



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29/1/1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Subject: Case No IV/M.1064 - BOMBARDIER/DEUTSCHE WAGGONBAU
Notification of 17.12.1997 pursuant to Article 4 of Council Regulation (EEC) No 4064/89.

1. On 17.12.1997, the Commission received the notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which Bombardier Inc. acquires sole control of Deutsche Waggonbau AG, Berlin, ("DWA").
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the Common Market and with the functioning of the EEA Agreement.

I. THE PARTIES

3. Bombardier Inc. is a publicly listed company in Canada, which is active in the design, development, manufacture and marketing of transport equipment, aerospace, defence and motorized consumer products. Bombardier operates plants in Canada, the United States and in several EU Member States. In 1996, Bombardier achieved a total world-wide turnover of ECU 4.6 billion, of which ECU 1.28 billion were achieved within the Community and ECU 16 million were achieved in the EFTA states.
4. DWA is active in the field of the manufacture and distribution of rail transportation vehicles and components. In 1996, DWA achieved a total world-wide turnover of ECU 512 million, of which ECU 316 million were achieved within the Community, no turnover was achieved in the EFTA states.

II. THE CONCENTRATION

5. The proposed operation consists in the acquisition of DWA by Bombardier by way of purchase of 99% of the shares of DWA. The notified operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

6. The combined aggregate world-wide turnover of the undertakings concerned exceeds ECU 5 000 million. The aggregate Community-wide turnover of each party exceeds ECU 250 million, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. Only DWA achieves more than two-thirds of its aggregate Community-wide turnover in one Member State, Germany. The notified operation, therefore, has a Community dimension according to Article 1(2) of the Merger Regulation. It does not qualify for co-operation with the EFTA Surveillance Authority pursuant to the EEA Agreement.

IV. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product markets

7. The relevant product markets concerned by the proposed concentration are passenger coaches, freight wagons, self propelled units for regional transportation (with diesel or electrical propulsion) ("EMUs/DMUs"), trams, underground vehicles, automated guided transports ("AGTs") and refurbishment of rail vehicles. This distinction of rail technology products, suggested by the parties in their notification, follows the same segmentation as decided by the Commission in the case IV/M.580 - ABB/Daimler Benz.

8. According to the parties, there is a clear trend towards forming consortia in which one company acts as 'system leader' managing the project and subcontractors contributing with their rail technology. In most projects, the supplier of the electrical element of rail technology, which contributes up to 60%⁽¹⁾ of the project value, is the system leader whereas the mechanical work is subcontracted. However, the integration of the electrical element into the whole rail vehicle is often done by the subcontractor. There are a number of reasons for answering to a call for tender as a consortium. Customers demand complete rail systems. Only companies which are full-line suppliers and which have sufficient expertise in managing a complete project are awarded contracts. Customers also prefer to have one company responsible for the project. This is more true when maintenance and repair jobs over the long-term are involved.
9. There is a trend in these industries to further reduce the range of self-manufactured components to be produced by the own company and to increase purchase of components from independent suppliers. However, the ability to supply the components to be incorporated by the main contractor or subcontractor in the electrical or mechanical subsystem of a rail vehicle does not mean in itself that it is possible to participate on the system markets. For instance, DWA as manufacturer of the mechanical element of rail vehicles has never manufactured the electrical part of rail vehicles. According to the parties and based on the Commission's survey carried out in case IV/M.580 - ABB/Daimler Benz⁽²⁾, the ability to supply a subsystem does not necessarily go hand in hand with market participation at the level of the system suppliers. For these reasons, on the above mentioned product markets, a further distinction must be drawn between the components and sub-systems either supplied by subcontractors or manufactured by the project leaders themselves.
10. A survey among the parties' main competitors confirmed that bundling of different rail technology products, for example a joint delivery of passenger coaches and freight wagons, has never been requested in calls for tenders and is unlikely to happen in the future.
11. The product market for passenger coaches includes all non-self-propelled railway vehicles for mainline and regional passenger transport having in common the same underlying technology. Passenger coaches can also be part of complete train sets consisting of a number of coaches and traction units at both ends. However, the technology is the same for both as far as the mechanical part is concerned. Both parties only being suppliers of the mechanical part of passenger coaches.
12. Concerning EMUs/DMUs a distinction could be made between electrical and diesel traction technology. However, as neither of the parties concerned is active in the sale of traction technology and, moreover, as the mechanical platforms support the integration of either diesel or electrical propulsion, the product market of EMUs/DMUs for the purpose of the present procedure can be considered together as a single product market.

