

***Case No COMP/M.3972 -
TRW AUTOMOTIVE /
DALPHI METAL
ESPAÑA***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 12/10/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12-X-2005

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case COMP/M.3972 - TRW AUTOMOTIVE/DALPHI METAL ESPAÑA
Notification of 07/09/2005 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 07/09/2005 the Commission received a notification in accordance with Regulation No 139/2004 of a proposed concentration, by which TRW Automotive Inc. ("TRW", US) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the undertaking Dalphi Metal España and its subsidiaries ("DME", Spain) 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 No 139/2004 and does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. TRW designs, manufactures and markets automotive components, including braking and steering systems, engine valves, airbags, steering wheels and electronic controls.

¹ OJ L 24, 29.1.2004 p. 1.

DME designs, manufactures and markets automotive safety systems, in particular airbags and steering wheels.

4. TRW intends to acquire a controlling participation of 68.39 % in DME. TRW will also acquire a controlling interest of 51% over a number of DME subsidiaries, including Dalphi Metal Seguridad SA (“DMS”), Dalphi Metal Internacional (“DMI”) and Dalphi Metal Portugal (“DMP”). After completion of the transaction, TRW will hold sole control over DME, DMS, DMI and DMP.

II. COMMUNITY DIMENSION

5. The combined aggregate world wide turnover of the undertakings concerned exceeds € 5000 million (TRW: € [...], DME € [...] in 2004). The aggregate Community wide turnover of two of the parties exceeds € 250 million (TRW: € [...], DME € [...]). These 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.

III. RELEVANT MARKETS

The relevant product market

a) Airbags

6. Airbags are designed and constructed to protect drivers and passengers in case of an accident. Airbags cannot be replaced by other passenger occupant safety systems like seat belts, but rather provide additional occupant protection.
7. As considered in previous Commission decisions², an airbag system consists of two major modules, each constituting a separate market, firstly the airbag control electronics module with the crash sensor and secondly the airbag module encompassing the casing, the airbag cushion and the airbag inflator. As DME does not produce airbag control electronics, this market is not affected by the present operation and will not be further assessed. The Commission also indicated in the mentioned decisions the possibility of establishing a distinct market for airbag inflators, separate of the rest of the airbag module, as the inflator determines the performance of the airbag. The parties consider that this sub-division of the product market is no longer necessary as, today, car manufacturers almost always purchase the airbag modules including the inflator. Also, most airbag suppliers manufacture the inflator in-house and their demand is therefore captive. The market investigation has indicated that some OEMs buy inflators separately from the rest of the airbag module or determine which inflator the airbag producer should use in the airbag. However, it appears that the volume of non-captive sales of airbag inflators has declined over the previous years and now represent only around 10% of total sales. In any case, the question whether a market for inflators, separate from the market for complete airbag modules, ought to be defined can be left open for the purpose of this assessment as the concentration will not

² case IV/M.686 - NOKIA / AUTOLIV and case No IV/M.872 - TRW / MAGNA

significantly impede effective competition on any of the possible market definitions considered (see below).

8. Depending on their location in the vehicle one can distinguish different categories of airbags. The parties consider product markets related to the various types of airbags used in passenger cars. Such an overall market would be based on supply-side substitutability as the underlying technology is the same for all types and almost all airbag producers have a full range of airbag types. From a customers point of view however, the different airbag types have different protection functions, distinct technical characteristics which are submitted to specific technical certification and can therefore not be considered substitutes. Furthermore there are significant price differences between the different types of airbags and the suppliers in Europe have different market shares in each of the categories. OEMs also tend to source each type of airbag independently. A particular car platform can have a different supplier for each of the airbag types installed. As confirmed by the market investigation, a more differentiated airbags market definition approach would distinguish between (i) Driver Airbags, (ii) Passenger Airbags, (iii) Side Airbags and (iv) Curtain Airbags. In any case, the exact definition of the market can be left open for the purpose of this assessment as the concentration will not significantly impede effective competition on any of the possible market definitions considered (see below).

