

***Case No COMP/M.4456 -
MAHLE / DANA EPG***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 06/03/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 06.03.2007

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sirs,

**Subject: Case No COMP/M.4456 – MAHLE / DANA EPG
Notification of 30/01/2007 pursuant to Article 4 of Council Regulation
No 139/2004¹
Publication in the Official Journal of the European Union No. C 027, dated
07/02/2007, page 25.**

1. On January 30, 2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004, by which the German company Mahle GmbH (hereinafter referred to as "Mahle" or "the notifying party") intends to acquire sole control over the Engines Product Group (Dana EPG) of the US-based company Dana Corporation by means of purchase of shares and assets.

I. THE PARTIES AND THE TRANSACTION

2. Mahle is a company active in the automotive and engine industry and supplies piston systems, cylinder components, valve train systems, air management systems, and liquid management systems to the automotive and the engine industry. Dana Corporation, the seller of Dana EPG, is an automotive supplier of drivetrains, chassis, engines, and structural technologies. Dana Corporation is under chapter 11 protection in the US. The primary products of the business being sold, Dana EPG, are piston rings and bearings for internal combustion engines.

II. CONCENTRATION

¹ OJ L 24, 29.1.2004 p. 1.



- The notified operation is intended to confer to Mahle sole control over Dana EPG, based on an agreement signed on December 1, 2006. It therefore constitutes a concentration within the meaning of Article 3(1)(b) of the EC Merger Regulation.

III. COMMUNITY DIMENSION

- Mahle has a world-wide turnover of EUR 4 122 million and Dana EPG has a world-wide turnover of EUR [300-800] million. Moreover, the turnover of Dana EPG does not exceed EUR 25 million in three Member States². The notified concentration therefore does not have a Community dimension within the meaning of Article 1 of the EC Merger Regulation.
- However, on December 11, 2006, the notifying party informed the Commission in a reasoned submission pursuant to Article 4(5) of the EC Merger Regulation that the concentration was capable of being reviewed under the national competition laws of at least three Member States, namely Austria, France, Germany, and Sweden, and requested that the case be referred to the Commission. None of the Member States competent to examine the concentration indicated its disagreement with the request for referral within the period laid down by the Merger Regulation.
- Therefore the concentration is deemed to have a Community dimension pursuant to Article 4(5) of the EC Merger Regulation.

IV. COMPETITIVE ASSESSMENT

- Both parties to the transaction are active in the supply of two specific engine components for internal combustion engines: connecting rod bearings and pistons rings. A connecting rod bearing is a metal shell that joins the connecting rod to the crankshaft, and allows the connecting rod and the crankshaft to move at different speeds, while also passing along the load generated by the piston in order to turn the crankshaft (see Figure 1). Piston rings are metallic engine parts that are inserted into the piston to preserve a gas-tight seal between the piston and the cylinder wall (see Figure 2).

	
<p><i>Figure 1: Connecting rod bearings</i></p>	<p><i>Figure 2: Piston rings (where the parties overlap) with piston head</i></p>

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, p. 25).

PRODUCT MARKET DEFINITIONS

8. The notifying party submits that piston rings and bearings are distinct products, both used as components in internal combustion engines. For the definition of the relevant product markets, however, further subdivisions should be made for each products, based on the sales channel and on size of the engines in which these products are used.

OEM/OES versus IAM

9. The notifying party proposes to consider the Independent AfterMarket (IAM) as a separate product market from OEM/OES markets³ This is in line with the Commission's decisional practice. The notifying party also proposes to consider a single market for Original Equipment Manufacturers (OEM), i.e. engine producers, and Original Equipment Suppliers (OES), i.e. the official repair network of the engine producers. The notifying party submits that OE customers do not distinguish between the purchases for OEM and for OES when negotiating supplies, that suppliers do not know what the final destination of the products are and that the products are identical for OEM and for OES.
10. No respondent to the Commission's market investigation has disputed these claims (that is, the existence of separate IAM and OEM/OES markets and the absence of distinction between OEM and OES purchases for the specific cases of bearings and piston rings).

