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2004/123/EC: Commission Decision of 12 January 2001 declaring a concentration to be compatible with the common market and the functioning of the EEA Agreement (Case COMP/M.2060 — Bosch/Rexroth) (Text with EEA relevance.) (notified under document number C(2000) 3785)

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Commission Decision

of 12 January 2001

declaring a concentration to be compatible with the common market and the functioning of the EEA Agreement

(Case COMP/M.2060 - Bosch/Rexroth)

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(Only the German text is authentic)

(Text with EEA relevance)

(2004/123/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area, and in particular Article 57(2)(a) thereof,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings(1), as last amended by Regulation (EC) No 1310/97(2), and in particular Article 8(2) thereof,

Having regard to the Commission Decision of 29 August 2000 to initiate proceedings in this case,

Having regard to the opinion of the Advisory Committee on Concentrations⁽³⁾,

Whereas:

(1) On 13 July 2000 the Commission received a notification of a proposed concentration pursuant to Article 4 of Regulation (EEC) No 4064/89. Under the proposed transaction, Robert Bosch GmbH (Bosch) intends to acquire control, within the meaning of Article 3(1)(b) of the Regulation, of Mannesmann Rexroth AG (Rexroth). Rexroth is a subsidiary of Mannesmann Atecs AG (Atecs), a Mannesmann AG holding company.

(2) After examination of the notification, the Commission concluded that the notified operation fell within the scope of Regulation (EEC) No 4064/89 and raised serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement. The Commission therefore decided on 29 August 2000, under Article 6(1)(c) of the Regulation, to initiate proceedings pursuant to Article 6(1)(c) of the Regulation and Article 57 of the EEA Agreement.

The Advisory Committee discussed the draft of this Decision on 4 December 2000.

I. THE PARTIES

(3) Bosch operates internationally in the fields of motor vehicle technology, communications technology, consumer durables (electrical tools, electrical household appliances, etc.) and producer goods (automation technology, packaging machines).

(4) Rexroth operates itself or through subsidiaries in the fields of hydraulics (hydraulic drive and open and closed loop control components, power units and systems, pumps, motors and gear technology), and automation (electrical control and drive components, and movement and control technology).

II. THE OPERATION

A. BACKGROUND TO THE CONCENTRATION

(5) Mannesmann was taken over in the spring of 2000 by Vodafone Airtouch plc⁽⁴⁾. The purpose of the takeover was to establish an international telecommunications supplier. Mannesmann therefore decided subsequently to shed its engineering and automotive activities. For the purpose of the hive-off, the five companies Dematic, VDO, Sachs, Demag Krauss-Maffei and Rexroth were brought into the intermediate holding company Atecs. The shareholders in Atecs are at present Mannesmann (54 %) and its wholly owned subsidiary Mannesmann Investment GmbH (Mannesmann Investment) (46 %).

(6) Siemens intends to acquire sole control of Atecs and hence also over the subsidiaries of Atecs. Immediately following this transaction, Bosch will acquire sole control, within the meaning of Article 3(1)(b) of the Council Regulation, of Rexroth. This concentration is the subject of these proceedings.

B. IMPLEMENTATION OF THE OPERATION

(7) Siemens will acquire sole control of Atecs by acquiring 50 % plus two shares in the share capital. Mannesmann - which will hold the other 50 % minus two shares in Atecs' share capital - will abstain from voting at the shareholders' general meeting.

(8) The share acquisition is made up as follows: Mannesmann Investment will sell its 46 % share in Atecs to Siemens. As a result of a capital increase, in respect of which Mannesmann will renounce its subscription right, Siemens will then, on the basis of the newly subscribed shares, receive 50 % of the share capital of Atecs plus two shares. Siemens and Mannesmann have also agreed an irrevocable purchase or sale option with respect to the remaining Atecs shares held by Mannesmann, an option which can be taken up by Siemens in the period from 1 April 2002 to 31 December 2003 and by Mannesmann from the day of the closing until 30 September 2002.

C. ACQUISITION OF SOLE CONTROL OF REXROTH BY BOSCH

(9) Directly subsequent to the acquisition of control of Atecs by Siemens, Bosch will acquire sole control of Rexroth.

(10) A business leasing contract and a control contract will be concluded between Bosch and Rexroth. These contracts give Bosch management control over Rexroth.

(11) The business leasing contract provides that the conduct of Rexroth's business is in the hands of Bosch alone, which will operate the leased undertaking in its own name and for its own account (Article 1(2) of the Rexroth business leasing contract). For this purpose, Rexroth places all the undertaking's assets at Bosch's disposal. The rental to be paid to Rexroth under Article 9 of the business leasing contract is a fixed amount to be paid monthly and is irrespective of the economic performance of the leased undertaking.

(12) The control agreement places Rexroth under the management of the controlling company Bosch, which is entitled to give instructions to Rexroth's managing board. The "profit share" to be paid to Rexroth is a fixed amount which has been determined once and for all and is independent of business performance.

