



EUROPEAN COMMISSION

DG Competition

*Case M.7893 – Plastic Omnium/Faurecia Exterior
Automotive Business*

Only the English text is available and authentic.

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

Decision on the implementation of remedies - Art. 6(1)(b)
in conjunction with 6(2) - Purchaser approval

Date: 28/3/2017



EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 28/03/2017
C(2017) 2182 final

PUBLIC VERSION

To the Notifying Party

Dear Sir/Madam,

Subject: Case M.7893 – Plastic Omnium/Faurecia Exterior Automotive Business Approval of Flex-N-Gate Automotive as purchaser of the Divestment Business (as defined hereunder) following your letters of 23.12.2016, 17.01.2017* and 14.03.2017 and the Trustee’s opinion of 18.01.2017* and supplementary opinion of 16.03.2017.*

I. FACTS AND PROCEDURE

1. By decision of 11 July 2016 (“the Decision”) based on Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004¹, the European Commission (the “Commission”) declared the operation by which Compagnie Plastic Omnium S.A. (“Plastic Omnium” or “PO”, France) acquired control of the automotive exterior business (“the Target”) of Faurecia S.A. compatible with the internal market subject to conditions and obligations (the “Commitments”).
2. The Transaction as initially notified to the Commission on 23 May 2016 would have significantly impeded effective competition on the following markets:
 - i. the markets for plastic front and rear bumpers in the local markets of a 250 km catchment area in Northern France around Renault Douai, Renault Maubeuge, Sevel Nord (Fiat/PSA), in Western France around Renault Flins, Renault Sandouville and PSA Poissy, in Eastern France around PSA

* Should read: 2017.

¹ OJ L 24, 29.1.2004, p. 1 (‘the Merger Regulation’). With effect from 1 December 2009, the Treaty on the Functioning of the European Union (‘TFEU’) has introduced certain changes, such as the replacement of ‘Community’ by ‘Union’ and ‘common market’ by ‘internal market’. The terminology of the TFEU will be used throughout this decision.

Mulhouse, PSA Sochaux and Renault Batilly, in Belgium around Volvo Ghent and in Spain around Renault Valladolid as a result of non-coordinated horizontal effects;

- ii. the EEA-wide market for plastic and hybrid FECs as a result of non-coordinated horizontal effects;
- iii. the EEA-wide market for plastic hatchbacks/tailgates (or a narrower local market) as a result of non-coordinated horizontal effects; and,
- iv. the EEA-wide market for FEMs as a result of non-coordinated horizontal effects.

3. PO proposed in the Commitments to divest the following manufacturing facilities initially forming part of the Target:

- i. the manufacturing plant of Audincourt (France) for the production and supply of bumpers, hatchbacks/tailgates, front end carriers ("FECs"), and engine cooling systems ("ECS"), and the Headquarters and R&D centre (the "**Audincourt Divestment Business**", and, together with Burnhaupt, the "**Audincourt-Burnhaupt Divestment Business**");
- ii. the manufacturing plant of Burnhaupt (France) for the production and supply of bumpers and FECs (the "**Burnhaupt Divestment Business**" and, together with Audincourt the "**Audincourt-Burnhaupt Divestment Business**");
- iii. the manufacturing plant of Marines (France) for the production and supply of bumpers, FECs, and ECS (the "**Marines Divestment Business**");
- iv. the manufacturing plant of Marles-les-Mines (France) for the production and supply of bumpers and FECs, as well as the interior business which manufactures instrument panels (the "**Marles-les-Mines Divestment Business**");
- v. the manufacturing plant of Ingolstadt (Germany) for the production and supply of FECs and front end modules ("FEMs") (the "**Ingolstadt Divestment Business**");
- vi. the manufacturing plant of Valladolid (Spain) for the production and supply of unpainted bumpers, instrument panels, and unpainted small parts (the "**Valladolid Divestment Business**");
- vii. the manufacturing plant of Offenau (Germany) for the production and supply of FEMs (the "**Offenau Divestment Business**"); and
- viii. the Neuburg R&D/ Customer Centre (Germany (the "**Neuburg Divestment Business**").

4. The Audincourt-Burnhaupt, Marines, Marles-le-Mines and Valladolid Divestment businesses are together referred to as the "**Bumper Divestment Business**".

5. The Ingolstadt, Offenau and Neuburg Divestment Businesses are together referred to as the "**FEM Divestment Business**".

