

Competition Tribunal



Tribunal de la Concurrence

CT-1989-001 – Doc # 140a

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., 1985, 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



ORDER VARYING CONSENT ORDER OF JUNE 15, 1989

Date of Hearing:

December 18, 1989

Presiding Member:

The Honourable Mr. Justice Leonard A. Martin

Lay Members:

Dr. Frank Roseman
Madame Marie-Hélène Sarrazin

Counsel for the Applicant:

Director of Investigation and Research

William J. Miller
John S. Tyhurst

Counsel for the Respondents:

(a) Asea Brown Boveri Inc.

Michael L. Phelan
Timothy Kennish
Peter A. Magnus

**(b) Westinghouse Canada Inc.
Transtrix Canada Inc.**

Not Represented

COMPETITION TRIBUNAL

ORDER VARYING CONSENT ORDER OF JUNE 15, 1989

The Director of Investigation and Research

v.

Asea Brown Boveri Inc. et al.

WHEREAS THE APPLICATION of the Director of Investigation and Research under the *Competition Act*, R.S.C., 1985, c. C-34, as amended, (the "Director") for an order pursuant to section 105 of the said Act was heard on June 15, 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") would 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;

AND WHEREAS the Tribunal issued the consent order on June 15, 1989 in the form of the order requested (the "original order");

AND WHEREAS paragraph 33 of the original order provides that jurisdiction is retained by the Tribunal for the purpose of any application by, inter alia, the respondents to the original order to rescind or vary any of the provisions of the original order in the event of a change in circumstances or otherwise;

AND WHEREAS an application of the respondent (ABB Canada) for an order varying the provisions of the original order pursuant to section 105 of the Competition Act was heard on December 18, 1989, stating that the necessary regulatory approvals required by paragraph 10(b) of the original order will not have been obtained by January 1, 1990;

AND WHEREAS the applicants wish to terminate the hold separate arrangement described in paragraphs 3 to 9 of the original order and substitute therefor an arrangement under which the Guelph business would function as a free-standing operation available on a "ready for sale" basis to a third party;

AND WHEREAS the applicants wish to modify the divestiture alternatives described in paragraphs 12 to 14 of the original order and substitute therefor the Guelph business;

ON READING the Notice of Application pursuant to the order dated November 9, 1989 and the Consent of the parties to a draft order accompanying the said application, all filed;

ON HEARING counsel for the parties with respect to this application;

1. THE TRIBUNAL ORDERS THAT the original order is varied as follows:

(i) paragraphs 1(h) and 1(j) are deleted;

(ii) paragraph 1(i) is amended by deleting "of TTI" and by substituting therefor "purchased from Transelectrix Technology Inc. (TTI)", and by adding the word "formerly" immediately before the word "owned";

(iii) "hold separate" in paragraph 1(k) is deleted and "Maintenance Requirement" is substituted therefor;

(iv) "the Accountant and Manager" in paragraph 2(a)(iii) is deleted;

(v) the heading immediately above paragraph 3 and paragraph 3 are deleted and the following is substituted therefor:

"Maintenance Requirement

3. THE TRIBUNAL ORDERS THAT the respondent ABB Canada shall develop and maintain the Guelph business as a free-standing division of ABB Canada to manufacture and sell Subject Power Transformers such that the Guelph business functions as a free-standing operation available on a "ready for sale" basis to a third party."

(vi) paragraph 4 is deleted and the following is substituted therefor:

"4. THE TRIBUNAL ORDERS THAT in order to preserve the Guelph business as a free-standing operation available on a "ready for sale" basis to a third party, **ABB** Canada shall:

(a) operate the Guelph business as a self-contained and self-sufficient divisional profit centre within ABB Canada; and

(b) develop and maintain as a free standing operation within the Guelph business engineering, technological, managerial, labour, manufacturing, marketing, financial, accounting, procurement and other related capabilities."

(vii) paragraph 5 is deleted;

(viii) paragraph 6 is amended by deleting "TTI Division" and substituting therefor "Guelph business";

(ix) paragraph 7 is deleted;

(x) paragraph 8 is deleted and the following is substituted therefor:

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

(a) permit any deterioration in such standards;

(b) cause the laying off of key personnel and ABB Canada shall not hire any management, technical staff or other personnel of the Guelph business; or

(c) cause any disposition of the assets of the

Guelph business other than in the ordinary course of business or pursuant to any order of the Tribunal."

(xi) paragraph 9 is amended by deleting "TTI Division" in paragraphs 9(a) and 9(b) and substituting "Guelph business" therefor, by deleting the "." at the end of paragraph 9(b) and substituting "; and" therefor, and by adding the following immediately after the said paragraph 9(b):

"(c) managing the Guelph business as a division of ABB Canada, while at the same time preserving the Guelph business as a free-standing operation available on a "ready for sale" basis to a third party."

(xii) paragraph 10(b) is amended by deleting "by January 1, 1990, or earlier" and substituting therefor "by June 30, 1990, or earlier" and by deleting "effective January 1, 1990" and substituting therefor "effective on the date in 1990 when the necessary regulatory approvals will have been obtained";

(xiii) paragraph 11 is amended by deleting "hold separate" and substituting therefor "arrangement under which the Guelph business would function as a free-standing operation available on a "ready for sale" basis to a third party" and by deleting "or 13";

(xiv) paragraph 12 is amended by substituting "Guelph business" for "Hamilton business" in the heading immediately above paragraph 12 and the text thereof;

(xv) the heading immediately above paragraph 13 and paragraphs 13 and 14 are deleted;

(xvi) paragraph 15 is amended by deleting "TTI" in paragraph 15(d) and substituting therefor "Transelectrix Technology Inc. ("TTI")", by deleting "the Hamilton business or the TTI Division as defined in paragraph 14" and substituting therefor "the Guelph business", by deleting "; and" in paragraph 15(f) and substituting a "." therefor, and by deleting paragraph 15(g);

(xvii) paragraph 17 is amended by deleting "and WECAN shall cooperate in carrying out such divestiture";

(xviii) paragraph 19 is amended by deleting "paragraphs 12 or 13" and substituting therefor "paragraph 12", by deleting "and the Manager shall use their" in paragraph 19(f) and substituting therefor "shall use its", and by deleting "and the Manager" wherever it appears in the remainder of paragraph 19(f);

(xix) paragraph 21 is amended by deleting "in the case only of the divestiture of the TTI Division" and by deleting "and the respondents" and substituting therefor "and ABB Canada";

(xx) paragraph 22 is deleted;

(xxi) all references to ", the Manager and WECAN" in paragraphs 30 and 31 are deleted, "the TTI Division and WECAN," in paragraph 30(a) is deleted, and "them" and "their" in paragraph 30(b) are deleted and "it" and "its" substituted therefor, respectively;

(xxii) paragraph 33 is deleted and the following substituted therefor:

"THE TRIBUNAL ORDERS THAT jurisdiction is retained by the Tribunal for the purpose of any application by the Director, any of the respondents, or the Trustee to rescind or vary any of the provisions of this order in the event of a change in circumstances or otherwise."

2. THE TRIBUNAL ORDERS THAT ABB Canada is at liberty to discharge the Accountant and the Manager from their respective duties and obligations as described in the original order, and the Accountant and the Manager are at liberty to resign from their respective positions.

3. THE TRIBUNAL ORDERS THAT the original order shall remain in full force and effect, except as amended by this order. A consolidated version of the original order will be issued forthwith.

DATED at Ottawa, this 18th day of December, 1989.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) Leonard A. Martin
Leonard A. Martin