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***Case No IV/M.937 -
LEAR / KEIPER***

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

Article 6(1)(b) NON-OPPOSITION

Date: 22/07/1997

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.07.1997

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sirs,

Subject: Case No IV/M.937 - LEAR/KEIPER

Notification of 19.06.1997 pursuant to Article 4 of Council Regulation (EEC)
No 4064/89

I. THE PARTIES AND THE OPERATION

1. The proposed operation consists of the acquisition of the whole of KEIPER Car Seating GmbH & Co., Germany, (KCS) by LEAR Corporation, USA, (LEAR) and its German subsidiary LEAR Corporation GmbH & Co. KG, from the KEIPER RECARO group which is controlled by the Putsch family.
2. LEAR is a car component producer, manufacturing and supplying complete car seats in just-in-time (JIT) sequence as well as other vehicle interior components, such as door panels, headliners, instrument panels. Its customers are almost exclusively vehicle manufacturers (OEMs) worldwide. In Europe, its major customers for car seats are Ford, General Motors, Renault and Volkswagen (Seat).
3. KCS also manufactures and supplies complete car seats in JIT sequence to OEMs. Its major customers in Europe are Mercedes Benz and Audi. The company emerged on 1. January 1997 after KEIPER RECARO GmbH & Co., an integrated producer of metal components for car and aircraft seats as well as car and aircraft seats, was divided into four separate companies. KEIPER RECARO GmbH & Co., which changed its name to KEIPER GmbH & Co. (KEIPER) kept the metal components division. RECARO Aircraft Seating GmbH & Co. KG assumed the production of aircraft seats. KCS assumed the production and supply of complete car seats in JIT sequence (standard seats) to OEMs (Original Equipment Manufacturers). RECARO GmbH & Co. (RECARO) assumed the RECARO-brand car seats. These speciality seats are either installed as original equipment on the production line on a "special

edition” basis or in accordance with the specification of the intended customer or sold as a replacement of the original standard seats on the so called “aftermarket”. All companies are solely controlled by the Putsch family which keeps 100% of the shares via one holding company.

4. The transaction concerns KCS and all its subsidiaries. These subsidiaries are KCS Brazil, KCS Hungary, RR Leder (100% owned by KCS), KCS Italy (65% KCS), KRC Trim Products and KRC Sewing Company, South Africa (both 51% KCS). In addition, the transaction includes KCS’s 50% stake in Euro American Seating LLC (EEA), USA, and its 15% stake in Johnson Controls Automotive Mexico (JCAM).

II. CONCENTRATION

5. LEAR is acquiring the whole of KCS and thus sole control. This operation is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

6. LEAR and KCS have a combined aggregate world-wide turnover in excess of ECU 5,000 million (LEAR, ECU 4,922 million; and KCS, ECU [...] million). Each of them has a Community-wide turnover in excess of ECU 250 million (LEAR, ECU 1240.9 million; and KCS, ECU [...] ¹ million). Only KCS achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State, Germany. The notified operation therefore has a Community dimension.

IV. THE RELEVANT MARKET

1. Relevant product market

7. According to the parties the relevant product market is the market for the JIT supply of complete car seating systems to OEMs (standard seats), which has to be distinguished from the market for the supply of speciality seats.
8. The Commission’s examination has shown that these two products are indeed separate markets. This was confirmed by all the customers and competitors contacted by the Commission.
9. Standard seats are exclusively sold to OEMs and specifically designed for a particular car model. The OEMs do not only buy the seats but also a service, the just-in-time delivery. Just-in-time delivery demands that high volumes must be delivered on very short notice (normally less than 14 hours) directly to the production line of the OEM where they are immediately installed in a car. The fact that they are not delivered to a warehouse reduces the OEM’s inventory level and thus its costs. This service requires specific know how in logistics and supply chain management as well as investments by the seat manufacturer to guarantee the timely flow of supply which create barriers to entry.

¹ Business secrets, more than MECU 250.

10. Speciality seats on the other hand are sold to car manufacturers and also to private customers in the aftermarket. Apart from speciality seats installed as original equipment on a “special edition” basis, in general they are not specifically designed for a particular vehicle model, but can be installed in most vehicles. In any case, the speciality seats which are sold to OEMs are not supplied on a just-in-time basis but delivered to a warehouse of the respective OEM.
11. There are important price differences between standard seats and speciality seats, which are 100% to 150% more expensive (for the OEM). The OEMs contacted by the Commission have all indicated that faced with a hypothetical small but significant price increase in all standard seats, they would not switch to speciality seats because of these price differences.
12. It may remain open whether one could further distinguish between a market for speciality seats sold to OEMs and a market for speciality seats sold to the aftermarket, as the impact of the concentration is limited to standard seats.

