

***Case No IV/M.1169 -
EDFI / GRANINGE***

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

Article 6(1)(b) NON-OPPOSITION
Date: 25/05/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.5.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M.1169 - EDFI/GRANINGE

Notification of 17.04.1998 pursuant to Article 4 of Council Regulation N° 4064/89¹

1. On 17 April 1998 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) N° 4064/89 by which the companies Electricité de France International (“EDFI”) and Skandrenkraft AB (“Skandrenkraft”), both subsidiaries of Electricité de France (“EDF”), acquire within the meaning of Article 3 (1)(b) of the Council Regulation joint control of the Swedish company Graningeverkens AB (“Graninge”) by means of, *inter alia*, shareholders’ agreements with a large number of primarily individual shareholders, all descendants of the founder of the target company.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) N° 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. The Parties.

3. Electricité de France International (“EDFI”) is a wholly-owned subsidiary of Electricité de France (“EDF”), the French state-owned electricity company ensuring the production, transport and distribution of electricity in France. EDFI is a holding

¹As amended by Council Regulation (EC) N° 1310/97 of 30.06.1997 (OJ.L 180/1, 09.07.1997).

company designed to purchase shares in companies outside France which are active in the field of power production, transmission and distribution of energy.

4. Skandrenkraft AB (“Skandrenkraft”) is a holding company specially created to purchase shares in companies specialising in the production and distribution of electricity in Scandinavia. The company is a wholly owned subsidiary of EDFI and was created in 1997 to acquire shares in Graningeverkens AB.

5. Graningeverkens AB (“Graninge”), is a limited company incorporated in Sweden which is active in three fields: Power generation and electricity distribution , production and distribution of district heating, and forestry sawmill operation in Sweden.

6. The shareholding descendants of the late A.N.Versteegh (“The Family”) is a collective description of a large number of individual shareholders in Graninge, all descendants of the founder of the company, who have entered into identical agreements with the EDF group.

II. The operation.

7. The EDF group, through its two subsidiary companies (“ EDFI” and “Skandrenkraft”), intends to acquire joint control over Graninge by co-ordinating its voting powers in the Annual General Meeting with The Family by means of shareholders agreements. These shareholders’ agreements set out *inter alia* general guidelines concerning Graninge’s strategy and commercial policy in the electricity and forestry sectors, as well as a common policy in major issues and a joint decision making procedure. Through these legally binding agreements the EDF group and The Family undertake to act in the same way to exercise their voting rights.

III. The concentration.

8. The operation is a concentration in the meaning of Article 3.1.b) of Council Regulation N° 4064/89. EDF, through the two EDF group companies EDFI and Skandrenkraft, will acquire joint control over Graninge by co-ordinating its voting powers with The Family. EDFI and Skandrenkraft together represent 30.1 % of the votes in Graninge and The Family represents 15.8 %, which gives them a combined 45.9 % of the voting power. Based on the number of shareholders represented at the shareholders meetings in the last two years, this percentage is sufficient for EDF and the Family to control a majority of the votes present at any shareholders meeting.

9. According to the parties joint control over Graninge is inferred from the legally binding Agreements between The Family and the EDF group, and is based mainly in the following findings: In the first place a specific mechanism which enables EDF and The Family to propose and appoint equal number of all members of the board of directors eligible by the shareholders meeting. Secondly there is a decision making system which obliges both parties , EDF and The Family, to give their prior consent upon any important issue before it is brought to or decided upon by the board of directors or by the shareholders’ meeting. In the third place and once mutual consent has been reached, there is an obligation to vote together in any shareholders’ meeting in favour of all decisions necessary to work out important issues. These three findings, together with the voting powers of the parties at the shareholders’ meeting are

sufficient to prove joint control of the two EDF subsidiaries, EDFI and Skandrenkraft, together with The Family over Graninge.

10. Furthermore, there are particular clauses in the Agreements which support the above mentioned findings, among them a safety clause intended to make sure that none of the parties shall be able to take sole control of Graninge [.....].

11. Therefore the EDF group and The Family will acquire joint control over Graninge.

12. Concerning the position of The Family as a party to the concentration, it must be noted that it is not relevant to this case to enter into considerations in order to decide whether or not the individual shareholders should be considered as (one or more) undertakings concerned. According to the Commission notice on the concept of undertakings concerned under Council Regulation (EEC) N° 4064/89,...“acquisitions of control by individuals will bring about a lasting change in the structure of the companies concerned only if those individuals carry out economic activities of their own” (paragraph 52, see also Commission Decision IV/M.082 Asko/Jacobs/Adia of 16 May 1991). It should, however, be noted that this case is essentially different given that the individual shareholders of The Family hold no other economic interests outside the target company.

13. For the purpose of this assessment it is however to conclude that two undertakings concerned, the EDF group and Graninge, satisfy the turnover thresholds of Article 1 (see below), and that the EDF group will acquire joint control over Graninge in the meaning of Article 3.

14. The question whether or not the individual shareholders of The Family should be considered as undertakings concerned may therefore be left open.

IV. Community Dimension.

15. The operation has a community dimension. The joint world-wide turnover of the undertakings concerned exceeds ECU 5.000 million in 1997 (EDF 29.354 MECU and Graninge 344 MECU). The aggregate EC-wide turnover of at least two of the undertakings concerned exceeds ECU 250 million (28.760 MECU for EDF and 326 MECU for Graninge) but they do not achieve more than two-third of their aggregate Community-wide turnover within one and the same Member State. The notified operation has therefore a community dimension in accordance with Article 1(2) of the Merger Regulation.

V. Competitive Assessment.

A. The Relevant Product market.

16. The notifying parties state that the notified operation does not result in any affected markets. The relevant product market in this case is described as the production, transportation and distribution of electricity. These activities encompass the network activities, that is the provision of high voltage power lines for the transmission of electricity, as well as the activities of production and distribution of

² Confidential Information

electricity. It is however not necessary to further delineate product markets in the present case because effective competition would not in any alternative considered be significantly impeded in the common market or any substantial part of that area.

B. Relevant geographic market.

17. The notifying parties state that the relevant geographic market for each of the product markets they propose should be at least Sweden. The parties have also indicated that Sweden is connected with Denmark, Finland and Norway through high-voltage transmission lines and DC-links, and that a DC-link also exists between Sweden and Germany. However it is not necessary to further delineate the relevant geographic markets in the present case because in any alternative market definition considered effective competition would not be significantly impeded in the EEA or any substantial part of that area.

C. Assessment.

18. The Swedish electricity market was deregulated in January 1996. Although network activities could be regarded as natural monopolies, the production and distribution of electricity is wholly liberalised and the companies active in this field are competing freely. Before the deregulation there existed a wholesale and a retail market: The producers all gained access to the national grid and sold electricity to retailers and large industries. The retailers, often municipality owned entities, distributed the electricity to small and medium sized customers. Following the deregulation, the former wholesale and retail markets have been integrated since most power producers have acquired former retailers. At the same time the remaining retailers have gained access to new power suppliers, including electricity traders.

19. The Swedish electricity market has a total production of slightly more than 140 Twh, and there are ten main producers of which Gräninge accounts for approximately 2% of the power produced in Sweden and 3-4% of the electricity sold. The EDF Group has no activities in Sweden or Scandinavia, apart from its holding in Gräninge. In view of the market position of the parties to the concentration and given that there is no overlapping activities between the parties, the Commission considers that the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or any substantial part of that area.

VI. Conclusion.

20. For the above reasons, the Commission decides not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) N° 4064/89 and Article 57(2) of the EEA Agreement.

For the Commission