

Anticipated acquisition by EnerSys of the motive power business of Fabbrica Italiana Accumulatori Motocarri Montecchio SpA

The OFT's decision on reference under section 22 given on 19 August 2005. Full text of decision published 16 September 2005.

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**PARTIES**

1. **EnerSys**, a US company listed on the New York Stock Exchange, is one of the largest manufacturers of industrial batteries in the world. Its various European subsidiaries include EnerSys Ltd in the UK.
2. **Fabbrica Italiana Accumulatori Motocarri Montecchio SpA (FIAMM)**, headquartered in Italy, is active in the automotive sector as a manufacturer of industrial batteries, acoustic devices and antenna systems.

**TRANSACTION**

3. EnerSys has acquired FIAMM's 'motive power business' (i.e. all its facilities for the production of motive batteries). The parties notified their anticipated transaction on 22 March 2005 but subsequently completed the sale and purchase agreement on 1 June 2005. The statutory deadline for the OFT is 30 September 2005.

**JURISDICTION**

4. As a result of this transaction, EnerSys and FIAMM's motive power businesses have ceased to be distinct. The parties overlap in the supply of motive batteries and 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 a relevant merger situation has been created.

## **RELEVANT MARKET**

### **Product frame of reference**

#### **Motive batteries**

5. The parties are both active in the supply of motive batteries, a source of electrical energy used to power the movement and work of machinery and equipment. They are designed to power a given machine for a certain time – normally measured in terms of one working day or shift – before being re-charged by connecting the battery to a source of mains electricity through a charger.
6. The largest buyers are original equipment manufacturers (OEMs) who undertake the factory installation of motive batteries into machines such as fork-lift trucks and electric wheelchairs before they are sold.
7. There are two main varieties: cell batteries and monoblocs. EnerSys and FIAMM manufacture both types. They are also active in the supply of chargers.

#### **Cell batteries**

8. Cell batteries are assembled from lead-acid elements (cells) – each of which incorporates one group of lead plates and one group of lead dioxide plates immersed in an electrolyte solution of sulphuric acid and produces an output of 2 volts. Such batteries contain a number of cells (usually between 12 and 40) with an accumulated voltage of between 24V and 80V and typical capacity of between 110 Ah<sup>1</sup> and 1105 Ah. Cell batteries are used for relatively long-lived and heavy-duty applications such as powering electrical vehicles (fork lift trucks, warehouse lifting vehicles, etc). As wet-sealed units containing lead and corrosive acid they perform best in conditions where they are not subject to excessive shake and jolt.

#### **Monoblocs**

9. The lead-acid chemistry and technology used to assemble monoblocs is similar to that used in the production of cell batteries. However, as well as being manufactured to a different design specification, monoblocs are smaller than cell batteries in terms of voltage, capacity and physical size – typically between 4V and 12V and < 24 Ah. Designed to sustain more jolt (the acid electrolyte is usually in the form of a gel), they are used for lighter-duty applications such as powering wheelchairs, golf-carts and cleaning machines.
10. The parties submit that there is no material demand side substitution between cell batteries and monoblocs.

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<sup>1</sup>The amount of electrical charge which can be stored. It is expressed in ampere hours (Ah) or milliampere hours (mAh) and indicates how much current can be drawn from the battery over the course of one hour.

11. On the supply side, they propose (and third parties have agreed) that while cell batteries and monoblocs are manufactured using essentially the same technology, chemistry and raw materials, the production processes differ.
12. This assessment therefore has regard to the impact of the merger on the supply of each of cell batteries and monoblocs separately – and also on the supply of chargers.

