



EUROPEAN COMMISSION

DG Competition

***Case M.7278 - GENERAL  
ELECTRIC / ALSTOM  
(THERMAL POWER -  
RENEWABLE POWER &  
GRID BUSINESS)***

Only the English text is available and authentic.

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

**MERGER PROCEDURE**

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Modification of Remedies

Date: 24/02/2016



## EUROPEAN COMMISSION

Brussels, 24.02.2016  
C(2016) 1278 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

### To the notifying party

Dear Sir/Madam,

**Subject: Case M.7278 - GENERAL ELECTRIC / ALSTOM (THERMAL POWER - RENEWABLE POWER & GRID BUSINESS)**

**Your requests of 10.02.2016 and 11.02.2016 for modification of the commitments annexed to the Commission decision of 08.09.2015**

1. By decision of 8 September 2015 adopted in application of Article 8(2) of the Merger Regulation<sup>1</sup> ("the Clearance Decision"), the Commission declared the operation by which General Electric Company ("GE", the United States, also the "Notifying Party") acquires sole control of the Thermal Power, Renewable Power and Grid businesses of ALSTOM ("Alstom", France) compatible with the internal market and with the EEA Agreement, subject to full compliance with the commitments submitted by the Notifying Party annexed to the Clearance Decision ("the Commitments").
2. Further to the requests of the Notifying Party of 2 October 2015, on 22 October 2015 the Commission issued a decision approving Ansaldo as a purchaser of the Divested Business, which took into account the draft Sale and Purchase Agreement approved by Ansaldo and GE ("the Proposed Agreement").

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<sup>1</sup> Council Regulation (EEC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ("the Merger Regulation"), OJ L 24, 29.1.2004, p. 1-22.

3. By requests of 10 February 2016 and 11 February 2016, the Notifying Party submits a request for (A) a modification pursuant to paragraph 7 (c) of the Commitments as regards the Key Personnel List as set out in the Appendix 3 of the Commitments; (B) modifications pursuant to paragraph 14 of the Commitments as regards the Pipeline Projects that relate exclusively to the business retained by GE ('Retained Business') as set out in paragraph 16.1.1(i).(a) of the Commitments and (C) modifications pursuant to paragraph 14 of the Commitments as regards the trademarks to be licensed back to GE.

**A. Request pursuant to paragraph 7(c) of the Commitments for modifications to the list of Key Personnel**

***Request of the Notifying Party***

4. Under clause 16.7 of the Commitments, the Notifying Party committed to include in the Divestment Business all Key personnel necessary to replicate Alstom as a viable and competitive force in HDGTs as listed in Appendix 3 of the Commitments.
5. Under clause 7(c) of the Commitments the Notifying Party committed to take all reasonable steps, or procure that all reasonable steps are being taken, to encourage all Key Personnel to remain with the Divestment Business. Any modification to the list of Key Personnel subject to the Commitments needs to be communicated by the Notifying Party to the Commission.
6. By letter of 11 February 2016, the Notifying Party submitted its reasoned proposal to the Commission in respect of changes to the Key Personnel, namely concerning the removal of [...] and [...], who presented letters of resignation on [...] and [...], respectively. The Notifying Party did not propose any replacement.
7. As regards [...], the Notifying Party explained [...] his departure would not adversely affect the viability or competitiveness of the Divestment Business in the hands of Ansaldo and therefore no replacement should be required.
8. As regards [...], the Notifying Party [...] considered that his departure would not adversely affect the viability or competitiveness of the Divestment Business in the hands of Ansaldo and therefore no replacement should be required.

***Opinion of the Monitoring Trustee***

9. The Monitoring Trustee has submitted an opinion on the request for changes to the list of Key Personnel on 12 February 2016.
10. First, according to the Monitoring Trustee, the Hold Separate Manager ('HSM') and his management team met with [...]. The HSM also stated that he would not need to be replaced. Ansaldo had no objection to this.
11. Second, according to the Monitoring Trustee, the HSM met with [...]. The HSM explained to the Monitoring Trustee that, given the short time to Closing, a replacement for [...] would not be required. Ansaldo had no objection to this.
12. Finally, the Monitoring Trustee confirmed that neither [...] nor [...] would join GE or direct competitors of the Divestment Business.
13. In view of the foregoing, the Monitoring Trustee has no objection to the modification to the list of Key Personnel subject to the Commitments as proposed by GE in its reasoned proposal of 11 February 2016.

### *Commission's assessment*

14. The Commission considers that, in view of the specific tasks carried out by [...] and [...], the removal of these employees from the list of Key Personnel is not likely to have an impact on the viability of the Divestment Business.
15. In the light of the elements put forward by the Notifying Party in its letter of 11 February 2016 and of the Monitoring Trustee's opinion of 12 February 2016, the Commission considers that the Notifying Party has shown the required good cause for the modification to the list of Key Personnel subject to the Commitments.