(13) Further to these arrangements between Bosch and Rexroth, Bosch and Siemens (as a shareholder in Rexroth) have, in a third addendum to the Supplementary Consortium Agreement, concluded agreements which further secure Bosch's control over Rexroth:

(14) Under Item III(1) of the Supplementary Consortium Agreement, Siemens and Bosch have agreed that sole entrepreneurial responsibility for and control of Rexroth lies with Bosch.

(15) Under Item III(4) of the Supplementary Consortium Agreement, Siemens undertakes to exercise its voting right at the general meeting of Rexroth shareholders solely in accordance with Bosch's instructions. Siemens will ensure that only persons appointed by Bosch are chosen as shareholder representatives on Rexroth's supervisory board.

(16) Under Item IV(3) of the Supplementary Consortium Agreement, all the opportunities and risks associated with Rexroth's business, including responsibility for financing, relate solely to Bosch.

(17) Atecs, as a shareholder in Rexroth, and - via Atecs - its parent company Siemens have no rights of influence with regard to Rexroth. Their proprietor's interest in Rexroth too is limited to the leasing income and the flat-rate "profit share" which Rexroth receives.

III. COMMUNITY DIMENSION

(18) The undertakings concerned have an aggregate worldwide turnover of more than EUR 5000 million (Bosch EUR 27906 million, Rexroth EUR [...](5) million) and they each have a Community-wide turnover of more than EUR 250 million (Bosch EUR [...]* million, Rexroth EUR [...]* million). The undertakings concerned do not achieve more than two thirds of their Community-wide turnover in one and the same Member State. The concentration therefore has a Community dimension. It also constitutes a case of cooperation under the EEA Agreement.

IV. COMPATIBILITY WITH THE COMMON MARKET

(1) RELEVANT PRODUCT MARKETS

(19) Bosch and Rexroth are both involved in the production and marketing of automation technology products, with Bosch being active in automation technology and Rexroth having its business divisions Rexroth Hydraulics, Brueninghaus Hydromatik, Lohmann & Stolterfoht, Rexroth Indramat, Rexroth Star, Rexroth Mecman and Rexroth Gießerei.

(20) The parties divide the activity areas of the undertakings concerned into the categories "hydraulics", "gearing for drive technology", "pneumatics", "electrical drive and control systems", "linear technology/linear systems", "assembly and deburring technology", "tightening and press-fit systems" and "foundry products".

1. HYDRAULICS

(21) Hydraulics is, in technical terms, the transmission of power and signals through pressurised fluids in closed or open systems. In the technology, hydrostatics, i.e. the transmission of power and signals through the static pressure of a fluid, is distinguished from hydrodynamics, where power and signal transmission is effected through kinetic energy. Both technologies are applied in many drive and control systems.

(22) On the basis of differences in design and use, a distinction is made between industrial hydraulics and mobile hydraulics. Although the components which are used in industrial and mobile hydraulics are based essentially on the same technological approaches, the Commission considers with the parties that they belong to separate product markets(6). The crucial factor here is the difference in design, size, working pressure and useful life which result from the different performance requirements. As regards useful life and load capacity, the demands made on industrial hydraulics component systems are much higher, since they are designed for continuous

industrial operation. By contrast, mobile hydraulics components must be of optimum weight and shock resistant for use in mobile machines. These differences and the resulting differences in industrial use mean that industrial hydraulics components are not in general interchangeable with mobile hydraulics components.

Hydraulic components

(23) A hydraulic power system used in industry is generally made up of the same key components. A mechanically driven hydraulic pump produces hydraulic energy which can be directed by means of valves and is converted via the hydraulic cylinder or the hydraulic motor into mechanical energy.

(24) According to the information provided by the parties, the individual components are not interchangeable with one another as regards their function in a hydraulic power system. The parties have also stated that these components are sold by the hydraulics industry individually to machine producers. Although the Commission's investigations have shown that hydraulic components are to some extent sold as systems, the market definition provided by the parties has to a large extent been confirmed by the investigations. The majority of customers buy the relevant hydraulic components individually. There are no technical requirements on customers to buy these components as systems. Furthermore, the market investigation has shown that the individual hydraulic components are in general not adapted for specific branches of industry. Accordingly, as far as industrial hydraulics are concerned, separate product markets may be distinguished for hydraulic pumps, hydraulic motors, hydraulic valves including electronics, hydraulic accessories, and hydraulic power units, components and hydraulic units (blocks) (see Case No IV/M.152 - Volvo/Atlas).

1.1. Industrial hydraulics

(25) According to the information provided by the parties, the industrial hydraulics market consists of various component markets. These are the markets for hydraulic pumps, hydraulic motors, hydraulic cylinders, hydraulic valves, hydraulic accessories and hydraulic power units, components and hydraulic units (blocks).

1.1.1. Hydraulic pumps

(26) In the parties' view, the market for hydraulic pumps must be divided into further submarkets. Accordingly, the individual types of hydraulic pumps form different markets. According to the parties, the technical designs and modes of operation are so different that they are not interchangeable with one another. There are therefore separate markets for axial piston pumps, radial piston pumps, vane pumps and gear pumps.