2. Relevant geographic market

13. According to the parties, the market for standard seats is at least the EEA, since LEAR, KCS and their competitors are active in more than one European country, most of the customers have manufacturing facilities in multiple European countries, and transport costs and JIT delivery requirements are not an obstacle to crossborder supplies.
14. This view is in line with the Commission’s assessment of the geographic market for other products which are supplied to OEMs. In these markets, the Commission has noted that although there is a relation between a national production and market shares, the geographic closeness between a supplier and a car manufacturer cannot be taken as a decisive element for the geographic boundary of the market. While the actual supply is regional or local due to the requirement of JIT delivery, competition for the award of supply contracts takes place on a EEA-wide level. This view was supported for standard seats by all the car manufacturers contacted by the Commission. They stated that before awarding a supply contract to a seat manufacturer, they would invite offers from all European suppliers and that there were no preferences for national producers. The market for standard seats is thus EEA-wide.

V. ASSESSMENT

15. According to the parties, the combined market share of LEAR and KCS in the market for standard seats in the EEA in 1996 was [30-40%] in terms of value (Lear [25-35%]³, KCS [5-10%]³) and [25-35%]³ in terms of units (Lear [20-30%]³, KCS [0-5%]³). Its major competitors are Johnson Control (JCI, market share (value): 34%), and Bertrand Faure (market share (value): 22%). In addition, there are 7 smaller competitors, who have a market share of around 1% each. In light of this market

² See e.g. Cases No. IV.M/134 (Mannesmann/Boge), §15; No. IV.M149 (Lucas/Eaton); §35.

³ Business secret. Exact number deleted.

structure, it should not be expected that LEAR alone will obtain a dominant position after the acquisition of KCS.

16. The market will be highly concentrated with the three leading suppliers having a market share of 92%. It is however unlikely that this will lead to anti-competitive parallel behaviour as a result of the concentration. The demand side is also relatively concentrated. As with most car components, the car producers have an excellent knowledge of prices and costs on a world-wide basis and seek offers from several suppliers prior to contracting a car seat which is normally done for the life of the respective car model. Some car producers even have an in-house seat production which allows them to gain further insights into the cost structure and allows them to switch sourcing between internal and external sources. If one included internal standard seat production by car manufacturers in the market, the combined market share of the three leading external suppliers decreases to 59%. In addition, further structural features such as the inhomogenous nature of the seats which are developed together with a specific OEM-customer for a specific car model and the fact that a supply contract, once it is lost, can normally only be regained once a new car model is introduced, increase the competitive pressure in the market.
17. Based on the above, it can be concluded that the concentration does not threaten to create or strengthen a dominant position in the market for standard seats in the EEA.

VI. ANCILLARY RESTRICTIONS

18. The parties have requested that certain provisions of the purchase agreement, if restrictions, be considered as ancillary to the concentration.

Non-Compete Covenant

19. In Article 16 of the Purchase Agreement, the parties have agreed a non-compete covenant. This provision is framed as a basic rule which is then specified for specific products and services.
20. The basic rule of Section 16.1. specifies that the KEIPER RECARO group agrees not to compete directly or indirectly with KCS and its subsidiaries for a period of five years in the rendering of research and development services for third parties, production and supply of complete seats for the original equipment of non-commercial vehicles (i.e. cars) in the respective geographical area in which the production and distribution activities of KCS and its subsidiaries are conducted today. This basic rule is however subject to the exceptions specified below.
21. Section 16.2 states that the KEIPER RECARO group may continue to develop, produce and supply RECARO seats (defined as RECARO-brand seats and non-branded seats bearing RECARO styling elements so that the end-user identifies the seat as a RECARO seat) to car manufacturers. However, the KEIPER RECARO group agrees to limit their production of RECARO seats to a specific annual number for those vehicle models and their respective first successor models which constitute the subject matter of an existing or contracted supply relationship between car manufacturers and either LEAR and any of its affiliates or KCS and any of its

affiliates (“non-qualifying vehicles”). To calculate this limit, [...] . The term of this restriction is 42 months.

