PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION POLICY

EUROPEAN COMMISSION

Notice published pursuant to Article 27(4) of Council Regulation (EC) No 1/2003 in Case COMP/B1/39.736 — Siemens/Areva
(Text with EEA relevance)

(2012/C 75/05)

1. INTRODUCTION

(1) According to Article 9 of the Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, the Commission may decide — in cases where it intends to adopt a decision requiring that an infringement is brought to an end and the parties concerned offer commitments to meet the concerns expressed to them by the Commission in its preliminary assessment — to make those commitments binding on the undertakings. Such a decision may be adopted for a specified period and shall conclude that there are no longer grounds for action by the Commission. According to Article 27(4) of the same Regulation, the Commission shall publish a concise summary of the case and the main content of the commitments. Interested parties may submit their observations within the time limit fixed by the Commission.

2. SUMMARY OF THE CASE

(2) In 2001, Siemens AG ('Siemens') and Framatome SA ('Framatome'), the legal predecessor of Areva SA ('Areva'), created the full-function joint venture Areva NP SAS ('Areva NP' or 'the JV'), in which they combined their respective activities in relation to nuclear power plants. In 2009, Siemens announced its decision to leave the JV. The Shareholders' Agreement between the parent companies of the JV includes a non-compete obligation ('NCO'), which not only covers the lifetime of the joint venture but, in its original form, was to continue for a period of 8 to 11 years after Siemens' loss of joint control of the JV ('post-JV NCO'). The post-JV duration of the NCO was later reduced by an arbitral award in April 2011 to end in September 2013. The Shareholders' Agreement also contains a confidentiality clause which has the same duration as the NCO.

(3) Following the submission of a complaint by Siemens on 16 October 2009, which was later withdrawn, the Commission carried out an investigation. On 21 May 2010, the Commission decided to initiate antitrust proceedings pursuant to Article 2(1) of Commission Regulation (EC) No 773/2004.

(4) On 16 December 2011 the Commission adopted a preliminary assessment within the meaning of Article 9(1) of Regulation (EC) No 1/2003, concerning an alleged infringement of Article 101 TFEU by Areva and Siemens in a number of product markets within the field of civil nuclear technology. In its preliminary assessment, the Commission expressed the concern that the post-JV NCO and the post-JV confidentiality clause agreed between Areva and Siemens may constitute an infringement of the competition rules due to their excessive product scope and duration. The preliminary assessment concluded that the post-JV NCO, and the post-JV confidentiality clause in as far as the latter had the same effect as a non-compete clause, fell within Article 101(1) TFEU, and did not meet the conditions of Article 101(3) TFEU in so far as:

— they prevented competition by Siemens on the markets of the JV's core products and core services, in particular nuclear islands, nuclear services and nuclear fuel assemblies, on a worldwide basis, for a period exceeding three years following Areva's acquisition of sole control over Areva NP in 2009; and

— they prevented competition by Siemens following Areva's acquisition of sole control over Areva NP in 2009, on a worldwide basis, on markets where Areva NP was not active with own products and/or on markets where Areva accepted sales by Siemens during the lifetime of the JV. In particular, this covers the markets for conventional islands for nuclear power plants (NPPs), and the markets for certain nuclear islands components such as variable frequency drives, reactor coolant pump motors, diesel

generators, conventional motors, transformers, medium voltage switchgears, low voltage switchgears, building management technology, plant management technology and water treatment solutions.

3. THE MAIN CONTENT OF THE OFFERED COMMITMENTS

(5) The Parties subject to the proceedings do not agree with the Commission’s preliminary assessment. They have nevertheless offered commitments pursuant to Article 9 of Regulation (EC) No 1/2003 to meet the Commission’s competition concerns.

(6) The commitments are briefly summarised below and published in full in English on the website of the Directorate-General for Competition at: http://ec.europa.eu/competition/index_en.html

(7) The Parties commit to set aside the post-JV NCO as it was agreed in the Shareholders’ Agreement and modified following the arbitral award, and to implement the following rules as regards the possibility for Siemens to compete with Areva NP after Areva’s acquisition of sole control over Areva NP.

(8) The Parties commit to allow Siemens to compete against Areva NP, without any restriction, as from the date at which Siemens lost joint control over Areva NP (i.e. on 16 October 2009), with the exception of activities directly related to the nuclear island of NPPs, namely as regards Areva NP Core Products and Core Services. A list of Core Products and Core Services is annexed to the commitments.

(9) According to the commitments, competition by Siemens against Areva NP would only be prevented in relation to those Core Products and Core Services for a duration of three years following Areva’s acquisition of sole control over Areva NP, and more precisely until 16 October 2012.

(10) Pursuant to the commitments, until 16 October 2012 Siemens would be prevented from using any confidential information in relation to Core Products and Core Services to which it may have had access during the lifetime of the JV. Siemens will, however, remain bound by a non-disclosure obligation in relation to Areva NP’s corporate constitution and administration documents also beyond that date. In relation to Areva’s confidential written technical information, Siemens is bound by both a non-use and non-disclosure obligation even beyond October 2012.

4. INVITATION TO MAKE COMMENTS

(11) Subject to market testing, the Commission intends to adopt a decision under Article 9(1) of Regulation (EC) No 1/2003 declaring binding the commitments summarised above and published on the Internet, on the website of the Directorate-General for Competition.

(12) In accordance with Article 27(4) of Regulation (EC) No 1/2003, the Commission invites interested third parties to submit their observations on the proposed commitments. These observations must reach the Commission not later than one month following the date of this publication. Interested third parties are also asked to submit a non-confidential version of their comments in which any information they claim to be business secrets and other confidential information should be deleted and replaced as required by a non-confidential summary or by the words ‘business secrets’ or ‘confidential’.

(13) Answers and comments should be reasoned and should set out the relevant facts. If you identify a problem with any part of the proposed Commitments, the Commission would also invite you to suggest a possible solution.

(14) Observations can be sent to the Commission under reference number COMP/I/39.736 — Siemens/Areva, either by e-mail (COMP-GREFFE-ANTITRUST@ec.europa.eu), by fax (+32 22950128) or by post, to the following address:

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