

***Case No COMP/M.2791 -
GAZ DE FRANCE /
RUHRGAS /
SLOVENSKÝ***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 06/06/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, **06/06/2002**
SG (2002) D/230079

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sir/Madam,

**Subject: Case No COMP/M.2791– Gaz de France/Ruhrgas/ Slovensky
Notification of 30.04.02 pursuant to Article 4 of Council
Regulation No 4064/89¹**

1. On 30/04/2002, the Commission received a notification of a proposed concentration by which the French Gaz de France International S.A. (“GDFI”), a wholly-owned subsidiary of Gaz de France (“GDF”) and the German Ruhrgas AG (“Ruhrgas”) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the Slovak undertaking Slovenský plynárenský priemysel a.s. (“SPP”).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

3. GDF is an integrated gas company mainly active in France at all levels of distribution and supply.
4. Ruhrgas is active in the wholesale and the long-distance transport of gas, both mainly in Germany.

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

5. SPP is an integrated gas company almost exclusively active in the Slovak Republic providing the sale of natural gas to end-consumers and the operation of the transit pipeline system through which Russian gas is transported to Western Europe².

II. THE OPERATION

6. By the proposed transaction, GDFI and Ruhrgas will acquire joint control over SPP, which is currently a fully state-owned company. The Slovak Republic sells up to 49% of the share capital in SPP to GDFI and Ruhrgas in equal stakes, 51% will remain with the National Property Fund of the Slovak Republic. The Russian supplier Gazprom has an option to acquire during the initial period of two years after conclusion of the proposed transaction either one-quarter or one third of the 49% stake that will be held by GDFI and Ruhrgas.

III. CONCENTRATION

7. The operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation. GDFI and Ruhrgas will jointly control SPP. They will hold equal stakes of 24.49 % each. Under the Shareholders' Agreement, GDFI and Ruhrgas have agreed to exercise their rights, including a right of veto, nomination, appointment, a right to consent or other similar rights, jointly. They will jointly nominate and appoint [a majority] of the seven members of the board of directors which will decide, *inter alia*, on the business plan and other issues of strategic nature.

IV. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5,000 million³ (for the year 2001, EUR 14,400 million for GDF, EUR 12,800 million for Ruhrgas and EUR 1,500 million for SPP). Both GDF and Ruhrgas have a Community-wide turnover in excess of EUR 250 million (for the year 2001, EUR [...] million for GDF and EUR [...] million for Ruhrgas). GDF realises more than two thirds of its Community turnover in 2001 in France. Ruhrgas realises more than two thirds of its Community turnover in 2001 in Germany. The notified operation therefore has a Community dimension.

² Gazprom has concluded with SPP the transit terms for the use of SPP's pipeline system. The gas is arriving from Russian gas fields via the Ukraine to Slovakia. After through-transmission, the gas is transported via the Czech Republic to Germany and Austria.

³ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 02.03.1998, p. 25). To the extent that figures include turnover for the period before 01.01.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

V. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product markets

9. SPP owns and operate the pipeline system for the transportation of natural gas imported from Russia into Western and Central Europe. The transit pipeline from Russia via the Slovak Republic and Czech Republic to Germany and Austria transports approximately 75% of the Russian natural gas supply into the EU. A second pipeline via Belarus and Poland to Germany provides the remainder of natural gas imports from Russia into the EU.
10. Russian imports of natural gas represent about 20% of total consumption in the EU. The import situation varies among Member States. For instance, Germany receives approximately 35% of natural gas from Russian sources, the remainder is mainly from Norway, the Netherlands, and some volume, approximately 22%, from own production. In France, approximately 30% are imported from Russia, one third from Norway and the Netherlands, approximately one-quarter from Algeria and the remainder from various other sources.
11. The present operation concerns the wholesale of natural gas. In Germany, as a result of the historical development there are two levels of gas wholesale companies: Wholesale companies which purchase gas imported from non-EU-gas producers, such as Russia, and transport this gas over long distances through high-pressure pipelines (in former decisions referred to as “long-distance wholesale transmission companies”) and regional and local supply companies, which use short-distance medium and low pressure transmission pipelines (in former decisions referred to as “short-distance wholesale transmission companies”). In Exxon/Mobile⁴ as well as in Veba/Viag⁵ the Commission concluded for Germany that each of these categories operate on a different wholesale market. Whether this distinction is still valid can be left open since in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.
12. As regards the situation in France, the market structure might be different. Given that in the present case, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area, it is not necessary to further delineate the relevant product market.

