

***Case No COMP/M.5473 -
FINCANTIERI/ ABB/ JV***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 11/05/2009

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11/05/2009

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties

Dear Sir/Madam,

**Subject: Case No COMP/M.5473 - Fincantieri/ ABB/ JV
Notification of 31 March 2009 pursuant to Article 4 of Council Regulation
No 139/2004¹.
Publication in the Official Journal of the European Union No. C83,
07.04.08, p.29**

1. On 31 March 2009, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("the Merger Regulation") by which the undertakings Fincantieri – Cantieri Navali Italiani S.p.A. ("Fincantieri", Italy) and ABB S.p.A. ("ABB", Italy) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of a newly created company ("the JV") constituting a joint venture.
2. After examination of the notification, the Commission concluded that this concentration falls within the scope of the Merger Regulation and that it does not raise serious doubts with regard to its compatibility with the Common Market and the EEA agreement.

I. THE PARTIES

3. ABB S.p.A., incorporated in Italy, is a wholly-owned subsidiary of ABB Ltd (Switzerland). The ABB group is a global provider of power and automation technologies. The transaction relates to the process automation business of ABB, and more precisely the "marine and solutions" branch. [...].

¹ OJ L 24, 29.1.2004 p. 1.

4. Fincantieri is an Italian shipbuilding company, active worldwide on the markets for both merchant ships (including cruise ships, ferries, offshore and specialized vessels and mega yachts) and naval ships (including submarines and surface combatants such as aircrafts carriers, frigates, destroyers and mine hunters).

II. THE OPERATION

5. Pursuant to the Shareholders Agreement ("SHA") signed between ABB and Fincantieri (together, "the parties") on 16 December 2008, the parties will set up a 50/50 joint venture based in Italy. The joint venture will be active in engineering, development, manufacture and sale of marine automation systems, as well as associated refitting/retrofitting services. ABB will contribute to the joint venture the whole of its Italian business unit for marine automation systems. Though the JV will be based in Italy, it envisages marketing its systems at a global level.

III. CONCENTRATION

6. With respect to joint control, each of the parties will hold 50% of the shares and voting rights in the joint venture. The SHA does not confer any particular preferential right to either ABB or Fincantieri. Therefore, the joint venture will be jointly controlled by the parties.
7. With respect to full-functionality issues, the JV will have *sufficient resources to operate independently on a market*. [...].
8. Also, the joint venture's activities will *go beyond one specific function of the parents*. It will focus on engineering, developing, manufacturing and selling (mainly under its own trade mark) marine automation systems for the most part to Fincantieri but also to third parties. For its first three years of operation, [...]
9. Finally, the joint venture will *operate on a lasting basis*. It will be initially set up for a period ending in 2060. [...].
10. In the light of the foregoing, it can be concluded that the joint-venture qualifies as full-functional and therefore the operation constitutes a concentration according to Article 3(4) of the Merger Regulation.

IV. COMMUNITY DIMENSION

11. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion. Each of them have a Community-wide turnover in excess of EUR 250 million, and they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

V. COMPETITIVE ASSESSMENT

12. Given that Fincantieri is not active in the market of marine automation systems where the JV will operate, there is no horizontal overlap between the parties. Vertical relationships result from the facts that ABB is active in the upstream market of automation products (the hardware and software the automation system is based on) and Fincantieri is active in the various downstream markets for shipbuilding.

