

***Case No COMP/M.5697 -  
ALSTOM HOLDINGS/  
ALSTOM HYDRO  
HOLDING***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 13/01/2010

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EUROPEAN COMMISSION

Brussels, 13.01.2010

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

**To the notifying party:**

Dear Sir/Madam,

**Subject: Case No COMP/M.5697 - ALSTOM HOLDINGS/ ALSTOM HYDRO HOLDING  
Notification of 30 November 2009 pursuant to Article 4 of Council Regulation No 139/2004<sup>1</sup>**

1. On 30 November 2009, the Commission received a notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004 by which the undertaking ALSTOM Holdings ("ALSTOM", France) acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of the whole of the undertaking ALSTOM Hydro Holding ("ALSTOM Hydro", France), currently jointly controlled by ALSTOM and Bouygues SA, by way of purchase of shares.

**I. THE PARTIES**

2. ALSTOM Holdings, incorporated in France, is the wholly-owned holding company of ALSTOM (société anonyme), a company listed on the Paris Stock Exchange. The ALSTOM Group ("ALSTOM") is an international group of companies mainly active in the manufacture of equipment and the provision of services for power generation and rail transport.

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

3. ALSTOM Hydro is currently a joint venture company (50%-50%) between ALSTOM and Bouygues SA ("Bouygues") created in 2006. ALSTOM hydro is active in the market for hydropower solutions and services.

## **II. CONCENTRATION**

4. In its decision of 11 May 2006 in case M.4237, the Commission decided that ALSTOM was under de facto sole control of Bouygues.
5. ALSTOM now considers that Bouygues no longer de facto controls ALSTOM in view of the voting patterns of Bouygues in ALSTOM's General Meetings since 2006. The parties submitted that: (i) it is no longer likely that Bouygues will achieve a majority at the shareholders' general meeting given the higher attendance of minority shareholders at the meetings in 2007, 2008 and 2009; (ii) the likelihood that Bouygues will acquire significantly more shares and/or will be able to cast significantly more votes at the shareholders' meeting is low; (iii) Bouygues with two out of the twelve directors does not hold a blocking majority at the Board of Directors. On the basis of the information submitted by the parties it appears that Bouygues no longer exercises control over ALSTOM. Therefore, the operation described in the following paragraph does not qualify as an intra-group restructuring but as a notifiable concentration.
6. Article 6 of the Joint Venture Agreement between Bouygues and ALSTOM imposes an obligation on ALSTOM to purchase the shareholding of Bouygues if Bouygues sends a notice of its intention to exercise such an option. Bouygues formally notified ALSTOM of the exercise of its exit option on 25 November 2009. Therefore ALSTOM would acquire the whole shareholding currently held by Bouygues and the proposed transaction constitutes a concentration within the meaning of Article 3 of the EC Merger Regulation.

## **III. COMMUNITY DIMENSION**

7. The notified concentration does not meet the turnover thresholds of Article 1(2) and 1(3) of the Merger Regulation.
8. On 26/10/2009, the Commission received from the parties a referral request pursuant to Article 4(5) of the Merger Regulation which has been transmitted to all Member States. Since no Member State has expressed its disagreement as regards the request to refer the case to the Commission, the concentration is deemed to have a Community dimension.

## **IV. RELEVANT MARKETS**

9. ALSTOM provides ALSTOM Hydro with control systems and excitation for larger hydropower plants (over 30MW per unit). ALSTOM sells similar systems to customers for other power generation systems (e.g. coal and gas power plants).

### *PRODUCT MARKET DEFINITION*

10. In the Commission's decision of 13 July 2005 in the *Siemens/VA Tech* case, which is the most recent decision in this sector, the Commission held that the relevant product market was the market for "*equipping of hydroelectric power stations*"<sup>2</sup> due to the considerable supply-side substitutability, the trend for joint tenders for both electrical

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<sup>2</sup> Case No COMP/M.3653 - Siemens/VA Tech, Commission decision of 13 July 2005, at paragraph 20.

and mechanical components in the EEA and the variation in product packages required by customers.

