

***Case No COMP/M.2513 -  
RWE / KÄRNTNER  
ENERGIE HOLDING***

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: 02/08/2001

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## COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels,

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**Subject: Case No COMP/M.2513 – RWE / KÄRNTNER ENERGIE HOLDING  
Notification of acquisition of joint control pursuant to Article 4 of Council  
Regulation No 4064/89<sup>1</sup>**

1. On 02.07.2001 the Commission received the notification of an operation by which the German RWE Plus AG (“RWEPlus”), a wholly-owned subsidiary of RWE AG (“RWE AG”), Germany, and the Austrian Land Kärnten (“LandKärnten”) acquire joint control of the Austrian undertaking Kärntner Energieholding Beteiligungs GmbH (“KEH”) by purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Council Regulation and does not raise serious doubts as to its compatibility with the common market or with the functioning of the EEA Agreement.

### **I. THE PARTIES**

3. RWE AG is one of the two largest energy utility companies in Germany with activities in energy, water, oil and petrochemicals, services for industrial and environmental applications.
4. KEH is a holding company mainly for the administration and management of the shareholding in the Austrian company Kärntner Elektrizitäts-Aktiengesellschaft (“KELAG”). KELAG is one of the regional electricity companies of Austria providing the supply of electricity mainly for the Land Kärnten. It receives electricity from own production sites

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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).

and through subscription rights from the Verbundgesellschaft and other neighbouring regional generation companies.

## **II. THE OPERATION**

5. The proposed operation consists of the acquisition of joint control by RWEPlus and LandKärnten of KEH. At present, LandKärnten solely controls KEH.

## **III. THE CONCENTRATION**

6. Through the proposed operation, RWEPlus acquires 49% of the shares in KEH with the remainder of 51% being kept by LandKärnten. As a result, RWEPlus and LandKärnten will jointly control KEH.
7. According to the provisions of the shareholder agreement (the “Syndikatsvertrag”), RWEPlus and LandKärnten have to decide on strategic business matters, such as the business plan, investments, by unanimous vote. Consequently, the transaction constitutes a concentration within the meaning of Article 3(1)(b) of Council Regulation (EEC) No 4064/89.

## **IV. COMMUNITY DIMENSION**

8. The companies involved in the proposed operation have a combined aggregate worldwide turnover in excess of EUR 5 billion (RWE AG EUR 47.9 billion, LandKärnten EUR 2.08 billion). Each of them has a turnover in the Community of more than EUR 250 million (RWE AG EUR [...], LandKärnten EUR 2.08 billion) and they do not achieve more than the two thirds of their Community-wide turnover in one and the same Member State. The proposed operation has therefore Community-dimension.

## **V. COMPETITIVE ASSESSMENT**

### **A. Electricity markets**

9. As far as the supply of electricity to eligible customers is concerned, there would no overlap of activities on a national market in Austria since RWE has no generation business in Austria and has made negligible imports of electricity. On a wider market, encompassing Austria and Germany, KELAG’s addition to RWE AG market share would be negligible.
10. On the market for trading of electricity<sup>2</sup>, KELAG recently entered this market in Austria with negligible volume traded, which currently represents less than [ $<5$ ]% market share. RWE Trading, the trading arm of RWE AG, has trading activities in Austria that amounts to a market share of approximately [5-10]%. The market share of the new entity would increase by less than [ $<5$ ]% to approximately [5-10]% in Austria. Since liberalisation of the Austrian electricity market, a number of domestic and foreign competitors trade with electricity in Austria. No concerns would arise either on a market encompassing Austria and Germany in view of the negligible character of KELAG’s activities.

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<sup>2</sup> In previous Commission’s decisions, Case No IV/M.1803 – Electrabel/Epon, Case No IV/M.1557 – EDF/Louis Dreyfus, the geographic scope has been finally left open, however, the consideration of alternative market definitions suggests being of at least national in scope.

## **B. Telecommunication infrastructure**

11. According to the notifying parties, the market for telecommunication infrastructure comprises the installation of infrastructure equipment, mainly for mobile telephony, together with related services such as planning, maintenance and other services. Various companies appear to offer this particular set of infrastructure equipment and services.
12. The notifying parties consider the geographic market of being national in scope, since KELAG carries out its activities on this market only in Austria. In view of the characteristics of the product offer and services, the Commission considers that the geographic market is at least national in scope.
13. The activities of KELAG and RWE AG, through subsidiaries, on this market in Austria amount to less than [ $<5$ ]% for KELAG and approximately [5-15]% for RWE AG. Main competitors on this market are ABB, a European-wide group active in the manufacturing of electrical equipment, and Alpine Energie. No addition of market shares arises outside Austria due to the fact that KELAG has no activities outside Austria.

## **C. Services for electricity businesses**

14. In the notification and by further precision of the market definition by the notifying parties, the activities of the companies concerned comprise the installation and distribution of devices that are used for the distribution of electricity. A number of companies appear to offer these services.
15. As far as the geographic scope of the market is concerned, the notifying parties consider the geographic market of being national in scope, since KELAG carries out its activities on this market only in Austria. In view of the characteristics of the product offer, the Commission considers that the geographic market is at least national in scope.
16. KELAG provides services for its Austrian customers, its activities amounts to a market share of approximately [ $<5$ ]%. RWE AG through its subsidiary achieves a market share of approximately [5-10]%. The proposed operation would lead to a combined market share of approximately [10-15]% in Austria. On this market, there is competition from *inter alia* ABB (about [10-15]%), Alstom (about [15-25]%), Siemens (about [10-15]%), achieving market shares of similar size as the new entity. No addition of market shares arises outside Austria in view of the fact that KELAG has no activities outside Austria.

## **VI. CONCLUSION**

17. It can be concluded that the proposed operation would not lead to the creation or strengthening of a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part thereof.
18. 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)**  
**Frits Bolkestein**  
Member of the Commission