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*Case No IV/M.221 -
ABB / BREL*

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

Article 6(1)(b) NON-OPPOSITION
Date: 26.05.1992

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PUBLIC VERSION

MERGER PROCEDURE -
ARTICLE 6(1)b DECISION

Registered with advice of delivery
To the notifying parties

Dear Sirs,

Subject: Case No. IV/M.221 - ABB / BREL
Notification of 22.04.1992 pursuant to Article 4 of
Council Regulation (EEC) No. 4064/89

1. This case concerns the acquisition by Asea Brown Boveri Limited (ABB) of a further 40% of the shares of BREL Group Limited, taking its stake in BREL Group from 40% to 80%.

I. THE PARTIES

2. ABB is the holding company for the UK interests of the Asea Brown Boveri group, which operates in a wide range of electrical engineering markets, particularly the supply of equipment for the power generation, transmission, distribution and railway industries. In the railway supply sector, ABB has operations in several EC Member States covering the supply of both electrical and mechanical equipment.

BREL Group is the parent of BREL Limited (BREL) and acts as a holding company and vehicle for the joint participation of its shareholders in the control of BREL. BREL was formerly part of British Railways Board and following privatisation it was purchased in 1989 by a consortium of ABB (40%), Trafalgar House plc (40%) and BREL management and employees (20%). BREL operates solely in the UK and designs, builds, maintains, repairs and refurbishes railway rolling stock and also has a small general engineering operation.

II. THE CONCENTRATION

3. Trafalgar House and ABB currently have joint control of BREL. ABB's purchase of Trafalgar House's stake will give it sole control of BREL. This acquisition of sole as opposed to joint control represents a change in the quality of decisive influence exercised by ABB and brings about a lasting change in the structure of both undertakings⁽¹⁾. Therefore the acquisition of sole control gives rise to a concentration within the meaning of Article 3(1) of the Regulation.

III. COMMUNITY DIMENSION

4. The aggregate worldwide turnover of the parties in 1991 exceeded 5,000 million ECU, ABB achieving 22,218 million ECU and BREL 420 million ECU. Both parties have a Community-wide turnover of more than 250 million ECU and the parties did not achieve more than two thirds of their Community-wide turnover in one and the same Member State. The operation therefore has a Community dimension within the meaning of Article 1 of the Merger Regulation.

IV. COMPATIBILITY WITH THE COMMON MARKET

Product markets

5. The railway equipment market can be divided between traction equipment and rolling stock on the one hand and stationary equipment such as that for signalling on the other. BREL does not produce, buy or sell stationary equipment and this market is therefore not considered further. Traction equipment and rolling stock includes the following vehicle types:

- locomotives,
- high speed trains,
- diesel and electrical multiple units,
- passenger coaches,
- freight wagons,
- metro cars,
- light rail vehicles such as trams.

There are separate markets for the design and construction ("new build") of the vehicles, for the supply of components and for the maintenance, repair and refurbishment of rolling stock.

New build

6. Typically there is a "mechanical" element to a vehicle consisting of the design and construction of the vehicle body and an "electrical" element consisting of the supply of traction packages and electrical equipment.
7. From a demand perspective, each vehicle type constitutes a distinct market, although there is a considerable degree of supply-side substitutability, with some larger suppliers

⁽¹⁾ cf. decision in case No. IV/M.023 - ICI/Tioxide, 28.11.1990

capable of supplying almost all vehicle types, albeit in collaboration with sub-contractors. Whether the relevant product market is that for all new build vehicles or separate markets for individual vehicle types can be left open because even on the narrower definition the concentration does give rise to any cause of concern in the new build sector.

Components

8. Vehicle manufacturers rely on sub-contractors for the supply of components such as seats, wheels, axles, bogies and electrical packages. Some vehicle manufacturers also manufacture components which they may use internally or sell to other vehicle manufacturers.

Maintenance, repair and refurbishment

9. Rehabilitation or overhaul orders are normally awarded on a tender basis every 10 to 12 years and involve the complete refurbishment of a vehicle. Routine maintenance and repair of traction equipment and rolling stock has historically been carried out by the railway operating company concerned. The policy of British Rail and the London Underground, however, is to conduct only very light operational maintenance themselves and to contract out other maintenance and repair work to third parties.

Geographic markets

New build

10. Historically, vehicle orders have tended to be placed with national suppliers (where possible) both because of a preference for national suppliers on the part of publicly-owned railway operating companies and for technical reasons: the products of railway vehicle manufacturers are to a high degree dependent on fixed network installations and need to be developed in close collaboration with the customer (this is particularly true for locomotives, but not for non-self propelling rolling stock)
11. EC moves to harmonise standards and liberalise public procurement policies may be expected to erode the barriers between national markets, as may the development of large suppliers with interests in more than one Member State and increased efforts by non-EC suppliers to enter the market. Indeed, it has been suggested to the Commission that access to the UK new build market for suppliers without a local manufacturing presence is possible with both British Rail and London Underground putting contracts out for full international tender. It has further been suggested that UK suppliers consider that they are competing directly for business with companies from elsewhere in Europe, and from Japan and North America.
12. Thus the geographic market must to a degree be seen as in transition. It is not necessary to take a definitive view on whether the new build market is national or EC-wide because the competition analysis points to the same conclusion in either case.

