

***Case No IV/M.1484 -
ALSTOM / ABB***

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

Article 6(1)(b) NON-OPPOSITION
Date: 02/06/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 02.06.1999

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sirs,

Subject: Case No IV/M.1484 / ALSTOM - ABB

1. On 27 April 1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89, as amended by Council Regulation (EEC) No 1310/97, by which ABB Handels- und Verwaltungs AG ("ABB HV") and ALSTOM (France) create a joint venture on power generation equipment, ABB ALSTOM Power NV ("JV").
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 serious doubts as to its compatibility with the common market and the functioning of the EEA agreement.

I. THE PARTIES

3. ALSTOM is a holding company with subsidiaries that are active in four sectors : energy, transmission and distribution, transport and industrial and marine.
4. ABB HV belongs to the Swiss-Swedish ABB Asea Brown Boveri Ltd. Group (“ABB”) which is, inter alia, active in the following sectors : power generation, transmission and distribution, automation and financial services.

II. THE OPERATION

5. The notified operation concerns the creation of a JV in which ABB and ALSTOM will each hold 50% of the shares and to which they will contribute their world-wide businesses concerning power generation equipment, except for ALSTOM’s large heavy duty gas turbine (LHDGT) business, which is being sold to General Electric Company (“GE”)¹ and ABB’s nuclear power and distributed power business.
6. The activities of the JV will include the design, manufacture, R&D, marketing, supply and servicing of turbines (gas, steam and hydro), generators, boilers, environmental control products and district heating systems.

III. CONCENTRATION

JOINT CONTROL

7. Each of ALSTOM and ABB will hold 50% of the shares in the JV and will appoint one half of the members of the supervisory board. The latter will approve annual budgets, business plans and long-term strategies of the JV and will appoint the management board. Therefore the JV will be jointly controlled by its parent companies.

AUTONOMOUS FULL FUNCTION UNDERTAKING

8. The JV will have its own dedicated management and financial resources. Although the JV will make some purchases from its parents (or subsidiaries of its parents), such purchases² will be conducted on an arm’s length basis and will account for a small proportion ([<10%]) of the JV’s business. The JV will therefore perform on a lasting basis all the functions of an autonomous economic entity.

IV. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion³ (ALSTOM 14373 Mio EUR, ABB 27537.4 Mio EUR). Each of

¹ Case IV/M.1404 – GE/ALSTOM, notified on 26/04/1999. The creation of the JV is conditional upon ALSTOM completing the sale of its LHDGT business to GE.

² Such purchases will be primarily of transmission and distribution equipment and process automation equipment, in both cases to enable the joint venture to offer such products in connection with tenders for particular projects.

³ 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

them have a Community-wide turnover in excess of EUR 250 million (ALSTOM [...] Mio EUR, ABB [...] 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.

V. COMPETITIVE ASSESSMENT

Relevant product markets

10. According to the parties the operation will give rise to the following affected markets :
(a) gas turbines up to 10 MW and (b) above 10 MW; (c) steam turbines up to 70 MW and (d) above 70 MW; (e) hydro generators; (f) heat recovery steam generators; (g) fossil boilers and (h) flue gas cleaning equipment.
11. In previous cases⁴ the Commission has examined the market for gas turbines and steam turbines. With regard to gas turbines the Commission 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). In the case of steam turbines a sub-division was made at 70 MW, since steam turbines above and below 70 MW tend to serve different applications.
12. 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

13. Gas turbines burn natural gas or fuel oil to power the turbine and are generally used when natural gas is readily available. According to the information provided by the parties the dividing line between the small industrial gas turbines and the large heavy duty gas turbines could have gone up from 10 MW⁵ to 13 MW, since all the main manufacturers of small industrial gas turbines have recently introduced new 13 MW turbines, based on the same technology as they use in the small industrial gas turbines. However, ALSTOM has not yet supplied any of its new 13 MW small industrial gas turbines and ABB does not have a 13 MW product. Moreover, there is no horizontal overlap with regard to small industrial gas turbines. For the purpose of the present case it is therefore not necessary to decide whether the dividing line has gone up from 10 MW to 13 MW since this would not change the outcome of this case.

(a) Small industrial gas turbines (up to 10 MW)

14. Small industrial gas turbines are used in a wide variety of industrial applications, either to power mechanical equipment (for example oil and water pumps, gas compressors, ...) or in combined heat and power applications.

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.

⁴ Cases Nos IV/M.440 – GE/ENI/Nuovo Pignone (II) and IV/M. 731 – Kvaerner/Trafalgar.

