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*Case No IV/M.548 -  
N O K I A  
CORPORATION / SP  
TYRES UK LTD*

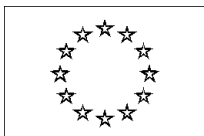
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**REGULATION (EEC) No 4064/89  
MERGER PROCEDURE**

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Article 6(1)(a) INAPPLICABILITY  
Date: 14/03/1995

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.03.1995

MERGER PROCEDURE  
ARTICLE 6(1)a DECISION

PUBLIC VERSION

To the notifying party

Dear Sirs,

Subject: Case No.IV/M.548 - NOKIA CORPORATION/SP TYRES UK LTD  
Notification of 13 February 1995 pursuant to Council Regulation (EC) No. 4064/89

1. On 13 February 1995 the Nokia Corporation (Nokia) and SP Tyres UK Ltd (SP Tyres) notified to the Commission an operation whereby Nokia, which holds 80 per cent of the shares in Nokia Tyres Ltd, reduces its shareholding by means of a public share offering, with the result that the shares in Nokia Tyres are held by Nokia (25 - 40 per cent), SP Tyres UK (20 per cent) and others (40 - 55 per cent). The exact reduction depends upon the success of the offering.
- 2 After examination of the notification, the Commission has concluded that the notified operation does not fall within the scope of application of Council Regulation No 4064/89.

**I. THE PARTIES**

3. Nokia is incorporated in Finland. Its principal activities are in the field of telecommunications, but it also supplies tyres. SP Tyres, incorporated in the United Kingdom, is a member of the Sumitomo Rubber Industries group (Sumitomo), which is incorporated in Japan; it supplies tyres under the Dunlop and other brands. Nokia Tyres (incorporated in Finland) also supplies tyres.

## **II. THE OPERATION**

4. Although at present SP Tyres can nominate two of the six directors of Nokia Tyres, Nokia can unilaterally determine the major strategic decisions made by the company. Nokia Tyres is thus under the sole control of Nokia. The share offering will result in a share structure under which Nokia hold between 25 and 40 per cent of the shares, SP Tyres hold 20 per cent, and the remaining 40 to 55 per cent are distributed among the new investors. According to the parties the new investors are likely to be institutions, employees of Nokia Tyres (total 3 per cent) and the general public; no investor will hold more than 5 per cent and general experience of Finnish company administration suggests that very few will take any other than a financial interest in the company. The board of directors will have no more than seven members; the effect of the shareholders agreement between the parties is that two directors must be nominees of Nokia and two must be nominees of SP Tyres.

## **III. COMMUNITY DIMENSION**

5. The notified operation constitutes a concentration within the meaning of Article 3(1)b of the Regulation.
6. Nokia Corporation and Sumitomo have a combined aggregate worldwide turnover in excess of 5000 million ECU. Each has a Community-wide turnover in excess of 250 million ECU, 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.

## **IV. CONCENTRATIVE JOINT VENTURE**

7. The parties contend that the operation creates a concentrative joint venture within Article 3(1)(b) of the Regulation.
8. As a result of the operation Nokia and SP Tyres will in practice be able to control the company if they so choose. Relations between them are governed by a shareholders agreement, which provides that the Nokia and the SP Tyres nominees on the board of directors will use their best endeavours to achieve a mutual understanding with regard to all strategic policy issues, in particular the business plan, the investment budget and the appointment of the managing director. This obligation - the only express indication of joint control - falls short of the absolute mutual veto over strategic policy issues which the Commission normally considers an essential element of joint control of an undertaking.
9. The parties however contend that (in accordance with the Commission's revised notice on the notion of a concentration paras 30 ff) joint control is implicitly established by the strong common interests which the parties have in not exercising their voting rights adversely to each other, and that if necessary the explicit, even if qualified, joint control conferred by the shareholders agreement should be taken into account in support of that conclusion. These common interests are said to be:

Prior links: The existing arrangement whereby SP Tyres effectively nominate two directors of Nokia Tyres dates from 1987. But the parties have cooperated in the development, production and distribution of tyres for a longer period. By a technical aid agreement (1982) SP Tyres licensed Nokia Tyres to manufacture Dunlop tyres; that agreement contains provisions whereby SP Tyres supply technical assistance and skilled personnel to Nokia Tyres as well as the standard provisions for the exchange of information about developments in technology. By two manufacturing and supply agreements (1987) SP Tyres and Nokia Tyres agreed that each would manufacture certain tyres for the other, thus securing beneficial economies of scale. By an agreement on development cooperation and testing (1987) they made their complementary testing facilities available to each other.

These arrangements continue with some enhancements under the present operation. The parties argue that neither of them would endanger the advantages which they obtain from them by voting against the other's interests.

Common interests: In the opinion of the parties the success of the joint venture depends upon the synergy created by combining the competitive advantages of SP Tyres (expertise in the manufacture of summer tyres) with those of Nokia Tyres (expertise in the manufacture of winter tyres and tyres for forestry machinery, the goodwill of the Nokia name and an established distribution network in Scandinavia). These complementary advantages are reflected in the exclusive distributorship in Finland which by the present operation SP Tyres confers on Nokia Tyres.

The parties contend that the combination of their individual strengths creates a degree of interdependency the effect of which is that each of them must respect the interests of the other. Nokia's interest in the joint venture is primarily financial; it would have no reason to compromise the competitive advantage which it obtains from the operation (especially since SP Tyres can terminate the joint venture) or to risk the reputation of the Nokia name (which it will continue to use for other activities). The parties rely upon the Commission's decisions in Fletcher Challenge/Methanex (IV/M.331) and Philips/Grundig (IV/M.382) in support of their argument.

10. However in the view of the Commission the operation does not result in joint control of Nokia Tyres. The express power of joint control is inadequate to achieve that result. The representation given to SP tyres on the board of directors, although generous for a holder of 20 per cent of the shares, indicates minority protection rather than joint control. The implicit joint control alleged by the parties is predicated upon facts which do not differ materially from those present in many similar operations where the parties have recognised that they must express joint control unambiguously in order to achieve the result which they intend. The addition of the power of joint control conferred by the shareholders agreement is not significant enough to alter this conclusion. The facts in the Fletcher Challenge/Methanex decision (where all the relevant parties had identical interests as bankers) and in the Philips/Grundig decision (where the relevant parties had greater control over the composition of the board of directors and were obliged to exercise their voting rights on important issues jointly), although similar, are in important respects different from those of the present operation. The effect of the operation is that control of Nokia Tyres is retained by the Nokia Corporation or that Nokia Tyres is subject to no overall control.

11. The operation accordingly does not create a concentrative joint venture within Article 3(1)(b) of the Regulation.

## **VII. CONCLUSION**

12. For the foregoing reasons the Commission has concluded that the notified operation does not fall within the scope of application of Council Regulation No 4064/89.

For the Commission,