COMMISSION DECISION

of 13 July 2005

amending the Decision 2002/191/EC declaring a concentration to be compatible with the common market and the EEA Agreement (Case COMP/M.2139 — Bombardier/ADtranz)

(notified under document number C(2005) 2683)

(Only the English text is authentic)

(Text with EEA relevance)

(2005/907/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 thereof,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings [1], and in particular Article 8(2) thereof,

Having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) [2], and in particular Article 26(2) thereof,

Having regard to the Commission Decision 2002/191/EC of 3 April 2001 declaring a concentration to be compatible with the common market and the functioning of the EEA Agreement (Case COMP/M.2139 — Bombardier/ADtranz) [3],

After consulting the Advisory Committee on Concentrations [4],

Whereas:

(1) On 3 April 2001, the Commission declared a concentration whereby Bombardier Inc. acquired within the meaning of Article 3(1)(b) of Regulation (EEC) No 4064/89 sole control of the undertaking DaimlerChrysler Rail Systems GmbH (ADtranz) compatible with the common market and with the functioning of the EEA Agreement. That declaration of compatibility was subject to full compliance with several conditions and obligations as set out in the Annex to the Decision.

(2) One of the conditions concerned the undertaking Elin EBG Traction (ETR), a subsidiary of VA Tech AG, established in Linz, Austria. Bombardier had joint control over ETR, a supplier of electrical propulsion for rail rolling stock. Severing ETR's structural link with Bombardier, as required by paragraph 1(a) of the Annex, turned that company into an independent supplier of propulsion technology for, among others, regional trains and trams/light rail vehicles. Nevertheless, certain guarantees were necessary for a transitional period in order to allow ETR to find new partners, replacing Bombardier, which became vertically integrated after the acquisition of ADtranz and, thus, was no longer to rely on ETR as a supplier of electrical propulsion equipment.

(3) These guarantees were intended to create a workload for ETR for a transitional period in order to enable it to survive economically. The condition as set out in paragraph 1(b) of the Annex provided for Bombardier to enter into a Joint Development Agreement with ETR for cooperation between these two companies until 2006 in relation to the tram 'CityRunner Type Linz', for which ETR supplies the electrical traction, thereby allowing ETR to continue to be active in the market for trams.

(4) On 10 January 2005, Siemens notified its planned acquisition of sole control, within the meaning of Article 3(1)(b) of the EC Merger Regulation, of VA Tech, whereby it would also acquire control of ETR. Siemens is a leading supplier of rail rolling stock which manufactures its own electrical traction for all types of rolling stock it offers. On 13 July 2005, pursuant to Article 8(2) of the EC Merger Regulation, the Commission declared the acquisition of VA Tech by Siemens compatible with the common market and with the functioning of the EEA Agreement, subject to several conditions and obligations as set out in the Annexes to that Decision.

(5) As part of Siemens, ETR has the financial background of a multinational firm which is a leader in rolling stock. Therefore, ETR no longer needs secured orders for its economic survival as was deemed necessary in 2001 when the structural link with Bombardier was severed. It is, consequently, no longer necessary to impose on Bombardier the condition to source the electrical traction for its CityRunner Type Linz from ETR, should Siemens acquire sole control of ETR.

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[1] OJ L 395, 30.12.1989, p. 1. As corrected by OJ L 257, 21.9.1990, p. 13. Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9.7.1997, p. 1).
[2] OJ L 24, 29.1.2004, p. 1.
[3] OJ L 69, 12.3.2002, p. 50.
[4] OJ C 321, 16.12.2005.

(6) The acquisition of VA Tech by Siemens has been declared compatible with the common market and with the functioning of the EEA subject to compliance with certain conditions. However, there is a possibility that that decision will be revoked pursuant to Article 8(6) of the EC Merger Regulation. This Decision, therefore, is conditional on the Commission Decision of 13 July 2005 in case COMP/M.3653 — Siemens/VA Tech [1] remaining in force,

HAS ADOPTED THIS DECISION:

Article 1

Article 2 of Decision 2002/191/EC is replaced by the following:

'*Article 2*

Article 1 is subject to full compliance with the conditions set out in paragraphs 1(a), first subparagraph, 1(c), 1(d), 1(e), first and fourth subparagraphs, 1(f), 1(g), 1(h), and 1(i) of the Annex.'

Article 2

This decision shall be conditional on

(a) the remaining in force of the Commission Decision of 13 July 2005 declaring the concentration whereby Siemens AG proposes to acquire sole control over VA Tech AG (Case COMP/M.3653 — Siemens/VA Tech) compatible with the common market and the EEA agreement, subject to certain conditions and obligations, and

(b) the implementation of the proposed concentration referred to in point (a).

Article 3

This decision is addressed to:

Bombardier Inc.
800 René-Lévesque Blvd. West,
Montréal
Canada — H3B 1Y8 — Québec.

Done at Brussels, 13 July 2005.

For the Commission
Neelie KROES
Member of the Commission

[1] Not yet published in the Official Journal.