

CT - 89 / 1

COMPETITION TRIBUNAL		P R O D U I T
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F I L E D	6 P.T. APR 29 1989 P.T.	
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OTTAWA, ONT.		1 / (a)

THE COMPETITION TRIBUNAL

IN THE MATTER OF an application by the Director of Investigation and Research under sections 92 and 105 of the Competition Act, R.S.C. c.C-34, as amended:

AND IN THE MATTER OF the proposed acquisition by Asea Brown Boveri Inc. of certain assets and property comprising the electrical transmission and distribution business of Westinghouse Canada Inc., including those of its wholly-owned subsidiary Transelectrix Technology Inc.

B E T W E E N:

THE DIRECTOR OF INVESTIGATION AND RESEARCH

Applicant

- and -

**ASEA BROWN BOVERI INC., WESTINGHOUSE CANADA INC.,
TRANSELECTRIX TECHNOLOGY INC.**

Respondents

NOTICE OF APPLICATION

TAKE NOTICE that the Applicant, the Director of Investigation and Research (the "Director"), will make an application to the Competition Tribunal, (the "Tribunal"), for:

- 1) an order under s.105 of the Competition Act in the form of a Draft Consent Order attached hereto as Schedule 'A'; and
- 2) such further or other order as the Applicant may advise and the Tribunal considers appropriate.

AND TAKE NOTICE that in support of this Application the Director will rely upon the Consent Order Impact Statement, this Notice of Application, and such other material as may be filed or the Director may advise.

**STATEMENT OF GROUNDS AND MATERIAL FACTS FOR THE APPLICATION
BY THE DIRECTOR OF INVESTIGATION AND RESEARCH UNDER
SECTION 92 OF THE COMPETITION ACT**

I. GROUNDS FOR APPLICATION

1. The Director states that the Respondents have proposed to effect a Merger which prevents or lessens or is likely to prevent or lessen competition substantially in the market for Subject Power Transformers (i.e., power transformers of a rating of 40 MVA and over) in Canada within the meaning of section 92 of the Competition Act.

2. This Merger, if allowed to proceed as currently proposed, is likely to substantially prevent or lessen competition in the Canadian market for Subject Power Transformers. The Merger will result in ABB Canada being the sole manufacturer in Canada of power transformers rated over approximately 400 MVA and 500 KV. As well, the Merger will reduce to two the number of domestic competitors in the sale of power transformers in Canada rated between approximately 40 MVA and approximately 400 MVA and give ABB Canada a dominant position in that market segment.

3. The Merger will, or is likely to, reduce choice in the Canadian market for Subject Power Transformers. Without the benefits of competitive pressures, either from domestic sources or manufacturers from abroad, the Merger may lead to higher prices for Subject Power Transformers in Canada, reduce incentives for competitive service and limit product and quality choice. Ultimately, the costs resulting from any substantial prevention or lessening of competition in the Subject Power Transformer market may be borne by consumers through higher prices for electricity.

4. Unless conditions in the Subject Power Transformer market, including the level of tariff barriers, are otherwise remedied, the Merger warrants the making of an order as described herein.

II. MATERIAL FACTS

A. DEFINITIONS

5. In this Application,

(a) "power transformer" means a device used to transfer electrical energy from one circuit to another by induction.

(b) **"Subject Power Transformer"** means a transformer having a nameplate power rating of approximately 40 mega volt amperes ("MVA") and over.

(c) **"MVA"** means mega volt amperes or million volt amperes, where "M" denotes one million, "V" denotes voltage, and "A" denotes amperes. Electrical power is customarily measured in volt amperes or VA.

(d) **"EHV"** means extra high voltage, comprising power transformers with a voltage rating of over 362 kilovolts ("KV"). This classification is used by the Electrical and Electronic Manufacturers Association of Canada which classifies power transformers according to voltage (KV) and power (MVA).

(e) **"HVDC"** means high voltage direct current. HVDC systems are sometimes employed for long distance transmission because electric power is more efficiently transmitted as direct current rather than alternating current.

(f) **"Merger"** means the proposed acquisition of certain assets by Asea Brown Boveri Inc. ("ABB Canada") of the power transmission and distribution business carried on by Westinghouse Canada Inc. and Transelectrix Technology Inc. pursuant to an Asset Purchase Agreement

between the parties dated February 14, 1989 and as subsequently amended. The Merger is part of a larger arrangement announced in April 1988 in which ABB Asea Brown Boveri Ltd. ("ABB") and Westinghouse Electric Corporation ("WEC") in the United States agreed to combine their world-wide electrical transmission and distribution assets.

