

***Case No COMP/M.2209 -  
EDF GROUP / COTTAM  
POWER STATION***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 29/11/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.11.2000

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 COMP/M.2209 - EdF Group/Cottam Power Station**

Notification of 26.10.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 26.10.2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89<sup>1</sup> by which the group Electricité de France (“EdF”) [France], owned and controlled by the French State, acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of Jade Power Generation Limited (“Jade”) which controls Cottam Power Station (“Cottam”) [United Kingdom] by way of purchase of assets.
2. Following the notification, the Commission has concluded that the notified operation falls within the scope of the said Council Regulation and does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

**I. THE PARTIES**

3. **EdF** generates, transmits, distributes and supplies electricity in France and exports electricity from France to neighbouring countries, including England and Wales through its France/England interconnector and elsewhere in the world. The EdF Group is ultimately owned by the French State. In the UK, EdF has previously acquired London Electricity<sup>2</sup> and the old SWEB supply business<sup>3</sup>, and has a joint venture with Eastern

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<sup>1</sup> 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).

<sup>2</sup> Decision IV/M.1346

<sup>3</sup> Decision IV/M.1606

Electricity (TXU Europe) for network infrastructure management. EdF also designs, builds and acts as technical consultant in relation to the construction, operation and maintenance of electrical plants and power networks and through specialist subsidiaries, provides waste re-cycling and street lighting services.

4. **Cottam** is a power station whose immediate parent is Jade, a special purpose subsidiary established for purposes of divesting the Cottam power station. Jade in turn is a wholly owned, indirect subsidiary of Powergen plc. Cottam's principle activity is the generation of electricity for supply to the electricity Pool in England and Wales.

## **II. THE OPERATION**

5. On 17.05.2000, Powergen arranged a private auction offering interested parties the opportunity to bid for Cottam. EdF submitted a final bid for Cottam on 07.08.2000 and concluded a Sale and Purchase Agreement with Powergen on 14.10.2000.

## **III. CONCENTRATION**

6. The proposed concentration constitutes a concentration within the meaning of Article 3.1.b of the Merger Regulation.

## **IV. COMMUNITY DIMENSION**

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>4</sup> (EdF Group, EUR 32,057.00 million; Cottam Power Station, EUR 330.68 million). Each of them has a Community-wide turnover in excess of EUR 250 million (EdF Group, EUR [...]; Cottam Power Station, EUR [...]), but they do not both 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. RELEVANT MARKETS**

8. Prior to March 1990, the electricity industry in England and Wales was state owned. On 31 March 1990, the industry was significantly restructured in preparation for its transfer from public to private ownership and was divided into four elements; generation, transmission, distribution and supply. As electricity can not be stored, but must be generated as required, the Pool was established to make provision for competition in the generation and supply of electricity. It is basically a wholesale trading mechanism through which suppliers acquire electricity from generators (see para. 13 below). Participation in the Pool is mandatory for nearly all generators and for most suppliers, however, it is due to be replaced by the new electricity trading arrangements ("NETA"). The timescale for implementing NETA is not yet finalised.
9. At the end of July 2000 the Utilities Act 2000 was enacted amending the Electricity Act 1989 to enable the Secretary of State to modify the conditions contained in the transmission, generation and supply licences for the purpose of introducing NETA.

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<sup>4</sup> 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.

Trading within the new arrangements was meant to take place on 21 November 2000, however due to delays in systems testing, the launch of NETA has been postponed and trading continues under the Pool. NETA is intended to make the electricity trading arrangements operate more competitively than the Pool by allowing trading parties (including generators and suppliers) to contract bilaterally in advance for the sale and purchase of electricity. Ultimately each industry participant will determine the price at which it buys or sells electricity based on the contracts it negotiates.

#### **A. Relevant product markets**

10. The activities of the electricity industry in England and Wales (see below) can be divided into at least four different physical stages: *generation* (the production of electricity in power stations); *transmission* (the transport of electricity over high tension cables); *distribution* (the transport of electricity over the low tension locals cables); and *supply* (the delivery of the electricity to the final customer). The proposed operation has a potential impact on only two of these activities; generation and supply. In this context generation includes that electricity generated elsewhere and supplied into E&W via the interconnectors from France and Scotland.
11. EdF is also active in the distribution and supply of electricity in England and Wales. Through its joint venture with Eastern Electricity (TXU Europe) it is also active in the provision of utility network asset management and operation services.
12. Cottam is a power station generating electricity for supply to the Pool. It is not active in the areas of supply to the final customer, distribution or maintenance.