(27) A gear pump is a hydraulic pump with two or more gears working together within a housing. Volume formation takes place between the tooth flanks and the housing walls. Gear pumps are essentially designed as fixed-displacement pumps. Gear pumps are moderate in price and have a wide speed range (up to 6000 rev/min, depending on type).

(28) Vane pumps have movable vanes which are directed radially in a rotor and are supported on an excentric stroke ring. This produces, during one revolution, increasing and decreasing displacement volume. Vane pumps can be designed either as fixed-displacement pumps or as variable-displacement pumps.

(29) The Commission's investigation has confirmed this market division, in that vane pumps and gear pumps do not belong to the market for piston pumps (axial and radial piston pumps). Piston pumps cannot be substituted by gear pumps. This is particularly because a gear pump is always a fixed-displacement pump(7), while piston pumps are usually variable-displacement pumps(8). Similarly, according to the customers questioned, gear pumps cannot be substituted for piston pumps. The main reason for this is the limited working pressure of gear pumps (max. 200 bar).

1.1.1.1. Piston pumps

(30) In the parties' view, axial piston pumps and radial piston pumps cannot be assigned to a single market for hydraulic piston pumps. Although the displacement principle is the same with both types, there are a number of differences. According to the information provided by the parties, radial piston pumps work at speeds of up to only 1800 revolutions per minutes, which means that they are unsuitable for being driven by combustion engines, which run much faster. According to the parties, axial piston pumps work at speeds of up to 3000 revolutions per minute. They can therefore be driven by combustion engines and are, according to the parties, in contrast to radial piston pumps, particularly suitable for use in mobile hydraulics.

(31) Another relevant difference in the parties' view relates to the production of working pressure. While radial piston pumps produce working pressure of up to 350 bar, the figure for axial piston pumps ranges up to 450 bar, which makes it possible for them to be used in industrial hydraulics with particular pressure requirements. Furthermore, axial piston pumps achieve a maximum volume flow rate of 1000 cm³, whereas the volume flow rate in the case of radial piston pumps is limited to 250 cm³. In addition, radial piston pumps are said to be more expensive to produce and their cost price is therefore higher. According to the parties, radial piston pumps show less wear and tear than axial piston pumps and have a longer maintenance-free useful life. According to the parties, the absence of non-ferrous metals gives radial piston pumps an advantage in the pumping of water-based special fluids. All in all, the parties take the view that these differences mean that there are different markets for axial piston pumps and radial piston pumps.

(32) The Commission's investigations have shown that the fact that axial piston pumps can be operated at a higher number of revolutions per minute is not a factor in industrial hydraulics, since in industrial hydraulics pumps are for the most part not driven by combustion engines. Although this advantage is important in mobile hydraulics, it is not significant in the industrial hydraulics market being examined here. By contrast, the higher potential pressure and the greater potential volume flow rate of axial piston pumps compared with radial piston pumps are specific advantages, since they allow more versatile applicability. Thus, in the great majority of cases it is possible to replace a radial piston pump by an axial piston pump. However, this is not possible to the same extent the other way round, because of the technical limitations of radial piston pumps in terms of maximum pressure and volume flow rate. As far as the higher cost price of radial

piston pumps is concerned, the Commission's investigations have shown that the price disadvantage is, from the customer's point of view, offset by the lower wear and tear and the wider maintenance intervals, so that, if one looks at the total useful life of the pump, there is direct competition between the two types. The specific advantage of radial piston pumps regarding the use of water-based special solutions is in the great majority of cases irrelevant to the customer, since customers very rarely use these pressurised fluids in hydraulic power systems.

(33) The Commission therefore concludes that there is significant substitutability between the two types of pump. During the design stage of a new generation of machines, the manufacturer is free to opt for the use of radial or axial piston pumps. Once he has opted for a particular type of pump, he designs the machine in which the pump will be used in accordance with the specific requirements of the pump type selected. This occurs, as a rule, before a new generation of machines is designed, because at this stage the different characteristics of the pumps can still be taken into account. The market investigation has shown that the purchasers of axial and radial piston pumps also play Bosch and Rexroth off against one another so as to foster competition in terms of price and quality.

(34) The Commission therefore concludes for the purposes of this Decision that axial and radial piston pumps form part of a single market for piston pumps.

1.1.2. Industrial hydraulic valves and electronics

(35) Valves are used in a hydraulic power system to control the flow of hydraulic fluid by influencing the start, stop, direction, pressure and size of the delivery. They are sold as individual components or as part of hydraulic units (blocks) and hydraulic power units. The notifying parties take the view that only the valves sold as individual components are to be assigned to this market, while the valves sold as part of equipped blocks and hydraulic power units should be assigned to the market for hydraulic power units and control blocks.

(36) Closely associated with valves are the electronic and sensory control systems built in to hydraulic power systems. The electronic components and sensors used are tailored to use in hydraulic systems and are sold together with the valves.

