

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 04/LM/Jan01

In the large merger between:

Framatome Societe Anonyme

and

Siemens AG

Order

Approval

1. The Competition Tribunal issued a Merger Clearance Certificate on 19 March 2001 approving the large merger between Framatome Societe Anonyme (“Framatome”) and Siemens AG (“Siemens”) without conditions. We set out the reasons for our approval of the merger below.

The parties to the merger

2. Framatome is a multinational company incorporated in France, ultimately owned and controlled by the French State. Framatome conducts its business in the nuclear energy and nuclear connectors sector. Framatome has a subsidiary in South Africa, Framex SA (Pty) Limited, and also a South African branch office since 1 July 2000. The South African branch is not a separate legal entity and is part of Framatome.
3. Siemens is a publicly owned multinational company incorporated in Germany. It owns and controls a number of subsidiaries involved in various sectors including the nuclear energy sector, information and communication, medical engineering and building technology. Siemens has no South African subsidiary involved in the nuclear energy business.

The merger transaction

4. This is an international merger combining the nuclear energy businesses of the

merging parties to form a jointly owned company to be named Framatome ANP. No consideration will be paid in relation to the merger; in exchange for shares in Framatome ANP the merging parties will transfer all the assets in their respective nuclear businesses to this new company. Framatome and Siemens will jointly control Framatome ANP - the former owning 66% and the latter 44% of the issued share capital in the new company.

5. In terms of the parties' submissions changes in the nuclear energy market have made it necessary for the parties to merge so as to ensure their long-term competitiveness. Changes in this market include a decline in the demand for services, ongoing consolidation amongst suppliers and utilities, strong competition from other energy sources and ever increasing pressure on prices.
6. The merging parties have for some time been collaborating on individual projects in the nuclear energy sector. In 1989 they co-operated in the development of a new generation of nuclear power plants, the European Pressurised Water reactor, and have since 1993 been involved in a joint venture called European VVER Fuels. The joint venture is for the design, manufacture and marketing of fuel assemblies for a particular design of a Russian nuclear power plant. In the merging parties' opinion this form of integration is no longer sufficient because of the above-mentioned changes in the market and a complete merger of their nuclear energy businesses is necessary.
7. The European Commission and the Federal Trade Commission have approved this merger.

Evaluating the merger

8. The parties are combining their interests in the nuclear energy sector. The nuclear energy sector involves mainly the design and supply of nuclear power plants ("NPPs"), maintenance services, replacements of parts of the nuclear power plants and the supply of fuel assemblies. The parties claim that information relating to their market shares in this sector is confidential information. We have not examined whether this claim is justified since there were no other interested parties to place it in dispute. We do not wish our failure in this regard to be construed as a finding that evidence in relation market share is confidential.
9. Nuclear power plants have a lifespan of between 30 and 40 years. During this period certain parts of the nuclear plants will be replaced and maintenance services are provided to the nuclear plant. Parts that that will generally be replaced during the lifespan of a nuclear power plant are steam generators, spent fuel storage racks, fuel assemblies and reactor vessel closure heads. Maintenance services for the nuclear power plants include in-service inspections to examine the condition of the components of the plant, conducting engineering studies regarding the enhancement of nuclear safety

and performance and the repair and replacement of parts of the plant.

10. Worldwide there is an overlap in the activities of the merging parties in two areas in the nuclear energy sector: the replacement of parts of the nuclear power plants and provision of maintenance services in the nuclear energy sector. According to the information supplied to us by the merging parties Siemens has not supplied any nuclear power stations for the past ten years and therefore only Framatome participates in this market.

Replacement of parts of the nuclear power plants

11. Both parties are involved in the replacement of steam generators and spent fuel racks and there is therefore an overlap in the services of the parties in these markets.
12. With regard to the replacement of fuel assemblies, Framatome has supplied this service to Eskom in the past. Apart from the supply to Eskom the merging parties have not been involved in this market anywhere else in the world. There is therefore no overlap in the replacement of fuel assemblies as Siemens does not participate in this market.
13. There is also no overlap with regard to the replacement of reactor vessel closure heads as well; Siemens has not supplied reactor vessel closure heads in the last ten years.

Provision of maintenance services for nuclear power plants

14. The merging parties provide a wide range of maintenance services for nuclear power plants worldwide. There is therefore an overlap between the businesses of the merging parties in this market.

The relevant services market

15. The relevant market for purposes of merger analysis is the market where there is an overlap in the services or products provided by the merging parties. There are two markets that are relevant for purposes of this merger: the market for the replacement of steam engine generators and spent fuel racks and the market for the provision of maintenance services for nuclear power plants.

The relevant geographic market

16. The relevant geographic market for both these markets is international. The merging parties are international companies providing services relevant to this transaction worldwide.

17. No local presence is required to replace steam engine generators and spent fuel racks or to provide maintenance services for nuclear power plants. The parties normally send personnel to perform services wherever required around the world, the employees will be based on the country where the service is provided until their task is completed. In South Africa the parties will normally send personnel for a period of 18 months to provide major maintenance services to Eskom. As a result all the international companies in the nuclear energy industry compete with each other on a worldwide market to provide their services to international clients.

Impact on competition

18. Considering the geographic extent of the relevant market and the number and size of competitors in the market this merger is unlikely to substantially lessen or prevent competition. Worldwide the merging parties are in direct competition with all international companies such as Westinghouse, MHI, BNFL, ABB and AECL for the provision of nuclear energy services. BNFL, Westinghouse and ABB merged their worldwide nuclear activities in 2000.
19. Furthermore, in terms of the Commission's recommendation the view of Eskom, the merging parties' only customer in South Africa, is that even though it is preferable to source replacement parts from the original supplier nothing prevents other suppliers from providing the same parts. This means that Eskom is not bound to source parts or services from one supplier and since it requires that suppliers tender for the provision of maintenance services and replacement parts for its nuclear power plants, if the merging parties were to increase their prices after the merger it will be able to source these services from other suppliers. Eskom therefore had no objection to the merger.
20. It is therefore unlikely that this merger transaction is will result in competition being substantially reduced or lessened.

Public interest concerns

21. There are no public interest considerations raised merger. The parties do not foresee any impact on employment resulting from the merger. Siemens's nuclear energy business is based in Germany and it has no employees in South Africa. Framex, Framatome's South African subsidiary, has three employees and they did not indicate any intention to participate in these proceedings.

Concurring: D. H. Lewis, P. Maponya