

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :  
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Plaintiff, :  
 :  
v. :  
WESTINGHOUSE ELECTRIC CORPORATION, :  
ABB ASEA BROWN BOVERI LTD., and :  
ASEA BROWN BOVERI INC., :  
 :  
Defendants. :  
- - - - - x

Civil Action No. 54-CIV-1032

Filed: 2/14/89

Judge Robert W. Sweet

COMPETITIVE IMPACT STATEMENT

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. §§ 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I.

Nature and Purpose of the Proceeding

Contemporaneously with this statement, the United States filed a civil antitrust Complaint under Section 15 of the Clayton Act, 15 U.S.C. § 25, alleging that two proposed partnership joint ventures between Asea Brown Boveri Inc. and Westinghouse Electric Corporation ("Westinghouse") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint names as defendants Westinghouse and Asea Brown

Boveri, Inc. and its parent company, ABB Asea Brown Boveri Ltd. <sup>1/</sup> The Complaint alleges that the effects of the joint ventures may be substantially to lessen competition in the United States markets for power transformers, converter transformers, steam turbine generator equipment and steam turbine generator service. The Complaint seeks such injunctive relief and relief by way of preservation of assets and divestiture as is appropriate to prevent the anticompetitive effects of the joint ventures and to maintain existing competitive conditions in these markets.

Together with the filing of this Competitive Impact Statement, the United States and defendants have filed a stipulation by which they consent to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of the proposed joint ventures. Under the proposed Final Judgment, as explained more fully below, ABB would be required, within six months, to sell any and all interest it has or shall acquire in all the transformer businesses of ABB Electric, Inc. in Waukesha, Wisconsin ("Waukesha business"). If it does not do so, a trustee appointed by the Court would be empowered for an additional six months to sell the Waukesha business. If the trustee is unable to do so, the Court may

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<sup>1/</sup> Hereinafter, the term "ABB" means ABB Asea Brown Boveri Ltd. and Asea Brown Boveri Inc.

extend the trustee period or enter such other orders as it shall deem appropriate in order to carry out the purpose of the trust.

The proposed Final Judgment would also require Westinghouse, within six months, to sell its converter transformer and related smoothing reactor technology, or grant the right to use and to license that technology to an eligible person. If it does not do so, the Court would be empowered to appoint a trustee to accomplish such a sale or grant.

Under the proposed Final Judgment, Westinghouse would be further required to release General Electric Company from its covenant not to compete with Westinghouse in power transformers, which General Electric agreed to in connection with the sale of its power transformer business to Westinghouse in 1986.

The proposed Final Judgment would also enjoin, for a period of 10 years, Westinghouse and ABB from combining their steam turbine generator equipment or steam turbine generator service businesses in the United States.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations of the proposed Final Judgment.



## II.

### Events Giving Rise To The Alleged Violation

ABB, with headquarters in Zurich, Switzerland, is the world's largest producer of electric power equipment. Westinghouse, with headquarters in Pittsburgh, Pennsylvania, is also one of the world's leading producers of electric power equipment. ABB and Westinghouse have agreed to form two partnership joint ventures, 2/ one relating to electric power transmission and distribution products, and the other relating to electric power generation products. The power transmission and distribution joint venture would combine, among other things, the companies' respective power transformer and converter transformer businesses in the United States. The power generation joint venture would combine defendants' respective steam turbine generator equipment and steam turbine generator service businesses in the United States. Defendants would transfer certain manufacturing plants, technology, or other assets to the new joint venture companies. ABB also would pay Westinghouse more than \$500 million in cash. Each of the joint ventures would be conditioned on the performance of the important terms of the other joint venture.

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2/ Defendants agreed to a preliminary Memorandum of Understanding in April of 1988.



#### A. Power Transformers

Power transformers are static devices used to transfer electric energy from one circuit to another by induction. <sup>3/</sup> They are used by electric power utilities to convert low voltage electricity produced by a power generating unit to higher voltages that are more efficiently carried over transmission lines, and to reduce voltages between transmission and distribution lines to deliver electricity safely to utility customers. Investor owned utilities and utilities owned and operated by federal, state, county and municipal governments are the principal purchasers of power transformers in the United States.

