

*Case No IV/M.588 -
INGERSOLL-RAND /
CLARK EQUIPMENT*

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

Article 6(1)(a) INAPPLICABILITY
Date: 15/05/1995

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.05.1995

MERGER PROCEDURE
ARTICLE 6(1)a DECISION

PUBLIC VERSION

To the notifying party

Dear Sirs,

Subject : Case No IV/M.588 - INGERSOLL-RAND/CLARK EQUIPMENT
Notification of 5.4.1995 pursuant to Article 4 of Council Regulation N°
4064/89

1. The above-mentioned operation concerns the acquisition by Ingersoll-Rand Company (I-R) of Clark Equipment Company (CE).
2. After examination of the notification, the Commission has concluded that the notified operation does not have a Community dimension, and therefore does not fall within the scope of the Merger Regulation.

I. THE PARTIES

3. I-R is a U.S. corporation which together with its subsidiaries is active in the manufacture and sale of non-electrical machinery and equipment, including construction and mining machinery, compressors, turbomachinery, industrial pumps, bearings and other items.
4. CE is a U.S. company active in the design, manufacture and sale of loaders and related construction equipment, asphalt paving machines, axles and transmissions.

II. THE OPERATION

5. The case was notified on 5th April 1995. The proposed operation consists in the acquisition by I-R of CE by way of purchase of shares.
6. Initially, CE's board of directors advised shareholders to reject I-R's offer but later an agreement was reached. The acquisition will still proceed by way of the public offer announced.

III. CONCENTRATION

7. The acquisition of CE by I-R constitutes a concentration within the meaning of article 3(1) (b) of the merger regulation.

IV. COMMUNITY DIMENSION

8. The combined worldwide turnover of the parties exceeds 5,000 million ECU.

The aggregate EU turnover of I-R exceeds 250 million ECU.

CE's 1994 EU turnover amounted to [...] ¹ million ECU. On 5th March 1995 CE sold its 50% share in the Dutch earth-moving equipment company VME to Volvo. Following clearance by the Commission ², this sale was closed on 13th April 1995. CE's 1994 EU turnover without VME would have amounted to [...] ³ million ECU.

9. On March 28th 1995 I-R launched an offer for CE containing the following condition:-

I-R "may terminate or amend the offer if (CE) shall not have consummated the sale of its 50% interest in VME ... and ... the definitive agreement to sell such interest ... shall have been cancelled or terminated, or shall have been amended in a manner that is materially adverse to (CE), or shall otherwise no longer remain in full force and effect ...".

10. This condition contained in the offer for CE as notified by I-R under the Merger Regulation shows that I-R's offer was for the purchase of CE without CE' 50% share in VME ⁴. Since, as stated above, CE's 1994 turnover without VME would have been less than 250 MECU, the conditions of Article 1.2(b) of the Merger Regulation are not satisfied, and the notified transaction does not have a Community dimension.

¹ Deleted business secret.

² See Commission Merger Regulation 6(1)(b) decision no M.575 Volvo/VME of 11th April 1995.

³ Less than 250.

⁴ See paragraph 27 of Commission Notice on calculation of turnover, OJ No. C 385/21 of 21.12.94: "Thus (...) or where such a divestment (...) is a pre-condition for the operation, the turnover generated (...) must be subtracted (...)."

V. CONCLUSION

11. Based on the above, the Commission has concluded that the notified operation does not have a Community dimension within the meaning of Article 1 of the Merger Regulation and therefore does not fall within the scope of the Merger Regulation. This decision is adopted in application of Article 6(1)(a) of Council Regulation No 4064/89.

For the Commission,