

***Case No COMP/M.5366 -  
IBERDROLA  
RENOVABLES /  
GAMESA***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERCER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 04/12/2008

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## COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 04/12/2008  
SG-Greffe (2008) D/207682  
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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5366 – Iberdrola Renovables/ Gamesa**

**Notification of 30.10.2008 pursuant to Article 4 of Council Regulation No 139/2004<sup>1</sup>**

1. On 30 October 2008, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the "EC Merger Regulation") by which the undertaking Iberdrola Renovables S.A. ("Iberdrola Renovables", Spain) acquires sole control of the activities of promotion and development of wind farms in Spain, continental Europe, UK, Mexico and the Dominican Republic of the undertaking Gamesa Energía S.A.U. ("Gamesa Energía", Spain).

### **I. THE PARTIES AND THE OPERATION**

2. Iberdrola Renovables is a Spanish company active in generation and wholesale of electricity generated from renewable resources such as wind, and in the development and promotion of wind farms for its own use. Its parent company, Iberdrola S.A. ("Iberdrola"), is one of the Spanish electricity incumbents active in generation, wholesale and retail supply of electricity with activities in other Member States, mainly in the UK through its recent acquisition of Scottish Power.
3. Gamesa Energía is a Spanish company active in the development and promotion of wind farms for their sale to third parties. Gamesa Energía is therefore not active in the

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

generation and sale of electricity produced from renewable sources<sup>2</sup> but solely in the development and sale of the infrastructure necessary to that end. Its parent company, Gamesa Corporación Tecnológica ("Gamesa"), is active in design, production and sale of wind generators and in provision of energy solutions.

4. Iberdrola Renovables and Gamesa Energía together are referred to as "the parties".

## II. THE TRANSACTION AND THE CONCENTRATION

5. The proposed concentration consists in the acquisition of sole control over certain activities of Gamesa Energía by Iberdrola Renovables. For this purpose the parties will set up a vehicle to which they will contribute certain assets and business. Gamesa Energía will contribute all its businesses<sup>3</sup> in Spain and in Continental Europe<sup>4</sup>, while Iberdrola Renovables will contribute certain wind farms. The vehicles will be solely controlled by Iberdrola, and Gamesa will withdraw from all its current activities in Spain and Continental Europe becoming a non-controlling shareholder of the vehicles. In addition, Iberdrola Renovables will acquire Gamesa's current projects in United Kingdom, Mexico and the Dominican Republic. It therefore appears that the operation goes well beyond a mere sale of assets and amounts to an acquisition of control over an undertaking or part of it, leading to a modification of the structure of supply in the wind farm development sector. The transaction therefore qualifies as a concentration within the meaning of Article 3(1)(b) of the EC Merger Regulation.

## III. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>5</sup> (Iberdrola EUR 17 415 million; Gamesa Energía EUR [...]<sup>6</sup>) and each of them has a Community-wide turnover in excess of EUR 250 million (Iberdrola EUR [...]; Gamesa Energía EUR [...]). Neither Iberdrola nor Gamesa Energía achieves more than two-thirds of their aggregate Community-wide turnover within one and the same Member state.
7. The concentration therefore has a Community dimension pursuant to Article 1(2) of the EC Merger Regulation.

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<sup>2</sup> Gamesa Energía's activities in the market for electricity generation and wholesale are limited, since it only generates electricity in the period between the start-up of a wind-farm it has constructed and its sale to a third party.

<sup>3</sup> All Gamesa Energía's assets, employees, and know-how will be contributed on permanent basis to the vehicle, ultimately controlled by Iberdrola

<sup>4</sup> Gamesa will only retain its activities in the United States and in China.

<sup>5</sup> 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).

<sup>6</sup> Turnover of Gamesa Energía in the territory covered by the agreement, in 2007. The turnover has been calculated on the basis of the revenues generated by each of the national subsidiaries of Gamesa Energia through the sale of wind farms in each of the countries where Gamesa Energia is present.

## IV. RELEVANT MARKETS

### A. Relevant product markets

#### **Generation and wholesale of electricity**

8. In its previous decisions the Commission has identified generation and wholesale of electricity as a separate product market, distinct from other markets in the electricity sector, i.e. transmission, distribution and retail supply.<sup>7</sup> The notifying party agrees with this market product market definition and considers that further segmentation of the market for electricity generation and wholesale according to the type of generation (i.e. gas-fired plants, nuclear plants, wind farms, etc.) is not appropriate. For the purposes of the present case the precise product market definition could be left open since even if a narrower definition was considered, the transaction would not raise any serious competition concerns.

