

***Case No COMP/M.6170 -
FIRST RESERVE FUND
XII / FINMECCANICA /
ANSALDO ENERGIA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 11/05/2011

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EUROPEAN COMMISSION

Brussels, 11.05.2011

C(2011)3375

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties

Dear Sir/Madam,

**Subject: Case No COMP/M.6170 - FIRST RESERVE FUND XII /
FINMECCANICA / ANSALDO ENERGIA
Notification of 31.03.2011 pursuant to Article 4 of Council Regulation
No 139/2004¹
Publication in the Official Journal of the European Union No C 111 of
9/4/2011, p. 54**

1. On 31/03/2011, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004² by which the undertakings Finmeccanica S.p.A. ("FNM", Italy) and FR Mansail Limited (UK), a wholly owned subsidiary of First Reserve Fund XII L.P. ("FR", the Cayman Islands) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of Ansaldo Energia S.p.A. ("AEN", Italy) currently controlled by FNM, by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

² OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

I. THE PARTIES

3. **FR** is an investment fund of First Reserve Corporation, a private equity firm specialized in the energy industry, including oilfield services, energy infrastructure, and power and energy reserves.
4. **FNM** is an Italian undertaking, whose main activities focus on the sectors for aerospace, defense and security. Moreover, the FNM Group operates satellite services, and it is also active in the sector for power generation systems and components (through AEN) and global transport.
5. **AEN** is a wholly owned subsidiary of FNM which is active in the sector for power generation systems and components and works with a customer portfolio that includes public sector agencies, independent producers and industrial customers.

II. THE OPERATION

6. The envisaged transaction involves the acquisition by FR Mansail Limited, a wholly owned subsidiary of FR, of 45% stake in Ansaldo Electric Drives S.p.A, a special purpose vehicle which owns the whole shareholding of AEN³. The remaining shares (55%) of Ansaldo Electric Drives S.p.A will be retained by FNM.
7. Pursuant to the Shareholders Agreement entered by the notifying parties, the prior consent of both FNM and FR will be required to approve the business plan and the budget of the JV vehicle⁴. As a result the notifying party will have joint control over AEN through Ansaldo Electric Drives S.p.A.
8. It follows from the foregoing, that the operation consists in a concentration within the meaning of Article 3(4) of the Merger Regulation given that FNM and FR will acquire joint control over a pre-existing undertaking.

III. EU DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁵ ([...]). Each of them has an EU-wide turnover in excess of EUR 250 million ([...]), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

³ It results from the information submitted by the parties that the special purpose vehicle Ansaldo Electric Drives S.p.A is currently controlled by AEN. The envisaged transaction provides for the transfer by AEN of the shares of Ansaldo Electric Drives S.p.A to FR Mansail Limited and FNM. The latter will then acquire the whole shareholding of AEN through Ansaldo Electric Drives S.p.A.

⁴ See Article 7.4 of the Shareholders Agreement.

⁵ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

IV. COMPETITIVE ASSESSMENT

1. Market definition

Activities of the JV

10. The AEN group is active in the supply of power generation equipment, in particular, (i) gas and steam turbines and (ii) turbo and hydro generators. It also (iii) manufactures and supplies turnkey power plants and it provides (iv) engineering services for nuclear power plants.
11. As the concentration does not raise serious doubts under any possible alternative definition, the product and geographic delineation of the relevant markets can be left open.

Activities of FNM and FR

12. The notifying parties have identified one potential vertical relationship between their activities. This concerns the upstream market for the manufacture and sale of civil helicopters where FNM group is active and the downstream market for transportation to offshore (oil and gas) platforms and vessels and rescue activities carried out by helicopters where a FR group's subsidiary is active.

2. Assessment

13. Neither of the parent companies carries out any business activities in any of the markets where AEN is active, nor are the parents engaged in activities in a product market which is upstream, downstream or otherwise closely related to these markets.
14. For these reasons, the Commission concludes that the concentration will not lead to a significant impediment of competition in those markets.
15. Furthermore, spill-over effects in the meaning of Article 2(4) of the Merger Regulation as a result of the proposed transaction can be discarded.
16. The only markets where the parents of the JV are engaged in activities which are vertically related are those of (i) the manufacture and sale of civil helicopters upstream and (ii) the transportation to offshore (oil and gas) platforms and vessels and rescue activities carried out by helicopters downstream. However, these activities are completely unrelated to those carried out by the JV: they do neither form part of the same joint venture's markets, nor of a market which is up- or downstream of those of the joint venture or of neighbouring markets closely related to these markets.
17. As a consequence, coordination between independent undertakings that restricts competition within the meaning of Article 101(1) of the TFEU is highly unlikely.

V. CONCLUSION

18. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission

(Signed)
Joaquín ALMUNIA
Vice-President