The Complaint alleges that the sale of power transformers constitutes a line of commerce and a relevant product market, and that the United States is a section of the country and a relevant geographic market in which power transformers are sold within the meaning of Section 7 of the Clayton Act. Successful entry into the power transformer market is difficult because of the cost and time required to develop the necessary technology to produce power transformers, to construct the physical facilities required for production of power transformers, to assemble the necessary technical, sales and service personnel, and to become a qualified source of power transformers for domestic electric utilities.

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<sup>3/</sup> As used herein, power transformers refers to transformers with minimum OA power ratings of 40 megavolt-amperes ("MVA") or higher.

ABB was the largest seller of power transformers in the United States in 1987. In that same year, Westinghouse was the second leading seller of power transformers in the United States. In terms of unit sales, the 1987 power transformer market shares of ABB and Westinghouse were 27 percent and 26 percent, respectively. The Complaint alleges that the United States market for power transformers is highly concentrated. Based on 1987 unit sales, the proposed combination would increase the Herfindahl-Hirschman Index ("HHI") 4/ by over 1386 to 3264.

B. Converter Transformers

The manufacture of converter transformers involves a technology different from that used in the manufacture of power transformers. Converter transformers are sold primarily to companies that design high voltage direct current (HVDC) systems, which are used in transmitting electricity over long distance transmission lines. They are also used to connect

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4/ The HHI is a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2600 ( $30^2 + 30^2 + 20^2 + 20^2 = 2600$ ). The HHI, which takes into account the relative size and distribution of the firms in a market, ranges from virtually zero to 10,000. The index approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between the leading firms and the remaining firms increases.

asynchronous transmission systems. Converter transformers are major cost items in HVDC systems.

The Complaint alleges that sale of converter transformers constitutes a line of commerce and a relevant product market, and that the United States is a section of the country and a relevant geographic market in which converter transformers are sold, within the meaning of Section 7 of the Clayton Act.

ABB is the largest seller of converter transformers in the United States and, since 1981, has accounted for more than 50 percent of all converter transformers sold in the United States. General Electric Company was a major competitor of ABB until it sold its converter transformer technology (and related smoothing reactor technology <sup>5/</sup>) to Westinghouse in 1986. Westinghouse is one of only a few companies possessing such technology and since 1986, Westinghouse has been one of only four companies bidding to supply converter transformers in the United States.

#### C. Steam Turbine Generator Equipment

Steam turbine generator equipment consists of a turbine and a connecting generator. Steam passes through the turbine causing the generator rotor and an attached electromagnet to rotate within a stator, generating electricity. Steam turbine

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<sup>5/</sup> A smoothing reactor is a device used to introduce reactance into a circuit for the purpose of reducing the alternating current component in a direct current power system.



generator equipment is the principal means by which nuclear and fossil-fueled utility plants generate electricity from steam energy produced by nuclear reactor or conventional boiler operations. The principal purchasers of steam turbine generator equipment are utilities. Steam turbine generator equipment is also sold to cogenerators, independent power producers and industrial customers.

The Complaint alleges that the sale of steam turbine generator equipment constitutes a line of commerce and a relevant product market, and that the United States is a section of the country and a relevant geographic market in which steam turbine generator equipment is sold within the meaning of Section 7 of the Clayton Act. Successful entry into the steam turbine generator equipment market in the United States is difficult because of the cost and time required to develop the necessary technology to produce steam turbine generator equipment, to construct the physical facilities required for production and service of steam turbine generator equipment, to assemble the necessary technical, sales and service personnel and to become a qualified source of steam turbine generator equipment for domestic electric utilities.

In the period 1983 through 1987, total sales of steam turbine generator equipment in the United States were approximately \$442 million. Westinghouse and ABB were the first and third largest suppliers of steam turbine generator equipment in the United States in that period, with market shares of 43 percent and 19 percent, respectively.

The Complaint alleges that the United States market for steam turbine generator equipment is highly concentrated. The proposed joint venture would create a firm controlling approximately 62 percent of steam turbine generator equipment sold in the United States, based on sales in the period 1983 through 1987. The proposed combination would increase the HHI by 1566 to 4693.

D. Steam Turbine Generator Service

Owners of steam turbine generator equipment may at times require equipment repairs involving the replacement or retrofitting of major components, or equipment modernization efforts aimed at significant efficiency enhancements or life extensions. Such steam turbine generator service is provided principally to private and public utility companies. In the past several years manufacturers of steam turbine generator equipment have begun bidding to provide such service not only for equipment of their own manufacture but also for equipment manufactured by others.

