II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 11 December 1980

relating to a proceeding under Article 85 of the EEC Treaty (IV/27.442 — Vacuum Interrupters Ltd)

(Only the English text is authentic)

(80/1332/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 85 thereof,

Having regard to Council Regulation No 17 of 6 February 1962 [1], and in particular Articles 6 and 8 thereof,

Having regard to the notification to the Commission made on 12 May 1978 by Mr C. S. Ede, Secretary of Vacuum Interrupters Ltd, London, England, on behalf of that company and of Associated Electrical Industries Ltd, London, England, Reyrolle Parsons Ltd, Newcastle upon Tyne, England, and Brush Switchgear Ltd, Leicestershire, England, concerning an agreement made on 27 April 1978 whereby Brush Switchgear Ltd acquired a portion of the shareholding in Vacuum Interrupters Ltd,

Having regard to the application, attached to the notification, for negative clearance of the agreement in relation to Article 85 (1) of the EEC Treaty, or, in the alternative, for exemption under Article 85 (3),

Having regard to the publication of the summary of the notification pursuant to the provisions of Article 19 (3) of the said Regulation No 17 in *Official Journal of the European Communities* No C 181 of 19 July 1980, page 2,

Having regard to the opinion of the Advisory Committee on Restrictive Practices and Dominant Positions delivered on 17 October 1980 in accordance with Article 10 of the said Regulation No 17,

Whereas:

I. THE FACTS

A. Commission Decision of 20 January 1977 [1]

1. By an agreement made on 25 March 1970, Associated Electrical Industries Ltd (hereinafter referred to as AEI) and Reyrolle Parsons Ltd (hereinafter referred to as RP) agreed to form a company to engage in the research, development, manufacture and sale of vacuum interrupters, to be known as Vacuum Interrupters Ltd (hereinafter referred to as VIL). The agreement was made for an initial period of 10 years, continuing thereafter from year to year on certain conditions not material to this Decision.

[1] OJ No 13, 21. 2. 1962, p. 204/62.

[1] OJ No L 48, 19. 2. 1977, p. 22.

2. VIL, which was controlled as to 60% by AEI and as to 40% by RP, had no power to engage in any other business without the written consent of both AEI and RP. AEI and RP undertook that they would not compete with VIL in research, development, manufacture or distribution of vacuum interrupters, and further, that they would, through their subsidiaries, buy such vacuum interrupters as they required from VIL provided the prices were competitive with vacuum interrupters from other sources.

These interrupters are for incorporation into contact breakers and switchgear manufactured by the AEI and RP groups.

3. By its Decision dated 20 January 1977 the Commission declared that the formation of VIL satisfied the tests of Article 85 (3) of the Treaty, notably as regards technical and economic progress in the production of interrupters in general, and exempted the agreement with effect until 25 March 1980.

ORIGIN OF THIS CASE

B. The product

1. The product involved in this Decision is called the 'vacuum interrupter'. The circuit breaker is the principal item of equipment in switchgear apparatus. The functions of switchgear are twofold, namely to switch on and switch off the power flowing from generating stations on the one hand and to act as a safety device in the event of a fault on the transmission system on the other. The circuit breaker must react to a fault very rapidly — in about $^1/_{25}$th of a second — to avoid damage to generating equipment motors and other apparatus connected to the system. The duty performed by the circuit breaker under fault conditions is extremely arduous and requires a most sophisticated piece of equipment. The interruption of heavy currents produces high tension arcs which conventionally have been interrupted in oil, compressed air or inert gases. The circuit breaker usually incorporates three interrupters of the type chosen for the particular switchgear apparatus. The traditional range of conventional interrupters has in broad terms been 1. the oil interrupter, 2. the compressed air interrupter and 3. the inert gas interrupter.

