

***Case No COMP/M.5500 -  
GENERAL MOTORS/  
DELPHI STEERING  
BUSINESS***

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: 30/04/2009

***In electronic form on the EUR-Lex website under document  
number 32009M5500***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30/04/2009  
SG-Greffe(2009) D/2459  
C(2009) 3549

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5500 - General Motors/ Delphi Steering Business  
Notification of 23 March 2009 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 23 March 2009, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 of 20 January on the control of concentrations between undertakings ("ECMR") by which the undertaking General Motors Corporation ("GM", US) acquires within the meaning of Article 3(1)(b) of the ECMR control of the global steering business ("**Delphi Steering Business**") of Delphi Corporation ("**Delphi**", US) by way of purchase of shares and assets.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the EC Merger Regulation but does not raise serious doubts as to its compatibility with the common markets and the functioning of the EEA Agreement.

**I. THE PARTIES**

3. GM is mainly active in the manufacture and sale of automobile vehicles.
4. Delphi Steering Business is active in the manufacture and sale of steering products and half-shaft components for automotive vehicles.

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

## **II. THE TRANSACTION AND THE CONCENTRATION**

5. The proposed transaction involves the acquisition of sole control over Delphi Steering Business within the meaning of Article 3(1)(b) of the ECMR.
6. Delphi Steering Business, as well as other businesses currently operated by Delphi, formed part of GM until 1999. Following the separation, GM and Delphi entered into a settlement agreement, subsequently amended in 2008 (the Master Restructuring Agreement, "MRA"). Pursuant to the MRA, GM agreed to acquire Delphi Steering Business, if it is not sold to a third party by 31 December 2010.
7. Delphi (including Delphi Steering Business) is subject to chapter 11 US bankruptcy proceedings initiated in 2005.
8. At the end of 2007, Delphi entered into an agreement to sell Delphi Steering Business to a financial investor, Platinum Equity. This proposed acquisition was cleared by the Commission<sup>2</sup>. However, in March 2009, Delphi and Platinum Equity abandoned the transaction for commercial reasons.
9. In March 2009, GM and Delphi reached an agreement for GM to purchase Delphi Steering Business, as foreseen in the MRA. According to the terms of the Master Agreement to be signed between GM and Delphi,<sup>3</sup> GM will purchase all of the shares of certain affiliates of Delphi (including Delphi Polska Automotive Systems Sp. z o. o. in the EEA), as well as assets such as contracts, plant machinery and equipment, IP rights, etc. together forming Delphi Steering Business. Through this operation, GM will acquire sole control of Delphi Steering Business.

## **IV. COMMUNITY DIMENSION**

10. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>4</sup> (GM: EUR 101 291 million; Delphi Steering Business: [...] million). Each of them have a Community-wide turnover in excess of EUR 250 million (GM: EUR [...] million; Delphi Steering Business: [...] million), and 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> Case COMP/M.5085 Platinum Equity / Delphi Steering

<sup>3</sup> Annex 3 of the notification

<sup>4</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. RELEVANT MARKETS

11. The parties are not active in the same markets: Delphi Steering Business is a tier 1 supplier for the automotive sector while GM mainly manufactures and sells motor vehicles. Accordingly, the proposed transaction does not give rise to horizontally affected markets. However, GM's vehicle business is downstream of Delphi Steering Business' main markets, i.e. the manufacture and sale of components for steering systems. The parties are therefore active in vertically related markets, some of which being affected by the transaction.

### A. Relevant product markets

#### Upstream markets – Components for steering systems and half-shaft components

12. Delphi Steering Business manufactures and sells various components for steering systems, as well as half-shaft components. More precisely, and according to the notifying party, these activities comprise the following product markets (together, "the upstream products"):
- **Steering columns and intermediate shafts.** Steering columns link the steering wheel and the vehicle's steering mechanism. Intermediate shafts ("I-shafts") further link the steering column and the steering gears (see below). According to the notifying party, all manufacturers of steering columns also produce I-shafts, and these products are usually<sup>5</sup> sold together. Therefore, steering columns and I-shafts would belong to the same product market.
  - **Steering pumps.** Steering pumps are components used in traditional hydraulic power steering systems (as opposed to EPS systems, see below).
  - **Steering hoses.** Steering hoses are also components for hydraulic power steering systems.
  - **Electronic Power Steering ("EPS") systems.** EPS systems use an electronic-motor-power assist mechanism instead of the traditional hydraulic technology.
  - **Half-shaft components.** Half-shafts transmit driveline torque to vehicle wheels and are made of three components: inboard joints, outboard joints and axle shafts.
13. The Commission already encountered the market(s) for steering columns in case IV/M.536 Torrington / NSK.<sup>6</sup> It concluded that steering columns based on different technologies were part of the same product market. In case IV/M.1291 Bosch / ZF Friedrichshafen,<sup>7</sup> the Commission's investigation revealed that components for steering systems were increasingly sold as a package, suggesting that these various components could belong to the same product market. However, the market definition was left open.

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<sup>5</sup> In approximately 80% of the cases.

<sup>6</sup> Case M.536 – Torrington / NSK.

<sup>7</sup> Case M.1291 – Bosch / ZF Friedrichshafen.

14. The results of the market investigation overall supported the definition of the upstream products as suggested by the parties.

*Possible segmentation by type of vehicle*

15. Delphi Steering Business manufactures and sells the upstream products only for passenger cars and Light Commercial Vehicles (up to about 5/6 tons, "LCVs"). The notifying party submit that the upstream products form part of the same market, regardless whether they have been designed for (i) passenger cars/LCVs or (ii) truck/heavy commercial vehicles ("HCVs").
16. The market investigation was not conclusive on whether the upstream products should be segmented between passenger cars/LCVs and HCVs. This question can be left open for the purpose of the assessment of the present case.

