



FINAL REPORT OF THE HEARING OFFICER¹
GENERAL ELECTRIC /ALSTOM
(THERMAL POWER – RENEWABLE POWER & GRID BUSINESS)
CASE M.7278

Introduction

1. On 19 January 2015, the European Commission (the "Commission") received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking General Electric Company ("GE") would acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the Thermal Power, Renewable Power and Grid businesses of Alstom Société Anonyme ("Alstom", GE and Alstom are together referred to as the "Parties") by way of purchase of shares ("the Proposed Transaction").
2. Based on the first phase investigation, the Commission raised serious doubts as to the compatibility of the transaction with the internal market and with the functioning of the EEA Agreement and on 23 February 2015, it adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation ("the Article 6(1)(c) Decision").

Statement of Objections

3. On 12 June 2015, the Commission adopted a Statement of Objections ("SO"), in which it reached the preliminary view that the Proposed Transaction would significantly impede effective competition via non-coordinated effects with respect to the markets for the supply of 50 Hz Heavy Duty Gas Turbines ("HDGTs"), generators bundled with 50 Hz HDGTs, Large Steam Turbines bundled with 50 Hz HDGTs and servicing of GE's 9FA HDGTs.
4. The Parties replied to the SO on 26 June 2015.

Access to the file

5. After notification of the Article 6(1)(c) Decision, the Parties requested access to certain documents claiming that they amounted to "key documents" within the meaning of paragraph 45 of Merger Best Practice Guidelines ("Best Practices").²

¹ Pursuant to Articles 16 and 17 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings, OJ L 275, 20.10.2011, p. 29. ("Decision 2011/695/EU")

² DG Competition Best Practices on the conduct of EC merger control proceedings 20/01/2004.

- DG Competition gave access to a set of key documents relied upon in the 6(1)(c) Decision. The Parties however requested to have full access to the entire set of responses of customers and competitors to the questionnaires sent by the Commission during the phase I market investigation claiming that they amounted to "key documents". DG Competition considered the request to exceed the definition of "key documents" but, in order to provide fuller context to the third party quotes relied upon in the Article 6(1)(c) Decision, granted further access via CD-ROM to the full text replies to a set of questions in the request for information sent to customers and competitors.
6. The Parties made a further request for access to full replies to other questions which the Commission refused with the exception of replies to one specific question. In addition, the Parties also requested access to any key document submitted by a competitor, following its admission as interested third person. In response the Commission informed the Parties that no key documents were received from this interested third party.
 7. The above-mentioned disclosures of documents do not relate *strictu sensu* to access to the file. It is worth recalling that the right to have full access to the Commission's file only arises if and when the Commission adopts a SO;³ parties do not have a right of access to the file in the earlier stages of the proceedings, for instance during merger investigations. I consider that in this case DG Competition met the requirements of procedural fairness and transparency - as prescribed by the Best Practices - by providing the Parties documents it was not required to disclose under access to the file rules. As such, DG Competition respected the effective exercise of the Parties' procedural rights.
 8. After the notification of the SO, the Parties received access to the file via CD-ROM on 13 June 2015.

Letter of facts

9. On 9 July 2015, the Commission sent a letter of facts to the Parties informing them about additional evidence identified after the adoption of the SO that supported the preliminary conclusions reached in the SO and that could be relied upon in the final decision. The Parties submitted written comments on 16 July 2015.

Interested third persons

10. Upon their request, received before the formal oral hearing took place, I allowed seven undertakings to be heard as interested third persons in the proceedings: four competitors to the parties, namely Mitsubishi Hitachi Power Systems, Ltd, Toshiba Corporation, Ansaldo Energia S.p.A. and Ethos Energy, and three customers, namely Iberdrola Generación España S.A., MPF Operations Limited and PKN Orlen S.A. Upon their requests, I also allowed six of these interested third persons to

³ Article 17(1) of Commission Regulation (EC) No 802/2004 of 21 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ L 133, 30.04.2004, p. 1-39 (the "Merger Implementing Regulation").

participate in the formal oral hearing. Following the oral hearing, upon its request, I allowed another competitor to the Parties, Siemens A.G., to be heard as interested third person in the proceedings.

Oral Hearing

11. The formal oral hearing took place on 2 July 2015 and it was attended by the Parties; the interested third persons; the Commission services; representatives from the competition authorities of five Member States (Belgium, Germany, Finland, France and United Kingdom); and a representative from the EFTA Surveillance Authority. The Parties requested and were granted a closed session for parts of their respective presentations.

Commitments

12. In order to address the competition concerns raised by the Commission in the SO, the Parties submitted commitments on 16 July 2015, which were subsequently revised on 21 July 2015 and on 24 July 2015. The Commission launched a market test of those commitments on 24 July 2015. The Parties were informed about the outcome of the market test on 4 August 2015 and, following further discussions with DG Competition, they submitted final signed commitments on 6 August 2015 (the "Final Commitments").
13. The Commission takes the view that the Final Commitments remove the competition concerns identified. The draft decision therefore declares the Proposed Transaction compatible with the internal market and the EEA Agreement, subject to compliance with the commitments set out as conditions and obligations attached to the draft decision.

Conclusion

14. Pursuant to Article 16 of Decision 2011/695/EU, I have examined whether the draft decision deals only with objections in respect of which the Parties have been afforded the opportunity of making known their views and I have come to a positive conclusion.
15. Overall, I conclude that all parties have been able to effectively exercise their procedural rights in this case.

Brussels, 1 September 2015

Joos STRAGIER