The Complaint alleges that the sale of steam turbine generator service constitutes a line of commerce and a relevant product market, and that the United States is a section of the country and a relevant geographic market in which steam turbine generator service is provided within the meaning of Section 7 of the Clayton Act. Successful entry into the steam turbine generator service market is difficult because of the cost and time required to develop the necessary technology to provide

steam turbine generator service, to construct the physical facilities required for provision of such service, to assemble the necessary technical, sales and service personnel, and to become a qualified source for steam turbine generator service for domestic electric utilities.

The Complaint alleges that the United States market for steam turbine generator service is highly concentrated. Westinghouse and ABB are leading suppliers of steam turbine generator service in the United States. Only five companies have provided such steam turbine generator service in the United States during the period from 1983 through 1987.

### III.

#### Explanation of the Proposed Final Judgment

The United States brought this action because the effect of these joint ventures may be substantially to lessen competition in the United States markets for power transformers, converter transformers, steam turbine generator equipment and steam turbine generator service, in violation of Section 7 of the Clayton Act. As described in detail below, the provisions of the Final Judgment are designed to eliminate the anticompetitive effects of the proposed joint ventures.

#### A. Remedy As To Power Transformers

The proposed Final Judgment contains two remedies that will preserve the competition in power transformers that the joint venture of defendants would otherwise eliminate. First, the proposed Final Judgment requires ABB, within six months of its



filing, to divest itself of its power transformer plant at Waukesha, Wisconsin, which is its only power transformer facility in the United States. <sup>6/</sup> If ABB cannot accomplish the required divestiture within that period, the proposed Final Judgment provides that, upon application by the United States, the Court shall appoint a trustee to effect the divestiture.

The proposed Final Judgment provides that the Waukesha business must be divested in such a way as to satisfy the United States that this business can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the power transformer market. ABB must take all reasonable steps necessary to accomplish the divestiture and shall cooperate with bona fide prospective purchasers and, if one is appointed, the trustee.

If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which divestiture is accomplished. After the trustee's appointment becomes effective, the trustee will file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture.

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<sup>6/</sup> ABB also manufactures power transformers at plants in Canada and Europe.

At the end of six months, if the trustee has not accomplished the divestiture, the trustee and the parties will make recommendations to the Court and the Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The proposed Final Judgment provides the United States an opportunity to review any proposed divestiture before it occurs. If the United States requests information from defendants to assess a proposed sale, the sale may not be consummated until at least 20 days after defendants supplied the information. If the United States objects to a proposed divestiture, the sale may not be completed.

The proposed Final Judgment provides that until the required divestiture has been accomplished, ABB must preserve and maintain the Waukesha business as a viable and active competitor. ABB must hold the Waukesha business, including all books and records, separate and apart from its other assets and businesses, and must maintain the Waukesha business as a saleable and economically viable, ongoing business.

The second element of the power transformer relief in the proposed Final Judgment provides for the restoration of General Electric Company as a competitor in the United States power transformer market. In 1986 General Electric sold most of its power transformer business to Westinghouse; the substantial terms of this transaction are reflected in an agreement between

the parties dated November 18, 1986. As a part of that transaction General Electric agreed not to compete for the sale of power transformers of 40 MVA and above for a period of ten years; that period expires in November, 1996. <sup>7/</sup> General Electric again desires to compete in the power transformer market. On February 9, 1989, it agreed with Westinghouse to an amendment to the 1986 agreement which abrogates the covenant not to compete and also grants to General Electric a license to use the technology relating to power transformers that General Electric sold to Westinghouse. The amendment will become effective upon the commencement of operations by the Westinghouse-ABB joint venture. The proposed Final Judgment requires Westinghouse to consummate that agreement.

Thus, the proposed Final Judgment requires the divestiture of the assets used by ABB in the manufacture of power transformers in the United States. In addition, it will permit General Electric Company, which in years past has been the largest United States manufacturer of electrical equipment, again to become a competitor in the power transformer market. The combination of the two elements of relief will restore the competition in power transformers that would otherwise be eliminated by the joint venture of Westinghouse and ABB.

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<sup>7/</sup> General Electric continues to manufacture power transformers of less than 40 MVA at its plant in Rome, Georgia.



