EN

Case No IV/M.1404 - GENERAL ELECTRIC / ALSTOM

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 01/06/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 01.06.1999

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sirs,

Subject: Case No IV/M.1404 – General Electric / Alstom

1. On 26/04/1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 [1] by which General Electric Company ("GE") acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the large heavy duty gas turbine business of ALSTOM France S.A. ("ALSTOM") by way of purchase of assets.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No 4064/89 and does not raise

[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).

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serious doubts as to its compatibility with the common market and the functioning of the EEA agreement.

I. THE PARTIES

3. GE is a US company active in power generation equipment, aircraft engines, industrial and medical systems, transportation equipment, lighting, plastics, and financial, information and other services.

4. ALSTOM is a French company active in power generation equipment, transmission and distribution of energy, transport, and industrial, marine and general engineering. ALSTOM's large heavy duty gas turbine ("LHDGT") business ("EGT transferred business") is operated by European Gas Turbines N.V. ("EGT"), currently 90 % owned by ALSTOM with the remaining 10% owned by GE.[2]

II. THE OPERATION

5. The transaction[3] involves the acquisition by GE of the LHDGT business of ALSTOM, which it has conducted using technology obtained from GE under a licence agreement.

III. CONCENTRATION

6. The operation whereby GE will acquire sole control over ALSTOM's LHDGT business is a concentration within the meaning of Art. 3 (1) (b) of the Council Regulation.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[4] (GE : 89617.5 Mio EUR, LHDGT business […] Mio EUR). Each of them have a Community-wide turnover in excess of EUR 250 million (GE […]Mio EUR, LHDGT business […] Mio EUR), 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.

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2 Under the terms of the proposed agreement ALSTOM will purchase GE's 10% equity stake in EGT.

3 The transaction should be seen in the context of the establishment of a joint venture in power generation equipment (including gas turbines) between Alstom and ABB (case IV/M.1484, notified on 27th April 1999).

4 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, p. 25). 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

Relevant product markets

8. In previous cases[5] the Commission has examined the market for gas turbines and has made a sub-division between gas turbines up to 10 MW (i.e. small industrial gas turbines) and gas turbines above 10 MW (i.e. large heavy duty gas turbines). According to GE it is possible that the lower limit of LHDGT should be between 10 and 20 MW, in view of recent increases in unit size of small industrial gas turbines. However, for the purpose of the present case it is not necessary to decide whether the dividing line should be between 10 MW to 20 MW, since this would not change the outcome of this case.

9. A turbine is driven by the pressure, momentum or reactive thrust of moving steam, water, air or gas against the vanes of a wheel or rotor. Generally turbines are used either to power generators for producing electricity or to power mechanical equipment. Gas turbines burn natural gas or fuel oil to power the turbine and are generally used when natural gas is readily available.

10. The current operation only relates to LHDGT, which are mainly used for power generation and are either used in simple cycle or in combined cycle. In a combined cycle power plant ("CC plant") a steam turbine and a heat recovery steam generator[6] is added to the process in order to increase the efficiency of the plant. Customers for LHDGT include utilities, independent power producers (IPPs) and industrial companies requiring power alone or power plus heat.

    LHDGT are sophisticated products characterised by on-going improvements of their technology and thus requiring high R&D investments.

11. In these previous decisions the Commission has also examined the substitutability between LHDGT and aeroderivative gas turbines. The latter combine an industrial version of an established aircraft engine with a power turbine to convert energy from the engine exhaust into rotational shaft power. In these cases the Commission came to the conclusion that substitution is possible at power outputs below 60 MW. The degree of the substitutability would depend on unit size, fuel, environmental requirements and operating conditions. LHDGT are preferred because of their lower cost or if the fuel quality is poor. Aeroderivatives are preferred if high simple cycle efficiencies are required and if weight/size is important (e. g. marine propulsion and power generation and mechanical drive applications on offshore platforms). They are also used in power plants for peak loads. Aeroderivatives have traditionally tended to be more expensive than other gas turbines on an initial cost basis, although initial cost differences can be offset during the turbine life cycle because of the aeroderivative's higher simple cycle efficiency.

