

***Case No COMP/M.2890 -
EDF / SEEBOARD***

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

Article 6(1)(b) NON-OPPOSITION
Date: 25/07/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25/07/2002

SG (2002) D/230939

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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.2890 – EDF/Seaboard
Notification of 25.07.2002 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 24.06.2002 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89² by which the undertaking London Electricity Group plc (“LEG”, U.K.), a company ultimately controlled by Electricité de France (“EDF”, France), acquire within the meaning of Article 3(1)(b) of the Council Regulation sole control of Seaboard plc by way of purchase of all the shares of its parent company CSW Investments (“CSW”, U.K.).

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).

² 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).

I. THE PARTIES

2. LEG is wholly owned by London Electricity Group Holding plc, a subsidiary of Electricité de France UK Limited (“EDF UK”). EDF UK is wholly owned by Electricité de France International SA (“EDF International”), which is itself a wholly owned subsidiary of EDF, owned by the French State. EDF and all its direct and indirect subsidiaries will be referred to as “the EDF Group”.
3. The principal activities of the EDF Group are the generation, the transmission, the distribution and the supply of electricity mainly in France and in other countries through EDF International. It is also active in the electricity trading and in the design, building and technical consultancy regarding the construction, operation and maintenance of electrical plants and power networks. Through specialised subsidiaries it provides waste re-cycling and street lighting services.
4. LEG is active in the generation and the supply of electricity and in the supply of gas in the United Kingdom. LEG holds two licenses of electricity distribution, in London and in Eastern England.
5. CSW is an unlimited company whose ultimate parent is American Electric Power Company, Inc. CSW owns Seeboard Group plc, which is the holding company of Seeboard plc. All references to “Seeboard” hereafter are to be taken to apply to both Seeboard Group and Seeboard plc.
6. CSW, through Seeboard, is active in the generation and supply of electricity and in the supply of gas in the UK. Seeboard holds a licence for distribution of electricity in South East England.

II. THE OPERATION

7. The proposed operation is the acquisition of the entire shareholding of CSW by a newly created company wholly owned by LEG, therefore all the activities of Seeboard will be acquired.

III. CONCENTRATION

8. In the light of the above, it can be concluded that the operation constitutes a concentration within the meaning of the article 3 (1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion³ (EUR 38,248 m for EDF-Group and EUR 1,6 m for CSW) and a Community-wide turnover in excess of EUR 250 million (EUR 36,646 m for EDF and EUR 1,6 m for CSW), 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.

³ 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.

V. COMPETITIVE ASSESSMENT

The electricity sector in the United Kingdom

10. In its previous decisions⁴, the Commission has considered four main activities for the electricity sector in the United Kingdom : generation, transmission, distribution and supply of electricity. The operation will have an impact in all of them except transmission, where the parties are not active.
11. On 27 March 2001 there was a significant change in the structure of the electricity marketing system in England and Wales. This change affects the way generators market the electricity they produce and the way electricity is purchased by suppliers. The New Electricity Trading Arrangements (“NETA”) endeavour to remove distortions in the old Pool system and to make the electricity marketing arrangements operate more competitively than the Pool by allowing participants, including generators, exporters, traders and suppliers, to contract bilaterally in advance for the sale and purchase of electricity.
12. These trading arrangements and the associated balancing and settlement mechanism are limited to England and Wales, as were the previous arrangements for trading electricity in the Pool. With the introduction of the NETA system, the overall electricity market in the UK is similar to other commodity markets. All electricity generated domestically or imported through the Scottish and French interconnectors is transacted through the NETA system. This also applies when the generator and the supplier, or trader, belong to the same group.

Relevant product and geographic markets, assessment

13. Bearing in mind the different physical stages described above, and following the introduction of the NETA system, the operation will have an impact in the following markets:

1. Generation / Wholesale

a. Relevant product market

14. The generation of electricity involves the production of electricity at power stations as well as all the electricity physically imported through interconnectors. Generators and exporters bilaterally sell electricity to operators supplying end users (suppliers) or to traders (who will in turn trade it to other traders or sell it to suppliers). In this market, EDF itself exports electricity to England and Wales through the France/England interconnector and holds interests in five power stations through its subsidiary LPC. Seeboard has a 37.5% interest in the Medway power station, whose 675 MW capacity represents 0.9 % of the total capacity in England and Wales.

b. Relevant geographic market

⁴ Case IV/M:1346- EDF/London Electricity; Case COMP/M.1606 – EDF/South Western Electricity; Case COMP/M.2675 - EDF/TXU Europe/West Burton Power Station and COMP/M.2679 – EDF/TXU Europe/24Seven, of 20.12.2001

15. In its previous decisions, the Commission left open the geographic market definition for generation, though it was suggested that it could be England and Wales⁵. As the network is connected to Scotland and France, the market could be broader. However, for the purpose of this decision, as no competition concern arise in the smallest of the potential geographic markets, England and Wales, the definition of the relevant geographic market can be left open.

c. Assessment

16. The market share of the EDF Group for the generation of electricity in England and Wales after the acquisition of Seeboard will be [5-10]%, including the electricity imported through the interconnector with France. This represents an overall capacity of 5,724 MW. Should Scotland be part of the market, the market share would be below [10]%. The EDF Group will face the competition of several competitors active in the market, among which three of them, British Energy, Innogy and Powergen have market shares above 10%. Therefore, the operation does not raise competition concerns on the market for generation.

