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***Case No IV/M.568 -
EDF / EDISON-ISE***

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

Article 6(1)(b) NON-OPPOSITION
Date: 08/06/1995

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08.06.1995

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M.568 - EDF/EDISON-ISE
Your notification of 28 April 1995 pursuant to Article 4 of Council Regulation No. 4064/89

1. The above operation involves the joint acquisition by Edison S.p.A. (Edison) and EDF International S.A.(EDFI) of 73.96% of the share capital of Ilva Servizi Energie S.r.l. (ISE).
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 give rise to serious doubts as to its compatibility with the common market and the EEA Agreement.

I THE PARTIES

3. EDFI is a subsidiary of the French state owned company Electricité de France (EDF), the French state-owned electricity company ensuring the production, transportation and distribution of electricity in France. EDF is also active outside France both through associations with local producers and through exports of electricity to other national operators, in particular ENEL in Italy, which is EDF's third largest international customer with a total purchase of 15.2 billions of kWh.
4. Edison is a subsidiary of the Italian group Montedison and is active in the production of electrical energy as well as the exploration, production, and distribution of natural gas and crude oil.
5. ISE is active in the production of electrical energy in Italy. Its main assets are: one thermoelectrical power plant and two turbo-generators in Taranto, two thermoelectrical plants in Piombino and one hydroelectrical plant in Terni. Another thermoelectrical plant is being constructed in Taranto, which should double the current power generation capacity of ISE (passing from 600 MW to 1100 MW).

II THE OPERATION

6. On June 28, 1994, an invitation to bid for 73.96% of the share capital of ISE (the controlling stake) was launched in the framework of the privatisation of the ILVA group. Following this invitation, Edison and EDFI concluded on December 21 1994 a preliminary agreement attributing 60% of the controlling stake to Edison and 40% to EDFI. On December 22 1994, they submitted a joint binding offer as a result of which a transfer agreement was entered between ILVA as seller, and Edison and EDFI as purchasers.
7. On April 20 1995, the parties entered into an agreement by which they created a non-operating company under Italian law (Newco), through which they will acquire the controlling stake in ISE.

III CONCENTRATION

Joint Control

8. The 73.96% controlling stake will confer on the parties through Newco joint control of ISE. The share capital of Newco will reflect the sharing of the control stake agreed upon between the parties in the agreement of December 21 1994, referred to above (60% Edison, 40% EDFI). However, unanimous approval of both parents is required for the main strategic decisions of Newco, which include the approval and implementation of the investment programme and business plan of ISE, the appointment of the management of ISE, the appointment and the organisation of ISE's consultative committee, and the definition of ISE's organisation structure.
9. In light of the above, ISE will be jointly controlled by Edison and EDFI.

Full Function

10. ISE will go on performing on a lasting basis, after the operation, all the functions of an autonomous economic entity as it did before the joint acquisition and is not intended to deliver electricity to its parent companies.

Absence of Co-ordination

11. Although ENEL, the Italian public monopoly for electricity, sources electricity from both foreign producers (including EDF) and independent Italian producers (including Edison), the operation will not lead to a coordination between the two parent companies as Edison's degree of flexibility in determining its behaviour vis-à-vis ENEL is very low.
12. The independent Italian producers can only supply ENEL or auto-consume the electricity they produce. Edison for example is active; on the one hand, in the production of hydroelectricity mainly for the supply of group consumption (autoproduction) and; on the other hand in the operation of thermoelectric production plants dedicated to ENEL through long term agreement

These long term regulated agreement do not provide the Italian independent producers, including Edison, with very limited flexibility as far as the operation of the plants dedicated to ENEL is concerned. The determination of prices and conditions of supply to ENEL by the independent producers follows strict regulated rules spelled out in the mandatory provisions for supply agreements laid down by the Italian law.

Each plant is subject to one of these long term publicly regulated agreement. Such agreements include fixed rules as regards the price to be paid for peak and off-peak hours and the amount of electrical power dedicated to ENEL. The agreement includes also a yearly production diagram detailing the number of operating days (in the case of Edison the plants are operating all year except maintenance time detailed in the yearly diagram). Based on this yearly diagram, ENEL issues a detailed weekly production plan which details hour per hour its requirements. The producer is required to strictly comply with the weekly plan. It is not allowed to produce more than requested and is subject to penalties if it produces less than requested. ENEL is subject to take or pay conditions and cannot request the plant to stop more than a limited number of time per year. There is thus very little flexibility on each side after the long term publicly regulated contract is signed

IV COMMUNITY DIMENSION

16. The operation has a Community dimension. The worldwide turnover of all the undertakings concerned amounted in 1993 to more than 5,000 million Ecu (Edison: 365 million Ecu; EDF 28,500 million Ecu; ISE 83.6 million Ecu). The Community-wide turnover of both Edison and EDF exceeded 250 million Ecu. The parties did not achieve more than two thirds of their aggregate Community-wide turnover within one and the same Member State.

V COMPATIBILITY WITH THE COMMON MARKET

Product and geographic market

17. The Commission already decided⁽¹⁾ that electricity should be considered as a relevant product market distinct from the market for gas or the market for other energy sources.

From a demand-side point of view, electricity is characterized by the universality of its usages. It is possible to distinguish between the exclusive usages (essentially lighting and the utilization of electricity to get some chemical reactions) and the usages for which there exists, from a technical point of view, a potential substitutability with other sources of energy utilized by households as well as by industrial operators (in particular traction and the production of heat). This technical substitutability relates only to the non-exclusive usages, essentially the production of heat. It remains very imperfect as electricity is produced from another source of energy, and is therefore necessarily more expensive. It is thus utilized only when the characteristics of heat and the technical process require it. Lastly, this substitutability could take place only over a long period of time because it involves different choices of equipment, according to the source of energy chosen.

From a supply-side point of view, every source of energy presents some different requirements as far as production, storage and transport are concerned. This distinguishes electricity from other sources of energy as it requires specific and important investments.

18. As regards the geographical market, those companies involved in the production, transport and distribution of electricity are essentially active on a national basis, so that the structure of supply is different in each country⁽¹⁾. The regulatory frameworks may evolve⁽¹⁾ and consequently national markets may develop into wider markets at some point in the future. However, they are to be considered as national, at least for the foreseeable future.

Assessment

19. The demand for electricity in the Italian market is about 250 billion kWh per year and is mainly satisfied by the public national operator ENEL while the independent producers represent a production of 36 billion kWh per year. Edison is the largest of these independent producers in Italy. Its annual production in 1994 was over 9 billion kWh representing a share of about 3.6% of the Italian electrical energy market, and corresponding to 24% of the total production of independent producers. Edison operates 21 hydro power plants and 4 thermo-power plants connected through 2400 Km high-voltage overhead lines to industrial customers and to the ENEL grid.

After the operation and the start-up of the CET3 Taranto plant, the combined market share of Edison and the JV will amount to 5.5% of the Italian electricity market, as Edison's current share of the Italian electricity market will increase by 1.9%.

⁽¹⁾ Case IV/M-493. Tractebel/Distrigaz

⁽²⁾ Case IV/M-493. Tractebel/Distrigaz

⁽³⁾ In particular, the Commission challenged the monopolies on imports in several member States including Italy.

20. For the above reasons, the concentration will not create or strengthen a dominant position in the EEA territory or a substantial part of it.

VI CONCLUSION

21. 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,