

EN

Case No COMP/M.1882 – PIRELLI / BICC

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

Article 8 (2).
Date: .19.07.2000

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Commission Decision
Of 19.07.2000
declaring a concentration to be compatible with the common market and the
functioning of the EEA Agreement
(Case No COMP/M.1882 – PIRELLI/ BICC)
(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area and in particular Article 57 (2)(a) thereof,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings¹, as last amended by Regulation (EC) No 1310/97², and in particular Article 8(2) thereof,

Having regard to the Commission's decision of 17 April 2000 to initiate proceedings in this case,

Having regard to the opinion of the Advisory Committee on Concentrations³,

WHEREAS:

- (1) On 14 March 2000, the Commission received a notification pursuant to Article 4 of Regulation (EC) No 4064/89 ("the Merger Regulation") of a proposed concentration whereby Pirelli Cavi e Sistemi S.p.A ("Pirelli ") acquires control within the meaning of Article 3(1)b of the Merger Regulation of part of the business of BICC General (the target "BICC" companies) in the field of general wiring and power cables in the United Kingdom, Italy, Asia and Africa, by way of purchase of all the shares in these companies.
- (2) After preliminary examination of the notification, the Commission concluded that the proposed concentration could create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in

¹ OJ L 395, 30.12.1989, p.1; corrected version in OJ L 257, 21.9.1990, p.13.

² OJ L 180, 9.7. 1997, p.1.

³ OJ

a substantial part of it, and as such raised serious doubts as to its compatibility with the common market.

- (3) On 17 April 2000 the Commission decided, in accordance with Article 6(1)(c) of the Merger Regulation to initiate proceedings in this case.

I. THE PARTIES

- (4) Pirelli is a company established under Italian law belonging to the Pirelli Group. Pirelli is the group's operating company for its production activities in respect of cables and cable systems.
- (5) BICC is a UK-based company which is active world-wide in the development, design and manufacture of cable products, copper, aluminium and fibre optic wire products. In 1998 BICC put its world-wide energy cable business up for sale. In May 1999 the entire business, including the companies subject to the proposed acquisition by Pirelli, was acquired by the United States firm General.

II. THE OPERATION

- (6) The parties concluded a Share Purchase Agreement on 9 February 2000 according to which Pirelli will acquire four manufacturing plants in the United Kingdom (situated in Leigh, Prescott, Wrexham and Erith) and two plants in Italy (Settimo Torinese and Ascoli Piceno). According to this agreement Pirelli will acquire 100% of the shares in the following companies currently owned by BICC:

“BICC General UK Cables Limited” (UK),
“Industrial Cables” (UK), “Compounds” (UK),
“BICC Rod Rollers Ltd” (UK),
“Supertension and Subsea Systems” (UK),
“BICC General Ceat Cavi S.r.l. Settimo Torinese” (Italy) and
“BICC General Cavi S.r.l. Ascoli”.

- (7) BICC will retain three manufacturing plants in Spain (“BICC General Cables Barcelona”) and one in Portugal (“BICC Celcat”) as well as one manufacturing plant in the UK (“BICC Pyrotenax”) producing mineral insulated fire resistant wiring cables and thermo-electric heating and measuring cables.

III. CONCENTRATION

- (8) The operation includes the acquisition of the production units, distribution and technology units but also of the intellectual property rights owned by BICC⁴ or conceived in a country where one of the target companies is located. According to the Share Purchase Agreement Pirelli will acquire sole control of the target companies.
- (9) The operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

⁴ With the exception of the intellectual property rights owned by BICC General Pyrotenax Cables Limited.

IV. COMMUNITY DIMENSION

- (10) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁵ (Pirelli [...]** BICC : EUR [...]* million). They each have an aggregate Community-wide turnover in excess of EUR 250 million (Pirelli: EUR [...]* million; BICC : EUR [...]* million), and neither of the undertakings concerned achieves more than two-thirds of its 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. It does not constitute a co-operation case under the EEA Agreement.

V. ASSESSMENT UNDER ARTICLE 2 OF THE MERGER REGULATION

A. Relevant product markets

- (11) The products concerned by the operation are general wiring, the production of copper rod and insulated power cables of low, medium, high and extra-high voltage ranges. Power cables are, for example, used for underground and submarine electricity lines. By contrast, bare wire, as typically used in over-head transmission lines, belongs to a separate product market not concerned by the operation.

Production and sale of general wiring

- (12) General wiring covers a variety of low voltage cables, used for example for building and industrial applications and for power and signal supply of mobile devices as used in railways or petrochemical installations. General wiring products are usually sold through electric wholesalers and cable distributors or directly to installers and original equipment manufacturers (OEMs). The parties do not consider a further segmentation of the market to be relevant. The market test confirmed this view. Therefore, for the purposes of this Decision, the relevant product market is the overall market for general wiring.⁶

Production and sale of copper rod

- (13) Copper rod is one of the principal raw materials used in the manufacture of some power cables, winding wires, general cables and metallic communications cables (“electric grade copper rod”). Before being converted into cables, copper rod must be converted into a solid conductor element or into copper wire. The parties maintain that

⁵ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p.25). To the extent that figures include turnover for the period before 1 January 1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

* Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk

⁶ See also Case No. IV/ M. 1271 - Pirelli/Siemens, paragraph. 8 (OJ C 336, 4.11.1998 , p.11)

virtually all cable manufacturers have their own facilities for transforming copper rod into copper wire and conductor elements. The Commission's investigation has confirmed this view. Therefore the relevant product market, for the purposes of this Decision, is the production and sale of copper rod.

Production and sale of energy power cables

- (14) Power cables can be distinguished, among other criteria, according to their voltage level: extra-high voltage ("EHV") and high voltage ("HV") power cables are used for the transmission of electric power. Low voltage ("LV") and medium voltage ("MV") power cables are employed mainly for the distribution of electricity. The parties maintain that the relevant product market for power cables is the overall power cable market including LV (up to 1kV), MV (1-33 or 1-45kV), HV (33/45-132kV) and EHV (275 kV, 400kV) power cables⁷. The parties argue that the distinction according to voltage levels is made for historical reasons and is no longer meaningful. The Commission, by contrast, has established that LV and MV, on the one hand, and HV and EHV power cables, on the other, belong to different product markets.

Power cables of lower (LV, MV) and higher (HV, EHV) voltage ranges

- (15) On the demand side, the parties claim that cables of MV and HV may to some extent be found in similar applications within a distribution system: Customers could choose between connecting directly to the transmission network or connecting at a series of intermediate points to the existing distribution network, when supplying electricity to an area of significant consumption for the first time (for example a business park or a large housing estate). The market test has revealed that, theoretically, several MV connections could be substituted for one HV connection. However, due to increased energy losses and extra costs resulting from the additional equipment required (substations, etc.), this is generally regarded as unattractive and therefore not a viable option for the customer. Furthermore, customers explained they were not free in their choice of a certain voltage level since this choice would be determined by the configuration of the existing grid.⁸
- (16) In the parties' view this limited demand-side substitutability does not justify a segmentation of markets according to voltage ranges. The parties argue that according to the concept of "indirect and direct chains of substitution", as referred to in paragraphs 57 and 58 of the Commission Notice on the definition of relevant market⁹, power cables of all voltage ranges could be regarded as substitutable from the demand-side, thereby leading to the definition of one single market for energy power cables.

