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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Lear Corporation
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Subject: **Case M.10512 - LEAR CORPORATION / INTERIOR COMFORT SYSTEMS BUSINESS OF KONGSBERG AUTOMOTIVE GROUP**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 24 January 2022, following a referral pursuant to Article 4(5) of the Merger Regulation, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Lear Corporation ("Lear" or the "Notifying Party") will acquire sole control within the meaning of Article 3(1)(b) of the Merger Regulation over the interior comfort systems business of Kongsberg Automotive ASA ("Target") ("the proposed Transaction").[3] Lear and the interior comfort systems business of Kongsberg

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.

2 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

3 Publication in the Official Journal of the European Union No C 55I, 2.2.2022, p. 1.

Automotive ASA ("Kongsberg") are designated hereinafter as the "parties to the proposed Transaction".

1. THE PARTIES

(2) Lear supplies automotive seating, wire harnesses and electronics to major automakers. Lear's activity in the seating segment includes the design, development, engineering, just-in-time ("JIT") assembly and delivery of complete seat systems to original equipment manufacturers ("OEMs"), and the design, development, engineering and manufacture of all major seat components, including seat structures and mechanisms.

(3) The Target consists of assets constituting the whole of the Target's interior comfort systems business, as well as 100% of the shares of Kongsberg's business in Mexico, Kongsberg Automotive S. de R.L. de C.V. The interior comfort systems business of Kongsberg manufactures, supplies and sells seat heating, seat ventilation, lumbar support and massage equipment, panel heating, ancillary electronic units and system components for passenger cars.

2. THE CONCENTRATION

(4) Pursuant to an asset and share purchase agreement signed on 28 October 2021, the proposed Transaction consists of Lear (via various subsidiaries) acquiring assets and – in respect of the Target's part of Kongsberg's business in Mexico only – shares from various subsidiaries of Kongsberg.

(5) Upon completion of the proposed Transaction, Lear will exercise sole control over the Target.

(6) It follows that the proposed Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(7) The proposed Transaction does not meet the thresholds of Article 1(2) or Article 1(3) of the Merger Regulation as the EU turnover of one of the parties to the proposed Transaction (the Target) amounted to only EUR […] in 2020.

(8) Nonetheless, the proposed Transaction fulfils the two conditions set out in Article 4(5) of the Merger Regulation since it is a concentration within the meaning of Article 3 of the Merger Regulation and it is capable of being reviewed under the national competition laws of at least three Member States – in this case, five Member States (namely […]) were capable of reviewing it.

(9) On 03.11.2021, the Notifying Party, by means of a reasoned submission, requested that the proposed Transaction be examined by the Commission pursuant to Article 4(5) of the Merger Regulation. A copy of that submission was transmitted to the Member States on 03.11.2021 and the Member States competent to examine the proposed Transaction did not express disagreement to the referral request within the period laid down by the Merger Regulation.

(10) Accordingly, the notified concentration is deemed to have a Union dimension pursuant to Article 4(5) of the Merger Regulation.

4. RELEVANT MARKETS

(11) The Parties' activities are related vertically because the seat components produced upstream by the Target are inputs for the downstream JIT assembly of complete car seat systems where Lear is active.

(12) The JIT assembly of complete car seats is an activity whereby OEMs themselves or "Tier 1 suppliers" (specialised assemblers of complete seats or vertically integrated seat manufacturers, such as Lear) assemble the different components, including those supplied by "Tier 2 suppliers" (such as the Target), in or close to the car factory of the OEM.[4] JIT assembly requires that high volumes of complete car seats must be delivered on a very short notice directly to the OEM's production line to be immediately installed in a car.

4.1. Product market definitions

4.1.1. Seat components (upstream)

(13) In past decisions in the automotive sector, the Commission has discussed, but ultimately left open, whether separate markets exist for the production and sale of individual seat components.[5] The Commission has to date not defined product markets for the specific car seat components produced by the Target, i.e., seat support equipment (lumbar support and seat massage equipment) and seat thermal solutions (thermal heat mats and thermal ventilation systems).