b) Steering wheels

9. Steering wheels can range from a basic steering element to a technical product with a complex requirement profile that operates various electronic components such as speed, radio and mobile phone. Comfort requirements range from basic (fully foamed or thermoplastics) to premium (heated / wood / leather-wrapped). Whilst there may be a limited degree of demand-side substitutability from the final customers point of view, OEMs have also indicated that, on most car models, they offer different levels of steering wheels. A market segmentation from the demand-side is therefore not necessary. The market investigation has indicated that producers offer a full range of steering wheels, thereby pointing to a high level of supply-side substitutability. Both customers and competitors have confirmed that a further segmentation of the market for steering wheels is not relevant.
10. The parties submit that, as most of the new cars are equipped with driver airbags and since most manufacturers supply OEMs with complete sets incorporating the steering wheel and the driver airbag system, steering wheels and driver air bags could be considered as part of the same market. However, as the market investigation has indicated that a limited number of the OEMs continue to procure the steering wheel and the driver airbag separately, a distinct market for steering wheels can be defined for the assessment of the present case.
11. The Commission has found in a number of automotive decisions³ that it may be appropriate to define the relevant product market by reference to the vehicles for which that particular product is supplied. Such a split is generally made between passenger cars, light commercial vehicles and heavy commercial vehicles. The

³ See cases IV/M.686, Nokia/Autoliv and Case COMP/M.872, TRW/Magna

parties produce steering wheels and airbags only for passenger cars. The other automotive segments are therefore not considered.

12. The Commission has further stated in a number of decisions⁴ that the markets for automotive components are to be divided into (i) products supplied to original equipment manufacturers (“OEM”) as first install equipment, (ii) products supplied to the original equipment service (“OES”) businesses, and (iii) the independent aftermarket (“IAM”). As confirmed by the market investigation, for the competitive assessment of this concentration there is no need to make a distinction between OEM on the one hand and OES/IAM on the other hand, as any replacement airbag must necessarily be of the same brand and type as the one first fit. As to steering wheels, the volume sold in the aftermarket is minimal. Therefore, this decision is based on the airbag and steering wheel volumes for both the first install (OEM) and the aftermarket(s).

The relevant geographic market

13. The parties submit that the airbag and steering wheels markets are, in line with the Commission’s previous decisions⁵, at least EEA-wide in scope. The parties base that conclusion on the pan-European centralised production, the European-wide buying policy of OEMs, homogenous prices within the EEA and relatively limited transport costs (less than 5% of airbag and steering wheel base costs). OEMs have indicated that they sometimes ask quotations from suppliers outside the EEA. However, as airbag testing and approval methodologies are different in the U.S. and Japan compared to Europe, airbags are designed and produced for a specific region (Europe, US and Asia including Japan), with almost no sales in the other regions. The geographic scope of the airbags and steering wheels markets can therefore be considered as the EEA.

IV. COMPETITIVE ASSESSMENT

14. The parties’ business activities overlap for the supplies of airbags and steering wheels to the OEMs as a first install equipment in new cars and aftermarkets. Overall, the parties’ activities are complementary to a large degree, with TRW focussing on the premium OEM segment [...], whilst Dalphi is strong in the volume segment [...]. As OEMs globalise, automotive component suppliers are increasingly required to provide a whole range of products, grouped in modules and systems, for a wide range of car platforms, ranging from low cost world cars to premium automobiles. TRW submits that this merger needs to be seen in that context.

⁴ see inter alia Case COMP/M.3789 Johnson Controls / Robert Bosch / Delphi SLI

⁵ Case COMP/M. 2939 : JCI/Bosch/VB JV. 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: 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*.

