

EN

***Case No COMP/M.6529 -
ABB / THOMAS &
BETTS***

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

Article 6(1)(b) NON-OPPOSITION
Date: 11/05/2012

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EUROPEAN COMMISSION

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Brussels, 11.05.2012
C(2012) 3253

PUBLIC VERSION

MERGER PROCEDURE

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M. 6529 - ABB / Thomas & Betts
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

1. On 30 March 2012, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking ABB Ltd ("ABB", Switzerland) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking Thomas & Betts Corporation ("T&B", United States of America) by way of purchase of shares² (ABB and T&B are designated hereinafter as the "Parties").

(1) THE PARTIES

2. ABB is a Swiss company and the ultimate parent company of the ABB group. ABB is a global provider of power and automation technology products that are designed to improve power grid reliability, increase industrial productivity and enhance energy efficiency for utility and industrial customers. ABB is divided into the following five divisions: (i) Power

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

² Publication in the Official Journal of the European Union No C 106, 12.4.2012, p. 7.

Products, (ii) Power Systems, (iii) Discrete Automation and Motion, (iv) Process Automation, and (v) Low Voltage Products.

3. T&B is a US-based company mainly active in designing and manufacturing components used to manage the connection, distribution, transmission and reliability of electrical products in industrial, construction and utility applications. T&B also offers commercial heating and ventilation products as well as engineered steel structures used for utility transmission.

(2) CONCENTRATION

4. The Parties have entered into an Agreement and Plan of Merger, dated as of 29 January 2012, providing for the acquisition of T&B by ABB. The proposed concentration will be structured as a merger of Edison Acquisition Corporation, an indirectly wholly-owned subsidiary of ABB, with and into T&B. As a result, T&B will continue as the surviving company of the merger and become an indirectly wholly-owned subsidiary of ABB. Accordingly, the completion of the proposed concentration qualifies as the acquisition of sole control by ABB over T&B within the meaning of Article 3(1)(b) of the Merger Regulation.³

(3) EU DIMENSION

5. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 2 500 million⁴ (for ABB EUR 27,292 million; for T&B EUR 1,733 million). In [...], their combined aggregate turnover exceeds EUR 100 million and each of the undertakings has an aggregate turnover exceeding EUR 25 million ([...]). The aggregate EU-wide turnover of each of the undertakings exceeds EUR 100 million (for ABB EUR [...]; for T&B EUR [...]). Neither of the undertakings concerned achieves more than two-thirds of its aggregate EU-wide turnover within one Member State. The notified operation therefore has an EU dimension under Article 1(3) of the Merger Regulation.

(4) COMPETITIVE ASSESSMENT

6. The proposed transaction gives rise to horizontal overlaps between the Parties' activities in the EEA in the supply of high⁵, medium⁶ and low⁷ voltage electrical components and systems. However, while ABB supplies a range of high, medium and low voltage products globally, T&B is active predominantly in North America and primarily in the supply of low voltage electrical components. Furthermore, the Parties' low voltage product ranges

³ Cf. Case No COMP/M.2510 - *Cendant/Galileo*, 24 September 2001, recital 5, where the Commission considered a similar concentration structure as acquisition of sole control according to Article 3(1)(b) of the Merger Regulation.

⁴ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

⁵ The high voltage overlap concerns high voltage disconnectors.

⁶ The medium voltage overlaps concern vacuum interrupters, vacuum contactors, vacuum capacitor switches and underground distribution connectors.

⁷ The low voltage overlaps concern cable trays, cable ties, wiring accessories, junction boxes, enclosures, fire detection, lightning protection systems and surge protective devices.

are largely complementary. Accordingly, the horizontal overlaps are limited and only give rise to affected markets in relation to two low voltage products: (i) lightning protection systems ("LPS") in the UK should the Parties' products be considered to fall within the same product market, and (ii) hardwired surge protective devices ("SPD") in France, Greece, Italy and the UK should these be considered to constitute separate geographic markets.

