

*Case No IV/M.700 -
Emerson / Caterpillar*

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

Article 6(1)(b) NON-OPPOSITION
Date: 31/05/1996

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 31.05.1996

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject : Case No IV/M.700 - EMERSON/CATERPILLAR

Notification of **24.04.96** pursuant to Article 4 of Council Regulation No 4064/89

1. The above mentioned notification concerns the creation of a joint venture between Emerson Electric Co. (Emerson) and Caterpillar Inc. (Caterpillar) which will control and run F.G. Wilson (Engineering) Limited (FGW), a wholly owned subsidiary of Emerson.

I THE PARTIES

2. Emerson is an American company manufacturing a range of products which can be classified into two main segments: commercial and industrial components and systems such as industrial motors and machinery sold for manufacturing and heavy commercial applications, and appliance and construction-related components such as fractional horse power motors, heating, ventilating, air conditioning components and tools.
3. Caterpillar is a US-based company mainly active in the design, manufacture and marketing of construction, mining and agricultural machinery, engines and the provision of financial products.
4. FGW, a wholly-owned subsidiary of Emerson, is a British company manufacturing diesel generator sets

II THE OPERATION

5. Emerson will form a Limited Liability Company (LLC) incorporated in Delaware (USA) to which it will transfer its subsidiary FGW. Caterpillar will then purchase a 30% ownership interest in the LLC.
6. The LLC's only initial activity will be to own the entire issued share capital of FGW. Also, the LLC will be granted a perpetual royalty free licence to use the trademark for Caterpillar's Olympian brand diesel generator set business.

III. THE CONCENTRATION

JOINT CONTROL

7. At the meeting of members, which is the LLC's equivalent to a shareholders' meeting, each of Emerson and Caterpillar will hold a number of votes corresponding to their percentage owner interest. Consequently, Emerson will hold the majority of the votes at the decision making body of the joint venture.
8. As regards decisions by the "meeting of members", unanimity is required in decisions regarding the approval of the initial business plan, the appointment and removal of the Chief Executive Officer (which has the power to make all decisions related to the day-to-day operations of the company) and the amount of Additional Capital Contributions to be required in any fiscal year as set out in any Annual Operation Plan.
9. Furthermore, for all other decisions which require a majority vote, including those related to business plans and budgets for subsequent years, Caterpillar has the right to be consulted. If Caterpillar objects to a proposal by Emerson a moratorium of 60 business days must be observed to allow the parties to reach an agreement. In the event that an agreement cannot be found Caterpillar has the option, by means of a "dispute call" mechanism established in the LLC Agreement to acquire the entire Emerson's shareholding in the LLC at a price which will be established by independent auditors taking into account the market value of the joint venture at the moment of the dispute.
10. The "dispute call" option together with the other rights mentioned in paragraph 8 will in practice allow Caterpillar to have veto rights concerning major business decisions of the JV and consequently the possibility to exercise a decisive influence. Therefore, the joint venture will be jointly controlled by Emerson and Caterpillar.

AUTONOMOUS FULL FUNCTION UNDERTAKING

11. The joint venture will have its own resources and personnel and will sell its own branded products on the market. Although both parents are present in upstream markets their sales to the JV account for only a small percentage of its purchases. The JV will therefore perform on a lasting basis all the functions of an autonomous economic unit.

COORDINATION

12. Emerson has no generator set business outside FGW and will not retain any generator set business following the transaction. Caterpillar has an independent generator set business which it will retain. Given the Emerson's lack of its generator set business, there is no scope for co-ordination of the competitive behaviour of Emerson and Caterpillar

in the joint venture's product markets. As stated above (see paragraph 11) both parents are also present in upstream markets of the JV. However, Emerson and Caterpillar manufacture different type of components. Emerson carries activities in upstream markets related to the manufacture of alternators and switching gears through its subsidiaries Leroy-Somer and Asco, while Caterpillar manufactures engines. Therefore there is not an overlap of the JV's parents activities in upstream markets.

