

*Case No IV/M.479 -  
Ingersoll Rand / Man*

Only the English text is available and authentic.

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

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Article 6(1)(a) INAPPLICABILITY  
Article 6(1)(b) NON-OPPOSITION  
Date: 28/07/1994

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28th July 1994

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(a) DECISION  
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

**Subject: Case N° IV/M.479 - Ingersoll-Rand/MAN**

Notification of 24th June 1994 pursuant to Article 4 of Council Regulation N° 4064/89.

1. On 24 June 1994 Ingersoll-Rand GmbH (IRG) and Ingersoll Rand Company Ltd. (IRUK), subsidiaries of Ingersoll-Rand Company/USA (IR), and MAN Gutehoffnungshütte AG (MAN GHH) and Ecoair Drucklufttechnik GmbH (Ecoair), subsidiaries of MAN Aktiengesellschaft (MAN), notified the following operation :

Under an umbrella Agreement between the notifying parties it was agreed that IRUK and IRG acquire all intangible and some tangible assets of Ecoair and that IRG acquires a 50 % interest in a limited partnership set up by MAN GHH, GHH-RAND Schraubenkompressoren GmbH & Co KG, (JV), which consequently becomes a joint venture between the parties.

I. The parties

2. IR is an American company which produces non-electrical machinery and equipment for construction, processing and production systems. IRG is a German company which manufactures and distributes compressors, construction equipment, compressed air tools and related products. IRUK is a British company which manufactures compressed air equipment, machine parts and other engineering products.

MAN is a German company which produces industrial plant, machinery and equipment for construction, processing and production systems. MAN GHH is a German company which produces and sells industrial equipment, conveyors, compressors and other machinery. Ecoair is a German company which produces and sells compressors.

## II. The operation

3. The proposed operation consists of two transactions. In one transaction, IRUK and IRG are buying the Ecoair compressor business of MAN GHH which has sales of about [ ]<sup>(1)</sup> Million ECU.

In the other MAN GHH and IRG are establishing a joint venture in the airend business for screw compressors. The joint venture consists of the existing airend business of MAN GHH representing about [ ]<sup>(2)</sup> Million ECU sales to third parties and about [ ]<sup>(3)</sup> Million ECU worth of deliveries to MAN GHH.

4. These two transactions constitute different concentrations because the nature of the control exercised by the undertakings concerned is different for the two transactions.
5. Furthermore, the two products concerned belong to separate markets, although airends are integral components of compressors.

## III. Acquisition of Ecoair assets

6. The acquisition by IRUK and IRG of the Ecoair compressor business of MAN GHH does not have a Community dimension. The turnover of the acquired business in this operation is below the 250 Mio ECU threshold.

## IV. Airend Joint Venture

### Joint control

7. The airend JV will be jointly controlled by the two parent companies MAN GHH and IRG who each hold 50%. Out of three managing directors two are appointed by IRG and one by MAN GHH; appointment and removal of the managing directors will be by unanimous decision of the advisory board.
8. The advisory board has four members, two being appointed by each party, and takes major business decisions of the JV by unanimous agreement. Besides management appointments these decisions include major changes of the business and of long term strategic direction.
9. With respect to other matters, a simple majority of the Board is sufficient, if unanimity is not reached. When nevertheless the vote is tied majority is reached by the casting vote of the chairman. This casting vote does not exist when unanimity is required. Thus significant management decisions, commercial and budget sensitive decisions and decisions concerning competitive strategies of the JV, require the consent of IR and MAN GHH.

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<sup>(1)</sup> Deleted for publication.

<sup>(2)</sup> Deleted for publication.

<sup>(3)</sup> Deleted for publication.

10. The agreement between the parties includes a call option which would allow IR to buy out MAN GHH's share of the JV. This is in effect an instrument to terminate the JV should the parents so decide, and does not affect the day-to-day joint control arrangements as specified above.
11. For the above reasons the airend JV is jointly controlled by IR and MAN GHH.

Concentrative joint venture

12. The airend JV is designed on a lasting basis. It has its own management, financial, production and sales functions. Predominantly it produces and sells airends as standard parts for air compressors on the free market. Until now, the MAN GHH airend business has had a sales breakdown as follows<sup>(4)</sup>:-

	Mio ECU	%
Gas compressor screws		
Standard airends		
Sales to MAN GHH/ Ecoair		
Sales to free market		
<b>Total sales</b>		

13. MAN GHH will not be in the same market as the JV. Moreover, it will continue to absorb only about 10 % of the JV's production, as a pre-product to its tailor-made process gas compressor screws. This market is different from air compressors from the users' point of view as well as from the manufacturing side (see below paragraph 18).

The tailor-made gas compressor screws are not marketable to third parties.

14. IRG will stay in the air compressor market and extend its operations via the JV to the airend business. Neither IRG nor IRUK are in the process gas compressor business. IR does have an interest in the gas compressor market but only in the form of a minority stake in a business which is controlled by another company, (Dresser).
15. For the above reasons the airend JV will be an independent entity, with no coordination between the parent companies, and will constitute a concentration within the meaning of Article 3 of the Merger Regulation.

