

## Summary of Commission Decision

of 10 May 2007

declaring a concentration compatible with the common market and the functioning of the EEA Agreement

(Case COMP/M.4381 — JCI/FIAMM)

(notified under document C(2007) 1863 final)

(Only the English version is authentic)

(Text with EEA relevance)

(2009/C 241/06)

On 10 May 2007 the Commission adopted a Decision in a merger case under Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings<sup>(1)</sup>, and in particular Article 8(2) of that Regulation. A non-confidential version of the full Decision can be found in the authentic language of the case and in the working languages of the Commission on the website of the Directorate-General for Competition, at the following address:

[http://ec.europa.eu/comm/competition/index\\_en.html](http://ec.europa.eu/comm/competition/index_en.html)

### I. INTRODUCTION

- (1) On 26 October 2006, the Commission received a notification of a proposed concentration by which VB Auto-batterie GmbH ('VB'), Germany, an undertaking jointly controlled by Johnson Controls Inc. ('JCI'), USA and Robert Bosch GmbH ('Bosch'), Germany, acquires sole control within the meaning of Article 3(1)(b) of Regulation (EC) No 139/2004 ('the Merger Regulation') of the automotive starter battery business of FIAMM S.p.A. ('FIAMM SBB'), Italy.
- (2) JCI is a global supplier of automotive components (seating, interior and batteries) and building control systems. Bosch is active worldwide in the areas of automotive technology, consumer goods and building technology. VB is the automotive battery joint venture of JCI and Bosch. VB produces starter batteries for cars, commercial vehicles, motorcycles and boats. It operates seven production plants in Germany, France, Spain and the Czech Republic.
- (3) FIAMM is a family-owned supplier of automotive components (horns, antennas and starter batteries) and industrial (stand-by) batteries. The transaction concerns the assets of the automotive starter battery business of FIAMM (FIAMM-SBB).
- (4) The notified transaction is arranged as a mixed share and asset deal. FIAMM-SBB currently operates three production plants for automotive starter batteries, two in Italy and one in the Czech Republic. Only FIAMM SBB's production plant located in Veronella (Italy) is intended to be inte-

grated into the battery business of VB. VB will not acquire the automotive battery plant of FIAMM in the Czech Republic (either the building or the machinery or equipment). The parties explain that FIAMM will convert this plant into an industrial battery plant over a certain period of time. As regards the starter batteries currently produced in this plant, VB (or a subsidiary of VB) will conclude an exclusive supply agreement for a period up to 31 March 2008. Furthermore, VB will acquire the machinery and equipment of FIAMM SBB's production plant in Avezano (Italy) but not the land and buildings of this plant, which will be rented by VB.

- (5) The proposed transaction consists in the acquisition of sole control by VB over FIAMM SBB. It therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

### II. EXPLANATORY MEMORANDUM

#### A. Competitive Assessment

- (6) In the decision, the Commission considers that the merger would significantly impede effective competition in a number of markets: the EEA-wide markets for the supply of car and of truck starter batteries to original equipment manufacturers and suppliers ('OE-markets'), and the national Italian, Austrian, Czech and Slovak markets for the supply of car and of truck starter batteries to the Independent Aftermarket ('IAM-markets'),

*EEA-wide OE markets*

- (7) The decision concludes that the notified concentration — without considering at this stage the likely effects if

<sup>(1)</sup> OJ L 24, 29.1.2004, pp. 1-22.

FIAMM SBB would exit the market because of financial failure — would create a dominant position on the EEA-wide markets for OE starter batteries for cars and for OE starter batteries for trucks. This conclusion is based on the following main findings: (i) the notified transaction would remove a strong competitive constraint and significantly increase the concentration level of the OE market for starter batteries for cars/LCV and would in addition remove a significant competitive constraint from the OE market for starter batteries for trucks/HCV; (ii) following the merger, the ability of OE customers to switch to alternative suppliers would be extremely limited, in particular due to the lack of significant overcapacity and the existing barriers to expand production capacity; (iii) significant barriers to entry in addition render swift market entry of new suppliers unlikely; and (iv) the detrimental effects on competition resulting from the merger are not likely to be counteracted by the alleged countervailing buyer power of OE-customers.

