Nishith Desai Associates
LEGAL AND TAX COUNSELING WORLDWIDE

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GE Boards The Alstom Express

November 2016

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ndaconnect@nishithdesai.com

Contents

1. Glossary

Acquirer	GE Energy Europe B.V.
Alstom	A societe anonyme incorporated under laws of France formed from a merger between Compagnie Francaise Thomson Houston and Société Alsacienne de Constructions Mécaniques in 1928
Alstom Group	Alstom, Alstom Holdings and / or its relevant affiliates
CCI	Competition Commission of India
Combination Regulations	Competition Commission of India (Procedure in regard to the transaction of business relating to combination) Regulation, 2011
Competition Act	The Competition Act, 2002
CSE	Calcutta Stock Exchange
GE	General Electric and / or its relevant affiliates
GEIF	GE Industrial France SAS
Income Tax	Income Tax Act, 1961
Master Agreement	Agreement to acquire PAC 1, PAC 2 and GEIF
PAC 1	General Electric Company
PAC 2	GE Albany Global Holdings B.V.
Primary Acquisition	A majority stake of 50% plus one share (representing 50% plus one vote) of the equity shares held by the Alstom Group in Alstom Grid Holding B.V.
NSE	National Stock Exchange
SEBI	Securities & Exchange Board of India
Takeover Code	SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997
Target 1	Alstom T&D India Limited
Target 2	Alstom India Limited

2. In a Nutshell

The ubiquitous GE corporation first changed the face of the manufacturing industry and then the financial services industry. But post the burst of the dotcom bubble, the organisation was unable to maintain its market position and was compelled to change its strategy to survive. GE started to aggressively acquire companies in order to strengthen its foothold and regain the *numero uno* position in the manufacturing ecosystem. Alstom on the other hand, had just survived the whirlwind of bankruptcy with the help of the French government and decided to revamp its strategy by shifting its focus to the rail transport business and hiving off its renewables, energy and grid business to GE. It was after a series of intense negotiations and constant dialogue with the French government that GE finally managed to have its deal with Alstom passed.

The mutually beneficial GE-Alstom deal came to fruition after years of GE's untiring efforts and willingness to compromise, to (a) wriggle out of fierce competition from other international competitors (Mitsubishi and Siemens), (b) assuage the French government's worries of increment in unemployment, and (c) tackle antitrust issues – both in India and the EU. GE sought to restructure the company and to re-focus on the manufacturing industry, for its flagging financing services (primarily GE Capital) were leading to a depression in stock prices. Alstom's power and energy division was just the shot in the arm it needed, for it would not only add to the scale of GE's operations by the effect of cost synergies, but also to GE's technical know-how. For Alstom, the deal was a significant cash influx in order to focus on Alstom's ever expanding rolling stock and railways signaling business. For years, Alstom had been keen to get out of its loss-making, cash-burning power engineering business and focus on its transportation business and this deal was deliberated at an opportune time for the parties.

3. Parties Involved in the Deal

a. **GE Energy Europe B.V. ("Acquirer")**, is a private limited liability company that was incorporated as General Electric Netherlands Holdings B.V. on June 21, 1999 under the laws of Netherlands and was renamed as GE Energy Europe B.V. The Acquirer is an indirect wholly owned subsidiary of PAC 1. PAC 2 and the Acquirer belong to the same group, i.e. GE group and are sister companies. GE Energy Netherlands B.V. in the Netherlands holds 99.88% of the shares in the Acquirer. The remainder of the shares are held by CVT Holdings SAS and GE Infrastructure Limited. All three shareholders of the Acquirer are wholly owned subsidiaries of PAC 1.

b. **GE Industrial France SAS ("GEIF"),** is a société par actions simplifiée incorporated under the laws of France, having its registered office at 2-4 rue Pillet-Will, 75009 Paris (France), registered in the registry of Paris under number 390 213 478. GEIF along with PAC 1 is the primary acquirer of Alstom's thermal power, renewable power and grid businesses.

c. **PAC 1**, General Electric Company, is a public listed company, limited by shares, incorporated on April 15, 1892 under the laws of New York in the United States of America. PAC 1 is the parent entity of the GE Group. PAC 1 is the indirect holding company of the Acquirer and PAC 2. The shares of PAC 2 are not listed on any stock exchange in India. PAC 1 is a widely held publicly listed company with no identified promoter. PAC 1 is not owned or controlled, directly or indirectly, by another corporation, any foreign government or by any other legal or natural person. BlackRock, Inc. and The Vanguard Group are known to be holding more than 5% of the voting rights of PAC 1. PAC 1's shares are listed on many stock exchanges across the world (but not listed on any stock exchanges in India).

d. **PAC 2**, GE Albany Global Holdings B.V., is a private limited liability company, incorporated on October 10, 2014 under the laws of The Netherlands. PAC 2 is a holding and finance company incorporated for the purpose of the Primary Acquisition. PAC 2 is a wholly owned indirect subsidiary of PAC 1. PAC 2 and the Acquirer belong to the same group, i.e. the GE Group and are sister companies. PAC 1 is the ultimate holding company of PAC 2 and the Acquirer. All common shares issued by PAC 2 are held directly by GE Energy International Cooperatief U.A, a Dutch cooperative that is a wholly owned subsidiary of PAC 1. The equity shares of PAC 2 are not listed on any stock exchange.

e. **Alstom**, is a société anonyme incorporated under the laws of France, operating worldwide in rail transport markets active in the fields of passenger transportation, signaling and locomotives, with products including the Pendolini high speed trains. It was formed from a merger between Compagnie Francaise Thomson Houston and Société Alsacienne de Constructions Mécaniques in 1928.

f. **Alstom Holdings**, is a public limited company with a capital of 624 125 422,20 euros created and governed by French law, registered in the Bobigny trade register under the reference number 347 951 238 and having its registered office at 48 rue Albert Dhalenne, 93400 Saint-Ouen, France.

g. **Target 1**, Alstom T&D India Limited was incorporated as a private limited company on March 13, 1957 under the name 'The English Electric Company of India (Private) Limited' and thereafter it was converted into a public limited company on February 25, 1963. As a result of the scheme of amalgamation under the Companies Act, 1956, 'The General Electric Company of India Limited' resulted into the Target of the Merger and the name of the merged entity was changed to 'GEC ALSTOM India Limited' and subsequently to 'GEC ALSTOM Limited. From September 1, 1998, 'GEC Alstom India Limited' was changed to 'Alstom Limited'. In 1999, 'Alstom Holdings' acquired the shareholding of 'GEC Alstom NV'. 'Alstom Holdings' sold its stake in the entire stake to 'Areva T&D SA' and pursuant to a share purchase agreement its name was changed to 'Areva T&D India Limited.' In 2009, ALSTOM and Schneider entered into a consortium agreement to acquire the global transmission and distribution business of AREVA T&D and subsequently divided the same such that the ALSTOM group would acquire the global transmission business and the Schneider group would acquire the global distribution business. After completion of the acquisition and after the global arrangement for demerger under the Companies act, 1956, a scheme of arrangement for demerger under the Companies Act, 1956 that became effective on November 26, 2011 and the name of the Target Company was changed to its current name i.e. 'Alstom T&D India Limited.'

