

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 29 May 1991

declaring the compatibility of a concentration with the common market

(Case No IV/M043 — Magneti Marelli/CEAc) —

Council Regulation (EEC) No 4064/89

(Only the French text is authentic)

(91/403/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings⁽¹⁾, and in particular Article 8 (2) thereof,

Having regard to the Commission Decision of 21 January 1991 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission,

Having regard to the opinion of the Advisory Committee on Concentrations⁽²⁾,

Whereas :

I. NATURE OF THE OPERATION

- (1) A proposed concentration was notified on 10 December 1990 pursuant to Article 4 of Council Regulation No 4064/89, consisting of the acquisition by Sicind, a wholly-owned subsidiary of Fiat, from Samag, a wholly-owned subsidiary of Alcatel Alsthom Compagnie Générale d'Électricité (Alcatel

Alsthom), formally known as CGE, of 50,1 % of the shares of the Compagnie européenne d'Accumulateurs (CEAc). Samag currently holds 98,4 % of the shares of CEA.

II. THE PARTIES

- (2) Fiat had a consolidated worldwide turnover of ECU 33,294 000 million in 1989. Its Community-wide turnover in 1989 was ECU 29,315 000 million of which 63 % was achieved in Italy. The Fiat group is active in particular in the automobile and industrial vehicles, agricultural machinery, road construction machines, automotive parts and electric components sectors as well as in a number of other diversified sectors. It is intended that control of CEA will be exercised by Magneti Marelli, a subsidiary of Fiat. Magneti Marelli is a producer of automotive parts. Its worldwide turnover was ECU 2,560 000 million in 1989.
- (3) CEA is a producer of starter batteries, stationary batteries and traction batteries. It achieved a worldwide turnover of ECU 275 million in 1989 and a Community-wide turnover of ECU 252 million.

III. CONTEXT OF THE ACQUISITION

- (4) The notified operation is one of the components of a 'framework agreement' entered into between Fiat and Alcatel Alsthom, the other main elements of which are as follows :

⁽¹⁾ OJ No L 395, 30. 12. 1989, p. 1, as amended in OJ No L 257, 21. 9. 1990, p. 13.

⁽²⁾ OJ No C 209, 10. 8. 1991, p. 11.

- the exchange of minority shareholdings between Fiat and Alcatel Alsthom. Fiat will acquire 6 % of Alcatel Alsthom and Alcatel Alsthom 3 % of Fiat,
 - the acquisition by Alcatel NV from Fiat SpA (Fiat) of a controlling interest of 69,2 % of the shares of Telettra SpA (Telettra). This concentration was authorized by the Commission subject to certain obligations, on 12 April 1991 (Case No IV/M042 — Alcatel/Telettra) ⁽¹⁾,
 - the planned acquisition of a controlling interest in Fiat's railway equipment subsidiary, Fiat Ferroviaria, by GEC-Alsthom, which is jointly controlled by GEC and Alcatel Alsthom,
 - the creation of a European holding company which will be jointly owned by Fiat and Alcatel Alsthom, which will have the objective of developing initiatives of mutual interest in research and development.
- (5) This Decision concerns only the concentration between Sicind/Magneti Marelli and CEAc.

IV. APPLICABILITY OF REGULATION (EEC) NO 4064/89

- (6) The notified operation is a concentration within the meaning of Article 3 (1) (b) of Regulation (EEC) No 4064/89, since, by acquiring 50,1 % of the shares in CEAc, Sicind would acquire control of CEAc.
- (7) The thresholds of Article 1 (2) of Regulation (EEC) No 4064/89 are met, since in 1989 the combined aggregate worldwide turnover of Fiat and CEAc was more than ECU 5 000 million and the aggregate Community-wide turnover of each was more than ECU 250 million, of which not more than two-thirds was achieved in 1989 within one and the same Member State.

V. RELEVANT PRODUCT MARKETS

- (8) According to the notification, the concentration affects the lead batteries sector, which must be divided into four separate product markets: the traction battery market, the stationary battery market, the original equipment (OE) market for starter batteries and the replacement market for starter batteries.
- (9) Traction batteries and stationary batteries, although both belonging to the industrial battery sector, differ from one another in terms of their techno-

logy, use and the customers for which they are intended.

- (10) In the case of starter batteries, the distinction between the OE market, in which the product is sold to motor vehicle manufacturers, and the replacement market is based not so much on a difference in the product itself or in the function of the product, but on the fact that the conditions of competition in the replacement market differ significantly from those in the market for original equipment. Supply to the OE market requires high technical capacity, intense research and development, 100 % reliability of the products, just-in-time delivery and supply certification granted by the car manufacturers. The existence of two separate markets for starter batteries is generally accepted in the industry. The Court of Justice has already drawn the distinction between the OE market and the replacement market in the case of truck tyres (Case No 322/81, *NV Nederlandsche Banden — Industrie Michelin v. Commission* [1983] ECR 3461).

VI. IMPACT OF THE CONCENTRATION IN FRANCE AND ITALY

- (11) In the case of stationary batteries and original equipment and replacement starter batteries, the concentration will result in an increase in market shares in France and Italy for the new entity.
- (12) In the case of traction batteries, the concentration will have a direct impact only in Italy, since Magneti Marelli operates only in that Member State.

VII. DECISIONS TAKEN BY THE COMMISSION DURING THE PROCEEDINGS

(a) *The decision to initiate proceedings*

- (13) After examination of the notification, the Commission concluded that, with the exception of the traction battery market, the notified operation raised serious doubts as to its compatibility with the common market. It therefore decided, on 21 January 1991, to initiate proceedings pursuant to Article 6 (1) (c) of Regulation (EEC) No 4064/89.