- (8) In the course of the procedure the parties raised the issues that if the present transaction does not go through, the entire FIAMM group will be forced out of the market due to its poor financial conditions. This would allegedly entail a worsening of the competitive conditions in the relevant markets similar or no worse than the possible adverse effects that would result from the present merger.
- (9) Based on its practice and relevant Court judgments, the Commission considers three main elements especially relevant in order to establish whether a 'rescue merger' may be permitted despite its adverse effects on competition: (i) the allegedly failing firm would in the near future be forced out of the market because of financial difficulties if not taken over by another undertaking; (ii) there is no less anti-competitive alternative purchase than the notified merger; (iii) in the absence of a merger, the assets of the failing firm would inevitably exit the market. Ultimately, it is to be assessed whether the deterioration of the competitive structure that follows the merger cannot be said to be caused by the merger. This would arise where the competitive structure of the market would deteriorate to at least the same extent in the absence of the merger.
- (10) In the decision, the Commission concludes that (i) FIAMM SBB — if not taken over by another company — would be forced out of the relevant markets; (ii) it appears more likely than not that there is no less anti-competitive purchase for the SBB business than the notified merger; (iii) it is not established that — absent the merger — all of the assets of FIAMM SBB would inevitably exit the market. Indeed, individual assets (machinery, production lines, brands) could be purchased by smaller producers in the course of the liquidation process and could be brought back to the market with some delay (which may result

from the liquidation process plus time needed to the buyer to adjust these assets to its own plant and make them productive again).

- (11) As for the overall criterion for assessing whether the proposed transaction has to be considered to be the cause of the significant impediment of effective competition, the Commission has assessed whether absent the merger 'the competitive structure of the market would deteriorate to at least the same extent', separately for each of the relevant markets for which a significant impediment of effective competition would occur.
- (12) Regarding the OE market, the decision concludes that the liquidation of FIAMM SBB would give rise to the exit of SBB as a going concern and a short-term reduction of capacity in the market. Ex-FIAMM market shares would most likely be reallocated to the advantage of those 'approved' suppliers of OE starter batteries which would fill the 'capacity gap'. It is likely that the largest part would go to JCI, but also to other competitors as Exide and Banner. In any event the current market shares of FIAMM would in the short term not go automatically to JCI, which is the most likely outcome of the 'merger scenario'. Furthermore, alternative suppliers would have an incentive and the ability to expand or to enter the market. Based on these considerations, the decision concludes that the competitive structure of the market would deteriorate less in the absence of the merger.

#### *National IAM markets*

- (13) The decision concludes that the notified concentration — without considering at this stage the likely effects if FIAMM SBB would exit the market because of financial failure — would create a dominant position on the Italian, Austrian, Czech and Slovak markets for IAM starter batteries for cars and for IAM starter batteries for trucks.
- (14) In these markets, FIAMM owns strong brands with an important national footprint. Conversely, FIAMM does not have nationally recognised brands in the other markets. VB's market presence is more homogeneous across Europe, and significant in each of the four national markets where FIAMM is strong.
- (15) In Italy, Austria, Czech Republic and Slovakia, a very high percentage of the batteries sold are branded as opposed to private label, much more than in other European markets. The value of brands, including FIAMM's, is something that is rooted in the consumer's preferences and awareness and that can outlive the company owing them.

(16) Additionally, distribution and retail in these countries is oriented more towards traditional types of retail channels (independent workshops, repair shops, filling stations, battery specialists, wholesalers) rather than towards 'modern' retail channels (supermarket/building centres, car centres, fast fitters/tyre retailers) or towards buyer groups. This factor increases the relevance of branded products: traditional distribution and retail channels tend to handle smaller volumes and rely more on the offer of their suppliers in terms of products sold and of marketing and communication.

(17) The merger would combine VB's strong brands (Varta and Bosch) with FIAMM's strong national brands (FIAMM, Uranio and AAA in Italy, Bären in Austria and Akuma in the Czech Republic and Slovak Republic). No other supplier would have a similar portfolio of brands: the closest competitor post merger (Exide in Italy and Slovakia, Banner in Austria and Czech Republic) would be very distant in terms of both market shares and brands. Smaller suppliers and private label products would not be able to compete on the high end of the market; the market investigation indeed confirmed the existing large price gap between branded and non branded products as well as customer's reluctance to switch in case of price increases.

(18) As for the OE markets, the Commission has assessed whether absent the merger 'the competitive structure of the market would deteriorate to at least the same extent', separately for each of the relevant markets for which a significant impediment of effective competition would occur.

(19) On this aspect, the decision considers that the main assets which are particularly relevant to the IAM markets are FIAMM's brands. Although diminished in case of FIAMM's liquidation, it is likely that these brands maintain a large portion of their value and could be usefully purchased by VB's competitors, allowing them to compete effectively with VB's strong brands. Such competitors would normally have sufficient capacity to produce a sufficient number of batteries to serve the IAM markets.

(20) Based on these considerations, the decision concludes that the competitive structure of the market would deteriorate less in the absence of the merger.

### B. Commitments

(21) In order to remedy the competition concerns identified by the Commission, the parties submitted commitments on 9 March 2007.