13. The creation of the JV will therefore be a concentration since FGW is an autonomous full function undertaking which will be jointly controlled by its parents, Emerson and Caterpillar, and the creation of the JV will not give rise to the coordination of the activities of the parent companies neither in the relevant markets of the JV nor in any upstream, downstream or neighbouring markets.

IV. COMMUNITY DIMENSION

14. Both Caterpillar and Emerson have an aggregate worldwide turnover of more than ECU 5 billion each (Caterpillar : 12,287 million Ecu; Emerson : 7,767 million Ecu). Moreover, they have each Community-wide turnovers exceeding ECU 250 billion. Neither Emerson nor Caterpillar have more than two-thirds of their respective EU turnovers in one and the same Member State. The notified operation therefore has a Community dimension.

V. COMPATIBILITY WITH THE COMMON MARKET

PRODUCT MARKETS

15. FGW manufactures and supplies only one product, namely diesel generator sets ("diesel gensets"). A diesel genset is in essence a standalone electricity generator powered by a diesel engine.
Diesel gensets range in size and power output from 1 kVA to over 7500 kVA and are manufactured by assembling the components (of which the most important are a diesel engine, alternator, switching gear and assorted control systems) on a platform. The assembled unit is often enclosed in a casing which can be sound-proofed (by the manufacturer adding sound attenuation materials to the casing). Where no bulk fuel supply is available, diesel oil tanks will also be added allowing the diesel genset to be operated in locations where there is no regular supply of diesel oil.
16. Diesel gensets may be used to generate electricity either on a continuous mode or intermittently. The different modes in which they may be operated, which are effectively related to the frequency and intensity with which they are used are the following :
 - i) standby : intermittent use for example as an emergency source of electricity
 - ii) peak shaving : intermittent use but at regular intervals which are known generally in advance
 - iii) prime power : this is the case of frequent use of supply of intermittent emergency electricity which occurs where the local electricity supply grid is unreliable
 - iv) baseload : the diesel genset is the user's only source of electricity and it is used to provide continuous power.
17. The parties submit that the diesel genset market would be most appropriately viewed as a single relevant product market since on the one hand a basic diesel genset can be used for both continuous and stand by power applications and, on the other hand, the power of the output is based on individual customer's specific requirements.

18. However, the parties also acknowledge that despite the fact that all diesel gensets have a multi-purpose functionality, diesel gensets of a certain size are nevertheless predominantly purchased for similar uses in different areas of the world and that the conditions of competition may vary somewhat over different segments of this single product market. Based in the intended use by the client and also on the type of engine used the parties submit that the whole market for diesel gensets can be divided in four segments :

under		150	kVA	(Kilovolt-Ampères)
	151 -	1000	kVA	
	1001 -	2500	kVA	
over		2500	kVA	

19. The parties have submitted that a different type of segmentation is used namely for customs purposes. For instance, the Community CN codes for diesel genset are based on the following segments : 1-75 kVA; 76-375 kVA; 376-750 kVA; over 750 kVA. However, the notifying parties consider that the CN codes are based on an arbitrary segmentation of the market and do not correspond to either manufacturer's operating considerations nor any identifiably different customer applications nor any particular feature or characteristic of the diesel engines and components.
20. The investigation which has been carried out among the main competitors of the parties within the EU did not allow the Commission to reach a definitive conclusion on this matter. For instance, some view the diesel genset market as a single product market, others consider that a segmentation should be made between diesel gensets under and above 2500 Kva and that for this last segment diesel gensets would be in competition with gas turbines. Finally, there was also indications that the segmentation should instead be made between gensets under and above 1000 Kva.
21. The majority of the competitors which were contacted also submit that the diesel genset market was part of a wider market for power generation which will also include portable (mobile) diesel, gasoline or dual fuel gensets at the lower end and gas turbines at the upper end.
22. FGW does not manufacture neither portable gensets nor gas turbines. Furthermore FGW does not have a significant activity in the segment above 2500 Kva (see below) where according to the information gathered diesel gensets could be in competition with gas turbines. Therefore the assessment of the notified concentration will be limited to the activities of the joint venture which are exclusively limited to the production of stationary (non portable) diesel gensets up to 2500 Kva since FGW activity related to the upper segment (above 2500 Kva) is not significant.
23. For the purposes of this case, it is not necessary to reach a definitive conclusion concerning the relevant product markets and therefore this issue may be left open since even on the assumption of the narrowest market definition based on the segmentation proposed by the parties the notified operation will not raise competition concerns.

