

***Case No IV/M.1334 -
VOLVO AERO / ABB /
TURBOGEN***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION

Date: 17/11/1998

*Also available in the CELEX database
Document No 398M1334*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.11.1998.

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Subject : Case No IV/M.1334 – Volvo Aero/ABB/TurboGen
Notification of 14.10.1998 pursuant to Article 4 of Council Regulation (EEC)
No 4064/89

1. The notified operation concerns the acquisition by Volvo Aero Corporation (“Volvo Aero”) and Asea Brown Boveri Aktiebolag (“ABB”) of joint control of TurboGen Aktiebolag (“TurboGen”) currently a wholly-owned company of ABB.

I. THE PARTIES

2. Volvo Aero is part of the Volvo Group (“Volvo”), an international industrial group based in Sweden. The group has six different lines of business : cars, trucks, buses, construction equipment, marine and industrial engines and aero.
3. ABB is active in the following business areas : power generation, power distribution, industrial and building systems and transportation.
4. TurboGen is currently a dormant company solely controlled by ABB. After the concentration TurboGen will manufacture, develop, market and distribute turbogenerators which have an effect up to 2300 kVA.

II. THE OPERATION

5. The relevant operation is the acquisition by Volvo Aero of 50 % of the shares in TurboGen. TurboGen will manufacture turbogenerators on the basis of the gas turbine technology transferred from Volvo Aero and the know-how concerning power, especially generators and electronics, provided by ABB.
6. In particular, Volvo Aero will transfer all its rights to the gas turbine VT 100 and a royalty-free, non-transferable right to use the technology owned by Volvo Aero connected to the gas turbine VT 40.

II. CONCENTRATION

JOINT CONTROL

7. The board of Directors of TurboGen will consist of five persons of whom two are to be nominated by Volvo Aero and two by ABB. The chairman of the board (and fifth board member) will be mutually agreed upon by Volvo Aero and ABB. Decisions will be taken by majority voting.

AUTONOMOUS FULL FUNCTION UNDERTAKING

8. TurboGen will have its own resources to develop, market and distribute turbogenerators. The turbogenerators will be sold through a sales network that will be established. The products may also be sold through the subsidiaries of Volvo and the subsidiaries of ABB (in those markets where Volvo and ABB have a strong market position and where there is a strong connection between the turbogenerators and the products sold by the relevant subsidiaries). TurboGen is free to sell the turbogenerators to whoever it wants at whatever price. TurboGen will thus perform on a lasting basis all the functions of an autonomous economic unit.

III. COMMUNITY DIMENSION

9. The Volvo Group and the ABB Group have a combined aggregate world-wide turnover in excess of ECU 5,000 million (Volvo Group, ECU 21,225 million; and ABB Group, ECU 32,000 million). Each of them has a Community-wide turnover in excess of ECU 250 million ECU (Volvo Group, ECU 10,855 million; and ABB Group, ECU 12,438 million). Neither Volvo nor ABB have more than two-thirds of their Community-wide turnover in one and the same Member State. The notified operation therefore has a Community dimension.

IV. THE RELEVANT MARKET

1. Relevant product market

10. A turbogenerator is a generator set consisting of an integrated gas turbine and generator, normally based on a single shaft. These turbogenerators are a novelty compared to the traditional generator sets and are now being introduced on the market. The output of turbogenerators and traditional generator sets is the same, electricity, but the advantages of turbogenerators compared to traditional generator

sets are : lower emission, lower weight, lower life cycle cost, possibility to use various fuels, etc.

11. According to the parties, the relevant product market is the market for generator sets (“GenSets”) in general (i. e. traditional GenSets and turbogenerators) with effects up to 2300 kVA.
12. As to traditional GenSets, in former decisions¹ the Commission has given indications that from the demand side GenSets are generally divided into power ranges. TurboGen will produce turbogenerators in the power ranges of [7 to 1000] kVA and of [1001 to 2300] kVA.
13. The investigation did not allow the Commission to reach a definitive conclusion on this matter. However, for the purposes of the present assessment the precise scope of the relevant product market can be left open because, in all alternative market definitions considered (i. e. market for GenSets in general or for turbogenerators only whether or not divided into power ranges), effective competition would not be significantly impeded in the EEA or any substantial part of that area.

2. Relevant geographic market

14. According to the parties the relevant geographic market is the world. In former decisions the Commission was of the view that the geographic market was at least the EEA (no legal or regulatory barriers to trade between member States, low transport costs, local production does not significantly influence the level of sales in individual member States) without excluding that it might be world-wide. The investigation carried out among the main competitors did not allow the Commission to reach a definitive conclusion on this matter. However, for the purpose of the present case the exact determination of the geographic scope of the market can be left open since even if the analysis is carried out at the EEA-level, which is the narrowest geographic scope to be taken into account, the operation will not lead to the creation or a strengthening of a dominant position.

V. ASSESSMENT

15. If the assessment is carried out on the market for GenSets in general with effects up to 2300 kVA, TurboGen will have insignificant market shares, even if this market is narrower sub-divided into power ranges. Moreover, on this market TurboGen will face competition from traditional GenSets manufacturers as Caterpillar/Perkins, Cummins, Wärtsilä, Jenbacher, MAN, Yanmar,
16. If, on the other hand the assessment is carried out on the market for turbogenerators with effects up to 2300 kVA, in 2005 TurboGen is expected to have market shares of 5-10% on the market for turbogenerators with an effect from [7 to 1000] kVA. On the market for turbogenerators with an effect from [1001 to 2300] kVA, TurboGen’s market share is expected to be [10-20]%. Allied Signal, Elliott Energy Systems and Capstone are other manufacturers of turbogenerators whose products are already marketed. As said by some of them, other companies have turbogenerators under development.

¹ Case IV/M.700-Emerson/Caterpillar and case IV/M.1094-Caterpillar/Perkins Engines .

17. Based on the above it can be concluded that the operation will not lead to the creation or strengthening of a dominant position.

VI. ANCILLARY RESTRAINTS

18. The parties have requested a non-compete clause to be considered ancillary to the operation. According to this clause Volvo Aero and ABB have undertaken not to pursue themselves the business being pursued in TurboGen during the continuance of the Cooperation and Shareholders Agreement and for one year after its termination. The only exception is the right of Volvo Aero to manufacture, sell and use turbogenerators for vehicle applications based on the VT 40 technology.
19. To the extent that the non-compete obligation agreed by the parties would be limited to the situation where the parent companies enjoy a controlling stake in TurboGen, the non-compete clause would aim at expressing the reality of the lasting withdrawal of the parents from the market assigned to the joint venture. Therefore, this decision only covers this non-compete clause for so long as the parent companies hold a controlling stake in TurboGen.

VII. CONCLUSION

20. 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,