⁷ The voltage levels mentioned are the most commonly used voltage levels; however, there are also other levels used by different customers.

⁸ The price differential between LV and MV cables amounts to approximately 45-60%, between MV and HV it is approximately 79%.

⁹ OJ C 372, 9.12. 1997, p. 5

- (17) There is no evidence to support this market definition. The concept of “chains of substitution” refers *inter alia* to a situation where two or more products can be regarded as belonging to the same product market, without being direct substitutes for each other, because their pricing might be constrained by another product, which is a substitute for the first products. In the present case, prices of HV or EHV power cables do not constrain prices in the lower voltage ranges (LV, MV) and vice-versa. There are, to a lesser extent, differences in price and intended use even between cables within one and the same voltage range, for example between cables of 3kV and 30kV, (both part of the MV segment). However, this does not warrant a distinction between power cables within one voltage range since the characteristics of demand do not substantially differ for these cables. There are, by contrast, a number of differences in the structure of demand for LV and MV on the one hand, and HV and EHV power-cables on the other hand, which are likely to have an impact on the competitive conditions prevailing in these markets.
- (18) First, there are differences in the customer base of HV/EHV and MV/LV power cables. EHV and HV cables are used for the transmission of power and are mainly purchased by the large national grid operators such as ENEL in Italy (80% of domestic demand), whereas MV and LV cables are predominantly used in the distribution of electricity. They are purchased by national utilities, but also by regional and local utilities as well as industry (for example, railways, manufacturing enterprises etc.). Regional utilities (municipalities in Italy or in the United Kingdom, for example) to a certain extent also purchase HV power cables but their share of the total demand is minimal compared to the national transmission grid operators, who often continue to operate as (regulated) monopolies.
- (19) Furthermore, there are differences in the frequency of transaction between the lower and higher voltage ranges and in the process by which the customer selects its suppliers. HV and EHV cables, unlike LV and MV cables, are usually purchased by the customer on a project by project basis, thereby defining the type of cable required for a specific project. Customers order complete installation with cable terminations, design and construction, often including accessories, installation, supervision and systems integration. In the lower voltage ranges, power cables and accessories are ordered separately. LV and MV power cables are standardised products and manufactured to stock. Suppliers have pointed out that deliveries are made weekly or even daily on requirements, which is also why LV and MV are often purchased through distributors, wholesalers or , with multi-year purchase agreements, directly from the manufacturer.
- (20) On the supply side, the parties submit that there is substitutability in the supply of power cables of different voltage ranges. In their view, most cable suppliers are able to offer and sell the various product types without significant switching costs and lead times. Supply-side substitution, the parties maintain, does not require significant adjustment of existing tangible and intangible assets, major investment or set-up time.
- (21) Two factors are of particular relevance in determining whether power cables of different voltages are indeed supply-side substitutable. First, the time and costs required to set up a new production line and distribution channels in a new voltage range and, secondly, the costs involved in switching between voltage ranges within an existing production facility.
- (22) The main European suppliers of cables in the EHV and HV ranges include the five large manufacturers ABB, Alcatel, NKT, Pirelli and BICC. LV and/or MV power cables are produced by the five large firms but also by a significant number of smaller “second-

tier” manufacturers, such as Draka (specialising in LV and MV power cables) and Carena Cavi, Ariston Cavi, Triveneta, Tratos, AEI etc. These smaller firms tend to cover more limited product and/or geographic markets, particularly in the lower voltage ranges for the supply of regional utilities. Some of the suppliers active in the LV and MV voltage ranges have the technical capability to manufacture HV/ EHV products, but have not yet gained significant market shares (for example, the Greek company Fulgor).

- (23) With respect to the barriers faced by a power cable producer who intends to enter a new voltage range, the results of the market test suggest that producers of EHV and HV usually have the know-how to provide the lower voltage ranges but that such a switch might not be envisaged for economic reasons (for example, investment in the necessary equipment and machinery). All suppliers stressed that producers of LV and MV power cables could not easily switch to the production of higher voltage cables, which is more know-how intensive. Rather, the switch between the individual voltage ranges required considerable investments in terms of time and capital.
- (24) Pirelli provides the following estimates of time and costs required to switch between different voltage ranges. The costs of switching from LV to the production of MV power cables is estimated by Pirelli at approximately EUR 7.2 million and to take 14 months (for an up-grade with new equipment). A switch from MV to HV, would cost approximately EUR 10-12 million, and would take on average 16 months. Finally, a switch from HV to EHV power cables would involve costs of between EUR 13 million and EUR 17 million and could be achieved within 18 months.
- (25) Based on these estimates, technical switching costs and times would already be significant. Moreover, many suppliers pointed out that, in addition to pure technical production resources, a successful entry into the HV and EHV power cable markets required considerable know how and customer goodwill, especially as far as the main customers, namely the energy utilities, are concerned. The potential entrant has to pass a number of pre-qualification tests to become an eligible supplier in the higher voltage ranges.
- (26) Some suppliers suggested that switching from lower to higher voltage ranges, including installation of the production line and completion of the necessary tests could take as long as two years. This aspect has been confirmed by a number of customers, who require each new supplier of HV and EHV cables to build competence in installation and systems integration. In addition, to successfully market EHV cables, a track record of successful reference projects is crucial. Manufacturers would usually have to move progressively up the voltage ranges to build up sufficient customer goodwill.
- (27) Regarding the costs of switching between the different voltage ranges within an existing production facility, manufacturers stated that a polymeric insulation extrusion line was normally designed to efficiently produce a specific range of cable types. Production of cable types outside this range is often technically possible, but leads to a loss of efficiency and, hence, higher unit costs resulting from sub-optimal line speed, under-utilisation of assets etc. (for example, if an HV line is used for production of MV/ LV cables).¹⁰ In addition, each switch between different cable types on the same line involves retooling and increased scrap rates. One competitor estimated that a factory

¹⁰ For the production of HV and EHV cables, for example, the standards of cleanliness are much higher, requiring the producer to adapt the production process accordingly.

dedicated to a small number of different cable types could operate up to 10% more efficiently, due to lower scrap rates and retooling costs, than a less specialised plant.

- (28) Upgrading production from lower to higher voltage levels therefore involves significant time and cost. Switching production between different voltages on existing machinery, can lead to significant increases in unit production cost. Supply-side substitutability is therefore relatively low.