B. THE PARTIES

6. The Director is an officer appointed under s.7 of the Competition Act.

7. **ABB Canada** is a company incorporated pursuant to the laws of Canada which has its head office and principal place of business in Saint-Laurent, Quebec. ABB Canada is a wholly-owned subsidiary of ABB Asea Brown Boveri Ltd. ("ABB") which is incorporated in Switzerland and has its principal office in the City of Zurich. ABB is owned, as to 50% each, by Asea AB, a Swedish Corporation, and BBC Brown Boveri Ltd., a Swiss corporation. ABB is the world's largest electrical equipment manufacturing company with 200,000 employees throughout the world and annual sales of approximately \$20 billion (U.S.).

8. ABB Canada is the continuing corporation resulting from the amalgamation on June 25, 1988 of Asea Inc. and BBC Brown Boveri Canada Inc.
9. ABB Canada's principal businesses relate to the manufacture and sale of electrical equipment, mainly power transmission and distribution equipment, and the marketing of various types of industrial equipment including electronic products and process control equipment. ABB Canada is the second largest manufacturer and supplier of Subject Power Transformers in Canada.
10. ABB Canada is a major supplier of power transformers, HVDC transmission systems, reactive power compensation equipment, power system control equipment, substations, high voltage apparatus, protection relays and systems, low and medium voltage switchgear, and power capacitors.
11. The ABB Canada domestic production facilities which relate to the power transmission and distribution equipment business are located at Toronto, Ontario and at Varennes and Saint-Laurent, Quebec. These plants manufacture and assemble Subject Power Transformers (at Varennes) or other electrical transmission and distribution products including switchgear, relay systems and capacitors.

12. **Westinghouse Canada Inc. ("WECAN")** is a company incorporated pursuant to the laws of Canada which has its head office and principal place of business in Hamilton, Ontario. WECAN is a wholly-owned subsidiary of Westinghouse Electric Corporation ("WEC"), a U.S. corporation, and one of the world's leading producers of electric power equipment. WECAN manufactures and sells a broad range of electrical and industrial equipment in Canada.

13. In 1986, WECAN acquired the power transformer assets and operations of Canadian General Electric Company Limited ("CGE"), comprising essentially its plant facility located at Guelph, Ontario which produced principally Subject Power Transformers and related equipment. As initially structured, that transaction involved WECAN having a 60% interest and CGE a 40% interest in **Transelectrix Technology Inc. ("TTI")**, a Canadian corporation which has its head office or principal place of business in the City of Hamilton, Ontario.

14. TTI is the entity to which the merged power transformer businesses of CGE and WECAN were transferred. In June, 1988, WECAN acquired CGE's remaining interest in TTI with the result that TTI is now a wholly-owned subsidiary of WECAN. TTI manufactures the full range of MVA ratings of power transformers at its manufacturing

facilities located in Guelph and Hamilton, Ontario. TTI is the leading manufacturer and supplier of Subject Power Transformers in Canada. (Hereinafter reference to "WECAN" includes TTI unless otherwise stated.)

C. THE MERGER

15. The Merger will involve the immediate acquisition by ABB Canada of all the electrical transmission and distribution operations of WECAN. No power generation assets will be included in the Merger, as WECAN will continue in this business.

16. The transmission and distribution operations of WECAN to be acquired by ABB Canada include the two TTI facilities capable of manufacturing Subject Power Transformers, and/or components of such transformers (the Beach Road, Hamilton, Ontario facility and the Guelph, Ontario facility) as well as other facilities which manufacture a wide range of electrical transmission and distribution equipment such as capacitors, meters, and a variety of types of smaller size transformers.

D. COMPETITIVE IMPACT OF THE MERGER

(a) The Canadian Power Transformer Industry

17. Subject Power Transformers are used by electric power utility companies to convert low voltage electricity produced by a power generating unit to higher voltages that are more efficiently carried over transmission lines, and to reduce voltages between transmission and distribution lines to deliver electricity safely to utility customers.

18. There are currently five manufacturers of power transformers in Canada: ABB Canada, WECAN/TTI, Federal Pioneer Limited, Hammond Manufacturing Company Limited, (through its subsidiary Moloney Electric Corporation), and NEI Ferranti-Packard Transformers. The latter two manufacture power transformers below approximately 25 MVA and 40 MVA, respectively. ABB Canada does not manufacture power transformers in these lower power ranges.