2. The vacuum interrupter has been developed over the last few years as a means of taking advantage of the fact that the high tension arc engendered by cuts in high power currents cannot be maintained in a vacuum, so that the arc will in general be extinguished more rapidly than by the traditional type of interrupter. The vacuum interrupter offers other benefits, such as a lowering of fire risk and a greater durability of working parts.

3. But the vacuum interrupter is nevertheless a technical novelty: there are several technical problems in manufacturing it, including the need to maintain electrical insulation despite metallic vapour created by the arc, a need to avoid excessive wear and tear on contacts, the problem of 'chopping', and the need to avoid a circumstance where contact surfaces might weld together. Despite heavy expenditure these problems have been only partly solved so far, which has limited the capacity of the vacuum interrupter being developed by VIL, which in turn has limited its ability to compete with the traditional types of interrupter.

4. The product with which this Decision is concerned is the vacuum interrupter and the relevant market is that for interrupters in general. It is appropriate to remark in this context that the vacuum interrupter is counterbalanced by the conventional types of interrupter hereinbefore mentioned because, whilst not as thoroughly efficient or effective, they perform, in essence, the same function. Although the objects set out in the Memorandum of Association of VIL extend throughout the electrical industry, agreements confine its activity to the vacuum interrupter.

C. The undertakings

1. Associated Electrical Industries Ltd (AEI) is a wholly-owned subsidiary of the General Electric Co. Ltd. The group, in business in a wide range of fields directly or indirectly linked to electrical engineering, had in 1977, 133 subsidiary companies in the United Kingdom and throughout the industrialized world. The group had sales of £ 1 902 million in 1976 and £ 2 206 million in 1977, spread over the following markets in the percentages shown: power engineering — 15%, industrial — 23%, telecommunications, electronics and automation — 26%, components, cables and wire — 12%, consumer products — 5%, and other overseas business — 19%.

2. On 20 September1977 Reyrolle Parsons Ltd (RP) merged with the Clarke Chapman Group; their holding company took the name of Northern Engineering Industries Ltd (NEI).

RP transferred to NEI its business concerning, mainly, the manufacture of turbines, power generators, interrupters, transformers, motors and accessories, and Clarke Chapman transferred to NEI its business concerned mainly with boilers, cranes

and other related engineering products. As a result the group currently controls some 49 subsidiaries in the UK and other countries, including Australia, New Zealand and South Africa. In 1977 NEI sales totalled £ 287 million.

3. Brush Switchgear Ltd (Brush) is a wholly-owned subsidiary of the Hawker Siddeley Group Ltd. In 1977 this group controlled 236 subsidiaries located throughout the industrialized world. It is mainly engaged in the aerospace industry. It has grown in importance in the electrical field since it acquired Brush in 1957, a firm called Crompton Parkinson Ltd in 1967 and another, Brook Motors Ltd, in 1970. Its 1976 group sales amounted to £ 641 million. Brush heads the group's electrical business with 1977 sales of £ 616 113.

4. The 1970 agreement for the formation of VIL contained *inter alia* the following clauses:

(a) AEI was to hold 60% and RP 40% of the shares; AEI could appoint four directors, one of them to be chairman, and RP could appoint three directors, one to be deputy chairman;

(b) AEI and RP could not assign the benefit of the agreement unless certain conditions had been fulfilled, principally as to the agreement of the other party;

(c) AEI and RP undertook not to compete with their joint subsidiary either directly or through their subsidiaries and to purchase all their vacuum interrupter requirements from VIL provided that VIL sold such vacuum interrupters on competitive terms 'as to price, specification, delivery dates and otherwise' or unless a customer insisted upon the supply of such interrupters from another source;

(d) AEI and RP undertook to make available to VIL rights in patents and other technical information relating to vacuum interrupters already available to them or which would later become available to them. They also undertook to ensure that VIL would keep in confidence and not disclose to any outside party, or use, except in connection with a purpose connected with the business, any confidential information acquired by virtue of their agreement;

(e) the agreement, as already stated above (I.A.1), was to continue in operation for a period of 10 years from the date of signing and thereafter from year to year until amended or terminated as provided in the agreement (six months' notice to be given).

