JOINT VENTURES (TRANSPORT): THE CONNEX CASE

Subject: Joint ventures
National laws

Industry: Public transport

Parties: Connex Verkehr GmbH
Deutsche Nahverkehrsgesellschaft mbH (DNVG)

Source: Commission Statement IP/02/627, dated 25 April 2002

(Note. The interest of this case lies in the distribution of authority between the Commission and the national authoritiy in cases in which there may be a Community interest but where in practice the issue is exclusively national. This is a joint venture case, governed by the Mergers Regulation.)

The Commission has referred to the German competition authorities (the Federal Cartel Office) a joint venture by which Connex Verkehr GmbH, a subsidiary of the Frerich Vivendi group, and Deutsche Nahverkehrsgesellschaft mbH (DNVG) plan to offer local public transport services in the Riesa area (Saxony, Germany). The referral had been requested by the Federal Cartel Office because the competitive impact of the transaction was limited to local markets within Germany.

DNVG is controlled indirectly by three municipalities, Bonn, Leipzig and Hanover. Connex is active in Germany as a provider of local public transport services in several German cities, including Schaumburg near Hanover. At present the holding company Deutsche Nahverkehrs- Beteiligungs- und Verwaltungsgesellschaft mbH (DNVBVG), which is controlled by Stadtwerke Bonn Verkehr-GmbH, Leipziger Verkehrsbetriebe GmbH and Lüstra Hannoversche Verkehrsbetriebe, holds all shares in DNVG. After the transaction, Connex will hold 51% while DNVBVG will keep 49%. Provisions in the shareholder agreement will lead to joint control.

The Federal Cartel Office has recently requested the referral because the joint venture would create structural links between the operator of public transport in Hanover and Connex which, from its established base in the adjacent Schaumburg market, would be best placed to act as a competitor in Hanover.

Today's Commission decision allows the German competition authorities to examine these potential implications. The Merger Regulation (Article 9(2)(b)) stipulates that concentrations which affect competition on a local or regional market within a Member State must under certain conditions be referred to the Member State. ■

The GE Power Systems / Enron Case

Whatever the context, Enron is news these days, even when it is involved in a fairly straightforward takeover of one of its remaining business interests. The Commission has cleared an operation by which GE Power Systems (GEPS), a wholly owned subsidiary of the General Electric Company (GE), acquires Enron's Wind Turbine Business. The Commission has concluded that the acquisition, which concerns wind turbines used for power generation, does not raise any competition concerns in Europe. GE Power Systems agreed in February to buy the wind turbine business of bankrupt US energy trading firm Enron Corp. The deal was notified on April 02 to the European Commission under the European Union's Merger Regulation for regulatory approval in Europe. Enron's Wind Turbine Business develops, manufactures and markets wind turbines. GEPS is not in the wind turbine business although it also develops, produces and markets turbines of various other types and sizes. The Commission's market investigation showed that, at present, wind turbines can be distinguished from other forms of power generation by reason of their technical characteristics, availability and reliability. Consequently, there are no horizontal overlaps between the activities of GEPS and Enron's Wind Turbine Business. As GE has no activities upstream or downstream of wind turbines, the operation does not raise vertical integration concerns. Enron's Wind Turbine Business holds an important, but not leading position in the market for wind turbines. Although GE is one of the leading players for power generation equipment other than wind turbines, the Commission concluded that it would not be able to leverage this position as customers for both products are largely different.

Source: Commission Statement IP/02/644, dated 30 April 2002

The Commission

References in this newsletter to the "Commission" are, unless the text specifies otherwise, references to the Commission of the European Communities. In Article 7 of the Treaty establishing the European Community, the name is simply the Commission. It is not "the European Commission", though this name appears on the Commission's letterheads and in its official Statements.

Commission Statements are sometimes inaccurate: in the Statement on which the Christie's/Sotheby's report is based, there is a reference to Article 81 of the EU Treaty. There is no such Article. What is meant is Article 81 of the EC Treaty.

Whatever happens to the ECSC Treaty, which contains some provisions on competition but expires this year, the newsletter will keep its present title for the time being.