### **Chargers**

13. Within lead-acid batteries, the chemical reaction that produces the electrical current is reversible. By applying current to the battery at the correct voltage using a charger, lead and lead dioxide re-form on the plates and the sulphuric acid within the electrolyte solution is re-concentrated. This restores the battery cells to a point that allows for the chemical reaction that produces electrical power to begin again. Although the re-charging process can be re-applied effectively time and again over the course of a number of years – typically between three and five years depending on usage – the battery unit eventually comes to the end of its useful life. The operational life-span of the machinery that draws power from a motive battery, however, is often twice as long as that of the battery itself. Most machines will therefore require a replacement battery at least once during their lifetime.
14. Motive batteries may be sold with chargers if this is required. Chargers have an operational lifespan that exceeds the working life of a re-chargeable battery. Sometimes a purchaser has no need of an additional compatible charger with every purchase of a new battery. However third party responses suggest that where the additional cost of the charger is marginal, purchasers will usually buy both.

### **Geographic frame of reference**

15. Previous decisions taken by the European Commission<sup>2</sup> and the Bundeskartellamt<sup>3</sup> (BKA) in Germany found the geographic scope for the supply of motive batteries to be EEA-wide and worldwide respectively.
16. The Portuguese Competition Authority has also examined this transaction<sup>4</sup>. Clearance was given on 21 April 2005 in a decision which concurred with the parties' proposal that the relevant geographic market was the EEA.
17. EnerSys currently manufactures motive batteries in plants in Poland, France and Germany, while FIAMM has production facilities in Italy and the UK. Both companies supply motive batteries within the EEA.

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<sup>2</sup> Comp/M.2705 – EnerSys/Invensys/(ESB) – 04/03/2002

<sup>3</sup> B7 – 177/00 – Exide/GNB Technologies – 27/09/2000

<sup>4</sup> Ccent N° 14/2005 – EnerSys/FIAMM/Motive Power – 21 April 2005

18. Imports of motive batteries into the EEA are relatively few. Third party respondents submit that the choice of alternative sources of supply outside the EEA is limited, that delivery lead times are long and that larger buyers, particularly OEMs, are not willing to switch to brands of motive battery that do not have a long-standing reputation.
19. Taking due account of these factors, it is appropriate to consider the impact of the merger on the assumption that the geographic scope for the supply of motive batteries is no wider than the EEA. The competitive impact specifically within the UK will also be considered.

## HORIZONTAL ISSUES

### Market shares – cell batteries, monoblocs and chargers

EU

20. Table one below sets out share of supply data for the above segments in the EU<sup>5</sup> in 2004. It should be noted that BAE went into receivership during 2005 and has since been acquired by the Dutch company, International Battery Group.

**Table one: EU share of supply of motive power batteries and chargers, based on value (2004)**

	<b>Cell batteries</b>	<b>Monoblocs</b>	<b>Chargers</b>
<b>EnerSys</b>	25-35	5-15	15-25
<b>FIAMM</b>	5-15	0-10	0-10
<b>Combined</b>	<b>35-45</b>	<b>10-20</b>	<b>20-30</b>
<b>Exide</b>	35-45	30-40	10-20
<b>Hoppecke</b>	0-10	0-10	0-10
<b>BAE</b>	0-10	0-10	0-10
<b>Midac</b>	0-10	0-10	0-10
<b>Faam</b>	0-10	0-10	0-10
<b>Others</b>	0-10	35-45	50-60
<b>Post merger HHI (increment)</b>	3948 (614)	1562 (105)	844 (99)
<b>Total estimated value of supply (000 Euros)</b>	550,000-600,000	40,000-60,000	100,000-120,000

Source: EnerSys

21. On the basis of these 2004 estimates, EnerSys's post-merger share of the supply of cell batteries amounts to some 35-45 per cent and reinforces its position as the second largest supplier in the EU. Of the increment provided by FIAMM, some 80 per cent is provided from its facility in Italy and the remaining 20 per cent from its plant in South Wales. Exide

<sup>5</sup> EnerSys submits that EEA figures are not available but are not believed to be significantly different from the data provided in the table. Given that the EEA is nonetheless a larger geographic scope than the EU, the figures may be an exaggeration of the shares of supply that would pertain to a wider EEA frame of reference.

and EnerSys/FIAMM accounted for some [75-85] per cent of EU sales in terms of value, while the third largest player, Hoppecke, had around [5-15] per cent. The number of alternative suppliers appears small. Post-merger HHI figures exceed 3000 (the increment is over 500) and point to an increase in an already concentrated market.