B. Remedy As To Converter Transformers

In its 1986 agreement with General Electric Company, Westinghouse also purchased General Electric's technology relating to converter transformers. That technology enabled Westinghouse to enter the converter transformer market and to begin bidding to supply converter transformers for use in high voltage direct current (HVDC) systems. As alleged in the Complaint, Westinghouse and ABB are two of only a few firms possessing such technology and currently bidding to supply converter transformers in the United States.

The proposed Final Judgment requires Westinghouse to sell or to grant the right to use and license its converter transformer (and related smoothing reactor) technology. The sale or license would be subject to any pre-existing rights held by any third party with respect to the relevant technology. The sale or license is to be made to a person, for whom it is demonstrated to plaintiff's sole satisfaction, that intends to sell and is capable of selling converter transformers in the United States. Westinghouse is to hold separate and not disclose to ABB the technology pending completion of the required disposition. 8/

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8/ The February 9, 1989 amendment to the Westinghouse-General Electric agreement also permits General Electric to reenter the converter transformer market and grants to General Electric a license to use the converter transformer technology it sold to Westinghouse in 1986. That transaction is independent of the

Footnote Continued

C. Remedies As To Steam Turbine Generator Equipment and Steam Turbine Generator Service

The proposed Final Judgment enjoins and restrains Westinghouse and ABB, for a period of 10 years, from entering into their proposed joint venture, or any similar agreement, relating to steam turbine generator equipment and steam turbine generator service without the prior written approval of the Antitrust Division.

IV.

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

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8/ Continued

requirement of the proposed Final Judgment relating to converter transformer technology. Plaintiff takes no position at this time as to whether that transaction satisfies the converter transformer requirement of the proposed Final Judgment.

V.

Procedure Available for Modification  
of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to comments. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to:

Ralph T. Giordano, Chief  
Antitrust Division  
New York Field Office  
United States Department of Justice  
26 Federal Plaza, Room 3630  
New York, NY 10278-0096



## VI.

### Alternatives To The Proposed Final Judgment

With respect to the power generation joint venture agreement, the injunction in the proposed Final Judgment prohibiting Westinghouse and ABB from combining their respective steam turbine generator equipment and steam turbine generator service businesses provides all the relief that could be obtained by the United States with respect to that joint venture after a full trial on the merits.

With respect to the transmission and distribution joint venture agreement, an alternative to settling this action pursuant to the proposed Final Judgment would be for the United States to seek preliminary and permanent injunctions against consummation of the joint venture agreement that relates to, among other things, the market for power transformers and converter transformers. The United States rejected this alternative because the sale required under the proposed Final Judgment of ABB's Waukesha business will establish a viable, independent competitor in the power transformer market in the United States. The Waukesha plant is ABB's only power transformer facility in the United States and manufactures a substantial range of the sizes of power transformers that sells in the United States. ABB manufactures larger sizes that it sells in the United States at plants in other countries. A buyer which, like ABB, also makes large power transformers at plants in other countries, will assume a similar position in the United States market as that now held

by ABB. Whether or not the purchaser of Waukesha produces large power transformers, however, Westinghouse's release of General Electric Company from its covenant not to compete in the United States in the manufacture and sale of power transformers will likely result in General Electric's reentry as a viable, independent competitor in the power transformer market in the United States.

With respect to the converter transformer market, the sale or grant of the right to use and license Westinghouse's converter transformer and smoothing reactor technology will facilitate new entry into that market. That transaction will duplicate the transaction that brought Westinghouse into the converter transformer market.

The United States is therefore satisfied that the proposed Final Judgment fully resolves the anticompetitive effects of the proposed joint ventures alleged in the complaint. Further, although the proposed Final Judgment may not be entered until the criteria established by the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)-(h)) have been satisfied, the public will benefit immediately from the safeguards in the proposed Final Judgment because defendants have agreed to comply with the terms of the Judgment pending its entry by the Court.

## VII.

### Determinative Documents

Amendment 3 to the 1986 Asset Purchase Agreement between General Electric Company and Westinghouse Electric

Corporation, dated February 9, 1989, and the 1986 agreement itself are determinative documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment. Accordingly, these documents are filed with this Competitive Impact Statement. However, insofar as the contracts contain confidential, commercially sensitive information relating to the prices paid for the various transfers of rights, that information has been redacted. The United States is prepared to file unredacted contracts with the Court, under seal, at its request.

Dated: \_\_\_\_\_

RALPH T. GIORDANO  
Chief, New York Office

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CHARLES V. REILLY

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