Alstom T&D Indian Limited is engaged in the business of manufacturing, designing and commissioning products, projects and systems for electricity transmission.

Shares of the Target Company are listed on BSE, NSE and CSE and are infrequently traded 'Equity Shares' as they fall outside the ambit of 'frequently traded' securities as mentioned in Regulation 2 (1)(j) of the SEBI SAST Regulations.

h. **Target 2**, Alstom India Limited was incorporated on September 2, 1999 under the Companies Act, 1956 in Maharashtra, India as a public limited company as 'Asea Brown Boveri Management Limited'. Thereafter, the name of Target 2 was changed to 'ABB Alstom Power India Limited' on November 29, 1999 and subsequently to 'Alstom Power India Limited' on September 5, 2000. On November 11, 2002, the name of Target 2 was changed to 'Alstom Projects India Limited' and thereafter on 2012 the name was changed to 'Alstom India Limited'. In 2016, the name of changed from 'Alstom India Limited' to 'GE Power India Limited'. The equity shares of Target 2 are currently listed on BSE and NSE. The operations of the company include a composite range of activities such as engineering, procurement, manufacturing, construction and servicing of power plants and power equipment.

4. Deal Snapshot

Acquirer	GE Energy Europe B.V. along with PAC 1 and PAC 2 collectively
Alstom Group	Alstom, Alstom Holdings and / or its relevant affiliates
PAC 1	General Electric Company
PAC 2	GE Albany Global Holdings B.V.
Target 1	Alstom T&D India Limited
Target 2	Alstom India Limited
Target	Target 1 and Target 2 together
Acquisition	The details of the acquisition are as follows: i. The entire issued share capital held by the Alstom Group in the legal entities carrying on the Alstom's power and grid business and a majority stake of 50% plus one share of the equity shares held by the Alstom Group in Alstom Grid Holding B.V. (**"Primary Acquisition"**); ii. An alliance was formed with Alstom Group through three joint ventures in renewables, grid and steam turbines for nuclear power plants; and iii. An arrangement with GE in relation to the purchase of GE's signaling business by Alstom Group.
Acquisition Price	**Primary Acquisition**: Acquirer will acquire the entire Alstom Group's energy business for €12.35 billion. **Open Offer**: Acquirer offered to purchase the equity shares held by the public shareholders at INR 300.98 (Rupees Three hundred and ninety eight paise only) for each equity share in Target 1 and at INR 440.32 (Rupees Four hundred and forty and thirty two paise only) for each equity share in Target 2.
Modes of Acquisition	**Master Agreement with respect to the Primary Acquisition**: The Acquirer and Alstom entered into a master agreement with respect to the purchase of equity shares in Alstom and Alstom Holdings. **Joint Ventures**: The Acquirer, Alstom and Alstom Holdings entered into three joint venture agreements with respect to the grid and digital energy JV, renewables and global nuclear and French steam. **Master Agreement for the signaling business**: The Acquirer and Alstom entered into a master purchase agreement in relation to the signaling business being sold by the Acquirer to Alstom. **Open Offer for Target 1**: Acquirer made an open offer to acquire 64,011,639 equity shares representing 25% of the fully diluted voting share capital of Target 1, from the public shareholders at a price of INR 300.98 (Rupees Three hundred and ninety eight paise only), payable in cash. **Open offer in Target 2**: Acquirer made an open offer to acquire up to 17,479,143 equity shares representing 26% of the fully diluted voting share capital of Target 2, from the public shareholders, at a price of INR 440.32 (Rupees Four hundred and forty and thirty two paise only), payable in cash.
Offer Size	**Target 1**: 64,011,639 equity shares representing 25% of the fully diluted voting share capital of Target 1. **Target 2**: Up to 17,479,143 equity shares representing 26% of the fully diluted voting share capital of Target 2.

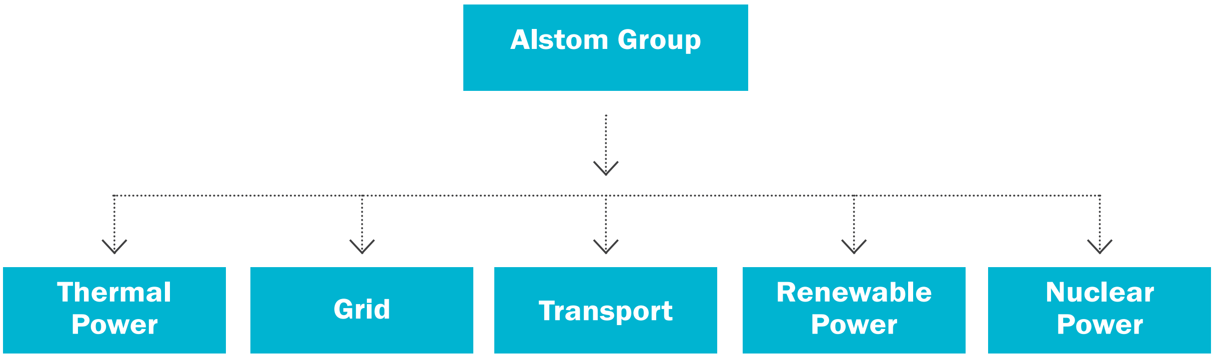
5. Chronology of Key Events and Consequences