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5 Cases Nos IV/M.440 – GE/ENI/Nuovo Pignone (II) and IV/M. 731 – Kvaerner/Trafalgar.

6 A heat recovery steam generator is used to recover waste heat from the exhaust gases from the gas turbine and is then used to create steam, which in turn is used to power a steam turbine and generator.

12. GE is of the opinion that the substitutability between LHDGT and aeroderivatives is limited and that it is not appropriate to identify further segments within the market for LHDGT, any demarcation by output being arbitrary.

13. In general the market investigation has confirmed that there is substitutability between LHDGT and aeroderivatives and that a further segmentation can be made between LHDGT (including aeroderivatives) in the 10 to 60 MW range and LHDGT above 60 MW.

14. However, for the purpose of the present case the precise definition of the relevant product market can be left open, since in all alternative definitions considered above, the operation will not lead to the creation or strengthening of a dominant position.

Relevant geographic markets

15. In a previous case[7] the Commission has left the definition of the relevant geographic market open. The Commission considered that previously the relevant geographic markets had been national, but that barriers to cross-frontier procurement had been removed and that suppliers had developed manufacturing and marketing operations on a European or world-wide basis.

16. GE submits that the relevant geographic market is now at least European and probably world-wide, given the fact that non-European large heavy duty gas turbine manufacturers as GE and MHI have been successful in selling their products in the Community.

    However, in this respect it has to be noted that GE has manufacturing facilities in the US and in Italy and has set up a service network in the EEA (see also below with regard to the importance of service).

17. A number of customers indicated that the market is global, however, others were of the opinion that the market is not (yet) global, but that there are three distinct geographic areas/markets : Europe/EEA, America and the rest of the world (mainly Asia) for the following reasons : customer preference in Europe and America for "home based" suppliers, whereas in the rest of the world European, American and Japanese companies are all able to sell without having to cope with this preference. This preference of European customers is on the one hand historical, but is, according to the market investigation, also influenced by the customers' need to obtain a speedy repair (and spare-parts) in case of a breakdown. In this respect, the customers' confidence that non-European based suppliers will be able to meet their service requirements seems not as high as the confidence they have in European based manufacturers. Indeed, gas turbines are sophisticated products characterised by on-going improvements of their technology and requiring a service organisation closer to the customer.

18. For the purpose of the present case the definition of the relevant geographic market can however be left open, since in all alternative market definitions considered above, the operation will not lead to the creation or strengthening of a dominant position.

Assessment

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7 Case No IV/M.440 – GE/ENI/Nuovo Pignone (II).

19. All market shares are volume data based on McCoy Power Reports, an independent source of data on power generation equipment. They are averages for a five year period (1994-1998) to average out the peaks and troughs, which are due to the fact that contracts are awarded relatively infrequently. The market investigation has largely confirmed these data.

20. There are four companies with proprietary gas turbine technology world-wide: GE (US), ABB (Swiss/Swedish), Siemens (Germany)/Westinghouse and MHI (Japanese). Other companies manufacture LHDGT under licence.

21. On the market for LHDGT (excluding aeroderivatives) GE's EEA market share would increase from [10%-20%] to [20%-30%] and from [25%-35%] to [35%-45%] on a global basis. The other main competitors are Siemens (EEA [20%-30%]; world [20%-30%]), ABB (EEA [20%-30%]; world [10%-20%]) , MHI (EEA [<10%]; world [<10%]), Ansaldo (EEA [<10%]; world [<10%]), Fiat (EEA [<10%]; world [<10%]) and Kvaerner[8] (EEA [<10%]; world [<10%]).

