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***Case No IV/M.542 -
BABCOCK / SIEMENS
/ BS RAILCARE***

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

Article 6(1)(b) NON-OPPOSITION
Date: 30/06/1995

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.06.1995

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No. IV/M.542 - BABCOCK/SIEMENS/BS RAILCARE

Notification of 30.05.1995 pursuant to Article 4 of Council Regulation No. 4064/89

1. On 30 May 1995 Siemens AG and Babcock International Group plc notified to the Commission their agreement to establish a joint venture holding company in the U.K. which will carry out activities in the rail transportation sector, primarily within the U.K..
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

3. Siemens AG, a publicly-held German industrial and electronics company and the ultimate parent of the Siemens Group, will carry out the operation through its wholly-owned U.K. subsidiary, Siemens plc (Siemens).
4. Babcock International Group plc, a publicly-held U.K. engineering company engaged in process engineering and contracting, materials handling and facilities management, will carry out the operation through its intermediate holding company, Babcock International Ltd. (Babcock).

II. THE OPERATION

Full function joint venture

5. The parties have constituted a new joint venture holding company, Railcare Ltd. (Railcare), which, in the framework of the privatization of British Rail, has recently successfully bid for two Level 5 railway vehicle heavy maintenance depots at Wolverton and Springburn, belonging to the British Railways Board. The transaction is to be completed through the acquisition by Railcare of Babcock's business for the refurbishment, design and supply of railway vehicle interiors, Tickford Rail Ltd.. Railcare is to operate as an independent entity and, to this end, the parties have undertaken to provide additional resources to the new company to meet its working capital requirements as well as to provide performance guarantees relating to long term customer contracts.

Joint control

6. Siemens and Babcock hold 40% and 60% respectively of the shares of Railcare, which they will, nonetheless, jointly control through the mechanisms, set up in the corresponding Shareholders' Agreement, for taking certain major decisions (approval of annual budget, 3-year business plan, change in business activities) concerning the company. The said mechanisms consist of the requirement of either the unanimous approval of the Directors (3 appointed by Babcock, 2 by Siemens) present at a validly constituted Board Meeting or written approval of one Babcock appointed Director and one Siemens appointed Director for major decisions.

Absence of risk of coordination

7. Both Siemens and Babcock have up to now been present in the U.K. market for railway vehicle maintenance and refurbishment. While Siemens is also present with these activities elsewhere in the EEA, Babcock has no other subsidiaries or businesses operating in railway maintenance and refurbishment in the EEA outside the U.K.
8. Babcock will withdraw its own presence from the U.K. market for the said activities by transferring all of its activities to the joint venture, with the exception of the rail repair and refitting division (Babcock Rail) of its wholly-owned subsidiary, Babcock Rosyth Defence Ltd. (BRDL). Siemens will maintain a separate presence from the joint venture with regard to two areas of its related activities: i) a pre-existing contract for Sheffield Supertram maintenance and ii) potentially, Heathrow Express maintenance, if its current tender for this contract is successful.
9. However, by virtue of the non-competition clause contained in the Shareholders Agreement relating to Railcare, Babcock is prohibited from engaging in rail maintenance or refurbishment in the U.K. other than through Railcare. In this context, under the terms of the said clause, Babcock's subsidiary, BRDL, is enabled to undertake only sub-contract work for Railcare, without breaching the non-competition covenant. Thus, in fact, only one of the parents (Siemens) will remain active in the joint venture's market and, in these circumstances, it can be considered that any risk of the coordination of the competitive behaviour of the parents of the joint venture can be excluded .

Conclusion

10. In the light of all the above-mentioned factors, it is concluded that the operation will result in the creation of an autonomous full function undertaking, which will be jointly controlled by its parents and which will not give rise to the coordination of the competitive behaviour of the parents, thus constituting a concentration within the meaning of article 3 (1) b of the Merger Regulation.