7. The transaction also gives rise to vertical relationships between the Parties' upstream activities in the supply of electrical components and ABB's downstream activities in the supply of electrical systems. However, only one of these relationships gives rise to vertically affected markets, namely the Parties' supply of medium voltage ("MV") vacuum interrupters and ABB's downstream production of MV circuit breakers.

A. Product market definitions

Lightning Protection Systems

8. LPS are designed to protect buildings and structures from damage or fire due to lightning strikes by channelling the lightning strike to the earth termination network in a safe and controlled way.
9. While T&B exclusively manufactures and sells conventional LPS, ABB is exclusively active in non-conventional Early Streamer Emission ("ESE") system LPS ("ESE LPS"). Conventional LPS consist of (i) a Franklin rod, i.e. an air terminal to intercept the lightning, made of lightning rod, mesh cage or catenary conductors, (ii) down conductors, and (iii) ground terminals to pass the lightning current into the earth. Non-conventional LPS are similar to conventional LPS in design and functionality. However, they use different air terminals which are equipped with an electric or electronic system to launch an upward connecting leader to meet the descending-step leader at an earlier time than would a conventional air terminal having similar geometry and installed at the same height. This is called the ESE system. According to the Parties, ESE LPS use fewer air terminals than needed under the conventional LPS. However, there is controversial debate about the efficiency of ESE LPS technology as compared to conventional LPS technology.
10. The Commission has not yet defined the relevant product market for LPS. The Parties submit that conventional and non-conventional LPS fall within two distinct product markets. They concede that there are no regulatory barriers to the trade of LPS in the EEA. However, they submit that there are clear historical preferences for either conventional or non-conventional LPS in the majority of Member States.⁸ Due to these preferences, in the majority of Member States including the UK there have been no significant market entries of companies selling an LPS technology previously not used in that Member State. With regards to the UK, the Parties submit that mechanical and electrical consultants do not recommend non-conventional LPS and that major insurance companies specify conventional LPS as a prerequisite for entering into a building insurance contract.

⁸ In most Member States sales of non-conventional LPS are minimal to non-existent: Austria, Belgium, Cyprus, Denmark, Estonia, Finland, Germany, Hungary, Iceland, Ireland, Latvia, Liechtenstein, Lithuania, Malta, Netherlands, Norway, Sweden and the UK. In some Member States, both systems are sold, but conventional LPS are prevalent: Czech Republic, Greece, Italy, Poland, Portugal, Spain, Slovakia and Slovenia. In France, customers predominantly buy non-conventional LPS with an ESE device.

Furthermore, the Parties highlight that conventional LPS are 30-40% more expensive than ESE LPS and that there is limited supply-side substitutability.

11. Although the majority of UK market participants acknowledge that the two systems have the same end use, the majority also believe that they are not substitutable from an end-consumer perspective. Furthermore, market participants maintain that prices between the systems differ and are not correlated. From a supply-side perspective, the market investigation indicated that suppliers cannot easily switch between the production of the two systems.
12. However, the Commission does not have to take a definitive decision on the relevant product market, since the proposed transaction does not raise competition concerns under any product market definition.

