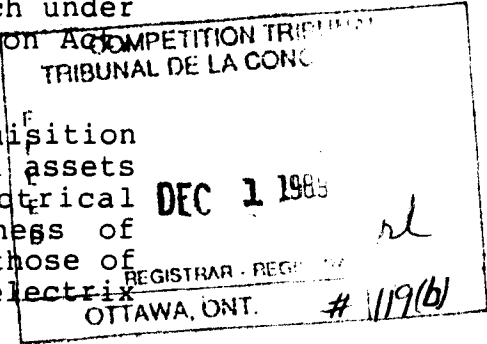


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THE COMPETITION TRIBUNAL

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

PUBLIC AFFIDAVIT OF PETER JANSON

I, Peter Janson, of the Town of Baie d'Urfé, in the Province of Quebec, Executive, MAKE OATH AND SAY THAT:

1. I am the President of Asea Brown Boveri Inc., ("ABB") and as such I am familiar with the matters leading to and now governed by the Consent Order dated June 15, 1989. For purposes of this affidavit I have relied upon my personal knowledge of the Canadian transformer industry and upon the knowledge within ABB obtained through the usual sources of public information or

commercial intelligence and such other information as was permitted pursuant to the Consent Order.

2. The Hold Separate Provisions of the Consent Order were established in order to maintain the competition situation as it existed prior to the merger until the conditions of the Consent Order had been fulfilled and to maintain TTI as an effective Canadian competitor so as to facilitate its divestiture in the event that such divestiture was required. One aspect of that competitive situation was that at the upper range of transformers, there had been very little if any foreign competition in the Canadian transformer market. Certain provisions of the Consent Order and undertakings filed with the Tribunal were designed to encourage such foreign competition after the parties were released from the Hold Separate Provisions. The provisions included duty remission as described in paragraph 10(b) of the Consent Order.

3. Subsequent to the granting of the Consent Order, the Canadian transformer market has responded as if the duty remission, the FTA accelerated tariff reductions and all other aspects of the trade remedies arising from the Consent Order were in effect. The result has been that the Canadian market has experienced significantly increased foreign competition, the details of such foreign competition are set forth more fully in the affidavit of Donald McFetridge to be filed with the Tribunal.

4. For the reasons to be set forth in the succeeding paragraphs I do verily believe that TTI is losing its competitive position to a very significant degree and that the proposed amendments to the Consent Order will assist in rectifying this loss of competitive position. The most significant of TTI's operations are conducted at its Guelph plant.

5. It is my information and belief that the Guelph plant has increased its planned production from a level of approximately \$35 million to over \$80 million between 1987 and 1989. In order to meet this increase in rate of production, it has been necessary to transfer or hire additional production staff and to make certain capital investments.

6. Notwithstanding the planned rate of production, the actual delivery of transformers by TTI for the year 1989 will be approximately \$60 million. The prime reason for the decline is the very serious problem of delivery delays experienced at the Guelph plant for reason described in this affidavit.

7. It is my understanding and belief that the current average delivery delay of TTI transformers is 4 months. This average

delay represents a range of delay from a few weeks to approximately 10 months.

8. The normal time for the production and delivery of a transformer is 10-12 months. An average delay of 4 months in delivery represents a serious problem for both the manufacturer and the customer.

9. The nature and extent of the delay inhibits the manufacturer's ability to accept new orders because the plant capacity is fully occupied, with current and delayed product. The delays undermine the confidence of purchasers to place further orders with the manufacturer. For most power projects involving transformers, the transformer is a part of a series of events within the power project's life cycle. A delay in delivery of a transformer has a significant adverse affect on the whole of the power project's timetable and scheduled start up date.

10. I am aware that certain TTI orders have been cancelled by reason of TTI's inability to deliver as required by the customer. Both the New Brunswick Power Commission and Nova Scotia Light and Power recently cancelled orders held by TTI for this reason.

11. In addition to concern for order cancellations, some purchasers have awarded orders to TTI competitors in situations where TTI had been a traditional supplier or otherwise had an

excellent opportunity to win the award. B.C. Hydro purchased from the U.S. manufacturer, McGraw-Eddison for a one 400 MVA transformer. Ontario Hydro placed two orders with the U.K. manufacturer Parsons Peebles for 750 MVA transformers with an option for a third unit. Ontario Hydro in particular has been a long time customer of TTI (or its predecessors) with whom TTI has a close relationship.

12. In addition, TTI has now been excluded from responding to tendering on certain contracts. Ontario Hydro has recently called for tenders on two transformers (of a rating not covered by the Consent Order). TTI was not invited to tender on this contract because of Ontario Hydro's concern for TTI's inability to meet the required delivery schedule.

