

*Case No IV/M.768 -
Lucas / Varity*

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

Article 6(1)(b) NON-OPPOSITION
Date: 11/07/1996

*Also available in the CELEX database
Document No 396M0768*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.07.1996

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

Registered letter with advice of delivery:

To the notifying parties

Dear Sirs,

Subject : Case No IV/M.768 - LUCAS / VARITY

Notification of **10.6.1996** pursuant to Article 4 of Council Regulation (EEC) No 4064/89

1. The companies Lucas Industries plc, Solihull/UK ("Lucas"), and Varity Corporation, Buffalo, New York/USA ("Variety"), notified that they intend to enter into a full merger. Under the terms of the merger a new UK holding company, to be known as LucasVariety plc, will be created. The Lucas shareholders will own about 62% and the Variety shareholders about 38% of the new merged business.
2. After the examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation (EEC) No 4064/89 ("Merger Regulation") and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES

3. Lucas designs, manufactures and sales advanced technology systems and components for the automotive and aerospace industry, in particular braking systems, diesel fuel injection systems as well as electrical and electronic systems. In its last business year, ended July 1995, the company had a worldwide turnover of about ECU 3.5 billion, about ECU 2.5 billion of it was generated within the Community.

4. Varity is predominantly active in the manufacture of braking systems and anti-lock systems (through its subsidiary Kelsey-Hayes) as well in the manufacture of diesel engines (through VarityPerkins). Besides that, Varity through its subsidiary VarityZecal is active in the development of a patented process of additive plating of copper to ceramic substrates. In its last business year, ended January 1996, the company had a worldwide turnover of about ECU 1.8 billion, of which ECU 584 million was generated within the Community.

II. THE OPERATION

5. The parties have signed a transaction agreement by which they will enter into a full merger of their businesses. Under the terms of the agreement a new UK holding company, to be known as LucasVarity plc, will be created. The Lucas shareholders will own about 62% and the Varity shareholders about 38% of the new merged business. Ultimately the new company will own all the assets of both Lucas and Varity.

III. CONCENTRATION

6. The merger between two previously independent undertakings, Lucas and Varity, will constitute a concentration according to Article 3(1)(a) of the Merger Regulation.

IV. COMMUNITY DIMENSION

7. The combined aggregate worldwide turnover of Lucas and Varity exceeds ECU 5,000 million. Each of the undertakings has a Community-wide turnover in excess of ECU 250 million, but 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 according to Article 1(2) of the Merger Regulation.

V. COMPATIBILITY WITH THE COMMON MARKET

8. Although the merged entity will enter a rank within the world's top ten component suppliers for the automotive industry as well for the aerospace industry the parties' activities are mostly complementary both with respect to the affected product markets and to the geographical markets. The proposed operation will not result in any addition of market shares in the component markets for the aerospace industry, in the electrical and electronic systems business and in the field of additive plating of copper to ceramic substrates since there is no overlap with respect to the activities of Lucas and Varity. Against that both parties are active in the diesel systems business and in the braking systems business.

Relevant product markets

9. For the case under consideration one can distinguish the overall diesel systems business into the markets for the manufacture of diesel engines and of diesel fuel injection systems. The overall market for diesel engines then has to be divided further into the distinct markets for the manufacture of diesel engines for cars and of diesel engines for

off-highway vehicles for agricultural, industrial and marine uses. These markets are characterized by particular requirements for power, application characteristics, legislative compliance, specific types of customers etc. According to the power range of diesel engines the market could be divided further into distinct sub-markets, for instance small (up to 40 horsepower), medium (40 to 300 horsepower) and large diesel engines (more than 300 horsepower). However, the question of the definition of the relevant product markets can be left open to that extent, because even in the narrowest market the proposed concentration would not create or strengthen a dominant position.

10. With regard to the braking business one has to distinguish hydraulic braking systems for light vehicles (cars and light commercial vehicles) and air brakes for heavy commercial vehicles (trucks, buses and off-road vehicles)⁽¹⁾. Both markets have to be divided further according to the different uses and product characteristics into the markets for "actuation systems" and for "foundation brakes"⁽²⁾. Foundation brakes again consist of several different components (disc brakes, drum brakes) that, from a customers point of view, belong to separate product markets.
11. Within the line followed in several cases anti-lock systems for light vehicles and for heavy commercial vehicles constitute separate product markets⁽³⁾.

Relevant geographic market

12. For the case under consideration the geographical scope of the relevant product markets is assumed to be EEA-wide. There are no apparent reasons for dividing markets on a national basis. Local production is not a necessary precondition for determining market positions in individual Member States and the costs for transportation and freight within the EEA are of minor importance.

