Case No COMP/M4840 – Fiat/ Teksid

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 7(3)
Date: 24.7.2007

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 7(3) DECISION

To the notifying party

Dear Sir/Madam,

Subject: Case No COMP/M.4840 – Fiat/ Teksid
Request of derogation pursuant to Article 7 (3) of Council Regulation No. 139/2004

1. We refer to your application for a derogation from the suspension obligation provided for in Article 7(1) of Council Regulation (EC) No 139/2004 ("the Merger Regulation") with regard to the proposed acquisition by Fiat S.p.a. ("Fiat", Italy) of sole control over the Teksid Aluminum s.r.l. ("Teksid Aluminum", Italy) and Teksid Aluminum Getti Speciali s.r.l. ("Getti Speciali", Italy) businesses (together hereinafter referred to as "the Target businesses") submitted pursuant to Article 7(3) of the Merger Regulation on 17 July 2007. The Target businesses are currently owned by Teksid Aluminum Luxemburg S.ar.l. ("TK Lux", Luxemburg)

I. THE PARTIES AND THE OPERATION

2. Fiat is principally engaged in the manufacture and sale of automobiles, commercial vehicles, agricultural machinery, construction equipment, automotive components, and metallurgical products. Fiat's passenger car and light commercial vehicle activities are carried out through its wholly owned subsidiary Fiat Group Automobiles S.p.A., which operates under the Fiat, Lancia and Alfa Romeo brands.

3. The Target Businesses are active in the production of cast aluminium components for the automotive industry and other residual applications, such as, aerospace, rail, biomedical. Regarding the automotive industry, the target businesses manufacture: i) camshaft carriers, ii) cylinder blocks, iii) cylinder heads, iv) intake manifolds and v) rear suspension arms.

4. On 5 July 2007 Fiat and TK Lux have entered into a preliminary agreement in which Fiat expresses its interest to acquire sole control over the Target businesses conditional upon the positive outcome of due diligence. In the agreement the parties mention 25 July 2007 as the date for the finalization of a binding agreement for the sale of the Target Businesses.

II. THE APPLICATION FOR DEROGATION

5. The parties submit that the Target Businesses are in serious financial distress.

6. According to Fiat, derogation from the standstill obligation would enable Fiat to take the measures necessary and inject fresh funds into Teksid Aluminum in order to avoid that the latter will be forced to discontinue its production, thus causing both irreversible deterioration of the Target Business (loss of goodwill) and serious disruption to Fiat vehicles' production, heavily dependent upon Teksid Aluminum supplies.

7. According to Fiat, Teksid Aluminum and Getti Speciali have a debt exposure and liabilities in the range of 162 millions Euro. Some suppliers have threatened to stop supplying Teksid Aluminum on several occasions, as a result of which there would be a serious risk of discontinuation within Teksid Aluminum. Absent a binding offer by Fiat prior to the general shareholders meeting to be held on 25 July 2007, the Boards of both Teksid Aluminum and Getti Speciali are most likely compelled to take the resolution to certify the insolvency status for the purpose of obtaining by the competent judge the admission to the appropriate insolvency procedure.

III. THE CONDITIONS FOR DEROGATION PURSUANT TO ARTICLE 7(3) OF THE EC MERGER REGULATION

8. Pursuant to Article 7(1) of the Merger Regulation, a concentration falling under that Regulation shall not be implemented either before its notification or until it has been declared compatible with the common market. Pursuant to Article 7(3) of the Merger Regulation, the Commission may, on reasoned request, grant derogation from the obligation imposed in Article 7(1). Derogation from the obligation to suspend concentrations is granted only exceptionally, normally in circumstances where suspension provided for in the Merger regulation would cause serious damage to the undertakings concerned by a concentration, or to a third party. In deciding on the request, the Commission must take into account, *inter alia*, the effects of the suspension on one or more undertakings concerned by the concentration or on a third party and the threat to competition posed by the concentration.

