

Anticipated acquisition by Atlas Copco Italia S.p.A of ABAC Aria Compressa S.p.A

The OFT's decision on reference under section 33(1) given on 7 February 2007. Full text of decision published 22 February 2007.

Please note that square brackets indicate figures or text which have been deleted or replaced at the request of the parties for reasons of commercial confidentiality.

PARTIES

1. Atlas Copco Italia S.p.A, a wholly-owned subsidiary of Atlas Copco AB (**Atlas Copco**) is an international industrial group based in Sweden. In the UK it is active in the sales and marketing of compressors, generators, construction and mining equipment, pneumatic and electric power tools and assembly systems.
2. ABAC Aria Compressa S.p.A, (**ABAC**) is based in Turin and is part of the ABAC Group. It has both an 'Industrial Division', which is active in the production and sale of compressors and systems for the production of compressed air for industrial and professional applications, including piston air compressors, rotary screw air compressors and turbo air compressors, and a 'Consumer Division', which makes compressors largely for domestic use. ABAC's UK turnover in 2005 was £[]million.

TRANSACTION

3. On 13 July 2006 Atlas Copco announced it intends to acquire the 'Industrial Division' of ABAC. The administrative deadline is 7 February 2007.

JURISDICTION

4. As a result of this transaction Atlas Copco and ABAC will cease to be distinct. The parties overlap in the supply of air compressors, with UK shares of supply of about [25-35] per cent by value for stationary, oil-injected rotary air compressors (all power ranges).
5. The share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

FRAME OF REFERENCE

6. The parties overlap in the manufacture and distribution of air compressors, which are used to output air at different levels of pressure and/or quality for operating machines, tools and other equipment, or within various industrial processes.

Product scope

7. The parties argue that the main distinction between different types of air compressor is in terms of the compressor technology employed, namely that customers use piston air compressors for intermittent operation but rotary air compressors¹ are best suited for continuous operation.
8. A further method of splitting the market is by the power range of rotary air compressors (which have a far wider power range than piston air compressors). They can be segmented by power range of up to 22kW, between 22kW and 90kW, and above 90kW. However, the parties have also asserted that air compressors of different sizes have become increasingly interchangeable on the demand side, as customers are able to choose between installing one high power air compressor to supply an entire plant, or several smaller air compressors at the different locations where compressed air is required. They have also suggested that there are no substantive barriers to switching power ranges on the supply side for manufacturers.

¹ Comprising both rotary screw and rotary vane technologies.

9. Air compressors may also be further sub-divided into oil-injected and oil-free air compressors. Oil-free air compressors are most frequently used whenever the compressed air may come in direct contact with the end product, which might be contaminated by the injected oil, for example in the food industry or breathing air applications. The parties suggest that the distinction is becoming less meaningful since oil-injected screw air compressors with appropriate filters are potential substitutes in certain applications.
10. Finally there are stationary air compressors (which are fixed, electric-powered units for indoor use) and portable air compressors (which are towable, diesel-powered units for outdoor use).
11. A concerned third party argued that power output was the most important factor governing the choice of air compressor. It did not consider segmentation by basic technology type appropriate, since customers generally viewed different types of technology as substitutable within a specific output range. Third parties, however, tended to support the parties' view that product classification should be based on the technology employed, rather than a purely power output classification.
12. In light of the main competition assessment, however, it has not been necessary to reach a firm conclusion on the precise delineation of product frames of reference.
13. It is also relevant, given the issues discussed below under 'portfolio effects', to consider the parties' position with respect to the full range of air compressor types.

Geographic scope

14. Production takes place on a pan-European basis. However, UK customers have indicated that they require a UK-based distribution and after-sales service presence. End users like to know that the majority of spares for their particular make of air compressor are held in the UK, to ensure rapid supply in the event of equipment failure. This may imply that UK end users would find it difficult to switch to overseas suppliers in the short term in response to relative price changes, and that current supply choices are limited to suppliers with a UK presence.

