



EUROPEAN COMMISSION
DG Competition

Case No COMP/M.2139 - Bombardier/Adtranz

Only the English text is authentic.

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

Modification of Art. 8(2) with conditions & obligations
Date: 13/07/2005



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.07.2005

C(2005) 203621

PUBLIC VERSION

**COMMISSION DECISION
Of 13.07.2005**

**amending the Decision of 3 April 2001
declaring a concentration to be compatible with the common market
and the EEA Agreement
(Case No COMP/M.2139 Bombardier/Adtranz)**

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of 13.07.2005
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(Only the English text is authentic)

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings¹, and in particular Article 8(2) thereof,

Having regard to Council Regulation (EC) Nr. 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation)², and in particular Article 26(2) thereof,

Having regard to the Commission Decision of 3 April 2001 declaring a concentration to be compatible with the common market and the functioning of the EEA Agreement (Case COMP/M.2139 — Bombardier/ADtranz)³,

After consulting the Advisory Committee on Concentrations⁴,

WHEREAS:

- (1) On 3 April 2001 the Commission declared a concentration whereby Bombardier Inc acquired within the meaning of Article 3(1)(b) of Regulation (EEC) No 4064/89 sole control of the undertaking DaimlerChrysler Rail Systems GmbH (ADtranz) compatible with the common market and with the functioning of the EEA Agreement. That declaration of compatibility was subject to full compliance with several conditions and obligations as set out in the Annex to the decision.
- (2) One of the conditions concerned the undertaking Elin EBG Traction (“ETR”), a subsidiary of VA Tech AG, established in Linz, Austria. Bombardier had joint control over ETR, a supplier of electrical propulsion for rail rolling stock. Severing ETR’s structural link with Bombardier as required by paragraph 1(a) of the Annex turned that company into an independent supplier of propulsion technology for, among others, regional trains and trams / light rail vehicles. Nevertheless, certain guarantees were necessary for a transitional period in order to allow ETR to find new partners, replacing Bombardier, which became vertically integrated after the acquisition of ADtranz and, thus, was no longer to rely on ETR as a supplier of electrical propulsion equipment.

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

² OJ L 24, 29.1.2004, p. 1.

³ OJ L 69, 12.3.2002, p. 50.

⁴ OJ C ..., ..., 200., p. ...

- (3) These guarantees were intended to create a workload for ETR for a transitional period in order to enable it to survive economically. The condition as set out in paragraph 1(b) of the Annex provided for Bombardier to enter into a Joint Development Agreement with ETR for co-operation between these two companies until 2006 in relation to the tram “*CityRunner Type Linz*”, for which ETR supplies the electrical traction, thereby allowing ETR to continue to be active in the market for trams.
- (4) On 10 January 2005 Siemens notified its planned acquisition of sole control within the meaning of Article 3(1)(b) of Regulation (EC) No 139/2004 (“the EC Merger Regulation”) of VA Tech, whereby it would also acquire control of ETR. Siemens is a leading supplier of rail rolling stock which manufactures its own electrical traction for all types of rolling stock it offers. On 13.07.2005, pursuant to Article 8(2) of the EC Merger Regulation, the Commission declared the acquisition of VA Tech by Siemens compatible with the common market and with the functioning of the EEA Agreement, subject to several conditions and obligations as set out in the Annexes to that decision.
- (5) As part of Siemens ETR has the financial background of a multinational firm which is a leader in rolling stock. Therefore, ETR no longer needs secured orders for its economic survival as was deemed necessary in 2001 when the structural link with Bombardier was severed. It is, consequently, no longer necessary to impose on Bombardier the condition to source the electrical traction for its *CityRunner Type Linz* from ETR, should Siemens acquire sole control of ETR.
- (6) The acquisition of VA Tech by Siemens has been declared compatible with the common market and with the functioning of the EEA subject to compliance with certain conditions. However, there is a possibility that that decision will be revoked pursuant to Article 8(6) of the EC Merger Regulation. This decision, therefore, is conditional on the Commission decision of 13 July 2005 in case COMP/M.3653 - Siemens/VA Tech remaining in force.

HAS ADOPTED THIS DECISION:

Article 1

Article 2 of the Commission Decision of 3 April 2001 in Case COMP/M.2139 – Bombardier/ADtranz is replaced by the following:

“Article 1 is subject to full compliance with the conditions set out in paragraphs 1(a), first subparagraph, 1(c), 1(d), 1(e), first and fourth subparagraphs, 1(f), 1(g), 1(h), and 1(i) of the Annex.”