22. Section 16.4. extends the non-compete covenant to hardware seat structures specially-designed for non-commercial vehicle seats sold by KCS or its subsidiaries. The KEIPER RECARO group agrees not to develop, produce or supply these structures and structures with similar features to competitors of KCS for installation in the same vehicle model or the first successor model already supplied by KCS to the specific car manufacturer for a period of five years. The non-compete clause does not apply, [...] ⁵ .
23. Section 16.5. extends the non-compete covenant to research and development services. the KEIPER RECARO group agree not to engage in any development activity with competitors of KCS for a period of five years, if the seat product constituting the subject matter of the R&D services is to be installed in the models comprising the subject matter of a KCS supply relationship. The same restriction applies to the solicitation of offers or for the participation in any bidding to provide research and development services for competitors of KCS if the services in question will be utilized for the purpose of competing for the award of the KCS successor supply relationship. [...] ⁵.
24. Section 16.8. specifies that during the non-compete period neither LEAR nor the KEIPER RECARO group will solicit to hire employees of the other company without its written consent.
25. The provisions set out above contain restrictions. As set out in paragraph 19 the parties have agreed on a general non-compete clause for the development, production and supply of complete car seating systems. This non-compete provision for a period of five years fulfils the requirements set out in Paragraph III.A of the Commission Notice Regarding Restrictions Ancillary to Concentrations) as regards geographic scope and duration. It needs however to be verified, whether the non-competition clause is limited to the products and services which form the economic activity of the undertaking transferred (III.A.4). This problem arises because of the competitive relations between the markets for JIT standard seats and speciality seats and because KCS, KEIPER and RECARO were part of an integrated company prior to the merger.
26. Since the KEIPER RECARO group retains R&D facilities for the development for both metal and non-metal components and via RECARO the manufacture of high-quality speciality seats, the KEIPER RECARO group remains able to reenter the JIT market. If RECARO was allowed to enter the market for JIT delivery of complete vehicle seats before LEAR had gained the confidence of its newly acquired customers, the value of KCS would be diminished. In order to grant LEAR the whole value of what it has bought from the KEIPER RECARO group, it is necessary to restrain RECARO from commencing high volume production of RECARO seats for a certain time by limiting the number of RECARO seats supplied to those car

4. Deleted. Business secrets.

⁵ Deleted. Business secrets.

manufacturers which have previously been supplied by KCS. Since the quantity limit in the annual allowance for “non qualifying vehicles”, as set out in paragraph 21, is determined on the basis of seats contracted or actually sold by the KEIPER RECARO group, it is based on their current market presence in the market for speciality seats and does not seem out of proportion. Concerning “non-qualifying vehicles” for which KCS supplies JIT standard seating equipment the restrictions imposed on the KEIPER RECARO group can therefore be regarded as directly related to the concentration and necessary for its implementation.

27. The provision of Section 16.2. which extends the protection offered by the non-competition clause to customers of LEAR and its affiliates which have not been previously supplied by KCS goes beyond the purpose of allowing LEAR protection against competitive acts of the vendor in order to gain the loyalty of customers. This provision can therefore not be regarded as necessary for the implementation of the concentration and should be assessed under Article 85.
28. The KEIPER RECARO group also retains via KEIPER the development and production of hardware seat structures. The hardware seat structure is an important component of the seat in question. It is specifically designed for a particular vehicle seat. The supply of hardware specifically designed for a KCS seat product to a competitor for installation in the same vehicle which is presently supplied by KCS constitutes a diminishment in value of the JIT production acquired by LEAR. The non-competition clause of Section 16.4. can thus be regarded as directly related to the concentration and necessary for its implementation.
29. The R&D facilities of both KEIPER and KCS were integrated in one company prior to the restructuring of the KEIPER RECARO group. The development projects which were transferred to KCS are integrated projects aimed at placing KCS in a position to acquire a car manufacturer supply contract or to secure the successor supply contract to an existing contract. KCS’ prospects for being awarded a car manufacturer supply contract following the conclusion of these specific development projects are diminished if the KEIPER RECARO group is free to apply the same development results in competition for the same supply contract currently held by KCS or to participate in any bid for a successor agreement for such a contract. The non-competition clause of Section 16.5. can thus be regarded as directly related to the concentration and necessary for its implementation.

The non-solicitation clause of Section 16.8. is necessary to give the purchaser sufficient time to take over the full value of the assets transferred. It can thus be regarded as directly related to the concentration and necessary for its implementation.

Ancillary Agreements

30. In the Purchase Agreement, KEIPER has agreed to assign approximately 40 patents to KCS. In a Grant Back Licence Agreement, KCS agrees to grant KEIPER a royalty-free, non-exclusive, sub-licensable licence to make use of all such patents which have been transferred to KCS. To the extent that this agreement constitutes a restriction to competition, it must be regarded as directly related and necessary to the implementation of the concentration.

31. As prior to the formation of KCS all R&D activities were handled by KEIPER and as KCS's R&D activities will be limited for a transitional period before they can be integrated with LEAR's activities, the parties have concluded a non-exclusive Framework Supply Agreement for R&D Services. It secures KCS' continued source of these R&D services for current seat development projects, and provides the possibility for KCS to retain KEIPER with respect to future services. To the extent that this agreement constitutes a restriction to competition, it must be regarded as directly related and necessary to the implementation of the concentration.

VII. CONCLUSION

32. 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,