

***Case No COMP/M.2705 -
ENERSYS/INVENSYS
(ESB)***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 04/03/2002

*Also available in the CELEX database
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 4/3/2002

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir(s),

**Subject: Case No. COMP/M.2705 – EnerSys/Invensys (ESB)
Notification of 04/02/2002 pursuant to Article 4 of Council Regulation (EEC)
No. 4064/89¹**

1. On 04.02.2002, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89² by which EnerSys Holdings Inc. (“EnerSys”), which is controlled by Morgan Stanley Capital Partners (“MSP”) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the Energy Storage Business (“ESB”) of Invensys plc (“Invensys”) by way of purchase of shares and assets.
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.

¹ OJ L 395, 30.12.1989 p. 1; corrected version OJ L 257 of 21.9.1990, p. 13, as last amended by Regulation (EC) No 1310/97, OJ L 180, 9.7.1997, p. 1, corrigendum in OJ L 40, 13.2.1998, p. 17.

² OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

I. THE PARTIES

3. EnerSys is a US company which supplies industrial batteries and stored energy solutions. It operates manufacturing facilities in the US, Argentina, Brazil and assembly operations in Canada.
4. Invensys is a global provider of automation and controls with its headquarters in the UK. ESB is a business division of Invensys' Power Systems Division and it is a separate group of operating companies with its own management, accounting and profit and loss responsibility. ESB manufactures, designs, engineers, develops, supplies and services industrial energy storage products. It has five manufacturing and two assembly facilities in the EEA.

II. CONCENTRATION

5. EnerSys will acquire sole control of ESB. The operation therefore constitutes a concentration within Article 3(1) of the Merger Regulation.

III. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate worldwide turnover of more than EURO 5 billion. Each of EnerSys and ESB have a Community-wide turnover in excess of EURO 250 million³, but they do not each achieve more than two-thirds of their aggregate community-wide turnover within one and the same Member State. Therefore the notified operation has Community dimension.

IV. THE RELEVANT MARKETS

Relevant product markets

7. The notified concentration concerns the *industrial energy storage products*, the main function of which is to store and provide electrical energy used to power various types of equipment. According to the notifying party, these products may be classified according to the product's application and/or components. On this basis, the sector might be considered to include the following product types: 1) products that power electric vehicles such as fork lift trucks ("motive batteries"), 2) products that provide emergency system back-up supply for fixed line and wireless telecommunications base stations and for example for utility providers ("stationary batteries"), and 3) products that provide primary or back-up power to defence equipment such as submarines and airplanes ("specialty batteries").
8. Neither EnerSys nor ESB supply *consumer batteries* used to power consumer appliances. As regards the industrial batteries listed above, both EnerSys and ESB supply motive and stationary batteries, but EnerSys is not at all active in the specialty batteries sector.

³ 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, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

9. There is a high degree of demand-side substitutability between the different types of motive batteries as well as between the different types of stationary batteries. Stationary and motive batteries are, however, not substitutable. The clearest differences between them is that stationary batteries are not required to provide the primary and ongoing source of power. They become operative only on an outage of other power sources. Stationary batteries also tend to be smaller than motive batteries.
10. The question as to where the exact boundaries of the relevant product markets lie, can, however, be left open as there will be no impact upon competition regardless of where they are drawn. This is due to the fact that there is minimal geographical overlap between the parties activities, as will be explained below.

Relevant geographic markets

11. The notifying party considers that the relevant market for both motive and stationary batteries is wider than national, but not wider than the EEA. This is due to the fact that batteries are generally manufactured and sold within the one and the same region, for example, the EEA and the USA. This conclusion may be drawn from a listing indicating the location of the manufacturing plants and the sales of all recognized industrial battery manufacturers, which indicates that sales are restricted largely to the region of manufacture (eg. EEA, USA). The reasons for this regional concentration are the cost of transportation (industrial batteries have a relatively low value to weight ratio), technical standards (the German and British ratings, which are predominant in EEA, differ from those of the US and Asia-Pacific), customers operating regional sourcing policies and many suppliers offering after sales and maintenance services, which is viable only on regional basis. On the other hand, it seems clear that conditions of competition between the Member States are not sufficiently different in order to conclude that competition on this type of batteries would take place at a national level.
12. As regards motive batteries, only around [0 -10%] of total EEA sales are imported. The vast majority of EEA imports derive from Eastern Europe. Motive batteries that have not been manufactured in Europe, tend to be niche and specialty products. Furthermore, [80-100%] of the production of the three largest suppliers in the EEA (Exide, ESB and Fiamm) is sold in the EEA. The sales pattern is similar in the Asia-Pacific region and the Americas. As to EnerSys, all of its manufacturing and assembly plants are located in the Americas (USA, Canada, Mexico, Brazil and Argentina) and [80-100%] of its sales of motive batteries are made within those regions.
13. Stationary batteries are generally slightly smaller than most motive batteries, but still bulky and heavy, and in general, it is not viable for suppliers to export extra-regionally. Furthermore, as for motive batteries, technical standards differ between regions, and customers and suppliers tend to operate regional sourcing and supply policies. It is estimated that [10-20%] of stationary batteries sold in the EEA are imported from outside. As for motive batteries, most of the importation comes from the Eastern Europe. For the three largest EEA suppliers, [80-100%] of stationary batteries manufactured in Europe are also sold in the EEA; both Fiamm and Hoppeke are thought to sell [80-100%] of Europe manufactured stationary batteries in the EEA. In the Americas and in Asia-Pacific, [80-100%] of stationary batteries are manufactured and sold within the same region.

14. In view of the above the Commission has concluded that the EEA constitutes a distinct geographic market for both motive and stationary batteries.

V. ASSESSMENT

15. EnerSys sells its products almost entirely in North and South America. It is not engaged in business activities in the EEA, except for de minimis sales [...] in the period from April 2001 to date (approximately [0-5%] market share). EnerSys has no production or assembly facilities in the EEA either. ESB, on the other hand, sells primarily to customers in Europe and also has its production plants close to where sales are made.
16. Since the activities of the parties are geographically complementary, there is no meaningful overlap in their activities in the EEA market.
17. At the EEA level, the market leader in industrial energy storage products is clearly Exide/GNB with a [35-45%] market share in motive batteries and a [30-40%] market share in stationary batteries. ESB comes in second with a [25-35%] market share in motive batteries and [30-40%] in stationary batteries. Fiamm and Hoppeke also have considerable market shares.
18. Worldwide, the market leader is again Exide/GNB with a [20-30%] market share in motive batteries and a [20-30%] market share in stationary batteries. ESB is second with [15-25%] in motive batteries and [15-25%] in stationary batteries. In motive batteries EnerSys has a market share of [5-15%] as well, but also Fiamm, East Penn and C&D have market shares between [5-15%] In stationary batteries C&D, Matshusita and Yuasa have market shares between [5-15%].

VI. CONCLUSION

19. 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 EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No. 4064/89.

For the Commission
(Signed)
Mario MONTI
Member of the Commission