

***Case No COMP/M.5244 -
ZF / CHERRY***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 31/10/2008

***In electronic form on the EUR-Lex website under document
number 32008M5244***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 31.10.2008

SG-Greffe(2008) D/206590

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5244 – ZF/ Cherry
Notification of 01.10.2008 pursuant to Article 4 of Council Regulation
No 139/2004¹**

- (1) On 01.10.2008, the Commission received a notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (“ECMR”) by which the undertaking ZF Friedrichshafen AG (“ZF”, Germany) acquires within the meaning of Article 3(1)(b) of the ECMR control of the whole of the undertaking Cherry Corporation (“Cherry”, US) by way of purchase of shares.

I. THE PARTIES AND THE OPERATION

- (2) **ZF** is a worldwide Tier 1 automotive supplier for driveline and chassis technology. The range of ZF products includes transmissions, steering systems, and chassis components as well as complete axle systems and modules. **Cherry** operates on a worldwide basis in three divisions: (i) design, development and manufacture of keyboards (ii) production and distribution of switches and sensors (iii) production and distribution of electronic components, particularly for the automotive industry.
- (3) ZF acquires all the shares in Cherry GmbH, Cherry's German subsidiary, and all the shares in Cherry pursuant to a Share Purchase Agreement signed on 25 July 2008. The

¹ OJ L 24, 29.1.2004 p. 1.

transaction therefore constitutes a concentration pursuant to Article 3(1)(b) of the ECMR.

II. COMMUNITY DIMENSION

- (4) The transaction does not fall within the scope of the turnover thresholds as laid down in Article 1(2) of the ECMR as Cherry's Community-wide turnover is below EUR 250 million. Moreover, the thresholds laid down in Article 1(3) are not met.
- (5) However, on 12.08.2008, the notifying party informed the Commission in a reasoned submission pursuant to Article 4(5) of the ECMR that the concentration was capable of being reviewed under the national competition laws of at least three Member States, namely Austria, Czech Republic, Germany, Greece, and Slovakia, and requested the Commission to examine it. 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 ECMR.
- (6) Therefore the concentration is deemed to have a Community dimension pursuant to Article 4(5) of the ECMR.

III. COMPETITIVE ASSESSMENT

- (7) The transaction is essentially of a vertical nature: ZF mainly sells automotive components and systems to car manufacturers while Cherry focuses on the production and sale of electronic components, some of which can be used by Tier 1 automotive suppliers such as ZF. Indeed, through the acquisition, ZF could integrate the development and production of electronic components in particular in the area of electronic components for the automotive industry. Notwithstanding, ZF has currently only very limited supply relationships with Cherry.

A. PRODUCT MARKET DEFINITIONS

Upstream markets – broader market definition: automotive electronic components

- (8) The notifying party submits that Cherry is active on a market for **automotive electronic components** ("AEC") containing printed circuit boards, sensors, switches etc. for the automotive industry. According to the notifying party, no further sub-segmentation of this market would be necessary, because of supply-side substitutability between individual products: AEC suppliers, who in general do not produce the input parts themselves, essentially design and assemble printed circuit boards answering the customers' needs, and are capable of switching production easily. Besides, AEC could be even part of a wider market including electronic components for other industries - such as telecommunications, electronics – as most AEC manufacturers would be able to supply similar components for these industries.
- (9) This wider market definition, including electronic components regardless of the end-usage, concurs with the market for Electronics Manufacturing Services ("EMS") to Original Equipment Manufacturers that the Commission considered in previous

cases². However, the exact market definition was left open and the Commission also assessed such markets based on narrower product market definitions, subdividing this hypothetical EMS market along specific electronic product segments.