A. THE OPERATION FALLS UNDER THE SUSPENSION OBLIGATION PURSUANT TO ARTICLE 7(1) OF THE EC MERGER REGULATION

9. The operation consists in the acquisition of sole control by Fiat of the Target Businesses.

10. The operation has a Community dimension. According to the parties, the worldwide turnover of Fiat is 51,832 million Euro and its community wide turnover is 33,425 million Euro. The worldwide turnover of the Target Businesses is 205 million Euro and its aggregate community wide turnover is 171 million Euro. The combined aggregate turnover is more than 100 million in at least three Member States. The

Parties do not achieve more than one thirds of their Community wide turnover within one and the same Member State.

11. On that basis, the operation falls under the suspension obligation laid down in Art. 7(1) of the Merger Regulation.

B. THE EFFECTS OF THE SUSPENSION ON THE UNDERTAKINGS CONCERNED AND THIRD PARTIES

12. The parties submit that the derogation would not have adverse effects on the undertakings concerned. On the contrary, a refusal of the derogation would have significant negative financial effects on the Target Businesses.

13. The Commission considers that the reasons given for the need for derogation from the suspension obligations can be regarded as exceptional. It can first be noted that the target is in serious financial distress. This financial distress is causing already some production disruption and deterioration of the business. Many suppliers have threatened to stop supplying, some have already stopped supplying, according to Fiat. These problems are causing deterioration of the value of the target business and may cause in turn disruption in the production of Fiat, dependent upon supplies of the Target businesses. The delay in the implementation of the transaction due to the standstill obligation of the EC Merger Regulation may cause this disruption to magnify.

14. Most importantly, in this case the effects of a suspension stem from the fact that on the 25th of July 2007 the board of the Target Businesses is obliged to submit the Financial accounts for approval to the Shareholders' meeting. The Auditors have warned the Board that in the absence of a binding acquisition agreement with Fiat, the Auditors will not sign off the Financial statement of 2006. As a consequence, unless the Board receives a binding offer by Fiat by that date, the Board has the legal obligation to initiate insolvency proceedings. Therefore, a suspension could seriously damage the continuity of the Target Businesses and the possibility for them to be sold as a going concern.

15. According to the application, derogation from the suspension obligation would not have adverse effects on any third party.

C. THE THREAT TO COMPETITION POSED BY THE CONCENTRATION

16. Fiat and the Target Businesses are not active in the same markets. The Target Businesses’ components are employed by Fiat for the manufacture of cars and, to a lesser extent, light commercial vehicles (LCV's). Not resulting in any horizontal overlap between the Parties’ activities, the proposed concentration is therefore purely vertical and involves the sector of aluminium and special castings.

17. As detailed below, the Target Businesses do not hold market shares in excess of 25% in any of the markets where they are operational, according to Fiat. The Commission has held that any component for the automotive industry constitutes a distinct product market and that, due to *inter alia* the low transportation costs and the substantial trade among Member States, the geographic dimension of automotive components is often likely to be defined as EEA wide.

18. A *camshaft carrier* is a component that locates the camshaft and provides upper bearing locations. The camshaft is an apparatus often used in piston engines to operate poppet valves. It consists of a cylindrical rod running the length of the cylinder bank with a number of oblong lobes or cams protruding from it, one for each valve. The cams force the valves open by pressing on the valve, or on some intermediate mechanism, as they rotate. According to Fiat the Target Businesses hold a 6,7% share of this market in the EEA.

19. The *engine block* is the single largest component of the engine system and houses all the operating elements of the engine, including cylinders and push rods. The engine block is a complex casting with adaptations to attach the cylinder head or cylinder heads, crankcase, engine mounts, drive housing and engine ancillaries. According to Fiat the Target Businesses hold a 2,3% share of this market in the EEA. Moreover, Teksid has resolved to exit the market by discontinuing production of cylinder blocks by the end of this year.

20. The *cylinder head* is a key part to the performance of every internal combustion engine. It is a plate of metal, bolted to the top of the cylinder bank. Often the cylinder head is designed to accommodate the camshaft or another mechanism to transfer rotational mechanics from the crankshaft to linear mechanics to operate the valve. Internally, the cylinder head has passages called ports for the fuel/air mixture to travel to the inlet valves from the intake manifold, for exhaust gases to travel from the exhaust valves to the exhaust manifold, and for antifreeze (coolant) to cool the head and engine

21. Although, in principle, cylinder heads are made out of aluminium or grey iron cast, the Commission has recently acknowledged that, within the EEA, aluminium has almost completely substituted iron to the extent that only about 1% of cylinder heads are of grey iron, thereby excluding grey iron cast cylinder heads from the relevant market for aluminum cast cylinder heads. The Target Businesses currently hold a 14,6% share in this market, according to Fiat.