19. There are three Canadian manufacturers of Subject Power Transformers (i.e., those rated over 40 MVA), and two of these, ABB Canada and WECAN (through its subsidiary

TTI), manufacture units rated over 400 MVA. The categories of transformers produced by each Canadian manufacturer are as follows:

Canadian Power Transformer Manufacturers, 1988

<u>Firm</u>	<u>Approximate Maximum Power</u>	<u>Approximate Maximum Voltage</u>
WECAN	750 MVA	765 KV
ABB Canada	800 MVA	800 KV
Federal Pioneer	400 MVA	500 KV
Hammond/Maloney	25 MVA	138 KV
Ferranti-Packard	40 MVA	230 KV

20. Rationalization and consolidation due to market conditions in the power transformer industry has resulted in the significant reduction of production capacity in Canada. As a result of the 1986 merger with CGE, WECAN has consolidated most of the manufacturing functions for Subject Power Transformers into the former CGE plant located in Guelph, Ontario. WECAN's Hamilton plant currently manufactures mainly smaller power transformers which are not the subject of this Application. In 1987 NEI Ferranti-Packard Transformers closed its manufacturing facility in Toronto which was capable of producing power transformers rated up to approximately 300 MVA and 345 KV.

21. Should the Merger proceed, Federal Pioneer's plant at Winnipeg, Manitoba would be the only other Subject Power Transformer manufacturing facility in Canada. Federal Pioneer has announced plans to replace an existing facility with a new power transformer plant to be built in Regina, Saskatchewan. However, this plant will only manufacture power transformers rated up to approximately 50 MVA and 138 KV.

22. Provincial utility companies are the largest purchasers of Subject Power Transformers. Transformers in these categories are used primarily for step-up voltage at generating stations, step-down voltage at substations, and interconnection of grid systems. Other customers, which form a small portion of the market, include industrial users which use transformers in other applications such as metallurgical processing.

23. Power transformers can be purchased by the electric utility companies either as a separate piece of equipment or as part of a fully integrated "system" supplied by an electrical equipment manufacturer.

24. Since 1986 the demand for Subject Power Transformers has significantly increased and the Canadian power trans-

former industry is now operating at or close to full capacity. Orders for purchases by customers in the Subject Power Transformer market are typically placed one to two years prior to delivery, and order backlogs have increased significantly as a consequence of higher capacity utilization rates in the industry.

(b) Product and Geographic Market Definition

25. The Director states that the relevant geographic market affected by the Merger is Canada.

26. The relevant product market is the market for the manufacture, sale, distribution and repair of Subject Power Transformers.

(c) Market Share

27. The table filed separately in confidence herein as Schedule B outlines the estimated market shares of participants in the Canadian Subject Power Transformer market for the years 1983 to 1988. The data shown in the table do not include all sales for all Subject Power Transformers, but only for those rated greater than 50 MVA (for which data are available). The table reflects approximate market shares for Subject Power

Transformers. The Director states that the Merger would result in ABB Canada having approximately 75% of the Canadian Subject Power Transformer market.

(d) Increased Concentration

28. The Director states that the proposed merger will result in a substantial increase in market concentration and will reduce the number of power transformer manufacturers in Canada from three to two for units rated between 40 MVA and 400 MVA. The only other domestic manufacturer of power transformers in this range would be Federal Pioneer which will have considerably less market share than the merged entity.

29. In the category of power transformers rated over 400 MVA, a range in which TTI and ABB Canada currently compete, the merger would result in there being only one manufacturer in Canada.

(e) Import Competition

30. Subject Power Transformer imports into Canada have not been extensive, accounting for less than ten percent of

total Canadian purchases of power transformers rated over 50 MVA (the market segment for which statistics are available) during the period 1983 to 1987.

31. Foreign suppliers of Subject Power Transformers have had limited success in competing in the Canadian market for Subject Power Transformers because of a number of factors, including:

- a) most significantly, the high tariff on imported power transformers;
- b) a history of effective anti-dumping protection;
- c) domestic purchasing preference policies on the part of many Canadian provincial electric utilities;
- d) lack of benchmark sales and demonstrated service and quality history by certain offshore suppliers;
- e) shipping costs; and
- f) exchange rate exposure.

32. For Subject Power Transformers, the Most-Favoured Nation Tariff rate on imports is currently fifteen percent, the

General Preferential Tariff is ten percent, and the tariff on imports from the United States is thirteen and one-half percent. Under the Canada-U.S. Free Trade Agreement, the tariff on imports from the U.S. is presently scheduled to be removed in ten equal annual stages which commenced January 1, 1989.

(f) Substitutes

33. In general, there are no effective substitutes for Subject Power Transformers. For any specific application, customers are normally unable to substitute transformers of different specifications.