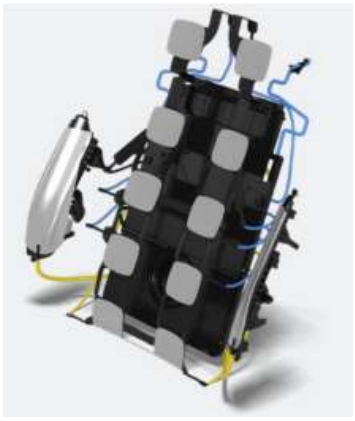
4.1.1.1. Seat support equipment

(14) Lumbar support and seat massage equipment typically constitute part of a seat component producer's seat support portfolio, as both products aim at improving a passenger's seating position and comfort. Lumbar support provides lower back support to car passengers and helps them keep a correct seating position. Massage equipment helps stimulate a car passenger's musculature and blood circulation.

4 Classifying suppliers as being "Tier 1", "Tier 2", etc. is common practice in the automotive industry.

5 Cases M.10232 Brose / Sitech; M.8405 Lear / Grupo Antolin Assets; M.6136 JCI / Automotive Business of Keiper Recaro Group; M.6045 JCI / CRH.

Figure 1: seat support equipment images



Massage equipment



Mechanical Lumbar Support



Pneumatic Lumbar Support

(15) The Commission has considered whether there is a separate market for lumbar support equipment systems but ultimately left open whether it constitutes a separate market from the supply of other seat components.[6]

(16) The Notifying Party submits that, based on its functionality, seat support equipment (i) is not a substitute for any of other seat components, and (ii) that, while some of the seat support equipment's functions are similar to those of seat structures, it cannot function as a substitute for a seat structure as the seat support equipment would not be able to provide its function without the seat structure in place.[7]

(17) The Notifying Party further submits that there is a strong degree of substitutability between lumbar support and massage equipment as both occupy the same position in the seat structure, and when it comes to their application, massage equipment performs all the functions of lumber support equipment. Where present, massage equipment replaces the installation of lumbar support equipment.[8]

(18) The results from the market investigation were mixed. A majority of customers considered that seat support equipment should be further segmented between seat

6 Case M.10232 Brose / Sitech.
7 Form CO, paragraph 78.
8 Form CO, paragraph 81.

lumbar support and seat massage equipment, whereas a majority of competitors considered that the manufacturing and supply of seat support equipment is a distinct market that should not be sub-segmented.[9]

(19) In any event, for the purposes of this Decision, it can be left open whether the manufacturing and supply of seat support equipment is a separate market from a wider market for the production and supply of seat components and whether the manufacturing and supply of seat support equipment should be sub-segmented as the proposed Transaction does not raise serious doubts as to its compatibility with the internal market even under the narrowest market definition. Therefore, the Commission will analyse the impact of the proposed Transaction on the sub-segments for both seat lumbar support and seat massage equipment.

4.1.1.2. Seat thermal solutions

(20) Car seats (and indirectly to a certain extent the whole car) are heated by thermal heat mats and are cooled by seat ventilation systems. Seat thermal solutions have a similar function as HVAC (heating, ventilation, and air conditioning) systems. The Commission previously considered whether the supply of HVAC systems to the automotive industry is a separate market, though it ultimately left the definition open.[10]

Figure 2: seat thermal solutions images



Seat thermal heat mats



Seat ventilation system

(21) The Notifying Party submits that seat thermal solutions: (i) serve a different purpose than lumbar support and seat massage equipment; and (ii) are not a substitute for HVAC systems, but rather an extension, or complement, of them, noting that seat thermal solutions are more frequently ordered by OEMs alongside HVAC systems to provide a holistic climate control system in a given car.[11]