GEOGRAPHIC MARKETS

24. According to the parties the relevant geographic market is at least Community-wide considering the following elements :
- All diesel genset manufacturers undertake their manufacturing operations at a few locations throughout the world and export from these locations to many different countries.
 - There are no legal or regulatory barriers to trade between Member-states. The Machinery Directive provides that diesel gensets manufactured in conformity with the regulations applicable in one Member state and the health and safety standards set out in the directive benefits from the principle of free movement of goods through the Community.
 - Transport costs represent only a small percentage of manufacturing costs and of the final sales prices.
 - The pattern of distribution in the EU varies significantly among manufacturers. In principle manufacturers use three different channels : direct sales from factory; establishment of a sales subsidiary or sales through independent distributors. It is not absolutely necessary to be physically established either through a subsidiary or through an independent dealer to do business in a country within the EU. Customers very often acquire directly from the factory and for the after sales service rely frequently on the servicing of parts manufacturers' such as those providing engines, alternators, etc. When technical service is required from the manufacturer normally a team from the headquarters travel abroad to provide these services.
 - Imports account for a significant part of sales within the EU. In 1993, 17.745 units (all segments included) were imported which represents about one half of total deliveries within the EU. For 1994, 10.658 units were imported (about 1/3 of total deliveries).
 - [...] ⁽¹⁾
25. The majority of the parties' main competitors within the EU which have been contacted indicated that the geographic scope of the market is worldwide. However there may exist some degree of differentiation of the conditions of competition between major geographic areas which could be an indication that the markets are narrower than worldwide in scope. For instance, the parties in their business plan consider three main geographic areas namely the Americas, Asia and the area which comprises Europe, Africa and Middle East. It may also be noted that the importance of establishing a distribution network is greater in the USA than in other parts of the world. Finally, it deserves mention the fact that Cummins, the second largest diesel gensets producer worldwide has only a very limited presence in the EU which fact could be interpreted as an indication of a market narrower than worldwide as penetration rates of main competitors within different major geographic areas may be substantially different.
26. However, for the purpose of the present case the exact determination of the geographic scope of the diesel genset market can also be left open since even if the analysis is

⁽¹⁾ Deleted business secret

carried at the level of the EU which is, according to the parties and all their main competitors, the narrowest geographic scope to be taken into account, this concentration will not create or reinforce a dominant position within the EU.

COMPETITIVE ASSESSMENT

27. FGW has no significant activities in the upper segment of the market (diesel gensets over 2500 kVA). Therefore only 3 segments of the overall diesel genset market are affected by this concentration namely the segment below 150 kVA and those comprised between 151-1000 kVA and 1001- 2500 kVA.
28. The size of the world market for the diesel genset industry up to 2,500 kva was estimated to reach in 1995 a value of about US\$ 5.3 billion, of which US\$ 1.9 billion for the segment below 150 kVA, US\$ 2.5 billion for the segment comprised between 151 and 1,000 kVA and US\$ 900 million for segment 1,001-2,500 kVA. The volumes shipped worldwide were respectively 220 thousand units for the lower segment, 68.5 thousand units for the middle segment and 7.1 thousand units for segment 1,001-2,500 kVA.
29. Taking into account the value of the shipments, the main players worldwide were in 1995 Caterpillar ([...]⁽²⁾ market share), Cummins [...]⁽³⁾, FG Wilson [...]⁽⁴⁾ and SDMO, Kohler and Denyo with about [...]⁽⁵⁾ each. There is low concentration in this market as the total market share held by the six most important players does not exceed 35%. Combined market shares of Caterpillar and FG Wilson in 1995 amounted to [...]⁽⁶⁾, and Caterpillar has thus reinforced its position as worldwide leader of this market but it will not be in a position to significantly impeded effective competition worldwide (see below).
30. The total EU market for diesel gensets up to 2,500 kva in 1995 was about 518 million Ecus (US\$ 678 million) which represents less than 15% of the total world market. For the same year, the combined market shares of FG Wilson and Caterpillar, based on the value of the shipments, all relevant segments included, reached [...]⁽⁷⁾ (FG Wilson [...]⁽⁸⁾, Caterpillar [...]⁽⁹⁾).
31. Within the EU, combined market shares were [...]⁽¹⁰⁾ for the lower segment (FG Wilson [...]⁽¹¹⁾; Caterpillar [...]⁽¹²⁾); [...]⁽¹³⁾ for the middle segment 151-1,000 kva (FG Wilson [...]⁽¹⁴⁾; Caterpillar [...]⁽¹⁵⁾) and [...]⁽¹⁶⁾ for the segment 1,001-2,500 kva (FG Wilson [...]⁽¹⁷⁾);