11. In previous decisions such as *ALSTOM/ABB*<sup>3</sup> in 1999 and *Voith/Siemens*<sup>4</sup> in 2000, the Commission had distinguished between mechanical equipment (hydraulic turbine) and electrical equipment (electrical generator, control systems, excitation<sup>5</sup>) due to the lack of demand and supply side substitutability. ALSTOM agrees with the market definition reached by the Commission in *Siemens/VA Tech*. The parties submit that in the vast majority of tenders for hydropower plants, electrical equipment (control systems and excitation) are supplied together with other equipment (e.g. turbines and generators) as part of a turnkey solution. The parties also submit that all major competitors in the market supply the whole range of equipment and services required for a hydropower plant, including control systems and excitation.
12. However, the market definition can be left open as on any narrower market, the concentration will not give rise to competition concerns.

#### *GEOGRAPHIC MARKET DEFINITION*

13. In the decision in the *Siemens/VA Tech* case, the Commission decided that the relevant market was EEA wide due to the structure of supply and the absence of credible Asian competitors on the EEA market. The parties consider that the market can now be more appropriately defined as worldwide due to the penetration in the EEA by Chinese competitors over the last few years.
14. However, it is not necessary to reach a conclusion on definition of the geographic market, as the concentration would not raise competition concerns on either an EEA or a worldwide market.

#### **V. COMPETITIVE ASSESSMENT**

15. ALSTOM Hydro does not supply ALSTOM with any products or services.
16. Control systems represent roughly less than 5% of the total cost of equipment for a new power plant (excluding civil works). Excitation represents around [0-5]% of the total cost of equipment for a new power plant (excluding civil works). ALSTOM does not manufacture control systems and excitation, it performs engineering, software programming and integration on standard industrial materials sourced from external suppliers in order to provide a complete set of plant control software. ALSTOM Hydro does not have core competence in control systems and excitation and only sells control systems and excitation because it is necessary to do so in order to service fully the hydropower market.
17. In the alternative where electrical and mechanical equipment are considered separately, vertically affected markets would arise as in 2008 ALSTOM had a market share of

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<sup>3</sup> Case No COMP/M.1484 of 27 April 1999.

<sup>4</sup> Case No COMP/M.1793 of 29 February 2000.

<sup>5</sup> Excitation (or exciter) is a device that produces the initial current flow necessary for the larger generator field to function.

around [30-40]% for control systems and [40-50]% for excitation<sup>6</sup>. However, it must be noted that the market for hydropower equipment is a bidding market and market shares vary significantly from one year to the next – in the previous years ALSTOM Hydro had lower market shares - in 2007 ALSTOM Hydro had [5-10]% in control system and [10-20]% in excitation and in 2006 ALSTOM Hydro had [10-20]% in control systems and [20-30]% in excitation.

18. Irrespective of the market shares of the parties in the affected markets, the transaction is unlikely to give rise to any anti-competitive effects for the following reasons:

- the transaction is a change from joint to sole control and ALSTOM's market position for hydro activities will not change;
- ALSTOM also submits that there will be no change to the current structure of supply of control systems and excitation as ALSTOM Hydro already sources all of its excitation and control systems requirements from ALSTOM on an intra-group basis and would continue to do so after the proposed transaction;
- the equipment sourced from ALSTOM represents, as mentioned above, a small proportion of the overall hydropower equipment market in terms of relative cost and business;
- a number of other players in the hydropower equipment market are either already integrated for supply of control systems and excitation (Andritz) or have a cooperation agreement with a preferred supplier [...].

## VI. CONCLUSION

19. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission  
(signed)  
Neelie KROES  
Member of the Commission

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<sup>6</sup> The parties submit that they don't trace separately the sales of control system and excitation, As new control systems are most commonly supplied with turbines and/or generators or as part of a turnkey solution, ALSTOM has provided shares for turbines and generators, including turnkey projects, as a proxy for the shares for control systems. Excitation is almost always supplied with generators and therefore shares for generators adequately reflect the share for excitation