

***Case No COMP/M.2340 -
EDP / CAJASTUR /
CASER /
HIDROELECTRICA
DEL CANTABRICO***

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

Article 6(1)(b) NON-OPPOSITION
Date: 05/03/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 5/3/2001

SG (2001) D/286592 to 286595

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No COMP/M.2340 - EDP/CAJASTUR/CASER/HIDROELÉCTRICA DEL CANTÁBRICO

Notification of 02.02.2001 pursuant to Article 4 of Council Regulation No 4064/89

1. On 02.02.2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ by which the undertakings the EDP- Electricidade de de Portugal S.A. (EDP), Caja de Ahorros de Asturias ("Cajastur") and Caja de Seguros Reunidos, Compañía de Seguros y Reaseguros S.A. (Cáser) acquire joint control over the utilities Spanish undertaking Hidroeléctrica del Cantábrico S.A. (Hidrocantábrico) by way of public bid and contract of management.
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 EEA Agreement.

I. THE PARTIES' ACTIVITIES AND THE OPERATION

3. Hidrocantábrico is mainly active as a generator, distributor and supplier of electricity in Spain and as a distributor and supplier of gas and telecommunications in Asturias (Spain). According to its governing rules none of its shareholders can hold more than 10% of its voting rights. Decisions are taken by majority of votes of shareholders present in the general shareholders meeting.
4. EDP is a Portuguese undertaking active in the production and distribution of electricity. It has other activities of some importance in the areas of telecommunications in Portugal.

¹ OJ L 395, 30.12.1989 p.1; corrigendum OJ L 257 of 21.9.1990, p. 13, 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).

5. Cajastur is a Spanish “caja de ahorros” (savings bank), a non profit making entity. Its core business is retail deposit taking and mortgage lending. Cajastur also provides other banking services such as general consumer lending facilities to SMEs.
6. Cáser is a Spanish corporation which carries on insurance and reinsurance business and manages pension funds in Spain.
7. The above-mentioned public take-over (see point 1) was filed with the CNMV² on 25 January 2001 and constitutes an unconditional offer for the acquisition of 100% of Hidrocantábrico’s share capital at the price and under the terms agreed by the parties. Cajastur and Cáser currently hold 10% and approximately 5% of Hidrocantábrico’s share capital respectively. The acquisition of joint control will be carried out through a special purpose vehicle (Adygesinval S.L., incorporated in Spain and owned initially by EDP and Cajastur on a 50/50 basis). The parties have entered into a shareholders agreement dated 24 January 2001, which provides for a structure of joint control over Adygesinval S.L by EDP, Cajastur and Cáser. It is the parties’ intention that, at the end of the take over proceedings, the shareholding structure of Adygesinval S.L will be as follows: EDP 40%, Cajastur and Cáser jointly 30%, Financial partners 30%. The financial investors are not party to the agreement and will not exercise control over Adygesinval S.L within the meaning of the EC Merger Regulation.

II. COMMUNITY DIMENSION

8. The combined aggregate worldwide turnover of EDP (3 867 million EURO), Cajastur (0,301 million EURO), Cáser (1 148 million EURO) and Hidrocantábrico (891 million EURO) exceeds EURO 5 billion. The aggregate Community-wide turnover of each of at least two undertakings concerned is in excess of 250 million EURO (EDP 3 859 million EURO, Hidrocantábrico 891 million EURO) and the undertakings concerned 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.

III. COMPETITIVE ASSESSMENT

9. The transaction will not lead to any increase in market shares. Although both EDP and Hidrocantábrico are active as electricity suppliers there are no overlaps between the parties’ activities given that they operate in different geographic markets³.
10. As regards the supply of electricity to customers the Commission has confirmed in several decisions⁴ for various Member States that the market is not larger than national. The Commission's investigation in the present case has shown that the market for electricity supply in mainland Spain and Portugal is not larger than national and that the concept of an Iberian market must be excluded due, in particular, to the limited scope of interconnections that limits imports and exports of electricity between Spain and Portugal⁵.

² Spanish Stock exchange regulator

³ Transport activities (transmission and distribution) are, at least at present, natural monopolies. Therefore, no competition concerns arise from the addition of EDP’s and Hidrocantábrico’s networks.

⁴ case IV M 1659 Preussen Elektra/EZH, case IV M. 1557 EDF/Louis/Dreyfus, case COMP M. 1673 VEBA/VIAG case COMP M 1803 Electrabel/Eon, COMP M. 1853 EDF/ENBw.