22. On the market for LHDGT (including aeroderivatives) GE's EEA market share would increase from [15%-25%] to [25%-35%]. The other main competitors are Siemens ([20%-30%]), ABB ([20%-30%]), ALSTOM ([<10%]) [9], MHI ([<10%]), Ansaldo ([<10%]), Fiat ([<10%]), Dresser ([<10%]), Kvaerner ([<10%]), Rolls Royce ([<10%]) and TSSI ([<10%]).

23. On the segment for LHDGT (including aeroderivatives) in the 10 to 60 MW range GE's share of sales will rise from [20%-30%] up to [30%-40%]. GE's main competitors and their share on this segment are ABB/ALSTOM ([10%-20%]), Dresser ([10%-20%]), Kvaerner ([<10%]), Rolls Royce ([<10%]), Fiat ([<10%]), TSSI ([<10%]) and MAN ([<10%]).

24. Currently ALSTOM is selling aeroderivatives supplied by GE which are then packed by ALSTOM. […].

25. In the event that this arrangement would come to an end, ABB/ ALSTOM's share would go down to [10%-20%] instead of [10%-20%]. However, as it is not possible to determine what the market reaction would be with regard to this possible event, it has to be assumed that this [<10%] share of sales will be diluted in the market.

26. On the segment for LHDGT over 60 MW, GE's share of sales would increase from [10%-20%] to [20%-30%]. GE would be faced with competitors such as Siemens ([30%-40%]), ABB ([20%-30%]), MHI ([<10%]), Ansaldo ([<10%]) and Fiat ([<10%]).

27. GE submits that the EGT transferred business' market share cannot be simply added up to GE's post-transaction share, because it is likely that at least some customers have selected ALSTOM to provide a LHDGT because of its overall turnkey offering rather

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8 Kvaerner is a manufacturing associate of GE. Recently Kvaerner has announced that it intends to sell several business activities includingKvaerner Energy, the division which operates the LHDGT.

9 See footnote 3.

than because of the LHDGT based on GE technology offered by ALSTOM and that this is all the more likely because of the proposed ABB/ALSTOM joint venture.

28. Although it is difficult to predict how the market will react to this restructuring, it can however be assumed that ALSTOM would be able to keep part of its former market share, given the fact that it will be in a proposed joint venture with ABB, which will also be offering turnkey gas plants (with a LHDGT based on ABB technology).

29. It also has to be noted that GE's and the EGT transferred business' market share have declined when comparing data for 1992-1996, 1993-1997 and 1994-1998 and that MHI's market share has risen (from [<10%] to [<10%]).

30. The customers for LHDGT are strong buyers including utilities, IPPs (frequently part of multinational groups) and large multinational industrial companies, including paper, chemical and oil and gas companies. Given the liberalisation of the electricity sector, LHDGT purchasers are under increasing pressure to produce power at the lowest possible cost per kWh and this pressure is in turn passed back to their suppliers.

31. On the basis of the above, the operation is not likely to lead to the creation or strengthening of a dominant position on the market for LHDGT and on the segments for LHDGT in the 10 to 60 MW range and above 60 MW.

VI. ANCILLARY RESTRAINTS

32. GE has identified the following ancillary restraints :

a) interim provisions :

- Section 5.01 of the Transaction Agreement contains covenants according to which ALSTOM and EGT, between signing and closing, may not take certain significant actions which would be outside the ordinary course of business and inconsistent with past practices without the prior consent of GE.

b) non-compete and licence terminate provisions :

- Section 5.03 of the Transaction Agreement imposes a 5 year obligation on the part of ALSTOM not to compete with the transferred business, with the exception allowing ALSTOM to continue to participate in the sale of LHDGT as an architect engineer or turnkey power plant provider and to re-enter the market of the business it is selling to GE if it does so through a permissible form of action including a joint venture, with an entity that has its own pre-existing LHDGT technology;