⁽¹⁾ See case no IV/M.580 (18)

⁽²⁾ See case no IV/M.580 (19)

B. Relevant geographic markets

13. The parties consider the geographical scope of the relevant product markets to be national for all the relevant product markets. They broadly agree with the findings in the Commission's decision in case IV/M.580. According to the parties, technical specifications for rail vehicles differ for each Member State. Proximity of the supplier to the customer is important in order to have a good understanding of local requirements and to offer maintenance and repair jobs conveniently. However, according to the parties, the product markets of passenger coaches and trams show a tendency towards a European geographical market due to contracts being awarded to non-local suppliers.
14. The Commission considers that the relevant geographic market for all product markets concerned in the foreseeable future will be still along national boundaries⁽³⁾. The reasons for applying a national geographical market have not significantly changed based on information gained in the case IV/M.580 - ABB/Daimler Benz and confirmed by the results of a survey among the parties' main European competitors. However, some efforts take place to align technical conditions in rail technology throughout the Community. In particular, attempts are being made to standardize technical specifications in the rail technology sphere and to create trans-European rail networks⁽⁴⁾. It might, therefore, be possible that because of greater standardization of rail technology products, technical barriers to market entry will be removed in the future.
15. Undertakings not established in Germany have hitherto submitted bids in response to calls for tenders by German purchasers to only a very limited extent. It has clearly been confirmed by competitors that technical expertise and familiarity with the national technical specification play a major role when awarding bids. This is true whether the customer is a railway operator on regional or national level. The number of bids made by undertakings not established in Germany has tended to be larger in the case of calls for tenders from Deutsche Bahn AG than in that of calls for tenders from municipal transport companies. In the light of total costs caused by the adaptation to the existing national technical specifications, foreign suppliers entering the German market, at best, could only be expected when large orders are involved.

C. Competitive assessment

1) General considerations

16. The rail technology market in the European Community is dominated by three big suppliers namely Siemens and ADtranz, both located in Germany, and GEC-Alsthom, France. All of them provide complete rail technology systems including electrical and mechanical elements of rail vehicles. They are mainly active

⁽³⁾ See case no IV/M.580 (22)..(41)

⁽⁴⁾ Council Directive 90/531/EEC on public procurement, amended by Directive 93/38/EEC, Council Directive 91/440/EEC requires Member States to separate the provision of rail transport services and the management of rail infrastructure.

in their domestic markets. Bombardier and DWA, to the contrary, are manufacturers and integrators of the mechanical element of rail vehicles. DWA is active in Germany and in some Central and Eastern European countries, Bombardier in several EU Member States through its subsidiaries.

17. New entries into the product markets of rail technology are currently not expected. The most recent newcomer has been Bombardier which has entered the markets in Europe by acquisitions of small suppliers over the past ten years. The three big competitors, whose activities are mainly focused on their domestic markets, continue to acquire suppliers located in other EU Member States. Siemens has a significant share holding in Matra, France, GEC-Alsthom acquired LHB, Germany, and ADtranz acquired Sorefame, Portugal. This clearly demonstrates that even the three leading suppliers prefer to enter foreign markets by acquiring smaller companies that are already active on these markets. As far as the parties are concerned, DWA had its activities exclusively in Central and Eastern European countries before 1989. After the reunification of Germany, DWA went through a restructuring process and began focusing on the German market. Bombardier, on the other hand, has acquired a number of suppliers located in several EU Member States, namely Talbot in Germany, BN in Belgium, ANF in France, BWS in Austria and ProRail in the United Kingdom.

2) Impact of the concentration

a) Trams

18. There is geographical overlap in the affected product market of trams. According to the parties, in Germany, the market share of Bombardier is approximately [5-15%]⁽⁵⁾, the market share of DWA is approximately [<10%]. These market shares do not vary significantly whether the parties have been sole supplier and whether they have participated in a consortium. As a result of the concentration, the market share adds up to approximately [10-20%]. At this level of market share it can be excluded that the proposed operation will lead to the creation or strengthening of a dominant position. In comparison, Siemens enjoys a market share of approximately [40-60%], ADtranz of approximately [20-40%] in Germany.

b) Freight wagons

19. In the product market of freight wagons there is an insignificant geographical overlap in Germany. According to the parties, the market share of Bombardier is approximately [<5%], the market share of DWA is approximately [10-20%]. As a result of the concentration, the market share adds up to approximately [10-20%]. At this level of market share it can be excluded that the proposed operation will lead to the creation or strengthening of a dominant position. In comparison, ADtranz enjoys a market share of approximately [40-50%], Windhoff of approximately [20-30%] and Graaff of approximately [10-15%] in Germany.

c) Other product markets

⁽⁵⁾ Market shares considered as business secrets have been replaced by ranges in square brackets [].