(37) Both Bosch and Rexroth produce hydraulic valves. The large number of different valve types, which can perform either a single or multiple control functions, are according to the parties, because of their design, properties and applications, interchangeable to only a limited extent and can be divided into the following product groups:

- hydraulic-mechanical flow-control, pressure-control and shut-off valves,
- directional valves and cartridges,
- continuously adjustable valves (proportional valves and servo valves)

1.1.2.1. Hydraulic-mechanical flow-control, pressure-control and shut-off valves

(38) Hydraulic-mechanical flow-control, pressure-control and shut-off valves control the size of the volume flow and the desired system pressure and shut off the flow in a given direction. The Commission's investigation has confirmed the view taken by the parties that, in terms of their potential use, hydraulic-mechanical flow-control, pressure-control and shut-off valves are to be distinguished from directional valves and cartridges and from proportional and servo valves.

1.1.2.2. Directional valves and cartridges

(39) Directional valves and cartridges essentially control the direction of the volume flow and its starting and stopping. The Commission's investigation has confirmed the view taken by the parties that, as regards their potential use, directional valves and cartridges are to be distinguished both from hydraulic-mechanical flow-control, pressure-control and shut-off valves and from proportional and servo valves.

1.1.2.3. Continuously adjustable valves (proportional valves and servo valves)

(40) There is no uniform concept covering continuously adjustable valves in the hydraulics industry. In German the usual generic term covering continuously adjustable flow-control, pressure-control and directional valves is *Stetigventile* (continuous valves); in English the term proportional valves is also used as the generic term. Continuously adjustable valves, depending on their design, can be used electrically with regard to all the parameters required for the control of a hydraulic system, for example the size of the volume flow, system pressure, shut-off of a fluid flow, starting and stopping, and the direction of the oil flow. As a result, in a hydraulic system, a variable input signal can be transformed into a proportional hydraulic or pneumatic output signal. Continuously adjustable valves differ technically from the above-mentioned valve types in the mechanism which makes it possible for the valve to have not just two switching alternatives (on/off or left/right or 100 %/0 %), but a variety of individual switching stages.

(41) Continuously adjustable valves can thus be used in a more variable fashion than the above-mentioned valve types and can accordingly be used in more complex applications. Consequently, for the purposes of this Decision, the Commission takes the view that continuously adjustable valves differ from the above-mentioned valves which are not continuously adjustable.

(42) There are no clear criteria or mandatory standards in industrial hydraulics to distinguish different types of continuously adjustable valves. However, a distinction is principally made between:

- proportional valves,
- high response valves, and
- servo valves.

(43) In a proportional valve, a spool is moved with high precision using magnetic forces in a valve housing in such a way as to achieve the desired control parameter (between 0 % and 100 % of the possible variants, hence proportional). They exist in closed-loop and open-loop form, with

closed-loop and open-loop controlled valves differing as regards their technological design mainly in the extent to which electronics are applied. Open-loop controlled valves, in contrast to closed-loop controlled valves, have no electrical feedback in the circuit and are therefore slower and less precise. Servo valves are used to amplify signal impulses (low-voltage current signal from the control system). By means of a magnet, an oil-jet nozzle inside the valve is deflected in such a way that a very thin oil jet is directed either left or right of a spool, which thus can be moved with high precision to the left or the right within the main valve.

(44) In the parties' view, all these continuously adjustable valves belong to one market, since they are completely interchangeable as regards their functionality and flexibility of use. The parties state in this respect that manufacturers market continuously adjustable valves as standardised products (valve hardware) characterised by standardised designs and standard functionality. According to the information provided by the parties, the various types of continuously adjustable valves are known both on the demand and on the supply side for their great flexibility of use. The functionality of a continuously adjustable valve is accordingly determined by its physical design. Depending on the bore in the valve block and the controllability of the valve, guidance or a change in volume of the hydraulic power within the hydraulic power system is achieved by means of the valve. The functionality is applicable in all machine types for which this is required. According to the parties, there is no adaptation of the valve hardware for use in a particular machine type.

(45) However, the Commission's investigation has shown that the market for these valves can be divided into further submarkets distinguishable from one another. Although the investigation confirmed the information provided by the parties in that there are standardised connection designs for the various valve types, nevertheless their interchangeability as regards functionality and price is limited. The market participants surveyed do not, however, make a distinction as regards functionality between proportional valves, high-response valves and servo valves as such, but often decide on the basis of characteristic values for dynamics (crossover frequency)(9), hysteresis(10) and threshold problems(11).

(46) In addition, according to information provided by market participants, proportional valves with closed and open loop control differ with regard to function and price. Proportional valves with closed-loop control are faster and more precise and are therefore used in higher-order control tasks. There are approximately one-and-a-half to two-and-a-half times as expensive as proportional valves with open-loop control.

(47) By contrast, open-loop control servo valves are very rarely used, and then only for the control of small volume flow rates (up to approximately 50 l/min). They are on about the same price-level as closed-loop controlled proportional valves, whereas closed-loop controlled servo valves are considerably more expensive. The latter are used for the control of large hydraulic tasks and high-order control functions.