(22) In relation to further segmenting the market, the Notifying Party points to the contrasting purposes of thermal heat mats and thermal ventilation systems and they provide market data on the basis of a product segmentation at the component level.[12]

9 See replies to question 6 of questionnaires Q1 to competitors and Q2 to customers.

10 Case M.7564, Mahle Behr / Delphi Thermal Systems Business.

11 Form CO, paragraphs 82-83.

12 Form CO, paragraphs 82 and 84.

(23) The results from the market investigation were mixed, with a slight majority overall considering that the manufacturing and supply of seat thermal solutions is a distinct market and should not be further sub-segmented for seat thermal heat mats and seat thermal ventilation.[13]

(24) In any event, for the purposes of this Decision, it can be left open whether the manufacturing and supply of seat thermal solutions is a separate market from a wider market for the production and supply of seat components and whether the manufacturing and supply of seat thermal solutions should be sub-segmented as the proposed Transaction does not raise serious doubts as to its compatibility with the internal market even under the narrowest market definition. Therefore, the Commission will analyse the impact of the proposed Transaction on the sub-segments for both seat thermal heat mats and seat thermal ventilation.

4.1.2. JIT assembly of complete car seats (downstream)

(25) In past decisions in the automotive sector the Commission has discussed a potential market for the JIT assembly of complete car seats, but ultimately left open whether the JIT assembly of complete car seats on the one hand, and the manufacturing of its individual components on the other hand, constitute different relevant product markets.[14]

(26) The Notifying Party considers the JIT assembly of complete car seats to be a separate product market, for the following reasons:[15]

(a) When purchasing seats that are to be installed in cars, as OEMs generally do not only purchase the seats, but also the JIT delivery, they run separate tender procedures for the assembly and JIT supply of complete car seats on the one hand and for individual components on the other hand;

(b) The JIT assembly of complete car seats should also be differentiated from the production and supply of individual seat components, as JIT suppliers typically assemble the seats in proximity to the OEM's car production plants using components that they either source from third parties (often selected directly by the OEMs) or their own Tier 2 and Tier 3 facilities located elsewhere;

(c) The requirement to deliver large volumes at short notice (usually within less than 14 hours), in turn requires specific know-how in logistics and supply chain management, as well as investments by the seat manufacturer to ensure the timely flow of supply.

(27) In relation to types of vehicle, Lear is not active in JIT assembly of [all types of] vehicles and the Notifying Party considers that a segmentation between passenger cars and light commercial vehicles is not appropriate. It states that all major providers are able to provide JIT assembly of complete seats for both passenger cars

13 See replies to question 7 in questionnaires Q1 to competitors and Q2 to customers.

14 Cases M.8405 Lear / Grupo Antolin Assets; M.6136 JCI / Automotive Business of Keiper Recaro Group.

15 Form CO, paragraph 98.

and light commercial vehicles and they regularly participate in requests for quotations ("RFQs") across the light vehicle segments.[16]

(28) Most respondents to the market investigation support the view that the JIT assembly of complete car seats is a separate product market from the production and supply of individual seat components[17], and furthermore that it should not be segmented by type of vehicle[18]. One respondent noted that whether assembly of complete car seats is distinct from the manufacturing and supply of individual components depends on the type and complexity of the component in question; they stated that for some components "*most JIT seat suppliers*" can produce the components as well as doing the assembly of complete car seats but that "*In other cases such as complex front seat structures or front head rests or lumbar/massage systems, some/most JIT seat suppliers are not able to produce these components in-house [and so they] would be distinct markets*".[19]

(29) In any event, for the purposes of this Decision, the exact product market definition may be left open as the proposed Transaction does not raise serious doubts as to its compatibility with the internal market under any of the considered plausible market definitions. The Commission will analyse the impact of the proposed Transaction on the market for the JIT assembly of complete car seats.