15. The transaction would combine the number 2 and number 4 automotive airbag supplier to OEMs. The new entity would have an overall airbag combined market share of [30% - 40%] (TRW [20% - 30%] and Dalphi [5% - 15%]). Market leader Autoliv (Sweden) has [40% - 50%] of the market. Also, Japanese players such as Takata ([10% - 20%]) and Toyota Gosei ([0% - 10%]) and US component suppliers such as KSS and Delphi (both [0% - 10%]) have European operations.
16. When assessing the different airbag segments, the parties' highest market share is for driver airbags with a combined share of [30% - 40%] (TRW [20% - 30%] and Dalphi [10% - 20%]). In this segment, Autoliv has [30% - 40%], Takata [20% - 30%] and the remaining players [0% - 10%]. Due to its focus on the medium to low price car segment, Dalphi has relatively modest market shares for premium applications such as Side Airbags ([0% - 10%]) and Curtain Airbags ([0% - 10%]). In these two segments, Autoliv is the undisputed market leader with around [50% - 60%], followed by TRW ([20% - 30%] - [20% - 30%]) and Takata ([10% - 20%] - [5% - 15%]). Also for passenger airbags, Autoliv is the market leader ([40% - 50%]) followed by the parties with [30% - 40%] (TRW [10% - 20%] and Dalphi [10% - 20%]), Takata [10% - 20%] and the remaining players with a combined [10% - 20%].
17. The parties' relatively strong market position for driver airbags is related to that for steering wheels. Their combined share for steering wheels is [40% - 50%] (TRW [20% - 30%] and Dalphi [20% - 30%]). All main airbag competitors are present on this market. Autoliv has [20% - 30%], Takata [20% - 30%] and the remaining players [10% - 20%]. Since steering wheels is a more differentiated market than airbags, the parties consider that their different focus (TRW in the premium segment and Dalphi in the budget segment) makes that there is little competitive overlap.
18. The parties state that the transaction will not raise significant competition concerns because of the presence of viable alternatives and the OEM's buying power.
19. The market investigation has confirmed that the competitive structure will not be significantly altered by this transaction. In all airbag segments, Autoliv will remain market leader or on equal footing with the parties. Established players such as Takata, KSS and Delphi as well as new entrants such as Toyoda Gosei are considered by the OEMs as fierce competitors and viable alternatives to Autoliv and the enlarged TRW, and such is reflected in some recent bidding success of these players. Variations in market shares for the individual airbag segments of up to 20% over a period of two to three years reflect the win or loss of an important car platform. Such is specifically the case for the less mature side Airbag and curtain airbag segments, but to a certain degree also for the driver airbag and passenger airbag segment (yearly variations of up to 10%).
20. Whilst previous to the merger, TRW, Dalphi, Autoliv and Takata had comparable market shares for steering wheels, the enlarged TRW will become the clear market leader. OEMs have however pointed to Dalphi's decreasing market share, mainly to the benefit of smaller competitors such as KSS, OAO and Toyoda Gosei, and to the continued presence of strong alternative players such as Autoliv and Takata. The market investigation has also to a certain extent confirmed the parties' submission that the parties' product range of steering wheels should be regarded as

complementary rather than directly competitive, as TRW focus is on premium steering wheels whilst DME os oriented towards lower value steering wheels.

