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***Case No IV/M.540 -
CEGELEC / AEG***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 20/02/1995

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.02.1995

PUBLIC VERSION

To the notifying parties

Dear Sirs,

**Subject: Case No. IV/M.540 - CEGELEC/AEG
Notification of 17 January 1995 pursuant to Article 4 of Council Regulation
No 4064/89.**

1. The above mentioned notification concerns the proposed acquisition by CEGELEC SA, a subsidiary of the ALCATEL/ALSTHOM group, of the sole control of the AEG's projects and drives systems division (except for those in the field of transportation).
2. After examination of the notification, the Commission has concluded that the proposed operation falls within the scope of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I THE PARTIES

3. CEGELEC SA (CEGELEC) is a French company, specialized in electric engineering. CEGELEC is part of the ALCATEL ALSTHOM group which is a French company with worldwide activities and active in the following areas: communications systems, energy and transport, electrical engineering (through CEGELEC), batteries and services.
4. AEG Daimler-Benz Industrie (AEG) is part of the Daimler-Benz group, a German company active in the following sectors: automotive industry, aeronautics, energy and transport. AEG, based in Germany, has interests all over the world, but mainly in Europe. It is specialized in the energy and transport sectors as well as in electronics and automation. One of its divisions is active in the projects and drives systems business.

II THE OPERATION

5. Under the proposed operation, CEGELEC will obtain the sole control of AEG's projects and drives system division. The operation will take place in several steps.
- 1) AEG has already consolidated its drives and related projects activities within Europe and China in a single subsidiary, located in Germany (the A.A.S. GmbH);
 - 2) A "société par action simplifiée" subsidiary, CEGELEC DRIVE SYSTEMS, has already been created by CEGELEC in France (the SAS);
 - 3) AEG will sell all of its shares in the A.A.S. GmbH to the SAS. AEG will purchase immediately 49% of the shares of the SAS;
 - 4) CEGELEC will delegate to the SAS, CEGELEC DRIVE SYSTEMS, the management of most of CEGELEC's drives and related projects activities.

The CEGELEC AEG DRIVE SYSTEMS company will be therefore created. It will combine CEGELEC's drives systems and related projects activities with the former AEG's business in the same sector, already transferred to the A.A.S. GmbH.

The new company will be managed by a President, appointed by CEGELEC. [...]⁽¹⁾

III CONCENTRATION

6. The notified operation constitutes a concentration within the meaning of Article 3 of Regulation n° 4064/89. After completion of the different phases of the notified operation, CEGELEC will acquire the sole control of AEG's drives system division with a 51% stake in the SAS. [...]⁽¹⁾

IV COMMUNITY DIMENSION

7. The aggregate worldwide turnover of the parties exceeds 5 billion Ecu. The aggregate Community-wide turnover of each party exceeds 250 million Ecu. They do not achieve more than two-thirds of their turnover in one and the same Member State. The operation has therefore a Community dimension.

V COMPATIBILITY WITH THE COMMON MARKET

A - MARKET DEFINITION

a) Relevant Product Markets

8. Two main product sectors can be distinguished within the field of automated industrial process control.
- 1) low-end drives;
 - 2) high-end drives and projects.

The purpose of a drive is to achieve, through electronics, supervision of electrical power for and precise speed control of multi speed industrial load-moving processes. Broadly speaking, a drive consists of a micro processor-based control unit and an electronic power

1) Deleted - Business secret

converter - or inverter - unit, control software and input/output connections to the process controlled. The most important of these elements is the electronic power converter for DC voltage - or inverter - for AC voltage - unit, composed of power semiconductor components (thyristors, IGBT units, diodes and GTOs). Variable speed drives are used in a wide range of industries and applications such as basic industries (metallurgical industries, mining), processing industries (paper, printing, plastics,...), marine and transportation (any application to the transportation sector remains outside the scope of the concentration). Because the most important element of a drive is the electronic power converter - or inverter - unit, a drive may be classified in a range extending from lower-power "standard" products up to high performance drive systems.

9. The low-end drives segment

This segment is considered to be a "volume" segment of standard products, the installation of which is relatively simple and does not require special engineering. Because of these characteristics which define these drives as banal, price lists are available to the public and they are sold through a number of different channels, often through distributors. Low-end drives are generally used for simple automation processes in the industry.

CEGELEC has proposed to define this segment on the basis of power and to establish a 100 Kw boundary. The notifying party identifies the low-end drives segment as a segment for drives with converters below 100 Kw. Despite the fact that in some cases the limit can be moved up to 250-300 Kw, the Commission considers on the basis of its investigation that a 100 kilowatts boundary for the low-end drives segment can be seen as an operative segmentation for the assessment of the operation.

10. The high-end drives and projects segment

As far as drives are concerned, this segment is constituted with more sophisticated products which are either engineered or custom designed depending on specific needs: power capacity, use of AC or DC voltage, nature of the control scheme. In terms of power capacity, and taking into account the 100 Kw boundary, there is a wide range of converters at or above 100 Kw. In the upper part of this segment, the power capacity can reach Megawatts. Thus the prices of these drives vary accordingly.

