

***Case No COMP/M.2443 -  
E.ON / POWERGEN***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 23/11/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23/11/2001 \* 292320

**SG (2001) D/293220**

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

**To the notifying parties:**

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Dear Sir/Madam,

**Subject: Case No COMP/M.2443 - E.ON/POWERGEN  
Notification of 19 October 2001 pursuant to Article 4 of Council  
Regulation No 4064/89<sup>1</sup>**

1. On 19.10.2001, the Commission received a notification of a proposed concentration by which the German undertaking E.ON AG ("E.ON") acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the British undertaking Powergen PLC ("Powergen").
2. The Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market.

**II. THE PARTIES AND THE OPERATION**

3. E.ON, which results from the merger between VEBA AG and VIAG<sup>2</sup>, is a vertically integrated energy company, mainly active in Germany and also present, through the

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<sup>1</sup> OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

<sup>2</sup> Cases COMP/M.1673 – VEBA/VIAG and COMP/ECSC.1321 – VEBA/VIAG.

recent acquisition of Sydkraft AB<sup>3</sup>, in Sweden. E.ON is primarily active in the generation, distribution and supply of electricity, as well as in the supply of gas, water, chemical products, and oil; as well in the provision of telecommunications services and real estate management.

4. Powergen is an integrated electricity and gas company, primarily active in the UK and the USA. Its main activities in the UK are the generation, distribution and supply of electricity and supply of gas, as well as the provision of telecommunications services to both domestic and business customers.
5. The operation consists of the acquisition by E.ON of full ownership and sole control over the whole of Powergen, through the acquisition (by means of a recommended cash offer) of all the issued and to be issued share capital of the target company.

### **III. COMMUNITY DIMENSION**

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>4</sup>. Each of E.ON and Powergen have a Community-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

### **IV. COMPETITIVE ASSESSMENT**

#### **Markets involved in the concentration**

7. According to the information provided by the notifying party, following definitions retained by previous Commission's decisions<sup>5</sup>, the supply of electricity, as well as energy trade (electricity/gas) and supply of gas would constitute the relevant product markets concerned by the proposed transaction.
8. The notifying party refer to the Commission's previous<sup>6</sup> practice when stating that the geographic scope of the above-mentioned relevant product markets is not wider than national, although they also point out that energy trading in the Nordic countries may be wider in its geographic scope.

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<sup>3</sup> Case no. COMP/M.2349 - E.ON/Sydkraft.

<sup>4</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

<sup>5</sup> Cases COMP/M.1673 – VEBA/VIAG; IV/M.2349 – E.ON/Sydkraft; IV/M.1169 – EDFI/Grange; IV/M.1231 – IVO/Stockholm Energi; IV/M.1346 – EdD/London Electricity; COMP/M.1659 - Preussen Elektra/EZH; IV/M.1606 – EdF/South Western Electricity; COMP/JV.36 – TXU Europe/EdF; COMP/M.2209 – EdF/Cottam Power Station; COMP/M.1803 – EdF/Louis Dreyfus; COMP/M.1803 – Electrabel/EPON.

<sup>6</sup> Cases COMP/M.1673 – VEBA/VIAG; IV/M.2349 – E.ON/Sydkraft; COMP/M.2209 – EdF/Cottam Power Station; IV/M.1169 - EDFI/Grange; IV/M.1231 – IVO/Stockholm Energi; COMP/M.1803 – Electrabel/EPON.

9. It must be noted in this respect that for the purposes of the present transaction, given that the proposed operation does not raise serious doubts irrespective of market definition chosen, the question on how to exactly define the relevant product markets can be left open.

#### ***Compatibility with the common market***

10. It can be concluded from the information submitted by the notifying parties that their activities do not overlap in any of the EEA countries where E.ON and Powergen are present, with the exception of electricity trading in the Nordic markets and the Netherlands.
11. Both E.ON and Powergen are present in the Nordic (Denmark, Finland, Norway and Sweden) electricity trading market, where their combined market share accounts for 9.1% (E.ON, 7.56%; Powergen, 0.4%). Furthermore, E.ON is active in the Dutch electricity trading market, with a 22.5% market share, having Powergen entered the market this year through two small trades accounting for less than 0.01%. In turn, only Powergen operates in the UK gas trading market (4-5%) and in the Zeebrugge gas trading market (5-8%).
12. As to the Nordic electricity trading market is concerned, both parties are present in it. However, their combined market share (9.1%) would not lead to a horizontally affected market in the meaning of section 6 of Form CO. Furthermore the increase in E.ON's current market share to be contributed by Powergen would be minimal (0.4%), with the operation not substantially modifying E.ON's pre-merger position.
13. With regard to the Dutch electricity trading market, it is true that the proposed transaction would give rise to an affected market, with a combined share going beyond the 15% threshold legally provided for. However, Powergen's contribution to this position would be negligible (less than 0.01%), thus representing no significant change in E.ON's existing position; furthermore, the market volume appears to significantly increase by up to 50% in 2001, according to the notifying party's estimates.

#### **V. CONCLUSION**

22. 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 (EEC) No 4064/89.

For the Commission  
**(Signed)**  
Mario MONTI  
Member of the Commission