

***Case No COMP/M.2675 -
EDF / TXU EUROPE /
WEST BURTON POWER
STATION***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 20/12/2001

*Also available in the CELEX database
Document No 301M2675*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20/12/2001
SG (2001) D/293041

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Subject: Case No COMP/M.2675 EdF/TXU Europe/West Burton Power Station and COMP/M.2679 – EdF/TXU Europe/24Seven Notification of 19 November 2001 pursuant to Article 4 of Council Regulation No 4064/89¹

1. On 19.11.2001 the Commission received two notifications pursuant to Article 4 of Council Regulation (EEC) No 4064/89 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 West Burton Power Station, and the whole of Eastern Electricity Ltd (“Eastern”) and the remaining 50% shareholding in 24Seven from TXU Europe [United Kingdom] by way of purchase of assets.

I. THE PARTIES

2. **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 Electricity², London Energy Company Limited (the old SWEB supply

¹ 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).

² IV/M.1346, 27.01.1999

business)³, and Cottam Power Station⁴. One of the operations notified is EdF's acquisition of the other 50% of a 50:50 joint venture it has with TXU Europe for 24Seven⁵, the joint venture company which manages and operates London Electricity's and Eastern's electricity distribution network.

3. The operations affect parts of TXU Europe, a wholly owned subsidiary of TXU Corp active in the provision of services in the electricity and gas sectors, energy trading, energy marketing and telecommunications primarily in the United States, Europe and Australia. The affected parts of TXU Europe are the **West Burton** power station (a coal fired power station based in Nottinghamshire, England), **Eastern** (the subsidiary of TXU Europe which currently owns the electricity distribution network in the Eastern region of England) and **24Seven**, the joint venture company which manages and operates London Electricity's and Eastern's electricity distribution network.

II. THE OPERATION

4. The notifications refer to three changes in the quality of control. In principle each change of control constitutes a separate transaction, unless the different acquisitions of control are interdependent. In the present case it appears that the operations involve the same buyer and the same seller, they have been concluded simultaneously, and the economic rationale of the transaction is the acquisition of all the relevant parts of TXU Europe. They can therefore be treated for the purpose of the present decision as a single operation. The notified acquisition of West Burton power station will take the form of an intra-group sale of the West Burton Power Station business and associated assets to a special purpose vehicle, Hood 2 and a subsequent acquisition by EdF's wholly-owned subsidiary, London Power Company, of the entire issued share capital of Hood 2. In addition, the second notification refers to the acquisition by EdF of the entire share capital of Eastern, together with TXU Europe's 50% shareholding in 24Seven.
5. After the operations are complete, EdF will have sole control of West Burton, the Eastern distribution assets and 24Seven.

III. THE CONCENTRATION

6. The concentration concerns the acquisition by EdF of sole control of parts of TXU Europe and a change in the nature of EdF's control over 24Seven, from joint to sole control. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Regulation 4064/89, the Merger Regulation.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion⁶ (EdF Group: EUR 34,424m; West Burton, Eastern and 24Seven:

³ IV/M.1606, 19.07.1999

⁴ COMP/M.2209, 29.11.2000

⁵ COMP/JV.36, 03.02.2000

⁶ 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

EUR [...]. Each of them has a Community-wide turnover in excess of EUR 250million (EdF Group EUR [...]; West Burton, Eastern and 24Seven: 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. COMPETITIVE ASSESSMENT

A. Product markets

8. The activities of the electricity industry 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 customer). The proposed operation will have a potential impact on two of these activities: generation and distribution. EdF is also active in the supply of electricity in England and Wales. The joint venture24Seven is active in the provision of new connection services and utility network asset management and operation services. In addition London Electricity Group will acquire the meters belonging to the Eastern distribution business.
9. The *generation* of electricity involves the production of electricity at power stations. The main fuels used for generation in Great Britain are coal, nuclear power, oil and gas with renewable energy sources contributing a small amount of electricity. The proposed operation involves the purchase of West Burton, a coal-fired power station. EdF, through London Power Company, currently owns four power stations in the UK and exports electricity to England and Wales through the France/England Interconnector.
10. There has been a significant change in the structure of the electricity trading system in England and Wales which came into operation on 27 March 2001 and which affects the way that generators market the electricity they produce and the way that electricity suppliers purchase their supplies from generators. The New Electricity Trading Arrangements (“NETA”) aiming to remove distortions in the old Pool system and 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. Under the Pool arrangements, generators bid prices to the National Grid Company for each half hourly period. The National Grid Company then selected the offers securing that the quantity requirements and the transmission constraints were satisfied at the lowest possible price, and accordingly set the price for electricity for the corresponding period. All purchasers from the Pool paid the same price and the generators were paid the price fixed by the Pool for all their output.
11. Under 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. NETA includes forward and

