

***Case No COMP/M.2701 -
VATTENFALL / BEWAG***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 04/02/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, **04/02/2002**
SG(2002) D/228354

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties:

Dear Sir/Madam,

Subject: Case No COMP/M.2701 – VATTENFALL/BEWAG
Notification of 03 January 2002 pursuant to Article 4 of Council Regulation No 4064/89¹

1. On 03.01.2002, the Commission received a notification of a proposed concentration by which the Swedish undertaking Vattenfall AB (“Vattenfall”) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the German undertaking Berliner Kraft- und Licht Aktiengesellschaft (“Bewag”).
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. Vattenfall is an energy group with activities mainly in the Nordic region, Germany and Poland. Its activity comprises electricity generation, distribution and trade, production of heat and the provision of energy solutions for customer communications and other applications.
4. Bewag is mainly active in electricity generation, distribution and trade in Germany, provision of district heat in the Berlin area.

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).

5. By the proposed transaction, Vattenfall will acquire sole control of Bewag. Prior this transaction, Vattenfall has held a co-controlling interest through the German undertaking Hamburger Elektrizitätswerke (“HEW”) in Bewag.

III. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (accounts of year 2000: Vattenfall: EUR 8.4 billion, Bewag: EUR 1.9 billion). Each of Vattenfall and Bewag have a Community-wide turnover in excess of EUR 250 million (Vattenfall: EUR [...] million, Bewag: EUR [...] 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 the Commission’s decision practice, the supply of electricity, as well as trade of electricity, and supply of district heat would constitute the relevant product markets concerned by the proposed transaction.
8. The notifying party suggests the geographic scope of the electricity activities being of EEA-wide. In the Commission’s previous³ practice the view was taken that in the market of supply of electricity at interconnected level the geographic scope is not wider than national. For electricity-trading activities, the geographic scope may be wider than national.
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 geographic market definition chosen, the question on how to exactly define the relevant geographic markets can be left open.

Compatibility with the common market

10. It can be concluded from the information submitted by the notifying party that the activities of Vattenfall and Bewag overlap in Germany. Both, Vattenfall, i.e. through its controlling stake in HEW and thereby in the German undertaking Vereinigte Energiewerke AG (“Veag”), and Bewag carry out supply and trading activities in electricity.

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

11. On the market for supply of electricity at interconnected level in Germany, i.e. supplying regional distributors, traders and large industrial customers, Vattenfall has a market share of approximately [between 10 and 20%], being contributed by Veag of [between 10 and 15%] and HEW of [< 5%]. Bewag achieves approximately [< 5%]. The combined market share of the new entity would amount to approximately [between 15 and 25%]. Main competitors in Germany are E.ON with a market share of approximately 32%, RWE/VEW with approximately 36%, and Energie Baden-Württemberg with approximately 10%. In view of the presence of these strong competitors, the proposed operation would not lead to the creation or strengthening of a dominant position in the German market.
12. The parties to the proposed operation also supply electricity to consumers with low consumption, e.g. households and small enterprises, so-called tariff clients. When considering the geographic scope being national, only HEW and Bewag supply electricity to this customer group, each having a market share of approximately [< 5%]. The combined market share of the new entity would add up to approximately [between 5 and 10%]. The market is quite fragmented, i.e. after liberalisation numerous newcomers entered into this market, however, none of them having achieved market shares of substantial size.
13. On the market for trade of electricity, both Vattenfall and Bewag are present among other major European electricity utilities. Bewag's trading volume amount to approximately [...] TWh, which calculates to a market share of approximately [< 5%] when considering the area of Germany and mainly the Benelux, Austria and Italy. Vattenfall has a trade volume of approximately [...] TWh, which represents a market share of approximately [< 5%]. In view of these low levels of volumes traded by the parties, the proposed operation would not lead to the creation or strengthening of a dominant position on the trading market.
14. Apart from electricity, the proposed operation would have overlapping activities in the sector of production and distribution of district heat. HEW and Bewag carry out these operations in their "domestic" region, i.e. for HEW the wider city area of Hamburg and that for Bewag in Berlin. The market share would add up to approximately [between 5 and 10%] when considering Germany as the relevant geographic market.

V. CONCLUSION

15. 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