



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  
MERCER PROCEDURE**

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Decision on the implementation of remedies - Purchaser  
approval

Date: 22.10.2015



## EUROPEAN COMMISSION

Brussels, 22.10.2015  
C(2015) 7415 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

MERGER PROCEDURE  
IMPLEMENTATION OF  
COMMITMENTS

PUBLIC VERSION

**To the notifying party:**

Dear Sir/Madam,

**Subject: Case M.7278 - GENERAL ELECTRIC / ALSTOM (THERMAL POWER - RENEWABLE POWER & GRID BUSINESS Approval of Ansaldo Energia S.p.A. as purchaser of *Divested Business* following your letter of 02.10.2015 and the Trustee's opinion of 09.10.2015**

### I. FACTS AND PROCEDURE

1. By decision of 8 September 2015 ("the Decision") based on Article 8(2) of Council Regulation (EC) No 139/2004<sup>1</sup>, the Commission declared the operation by which the undertaking General Electric Company ("GE", United States of America) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the Thermal Power, Renewable Power and Grid businesses of ALSTOM (Société Anonyme) ("Alstom", France) compatible with the internal market following modification by GE, subject to conditions and obligations (the "Commitments"). GE and Alstom together are hereafter referred to as the "Parties".

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

### *The Commitments*

2. Under section B of the Commitments, GE committed to divest to Ansaldo Energia S.p.A. ("Ansaldo", or "the Purchaser") the "Divestment Business" as defined in Schedule 1 of the Commitments and mainly consisting of:
  - a. the Gas Business of Alstom, described as the combination of business activities within Alstom's Thermal Power Sector responsible for the development, sale, servicing and delivery of gas plant products and projects. The Gas Business of Alstom includes, but is not limited to, GT26 2006 and GT26 2011 gas turbines and the GT36 programme, and all personnel supporting this business.
  - b. the Business of Alstom's affiliated company Power Systems Mfg ('PSM', United States of America),
  - c. with the exclusion of (i) those areas of Alstom's Gas Business where no competition issues arise, and (ii) elements of Alstom's Gas Business and the PSM Business that are not needed by Ansaldo to replicate Alstom as a viable and competitive force in heavy duty gas turbines ("HDGTs"), insofar as Ansaldo's resources and capabilities are taken into account.

### *Sale and Purchase Agreement*

3. On 25 September 2015, GE and Ansaldo submitted a set of Divestment Agreements (the "Proposed Agreement") together with a letter confirming that each party would be willing to execute the proposed Agreement. As a result of the Proposed Agreement, Ansaldo would acquire sole control of the Divestment Business (the "Proposed Transaction").
4. Pursuant to paragraph 14 of the Commitments, GE submitted to the Commission by letter of 2 October 2015 its reasoned proposal relating to the Proposed Transaction (the "Reasoned Proposal") and the Proposed Agreement.
5. GE submitted a final revised version of the Proposed Agreement ("revised Proposed Agreement") on 16 October 2015.

### *Proposed Purchaser*

6. Ansaldo is an Italian supplier, installer and service provider of power generation plants and components. Ansaldo was a company belonging to the Finmeccanica Group ("Finmeccanica") until December 2013, when Fondo Strategico Italiano acquired an 85% stake in Ansaldo (with Finmeccanica retaining a 15% stake). In May 2014, Fondo Strategico Italiano signed a long term strategic agreement with Shanghai Electric ("SEC") - a Chinese manufacturer of power generation equipment and other machinery - whereby SEC acquired a 40% share in Ansaldo.
7. Ansaldo's current operations are structured around its core business activities of plants, components (gas turbines, steam turbines and generators), servicing and nuclear activities. Ansaldo currently employs over 3,600 people and has an installed capacity of gas turbines of 35,000 MW, corresponding to 202 units in over 30 countries.
8. Ansaldo's previous HDGT offering was based on Siemens technology, for which Ansaldo had a license covering full intellectual property rights. This licence

agreement was terminated in October 2004 and since then Ansaldo has developed and sold an offering independent of Siemens. Ansaldo's current portfolio of 50 Hz HDGTs consists of two HDGTs frames in the Medium segment,<sup>2</sup> i.e. the AE94.2K and the AE94.2, as well as the AE94.3A frame in the Large segment<sup>3</sup>. Ansaldo currently does not have an HDGT frame in the Very Large segment.<sup>4</sup>

9. Ansaldo's power generation production centre is located in Genoa where it has the technical capability to manufacture all the main and strategic components of gas turbines, steam turbines and generators.