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

(b) Large heavy duty gas turbines (more than 10 MW)

15. Large heavy duty gas turbines are mainly used for power generation and are either used in simple cycle or in combined cycle. In a combined cycle plant a steam turbine and a heat recovery steam generator (see infra) is added to the process in order to increase the efficiency of the plant. Customers for large heavy duty gas turbines include utilities, independent power producers (IPPs) and industrial companies requiring power alone or power plus heat.
16. Large heavy duty gas turbines can be supplied separately or as part of a turnkey gas plant. According to the parties and the market investigation, there is an increasing demand for turnkey gas plants. This is largely due to the emergence of IPPs as part of the liberalisation process. In the past, the major public utilities with large engineering and procurement departments specified the supply of the individual items of power generation equipment. They also took care of the installation, the service and the maintenance of the plant buying service parts as necessary. Nowadays, the IPPs, which do not have these large engineering departments, are demanding a turnkey solution for their power generation needs. IPPs are primarily interested in the performance and availability of the plant to generate a particular output capacity (as this is the basis on which their financial projections are based). These customers therefore tend to have agreements which involve not only the supply of all the equipment, but also the supply of all operating and repair services throughout the life cycle of the plant (including the supply of spare parts) and the suppliers have to guarantee the performance and availability of the plant.
17. The competitive threat from IPPs to utilities are forcing the latter to behave more like IPPs regarding their buying criteria. Moreover, many traditional utilities are being converted into energy companies as a first step towards privatisation and act accordingly.
18. Since 1996-97 the IPPs account for 28% of all world-wide orders of gas and steam turbines whereas their share of orders forecast for 2000 will amount to 35%. The share of orders made by utilities was 55% in 1996-97 and is forecast to drop to 45% in the year 2000⁶. It is therefore likely that this increasing demand for turnkey gas plants will continue.
19. In previous decisions the Commission has also examined the substitutability between large heavy duty gas turbines 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. Heavy duty gas turbines 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. certain types of offshore platforms.
20. In general, the market investigation has shown that there is substitutability between large heavy duty gas turbines and aeroderivatives. In the present case it is however not

⁶ Industrial users' orders amounted to 17% in 1996-97 and will rise until 20% in 2000.

necessary to decide whether a further sub-division has to be made between on the one hand large heavy duty gas turbines in the 10-60 MW range (including aeroderivatives) and, on the other hand, large heavy duty gas turbines of more than 60 MW, as in all alternative market definitions considered above, the operation would not lead to the creation or strengthening of a dominant position.

Steam turbines

21. Steam turbines are used where fossil fuel (coal or oil) is readily available for burning in a boiler to produce steam. Other energy options include nuclear, solar and geothermal. Steam turbines utilise the expansion of steam from high to low pressure to produce rotational shaft power.

The market investigation has confirmed that two principal categories of steam turbines can be distinguished and that this distinction can be drawn at 70 MW.

(c) Steam turbines up to 70 MW

22. Steam turbines up to 70 MW are employed by smaller utilities and IPPs for power generation and by industrial customers for power generation and to drive mechanical equipment. In power generation applications they may be used as the primary source of energy or as the secondary source of energy in combined cycle plants.

(d) Steam turbines of more than 70 MW

23. Steam turbines of more than 70 MW are mainly used in power generation by utility plants and large IPPs.

(e) Hydro generators

24. Generators use the mechanical energy from turbines and convert it into electrical power. Generators for gas and steam turbines are invariably supplied as a package with the turbines. However, hydro generators, which are used in combination with a hydro turbine⁷ are often supplied separately from hydro turbines because some manufacturers of hydro turbines do not manufacture electro-mechanical products.
25. The market investigation has shown that there are different types of hydro generators (related to power output and speed), but since there is in general supply-side substitutability a further segmentation between different hydro generators is not necessary.

⁷ Hydro turbines are used where water is available in conjunction with a river or dam. The water pressure is used in the turbines to produce rotational shaft power. Hydro turbines are manufactured by companies whose base technology is electro-mechanical (as for gas and steam turbines) but also by companies which have different base technologies (for instance by manufacturers of ship propellers).

(f) Heat recovery steam generators

26. Heat recovery steam generators are used in conjunction with gas turbines to recover waste heat from the exhaust gases from the gas turbines which are then used to create steam, which in turn is used to power a steam turbine and generator. This process can enhance the total efficiency of a gas turbine plant from 40 to 60 %. According to the parties the product is relatively simple, using long established technology and manufacturing techniques.