5. Acting under the agreement which was the subject of the Commission Decision of 20 January 1977, VIL manufactured only vacuum interrupters and not the contact breakers or switchgear into which they were to be incorporated. The design and specifications for the latter apparatus are prepared by a manufacturer, specifically to accept the type of vacuum interrupter to be used. Consequently the vacuum interrupter cannot normally be changed for another type of interrupter in that particular equipment. It is therefore sold only to the intermediate customer, who is the manufacturer of the switchgear apparatus for which it was designed and made. The market for vacuum interrupters is consequently limited to those companies or undertakings which manufacture, fabricate, construct or adapt switchgear apparatus which is built around, adapted for, or incorporates the vacuum type interrupter.

6. In 1974 a prototype V5-interrupter achieved a short circuit rating of 26·2 kA at 11 kV, and the interrupter was put into production in 1975. Work was then put in hand to develop the V8-model and to achieve a voltage rating for both models of 24 kV. Technical problems were encountered which are being overcome. Since 1977 these development efforts have enabled the V5 to be rated at 31·5 kA at 12 kV and 20 kA at 24 kV. The V8 is being developed to 20 kA at 12 kV. The problems in development encountered were of an unexpected nature, and they have both delayed the programme and involved unplanned expenditure.

However, certain technical successes and a steady expansion in sales of vacuum interrupters (from 138 in 1975 to 1 200 in 1977/78) encouraged AEI and RP to continue working through the joint venture and even to increase VIL's capital.

The prices at which vacuum interrupters were sold, and which did not produce a profitable return on the investment, were set at a commercially acceptable level for the purchaser.

The price of the vacuum interrupter can represent between 15 and 40% of the cost of the switchgear unit into which it is incorporated; whereas the cost of the oil interrupter (at present by far the most widely used in Europe) can represent between 10 and 20% of the cost of its unit.

Nevertheless, in spite of the technical progress achieved, it has not yet achieved the technical level hoped for.

Although VIL can produce a technically good vacuum interrupter, further work is required for it to become truly price competitive with other forms of

interrupters and this can be achieved only if three objectives are reached:

(a) the cost of existing interrupters reduced;

(b) the voltage rating increased, and

(c) short circuit current and normal current ratings increased.

The achievement of each of these aims has some effect on the other two, and it has been calculated that the overall time required for the technical development would be of the order of eight years from 1978 involving expenditure estimated at some £ 2 million. It was in these circumstances that it became questionable as to whether VIL would remain in business and that a decision to change the structure of VIL involving a new agreement incorporating a new company (Brush) as a joint shareholder and placing it on an equal footing with one of the original shareholders (RP), was taken, thereby creating in effect a new joint venture.

7. VIL is at present housed in one small, but sophisticatedly-equipped premises, and employs about 50 technicians and other staff. The annual turnover is in the region of £ 750 000. Should the technical improvement of the vacuum interrupter be achieved, plant accomodation, staff, production and turnover could be expected to increase significantly.

D. **Brush's shareholding**

1. By a new agreement made on 27 April 1978, AEI, RP and VIL decided to increase VIL's capital by issuing 50 000 ordinary shares in addition to the 100 000 existing shares. These 50 000 shares were issued the same day. Of them, 30 000 were subscribed by AEI and 20 000 by Brush, which purchased a further 10 000 from RP. Following this reorganization the shares in VIL are now held as to 60% by AEI, 20% by RP and 20% by Brush.

2. Although the agreement does not state so explicitly, this proportion is intended to be fixed and constant: changes are to be made only where one of the parent companies acquires the ownership of another company or asset in any way related to vacuum interrupters and then, in accordance with the agreement, transfers that businees into VIL. But even then VIL can pay the relevant parent company the value of the assets transferred by issuing shares only up to a certain limit, which is to say that the balance of power in VIL must not be altered in such a way as to reduce AEI's percentage below 50% and either RP's and Brush's percentage below 15%. Any excess must be paid for in cash.