XLPE and fluid-filled power cables

- (29) Two different basic technologies are currently used in the production of energy power cables, “fluid-filled” or “oil-filled” technology and cross-linked polyethylene extrusion (“XLPE”) technology. The first involves a process based on the use of insulating laminar paper wrapped around the conductor and impregnated with a dielectric fluid. It was generally used for all types of cables until the early 1970’s, when it started to be gradually replaced by the newer XLPE-technology, beginning with lower voltages. XLPE technology is based on extruded insulation achieved with the help of cross-linked polyethylene. The oil-filled technology involved significant process know-how not widely available to competitors. Production equipment was partly developed in-house by the major cable manufacturers. The XLPE technology, by contrast, is reported to be more widely available with most equipment being supplied by external machinery makers. It is thus significantly more accessible by potential new entrants. Equipment used in the production of oil-filled cables cannot be used for XLPE production, and vice versa. It can therefore be concluded that the two technologies are not substitutable from the supply-side.
- (30) From the demand-side, however, there is strong evidence that fluid-filled power cables and XLPE cables are substitutes. The XLPE technology was initially used only in the LV and MV ranges but has, since the early 1990’s, become increasingly common also for HV and EHV applications. Compared to oil-filled cables, XLPE cables are simpler to install, require less maintenance and are more environmentally friendly (no risk of leakage). As a result, the share of fluid-filled cables in EHV in Europe is decreasing rapidly. In 1999, oil-filled cables accounted for 38% of the total EHV power cable market. According to the parties’ estimates, the technology’s market share will fall to 20% in 2000 and less than 10% in 2001. All competitors have confirmed this decline in customer demand for oil-filled cables. The technology is considered increasingly obsolete.
- (31) For LV, MV and HV power cables, virtually all customers thus regard XLPE and oil-filled cables as substitutes. In the EHV market, two customers stated that they did not consider XLPE and oil-filled power cables as readily substitutable. These customers argued that the long-term reliability of XLPE products had not yet been sufficiently proven and that specific features of their grids (diameter of existing ducts) made a switch costly at present. The market test, however, has shown that most of the European utilities who still use oil-filled cables in EHV plan to switch to XLPE technology in future projects. Electricité de France (“EDF”), the French utility, for example, already began to use XLPE-power cables in EHV in the mid-1980’s. According to the majority of customers and suppliers, there remain no technical obstacles either to the use of XLPE-power cables at EHV, or to the installation of such cables into an existing network of fluid-filled cables. ENEL, the Italian electricity provider, for example, who in the past used oil-filled or EPR-insulated power cables for EHV, will purchase XLPE-EHV power cables in the period of 2000 to 2002. Regional utilities have stated similar views (for example, Edison and AEM Torino in Italy, Scottish and Southern Energy

plc.). Where specific obstacles to the use of XLPE exist (for example, due to XLPE cables' larger conductor size), they can be assumed to be transitory.

Conclusion

- (32) The Commission concludes that the production and sale of LV/ MV power cables on the one hand and HV/ EHV power cables on the other hand, are distinct markets: First, there is no demand-side substitutability between these products. Secondly, switching costs and time from production of lower to higher voltages are significant. Thirdly, the limited supply-side substitutability does not have an impact equivalent to the (missing) demand-substitution effect. Switching to higher voltage ranges with existing machinery but outside efficient range is possible, but at significantly increased production cost. Finally, a distinction between LV and MV on the one hand and the higher voltage ranges (HV/ EHV) on the other hand is required due to the different competitive conditions governing the supply and demand of these products.¹¹ However, the Commission considers that there is not enough evidence to maintain that fluid-filled power cables of extra-high voltages form a distinct product market from EHV power cables manufactured with the use of other techniques (mainly XLPE), given that all producers and a large majority of customers in Europe consider these cable types as substitutes.

B. Relevant geographical markets

Production and sale of general wiring

- (33) The parties submit that the market for general wiring is a Community-wide market due to the harmonisation of cable specifications and the presence of multinational operators, whose commercial policy is established at Community level. The market investigation in the present case has confirmed this view. Therefore, for the purposes of this Decision, the market for general wiring is considered to be a Community-wide market.

Production and sale of copper rod

- (34) The parties submit that the relevant geographic market for copper rod is at least Community-wide since copper rod is a standardised commodity product, which is

¹¹ Based on similar considerations, a study on power cables and conductors (Databank, "Cavi e conduttori isolati"; June 1999; Rif. ISTAT 31.3, Codice B.d.I. 059.341) applies a distinction between high technology power cables ("cavi ad alta tecnologia") and standard power cables ("cavi e conduttori standard"). HV power cables (from >36kV) and EHV power cables (up to 500-600 kV) belong to the first group, LV and MV power cables to the second.

widely traded throughout Europe at comparable prices. Furthermore, the parties hold that transport costs do not constitute a barrier to the import of copper rod. The Commission's investigation has confirmed this assessment.

Production and sale of power cables

- (35) The parties maintain that power cable markets have progressively evolved to become Community-wide markets. According to this view, there are no barriers to market entry on the supply-side. Harmonisation of technical standards for power cables has, according to the parties, removed all remaining obstacles for Community-based suppliers to participate in tenders in all Member States. From a demand side perspective, power cable markets are bidding markets, where customers increasingly source power cables at a European level on the basis of the procedures provided for in the Community public procurement directives. These elements, together with the low impact of transportation costs, the parties argue, are reflected by the increasing level of imports and exports of power cables between Member States. The Commission's investigation has confirmed that the markets for power cables are indeed Community-wide.

Harmonisation of product standards has advanced significantly

- (36) In its Decision concerning Alcatel/AEG Kabel¹² the Commission found that cable markets in the Community are at a transitional stage, shifting from national markets to one that is Community-wide. However, at that time, it concluded that the transition was not yet completed due to a number of factors including the existence of different cable specifications hindering imports, complicated and lengthy approval requirements for suppliers to meet national standards and the related adaptation costs. In its Decision concerning Pirelli/Siemens¹³, the Commission recognised that there is a tendency towards harmonisation of technical standards across Europe, but the question of the national or European dimension of geographic markets was left open.
- (37) In the present case the Commission has found that, according to the European Committee for Electro-technical Standardisation ("CENELEC"), most LV and MV power cables are covered by European standards ("EN's"), except for specialist niche applications, for which no European standards exist. For ENs transposition into a corresponding national standard is compulsory. For HD ("harmonised documents") transposition is voluntary. CENELEC reports that 90% of ENs and HDs are implemented at the national level less than one year after adoption. Most utilities have reported that they apply EN's, international standards ("IEC's"), or national standards compliant with European standards.