Surge Protective Devices

13. SPD, also called surge arrestors or surge suppressors, are used to protect electrical equipment from damage caused by transient overvoltage or surges due to lightning or electrical switching operations. SPD are designed to limit the surge voltage to a safe threshold and to prevent sparking and fire.
14. SPD can be either hardwired to become a permanent part of the installation or can be of the cheaper plug-in type that connects to a socket outlet. Hardwired SPD can be categorized into mains power SPD used against surges occurring on power lines and data signals/telecom SPD used against surges on data and telecom lines. Both parties manufacture and sell hardwired mains SPD and hardwired SPD for data signals and telecoms. While ABB also sells limited quantities of plug-in SPD purchased from a Chinese manufacturer, T&B is not active in the supply of any type of plug-in SPD.
15. In previous decisions, the Commission has not had to decide on the precise product market definition for SPD.⁹ However, in the *Schneider Electric/APC* case, the Commission rejected an overall market for secured power products which would include different products such as SPD, batteries and uninterruptible power supply systems.¹⁰
16. The Parties support this view and submit that a separate product market exists for SPD. However, according to the Parties, no further sub-segmentation is necessary due to supply-side substitutability between the different types of SPD. In the Parties' view, this applies in particular to hardwired mains SPD and hardwired SPD for data signals and telecoms.
17. Respondents to the market investigation indicated that prices between different types of SPD differ. Although this could point towards different product markets, the market investigation was not conclusive with regard to supply-side substitutability.
18. However, the exact product market definition with regard to hardwired SPD can be left open in this case, since the proposed transaction does not raise competition concerns under any product market definition.

⁹ Case No COMP/M.3347 – *Schneider Electric/MGE - UPS*, 5 February 2004; Case No COMP/M.4475 – *Schneider Electric/APC*, 8 February 2007.

¹⁰ Case No COMP/M.4475 – *Schneider Electric/APC*, 8 February 2007, recital 7.

MV vacuum interrupters and MV circuit breakers

19. In previous decisions, the Commission has identified an MV segment within the transmission and distribution equipment business without coming to a definitive conclusion on the relevant product market in this area.¹¹ According to Commission precedents, MV products are used for distribution networks operating at voltages between 1 kV and 52 kV.¹² The Parties agree with this definition.
20. The MV segment comprises a number of different electrical components that are supplied individually or integrated into a system. These include, *inter alia*, MV vacuum interrupters and MV circuit breakers.
21. An MV vacuum interrupter is a type of protection and control equipment consisting of two electrical contacts in a container, which is pumped down to an appropriate level of vacuum and then sealed off. By parting the contacts of the switch in a vacuum, the current flow is quickly and safely contained. A vacuum interrupter is not used as a stand-alone product but typically as a component, for example in MV circuit breakers. Both Parties manufacture and supply MV vacuum interrupters.
22. An MV circuit breaker acts as a switch for the user to turn current on and off. However, it is also capable of automatically breaking faulty current (e.g. short-circuit current) that is far stronger than the nominal current. In this case, the protection relay analyses the current and triggers the circuit breaker to stop the current if the measured values exceed the thresholds set by the user. While ABB manufactures and supplies MV circuit breakers, T&B does not sell this product on the merchant market.
23. The Commission has previously discussed whether the supply of each type of MV product should be considered as a separate product market but ultimately left this question open.¹³ The Parties do not propose a definitive product market definition in this respect.
24. Further considerations of the Commission related to a possible sub-segmentation of certain MV products, including circuit breakers, into those used in primary power distribution and those used in secondary power distribution.¹⁴ Primary distribution systems step-down high voltage electricity to medium voltage electricity while secondary distribution systems step-down medium voltage electricity to low voltage electricity. The Parties submit that such segmentation would not be suitable in the present case. They highlight that the distinction between these two categories is blurred as there are no technical limitations for using an MV product normally used in primary distribution applications also in secondary distribution applications. Moreover, they argue that producers can switch fast and without incurring significant costs between the production of both types of MV products.

¹¹ Most recently in Case No COMP/M.5755 – *Schneider Electric/Areva T&D*, 26 March 2010, recital 8.

¹² Most recently in Case No COMP/M.5755 – *Schneider Electric/Areva T&D*, 26 March 2010, recital 10; the 52 kV limit was also used in Case No COMP/M.3296 *Areva/ALSTOM T&D*, 19 December 2003, recital 11 and in Case No COMP/M.3653 *Siemens/VA Tech*, 13 July 2005, recital 76.

¹³ Case No COMP/M.5755 – *Schneider Electric/Areva T&D*, 26 March 2010, recitals 10-17.

¹⁴ *Ibid*, recitals 18-22.