Article 2

This decision shall be conditional on

- (a) the remaining in force of the Commission decision of 13.07.05 declaring the concentration whereby Siemens AG proposes to acquire sole control over VA Tech AG (Case COMP/M.3653 Siemens/VA Tech) compatible with the common market and the EEA agreement, subject to certain conditions and obligations, and
- (b) the implementation of the proposed concentration referred to in point (a).

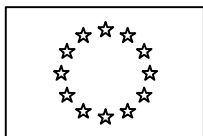
Article 3

This decision is addressed to:
Bombardier Inc.
800 René-Lévesque Blvd. West ,
Montréal
Canada - H3B 1Y 8 - Québec

Done at Brussels, 13.07.2005

For the Commission

(Signed)
Neelie KROES
Member of the Commission



EUROPEAN COMMISSION

The Hearing Officer

FINAL REPORT OF THE HEARING OFFICER
IN CASE COMP/M. 2139 Bombardier/Adtranz

**(pursuant to Articles 15 & 16 of Commission Decision (2001/462/EC, ECSC)
of 23 May 2001 on the terms of reference of Hearing Officers
in certain competition proceedings – OJ L162, 19.06.2001, p.21)**

On 3 April 2001 the European Commission declared a concentration by which Bombardier acquired within the meaning of Article 3(1)(b) of Council Regulation No 4046/89 sole control of the undertaking DaimlerChrysler Rail Systems (Adtranz) compatible with the common market and with the functioning of the EEA Agreement. This declaration of compatibility was subject to compliance with several conditions and obligations.

One of the conditions concerned the Austrian undertaking Elin EBG Traction (“ETR”), a subsidiary of VA Tech AG, which is a supplier of propulsion technology for, among others, regional trains and trams / light rail vehicles. After ETR’s structural link with Bombardier was to be severed to render the proposed merger compatible with the common market, it became necessary to create workload for ETR which would allow the company to survive economically. Therefore, Bombardier was obliged to enter into a Joint Development Agreement with ETR for co-operation between these two companies until 2006 in relation to the tram “*CityRunner Type Linz*”, for which ETR supplies the electrical traction.

The justification for this obligation is likely to soon cease to exist: Siemens has proposed to acquire sole control of VA Tech and thereby also control of ETR. Therefore, a change in ETR’s financial structure is imminent and ETR does not, in that case, need any longer secured orders from Bombardier for its economic survival. It is, consequently, no longer necessary to impose on Bombardier the condition to source the electrical traction for its CityRunner Type Linz from ETR should Siemens acquire sole control of ETR.

Subject to the clearance decision in case COMP/M.3653 Siemens/VA Tech entering into force, and the proposed acquisition of sole control of VA Tech by Siemens as approved in that decision being implemented, the present draft decision proposes to revoke the aforementioned obligation imposed on Bombardier pursuant to Article 8(5) of Council Regulation (EC) No 4046/2004.

In view of the fact that the proposed draft decision merely relieves Bombardier of an obligation and given that Siemens, in their letter of 16 June 2005, explicitly dispense with any rights that might follow from this obligation, the case does not call for any particular comments as regards the right to be heard.

Brussels, 30 June 2005

Serge DURANDE



EUROPEAN COMMISSION
Competition DG

Policy and Strategic Support

OPINION

**of the ADVISORY COMMITTEE on CONCENTRATIONS
given at its 133rd meeting on 29 June 2005
concerning a draft decision relating to
Case COMP/M.2139 – Bombardier/ADtranz**

1. The Advisory Committee agrees with the Commission that the undertaking given by Bombardier in case COMP/M.2139 Bombardier/ADtranz of 4 April 2001 to only purchase electrical traction for trams of the type Cityrunner Linz from Elin EBG Traction, a subsidiary of VA Tech, for a period of 5 years, is no longer warranted as soon as the Commission clearance decision with conditions and obligations in case 3653 Siemens/VA Tech is adopted and in force, and, subsequently, VA Tech becomes part of Siemens.
2. The Advisory Committee agrees with the Commission that, consequently, the undertaking as described in Annex 1(b) to the decision COMP/M.2139 Bombardier/ADtranz is repealed by the proposed decision.
3. The Advisory Committee asks the Commission to take into account all the other points raised during the discussion.