¹² Case No. IV M. 165 - AEG/Alcatel Kabel (OJ C6; 10.1.1992;

¹³ Case No. IV/ M. 1271 - Pirelli/Siemens, (OJ C 336, 4.11.1998 , p.11)

- (38) For LV and MV cables, a mix of IEC and CENELEC standards prevails in each Member State. In addition, the individual utility customer usually applies a set of different product specifications (ENEL for instance applies 24 different specifications for LV and MV power cables) related to product quality, raw material and product safety. These specifications are stipulated by the different utilities to fit their respective cable networks (joints, accessories, switching gear).¹⁴
- (39) There are no indications that the different specifications constitute significant barriers-to-entry for potential competitors. Apart from the parties, there are a number of European cable suppliers, such as ABB, Alcatel, NKT, Sagem or the remaining BICC facilities in Spain and Portugal¹⁵, who possess the technical capability, production capacity and certifications required to supply the major European electricity utilities, which they have put to use in a large number of tenders outside their traditional home markets. All these first-tier manufacturers, with the possible addition of some smaller manufacturers, are able to supply cables to specifications required for LV/MV power cables throughout the Community.
- (40) In the HV/EHV market, by contrast, there are no set product standards. For each project, utility customers specify their own design standards, based on national, IEC and CENELEC standards. Hence, cables are custom-designed for each high or extra-high voltage project and national standards do not normally constitute a barrier-to-entry. In order to become a qualified supplier of HV/EHV power cables, the supplier usually has to meet comprehensive test requirements, which, according to customers, can take between 12 and 18 months. However, the main suppliers of HV/EHV cables, including Pirelli, BICC, Alcatel, ABB, NKT, but also some second-tier manufacturers, are already qualified suppliers to most European power utilities. All of these companies could meet the necessary certification requirements for any tendered project, given that utilities are usually obliged to indicate their estimated purchases one year in advance.
- (41) In view of the foregoing, it can be concluded that different product standards are largely harmonised at a European level and existing national specifications are not any longer obstacles to market entry.

Price differences are due to the individual characteristics of each tender

- (42) The Commission's investigation has revealed that a comparison of price levels across different countries for individual products is not meaningful because prices for power cables depend strongly on quantities purchased in each transaction and the specifications stipulated in each individual tender. Batch-sizes can vary widely between the different customers. For example, framework contracts in the LV/MV market can cover several thousand kilometres of cable, while other contracts may relate to relatively short cable links. In addition, the individual customers typically require different cable designs even for identical voltages, for example single or multiple core cable types, different kinds of conductors (round or sectoral), or different types of screens. These

¹⁴ Utilities but also suppliers have reported that the number of specifications will be reduced in the future, due the need to increase efficiency and reduce production costs.

¹⁵ There is no non-compete clause between the new entity and BICC.

differences, combined with varying contract sizes, lead to price differentials between Member States, although they do not constitute barriers-to-entry.¹⁶

Utilities can purchase Community-wide

- (43) Traditionally, that is to say prior to deregulation, the electricity market was marked by monopoly suppliers purchasing largely from domestic cable suppliers. Under the public procurement directives, in particular Council Directive 93/38/EEC of 14 June 1993 co-ordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors¹⁷, as last amended by Directive 98/4/EC of the European Parliament and of the Council¹⁸, contracting entities are required to ensure that there is no discrimination between suppliers, contractors or service providers from different Member States. Under the public procurement directives, utilities are legally required to tender their cable requirements on a European basis through publication in the *Official Journal of the European Communities*.
- (44) However, the contract award notices examined in the course of the Commission's investigation reveal that, although contracts are tendered Community-wide, in the majority of cases the successful bidder(s) continue to be national suppliers with a long-established supplier relationship with the utility customer. That is, utilities' incumbent suppliers have defended their traditional national strongholds despite the opening-up of procurement procedures.
- (45) ABB, for instance, has an HV/ EHV market share of [50-60]*% in Sweden, [45-55]*% in Norway and [5-15]*% in Germany and is not present in any other Member State. SAT-Sagem has [10-20]*% in France, [below 5]*% in Belgium and is not present in any other Member State. NKT has [35-45]*% in Denmark and [5-15]*% in Germany through acquisition of Felten & Guillaume¹⁹. Fulgor has a [45-55]*% market share in Greece and only a minor presence in other Member States. These market shares have changed only marginally over the past three years. Only Pirelli, BICC and Alcatel have significant market shares in all large Member States: Pirelli has [40-50]*% in Italy, [40-50]*% in France, [40-50]*% in Spain, [35-45]*% in Germany and [30-40]*% in the United Kingdom. BICC has [45-55]*% in the United Kingdom, [15-25]*% in Germany, [25-35]*% in Italy, [35-45]*% in Portugal and [50-60]*% in Spain. Alcatel has [25-35]*% in France, [35-45]*% in Belgium and [20-30]*% in Italy. These companies, especially the two market leaders Pirelli and BICC, however, largely base these market positions on local production facilities and/or acquisition of local players. In the LV and MV segment, very similar trends can be observed.
- (46) This significant asymmetry of market shares across Europe could suggest that markets might still be national in scope. However, the market investigation conducted by the Commission did not support this initial assumption.

¹⁶ Price comparisons have been conducted on a hollow basis, i.e. stripping out fluctuations in the copper price.

¹⁷ OJ L 199, 9.8.1993, p.84.

¹⁸ OJ L 101, 1.4.1998, p. 1

¹⁹ NKT also has a minor presence in Finland (5%) and in Belgium (7%).

- (47) Over-capacity combined with the threat of losing out to foreign competitors at present enables utilities to achieve highly competitive bids from their incumbent domestic suppliers. Nevertheless, cross-border bids are increasingly frequent and a number of European cable manufacturers regularly participate in tenders across various Member States. For example in the United Kingdom, the import ratio in 1999 was 32%. Several non-domestic suppliers such as NKT, Studer, Fulgor, Alcatel, Wessel or Tratos have submitted bids for LV/MV power cables. In Italy, the import ratio is lower (approximately 9% of consumption) but has been increasing significantly over the past three years (from 5% in 1997, 6.4% in 1998 to 9-10% in 1999/2000)²⁰. In Italy, several non-domestic suppliers like for example, ABB, NKT and Sagem have recently participated in ENEL-tenders for HV and EHV power cables. In the UK, Alcatel, who recently became qualified supplier for EHV cables to NGC, have participated in NGC tenders, amongst them the high voltage project in Northern Yorkshire.
- (48) Hence, liberalisation and Community procurement legislation have not yet led to a substantial change in national market shares, mainly because low price levels currently make further aggressive undercutting unattractive. Competitive pressure is nevertheless exerted by foreign suppliers, because utilities would face no obstacles in switching to foreign suppliers if local prices rose above competitive levels. The switch would be facilitated by the fact that most large energy utilities are sophisticated customers with significant buyer power, which could easily turn to foreign firms. The utilities, which were addressed in Italy, the United Kingdom, Germany and France have confirmed that they would not hesitate to move orders to foreign suppliers, if domestic manufacturers attempted to raise prices by an appreciable extent (by 5-10%). In addition, utilities have actually achieved substantial price reductions by confronting their incumbents with alternative bids from foreign competitors.
- (49) At the same time, deregulation has increased utilities' incentives to bargain more aggressively with their cable suppliers. Most countries either have or are planning to introduce regulatory systems, whereby efficiency gains above a set level accrue to the utilities. For example, in the United Kingdom, RPI-X price controls, which are reassessed every five years, ensure that a minimum level of efficiency gains is passed on to the consumer, while setting strong incentives for utilities to perform. The RPI-X price controls on the various parts of the electricity industry require the average price (or revenue) to decrease in real terms by a specified annual rate X. The price controls reflect the anticipated levels of future operating costs and capital expenditure that might be incurred and are set to provide an adequate return to shareholders consistent with efficient performance.

