

Deficits in Merger Proceedings before the European Commission

Studienvereinigung Kartellrecht –
International Forum on European Competition
Law

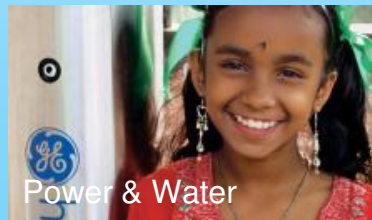
Hendrik Bourgeois
March 14, 2012



GE and EU Merger Control...

GE today

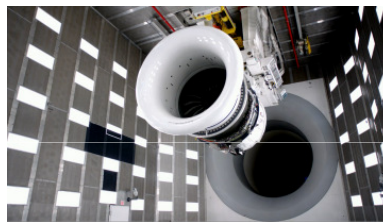
GE Energy 30% / \$43.7 B



Healthcare 12% / \$18.1 B



Aviation 13% / \$18.9 B



Transportation 3% / \$4.9 B



GE Capital 30% / \$45.7 B



Home & Business Solutions 6% / \$8.5 B



~\$147B Revenue

\$14.8B operating earnings
\$12.1B cash flow

M.234 – GECC / AVIS	M.2780 - GE WIND TURBINES / ENRON
M.405 - GE / NUOVO PIGNONE	M.2970 - GE / ABB STRUCTURED FINANCE
M.440 - GE / ENI / NUOVO PIGNONE (II)	M.3083 - GE / INSTRUMENTARIUM
M.465 - GE / CIGI	M.3103 - GENERAL ELECTRIC CONSUMER FINANCE / ABBEY NATIONAL
M.577 - GE / POWER CONTROLS BV	M.3113 - GE / JENBACHER
M.659 - GE CAPITAL / SOVAC	M.3136 - GE / AGFA NDT
M.798 - GENERAL ELECTRIC / COMPUNET	M.3290 - GENERAL ELECTRIC / SOPHIA
M.939 - BANKAMERICA / GENERAL ELECTRIC /CABLEEUROPA	M.3303 - GE / VIVENDI UNIVERSAL ENTERTAINMENT
M.1018 - GE CAPITAL / WOODCHESTER	M.3304 - GE / AMERSHAM
M.1020 - GE CAPITAL / SEA CONTAINERS	M.4059 - SWISS RE / GE INSURANCE SOLUTIONS
M.1081 - DOW JONES / NBC - CNBC EUROPE	
M.1162 - GE / BAYER	
M.1404 - GENERAL ELECTRIC / ALSTOM	
M.1786 - GENERAL ELECTRIC / THOMSON CSF / JV	M.4146 – GE / BAYER / OSi Europe Business
M.2025 - GE CAPITAL / BTPS / MEPC	M.4315 – GE / CS/ GIMP / JV
M.2220 - GENERAL ELECTRIC / HONEYWELL	M.4413 – APOLLO GROUP / GE ADVANCED MATERIALS
M.2526 - GE INSURANCE HOLDING / NATIONAL MUTUAL LIFE	M.4429 – AIG / GIP / STRATFIELD
M.2577 - GE CAPITAL / HELLER FINANCIAL	M.4440 - GE / DISKO / ASL
M.2703 - MERLONI / GE / GDA JV	M.4444 - GE / ARTESIA BANQUE NEDERLAND
M.2738 - GEES / UNISON	M.4452 – SWISS RE / GE LIFE
	M.4561 - GE / SMITHS AEROSPACE
	M.4569 - GE / ABBOT DIAGNOSTICS DIVISION
	M.4618 – PETERBOHLE SCHIFFFAHRTS KG / GE TRANSPORTATION FINANCE INC / JV