(g) Barriers to Entry

34. Barriers to entry into the production of Subject Power Transformers are considerable, and no new manufacturers of Subject Power Transformers are expected to be established in Canada in the foreseeable future. Barriers to new entry, apart from the tariff barriers discussed above include the following:

a) the sunk costs associated with an investment which comprises highly specialized assets which have very limited alternate uses;

- b) the time and cost required to assemble a specialized and technically skilled labour force necessary for designing, manufacturing and marketing power transformers;
- c) the requirement to become a qualified supplier approved by the major electrical utility companies;
- d) the difficulty of existing Canadian power transformer manufacturers of smaller rated units of switching into the production of very large and EHV transformers. Manufacturers of small and medium power transformers would essentially have to construct new plants, purchase the necessary production and testing equipment, and acquire the necessary technology; and
- e) the substantial costs and time lags in establishing a fully integrated, efficient scale power transformer manufacturing facility in Canada, and developing the necessary skills and technology.

(h) Removal of a Vigorous and Effective Competitor

35. The Director states that TTI is and historically has been an effective competitor of ABB Canada. As a result of the recent rationalization in the Canadian Subject

Power Transformer industry, the two companies have become more effective competitors. The Director states that the proposed Merger is likely to remove the competition that TTI currently and potentially poses in the market.

(i) Effective Competition Remaining

36. The Director states that less effective competition will remain in the Subject Power Transformer market. The only remaining domestic competitor will be Federal Pioneer Limited which has a much smaller production capacity and share of the Canadian Subject Power Transformer market than either ABB Canada or TTI. In addition, Federal Pioneer Limited does not manufacture power transformers rated over 400 MVA and 500 KV.

(j) Change and Innovation in the Market

37. Power transformers are considered to be a technologically mature product. Technological advances are not likely to mitigate the anti-competitive effects of the Merger.

(k) Other Competitive Factors

38. The demand for Subject Power Transformers has increased considerably. In 1987 and 1988 the growth in demand has been approximately double the rate experienced during the early 1980s. The resurgence in demand, combined with the rationalization that has recently taken place in the Subject Power Transformer industry, has led to generally higher rates of capacity utilization for manufacturers of Canadian Subject Power Transformers. Electrical utilities have noted higher price quotations and longer delivery lags as a result of the increase in demand. The generally tighter conditions in the Subject Power Transformer market are likely to augment the market power that the Merger may give to ABB Canada.

39. The Merger, should it proceed as proposed, would put the majority of the capacity for the manufacture of Subject Power Transformers in Canada under the control of a single company, operating in a market environment protected by tariffs and other factors. The Director states that the utility companies, who are the major purchasers of the Subject Power Transformers, will have limited ability to exercise effective countervailing power given the limited competitive alternatives

available. Transformers represent a relatively small portion of the total cost of operating a transmission and distribution system. However, transformers are a critical component in such systems and any increased costs may ultimately be passed on to consumers.

E. ORDER SOUGHT

40. The Director has engaged in discussions with the Respondents to the effect that the foregoing alleged anti-competitive aspects of the Merger have been dealt with and provision for their remedy is reflected in the Draft Consent Order sought herein and attached as Schedule "A" hereto.

41. The Director accordingly seeks the order outlined above in this Notice of Application.

Dated at the City of Hull in the Province of Quebec this 26th of April, 1989.



Calvin S. Goldman, Q.C.
Director of Investigation
and Research

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AND TO: THE REGISTRAR
THE COMPETITION TRIBUNAL

SCHEDULE "A"

THE COMPETITION TRIBUNAL

IN THE MATTER OF an Application by the Director of Investigation and Research under sections 92 and 105 of the Competition Act, R.S., c.C-34, as amended:

AND IN THE MATTER OF the proposed acquisition by Asea Brown Boveri Inc. of certain assets and property comprising the electrical transmission and distribution business of Westinghouse Canada Inc., including those of its wholly-owned subsidiary Transelectrix Technology Inc.

BETWEEN:

THE DIRECTOR OF INVESTIGATION AND RESEARCH

Applicant

- and -

ASEA BROWN BOVERI INC., WESTINGHOUSE CANADA INC., TRANSELECTRIX TECHNOLOGY INC.

Respondents

DRAFT CONSENT ORDER

THE APPLICATION of the Director of Investigation and Research under the Competition Act (the "Director") for an order pursuant to section 105 of the said Act was heard the ___ day of _____, 1989, alleging that the proposed acquisition by the Respondent Asea Brown Boveri Inc. ("ABB Canada") of certain assets and property comprising the

electrical transmission and distribution business of the Respondents Westinghouse Canada Inc. ("WECAN") and its wholly-owned subsidiary Transelectrix Technology Inc. ("TTI") (the "Merger") will substantially prevent or lessen competition for large power transformers in Canada, and requesting an Order on consent of the parties, to remedy the alleged lessening of competition as filed in draft therewith;

ON READING the Notice of Application, Statement of Competitive Impact under Rule 34 of the Tribunal, the Consent of the parties to a draft Order accompanying the said application, the reports of Woods Gordon, and _____, P.Eng. with supporting affidavits and the affidavits of _____ and _____ on behalf of the Respondents, all filed;

NOTICE of the within application was given in accordance with Rules 35 and 37;

ON HEARING counsel for the parties with respect to this application, counsel for the Repondents advising that the Merger will not be effected until the issuance of the within Order;

AND IT BEING UNDERSTOOD BY THE PARTIES HERETO
THAT nothing in this Order shall be taken as an admission by the Respondents of any facts or law which would support the allegation that the Merger prevents or lessens, or is likely to prevent or lessen, competition substantially.