Increasing intra-Community trade-flows

- (50) The parties argue that due to deregulation of electricity markets, the absence of entry barriers and low transport costs all over Western Europe, imports as well as exports have increased in recent years. According to the parties, 20.8% of the total Western European consumption was imported while 27% of total production was exported in 1999.
- (51) The Commission's inquiry has revealed that, in general, imports of power cables are increasing within the Community. This trend partly reflects the strategy of most first-tier

²⁰ Trade statistics given by CRU.

cable manufacturers to improve efficiency by consolidating production of specific cable types in dedicated plants on a European basis. This strategy of European realignment of production capacity is currently pursued by all first-tier cable manufacturers (i.e. Pirelli, BICC, Alcatel, ABB, NKT). For example, Alcatel supplies large quantities of cables from its French production plants to other countries, while NKT and ABB have created international production hubs in Copenhagen and Karlskrona, respectively, from where they supply cables to several European countries. Hence, supply of power cables increasingly takes place through European production networks, rather than domestic sources.

- (52) Import ratios differ between Member States. Whereas in the United Kingdom one third of consumption was imported in 1999, imports account for only approximately 9% of consumption in Italy (although they are increasing). In Germany, 21.9% of consumption is imported, in France 23.9% and in the Nordic countries 17.4%. However, the lower level of imports in certain Member States is not due to the existence of entry barriers but reflects differences in the speed and extent to which deregulation and privatisation has taken place.
- (53) Furthermore, the inquiry has revealed that local production capacity is not a prerequisite for successful market entry since transportation costs are relatively low²¹: on average, intra-Community transportation costs are estimated at between 3 and 7% of production cost.²² As such, they lie in the same range as in other industries with well-established European production systems.
- (54) Similarly, the market investigation has revealed that a local presence is not necessary for a supplier to meet customers' just-in-time delivery requirements for LV/MV power cables, which the customer may need within 1 to 2 weeks from the order. These requirements can be met by imports of these products, which can usually be carried out within 1 to 2 weeks. If necessary, local storage facilities can be established at relatively short notice and moderate cost. For HV/EHV power cables, just-in-time delivery requirements do not arise. A local presence for reasons of maintenance or installation does not seem essential. In the case of LV/MV cables, installation and maintenance is done by the customers. In the case of HV/EHV power cables installation or maintenance²³ is usually performed by the large suppliers with the help of local contractors. This view was supported both by customers and competitors covered by the Commission's investigation.

Conclusion

- (55) To summarise, the gradual liberalisation of electricity markets has led the markets for production and sale of power cables (LV/ MV and HV/ EHV) to evolve as Community-wide, even if this is not yet reflected in current market shares. The demand side is dominated by large sophisticated customers with significant buyer power, which

²¹ Due to the higher product value of EHV and HV power cables, transportation costs are relatively lower than for LV and MV power cables.

²² According to most customers, transportation costs mainly represent a barrier-to-entry for imports of low-value added (i.e. LV/ MV) cables from outside Europe, where they can account for approximately 10-15% of product value.

²³ Periodic maintenance is usually not required for HV/EHV voltage power cables.

can be used strategically (for example, to encourage foreign firm entry). Barriers-to-entry are low. The Commission therefore concludes that the relevant geographical market is Community-wide.

C. Competitive Assessment

General wiring

(56) The market shares achieved by Pirelli, the target companies and their main competitors within the Community in 1997, 1998 and 1999, according to the notification, are set out in the table below:

Competitor/Product	1997	1998	1999/2000
Pirelli	[below 10%]*	[5-15%]*	[10-20%]*
BICC/The target companies	[below 10%]*	[below 5%]*	[below 5%]*
<i>Pirelli/BICC</i>	/	/	[10-20%]*
Alcatel	[10-20%]*	[10-20%]*	[10-20%]*
Delta	[below 5%]*	[1-10%]*	[1-10%]*
Triveneta	[below 5%]*	[below 5%]*	[below 5%]*
Draka	[below 5%]*	[below 5%]*	[below 5%]*
BICC General ²⁴	[below 5%]*	[below 5%]*	[below 5%]*
ABB	[below 5%]*	[below 5%]*	[below 5%]*
General Cavi	[below 5%]*	[below 5%]*	[below 5%]*

(57) As shown in the table in paragraph 56, the parties will have a combined market share of [10-20%]*, with only a small distance to Alcatel, which holds [10-20%]*. The market for general wiring is a rather fragmented market with numerous suppliers competing against the merged entity. The proposed concentration will only marginally increase Pirelli's current market share in general wiring and will not lead to the creation of a dominant position for Pirelli/BICC. In general wiring, there are no significant entry barriers since the manufacturing process does not require complex know-how, and customer loyalty is reported to be low. An important proportion of the production of general wiring products is sold through independent distributors (which are not affiliated to cable producers) which themselves have significant market positions in several Member States. Important distributors include, for example, Rexel, Sonepar or Edmundson in France and Belgium or Newey & Eyre, Rexel and Sonepar in the United Kingdom. The market investigation has confirmed that the proposed concentration will not give rise to competitive concerns in the field of general wiring.

²⁴ The remaining business in Spain and Portugal.

Production and sale of copper rod

- (58) At the Community level, Pirelli's and BICC's sales of copper rod each account for approximately 5% of total market in 1999, their combined shares being 10%, while Alcatel has 13.7%.²⁵ Pirelli/BICC²⁶ and Alcatel would be the only power cable producers vertically integrated towards the production of copper rod, selling about 25% of the total EEA copper rod production. Independent manufacturers sell 75% of the supply. The proposed concentration will not lead to the creation of a dominant position in the market for copper rod as a result of which competition would be significantly impeded in the common market since competitors of Pirelli/BICC and/or Alcatel can source copper rod from independent suppliers.