(b) *The statement of objections*

- (14) Following investigations carried out amongst a broad range of undertakings operating in the affected markets as competitors or customers, the Commission sent the parties, on 22 February 1991, a statement of objections in which it raised objections regarding the replacement market for starter batteries in France and Italy.

⁽¹⁾ OJ No L 122, 17. 5. 1991, p. 48.

(15) At a later stage, the objections relating to the replacement market for starter batteries in Italy were withdrawn by the Commission, which found that the concentration entailed a small increase in market share and that significant competitors were present on the market.

(16) As regards the replacement market for starter batteries in France, the objections set out in the statement of objections may be summarized as follows :

(a) there are in France sufficiently homogeneous conditions of competition which differ appreciably from the conditions of competition existing in the other Member States.

Two factors demonstrate this :

- as is evident from the information communicated by the parties and their competitors, manufacturers are able in France to charge, for the same types of batteries, different prices than those which they charge in the other Member States,
- the market shares of the manufacturers are very different in each Member State : thus, for example, CEAC has a market share of more than 40 % in France and a market share of less than 5 % in Germany.

These differences, which continue to exist despite the absence of any specific legal barriers, may be attributed to a range of causes :

- different requirements reflecting the different make-up of vehicle fleets and differences in the level of service required in the Member States,
- consumer preferences for well-known brands,
- major differences in the range of distribution channels, which entail costs for manufacturers having to adjust their commercial strategy to each country,
- the concentration of supply varies considerably from one Member State to another. The more supply is concentrated in one market, the more difficult it will be for actual or potential competitors to increase their market shares or to penetrate a market. The proposed concentration would mean a substantial increase in market shares in France, where the two parties already have the largest market shares ;

(b) the proposed concentration would give the new entity a dominant position, with the result that

effective competition would be significantly impeded, because of the following factors :

- the market share of the new entity would amount to some 60 % in France,
- the gap in relation to the next largest competitor would be considerable (of the order of 40 %),
- in addition, the financial strength of the new entity and that of its parent companies, and its greater access to the lead market, would also have to be taken into consideration,
- lastly, the main competitors having strong positions on their respective national markets would be tempted to refrain from competing, in particular since price competition is unreasonable on a mature market on which little production capacity is available.

It does not seem that the above factors can be offset by purchasing strength that could counterbalance the power of the new entity, since the largest of the numerous customers of the new entity achieve only a fraction of the new entity's turnover.

(17) The parties made known, at a hearing, their disagreement with the Commission's analysis in its statement of objections.

(c) *The opinion of the Advisory Committee*

(18) The Advisory Committee on Concentrations met on 30 April 1991 and delivered an opinion which supported the Commission's analysis.

VIII. AMENDMENTS MADE TO THE PROPOSED CONCENTRATION

(19) However, Fiat has informed the Commission that it has independently decided to amend the strategy underlying its establishment in France.

It will for this purpose, within an agreed period, undertake to reduce its majority holding in the capital of the Compagnie Française d'Électrochimie (CFEC) to 10 % and to reduce to one member its representation on the administrative or supervisory bodies of CFEC.

Before its acquisition by Magneti Marelli in 1990, CFEC was the second largest French battery manufacturer, concentrating its activities on starter batteries in France. It is well established on the French market, on which it has long-established business relationships and well-known brands. Virtually all of Magneti Marelli's market share in France, which was 18,4 % in 1990, is accounted for by the turnover of CFEC.

IX. IMPLICATIONS OF THE TRANSFER OF CFEC ON THE ANALYSIS OF THE COMPETITIVE SITUATION

- (20) The transfer by Fiat of its majority holding in CFEC's capital constitutes an important change in the facts of the concentration and has an influence on the assessment of the concentration on the relevant replacement market of starter batteries.

As a result of the transfer, the two largest French undertakings in the starter battery market are no longer involved in a concentration with one another. Consequently, the effects of the concentration in respect of:

- the combining of their market shares,
 - the combining of their distribution networks,
 - the combining of the best known French brands in the hands of a single undertaking,
- no longer apply.

This change in the facts of the proposed concentration leads the Commission to consider the concentration compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The proposed concentration between Sicind and CEAc is hereby declared compatible with the common market, subject to the obligations set out in Article 2.

Article 2

The following obligations are attached to this Decision:

- (a) in accordance with a timetable agreed with the Commission, Fiat shall reduce its holding in the Compagnie Française d'Électro-chimie to 10 % and shall reduce to one member its representation on the administrative or supervisory bodies of the Compagnie Française d'Électro-Chimie;
- (b) Fiat shall not then increase its holding in the Compagnie Française d'Électro-chimie above the level referred to in (a) without the Commission's agreement;
- (c) for the purposes of this article, Fiat means:
 - (i) the Fiat group;
 - (ii) any company controlled by any part of the Fiat group;
 - (iii) any person acting on behalf of a company referred to in (i) and (ii).

Article 3

This Decision is addressed to:

Fiat SpA,
Corso Marconi 10,
I-10125 Torino;

Sicind SpA,
Corso Marconi 20,
I-10125 Torino;

Compagnie Européenne d'Accumulateurs (CEAc),
18 Quai de Clichy,
F-92111 Clichy Cedex.

Done at Brussels, 29 May 1991.

For the Commission

Leon BRITTAN

Vice-President