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- (2) Deleted market share - between 10 and 15 %
 - (3) Deleted market share - between 5 and 10 %
 - (4) Deleted market share - between 5 and 10 %
 - (5) deleted market share : less than 5 %
 - (6) Deleted market share - between 15 and 20 %
 - (7) Deleted market share - less than 25 %
 - (8) Deleted market share - between 10 and 15 %
 - (9) Deleted market share - between 5 and 10 %
 - (10) Deleted market share - less than 20 %
 - (11) Deleted market share - between 15 and 20 %
 - (12) Deleted market share - less than 1 %
 - (13) Deleted market share - less than 20 %
 - (14) Deleted market share - between 10 and 15 %
 - (15) Deleted market share - between 5 and 10 %
 - (16) Deleted market share - between 20 and 25 %
 - (17) Deleted market share - less than 5 %

Caterpillar [...] ⁽¹⁸⁾). Caterpillar and FG Wilson together will be the most important player within the EU in all the relevant segments of the diesel genset market up to 2,500 kVA and consequently for the whole diesel genset market below 2,500 kVA. However, a significant number of important competitors will be present in each segment. For instance, the french undertaking SDMO will remain the most important competitor of the parties within the EU and will be present in all relevant segments of the market with market shares comprised between 5% and 10%. For the lower and middle segments another important competitor will be the german firm Kirsch with market shares which are estimated to be above 5% for each of these two segments. Finally, in what regards the middle and in particular the upper segment the German undertaking MTU, which belongs to the Daimler Benz group will also be an important competitor.

32. Both worldwide and in the EU there are a great number of players. In the EU alone there are more than 200 diesel gensets manufacturers. All the large players in the EU market are active at an international level and most of them sell worldwide. Even some small players can export and maintain a significant international activity.
33. Entry barriers are very low. The basic technology is widely known and the supply of main components such as engines and alternators is widely available. Although some players among which the parents of the joint venture are also present in upstream markets such as the manufacture of basic components (engines, alternators, switching gears, etc.), there are a number of independent suppliers. For the supply of diesel genset engines there are the manufacturers of truck and van engines, such as Mack and Mercedes, and also manufacturers of industrial engines such as Lister, Lombardini and Perkins. With regard to the supply of alternators, there are several independent suppliers such as Marathon, MeccAlte and Syncro.
34. The proposed concentration will not create or reinforce a dominant position neither at worldwide level nor within the community. Although the new entity will be the market leader in both cases, combined market shares will not in any circumstance exceed 25%. Furthermore, there are a great number of players in each relevant segment, a number of important independent suppliers of main components, and low barriers to entry as well as strong competitors being some of them part of diversified industrial groups with substantial financial resources.

VI CONCLUSION

35. Based on the above findings, the Commission has come to the conclusion that the proposed concentration does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.
36. 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 functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission,

⁽¹⁸⁾ Deleted market share - between 15 and 20 %