Power Cables

Recent developments in the power cable industry

- (59) Power cable markets traditionally used to be closed markets, where national suppliers²⁷ covered most of the national electricity utilities' requirements without facing significant competition from foreign competitors. In the absence of competitive pressure, the public utilities tended to favour domestic suppliers. They were only moderately price-sensitive, with a tendency, in some countries, to "over-engineer" their networks. Power cables, in addition, typically account for only a minor share of a utility's capital expenditure (low single-digit percentages) and as such did not initially constitute a priority target for cost reduction. Especially in high-voltage transmission, most European utilities' electricity grids predominantly use over-head wire lines, a market not concerned by the operation.²⁸
- (60) Following the gradual liberalisation of the electricity markets and introduction of the Community public procurement regime, the cable industry's competitive environment has started to change. Demand is decreasing as a result of the restructuring of the utilities (for example, privatisation, separation of transmission, distribution and maintenance) and the high level of market saturation (most Member States have a fairly developed electricity system). Many utilities have reduced their investment budgets due to a tightened regulatory regime, leading to significant industry-wide over-capacity (of approximately 30-50%).

25 Figures given in the notification.

26 Through its joint venture with AEI.

27 Suppliers with domestic production capacity, not necessarily domestically owned ones

28 In Europe approximately 0.7% of 400kV lines, 2% of 220kV lines and 5% of 45 – 220 kV lines use underground cables.

- (61) Due to these and other factors²⁹, cable suppliers have found themselves confronted over the past three years with rapidly declining prices (by up to 60%) and decreasing profit margins. Prices have not always moved uniformly in the different Member States, but they appear to have generally declined between 1996 and 1999 by 16% to 24% in LV and by 7% to 36% in MV in the larger Member States (France, Italy, the United Kingdom and Spain), apart from Germany³⁰. In the HV/ EHV segment, specific features of each individual project and the small overall number of transactions blur any price trend or cross-country comparison. Nevertheless, customer have reported significant price decreases of up to 60% in this market. The fact, however, that prices have not always declined uniformly across different European countries does not indicate that markets are national, but rather reflects the different speeds at which electricity markets have been deregulated and, hence, the point at which national utilities have become more price-sensitive.
- (62) At present, price levels are at a historical low. This market environment has led several cable manufacturers to exit the market and many of the remaining ones to merge with competitors, thereby reducing over-capacity and gaining efficiencies through better capacity utilisation and consolidating production of specific cable types in dedicated plants on a European basis.
- (63) Hence, the present operation has to be seen in the context of the general consolidation and restructuring trend in the cable industry. The underlying business rationale of the proposed take-over for Pirelli/BICC is to rationalise production capacity, including the possibility of plant closures. While the operation is likely to reduce industry capacity, the parties' market power after the operation will be constrained by several other viable suppliers as well as utilities' significant buyer power, which should prevent prices from increasing above competitive levels.

Market Shares

- (64) The table below sets out market shares in the HV/ EHV market in the Community in 1997, 1998 and 1999/2000, as given in the notification.

Competitor	1997	1998	1999/ 2000
Pirelli	[20-30]*%	[20-30]*%	[30-40]*%
BICC (the target companies)			[5-15%]*
<i>Pirelli/BICC</i>	/	/	[45-55%]*
Alcatel	[10-20%]*	[10-20%]*	[10-20%]*
ABB	[1-10%]*	[1-10%]*	[1-10%]*
BICC ³¹	[15-25%]*	[15-25%]*	[1-10%]*
NKT	[below	[below	[below

²⁹ Including the decision of the Bundeskartellamt breaking up the power cable cartel in Germany in 1996; B 7-31301-A-105/96

³⁰ In Germany, a large cable cartel was broken up in 1996. As a result, prices for HV/EHV cables have dropped by up to 60% in the past three years, while LV and MV rates have recovered from their lows in the wake of the collapse of the cable cartel 1996.

³¹ The business remaining with BICC, that is essentially BICC's production plants in Spain and Portugal.

	5%]*	5%]*	5%]*
SAT/Sagem	[below 5%]*	[below 5%]*	[below 5%]*

- (65) Pirelli/BICC have a combined market share of [45-55%]*, while the next player, Alcatel, has only [10-20%]*. The operation will combine the largest and the third largest manufacturer of HV/EHV power cables.
- (66) The table below sets out the market shares in the LV/ MV market in the Community in 1997, 1998 and 1999/2000, as given in the notification.

	<i>1997</i>		<i>1998</i>		<i>1999/2000</i>	
	<i>LV</i>	<i>MV</i>	<i>LV</i>	<i>MV</i>	<i>LV</i>	<i>MV</i>
Pirelli	[5-15%]*	[10-20%]*	[5-15%]*	[10-20%]*	[20-30%]*	[25-35%]*
BICC (the target companies)					[1-10%]*	[1-10%]*
<i>Pirelli/BICC</i>					<i>[25-35%]*</i>	<i>[30-40%]*</i>
Alcatel	[15-25%]*	[15-25%]*	[15-25%]*	[15-25%]*	[15-25%]*	[15-25%]*
Draka	[5-15%]*	[1-10%]*	[1-10%]*	[1-10%]*	[5-15%]*	[5-15%]*
SAT-Sagem	[1-10%]*	[1-10%]*	[1-10%]*	[1-10%]*	[1-10%]*	[below 5%]*
BICC ³²	[1-10%]*	[5-15%]*	[5-15%]*	[5-15%]*	[below 5%]*	[1-10%]*
NKT	[below 5%]*	[below 5%]*				
ABB	[below 5%]*	[below 5%]*				

- (67) Pirelli/BICC's combined market share amounts to [25-35%]*. In the LV segment Pirelli/BICC together with Alcatel account for approximately [45-55%]* of the market, whilst in the MV segment they account for [50-60%]*.
- (68) Due to Pirelli/ BICC's high combined market shares in both the LV/ MV and the HV/ EHV market, the Commission has investigated the following possibilities:
- Creation of single dominance of Pirelli/ BICC in the HV/ EHV market
 - Creation of collective dominance of Pirelli/ BICC and Alcatel in the HV/ EHV market
 - Creation of collective dominance of Pirelli/ BICC and Alcatel in the LV/ MV market

Possible creation of single dominance in the HV/EHV market

³² The business remaining with BICC, that is essentially BICC's production plants in Spain and Portugal.