Moreover, should VIL require extra capital, the three parent companies undertake to subscribe for new shares or to lend to VIL in these proportions.

3. The agreement of 25 March 1970 regulating the management of VIL by the original parent companies underwent substantial amendments by the new agreement of 27 April 1978. Several clauses of the 1970 agreement were replaced by new clauses, some clauses were retained and additional terms incorporated.

Amongst the provisions of the new agreement effectively establishing a new joint venture are the following:

(a) AEI may appoint five directors to the Board, one of them to be chairman, while RP and Brush may appoint two directors each. AEI is entitled to three votes and RP and Brush to one vote each at Board meetings, regardless of the number of members present.

Whilst, pursuant to clause 15 of the new agreement, the day-to-day management of VIL is under AEI's control, it is also provided that AEI will in good time notify RP and Brush of the annual accounts, the monthly statements of account and any other document or information that would be of interest to them. Nevertheless, the ultimate authority of AEI in VIL is limited in that the structure of the joint venture cannot be altered without the agreement of other parent companies.

AEI cannot itself manipulate, because of the effect of the Articles of Incorporation and the terms of the agreement of 1978, the share capital of VIL to the detriment of the other partners. In fact their interests appear to be adequately protected. Each of the partners have the right to withdraw from the joint venture. In that event they are obliged in the first instance to offer their own shareholding to the other partners.

If they should so withdraw they can themselves engage thereafter in the research, development, manufacture and sale of vacuum interrupters. In fact, from 31 March 1986 (fixed by the 1978 agreement), if any partner wishes then to withdraw, there are provisions for continuing technical assistance in the field of vacuum interrupters to be provided for them by VIL:

(b) There is a clause containing an undertaking by the three parent companies to buy their vacuum interrupter requirements exclusively from VIL (expressly excluding vacuum switches) but which allows purchase elsewhere if VIL are not

competitive or if a customer insists on a vacuum interrupter from another supplier.

(c) There are clauses which deal in greater detail with the prohibition on competing with the joint subsidiary and on entering into other agreements that might adversely affect VIL's interests, including a requirement that in the event of AEI, RP or Brush or their associated companies acquiring an undertaking, part of whose business is in the field of vacuum interrupters, such part shall be offered to VIL at an open market price.

(d) Should one of the parent companies wish to sell its holding in VIL, or should more than 50 % of its own capital come under the control of competing persons or companies, the other two parties to the agreement have the right to buy all VIL shares owned by the relevant company;

(e) The duration of the agreement is not limited in time, but provides that should one of the parties wish to withdraw, this is possible. A company which wishes to withdraw after the 31 March 1986 but wishes to continue developing and producing vacuum interrupters on its own account may seek technical cooperation from VIL for a period of 18 months and obtain supplies from VIL of all its vacuum interrupter requirements for a period of at least two years.

(f) Other clauses spell out in great detail the arrangements concerning the assignment of patents, the scientific and technical know-how to be provided by parent companies, limits on VIL's borrowing powers, the circumstances in which the joint subsidiary may be dissolved, breaches of the agreement, disputes, and the circumstances and procedure for arbitration.

4. Brush does not and never has manufactured vacuum interrupters. Most of its experience of interrupters has been acquired in switchgear using all types of interrupters including the vacuum interrupter which the company has purchased from other manufacturers. It also specializes in the manufacture of parts and components incorporated in complex electrical equipment such as current transformers, voltage transformers, switch protection devices and housings. In incorporating a new type of interrupter (the vacuum interrupter) into their own switchgear, Brush met with technical problems which could only be resolved by research and development in the vacuum interrupter itself.