15. Taking a cautious approach, the competition assessment therefore considers a UK frame of reference.

HORIZONTAL ISSUES

Market shares

17. There is no overlap in relation to portable air compressors, since these are not supplied by ABAC in the UK. For stationary piston air compressors, the parties will have about a [15 – 25] per cent share by value (increment about [0 – 5] per cent), with two competitors having a similar size. For stationary oil injected rotary air compressors the parties will have about [25 – 35] per cent (increments about [0 – 5] per cent) in all power ranges and in each power range separately. In each power range there will be at least three competitors with a share in excess of 10 per cent (bar 22-90kW, where the third rival is just below) and four rivals larger than ABAC. Finally the increment in stationary oil-free rotary air compressors is [0 – 5] per cent on about [10 – 20] per cent.

Non-coordinated effects

18. The parties argue that they are not currently close competitors since their respective strengths are in different aspects of the overall product range. Atlas Copco is the market leader in rotary air compressors, but has a limited presence in the supply of piston air compressors. ABAC, by contrast has a significant presence in the supply of piston air compressors, but only a small share ([0 – 5] per cent) in sales of rotary air compressors.
19. Based on the information available concerning combined shares and increments arising from the transaction, the OFT has not found any evidence that leads it to believe that significant market power in relation to any particular set or grouping of air compressor types will be created by the merger. This view was supported by comments received from customers, such as stating that the parties as offering complementary products and that there will be plenty of competition for an effective tendering process.

PORTFOLIO EFFECT ISSUES

20. One third party argued that the merged group would be able to offer a range of leading products to distributors across all output segments which would enable it to foreclose opportunities for competing manufacturers to supply via the distribution channel.
21. This theory of harm is described as portfolio power². If a merger creates a firm with several brands, which relate to products sharing sufficient characteristics to be considered a discrete group, customers may have an incentive to purchase the portfolio from one supplier to reduce their transaction costs. This may lessen competition if non-portfolio competitors, or those competitors that control only one or a few brands, do not impose an effective constraint on the firm with portfolio power.
22. If the merged firm controls complementary goods, a merger may increase the prospect that tying or bundling of a range of products may occur. Such conduct is only likely to result in adverse effects on competition if it would be difficult for rivals or new entrants to provide competing bundles and thus be unable to constrain the behaviour of the merged entity.
23. While the merger complements Atlas Copco's existing strength in rotary air compressors with ABAC's existing offering in piston air compressors, there is no evidence that the merger will allow the merged entity to foreclose competitors. The shares of supply across the range of product groups are less than [25 – 35] per cent. There are a number of substantial competitors who could supply competing bundles of products (either through their own distribution arms or independent distributors) and thus constrain the behaviour of the merged entity. Finally none of the customers shared this concern, with one UK distributor stating that while Atlas Copco and ABAC's products were complementary, there were numerous other manufacturers present in the market.

VERTICAL ISSUES

24. Both parties have their own UK distribution arms, in addition to supplying through independent distributors. This implies a potential vertical aspect to

² Mergers: Substantive assessment guidance; paras 6.1-6.8

the transaction. However, no significant issues were raised by distributors in relation to supply availability or terms for supply of air compressors and based on the balance of evidence made available, the OFT does not believe that there are vertical concerns arising from this merger.

THIRD PARTY VIEWS

25. One third party was concerned by the merger, as addressed in portfolio issues. All other third parties, including customers, were unconcerned and most supported the parties' argument that their product ranges are largely complementary, and therefore that the parties are not currently close competitors.

ASSESSMENT

26. The parties are stronger at the different ends of the product range, and third parties have highlighted the complementary nature of their respective offerings. Shares of supply are below [25 – 35] per cent and a number of rivals with shares greater than ABAC remain in each segment. The concern expressed by one third party about portfolio effects and consequent foreclosure, is not supported by the evidence or by other third party respondents.
27. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

28. This merger will therefore not be referred to the Competition Commission under section 33(1) of the Act.