25. However, the precise product market definition with regards to MV products can be left open in this case, as no competition concerns arise under the alternative product market definitions.

B. Geographic market definitions

Lightning Protection Systems

26. In the absence of Commission precedents, the Parties argue that the geographic market for LPS in the EEA should be defined on a Member State basis due to differing customer preferences described in paragraph 10 above.

27. During the market investigation, the majority of market participants agreed that the relevant geographic market is the UK market.

28. However, the geographic market definition can be left open in the present case, since no competition concerns arise at either the worldwide, EEA-wide or narrower levels.

Surge Protective Devices

29. While the Commission has not yet decided on the geographic market definition for SPD, the Parties submit that the market for SPD is at least EEA-wide. They point to the fact that the major SPD manufacturers produce SPD centrally in one or two facilities worldwide and that transportation costs and other barriers to trade are low. Consequently, import levels into the EEA, mainly from the Asia/Pacific region, are estimated to be high (70% for plug-in SPD, 30% for hardwired SPD) and to rise further in the next 3-5 years. Furthermore, the Parties submit that price levels are similar within the EEA and comparable to other regions worldwide and that no physical presence of the manufacturer is required in the EEA.

30. The market investigation points towards markets which are at least EEA-wide in scope. This seems to be due to low transportation costs and the absence of differing national technical standards or other significant barriers to trade. On the other hand, the competitive landscape appears to vary significantly across different Member States.

31. However, the geographic market definition can ultimately be left open in this case, since no competition concerns arise under all possible geographic market definitions.

MV vacuum interrupters and MV circuit breakers

32. The Commission has previously assessed the markets for MV products as well as their further delineations at an EEA and worldwide level without further defining the exact geographic market.¹⁵ The assessment of markets wider than national was due to low transport costs and the fact that major manufacturers supply worldwide and are able to supply according to national and international standards. The Parties agree with this finding and submit that the geographic markets for MV vacuum interrupters and MV circuit breakers are at least EEA-wide.

¹⁵ Case No COMP/M.5755 – *Schneider Electric/Areva T&D*, 26 March 2010, recital 32; although the market investigation pointed to markets that were at least EEA-wide, the geographic market definition was ultimately left open in Case No COMP/M.3296 – *Areva/Alstom T&D*, 19 December 2003, recitals 16-18.

33. Although there are no indications that the market characteristics mentioned above have changed, the geographic market definition can ultimately be left open in this case, since no competition concerns arise under all possible geographic market definitions.

C. Assessment

Horizontal overlap - Lightning Protection Systems in the UK

34. Should conventional LPS and non-conventional ESE LPS be considered to belong to different product markets, there would be no overlaps between the respective activities of ABB and T&B. In fact, T&B exclusively manufactures and sells conventional LPS, whereas ABB is exclusively active in non-conventional ESE LPS.

35. In a potential product market for both conventional LPS and non-conventional ESE LPS, the Parties' combined market share is [5-10]% (ABB: [0-5]%; T&B: [5-10]%) at the worldwide and [5-10]%¹⁶ (ABB: [0-5]%; T&B: [5-10]%) at the EEA-wide level.

36. T&B is not active in countries where predominantly non-conventional LPS are sold¹⁷ or where there is no such clear customer preference.¹⁸ In a wider than national market within the EEA where predominantly conventional LPS are sold¹⁹, the Parties' combined market share is less than [10-20]% (T&B: [5-10]%, ABB: [0-5]%).

37. The only possible affected market within the EEA is the UK, where customers buy mainly conventional LPS. In the market for both types of LPSs in the UK, T&B has a market share of [50-60]% while ABB has a market share of [0-5]% with sales of approximately EUR [...] in 2011. Major competitors include Wallis ([20-30]%), Kingsmill ([10-20]%), Sudafix ([5-10]%), Erico ([0-5]%), Dehn ([0-5]%), and Propster ([0-5]%), who are all active in the sale of conventional LPS.

