authorities, which now have a maximum of four months in which to complete their own investigation. ■

MERGERS (ELECTRICITY): THE VEBA / VIAG CASE

Subject Mergers

Industry Electricity; chemicals

Parties VEBA AG
VIAG AG

Source Commission Statement IP/00/114, dated 4 February 2000

(Note. Here is another "second-phase" investigation under the Mergers Regulation, indicating the Commission's uncertainty about approving a merger which would result in an undertaking having a two-thirds share of the market in Germany for the supply of electricity. At first sight it was also a candidate, like the cases reported above, for consideration at national level. However, the Commission points out that other cases are being considered in the sector and that "these mergers are also likely to have significant consequences for the future structure of the whole European market". It is therefore continuing the investigation itself, but "in close liaison with [Germany's] Federal Cartel Office".)

The Commission has decided to undertake a full, second-phase investigation of the proposed merger between VEBA AG, of Düsseldorf and VIAG AG, of Munich. The Commission considers that the proposed merger raises serious doubts about its compatibility with the common market as regards, in particular, the strong positions of both parties in electricity generation and transmission, and also in the markets for certain chemicals.

VEBA is a diversified group with activities in many areas, including electricity and chemicals. It is present at all levels in the energy sector through its subsidiary PreussenElektra AG. Its traditional distribution area covers the northern Bundesländer Schleswig-Holstein and Lower Saxony together with large parts of Hesse. Its activities in chemicals are for the most part undertaken through its subsidiary Degussa-Hüls AG. VIAG is likewise a conglomerate, active in numerous sectors including electricity and chemicals. Its activities in the energy sector are concentrated in Bayernwerk AG. Bayernwerk also is present at all levels in the electricity sector. Its traditional distribution area covers most of the southern Bundesland of Bavaria. VIAG's activities in chemicals are brought together in SKW Trostberg AG and the latter's subsidiary Goldschmidt AG.

On the basis of the information available, the merger's primary effects will be on the generation and distribution of electricity in Germany. VEBA/VIAG would, together with the generator RWE, produce over two thirds of German energy consumption. The concern is that the merger would significantly reduce competition on the German market in particular. Grounds for this view are that VEBA/VIAG would have a number of joint ventures with RWE. Both VEBA

and VIAG also possess substantial generating capacity and transmission networks on which other suppliers are dependent for successful market entry. The Commission accordingly has serious doubts about the operation's compatibility with the common market, in as much as the merger could lead to joint dominance of the market in question by VEBA/VIAG and RWE. The Commission's enquiries also gave grounds for concern that the terms of 'Verbändevereinbarung II'- which lays down the conditions for non-discriminatory transmission across the existing network – could have the effect of dividing the German market into two separate zones. This could allow discrimination against other suppliers, especially those from other Member States of the European Union.

Serious doubts about compatibility were also found to arise from the merger of VEBA and VIAG's activities in certain chemicals. These are prussic acid derivatives, which are used among other things for the manufacture of herbicides, optical witheners and disinfectants. The concentration would produce significant overlaps in these sectors.

Every investigation under the Merger Regulation is carried out in accordance with a statutory timetable. The Commission has one month from the date on which the merger is notified to it in which to make a preliminary examination. If a Member State requests the reference of the notified concentration to its competent authorities, this period is increased to a total of six weeks. In the present case, the Federal Republic of Germany requested that such a reference be made, informing the Commission that the concentration would create or strengthen dominant positions in regional or national markets for electricity in Germany, which would significantly impede competition in those markets. In the view of the German authorities, the affected markets show all the characteristics of distinct markets.

In its decision on the request for reference, the Commission has taken account of the extent to which the affected markets are a substantial part of the common market. The fact that the main focus of the merging firms' activities in the electricity sector is in Germany, where they derive most of their turnover, supports the case for reference. Moreover, the Federal Cartel Office (the German national competition authority) is currently investigating the merger between RWE and VEW, which will substantially affect the structure of electricity markets in Germany. On the other hand, the Commission is also involved in examining, or expects to receive notification of, other proposed mergers in the German electricity sector. Because of the central importance of Germany in this area, these mergers are also likely to have significant consequences for the future structure of the whole European market. In this connection the Commission is currently undertaking a detailed examination of the provisions of 'Verbändevereinbarung II'. On the basis of its preliminary assessment, the Commission considers that certain provisions discriminate against, in particular, foreign suppliers and could lead to the foreclosure of national markets. Accordingly the Commission considers that there is an overriding Community interest in favour of an investigation at Community level. The Commission has accordingly decided to undertake a full investigation of the case. It has a further