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.

futures markets that allow contracts for electricity between generators and suppliers to be struck several years in advance; short-term power exchanges allowing participants to ‘fine-tune’ their contracts; and a balancing mechanism allowing generators and suppliers to make up any shortfall in consumption or generation and a settlement process for charging participants whose contracted positions do not match their metered volumes of electricity. These trading arrangements and the associated balancing and settlement mechanism are limited to England and Wales, as were the previous arrangements for trading electricity in the Pool.

12. For the purposes of this decision it is not necessary to reach any final decisions about the boundaries of an electricity generation market or the possible effects of the introduction of NETA as the operations do not give rise to the creation or strengthening of a dominant position.
13. Electricity *distribution* involves the conveyance of electricity from the National Grid to consumers through a local network. Each distribution licensee receives electricity from the National Grid at various supply points, it is then distributed to customers by a means of overhead lines, underground cables, transformers and circuit breakers, through a series of networks. EdF currently owns the distribution business in the London Metropolitan area and will acquire Eastern’s distribution business in the Eastern region of England.
14. Within the distribution market it may be possible to distinguish between the ownership and operation of assets. Utility network assets comprise the infrastructure by means of which electricity, gas, water and telecommunications services are distributed. Within the electricity, gas and water industries, the maintenance and operation of network assets has traditionally been carried out by the owner of those assets. The parties have argued that these functions are increasingly being carried out by independent contractors and companies. In a previous case⁷ the Commission considered whether utility network asset management represents a separate product market, however the exact market definition was left open. 24Seven currently provides utility network asset management services to London Power and Eastern Electricity and is seeking to obtain contracts from other utility network owners. Whether network asset management and operation forms a separate product market from the distribution of electricity does not have to be decided in this case as EdF already has joint control over 24Seven and, as such, there will be minimal impact from this operation.
15. The operation also affects the provision of new connection services, connecting new premises to the existing electricity distribution network. Traditionally these services have been provided by the incumbent distribution company, and it was only following consultation with the UK electricity regulator (then OFFER, since renamed Ofgem) in 1995 that some areas of connection work were opened to competitive providers. The question therefore arises whether a market has developed for the supply of connection services, or indeed for the different services which together constitute connections services. As above, whether this forms a separate product market from the distribution of electricity does not have to be decided in this case as EdF already has joint control over this joint venture and, as such, there will be minimal impact from this operation.

⁷ COMP/JV.36, 03.02.2000

16. London Electricity Group also carries out the majority of metering and meter reading work in the London area. The acquisition of Eastern will include the acquisition of meters belonging to the Eastern distribution business, but not the acquisition of any metering or meter reading businesses.
17. EdF is also active in the *supply* of electricity in England and Wales. Neither Eastern nor West Burton are active on this market, therefore no horizontal overlaps arise, however, there are vertical relationships that arise between EdF's supply business and the activities of Eastern and West Burton power station. Due to differences in the development of competition, in particular the large time gap between competition was opened up to larger customers (those with a demand exceeding 100kW) and smaller customers (those with a demand not exceeding 100kW), the Commission has previously examined the supply of electricity in England and Wales separately for these groups⁸. However, for the purpose of this case, it is not necessary to decide whether there are one or two relevant product markets, as in either case the operation does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of it.

B. Geographic markets

18. In the *EdF/Cottam Power Station and EdF/London Electricity*⁹ 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 geographic market would be unaffected by the introduction of NETA as the introduction of NETA simply changes the manner in which electricity is traded in England and Wales. NETA does not affect the capacity for electricity to be traded between England and Wales and other regions to which the network is connected, such as Scotland and France. In the present case, the exact definition of geographic market may also be left open.
19. In a number of previous cases¹⁰, the Commission found that the relevant geographic market for the *distribution* of electricity coincided with the licensed distribution area of each Regional Electricity Company. As there are no alternative methods by which electricity can be delivered to its end-users, this conclusion remains valid and in this case the relevant geographic markets are the Eastern distribution area and the London metropolitan distribution area.
20. The parties argue that the relevant geographic market for network asset management and operation should be England, Wales and Scotland. It is not necessary to define this geographic market as, in all alternative market definitions considered, the operation will not create or strengthen a dominant position.
21. The market for the supply of new connections has recently been opened up to competition. In the past the regional distribution company would hold a monopoly