Date	Commercial Event	Commercial consequences of the event
April 30, 2014	Made a unilateral binding offer to acquire Alstom Group's power and grid business.	This would be commercially beneficial for both GE and Alstom Group as would enable them to expand their market reach. GE can regain its brand of being the leader in the energy and renewables industry and Alstom Group can develop control in rail transport.
May 5, 2014	Public announcement made by Acquirer, PAC 1, PAC 2 and GEIF to public shareholders.	The offer to acquire Alstom's power and grid business.
June 02, 2014	The committee of independent directors was to review GE's offer to acquire Alstom's power and grid business by this date.	The board of directors of Alstom S.A received the offer positively and appointed a committee of independent directors to review the Alstom Offer by June 02, 2014. Alstom S.A board of directors had appointed a committee of independent directors after consultations with Alstom employee representatives.
November 4, 2014	Alstom and Alstom Holdings, PAC 1, PAC 2 and GEIF entered into the Master Agreement for acquisition by PAC 1, PAC 2 and GEIF of Alstom's power and grid business from the Alstom Group.	GE gained control over Alstom's power and grid business including indirect control over the Target. GE agreed to acquire directly/indirectly from Alstom Group: i. the entire issued share capital held by the Alstom Group in the legal entities carrying on Alstom's power and grid business; ii. as an exception to (i), a majority stake of 50% plus one share (representing 50% plus one vote) of the equity shares held by the Alstom Group in Alstom Grid Holding B.V. As a part of the Primary Acquisition, PAC 2 acquired a majority stake of 50% plus one share (representing 50% plus one vote) in Alstom Grid Holding B.V. which directly and indirectly holds 75% stake in the Target. After the closing of the Primary Acquisition, three joint ventures agreements between GE and Alstom Group have been formed at a global level, consisting of: a. the grid business of Alstom and digital energy business of GE (**"Grid and Digital Energy JV"**); b. Alstom global nuclear and French steam business (**"Nuclear JV"**); and c. Alstom renewables (hydro, offshore wind and marine energy (tidal and wave)) business (**"Renewables JV"**). GE has sole control over each of the JVs, whereas Alstom has a non-controlling minority shareholding in each JV and limited minority protection rights with regard to its investment in the JVs. Interestingly, the French government is part of the Nuclear JV.

November 2, 2015	GE completed acquisition of Alstom's power and grid businesses, which is GE's largest industrial acquisition. Regulatory approval of the deal was obtained and complied with from over over 20 countries. Since the initial date of acquisition was postponed, the value of the transaction dropped. As a consequence: i. GE announced that it had completed the sale of its rail signaling business to Alstom for USD 800 million (in order to win clearance from European Union). Hence, Alstom Group is entirely focused on rail transport. ii. Alstom Power and GE Power and water combined to form GE Power.	**Primary acquisition closed**: There was an exchange of skill between both the entities for further specialization. This means that GE completed acquisition of Alstom's power and grid business to further specialize in their core areas. GE acquired 0.02% stake when it wanted to acquire 26% to boost the U.S. manufacturer's revenues from energy assets acquired last year from France's Alstom SA. With this transaction, GE aims at generating more than 50% of its revenue outside United States and aims at becoming bigger in the European market as well as all over the world. Alstom got cleared of an ancillary business area of practice. From Alstom's side, it became a stand-alone unit of rail business thereby creating for itself a more specialized market in countries like India. The purchase price for the Primary Acquisition payable under the Master Agreement was a fixed price of EUR 12,050,000 payable in cash. However, this was subject to certain adjustments in the Master Agreement. After the adjustments, the closing price of the Primary Acquisition was EUR 9,548,708,766. The Primary Acquisition resulted in a change of control and indirect acquisition of 75% of equity share capital of Target.
November 3, 2015	Ansaldo Energia got into a binding agreement with General Electric to acquire select Alstom Assets.	Ansaldo, which is an international leader for providing transport services internationally acquired Alstom's heavy-duty gas turbine and intellectual property rights. It also included servicing agreements sold by Alstom; absorption of employees of Alstom in Florida etc.
November 6, 2015	The Acquirer and the PAC released a Detailed Public Statement for the acquisition.	
January 11, 2016	Letter of Offer dispatched to the shareholders	
January 18, 2016	Commencement of the Tendering Period for the Open Offer	
Feb 14, 2016	GE's open offer to acquire 1.74 crore publicly held shares in Alstom India. GE's open offer to Alstom T&D to acquire 6.4 crore publicly held shares had a similar consequence.	GE acquired 0.02% stake in the company through the open offer, although it wanted to acquire 26% stake. GE made an open offer to acquire 1.74 crore publicly held shares in Alstom. However, this elicited a poor response with just 13,789 shares getting tendered. GE made an open offer to Alstom T&D worth INR 1,926 crores to acquire 6,400,000 crore publicly held shares. However, this also elicited a poor response, as 43,439 shares were received and offer for 42,570 shares out of 43,439 were accepted.
February 15, 2016	All requirements, including payment of consideration, completed.	

6. Deal Structure

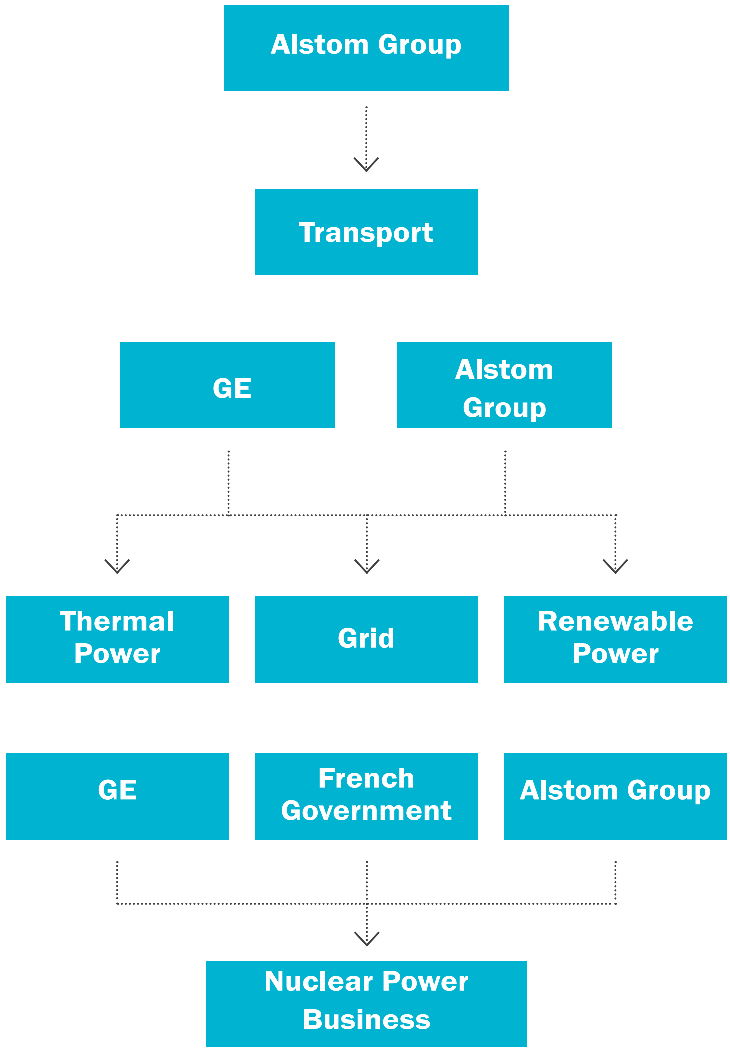
I. Pre-Primary Acquisition structure



II. Primary Acquisition structure

III. Post Primary Acquisition structure

Post Primary Acquisition the structure was split into three sub-structures with each Alstom, GE and French Government being part of different business.