### **B. Request pursuant to paragraph 14 of the Commitments for modifications as regards the Pipeline Projects that relate exclusively to the Retained Business**

#### *Request of the Notifying Party*

16. According to paragraph 16.1.1.(d) of Schedule I of the Commitments Pipeline Projects, which are one part of the intangible assets of Alstom, correspond to all patents, patent applications, invention disclosures or other documents or data files articulating inventions or know-how, created on or prior to the Effective Date for the gas turbines business. In line with paragraph 3 of Schedule I of the Commitments, the Pipeline Projects have been categorised in (i) those used exclusively in the Divestment Business, (ii) those used exclusively in the Retained Business and (iii) those used both in the Divestment Business and in the Retained Business. Under clause 16.1 of Schedule I of the Commitments, the Divestment Business transferred to Ansaldo includes, among other main intangible assets, the Pipeline Projects used exclusively in the Retained Business. According to clause 16.1.1(i).(a) of the Commitments, these assets shall only be licensed back to GE.
17. By letter of 10 February 2016, the Notifying Party requested that the Pipeline Projects exclusively relating to the Retained Business should not be transferred to Ansaldo but retained directly by GE. The Notifying Party considers that this amendment would be in line with the principle of the Retained business and would not impact Ansaldo's viability since Ansaldo does not consider access to those Pipeline Projects useful.
18. By letter of 12 February 2016, Ansaldo has confirmed the above and has expressed no objections vis-a-vis this proposed amendment.

#### *Opinion of the Monitoring Trustee*

19. The Monitoring Trustee has submitted on 10 February 2016 an opinion on the request for modifications as regards the Pipeline Projects that relate exclusively to the Retained Business.
20. First, the Monitoring Trustee observes that the industry expert, [...], was called to assess the categorisation of the Pipeline Projects made by GE and to ensure that the list of projects to be licensed back to GE met the requirements of Paragraph 16.1.1(i) of Schedule 1 to the EU Commitments. In its report of 3 October 2015, the expert concluded that the Pipeline Projects had been allocated correctly to the various categories, namely (i) those used exclusively in the Divestment Business, (ii) those used exclusively in the Retained Business and (iii) those used both in the Divestment Business and in the Retained Business.
21. Second, the Monitoring Trustee indicates that the HSM reviewed the list of Pipeline Projects to be transferred to GE and agreed with the expert's conclusion.

22. Finally, the Monitoring Trustee also takes into account that Ansaldo itself performed a review of the projects and agreed that those Pipeline Projects can be transferred directly to GE, rather than being licensed back.
23. In view of the foregoing, the Monitoring Trustee has no objection to the modifications as regards the Pipeline Projects that relate exclusively to the Retained Business proposed by GE as set out in its reasoned proposal of 10 February 2016.

***Commission's assessment***

24. The Commission considers that the Pipeline Projects in question exclusively relate to the Retained Business, namely the part of Alstom's business which is not being transferred to Ansaldo where no competition concerns were identified by the Commission and where Ansaldo is already active. Therefore, the transfer to GE of those Pipeline Projects exclusively relating to Retained Business is not likely to have an impact on the viability of the Divestment Business.
25. In the light of the elements put forward by the Notifying Party in its letter of 10 February 2016 and of the Monitoring Trustee's opinion of 12 February 2016, the Commission considers that the Notifying Party has shown the required good cause for the modifications as regards the Pipeline Projects that relate exclusively to the Retained Business.

**C. *Request pursuant to paragraph 14 of the Commitments for modifications as regards the trademarks to be licensed back to GE***

***Request of the Notifying Party***

26. According to Paragraph 16.1.4 of Schedule 1 of the Commitments the Divestment Business includes the model names "GT26" and "GT36", subject to a perpetual reverse unrestricted right to GE to use the model name "GT26" in relation to GT26 series units (excluding only the GT26 2011 name), for servicing and marketing these units or any upgrades thereto.
27. By letter of 10 February 2016, the Notifying Party asked to modify the Commitments in relation to the definition of the trademarks being licensed back to GE for use in the Retained Business. In agreement with Ansaldo, GE requests that those trademarks should include the "MXL2", which may be used only in relation to the servicing and marketing of services for GT26 (no sale of new units), GT 26 2011, which may be used only in relation to GT26/2011 agreements or open GT26 tenders not transferred to Ansaldo, as well as a set of additional trademarks for use in connection with the goods and services of the Retained Business.

***Opinion of the Monitoring Trustee***

28. The Monitoring Trustee observes that the proposed changes are the result of commercial negotiations between the Parties and are in line with the text of the Commitments.

***Commission's assessment***

29. The Commission considers that, although the proposed change in the Commitments broadens the scope of the trademarks licensed back to GE, the use of such trademarks is strictly regulated by the agreement reached by GE and Ansaldo which limits its use to the cases where they would be applicable to the Retained Business or where Ansaldo is not

able to assume a given project. Therefore, the licensed back of such trademarks to GE is not likely to have an impact on the viability of the Divestment Business.

30. In the light of the elements put forward by the Notifying Party in its letter of 10 February 2016 and of the Monitoring Trustee's opinion of 12 February 2016, the Commission considers that the Notifying Party has shown the required good cause for the modifications as regards the clause on trademarks being transferred to GE.

***D. Conclusion***

31. In accordance with Paragraph 35 of the Commitments, the Commission has carefully assessed the arguments and the evidence submitted by the Notifying Party, and concludes that its arguments satisfy the requirements of "exceptional circumstances" laid down in point 35 of the Commitments.
32. The Commission therefore accepts their request for (i) the change in the list of Key Personnel, (ii) the modifications as regards the Pipeline Projects that relate exclusively to the Retained Business and (iii) the modifications as regards the trademarks to be licensed back to GE. Therefore, the Commission has decided to accept the above modifications to the Commitments.

*For the Commission*

*(signed)*

*Johannes LAITENBERGER*

*Director-General*