2. Electricity distribution

a. Relevant product markets

17. Electricity distribution is the conveyance of electricity from the national grid to consumers through a local network. Until October 2001, each of the 12 PES⁶ licensed to supply electricity was also licensed to operate the local distribution network in its authorised area. From October 2001, following enactment of the Utilities Act 2000 in July 2000, the single licence which gave PESs their dual supply/distribution function was divided into two separate licences, one for supply and one for distribution. The holder of a supply licence is prohibited from holding a distribution licence and *vice versa*, although licence holders can belong to the same corporate group. The relevant product market is therefore strictly limited to electricity distribution.

b. Relevant geographic market

18. In its previous decisions, the Commission found that the relevant geographic market for the distribution coincided with the licensed distribution area of each regional electricity company⁷. As the distribution market is still regulated on this regional basis by Ofgem (Office for Gas and Electricity Markets) and there are no alternative methods by which electricity can be delivered to end-users, this conclusion remains valid. LEG holds a license for London and Eastern England, Seeboard for South East England. Therefore in this case, the relevant geographic markets are London, the South West of England and the South East of England.

c. Assessment

⁵ Case IV/M.1346 – EDF/London Electricity of 27.01.1999, Case COMP/M.2675 - EDF/TXU Europe/West Burton Power Station and COMP/M.2679 – EDF/TXU Europe/24Seven, of 20.12.2001

⁶ Public Electricity Suppliers.

⁷ For example: Case COMP/M.2675 - EDF/TXU Europe/West Burton Power Station and COMP/M.2679 – EDF/TXU Europe/24Seven, of 20.12.2001

19. In its own area, each license holder has a monopoly position. However, this market is fully price regulated by Ofgem. There is no overlap between the parties, since each party has its own licensed area. Hence, the operation does not bring about any change to the competitive structure of each of the licensed areas. Therefore, it does not raise any competition concerns.

3. Management and operation of utility network assets

a. Relevant product market

20. Utility network assets comprise the infrastructure by means of which electricity, gas, water and telecommunications services are distributed. The management and operation of those assets comprises the construction of new assets, the maintenance of existing assets and the operation of those assets. Traditionally, the owners of those assets have carried out this work, although these functions can be carried out by independent contractors and companies. Therefore, the parties have indicated that it may be appropriate to consider the provision of management and operation services as a separate product market from the electricity distribution market.

b. Assessment

21. In a previous decision, the Commission has left this issue open⁸. The market investigation in this case has shown, that although companies like 24seven⁹, an LEG subsidiary, have been established in order to provide these services to the network owners, the overwhelming majority of this work is still carried out in-house or from subsidiaries of the parent utility companies. 24seven still provides its services to LEG subsidiaries only, although it was incorporated in April 2000 in view of providing services to other utilities. Therefore, the Commission has concluded that the management and operation of utility network assets can not be regarded as a separate product market at the current stage.

4. Connection works

a. Relevant product market

22. Connection works involve the provision of new assets (e.g. cables or transformers) for the purpose of connecting a new customer to a utility network, the removal of assets from that network, either permanently or temporarily (for example, during repair or replacement of equipment), and the alteration of assets within the network (for example, to upgrade the capacity of the connection). It also includes the restoration of supplies, for example the reconnection of a street-light after its repair or replacement.
23. Ofgem intends to promote competition in this activity which is supposed to be “contestable”, which means that, from an economic point of view, there is no reason to have this activity performed by the distribution monopolist only. Indeed Ofgem allows

⁸ COMP/M.2679 – EDF/TXU Europe/24Seven, of 20.12.2001

⁹ COMP/JV.36 – TXU Europe/EDF London Investments; EDF later on gain whole control in 24seven (COMP/M.2679 – EDF/TXU Europe/24Seven, of 20.12.2001)

for contestable work to be carried out by either the licensee or an approved contractor in accordance with the terms and conditions set down by the licensee in its charging statement. In the case of connection work, it is “contestable” as it can be economically carried out by any service provider such as civil engineering companies. Therefore the question arises, whether the provision of connection work can be regarded as a separate product market from the electricity distribution market.

b. Assessment

24. The market investigation carried out by the Commission has shown that at the present stage, the market is still in a very early development stage. There is very little competition taking place, as the major part of the work is still carried out by the distributors themselves, or partly subcontracted to subsidiaries. Therefore, even if the market is in the process of developing, the Commission does not regard the provision of connection services a separate market at this stage.