*Possible segmentation by sales channel*

17. In Europe, Delphi Steering Business sells all its products to OEMs and does not supply the independent aftermarket. The parties have provided market data on the basis of separate markets for the supply of the upstream products to OEMs. The question whether all sales (independent aftermarket and to OEMs) belong to the same market can thus be left open.

Downstream markets – Manufacture and supply of motor vehicles

18. GM sells passenger cars and LCVs in the EEA.
19. In past decisions concerning these markets,<sup>8</sup> the Commission distinguished a market for the manufacture and supply of motor vehicles and a market for the wholesale and retail distribution of these products.
20. Concerning the market for the manufacture and supply of passenger cars, the Commission envisaged a further sub-segmentation based on the type of car,<sup>9</sup> but left the exact market definition open. The market investigation did not provide elements suggesting a deviation from this segmentation.
21. As regards LCVs, the Commission did not consider any narrower segmentation of the market for the manufacture and supply of these products.<sup>10</sup>
22. Since the concentration does not raise serious doubts under the narrowest product market definition, the precise market definitions can be left open for the purpose of this decision.

**B. Geographic market definition**

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<sup>8</sup> See for example case COMP/M.5250 Porsche / Volkswagen.

<sup>9</sup> Mini cars, small cars, medium cars, large cars, executive cars, luxury cars, sport coupés, multi purpose vehicles and sports utility vehicles.

<sup>10</sup> See for example case COMP/M.2832 General Motors / Daewoo Motors.

*Upstream markets – Components for steering systems and half-shaft components*

23. In line with the Commission's findings in past cases concerning the markets for automotive systems and components, the parties submit that the geographic scope of the upstream products markets is at least EEA-wide. The market investigation has confirmed this view.

*Downstream markets – Manufacture and supply of motor vehicles*

24. In previous decisions concerning the manufacture and supply of passenger cars,<sup>11</sup> the Commission has either considered the relevant geographic market to be national in scope or left open the precise definition.
25. As regards LCVs,<sup>12</sup> the Commission also left open the question whether the market for the manufacture and supply of these products is EEA-wide or national in scope.

**VI. COMPETITIVE ASSESSMENT**

26. Delphi Steering Business' market shares are below 25% on any of the upstream markets in the EEA. However, under the narrowest downstream market segmentation (national markets for each vehicle type), GM's market share exceed - or are close to - 25% in 3 markets.<sup>13</sup> Therefore, the vertical relationships identified above are affected by the transaction.
27. However, according to the notifying party, and as confirmed by the market investigation, the upstream products are sourced at least at the EEA level and thus market shares at national level downstream are not representative of GM's market power in this context.

*Risks of input foreclosure*

28. Delphi Steering Business holds relatively low market shares on all the product markets upstream: steering columns and I-shafts [10-20]%,<sup>14</sup> R&P gears <[5-10]%, steering pumps [20-30]%, steering hoses <[0-5]%, EPS systems [10-20]%, half-shaft components <[0-5]%. Besides, several major automotive components suppliers are active on the steering systems markets and hold significant market shares: JTEKT Corporation, ZF Lenksysteme GmbH, TRW Automotive Holding Corp, NSK group, ThyssenKrupp Presta, Mando.
29. However, some customers of Delphi Steering Business expressed some concerns as regards their future supplies of upstream products. Indeed, as confirmed by the market investigation, a large share of the upstream products are tailor made and consequently

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<sup>11</sup> See for example case COMP/M.5250 Porsche / Volkswagen.

<sup>12</sup> See for example case COMP/M.2832 General Motors / Daewoo Motors.

<sup>13</sup> Mini cars in the Czech Republic (market share: [20-30]%), medium cars in Hungary ([20-30]%), multi-purpose vehicles in the UK ([20-30]%).

<sup>14</sup> Market share in value for the EEA, 2008

switching supplier entails significant development and switching costs. On the other hand, car manufacturers enter contracts with upstream suppliers for the whole car production lifetime and therefore can secure their supplies. Besides, the market investigation suggested that car manufacturers can exercise significant bargaining power since (i) they can unilaterally exit such contracts (with prior notice) and (ii) new suppliers of upstream products sometimes offer to pay full or part of these costs in order to compete with current suppliers of carmakers. Therefore, on balance, it appears unlikely that the merged entity could have the ability to foreclose its downstream competitors. In any event, the merged entity would not have the incentive to pursue a foreclosure strategy as explained below.

30. The market investigation indicated that the cost of steering and half-shaft components together as a percentage of the cost of a car is very small (less than [0-5]%). Therefore, it appears very unlikely that the merged entity could have the incentive to increase its prices or disrupt supplies towards competing car manufacturers, as engaging in this strategy would not substantially affect its downstream competitors' prices for inputs. Last, GM's market share on the downstream markets ([5-10]% of passenger cars in the EEA, [5-10]% for LCVs, below [10-20]% for any vehicle type in the EEA) seems too low to capture enough additional profits to make an input foreclosure strategy profitable.

*Risks of customer foreclosure*

31. GM's demand for the upstream products in the EEA only represent a limited fraction of total industry demand: steering columns and I-shafts [5-10]%, R&P gears <[10-20]%, steering pumps [0-5]%, steering hoses [0-5]%, EPS systems [5-10]%, half-shaft components [5-10]%. Also, currently GM sources the great majority of its input requirements from Delphi. Consequently, any concern of customer foreclosure can be dismissed.

## **VII. CONCLUSION**

32. 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)  
Siim KALLAS  
Vice-President of the Commission