The high-end drives normally are not purchased separately by the end-user, but as part of a "project", i.e., a custom-designed overall automation solution for the industrial customer's load motion control needs.

A "project" is a package which comprises the custom design, engineering and installation necessary for a optimal procurement and integration of drives with motors, instrumentation, PLCs, computers, software, switch gears, transformers, etc... The main element in a project is the engineering and know-how involved in applying drives technology to the process to be automated. This is why projects are considered to be drives-oriented.

11. Generally speaking, projects are sold through a tender-bid system. A project can be carried out by different players such as system integrators, machine builders, general engineering companies who are direct customers of drives producers who can also compete as prime contractor for the "turnkey" process control operation, when a tender is launched by the end-users.

12. It is not necessary to decide whether the low-end drives segment and the high-end drives and related projects segment, including or excluding its upper part, i.e. with megawatts converters, constitute or not separate product markets because it does not change the overall assessment of the current operation.

b) Geographic market

13. With respect to low-end drives, the parties submit in their notification that the standardization of these products, low transport costs and the absence of particular difficulties in their installation would plead for a EEA-wide market.

The distribution of market shares of the leading competitors and the relative homogeneity of their presence throughout EEA countries would support this point of view. Furthermore, the competitors and clients consulted by the Commission in its enquiry have indicated that they consider the market EEA or even worldwide for these same reasons.

In any case, and taking into account the minimal overlap of the parties' activities in any one country and the fact that market shares at national level are in all cases below 25%, the exact delimitation of the relevant geographic market can be left open.

14. With respect to high-end drives, the parties submit that product customization, the higher importance of the service aspect associated to the supply of an overall solution (projects) and linguistic barriers, and differences in technical practices, would tend to create certain barriers at national or regional level. The distribution of market shares across countries of the main competitors shows that these tend to enjoy higher market shares in their home countries. However, each competitor has non-negligible sales and shares in several countries. In any case, the precise definition of the relevant geographic market does not seem to be necessary, in view of the market share of the merged entity and the existence of a sufficient number of competitors.

B - ASSESSMENT

15. According to the notification, the combined market share of the parties in any of the possible affected markets is below 10% in all cases excepting in the Benelux for low-end drives [...]⁽²⁾, and Germany and the UK for high-end drives ([...]⁽¹⁾ and [...]⁽²⁾ respectively). The market shares of the merged entity at EEA level would be of around [...]⁽²⁾ for low-end drives and below [...]⁽²⁾ for high-end drives.

16. In all cases, the parties face competitors of a large size, with a well established reputation in the field of engineering generally, and in particular in the field of automation. Two of these competitors have larger market shares than the merged entity (ABB and Siemens). They also face a large number of smaller competitors, that however have the capability of selling across borders and are often internationally diversified.

The market for high-end drives is relatively more concentrated than the market of standard drives. Nevertheless, the level of concentration is far from raising major competition concerns.

2) Less than 25%

17. The Commission has focused its enquiry into the segment of large projects requiring very high power drives (above one megawatt), in particular for the steel and mining industries where the parties accomplish most of their sales. Even in this smaller segment, there will remain after the merger a sufficient number of manufacturers able to supply these drives and projects (ABB, Siemens, Ansaldo, Reliance and others).
18. Furthermore, the parties will also be confronted with competition from engineering firms that purchase electrical equipment from various suppliers and bid for large projects. These firms are able to win tenders even when they compete against the original manufacturers of the equipment they purchase.
19. From a demand point of view, the typical client is a large industrial company undertaking significant investments to modernize or upgrade their capital equipment. The choice of a supplier is systematically done through tender procedures. Depending on the scope of the project, the client will decide for a turnkey project supplied by the manufacturer, a turnkey project designed and subcontracted by an engineering firm, or the use of its own in-house engineering capability, perhaps in combination with the services of engineering consultants and electrical equipment manufacturers. Demand is therefore constituted by firms with the resources, the ability and the incentives to choose a competitive supplier.

VI ANCILLARY RESTRAINTS

20. The notifying party has requested that the following be considered as ancillary to the notified transaction:
 - during a transitional period, the sales channels of AEG may be used by the new entity in markets where the volume of sales is not sufficient to justify the establishment of a CEGELEC channel;
 - AEG will remain a supplier of certain products such as motors, low voltage distribution equipment, industrial components and PLCs;
 - non-compete clause for 5 years.⁽¹⁾
21. The text of the agreements regarding the modalities of implementation of the supply of products by AEG and the use of AEG sales channels for a transitional period have not been finalized yet. Therefore, they cannot be examined in order to establish which restrictions of competition, if any, could be considered as directly related and necessary for the implementation of the concentration. They are therefore not covered by this decision. The non-compete clause for a period of five years⁽³⁾ enshrined in the notified agreement can however be considered as ancillary to the concentration.

VII CONCLUSION

22. 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.

For the Commission,

3) Relating to the activities of the concentration