⁸ For example, IV/M.1606 – EdF/South Western Electricity, 19.07.1999

⁹ IV/M.2209, 29.11.2000 and IV/M.1346, 03.02.2000

¹⁰ See for example, IV/M.1346 – EdF Group/London Electricity and COMP/M.1949 – Western Power Distribution/Hyder, most recently COMP/M.2586 – CE/Yorkshire Electric, 17.09.2001

position in its own region. The market is now in transition and it seems likely in that in the future it will become subject to competition on a national basis.

22. The parties argue that the geographic market definition for metering should be at least England and Wales since conditions for providing this service are homogeneous through this area. Again, the Commission does not need to reach a decision in this market as the operation will not create or strengthen a dominant position however the market is defined.
23. In *EdF/South Western Electricity*¹¹ the Commission found that the *supply* of electricity to small customers was likely to be regional because the competitive conditions for supply to these customers remained different from those for the larger customers, mainly because these smaller customers remained to be protected by certain price controls set by the Director General of Electricity Supply. The parties have argued that due to the introduction of competition in electricity supply to small customers on 24 May 1999 and increasingly vigorous competition from national operators, the geographic market should now be regarded as national rather than regional. However, for the purposes of the current case, the exact geographic definition can be left open as the operation does not create or strengthen any dominant position, however the markets are considered.
24. In *EdF/London Electricity*¹² the Commission found that the geographic market for the supply of electricity to larger customers was England and Wales as large customers had been free to choose supplier for over four years and appeared to change their suppliers frequently. This reasoning remains valid.

C. Competition Assessment

25. The acquisition of West Burton will increase EdF's share of *generation* output from [5-15%] to [5-15%] and its share of capacity from [5-15%] to [5-15%]. Several other generators have comparable shares of total capacity, including British Energy ([5-15%]), Innogy ([5-15%]) and Powergen ([5-15%]). With a market share below 15% and the existence of other players with similar market shares, it is therefore unlikely that the concentration will create or strengthen a dominant position in this market.
26. Both London Electricity and Eastern have a natural monopolistic position in the *distribution* markets in their respective regions, therefore the combining ownership of the assets will have no impact on the physical choices that consumers and suppliers in those regions face. Furthermore, the operation will have very little impact on the way the distribution assets are managed and operated as these functions are already carried out by the joint venture 24Seven. As a result of the operation, the ownership and operation of the distribution assets of Eastern and London Electricity will be reunited and the concentration will not materially change the competitive situation.
27. 24Seven also has an approximate market share of [15-20%] in the market for connections work in England and Wales. There are many potential suppliers to the connections business, including the other distribution companies and independent

¹¹ IV/M.1606, 19.07.1999

¹² IV/M.1346, 27.01.1999

suppliers, both regionally and on a national scale. Whether the relevant market is national or regional does not have to be decided in this case as the competitive situation in this market is unlikely to change as a result of the operation as EdF already had joint control over the joint venture.

28. Similarly, the acquisition of meters belonging to the Eastern distribution business does not raise any competition concerns whether the market is defined as being national or regional. If the market for metering is considered to be England and Wales then London Electricity Group's market share in this market is below 25%.

Vertical effects

29. As a result of the operation there will be no great impact on the market for the supply of electricity to small and large customers. EdF will continue to face effective competition from a number of other suppliers in a market where the regulator has removed all supply price controls due to the increase in the strength of competition in electricity and gas supply markets.
30. The Commission also notes that there exist certain restrictions within London Electricity's supply and distribution licences which would constrain the extent to which EdF's supply and distribution businesses can benefit from the increase in vertical integration. These conditions include the ring-fencing of finances from London Electricity's distribution business from EdF's other businesses, which prevent the cross subsidy between distribution businesses, an obligation not to discriminate in the sale of electricity between different electricity suppliers, and an obligation not to conclude or amend any more contracts between EdF's generation businesses and other small customer supply businesses.

VI. CONCLUSION

31. For the above reasons, the Commission has decided not to oppose the notified operations and to declare them 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: Mario MONTI,
Member of the Commission)*