#### *The “generation” of electricity (including imports from France and Scotland)*

13. Generators must sell all electricity supplied in England and Wales, with the exception of that produced in the very smallest power stations, to suppliers through a wholesale trading arrangement called the Pool. Under this system, generators bid prices to the National Grid Company, which selects the offers securing that the quantity requirements and the transmission constraints are satisfied at the lowest possible price, and accordingly sets the price for electricity for the corresponding period. All generators located in England and Wales, and the external members of the Pool, EdF and the Scottish producers, operate under similar conditions. They bid into the Pool and are paid the price fixed by the Pool for all their output. Following the changes that will be introduced by NETA, the generators will continue to sell their electricity mainly to suppliers, but the price paid will be determined by the contracts arranged between the generators and their customers, rather than set centrally via the Pool.
14. It may also be relevant to consider narrower markets within that for generation, namely a market for power produced by mid-merit, or price setting generation plant. This is because, under the Pool arrangements, it is mainly this mid-merit plant which sets the prices customers pay. Generation capacity with high start up costs (e.g. nuclear) provides baseload capacity and bids for this plant are submitted to guarantee that these plants will be called upon. This baseload plant does not therefore compete in the price setting part of the Pool. Following the introduction of NETA, the mid-merit plant will no longer play the centralised price-setting role that it currently plays, since prices will be determined on the basis of individual contracts rather than via the centralised system under the Pool. The possibility that there exists a narrower market for mid-merit generation will therefore be eliminated. For the purposes of this decision, it is not necessary to decide

whether or not such narrower markets are relevant, since no dominant position is created or strengthened by the operation under whatever market definition considered.

#### The supply of electricity

15. In the *EdF/London Electricity*, *EdF/South Western Electricity* and *EdF/Louis Dreyfus* decisions, the Commission left open the exact definition but suggested that it would be possible to distinguish at least two markets in relation to the supply of electricity to final consumers; supply of electricity to small customers (those with a demand not exceeding 100kW); and supply of electricity to large customers (those with a demand exceeding 100kW). For the purposes of this decision it is not necessary to define precisely the relevant market for the supply of electricity as in none of the alternative market definitions considered, will the operation give rise to any competition problems. This conclusion will remain valid after the introduction of NETA. Under the new arrangements, customers will be able to contract directly with generators in addition to the existing possibility of buying their electricity via suppliers; the choice available to customers will therefore be increased.

### **B. Relevant geographic markets**

#### The generation of electricity

16. In the *EdF/London Electricity* and in *EdF/South Western Electricity* decisions, the Commission left the exact definition of the geographic market for *generation* open, though it was suggested that this geographic market could be England and Wales. The electricity trading arrangements in E&W (i.e. the Pool) were established via legislation which provides for the geographic market. These differ from the arrangements in Scotland, Northern Ireland and France, and are limited to England and Wales. Furthermore, although some electricity can be exchanged between England and Wales on the one hand, and neighbouring countries and areas on the other hand, the equipment permitting these exchanges is of limited capacity (less than 6% of total capacity in England & Wales. The proposed change to NETA will not have an affect on the definition of the geographic market as the trading arrangements will continue to differ between England and Wales and elsewhere. The relevant geographic market for *generation* may therefore be no wider than England and Wales.
17. However, it is not necessary to define this geographic market, as in none of the alternative market definitions considered, will the operation give rise to any competition problems.

#### The supply of electricity

18. The supply of electricity in England and Wales is the sale of electricity to the final customer and includes billing services. Supply was carried out by the twelve public electricity suppliers (PESs) and each PES was granted a licence under the Electricity Act 1989 to supply electricity as a PES within its local area, thereby ensuring that the PESs remained the monopoly supplier to any customer within its allocated area whose demand for electricity was below 1MW. In 1994 this was reduced to 100kW. Since 24 May 1999, each PESs area has been fully open to competition and all customers in England and Wales are now able to purchase electricity offered by other suppliers.