#### *Opinion of the Monitoring Trustee*

10. In its Reasoned Opinion ("Opinion") of 9 October 2015, the appointed Monitoring Trustee ING Bank N.V. London Branch (the "Trustee") confirmed that Ansaldo is a suitable buyer as it fulfils the criteria of the purchaser requirements in section D of the Commitments attached to the Decision. In its assessment, the Trustee also indicated that, on the basis of the Proposed Agreement, the Divestment Business would be sold in a manner consistent with the Commitments, subject to a number of observations.
11. The Trustee submitted additional comments on 13 October 2015 and an updated Opinion on 17 October 2015, in which it confirmed that on the basis of the revised Proposed Agreement, the Divestment Business would be sold in a manner consistent with the Commitments.
12. To assist the Trustee in its review process, two independent Technical Experts were hired by GE, namely [Expert A] and [Expert B]. The Experts submitted reports on specific technical issues concerning the divestment process, whose conclusions were taken into account in the Trustee's final opinion.

## **II. ASSESSMENT OF THE PROPOSAL**

### **(a) Legal Framework**

13. According to paragraphs 13 and 14 of the Commitments, in its assessment of the Proposed Agreement the Commission has to ensure (i) the suitability and independence of the Proposed Purchaser, (ii) the viability of the Divestment Business after the sale, and (iii) that the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision.
14. In order to assess the suitability of the Proposed Purchaser, the Commission should verify that the Proposed Purchaser:
  - a. is independent of and unconnected to the Parties;

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<sup>2</sup> Based on the Decision, the Medium segment of the 50 Hz HDGT market comprises HDGT with output in the range of 90 MW to 200 MW.

<sup>3</sup> Based on the Decision, the Large segment of the 50 Hz HDGT market comprises HDGT with output in the range of 200 MW to 320 MW.

<sup>4</sup> Based on the Decision, the Very Large segment of the 50 Hz HDGT market comprises HDGT with output above 320 MW.

- b. has the financial resources, proven expertise, and the ability and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the merged entity and other competitors; and
- c. is neither likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

**(b) Independence from the Parties**

- 15. Given the absence of (i) equity links, (ii) board/management links, or (iii) any other significant economic links, Ansaldo appears to be independent from the Parties.
- 16. The Parties do not have any direct or indirect participations or cross-shareholdings in Ansaldo or its subsidiaries (and vice-versa). None of the Parties' directors is on the board of Ansaldo or its subsidiaries (and vice-versa) and there are no material management links between the Parties and Ansaldo.
- 17. A limited number of commercial relationships were identified between the Parties and Ansaldo, [List of commercial relationships].
- 18. Therefore, the Parties do not represent a significant supplier or customer for Ansaldo and, thus, there appear to be no significant economic links between them.
- 19. As a result, the Commission considers that there are no commercial relationships that impair the independence of Ansaldo from the Parties.
- 20. In view of the above, the Commission considers that the Proposed Purchaser is independent of and unconnected to the Parties.

**(c) Financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitor**

*Financial resources*

- 21. GE submits that Ansaldo has the financial resources to maintain and develop the Divestment Business as a viable and active competitive HDGT force, replicating Alstom's competitive position. This is based on the company's current financial situation, as well as the ability and incentive of its main shareholders, Fondo Strategico Italiano and SEC, to further develop Ansaldo as a HDGT supplier, including by the acquisition and development of the Divestment Business.
- 22. [Ansaldo's financial situation].
- 23. The Trustee has reviewed Ansaldo's pro-forma combined cash flow forecasts [Ansaldo's financial situation].
- 24. As a company with strong shareholders such as the Italian State backed Fondo Strategico and SEC, and having recently demonstrated its ability to resort to both the debt and bond markets, Ansaldo's access to financing currently appears sufficient to fund the purchase and development of the Divestment Business.