Assessment

Diesel systems

13. Lucas Diesel systems is the world second largest manufacturer of diesel fuel injection systems. In Europe, Lucas manufactures diesel fuel injection systems in plants in France, UK and Spain. According to the parties, Lucas reaches the second rank in Europe having a market share of about 29%. Market leader is the German company Bosch with a market share of more than 50%. Smaller competitors in Europe are Stanadyne, Caterpillar and Cummins. Since Varity does not manufacture diesel fuel injection systems the proposed merger will not result in any addition of market shares to that extent.
14. Varity through its subsidiary Perkins manufactures a comprehensive array of multicylinder water-cooled diesel engines in the 7 to 2,500 horsepower range in United Kingdom and purchases diesel fuel injection systems for its engines in the 30 to 600 horsepower range from Lucas. According to the parties, VarityPerkins' market share in

¹ See case No IV/M.148 - Lucas/Eaton, points 25 and 28; No IV/M.726 - Bosch/Allied Signal, point 9.

² See case IV/M.337 - Knorr-Bremse/Allied-Signal, points 21 et seq.; No. IV/M.726 - Bosch/Allied Signal, point 11.

³ See case No IV/M.726 - Bosch/Allied Signal, point 14.

Europe does not exceed 25%. Sizeable competitors are Cummins, Deutz, Caterpillar and John Deere each having a market share of at least 10%. Since Lucas does not manufacture diesel engines the proposed merger will not result in any addition of market shares to that extent.

15. However, through the proposed merger Lucas and Varity will vertically integrate their diesel businesses. This link between one of the leading suppliers of diesel fuel injection systems with the leading supplier of diesel engines will result in a reduction of independent sources of supply with regard to diesel fuel injection systems. However, since there will be at least two independent sources of supply left, Bosch and Standyne, and two manufacturer of diesel engines, Cummins and Caterpillar, also produce diesel fuel injection systems the merger is unlikely to result in a foreclosure effect in the market for diesel fuel injection systems.

Braking systems

16. The European markets for "actuation systems" and for "foundation brakes" for light vehicles are highly concentrated. Varity does not manufacture "actuation systems" and has not hitherto sold "foundation brakes" into the European market. In the OEM/OES-market for "actuation systems" Lucas reaches the third rank behind the leading ITT/Teves and Bosch. In the component markets for "foundation brakes" Lucas has the leading position followed by ITT and Bosch. Since Varity is not active in these markets the market shares of Lucas will not be affected by the merger. The new entity will face strong competition from the other integrated brakes manufacturers Bosch and ITT. On both markets the suppliers face significant buying power from their customers in the automotive industry⁽⁴⁾. In addition, several components for the foundation brakes (front and rear disc brakes, drum brakes) are still produced by the car manufactures themselves (in-house production).
17. In the European markets for air brakes for heavy commercial vehicles Lucas has the leading position with a market share of between 40% and 50%⁽⁵⁾. Sizeable competitors in this markets are Knorr-Bremse, Rockwell, WABCO (Perrot) and Eaton. Since Varity has not hitherto sold heavy duty brakes into the European market the market shares of Lucas will not be affected by the merger. Approximately 51% of total European demand for heavy duty brakes is still met by in-house production by vehicle manufacturers, although the balance is progressively shifting towards out-sourcing⁽⁶⁾.
18. The European market for anti-lock systems (ABS) for light vehicles is characterized by the strong market position of the leading Bosch and the following ITT/Teves. The sales of both companies account for more than 80% of the EEA market volume. Although Varity through its subsidiary Kelsey-Hayes is the world's largest producer of anti-lock braking systems the companies' current market share in Europe is just under 5%. Kelsey-Hayes has set up a production plant for ABS in Heerlen/NL and seeks to increase its market share. Lucas has only minor ABS activities both with regard to Europe as well on a worldwide level. It is expected that the proposed merger will provide the new entity the potential to compete effectively with the leading integrated brakes manufacturers. The

4 See case No IV/M.726 - Bosch/Allied Signal, points 41 et seq..

5 See case No IV/M.149 - LUCAS/EATON, point 36.

6 See case No IV/M.149 - LUCAS/EATON, point 37.

proposed merger therefore - in the long-term - will have a positive effect on the conditions of competition in Europe.

VI. CONCLUSION

19. It follows from the above that the proposed concentration would not create or strengthen a dominant position as a result of which competition would be significantly impeded in the common market or in a substantial part of it.
20. 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 (EEC) No 4064/89.

For the Commission,