#### **Development and promotion of wind farms**

9. Wind farms are electricity generation plants that generate electricity from wind. These plants are formed by clusters of medium-power interconnected generators that supply the generated electricity to the grid in a continuous fashion.
10. The development and promotion of wind farms basically comprises the following stages: (i) choice of the location and assessment of wind conditions, (ii) administrative procedures and environmental authorisation, (iii) acquisition of the necessary rights on the land and procurement of wind generators, (iv) license to connect the wind farm to the transmission network, (v) construction and (vi) start-up.
11. These wind farms can be developed by undertakings for their own use (in order to generate electricity for its sale into the wholesale market) or for their sale to third parties, the latter being the activity in which Gamesa Energía is present.
12. The notifying party considers that there may be two alternatives for defining this market: (i) a narrower market comprising only the development and promotion of wind farms intended for their sale to third parties, or (ii) a wider market comprising the development and promotion of all wind farms, regardless of whether or not they are intended for their sale to third parties.
13. The market investigation examined whether it was appropriate to segment the wholesale distribution market in the above-described manner. It has shown that the acquisition of wind farms from third parties is viewed as more costly whereas their own development is regarded as more risky and lengthy.<sup>8</sup> Nonetheless, the majority of respondents consider that development and promotion of wind farms for their sale to third parties does not constitute a separate product market but forms a part of a wider market comprising development and promotion of all wind-farms, regardless of whether or not they are intended for sale to third parties. The reasons for this are twofold.

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<sup>7</sup> Cases No. M. 3440 - EDP/ENI/GDP, M.4180 - Gaz de France/Suez, M.3868 - Dong/Elsam/Energi E2, M.3696 - E.ON/Mol.

<sup>8</sup> Replies to questionnaires: question 5.

Firstly, as mentioned above, the development process of wind farms consists of a number of phases and the project can be sold at any stage. Consequently, there is direct competition between the two alternative ways to obtain a new wind-farm at each of these stages. Secondly, most companies developing wind-farms for their own exploitation acquire some of them from third parties as well and consider these two alternatives as substitutable.

14. However, for the purposes of the present case, the precise product market definition could be left open as the transaction would not raise any competition concerns under any possible product market definition.

**B. Geographic markets**

15. The notifying party, in line with previous decisions of the Commission, considers that the relevant geographic market for generation and wholesale of electricity is national in scope,<sup>9</sup> although in Spain the alternative of splitting the market in three narrower areas (mainland Spain, Canary Islands and Balearic Islands) has also been considered.<sup>10</sup>

16. With respect to development and promotion of wind farms, the notifying party regards the market as national in scope. The market investigation has confirmed this view. This is due to differences in legislation and regulation of the sector which exist in each EU member state, the need to have a good network of local business contacts, as well as different administrative steps that need to be taken in the course of the wind-farm development.

17. In any event, the operation does not raise any serious doubts as to its compatibility with the common market regardless of the geographic market definition with respect to electricity generation and wholesale as well as development and promotion of wind farms. Therefore, the precise geographic definitions can be left open for the purposes of the present case.

**V. COMPETITIVE ASSESSMENT**

18. This concentration will lead to the following affected markets: generation and wholesale of electricity in Spain and promotion and development of wind farms in Spain.

**A. Generation and wholesale of electricity in Spain**

19. With regard to the market for electricity generation and wholesale in Spain, the transaction leads only to a minor horizontal overlap. Gamesa Energía's activities in the Spanish market for electricity generation and wholesale are limited to electricity generation on a temporary basis. It generates electricity in the period between the start-up of a wind-farm it has constructed and its sale to a third party. Thus, its market

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<sup>9</sup> Case No. COMP/M.3440 - EDP/ENI/GDP; case No. COMP/M.3448 – EDP/Hidrocantábrico

<sup>10</sup> C94/05 Gas Natural/Endesa; COMP/M.5171 ENEL/ACCIONA/ENDESA

share is less than [0-5]% in terms of both total electricity generated and total capacity installed in Spain. In turn, Iberdrola's market share is [20-30]% and [20-30]% in terms of total electricity generated and capacity installed, respectively.

20. The same applies if a narrower product market definition is considered. In a market for generation and wholesale of electricity produced from renewable resources<sup>11</sup>, Iberdrola Renovables' market share is [20-30]% of total capacity installed, while Gamesa Energía's market share is again negligible.
21. Consequently, the Commission concludes that the transaction does not raise competition concerns in the market of generation and wholesale electricity in Spain.

**B. Development and promotion of wind farms in Spain**

22. With regard to the market for development and promotion of wind farms, two relevant product markets could be considered: (i) a wider market for development and promotion of wind farms<sup>12</sup>, and (ii) a narrower market for development and promotion of wind farms for their sale to third parties.
23. If the market for development and promotion of all wind farms is considered, the parties' combined market share after the transaction would be [20-30]%<sup>13</sup>, with several other competitors being present in the market, such as HC Energia/Neo Energia ([10-20]), Acciona ([10-20]%), ECYR/Endesa ([5-10]%) and Eufer ([5-10]%) among others.
24. Alternatively, if a separate market for development and promotion of wind farms for their sale to third parties is considered, the transaction does not give rise to any horizontal overlap as Iberdrola Renovables develops wind farms exclusively for its own use while Gamesa Energía develops them solely for their sale to third parties.
25. Nevertheless, given that Iberdrola Renovables does not intend to continue with Gamesa Energía's current business, such a withdrawal from the market could limit the sources of supply for customers interested in the acquisition of wind farms. In that regard, the market structure during the past 3 years of the market for promotion and development of wind farms in Spain, in terms of MW sold to third parties, has been as follows according to the parties<sup>14</sup>:

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<sup>11</sup> Includes all electricity generated by wind farms, regardless of whether or not they are intended for their sale to third parties.