21. The parties have submitted that consolidation among the OEMs has increased the latter's buyer power, which is reflected in decreasing prices, competitive tendering with multi-sourcing, frequent switching of suppliers and shorter supply contracts. This is to a certain degree reflected in the evolution of market shares and the bidding data, with market leaders Autoliv and TRW loosing market share to Dalphi, Toyoda and Takata. None of the OEMs consider that the concentration would make them overly dependent on TRW/Dalphi. To this effect, OEMs have pointed to the relative ease with which suppliers can be switched and the possibility to accelerate the introduction of new suppliers such as Tokai Rika (Japan) to continue putting pressure upon the established players. Also, the OEMs have confirmed the complementarity of TRW and DME with regard to their product offering.
22. If a separate market for inflators were to be defined, the enlarged TRW would have a market share of [30% - 40%] (TRW [30% - 40%] and Dalphi [0% - 10%]). Market leader Autoliv has a market share of [40% - 50%], Takata [10% - 20%], KSS [0% - 10%] and Delphi [0% - 10%]. As around 90% of these volumes are used internally, the market shares for inflators follow those for airbags closely. The Japanese inflator producer Daicel, not vertically integrated downstream into airbags, holds [0% - 10%] of the market and is increasing its market share. As DME's position on the inflator market is relatively weak, the concentration will not affect the competitive structure of the market. The proposed transaction does not raises particular risks of foreclosure either. Firstly, the main competitors of TWR are vertically integrated and thus are present in both airbag modules and inflators segments. Secondly, the transaction would not substantially change the current market situation, as DME is heavily dependent on the use of third party inflators the majority of which already are supplied by TRW. Therefore the concentration does not lead to vertical concerns.
23. It can be concluded that airbags and steering wheels are buyer markets, with significant buyer power that has increased over the years as a result of the consolidation in the car manufacturing market and the OEMs' cross brand sourcing strategy. The OEMs feel confident that stringent cost and quality audits, on-line auctions, combined demand across platforms and unilateral renegotiation of supply contracts is sufficient to counter this level of concentration.
24. The market investigations has shown that two actual or potential competitors, respectively Takata (21,6%) and Japanese airbag producer Nihon Plast (10%), hold a minority stake in DME. The latter is a local supplier to Nissan, with no activities outside Japan. Also, Takata has a shareholding of 49% in each of the DME production joint ventures Dalphi Metal Seguridad SA, Dalphi Metal Internacional and Dalphi Metal Portugal. The Commission has examined whether the operation, post merger, would give rise to a risk of co-ordination between TRW and Takata on the markets for airbags and steering wheels. The market investigation has focused on whether the acquisition of DME could, directly or indirectly, increase the flow of information between TRW and Takata, providing them with the incentive and ability to co-ordinate, specifically in those markets where TRW/DME and Takata combined hold a significant share of the market.

25. The Commission's analysis has not raised such concerns. Firstly, the structural links between DME and Takata do not provide the latter with any form of control over DME. The shareholding of Takata in the DME's production JVs does not provide it with any form of production output, distribution agreements, technology sharing or other arrangement relevant to the activities of Takata on the markets for airbags and steering wheels. Also, no non-compete, joint purchasing or joint selling agreements exist between DME and Takata. As such, Takata cannot exercise any influence over DME and thus over TRW.
26. Secondly, the structural link between these companies was established when Takata acquired in the year 2000 the German company Petri AG which had acquired in 1988 the 21,6% shareholding in DME. As to the risk of possible already existing co-ordination between DME and Takata, the market investigation has shown that DME has taken corporate precautions by creating firewalls between DME and Takata such as removing the former Petri board members from the board, subsequent reduction of the number of board members to assure the absence of Takata members on the board and termination of the shareholder agreement with Petri AG. Takata will not have access to information relating to the activities of DME or TRW that could form a basis for the development of a co-ordinated commercial strategy.
27. [...]. OEMs have confirmed that DME and Takata have in the past always bidded separately for new business and competed against each other.
28. Post-merger, the only hypothetical strategy that TRW and Takata could pursue in a coordinated manner would be a strategy of jointly raising prices for their airbag and steering wheels. As indicated above, this merger does not in any respect increase the possibility for such coordination since there is no increased opportunity for Takata and TRW to exchange or access each other's business information such as pricing, cost structures etc. with regard to these products. With regard to the opportunities for coordination, it also has to be taken into account that TRW and Takata face fierce competition from market leader Autoliv but also from smaller competitors such as Toyota Gosei, Delphi and KSS. This is further strengthened by the fact that the market in question is a bidding market, where clients put contracts for airbag and steering wheels to tender among all established players. Coordination on bidding behaviour typically tends to need a rather high level of sophistication and interaction to be successful. In all events, the proposed transaction would not substantially change the hypothetical incentives of TRW and Takata to adopt a joint price increase. If they would have considered such a strategy to be profitable and viable, this would have been the case already before the merger of TRW with DME.
29. It appears therefore that in view of the absence of co-ordination in the past, the precautions to avoid information flows to Takata put in place by DME and confirmed by TRW, the existence of bidding markets and the degree of buyer power, the proposed transaction does not raise co-ordination issues.

VI. CONCLUSION

30. It can therefore be concluded that the concentration will not significantly impede effective competition in the EEA or the common market, or a significant part

thereof, in particular as a result of the creation or strengthening of a dominant position.

31. 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 (EC) No 139/2004.

For the Commission
(signed)
Neelie KROES
Member of the Commission