Brush can thus enable VIL to acquire an increased range of technical experience in, or relating to the design, application and use of the vacuum interrupter. VIL can also work out new programmes for the development of interrupters including those capable of standing up to short-circuit currents of higher voltages and amperages than are currently being manufactured. As a result, VIL will be able to extend its potential customer market and make its interrupters more competitive.

5. In the last four years Brush bought the following quantity of vaccum interrupters from VIL (1):

	1975/1976		1976/1977		1977/1978		1978/1979	
Model types	V5	V8	V5	V8	V5	V8	V5	V8
Rating (MVA) at 12 kV not exceeding Quantity purchased								

The reduction in the number of interrupters bought in 1977/78 followed from Brush's decision to try interrupters manufactured by other firms. Their purchases from VIL have however since reverted to the 1976/77 level.

E. State of the market

1. There has been no substantial change in the state of the vacuum interrupters market since the Decision of 20 January 1977. Vacuum interrupters are designed and produced mainly in the United States, Japan and the United Kingdom. Since 1975, a major German group (Siemens) has begun producing them on a small scale. This group is associated with VIL by a licence agreement on vacuum technology.

2. Although the manufacture of this type of interrupter is already at a quite advanced stage, the notifying firms state that Japan and the United Kingdom remain the only countries where the vacuum interrupter has made any substantial progress in competition with either the traditional

(1) In the published version of the Decision, some figures have hereinafter been omitted, pursuant to the provisions of Article 21 of Regulation No 17 concerning non-disclosure of business secrets.

air-filled or oil-filled interrupters. Nevertheless, the vacuum interrupters manufactured in Japan and the USA may not as yet provide strong competition for the European-made vacuum interrupters because, whilst they can be adapted, their technical specifications are not at present immediately compatible with European specifications. There is, in any event, the attraction for European technicians of utilizing products from familiar companies with familiar technologies particularly in a new field — in this case European ones known to them.

3. Between 1975 and 1979 VIL sold the quantities set out in the following table:

Breakdown of VIL sales by country

	1975/76				1976/77				1977/78				1978/79							
	V8	V5	V3	V2	V8	V5	V3	V2	V8	V5	V3	V2	V8	V8	V5	V5	V5	V5	V3	V2
kVA([1])	250	350	250	130	250	350	250	130	250	500	250	130	250	375	350	500	600	750	250	130
United Kingdom																				
Federal Republic of Germany																				
Hungary																				
India																				
South Africa																				
Sweden																				
Switzerland																				
Total																				

([1]) Equivalent at voltage not exceeding 12 kV.

Since 1977 VIL have been selling vacuum interrupters in export markets, and it is thought that as the capacity of the vacuum interrupter increases, exports may increase quite considerably.

Brush (see above I.D.4) specializes in the manufacture and sale of switchgear particularly low-voltage switchgear, for which the vacuum interrupter is particularly suitable.

As regards the low-voltage switchgear market, Brush's United Kingdom market share is some . . %, whilst its share of the aggregate switchgear market is much lower, at some . . % or . . % if the companies associated with VIL through the Hawker Siddeley Group are taken into account.

4. The Annex shows approximate market shares relevant to this Decision.

II. APPLICABILITY OF ARTICLE 85 (1) OF THE EEC TREATY

Article 85 (1) of the Treaty prohibits as incompatible with the common market all agreements and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market.

A. The restriction of competition

1. The agreement of 27 April 1978 made between Brush, RP and AEI, whereby Brush acquired 20 % of the shares in VIL, is an agreement between undertakings within the meaning of Article 85 (1) of the EEC Treaty. The object and effect of the agreement is to restrict competition which, for the following reasons, brings it within Article 85 (1).

2. Brush, RP and AEI are companies engaged in the field of electrical engineering. All three would have the technical and financial resources, either alone or in conjunction with other companies of their groups specializing in the same field, to develop and manufacture interrupters in general and vacuum interrupters in particular. Brush, which doesn't produce interrupters, can be considered a potential competitor of VIL because of its experience in manufacturing switchgear and the technical expertise and facilities available to it.