13. I am aware that many customers have concluded that since TTI's assets are owned by ABB, ABB is in a position to rectify these delay problems. As a result I have had direct contact with such TTI customers including but not limited to Ontario Hydro, New Brunswick Power Commission, Nova Scotia Light and Power, Alcan, all of whom has expressed loss of confidence, frustration and reluctance to deal with TTI. I do verily believe that TTI is currently unable to meet a significant portion of its customers' delivery dates.

14. I do verily believe that the major cause of the cancellations, lost bids and exclusions from bidding is TTI's

recent history of delivery delays and the resulting loss of customer confidence in TTI's reliability. These delays and the backlog of work due to production problems has caused and will cause more purchasers to purchase offshore and will continue to undermine TTI's competitive position.

15. With the removal of the Hold Separate Provisions, ABB could undertake remedial action to eliminate delays, restore customer confidence and put TTI in a position to bid on future contracts. ABB and TTI could canvass a range of options including but not limited to shifting some work to other ABB plants, subcontracting certain work and addressing certain personnel issues as more fully described below.

16. It is my understanding and belief that employee issues are a contributing factor to the delay in deliveries. The current work force is experiencing a state of continuing uncertainty since the proposed merger was announced over a year ago. This uncertainty affects morale and productivity. This uncertainty will remain until ABB is able to take concrete steps to address labour-management and other issues and inform the employees about the anticipated future of the business.

17. One of the significant employee issues is the level of skill and training of a large portion of the Guelph labour force. When TTI increased its rate of production, it was required to hire a large number of inexperienced workers.

Because of the nature of the manufacture of transformers, testing can only occur at the end of the manufacturing process. One of the causes of delay in TTI deliveries has been the large number of test failures which have required a significant amount of rebuilding and reworking the failed unit. The result of such test failures is a delay in delivery and utilization of plant capacity for purposes of rebuilding and reworking failed units rather than completion of other contracts.

18. The large number of inexperienced workers have caused a serious loss in TTI's productivity. A loss of productivity not only results in delayed orders but reduces annual income and increases labour costs. In addition TTI is unable to rectify test problems and productive delays because it does not have a sufficiently large pool of experienced personnel to deal with these unforeseen events. These factors affects TTI's ability to be and remain a profitable enterprise.

19. It is essential in order to maintain TTI's competitive position that ABB and TTI take remedial action. Such action could include new training for employees and transferring a limited number of experienced ABB personnel to work alongside TTI employees all without adversely affecting the present work force. In addition ABB will undertake not to terminate or lay-off key employees at Guelph.

20. As a result of TTI's production commitments, I do verily believe that additional capital may be required to meet these

objectives. It is necessary to review and plan these capital requirements with TTI and to implement such necessary investment in conjunction with addressing the other problems raised by this affidavit.

21. In addition it is essential to review management systems to ensure sufficient stock and work in process control in order to maintain and improve the delivery schedules.

22. At the time that the Consent Order was negotiated and subsequently issued, the parties had expected that the Hold Separate Provisions without divestiture would be in effect for no more than 6 months. Both TTI and ABB have maintained the competitive status quo from the outset of its negotiations for the acquisition of TTI over 18 months ago.

23. The current problems at TTI, which the Hold Separate Provisions impede resolution, seriously affect TTI as a meaningful competitor in the market and makes it a less valuable asset in the event of divestiture. ABB is in a position to address the problem of delay, training, personnel and capital, all of which will improve TTI's competitive position.

24. I am concerned that unless these issues are resolved both ABB and TTI are and will be adversely affected. Pursuant to the Hold Separate Provisions, ABB and TTI are unable to adequately address this increased offshore competition. The

value of the TTI asset is declining by virtue of the decline in its competitive abilities. In the event of the anticipated fulfillment of the remaining Consent Order conditions, ABB will takeover a less valuable operation whose problems have been compounded through the maintenance of the status quo. In the unlikely event of divestiture, the TTI operation will be less valuable to a purchaser for the same reasons. Finally, Canadian production competitiveness will have been reduced if these issues are not resolved expeditiously.

25. I do verily believe that a major purpose of the Consent Order to maintain TTI as a significant competitive force will be frustrated if the problems at TTI cannot be addressed immediately.

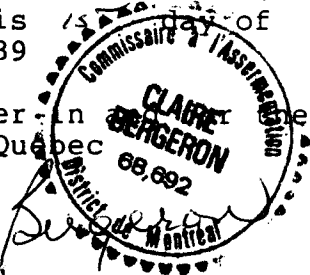
26. The problems of TTI require immediate action which the continuance of the Hold Separate Provisions for a further 3-6 months preclude. In view of the reasonable certainty of the fulfillment of all the conditions of the Consent Order, it would serve no good purpose to commence divestiture procedures.

SWORN before me at the City)
of Montreal, in the Province)
of Quebec this 15th day of)
November, 1989)

December

A Commissioner in)
Province of Quebec)

Claire Bergeron



Peter Janson
PETER JANSON