The deal originated as a share acquisition after the acceptance by the French Government wherein GE acquired Alstom's energy business which has footprints in Europe and Asia (including India). It was after evaluation of competitive offers from Siemens and Mitsubishi Heavy Industries that the French government settled with GE at €12.5 billion. After endless negotiations, the following terms were mutually agreed:

a. GE will acquire the entirety of Alstom's energy for €12.5 billion;

b. GE will set up an alliance with Alstom, through three joint ventures (JVs):

   - a 50/50 joint venture in renewable energies;
   - a 50/50 joint venture in grid; and
   - an 80/20 joint venture in steam turbines for nuclear power plants and for the French market.

c. Alstom will use the proceeds of sale to invest €2.5 billion in the JVs. Interestingly, it was agreed that Alstom will invest €2.5 billion in the joint venture, which will be used from the proceeds of the sale.

d. In addition, GE commits to sell its transportation's signaling business to Alstom and to enter into a global rail alliance with GE. GE will add 1,000 employees in France in the next 3 years.

e. In parallel, the French government also acquires 20% of Alstom's shares from Mr. Bouygues at a pre-agreed price, for a period of 20 months. With this shareholding, the French government will be the main shareholder in Alstom, though not with a majority.

f. GE has sole control over each of the JVs, whereas Alstom will have a non-controlling minority shareholding in each

JV and limited minority protection rights with regard to its investment in the JVs.

After the structure fructified, the parties have entered into (i) Master Agreement with respect to the Primary Acquisition, (ii) Formation Agreement with respect to the Grid and Digital Energy JV, (iii) Formation Agreement with respect to the Renewables JV (iv) Formation Agreement with respect to the Global Nuclear and French Steam JV, and (v) Master Purchase Agreement in relation to the signalling transaction. All these agreements were executed on November 4th, 2014.

For this transaction, Alstom and Alstom Holdings, PAC 1, PAC 2 and GEIF entered into the Master Agreement for the acquisition by PAC 1, PAC 2 and GEIF of the Alstom Group's power and grid business from Alstom, Alstom Holdings, Target 1 and Target 2.

Master Agreement: Key Terms

Pursuant to the Master Agreement, GE agreed to acquire, directly or indirectly, from Alstom and / or its relevant affiliates (the **"Alstom Group"**) (i) the entire issued share capital held by the Alstom Group in the legal entities carrying on the Alstom Group's power and grid business; and (ii) (as an exception to (i)), a majority stake of 50% plus one share (representing 50% plus one vote) of the equity shares held by the Alstom Group in Alstom Grid Holding B.V. (**"Primary Acquisition"**). As a part of the Primary Acquisition, PAC 2 acquired a majority stake of 50% plus one share (representing 50% plus one vote) in Alstom Grid Holding B.V. which directly and indirectly holds 75% stake in the Target. PAC 2 is the principal acquiring entity in respect of the non-US operations of the Alstom Group's power and grid business.

The Master Agreement contains the following terms that Alstom and Alstom Holdings are required to comply with:

a. Non-compete obligations restricting Alstom Group from competing with the business of Alstom Group's power and grid business for a period of 3 (three) years.

b. Non-solicitation obligations preventing Alstom from soliciting Alstom Group's power and grid business employees for 3 (three) years and

c. An exclusive, worldwide, royalty- free, non-transferable license granted by Alstom Group to GE to use the Alstom name and other trade names for 5 (five) years following the closure of Primary Acquisition.

Completion of the acquisitions pursuant to the Master Agreement resulted in GE gaining indirect control over the Target 1 and Target 2 that triggered a Public Announcement under Regulation 5 (1) of the Takeover Code (read along with Regulations 3 and 4). Since the thresholds set out in Regulation 5(2) of the Takeover Code are not met when the parameters set out therein are computed in relation to the Power and Grid Business the proposed acquisition of the Target by GE as part of the Primary Acquisition will not constitute a 'deemed direct acquisition' under the Takeover Code. Pursuant to the Public Announcement, the following open offers were made:

a. An open offer by the Acquirer, PAC 1 and PAC 2 was made to acquire up to 64,011,639 fully paid up equity shares of face value of INR 2 each representing 25% of the fully diluted voting equity share capital of Target 1 at a price of INR 300.98 (Rupees Three hundred and ninety eight paise only) per equity share, payable in cash, and

b. An open offer by the Acquirer, PAC 1 and PAC 2 was made to acquire up to 17,479,143 fully paid up equity shares of face value of INR 10 each representing 26% of the fully diluted voting equity share capital of Target 2 at a price of INR 440.32 (Rupees Four hundred and forty and thirty two paise only) per equity share, payable in cash.

However, both the Open Offers got poor responses, with GE having acquired only 0.020% in the Target through the Open Offers.[1]

1. http://economictimes.indiatimes.com/markets/stocks/news/ges-open-offer-for-alstom-india-draws-a-blank/articleshow/51122191.cms; http://smartinvestor.business-standard.com/market/ipoNews-368328-GEs_open_offer_to_buy_stake_in_Alstom_TD_gets_poor_response.htm

7. Commercial Reasons

I. GE: Deal Motivation

GE is a company that needs no introduction. Not only do they serve around 100 countries but they also create an immense impact by providing employment to more than 300,000 people worldwide. For the longest time, GE remained one of the most profitable and highest ranked companies in the world, not just in terms of revenue but also in terms of its customer base. GE created history in the manufacturing industry and it was only in the last few years that its focus shifted from being a pure play manufacturing/ industrial giant to a financial powerhouse, which is evident from the growth of GE Capital and GE Capital's contribution to the revenue and profits to the GE group. Everything was going well for GE, diversification and focus on the financial services was paying the group handsomely and stock prices were replicating the same by rewarding the shareholders.

But there was a twist in the story with the advent of this millennium wherein the dotcom burst lead to the downfall of public markets. While the 2000-2002 downfall was mostly in line with the market downfall in that period, GE failed to salvage their share prices post 2002 quite unlike the other companies that were also affected. The full downside of GE Capital strategy became obvious during the financial crisis in 2008. The moment when liquidity dried up in the marketplace, GE found itself in trouble, and it took billions of dollars in capital raising to provide some confidence in the unit's viability. That is the time, GE also slashed its dividend, ending a streak of almost quarter of the century of not having to endure a payout cut, and thereby hurting many dividend investors in the process.

