

***Case No COMP/M.5588 -
GENERAL MOTORS /
DELPHI STEERING II***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 13/08/2009

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.8.2009

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5588 - General Motors / Delphi Steering II
Notification of 10 July 2009 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 10 July 2009, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the Merger Regulation) by which the undertaking General Motors Corporation, now General Motors Company² ("GM", US) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of part of the undertaking Delphi Corporation (US) consisting of its global steering business and of certain other assets (together "**Delphi Targets**") 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.

¹ OJ L 24, 29.1.2004 p. 1.

² On 10 July 2009, General Motors Corporation (the "old GM") used the U.S. bankruptcy code to transfer most of its assets to a new company, named General Motors Company (the "new GM"). The parties confirmed that this event does not affect the Master Disposition Agreement, which is the basis for the notified transaction. In addition, under the applicable provisions of US insolvency and corporate law, the EC filing continues to be a valid and binding legal act for the new corporation.

I. THE PARTIES

3. GM is mainly active in the manufacture and sale of automotive vehicles.
4. Delphi Targets consist of (i) the **Delphi Steering Business**, active in the manufacture and sale of steering products and half-shaft components for automotive vehicles and (ii) of additional assets ("**the Assets**") which are made up by four U.S. sites of Delphi Corporation active in design and manufacture of different automotive component types for various fields of use. The Assets are located in Grand Rapids, Michigan; Rochester, New York; Kokomo, Indiana and Lockport, New York.

II. THE TRANSACTION AND THE CONCENTRATION

5. The proposed transaction involves the acquisition of sole control over the Delphi Targets and therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.
6. Delphi Corporation (including Delphi Steering Business and the Assets) is subject to chapter 11 US bankruptcy proceedings. In March 2009, GM and Delphi Corporation reached an agreement for GM to purchase Delphi Steering Business. That concentration of GM and Delphi Steering Business (but not including the Assets) was notified and unconditionally cleared by the Commission on 30 April 2009.³
7. The planned acquisition of Delphi Steering Business required *inter alia* approval of U.S. Department of Treasury and U.S. Bankruptcy Court for the Southern District of New York. The parties did not receive these approvals and subsequently re-negotiated the acquisition. In course of the bankruptcy proceedings, the parties agreed to modify the scope of the concentration by including the Assets, on top of the Delphi Steering Business. Accordingly, pursuant to the Master Disposition Agreement signed on 1 June 2009,⁴ GM intends to acquire sole control over the Delphi Targets, including both Delphi Steering Business and the Assets.
8. As the inclusion of the Assets modifies the scope of the original concentration, GM therefore notified the new modified concentration to the European Commission.

III. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion⁵ (GM: EUR 101 291 million; Delphi Targets: EUR [...] million). Each of them have a Community-wide turnover in excess of EUR 250 million (GM: EUR [...] million; Delphi Targets: EUR [...] 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.

IV. RELEVANT MARKETS

³ Case M.5500 GM / Delphi Steering Business

⁴ Annex 3 of the notification

⁵ 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).

10. The proposed transaction does not give rise to horizontally affected markets as the parties are not active in the same markets.
11. The parties are active in vertically related markets. GM's vehicle business is downstream of Delphi Targets' markets, i.e. the manufacture and sale of a number of automotive components including components for steering systems.
12. The vertical relationships stemming from Delphi Steering Business (including the description of the relevant markets) were assessed by the Commission in Case COMP/M.5500 GM / Delphi Steering Business and the market conditions relevant for the Commission's assessment have not substantially changed since then. In that decision, the Commission noted that the significance of these vertical relationships is limited, and concluded that there is no risk of input and/or customer foreclosure. Therefore, in this decision, the Commission will analyse the relevant markets where the Assets are active in and will no further discuss the Steering Business part analysed in Case COMP/M.5500 GM / Delphi Steering Business.⁶
13. The Assets consist of four manufacturing sites in the US which are active in the design, manufacture and sale of a great number of automotive component types.