5. Metering reading and operation

a. Relevant product markets

25. Meter-related activities involve both, (i) the installation and operation of electricity meters for distribution businesses, which generally own the meters, and (ii) meter reading and associated data processing activities. These activities were in the past provided by PESs to their own supply businesses and to other suppliers. These activities are now opened to competition and Ofgem intends to further promote competition.
26. The services are now often provided by separate companies, even if there is still a majority of distributors which do not have transferred their metering to independent companies. Therefore the parties indicated that meter reading and meter operation should be regarded as two separate product markets. In the course of the market investigation, most of the respondents confirmed the view that meter reading and meter operation have different characteristics as they demand different skills and incur different responsibilities. Skilled people are needed in order to carry out meter operation, while reading can be done by anybody. Moreover, the ultimate goal for reading is to have it fully automated, whereas meter operation will always require a substantial workforce. Therefore, were a metering market to be defined, it should be split in two distinct relevant product markets, meter reading and meter operation.

b. Relevant geographic market

27. As to the geographic scope for meter operation, the notifying party submits that it is at least England, Wales and Scotland, since conditions for providing this service are homogeneous throughout this area. For meter reading, they argue that the skills, technology and resources required are the same throughout Great Britain, which should hence be the geographic market. The market investigation of the Commission confirms this view.

c. Assessment

28. With regard to the metering operations and meter reading, LEG carries out all its activities through its subsidiary ECS Metering Services Limited. Seeboard has subcontracted them to a third company, IMServ, until []. If all these activities were

carried out by LEG after the operation, its market share would be around [10-15]% for both metering operations and meter reading on the national market (i.e. England Wales and Scotland). LEG would face vigorous competition from other companies active in this market including Siemens, which has a market share of [15-20]% in metering operations and [10-15]% in meter reading, IMServ with market shares of [5-10]% and [5-10]% respectively, and electricity distribution companies that have market share of about roughly [5-10]% for both services.

29. As these market shares do not give rise to competition concerns, the question of knowing whether or not meter reading and operations already constitute a separate product market. can be left open for the purpose of this decision.

6. Electricity supply

a. Relevant product market

30. Electricity supply is the sale of electricity to the final customer and includes billing services. Until October 2001, supply was carried out by the twelve PES and, following the introduction of competition into the market, by a number of second-tier suppliers. The new supply licence introduced in October 2001 has replaced the concept of PES and second-tier suppliers with the concept of a single supplier. Any business intending to supply electricity in England and Wales must be licensed to do so, on the terms of Ofgem's standard licence.
31. In previous decisions, the Commission has distinguished between two different product markets: customers with a maximum demand of 100kW and above and customers with a maximum demand below 100kW for regulatory reasons¹⁰ : under the former system, only customers with a demand above 100kW were allowed to freely choose their supplier. However, under Ofgem's new license terms, a distinction is made between domestic and non-domestic customers and now both are free to select their supplier.
32. From the market investigation conducted by the Commission it can be concluded, that the old distinction becomes increasingly meaningless. There are indications that the market could further be subdivided into three categories: domestic customer with only domestic demand, enterprises which do not use "half hourly" tariffs, which are generally small and midsize companies, and enterprises companies which have half hourly tariffs, usually large commercial and industrial. Only the last ones are able to freely negotiate their contracts, while SMEs can economically only be severed on standard terms and domestic customers can not negotiate the terms at all. In addition, sales forces are usually different for each group of customers.
33. Whether the product market for electricity supply should be subdivided along these lines or the old distinction should still be applied could not be clearly established. However, for the purpose of this decision, it is not necessary to conclude on the exact definition of the relevant product markets since this case does not give rise to competition concerns in any of the alternatives.