22. In automotive engineering, an *intake manifold* or inlet manifold is a part of an engine that supplies the fuel/air mixture to the cylinders. The intake manifold is usually made of aluminium but there are some cases where it is made of plastic (Most Chrysler 4 cylinders and duratec 2.0 and 2.3 on Ford Focus and Mazda3) and located between the carburettor and the cylinder head. On multi point injected engines, the intake manifold holds the fuel injectors. The Target Businesses enjoy a 3,5% market share, according to Fiat.

23. Suspension is the term given to the system of springs, shock absorbers and linkages that connects a vehicle to its wheels. Suspension systems serve a dual purpose – contributing to the car's handling and braking for good active safety and driving pleasure, and keeping vehicle occupants comfortable and reasonably well isolated from road noise, bumps, and vibrations. These goals are generally at odds, so the tuning of suspensions involves finding the right compromise. The suspension also protects the vehicle itself and any cargo or luggage from damage and wear. The design of front and rear suspension of a car may be different. Suspension arms provide the “links” between the automobile suspension, the axle and the chassis. With respect to rear suspension arms, the Target businesses hold a 0,2% share of such market, according to Fiat.

24. To the extent the downstream markets in which Fiat is active are relevant in order for the Commission to assess the risk of foreclosure, such markets should be considered at the level of production (i.e. the extent to which Fiat procures these components for the purpose of its car production)[1] In the downstream markets in which the above components are used, Fiat's market position EEA-wide is around 7% for cars, and around 24% for light commercial vehicles. Fiat's market shares do not exceed 25% EEA-wide under any possible product market segmentation, according to Fiat.

Potential foreclosure

25. Engine blocks and cylinder heads are often part of an engine program that runs for typically 8 years. Manufacturers of cars could face a supply problem if Fiat would decide to stop supplying its competitors. Taking into account the market shares of the Target Business as described above, Fiat appears prima facie not likely to have the ability to foreclose other car manufacturers. Those competitors might need to resource their supplies but on the long run there appear to be enough alternative sources to supply motor blocks and cylinder heads.

26. Moreover, Fiat appears prima facie not to have the incentive to stop supplying other car manufacturers with the products that the Target Business is currently producing. Fiat has explained that post merger the only rational strategy of the merging entity will be to keep supplying all customers, for there are a number of strong competing suppliers of aluminium components capable of supplying the same products.

27. 50% of the output volume of The Target Businesses is currently sold to Fiat, the remainder of the produced volume is sold to other car manufacturers. Even if Fiat were to stop supplying car manufacturers, this would be unlikely to have a significant effect on the markets that are mentioned above. According to Fiat, the market shares on all markets that the Target Businesses and Fiat are active on are below the 25% threshold.

Conclusion

28. Therefore, on the basis of the information provided by the parties it appears *prima facie* the transaction does not likely pose a threat to competition within the EEA.

D. BALANCE OF INTERESTS

29. Based on the above, it appears that whilst the suspension obligation could seriously affect the financial interests of the parties and could result in discontinuation of supplies, no threat to competition caused by the operation can currently be identified, and derogation does not appear to have adverse effects on one or more of the parties or on any third party. Therefore the Commission finds that derogation can be granted in accordance with the application and to the extent specified below.

[1] See draft Commission notice on the assessment of non horizontal mergers, paragraphs 68 and following.

V. CONCLUSION

30. Based on the above considerations and in accordance with Article 7(3) of the Merger Regulation, Fiat is granted a derogation from the obligations imposed by Article 7(1) of the Merger Regulation in accordance with the foregoing terms and conditions until the acquisition has been declared compatible with the common market by means of a decision pursuant to Article 6(1)b or 8(2) or a presumption pursuant to Article 10(6).

For the Commission
(signed)
Franco FRATTINI
Member of the Commission