(48) However, the question of whether and how, within the overall market for valves, individual submarkets are to be defined can be left open for the purposes of this Decision, since it is not to be expected that a dominant position will develop or be reinforced applying any conceivable market definition.

1.1.3. Hydraulic power units, and control blocks

(49) Hydraulic power units, and control blocks are ready-made independent assemblies of hydraulic components and accessories. In hydraulic power units, electric power (from electric motors) or thermal power (from combustion engines) is converted into hydraulic power. In both cases, the rotary movement and torque of the engine are converted through a hydraulic pump into volume flow and pressure. A hydraulic power unit consists of an engine, pump, valves, hydraulic units (blocks) and various accessories.

(50) A control block is a metal block which can accommodate several valves through incorporation or addition. The connections required for the functioning of the control block are fitted into the block and linked up with the appropriate lines. Amongst the features of control blocks are their compact design and the small number of seals used.

(51) Hydraulic power units and control blocks are manufactured and sold in complete form. They are used as assemblies in industrial equipment such as machine tools.

(52) However, the question of whether control blocks and power units form a joint market or separate markets can be left open for the purposes of this Decision, since it is not to be anticipated that a dominant position will develop or be reinforced applying any conceivable market definition.

1.2. Mobile hydraulics

(53) On the basis of the breakdown into industrial and mobile hydraulics, the Commission takes the view, for the purposes of this Decision, that there are separate component markets for hydraulic pumps, hydraulic motors, mobile cylinders, hydrostatic gearboxes, mobile valves and electronics, and hydraulic accessories.

1.2.1. Mobile valves

(54) The Commission's investigations have in particular confirmed the view taken by the parties that mobile valves cannot be divided into further submarkets because of the high integration of the function of the valves into control blocks on the one hand and the special design of the valves for special tasks on the other. However, the question of whether the component markets for pumps and motors must be further divided can be left open, since a dominant position will not be established or reinforced under any market definition.

2. ELECTRIC DRIVES AND CONTROLS

(55) In the parties' view, electric drives and controls can, in view of their technological designs, be assigned to the following markets: servo drives, frequency converters and digital controls.

2.1. Servo drives

(56) A servo drive is a package consisting of a control device and servo motor which, via the position or speed control, using feedback, performs controlled drive tasks.

(57) However, the question of whether servo drives and other electric drives and controls form a joint market or separate markets can, for the purposes of this Decision, be left open since it is not to be anticipated that a dominant position will develop or be reinforced applying any conceivable market definition.

(2) RELEVANT GEOGRAPHIC MARKETS

(58) As distinct from the definition of the relevant product market, the relevant geographic market for hydraulic components must, in the view of the notifying parties, be defined as covering the EEA. Within the common market, there are no tariff and non-tariff trade barriers for these components, low transport costs, significant cross-border trade and internationally accepted norms and standards. The Commission has already defined these markets as being EU-wide(12). The investigations in this case have confirmed this. For the purposes of this Decision, the Commission defines the market as comprising the EEA.

(3) ASSESSMENT

1. HYDRAULICS

1.1. Industrial hydraulics

1.1.1. Pumps

1.1.1.1. Piston pumps

(59) Rexroth is the leading manufacturer of axial piston pumps, selling [40 to 50]* % of all axial piston pumps in the EEA, while Bosch is the leading manufacturer of radial piston pumps, selling [40 to 50]* % of all radial piston pumps in the EEA. With the exception of one model, neither of the parties manufactures pumps of the other type(13).

(60) Of the total market for both types of piston pump, Bosch has a share of [5 to 15]* % and Rexroth a share of [30 to 40]* %. Their biggest competitors are Parker, with a market share of [5 to 15]* %, Denison [5 to 15]* % and Eaton [5 to 15]* %. Smaller competitors are Wepuco, with [5 to 10]* %, and Hawe, with [5 to 10]* %, while other competitors have [15 to 25]* % between them; according to the information supplied by the parties, the EEA-wide market is worth EUR[5 to 200]* million.

(61) The high combined share of the market, taken together with the factors outlined below, raise serious doubts as to the planned concentration's compatibility with the common market.

(62) After the concentration the two leading manufacturers would have a combined market share of nearly [40 to 50]* %. This would be more than [...] times the share of any of the biggest remaining competitors, Parker, Denison and Eaton. The parties would be the only suppliers

offering both radial and axial piston pumps and the other key components for industrial hydraulics. The Commission's enquiries have established that many customers expect a supplier to be able to provide all the components for a machine. This is so especially because technically sophisticated machines demand the closest possible interplay between the components. Customers and competitors estimate that for a new and competitive producer to enter the market would take at least one to three years.

(63) The Commission concludes, therefore, that the concentration would create a dominant position held by Bosch on the market in piston pumps.

1.1.1.2. Gear pumps

(64) There is no overlapping on the market in gear pumps, as Bosch does not manufacture any such pumps.

