

***Case No COMP/M.4902 -  
YAMAHA MOTOR  
EUROPE / YAMAHA  
DISTRIBUTION  
COMPANIES***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 28/11/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28/11/2007

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sir/Madam,

**Subject: Case No COMP/M.4902 - Yamaha Motor Europe / Yamaha Distribution Companies**  
**Notification of 22 October 2007 pursuant to Article 4 of Council Regulation No 139/2004<sup>1</sup>**

1. On 22/10/2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which Yamaha Motor Europe N.V. ("YME", Netherlands), controlled the Yamaha Motor Corporation of Japan ("YMC"), acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of Mitsui Motor Polska SP.Z.O.O. of Poland, Yamaha Motor Deutschland GMBH of Germany and Yamaha Motor UK Ltd. of the United Kingdom ( together "Yamaha Distribution Companies" or "YDC"), by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

**I. THE PARTIES**

3. YMC is activite in the manufacture of motorcycles, scooters, electro-hybrid bicycles, boats, sail boats, water vehicles, pools, utility boats, fishing boats, outboard motors, diesel engines, 4-wheel all terrain vehicles ("ATVs"), side-by-side vehicles, racing karts, golf cars, multi-purpose engines, generators, water pumps, snowmobiles, small-sized

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

snow throwers, automotive engines, intelligent machinery, industrial-use remote control helicopters, electrical power units for wheelchairs, helmets.

4. YME is involved in the marketing and sales of YMC products, principally motorcycles, scooters, marine outboard engines, inflatable boats, waverunners ("jetskis"), all-terrain vehicles, golf carts, generators and snowmobiles. YME is controlled by YMC.
5. YDC are all currently controlled by Mitsui Automotive Europe B.V. ("MAE"), a subsidiary of Mitsui & Co., Ltd. ("Mitsui") of Japan. YDC has exclusive wholesale distribution rights for all Yamaha products in Poland, Germany, and the UK. , and is contractually excluded from distributing the products of other manufacturers. The products involved are motorcycles, scooters, marine outboard engines, inflatable boats, jetskis, all-terrain vehicles, golf carts, generators and snowmobiles

## **II. THE OPERATION**

6. YME intends to acquire within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of YDC. YME and MAE will set up a new company, incorporated in the Netherlands, to which MAE will contribute YDC, while YME will contribute three other companies engaged in distribution of YMC products in the EU. 60% of the shares in NEWCO will be held by YME, while the remaining 40% of the shares will be held by MAE. NEWCO will be solely controlled by YME.
7. The transaction therefore concerns the sale, distribution and/or import of Yamaha motorcycles and motorcycle spare parts, scooters, ATV's, marine outboard engines, inflatable boats, jetskis, ATV's, golf cars, generators and snowmobiles in Austria, Germany and the United Kingdom.

## **III. CONCENTRATION**

8. The acquisition of YDC involves several transactions, in so far as each of the target distribution companies are individually acquired. However, these individual transactions are linked to each other as parts of one overall transaction in economic terms, and as such constitute a single concentration under the terms of the Merger Regulation.

## **IV. COMMUNITY DIMENSION**

9. YMC has a worldwide turnover of EUR 10,834 million, while YDC have a combined turnover of EUR [...] million. The undertakings concerned therefore have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>2</sup>. Moreover, each of them has a Community-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

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<sup>2</sup> 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, p25).

## V. COMPETITIVE ASSESSMENT

### *Relevant markets*

10. The parties take the view that, in terms of wholesale distribution the relevant product markets that should be considered are the markets for the wholesale of two wheelers, ATVs, snow mobiles, marine products, golf carts or generators respectively.
11. The parties also take the view that these product markets are national in scope, as all major manufacturers organise the distribution of these products on a national level. The Commission investigated in more detail the market for motorcycles and scooters in the Piaggio /Aprilla – decision (Case COMP/M.3570, 22 November 2004). In that decision, Commission held that the product markets appear to be national in scope. There are several cases where the European Commission investigated the markets for the distribution of automobiles. In these cases, the Commission worked on the basis of national markets for the wholesaling of passenger cars and light commercial vehicles, which is a further indication that a national market definition is appropriate in the present case.
12. In any event, the precise market definition can be left open in this case, as the transaction does not raise any competitive issues.

### *Assessment*

13. The Commission considers that the following may be considered as vertically affected markets because the merged entity will have a market share of more than 25%:
  - Wholesale of ATVs in Poland
  - Wholesale of snowmobiles in Poland
  - Wholesale of golf carts in the UK
  - Wholesale of jetskis in Germany, Poland, and the UK
14. YDC already have exclusive distribution rights, in that they distribute all and only Yamaha products in the three countries concerned; therefore no foreclosure problems can arise, since Yamaha's competitors, whether on the downstream distribution market or the upstream manufacturing market, have never been supplied by Yamaha, or used Yamaha distribution channels, respectively, and thus the transaction changes nothing with respect to the competitive structure of the relevant markets.

## VI. CONCLUSION

15. 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