4.2. Geographic market definitions

4.2.1. Seat components (upstream)

(30) In past decisions the Commission has considered the markets for automotive components (including car seats and car seat components), as well as for HVAC systems, to be at least EEA-wide if not broader.[20]

(31) The Notifying Party considers that the relevant geographical market is global.[21] In support of this view, in relation to the specific characteristics of the components subject to this proposed Transaction, it states:

(a) Components can be shipped across long distances, transport costs or logistics do not constitute a barrier, they are shipped in bulk and stored easily and efficiently in warehouses that manufacturers can easily build all over the world;

(b) OEMs do not require these components to be produced near the OEM / Tier 1 manufacturing sites and tenders are increasingly organised on a global basis (with an increasing participation of Asian suppliers);

16 Form CO, paragraphs 124-5.

17 See replies to question 4 of questionnaires Q1 to competitors and Q2 to customers.

18 See replies to question 8 of questionnaires Q1 to competitors and Q2 to customers.

19 See reply to question 4 of questionnaire Q2 to customers.

20 Cases M.10232 Brose / Sitech; M.6136 JCI / Automotive Business of Keiper Recaro Group; M.7564 Mahle Behr / Delphi Thermal Systems Business.

21 Form CO, paragraph 86.

(c) Most of the Target's products contain relatively mature technology and they are relatively simple, low-tech products that conform to global standards without significant quality differences between suppliers.

(32) The results from the market investigation indicate that seat components are generally sourced on a global basis.[22] However, some respondents point to sourcing on a regional/EEA basis[23], the majority responded that prices for automotive components differ significantly in different regions of the world[24], and most competitors stated that they supply their customers in the EEA from plants located both globally and in the EEA[25].

(33) In any event, for the purposes of this Decision, the precise geographic scope of the market may be left open since the proposed Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement regardless of the geographic market definition adopted. The Commission will analyse the impact of the proposed Transaction on the relevant car seat components at the EEA level.

4.2.2. JIT assembly of complete car seats

(34) In past decisions the Commission has considered the geographic scope of the market for the JIT assembly of complete car seats to be at least EEA-wide[26], although it has been left open in some decisions[27].

(35) The Notifying Party considers that the relevant geographical market is at least EEA-wide.[28] In support of this view, it states:

(a) Competition for the award of contracts takes place in EEA-wide bidding or tender procedures;

(b) Any new suppliers that need to invest in a production site near the OEM customer can do so given the long lead times between the award of a contract and the start of production (two to four years), and they will typically recoup those costs during the initial contract period given the long duration of the contracts (typically between four to six years and longer should the programs be extended);

(c) Manufacturers that already have production sites close to the relevant OEM manufacturing plants may and do lose JIT seat assembly contracts to competitors without an established production site in proximity.

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22 See replies to question 9 of questionnaires Q1 to competitors and Q2 to customers.

23 See replies to question 9 in of questionnaires Q1 to competitors and Q2 to customers.

24 See replies to question 10 of questionnaire Q2 to customers and question 11 of questionnaire Q1 to competitors.

25 See reply to question 10 in questionnaire Q1 to competitors.

26 Cases M.10232 Brose / Sitech; M.6136 JCI / Automotive Business of Keiper Recaro Group; M.7564 Mahle Behr / Delphi Thermal Systems Business.

27 Cases M.8405 Lear / Grupo Antolin Assets; Case M.5930 JCI / Michel Thierry Group.

28 Form CO, paragraph 100.

(36) Some responses to market investigation suggest a global market, although overall they point to the market being at least EEA-wide. The summary of one respondent was that "*Sourcing of complete seats is EEA-wide, sourcing of components is global*".[29]

(37) In any event, for the purposes of this Decision, the precise geographic scope of the market may be left open since the proposed Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement regardless of the geographic market definition adopted. The Commission will analyse the impact of the proposed Transaction on the market for the JIT assembly of complete car seats at the EEA level.