6. The Bumper Divestment Business and the FEM Divestment Business are together referred to as the "**Divestment Business**".
7. The Divestment Business also includes:
- a) intangible assets:
 - a. IT software and hardware used in the Divestment Businesses;
 - b. non-exclusive, royalty-free, transferable and irrevocable licences for the intellectual property rights (including patents) necessary for the operation of the Divestment Businesses to the purchaser; and
 - c. the current customer lists.
 - b) the personnel currently employed by PO and working predominantly for the Divestment Businesses;
 - c) key employees;
 - d) contracts for the supply of parts/services to plants that will be retained by the Divestment Business or PO;
 - e) contracts for the supply of parts/services by PO to the Divestment Businesses.
8. The Commitment therefore consisted in the divestment of a self-standing business to a suitable purchaser within a fixed time-limit after the decision.
9. By letter of 23 December 2016, PO proposed Flex-N-Gate Automotive Corporation, part of the Flex-N-Gate group of companies ("**FNG**" or the "**Purchaser**", of the United States of America) for approval by the Commission as purchaser of Divestment Business and submitted the proposed Sale and Purchase Agreement and related agreements (the "Proposed Agreement").
10. The Commission considered that the Proposed Agreement departed from the requirements set out in the Commitments by foreseeing that some of the IP necessary for the operation of the Final Divestment Business and retained by PO were not transferrable by FNG outside its group. Following discussion with the Commission as to the compliance of this provision with the Commitments, PO on 17 January 2017 submitted a letter where [IP agreement] in order to make it compliant with the Commitments.
11. On 18 January 2017, Advolis SA., in its capacity as monitoring trustee (the "Trustee") has submitted an assessment of FNG's suitability as a purchaser and, in particular, has indicated that it fulfils the criteria of the purchaser requirements set out in section D of the Commitments attached to the Decision. On 26 January 2017 a meeting was held between FNG and the Commission.
12. After analysing the Proposed Agreement and the Trustee's reasoned opinion of 18 January 2017, the Commission concluded that PO's letter of 17 January 2017 was not sufficient to render the IP agreements compliant to the Commitments and informed the Trustee and PO accordingly. PO therefore agreed to reopen the negotiation with FNG in order to precisely identify the IP necessary for the

operation of the Divestment Business and to agree on an IP scheme compliant with the Commitments.

13. By letter of 14 March 2017 PO informed the Commission that it had identified all the IP rights retained by PO considered necessary for the operation of the Divestment Business. PO also informed the Commission that it had reached an agreement with FNG on an IP scheme which ensures that the Divestment Businesses will be assigned or granted worldwide, irrevocable, non-exclusive, sub-licensable and transferable and royalty-free licences on all IP rights necessary for the operating of the Divestment Business (the "IP Scheme").
14. In that letter, PO also requested the Commission to approve the sale of the Valladolid Divestment Business without the employee based in Torino and responsible for the client relationship with Iveco referred to in paragraph 1.1.5. of the Schedule to the Commitments.
15. Following PO's submission of 14 March 2017, on 16 March 2017 the Trustee submitted a supplementary submission to its reasoned opinion of 18 January 2017 assessing the compliance with the Commitments of the IP scheme agreed upon by and between PO and FNG in light of the negative opinion of the Commission on the original IP scheme. In the same additional submission, the Trustee also assessed the compliance with the Commitments of the change in the composition of the Valladolid Divestment Business.

II. ASSESSMENT OF THE SUITABILITY OF THE PURCHASER

(a) Description of the Purchaser

16. FNG is a leading global Tier 1 designer, manufacturer and supplier of large stamped metal and welded components, assemblies and plastic parts for the automotive industry.
17. FNG started its activities in 1956 with aftermarket parts in the United States. The company rapidly moved into the supply of OEMs (Original Equipment Manufacturer) with the supply of bumpers to the Jeep Corporation in 1968.
18. FNG operates through more than 50 manufacturing facilities in the United States, Canada, Mexico, Brazil, China, Argentina and Spain.

(b) Assessment of the suitability of the Purchaser

19. Following the analysis of PO's proposal and of the Trustee's opinion of 18 January 2017 and additional submission of 14 March 2017, the Commission considers FNG to be a suitable purchaser according to the Commitments. This is because of the following reasons.