1.1.1.3. Vane pumps

(65) On the market in vane pumps, the parties have a market share of [15 to 25]* % (Bosch [...]* %, Rexroth [...]* %). Their biggest competitors are Parker, with [5 to 15]* %, Eaton, with [30 to 40]* %, Denison, with [20 to 30]* %, and Berama, with [5 to 15]* %. Even after the concentration, therefore, both Eaton and Denison would have higher market shares than the parties together, so that on this market no competition concerns arise.

1.1.2. Hydraulic valves and electronics

(66) Of the total market in valves, the parties have a combined share of [20 to 30]* % (Rexroth [...]* %, Bosch [...]* %). Their main competitors are Parker, with [5 to 15]* %, Moog, with [5 to 10]* %, Eaton/Vickers, with [5 to 10]* %, Atos, with [5 to 10]* %, and Denison, with [5 to 10]* %. Like Bosch/Rexroth, these competitors do business throughout the world, and also operate in the other branches of industrial hydraulics. Thereafter the market in valves is highly fragmented. These seven largest suppliers account for just over [45 to 55]* % of the market, and the remaining share of almost 45 % is divided between a large number of small manufacturers.

(67) With the exception of Atos, which does not produce servo valves, these undertakings manufacture the same range of products. It can be assumed that the competing producers would be in a position to increase their market shares if the parties were to attempt to charge higher prices.

1.1.2.1. Hydraulic-mechanical flow control, pressure control and shut-off valves

(68) On the market in hydraulic-mechanical flow control, pressure control and shut-off valves, the parties have a market share of [20 to 30]* % (Bosch [...]* %, Rexroth [...]* %). Here too the competitors are Parker, with [0 to 20]* %, Denison, with [5 to 15]* %, Eaton, with [5 to 10]* %, and Atos, with [5 to 10]* %. Despite their smaller market shares, these undertakings have the competitive potential to constrain the parties' competitive behaviour (see recitals 66 et seq.).

1.1.2.2. Directional valves and cartridges

(69) On the market in directional valves and cartridges, the parties have a market share of [20 to 30]* % (Bosch [...] % , Rexroth [...] %). The competitors are Parker, with [5 to 15]* % , Eaton, with [5 to 15]* % , and Atos, with [5 to 10]* % . But this lead does not amount to a dominant position, because Bosch/Rexroth's competitive behaviour is effectively constrained by its competitors (see recitals 66 et seq.).

1.1.2.3. Continuously adjustable valves (proportional valves and servo valves)

(70) On the market in continuously adjustable valves no competition concerns arise, even when different possible market definitions are tried. In none of the alternative markets studied do the parties reach a market share of over [15 to 25]* % . While this share might be basis for market leadership, it does not amount to a dominant position, because the parties' competitive behaviour is constrained by their competitors (see recitals 66 et seq.).

1.1.2.3.1. Market in continuously adjustable valves of all kinds

(71) Taking a market in closed-loop and open-loop proportional and servo valves, the parties would have a market share of [15 to 25]* % after the concentration (Bosch [...] % , Rexroth [...] %). The competitors are Moog, with [15 to 25]* % , Parker, with [5 to 10]* % , Atos, with [5 to 10]* % , and Eaton, with [5 to 10]* % . In view of the sufficiently small market share, and the features of the market already referred to, it is not to be expected that dominance might arise (see recitals 66 et seq.).

1.1.2.3.2. Market in proportional valves

(72) Taking a market in closed-loop and open-loop proportional valves, the parties would have a market share of [15 to 25]* % after the concentration (Bosch [...] % , Rexroth [...] %). The competitors are Moog, with [12 to 20]* % , Parker, with [5 to 10]* % , Atos, with [5 to 10]* % , and Eaton, with [5 to 10]* % . In view of the sufficiently small market share, and the features of the market already referred to, it is not to be expected that dominance might arise (see recitals 66 et seq.).

1.1.2.3.3. Market in closed-loop proportional valves

(73) Taking a market in closed-loop proportional valves, the parties would have a market share of [15 to 25]* % after the concentration (Bosch [...] % , Rexroth [...] %). The competitors are Moog, with [34 to 40]* % , Parker, with [5 to 10]* % , Atos, with [5 to 10]* % , and Eaton, with [5 to 10]* % . In view of the sufficiently small market share, and the features of the market already referred to, it is not to be expected that dominance might arise (see recitals 66 et seq.).

1.1.2.3.4. Market in open-loop proportional valves

(74) Taking a market in open-loop proportional valves, the parties would have a market share of [15 to 25]* % after the concentration (Bosch [...] % , Rexroth [...] %). The competitors are

Moog, with [5 to 15]* %, Parker, with [< 10]* %, Atos, with [< 10]* %, and Eaton, with [< 10]* %. In view of the sufficiently small market share, and the features of the market already referred to, it is not to be expected that dominance might arise (see recitals 66 et seq.).

1.1.2.3.5. Market in servo valves

(75) Taking a market in servo valves, there would be no overlapping, because Bosch does not produce any such valves.

