

***Case No IV/M.990 -
HAGEMEYER / ABB
ASEA SKANDIA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 007/10/1997

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 7.10.1997

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

Subject: Case No IV/M.990 Hagemeyer/ABB Asea Skandia

Notification of 05.09.1997 pursuant to Article 4 of Council Regulation N° 4064/89

1. On 5 September the Commission received a notification of a proposed concentration, by which Hagemeyer NV, controlled by First Pacific Company Limited, acquires the subsidiaries of ABB Asea Brown Boveri ("ABB"), which are active in the wholesale of electrical products in Finland, Sweden, Norway, Russia and The Baltic States. Hagemeyer received an option to exclude from the transaction all activities conducted by affiliates of ABB in Russia, Estonia, Latvia and Lithuania. In Norway, Sweden and Finland these subsidiaries are now operating under the name ABB Asea Skandia.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation 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. Hagemeyer N.V. is active in the business of international marketing, sales and distribution in the fields of consumer and professional products, distribution of electrical products, automotive and technical products and specialty foods. In this respect it has to be mentioned that Hagemeyer has subsidiaries performing

electrical wholesaling activities in different EEA and EFTA Member States (i.e. Germany, UK, Ireland, the Netherlands, Austria and Switzerland).

4. The operations of ABB, that are acquired by Hagemeyer, are active in the wholesale of electrical products in Norway, Sweden and Finland and some other countries outside the EEA or EFTA territory.

II THE OPERATION

5. The notified concentration consists of the acquisition of 100% of the shares of the holding company ASK Holding, which will be set up for the sake of this operation and which will acquire control of the above mentioned subsidiaries of ABB.

III COMMUNITY DIMENSION

6. The combined aggregate worldwide turnover of the undertakings concerned exceeds ECU 5000 million. The aggregate Community wide turnover of each party exceeds ECU 250 million. They do not achieve more than two-thirds of their turnover in one and the same Member State. The operation therefore has a Community dimension, but does not constitute a cooperation case under the EEA Agreement.

IV COMPETITIVE ASSESSMENT

A. Relevant product market

7. The parties submit that the relevant product market is the wholesale market for electrical products. The range of products supplied by different wholesalers differs per country and region of establishment. The following product groups can however be identified: installation materials, industrial switchgear, lighting, domestic appliances and cables/wire. The range of products offered by an individual wholesaler depends on several aspects: demand of customers, market position (focusing on large orders or more focused on smaller installers), corporate culture, ownership of the wholesale business (family-owned or owned by a manufacturer of electrical materials), tradition, etc..
8. According to the notifying parties the wholesale, manufacturing and retail activities constitute separate markets. Although manufacturers may deliver directly to customers, the orders involved are usually very large and only for products manufactured by themselves. While the retailers mainly concentrate on small orders to end-users, wholesalers take large as well as smaller orders and deliver them to retailers, constructors, installers as well as end-users. Wholesalers deliver to the customers's premises as well as over-the-counter. Having regard to the demand and supply characteristics of the wholesale activities, in particular the nature of the customers, the order volumes and the distribution methods necessary to compete, it would appear that a distinct market for wholesale

activities exists. However, as there is no geographical overlap between the activities of the notifying parties, it is not necessary to investigate this further.

B. Relevant geographic market

9. The notifying parties submit that the relevant geographic market is regional or national, because of the fact that the customers (i.e. retailers, constructors, installers and end-users) rarely place their orders with a wholesaler located outside a given region or national border. Customers confirm that the relevant geographic market is regional or national. However it is not necessary to define the exact scope of the relevant geographic market, because there is no overlap between the activities of the parties in the same region.

C. Competitive assessment

10. The notifying parties submit that there are no affected markets because Hagemeyer is not currently active in the same relevant geographic markets as the subsidiaries of ABB, that will be acquired by the operation.
11. Although Hagemeyer is active as a wholesaler of electrical products in other Member States (i.e. Germany, UK, Ireland, the Netherlands, Austria and Switzerland), the Commission considers that no overlap exists between these activities of Hagemeyer and the activities of the transferred wholesale-subsidiaries of ABB.
12. On this basis, it can be concluded that there are no affected markets and that the operation does not create or strengthen a dominant position in the common market.

V. ANCILLARY RESTRICTIONS

13. The parties have submitted that the following provisions should be considered as ancillary restrictions: the Trade Mark License Agreement and the Master Supply Agreement, which includes the Preferred supplier status for ABB companies to the ASK Group and vice-versa.
14. The Trademark License Agreement will give the ASK Group for a period of five years the exclusive right to use the trademark "Asea Skandia", which belongs to ABB, to identify its business and products. The trademark identifies the business and is therefore, as the parties submit, necessary for the continuation of the identity of the business in the eyes of the customers. The continued use of the trademark for the goods, that are not supplied by ABB but sourced from other producers and distributed under the Asea Skandia label, is equally important in this respect. The Commission considers that, since it is the name of the businesses and therefore part of the goodwill, which is transferred by this agreement, the Trademark License Agreement is an inherent part of the transaction and therefore does not constitute a restriction of competition
15. The Master Supply Agreement includes a Preferred supplier status for ABB companies, which provides that those units within the ABB Group which have a supplier relationship with the ASK Group as of the date of the Purchase

Agreement, will be preferred suppliers to the ASK Group with regard to a limited number of products. Two different regimes are applicable depending on the products concerned: i) as regards the products described under the heading “Class 1 Products” the ASK Group will purchase such products from affiliates of the ABB Group, unless the customer expressly requests the product of a competing third-party manufacturer, or unless it has been determined that the conditions offered by the ABB Group are not competitive; ii) as regards products described under the heading “Class 2 Products” the parties review annually the trade levels between the ABB and the ASK Groups. Where there has been an appreciable decrease of the relative share of ABB products, the parties shall review the reasons for such decrease and shall negotiate in good faith measures to rectify the situation. Furthermore, the Agreement provides also for the ASK companies a preferred supplier status: the companies of the ASK Group, which have a supplier relationship with the ABB Group will be preferred suppliers to the ABB Group. The ABB Group will order such products either from the ASK Group or from third-party competing suppliers, with an annual review procedure that is similar to that provided for Class 2 products in the case of ABB’s preferred supplier status. The Master Supply Agreement has been concluded for [...] years. The parties claim that because of the already for decades existing comprehensive relationship between the members of the ABB Group and Asea Skandia, the parties could not have contemplated the current operation without this agreement which ensures the continuation for a period of seven years of the trading relationships between the two groups. The Commission considers that several provisions of the Master Supply Agreement, especially those in relation to the Class 1 products, have the effect that the commercial relationships between the two groups will in practice remain very close. Given the for decades existing relationship between the ABB production- and the ABB wholesale-companies and the large part accounted for in the total sales of the transferred wholesale businesses by the products purchased from ABB, the Commission considers, that these agreements can be considered as necessary to avoid the sudden disruption of traditional lines of procurement, but can only be considered as ancillary restrictions for an initial start-up period of three years, since this period seems necessary to ensure the new owner as well as the vendor the opportunity to adopt a new policy.

VI. CONCLUSION

16. 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.

¹ Deleted for publication (business secret) : between 5 and 8 years.

For the Commission,