EN

Case No COMP/M.2970 - GE / ABB STRUCTURED FINANCE

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 05/11/2002

In electronic form on the EUR-Lex website under document number 32002M2970

Office for Official Publications of the European Communities
L-2985 Luxembourg

Brussels, le 05.11.2002

SG (2002) D/232472

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Subject: Case No COMP/M.2970 – GE/ABB Structured Finance
Notification of 01.10.2002 pursuant to Article 4 of Council Regulation No 4064/89[1]

1. On 01.10.2002, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89[1] by which the US undertaking General Electric Capital Corporation ("GE Capital"), a wholly owned subsidiary of the General Electric Corporation ("GE"), acquires, within the meaning of Article 3(1)(b) of the Merger Regulation, sole control over the major part of ABB's Structured Finance businesses ("ABB SF") by way of purchase of shares and assets.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and that the concentration does not raise serious doubts as to its compatibility with the common market and with the EEA agreement.

I. THE PARTIES

3. GE Capital is the holding company for the global financial services division of GE, which is a diversified manufacturing, technology and services company active in various fields including aircraft engines, appliances, financial services, information services, power generation equipment, lighting, industrial systems, medical systems, plastics, broadcasting and transportation equipment.

---

[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. The ABB Group, incorporated in Switzerland, is a global supplier of power and automation technologies to utility and industry customers in more than 100 countries. ABB SF comprises the majority of ABB's Structured Finance business, which itself currently forms one arm of ABB's Financial Services division.

II. THE CONCENTRATION

5. Following a Sale and Purchase Agreement with ABB Financial Services B.V., a subsidiary of ABB Ltd, dated 04.09.2002, GE, though GE Capital, will acquire sole control over the businesses, companies and assets comprising ABB SF. The notified transaction excludes the assets of ABB Export Bank, ABB's Financial Advisory services, as well as ABB's 35% stake in Swedish Export Credit Corporation and ABB's aircraft leasing business. The business, assets and companies making up ABB SF will be integrated into GE's corporate structure and in particular GE Capital's Commercial Finance division as a result of the notified transaction. The operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 Bio (EUR 141 023 Mio for GE and over EUR [...] Mio for ABB SF in 2001).[2] Each of GE and ABB SF have a Community-wide turnover in excess of EUR 250 million (EUR [...] Mio for GE and EUR [...] Mio for ABB SF in 2001), 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. It does not constitute a co-operation case under the EEA Agreement.

IV. COMPATIBILITY WITH THE COMMON MARKET

7. GE, through its GE Capital Commercial Finance unit is active in financial services and products to businesses of all sizes on a worldwide basis. In particular, with a focused expertise on the medium-sized companies, GE Commercial Finance provides loans, operating leases and financing programs. It also offers loans and financing leases for major capital assets, including a full range of aircraft fleet and financing solutions; industrial facilities and equipment, and energy-related facilities as well as loans to and investments in public and private entities in diverse industries.

8. ABB SF mainly offers syndicated debt financing and various infrastructures financing solutions to industrial customers as well as lease-based finance solutions to business equipment purchasers and higher value business assets.

9. The only affected markets are those of ***business equipment leasing*** in Norway and Sweden where the combined shares reach [between 10 and 20%].

---

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.

A. RELEVANT PRODUCT MARKETS

10. The parties submit that the relevant product market encompasses all financing methods by which customers may seek to acquire the use of any type of asset. This approach is based on the suggestion that, whenever deciding to acquire the use of an asset, potential customers would likely be considering, first of all, whether to use their internal resources as a source of funds. In addition, whenever customers would choose to dismiss outright ownership of the assets, the parties have claimed that a wide variety of financial products and services can serve asset use financing purposes. Consequently, the parties have argued that the relevant product market should include, at least, loans, leasing arrangements as well as other forms of credit on differing terms provided by banks, other financial companies and financial subsidiaries of original business equipment manufacturers ("OEM") or vendors.

11. On top of the strong substitutability between the different financial products, the parties further argue that barriers to entry are low especially when commercial banks with existing distribution networks are taken into account as likely to offer competing offers in response to small and permanent changes in relative prices.

13. The question was raised about the exclusion of OEM's financing activities accompanying direct equipment sales to customers in the market on the basis of their alleged absence from the so-called competitive or "merchant" market resulting from their incentive, as opposed to the "non-affiliated" players, to link the provision of such financial services with the supply of their own equipment.

14. In addition, the possibility of a further delineation of the market according to the customers' category i.e. small and medium-sized enterprises ("SMEs") versus multinational companies ("MNCs") was suggested by the results of the market investigation on the basis that purchasing patterns, competition conditions and prices could differ from one customer category to the other. Based on the same reasoning, a possible further segmentation according to the main activity sectors of customers such as manufacturing, telecommunications, energy companies, public or private administrative bodies, etc. was also submitted.

15. Without dismissing the broader product market definition submitted by the parties as described above, the results of the market investigation carried out by the Commission nevertheless indicate a tendency towards a segmentation of the relevant product market according to the type of the financial solutions actually provided, e.g. leasing vs other types of financial products such as various kinds of loan arrangements. Such segmentation would mainly be based on demand side considerations such as *inter alia* customers' preference for the accounting (e.g. on- or off-balance sheet) of one product versus another.

