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Case No COMP/M.4785 - RUSSIAN MACHINES / MAGNA

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 30/08/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

Subject: **Case No COMP/M.4785 - Russian Machines / Magna**
Notification of 25.07.2007 pursuant to Article 4 of Council Regulation No 139/2004

I. INTRODUCTION

1. On 25 July 2007, the Commission received a notification pursuant to Article 4 of the Council Regulation (EC) No 139/2004[1] by which Open Joint Stock Company Russian Machines ("RM" Russia, part of Basic Element Group) and the Stronach Trust ("Stronach" Canada) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of Magna International Inc ("Magna" Canada), by way of purchase of shares. Stronach currently exercises sole control over Magna.

II. THE PARTIES

2. **RM** is a wholly-owned subsidiary of Basic Element group ("Basic Element" Russia). RM is comprised of an automobile manufacturer ("GAZ")[2], an airplane manufacturer and a train car manufacturer. GAZ vehicles produced in Russia are predominantly sold in Russia with only […] sold in the EEA, all of which were light commercial vehicles ("LCVs"). In September 2006, GAZ acquired control of the LDV Group Limited ("LDV"), a producer of LCVs. LDVs sold in 2006 […]% of its LCVs in the UK[3].

1 OJ L 24, 29.1.2004 p. 1.

2 GAZ is Russia's second-largest automotive company with operations include the manufacturing of LCVs (vans, trucks and buses), heavy industrial equipment and cars. However, its activities in the EEA are limited to the supply of LCVs.

3 In 2006, it sold […] LCVs in the EEA, of which […] were sold in the UK.

3. **Magna** is a diversified global automotive supplier based in Canada which provides a wide variety of automotive systems, assemblies, modules and components primarily to Original Equipment Manufacturers ("OEMs") of cars and LCVs. Magna's products for LCVs include: seats, seat mechanisms, front and rear fascias, interior mirrors and exterior mirrors. Magna is currently under the sole control of Stronach[4].

III. THE CONCENTRATION

4. The transaction concerns the acquisition of joint control over the whole of Magna. Russian Machines will acquire joint control of Magna together with Stronach, which currently exercises sole control over Magna. Pursuant to the Transaction agreement of 10 May 2007, RM will invest approximativly US$1.54 billion to indirectly acquire 20 millions Class A Subordinate Voting Shares of Magna[5]. RM, Stonach and certain individual members of Magna's management will hold their interest in Magna through newly created Canadian holding companies (Neweco, Neweco 1.5 and Neweco II).

5. The transaction agreement contemplates that the parties will enter into a number of additional agreements, most materially an Investor Agreement and a number of Shareholders' Agreements. Pursuant to these additional agreements, the Board of Magna will be jointly controlled by RM and Stronach.

IV. COMMUNITY DIMENSION

6. In 2006, Basic Element as a whole had a worldwide turnover of […] million EUR and a Community wide turnover of […] million EUR. Magna had a worldwide turnover of […] million EUR and a Community wide turnover of […] million EUR.

7. It follows that Basic Element and Magna have a combined aggregate world-wide turnover of more than 5 billion EUR. Each of them has an aggregate Community-wide turnover in excess of 250 million EUR and none of them achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. Therefore, the notified operation has a Community dimension within the meaning of Article 1(2) of the EC Merger Regulation.

V. COMPETITIVE ASSESSMENT

8. The present transaction gives rise to vertical links in the EEA between Magna, as a manufacturer of automotive components and RM's activities as a manufacturer of LCVs. Indeed, Magna is active in the supply of several automotive components for LCVs such as the supply of seats, seat mechanism, front and rear fascias and exterior mirrors for LCVs. However, only the relevant product market for interior mirror systems for LCVs and passenger cars is an affected market, where Magna's share is above 25%.

[4] Stronach currently indirectly exercises sole control over Magna through its ownership of more than 99.9% of the outstanding voting securities of 445327 Ontario Limited, which owns Class B Shares representing more that 50% of the total outstanding voting right of Magna.

[5] Magna's Class A Shares are listed on the Toronto and New York Stuck Exchange and its Class B Shares are listed on the Toronto Stock Exchange.

A. MARKET DEFINITION

Downstream market: Light Commercial vehicles (LCVs)

a) Relevant product market

9. In previous decisions (M.2832 - *General Motors / Daewoo Motors)*, the Commission has defined LCVs as a market distinct from passenger cars or heavy commercial vehicles. LCVs include all commercial vehicles under 3.5 tons. They are generally bought for commercial services and for collective and governmental services such as local deliveries to shops and businesses, courier and parcel delivery services, mobile workshop and service vans as well as fire, police and ambulance services.

10. RM is active in the production of LCVs through its cars' subsidiary GAZ and LDV, a company acquired by GAZ in September 2006.

b) Relevant geographic market

11. The Parties submit that the relevant geographic market for LCVs is EEA-wide citing *inter alia* the Commission's earlier finding in case M.2832- *General Motors / Daewoo Motors*. It is supported by the fact that (i) there are no tariffs or other obstacles for trade in the EEA, (ii) all major vehicle suppliers distribute their products on an EEA-wide basis, (iii) technical requirements for vehicles and regulation are common to all Member States, (iv) transport costs within the EEA account for less than 1% of the price. However, the exact geographic market definition is not necessary in this case as it does not affect the competitive assessment.