3. Since Brush, RP and AEI, which produce switchgear, have, pursuant to this agreement of 1978, not only a contractual obligation but the business interest to buy all their vacuum interrupters from VIL, it can be appreciated that the most important English buyers of interrupters have left the market to the sole benefit of VIL. Brush, in particular, is a very important buyer of interrupters for low-voltage

switchgear in which vacuum interrupters can be used. All this constitutes a restriction on the potential sales of the relevant product on the United Kingdom market because producers other than VIL must meet, in addition to normal competitive factors, an additional handicap in that these, the main purchasers of the vacuum interrupter in the UK, have an economic interest in VIL. Unless the terms offered by other manufacturers are very highly competitive it is more likely that these three firms will purchase from VIL.

4. This agreement, which regulates the purchase by one company of a significant shareholding in another company already owned by two competitors gives rise to a situation in which competition between those three companies is likely to be restricted within the meaning of Article 85 of the Treaty.

So in this case, Brush, as already appears, has the technical and financial ability and the business interest to produce its own vacuum interrupter for incorporation into its own switchgear, now has by virtue of the agreement under consideration, an economic interest as a result of which it is likely to align its decisions and activity in this sphere with its partners in VIL as it now holds a share of the capital in that company. This interest will prevent Brush acting as an independent enterprise in the field of vacuum interrupters.

Further, Brush, AEI and RP who compete with each other in the switchgear sector of the electrical engineering industry nevertheless restrict competition between themselves by their agreement to purchase an important component for their equipment from VIL.

B. The effect on trade between Member States

1. The effects of the formation of VIL on Community inter-state trade envisaged by the Commission Decision of 20 January 1977 have been confirmed in practice, and are likely to be intensified following Brush's accession to VIL membership. There have been no significant imports of vacuum interrupters into the UK. There have been some imports of vacuum interrupters from third countries into other EEC Member States and some exports from the UK to one other EEC Member State.

2. Now that Brush has joined VIL, the chance for manufacturers of electrical equipment in other Member States to penetrate the United Kingdom market as manufacturers and sellers or even only as sellers of vacuum interrupters in competition with VIL is diminished because demand for these products is confined to a small number of buyers, particularly firms like Brush, who fabricate switchgear apparatus and are interested in using the new technology. In fact Brush, along with AEI and RP, are amongst the largest switchgear manufacturers in the United Kingdom who are at the same time each interested in the use of the vacuum interrupter in swichgear and who, by undertaking to purchase in effect all the vacuum interrupters they require from VIL, cease to be potential customers for such manufacturers in other countries. Brush's membership of VIL is of particular importance to the possible restraint of competition being specialized in low-voltage switchgear — switchgear that is particularly suited to the use of the vacuum interrupter.

For these considerations this agreement is an agreement between competing companies, restricts competition, affects trade between Member States, and is consequently within the prohibition of Article 85 (1) of the EEC Treaty.

III. APPLICABILITY OF ARTICLE 85 (3) OF THE EEC TREATY

1. Under Article 85 (3), the provisions of Article 85 (1) may be declared inapplicable in the case of any agreement which contributes to improving the production or distribution of goods or to the promotion of technical or economic progress, while allowing consumers a fair share of the resultant benefit, and which does not:

(a) impose on the undertakings concerned restrictions which are not indispensable for the attainment of these objectives;

(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

2. Developments in VIL's business and in the state of the vacuum interrupters market, as described in the Commission Decision of 20 January 1977, have confirmed that there are substantial difficulties in the way of technical development of the vacuum interrupter, which is why this type of interrupter still represents a technical novelty on the interrupters market in general although the basic principles have been known for several years.