25. In view of the above, as expressed by the Trustee, Ansaldo has sufficient funds and solvency to fund an acquisition of this size and to further develop the business going forward.
26. In light of the foregoing, the Commission concludes that Ansaldo has the requisite financial resources to maintain and develop the Divestment Business.

*Proven expertise in HDGTs, ability and incentive to maintain and develop the Divestment Business as a viable competitive force*

27. The Parties submit that Ansaldo has a strong level of expertise in the HDGT industry. In fact, Ansaldo has a track record as a supplier in the power generation sector through the provision of power generation equipment, maintenance services, and Engineering, Procurement and Construction ("EPC") services. This proven expertise, combined with its existing capabilities in the area of R&D and product design, should enable Ansaldo to viably and competitively develop the Divestment Business.
28. The Parties submit that Ansaldo has the ability and incentive to maintain and develop the Divestment Business from a R&D, manufacturing and commercial point of view, both in relation to the new built HDGTs and in relation to the servicing of those HDGTs.
29. As regards the ability to support the Divestment Business from an R&D point of view, during the last decade Ansaldo has transformed itself from a licensee of third party (GE, ABB and Siemens) technology to an independent technological player. Moreover, as indicated by the Trustee on the basis of the expert report of [Expert A], Ansaldo's own R&D capabilities can be effectively and timely combined with the R&D expertise of the Divestment Business to further develop the GT26 and GT36 new-built and servicing activities on a stand-alone basis. Ansaldo together with the Divestment Business will thus dispose of the necessary R&D capabilities to maintain and further develop the Divestment Business.
30. As to its manufacturing ability, Ansaldo intends to integrate and combine some of the manufacturing assets of the Divestment Business with its existing fully fledged HDGT manufacturing plant in Genoa. The Commission's services have visited the manufacturing facilities of Ansaldo in Genoa and verified that Ansaldo has sufficient manufacturing capabilities available and effective plans for the necessary re-arrangements as regards the assembly of the GT36 in that location.
31. As indicated by the Trustee, while integration planning is at an early stage, the Parties and Ansaldo are capable of overcoming the integration challenges during the transition. The acquisition of the Divestment Business should provide Ansaldo's current and acquired customer-base with tangible benefits in terms of a geographically broader and more technologically advanced product offering.
32. As regards the ability to commercially support the Divestment Business in relation to new built HDGTs, according to the bidding timelines produced by Ansaldo with the involvement of the Hold Separate Manager ("HSM"), [Business plans of Ansaldo for the Divestment Business].
33. [Business plans of Ansaldo for the Divestment Business].

