

***Case No COMP/M.3003 -
ELECTRABEL /
ENERGIA ITALIANA /
INTERPOWER***

Only the English text is available and authentic.

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

Article 6(1)(a) INAPPLICABILITY
Date: 23/12/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.12.2002
SG(2002)D/233545

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(a) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No COMP/M.3003 - Electrabel/Energia Italiana/Interpower

Notification of 26 November 2002 pursuant to Article 4 of Council Regulation No 4064/89

1. On 26 November 2002, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ by which the Belgian undertaking Electrabel S.A. ("Electrabel"), belonging to the Suez group ("Suez") (France) and the Italian undertaking Energia S.p.A. ("Energia") controlled by the Italian undertaking Compagnie Industriali Riunite (S.p.A.) ("CIR") acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the Italian company Interpower S.p.A. ("Interpower"), presently controlled by the Italian company Enel S.p.A. ("Enel"), by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation does not fall within the scope of Council Regulation (EEC) No 4064/89.

I. THE PARTIES AND THE OPERATION

3. Electrabel is mostly active in production, trade and transmission of electricity and natural gas, mainly in Belgium. In Italy, directly or through joint ventures, Electrabel is active in power generation and trade of electricity.
4. Energia is active in supply of gas and electricity in Italy as well as in the supply of services such as "energy management" and maintenance of energy plants. It is not directly engaged in power generation, but through its subsidiary Energia Plassier S.p.A.
5. Interpower is active in electricity generation in Italy. It operates 3 thermal plants and 1 hydro bundle, with a total net installed capacity of 2611MW. Interpower is currently

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).

wholly-owned by Enel, which purchases most of Interpower's production under a Power Purchase Agreement (PPA). The remaining output (about 27MW) is sold to the National Grid Operator (the "GRTN").

6. Interpower is one of the three companies (with Elettrogen and Eurogen) incorporated by Enel pursuant to the so-called *Bersani Decree* of 1 April 1999, implementing the EU Electricity Directive (96/92/EC) in Italy, and to the Italian Prime Minister's Decree of 4 August 1999, pursuant to which Enel is required to sell at least 15GW of its generation capacity by 1 January 2003.
7. The proposed operation consists in the joint purchase of Interpower by a consortium composed of EblAcea, a special-purpose vehicle solely controlled by Electrabel, and Energia (through its subsidiary Energia Italiana).

II. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (€42 billion for Suez and €2 billion for CIR, in 2001). Each of Suez and CIR has a Community-wide turnover in excess of EUR 250 million (€31 billion for Suez and €1,86 billion for CIR, in 2001), 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.

III. CONCENTRATION

Joint control of Interpower by EblAcea and Energia Italiana

9. Further to the joint venture Agreement governing the consortium made up by EblAcea and Energia to purchase Interpower, each of EblAcea and Energia Italiana is entitled to appoint half of the members of the board of Directors and the Executive Committee of Interpower. The Chairman of the former, whose term lasts one year, is appointed by the board upon designation by Energia/Energia Italiana for the first year, by EblAcea for the following year and so on. Last, no special right is granted to one of the shareholders. Therefore, Interpower will be jointly controlled by the parties.

No Full-functionality of the joint venture

10. Interpower currently sells most of the electricity produced to Enel through a Power Purchase Agreement (PPA) and, to a much lesser extent, to the National Grid Operator (the "GRTN"). After the expiration of these contracts, expected in 2003, and based on the Joint Venture Agreement, most of the electricity produced by Interpower will be committed to the parties, in proportion of their shareholdings, save for a [...] amount required to be sold on the Pool³ Market (i.e. approximately [5%-15%]). The electricity thus purchased by the parties will be sold either on the Pool or to their respective eligible customers via bilateral contracts.

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).

³ The Pool is a market for spot trading of electricity, created by the Italian Legislative Decree 79/99 and administered by an independent entity (GME: Gestore Mercato Elettrico).

11. Furthermore, Interpower will have neither its own customers nor an independent commercial strategy. It will therefore depend for the greatest part of its turnover upon the sales to its parent companies. In the light of the above and in accordance with the Commission notice on the *concept of full-function joint ventures*, it can be concluded that the proposed joint-venture will not perform on a lasting basis all the functions of an autonomous economic entity within the meaning of Article 3(2) of the Merger Regulation.

VI. CONCLUSION

12. For the above reasons, the Commission has decided that the notified operation is not a concentration within the meaning of articles 3(1)b and 3(2) of Council Regulation (EEC) No 4064/89. This decision is adopted in application of Article 6(1)(a) of Council Regulation (EEC) No 4064/89.

For the Commission
Mario MONTI
Member of the Commission