Since the technical difficulties have turned out to be greater than expected, VIL is behind schedule in the development and marketing of its interrupters and there have been doubts as to whether it could stay in business if the parent companies did not make further substantial efforts on both the technical and the financial fronts (see I.C.6). It is to be noted that VIL has continued to sell vacuum interrupters at prices that are very low in comparison with the company's research and production costs.

3. However, the technical value of the product is confirmed by the number of firms, many of whom are large, who are pressing ahead with research in the use of this type of interrupter, and are purchasing them from VIL.

4. Brush's membership of VIL would seem to have taken place at the right time and to have been opportune. AEI and RP had been coming to the conclusion that the many technical problems of developing the vacuum interrupter were tying up an amount of technical skill and finance disproportionate to the results being achieved from both the financial and technical aspects. VIL might well have ceased to function had not Brush taken a capital interest in it as VIL needed a market such as Brush provides. The technical challenge and technical ability provided by Brush should hasten the development of the vacuum interrupter. The participation of Brush should also ensure there will not be unnecessary further delay in development which might jeopardize the ultimate technical and economic value of VIL research already carried out. Brush further provides VIL with an important primary outlet which helps justify continued research development and manufacture by VIL even though sales do not provide a full return on the capital invested in VIL.

5. Users of circuit breakers incorporating vacuum interrupters benefit from the agreement as they can continue to have access forthwith to durable, efficient low-power interrupters at a cost which can be considered as reasonable compared with the durability and other advantages offered. As a result they can look forward to having new interrupters with improved characteristics and capacity constituting genuine technical progress on the relevant market.

The constant endeavours to achieve an increase in the efficiency, safety and durability of the vacuum interrupter should ensure economic progress and the intensification in competition that can be expected on the market for interrupters in general and should be of benefit to the consumer.

Vacuum interrupters are sold to sophisticated buyers whose technical and economic requirements are demanding and whose expertise and bargaining strength will ensure that a fair share of the benefit is passed to the user.

6. The shareholding of Brush with AEI and RP is, for the reasons given in paragraph 4 hereof, indispensable to the continued and successful operation of the joint venture. The agreements impose no obligations which are not indispensable to the attainment of these objectives. The undertakings by the three groups to purchase all their vacuum interrupter requirements from VIL is reasonable and well-founded, especially as the new agreement retains the clause stating that, where a customer of one of the parent companies or of one of their subsidiaries specifies that a vacuum interrupter made by another manufacturer must be used in electrical equipment manufactured to a specific order, the customer's wishes must be respected.

The clause providing that none of the parent companies shall develop, design, manufacture or sell vacuum interrupters on its own, is indispensable for the activities of the joint venture, because it ensures to VIL continued encouragement and financial support in the development of the market.

The companies agree to proceed with the joint ownership and management of VIL precisely because none of them feels capable individually of succeeding in the line of business with a reasonable outlay of technical skill and financial investment. Further, the effects of the agreement are limited in time since after 31 March 1986 each firm can then withdraw from the agreement and resume independent business.

7. The agreement does not afford the companies concerned the power to eliminate competition in respect of a substantial part of the market for interrupters in general, since that market is dominated by the traditional types of interrupter and there is no real competition in the vacuum interrupter except at the scientific research stage; even here competition is not eliminated because vacuum interrupters manufactured in Japan and the USA can be adapted to the European market. Siemens, already an important manufacturer of electric products in Europe, is engaged in the research and manufacture of vacuum interrupters in line with VIL technology. Should demand for the vacuum interrupter increase in Europe it is likely that the Japanese and USA manufacturers would market vacuum interrupters suitable for use in Europe in competition with VIL.

All the tests of Article 85 (3) are accordingly satisfied.

8. Lastly, the Commission considers that the agreement of 27 April 1978 replaces the agreement of 25 March 1970 because Brush is an electrical engineering firm competing with AEI and RP, because it is big enough to alter the structure of the joint venture, because by acquiring 20% of the shares Brush is in a position to influence VIL's business policy and because the agreement of 25 March 1970 was radically amended upon the arrival of Brush in

VIL, notably in order to give Brush its fair share of the seats on the Board of Directors of their joint subsidiary.