5. COMPETITIVE ASSESSMENT

(38) The proposed Transaction does not lead to any horizontal overlaps nor will it give rise to any conglomerate effects. The parties' activities lead to vertical relationships between the upstream markets for seat thermal solutions and seat support equipment (and potential segments), where the Target is active, and the downstream market for JIT assembly of complete seats, where Lear is active.

(39) The proposed Transaction only gives rise to one vertically affected market between the potential segment for the manufacturing and supply and thermal heat mats for which the Target had a market share[30] of [30-40]% at EEA level in 2020[31] and the downstream market for JIT assembly of complete seats for which Lear had a market share of [20-30]% at EEA level in 2020[32]. On all the other plausible product and geographic markets discussed in section 4 above, the parties' combined market shares are all below the 30% threshold and therefore these markets are not further examined.

(40) According to the Commission's Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ('Non-horizontal Merger Guidelines'), foreclosure effects may occur where actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing these companies' ability and/or incentive to compete[33].

(41) In assessing the likelihood of an anticompetitive customer foreclosure scenario, the Commission examines, first, whether the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals, second, whether it would have the incentive to reduce its purchases upstream, and third, whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market[34].

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29 See replies to question 9 of questionnaires Q1 to competitors and Q2 to customers.

30 In volume (units).

31 [30-40]% in 2019 and [30-40]% in 2018.

32 As well as in 2019 and 2018 in volume and in value.

33 Non-horizontal Merger Guidelines, paragraph 18.

34 Non-horizontal Merger Guidelines, paragraph 59.

(42) In assessing the likelihood of an anticompetitive input foreclosure scenario, the Commission examines, first, whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs, second, whether it would have the incentive to do so, and third, whether a foreclosure strategy would have a significant detrimental effect on competition downstream[35].

5.1. Position of the Notifying Party

(43) The Notifying Party argues that there are no affected markets as the geographic markets are global. In any case, at EEA level, it considers that the vertically affected markets of the supply of thermal heat mats (upstream) and the JIT supply of complete car seats (downstream) do not raise concerns as there is no risk of foreclosure (from inputs or customers) as the merged entity will have neither the ability nor the incentive to foreclose actual or potential competitors[36].

5.2. Assessment of the Commission

(44) Based on the information provided by the Notifying Party and the results of the market investigation, the Commission agrees with the Notifying Party that the proposed Transaction is unlikely to raise serious doubts as to its compatibility with the internal market with respect to this vertical relationship.

5.2.1. No input foreclosure

(45) First, the Commission considers that Lear and the Target will not have the ability to substantially foreclose access to the thermal heat mats for the following reasons:

(a) The Target's market shares remain relatively moderate, below 40% at EEA level and below 30% at global level. Several large competitors of the Target will remain on the upstream market such as Gentherm, Kwangjin, and IG Bauerhin. As a consequence, customers of the Target can turn to other suppliers.

(b) The provision of car seat components commonly takes place in a bidding market with experienced buyers and where a number of large competitors upstream compete with the parties to serve these buyers.

(c) OEMs enjoy a certain degree of buyer power and they often use a directed-buy strategy (in the automotive industry in general, but also specifically in relation to car seat components) whereby they choose Tier 2 component suppliers (such as Kongsberg), negotiate the terms and conditions with them and direct Tier 1 suppliers (such as Lear) to buy components from the Tier 2 suppliers. Where the OEMs apply such a strategy, Lear must abide by the conditions negotiated and agreed between the OEMs and the Tier 2 supplier; Lear cannot choose other Tier 2 suppliers nor negotiate its own terms. The results from the market investigation confirm than the directed-buy strategy is widely used by OEMs[37]. In addition, a competitor points out that "*the markets – in the automotive industry in general, and this business area in*