38. During the market investigation, none of the market participants raised any substantial competition concerns. Generally, market participants did not consider ABB to impose a competitive constraint on T&B's LPS activities.

39. Due to the focus of T&B's LPS activities on the UK as well as ABB's limited activities in the UK LPS market, the concentration's effect on competition will be minimal. ABB's limited market share and its lack of success in expanding its market share over the past 10 years indicates that ABB cannot be considered to impose a significant competitive constraint on T&B's LPS activities in the UK in the future. Moreover, ABB's non-conventional LPS constitute a distant substitute to T&B's conventional LPS due to the use of different technology and the existence of clear customer preferences.

¹⁶ All market shares in this decision refer to 2011 and are based on value in EUR. The Parties are not in a position to supply volume-based market shares due to a lack of available third party data.

¹⁷ The only country in which predominantly non-conventional LPS are sold is France.

¹⁸ Those countries are the Czech Republic, Greece, Italy, Poland, Portugal, Spain, Slovakia, and Slovenia.

¹⁹ Those countries are Austria, Belgium, Cyprus, Denmark, Estonia, Finland, Germany, Hungary, Iceland, Ireland, Latvia, Liechtenstein, Lithuania, Malta, Netherlands, Norway, Sweden, and the UK.

40. In view of the above, the proposed transaction does not raise serious doubts as to its compatibility with the internal market with regard to LPS.

Horizontal overlap – Hardwired Surge Protective Devices in France, Greece, Italy and the UK

41. At the worldwide level, the Parties' combined market share in both types of hardwired SPD is about [5-10]% (ABB: about [0-5]%; T&B: about [0-5]%). If the product market is further sub-segmented, the Parties' combined worldwide market share is [5-10]% for hardwired mains SPD (ABB: [0-5]%; T&B: [0-5]%) and about [0-5]% (ABB: [0-5]%; T&B: [0-5]%) for hardwired SPD for data signals and telecoms.

42. The Parties' combined market share in an EEA-wide market for both types of hardwired SPD is [5-10]% (ABB: [5-10]%; T&B: [...]%) with a combined market share of [10-20]% for hardwired mains SPD (ABB: [5-10]%; T&B: [0-5]%) and [0-5]% for hardwired SPD for data signals and telecoms (ABB: [0-5]%; T&B: [0-5]%).

43. If the geographical markets are defined on a national basis, the Parties' market shares in the affected markets are as follows:

<u>Hardwired SPD total</u>	ABB	T&B	<u>Hardwired mains SPD</u>	ABB	T&B	<u>Hardwired data signals SPD</u>	ABB	T&B
France	[10-20]%	[0-5]%	France	[20-30]%	[0-5]%	France	[0-5]%	[0-5]%
Greece	[30-40]%	[0-5]%	Greece	[40-50]%	[0-5]%	Greece	[0-5]%	[0-5]%
Italy	[20-30]%	[0-5]%	Italy	[30-40]%	[0-5]%	Italy	[0-5]%	[0-5]%
UK	[0-5]%	[20-30]%	UK	[0-5]%	[20-30]%	UK	[0-5]%	[10-20]%

44. The Parties' activities are complementary as T&B's SPD activities focus on the UK where ABB has only a limited presence. As a result, there are only minimal increments in market shares for all types of SPD in the affected markets. Furthermore, effective competition in these markets will be ensured by the presence of a number of viable competitors active at the EEA,²⁰ namely Dehn, Phoenix Contact, Obo Bettermann, Schneider and Eaton. These companies are also significant competitors at the national level in France, Greece, Italy and the UK.

45. During the market investigation, participants did not raise any substantial competition concerns. Certain market participants even pointed to positive effects of the proposed transaction.