¹⁰ Case IV/M.1346 – EDF/London Electricity

b. Relevant geographic market

34. As far as the geographic market is concerned, the Commission has previously concluded that the market for electricity supply to small customers (with a demand below 100kW) is regional¹¹. The parties submit that the supply of electricity to small customers in England and Wales as a whole has changed substantially since the date of those decisions, with the result that the geographic scope of this product market is now national, rather than regional. The parties bring in the following arguments : (i) suppliers can now supply customers throughout the country, and do it, as incumbents' market shares have significantly decreased ; (ii) Ofgem abolished in April 2002 price caps which applied to each region ; (iii) the process of changing supplier is straightforward and customers are well informed on their possibility of changing of supplier.
35. The market investigation has confirmed that the market is in the process of becoming national since in all areas of the country there are several suppliers competing. The rate of customer who have switched of supplier is around 35 %, according to Ofgem. However, some regional characteristics remain within the market. First, the prices differ in some regions of the country. For example, according to calculations for an annual bill for standard rate electricity provided by Energywatch, an independent consumer watchdog, the price range in the Seeboard distribution area is for a low user GBP 107 to GBP 182, while in the Swalec distribution area it is GBP142 to GBP 219. For a medium user the range in the Yorkshire distribution area is GBP 196 to GBP 302, while in the Swalec area it is GBP 236 to GBP 317. Second, the incumbents still have high market shares in their historic region. According to a report from Ofgem¹², at September 2001 the average market shares were around 70%. Ofgem's figures from December 2001 indicate a further fall of the average market share to 68%.
36. However, for the purpose of this case, it is not necessary to decide whether the relevant geographic market for the supply of electricity to small customers is regional or national as effective competition would not be significantly impeded.
37. Whether the geographic market for large customers (either above 100kW or non-domestic), is national (i.e. England, Wales and Scotland), or is limited to England and Wales, does also not have to be decided, since effective competition would not be significantly impeded in both cases.

c. Assessment

38. For customers with a demand above 100kW, the combined market share of the parties would be [10-15]% at a national level. These figures do not give rise to competitive concerns since in this market, competition is well developed, with competitors like Powergen, TXU, Scottish and Southern and Innogy having more than 10 % market share.

¹¹ Case IV/M.1346 – EDF/London Electricity; Case IV/M.1606 – EDF/South Western Electricity

¹² Ofgem, November 2001, Review of domestic gas and electricity competition and supply price regulation: evidence and initial proposals, p. 40.

39. If the small customers are considered, the combined market share would be of [15-20]% at a national level (Great Britain), with [5-10]% for the EDF Group and [5-10]% for Seeboard. Innogy, Centrica, TXU and Scottish and Southern have all market shares above 10%. At a regional level, Seeboard supplied [65-70]% of the domestic customers or [65-70]% of the customers if calculated on the basis of a demand below 100kW in the South East of England. This market share would increase by [0-5]% or [0-5]% respectively through the customers served by LEG in this area. In the London area, [65-70]% of the domestic customers (and above 70% of the customers with a demand below 100kW) are served by LEG, whilst Seeboard supplied [0-5]% of the customers (in both calculations). In the South West of England, [70-75]% of the domestic customers (and also above 70% of the customers with a demand below 100kW) are served by LEG, whilst Seeboard supplied less than [0-5]% of the customers. Hence, as a result of the acquisition, there will only be a marginal increase of market shares. Furthermore, since the introduction of full competition in this activity on 24 May 1999, the parties have lost between about [25-30]% (LEG) and [30-35]% (Seeboard) of their previous 100% market shares. This shows that the market is becoming more and more competitive. Therefore there is no strengthening of a dominant position even in the regional markets.
40. Should the market be subdivided into domestic customers, non-half hourly tariffs and half hourly tariffs, the combined market shares in Great Britain of the parties would be [15-20]% for domestic customers, [15-20]% for non-half hourly and [5-10]% for half-hourly. Such numbers do not lead to competition concerns neither.

7. Vertical integration

41. Given that LEG and Seeboard are vertically integrated companies, competition concerns could arise with respect to vertical integration. However, no competition concern has been identified whether in the generation or in the supply markets, and the distribution business is fully integrated. In addition, several competitors of the parties are also vertically integrated and could not suffer from the vertical integration of LEG and Seeboard.

8. Gas supply

a. Relevant product markets

42. The notifying party submits that the supply of gas constitutes a separate product market from the supply of electricity, and this is supported by previous decisions of the Commission¹³. For the purpose of this decision, it is not necessary to define different product markets for large and small or domestic customers since this case does not give rise to competition concerns in any of the alternatives.

b. Relevant geographic market

43. Since the vast majority of the population of Great Britain is served by the natural gas pipe line network, the notifying party considers that the geographical market covers at least England and Wales. For the purpose of this decision, it is not necessary to define

¹³ Case No. IV/M.493 - Tractebel/Distrigaz II, Case No. IV/M.568 - EF/Edison-ISE, Case No. IV/M.931 - Neste/IVO and Case No. IV/M.1190 - Amoco/Repsol/Iberdrola/EnteVasco de la Energia.

the exact scope of the market, since this case does not give rise to competition concerns in any of the alternatives.

c. Assessment

44. Both LEG and Seaboard are active in the supply of gas, although with small market shares. After the operation, the combined market share of the parties would be around [0-5]% and would not give rise to competitive concerns.

VI. CONCLUSION

45. 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