35 Non-horizontal Merger Guidelines, paragraph 32.

36 Form Co, paragraphs 147 and f.

37 See replies to question 14 of questionnaires Q1 to competitors and Q2 to customers.

particular – are very competitive and characterized by strong OEM buyer power. In particular, the OEM could simply make other suppliers stronger as there are various of them to choose from and increasing new ones (in particular from Asia) entering the market."[38]

(46) Second, the new entity will not have any incentive to engage in a foreclosure strategy upstream for comparatively low-cost car seat components. Indeed, such a strategy would expose Lear to not being selected by OEMs in future tenders they organise for the JIT assembly of entire car seats. Given the much higher value of an entire JIT assembly contract, this would lead to great losses for the new entity. In that respect, a customer underlines that it could decide to switch to other providers: "*Lear can offer a higher vertical integration of seats / seat components which might result in good/better offers. If Lear would plan to offer higher prices after the acquisition of Kongsberg, this might result in a loss of the future contract as also other JIT suppliers have partners for "Kongsberg parts" and/or will offer interesting pricing*."[39]. The market investigation confirms that there are, besides the parties, sufficient competitors with sufficient capabilities on the JIT assembly of entire car seats[40].

(47) Third, the majority of respondents to the market investigation consider that the proposed Transaction will have no (or at most a limited) impact on competition (in terms of prices, choice, quality and innovation). Some customers even consider that the proposed Transaction will have positive effects on the market[41].

5.2.2. No customer foreclosure

(48) The Commission considers that the notified concentration is unlikely to result in any risk of customer foreclosure.

(49) First, the Commission takes the view that the new entity is not likely to have the ability to foreclose access to downstream markets:

- Tier 2 suppliers will continue to be able to sell their thermal heat mats to competitors downstream, such as Adient (the number 1), Faurecia and Magna representing more than 70% of the EEA market. The proposed Transaction will not result in any increment of the Notifying Party and the Target's market share of this component. The market investigation confirms that there will remain sufficient competitors on the JIT assembly of complete car seats market[42].

- It stems from the market investigation that a majority of OEMs organise different tenders for the JIT assembly of complete seats and the individual components of

38 See also: "*in the event of price increases in seating components, the OEMs have the ability and incentive to encourage and support new seat component market entrants".* See replies to questions 16 and 22 of questionnaire Q1 to competitors.

39 Reply to questionnaire Q2 to customers.

40 See replies to question 13 of questionnaire Q1 to competitors and to question 12 to questionnaire Q2 to customers.

41 See replies to questions 20-24 of questionnaires Q2 to customers.

42 See replies to question 13 of questionnaires Q1 to competitors and to question 12 of questionnaire Q2 to customers.

the seats[43]. In addition, the OEMs largely use a directed-buy sourcing strategy pursuant to which they impose their preferred Tier 2 suppliers (as all as the terms and conditions) on Tier 1 suppliers[44]. Even if it wishes to do so, Lear cannot decide unilaterally to source exclusively from Kongsberg. As a result, Lear will not have the capability to foreclose Tier 2 suppliers.

(50) Second, the new entity would have a modest position in the downstream market (market shares below 30%) facing competition by several important rivals. Given the market characteristics, this would make any foreclosure strategy unprofitable and therefore the new entity will have no incentive to enter in such strategy.

(51) Third, the majority of respondents to the market investigation consider that the proposed Transaction will have no (or at most a limited) impact on competition (in terms of prices, choice, quality and innovation)[45].

(52) In light of the above, the proposed Transaction is unlikely to result in any input or customer foreclosure and the Commission concludes that the proposed Transaction does not raise serious doubts as to its compatibility with the internal market.

6. CONCLUSION

(53) For the above reasons, the European Commission has decided not to oppose the proposed Transaction and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

43 See replies to question 5 of questionnaire Q2 to customers.

44 The importance of the direct-buy strategy can vary depending on the relevant components.

45 See replies to questions 20-24 of questionnaires Q1 to competitors and Q2 to customers.