22. The ‘monoblocs’ and ‘chargers’ segments are much less concentrated, and the combined shares of the merged parties were about [10-20] per cent and [20-30] per cent respectively. Exide is again the major rival and the smaller players’ combined shares of supply – at over 40 per cent in each case – indicate a continuing and significant competitive constraint on the merged entity. No competition concerns are evidenced in either of these segments.

UK

**Table two: UK Share of supply of motive power batteries and chargers, 2004 based on value**

	<b>Cell batteries</b>	<b>Monoblocs</b>	<b>Chargers</b>
<b>EnerSys</b>	15-25	5-15	20-30
<b>FIAMM</b>	5-15	5-15	5-15
<b>Combined</b>	<b>25-35</b>	<b>10-20</b>	<b>30-40</b>
<b>Exide</b>	50-60	50-60	35-45
<b>Hoppecke</b>	5-15	0-10	5-10
<b>Other</b>	0-10	20-30	10-20
<b>Post merger HHI (increment)</b>	4007 (487)	3455 (131)	2897 (451)
<b>Total value of supply (000 Euros)</b>	60,000-65,000	5,000-10,000	10,000-15,000

Source: EnerSys

23. Table two above outlines the parties’ and their competitors’ UK shares of supply in the relevant segments. Relative to the EU, shares of the supply of cell batteries in the UK appear to be no less concentrated overall. EnerSys/FIAMM, Exide and Hoppecke, the three major players post-merger, accounted for over [90-100] per cent per cent of the total UK supply in 2004, of which Exide had more than half. The parties to the merger accounted for [25-35] per cent of UK supply – less than their EU shares.
24. As is the case in the EU, the shares of supply of monoblocs and chargers in the UK are more fragmented and a number of other smaller players remains whose combined sales in 2004 amount to appreciable shares of supply.
25. Overall, however, prima facie concerns exist as a result of the significantly increased concentration in the manufacture of cell batteries at both the EU and the UK levels.

26. We therefore proceed to assess the scope for the remaining suppliers to align their prices upwards. Such a general price increase might take effect as a result of (a) a unilateral commercial decision taken by one of the suppliers, or (b) the capacity within the oligopoly to co-ordinate pricing behaviour.
27. The BKA had due regard to the impact of market structure on the possibilities for price co-ordination in its Exide/GNB Technologies decision in 2000 (see footnote 3 above). It concluded that, due largely to the disciplinary effect of the buyer power of fork lift truck manufacturers and the sufficiency of alternative sources of supply, the majority of customers did not see any threat to competition. The BKA also discounted the possibility of the creation or strengthening of a collective dominant position between Exide and EnerSys on the basis of prevailing market conditions. There is no reason to believe that these factors are not also relevant in the present case.
28. Two other principal factors must be borne in mind when considering substantial increments in shares of supply and concentration set out in tables one and two above.
29. The first is that there is no evidence that FIAMM had been a significant player in the supply of cell batteries to larger customers – particularly OEMs.<sup>6</sup> According to EnerSys, most OEMs at the European level did not source cell batteries from FIAMM but primarily procured from EnerSys, Exide and (to a lesser extent) Hoppecke. Information supplied to the OFT by customers supports the submission that FIAMM has been largely unsuccessful in obtaining sales to larger OEM customers elsewhere in Europe<sup>7</sup> and had not been perceived by such customers to be in competition with EnerSys prior to the merger.
30. The second is that there is evidence of smaller ('non-OEM') customers, including those who purchase replacement batteries, switching between the two largest suppliers (EnerSys/FIAMM and Exide) and a number of smaller manufacturers. Non-OEMs are principally distributors of industrial batteries, or smaller end-users who tend to purchase cell batteries on a relatively infrequent basis. The figures for 2004 indicate that smaller manufacturers had about a 15 per cent share of the supply of cell batteries overall – regardless of whether the sales were made to large or small customers. However, EnerSys' submission that sales to non-OEMs are fluid and that switching barriers are low is supported by a review of EnerSys/FIAMM's 2004/05 half year sales figures. These demonstrate that non-OEM customers are sourcing supplies of cell batteries from smaller manufacturers, some of which have presented themselves as viable sources of supply since 2004. These include Hoppecke in Germany, TAB<sup>8</sup> in Slovenia, FAAM SpA and Midac SpA in Italy, Germanos SA in Greece and Espex in India.