(g) Fossil boilers

27. Fossil boilers are used in thermal power generation plants to burn fossil fuel (coal, oil) to produce steam to power steam turbines. There are standard boilers, but according to the parties, most boilers (especially the larger ones) are built to suit the particular requirements of the local fossil fuel.
28. The market investigation has shown that there are differences in the design of the boilers based upon the size/capacity and the fuel that will be used. Depending upon these elements different technologies will be used : for instance desulphurization for pulverized coal (PC) boilers, circulated fluidized bed (CFB) for small and medium sized boilers and especially for low quality fuels and bubbling fluidized bed (BFB) for small and medium sized boilers. Most of the boiler manufacturers have their own technology for PC and BFB boilers, but only few dispose of the CFB technology.
29. The parties submit that such segmentation would not be correct, as all fossil boilers compete in the same market for fossil fired power plants.
30. For the purpose of the present case, the definition of the relevant product market can 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.

(h) Flue gas cleaning equipment

31. Filters, ash handling equipment, gas desulphurization equipment and precipitators are used to achieve cleaner exhaust gases from combustion of fossil fuels thereby lowering the emission of polluting gases from power plants and are generally described as flue gas cleaning equipment.

Relevant geographic markets

32. According to the parties the relevant geographic market for all affected product markets is the world for the following reasons : the major players in the power generation equipment industry (i.e. GE (US), Mitsubishi (“MHI”) (Japan), Siemens (D)/Westinghouse (US) and ABB and ALSTOM), bid for all the major contracts in the world regardless of the location of the customer and do win bids in all of these areas. This world-wide tendering has resulted in world-wide price convergence for steam turbines and a substantial degree of world-wide price convergence for gas turbines. Transportation costs are not significant compared to the total cost of the most important power generation products : they represent 2,5%-6% of the revenue of gas turbines, 4-8% of steam turbines, 3% of hydro generators, 7,5% of boilers, 6-8% of heat recovery steam generators and 4% of flue gas cleaning equipment. The tariff on imports into the EEA (2,5 to 5,5% depending upon the capacity) is not a significant barrier to supply in

the EEA. Imports of gas and steam turbines into the EEA amount to 14% for LHDGT and to 12% for steam turbines.

33. The parties are also of the opinion that there are no non-tariff barriers to trade such as the frequency of the electricity grid, which is country specific. Although there are two standards world-wide, i.e. 50 Hz in Europe (and certain parts of Asia) and 60 Hz in the US (and most of South America and certain parts of South East Asia), all main manufacturers produce power generation equipment in both the 50 Hz and 60 Hz product range.
34. A number of customers indicated that the market is global, however, others were of the opinion that the market is not 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. This was in particular the case for gas turbines, which are sophisticated products characterised by on-going improvements of their technology and requiring a service organisation closer to the customer, and steam turbines⁸.
35. However, with regard to hydro generators, there is a strong indication that the geographic market is wider than the EEA, given the fact that these products are more service-free. Moreover, it has to be noted that only 7% of the world-wide orders for hydro generators are sold in the EEA.
36. 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

37. All market shares are volume data based on McCoy Power Reports, an independent source of data on power generation equipment (and were adjusted by the parties). They are averages for a five year period (1993-1997) 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.

⁸ Despite the fact that steam turbines usually only require a major overhaul after 10 to 15 years - which can normally only be done by the original equipment manufacturer (OEM) – and that minor repairs (every 1 to 3 years) can be done either by the customers themselves (e.g. utilities), by other companies (reverse engineers) or by the OEM supplier and its competitors.

(a) Small industrial gas turbines

38. With regard to gas turbines up to 10 MW no horizontal overlap occurs and the JV will have a market share of [30%-40%] in the EEA (coming from ALSTOM) and [20%-30%] in the world. The most important competitor on this market is Solar (US) with an EEA-wide market share of [50%-60%] and [60%-70%] world-wide.
39. The operation will therefore not lead to the creation or strengthening of a dominant position on the market for small industrial gas turbines.