III CONCENTRATION OF A COMMUNITY DIMENSION

11. Siemens AG and Babcock International Group plc have a combined worldwide turnover in excess of 5000 million ECU (Siemens AG, 43833 million ECU and Babcock International Group plc, 1036 million ECU in 1993/94). Each of them has a Community-wide turnover in excess of 250 million ECU (Siemens, 27642 million ECU and Babcock International Group plc, 867 million ECU in 1993/94), of which they do not achieve more than two thirds within one and the same Member State. The notified operation has, therefore, a Community dimension.

IV COMPATIBILITY WITH THE COMMON MARKET

A. Relevant Product Markets

12. Railcare's business will cover three areas of activity in the rail transportation sector, all of which concern railway vehicles (this term meaning all types of rolling stock, locomotives and trams): i) the maintenance, repair and refurbishment of railway vehicles and vehicle components; ii) the design, manufacture and sale of railway vehicle interiors and related components; iii) the assembly and sale of railway vehicles.
13. With regard to the last of the joint venture's areas of activity mentioned above, according to the parties, the assembly and sale of railway vehicles will form no material part of Railcare's business for some years. In relation to the activities of the remaining two areas of Railcare's business, the parties identify two relevant product markets: i) the maintenance of railway vehicles and ii) the refurbishment of railway vehicles, this latter including the activities relating to interiors described in paragraph 12 above.
14. The maintenance of railway vehicles encompasses a broad range of services covering: a) routine daily maintenance and b) more substantial maintenance and repair such as collision damage repair, modification, conversion and refurbishment of and to railway vehicles and certain components.
15. The refurbishment of railway vehicles involves the major refurbishment of and to locomotives, vehicles (including interiors) and certain components.
16. However, a product market definition is not necessary as, given the respective market positions of the parties in the activities concerned, described under Assessment below, such a definition would not alter the Commission's conclusion with regard to dominance in this case.

B. Relevant Geographic Market

17. The parties consider the corresponding relevant geographic market to be by its nature limited to the U.K. for reasons of the cost-effectiveness and practicality associated with carrying out the activities concerned by the operation within the U.K.: the importance of the time factor in overall cost; certain technical differences (e.g., voltage) coupled with the difficulty in transporting over long distances. In support of this line of argument, the parties point out the fact that only U.K.-based undertakings are involved in such railway vehicle related activities in the U.K. railway transportation sector.
18. However, given that Babcock International Group plc has no presence in any of the activities of the joint venture outside the U.K. and that, even on the parties' own narrow definition of the relevant geographic market, the operation does not result in any problems of dominance, it is not necessary to define the relevant geographic market in the present case.

V ASSESSMENT

19. The core business of the joint venture will consist of two broad areas of activity, i.e. the maintenance of railway vehicles and the refurbishment of railway vehicles, described under Relevant Product Markets above (paras. 14 and 15).
20. With regard to the current presence of Siemens and Babcock in the above-mentioned two areas of activity, Babcock's activities have been concentrated principally in its Tickford Rail Ltd. subsidiary, which is being acquired by the joint venture, and have consisted mainly in refurbishment work carried out under contract with the London Underground. The said activities have given Babcock a market share in the U.K. of around 20% in railway vehicle refurbishment. As British Rail (pre-privatization) and the London Underground have both traditionally undertaken their own maintenance in-house, Babcock's share of U.K. railway vehicle maintenance has been minimal. The corresponding presence of Siemens in the U.K. market has been very limited, consisting principally in its Sheffield Supertram maintenance activities, and has not reached an overall market share of 1%.
21. With regard to the market share targeted by the parties through the present joint venture operation, the parties estimate that Railcare will achieve in the U.K. in the current year, 1995/96, a market share of approximately 13% in railway vehicle heavy maintenance activities and a market share of 20% in railway vehicles refurbishment activities (including interiors). Both in maintenance and refurbishment, the joint venture will be faced with strong competition from important players, such as GEC Alsthom, ABB Transportation and Bombardier.
22. In the light of the above considerations, it is considered that there is neither creation nor strengthening of a dominant position in the market as a result of the present operation.

VI CONCLUSION

23. 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 No 4064/89.

For the Commission,