EN

Case No COMP/M.3113 - GE / JENBACHER

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 14/04/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3113 – GE/Jenbacher
Notification of 13.03.2003 pursuant to Article 4 of Council Regulation No 4064/89

1. On 13.03.2003**,** the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89[1] ("The Merger Regulation) by which the undertaking General Electric (GE) proposes to acquire sole control of the Austrian company Jenbacher within the meaning of article 3 (1) (b) of the aforementioned Council Regulation, through the purchase of shares.

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

3. GE (US) is a diversified industrial corporation active in fields including aircraft engines, appliances, information services, power systems, lighting, industrial systems, medical systems, plastics, broadcasting (through the NBC media channel), financial services and transportation systems.

4. Jenbacher develops, produces and supplies reciprocating engines (internal combustion engines).

[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).

THE OPERATION

5. GE has entered into a Tender Offer whereby, acting through its affiliate GE Holdings Austria GmbH, it proposes to purchase the shares of Jenbacher. Therefore the proposed operation constitutes a concentration within the meaning of Article 3 (1) (b) of the Merger Regulation.

COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5,000 million[2] (for the year 2002, EUR 139,310 million for GE and EUR […] for Jenbacher). The combined aggregate turnover of all undertakings concerned exceeded EUR 100 million in all Member States except for […] and […]. In addition, the aggregate turnover of each of at least two of the undertakings concerned exceeded EUR 25 million in […],[…],[…] and […]. Finally, both GE and Jenbacher did not achieve more than two-thirds of their EU turnover within one and the same member state. On the basis of the turnover figures of the parties, it can be concluded that the concentration has a Community dimension pursuant to the Article 1(3) of the Merger Regulation.

RELEVANT MARKETS

Relevant Product Market

7. Both Jenbacher and GE manufacture and sell equipment that may be used for purposes of power generation. Jenbacher's activities in this field are limited to gas-fuelled (i.e. non liquid) reciprocating engines. GE is a leading producer of (aeroderivative) gas turbines, steam turbines, wind turbines, generators and hydro power generation products but not reciprocating engines. The parties submit that the business of GE is distinct from any part of the reciprocating engines business, and as such there would be no horizontally or vertically affected markets.

8. Reciprocating engines generate rotary power which can be coupled to drive another device (e.g., compressor, propeller or generator) for respectively mechanical drive, transportation and power generation applications. Reciprocating engines run on a wide range of liquid or gaseous fuels. Turbines are machines driven by the pressure, momentum or reactive thrust of steam, water, air or gas against a wheel or rotor. Turbines can be used either to produce electricity or to power mechanical equipment.

9. The parties submit that reciprocating engines can be distinguished from all types of turbines by reason of their operating conditions, efficiency, technical characteristics and price. Reciprocating engines are preferred by customers with variable electrical demand who value electrical output rather than heat output, such as hospitals, universities and SME's. The market investigation has confirmed this, although a limited degree of demand

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2 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 02.03.1998, p. 25). To the extent that figures include turnover for the period before 01.01.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

substitutability between gaseous reciprocating engines and gas turbines[3] appears to exist. In any event, it can be left open whether reciprocating engines is a market in itself since, even if they were considered to be part of a larger market for all or some power generation equipment, this would not materially affect the assessment of the notified concentration.

10. In previous decisions[4], the Commission has examined the market for gas turbines, whereby it has made a sub-division between gas turbines up to 10 MW (i.e. small industrial gas turbines) and gas turbines above 10 MW (i.e. large heavy duty gas turbines). Furthermore, a distinction was made between industrial and marine applications. The same distinctions could be applied to reciprocating engines. In any case, such can be left open, as Jenbacher's largest commercialised reciprocating engines have a maximum output of 2.9 MW, which are only available for industrial applications. In the present case, it is also not necessary to conclude whether reciprocating engines could be further distinguished according to the input used (liquid or gaseous fuels) as Jenbacher only produces gas fuelled reciprocating engines and GE has no presence in this market.