(Through 2000, GE enjoyed incredible growth, taking full advantage of its innovative times of the 1980s and 1990s. In late 2000, it hit its peak market capitalization, exceeding USD 600 billion. The upward trend had begun in the 1980s. With the arrival of Jack Welch as CEO in 1981, General Electric started making strategic moves that sent the company in new directions, such as the acquisition of RCA and the NBC television network in 1986. More importantly, the period featured the expansion of the GE Capital division to go well beyond industrial financing.)

However, GE's tryst with diversification did not last long, and GE returned to its original being i.e. the manufacturing giant with the focus on power, renewable energy, aerospace, oil and gas. However, all these years of focus on financing had rusted the manufacturing wings of the company. GE stared at a question of electing between greenfield investments or brownfield investments. Investments had to match the erstwhile technical know-how. In this backdrop, it was decided to focus on the acquisition of companies that could provide such know-how. Thence, began a series of announcements.

In 2007, GE acquired Smiths Aerospace and Vetco Gray and a year later in 2008, the acquisition of Hydril Pressure & Control. In April 2011, GE announced that it had completed its purchase of John Wood Plc's Well Support Division for USD2.8 billion. This acquisition expands the extensive drilling, surface manufacturing and services portfolio of GE Oil and Gas, a division of GE Energy. In June 2012, the CEO and President of GE said that the company would invest ₹3 billion to accelerate its manufacturing businesses in Karnataka. In April 2013, General Electric Co acquired oilfield pump maker Lufkin Industries for USD 2.98 billion. Finally, in April 2014, it was announced that GE was in talks to acquire the global power division of French engineering group Alstom for a figure of around USD13 billion.

II. Why Alstom?

A. Background to the Global Energy Market

GE recently released its investment plan for Europe, the plan sets out GE's commitment for investing in sustainable growth. Plan sets out that the International Energy Agency believes that the global energy demand will shoot up by 37% by 2040 and electricity will satisfy a large chunk of the same. GE expects investments of USD 5 trillion globally on new power plants between 2013 and 2023. Further, due to increasing environmental concerns in the EU community, there is a worldwide pressure to reduce pollution generated by the production of electricity. It will require a more sophisticated and efficient processes. GE saw a huge potential in the power manufacturing industry and sought to exploit it through Alstom's acquisition. Till that time, GE was not in the business of manufacturing/transmission of the electricity, but manufactured the machinery required for the generation and transmission of power.

B. GE's Competitors

The power equipment manufacturing industry is much of an international oligopoly comprising of Siemens, Mitsubishi, Alstom and GE. Indian and Chinese players – BHEL and Shanghai Electric Corp have also sprung up in recent times and have acquired reasonable footing, especially in the steam-turbine manufacturing segment. In fact, the steam turbines market share of the big four is much less than BHEL's, which is at around 18%. GE was well aware of its financial resources (which were its strength) and the threats that budding Indian and Chinese players posed in the aforesaid market. It had to address its weak presence in Asia whilst exploiting the global electricity demand growth. These factors increased GE's interest in Alstom.

III. Alstom: Deal Motivation

If GE led the markets by means of acquisitions, Alstom managed to survive by means of divestments. Alstom once seen as a crown jewel of France but was unable to keep up with its big brothers, being GE and Siemens. In 2003, due to poor sales, Alstom faced a financial crisis with its liabilities touching USD 5 billion and a potential threat to force the company into liquidation. This was when the firm had acquired ABB's turbine designs, collapse of customer Renaissance Cruises and a downturn in the marine market, Alstom's prices fell 90% over those few years. Cleaning up the legal technicalities that arose from flaws in ABB's turbine designs had cost Alstom a whopping USD 4.6 billion. While nothing was going well for Alstom, the European competition commission went ahead and ordered Alstom to sell several of its subsidiaries. Alstom tried to fight off bankruptcy by even selling its assets to its competitor, Siemens. The company also sold its electrical transmission and distribution grid activities to Areva and also delivered Queen Mary 2, the world's largest ocean liner. But all of this seemed inadequate to overcome the debts and in order to avoid any loss to the reputation of the French or the European financial system, the French banks insisted the government to get involved to rescue Alstom. But the brave move of the French government to rescue Alstom by acquiring its stake was again subject to the approval (and wrath) of the European Commission, which resulted in a roadblock.

Gradually, Alstom started to regain its stand in the European financial system but was treading a fine balance between burning cash to support it is energy business and expanding its transportation business. For Alstom, sale of its energy assets will yield cash and with which Alstom can pay down its heavy debts and refocus on the transportation business. As part of the structure it was agreed that while GE will have access to Alstom's energy business, Alstom will have access to GE's transportation business, which is where Alstom is focusing. To that extent, from being an active player in the energy space, Alstom will now also focus in the transportation space.

IV. French Government: The Positive Catalyst

One of the most interesting facets of this deal was the involvement of French government in the decision making process. The deal which was structured as an acquisition was later transformed into a hybrid joint venture agreement, wherein the French government was a also a party in limited sense and for a limited business.

On April 23, 2014, Bloomberg leaked that GE is in talks to buy Alstom's energy business for approximately USD 13 billion. The news takes the French government by shock and surprise. GE's potential acquisition of Alstom's business is perceived as a threat for over 9,000 Alstom workers in the French territory.

On April 30, 2014, GE confirmed its intention to acquire Alstom thermal, renewables and its grid business for €12.5 billion. This acquisition would indeed add to the GE dynasty and increase its opportunities in energy and renewables. But for the French government, *GE's bid was not good enough and hence was not acceptable.*[2] The French Government in the meanwhile received a counter-offer from Siemens wherein Siemens and Mitsubishi Heavy Industries (MHI) with Siemens were seeking to acquire Alstom's gas turbine business for €3.9 billion, and MHI proposed a joint venture in steam turbines, plus a €3.1 billion cash investment. It was at this time that, the legal framework for foreign investment in France underwent a change wherein the authority was extended to the minister of economy to impose conditions on foreign investments, to enjoin them and to sanction breaches of ministerial decisions.

Accordingly, GE revised its offer and GE, Alstom and the French Government signed a protocol on June 19, 2015. In June 2014, the following was agreed by Alstom board, rejecting the rival bid:

- GE will acquire Alstom's entire energy business for a sum of €12.35 billion.