II.b.1. Independence from the Parties

20. First, FNG is independent of and unconnected to PO.
21. The Final Divestment Business will be acquired by three different legal entities ([Corporate information]) all part of the Flex-N-Gate group of companies,

ultimately beneficially owned by the adult children of Shahid Rafiq Khan, founder of the company.

22. The Trustee ascertained that there is no corporate link between PO and FNG. The Trustee also ascertained that there are currently no contractual relationship between FNG and PO and that post-transaction they will be limited to the transitory service agreement ("TSA") which will be executed together with the share purchase agreement ("SPA").
23. The TSAs will have a maximum duration of [Duration] and are customary features in this type of transaction.
24. In light of all the above, the Commission takes the view that FNG is independent and unconnected to PO and therefore meets the Purchaser criterion set out in section 17(a) of the Commitments.

II.b.2. Financial resources, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitor

25. Second, FNG has the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitor on the market.

II.b.2.1. Financial resources to maintain the Divested Business as a viable and active competitor

26. The structure of the FNG group is extremely complex; however the main operating companies in the automotive sector are Flex-N-Gate Corporation, Ventra Group Co. and Ventra Greenwich.
27. As to the financial resources, the Trustee ascertained that the operating companies mentioned above are profitable and that FNG overall is in a stable financial situation.
28. In light of the above, the Commission takes the view that FNG has sufficient financial resources to maintain the Divestment Business as a viable and competitive force on the market.

II.b.2.2. Proven expertise to maintain the Divested Business as a viable and active competitor

29. As to proven expertise and incentive to maintain the Final Divestment Business as a viable and active competitor, it must be firstly pointed out that FNG is already active in the manufacture and supply of both plastic front and rear bumpers and FEMs.
30. FNG entered the market for plastic bumpers in 2001 with the acquisition of Ventra group and has been active in that market since then. Also, FNG has already entered the FEM market having an ongoing supply agreement with [Clients].
31. FNG is a Tier 1 supplier to the automotive industry currently operating in geographic areas other than the EEA. FNG has established contractual

relationship and significant track record with a number of automotive manufacturers, [Clients].

32. [Confidential].

33. In light of the above, the Commission takes the view that FNG is an established player in the bumpers and FEM market and therefore possess all the required know-how and experience to actively and strongly compete on both the above-mentioned markets.

II.b.2.3. Incentives to maintain the Divested Business as a viable and active competitor

34. The Trustee considers that FNG also has the incentive to maintain and develop the Final Divestment Business as a viable and active competitor on the market. This is because FNG's strategic interest is to enter the EEA market. Hence, the Trustee concludes that the FNG has all the incentives to strongly compete on this market.

35. The Commission understands that FNG was considering entering the EEA market and the proposed acquisition of the Final Divestment Business constitutes an opportunity to enter that market by acquiring already existing production assets and related supply contract.

36. Finally, the Final Divestment Business includes [IP scheme] a worldwide, irrevocable and perpetual licence to all IP rights of the Target's business retained by PO. In light of the above, FNG will have access to all the necessary IP to comply with the contractual obligations of the Final Divestment Business and to actively compete on the EEA market.

II.b.2.4. Conclusion

37. In light of all the above, the Commission takes the view that FNG has the proven expertise and incentive to maintain the Final Divestment Business as a viable and active competitive force on the market. Also, the Commission takes the view that FNG has sufficient experience in the automotive industry and supply of components to that industry.

38. The Commission therefore concludes that FNG meets the Purchaser criterion set out in section 17(b) of the Commitments.

II.b.3. Absence of prima facie competition problems

39. FNG is not currently active neither in the market for front and rear bumpers in any geographic market in the EEA nor in the EEA-wide market for FEMs.

40. The Commission therefore considers that the acquisition of the Divestment Business will likely not generate horizontal overlaps. Also, in light of the fact that FNG will be a new entrant in this market, the proposed acquisition will likely restore the level of competition existing before the acquisition of the Target by PO.

41. The Commission therefore concludes that FNG meets the Purchaser criterion set out in section 17(c) of the Commitments

42. This *prima facie* assessment is based on the information available for the purpose of this buyer approval and does not prejudice the competition assessment of the acquisition of the Divestment Business by FNG by a competent competition authority under applicable merger control rules.