M.4669 - GE / NEWS CORP / JV

M.4737 - SABIC / GE PLASTICS

M.4916 - GE MONEY / BPH

M.4917 - GE / DOGUS / JV

M.4940 - CREDIT SUISSE GROUP / GENERAL ELECTRIC /
MUBADALA DEVELOPMENT

M.5034 - GIP / MONTAGU / BIFFA

M.5146 - GE / INTERBANCA

M.5147 - SANTANDER / GE MONEY BANK GMBH/ GE MONEY OY /
GE CAPITAL DEUTSCHLAND GMBH / GE MONEY BANK LIMITED

M.5240 - GE / GMT / BIGPOINT

M.5260 - BNP PARIBAS / CHOMETTE / GE / CAPITAL FRANCE HOTEL

M.5281 - NBC / BLACKSTONE / BAIN / LANDMARK

M.5417 - MUBADALA / GENERAL ELECTRIC / JV

M.5438 - NBC UNIVERSAL / DE AGOSTINI COMMUNICATIONS / IMI
INVESTIMENTI / CATTLEYA

M.5539 - SAFRAN / GEHP

M.5541 - GE / NEWS CORP / DISNEY / HULU JV

M.5652 - GIP / GATWICK AIRPORT

M.5735 - UTC / GE SECURITY

M.5773 - QATAR PETROLEUM / GENERAL ELECTRIC COMPANY / PII
GROUP

M.5779 - COMCAST / NBC UNIVERSAL

M.5901 - MONTAGU / GIP / GREENSTAR

M.6002 - INTEL / GE / JV

M.6039 - GE / DRESSER

M.6222 - GE ENERGY / CONVERTEAM

M.6356 - GE / IR / UEC / JV

M.6474 - GE / MICROSOFT / JV

M.6474 - GE / KGAL / EXTRESOL 2

67 EU Merger
Control Filings – 3
filings every year
since 1990

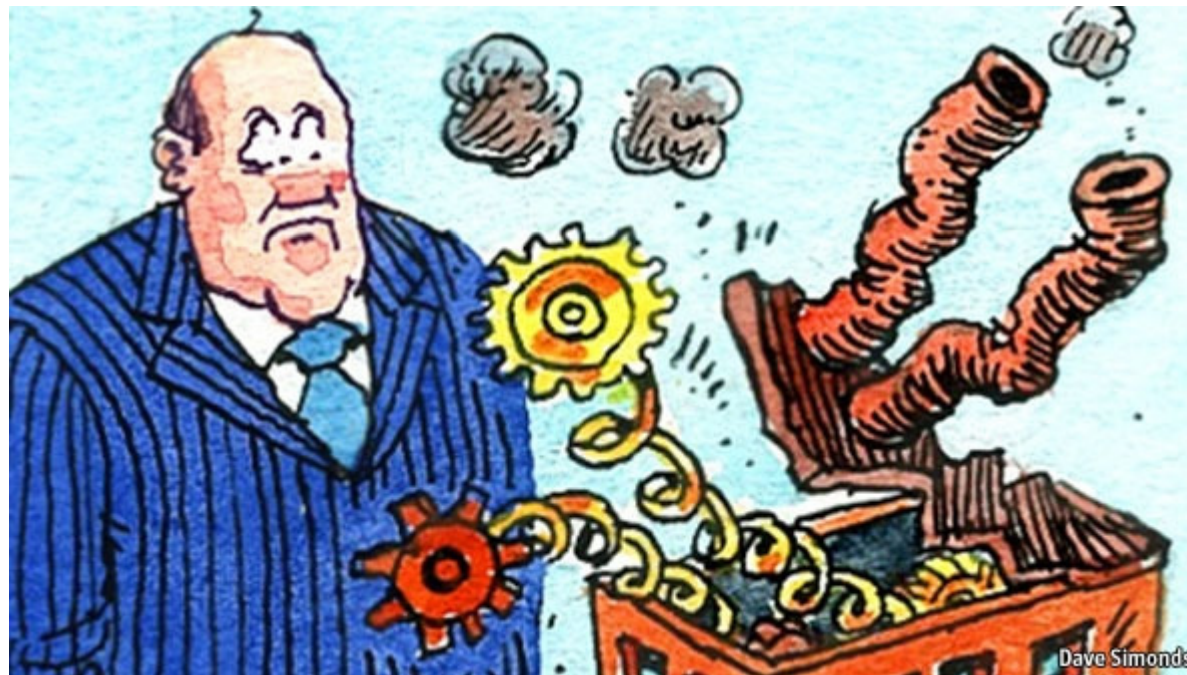


Almost always, it's about 'when', not about 'if' ...21 (or 94) cases out of 4900



The Economist

Small is not beautiful
Why small firms are less wonderful than you think



GENERAL OBSERVATIONS...

COMPARING MERGERS WITH OTHER CONDUCT THAT GIVES RISE TO
COMPETITION LAW ENFORCEMENT

DO WE HAVE THE BALANCE RIGHT?

Merger Control Customer Benefits: EUR 4 to 5.8 Billion in 2011 (?)
Cartel Enforcement Customer Benefits: EUR 2.8 to 4.2 Billion in 2011

DUE PROCESS – CHECKS & BALANCES

JUDICIAL REVIEW

Specific Observations re Process

TYPE OF
TRANSACTIONS

INFORMATION TO BE
PROVIDED

DURATION OF
REVIEWS

REFERRALS



imagination at work

PROCEDURAL ISSUES

TYPE OF TRANSACTIONS

- Articles 139 and 140 of the Jurisdictional Notice : notification of JVs with no commercial activities in the EU
- Minority Shareholdings
- Substantive Acquisition of Control: 25% shareholdings pursuant to Sec. 37 (1) No. 2GWB

REVIEW PERIODS

- Too long (cost benefit analysis / compare other jurisdictions)
- Pre-notification Consultations
- Different Incentives: (i) merging parties (ii) legal representatives, (iii) case team

PROCEDURAL ISSUES (II)

INFORMATION TO BE PROVIDED

- Too much
- Paradox given the 20+year experience
- Threat of Litigation & few final determination on definitions
- Compare to German approach

REFERRALS

- Article 4(5) EU MCR not the right answer
- Abolish form RS / reduce scope / reduce deadlines for MS reaction
- Introduce pan-European merger control rules?

