

***Case No COMP/M.2712 -
ELECTRABEL /
TOTALFINAELF /
PHOTOVOLTECH***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 18/04/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.04.2002

SG (2002) D/229468, 229469, 229470

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.2712 - ELECTRABEL / TOTALFINALELF / PHOTOVOLTECH
Notification of 13.03.2002 pursuant to Article 4 of Council Regulation No 4064/89¹

1. On 13.03.2002, the Commission received a notification of a proposed concentration by which the undertakings Electrabel NV (“Electrabel”, Belgium) belonging to the Suez group, Soltech NV (“Soltech”, Belgium) controlled by Electrabel, and Total Energie Développement S.A. (“TED”, France) ultimately controlled by the TotalFinaElf group, acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of a newly created company constituting a joint venture named Photovoltech NV (“Photovoltech”, Belgium).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

I. THE PARTIES

3. Electrabel is active in the various fields relating to the production and distribution of electricity, among which the construction, management and service of networks used for the transmission of electricity.

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).

4. Soltech is a company jointly controlled by Electrabel and Tractebel (which also belongs to the Suez group). Soltech's object is the design, engineering and sales of photovoltaic systems, the development of advanced solar building integrated products and the manufacture of custom-made photovoltaic modules for special applications.
5. TED holds shareholding interests in the capital of companies involved in the renewable energy business. TED has as its main object research and development, industrial activities, trade, technical assistance and industrial co-operation in relation to the energy domain.
6. Photovoltech will become active in the production, use and sale of photovoltaic ("PV") cells and modules for terrestrial applications.

II. THE OPERATION AND THE CONCENTRATION

7. Pursuant to the Shareholder agreement dated 11 December 2001, the structure of ownership of Photovoltech will be as follows: TED will own 42.5% of the shares, as will the Electrabel Group through Electrabel (34%) and Soltech (8.5%). The remaining 15% of the shares will be owned by IMEC VZW ("IMEC"), a non-profit organisation active in the field of research and development of micro-electronics, as a compensation for the [...] licensing of its technology for the manufacture of photovoltaic cells and modules. The Board of Directors is composed of at least 7 Directors, 3 of which are appointed by TED, 2 by Electrabel and 1 by Soltech. Strategic decisions must be adopted by $\frac{3}{4}$ of the Directors present or represented. As a result, Photovoltech will be jointly controlled by Electrabel and Soltech, on the one hand, and TED, on the other hand.
8. Photovoltech is set up for an unlimited duration. It will employ around 50 persons, and will be managed independently from its parents by a general manager and a chairman of the board, subject only to the strategic control rights of the notifying parties. It will acquire the necessary technology to start the business by means of a world-wide [...] technology license to be granted by IMEC for an indefinite duration. Photovoltech will dispose of its own production unit of PV cells and modules in 2003 and will be provided with sufficient funds during the start-up phase. Accordingly, Photovoltech will be a full-function joint venture within the meaning of article 3(2) of the Merger Regulation.
9. The operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

10. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion². Each of TotalFinaElf and Suez have a Community-wide turnover

² 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.

in excess of EUR 250 million, but they 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.

IV. COMPETITIVE ASSESSMENT

1. Relevant product markets

11. As indicated above, Photovoltech will be active in the production and sale of PV cells and modules for terrestrial applications. PV cells and PV modules are products that convert sunlight into electricity. PV cells can be made of various materials, mainly monocrystalline or polycrystalline silicon. Cells are then framed and interconnected by series in order to become PV modules and obtain a certain voltage. Solar modules themselves are combined with other components (charge controllers, mounting structures or batteries) in order to build solar energy systems which are either stand-alone or grid-connected systems.
12. The parties submit that PV cells and modules for terrestrial applications constitute separate product markets, on the basis of the following:
 - (1) PV cells are a component for the production of PV modules;
 - (2) PV cells and modules differ in terms of characteristics, price and intended use;
 - (3) although a majority of PV cells manufacturers are vertically integrated and produce also modules, a number of companies specialise in the production of PV modules and rely on external PV cells suppliers; therefore, the number and identity of PV cells' suppliers differ from those of PV modules' suppliers; and
 - (4) PV cells target different customers than PV modules: cells are sold to modules manufacturers, while PV modules are mainly supplied to manufacturers of PV systems (systems assemblers), project developers and end-users doing their own assembly.
13. In a previous decision³, the Commission considered that there may be separate markets for PV cells and PV modules intended for terrestrial applications, although the exact delineation of the relevant product market was left open. Similarly, for the purposes of this decision it is not necessary to conclude on the exact product market definition, since under any alternative market delineation the proposed operation does not raise competitive concerns.

2. Relevant geographic markets

14. The parties submit that the markets for both PV cells and PV modules are world-wide. This submission is in line with a previous decision of the Commission⁴.