III. ASSESSMENT OF THE PROPOSED AGREEMENT

43. PO and FNG have first entered into the Put Option Agreement and agreed that FNG will be bound to execute the attached SPA if PO submits an execution request [put option agreement] of the completion of the Works' Council Consultation required by law. Under the SPA, completion of the acquisition is conditional upon receiving approval of the Purchaser from the Commission.
44. According to the SPA and ancillary agreements, the Divestment Business (including all the items listed in paragraph 7 above) will be transferred from PO to FNG.
45. In its reasoned opinion of 18 January 2017 and supplementary submission of 16 March 2017, the Trustee indicated that it considers the SPA and all ancillary agreements (as amended by the Parties) are in line with the Commitments. The Trustee therefore concluded the Divestment Business would be sold in a manner consistent with the Commitments.
46. The Commission takes the view that the SPA and related ancillary agreements as modified by the PO by its letter of 14 March 2017 are compliant with the Commitments.
47. The Commission notes that the perimeter of the transaction includes the entirety of the Divestment Business and all the assets required for its functioning. Also, for the reason below the Commission takes the view that:
- a) the IP Scheme is compliant with the Commitments; and,
 - b) that the sale of the Valladolid Divestment Business without the employee based in Torino will not affect the viability and competitiveness of the Valladolid Divestment Business itself.

(a) ASSESSMENT OF THE IP SCHEME

48. As mentioned in paragraph 12 above, the Commission concluded that the IP agreement originally agreed between the Parties was not compliant with the Commitments. Therefore, albeit the remaining transaction documents were compliant, the Commission considered that Divestment Business would have been sold in breach of the Commitments. PO therefore agreed to amend the IP agreements as follows.
49. According to the IP Scheme, [...]. As to the IP rights held by [...] PO and [...] needed for the operation of the other entity, the IP scheme provides for [...]:
50. "List 1 Patents", which includes all patents owned or co-owned by PO and used for the operation of the Divestment Business; and,
51. [IP scheme].

52. According to the IP Scheme, PO will grant FNG a worldwide, irrevocable, non-exclusive, sub-licensable, transferrable and royalty-free licence over all the IP rights included in List 1 Patents. [IP scheme].
53. The IP rights included in List 1 Patents [...] have been identified jointly by PO and FNG with the assistance of employees of the Divestment Business..
54. The Trustee in its additional submission expressed the opinion that the IP Scheme agreed upon between the Parties is compliant with section 2.2.2. of the Schedule to the Commitments as FNG will either own or be granted a worldwide, irrevocable, non-exclusive, sub-licensable, transferrable and royalty-free licence over all IP rights needed for the operation of the Divestment Business.
55. The Commission considers that indeed FNG will either own or be granted a licence compliant to the Commitments over all the IP necessary for the operation of the Divestment Business. In light of the above, the Commission takes the view that the IP Scheme as modified has been made compliant with the Commitments. Therefore each and all the transaction documents making up the Proposed Agreement are compliant with the Commitments.

(b) SALE OF THE VALLADOLID DIVESTMENT BUSINESS WITHOUT THE EMPLOYEE BASED IN TORINO AND RESPONSIBLE FOR THE IVECO CUSTOMER RELATIONSHIP

56. As to the non-inclusion of the employee based in Torino and responsible for the client relationship with Iveco referred to in paragraph 1.1.5. of the Schedule to the Commitments, PO explained that it is due to a request of the hold separate manager ("HSM").
57. [Sales strategy].
58. [Sales strategy].
59. In its supplementary submission, the Trustee takes the view that the sale of the Valladolid Divestment Business without the employee based in Torino does not affect the overall viability of the Valladolid Divestment Business. Therefore, according to the Trustee paragraph 19 of the Commitments may be applied.
60. The Commission takes the view that [Sales strategy].
61. In light of all the above, the Commission takes the view that the sale of the Valladolid Divestment Business without the employee based in Torino will not affect the viability and competitiveness of the Valladolid Divestment Business itself. Hence, the sale of the Valladolid Divestment Business is approved with the modification requested by PO.

IV. CONCLUSION

62. On the basis of the above assessment the Commission approves Flex-N-Gate Automotive Corporation as a suitable purchaser for the above-mentioned reasons.

63. On the basis of the Proposed Agreement, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments.
64. This decision only constitutes approval of the proposed purchaser identified herein and of the Proposed Agreement. This decision does not constitute a confirmation that Compagnie Plastic Omnium S.A. has complied with its Commitments.
65. This decision is based on Section D and paragraph 19 of the Commitments attached to the Commission Decision of 11 July 2016.

For the Commission

(Signed)

*Johannes LAITENBERGER
Director-General*