

***Case No COMP/M.2586 -
CE / YORKSHIRE
ELECTRIC***

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

Article 6(1)(b) NON-OPPOSITION
Date: 17/09/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17/9/2001
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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.2586 – CE Electric / Yorkshire Electricity
Notification of 16/08/2001 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 16 August 2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertaking CE Electric (“CE”) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Yorkshire Power Group Ltd (“YPG”).
2. After examination of the notification, 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.

I. THE PARTIES AND THE OPERATION

3. CE is the holding company for Northern Electricity plc (“Northern”) which distributes electricity in Northeast England and supplies electricity across the UK. CE is also active in the exploration and development of natural gas in the southern basin of the North Sea. More than half of the shares of CE are owned by the MidAmerican Energy Holdings

¹ 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).

Company (“MEHC”) which is active *inter alia* in generating, transmitting, distributing and selling electricity and natural gas in the USA.

4. YPG distributes electricity in the Yorkshire region and also supplies electricity across the UK. The vendor, Npower Yorkshire Limited, is a wholly owned subsidiary of Innogy plc (“Innogy”).
5. The notified operation is the acquisition by CE of 94.75% of the issued share capital of YPG. This operation is part of a wider transaction between CE and Innogy, which also involves the acquisition by Innogy of CE’s electricity supply business. This second operation does not have a Community dimension.

II. CONCENTRATION

6. Since the remaining 5.25% of the shares of YPG are held by an American company which does not enjoy sufficient contractual or other rights to exercise decisive influence over YPG, the acquisition by CE of the 94.75% stake will procure sole control of YPG and its subsidiaries. The proposed operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion². Each of CE and YPG have a Community-wide turnover in excess of EUR 250 million, but they do not both 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

Relevant Product Markets

8. The core activity of the distribution businesses is the maintenance and operation of the distribution networks which are used to transmit electricity from the national high voltage transmission network (the National Grid) to its point of consumption. These distribution networks constitute the low-tension local cables, switchgear, transformers and other associated assets, which enable electricity to be transported from nodes on the transmission network to its point of consumption.
9. In a number of previous cases³, the Commission has examined the electricity sector in the UK, and found that the distribution of electricity represents a separate product market. As there are no alternative methods by which electricity can be delivered to its end-users, this conclusion remains valid.

² 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.

³ See for example, IV/M.1346 – EdF/London Electricity and COMP/M.1949 – Western Power Distribution/Hyder

10. The operation also affects the provision of new connection services, connecting new premises to the existing electricity distribution network. Traditionally these services have been provided by the incumbent distribution company, and it was only following consultation with the UK electricity regulator (then OFFER, since renamed Ofgem) in 1995 that some areas of connection work were opened to competitive providers. The question therefore arises whether a market has developed for the supply of connection services, or indeed for the different services which together constitute connections services. For the purposes of the current decision, these questions can be left open since the proposed operation would not create or strengthen a dominant position on any such market.

Relevant Geographic Markets

11. Previously, the Commission has considered that the geographical scope of the electricity distribution markets was regional, determined by the geographical scope of the Public Electricity Supplier (PES) licenses under which the companies operate. There is no substitution between networks, although access to these networks is available to any other supplier selling electricity to customers located in the Authorised Area covered by a given PES's distribution network⁴. Electricity suppliers who wish to supply electricity to any particular customer have no choice as to who distributes the electricity they supply.
12. The current operation will lead to the control by a single entity of two neighbouring distribution companies. There are currently two points of direct interconnection between the two systems. One is an extra high voltage link (the Ferrybridge ring) which is used to distribute electricity to customers in both the Yorkshire and Northern areas. This represents approximately 5% of Northern's total network capacity. Furthermore, there is a dedicated distribution line from Northern's authorised area to a site in Yorkshire's authorised area and Yorkshire provides a back-up connection in case of failure of Northern's system. Neither of these connections is, by itself, sufficient to enable the combined entity to operate as a single system.
13. For the purposes of this decision it is not necessary to decide whether or not the geographic scope of the market will change as a result of the current operation, since, however the geographic market is defined, the operation will not create or strengthen a dominant position.
14. The market for the supply of new connections has recently been opened to competition. In the past it was a regional monopoly for the regional distribution company. The market is now in transition and it seems likely that in the future it will be subject to competition on a national basis.

Effect on Competition

Distribution of electricity

15. The concentration will combine YPG's distribution of electricity in the Yorkshire region with that of CE in the Northern region. Although the two distribution systems are neighbouring, they will continue to be operated as separate systems. There will be no, or

⁴ See for example, JV.36 – TXU Europe/EdF-London

at least no significant, loss of competition compared to the pre-merger situation. The operation will therefore neither create nor strengthen any dominant positions on the regional markets for the distribution of electricity.

Provision of new connection services

16. There are many potential suppliers (including the other distribution companies and independent suppliers) to the connections business in the Northern area. YPG is one. Similarly Northern is a potential supplier in the YPG area. The removal of one potential competitor will not, in the circumstances, significantly change the competitive situation.

V. CONCLUSION

17. 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

Mario MONTI
Member of the Commission