EN

Case No IV/M.440 - GE / ENI / NUOVO PIGNONE (II)

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 6.5.1994

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

TO THE NOTIFYING PARTIES

Dear Sirs,

Subject: Case No. IV/M.440 GE/ENI/NUOVO PIGNONE (II)
Your notification of 5.04.94 pursuant to Article 4 of Council Regulation No 4064/89.

1. The above mentioned notification concerns the agreements between General Electric Company (GE) and Ente Nazionale Idrocarburi (ENI) by which ENI, acting on behalf of AGIP and SNAM, is to sell shares representing 69.33 percent of its 89.58 percent existing shareholding in Nuovo Pignone S.p.A. (NP). The operation is part of the Italian privatization programme for companies and business owned or controlled by the Italian Government.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I. THE OPERATION AND THE PARTIES

3. The concentration being notified is the acquisition by GE of shares of NP (69.33%) owned directly or indirectly by ENI. Following the initial closing, GE may sell to a consortium of Italian banks shares from its shareholding representing up to 20% of the outstanding NP shares. Within thirty days of closing, GE is obliged under Italian law to launch a public bid offering to purchase the remaining publicly quoted shares which make up the remaining 11% of the share capital of NP. GE intends to offer up to 5% for resale to employees.

Rue de la Loi 200 - B-1049 Brussels - Belgium
Telephone: exchange (+32-2)299.11.11
Telex: COMEU B 21877 - Telegraphic address: COMEUR Brussels

4. GE is a large and diversified industrial corporation, currently organized into twelve component businesses. GE Industrial and Power Systems is a worldwide competitor in the design and manufacture of equipment for energy and power generation and distribution. Its products include turbines, generators, drive systems transmission and distribution systems, power and pollution control equipment, design and service of nuclear power facilities.

5. NP is the operational holding company of ENI for activities in the mechanical engineering sector. NP main activities are concentrated in the production of gas and steam turbines, process gas compressors, centrifugal pumps, valves, instrumentation, gas meters and pressure regulators, and fuel dispensing systems.

II. CONCENTRATION

6. As part of its offer to acquire NP, GE put forward an Industrial Plan covering the period for acquisition until the end of 1997. The Industrial Plan includes a commitment by GE to strengthen NP's technology base and manufacturing capability and provides certain assurances on manpower levels. This Industrial Plan was part of the rationale for ENI accepting the GE bid. Following the acquisition, the board of directors of NP will consist of nine members, seven appointed by GE and two appointed by ENI. Under the terms of the GE/ENI Share Acquisition Agreement, the management of NP will be undertaken by GE alone. Although decisions of the Board of Directors of NP in respect of certain matters will require the approval of at least one of the two directors appointed by ENI, this situation will last only until 31 December 1997 once the bylaws have been amended after closing of the deal. The veto rights are conferred to ENI concerning actions which may have a social impact and which are not foreseen in the Industrial Plan.

7. As specified in Article 24 of the bylaws of NP, read in conjunction with Article 9.01(a) of the GE/ENI Share Acquisition Agreement, these matters are limited to:

   (i) Any sale of shares or assets not contemplated by the 1994-1997 Industrial Plan or the sale of shares or other equity interests having value in excess of 2 billion Lire or representing 10 per cent of the capital or voting rights of a company with a net invested capital greater than 20 billion Lire or the sale or lease (as lessor) of businesses or parts thereof with a net invested capital greater than 20 billion Lire;

   (ii) any investment for an amount in excess of 5 billion Lire not contemplated by the above Industrial Plan;

   (iii) transactions or industrial plans which involve substantial changes to the above Industrial Plan.

8. Under Article 19 of NP bylaws, combined with Article 2365 of the Italian Civil Code, decisions at the Extraordinary Shareholders Meeting require a majority of 85% on the following issues: 1) any modification of the company constitution act, such increase or reduction of the company's capital, mergers, demergers, etc. 2) issue of bonds 3) designation of liquidators. The extraordinary voting rights conferred on ENI pursuant to Article 19 of the bylaws are intended to ensure that Article 24 of NP's bylaws is not altered so as to permit violations of the Industrial Plan. Article 9.01(a) of the GE/ENI share Acquisition Agreement imposes a contractual obligation on ENI to ensure that Articles 19 and 24 are amended so as to provide that the extraordinary voting rights expire on 31 December 1997.