²⁰ Competitors' market shares at the EEA-level: Dehn ([20-30]% in SPD; [20-30]% in hardwired mains SPD; [20-30]% in hardwired SPD data signal), Phoenix Contact ([10-20]% in SPD; [10-20]% in hardwired mains SPD; [10-20]% in hardwired SPD data signal), Obo Bettermann ([10-20]% in SPD; [10-20]% in hardwired mains SPD; [0-5]% in hardwired SPD data signal), Schneider ([5-10]% in SPD; [10-20]% in hardwired mains SPD; [0-5]% in hardwired SPD data signal), Eaton ([0-5]% in SPD; [0-5]% in hardwired mains SPD; [0-5]% in hardwired SPD data signal).

46. In light of the above and especially the minimal increments in market shares below [0-5]% in all possible affected markets, serious doubts as to the transaction's compatibility with the internal market do not arise with regards to SPD.

Vertical link - MV vacuum interrupters and MV circuit breakers in the EEA

47. MV vacuum interrupters manufactured and sold by both Parties are used in the production of MV circuit breakers manufactured and sold by ABB. However, ABB sources its supply of MV vacuum interrupters captively and does not purchase from third parties.

48. In a worldwide market for MV products, ABB's market share is [10-20]% ([10-20]% in primary distribution, [10-20]% in secondary distribution) while T&B's market share is less than [0-5]% (in both primary and secondary distribution). At the EEA-level, ABB's market share is [10-20]% while T&B's market share is below [0-5]%. The EEA market is not concentrated; important competitors are Schneider ([10-20]%), Siemens ([10-20]%) and Ormazabal ([0-5]%).

49. With regards to MV vacuum interrupters, the Parties' combined market share at the worldwide level is below [0-5]% (ABB: [0-5]%; T&B: below [0-5]%). According to the Parties, their MV vacuum interrupters are most likely used in primary distribution settings where their combined global share is below [0-5]%.

50. In the EEA, T&B's merchant sales of MV vacuum interrupters are limited to the supply of [...] in [...] at an annual value of approximately EUR [...]. This corresponds to a market share of [0-5]% in the EEA. ABB achieved a turnover of EUR [...] in the EEA through the sale of MV vacuum interrupters equal to a market share of [0-5]%. The Parties' combined market share in an EEA-wide market for MV vacuum interrupters is thus [5-10]%. According to the Parties, their MV vacuum interrupters are most likely used in primary distribution settings. When considering MV vacuum interrupters used only in primary distribution settings, the Parties' combined share in the EEA is also [5-10]% (ABB: [0-5]%; T&B: below [0-5]%). The EEA-wide market for vacuum interrupters is currently characterized by the presence of the strong market leader Eaton (about [80-90]%), and some suppliers of less competitive relevance including Schneider (about [5-10]%) and Siemens (about [0-5]%). Since none of ABB's sales were realized in Germany, there is no horizontal overlap in possible national markets for MV vacuum interrupters.

51. With regards to MV circuit breakers, ABB's share at the worldwide level is [10-20]% ([10-20]% in primary distribution, below [10-20]% in secondary distribution) while T&B does not sell this product.

52. At the EEA level, ABB has a market share of [20-30]% ([20-30]% in primary distribution, below [5-10]% in secondary distribution). ABB's main competitors are Schneider/Areva ([20-30]%), Siemens ([10-20]%), Tavreda ([0-5]%), Hawker Siddeley ([0-5]%) and Koncar ([0-5]%).

53. In light of the Parties' limited market shares under any possible market definition, the analysed vertical link between the Parties' MV activities does not lead to foreclosure concerns. Competitors in the downstream market will be able to satisfy their demand of MV vacuum interrupters through purchases from the remaining suppliers. Furthermore, competitors in the upstream market will not lose a customer since ABB has not purchased MV vacuum interrupters on the merchant market before the transaction.

54. In view of the above, there are no serious doubts as to the compatibility of the proposed transaction with the internal market with regard to MV products.

(5) CONCLUSION

55. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission

signed

*Joaquín ALMUNIA
Vice-President*