Components

13. The market for components is at least EC-wide and may be global for certain components. The parties suggest that 46% of UK orders for bogies, about 33% of those for wheel sets and 30-40% of those for traction components were placed outside the Community in 1989-91.

Maintenance, repair and refurbishment

14. This market is national and is unlikely to change given the costs involved in transporting vehicles and components a long distance for repair work, particularly for an island such as the UK.

COMPETITION ANALYSIS

15. Manufacturers design and build vehicles to meet the specific needs of each customer and project. As a result, orders are intermittent and may create sizeable fluctuations in demand from year to year. Consequently market share figures may not accurately reflect the competitive situation, even where several years' figures are taken into account. More important is a company's current ability to supply when successful in winning a bid. A manufacturer may possess the capability to build a vehicle but receive no orders in one year, only to take 50% of the market with a single contract the following year.
16. If the new build market is considered to be national and the relevant product markets those for individual vehicle types, this concentration will not give rise to any increments in market shares for any of the four products manufactured by BREL (electrical and diesel multiple units, metro cars and passenger coaches). ABB's only current independent activities in the UK consist of the manufacture and importation of certain components not supplied by BREL. [...]⁽¹⁾
17. Other than for coaches where it did not win the only contract let in the period 1989-91, BREL has high UK market shares: [...]⁽²⁾ for electrical multiple units (EMUs), [...]⁽³⁾ for diesel multiple units (DMUs) and [...]⁽⁴⁾ for metro cars. BREL's two competitors in the EMU market, Telfos and GEC Alsthom had market shares of [...]⁽⁵⁾ and [...]⁽⁶⁾ respectively, and GEC Alsthom had also won contracts to supply DMUs prior to 1989. BREL's [...]⁽⁷⁾ share of the metro car market reflects its having won the only sizeable contract in the past three years (for London's Central Line): all previous metro contracts for London had been awarded to a GEC Alsthom subsidiary, Metro Cammell. These high market shares need to be seen in the context of existing alternative sources of supply such as GEC Alsthom, and it should be remembered that the concentration does not result in any increase in market share.

(1) Deleted: business secret

(2) Deleted: business secret - over 30%

(3) Deleted: business secret - over 60%

(4) over 60%

(5) over 10%

(6) over 30%

(7) over 60%

18. If the relevant geographic market for new build is considered to be the EC, and the narrow product definition taken, the concentration will result in market share increments of between [...] ⁽¹⁾. High market shares are produced in the DMU market [...] ⁽²⁾ and the metro car market [...] ⁽³⁾ with a [...] ⁽⁴⁾ share in EMUs. These shares are largely a reflection of contracts won by BREL in the UK between 1989-91 (as discussed in the previous paragraph) and the large share of the EC market represented by the UK market in this period. Of greater consequence than simple market shares, however, is the degree of competition likely to exist for future contracts, and there could not appear to be cause for concern given the competitive capability of the large European manufacturers such as AEG, Siemens and GEC Alsthom and other manufacturers such as Veronesi and CAF in the DMU and metro car markets.
19. BREL is not a major producer of components. It produces bogies principally for in-house use, although [...] ⁽⁵⁾ were ordered by third parties in the UK between 1989-91 (representing approximately [...] ⁽⁶⁾ of total orders placed in the UK). ABB supplies components such as electrical equipment, wheels and axles. This concentration will not result in any increment in ABB's market share.
20. BREL has approximately [...] ⁽⁷⁾ of the UK repair, maintenance and refurbishment market (including in-house work) and does not carry out such work on any other EC market. Competitors include RFS Industries, Rosyth Dockyard, Devonport Dockyard, Telfos and a considerable number of smaller repair companies. ABB does not carry out any such activity in the UK.
21. The vertical issues which arise are in respect of the future use of ABB components by BREL in its business. This relates as much to maintenance as new build activities because it is not usually possible to use spare parts which are produced by one manufacturer on another manufacturer's equipment. It could be argued that following the transaction, customers letting contracts where BREL is the lead contractor will be obliged to accept ABB components (such as wheelsets or traction packages). Component suppliers competing with ABB could possibly find BREL-led contracts closed to them. This would only be the case, however, where an ABB component was entirely substitutable in operational and performance terms since a manufacturer must be able to offer a full range of components in order to remain fully competitive. Certain components, particularly those with a bearing on safety or where compatibility with existing components is important may, in any case, be specified by the customer in the contract (although there is a trend to specify only operational and performance criteria wherever possible). Furthermore, given the concentration of UK demand in the British Railways Board and London Underground and the overcapacity in the industry (estimated at 50% EC-wide) customers have considerable power in relations with their suppliers.

(1) under 20%

(2) over 50%

(3) over 30%

(4) over 10%

(5) under 300

(6) under 10%

(7) under 20%

VI. CONCLUSION

22. There is no horizontal overlap between the parties to this concentration and the small vertical links do not give rise to concern. It is concluded that this concentration 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 EC.
23. For the above reasons the Commission has decided not to oppose the notified concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)b of Council Regulation (EEC) No. 4064/89.

For the Commission,