20. In all other product markets concerned there is no geographical overlap resulting from the parties' activities. Further consideration of the competitive situation on the product markets for passenger coaches and EMUs/DMUs, however, appears necessary due to significant market shares enjoyed by Bombardier in some of the Member States.

i) Passenger coaches

21. In Germany, DWA has increased its market share significantly to approximately [30-40%] over the past three years because of its participation in the ICE-consortium. Siemens which is the project leader has subcontracted a major part of the mechanical work to DWA. Competitors from other Member States, which have also their activities in the mechanical element of rail vehicles, have not been successful in being awarded due to the specific technical requirements of the ICE-programme which comprises integration of electrical and mechanical elements into complete train sets. In Germany, according to the parties, Siemens has a market share of approximately [40-50%], ADtranz of approximately [5-15%]. In France, Bombardier has been subcontractor in the TGV-consortium among others such as DeDietrich, together with GEC-Alsthom as project leader. GEC-Alsthom has a market share of approximately [60-80%], DeDietrich of approximately [10-20%], and Bombardier of approximately [5-15%].

22. In the Netherlands and Belgium, the market share of Bombardier is about [50-60%] in each country, mainly because of the fact that existing passenger coaches are being replaced due to modernisation programmes of the national rail operators. The market share of Bombardier is less than [<5%] in Member States other than those mentioned before.

ii) EMUs/DMUs

23. In the Netherlands and Belgium, Bombardier enjoys market shares of approximately [60-80%] in each country. In the past, contracts have been awarded to Bombardier to replace conventional train sets by self-propelled units. Bombardier, as manufacturer of the mechanical element of the rail vehicle, co-operated with a propulsionist to integrate the traction equipment. In the Netherlands, Holec, a local supplier, provided the electrical traction equipment. ACEC, a subsidiary of GEC-Alsthom, provided the electrical traction equipment for the Belgium market. In the Netherlands, Siemens with a market share of approximately [10-20%] have been a major competitor of Bombardier. In Belgium, GEC-Alsthom and DeDietrich are present with market shares ranging between [5-15%]. In Austria and France, Bombardier has a market share of approximately [10-30%] in each country. Competitors in Austria have been Siemens and ADtranz with market shares between [30-50%]. In France, Bombardier has a market share of approximately [20-30%], GEC-Alsthom of approximately [50-70%]. The market share of Bombardier is less than [<5%] when regarding Member States other than those mentioned before.

24. DWA, to the contrary, has no significant activities in the product market of EMUs/DMUs. Siemens and ADtranz, as its main competitors, delivered complete train sets in the framework of metropolitan transport systems for large cities in Germany. DWA has currently no complete product to offer and, therefore, depends on co-operation with other full-line suppliers of rail technology.

d) Overall conclusion

25. As shown above, technical specifications for rail vehicles vary significantly between Member States. Only suppliers that have sufficient expertise can successfully participate in calls for tenders either as leader of the tender or as a subcontractor. In Member States, where a strong domestic rail technology industry exists, both parties have been subcontractors responsible for the mechanical element of the rail vehicle. In Member States without strong domestic competitors, Bombardier has also been system leader but was required to co-operate with an independent supplier of traction technology.
26. Entry barriers into neighbouring geographical markets still seem to be high. The examples given above (in 21.-24.) demonstrate that it is essential to be present as a local supplier in order to participate successfully in calls for tenders. Moreover, multi-national platforms which could relatively easily be adapted to national specifications, are not yet seen.
27. Particular consideration has to be given as to whether the proposed concentration could create or strengthen a dominant position of Bombardier in certain national markets for the manufacture and sale of mechanical rail technology as a result of the acquisition of DWA, a possible potential competitor. In Germany, Bombardier has only limited activities in some of the product markets concerned due to its inability to provide complete rail technology systems. In view of the existence of major competitors it is unlikely that the proposed operation would create or strengthen a dominant position for the new entity Bombardier/DWA in Germany. In other Member States, DWA is a possible potential competitor of Bombardier but is not particularly effective due to its lack of technical expertise in the electrical element of rail vehicles, restricted financial and other resources. Market entry by DWA into other Member States is, therefore, not expected in the foreseeable future. A considerable strengthening of Bombardier's competitive position due to the acquisition of DWA in these Member States can, therefore, be excluded.
28. Furthermore, as the adoption of technology to the specific requirements in other Member States, at present, seems to be difficult and expensive, the realization of economies of scale, resulting from the concentration, is possible to a very limited extent only as a survey among the parties' main competitors confirmed.
29. In addition, an alternative definition of the geographical market has also been considered. On a European-wide geographical market the market share of Bombardier would rise to approximately [5-15%] as a result of the concentration. This level of market share will not create or strengthen a dominant position. Siemens, ADtranz, and GEC-Alsthom enjoy much higher market shares, between [20-30%] each. In comparison, competitors that have focussed their activities on the mechanical element of rail vehicles have market shares of approximately [<10%] on the EEA-level.
30. It is, therefore, unlikely that the proposed concentration would lead to the creation or strengthening of a dominant position of the parties both on the national markets concerned or on a wider European level.

V. CONCLUSION

31. It follows from the above that the proposed concentration would not create or strengthen a dominant position as a result of which competition would be significantly impeded in the Common Market or in a substantial part of it.
32. For the above reasons the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,