34. As regards the ability to commercially support the Divestment Business in relation to servicing activities, Ansaldo plans to be fully independent from GE and have its servicing activities for HDGTs and the other power plant components qualified by [Date by which Ansaldo plans to have its servicing activities for HDGTs and the other power plant components qualified]. In the meantime, Ansaldo would be able to make use of transitional service agreements that are part of the Proposed Agreement. For additional transitional service needs that are identified by Ansaldo up to nine months after Closing, GE has committed to negotiate additional agreements in good faith.
35. The Commission considers that Ansaldo will have the ability to maintain and develop the Divestment Business. The proposed acquisition of the Divestment Business will result in a combination of resources, experience (current gas turbine fleet and servicing portfolio) and scope (global geographic presence and broad business mix) that will enable Ansaldo to maintain and develop the business.
36. Concerning Ansaldo's incentives to maintain and develop the Divestment Business, in line with the Trustee, the Commission considers that Ansaldo's business plan for the Divestment Business is built upon well-considered and reasonable assumptions which show Ansaldo's intention to increase the sales volumes of the business throughout the period and to earn acceptable margins that are comparable to those of other OEMs.
37. As indicated by the Trustee, the Divestment Business as a whole will remain profitable even under a worst-case lower margin scenario (currently not foreseen by Ansaldo in its business plan) [Business plans of Ansaldo for the Divestment Business].
38. Moreover, in light of the Decision, given that Ansaldo's HDGT in the Large segment (i.e. the AE94.3A) is targeting very different customer requirements and profiles than the GT26, Ansaldo will have the incentives to pursue the bids for the latter, in particular for combined-cycle tenders.<sup>5</sup> Ansaldo is likely to have the incentives to pursue the bids of the GT36 since it has currently no offer in the Very Large segment.
39. Geographically Ansaldo is already well positioned in Southern Europe, the Middle East and Africa and has started to strengthen its position in the Asian markets through its association with SEC. The acquisition of the Divestment Business assets will enhance its geographic presence in Northern and Western Europe and the Americas. [Business plans of Ansaldo for the Divestment Business].
40. As regards the servicing of new HDGTs, [Business plans of Ansaldo for the Divestment Business], the servicing business appears to remain sufficiently profitable.
41. As regards PSM, given that Ansaldo is acquiring the PSM business without any carve-out and given that PSM has been running on a relatively standalone basis from Alstom, the business should continue to be viable whereby it would continue to achieve stable and acceptable margins post-divestment.

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<sup>5</sup> Section 8.5.2.2 of the Decision.

42. In relation to Ansaldo's overall incentives vis-à-vis the Divestment Business, as indicated by the Trustee, the potential operating and R&D synergies identified in Ansaldo's business plan provide a credible rationale for the acquisition of the Divestment Business, especially for the Large HDGT segment This is consistent with the Commission's preliminary findings in the Decision.<sup>6</sup>
43. [Business plans of Ansaldo for the Divestment Business]. Therefore, Ansaldo has strong incentives to maintain and develop the Divestment Business.
44. The Commission thus concludes that Ansaldo has the required proven expertise, ability and incentive to maintain and develop the Divestment Business as a viable competitive force.

**(d) Absence of prima facie competition problems**

45. The acquisition of the Divestment Business by Ansaldo is prima facie not likely to give rise to competition concerns. According to the Decision, Ansaldo is a niche HDGT player. Ansaldo currently offers two 50 Hz HDGTs in the Medium segment and one 50 Hz HDGT in the Large segment. It is currently not present, and was not expected to become present in the next four years, in the Very Large segment. As a consequence the only relevant overlap with the Divestment Business is in relation to the Large segment.
46. In the Large segment the overlaps between Ansaldo and the Divestment Business are limited. The Parties estimate that at a worldwide level (excluding China and Iran), Ansaldo has a market share of [5-10]% and the Divestment Business of [0-5]%. Based on the Commission's calculations presented in the Decision, whereas Ansaldo is indeed a rather small player with a [5-10]% global share (excluding China and Iran) in the 50 Hz Large HDGT segment over the period 2009Q2-2014Q1, Alstom appears to be a stronger player with an estimated [10-20]% global share.<sup>7</sup> At an EEA level, according to the Parties, the market shares are respectively [5-10]% and [10-20]% for Ansaldo and the Divestment Business, whereas according to the Commission's estimates in the Decision, the former accounted for [5-10]% of the EEA market over the period 2009Q2-2014Q1 and Alstom for [20-30]%.
47. However, in the Large segment Ansaldo is not a close competitor to the GT26 in terms of efficiency and flexibility, as its offering is more suitable for single cycle projects instead.<sup>8</sup> Ansaldo was therefore not meeting very often the GT26 in past tenders as compared to the other players, i.e. GE and Siemens.<sup>9</sup>

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<sup>6</sup> Section 12.5.2.1 of the Decision.

<sup>7</sup> Some of the difference between the Parties' estimation and the Commission's Decision result from the fact that the former refers only to the Divestment Business (which does not include the initial versions of the GT26) while the latter includes all Alstom's sales in the Large segment.

<sup>8</sup> Section 8.5.2.2 of the Decision.

<sup>9</sup> Annex 2 of the Decision.