<sup>12</sup> Includes the development and promotion of wind farms for their sale to third parties and for their own use (to produce electricity)

<sup>13</sup> In terms of wind farms brought into operation (2007)

<sup>14</sup> The figures are related to the sales of operational wind farms to third parties. Thus, they do not include the wind farms sold to third parties in an early stage, before becoming operational.

<b>Undertaking</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
Dong	[0-5]%	[0-5]%	[20-30]%
Gamesa Energía	[5-10]%	[20-30]%	[20-30]%
Acciona Windpower	[0-5]%	[5-10]%	[10-20]%
Castellwind	[0-5]%	[0-5]%	[10-20]%
Ecotecnia (Grupo Alston)	[5-10]%	[0-5]%	[5-10]%
Nuon	[20-30]%	[0-5]%	[0-5]%
Caja Navarra y otros	[40-50]%	[0-5]%	[0-5]%
Mercapital y Bridgepoint	[0-5]%	[60-70]%	[0-5]%
CEASA	[0-5]%	[5-10]%	[0-5]%
Galicia viento	[10-20]%	[0-5]%	[0-5]%
Other	[0-5]%	[0-5]%	[0-5]%
<b>TOTAL</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

26. As shown in the above table, during the past three years the market share of Gamesa Energía has always been below 30%, and other strong competitors being present in the market. In fact, Gamesa's market shares would be even lower if the figures would include all wind farms sold to third parties, i.e. operational wind farms and wind farms sold at a previous stage (not operational).
27. In addition, this market appears to be rather dynamic since there has been a number of companies entering and exiting the market during this period. Especially remarkable is the fact that some of the undertakings mentioned in the above table are not related to the power business<sup>15</sup>. Entry and exit barriers in this market appear to be rather low, especially since the pay back of the investment required to develop a wind farm is guaranteed<sup>16</sup>.
28. Accordingly, it could be concluded that the market for development and promotion of wind farms for their sale to third parties is and will remain contestable. Therefore, the withdrawal of Gamesa Energia from the market for development and promotion of wind farms for their sale to third parties would not limit the sources of supply, since the historic track record shows that new entrants have been able to enter the market. There is no reason to suppose that the removal of Gamesa Energia would negatively affect the ability of third parties to enter the market.

<sup>15</sup> Such as saving banks (Caja Navarra), investment funds (Mecapital), asset management funds (Bacock & Brown), property developers and real state companies (ACS/EYRA, FCC).

<sup>16</sup> The Royal Decree 661/2007 of the Ministry of Industry, Commerce and Tourism of Spain, regarding the Regulation of Electricity Generation under the Especial Regime, allows operators that generate electricity by means of renewable sources (including wind farms) to choose between a set feed-in tariff and a bonus added on to the market price. Pursuant to art.44 of this Royal Decree the objective of this compensation system is 'to guarantee reasonable profit rates (...)' in order to promote investments in renewable energy activities.

29. There is also a structural vertical link between Iberdrola Renovables and Gamesa Corporación Tecnológica, since they have signed an agreement by which Gamesa Corporación Tecnológica ensures the supply of aero generators to Iberdrola Renovables until 2012<sup>17</sup>. Nevertheless, there is no risk of foreclosure since Gamesa Corporación Tecnológica is already supplying to Iberdrola [...] % of its aero generators. Furthermore, Gamesa Corporación Tecnológica's core business is the manufacturing of aero generators<sup>18</sup> and it is currently selling its aero generators to other competitors in the Spanish market<sup>19</sup>, as well as on a world-wide level. In this respect, Gamesa Corporación Tecnológica's sales to Iberdrola in the Spanish market represent less than [...] % of its total sales in Spain. Therefore, Gamesa Corporación Tecnológica has no incentive to foreclose the market for manufacturing of aero generators.
30. It follows from above that the proposed concentration would not have a negative impact on competition in the Spanish market for development and promotion of wind farms, thus no competitive concerns could arise due to the transaction.

## VI. CONCLUSION

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 the EC Merger Regulation.

For the Commission,  
(*signed*)  
Neelie KROES  
Member of the Commission

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<sup>17</sup> Up to a maximum capacity of 4.500 MW. As well, Iberdrola has signed supply agreements with other manufacturers of aero generators such as [...].

<sup>18</sup> It accounts for the 78% of its benefits (EBITDA).

<sup>19</sup> [...] etc, of Gamesa Corporación Tecnológica's total sales.