A. Relevant product markets

Upstream markets - the Assets

14. The Assets manufacture a great number of various automotive components (none of which forms part of Delphi Steering's product lines): Airmeter electronics, crash sensors, canisters, EGR valves, gas control modules, gas fuel systems, HVAC, ignition electronics, occupant sensing, powertrain cooling, pressure sensors, radios (including reception systems/antennas and satellite radios), semiconductors, electronic devices for various automotive components (such as for engine management, airbag systems and chassis control), transmission modules, valvetrain and warning systems.
15. For the purposes of this decision the exact market definitions can be left open, as no competition concerns arise for any possible product market definitions considered by the Commission in previous cases concerning the automotive sector, or if not previously considered, even for the narrowest potential product market.

Downstream markets – Manufacture and supply of motor vehicles

16. GM sells passenger cars and Light Commercial Vehicles (LCVs) in the EEA. In past decisions concerning these markets,⁷ 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. Concerning the market for the manufacture and supply of passenger cars, the Commission envisaged a further sub-segmentation based on the type

⁶ The Assets are not active in any of the markets assessed in the case M.5500 GM / Delphi Steering Business, and hence the analysis and conclusions relating to the Delphi Steering Business remain unaffected by the inclusion of the Assets into the concentration.

⁷ See for example case COMP/M.5250 Porsche / Volkswagen.

of car,⁸ but left the exact market definition open. As regards LCVs, the Commission did not consider any narrower segmentation of the market for the manufacture and supply of these products.⁹

17. Since the concentration does not raise serious doubts even under the narrowest product market definition, the precise market definitions can be left open for the purpose of this decision.

B. Relevant geographic markets

Upstream markets

18. 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 all upstream products markets is at least EEA-wide.

Downstream markets – Manufacture and supply of motor vehicles

19. In previous decisions concerning the manufacture and supply of passenger cars,¹⁰ the Commission has either considered the relevant geographic market to be national in scope or left open the precise definition. As regards LCVs,¹¹ 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.

V. COMPETITIVE ASSESSMENT

20. The total revenues generated by the Assets in the EEA are negligible and amount to EUR [...] million. Out of that, EUR [...] million were generated with sales to Delphi Corporation (currently intra-group), EUR [...] million with sales to GM and only less than EUR [...] million with sales to third parties.
21. The parties estimate that the Assets' market shares are below [0-5]% on any of the upstream markets in the EEA, irrespective of the market definition. The parties also confirm that on hypothetical worldwide markets, the Assets' market shares would be clearly below [5-10]% under all possible alternative product market definitions.
22. However, under the narrowest downstream market segmentation considered previously by the Commission (national markets for passenger car markets differentiated by size), GM's market share exceed - or are close to - 25% in 3 markets.¹² Therefore, certain vertical relationships arise that lead to markets affected by the transaction.

⁸ Mini cars, small cars, medium cars, large cars, executive cars, luxury cars, sport coupés, multi purpose vehicles and sports utility vehicles.

⁹ See for example case COMP/M.2832 GM / Daewoo Motors.

¹⁰ See for example case COMP/M.5250 Porsche / Volkswagen.

¹¹ See for example case COMP/M.2832 General Motors / Daewoo Motors.

¹² Mini cars in the Czech Republic (market share: [20-30]%), medium cars in Hungary ([20-30]%), multi-purpose vehicles in the UK ([20-30]%).

23. As explained above, the upstream market shares of the Assets in the EEA are negligible (and very limited also on a worldwide level) in any of the potential product markets. Therefore, it is extremely unlikely that the merged entity could have the ability to foreclose its downstream competitors from necessary inputs.
24. In addition, GM's demand for the upstream products in the EEA only represent a limited fraction of total industry demand, since it does not represent more than [5-10]% of the total demand in the EEA. Consequently, concerns of customer foreclosure can be dismissed.

VI. 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 Council Regulation (EC) No 139/2004.

For the Commission

(signed)

Janez POTOČNIK
Member of the Commission