48. Pre-acquisition, Ansaldo is seen by customers as a weaker player given its previous position as a licensee of Siemens and its more limited R&D capabilities relative to its competitors. Post-acquisition Ansaldo will be stronger and will be better equipped to face three full technological global players (GE, Siemens and MHPS).<sup>10</sup>
49. As regards the servicing of mature GE's 50 Hz HDGT frames, the overlaps are mainly in the servicing of GE's 9E frame. According to the Decision there are several competitors able to service this frame.<sup>11</sup> Moreover, the overlaps between Ansaldo and the Divestment Business are small. In fact, according to GE's estimation, despite Ansaldo having a [30-40]% market share at a worldwide level, the Divestment Business' market share in the worldwide market is below [5-10]%. At an EEA level the overlaps are very small.
50. As for the remaining frames the overlaps are very limited. In particular, for the servicing of the 9F frame, Ansaldo is not a significant potential service provider.<sup>12</sup>
51. Finally, as regards the servicing of MHPS and Siemens' mature HDGTs there is no overlap since the Divestment Business only serves the 60 Hz frames while Ansaldo serves only the 50 Hz frames, which are in different relevant markets.
52. On the basis of the above, the Commission considers, in line with the Trustee, that the acquisition of the Divestment Business by Ansaldo does not give rise to prima facie competition concerns.
53. This prima facie assessment is based on the information available for the purpose of this buyer approval and does not prejudice the competition assessment of the acquisition of the Divestment Business by Ansaldo by a competent competition authority under applicable merger control rules.

**(e) No delay in implementation of the Commitments**

54. According to the Parties, there are no obstacles to timely and efficient implementation. The Commitments stipulate that the Divestment Business will be transferred to Ansaldo within three months from the closing of the main Transaction for which the outstanding regulatory approvals are expected shortly.
55. The Parties do not expect the acquisition by Ansaldo of the Divestment Business to raise competition concerns or to be subject to significant delays or impediments due to other regulatory approvals such as the procedure by the Committee on Foreign Investment in the United States of America (concerning the acquisition of the PSM business).
56. [GE's agreement to assist Ansaldo].

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<sup>10</sup> Section 8.5.1.4 of the Decision.

<sup>11</sup> Section 10.1.3.4 of the Decision.

<sup>12</sup> Section 10.1.3.3 of the Decision.

57. As indicated by the Trustee, the risk of unreasonable delays due to outstanding regulatory approvals, or failure to obtain the same, is reasonably low<sup>13</sup>.
58. The Commission thus concludes that the outstanding conditions for transferring the Divestment Business to Ansaldo do not give rise to a risk that the implementation of the Commitments will be delayed.

**(f) Exclusion of certain assets from the Divestment Business does not affect the viability and competitiveness of the Business after the sale**

59. Pursuant to paragraph 14 of the Commitments, the Commission must verify that the Divestment Business is being sold in a manner consistent with the Commission's Decision and Commitments. In particular, the Commission may approve the sale of the Divestment Business without one or more assets or parts of the Personnel, or by substituting one or more different assets or personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking into account of the Purchaser.
60. GE submits that the sale of the Divestment Business to Ansaldo will be effected in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. In particular, according to GE, in line with the Commitments and pursuant to the Proposed Agreement, the Divestment Business will include all the necessary elements for Ansaldo to replicate Alstom as a viable and competitive force in HDGTs, insofar as Ansaldo's resources and capabilities are taken into account.
61. GE submits that the viability and competitiveness of the Divestment Business will not be affected by the exclusion from the Divestment Business of (i) [Details of remedy package] and (ii) some other assets as well as by (iii) the change of some personnel in the list of Key Personnel.

[Details of remedy package]

62. [Details of remedy package].
63. [Details of remedy package].
64. [Details of remedy package].
65. [Details of remedy package].
66. [Details of remedy package].
67. [Details of remedy package].
68. [Details of remedy package].

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<sup>13</sup> It is to be noted in this regard that the Framework Agreement between GE and Ansaldo does not exclude the possibility of closing later than three months following the completion of the main transaction. Such late closing would require the Commission's consent.