Upstream markets – narrower market definitions: sensors

- (10) In this particular case, automotive electronic components within Cherry's portfolio which are or could be used by ZF are: (i) **position sensors** and (ii) **speed sensors**. Sensors are devices used to provide information in a variety of automotive electronic systems. The Commission encountered the question of market definition for sensors used in the automotive industry in previous cases³ and considered the following sub-segmentation, based on the type of information the sensor can provide: (i) temperature sensors; (ii) pressure sensors; (iii) level sensors; (iv) speed sensors (ABS and powertrain); and (v) accelerometers. The notifying party identified position sensors as a potential additional submarket. A position sensor is any device that enables position measurement (distances or angles). The parties gave two examples where position sensors may be used: (i) in the transmission system the position sensor has mainly the function to detect the position of the gearshift, (ii) in chassis systems the position sensor is used to identify the steering-angle. Regarding speed sensors, Cherry only started in 2008 to sell these products, and only in the US. Therefore, speed sensors are not further discussed in this decision.
- (11) The notifying party submits that no further sub-segmentation of the market for position sensors is necessary as there would be a high degree of supply-side substitutability between the various types of positions sensors. This has been confirmed by the market investigation.

Upstream markets – conclusion

- (12) In the present case, the exact product market definition ((i) market for AEC or (ii) market for position sensors) can be left open, as under any possible market definition, the transaction does not raise competition concerns.

Downstream markets

- (13) ZF uses position sensors for a variety of applications (transmission systems, steering systems, chassis systems, etc.). The notifying party submits that these applications might correspond to distinct product markets (depending e.g. on the transmission system, type of vehicle, etc.).
- (14) However, in this case, the exact product market definitions can be left open. Indeed, as explained in more detail below, risks of input and/or customer foreclosure can be excluded, under any possible market definition for the downstream markets.

² For example: decision of 28.10.2004, Case COMP/M.3583 – Flextronics / Nortel.

³ Decision of 12.02.1998, Case IV/M.1053 – Mannesmann/Philips; decision of 04.08.2000, Case COMP/M.2036 – Valeo/Labinal.

B. GEOGRAPHIC MARKET DEFINITIONS

- (15) In line with past Commission decisions concerning related markets⁴, the notifying party submits that all relevant markets are at least EEA wide.

C. HORIZONTAL OVERLAPS

- (16) ZF is, to a limited extent, active on the AEC markets through a [...]% subsidiary (Lemförder Electronics GmbH), which produces printed circuit boards for captive use only. Even considering that, following the transaction, ZF would sell these products on the merchant market, the combined market share of the parties on a EEA market for the assembly of printed circuit boards would be marginal.
- (17) Therefore, the transaction does not give rise to competitions concerns stemming from horizontal overlaps between the parties' activities.

D. VERTICAL OVERLAPS

- (18) The transaction would bring together Cherry's activities regarding position sensors and ZF's activities on associated downstream markets.

Risks of input foreclosure

- (19) On a EEA market for AEC, Cherry has a market share below [0-5]%, and faces competition from much stronger players: Bosch ([30-40]%), DENSO ([20-30]%), Continental ([10-20]%), Tyco Electronics ([0-10]%), Hella (<5%).
- (20) Similarly, on a EEA market for position sensors, Cherry has a market share below [0-5]% and is thus a minor player compared with Tyco (10-20%), Hella (10-20%), AB Electronics (5-15%), Electricfil (5-10%), Kostal (<5%) and Marquardt (<5%).
- (21) Consequently, in view of the presence of numerous competing alternatives, the merged entity will not have the ability to foreclose access to position sensors, and thus any concern of input foreclosure can be dismissed.

Risks of customer foreclosure

- (22) ZF's purchases of AEC amount to less than [0-5]% of total AEC demand in the EEA, while its purchases of position sensors represent less than [0-5]% of the total position sensor market in the EEA.
- (23) Consequently, it can be concluded that ZF is not an important customer of position sensors. Therefore, even if the merged entity decided following the transaction to source all its position sensors requirements in-house, this would be unlikely to affect competition on the upstream market. Risks of customer foreclosure can be excluded.
- (24) Therefore, the transaction does not raise serious doubts as to its compatibility with the common market.

⁴ AEC: decision of 28.10.2004, Case COMP/M.3583 – Flextronics / Nortel, para 12; sensors: decision of 04.08.2000, Case COMP/M.2036 – Valeo/Labinal, para 20.

IV. CONCLUSION

- (25) 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 the ECMR.

For the Commission
(signed)
Neelie KROES
Member of the Commission