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***Case No COMP/M.5680 -  
FAURECIA/EMCON  
TECHNOLOGIES***

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: 06/01/2010

***In electronic form on the EUR-Lex website under  
document number 32010M5680***



## EUROPEAN COMMISSION

Brussels, 06.01.2010

SG-Greffé(2010) D/48  
C(2010)28

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5680 – Faurecia/ Emcon  
**Notification of 24.11.2009 pursuant to Article 4 of Council Regulation No 139/2004<sup>1</sup>**

### **I. INTRODUCTION**

1. On 24 November 2009, the Commission received a notification of a proposed concentration by which the undertaking Faurecia S.A. ("Faurecia") acquires within the meaning of Article 3(1)(b) of the EC Merger Regulation sole control of the undertakings Emcon Technologies US LLC and ET Dutch Holdings Cooperatie U.A. (together "Emcon").

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

## **II. THE PARTIES**

2. **Faurecia**, a French company, is a global supplier of automotive equipment, in particular vehicle seating, interiors, front ends and exhaust systems. It is controlled by the car manufacturer PSA Peugeot-Citroën SA ("PSA").
3. **Emcon**, a U.S.-based company, is active in the area of exhaust emissions control, serving passenger car, commercial vehicle and engine manufacturers on a global basis. It is currently controlled by One Equity Partners II, L.P. ("OEP") and certain affiliated funds, ultimately controlled by JPMorgan Chase & Co.

## **III. CONCENTRATION**

4. On 30 October 2009, Faurecia entered into an agreement with a subsidiary of OEP to acquire sole control over Emcon. Hence, the proposed transaction constitutes a concentration within the meaning of Art. 3(1)(b) EC Merger Regulation.

## **IV. COMMUNITY DIMENSION**

5. The undertakings concerned have a combined aggregate world-wide turnover of more than € 5 billion (Faurecia: € 12.0 billion, Emcon: € 2.5 billion), the Community-wide turnover of each undertaking concerned is more than € 250 million (Faurecia: [...], Emcon: [...]]), and they each do not achieve more than two-thirds of their Community-wide turnover within one and the same Member State. The concentration therefore has a Community dimension (Art. 1 (2) EC Merger Regulation).

## **V. COMPETITIVE ASSESSMENT**

### **1. Relevant product markets**

6. Faurecia and Emcon are both suppliers of automobile exhaust systems. Faurecia is only active in the systems and components markets for light vehicles, including passenger cars and light utility vehicles (as opposed to the markets for heavy vehicle equipment). Furthermore, both Faurecia and Emcon are only supplying original equipment manufacturer (OEMs). They are not active in the markets for replacement parts sold to the independent aftermarkets. The horizontal overlap thus relates to the market(s) for exhaust systems for light vehicles sold to OEMs.
7. Exhaust systems comprise three main elements: (i) the manifold, (ii) the hot end, and (iii) the cold end. The manifold, which collects the exhaust gases produced by the engine, routes the gases to the hot end, which reduces their toxicity. The gases then go to the cold end, which reduces noises and vibrations.