(22) Most answers of the market test showed that the commitments, while being sufficient to remove the competitive concerns in the IAM markets, were not

sufficient to remove the competition concerns in the OE markets.

(23) After being informed by the Commission on the results of the market test, the parties modified their initial commitments for the OE markets on 29 March 2007.

*OE markets — the commitments proposed on 29 March 2007*

(24) The commitments offered by the parties consist of two main elements:

— the divestiture of [one of the parties]'s car battery production plant in [Plant] (\*) for a total capacity indicated in [...] (\*) million batteries per year. Current OE starter battery production at [Plant] (\*) is of around [1-2] (\*) million batteries per year; IAM batteries are produced in similar volumes. Although the divestiture of the IAM battery business at [Plant] is not necessary to restore competition, it may be necessary to guarantee the viability of the plant, which rests on both lines of production,

— [one of the parties] (\*) commits to sell certain separate pieces of equipment for the production of starter batteries for both cars/LCV and trucks/HCV currently in use at its [Plant] (\*) plant. Although the equipment offered would not constitute a complete production line, it would be consistent with a yearly production capacity of approximately [1-2] (\*) million batteries.

*OE markets — Assessment of commitments*

(25) On the basis of its assessment of the information provided by the investigation, and, in particular, of the results of the previous consultation of the market operators, the decision considers that the modified commitments proposed by the parties on 29 March 2007 are clear-cut and sufficient to remove the competition concerns, without the need to run a further market test, for the following reasons:

— the [Plant] (\*) plant is a significant supplier of starter batteries to the OE car market, with a market share of around [5-10] (\*) % in the EEA. The impact of the remedy would fall short of eliminating the overlap between VB and FIAMM. However, the market share that VB will gain as a result of the transaction post-remedy is likely to be less than what VB would gain, were FIAMM to exit the market as a result of liquidation. Therefore, the remedy would certainly improve the situation with respect to the counterfactual of FIAMM exiting the starter batteries markets,

— thanks to the [Plant]'s (\*) geographical location and its large overall capacity, the plant is well placed to increase its presence in the OE market. Capacity utilisation at the [Plant] (\*) plant has been consistently high in recent years, at around [90-100] (\*) %,

(\*) Confidential information.

- if necessary to ensure the viability of the plant, the IAM Business will be also divested by [one of the parties] (\*),
- the divestiture of the [Plant] (\*) equipment will help currently capacity constrained battery manufacturers to increase their capacity at their own plants. The [Plant] (\*) equipment is capable of producing both car and truck batteries and could increase the OE capacity and market presence of the purchaser.

*IAM markets — the commitments proposed on 9 March 2007*

- (26) In the IAM markets, VB committed to divest a number of trademarks and businesses, which consist of: (i) the [A] (\*) trademark and business in the EEA; (ii) the [B] (\*) trademark and business in the EEA; (iii) the [C] (\*) trademark and business in the EEA; and (iv) the [D] (\*) trademark and business in the EEA; (v) the [E] (\*) trademark and business in the EEA. Additionally, VB and FIAMM committed, at the option of the purchaser, to enter into a temporary supply or toll manufacturing agreement with the purchaser for the non-exclusive supply of or toll manufacturing of starter batteries for a total of maximum [0-1 million] (\*) batteries over a period of [...] (\*).

*IAM markets — assessment of commitments*

- (27) On the basis of its assessment of the information provided by the investigation, and, in particular, of the results of the market test, the decision considers that the commitments proposed by the parties on 9 March 2007 are sufficient to remove the competition concerns, for the following reasons:

- in Italy, the brands to be divested have an important commercial value, which would not be lost if the brands were to be separated from FIAMM. While FIAMM is clearly seen as the most valuable brand, [A] (\*) and [B] (\*) are also considered as good brands in the Italian aftermarket. Customers believe that there are starter battery producers which could be interested and willing to purchase the brands and businesses to be divested and to compete effectively with VB post-merger. Although the brands divestiture does not include the highly rated FIAMM brand, the market test has clearly indicated that the remedy proposed by the notifying party is sufficient to solve the competition problem identified by the Commission in the Italian IAM and has consistently provided reasons to support this view,
- in Austria, Czech Republic and Slovakia, the brands to be divested represent virtually all sales of branded products by FIAMM. Customers and competitors see these divestitures as capable of providing purchasers with valuable assets which will enable them to compete effectively with the merged entity.

### III. CONCLUSION

- (28) The concentration as notified would significantly impede competition in a number of markets. The commitments offered by the parties on 9 March 2007 and modified for the OE markets on 29 March 2007 are sufficient to remove the competition concerns identified by the Commission. Therefore, and subject to the parties' full compliance with their commitments, the decision concludes that the concentration is compatible with the common market.