19. In relation to the supply of electricity to large customers, (those whose maximum annual demand exceeded 100kW) in *EdF/London Electricity*<sup>5</sup> the Commission found that this market constituted a separate market whose geographic scope is England and Wales. This was because those larger customers have been able to choose their suppliers since 1994 (1990 for those whose demand exceeds 1MW) there was considerable evidence that these customers review their supply contracts and change suppliers frequently. This reasoning remains valid for the purposes of the current assessment.
20. As a result of the history of liberalisation, the markets for supply to smaller customers immediately post-liberalisation were regional, as the vast majority of customers were supplied by the incumbent regional operator and exhibited considerable inertia to switching suppliers. In *EdF/SWEB*<sup>6</sup> the Commission found that the supply of electricity to small customers (demand not exceeding 100kW) was likely to be regional. However, since then, a number of second-tier suppliers such as British Gas Trading have begun operating on a national scale. Currently there are an estimated 26.4 million electricity customers in England and Wales (approx. 24.5 million small customers and 55,000 larger customers). Since the liberalisation of the market, customer inertia appears to have reduced, and each month approximately 1% of all small customers change their electricity supplier.. There do not therefore appear to be any significant barriers to switching suppliers.
21. As a result of the increased customer switching, the relevant geographic market for *supply* may now be wider than regional. However, it is not necessary to define the geographic market, as in all alternative market definitions considered, the operation will not give rise to any competition problems.

## VI. COMPETITIVE ASSESSMENT

### Horizontal Aspects

22. The proposed concentration will not give rise to any horizontal overlapping activity other than in generation. There, the combined share of the EdF Group and Cottam is [below 10]% of output (EdF [below 10]%; Cottam [0-5]%). Several other generators have substantially larger shares (e.g. National Power, Powergen and British Energy). On the basis of a narrower market (that for mid-merit plant), the operation is pro-competitive, since it introduces a new competitor into the price-setting part of the Pool. Accordingly it is not necessary to examine this aspect of the operation any further.

### Vertical Aspects

23. The concentration will also, however, give rise to a vertical integration which must be examined in relation to the interaction between generation and the following relevant markets.

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<sup>5</sup> Decision COMP/M.1346

<sup>6</sup> Decision COMP/M.1606

### The supply of electricity to large customers

24. The parties' share of the market for the supply of electricity to customers with a maximum demand exceeding 100kW in the England and Wales is [10-20]%. As a result of the operation, EdF's share of generation will increase to [below 10]%. Even if there were no regulatory or legislative barriers, market shares of this magnitude would be insufficient to create or strengthen a dominant position at either the generation level or at the supply stage. Not only will there exist several other major generators (e.g. Powergen with 14.6%; British Energy 17%; Innogy (formerly National Power) 7.9%; and AES 8.1%), but there are also strong competing suppliers and the costs of switching between one supplier and another are very low. The vertical integration examined therefore will not create or strengthen a dominant position on either the generation or the supply markets.

### The supply of electricity to small customers

25. EdF through LEG supplies approximately [80-90]% of the 'small' customers in the London area, and [80-90]% in South West England. As explained in paragraph 17 above, until the complete liberalisation of the electricity supply market on 24 May 1999, the regional supply companies had a monopoly on sales to these customers. The incumbents therefore have lost over [10-20]% of their sales in the last 18 months. Currently, about 1% of all small customers change supplier each month. This proven willingness of small customers to switch, together with the availability of alternative suppliers and the existence of other generators able to compete with EdF means that, even if EdF were considered dominant on regional supply markets, there would be no reinforcement of any such dominant position by the increased vertical integration brought about by this operation.

26. EdF's share of supply in England and Wales is [below 10]%. As there exist several strong competitors at the supply level with market shares between 9% and 15%, and other companies able to compete with EdF at the generation level, the operation would not create or strengthen a dominant position if the market for supply to small customers would encompass England and Wales.

## **VII. 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,  
Mario MONTI  
Member of the Commission