Upstream market: Supply of interior mirrors

a) Relevant product market

12. In a previous decision (M2901 – *Magna/Donnelly)*, the Commission found that there is a relevant market for the supply to OEMs of interior rear view mirror systems for passenger cars and LCVs. In this decision, the Commission found that the market included products with a variety of features, such as prismatic mirrors which are tilted manually to reduce glare from headlights of vehicles approaching from the rear, compass and/or temperature sensors, anti-theft sensors, electrochromic mirrors which automatically dim glare, integrated lights, telematic mirrors allowing communication with the vehicles communication system, and integrated microphones.

13. Magna argues that interior mirrors sold for LCVs are much less sophisticated than those sold to passenger cars. Interior mirrors used in LCVs tend to be technologically simple and relatively void of added features or additional functionalities (i.e. basic prismatic mirrors that are manually adjusted). Moreover, only a de minimis proportion of interiors mirrors would be sold to LCVs as many of them do not incorporate at all such mirrors.

14. However, the exact product market definition can be left open as in this case no competition problem is likely to arise on either product market definition.

b) Relevant geographic market

15. The parties take the view that the relevant geographic market is at least EEA wide in scope and it is supported by the Commission's previous decision (M2901 – *Magna/Donnelly*. It was also noted that transport costs and tariffs are low and significant cross-border sales of interior occur in the EEA.

B. COMPETITIVE ASSESSMENT

16. The proposed transaction does not result in any horizontal overlap since the RM and Magna are not engaged in business activities in the same relevent product and geographic market.

17. It will give rise to vertical issue as Magna, suppliers of automotive components, is active in several upstream markets to the activities of Russian Machines, manufacturer of LCVs. However, the only affected market with respect to the present transaction is the market for the supply of interrior mirrors for cars and LCVs. In this market, Magna's EEA-wide market share amounts approximativly to [40-50] %.

Input forclosure

18. The Commission investigation revealed that Magna would have neither the ability nor the incentive to forclose downstream non integrated LCVs competitors.

19. Magna's market shares of interior mirrors for passenger cars and LCVs and separately for LCVs in the EEA amounts respectively to [40-50]% and [30-40] %.

20. Interior mirrors for passenger cars and LCVs are supplied to large, often global original equipment manufacturers ("OEMs"). Magna's customers for interior mirrors include […]. The markets for interior vehicle mirrors and components in general are characterised by competitive bidding processes and long term contract relations between suppliers and OEMs[6]. It appears from the above that the market for the supply of interior mirrors is a very competitive market where OEMs have bargaining power.

21. There are a number of mirror suppliers competing with Magna in the EEA, including Schefenacker, Ficosa International and Gentex. In its review of the market for the supply of interior mirrors for automobiles in *Magna / Donnelly* (2002), the Commission found that Ficosa International's market share was approximately 8%, Schefenacker's share was approximately 18% and Gentex's share was about 14%. Magna estimates Schefenacker’s 2006 market share to be approximately 29%, due in part to its acquisition of Engelmann.

22. Accordingly, no competitors of RM are dependent on Magna for the supply of interior mirrors. They have other alternative suppliers in the market and most suppliers offer a wide range of interior mirror systems. In addition, mirrors installed on LCV appear to be commodity products[7] for which there is a high degree of substitutability. Moreover, interior

[6] Contract duration with the supplier of interior mirrors is usually for the lifecycle of a vehicle i.e. five to seven years for a passenger car and eight to ten years for a LCV.

[7] It appears that interior mirrors used in LCVs tend to be technologically simple and relatively void of added features or additional functionalities. According to the notifying party many LCVs do not even incorporate interior mirrors at all.

mirrors do not constitute an important input for LCVs as they do not represent a significant cost factor relative to the price of the LCVs.

Most importantly, Magna will not have the incentive to forclose or render access of downstream competitors more difficult for interrior mirrors, considering its modest market share in the downstream market for LCVs. Indeed, RM market shares with regard to LCVs amounts to less than [0-10] % in the EEA, to [0-10] % in the EU-15 and to [0-10] % in the United Kingdom. In addition, RM's competitors such as Volkswagen, Ford, Mercedez-Benz and Fiat constitute Magna's main customer basis, whose purchases correspond approximately [60-70]% of Magna's supplies of interior mirrors for LCVs within the EEA. It follows that Magna post merger would not be able to profitably restrict its input sales to downstream non integrated competitors or increase prices in this market.

Customer foreclosure

23. RM's supplies of LCVs within the EEA are limited. In 2006, it sold only […] LCVs in the EEA, with […] of those being sold in the EU-15 and […] in the UK. These sales represented less than [0-10] % in the EEA, [0-10] % in the EU-15 and [0-10] % in the United Kingdom.[8] In addition, RM competes with LCVs produced by the major vehicle manufacturers such as VW, Mercedes, Ford, GM, Renault and Fiat.

24. Considering the *de minimis* scale of RM's activities on the downstream LCVs market, whether in the EEA, in the EU-15 or at national level, the present transaction does not raise the risk that Magna's competitors would be deprived of access to a material portion of the downstream market. They will have sufficient economic alternatives in the downstream market of LCVs to sell their output, considering that the remaining LVC manufacturers represent over [90-100]% of European LCV manufacturing capacity.

25. In light of the above, the merged entity is unlikely to have the ability and incentive to foreclose manufacturers’ access to a significant customer base.

VI. CONCLUSION

26. 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

[8] Share calculated on the basis of *Global Insight Forecast* estimate of total EU market size of 1,170,178 units in the EU-15, including 224,976 units in the United Kingdom.