Geographic Market Definition

11. The parties submit that the relevant geographic market is world-wide on the basis that there are no national preferences, brands, regulatory or technical barriers that prevent competition across borders. The market investigation has not provided arguments for considering the market narrower than world-wide. However, as the operation does not raise serious doubts as to its compatibility with the common market on the basis of a narrower geographic market, the question of the exact definition of the geographic market can be left open.

Competitive Effects

12. Jenbacher is an important, but not the leading player in the market for reciprocating engines with a [10% - 20%][5] EEA-wide market share (below [1% - 5%] world-wide). On an EEA -wide basis for reciprocating engines in the 0.5 to 10 MW range, the German company Deutz is the market leader ([20% - 30%]) followed by Caterpillar ([10% - 20%]), Jenbacher ([10% - 20%]), Wärtsilä ([10% - 20%]), MTU and Cummins (both around [5% - 10%]). On a world-wide basis, Caterpillar is the clear market leader ([30% - 40%]), followed by Cummins and MTU ([5% - 10%]) Deutz ([5% - 10%]) and Jenbacher ([1% - 5%]).

13. As the market investigation has not pointed to the existence of significant supply- or demand-side substitutability between Jenbacher's reciprocating engines and the power generation products produced by GE it can be concluded that the concentration will not lead to a strengthening of their market position for any of these products. As GE has no presence in the markets upstream of reciprocating engines, the transaction also does not lead to any vertical overlaps between the parties.

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3 GE's small gas turbines burn a wide range of fuels, from liquid distillates and residuals to all gaseous fuels, including low BTU gas.

4 Case N° IV M. 440 GE/Nouvo Pignone, Case N° IV/M.1404 GE/Alstom, Case IV/M 1484 Alstom/ABB

5 All market shares are based on information provided by the in form CO

14. Even in the unlikely event of a limited degree of substitutability between reciprocating engines and other power generation equipment, it is to be noted that GE's power generation business is mainly focused on large turbines with a power output far exceeding that of reciprocating engines. Indeed, the maximum power output of Jenbacher's reciprocating engines (ranging from 300 KW to 2.9 MW) compares to only the smallest of gas or steam turbines up to 10 MW, for which GE holds a market share well below [1% - 5%] (both EEA and world-wide). Even if the relevant market would be defined as comprising gas only fuelled reciprocating engines and gas turbines with an output up to 10MW, the combined entity would have a market share of [20% - 30%], with GE representing an increment of [1% - 5%]. As such, it can be concluded that this operation would only lead to a 'de minimis' increase in GE's position on the hypothetical market covering all equipment used for power generation. Caterpillar, is world-wide market leader for both reciprocating engines and small gas turbines (through its Solar subsidiary).

15. The only power generation equipment market where GE has a market share in excess of 25% is that for large heavy duty gas turbines, predominantly used by power utilities. Although there are no indications of existing supply- or demand-side substitutability; these gas turbines can be considered as a market neighbouring to reciprocating engines. GE has a leading but not uncontested position for large heavy duty gas turbines ([40% - 50%] in the EEA) as it faces competitive pressure from several other strong competitors such as Siemens and ABB, (each with market shares above 20%), Alstom, and Mitsubishi Heavy Industry. Furthermore, the analysis of the parties' customer base shows that less than [5% - 10%] of Jenbacher's existing customers are also customers of GE's power generation business. Such has been confirmed by the market investigation.

16. A third party that competes with Jenbacher, submitted that in the specific field of combined heat and power generation (CHP), almost all customers for reciprocating engines above 4 MW also buy gas turbines. Such has not been confirmed by the market investigation. In addition, as Jenbacher's most powerful engine has a power output of less than 3 MW, there appears to be limited scope for cross-selling between GE and Jenbacher customers.

17. It can therefore be concluded that the concentration does not give rise to serious doubts as to the creation or strengthening of a dominant position as the result of which competition would be significantly impeded in the common market or in a substantial part of it.

CONCLUSION

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 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