*Other assets excluded from the Divestment Business*

69. GE proposes to exclude a number of assets from the Divestment Business, namely:
- a. Design Tool [Details of remedy package]; and
  - b. Ansaldo's\* full rights to the HBK5 high pressure combustor test facility located in Cologne (Germany);
70. On the one hand, the Commitments provide for the full transfer of all designed tool controlled by Alstom (paragraph 16.2.1(a)\*\* of Schedule I of the Commitments). GE proposes to exclude the Design Tool [Details of remedy package] from the Divestment Business.
71. The Commission understands that the Design Tool [Details of remedy package] relate to the development and design of Alstom's base and E-fleet, which is part of Alstom's business retained by GE. This was confirmed also by the HSM. Therefore, this tool does not pertain to the Divestment Business and, thus, its exclusion does not have the potential to endanger the viability and competitiveness of the business after the sale.
72. The Commission thus agrees to exclude the Design Tool [Details of remedy package].
73. On the other hand, the Commitments provide for the full transfer of all Alstom's [Details of remedy package] rights to use the HBK5 high pressure combustor test facility located in Cologne, Germany (paragraph 16.4.2(b) of Schedule I of the Commitments). GE proposes instead to transfer [Details of remedy package] of the HBK5 testing facility with GE retaining the remainder. [Alstom's access to the HBK5 high pressure combustor test facility]<sup>14</sup> [Alstom's access to the HBK5 high pressure combustor test facility].
74. The Commission understands that Ansaldo claimed to have access to a similar combustion testing facility in Italy to the HBK5 testing facility. Therefore, Ansaldo sought to avoid the costs of maintaining two combustion testing facilities, which would be inefficient. On this basis, Ansaldo indicated a preference to split access rights (and therefore costs) with the combined GE/Alstom.
75. In consideration of Ansaldo's claims, the Commission has consulted the HSM expressly on this matter to obtain an opinion on the risks associated to this partial transfer. [Alstom's access to the HBK5 high pressure combustor test facility].
76. The Commission thus agrees with the amendment of the clause related to the rights to use the HBK5 high pressure combustor test facility.

*Changes in the list of Key personnel*

77. From the list of Key Personnel included in the Commitments, four names were excluded in the Framework Agreement. On the other hand, four names were added to the Key Personnel list. On 12 October 2015, GE submitted a reasoned proposal

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<sup>14</sup> The HBK5 Facility is located on the premises of DLR in Cologne.

justifying the substitution of this personnel by other personnel. (the "Reasoned Proposal on Key Personnel").

78. The Commission considers, in light of the views of HSM, that the new personnel included in the Key Personnel list are of a suitable seniority, with high level of experience as well as leadership capabilities.

79. Therefore, the Commission concludes that the proposed replacement of Key Personnel will not negatively impact the viability and competitiveness of the Divestment Business.

### *Conclusion*

80. In conclusion, as indicated by the Trustee, all elements of the Divestment Business identified in Schedule 1 of the Commitments are materially included in the Proposed Agreement. Besides, the terms of the ancillary agreements are in line with current market practice and are materially consistent with the Commitments.

81. In view of the above, the Commission concludes that the sale of the Divestment Business to Ansaldo will be effected in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market.

### **III. CONCLUSION**

82. On the basis of the above assessment, the Commission approves Ansaldo as a suitable purchaser.

83. Further, on the basis of the Proposed Agreement, the Commission concludes that the Divestment Business is being sold in a manner consistent with the Commitments.

84. This decision only constitutes approval of the proposed purchaser identified herein and of the Proposed Agreement. This decision does not constitute a confirmation that GE has complied with its Commitments.

85. The buyer approval decision is based on paragraphs 13 and 14 of the Commitments attached to the Decision.

*For the Commission*

*(Signed)*

*Johannes LAITENBERGER  
Director-General*

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\* Where it reads [Ansaldo] should read [Alstom].

\*\* Where it reads [paragraph 16.2.1(a)] should read [paragraph 16.1.3(b)].