Light duty versus heavy duty bearings and piston rings

11. Following the Commission's decisional practice⁴ in cases involving the supply of engine components, the parties distinguish between light duty and heavy duty markets⁵. Light duty engine parts are sold largely for vehicles up to 6 tons (excluding very small ones, e.g. for motorcycles and lawn mowers). Conversely, heavy duty engine parts are sold largely for vehicles above 6 tons.
12. Lack of demand side substitutability is clear in this case. As for supply side substitutability, the parties state that light duty engine components are typically produced in larger volumes in an automated process, while heavy duty components are produced in smaller quantities. In addition, light duty and heavy duty components have different technical characteristics.
13. Even if some competitors noted some degree of supply-side substitutability between light duty and heavy duty bearings and piston rings, the market investigation has overwhelmingly confirmed the relevance of this distinction⁶.

Other possible distinctions

- ³ In OEM/OES markets, parts are sold to equipment manufacturers for assembly in new vehicles and for resale through their service network. In IAM markets, parts are sold to independent retailers for automotive spare parts and independent repair shops.
- ⁴ See e.g. Case M. 1587 Dana/GKN.
- ⁵ The distinction is also reflected in Dana EPG's information memorandum to potential acquirers.
- ⁶ See majority of the answers to questions 4 and 6 in the Article 11 letters sent to customers and competitors.

14. The Commission has investigated whether further distinctions would be relevant by asking OEM customers to evaluate the ability of their suppliers to meet fully their demand.
15. In particular, as regards piston rings, the Commission investigated whether there was a good supply-side substitutability between diesel and gasoline piston rings. Indeed, in a 1999 Bundeskartellamt case Federal Mogul – Alcan Deutschland GmbH, the German Competition Authority considered that gasoline and diesel piston rings were part of distinct product markets.
16. Mahle submitted that such a distinction is no longer relevant. According to Mahle, the reason for the limited substitutability at the time the German Bundeskartellamt examined the merger between Federal Mogul and Alcan in 1999 was linked to Federal's Mogul patent on the dominant CKS technology used for producing light duty rings. Now Federal Mogul's patent has expired and new technologies like the PVD have been developed⁷. As a result, all piston rings producers today use their capacity to manufacture both gas and diesel rings. There is now full supply-side substitutability between diesel and gasoline piston rings.
17. All competitors and customers confirmed Mahle's claim and making a distinction between diesel and gasoline piston rings or any other distinction does not prove to be relevant for the competitive assessment⁸.

Conclusion

18. In conclusion, the relevant product markets identified in this case are the following:
 - Bearings for light duty applications to OEM/OES customers;
 - Bearings for heavy duty applications to OEM/OES customers;
 - Bearings for light duty applications to IAM customers;
 - Bearings for heavy duty applications to IAM customers;
 - Piston rings for light duty applications to OEM/OES customers;
 - Piston rings for heavy duty applications to OEM/OES customers;
 - Piston rings for light duty applications to IAM customers
 - Piston rings for heavy duty applications to IAM customers

⁷ CKS and PVS are two alternative coating technologies. They respectively stand for Chromium Ceramic Coating and Physical Vapour Deposition.

