

*Case No IV/M.706 -
GEC Alsthom / AEG*

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

Article 6(1)(b) NON-OPPOSITION
Date: 03/09/1996

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 03.09.1996

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject : Case No IV/M. 706 - GEC Alsthom NV / AEG
Notification of 31.07.1996 pursuant to Article 4 of (EEC) Council Regulation No 4064/89

1. On 31.07.1996, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertaking GEC Alsthom NV acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of AEG power transmission and distribution equipment business.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES

3. GEC Alsthom NV (GEC Alsthom), which is a Dutch joint venture between General Electric Company, p.l.c. and Alcatel Alsthom CGE, is an industrial holding company for a range of companies primarily active in the energy and transport sectors. The main business activities of the GEC Alsthom group include the manufacture and commissioning of power stations, the manufacture of switchgears, transformers and other power transmission and distribution equipment, the manufacture of railway rolling stock and signalling and automation equipment, the production of industrial equipment and marine equipment.

4. AEG Aktiengesellschaft (AEG) is a German industrial company, majority owned by Daimler-Benz AG. The main business activities of AEG include rail systems, microelectronics, diesel engines, automation and electrical power systems. In Germany, AEG's activities in the power transmission and distribution equipment (T&D) sector are carried out both by separately incorporated subsidiaries and by a newly formed subsidiary, AEG Energietechnik GmbH, to which AEG has now transferred the T&D activities of its German operational subdivisions. Outside Germany, the whole of AEG T&D business is going to be reorganized into dedicated subsidiaries.

II. THE OPERATION

5. The operation consists of the acquisition by GEC Alsthom of AEG's worldwide power transmission and distribution equipment business (AEG T&D), by way of purchase of shares.

III. CONCENTRATION

6. The transaction, involving the acquisition of sole control by GEC Alsthom of AEG's power transmission and distribution equipment business, is a concentration within the meaning of article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate worldwide turnover in excess of ECU 5,000 million. Each of them has a Community-wide turnover in excess of ECU 250 million, but they 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, but does not constitute a cooperation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

V. THE RELEVANT MARKETS

Relevant product markets

8. The business being acquired include the production and supply of equipment which is used as component of power transmission and distribution networks. The notifying parties state that there are distinct relevant product markets for the following products: high voltage switchgears, medium voltage switchgears, transformers, protection and control devices, turn-key systems and instrument transformers. These relevant product markets furthermore consist of the following product lines:

high voltage switchgears: individual circuit breakers, individual disconnectors and lighting arresters, gas insulated switchgear assemblies.

medium voltage switchgears: individual circuit breakers, individual disconnectors, individual contactors, circuit breaker/contactors cubicles (air insulated), circuit breaker cubicles (gas insulated), load break disconnector switch cubicles, transformer substations;

transformers: power transformers, distribution transformers;

turn-key packages: AC substations, HVDC links, SVC systems.

9. However, it is not necessary to further delineate the relevant product markets because, as argued below, even for a narrower product market definition, it appears that effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Relevant geographic markets

10. The notifying parties contend that the relevant geographic market for the supply of power transmission and distribution equipment is at least EEA-wide. Their analysis is based on the absence of legal barriers to trade between Member States, the low transport costs, the fact that the technology for transmission and distribution of electric power is uniform across Europe and basic product designs are similar, and that the traditional national standards have largely become aligned to the reference technical standards set by the International Electrical Commission. They add that remaining differences in national standards are marginal and do not significantly influence basic product development or design and that T&D products are suited to large-volume highly automated assembly-line production involving significant economies of scale. These elements are reflected by the fact that the major competitors are present throughout a range of EEA countries, organize manufacturing and product development at least at EEA-wide level and source products for the whole of EEA business from large production centres.
11. Replies obtained by the Commission from main customers and competitors, which were questioned with respect to this specific issue, have largely confirmed the information provided by the parties. In particular, major European utilities agree upon the definition of a EEA-wide market for T&D equipment. Accordingly, they have confirmed that: (i) they select their suppliers of power transmission and distribution equipment on the basis of multiple sourcing policies; (ii) in accordance with the EC rules laid down in Council Directives 90/531 and 93/38, they usually award their procurement contracts through competitive and non discriminating procedures; (iii) suppliers from other Member States can and usually do participate in these procedures by submitting their own bids.
12. The Commission recognizes that in some Member States national producers still hold positions of strength to some extent, largely as a result of both historical specialisation and the utilities' national buying habits which were prevailing in the past. However, it considers that since the last few years this situation has been undergoing significant changes due to several concurring factors. In particular, technical specifications applied by the customers have substantially converged in recent years and T&D equipment is currently designed to allow the modifications necessary to comply with customer specification. Thus, equipment provided by a new supplier is often just as likely to serve a user's purposes as equipment provided by a different supplier selected in the past and technical requirements no longer impose on producers from other Member States significant additional costs. On the other hand, utilities are no longer tied to their current suppliers since major competitors offer functionally substitutable products that, in most cases, can be used to replace installed equipment without significant switching costs. Furthermore, although Eurostat statistics on intra-community trade do not perfectly correspond to the product description provided by the parties, the available figures for electrical equipment for connecting to, switching and protecting electrical circuits, show

the existence of significant trade flows between different Member States. In view of all of the above elements the Commission considers that the relevant geographic markets for the products concerned can be deemed to have a EEA-wide dimension.