- Section 7.09 of the Transaction Agreement provides that ALSTOM may not:
  - -- for 5 years from closing employ persons in the same business as the EGT transferred business who have had access to GE proprietary information (Section 7.09(c)(i));
  - -- for 3 years from closing solicit employees transferred to GE with the EGT transferred business (Section 7.09(c)(ii));
  - -- for 5 years from closing manufacture, install, sell, provide contracting services or provide parts or services involving large heavy duty gas turbines (above 20 MW) based upon GE technology or upon related ALSTOM technology (Section 7.09(d)(e)).

c) transitional arrangements :

- Transitional Services Agreements : under these agreements and under the provisions of the Belfort Sublease and the Essen Option Agreement ALSTOM will provide to the EGT transferred business various services, such as IT services, general administrative support and facility and building maintenance services. The initial duration of the provision of these services is 3 years;

- Consortium and Sub-Contract Agreements : under the terms of these agreements GE and the EGT transferred business will continue to participate in the performance of certain on-going combined cycle projects undertaken by ALSTOM;

- Parts and Services Agreement : during the terms of this agreement (being the period until final expiration of all warranties and obligations under each customer contract), ALSTOM will be the preferred supplier for the supply of the parts/or services for the contracts won by the EGT transferred business at the time of closing;

- Generator Agreement : according to this agreement GE undertakes to purchase from ASEA, a wholly owned subsidiary of ALSTOM, and/or other ASEA companies, a minimum volume of generator equipment for a transitional period of an initial 3 years and may purchase additional generators up to a maximum amount defined in the agreement. For at least […] years from the date of this agreement, upon request of GE, ALSTOM undertakes to provide technical and engineering guidance with respect to contract equipment and parts to GE;

- Component Supply Agreement : under the terms of this agreement ALSTOM agrees to supply to GE, for an initial period of three years, the components (e.g. transformers, motor control centres, circuit breakers) in quantities and on terms consistent with the supply of such components to the EGT transferred business prior to closing. GE is not obliged to purchase components from ALSTOM ;

- Whetstone Agreement : according to this agreement ALSTOM and GE have agreed that, post-closing, GE will have access to Whetstone, an ALSTOM R&D facility which is also used for R&D on a contractual basis by third parties. ALSTOM undertakes to perform […] man years of R&D activities on behalf of GE if requested. The initial duration of this agreement is three years, subject to continuation until terminated by GE upon one years' notice. The intellectual property rights resulting from the R&D work undertaken under this agreement are to owned exclusively by GE.

33. The interim provisions of Section 5.01 and the Transitional Services Agreement, to the extent that these provisions and agreement could be considered as restrictions of competition, can be considered as being directly related and necessary to the concentration since they protect the value of the business being acquired.

34. The restrictions of Section 5.03 and Section 7.09 are in line with the Commission Notice regarding restrictions ancillary to concentrations, since it guarantees the transfer to the acquirer of the full value of the assets transferred.

35. The Consortium and Sub-Contract Agreements and the Parts and Services Agreement can be considered as being directly related and necessary to the concentration since they ensure that the projects will be completed and that warranty or other obligations to

customers are met as if they would have been if the EGT transferred business had not been transferred.

36. The Generator Agreement and the Component Supply Agreement can be considered as being directly related and necessary to the concentration for a period of 3 years and upon the condition that the purchase obligation of the Generator Agreement does not amount to exclusivity.

37. Given the particular circumstances of this case, the Whetstone Agreement can be considered as being directly related and necessary to the concentration for a period of 3 years for the following reasons : the need for GE to have access to the technical capabilities of the engineers and the core staff that has been working on GE's LHDGT technology; these engineers and core staff will not work on any other R&D project, but will be dedicated to GE; these engineers and core staff will not be able to carry out R&D on LHDGT for ALSTOM for a period of 3 years after they were last exposed to R&D for GE and the fact that the security provisions at Whetstone are high (segregation of workers and workspaces, computer fire walls, confidentiality obligations for the engineers and core staff, …). Moreover, this agreement will not change the access of third parties to the Whetstone R&D facility.

VI. CONCLUSION

38. 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,