RELEVANT PRODUCT MARKETS

1. *Market where the JV will operate: marine automation systems*
13. Marine automation systems are electronically computerised systems, installed in all categories of ships/vessels in order to enable the real time monitoring and control of their various systems, such as propulsion, electrical plants, safety systems and auxiliary systems. Marine automation systems are playing an increasingly important role in shipbuilding, as they facilitate the development and construction of a single control platform with considerable benefits for the ship's functionality and performance.
14. According to the notifying parties, all marine automation systems require the same basic technology and know-how irrespective of the type of ship (e.g. whether merchant or naval, see below) for which these systems are sold. The main suppliers of marine automation systems would indeed offer both products for merchant and naval ships or would be able to do so without much time and investment.
15. Respondents to the market investigation confirmed that general building components of marine automation systems are the same irrespective of the type of ships on which they are installed. Competitors of ABB also indicated that they provide marine automation systems for both naval and merchant ships.
16. A market player however submitted that the market for marine automation systems should be segmented between highly complex automation systems and less complex automation systems. According to this respondent, highly complex automation systems are installed on ships requiring a large number of measuring points and control functions (more than 6000 so-called IO points) whereas low complex automation systems (less than 3000 IO points) are not suitable on ships which require automation of a large number of –often interrelated- processes. The main differences between these systems relate mainly to functionality, system architecture, and price (high complexity systems would be 10 times more expensive than low complexity systems, not only because of the higher number of IO points but also due to a higher price per IO point).
17. The Commission's investigation has not confirmed this view. First, the complexity of marine automation systems is not directly correlated to the size of the ship. In other words, there is no clear correspondence between the number of IO points and the type of ship. Indeed, the complexity of marine automation systems also depends on the ship-owner's requirements for more advanced functionalities. Therefore, there is some level of demand-side substitutability between marine automations systems of varying complexities. Second, the architecture and design of the so-called highly complex automation systems does not fundamentally depart from the structure of less complex automation systems. The market investigation revealed that most marine automation systems do or could offer the full range of automation systems in a short time and with limited investment. There is thus significant supply-side substitutability between these products. Third, none of the customers who responded to the Commission's investigation deemed this distinction relevant. In any case, the precise product market definition for marine automation systems can be left open, as the transaction does not raise serious doubts under any alternative product market definition.
18. The joint venture will also be active in refitting/retrofit activities for marine automation systems, which are aimed at upgrading and refurbishing existing marine automation systems, by installing new components on, and/or by redesigning portions of, existing marine automation systems. The parties submit that these operations are generally

performed by the supplier who installed the existing system. Consequently, these activities would form part of the same market than the production and sale of marine automation systems, as an after-market of the latter. A majority of customers have indeed indicated that the original supplier is more familiar with the existing system and it is normally offering the best terms of the upgrade. As the elements put forward by the parties have been confirmed in the investigation, refitting/retrofit activities for marine automation systems will not be discussed further in the decision.

2. *Upstream market(s): automation products*

19. Automation products are a combination of hardware and software used by systems engineers in the development and production of automation systems for various applications, such as petrochemicals, oil & gas, pharmaceuticals, energy production, pulp & paper, food, water, mining & metals, etc. Automation products are the main input that is used for the development and manufacture of marine automation systems.
20. The parties submit that all automation products, regardless of their application, form part of the same market, mainly because the main suppliers already offer or can easily start supplying the full range of products. However, this alleged supply-side substitutability is less clear for the particular case of marine automation products, where specific certification schemes are mandatory. The existence of these certification schemes have been confirmed by respondents to the market investigation, who nevertheless indicated that they did not encounter any difficulties obtaining certification for their products. Anyhow, the precise market definition can be left open as it does not affect the assessment in this case.

3. *Downstream market (s): Shipbuilding*

21. In past cases², the Commission made a first distinction within the shipbuilding market between (i) merchant ships and (ii) naval (military) ships. The need for this distinction arises from differences in characteristics, performance, use and prices, as well as distinct customer bases, naval vessels being ordered by national governments as opposed to private customers for merchant ships.
22. Within merchant ships, the Commission considered a further sub-delineation along the various types of ships (possibly grouped) such as ferries, cruise ships, chemical/oil tankers, product tankers, leaving the exact market definitions open. The parties do not agree with this distinction and rest on supply-side considerations to justify a market delineation including all merchant ships. However, they provided market data for all the types of ships where Fincantieri is active, namely: cruise ships, ferries, offshore vessels - more precisely the sub-segment of Anchor Handling Tug Supply Vessels ("AHTS")³ - and mega-yachts.
23. Within naval vessels, the Commission also considered a possible distinction by type of ships such as frigates, corvettes or mine counter measure vessels. Similarly to merchant ships, the parties take the view that all naval vessels belong to the same product market.

² See notably Case COMP/M.4956 STX/Aker Yards and Case COMP/M.1709 Preussag/Babcock/Celsius.

³ An AHTS is a vessel which supplies oil rigs, tows them to a location, anchor them up and, in a few cases, serves as an emergency rescue and recovering vessel.

Nevertheless, the parties provided their market shares for the two types of naval vessels which Fincantieri sold in the past few years, namely frigates and patrol vessels.

24. The market investigation confirmed that the distinctions put forward by the Commission in past decisions remain valid. Nevertheless, this question can be left open, as it does not affect the assessment of the case.