(b) Large heavy duty gas turbines

40. On the market for gas turbines above 10 MW⁹ the parties state that the JV's market share will be [20%-30%] in the EEA (ALSTOM [<10 %]; ABB [20%-30%]) and [10%-20%] world-wide (ALSTOM [<10%]; ABB [10%-20%]). ALSTOM's market share represents the sales of aero-derivative gas turbines, which ALSTOM currently buys in from GE. The most important competitors and their market shares in the EEA and the world are GE ([25%-35%] / [35%-45%]), Siemens ([20%-30%] / [20%-30%]) and MHI ([<10%] / [<10%]). [...].
41. Given this small horizontal overlap and the combined market share of the JV, the operation will therefore not lead to the creation or strengthening of a dominant position of the JV on the market for large heavy duty gas turbines.
42. With regard to turnkey gas plants, ABB had an EEA and global share of sales of [20%-30%] / [10%-20%] and ALSTOM of [10%-20%] / [<10%]. A share of sales of [30%-40%] is likely to overstate the JV's position as explained below.
43. The other main player offering turnkey gas plants is Siemens (EEA [20%-30%], world [20%-30%]). There are a number of smaller players including Fiat (EEA [<10%], world [<10%]), Raytheon (EEA [<10%], world [<10%]), Stone & Webster (EEA [<10%], world [<10%]) and others. GE is not present in the EEA as a project leader with overall responsibility, but as has teamed up with an architect/engineer (such as Bechtel, Stone & Webster, Black & Veatch).
44. At this stage these smaller players seem to provide an active competitive source as long as they have sufficient sources for the components of the turnkey gas plant (gas turbine, steam turbine, ...). With this post-transaction market structure there will remain, besides the JV, sufficient suppliers of power generation equipment (see also infra) necessary for the construction of a turnkey gas plant. The access to the different components of a turnkey gas plant will therefore not be foreclosed. In this respect the parties have stated that "the JV will on a case by case basis continue to offer products to architect/engineers, even if on a specific turnkey project they are in competition with the JV. This is the current practice, and makes good commercial sense." To illustrate this statement the parties have indicated that between 1993 and 1997 approximately [20%-30%] of equipment supplied by ALSTOM for turnkey projects were made to architect engineers. The latter also accounted for [20-30%] of ALSTOM's gas and steam turbines sales.

⁹ including aero-derivatives.

45. Given the presence of other turnkey gas plant providers, the fact that there are a number of component suppliers (see supra for gas turbines and infra for the other components) and the non-foreclosure of the access to components for architect/engineers, it can be concluded that with regard to turnkey gas plants the JV will not be in a position to behave independently of its competitors and customers.

(c) Steam turbines up to 70 MW

46. On the market for steam turbines up to 70 MW the JV's market share would rise to [40%-50%] (ABB [30%-40%], ALSTOM [<10%]) in the EEA and to [20%-30%] (ABB [20%-30%], ALSTOM [<10%]) in the world. The parties' most important competitors (and their market shares in the EEA and the world) are Ansaldo¹⁰ ([10%-20%] / [<10%]), GE ([<10%] / [10%-20%]), Siemens ([<10%] / [10%-20%]) and MHI ([<10%] / [10%-20%]).
47. The market investigation has confirmed that there is a major trend away from steam to gas in Europe, provided that gas is readily available. In the period 1993-1997 more than 50% of all sales of steam turbines up to 70 MW were for use in a combined cycle plant (CC plant)¹¹. In ALSTOM's case this amounted to almost [>50%]. The market investigation has confirmed the fact that the gas turbine is the most important element of the CC plant and the decisive factor for choosing a supplier who will in general supply the gas turbine and the steam turbine. For this reason it would be likely that the increment of [<10%] coming from ALSTOM would therefore even be smaller and that GE could become a more important competitor for steam turbines up to 70 MW, given the purchase of ALSTOM's large heavy duty gas turbine business.
48. Although there will be one steam turbine provider less, given the fact that there are still strong competitors active on this market, it is unlikely that this operation will lead to the creation of a dominant position on the market for steam turbines up to 70 MW.

(d) Steam turbines over 70 MW

49. On the market for steam turbines over 70 MW, the JV would have a market share of [40%-50%] (ABB [20%-30%], ALSTOM [20%-30%]) in the EEA and of [10%-20%] (ABB [10%-20%], ALSTOM [<10%]) in the world. The parties' most important competitors (and their market shares in the EEA and the world) are Siemens ([30%-40%] / [10%-20%]), Ansaldo ([10%-20%] / [<10%]), GE ([<10%] / [10%-20%]) and MHI ([<10%] / [10%-20%]).
50. In the period 1993 to 1997 almost [20%-30%] of ALSTOM's supplies of steam turbines over 70 MW were for use in CC plants and were supplied together with large heavy duty gas turbines based on GE technology. Therefore not all of ALSTOM's sales are likely to accrue to the JV and might go to GE.
For steam turbines used in non-combined cycle the EEA orders placed in 1997 compared to 1993 have declined by 96% (1996/1993 : about 70% - 1997/1994 : 90%).