1.2. Mobile hydraulics

1.2.1. Mobile valves

(76) According to the information supplied by the parties they have a share of [10 to 20]* % of the market in mobile valves (Bosch [...]* %, Rexroth [...]* %), the volume of the market being EUR 1,093 million. According to competitors' estimates the total volume of the market may be only EUR 750000. Even if this lower figure is accepted the parties' market share is still only about [15 to 25]* %. In view of the sufficiently small market share, it is not to be expected that dominance might arise.

2. ELECTRIC DRIVES AND CONTROLS

2.1. Servo drives

(77) On the market in servo drives the parties would have a market share of [10 to 20]* % after the concentration (Bosch [...]* %, Rexroth [...]* %). The market leader would be Siemens, with 18,7 %; other competitors would be Fanuc and Baumüller, with 5,6 % each.

Relationship between Bosch and Siemens

(78) On a market in servo drives, then, Siemens would be Bosch's and Rexroth's strongest competitor. The Commission was therefore obliged to verify whether the planned concentration might give rise to a joint dominant position. That might be so especially if control exercised by Siemens via Rexroth's parent company Atecs made it likely that competition between Siemens and Rexroth/Bosch would be restricted.

(79) But Bosch and Siemens have no similar interests that would justify coordination. The leasing and control agreement reduces Siemens's interest as owner of Rexroth to the rent it is to receive, which is independent of profitability. Thus Bosch and Siemens have no joint financial interest in Rexroth's operative business.

(80) Nor is there any entitlement to information under company law which would operate via Atecs so as to lead to an exchange of information that might be relevant from the point of view of competition. Siemens is entitled to information on Rexroth only in respect of the rent that Rexroth is to receive from Bosch. That is separate from the operative business, so that competitive conduct cannot be aligned through the exercise of rights to information via Atecs.

(81) In order to prevent any informal exchange of information, Bosch and Siemens have undertaken to ensure that nobody is appointed to the management or supervisory boards of Rexroth who is an employee of Siemens or of a company dependent on Siemens. Siemens and Bosch will also ensure that nobody is appointed to the management or supervisory boards of Atecs, VDO, Dematic, Sachs or Demag Krauss Maffei, or of any company dependent on any of them, who is at the same time a member of the management board or of the shareholders' representation on a supervisory board of Rexroth or of any company dependent on it, or of Bosch or of a subsidiary of Bosch to which Rexroth's business has been leased.

(82) Alongside these agreements, with their structural effects, the parties have also given the Commission an undertaking that they will not exercise any remaining rights to information through Atecs in respect of the holding companies, and will not supply any information asked for.

(83) The arrangements described in recitals 79 to 81 ensure a structural division between the spheres of influence of Bosch/Rexroth and Siemens. There is therefore no reason to fear that as a result of the concentration a joint dominant position might come to be held by Siemens and Bosch/Rexroth.

V. COMMITMENTS OFFERED BY THE PARTIES

A. COMMITMENTS

(84) In order to remove the Commission's doubts regarding the planned concentration, Bosch and Rexroth have entered into the following commitments vis-à-vis the Commission(14).

(85) Bosch will sell its radial piston pumps business. The sale will include the development and production divisions, the transfer of customer relations and the relevant supply contracts to the buyer, the other assets needed for the continuation of the business, and the transfer of the staff.

(86) Bosch will sell the business to a buyer which is an undertaking independent of Bosch, viable, already in existence, already operating on European industrial hydraulics markets, and possessing the financial resources and experience necessary to be able to survive as an active competitor on the European market in industrial hydraulics piston pumps. Bosch will safeguard the transfer of the business by means of a series of commitments. These include the following, all limited in time: a clause banning Bosch from competing in respect of radial piston pumps, a clause banning Bosch from poaching staff, and a clause requiring Bosch to make good any loss of profits if it attracts away customers. The buyer must be approved by the Commission. Bosch intends to conclude a binding agreement for the sale of the radial piston pumps business before the Commission has taken a decision finding the concentration compatible, which agreement is to be with a buyer to be approved by the Commission under this Decision. Bosch accepts that the concentration cannot be put into effect until a binding agreement for the sale of the radial piston pump business has been concluded. Bosch will also entrust an independent and experienced trustee with the task of ensuring the preservation of the economic value and competitiveness of the radial piston pump business until the sale is complete.

(87) Bosch will also transfer to the same trustee the task of supervising the sale of the business if at the time the concentration is put into effect the sale is not yet complete.

(88) As regards the other assets to be transferred, and the supporting measures to be taken, this trustee will have power to determine the interpretation of the contractual clauses if the parties should disagree. Bosch will give the trustee all assistance and information (recitals 6 to 8).

B. ASSESSMENT OF THE COMMITMENTS

(89) The commitments offered will in the first place ensure that the overlapping of Bosch's and Rexroth's shares of the market in piston pumps will disappear: if Bosch disposes of its radial piston pumps business, it will be disposing of all of its piston pumps activities, and after the concentration Bosch will be manufacturing and selling only Rexroth's axial piston pumps.