RELEVANT GEOGRAPHIC MARKETS

1. Market where the JV will operate: marine automation systems

25. The notifying parties submit that the market for marine automation systems and associated after-market have at least an EEA-wide dimension. This is supported by the fact that, currently, ABB develops and sells all its marine automation systems from Italy and, to a lesser extent, Norway, to customers located all over the world. This would also hold true for naval applications.
26. The Commission's market investigation has broadly confirmed the scope of this market. Competitors submitted that customers are located worldwide and European customers explained while they might prefer suppliers which are located in the EEA, they generally see no problems in procuring from suppliers on a worldwide level should customer requirements or special technical solutions suggest so. Therefore, for the purpose of the present case, the market for marine automation systems is considered as at least EEA-wide in scope.

2. Upstream market(s): automation products

27. The parties submit that the market for automation products is at least EEA-wide in scope, in line with their actual geographic area of operation of ABB. The market investigation did not show that the scope of these markets should be narrower than the EEA.

3. Downstream market (s): Shipbuilding

28. In accordance with past cases⁴, the parties submit that the markets for merchant ships are worldwide in scope. A similar definition can be retained in this case.
29. With respect to naval vessels, the Commission has traditionally found markets to be national where domestic producers exist that are able to design and manufacture products satisfying actual and future demand⁵. In other cases, it also discussed alternative wider scopes⁶. According to the parties, skilled local shipbuilders (usually preferred by the local government) are only present in a limited number of countries, and therefore, national governments have to place orders to non-national shipbuilders. According to the parties, this would give these markets a worldwide dimension. However, in this particular instance, it appears that Fincantieri is the main contractor of the Italian Navy. The parties also indicated their market shares on the basis of a national

⁴ See notably Case COMP/M.4956 STX/Aker Yards.

⁵ See Case COMP/M.4640 BAe/VT/JV.

⁶ See Case COMP/M.1709 Preussag/Babcock/Celsius.

market for Italy. For the purpose of the assessment of the present case, the question whether the market for naval vessels is national or wider in scope can be left open.

COMPETITIVE ASSESSMENT

1. *Vertical relationship between ABB's activities in automation products and the joint venture's activities in marine automation systems.*
30. Considering a broad market of automation products, ABB holds a market share of [10-20%] at worldwide level and [20-30%] at EEA level. Regarding a narrower market of automation products for marine automation systems, these shares are quite smaller ([0-5%] at worldwide level and [5-10%] at EEA level).
31. In any event, the joint venture's activities in marine automation systems will exclusively derive from the transfer of ABB's Italian business unit. In other words, Fincantieri will bring to the joint venture neither additional demand for marine automation products nor production capacity/technology in marine automation systems. Therefore, the vertical link between ABB's automation products' activities and the joint venture's business already exists within ABB and the transaction will not bring any change in this respect.
2. *Vertical relationship between Fincantieri's activities in shipbuilding and the joint venture's activities in marine automation systems.*
32. Fincantieri, as a shipbuilder, purchases marine automation systems. Fincantieri and ABB's business unit active in marine automation systems - and which will be the core of the joint venture – are already significantly linked as Fincantieri is by far⁷ the main customer of ABB for these products.
33. The parties submit that this link is not entirely of a vertical nature, at least for merchant ships. According to the parties, most marine automation systems installed in merchant ships are selected by the ship-owner, and allegedly the shipbuilder cannot drive this choice. This would be mainly due to the need to limit training and maintenance costs.
34. However, this point has not been fully confirmed by the market investigation⁸. The selection procedure of a supplier of marine automation systems has been described by market players as follows: as a general rule, the ship-owner will specify the system requirements and define, together with the yard, a makers' list for marine automation systems as part of the shipbuilding contract. The yard then selects the best supplier based on a commercial/technical evaluation of the bids. The client approves the yard's selection, alternatively (and rarely) instructs the yard to select a different supplier, usually paying an additional fee. In very few instances the selection of a supplier of marine automation systems is defined by the owner and stipulated in the shipbuilding contract. It follows from the above that the shipyard generally has a significant influence on the choice of the provider of marine automation systems, through the definition of the maker's list and the evaluation of the bids placed by short-listed suppliers.

⁷ [...].