⁸ See question 8 in the article 11 letters sent to customers and competitors

Geographic market definitions

(i) OEM/OES markets

19. As regards OEM/OES markets, the parties submit that the OEM/OES markets are least EEA-wide, which is in line with the Commission's decisional practise.
20. The market investigation provided mixed elements on the geographical scope of the markets. As regards bearings, the demand seems to be somewhat different in Europe due to the existence of tougher regulation standards, and the large number of diesel engines for light duty vehicles⁹. Other specificities of European manufacture requirements would lie in their life-time expectation, the specific design of engines, and the power output of engines. Furthermore, some customers indicated that there still exists a home bias and that bearing manufactures tend to be strong in their home markets. This would be due, as indicated below, to the difficulty to switch supplier and also to the existence of aftermarket sales which reinforces ties of car and truck manufacturers to their historic suppliers.
21. As a result, regional suppliers and car/truck manufacturers have developed a relationship of trust and confidence that makes it difficult to enter a new geographic market. Moreover, a manufacturer willing to expand its presence in Europe would need a knowledgeable salesforce, a good distribution network, and gather market intelligence, which could also be obstacles for being an effective competitor. Overall, competitors that responded to the market test estimated that, for a competitor with no current operations in Europe, it would take up to 3 years to become an effective competitor in Europe.
22. On the other hand, car/truck manufacturers are increasingly becoming global companies which value a worldwide presence of their suppliers. In any case, the question whether the OEM/OES markets for light duty and heavy duty bearings are EEA-wide or larger in scope can remain open as it does not alter the conclusions of the competitive assessment.
23. As regards piston rings, the European dimension of the OEM seems to be even more manifest. Again, there is a more stringent regulation, higher technical loads, more diesel engines, and a different quality standard in Europe. For example, superior noise reduction conditions have to be achieved with European engines and engines tend to have a smaller size and higher power. The historical ties between car/truck manufacturers and regional suppliers seem also to be strong. Furthermore, several customers mentioned also the remoteness of plants from Europe (e.g. Brazil for Mahle) as an important weakness. However, the question whether the OEM/OES markets for light duty and heavy duty piston rings are EEA-wide or larger in scope can remain open as it does not alter the conclusions of the competitive assessment.

(ii) IAM markets

24. Concerning IAM markets, in line with the Commission's decision practise, the parties submit that IAM markets are national in scope. The question whether the IAM markets

⁹ While suppliers already present in Europe can provide bearings both for gas and diesel engines, the specificities of the European demand means that would a potential entrant would have to adapt its production process to enter the market.

for light duty and heavy duty bearings and piston rings are national or wider in scope can remain open as it does not alter the conclusions of the competitive assessment.

a. ASSESSMENT

(i) OEM/OES markets

Light Duty Bearings

25. The proposed transaction does not raise any competition concerns on the market for light duty bearings since the overlap is limited to [<5] at the EEA level (and the combined market share would be [15-25]%; Federal Mogul, Kolbenschmidt, and Miba have respectively [35-45]%, [15-25]%, and [5-15]% of the market). At the worldwide level, the market is not affected.

Heavy Duty Bearings

26. In the EEA market for heavy duty bearings, the transaction would reinforce the number two position currently held by Dana EPG behing market leader Federal Mogul¹⁰:

2005 data	Mahle	Dana EPG	Combined	Federal Mogul	Kolbenschmidt	Miba	Others
EEA	[<5]%	[30-40]%	[35-45]%	[40-50]%	[5-15]%	[<5]%	[<5]%

27. The parties submitted that no anticompetitive effect would result from the merger, considering the relatively small overlaps, the strength of the market leader Federal Mogul, the competitive pressure exerted by other, smaller competitors coming from Japan, China and India, and the considerable buyer power of customers.

28. In the market investigation, car and truck manufacturers explained that changing suppliers is a very heavy and expansive process that can take several years. The qualification process for a new supplier involves discussion on the technical characteristics of the products, as well as extensive testing first in the laboratory and in the actual production process. As a result, car and truck manufacturers prefer to establish a relationship and work with a relatively small number of suppliers (3-4). They choose their suppliers based on the price, quality, and technology of products.

29. However, the market investigation revealed that most car and truck manufacturers do not consider Mahle and Dana EPG as close competitors. Indeed, on the market, Federal Mogul is considered as the technological leader, which keeps its edge through important R&D investment and is able to supply a wide range of products. It appears that Dana EPG has a comparable positioning. By contrast, according to the market investigation, Mahle markets less quality oriented products which come from its production facility in Brazil.

30. Thus, the merger removes a weak competitor from the market, and the new entity will still face the strong competition of Federal Mogul, whereas Kolbenschmidt remains a

¹⁰ 2005 data provided by Mahle.

sizable competitor. It therefore appears unlikely that the proposed transaction will give rise to non-coordinated effects.

