

# RULES OF THE ROAD

## GE hopes this sequel gets a better reception in Europe

*The review of the Alstom purchase will test what the U.S. giant learned from the Honeywell debacle*

BY RENEE CORDES

Sequels rarely measure up to the original, but this one could be riveting: The European Commission's in-depth scrutiny of **General Electric Co.**'s \$17 billion purchase of **Alstom SA**'s power unit, nearly 14 years after Brussels regulators killed GE's \$43 billion play for **Honeywell International Inc.**

The review has the makings of a good drama. It combines old-fashioned politicking with corporate grandstanding and market musings about a change at the top of GE. There are flashbacks to GE's and Alstom's long-term relationships with each other and with the commission, and a dynamic new EU competition chief, Margrethe Vestager, who has a soft spot for "Die Hard" flicks and who likes knitting at staff meetings.

Three competition commissioners ago in July 2001, Mario Monti went down in history for squelching then-GE CEO Jack Welch's Honeywell deal, already cleared in the U.S., after Welch's strong-arm tactics backfired.

It remains to be seen whether Jeff Immelt, who succeeded Welch in 2001, will have better luck getting GE's largest acquisition to date off the ground amid market chatter, fueled by **Barclays plc** analysts, that he could step down next year. The EC has given itself until early July to decide whether the deal harms competition in the market for heavy-duty gas turbines, mainly used in gas-fired power plants.

"What is critical is the market definition," said Nicolas Petit, a professor at the University of Liège Competition and Innovation Institute in eastern Belgium. "If the commission manages to show that a combined GE-Alstom entity has a monopoly on narrow market segments, then it's 'Kill Bill.' They can shoot the transaction easily."

The deal was agreed to in June, after GE finally got the French government's backing over rival offers from **Siemens AG** and **Mitsubishi Heavy Industries Ltd.** Paris gave the green light after rejecting GE's first two offers for not safeguarding France's strategic interests and Alstom's French workers.



Final terms give GE full control of Alstom's thermal power, renewables and grid operations, all of which will be set up as 50/50 joint ventures with a put option for the Fairfield, Conn.-based buyer. GE will also sell its rail signaling business to Alstom.

In addition, the companies will form a 50/50 steam and nuclear JV, in which the French government will have a special veto right over security and technology and own the intellectual property related to Alstom's nuclear steam turbine technology.

Not surprisingly, France is still very protective of the company it rescued from the brink of bankruptcy in 2004,

after Alstom agreed to sell assets and to other conditions in return for EC state aid approval.

**GE AND ALSTOM** had plenty of time to meet with the commission's case team before notifying the deal in January, as more and more merging companies are doing.

But even after the clock started ticking, they held off putting forward during the initial probe, sending the inquiry into Phase Two—despite the growing number of Phase One conditional clearances even on complex deals.

On the other hand, what has GE got to lose?

The EC has not vetoed a deal in more than two years, it's prohibited just 24 out of 5,742 notified since 1990, and most legal experts agree there will never be another GE/Honeywell given today's extensive economic analysis with larger case teams assigned to the more complex cases.

"We've moved on," said Alec Burnside, Brussels managing partner with **Cadwalader, Wickersham & Taft LLP**. "It's a different universe now with a much more rigorous, exacting process."

Others point out that there's probably no one left from the GE/Honeywell case team anyway, and that every case is decid-

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ed on the merits.

Since Honeywell, GE has managed to get a number of tough transactions through in Brussels, including its purchase of Italian aviation equipment maker Avio SpA, which was cleared in 2013 with conditions, and of Converteam Group SAS, formerly Alstom Power Conversion, approved without conditions in 2011. Both GE and Alstom trace their corporate roots to the Thomson-Houston Electric Co., which merged with Edison General Electric Co. to form GE in 1892 and with the Société Alsacienne de Constructions Mécaniques to form Alstom in 1928. GE also licensed Alstom's first gas turbine, produced in France in 1959 and installed in Algeria.

In 1999, GE bought Alstom's heavy-duty gas turbine business after getting the EC's unconditional nod. Heavy-duty gas turbines are spinning again.

The EC's preliminary investigation into the latest deal flagged concerns in heavily concentrated markets dominated by GE, Alstom, Siemens and Mitsubishi globally and GE, Alstom and Siemens in Europe.

Although Italy's **Ansaldo STS SpA** is also active globally, watchdogs found that it appears to be a niche player with a more limited geographic reach. They also noted that margins in heavy-duty gas turbines seem to be greater than those for power generation equipment like steam turbines.

Two weeks into the probe, the case team is still gathering heaps of market data from the merging companies, competitors and customers, including probably several years' worth of information on bidding, contracts and purchases, to be run through economic models and determine whether the deal could lead to a rise in prices, reduced consumer choice or less industry R&D and innovation. The EC has also pointed to a post-merger risk that GE would stop producing certain Alstom heavy-duty gas turbine models and that advanced technology developed by Alstom would not be brought to the market.

Once the month-long data-gathering marathon is complete, case handlers will determine whether to send a so-called statement of objections listing their concerns.

As with many large cases, there's likely to be a dispute over how to define the market, which the companies will want to see as wide as possible.



EU COMPETITION CHIEF MARGRETHE VESTAGER

"You don't want to be facing a 3-to-2 situation in Europe," noted Anne MacGregor, special counsel at Cadwalader. "If the commission's in-depth investigation leads it to conclude that this is a 3-to-2 market in the EEA [European Economic Area], the easiest structural solution may be to spin off one of the parties' heavy-duty gas turbine business, depending on which one of them is the most innovative."

There's still a long way to go on the probe, and there may be several tries on remedies before anything is decided.

One hurdle that may not be obvious: A potential case of "remedies fatigue" among GE management after having to give in to the French government's demands, an interesting argument that Liège law professor Nicolas Petit made in a 25-page paper.

"Until now," he explained, "GE has been conceding significant concessions to public authorities. Although these con-

cessions are fairly different from the types of concessions you have to make with antitrust authorities, companies are run by managers, not lawyers, but at some point management and investors may prove reluctant to give yet another concession to a public authority."

He also noted that the French deal intervention did not sit well with the commission, which may actually be beneficial to the companies in the antitrust review.

Others predict the EC will just ignore the politics and get on with the task at hand.

"Although politics may contribute some mood music, the outcome of these reviews turn on specific facts," noted Jonas Koponen, a Brussels-based competition partner with **Linklaters LLP**. "I would expect the Commission to decide on the merits of those that are relevant here, and that the closer review should eventually give the confidence to clear."

One lesson that GE and other large corporates may have gleaned from the Honeywell experience: Heavy-handed tactics don't work. That's to the chagrin of seasoned lobbyists like Andreas Geiger of Brussels' **Alber & Geiger**, who predicted the probe would be "more Honeywell than honeymoon" last year.

"I think it would be much smarter if GE behaved like they do in the U.S. and send out lobbyists to test the ground and clarify things politically before they even file a merger," he said. "Now they are at the mercy of the case team." ■