8. The Commission has analysed exhaust systems in one previous decision which focused on the independent aftermarket. In this decision a market for *exhaust systems as a whole* was identified mainly on supply-side substitutability grounds.<sup>2</sup> The parties emphasise that the manufacturing processes for all exhaust systems components require similar equipment, have the same cost structure and are typically carried out in the same facilities. The parties therefore submit that there is no need for further segmentation of the exhaust system market.
9. Alternatively, the parties consider that the market for exhaust systems may be sub-divided into (i) a market for *manifolds*, (ii) a market for *hot ends*, and (iii) a market for *cold ends*. The data from tenders in which the parties participated indeed show that the three main elements of exhaust systems are tendered separately in the majority of cases.
10. In addition, a further delineation may be appropriate within the markets for manifolds and hot ends. The market for manifolds may potentially be sub-divided in two markets: (i) *cast* manifolds and (ii) *fabricated* manifolds. Suppliers usually produce either one of the two. The parties only produce fabricated manifolds. Cast manifolds only cost about half the price of fabricated manifolds, whereas fabricated manifolds are lighter and conform to higher anti-pollution standards.
11. Similarly, the market for hot ends may potentially be sub-divided in two markets: (i) hot ends for *gasoline* engines and (ii) hot ends for *diesel* engines. The two types of hot ends differ technically in that catalytic converters for the two types of engines have to treat different pollutants and have to meet different emission limits. However, all suppliers of hot ends produce systems for both diesel and gasoline light vehicles.
12. While cold ends consist of different parts (the pipes, a muffler and a tip), there appears to be no potential further sub-segmentation of this market.
13. The market investigation conducted in this case is not conclusive on whether the market for exhaust system must be subdivided or not. Several car manufacturers as the customers of the parties consider the different elements to belong to an exhaust system market as a whole, but at the same time in particular deny supply-side substitutability with regard to cast and fabricated manifolds. Most competitors of the parties would further subdivide exhaust systems (at least) into product markets for manifolds, hot ends and cold ends.
14. However, for the assessment of this case, it is not necessary to conclude on the exact product market definition, since even under the narrowest definition of the product markets discussed above, the concentration does not raise serious doubts as to its compatibility with the common market.

## **2. Geographical market**

15. In line with the Commission's previous decisions in previous cases concerning the markets for automotive systems and components, the parties submit that the geographic scope of all possible products markets is at least EEA-wide. As a result of the Commission's investigation, market players tend to consider that all potential markets

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<sup>2</sup> See Case IV/M.360 – *Arvin/Sogefi*.

concerned are world-wide. However, for the assessment of this case, it is not necessary to conclude on the exact geographic market definition, since even under the assumption of EEA-wide markets, the concentration does not raise serious doubts as to its compatibility with the common market.

### 3. Competitive assessment

- 16. The results of the market investigation show that the concentration will not lead to relevant non-coordinated effects as explained below.**

#### *3.1 Horizontal effects*

17. The following table shows the parties' shares in volumes in the affected markets. The market shares in terms of value are similar.

**Table: EEA-wide market shares in affected exhaust system markets for light vehicles, 2007-2009**

Products	Company	Market shares (by volume)		
		2007	2008	2009 <sup>3</sup>
<b>Overall exhaust systems</b>	Faurecia	[10-20]%	[10-20]%	[10-20]%
	Emcon	[10-20]%	[10-20]%	[10-20] %
	<i>Combined</i>	[20-30] %	[20-30]%	[20-30] %
<b>Manifolds</b>	Faurecia	[10-20]%	[10-20]%	[10-20]%
	Emcon	[5-10]%	[5-10]%	[5-10]%
	<i>Combined</i>	[10-20]%	[10-20]%	[20-30]%
<b>Fabricated manifolds</b>	Faurecia	[20-30]%	[20-30]%	[20-30]%
	Emcon	[10-20]%	[10-20]%	[20-30]%
	<i>Combined</i>	[30-40]%	[30-40]%	[40-50]%
<b>Hot ends</b>	Faurecia	[20-30]%	[20-30]%	[20-30]%
	Emcon	[10-20]%	[10-20]%	[10-20]%
	<i>Combined</i>	[40-50]%	[40-50]%	[40-50]%
<b>Diesel hot ends</b>	Faurecia	[20-30]%	[20-30]%	[20-30]%
	Emcon	[10-20]%	[10-20]%	[10-20]%
	<i>Combined</i>	[40-50]%	[40-50]%	[40-50]%
<b>Gasoline hot ends</b>	Faurecia	[20-30]%	[20-30]%	[20-30]%
	Emcon	[10-20]%	[10-20]%	[10-20]%
	<i>Combined</i>	[30-40]%	[30-40]%	[40-50]%
<b>Cold ends</b>	Faurecia	[20-30]%	[20-30]%	[10-20]%
	Emcon	[10-20]%	[10-20]%	[10-20]%
	<i>Combined</i>	[30-40]%	[30-40]%	[20-30]%

<sup>3</sup> The market shares for 2009 are calculated on an annualised basis, i.e. taking together a calculation for the first 9 months plus a projection for the last three months.

