

***Case No COMP/M.1659 -
PREUSSEN ELEKTRA /
EZH***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 30/09/1999

*Also available in the CELEX database
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.09.1999
SG(99) D/7903

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Madam/Sir,

Subject: Case No IV/M. 1659 – PreussenElektra/EZH

Your notification of 30.08.1999 pursuant to Article 4 of Council Regulation No 4064/89¹

1. On 30.08.1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertaking PreussenElektra AG, which belongs to VEBA AG, acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the Dutch regional electricity provider N.V. Electriciteitsbedrijf Zuid-Holland ('EZH').
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

¹ OJ L 395, 30.12.89 p.1; corrigendum OJ L 257 of 21.09.90, p.13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 09.07.97, p.1, corrigendum OJ L 40, 13.02.98, p.17).

I. THE PARTIES' ACTIVITIES

3. PreussenElektra is active in the construction and management of facilities for electricity, gas, heat and water supply, as well as in the areas of the generation, transmission, and the distribution and supply of electricity in Germany (in six German Länder).
4. EZH is one of four electricity generating companies in the Netherlands. The current shareholders of EZH are public entities, i.e. the province of Zuid-Holland and the cities of Rotterdam, 's Gravenhage, Dordrecht, Delft and Leiden.

II. CONCENTRATION

5. The above operation will result in the acquisition, through the purchase of shares, of sole control by PreussenElektra over EZH and therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

6. The combined aggregate worldwide turnover of the undertakings concerned exceeds EUR 5 000 million (VEBA AG: EUR 42 787 million, EZH: EUR 678 million). The aggregate Community-wide turnover of each party exceeds EUR 250 million (VEBA AG: EUR 8 200 million, EZH: 678 million). They do not achieve more than two-thirds of their turnover in one and the same Member State. Therefore, the concentration has Community dimension.

IV. COMPETITIVE ASSESSMENT

A. Relevant product markets

7. The activities of the electricity industry can be divided into four different types of operations, *generation*, the production of electricity in power stations; *transmission*, its transport over high tension cables; *distribution*, the transport of the electricity over the low tension local cables and *supply*, the delivery of the electricity to the final consumer. In line with previous Commission decisions² each of these activities can be regarded as constituting a separate product market, as they require different assets and resources, and the market structures and conditions of competition are different for each. For supply to final customers a further distinction could be made between larger, medium-sized and commercial/household customers.
8. PreussenElektra is active in all four types of operation, whereas EZH is only active in power generation. Therefore, the market for electricity generation is the only market, where the activities of the parties overlap.

B. Relevant geographic market(s)

9. The parties state that the market for electricity generation has become Community-wide following the liberalisation process that has taken place. The parties present a number of arguments in order to show that the markets are wider than national in scope, among others, that significant imports take place. However, imports into the Netherlands are

² See for example IV/M.1346 EdF/London Electricity

limited to some 14% of total national demand, and the growth rate of such imports of electricity generated abroad was very low in the last few years. These figures would indicate, that the market is at most national in scope. A further indication that the market is national in scope follows from the fact that the Dutch market is governed by a pooling arrangement as described in para.10. However, the precise geographic market definition can be left open, since the proposed takeover does not lead to competition concerns on either of the possible definitions.

C. Competitive Assessment

Generation

10. The current legal structure of the Dutch energy market, including electricity generation, is governed by the 1998 Electricity Act, which reflects the rules contained in Community Directive 96/92. The Dutch competition authority (NMa) is entrusted with the supervision of compliance with the Electricity Act. EZH is the smallest of four electricity producers in the Netherlands. The electricity the four generators produce, is currently (until 31 December 2000) pooled by the undertaking SEP (which is jointly owned by these four producers). SEP redistributes the electricity to its shareholders/generators at a pooled national tariff. As from the year 2001, SEP will no longer function as an intermediary body between purchases and sales of electricity, as a result of the entry into force of the above legislation. The generators will subsequently supply a number of local distribution companies, which transmit and sell electricity to the final consumer.
11. Total power supply in the Netherlands including net imports amounted to 99.3 TWh in 1998. The share of EZH was [...] TWh, i.e. [5-15%]. PreussenElektra exported [...] TWh via an exchange agreement with SEP as well as directly to Dutch distributing companies, amounting to a market share of [0-5%]. Therefore, the combined market share of the parties would amount to [5-15%]. That market position does not give rise to competition concerns.

Transmission

12. The Dutch high voltage grid, previously managed by SEP, has been transferred to a separate legal entity called TenneT, which is a 100% owned by SEP. Since EZH owns 25% of SEP, it is also co-owner of TenneT. However, the controlling interest in TenneT is to be transferred to the Dutch government, as soon as the amendment of the 1998 E-Act, in particular Article 77d, enters into force.
13. The Netherlands are a net importer of electricity. PreussenElektra provides a substantial share of these imports (15-20%). It is, therefore, conceivable, that vertical issues may arise as a result of this concentration. However, until the majority of the shares in TenneT will be owned by the Dutch State, EZH does not exercise its voting rights through SEP in TenneT without the consent of the Dutch Minister of Economic Affairs. Pursuant to Article 8(2)(iv) of the share purchase agreement, PreussenElektra has agreed not to exercise these rights without prior written approval of the Dutch Minister of Economic Affairs as well. It can, therefore, be assumed that the voting rights will be exercised only in the interest of the Dutch State as the future owner as opposed to the interest of PreussenElektra. Therefore, the market for electricity transmission will not be affected as a result of the merger, and no vertical issues arise.

VI. CONCLUSION

14. 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,

signed by

Mario MONTI

Member of the Commission