⁸ Answer to Q.18 of questionnaire sent to competitors on 1 April 2009. Answer to Q.21 of questionnaire sent to customers on 1 April 2009.

35. The Commission therefore assessed whether the new vertical link created between ABB's activities in marine automation systems and the shipbuilding activities of Fincantieri could lead to risks of input or customer foreclosure.

Risks of input foreclosure

36. On an EEA market for marine automation systems (both for merchant and naval ships), ABB's market share (which will be almost entirely transferred to the joint venture) amounts to [5-10%]. Its main competitors include Kongsberg (market share: [30-40%]), L3 Valmarine/SAM ([20-30%]) and Siemens ([20-30%]).
37. The parties could not provide estimates of the total market value when distinguishing between sales for merchant ships and naval ships. Market size data gathered during the market investigation showed that, even taking into account this distinction, the merged entity will still face several strong competitors with high market shares, capable of supplying competing shipbuilders in an input foreclosure scenario.
38. With respect to a possible distinction between highly complex and less complex automation systems, ABB's market share would reach [10-20%] for complex automation systems⁹, and thus the conclusion above remains valid also under this product market definition.
39. Last, it should be underlined that, in the past few years, Fincantieri has already been the main customer of ABB for marine automation systems by far (more than [70-80%] of its sales in the past three years). Therefore, an hypothetical withdrawal of ABB from the marine automation system merchant market is unlikely to affect the conditions of competition on this market, as ABB is currently supplying only limited volumes to Fincantieri's competitors.
40. Consequently, the Commission takes the view that concerns of input foreclosure can be dismissed, in view of the limited market share of ABB/the joint venture (and, in particular the limited sales made to shipbuilders other than Fincantieri) and the existence of strong alternative suppliers.

Risks of customer foreclosure

41. Assuming that there are no specificities of marine automation systems depending on the type of ships in which they are installed, risks of customer foreclosure can be excluded as Fincantieri's demand for these products represents only [0-5%] of total demand.
42. Regarding merchant ships, considering narrower markets by types of ships, downstream worldwide market shares (in number of ships) of Fincantieri are as follows: cruise ships [20-30%]¹⁰, ferries [0-5%], AHTS [5-10%], mega-yachts [0-5%]. Apart from cruise ships and only if considering market shares in tonnage ([30-40%]), these markets are not affected by the transaction. As regards cruise ships, Fincantieri is unlikely to have the ability to engage into customer foreclosure, given that large alternative customers exist for competing marine automation systems suppliers: STX Europe (market share in

⁹ [...].

¹⁰ Market shares in number of ships at worldwide level for the period 2000-2007.

number of ships: [10-20%]); Meyer Werft GmbH ([10-20%]) and T. Mariotti S.p.A. ([0-5%]). Competitors have confirmed during the market investigation that these players represent a significant share of their orders of marine automation systems and also named other alternative customers such as Odense (Denmark), TKMS and Blohm and Voss (both from Germany).

43. Regarding naval ships, considering markets of worldwide dimension, Fincantieri's market share is largely below 25% under any possible measure and therefore these markets are not affected by the transaction. However, Fincantieri has been the only supplier of the Italian Navy for frigates for the period 2000-2007 (with 2 frigates sold) and one of the two suppliers of patrol vessels during the same period (market share in number of ships: [10-20%], in tonnage: [50-60%]). In particular, in Italy, only Fincantieri produces and sells naval vessels (non nuclear powered) above 45 meters in length.
44. Notwithstanding, the market investigation has not shown that the upstream market for marine automation systems has to be further segmented depending on the type of ships in which they are installed. Furthermore, as mentioned in paragraph 26, the market for marine automation systems is at least EEA-wide in scope, even when these systems are to be installed in naval ships. This means that a strong position of Fincantieri in Italy does not limit the range of available customers for suppliers of marine automation systems for naval ships. Overall, Fincantieri does not appear to be a significant customer on the downstream market and therefore does not have the ability to engage in customer foreclosure.
45. Even if a distinction between highly complex and less complex marine automation systems were to be relevant, the same reasoning applies, as Fincantieri's purchases of highly complex automation systems represent less than [0-5%] of total market demand.
46. Based on the above, the transaction does not raise serious doubts as regards vertical effects, either through input or customer foreclosure.

VI. CONCLUSION

47. 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 (EC) No 139/2004.

For the Commission
(signed)
Neelie KROES
Member of the Commission