VI. ASSESSMENT

13. GEC Alstom and AEG combined shares at the EEA level for 1995 are [30-40%]⁽¹⁾ for high voltage switchgears, [15-20%]⁽¹⁾ for medium voltage switchgears, [15-20%]⁽¹⁾ for transformers, [30-40%]⁽¹⁾ for protection and controls devices, [30-40%]⁽¹⁾ for turn-key systems and [15-20%]⁽¹⁾ for instrument transformers. AEG has no sales of instrument transformers, while for high voltage switchgears, medium voltage switchgears, transformers and turn-key systems, GEC Alstom is contributing the most important proportion of the future market position of the new entity.
14. As regards the individual product lines, a detailed analysis shows that the parties are broadly complementary. For medium voltage individual contactors, HVDC links and SVC systems there is no overlap between GEC Alstom and AEG's activities. For medium voltage transformer substations and distribution transformers the parties' combined shares are below 15%. As to the remaining product lines the parties' combined shares range between 17.2% and 41.4%.
15. Following the proposed operation, at EEA level, GEC Alstom will be the largest supplier of high voltage switchgears, medium voltage switchgears, protection and controls devices and the second largest supplier of transformers and turn-key systems. However, for all the products mentioned above, they are facing strong competitors such as ABB, Schneider, Siemens, NEI, Pauwels, which are groups with significant financial resources, EEA-wide activities and a large and appropriate technological base. In particular, whatever the product market definition adopted, where the parties' combined shares exceed 25%, their three major competitors account for an aggregated share of about 50%, the only exceptions concerning the individual product lines for medium voltage individual disconnectors and AC substations. As regards individual disconnectors the parties' combined share is [20-30%]⁽²⁾ whereas ABB, Schneider and F&G have an aggregated share of about 24%. In this respect, however, it has to be taken into account that the contribution of AEG is limited to [less than 5%]⁽²⁾. As to AC substations, the parties' combined share is [40-50%]⁽²⁾, whereas ABB, Siemens, NEI and Schneider have an aggregated share of about 49%. However, demand for AC substations, as in general for other turn-key packages, is significantly erratic and single projects can represent a large proportion of demand over a number of years. Therefore, both market size and market shares often vary to a large extent from one year to another, depending on the value and number of the contracts tendered, and market shares may not accurately reflect the degree of competition in the market.
16. As regards the structure of demand, across the whole sector of power transmission and distribution equipment customers fall into two categories: electricity utilities (such as Electricité de France, ENEL, National Grid PLC and VEAG) and large industrial companies (such as Shell France, Ferrovie dello Stato S.p.A. and BASF AG.). All of these companies are very powerful groups with significant negotiation power, which they exert through competitive calls for tender and multiple sourcing policies. Furthermore,

⁽¹⁾ Deleted business secret, replaced by range.

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in their replies to the questionnaires sent to them by the Commission, they have expressed no concern about the possible impact on competition of the proposed operation, also pointing out that even after the concentration they still will face a number of alternative suppliers sufficiently large to meet their demand and to countervail any appreciable price increase of the products supplied by GEC Alstom/AEG. Finally, the ongoing liberalization and privatization processes in the electricity systems of several Member States, are likely to further strengthen the importance of cost-effectiveness criteria in utilities' procurement decisions.

17. In view of the characteristics of the T&D equipment sector and the presence of well established competitors, the proposed operation will not lead to the creation or strengthening of any dominant position as a result of which effective competition will be significantly impeded in the EEA or a substantial part of it.

VII. ANCILLARY RESTRAINTS

18. The parties have asked for some provisions of the sale and purchase agreement to be declared ancillary to the concentration. Two of them are basically non-competition clauses according to which: (i) AEG will not compete with the acquired business for a period of five years; (ii) for the same period Daimler-Benz undertakes not to engage in any competing activity (subject to certain exceptions) and to offer to sell GEC Alstom any T&D equipment activities which may be incidentally acquired. The third clause provides that certain intellectual property rights held by AEG or Daimler-Benz, but used in the acquired business, will be licensed to GEC Alstom and, in particular, that (subject to certain exceptions) such intellectual property rights will not be licensed to non-affiliates for the purposes of manufacturing T&D products.
19. All of these provisions are directly related and necessary to the implementation of the concentration, since they are aimed at guaranteeing the transfer to the buyer of the full value of the assets transferred, and they can therefore be declared ancillary to the transaction.

VIII. CONCLUSION

20. 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,