DEFINITIONS

1. **THE TRIBUNAL ORDERS THAT** for the purposes of this Order the following definitions shall apply:

- (a) "transformer" means a device used to transfer electrical energy from one circuit to another by induction;
- (b) "Subject Power Transformer" means a transformer having a minimum nameplate power rating of approximately 40 megavolt amperes ("MVA");
- (c) "Person" includes a natural person, partnership, and body corporate;
- (d) "Hamilton business" means the Beach Road, Hamilton, Ontario undertaking of TTI and includes

all the equipment, the right to use any relevant technology or know-how, trade secrets, contracts and other property and interests owned by or licenced to TTI and used in the production and sale of electrical distribution and transmission equipment and all such property or interests needed to manufacture Subject Power Transformers;

- (e) "Guelph business" means the Guelph, Ontario undertaking of TTI and includes all the equipment, the right to use any relevant technology or know-how, trade secrets, contracts and other property and interests owned by or licenced to TTI and used in the production and sale of electrical distribution and transmission equipment and all such property or interests needed to manufacture Subject Power Transformers;
- (f) "TTI" means the Respondent Transelectrix Technology Inc. and includes the Hamilton business and the Guelph business; and,
- (g) "hold separate" means the arrangement described in paragraphs 3 to 9 herein.

APPLICATION

2. THE TRIBUNAL ORDERS THAT:

(a) the provisions of this Order apply to each of the Respondent corporations and

(i) each division, subsidiary, or other person controlled by it; and each officer, director, employee, agent or other person acting for or on behalf of any of them;

(ii) each of their successors and assigns, and all other persons in active concert or participation with any of them who shall have received actual notice of this Order; and,

(iii) the Trustee, the Accountant and Manager, as defined and specifically referred to herein;

(b) nothing in this Order or the consent of the Applicant and the Respondents shall be construed to confer any rights upon any person except the

Applicant and the Respondents, other than as specifically provided in this Order.

HOLD SEPARATE

3. THE TRIBUNAL ORDERS THAT the Respondent ABB Canada shall hold separate the operations of TTI from its own operations and not take any action towards combining the assets or operations of TTI with its own assets or operations with the exception of taking legal title to the TTI assets pursuant to the Merger.

4. THE TRIBUNAL ORDERS THAT in order to preserve the separation of the TTI assets acquired pursuant to the Merger, ABB Canada shall:

- (a) maintain the TTI assets purchased pursuant to the Merger in a separate identifiable division of ABB Canada established for this purpose (the "TTI Division") for the term of this hold separate;
- (b) contract with an independent accounting firm (the "Accountant"), to prepare separate financial statements for the TTI Division, in accordance

with generally accepted accounting principles, on a monthly basis.

5. **THE TRIBUNAL ORDERS THAT** ABB Canada shall not influence or attempt to influence any operational or financial decisions of the TTI Division, including the tendering of bids, and shall not obtain, directly or indirectly, from the TTI Division, any information except as follows:

- (a) monthly financial statements prepared by the Accountant pursuant to subparagraph 4(b) which statements will be filed with the Tribunal on a confidential basis when issued to ABB Canada;
- (b) information concerning the financial condition and performance of the TTI Division necessary for ABB Canada to comply with the provisions of this Order, or information necessary to deal with post-closing matters arising from the Merger, provided that:
 - (i) such information shall not be disclosed to ABB Canada without the prior written permission of the Director; and,

(ii) such information shall only be disclosed to the following individuals in ABB Canada, who shall not disclose this information to anyone without the prior written permission of the Director:

- Sven Hindrikes, Executive Vice-President; Gilles Sicotte, Director of Finance, Power Transmission Segment; and Alan MacNamara, Corporate Comptroller.

6. THE TRIBUNAL ORDERS THAT ABB Canada shall refrain from taking any action that would jeopardize the sale or operation of the TTI Division or otherwise adversely affect its capability to compete effectively in the production and sale of Subject Power Transformers.