³ Case COMP/M.2367, Siemens/E.ON/Shell/SSG, Decision of 27 March 2001.

⁴ Case COMP/M.2367 (cited above).

15. Indeed, the Commission concluded recently that the market(s) for PV cells and modules is (are) to be regarded as world-wide, since:
 - (1) PV cells and modules are sold all over the world by European and non-European producers alike;
 - (2) there are no barriers to trade;
 - (3) the costs of transportation of cells and modules are not significant; and
 - (4) price levels tend to be homogeneous.
16. Hence, the relevant market(s) for the purposes of the assessment of this operation is (are) world-wide in scope.

3. Competitive Assessment

Horizontal effects

17. The parties have planned to initiate the construction of Photovoltech's production unit in the last quarter of 2002. The production of PV cells and modules is expected to start around mid 2003. Photovoltech's production capacity of PV cells will amount to 6 MWp (Megawatt Peaks), of which half of it (i.e., 3 MWp) will be used for the in-house manufacture of PV modules. The remaining 50% of Photovoltech's cell production will be sold to other module manufacturers.
18. In the event of a separate market for PV cells, the operation would give rise to no overlap as none of the parent companies or their subsidiaries is active on this market. On the basis of estimates on the evolution of the world production of PV cells, Photovoltech's share will account for 1% of the total market and will vary between 4% and 6% of the merchant market for PV cells in 2003 (first year of production).
19. On a separate market for PV modules, the operation will give rise to a minimum overlap between the activities of Photovoltech and those of Soltech and Tenesa Manufacturing, the latter being a South African company which is controlled indirectly by TED. However, Soltech's production is negligible (less than 0.1 % of the world production in 2001) as it concentrates on PV system engineering of standard modules supplied by third parties. Tenesa Manufacturing's share of the market, which now amounts to 1% of the world production, is expected to reach around 1.5% in 2003, while Photovoltech's share will amount to less than 1%. The parties' combined market share would therefore account for around 2%.
20. Alternatively, if we were to consider that the relevant market comprises both PV cells and modules, the parties' combined market share would account to around 2-3% world-wide in 2003.
21. Further to the referred small market shares, in either market for cells and modules there are a number of strong competitors active world-wide, such as the Japanese producers Sharp, Kyocera, Sanyo or Mitsubishi, the American-based manufacturers BP-Solar, Siemens Solar, AstroPower and ASE and the European producers Photowatt (France) and Isofoton (Spain).

Vertical effects

22. Both parent companies have activities on the downstream market for PV systems. Soltech is active in Belgium and Africa, while TED, through a company called Total Energie over which it has joint control together with EDF, operates in France, Germany and Africa.
23. The parties submit that the market of PV systems is to be considered as world-wide, on the basis that most suppliers are active all over the world and that the conditions of competition are similar world-wide. In a global market, the combined market shares of Total Energie and Soltech would not exceed 1% at the time Photovoltech will operate. Should the market be deemed to have a much narrower dimension and be national in scope, Soltech would have a [35-40]% share of the Belgium market in 2001, while on the French market, sales of PV systems by Total Energie would account for approximately [40-45]% of total sales. The parties activities, however, do not overlap in any national market in Europe.
24. Further, it is more than doubtful that Soltech and TED's participation in Photovoltech could have a foreclosure effect on the access to PV modules. PV modules are sold on a world-wide basis and Photovoltech's market share, as mentioned above, will account for less than 1% of the world market. Apart from the large Japanese and US manufacturers, there would be as well a number of important alternative European or Europe-based suppliers, such as Photowatt (France), Isofoton and BP Solar España (Spain) or Shell Solar Energy (the Netherlands). It is noteworthy to indicate that the combined share of Photovoltech and Soltech of the total production of PV modules in Europe will be clearly below 5%. Moreover, Photovoltech is not committed to sell its products exclusively to its parents and will dispose of its own sale personnel. Therefore, the operation is not likely to raise competitive concerns in this respect.

Risk of coordination

25. With regard to PV modules, a coordination between Photovoltech, Soltech and Tenesa Manufacturing would not have any effect on competition considering their limited market shares, the number and size of competitors, and the market growth rate (40% between 2000 and 2001).
26. As regards PV systems, it is difficult to construe a causal link between the creation of Photovoltech and the co-ordination of Soltech and Total Energie's competitive behaviours. If the market for PV systems were to be considered as a world-wide market, such coordination would not have any effect on competition in view of the limited combined market share of these companies. If it were concluded that this market is national in scope, the creation of Photovoltech could not lead to such coordination as Total Energie and Soltech are active on different markets. Furthermore, on the basis of the information available and considering that it is a growing market, the production capacities of these companies, [...], are likely to be used for the supply of PV systems on the markets where they are already active.

V. 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.

For the Commission

Mario MONTI
Member of the Commission
(signed)