31. Accordingly, only one customer expressed fears that the merger would bring about higher prices. Other customers did not express strong concerns, and some of them explained that the takeover of Dana EPG would make the latter a more reliable partner as one of its current weaknesses is its financial instability.
32. As regards possible coordinated effects, the market investigation revealed that markets cannot be considered as transparent. Indeed, while the successful bidder of tenders is generally public, pricing remains unknown. Furthermore, as explained above, the market is somewhat differentiated with technological leaders such as Federal Mogul. These elements—lack of transparency and lack of product homogeneity—make it difficult for suppliers of heavy duty bearings to reach a common understanding on the terms of coordination and to monitor such coordination. Thus, coordinated effect are unlikely to arise as a result of the market investigation.
33. If the markets were to be considered worldwide in scope, the position of the new entity would be weaker (Mahle: [5-15]%; Dana EPG: [10-20]%; Daido: [30-40]%; Federal Mogul: [15-25]%; Taiho: [10-20]%; Kolbenschmidt: [<5]%; others: [<5]%) as it would be limited to [20-30]%. In particular, it would face the competition of the Japanese suppliers such as Daido and Taiho in addition to that of Federal Mogul. Thus, the proposed transaction is unlikely to significantly impede effective competition on a worldwide basis.

Light duty and heavy duty piston rings

34. On other EEA markets for piston rings, the proposed transaction brings about limited changes as can be seen from the following table¹¹:

2005 data	MAHLE	Dana EPG	Combine d	Federal Mogul	Riken	NPR	Others
Light duty piston rings	[10-20]%	[0-10]%	[15-25]%	[60-70]%	[0-10]%	[<5]%	[<5]%
Heavy duty piston rings	[0-10]%	[10-20]%	[15-25]%	[55-65]%	[5-15]%	[<5]%	[0-10]%

35. Thus, non-coordinated effects are very unlikely as a result of the merger. Coordinated effects are also unlikely due to the lack of transparency on the market (pricing) and the different market positioning of market players (for example, Federal Mogul is stronger in piston rings for diesel engines than Mahle and Dana EPG).
36. In addition, as explained by the notifying party, that there have been several new entrants on the market, notably from Japan (Riken, NPR), as well as from China and India. It appears that the Czech company Bachibuzuk is also newly active on the market.
37. This analysis holds at the worldwide level. For light duty piston rings, the new entity would hold [20-30]% of the market (Mahle: [5-15]%; Dana EPG: [10-20]%) and would face competition from Federal Mogul [35-45]% and Japanese manufacturers (Riken ([5-

¹¹ 2005 data provided by Mahle

15]), TPR ([5-15]), NPR ([5-15])). As for heavy duty piston rings, the new entity would only hold [10-20] of the market and would face competition from Federal Mogol ([25-35]) and Japanese manufacturers (Riken ([20-30]), TPR ([10-20]), NPR ([10-20])).

38. For these reasons, the proposed transaction is very unlikely to significantly impede effective competition on the markets for piston rings. In fact, no customers raised concerns specific to these markets and some of them even expect a boost to innovation.

(ii) IAM

39. The only national IAM affected would be the French light duty bearing market and the French light duty piston rings markets. European IAM markets for engine components are micro-markets compared to the OEM/OES markets: the estimated market size in France in 2005 was €1.4 million for light duty bearings and €3 million for light duty piston rings.
40. The transaction would lead to combine market shares of [30-40] (Mahle [25-35], Dana EPG [0-10], market leader is Federal Mogul with [40-50]) for light duty bearings. However, Dana EPG's sales in the French market are not made to French customers (i.e. repair shops and mechanics operating in France) but to exporters that resell bearings in the Maghreb. Thus, Dana EPG is a niche player on the market and its peculiar market positioning makes it unlikely that non-coordinated effects will arise as a result of the merger. As for light duty piston rings, the merger will barely bring about any change and the combined market share would be limited to [10-20] (Mahle [10-20], Dana EPG [<5], market leader Federal Mogul with [60-70]).
41. In view of these elements, the proposed transaction does not give rise to competition concerns on the French IAM markets for light duty bearings and piston rings.
42. No competition concerns would arise in hypothetical EEA-wide IAM markets. As for light duty bearings, in all European countries other than France, Mahle's position is clearly below 15% and Dana EPG is hardly present. Similarly, Mahle's position in light duty piston rings is below 15% in all EEA countries but France, and Dana EPG is hardly present in these countries.

VI. CONCLUSION

43. 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
signed
Neelie KROES
Member of the Commission