⁵ See also COMP M 1952 RWE/Iberdrola/Tarragona Power JV

11. Given the existence of technical constraints between these two geographic areas, the range of maximum exports from Portugal and maximum imports from Spain are the following:

MW	Winter	Summer
Exporting	700 -1150	100-910
Importing	290-1730	160-1090

However, the actual commercial capacity is much lower due to the fact that it is reserved for national security reasons. Thus, the available interconnection capacity for commercial purposes is limited to 650 MW from Portugal to Spain and 750 MW from Spain to Portugal. This represents 1,5% of the whole ordinary capacity already installed in Spain and 8,1% of the Portuguese installed capacity (excluded auto-producers). Furthermore, the increase in available capacity due to the superposition is uncertain as the superposition effect of import and export flows can only occur to the extent that electricity flows in both directions take place at exactly the same time⁶.

12. EDP has no generation capacities operational in Spain and Hidrocantábrico has no generation capacities operational in Portugal. Moreover, neither EDP nor Hidrocantábrico have sales of electricity respectively in Spain and Portugal. The proposed operation therefore would not lead to any overlap.

13. According to the parties, the only product markets where the merger will have an impact is the Spanish electricity market (supply to eligible customers which is liberalised and supply to smaller customers when it becomes a liberalised market⁷) because of the exclusion of a potential competitor (EDP). Nevertheless, the parties submit that interconnection limitations are such that, at this stage of development of the market, it cannot be considered that EDP in Spain would be as a serious potential competitor. The Commission notes that Hidrocantábrico has only a market share of 6,6% of electricity sales to eligible customers. It is also worth noting that its share to non-eligible customers is around 4,8% and its share in total generation is 4,7%. In the light of these figures and the limited interconnection capacity between Portugal and Spain, the merger will not create or strengthen a dominant position in Spain in the market for eligible customers.

14. The Commission has received comments from one competitor according to which the concentration would result in the aggravation of single market dominance by EDP in Portugal⁸. He claims that, after the acquisition, EDP will be in a stronger position to compete in the Spanish market and will enable it to put pressure on the remaining Spanish incumbents

⁶ In 2000 imports of electricity from Spain into Portugal accounted for 518 GWh (around 1,2% of total Portuguese production which was 41504 GWh in 1999) and exports from Portugal to Spain accounted for 1351 GWh (around 3,2% of total Portuguese production), the difference being 841 GWh.

⁷ Eligible customers are free to choose their electricity supplier. A minimum demand of electricity is required to become an eligible customer. According to Commission's figures, non eligible customers represent around 45% of the market in Spain and around 70% of the market in Portugal. Supply to non-eligible customers is a regulated activity and companies do not compete in this sector. It is expected that by 2007 at least some of these customers will be able to choose their supplier too.

⁸ 81% installed capacity, almost 100% distribution to non-eligible customers. Total potential Eligible customers consumption accounts for 28,33% of EDP production (6098 GWh). However the consumption of eligible customers that have effectively left the "bound system" existing for non eligible customers is only 216 GWh accounting only for 0,9% of total EDP production.

by threatening to compete aggressively in their market if they enter the Portuguese market for eligible customers. The Commission does not share this assessment given the very limited importance of Hidrocantábrico (see figures set out in previous paragraph). The proposed concentration will not increase to a significant degree EDP's potential for retaliation in Spain where Hidrocantábrico is a minor actor, with no particular advantages, compared to companies like Endesa or Iberdrola. Nothing suggests that a relatively small operator such as Hidrocantábrico could be in a position to prevent companies such as Endesa (42,7% generation capacity 47,7% sales to eligible customers and 40% to non eligible customers) and Iberdrola (35,1% generation capacity 27,1% sales to eligible customers and 40,6% to non eligible customers) to enter the Portuguese market for eligible customers by threatening to compete aggressively with them.

15. As far as Hidrocantábrico might have been considered as a potential competitive entrant in the Portuguese market, as it has been mentioned before, the interconnection limitations are very limited.
16. Furthermore, Hidrocantábrico has no access to generation capacity situated in Portugal, not even under contractual agreements with Portuguese generators. Hidrocantábrico would thus not be one of the strategically best-placed companies to enter the Portuguese market in contrast with other electricity producers such as the German RWE and the Spanish Endesa that control production facilities in Portugal such as Tejo Energia and Turbogás .
17. Finally, even if the merger will imply the disappearance of one potential "ex novo" entrant (installation of new capacities) able to compete with the existing players in each of the countries where EDP and Hidrocantábrico operate, given the number of potential competitors existing at EEA⁹ and world level who are in a position to install new capacities in Portugal and Spain the impact of the merger, in this respect, will be negligible.
18. In these circumstances, the concentration will not lead to the creation or strengthening of a dominant position.

IV. CONCLUSION

19. 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

⁹ such as Iberdrola and Endesa in Portugal or EDF and the German electricity companies in both Portugal and Spain.