

***Case No COMP/M.2620 -
ENEL / VIESGO***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 20/11/2001

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

Brussels, 20/11/2001

SG (2001) D/292210

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party

Dear Madams/Sirs,

Subject: Case No COMP/M.2620 – ENEL/VIESGO

Notification of 15.10.2001 pursuant to Article 4 of Council Regulation No 4064/89

1. On 15.10.2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ by which the Italian undertaking Enel SpA (Enel) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the Spanish undertaking Electra de Viesgo S.L. (Viesgo) belonging to the Spanish undertaking Endesa S.A, by way of purchase of assets.
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.

THE PARTIES' ACTIVITIES AND THE OPERATION

3. Enel is active in the generation, distribution and supply of electricity in Italy. Enel has the sole ownership of the Italian transmission grid. It also operates in the telecommunications sector through Wind Telecomunicazioni S.p.A., a full function joint venture jointly controlled with France Télécom SA, and in the field of gas distribution, mainly on the Italian market.

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).

4. Viesgo is a vertically integrated power utility, belonging to Endesa S.A. with a presence in the electricity generation, wholesale and distribution markets in the north of Spain.
5. The operation consists of the acquisition of 100% of the capital of Electra de Viesgo SL., presently owned by Endesa S.A.. As a result of the proposed transaction, Enel will acquire the sole direct control of Viesgo. The sales process has been performed in several steps. In April 2001, Endesa announced its intention to divest, by means of a competitive bid, the newly created holding company Electra de Viesgo SL, to which 100% of both Viesgo Generación, the generation subsidiary, and Viesgo Distribución, the distribution arm were contributed. Endesa invited all the large electricity groups at European level as well as large American companies. [...] companies signed the confidentiality agreement and therefore received the prospectus and could make a non-binding offer. On June 11, 10 non binding offers were received by Endesa. Following the selection of the preliminary offers, the potential purchasers were invited to carry out a due diligence investigation of the technical, legal and economic documentation and information of the Viesgo Group. On 16 July a letter was sent to bidders where they were asked to express their availability to formalise the single sale/purchase document in Madrid in the 5 days following the acceptance by Endesa of the offer and to make upon signature a down payment of 5% of the contract price. The final draft contract was sent to the potential purchasers on 3 August. On 13 August the interested parties made final firm offers. The board of Endesa examined the last bids and on 12 September granted the sale of the Viesgo Group to Enel. The sale/purchase contract was signed on 19 September 2001.

COMMUNITY DIMENSION

6. The combined aggregate worldwide turnover of Enel (25 286 million EURO) and Viesgo (648 million EURO) exceeds EUR0 5 billion. The aggregate Community-wide turnover of each of the undertakings concerned is in excess of 250 million EURO and they do not achieve more than two-thirds of their turnover in one and the same Member State. The notified operation therefore has a Community dimension.

COMPETITIVE ASSESSMENT

7. The only field of activity possibly affected by the present concentration is the sale of electricity in the liberalised market. As already indicated in past decisions for various Member States, including Spain², the market for the sale of electricity, at this stage, is not larger than national.
8. The operation does not lead to vertical or horizontal overlaps or any other competition problem.
9. It brings a new competitor in the Spanish electricity market. Viesgo has a [2-8%] market share of generation capacity in Spain. As regards sales of electricity in the liberalised wholesale market (pool), Viesgo's market share was [2-8%] in 2000.

Accordingly, it can be concluded that the merger does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.

² For Spain, cf. case IV M. 2340 EDP/Cajastur/Caser/Hidroeléctrica de Cantábrico, 2434 EnBW Hidroeléctrica del Cantábrico; cf. also COMP M 1952 RWE/Iberdrola/Tarragona Power JV; for other Member States cf. case IV M 1659 Preussen Elektra/EZH, case IV M. 1557 EDF/Louis Dreyfus, case COMP M. 1673 VEBA/VIAG case COMP M 1803 Electabel/Epon, COMP M. 1853 EDF/EnBW.

CONCLUSION

10. 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