

***Case No COMP/M.1949 -
WESTERN POWER
DISTRIBUTION (WPD) /
HYDER***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 14/07/2000

*Also available in the CELEX database
Document No 300M1949*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.07.2000
SG(2000)D/

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 COMP/M.1949 – Western Power Distribution / Hyder

Notification of 12.06.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 12.06.2000 the Commission received a notification whereby Western Power Distribution Limited, controlled by The Southern Company, notified its intention to acquire sole control of Hyder plc.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the EEA agreement.

I. THE PARTIES

3. **Western Power Distribution Limited (“WPDL”)** has been formed for the purpose of making an offer for Hyder plc. WPDL’s shares are held as to 49% by a wholly owned subsidiary of The Southern Company (“Southern”), a US utility holding company based in Georgia, USA and as to 51% by a wholly owned subsidiary of PP&L Resources Inc (“PP&L”), a US utility holding company based in Pennsylvania. Southern’s 49% interest gives it 51% of the voting rights. PP&L’s 51% interest carries only 49% of the voting rights and the veto rights accorded to PP&L are standard minority protection provisions. For the purposes of the EC Merger Regulation WPDL is solely controlled by Southern. Southern also controls South West Electricity plc, formerly “SWEB” now operating as Western Power Distribution (“WPD”). WPD’s principal activity is the distribution of electricity in the South West of England.
4. **Hyder plc (“Hyder”)** is the holding company for the Hyder Group. The Hyder Group’s principal activities are the provision of water and sewerage services in Wales through Dwr Cymru Cyfyngedig (“DC”) and the distribution of electricity in Southern Wales through South Wales Electricity plc (“SWALEC”).

II. THE OPERATION

5. Southern, via WPDL, proposes to acquire the entire issued share capital of Hyder. The transaction will accordingly result in sole control of Hyder by Southern.

III. CONCENTRATION

6. The transaction, by which Southern, via WPDL, intends to acquire sole control of the whole of Hyder is a concentration within the meaning of article 3(1) (b) of the Merger Regulation.
7. Separately, Southern [via WPD Holdings UK] has entered into an agreement with United Utilities (“UU”) whereby UU will provide certain operational and maintenance services in relation to the Dwr Cymru water and sewerage assets. However, this agreement has not been notified to the Commission.

IV. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion¹ (Southern EUR 10,172.2 million; Hyder EUR 1,976.18 million). Each of Southern and Hyder have a Community-wide turnover in excess of EUR 250 million (Southern EUR 1,372 million; Hyder EUR [...] million), 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

Water and sewerage services

9. Only Hyder is active in the supply of water and sewerage services. This aspect of the concentration therefore raises no competition issues.

Electricity

Relevant Product Markets

10. Previously² the Commission has defined four separate product markets for the electricity industry in the UK: *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.

¹ 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, p25). 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.

² Case No. IV/M.1346 – *EdF/London*

11. Neither Hyder nor Southern market electricity in the UK³. Hyder does not market electricity in any other part of the EEA. Therefore, no possible horizontal overlap exists. Southern markets electricity in Germany via BEWAG, which it co-controls. However, as will be shown below, the existence of this activity does not lead to concerns with respect to the new entity's combined distribution activity in the UK. Therefore, it is necessary neither to delineate relevant product market(s) concerning the marketing of electricity, nor, in particular, to ascertain whether in the UK there are still markets for "generation" and "supply"⁴.
12. As far as transport of electricity is concerned, neither of the parties to the concentration operates high tension grids in the UK. Their only transport activity in the UK is the one previously defined as distribution, i.e. transport over low tension cables. The Commission's inquiry has confirmed that this definition is still valid.

Connection and metering services

13. There are certain other activities that have traditionally been undertaken by the PES licence holders that are becoming separated activities. In particular the parties have indicated that it may be appropriate to consider (i) the provision of connection services and (ii) the provision of metering services as separate product markets.
14. *Connection* services are supplied when customers first connect to the distribution system, when they have a material change in their supply requirements, or when restoring supply. While this connection work has traditionally been carried out entirely by the host PES, the DGECS has recently been encouraging the development of competition in the provision of connection services. Not all connection services are open to competition and it is currently up to the host PES which it identifies as contestable and which connection activities the host PES states that only it can carry out. The question therefore arises whether at this stage a market has developed for the supply of connections services. However, for the purposes of the current decision, whether there exists a relevant product market for connection services can be left open since the proposed concentration would not create or strengthen a dominant position on such a possible market.
15. *Metering* services include activities related to the distribution businesses, such as installation and maintenance of electricity meters. They also include activities related more to supply businesses, for example, meter-reading and other data related services.
16. Due to the manner in which the supply of electricity has developed since the British electricity industry was privatised, some meters need to be able to read consumption in each half-hour period. The notifying party indicated that the characteristics of services provided to those with half-hourly meters are sufficiently different to the services provided to those without half-hourly meters that these should be considered as separate relevant product markets.