9. ENI cannot therefore be regarded as being in control of NP. In order to confer control within the meaning of Article 3(3) of Regulation 4064/89, ENI would have to have the permanent ability to exercise veto rights over a broader range of issues than those which they will temporarily enjoy. ENI's minority shareholding is likely to disappear if the contractual "call" and "put" options are exercised respectively by GE and ENI in the agreed period in 1998.

10. Thus, the notified operation constitutes a concentration within the meaning of Article 3(1)b of the Regulation.

III. COMMUNITY DIMENSION

11. The undertakings concerned have a combined aggregate worldwide turnover in excess of 5.000 million ECU. Both GE and NP have a Community-wide turnover in excess of 250 million ECU but 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. COMPATIBILITY WITH THE COMMON MARKET

A. THE RELEVANT PRODUCT MARKET

The manufacture and sale of turbines

12. The parties to the proposed concentration are both active in the manufacture of gas turbines, aeroderivative gas turbines and steam turbines. A turbine is a machine that is driven by the pressure, momentum or reactive thrust of a moving fluid, such as steam, water, air, gas against the curved vanes of a wheel or rotor, or by passing through and filling the housing around the rotor. Turbines are used to power generators to produce electricity or to power mechanical equipment such as compressors and pumps used to compress or move liquids and gases.

a) Gas turbines

13. Gas turbines burn natural gas to power the turbine. Gas turbines typically are chosen where natural gas is readily available fuel source. Because natural gas is one of the cleanest burning fossil fuels, gas generators may also be used in regions where there are ecological concerns. this segment can be further subdivided into large, heavy duty gas turbines (> 10MW) and small industrial gas turbines (0-10 MW).

14. Large , heavy duty gas turbines are used chiefly for power generation by utility plants, either in simple cycle or in combined cycle with a steam turbine to maximize efficiency. Customer for large heavy-duty gas turbines also include large industrial companies requiring power alone or power plus heat. this customer segment has grown as industrials have obtained contracts to sell excess generated power to nearby utilities.

15. Small industrial gas turbines are used in a wide variety of industrial applications. For example small industrial gas turbines are used to power electric generators, oil and water pumps and gas compressors. Other customers use small industrial gas turbines in combined heat and power applications, whereby the waste heat produced by the gas turbine is captured and used for process applications requiring heat. Customers for small industrial gas turbines in combined heat and power applications typically include paper, textile, chemical and pharmaceutical companies, oil refineries, hospitals and universities. GE has no direct sales in Europe in this segment.

b) Aeroderivative gas turbines

16. Aeroderivative gas turbines combine an industrial version of an established aircraft engine with a power turbine which converts energy in the engine exhaust into shaft power. Aeroderivative gas turbines have a wide range of capacities, up to approximately 45 MW. Aeroderivative gas turbines are more fuel efficient, lighter and more compact than equivalent power small industrial and heavy duty gas turbines. They are more expensive than other gas turbines on an initial cost, although some of the initial cost difference is compensated for during the turbine life cycle because of the aeroderivative's higher efficiency. GE has no direct sales in Europe in this segment.

c) Steam turbines

17. Steam turbines are much more mature technologically than gas and aeroderivative turbines. They are employed where coal or oil is readily available. A variety of fuel sources can be used to fuel a boiler which produces steam. Other energy options include nuclear, solar and geothermal. Steam turbines utilize the expansion of steam from high to low pressure to produce rotational shaft power. like gas and aeroderivative turbines, steam turbines are employed in both industrial and power generation applications. However, turbines above and below 70 MW tend to serve different applications. GE has no direct sales in Europe in the segment over 70 MW.

18. Steam turbines, heavy duty and aeroderivative gas turbines can be substituted for one another, however, substitution is limited depending on unit size, fuel, environmental requirements and operating conditions. Steam turbine output is about half of the gas turbine. Heavy duty and aeroderivative gas turbines are potential substitutes for one another in the power range below 60 MW. Heavy duty gas turbines are preferred because of their lower cost or where fuel quality is poor. Aeroderivatives are preferred where high simple cycle efficiencies are required and where weight/size is important, eg certain types of offshore platform. Some applications require both steam and gas turbines. The precise delimitation of the relevant turbine market segment need not to be further defined in the present case because even on the basis of the narrowest definition, the operation does not raise serious doubts as to its compatibility with the common market.