16. Regarding a possible further segmentation according to the customers' category i.e. SMEs versus MNCs, while it is acknowledged that the creditworthiness of a customer, rather than its actual size, might play a role in both the provision of a financing and the conditions at which it is provided, the results of the Commission's market investigation do not reveal indications of possible price discriminations that would warrant such a further market delineation. The same reasoning applies to the argument of a possible segmentation of the product market according to the main activity sectors of customers.

17. Notwithstanding the above considerations, for the purpose of this case, it is however not necessary to further define the market as the concentration would not result in the creation

or the strengthening of a dominant position in the EEA or any substantial part of it on any such or alternative market definition considered.

B. RELEVANT GEOGRAPHIC MARKETS

18. While the Commission has, in a number of previous decisions, indicated that the geographical dimension of competition is national for many aspects of corporate finance and lending services to SMEs[3], but that it may be wider than national for lending services to larger corporations, the parties argue that the market for business equipment leasing is increasingly extending beyond national borders and would be taking place at regional or even global level in certain cases.

19. While the results of the market investigation tend to confirm this growing approach towards cross-border leasing agreements especially for larger customers such as MNCs present in several countries and co-ordinating their activities with a limited number of international suppliers, they nevertheless also show that it remains very much national for the majority of the smaller customers. However, for the purpose of the proposed transaction, the exact geographic market definition can be left open, since on any possible geographic market definition, the concentration does not raise competition concerns.

C. COMPETITIVE ASSESSMENT

20. This transaction expands GE Commercial Finance's global reach in project financing, particularly in the energy, transportation, and infrastructure sectors as well as GE's equipment finance activities especially across Europe.

Horizontal Effects

21. On the basis of the market identified by the parties, ***business equipment leasing*** in Norway and Sweden, the combined shares would reach [10-20%].

22. In <u>Sweden</u>, the combined share would raise to [20-30%]. On an individual basis, the merged entity would be the largest single player on that market with Telia closely following with a [15-25%] share and Barcken with an estimated [10-20%] share. The aggregate share of the banks is estimated at between [35-45%] and that of the OEM financial arms between [10-20%].

23. In <u>Norway</u>, the picture is somewhat similar with the share of the merged entity reaching around [20-30%] and that of Telia between [10-20%]. Given the absence of an additional non-affiliated player such as Barcken in Sweden, the banks' aggregate share ranges around [40-50%] with the OEMs estimated at [10-20%].

24. While the results of the Commission's market investigation did not yield any clear-cut evidence as to a possible partial or total exclusion of the OEM's financial subsidiaries from the competitive market, a recalculation of the market shares excluding them as a whole does not raise any further competition concerns as a result of the proposed transaction since, in such a worst case scenario, the merged entity would reach markets

---

[3] For example, Case M. 1018 – GE Capital/Woodchester (07.11.1997) and Case M. 1910 – Meritanordbanken/Unidanmark, (10.04.2000).

shares of [25-35%] and [25-35%] in Sweden and Norway respectively with enough established suppliers available to customers in both cases.

25. The impact of the notified transaction on the possible further delineated markets according to the customers' category (i.e., SMEs and MNCs) was carefully considered in the Commission's market investigation. Should such hypothetical segmentation prevail, as submitted by some of the respondents to the market investigation, the results of the Commission's investigation indicate that the structure of the market, both for the SMEs and the MNCs, will not be significantly altered as a result of the proposed combination.

26. More particularly, the merged entity's share of a possible market for SMEs will remain below its share of the business equipment leasing market as a whole. Indeed, while GE does not currently have a strong presence in the SMEs segment, ABB SF does not show a particular specialisation in the provision of leases to small undertakings either. The results of the market investigation further confirmed that the relativity low barriers to entry and the absence of significant barriers to expansion further enhance the intensity of competition on both affected markets. Such reasoning is essentially based on the fact that the average ticket price of the leased items varies around EUR [...], which as such is within the reach of the vast majority of financial institutions, and that no exclusive distribution channel is needed to start up in that business as, for example, finance companies desiring to enter the market could very well establish trading agreements either with vendors or with OEMs directly. Therefore, potential competitors, such as pan-European financial operators would be able to discipline the market should supra-competitive pricing take place.

27. The same conclusions apply as far as the competitive impact on a possible further market segmentation according to the various sectors of activities of customers is concerned.

Vertical Effects

28. Given GE's current and ABB's earlier involvement as manufacturers of ***power systems equipment*** such as gas turbines[4], and their ongoing activities as suppliers of financing means to power generation projects, it is necessary to assess the potential competitive impact of the proposed transaction on those vertically related markets.

29. However, given ABB's *de minimis* participation (estimated at less than 1%) in the power project financing business, the addition of ABB SF to GE could not conceivably be considered to produce any appreciable competitive effect on the power generation markets where GE is active.[5]

---

4 ABB sold its power generation activities to Alstom (France) in two steps: a) 50/50 joint venture with Alstom approved by the Commission on 02.06.1999 (Case M. 1484 – Alstom/ABB) and b) complete divestiture to Alstom approved by the Commission on 05.05.2000 (Case M. 1909 – Alstom/ABB Alstom Power).

5 The proposed transaction will not have any competitive impact on the market for large commercial aircraft engines where GE holds a share beyond [between 0% and 50%], as ABB will retain the bulk of its aircraft financing portfolio (approximately 21 aircraft and 30 helicopters with a value [below USD 100 mio] will be acquired by GE).

V. CONCLUSION

30. In light of the above, the Commission has concluded that the proposed transaction is not likely to 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 that area.

31. 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 by
Mario MONTI
Member of the Commission