7. THE TRIBUNAL ORDERS THAT during the term of the hold separate herein:

(a) the TTI Division shall be managed by Mr. Jack Churchman, Vice-President, TTI (the "Manager"). ABB Canada and the Manager shall incorporate into any employment contract entered into between them

the terms of this Order governing the conduct of the Manager;

(b) the Manager shall have complete managerial responsibility over the TTI Division, subject to the provisions of this Order, and shall maintain, in accordance with sound accounting practice, separate, true and complete financial ledgers, books and records recording material financial information of the TTI Division; and,

(c) the Manager shall be assisted by the Accountant in such manner as he may require in managing the on-going operation of the TTI Division.

8. THE TRIBUNAL ORDERS THAT the TTI Division shall be operated in the ordinary course of business by the Manager except as required by a purchaser. ABB Canada and the Manager shall actively maintain the physical property of and the goodwill associated with the TTI Division to standards at least equal to those existing at the date of closing of the Merger and they shall not:

(a) permit any deterioration in such standards;

- (b) cause the laying off of key personnel and ABB shall not hire any management, technical staff or other personnel of the TTI Division; or,
- (c) cause any disposition of the assets of the TTI Division other than in the ordinary course of business or pursuant to any order of the Tribunal.

9. **THE TRIBUNAL ORDERS THAT** nothing in paragraphs 3 to 8 shall restrict ABB Canada from:

- (a) providing for and maintaining sufficient working capital to permit the TTI Division to continue to operate as a viable on-going business;
- (b) providing for and authorizing all necessary capital improvements to the TTI Division required to enable it to continue to operate up to at least the standards referred to in paragraph 8.

CONDITIONS

10. **THE TRIBUNAL ORDERS THAT** the following conditions shall apply to the paragraphs 11, 12 and 13 hereof:

- (a)** by January 1, 1990, or earlier, the necessary regulatory approvals will have been obtained so that the customs tariff on all imports under tariff item 8504.23.00 of transformers over 400 MVA rating shall be subject to a full duty remission for a period of not less than five years effective January 1, 1990;
- (b)** by January 1, 1990, or earlier, the necessary regulatory approvals will have been obtained so that the customs tariff on tariff item 8504.23.00 of transformers of rating between 40 and 400 MVA inclusive with respect to imports originating in the United States of America shall be reduced to a maximum of 6 percent effective January 1, 1990, 3 percent effective January 1, 1991 and to zero percent effective January 1, 1992;
- (c)** by June 16, 1989, or earlier, the agreement of Federal Pioneer Limited to the proposed tariff reductions set out in paragraph (b), or a written indication from the Minister of Finance that he will recommend such reductions to Privy Council, will have been obtained;

- (d) the above conditions (a) and (b) will have been accomplished by filing with the Registrar of this Tribunal copies of the necessary statutory instruments or approvals evidencing such reductions;
- (e) the above condition (c) will have been accomplished by filing with the Registrar correspondence from Federal Pioneer Limited or the Minister of Finance, as the case may be, which sets out their support as required.

11. **THE TRIBUNAL ORDERS THAT** the hold separate will continue to apply until either:

- (a) all the conditions in paragraph 10 have been satisfied; or,
- (b) the divestiture referred to in paragraphs 12 or 13, if required by this Order, has been accomplished.

DIVESTITURE OF THE HAMILTON BUSINESS

12. **THE TRIBUNAL ORDERS THAT** if condition 10(b) or

10(c) has not been accomplished within the time specified, ABB Canada shall proceed to divest all its right, title and interest in the Hamilton business in accordance with the procedure for divestiture set out in this Order.

DIVESTITURE OF THE TTI DIVISION

13. **THE TRIBUNAL ORDERS THAT** if either condition 10(a) or the divestiture of the Hamilton business pursuant to paragraph 12, as required, are not accomplished within the time specified therefor, ABB Canada shall proceed to divest all its right, title and interest in the TTI Division in accordance with the procedure for divestiture set out in this Order.

14. **THE TRIBUNAL ORDERS THAT** for the purposes of the divestiture required by paragraph 13, reference to divestiture of the TTI Division shall mean the divestiture of either the TTI Division or the Guelph business, as defined herein, at the option of the Director.