The technology arrangements in the turbines sector

19. Manufacture of turbines is based on worldwide known technology. Few competitors in each market, among them GE, possess proprietary technology. They widely licence their technology and enter into manufacturing agreements. GE has no direct manufacturing capacity in Europe. Although NP has also developed and licensed technologies for certain "hybrid" gas turbines which use some aeroderivative technologies, it manufactures, packages and sells gas turbines designed by other manufacturers, including GE, pursuant to licenses and manufacturing agreements. NP also design components for some turbine models. No significant overlap exists in the proprietary technologies of both GE and NP.

B. THE GEOGRAPHIC REFERENCE MARKET

20. In the past, due to national procurement barriers, national markets were often closed. However, barriers to cross frontier procurement have now been removed and major companies operate manufacturing facilities across Europe and the world as well as maintaining European or worldwide sales and service forces. Significant tariffs exist on gas turbine imports into the Community, which may suggest that the market is European. However, the precise geographic market can be left open in this case as the operation does not present serious doubts as to its compatibility with the common market.

21. Technology licensing activities appear to be worldwide. GE, for instance, has entered into technology arrangements with firms in Europe as well as the rest of the world, it has gas turbine agreements with 11 major firms, including six in Europe, as well as OEM agreements with OEM's who sell aeroderivative turbines. Other established worldwide competitors have reached similar arrangements: ABB's principal licensees/manufacturing associates include KHI (Japan), Nevski Zadov and Saturn (Russia). Westinghouse and MHI operate as partners, providing royalty-free licenses to each other. Their principal associate is Fiat. Siemens' principal associates are Ansaldo (Italy), Fuji (Japan) and LMZ (Russia). Likewise GE, Rolls Royce and Pratt & Whitney have developed and own a large share of the proprietary technology for aeroderivative gas turbines, which they widely license or provide through manufacturing agreements to other competitors.

COMPETITIVE ASSESSMENT

22. There is only an overlap on the heavy duty gas turbines market. On the basis of composite figures for commitments provided by the parties between 1988 and 1992, GE has a market share in Europe of 5 % whilst Nuovo Pignone has one of 15%. There will be at least ten companies active on the EC market following the concentration including EGT (with a market share of 33%), ABB and Siemens.

23. According to the parties capacity utilisation in the Community for gas turbines is somewhat above 80%, whilst worldwide capacity utilisation varies between 75% and 90%. Any attempt by GE and NP to raise prices could be met by competitors bidding for contracts using current excess capacity.

24. On the aeroderivative gas turbine market, no horizontal overlap will occur between GE and NP. According to the parties, NP has a current market share of 17% for aeroderivative gas turbines. This market share is exceeded by Cooper Rolls and EGT and there are eight other competitors on this market.

25. There are a number of technologies for heavy duty gas turbines as outlined in paragraph 19 above. GE has made its technology available to a number of NP's competitors including EGT, John Brown Engineering, Kvaerner and Thomassen. Other technologies are available from ABB, Siemens, MHI/Westinghouse and MAN. Other GE licensees have confirmed that they compete with NP and other licensees at present and anticipate that continuing in the future.

26. The technology and availability of parts for aeroderivative gas turbines is limited to four players: GE, TP & M (which uses Pratt & Whitney aeroderivative technology) Cooper Rolls, and the Allison Engine Company. GE provides aeroderivative technology and gas generators to a number of aeroderivative gas turbine manufacturers including Dresser-Rand, Fiat, Kvaerner and Thomassen. Those manufacturers will, therefore, provide competition to NP.

27. The significant effects of this concentration will be vertical: GE will acquire a manufacturer of heavy duty gas turbines and aeroderivative gas turbine packages (to which it already licenses technology) in Europe. GE already has a number of other licensees in Europe who currently compete with NP and one another. That position is expected to continue following the operation and there are other manufacturers also present on the market using alternative technologies. The large number of competitors and the excess capacity in the heavy duty gas turbine market would prevent GE from exercising market power on the only affected horizontal market.

V. ANCILLARY RESTRAINTS

28. The GE/ENI Acquisition Agreement contains a "non compete" clause that precludes ENI or its subsidiaries from competing in any business currently conducted by NP and its subsidiaries for a period of five years. This agreement is directly related and necessary to the implementation of the concentration and is, therefore, ancillary within the meaning of the Regulation.

VI. CONCLUSION

29. For the foregoing reasons the proposed concentration does not raise serious doubts as to its compatibility with the common market.

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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 functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No. 4064/89. The application of Regulation (EEC) 4064/89 is without prejudice to the applicability of the provisions of Articles 92 to 94 of the Treaty.

For the Commission