V. Community dimension

16. The creation of the airend joint venture has a Community dimension.

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<sup>(4)</sup> The figures in the table are deleted for publication. The sales to the free market represent about two-thirds of total sales.

The enterprises concerned have a combined aggregate world-wide turnover calculated in accordance with Article 5(3)(b) of the Merger Regulation in excess of 5,000 million Ecu. Both IR and MAN have a Community-wide turnover in excess of 250 million Ecu but do not achieve more than two-thirds of this turnover in one and the same Member State.

## VI. Relevant markets

### Relevant Product market

17. Air compressors are stationary or mobile machines which compress air, or sometimes nitrogen, creating pressure and energy to drive other machines, tools, automatic equipment and material handling systems.

Process gas compressors are machines used in chemical and physical processes to raise pressure within the process or to transfer gases to downstream processes.

Airends or screws are the central components of compressors which actually compress air or gas. The kind of lubrication used (with or without oil) creates significantly different markets from the production side (different technology, substantially higher production costs and prices) as well as from the demand side (health and environment and security aspects); oil-free and oil lubricated machines are not substitutable.

In general, large stationary compressors cover a pressure range up to 200 bar and an energy range of as much as 20.000 KW (tailor made). Standard air compressors (mobile and stationary) cover 4-14 bar and 4-400 KW and low pressure machines cover a range of less than 3,5 bar.

18. The following product markets may be affected (indirectly as far as compressor markets are concerned) :

- oil-lubricated stationary air compressors.
- oil-lubricated portable air compressors.
- oil-free stationary air compressors.
- oil-free portable air compressors.
- oil-lubricated airends.
- oil-free airends/screws.
- process gas compressors.

Oil-lubricated compressors and airends are the more generally used product. Oil-free compressors and airends are specifically intended for use in environments where hygiene and health considerations are important.

19. The JV involves the airend market only. Oil-lubricated airends are the central unit of most compressors and are produced by a variety of compressor manufacturers for their own purposes, and in part for sale to third-party assemblers. This will be the main business of the JV after MAN GHH has contributed its airend business. MAN GHH has significant shares only in Germany and Italy.

Oil-free airends form a very small market with a significant potential to develop. It is estimated that 80% of this market is served by Atlas Copco; one of the main objectives

of the new JV will be to market more effectively the former MAN oil-free technology in this sector.

Relevant geographic market

20. According to the parties there are just minor imports from the USA, EFTA, and Japan to the EU totalling about 15 Mio ECU of a market of more than 1,000 million ECU.

Although there are nearly no trade barriers between the European countries concerned there seem to be strong national preferences in the market relations between compressor and airend suppliers and users. Markets for the products affected by the concentration may therefore be national. Reliability of products and good after-sales service are vital for industrial customers, given the critical function played by these products in the production processes for which they are used.

For present purposes it can be left open whether there are national or European markets since even on the narrowest market definition, no competition problems arise.

VII. Compatibility with the Common Market

21. In the airend market IR manufactures only for its own internal compressor manufacturing. Therefore no addition of market shares results from the concentration. MAN GHH estimates its market share at about [ ]<sup>(5)</sup> % in the EEA, the total EEA market being worth about 17.4 MECU. Important competitors are Tamrotar (Finland), Rotorcamp (Germany), Aerzener (Germany) and Sullair (USA) having shares between 10% and 20%. Nearly all customers are assemblers in the various compressor markets.
22. Since the compressor business of Ecoair will be transferred to IR, and only a part of the JV production will be used for IR's own airend production, for its own compressors, deliveries to the free market (i.e. third parties) will be increased in comparison with the pre-concentration situation. The following table gives an estimated sales comparison [ ]<sup>(6)</sup> :

	MAN/IR airends business (JV)	
	Mio ECU (approx)	
Customer	before concentration	after concentration
MAN GHH		
ECOAIR		
IR		
Third parties (free market)		
<b>Total sales (approx)</b>		

<sup>(5)</sup> Less than 40%.

<sup>(6)</sup> The figures in the table are deleted for publication.

23. The JV will therefore produce mainly standard airends; the production [ ]<sup>(7)</sup> Mio ECU value) for MAN indicated in the above table involves tailor-made screws for MAN gas compressors. The airend supply to the open market itself will increase. Furthermore the JV's entry into the growing oil-free airend market will not create a dominant position because Atlas Copco is by far the largest player.

For the above reasons no dominant position on the airend market is created or strengthened by the joint venture.

#### VIII. Conclusion

24. As to the first concentration, concerning the creation of the airend JV, the Commission has decided for the above reasons not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA agreement. This decision is adopted in application of Article 6(1)b of Council Regulation No 4064/89 and article 57 of the EEA agreement.
25. As to the second concentration, concerning the acquisition by IR of MAN's Ecoair compressor business, the Commission has decided, because of the absence of a Community dimension of this operation, that it does not fall within the scope of the Merger Regulation. This decision is adopted in application of Article 6(1)(a) of Council Regulation No 4064/89.

For the Commission

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<sup>(7)</sup> Deleted for publication.