DIVESTITURE PROCEDURE

15. **THE TRIBUNAL ORDERS THAT** divestiture of the Hamilton business or the TTI Division as defined in

paragraph 14 (the "Assets") shall be accomplished:

- (a) by sale of the fee simple title, assignment of lease or sublease, assignment of contract, or other disposition necessary to ensure that by completion of the divestiture, ABB Canada has no remaining right, title or interest in the Assets inconsistent with the intent of this Order;
- (b) by way of disposition of the Assets as a going concern;
- (c) to an arm's length purchaser or purchasers who:
 - (i) will effect the purchase for the purpose of competing effectively in the manufacture and sale of Subject Power Transformers or in power transformers over a range of power ratings acceptable to the Director and in any case up to a maximum power rating of not less than 400 MVA;
 - (ii) have the managerial, operational and financial capability to compete effectively in the manufacture and sale of Subject Power Transformers;

- (d) by including in the divestiture the TTI trademark or trade name, the personnel, inventory, customer lists, supply contracts and other assets, interests or personal property necessary for a purchaser to operate the Assets as a going concern and which a purchaser is desirous of acquiring;
- (e) by way of tender, bidding or other procedure instituted in a manner to allow a fair opportunity to prospective purchasers to acquire the Assets;
- (f) on usual commercial terms; and,
- (g) by including with the divestiture, in the case of the divestiture of Hamilton business, the assignment of contracts of ABB Canada for the current production of Subject Power Transformers satisfactory to the Director.

16. **THE TRIBUNAL ORDERS THAT** any person making an inquiry regarding the possible purchase shall be notified that the sale is being made pursuant to this Order and provided with a copy of this Order. Any bona fide prospective purchaser shall be furnished, subject to the

execution of a customary confidentiality agreement, all pertinent information regarding the Assets; such information to be provided to the Director on request. The prospective purchaser shall be permitted to make such inspection of the plant and of all financial, operational or other documents and information as may be relevant to the divestiture.

17. **THE TRIBUNAL ORDERS THAT** ABB Canada shall use its best efforts to accomplish the divestiture within the time period specified and WECAN shall cooperate in carrying out such divestiture.

18. **THE TRIBUNAL ORDERS THAT** ABB Canada shall advise the Director every 30 days in writing of the progress of its efforts to accomplish the divestiture, including a full description of contacts or negotiations and the identity of all parties contacted and prospective purchasers who have come forward.

TRUSTEE SALE

19. **THE TRIBUNAL ORDERS THAT** if the divestiture is not completed within 120 days from the date paragraphs 12 or 13 become effective, the Tribunal, on the application of the Director, and after affording the

Respondents a reasonable opportunity to be heard, may appoint a trustee ("Trustee") to be nominated by the Director for the sale of the Assets on the following terms ("Trustee Sale"):

- (a) the Assets shall be divested by the Trustee within 60 days of the Trustee's appointment at the most favourable price and on the most favourable terms and conditions available;
- (b) the Trustee Sale shall be accomplished in accordance with paragraph 15 herein;
- (c) the Trustee Sale shall be considered to have been completed when the purchaser has signed a binding agreement that has not been the subject of objection by the Director pursuant to paragraph 28;
- (d) after the appointment of the Trustee becomes effective, only the Trustee shall have the right to effect the divestiture required by this Order;

- (e) the Trustee shall have the full power and authority to effect the Trustee Sale and shall use all reasonable efforts to accomplish it;
- (f) ABB Canada and the Manager shall use their best efforts to assist the Trustee in accomplishing the Trustee Sale. The Trustee shall have full and complete access to the personnel, books, records and facilities of the Assets, and ABB Canada and the Manager shall provide to the Trustee such financial or other information relevant to the Assets as the Trustee may request. ABB Canada and the Manager shall take no action to interfere with or impede the Trustee's accomplishment of the Trustee Sale;
- (g) after appointment, the Trustee shall, every 30 days, file reports with the Director and ABB Canada setting forth the Trustee's efforts to accomplish the Trustee Sale;
- (h) the Trustee Sale shall be conducted at ABB Canada's expense and the proceeds of the divestiture paid to ABB Canada;

(i) the Trustee shall have such other powers as the Tribunal shall deem appropriate.

20. **THE TRIBUNAL ORDERS THAT** ABB Canada shall not object to a divestiture by the Trustee on any grounds other than the Trustee's malfeasance or gross misconduct and then only subject to the provisions of paragraph 27.

21. **THE TRIBUNAL ORDERS THAT** in the case only of the divestiture of the TTI Division, if the Trustee has not accomplished the divestiture within 60 days of its appointment, the Trustee shall thereupon promptly file with the Tribunal on a confidential basis a report setting forth:(1) the Trustee's efforts to accomplish the required divestiture or disposition, (2) the reasons, in the Trustee's judgment, why the required divestiture or disposition has not been accomplished, and (3) the Trustee's recommendations. The Trustee shall at the same time furnish such report to the Director and the Respondents, who shall each have the right be heard and to make additional recommendations consistent with the purpose of the divestiture. The Tribunal may thereafter make such orders as it shall deem appropriate in order to carry out the divestiture, which may, if necessary, include extending the term of the Trustee's appointment.

