ACQUISITIONS (MOTOR VEHICLE COMPONENTS): THE UBS / VALFOND CASE

Subject: Acquisitions
Ancillary restrictions

Industry: Motor vehicle components

Parties: Union Bank of Switzerland AG
Groupe Valfond

Source: Commission Decision in Case IV/M.1521, dated 19 May 1999

Commission Note: In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

(Note. This case is reported for the purposes of comparison with the Ford / Kwik-Fit case, reported on page 131 in this issue. There is one point of comparison, in that the summary of the Ford case gave no quantifying figures, while the UBS case, though given in full, omits many significant figures from the text for the reasons given in the Commission's note above. There are two points on which the cases differ. In the Ford case, the acquiring party is itself a manufacturer of motor vehicle components, while in the UBS case the acquiring party is a bank which already has a controlling interest in two such manufacturers. Then, in the UBS case, there is an additional factor in the form of ancillary restrictions: not, as sometimes happens, in connection with patent or other intellectual property rights, but in the form of a non-competition clause.)

1 On 14.04.1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) 4064/89 by which the undertaking Union Bank of Switzerland AG (UBS) acquires sole control of the Groupe Valfond (France).

The parties' activities and the operation

2 The Group Valfond, which has its main manufacturing facilities in France and Germany, produces ferrous light alloy castings as well as undertaking machining activities. It supplies components to the automotive industry.

3 UBS is an international banking group. The principal activity of UBS is the provision of financial services. UBS controls Triplex Ltd (UK) and Peak Automotive Ltd (UK). Both companies are involved in the manufacture and supply of automotive components.

4 The concentration involves the acquisition by UBS of sole control of Groupe Valfond by way of acquisition of shares. The transaction involves a change of control, thus constituting a concentration within the meaning of Article 3(1) of the Merger Regulation.

Community dimension

5 The UPS group and the Groupe Valfond have a combined aggregate worldwide turnover in excess of €5,000m (UBS group, €15,591m; and Groupe Valfond €819m). Each of them has a Community-wide turnover in excess of €250m (UBS group, €1,084m; and Groupe Valfond €802 m), 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 within the meaning of Article 1(2) of the Merger Regulation.

Competitive assessment

6 UBS, through its subsidiaries Triplex Ltd (UK) and Peak Automotive Ltd (UK), and Groupe Valfond are both active in the manufacture and supply of automotive components. The two UBS subsidiaries operate mainly in the UK while Valfond operates in several mainland European countries.

Relevant product market

7 The notifying party states that there are no relevant product markets, that is there are no markets in which both parties are active and where the concentration would lead to a combined share of 15% or more. The activities where there are overlaps are ferrous castings, light alloy castings and machining where the combined market shares after the concentration would be [between 0% and 10%] at EU level.

8 If specific products are considered there are *de minimis* overlaps for exhaust manifolds and intake manifolds and a small overlap in turbocharger housings, albeit with a combined market share below 15% at EU level.

9 It is not necessary to delineate further the relevant product markets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Relevant geographic market

10 The notifying party states that the markets for automotive components are European, if not world wide, as car manufacturers obtain their supplies from sources all over Europe and from further afield. In previous cases (most recently, *TRW / Lucas Varity*, decision of 11.03.1999; and DURA / ADWEST, decision of 10.03.1999), the Commission has already defined the geographical scope of the markets for car components as European-wide.

11 It is not necessary to delineate further the relevant geographic markets because, in all alternative geographic market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Assessment

12 The parties' operations are to a certain extent complementary. In the areas where the parties' activities overlap the shares of the EU market are below 15%. In view of the market position of the parties to the concentration, it appears that the notified operation will not have a significant impact on competition in the EEA and that the proposed concentration will not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

Ancillary restrictions

13 The notifying party has requested that non-competition clause contained in the Article V of the "Protocole d'Acquisition d'Actions" be considered as an ancillary restriction. This clause provides that, to ensure the transfer of the full value of the assets acquired including good will and know how, the vendor undertakes not to compete with the acquirer in the business transferred for a period of [between 1 and 5 years]

14 The Commission notice regarding restrictions ancillary to concentrations (Chapter III, letter A), provides that such a non-competition clause may be considered as an ancillary restriction directly related to the concentration and necessary for its implementation. Therefore the clause is covered by the present decision.

Conclusion

15 For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market arid with the EPA Agreement. This decision is adopted in application of Article 6(l)(b) of Council Regulation (EEC) 4064/89. □