³ Both companies have sold their corresponding businesses. For Southern cf. case No. IV/M.1606, EdF/South Western Electricity

⁴ Recently, the Commission has defined, as for Germany, a market for supply of electricity at interconnected level: case IV M.1673 – VEBA / VIAG

17. Whether there is a separate market or markets for metering services and if so, what are the precise boundaries of this market or these markets can be left open, since the concentration would not create or strengthen a dominant positions on any of these possible markets.

Relevant Geographic Markets

Distribution of electricity

18. In the *EdF/London* decision the Commission noted that the relevant geographic markets for distribution appeared to coincide with the twelve distribution areas of the RECs. This conclusion remains valid.

Connection and metering services

19. The notifying party considers that as any service provider can carry out any element of connections work identified by the incumbent PES as contestable, the relevant geographic market for connections services should be defined as the whole of Great Britain. Likewise, the notifying party argues that the relevant geographic market for all types of metering services is national. However, as these markets develop from what have traditionally been regional monopolies, there may be a transition period during which competition is on a regional basis rather than on a national basis. For the purposes of the current decision the geographic market definition for both connections services and for metering services can be left open as the concentration does not create or strengthen any dominant positions under any possible geographic market definitions.

Assessment

Distribution of electricity (horizontal aspects)

20. The concentration will combine Southern's distribution of electricity in the South West of England and Hyder's distribution of electricity in southern Wales. The distribution markets being regional in scope, there is no horizontal overlap between the two companies' respective activities. The concentration therefore neither creates nor strengthens a dominant position.

Vertical integration of marketing and distribution

21. The Southern Company also holds joint control of the Berlin power company, BEWAG⁵, an electricity company incorporated in the Federal Republic of Germany active in the supply of electricity at interconnector level and in distributing and marketing electricity to consumers in the Berlin area. However, the combination between BEWAG's supply of electricity at interconnector level and the new entity's combined distribution activities in England and Wales is not able to create competition concerns. This is because, as noted in the Commission's assessment of *EdF/London*⁶, although some electricity can be exchanged between England and Wales and neighbouring countries, the equipment permitting these exchanges is of limited

⁵ cf. Case No IV/M.932

⁶ *ibid*

capacity (less than 6% of total capacity). With the maximum potential imports constrained to 6% of total capacity, even if BEWAG were to become active in marketing electricity in England and Wales via the interconnector, the concentration would neither create nor strengthen a dominant position.

Connection and metering services

22. If the markets for *connection* services and *metering* services are regional, then a concentration between two contiguous suppliers could eliminate potential competition within a region and therefore reinforce a dominant position held by the incumbent operators. However, barriers to entry into both connections and metering markets appear to be very low and after the concentration there will remain a significant number of potential competitors. Therefore if the geographic scope of these markets is defined as regional the concentration will not create or strengthen a dominant position.
23. If the market or markets for *connections* are national, then on the basis of information in Ofgem's report, Competition in Connections, December 1998, the parties estimate their combined market share to be [5-15] % (Hyder [5-15] % and Southern [0-10] %). This is based on information on revenues from connection services in the UK provided by only seven of the twelve PES licensees. Assuming that the remaining five PES licensees also obtain revenues from such services, then the parties' actual market share would be less than [5-15] %. Therefore the concentration will not create or strengthen a dominant position on any possible market for connection services.
24. As regards *metering* services, the parties have estimated their market shares on the basis of two relevant national markets: (i) for the provision of distribution business metering and services to half- hourly customers; and (ii) for the provision of distribution business metering and services to non-half-hourly customers.
25. The parties estimate that if they were to service all the meters in their respective areas, their maximum share on a national market would be [5-15] %, given that neither company operates significant numbers of meters outside their areas. On the basis that both Southern and Hyder serviced [>70] % of the half-hourly meters in their respective areas, their combined market share would be less than [0-10] %.
26. Competition was only introduced for non-half-hourly metered customers (essentially those customers with maximum demand up to 100kW) on 1 April 2000. The parties have not identified any external source of information on market shares but have estimated their market shares on the basis of the share of customer numbers in their authorised areas. On this basis, the parties' combined share would be [5-15] % (Source: Electricity Industry Review 4 – Electricity Association January 2000). Therefore however the markets for metering services are defined, the concentration will not create or strengthen a dominant position.

VI. CONCLUSION

27. 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 and Article 57 of the EEA Agreement.

For the Commission,

SIGNED

Mario MONTI
Member of the Commission