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<sup>6</sup>With the exception of OEMs in Italy, FIAMM's home market

<sup>7</sup> Possible exceptions are FIAMM's sales in the UK of (a) non-standard cell-batteries to a 'specialist' manufacturer of fork-lift trucks, and (b) standard cell batteries to a UK distributor who undertakes the installation of cell batteries as part of the resale service it provides to its customers and its own principal OEM supplier.

<sup>8</sup> Tovarna Akumulatorskih Baterij

31. On the basis that:

- a. the supply of cell batteries is subject to the disciplining effect of considerable buyer power
- b. OEM's did not perceive FIAMM to be a viable competitor prior to the acquisition by EnerSys
- c. the commercial behaviour of the two largest suppliers of cell batteries to non-OEMs is subject to the constraint posed by the ability of smaller manufacturers to effect sales to such customers and accumulate shares of supply,

the available evidence does not sustain a reasonable belief, objectively justified by relevant facts, that there is a realistic prospect of a substantial lessening of competition as a result of this merger.

### **Barriers to entry and expansion**

32. Sales of cell batteries to large OEMs (principally fork lift truck manufacturers) account for the majority of the overall supply. FIAMM's past lack of success in achieving sales to customers in this segment could suggest that entry barriers are high. The parties submit that this is partly attributable to a perception on the part of the OEMs' end customers of commercial risk in sourcing cell batteries from manufacturers who have not established a long-standing reputation. However, there is evidence of some OEMs having recently facilitated the growth of smaller manufacturers by procuring cell batteries from them and re-branding the units with proprietary labels. Examples of this are Jungheinrich sourcing cell batteries from FAAM, and Still (part of the Linde group) sourcing from Midac.
33. The available evidence of non-OEM customers switching between suppliers indicates that sales are fluid and that barriers to expansion in this sector are reasonably low.

### **Buyer power**

34. Large OEMs enjoy substantial buyer power in the form of volume discounts. Increasingly, they are also benefiting from extra leverage as a result of developing their own brands of cell battery. The parties submit that this has led to a reduction in the value that the OEMs' end-customers placed on both the EnerSys and Exide brands.
35. The available evidence indicates that non-OEMs' lack of sensitivity to brands and their willingness to purchase from alternative manufacturers is of itself a negotiating lever.

### **VERTICAL ISSUES**

36. The merger does not give rise to any vertical issues.

### **THIRD PARTY VIEWS**

37. The OFT received responses from one competitor and a number of (mainly small) customers. Concerns raised were followed up and provided evidence of switching to fringe manufacturers.

### **ASSESSMENT**

38. EnerSys and FIAMM overlap in the manufacture and sale of motive batteries, including cell batteries which are particularly suited to powering fork lift trucks and other warehouse vehicles.
39. Based on the share of supply estimates for 2004 as they apply to both the EU and the UK, the pre-merger supply of cell batteries was already concentrated and the merger – of the second and third largest suppliers – significantly increases concentration of market shares.
40. However, market shares are not definitive indicators of the impact of this merger on competition.
41. The supply of cell batteries to the large OEM segment is characterised by considerable buyer power. In any case, FIAMM does not appear to have been a significant player in the supply of cell batteries to these larger customers. In the non-OEM segment, customers switch readily between cell batteries produced by both large and small suppliers.
42. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

### **DECISION**

43. This merger will therefore not be referred to the Competition Commission under section 22(1) of the Act.