22. **THE TRIBUNAL ORDERS THAT** in the case of the divestiture of Hamilton business, if the Trustee has not accomplished the divestiture within 60 days of its appointment, ABB Canada shall divest the TTI Division pursuant to paragraph 13.

23. **THE TRIBUNAL ORDERS THAT** following the divestiture or Trustee Sale, neither ABB Canada nor any of its agents or representatives will make further direct or indirect use of the Assets or acquire the Assets for a period of ten years, but nothing in this paragraph shall preclude the exchange or sale of products or like arrangements acceptable to the owner or operator of the Assets or the purchase by ABB Canada of any of the Assets if the business associated with the Assets has failed or is likely to fail, subject to the provisions of the Competition Act.

NOTIFICATION

24. **THE TRIBUNAL ORDERS THAT** ABB Canada or the Trustee, whichever is then responsible for effecting the divestiture or disposition required herein, shall notify the Director of any proposed divestiture required by this Order. If the Trustee is responsible, it shall similarly notify ABB Canada. The notice shall set forth the details

of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest or desire to acquire any of the Assets (as defined herein) together with full details of the same.

25. THE TRIBUNAL ORDERS THAT within seven days after receipt of the notice, the Director may request additional information concerning the proposed divestiture, the proposed purchaser and any other potential purchaser. ABB Canada or the Trustee shall furnish the additional information within seven days of the receipt of the request unless the Director agrees in writing to extend the time.

26. THE TRIBUNAL ORDERS THAT within 15 days after receipt of the notice or within 15 days after receipt of the additional information, whichever is later, the Director shall notify in writing ABB Canada and the Trustee, if there is one, if it objects to the proposed divestiture.

27. THE TRIBUNAL ORDERS THAT if the Director fails to object within the period specified, or if the Director notifies in writing ABB Canada and the Trustee, if there is one, that he does not object, then the divestiture may be consummated, subject only to ABB Canada's limited right to

object to the sale under paragraph 20. Upon objection by ABB Canada under paragraph 20, the proposed divestiture shall not be accomplished unless approved by the Tribunal.

28. THE TRIBUNAL ORDERS THAT if the Director objects, he may apply to the Tribunal for an Order that the proposed purchase not be consummated.

FINANCING

29. THE TRIBUNAL ORDERS THAT ABB Canada shall not provide financing for all or any part of any divestiture under this Order which would permit ABB Canada to influence or control the operation of the Assets after the divestiture (such as through a right of repossession) and no financing shall occur without the prior written consent of the Director.

COMPLIANCE INSPECTION

30. THE TRIBUNAL ORDERS THAT ABB Canada, the Manager and WECAN shall, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, from time to time permit duly authorized representatives of the Director, including

counsel, consultants and other persons retained by the Director, upon the written request of the Director, and on seven days' notice:

(a) access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of ABB Canada, the TTI Division and WECAN, which may have counsel present, relating to any matters contained in this Order; and,

(b) subject to the reasonable convenience of ABB Canada, the Manager and WECAN and without restraint or interference from them, to interview their officers, employees, and agents, who may have counsel present, regarding any such matters.

31. Upon the written request of the Director, ABB Canada, the Manager and WECAN shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Order as may be requested.

32. No information or documents obtained by the means provided in paragraphs 30 and 31 herein shall be divulged by any representative of the Director to any person except in the course of legal proceedings to which the Director is party, or for the purpose of securing compliance with this Order, or as otherwise required by law.

33. **THE TRIBUNAL ORDERS THAT** jurisdiction is retained by the Tribunal for the purpose of any application by the Director, any of the Respondents, the Trustee, the Manager or the Accountant to rescind or vary any of the provisions of this Order in the event of a change in circumstances or otherwise.

Dated at Ottawa this ___ day of _____, 1989.

Member, Competition Tribunal

Member, Competition Tribunal

Member, Competition Tribunal

THE COMPETITION TRIBUNAL

IN THE MATTER OF an Application by the Director of Investigation and Research under sections 92 and 105 of the Competition Act, R.S., c.C-34, as amended:

AND IN THE MATTER OF the proposed acquisition by Asea Brown Boveri Inc. of certain assets and property comprising the electrical transmission and distribution business of Westinghouse Canada Inc., including those of its wholly-owned subsidiary Transelectrix Technology Inc.

BETWEEN:

THE DIRECTOR OF INVESTIGATION
AND RESEARCH

Applicant

- and -

ASEA BROWN BOVERI INC. et al.

Respondents

DRAFT CONSENT ORDER

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John S. Tyhurst
Department of Justice
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SCHEDULE "B"

CONFIDENTIAL

(Has been filed in an envelope which can be ~~find~~ found
in the vault)

filed - Conf. Annex A

Rachel Landry
May 2, 1989