18. On a market for *fabricated manifolds*, the parties' would have a relatively strong position ([30-40] % market share by volume in 2008). A merged entity would face competition in particular by Boysen ([20-30] %), Benteler ([10-20] %) and Tenneco ([5-10] %).
19. On a market for *hot ends*, the parties' position is even slightly stronger. Their combined market share is essentially similar for all the alternative market definitions (combined market share of [40-50] % by volume in 2008 or – on the basis of a further sub-segmentation – of [40-50] % for diesel hot ends and [30-40] % for gasoline hot ends). A merged entity would face competition in particular by Eberspaecher (overall hot end market: [20-30] %; diesel hot ends: [20-30] %; gasoline hot ends: [20-30] %), Tenneco (overall hot end market: [10-20] %; diesel hot ends: [10-20] %; gasoline hot ends: [20-30] %) and Magneti Marelli (overall hot end market: [5-10] %; diesel hot ends: [5-10] %; gasoline hot ends: [5-10] %). In a market for diesel hot ends, it would additionally face competition by Boysen ([5-10] %), in a market for gasoline hot ends by Calsonic ([5-10] %).
20. On a market for *cold ends*, the parties' would have a combined market share of [30-40] % by volume in 2008. A merged entity would face competition in particular by Tenneco ([20-30] %), Eberspaecher ([10-20] %) and Magneti Marelli ([5-10] %).
21. The parties explain that they face strong actual competition from the other established players as well as potential competition by new entrants in particular from Asia. Moreover, they claim that the car manufacturers would have countervailing buyer power.
22. Despite the significant market share of the merged entity in particular on a market for (diesel) hot ends, the investigation conducted by the Commission show that the parties face strong actual competition on all above-mentioned product markets. According to bidding data submitted by the parties, the main competitors, in particular Tenneco and Eberspaecher, indeed have won a significant number of tenders in which the parties participated. Additionally, the bidding data show that car manufacturers – except from [...] which sources to a large extent from Faurecia – source from different suppliers for different platforms and engines.
23. The market investigation carried out by the Commission has confirmed that car manufacturers tend to multi-source and have switched suppliers in the past. They award contracts in tenders for specific models and platforms for an average duration of five years. According to the market investigation, there are no significant switching costs and car manufacturers would indeed switch supplier if a supplier tried to increase prices. According to the results of the market investigation, car manufacturers also attempt to ensure that they have several alternative sources of supply and that they are not dependent upon any single equipment supplier.
24. Within the market investigation, the vast majority of customers and competitors did not raise any concerns. However, one competitor was critical of the merger, alleging that the merged entity would have a competitive advantage over its competitors due to its combined "just in time" facilities. According to the results of the market investigation, it is indeed a current practice for car manufacturers to request their suppliers to build such production capacities next to car factories. However, most of the participants in the market investigation – both customers and competitors of the parties – consider that

all major exhaust systems manufacturers are able to build such just in time facilities. In addition, the cost of such installations does not appear to be significant.

25. The same competitor argued that Faurecia would aggressively enforce its IP rights and might do so even more after the merger. However, this competitor's allegation, if merger-specific at all, relates to a very specific patent dispute. None of the other respondents raised issues arising from IP rights in this sector. To the contrary, according to another competitor and based on the information provided by the parties, none of the exhaust system suppliers – including the merged entity – would be able to use their IP rights to impede effective competition.

### *3.2 Vertical effects*

26. On the basis of a national segmentation of the markets for the manufacture and supply of passenger cars, PSA – Faurecia's parent company – has a share of [30-40] % on the French market. However, even assuming that PSA would decide only to source from the merged entity, rival upstream exhaust system suppliers would have a sufficiently large customer base on the (at least) EEA-wide exhaust system market(s). Therefore, customer foreclosure due to the concentration is unlikely. Hence, there is no risk of anti-competitive vertical effects.
27. In light of the above elements, it is concluded that the transaction does not raise concerns in any market for the manufacture and supply of exhaust systems components.

## **VI. CONCLUSION**

28. 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