Impact of the market share increment resulting from the operation

- (69) In the HV/ EHV market, the combined entity would be market leader with [45-55%]* % market share at the European level with a considerable distance to the second-largest firm, Alcatel with [10-20%]*.
- (70) To properly assess the parties' market position, it has to be borne in mind that in several Member States the demand for high-voltage power cables consists mainly of the respective national grid operators, such as National Grid Company ("NGC") in the United Kingdom, ENEL in Italy and EDF in France, who account for up to 90% of domestic demand. Hence, the prevailing market structure is not least a result of these dominant customers' purchasing policies. These utilities may move purchases to alternative suppliers in order to maintain a desired number of sources.
- (71) As a result, it is unlikely that Pirelli/BICC's current combined Community market share will be sustained by the merged entity. Several competitors of Pirelli and BICC stated that they anticipated new opportunities to arise for foreign suppliers because utilities currently using Pirelli and BICC as their main suppliers are likely to diversify their supplier-base.³³ Due to the current situation of over-capacity, all of the main European cable manufacturers have significant spare capacity and would therefore be able to fill additional orders.
- (72) At present, depressed price levels enable utilities to obtain highly competitive bids from their traditional suppliers. Market shares have thus remained relatively stable over the past years. Competitive pressure is nevertheless exerted by foreign competitors. Utilities have achieved considerable price reductions (by up to 40%) by confronting incumbent suppliers with lower bids from foreign competitors (for example, ABB and Brugg in Italy, Alcatel and Fulgor in the United Kingdom, NKT in Germany).

After the operation customers will still have at least four alternative suppliers

- (73) Apart from the parties, there are a number of large European cable suppliers such as ABB, Alcatel, NKT, Brugg (and possibly Sagem and BICC General³⁴), which possess the technical capabilities, production capacity and quality certifications to supply the major European utilities with know-how intensive HV/EHV voltage cables in large quantities. As such, they are credible bidders in any major European tender for HV/ EHV power cables. In addition, smaller companies like Fulgor ([below 5%] market share at a Community level), which has recently been added to ENEL's list of pre-qualified suppliers for HV and EHV power cables, have the technical capabilities to supply HV/EHV, provided customers guarantee sufficient orders to justify the necessary investment. As shown in paragraphs 36 to 40, technical and administrative barriers to entry are relatively low. Where specific type qualifications are required, they can be obtained within a reasonable time period, if the customer provides assistance. All of the first-tier manufacturers could supply power cables of HV/EHV using XLPE technology.

³³ ENEL and EDF, for example, according to internal guidelines usually tend to have at least 3 suppliers for power cables of all voltage ranges. Some German utility customers tend to have at least two suppliers for each cable type in the HV/EHV ranges for safety reasons.

³⁴ BICC's remaining facilities in Spain and Portugal

In addition, all market participants agreed that transport costs are moderate (between 3 and 5% of the product price) and that import levels are increasing.

- (74) The competitors' relatively low Community market shares (compared with Pirelli/BICC) do not adequately reflect their competitive strength and production capacity, because the low prevailing price levels have led these manufacturers to focus on overseas markets (for example ABB) or traditional home markets (for example Alcatel). However, when price levels recover, these companies can be expected to bid more actively in Europe.
- (75) In addition, customers have confirmed that existing contractual relationships with their incumbent suppliers do not represent an obstacle to switching suppliers at short notice. Due to their strong bargaining position, several utility customers have, in the past, renegotiated framework-contracts when they felt that market prices had decreased during the contract term.
- (76) Finally, due to their substantial purchasing power, utilities have the possibility to attract additional cable suppliers through strategic allocation of orders and, thus, to broaden their supplier base, if necessary. Fulgor, for example, was encouraged by a British utility to enter the United Kingdom market. The company has the technical capability to manufacture XLPE power cables of EHV up to 420 kV and may in the future become a first-tier manufacturer in terms of Community market share, product range and geographical market penetration. The same principle potentially applies to other second-tier manufacturers, such as AEI or Tratos.

The utility customers have significant buyer and bargaining power, which they exercise in a bidding process

- (77) The major utilities ENEL and NGC as well as EDF and the main German electricity utilities, but also regional utilities, are able to exercise considerable buyer power. Virtually all demand for HV/ EHV cables stems from these customer groups. They purchase large volumes of power cables and account for a significant share of Pirelli and BICC's turnover. ENEL represents around [70-80%]* of the Italian demand for HV/ EHV power cables and represents between 80 and 100% of BICC's and [70-80%]* of Pirelli's sales of power cables to utilities in Italy. NGC represents between 80 and 100% of BICC's sales in the United Kingdom and has a very important share of BICC's Community-wide sales.
- (78) According to Directive 93/38/EEC, public undertakings (contracting entities) are obliged to regularly publish in the *Official Journal* all the contracts which they intend to award over the following twelve months (obligatory "call for competition").³⁵ They must also publish contract award notices which must indicate, *inter alia*, the products concerned, the award procedure, the tenders received and the name and address of the successful suppliers. In the procedure, contracting entities are required to ensure that there is no discrimination between different suppliers or service providers. Many contracting entities have established a system of qualification for suppliers, mostly using European standards as a reference. The criteria for this qualification system have to be made available to interested suppliers. Contracting entities requiring certificates for attesting conformity of the supplier to certain quality assurance standards have to use the

³⁵ This applies to contracts with an estimated value of no less than EUR 400 000.

relevant EN standards series and have to recognise equivalent certificates from bodies established in other Member States.

- (79) However, the existence of bidding markets by themselves does not automatically ensure effective competition in highly concentrated markets. The application and impact of the public procurement directives has to be examined in each individual case. In the HV/ EHV power cable market, tenders take place infrequently, while the value of each individual contracts usually is very significant. Contracts are typically awarded to a single successful bidder (so-called “winner-take-all”-principle). Strong incentives therefore exist for all competitors to bid aggressively for each contract.

Conclusion

- (80) In summary, there is insufficient evidence to conclude that the operation would result in the creation of a dominant position of Pirelli/BICC in the market for the supply of HV/EHV power cables in the Community, because there remain at least four first-tier competitors as credible bidders and because the demand side is dominated by large sophisticated customers, purchasing power cables in a bidding process.

Possible creation of collective dominance of Pirelli/BICC together with Alcatel in the HV/ EHV market

- (81) In the HV/EHV market, the two leading firms, Pirelli/ BICC and Alcatel, would achieve a combined market share of [55-65%]*. Given the considerable lead of Pirelli/ BICC and Alcatel over the next largest competitors and the high degree of existing market concentration, the creation of a collective dominant position of Pirelli/ BICC and Alcatel in the HV/EHV market could *a priori* not be excluded. A position of collective dominance could be exploited, in particular, by bidding less aggressively against each other than under competitive conditions or by tacitly carving up markets along geographic lines (for example traditional home markets). The market investigation has, however, revealed that the underlying transaction structure of the HV/EHV market does not foster conscious parallel behaviour.
- (82) Bidding transactions in the HV/EHV market take place infrequently (there are generally no more than a few HV/EHV contracts placed per year in each country, even less in smaller countries), while the value of each individual contract is very significant. Contracts are typically awarded to a single successful bidder (“winner-take-all”-principle). Strong incentives therefore exist for all competitors to bid aggressively for each contract. The bidding structure (infrequent, high-value contracts) prevailing in the HV/ EHV market makes conscious parallel behaviour unattractive, because the benefits of winning each current contract is likely to outweigh potential future gains from collusion.
- (83) In addition, the benefits of collusive strategies would be asymmetric, because both the value of individual tenders and the size of the competitors’ respective traditional geographic strongholds vary significantly. In addition, Pirelli/ BICC and Alcatel’s existing market shares are asymmetric. Furthermore, prices for HV/EHV power cables are not transparent since they include an important element of services (for example installation and maintenance), accessories (for example joints and switches) and civil

works, which can amount to more than two-thirds of total project value (especially for inter-urban underground cable links).