¹⁰ Ansaldo, part of the Finmeccanica group, has a licence agreement with ABB with regard to steam turbines.

¹¹ In a combined cycle plant a steam turbine is added to the gas turbine in order to increase the efficiency of the plant.

In 1998 ABB's EEA turnover for steam turbines used in non-combined cycle amounted to [<100] Mio EUR and ALSTOM's to [<100] Mio EUR. This accounts for [<20%] of the JV's world-wide turnover for steam turbines over 70 MW and to [<30%] of its EEA turnover.

51. Steam turbines over 70 MW are based on a mature technology, however R&D does still take place in order to improve the efficiency of the turbine and to reduce its cost.
52. Siemens is the other main player with a market share of 34% in the EEA and Ansaldo has been acting as a competitor. GE's market share may increase as explained above. If the JV would raise prices significantly, there is also the threat of more potential imports from MHI. In this respect it has to be noted that in 1996 and 1997 MHI has supplied steam turbines in the UK. In 1997 this accounted for 12% of total EEA orders.
53. While the operation eliminates an important competitor, the operation will not give rise to the creation or strengthening of a dominant position with this post-transaction market structure.

(e) Hydro generators

54. On the market for hydro generators the JV will have an EEA-wide market share of [50%-60%], this is due to ABB's share of [50%-60%] that will be increased with ALSTOM's [<10%]. On a global basis the JV will have [30%-40%] (ABB [20%-30%] / ALSTOM [10%-20%]). The main competitors are Siemens (EEA [<10%] / world [<10%]) and Ansaldo (EEA [<10%] / world [<10%]).
55. Although the JV will have a large market share in the EEA, the increment is small and the geographic scope of the market is likely to be wider. Moreover, hydro generators are bought by large utilities which do have countervailing buying power.
56. The operation will therefore not lead to the creation or strengthening of a dominant position on the market for hydro generators.

(f) Fossil boilers

57. With regard to fossil boilers the JV's share of the EEA and world market will be [30%-40%] (ALSTOM [20%-30%], ABB [<10%]) resp. [10%-20%] (ALSTOM [<10%], ABB [10%-20%]). The most important competitors are D. BK with [40%-50%] on the EEA market and [<10%] in the world and F&W with [<10%] in the EEA and [10%-20%] on a global basis.
58. The JV would become the second largest supplier in the EEA and the market leader in the world. The market investigation however, has shown that there are also many other smaller suppliers of fossil boilers.
59. Although fossil boilers are mature products, new technologies are still being developed. With regard to fluidised bed boilers and according to the information provided by the parties, the JV's share of sales would be [<10%] in the EEA and [10%-20%] in the world (ALSTOM [<10%], ABB [<10%]). The other main suppliers of fossil boilers based upon this technology are Kvaerner (EEA [40%-50%] / world [10%-20%]), F&W (EEA [40%-50%], world [40%-50%]) and Lurgi (EEA [<10%], world [10%-20%]).

60. The operation will therefore not lead to the creation or strengthening of a dominant position on the market for fossil boilers.

(g) Heat recovery steam generators

61. On the markets for heat recovery steam generators the JV's market share will be [10%-20%] in the EEA and [10%-20%] in the world.

62. The operation will therefore not lead to the creation of a dominant position on the market for heat recovery steam generators.

(h) Flue gas cleaning equipment

63. With regard to flue gas cleaning equipment no significant overlap occurs and the JV will have a market share of [20%-30%] in the EEA mainly coming from ABB.

64. The operation will therefore not lead to the creation of a dominant position on the market for flue gas cleaning equipment.

VI. ABSENCE OF CO-ORDINATION

65. The operation is not likely to lead to any appreciable co-ordination between ABB and ALSTOM with regard to transmission and distribution equipment and process automation equipment. Although the JV will purchase such products from its parents (on arm's length basis), in particular in relation to turnkey projects, these purchases will only amount to [<10%] of the JV's business, i.e. [<1000] Mio EUR. This represents [<10%] of the turnover of ABB and ALSTOM with regard to transmission, distribution and process automation equipment.

VII. ANCILLARY RESTRAINTS

66. The parties have requested to consider Art. 10 of the Shareholders' agreement as ancillary to the operation. According to this provision each of ALSTOM and ABB agree not to engage in activities in the supply of power generation equipment for as long as it holds at least 25% of the JV's company's share capital and for a period of three years after its shareholding falls below that level.

67. 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 the JV, 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 the JV.

VIII. CONCLUSION

68. 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,