good example of a recent entrant to the transfer case segment is Magna which started developing transfer cases after it was established as a PTU supplier.

54. The above-mentioned financial investment could be recouped, with additional profit revenues, within an acceptable time horizon if a new entrant won the contract to supply transfer cases to a particular OEM for the duration of a new OEM vehicle platform. The Commission's investigation has revealed, for example, that the cost to one OEM of transfer cases for the next five years, given planned vehicle production volumes, is estimated at several hundred million euros. As regards the cost of participating in a bidding procedure, the parties have estimated this to be 20,000-50,000 EUR. The investigation has found that this cost is not prohibitive for potential competitors to participate in bids.

(ii) Assessment of potential competition

55. For the purposes of the analysis of potential competition, the narrowest possible relevant market definition will be considered: transfer cases market in the EEA. The Commission's investigation has revealed that entry to this market may occur from the following sources: (a) transfer case manufacturers present in other geographic areas; (b) manufacturers from neighbouring product markets – i.e. manufacturers of other all-wheel drive solutions; and (c) manufacturers of other driveline and transmission components.

(a) Transfer case manufacturers from other geographic areas

56. There are a number of transfer case manufacturers present in other geographic areas. Fuji Univance, an Asian manufacturer of transfer cases and who has a strong position in the USA, is as well known in the European market and has been mentioned by OEMs as a potential alternative supplier. Its presence in Europe today has been limited

to relatively minor supplies of transfer cases to Mitsubishi Pajero Pinin assembled in Italy, but it could enter the European market on a larger scale in the future. As regards the Asian manufacturers of transfer cases, the investigation shows that the Japanese manufacturer Aisin has engineering capacity located in Europe, which enables it to work close to the customers. Aisin is already supplying for example gear boxes to some OEMs in Europe. This makes of it an interesting alternative supplier for the European OEMs. The Commission notes that the solutions offered by manufacturers located in different parts of the world - especially in the USA and Asia - appear to be comparable in technical terms.

(b) Manufacturers present in neighbouring product markets

57. The Commission's investigation has revealed that, from a product point of view, established automotive component suppliers who are currently active in neighbouring markets are realistic potential manufacturers of transfer cases, particularly in view of the fact that the demand for these products is increasing in line with the increasing demand for all-wheel drive vehicles. In particular the manufacturers of PTUs could enter the transfer case market because they possess relevant necessary technical skills. These manufacturers, such as Visteon, Getrag (through Getrag/Volvo/Dana joint venture manufacturing PTUs for Volvo) and TFS are known to the OEMs as often one OEM sources both PTUs and transfer cases. Graziano, a Swiss manufacturer of PTUs and other automotive components for drive-line systems, is another potential entrant into the transfer case market. The company has a production facility in Europe and is known to OEMs. It has a capacity to develop and manufacture complete driveline assemblies.

58. In addition, manufacturers of integrated transfer cases could enter this market as they possess some of the necessary technical skills and are equally known to the OEMs. An example of such manufacturer is […] who has been recently taking part in bids for transfer cases. Another integrated transfer case manufacturer, who has the necessary technical capabilities, is Getrag, already mentioned above in relation to PTUs.

(c) Manufacturers of other driveline and transmission components

59. Participation in the growing all-wheel drive systems' market is attractive to other vehicle components manufacturers, especially those manufacturing driveline components. This is exemplified by new entrants in recent years to the production of PTUs, such as Visteon (an axle manufacturer which became a PTU supplier for the Jaguar X-type in 2003), and the transmission manufacturer Getrag (manufacturer of integrated transfer cases which entered the PTUs through the joint venture with Volvo/Dana). The replies to the Commission's investigation indicated that future entry to both PTUs and transfer cases could be expected also from established manufacturers of other automotive components closely related to all-wheel drive systems, such as transmissions manufacturers, axle manufacturers and torque management systems manufacturers. It has been suggested during the market investigation that those driveline component manufacturers may have an advantage in relation to OEMs because they are able to supply several components for the driveline. As there may be some technical advantages in such capability, it may be interesting for OEMs to source several different driveline components from the same manufacturer.

60. Specific potential entrants and their existing products who have been mentioned by both OEMs and suppliers:

American Axle, USA- axle and steering components
Dana, USA – axles and driveshafts, already present in the PTUs market through the joint venture with Getrag and Volvo,
GKN, UK- constant velocity joints,
Haldex, Sweden – couplings,
Toyota/Toyoda, Japan – Torsen differentials,
Linamar Corporation, Canada – transmission components
Metaldyne Corporation, USA – driveline components, including transfer case sub-assemblies

(iii) Entry inducing factors

61. The Commission takes note of the fact that OEMs routinely invite 3-5 suppliers to bid for the contracts, which can be considered as evidence on at least a potential supply base. The bidding data supplied by the parties and information submitted by OEMs show that several bidders compete for contracts. In 2000-2003, both Magna and NVG lost contracts related to both transfer cases and PTUs to Borg Warner, Fuji Univance, GKN, Getrag, Graziano and Visteon. The Commission also has evidence showing that potential suppliers in neighbouring markets have been pre-selected to bid for transfer case contracts and have done so. In this respect, the Commission notes that the responses to the market investigation did not indicate that the parties are closest substitutes for a substantial proportion of customers. Customers representing large volumes of the all-wheel drive solutions demand have named suppliers such as Borg Warner, Getrag, ZF and Fuji Univance as alternative suppliers to the notifying parties' products, both with regard to transfer cases and PTUs.

62. The Commission considers that following the transaction, OEMs and especially those to whom Magna and NVG are currently the only suppliers, may have a strong incentive to look for new suppliers for all-wheel drive systems and especially transfer cases in the future. This is supported by the fact that for instance some OEMs who have different all-wheel drive systems buy them from different suppliers. Also the fact that OEMs invite several bidders to participate reflects the need to have strategic alternatives. The Commission considers that the large volumes of some of these OEMs (particularly BMW) are sufficient to induce new entry into the market. With regard to those manufacturers whose volumes are smaller, the Commission finds it feasible that such volumes could be supplied even from outside the EEA without local manufacturing base, as is the case already today.

63. According to the results of the Commission's investigation, there are no significant capacity constraints on entry or growth in the transfer case or PTU segments. The only immediate constraint is factory space for housing new production lines, and this can be leased or purchased within the lead time which elapses (up to 24 months) between successful procurement of an order for a new 'platform' production run, and the actual commencement of that production.

64. In conclusion, the Commission considers that there is enough actual and potential competition from both all-wheel drive solutions manufacturers established currently in the EEA and outside Europe and also suppliers present on neighbouring markets to prevent the new entity from acquiring market power.

D. Overall assessment

65. The Commission considers that the transaction is unlikely to enhance the market power of the combined entity vis-à-vis the existing contracts, because the terms and the conditions of these contracts have already been agreed upon and would be difficult to renegotiate. With regard to the future contracts, the Commission does not consider, on the basis of the investigation, that the transaction would confer market power to the combined entity in the future bidding situations. As noted above, capacity constraints do not play a major role in the segment and there is evidence that even though suppliers do not have current contracts, they keep on bidding. The Commission considers the "exiting and re-entering" the EEA market of Borg Warner a clear indication of this. Therefore the Commission considers it unlikely that post-transaction the combined entity would be in a position to exercise market power in winning new contracts.

Conclusion

66. For all the foregoing reasons, the Commission considers that the notified transaction will not significantly impede effective competition in the common market or substantial part of it.

VI. CONCLUSION

67. 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 (EC) No 139/2004.

For the Commission

Mario MONTI
Member of the Commission
signed