2. http://www.reuters.com/article/us-france-alstom-idUSBREA4505R20140506

- GE will set up a joint venture with Alstom wherein following three joint ventures will be set up:
  - a 50/50 joint venture in renewable energies;
  - a 50/50 joint venture in grid; and
  - a 80/20 joint venture in steam turbines for nuclear power plants and for the French market.
- Interestingly, it was agreed that Alstom will invest €2.5 billion in the joint venture, which will be used from the proceeds of the sale.
- GE committed to sell its transportation's signalling business to Alstom, and to enter into a global rail alliance.
- GE committed that it will add 1,000 employees in France in the next 3 years (subject to penalty of €50,000 per job and a cap of €50 million) and keep the headquarters for grid, hydro, offshore, wind and steam business in France.

Another, interesting anecdote in this case is that in parallel, French government acquired 20% of Alstom's shares in a structured transaction with a private investor namely, Bouygues Telecom, thereby, becoming a substantial shareholder of Alstom.

The French government came out on top of this deal wherein it acquired commercial interest in a conglomerate to have a close oversight on the commercial transaction and this did not result in any substantial change in the deal terms. French government imposes additional financial burden on GE and Alstom Group as GE will have to ensure creation of 1,000 new jobs in France within a span of 3 years, and Alstom Group was made to re-invest €2.5 billion in the joint venture. However, in Alstom Group's case, a safeguard was provided that Alstom Group will have an option to put its shares in the joint venture on GE and thereby get its money back, after all. GE expects the deal to generate USD 0.05-0.08 of earnings per share in 2016 and USD 0.15-0.20 of earnings per share by 2018. GE is also targeting USD 3.0 billion in cost synergies in year five and strong deal returns.[3]

V. Fair Deal Value?

Compared to few other transactions in European market (such as Electricite de France's acquisition of Edison International, Cassa Depositie Prestiti's acquisition of Snam), it emerged that GE had undervalued Alstom and Alstom Holdings' power and grid business and the main reason for such undervaluation was the recent performance by Alstom and Alstom Holdings. Alstom and Alstom Holdings had also performed negatively in the last few years due to the heavy liabilities of the company. In 2013, its net income fell 28% to €556 million due to higher restructuring costs and the operating profit fell 3% to €1.4 billion, with operating margin dropping from 7.2% to 7% and orders to 10% (€21.5 billion) because of a weak performance in the thermal power division[4] [5]

VI. Stock Prices: Did We Cure the Illness?

Post the acquisition of Alstom and Alstom Holdings' power and grid business, operating profits in the power business rose 12% to USD 1.1 billion on a 37% rise in revenue to USD 6.5 billion. In other major segments, aviation saw growth of operating earnings by 10% to USD 1.5 billion on a 5% increase in revenue to USD 6.3 billion. Operating earnings in healthcare rose 10% to USD 717 million after revenue gained 5% to USD 4.5 billion. Oil & gas, however, reported a 42% drop in operating profit to USD 353 million as revenue retreated 25% to just shy of the USD 3 billion mark. The power, aviation, healthcare and renewable energy divisions all contributed to top- and bottom-line growth. However, oil & gas and transportation were heavy drags on revenue and operating profits.[6]

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3. http://www.businesswire.com/news/home/20151102005757/en/GE-Completes-Acquisition-Alstom-Power-Grid-Businesses
4. https://iimaconsulting.wordpress.com/tag/alstom/
5. https://blog.consultclub-iima.com/2014/09/21/ges-alstom-acquisition-how-smart-is-the-move/
6. http://m.nasdaq.com/article/patience-is-key-after-general-electric-company-ge-earnings-cm697989

8. Legal & Regulatory Considerations

I. How has the completion of the Primary Acquisition resulted in an indirect acquisition of the Target?

The Primary Acquisition has resulted in an indirect acquisition of voting rights in the Target. The Primary Acquisition is not a deemed direct acquisition of control over the Target as it does not fall within the parameters prescribed under Regulation 5(2) of the Takeover Code. In terms of Regulation 5(2) of the Takeover Code, an indirect acquisition where the proportionate net asset value of the Target (as a percentage of the consolidated net asset value of the entity or business being acquired) or the proportionate sales turnover of the Target (as a percentage of the consolidated sales turnover of the entity or business being acquired) or the proportionate market capitalization of the Target (as a percentage of the enterprise value for the entity or business being acquired), is in excess of 80% (eighty percent), on the basis of the most recent audited financial statements, shall be deemed to be a direct acquisition.

The net asset value, the sales turnover and the market capitalization of Target 1 constitute 3.40%, 2.93% and 5.82% respectively and that of Target 2 constitute 2.54%, 2.17% and 2.58% respectively of the net asset value, sales turnover and enterprise value of Alstom Group's power and grid business, all of which are under 80%. Therefore, the Primary Acquisition is not a deemed direct acquisition of control over the Target and has resulted only in an indirect acquisition of the Target.

II. Why was the public announcement for an open offer made mandatory?

An acquirer who, together with persons acting in concert (PAC), acquires shares or voting rights in a target company which would entitle them to exercise 25% or more of voting rights in a target company, is required under regulation 3(1) of the Takeover Code to make a public announcement of an open offer for acquisition of shares from the public shareholders. The acquirer is further required to make the public announcement of an open offer under Regulation 4 of the Takeover Code when, irrespective of any acquisition of shares or voting rights, it acquires, directly or indirectly, control over a target company. The Primary Acquisition, whereby the Acquirer indirectly acquired 75% of the equity share capital of Target 1 and 68.56% of Target 2, resulted in the indirect acquisition of control over the Target by the Acquirer thereby, triggering the open offer.

III. Was the offer revocable?

The Offer is subject to statutory approvals, and the Acquirer will have the right to withdraw it in accordance with Regulation 23 of the Takeover Code if any statutory approval is refused. However, if the non-receipt of any statutory approvals is not attributable to any willful default, failure or neglect on the part of the Acquirer, the SEBI may grant an extension of time to complete the Offer. In case of an extension, the Acquirer will have to pay interest to the shareholders for the delay at rate specified by SEBI. The shareholders to whom any pending approval does not extend will be paid the consideration at the option of the Acquirer.

IV. What are the consequences if the aggregate sharing holding of the Acquirer increases beyond the maximum permissible non-public shareholding?