The Commission considers that the change of circumstances which were brought about by that agreement were brought about by the parties themselves, and that the earlier agreement, the subject of the Commission Decision of 20 January 1977, thereafter became inapplicable.

9. Having regard to the nature and complexity of the factors involved, as already referred to in the Decision and as demonstrated by the slow rate of progress in developing the technology by VIL, having regard to the period considered necessary to make for significant progress, and, at the same time, having regard to the restriction on potential competition, a period of exemption to expire on 31 March 1988 appears reasonable in order to allow the programme of investment and research now possible to be carried through to fruition.

It is to be noted that 31 March 1986 is the date prescribed in the agreement as being the date after which any of the parties can withdraw from VIL but is thereafter entitled to the technical support of VIL for a period of between 12 and 18 months. This period of between 12 and 18 months is calculated as being the time required by a withdrawing party to be capable of starting to manufacture vacuum interrupters in quantities sufficient to supply itself and its customers.

The Commission should in the circumstances of this case be enabled to keep the progress of development under review during the period of exemption and it is therefore a condition of the exemption that regular technical reports be furnished to the Commission. Such reports will be treated on the basis of business secrets. The parties concerned have no objection to this condition.

10. The exemption is subject to an obligation to notify the Commission of:

— any change in the structure and share ownership of VIL during the period of the exemption,

— any authorization given by AEI, RP and Brush for VIL to carry on any other business, with full particulars of such authorization,

— the furnishing of annual reports and the furnishing of regular technical reports.

HAS ADOPTED THIS DECISION:

Article 1

The provisions of Article 85 (1) of the Treaty establishing the European Economic Community are hereby, pursuant to Article 85 (3) of the said Treaty, declared inapplicable to the agreement made on 27 April 1978 between Associated Electrical Industries Ltd, Reyrolle Parsons Ltd, Brush Switchgear Ltd and Vacuum Interrupters Ltd.

Article 2

Vacuum Interrupters Ltd shall notify the Commission:

1. of any changes, during the period of the exemption, in its share capital and/or the ownership of its shares within 28 days of such becoming effective; and
2. of any authorization given by Associated Electrical Industries Ltd, Reyrolle Parsons Ltd and Brush Switchgear Ltd during the period of exemption, to carry on any other business, with full particulars of such authorization, within 28 days of such authorization being given.

Article 3

Vacuum Interrupters Ltd shall supply to the Commission:

1. in each year their annual report; and
2. in each second year from 11 December 1980 a comprehensive technical report detailing progress and/or difficulties in developing, manufacturing, distributing or selling vacuum interrupters.

Article 4

This Decision shall apply with effect from 12 May 1978 and shall apply until 31 March 1988.

Article 5

This Decision is addressed to:

1. Vacuum Interrupters Ltd, 68 Ballards Lane, Finchley, London N3, England;
2. Associated Electrical Industries Ltd, 1 Stanhope Gate, London W1, England;
3. Reyrolle Parsons Ltd, Hebburn, Co. Durham, England;
4. Brush Switchgear Ltd, Falcon House, Loughborough, Leicestershire, England.

Done at Brussels, 11 December 1980.

For the Commission

Raymond VOUEL

Member of the Commission

ANNEX

IV/27.442 – Vacuum Interrupters

Market shares

		AEI (GEC-group figures)	Brush	RP
Electrical equipment in general	United Kingdom			
	Rest of EEC			
Switchgear apparatus	United Kingdom			
	Rest of EEC			
Interrupters in general	United Kingdom			
NB: normally co-extensive with switchgear apparatus	Rest of EEC			
Vacuum interrupters	United Kingdom	Shares equal to shareholding in Vacuum Interrupters Ltd [1].		
	Rest of EEC			

[1] But see paragraph E. 1 of this Decision.