(90) The commitment submitted on 20 October 2000 ensures that sufficient account is taken of the doubt that the Commission expressed in the first stage of the merger authorisation procedure as to the possibility of a successful continuation of the radial piston pumps business by a future buyer. Bosch has now committed itself to selling the business only to an existing undertaking which already operates on the European hydraulics market, which must also possess sufficient financial resources and specific market experience; this ensures that the buyer will have the specific capacity to compete in the hydraulics business.

(91) The measures relating to the transfer of the business which are set out in Article 2 of the commitments are important supplementary measures which provide further support for the continuation of Bosch's radial piston pumps business by the future buyer. Bosch here commits itself to making good the profits forgone by the buyer if in the first three years one or more of the ten biggest customers replace Bosch radial piston pumps in existing mass-produced machines with Rexroth axial piston pumps. Taken together with Bosch's commitment not to compete in respect of radial piston pumps for a certain time, this ensures that Bosch's existing clientele will not immediately be enticed away by the parties. A future buyer will therefore have a running-in period in which to establish itself successfully on the market.

(92) Until a binding agreement is concluded for the sale, Bosch accepts that the ban on putting the concentration into effect which is laid down in Article 7(1) of Regulation (EEC) No 4064/89 will continue to apply. This means that the parties can put the concentration into effect only once the radial piston pumps business has been sold to a buyer approved by the Commission. The Commission considers this commitment necessary in order to resolve the doubts expressed in the market study regarding the practical possibility of disposing of the business.

(93) That the ban on putting the concentration into effect should continue to apply in this case is a measure proportionate to the aim of avoiding a real danger, namely that if the concentration were to be completed before this business was disposed of the added market shares would in time automatically accrue to the parties. In the particular situation, this could not be ruled out with sufficient probability, because if no competitive buyer is found for the radial piston pumps business, and as a result customers can find no attractive long-term alternative, customers may begin to turn Bosch, and to buy Rexroth's axial piston pumps, thus reducing the market share of

radial piston pumps. In a situation of the kind described such a development is not improbable, since on the market in piston pumps relations with customers have traditionally been intensive. The continuation of the ban on putting the concentration into effect which has been promised by the parties, together with the other commitments entered into, ensures that the present market situation will continue until it is clear that the radial piston pumps business is to be taken over by a competitive buyer.

(94) If a concentration is authorised, but may not be put into effect pending fulfilment of a commitment to dispose of an asset, a situation may arise in which it may be to the merging undertakings' advantage to run down the economic value of the asset to a point where it becomes practically impossible to dispose of it. Such a situation would not be wholly improbable especially if the merging undertakings could expect to be able to offset the resultant losses of market share and profits by making corresponding gains on their other products on the same market.

(95) This possibility is ruled out in advance by Bosch's commitment to have its radial piston pumps division supervised by an independent trustee up to the time of sale, in order to ensure that its competitiveness is preserved. The Commission also acknowledges that the parties will hardly accept a long delay in putting the concentration into effect in order to establish a special situation on the market in radial piston pumps. In the Commission's view, the relatively great importance of the other economic activities of the parties which are affected by the concentration make it clear that it is in Bosch's interest to carry out a disposal approved by the Commission as quickly as possible,

HAS ADOPTED THIS DECISION:

Article 1

The notified acquisition of sole control of Mannesmann Rexroth AG by Robert Bosch GmbH is hereby declared compatible with the common market and the EEA Agreement, on condition that the commitments entered into by the notifying parties, which are set out in the Annex to this Decision, are fulfilled.

Article 2

This Decision is addressed to:

Robert Bosch GmbH Zentralabteilung Recht z.Hd. Herrn RA Dr. Dieter Berg Robert-Bosch-Platz 1 D - 70839 Gerlingen-Schillerhöhe

Mannesmann Rexroth AG z.Hd. Herrn Dr. Albert Hieronimus Jahnstraße 3-5 D - 97816 Lohr am Main

Done at Brussels, 12 January 2001.

For the Commission

Mario Monti

Member of the Commission

(1) OJ L 395, 30.12.1989, p. 1; corrigendum OJ L 257, 21.9.1990, p. 13.

(2) OJ L 180, 9.7.1990, p. 1.

(3) OJ C 39, 13.2.2004.

(4) See Commission Decision COMP/M.1795 of 12 April 2000.

(5) Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

(6) See Case No IV/M.152 - Volvo/Atlas.

(7) Pumps with a fixed delivery.

(8) Pumps with variable delivery.

(9) Value relating to the time constant, i.e. the time required to transform an (electrical) input signal into a hydraulic output signal.

(10) Maximum difference in the same output signal in passing through the full signal area (i.e. outward and return).

(11) Problems in the final control element of a control circuit below the response threshold of a constantly adjustable valve.

(12) See Case IV/M.152 Volvo/Atlas, recitals 15 et seq.

(13) The one exception is a small fixed-displacement radial piston pump produced by Rexroth.

(14) The full wording of the commitments is given in the annex, and forms an integral part of this Decision.

ANNEX

The full text of the commitments referred to in Article 1 may be consulted on the following Commission website:

Internet: http://europa.eu.int/comm/competition/mergers/cases/decisions/m2060_de.pdf