If the non-public shareholding in the Target exceeds the maximum permissible non-public shareholding, the Acquirer, as a result of acceptance of equity shares in the Offer, will have to bring down the non-public shareholding to the level specified within the time permitted under the Securities Contracts (Regulation) Rules, 1957, by any permissible means. The minimum public shareholding requirement for listed companies is 75%.[7] After accepting equity shares, the total public shareholding of GE Power Ltd (Target 2 was renamed GE Power after acquisition[8]) and GE T&D India Ltd.[9] is 31.42%[10] and 24.98%[11] respectively. Thus, GE T&D will be required to comply with the minimum public shareholding requirements of the Securities Contracts (Regulation) Rules, 1957 as per Regulation 38 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 and increase its public shareholding to 25% in the manner prescribed by SEBI vide its Circular dated November 30, 2015.[12]

Pursuant to the Open Offer, shareholding of the Acquirer (being the promoter group) in Target 1 increased to 75.02% from 75.00%. Target 1 in terms of regulation 7(4) of Takeover Code read with rule 19A of Securities Contracts (Regulation) Rules, 1957, has one year time from completion of Open Offer to comply with minimum public shareholding requirement.

V. Did the offer require a minimum level of acceptance?

The offer was not a conditional offer in terms of Regulations 19 of the Takeover Code. Hence, no minimum level of acceptance was necessary under the offer.

VI. Why was interest required to be paid for the shares?

An interest at the rate of 10% per annum was required to be paid on the Offer Price under Regulation 8(12) of the Takeover Code in the case of an indirect acquisition for the period between the earlier of the date on which the primary acquisition is contracted or the date on which the intention or the decision to make the primary acquisition is announced in the public domain, and the date of the detailed public statement, if the period is more than five working days. The dates of the first public announcement and the detailed public statement were April 30, 2014 and November 6, 2015 respectively.

Thus for Target 1, an interest of INR 39.73 (Rupees thirty nine and seventy three paise) was added to the determined price of Equity Share of INR 261.25 (Rupees two hundred and sixty one and twenty five paise) to get an Offer Price of INR 300.98 (Rupees three hundred and ninety

7. http://www.sebi.gov.in/cms/sebi_data/boardmeeting/1350559669479-a.pdf

8. https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwjEr-LQ6frQAhUCUI8KHbUdAYMQFggoMAI&url=http%3A%2F%2Feconomictimes.indiatimes.com%2Fnews%2Fcompany%2Fcorporate-trends%2Falstom-india-changes-name-to-ge-power-india%2Farticleshow%2F53562276.cms&usg=AFQjCNEZLkXh93n1VwP_Kr9sx7aE34Qgrw&bvm=bv.142059868,d.c2I

9. https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=7&cad=rja&uact=8&ved=0ahUKEwiTydai6vrQAhUEsI8KHZszAB4QFghFMAY&url=http%3A%2F%2Feconomictimes.indiatimes.com%2Findustry%2Findl-goods%2Fsvs%2Fengineering%2Falstom-td-changes-name-to-ge-td-india%2Farticleshow%2F53504882.cms&usg=AFQjCNE3pg006JpKy1IMTMTPyEchwVFqCw&bvm=bv.142059868,d.c2I

10. http://www.moneycontrol.com/company-facts/gepowerindia/shareholding-pattern/AP29

11. http://www.moneycontrol.com/company-facts/alstomtdindia/shareholding-pattern/ATD

12. https://www.nseindia.com/content/equities/SEBI_Circ_30112015_4.pdf

eight paise only) per Equity Share, and for Target 2, an interest of INR 58.12 (Rupees fifty eight and twelve paise only) was added to the determined price of Equity Share of INR 382.20 (Rupees three hundred eighty two and twenty paise only) to get an Offer Price of INR 440.32 (Rupees four hundred forty and thirty two paise only).

VII. What is the justification of price of shares?

The Offer Price is justified, taking into account the parameters set out under Regulation 8(3), Regulation 8(4) and Regulation 8(12) of the Takeover Code. The price of the Equity Shares has been determined by the Acquirer and the PAC together with the Manager to the Offer in accordance with the provisions of Regulation 8(4) of the Takeover Code (as it is incapable of being determined in accordance with any of the parameters in Regulation 8(3) of the Takeover Code) taking into account, *inter alia*, the valuation report dated May 3, 2014 issued by Price Waterhouse & Co. LLP. In view of the parameters considered under Regulation 8(3) of the Takeover Code, the Offer Price of INR 300.98 (Rupees three hundred and ninety eight paise only) and INR 440.32 (Rupees four hundred forty and thirty two paise only) per Equity Share of Target 1 and Target 2, being the highest of the prices so determined is justified in terms of Regulation 8 of the Takeover Code.

VIII. What are the views/ opinions of the CCI?

A. Assessment of Competition by the Commission

The businesses of the Parties involved in the proposed combination was classified into (i) thermal power business (ii) renewable energy business (iii) grid business and (iv) signalling business. It was observed by the CCI that the proposed combination is not likely to result in any appreciable adverse effect on competition in any of the above segments in India. It was therefore approved under Section 31(1) of the Act.[13]

B. Penalty for failure to notify

The CCI gave its approval for the Primary Acquisition, formation of the JVs and the acquisition of GE's signalling business by Alstom vide an order dated May 5, 2015. However, CCI took suo-moto cognizance of the two Public Announcements made by the Acquirer for failure to notify their proposed combination in terms of Section 6(2)(b) of the Competition Act read with Regulation 5(8) of the Competition Commission of India (Procedure in regard to the transaction of business relating to combination) Regulation, 2011 (**"Combination Regulations"**).[14]

Three conditions were required to be satisfied to attract penalty under Section 6(2)(b) read with Regulation 5(8) of the Combination Regulations: (a) The Acquirer has an intention to acquire shares in the Targets, (b) The intention was communicated to a Statutory Authority/Central Govt./State Govt. and (c) they failed to give notice to the CCI within 30 days of such communication.

CCI was of the view that the Acquirer satisfied the abovementioned three conditions and that penalty under Section 6(2)(b) would be applicable as (a) the binding offer made by the Acquirer qualified as intent to acquire (b) such intention was communicated to SEBI, which is a statutory authority incorporated under Securities and Exchange Board of India Act, 1992, in the form of the public announcement made on May 5th, 2014 and (c) the notice to the CCI should have been given by May 4th, 2014.

13. http://www.cci.gov.in/sites/default/files/C-2015-01-241.pdf
14. http://competitionlawyer.in/cci-penalty-general-electric-ge-alstom-merger/

C. What is a Valid Trigger for a Merger Notification?

The Commission issued a show cause notice to the Acquirer, requiring them to explain why penalty should not be imposed on failure to file the notice for the transaction by May 4th, 2014.