- (84) Finally, large utilities, the main customers of HV/EHV power cables typically purchase large quantities. In some Member States, one single monopoly grid operator accounts for almost all HV/ EHV purchases. By virtue of their substantial purchasing power, these customers have the possibility to actively develop new supply sources through strategic allocation of orders to selected cable producers. Smaller manufacturers can thus be encouraged to submit bids, provided they are offered sufficient quantities at viable prices to justify the necessary investment.

Conclusion

- (85) No conclusive evidence was found that the operation would lead to the creation of collective dominance of Pirelli/BICC together with Alcatel in the HV/ EHV market, since the market structure does not appear to lend itself to conscious parallel behaviour among bidders and customers can be expected to exercise their considerable buyer power.

Possible creation of collective dominance of Pirelli/BICC together with Alcatel in the LV/ MV market

- (86) In LV/MV power cables, Pirelli/BICC, together with the second largest firm, Alcatel, would account for [50-60%]*% of the market. Pirelli/ BICC and Alcatel collectively would be market leaders with some distance to the next largest competitors. The market investigation has, however, not provided evidence supporting the creation of a collective dominant position of Pirelli/BICC and Alcatel in the supply of LV/ MV power cables.
- (87) Compared to HV/ EHV, Pirelli/ BICC and Alcatel's market shares are more symmetric ([25-35%]* and [15-25%]*, respectively), but their combined market share is lower ([50-60%]*). Barriers-to-entry to the LV/ MV market are lower than in HV/EHV, because the products are less know-how intensive. In the LV/MV market, Pirelli/BICC's main competitors include the large manufacturers Alcatel, NKT, Draka, Sagem, Brugg in addition to a number of smaller firms such as Fulgor, Waskonig, AEI, Tratos, Carena, Triveneta and others, who are active in more limited geographic and/ or product markets.
- (88) Competitive pressure in the LV/MV market is therefore exercised not only by the remaining first-tier manufacturers, but also by a large number of second- tier firms. Apart from the second-tier manufacturers mentioned in paragraph 87, who typically hold established market positions as suppliers to regional utilities and, as members of bidding consortia, to national grid operators, customers have stated that even hitherto less known ("third-tier") manufacturers could be eligible for LV/ MV contracts, if prices available from existing suppliers were to rise. Given the existence of this large competitive fringe, it appears unlikely that Pirelli/ BICC and Alcatel would be able to use their combined market share to impose price increases in the LV/ MV market.

- (89) In contrast to tenders in HV/EHV power cables, LV/ MV transactions tend to take place more frequently and the average batch value is lower. Given the lower average batch value and higher frequency of bidding occasions the individual supplier could be tempted to abstain from aggressive bidding rather than risk a decline in prices and retaliation by rival suppliers.
- (90) However, the Commission's inquiry in the present case has concluded that utilities have various possibilities to thwart attempts of conscious parallel behaviour among bidders. For example, customers can use framework contracts, which aggregate a utility's demand over a period of time (up to two years) and, hence, create less frequent more valuable transactions, in order to increase bidders' incentives to compete aggressively. In addition, utilities frequently use a "bids-for-allocations" process to exercise gradual pressure on large suppliers by reducing their allocation. By offering a higher allocation to smaller (second-tier) players, and thus reducing existing suppliers' volumes, pressure can be exerted on suppliers with a significant fixed cost base. Both strategies are employed by ENEL in Italy and other large utility customers.
- (91) Furthermore, the results of the market investigation indicate that price transparency for LV/MV products is rather low due to the absence of meaningful list prices and varying customer-defined product specifications. Collusive strategies are thus further complicated.
- (92) Finally, LV/MV power cables are also purchased by a number of smaller regional utilities active in the distribution of electricity. Their more limited buyer power, compared to the national grid operators, is balanced by their ability to source cable requirements from the large number of fringe firms, in addition to the first-tier manufacturers. These smaller firms, such as Tratos, Carena and Triveneta in Italy and AEI in the United Kingdom, are all able to cover the smaller quantities demanded by regional utilities.

Conclusion

- (93) The risk that the transaction might create a position of oligopolistic dominance by Pirelli/ BICC and Alcatel in the market for LV/MV power cables appears small, because of the low barriers to entry, a large competitive fringe, the two leading firms' asymmetric market shares and low price transparency.

VI. CONCLUSION

- (94) The combination of Pirelli/ BICC's activities in the United Kingdom and in Italy will remove (or at least weaken significantly) one of the main competitors in an already concentrated market. The merged entity will be the leading cable manufacturer on the EEA level. The operation continues a restructuring process in the cable industry, which has been triggered by the gradual liberalisation of the electricity sector and has led several cable suppliers to exit the market (Siemens, KWO Kabel, Delta). Given the high level of market concentration, the Commission had to carefully evaluate the impact of the operation in the context of the ongoing structural change in the electricity industry. Further consolidation amongst the market leaders would have to be viewed extremely critically.

- (95) In the present case, the Commission has found no conclusive evidence that the merger would create or strengthen a dominant position of Pirelli/ BICC or a position of oligopolistic dominance for Pirelli/BICC together with Alcatel in the markets for LV/MV and HV/EHV power cables in the Community, as a result of which competition would be significantly impeded in the common market. After the proposed transaction, there would appear to be a sufficient number of credible European bidders left to maintain prices at competitive levels. Demand is characterised by large sophisticated customers with substantial buyer power, which enables them to encourage further market entry through strategic contract allocation, if necessary.
- (96) In view of the fact that no fewer than four first-tier competitors in addition to a number of second-tier manufacturers would continue to exist after the operation, the likely continued participation of these suppliers in the calls for tenders constituting the competitive process in the relevant markets, and the considerable scope for customers to structure these bidding processes in a way conducive to effective competition, it can accordingly be accepted that the proposed transaction will not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in a substantial part of the Common Market. The transaction is therefore to be declared compatible with the Common Market, pursuant to Article 8(2) of the Merger Regulation and with the EEA Agreement, pursuant to Article 57 thereof .

HAS ADOPTED THIS DECISION :

Article 1

1. The operation whereby Pirelli Cavi e Sistemi S.p.A. acquires control of part of the business of BICC General is hereby declared compatible with the Common Market and with the functioning of the EEA Agreement.

Article 2

2. This Decision is addressed to :

Pirelli Cavi e Sistemi S.p.A
Viale Sarca , 222
20126 Milano Italy

Brussels,

For the Commission
Mario Monti
Member of the Commission