EN

Case No COMP/M.2780 - GE WIND TURBINES / ENRON

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 30/04/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party

Dear Sirs,

Subject: Case No COMP/M.2780 – GE/Enron Wind Turbine Business

Notification of 02.04.2002 pursuant to Article 4 of Council Regulation No 4064/89

1. On 02.04.2002**,** the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89[2] ("The Merger Regulation) by which the undertaking General Electric (GE) proposes to acquire sole control of the Wind Turbine Business of Enron within the meaning of article 3 (1) (b) of the aforementioned Council Regulation, through the purchase of assets.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

[2] OJ L 395, 30.12.1989 p.1; corrigendum OJ L 257 of 21.9.1990, p. 13, 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).

THE PARTIES

3. GE (US) is a diversified industrial corporation active in fields including aircraft engines, appliances, information services, power systems, lighting, industrial systems, medical systems, plastics, broadcasting (through the NBC media channel), financial services and transportation systems.

4. Enron is a US Corporation and debtor-in-possession under Chapter 11 of the US bankruptcy code administered by the US Bankruptcy Court for the Southern District of New York. The Wind Turbine business of Enron ("Enron Wind") is involved in the development, manufacture and supply of wind turbine products.

THE OPERATION

5. GE has entered into a Purchase and Sale Agreement (the Agreement) whereby, acting through its GE Power Systems Business (GEPS), it proposes to purchase the Wind Turbine Business conducted by Enron and defined in the Agreement. Therefore the proposed operation constitutes a concentration within the meaning of Article 3 (1) (b) of the Merger Regulation.

COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5,000 million[3] (for the year 2001, EUR 141,023 million for GE and EUR [….] million for Enron Wind). Both GE and Enron Wind have a Community-wide turnover in excess of EUR 250 million (for the year 2001, EUR [….] million for GE and EUR [….] million for Enron Wind). The notified operation therefore has a Community dimension.

RELEVANT MARKETS

7. Both Enron Wind and GE manufacture and sell turbines, which are machines driven by the pressure, momentum or reactive thrust of steam, water, air or gas against a wheel or rotor. Turbines can be used either to produce electricity or to power mechanical equipment. GE produces turbines of various types and sizes[4], but not wind turbines. Enron Wind only produces wind turbines. [5]

8. The parties submit that wind turbines are distinguishable from all other types of turbines by reason of their technical characteristics, availability and reliability. Wind is a

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[3] Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 02.03.1998, p. 25). To the extent that figures include turnover for the period before 01.01.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

[4] GE produces aeroderivative gas turbines (< 10 MW), large gas turbines (10 MW – 480 MW), steam turbines (150 MW – 1350 MW), generators (25 MW – 1400 MW) and hydro power generation products (1 MW – 800 MW).

[55] The Commission has considered the issue of substitution between various types of turbines in a number of cases (Case N° IV M. 440 GE/Nuovo Pignone of 6.5.1994, Case N° IV/M.1404 GE/Alstom of 1.06.1999) on the basis of unit size, fuel, environmental requirements and operating conditions but left the relevant product market definition open.

renewable form of energy which needs to be distinguished from fossil fuelled or nuclear power generation applications.

9. The market investigation has confirmed that, at present, wind turbines can be distinguished from other forms of power generation. From the demand side point of view, wind turbines require different operating conditions driven by the availability of wind. Hence, the selection of wind power is dependent on the availability of a site situated in an area with appropriate climatic condition. The lack of reliability of wind as a power source therefore implies that wind turbines are generally used for power production in circumstances where continuous power generation is not essential or can be compensated by other generation sources on a power grid. Differences in the relative cost of electricity generation are an important factor in differentiating wind power from other forms of power generation. Indeed, it also appears from the Commission's market investigation that currently the choice for wind is heavily influenced by regulatory conditions and related subsidy mechanisms. Therefore, for most customers wind energy is not a substitute for other forms of power generation. As indicated by the market investigation, there have been no occasions in the past where wind turbines have bid against other turbines or generators for power generation projects. Equally, the Commission's preliminary investigation has not revealed any obvious trends towards convergence between wind turbines and other forms of power generation. Finally from a supply side point of view, the production of wind turbines is based on technology and equipment that is different from those used for other power generation equipment.

10. In any event, it can be left open whether wind turbines is a market in itself since, even if wind turbines were considered to be part of a larger market for all or some power generation equipment, this would not materially affect the assessment of the notified concentration

Geographic Market Definition

11. The parties submit that the relevant geographic market is global on the basis that there are no national preferences, brands, regulatory or technical barriers that prevent competition across borders. The market investigation has not provided arguments for considering the market narrower than world wide. However, as the operation does not raise serious doubts as to its compatibility with the common market on the basis of a narrower geographic market, the question of the exact definition of the geographic market can be left open.

Competitive Effects

12. Enron Wind is an important, but not the leading player in the market for wind turbines with a [5-15%] EEA-wide market share ([10-20%] world-wide). On a world-wide basis there are eight companies with large market shares with the Danish company Vestas being the market leader followed by Enron ([10-20%]) Enercon GmbH, [10-20%], NEG Micon [5-15%], AN Bonus Energy [5-15%], Gamesa Eolica [1-10%] (Spain), and a number of smaller companies. On an EEA-wide basis there are also eight competitors with sizeable market shares. The market leader being Enercon [15-25%] followed by Vestas Wind [10-20%], Enron [5-15%], NEG Micon [5-15%], Gamesa Eolica [1-10%], AN Bonus Energy [1-10%].

13. As the market investigation has not pointed to the existence of supply- or demand-side substitutability between Enron's wind turbines and the power generation products produced by GE, it can be concluded that the concentration will not lead to an increase in the combined entities' market share for any of these products. As GE has no presence in the markets upstream or downstream of wind turbines, the transaction also does not raise vertical integration concerns.

14. Even in the unlikely event of a limited degree of substitutability between wind turbines and other forms of power generation equipment, it is to be noted that GE's power generation business is mainly focused on large turbines with a power output far exceeding that of wind turbines. Indeed, the maximum power output of Enron's wind turbines (ranging from 600 kW to 1,5 mw) compares to only the smallest of gas or steam turbines, for which GE holds a market share [….] below 25% (both EEA and world-wide). Finally, as wind turbines currently represent only a minor fraction of the market for turbines used for power generation, it can be concluded that this operation would only lead to a 'de minimis' increase in GE's position on the hypothetical market covering all equipment used for power generation.

15. The only power generation equipment market segment where GE has a market share in excess of 25 % is that for large gas turbines. Although there are no indications of existing supply- or demand-side substitutability, large gas turbines can be considered as a market segment neighbouring to wind turbines. GE has a leading but not uncontested position for large gas turbines ([45-55%] in the EEA) as it faces competitive pressure from several other strong competitors such as Siemens and ABB, (each with market shares above [15-25%]), Alstom, and Mitsubishi Heavy Industry. Furthermore, the analysis of the parties' customer base shows that less [….] of Enron's existing customers are also customers of GE's power generation business. The market investigation shows that it is not common in this industry for utility customers to buy both wind turbines and other power generation equipment . In the light of the foregoing it is unlikely that GE would be able, as a result of this concentration, to leverage its position for large gas turbines on the market segment for wind turbines.

16. It can therefore be concluded that the concentration does not give rise to serious doubts as to the creation or strengthening of a dominant position as the result of which competition would be significantly impeded in the common market or in a substantial part of it.

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 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