The Acquirer argued that a valid trigger for merger notification ought to be a *"binding agreement or other document for acquisition"* as used in Section 6(2)(b) of the Competition Act and not a mere unilateral communication of intention to acquire. Since the initial offer for Alstom's power and grid business was unilateral and the terms of the transaction were not crystallized at the time of making the Public Announcements there was uncertainty with regard to the terms of the transaction. The Public Announcements were premature which were issued in procedural compliance, and that the term "other document" in Regulation 5(8) needs to be read in accordance with the purpose envisaged under the parent statute, and thus the requirement to notify the CCI arose only upon the execution of a binding agreement for acquisition. The Acquirer relied upon the doctrine of *nociter a soscia* and argued that the two words *"agreement"* and *"other document"* stated in Section 6(2)(b) of the Competition Act, take colour from the word *"acquisition"* and should be interpreted to mean a binding agreement or terms of any document which is binding on the parties. The Acquirer further insisted that the second proviso to Section 5(8) of the Combination Regulations does not create an exception but expands the scope of the provision by clarifying what will be considered as the date of execution of a binding document and therefore, a Public Announcement does not satisfy the requirements of an *"other document"*. The Acquirer believed that since the requirement to notify the Commission arose only upon the execution of a binding agreement, i.e. the Master Agreement and not a mere communication of intent to acquire on the basis of a unilateral offer for the indirect acquisition. Lastly, the Acquirers argued that merely sending a copy of the Public Announcement to SEBI for information or record purposes, without requiring SEBI to act in any manner, cannot be considered to be "communication" as is intended by the Competition Act and the Combination Regulations and hence it would not be appropriate to levy a penalty under Section 43A on the Acquirer.

However, the CCI was of the view that the intent to acquire would include unilateral measures envisaged under the Takeover Code and that the Public Announcements would constitute "communication" within the purview of second proviso to Regulation 5(8) of the Combination Regulations. Thus, the Acquirer were held to have violated Section 43A and considering their bonafide conduct and the approval they obtained for the combination, a penalty of INR 5 Crore was imposed on the Acquirer.[15]

15. http://www.cci.gov.in/sites/default/files/Section%2043A%20 Order.pdf

9. Tax Considerations

I. Was there any tax implication upon transfer of shares in case of the Primary Acquisition?

Since the Acquirer indirectly acquired the control of the Target pursuant to the global transaction i.e. Primary Acquisition, such transfer/acquisition of shares may have been subject to tax in India under Income Tax Act as such transfers are considered as '*indirect transfer*' under Income Tax Act, and have tax implications if the following two conditions are met:

i. if Alstom Grid Holding B.V. and ALSTOM Finance BV, Netherlands in respect of Target 1 and Target 2, respectively derived substantial value (i.e. if the fair market value is 50% or more) from assets (whether tangible or intangible) of the Target as on the date of the transaction; and

ii. the value of such assets exceeds the amount of INR 100,000,000 (Indian Rupee One Hundred Million) i.e. around USD 150,000 (US Dollars One Hundred and Fifty Thousand only).

By virtue of the transaction value, both Target 1 and Target 2 would have been easily complied with the second condition. However, it is not very clear whether Alstom Grid Holding B.V. and ALSTOM Finance BV, Netherlands had any other asset at the time of transaction either in India or elsewhere to ascertain whether transaction complies with the first condition. To that extent, it is not clear whether there was any tax implication on account of the Primary Acquisition.

II. What is the tax implication for the public shareholders tendering their shares under the Open Offer?

The Acquirer in this case could not opt for an on-the-exchange tendering process due to the timing of the open offer as mentioned in [Clause 8] of the Legal and Regulatory Consideration. Hence, all the public shareholders were only provided with the option of tendering their equity shares through an off-the-market transaction.
This would have significantly impacted the interest expressed by public shareholders to participate in the Open Offer, since the long-term capital gains exemption in India is not applicable for off-the-market transactions.[1]

As for the actual tax impact, the rate of taxation of the public shareholders would depend on the duration for which the equity shares were held by the public shareholders. If the equity shares were held for a period of 12 months or less, gains arising on sale of such equity shares would have been taxable as short term capital gains at the maximum marginal rate. On the other hand, if the equity shares were held for a period longer than 12 months, gains arising on sale of equity shares would have been taxable as long term capital gains at the rate of 10% (excluding surcharge and cess).

III. Will there be any tax implication on the interest paid out to the public shareholders as part of the open offer consideration?

Since the interest payout to the public shareholders was included in the per share consideration for the public shareholder, there will be no other tax implication on such payment apart from the tax implication as mentioned in point 2 above.

10. Epilogue

Although this is one of the largest acquisitions by GE, it remains to be seen whether it will fulfil its commitments of guaranteed employment to the French government and also, be the required catalyst for the renewables and grid industry in France. While GE shifts its focus from being a financial powerhouse to a pure play manufacturing giant, Alstom regains the reins to the railways transport sector across countries with pre-established GE presence. It is rumored that Alstom has also entered into an arrangement with the Indian government to improve the railway transport sector. Whether this was a fair deal value to aid GE to recoup its share prices or whether this was indeed a suitable swap, shift and refocus for Alstom are questions that will be answered over the course of the next few years. The French government however, strongly believes this deal is a win-win for all involved. A deal with these many facets, has a multitude of implications across sectors, nations and persons; we must wait and watch whether the Alstom express stays the course under GE management, or gets derailed.

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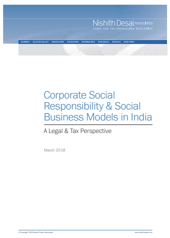

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Nishith Desai Associates
LEGAL AND TAX COUNSELING WORLDWIDE

MUMBAI

93 B, Mittal Court, Nariman Point
Mumbai 400 021, India

tel +91 22 6669 5000
fax +91 22 6669 5001

SILICON VALLEY

220 California Avenue, Suite 201
Palo Alto, CA 94306-1636, USA

tel +1 650 325 7100
fax +1 650 325 7300

BANGALORE

Prestige Loka, G01, 7/1 Brunton Rd
Bangalore 560 025, India

tel +91 80 6693 5000
fax +91 80 6693 5001

SINGAPORE

Level 30, Six Battery Road
Singapore 049 909

tel +65 6550 9856

MUMBAI BKC

3, North Avenue, Maker Maxity
Bandra–Kurla Complex
Mumbai 400 051, India

tel +91 22 6159 5000
fax +91 22 6159 5001

NEW DELHI

C–5, Defence Colony
New Delhi 110 024, India

tel +91 11 4906 5000
fax +91 11 4906 5001

MUNICH

Maximilianstraße 13
80539 Munich, Germany

tel +49 89 203 006 268
fax +49 89 203 006 450

NEW YORK

375 Park Ave Suite 2607
New York, NY 10152

tel +1 212 763 0080