⁴ Commission Decision of 29.09.1999, Case No. IV/M. 1383 – Exxon/Mobil, paragraphs 48 ff , 111

⁵ Commission Decision of 13.06.2000, Case No. COMP/M.1673 – Veba/Viag, paragraph 186

B. Relevant geographic markets

13. In Exxon/Mobile⁶ as well as in Veba/Viag, it was left open whether the wholesale markets in Germany were still regional, i.e. the former demarcation regions, or already national in scope.
14. The parties submit that the relevant wholesale markets are at most national in their geographic dimension. Given that in the present case, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area, it is not necessary to further delineate the relevant geographic markets.

C. Competitive Assessment

15. In Germany there are five main wholesale companies, Ruhrgas, Thyssengas, BEB, VNG and Wingas, which accounted for 96% of total German imports in 2000, and which re-sell gas either to supra-regional, regional and local distribution companies or to industrial end-users. Ruhrgas is the most important importer and wholesale company in Germany accounting for 53% of total German gas imports (in 2000)⁷. Number two and three are VNG and Wingas which account for 14% and 12% respectively of total German gas imports (in 2000)⁸. Moreover, Ruhrgas has various indirect minority shareholdings in companies which are active as wholesale and retail companies, including for example VNG.
16. GDF holds a leading position at all levels of the French gas industry. It accounted for 100% of the French gas imports in the year 2000⁹ and is also the most important wholesale company in France. 20% of GDF's imports are sold to Compagnie Française du Méthane¹⁰, in which GDF has a 55%-stake and TotalFinaElf owns the remaining 45%¹¹. Around 4% of GDF's imports are sold to Gaz du Sud-Ouest¹², in which GDF has a 30%-stake and TotalFinaElf owns the remaining 70%¹³.

⁶ Commission Decision of 29.09.1999, Case No. IV/M. 1383 – Exxon/Mobil, paragraph 152

⁷ CEDIGAZ: *The European Gas Market Players, 2001 Edition, page 68*

⁸ CEDIGAZ: *The European Gas Market Players, 2001 Edition, page 68*

⁹ CEDIGAZ: *The European Gas Market Players, 2001 Edition, page 76*

¹⁰ CEDIGAZ: *The European Gas Market Players, 2001 Edition, page 76*

¹¹ CEDIGAZ: *The European Gas Market Players, 2001 Edition, page 120*

¹² CEDIGAZ: *The European Gas Market Players, 2001 Edition, page 76*

¹³ CEDIGAZ: *The European Gas Market Players, 2001 Edition, page 120*

17. Through the current operation Ruhrgas and GDF will acquire control over one of the two transit pipelines from Russia to Germany and Austria which in terms of transport accounts for approximately 75% of the current Russian natural gas supply into the EU. However, the proposed operation will have no impact on the supply situation of natural gas into Western Europe and in particular the volumes available for the wholesale markets.
18. In general, energy policy requires the sufficient supply of primary energy to be secured on a long-term basis for industrial countries in the EU. Therefore, the import volumes of natural gas are typically contracted to cover long delivery periods, i.e. 15-25 years. [...]. The contracts have typically no early termination clauses nor provisions that would allow deviating substantially from contracted volumes. This situation is similar with competitors active in the import business. For instance, Wingas has concluded long-term supply contracts (15-20 years), ending earliest 2015, with Gazprom via SPP, i.e. delivery of gas is made at the Ukraine/Slovak border.
19. As far as access to SPP's pipeline is concerned, according to the Commission's investigation there is no risk of possible discrimination in the long run. According to the parties, SPP's pipeline capacity is widely used by around [...] billion m³ of gas transiting via this pipeline each year on the basis of long-term transit agreements. Both Wingas and Gazprom, which currently use SPP's pipeline for transits, have concluded such long-term contracts with SPP which ensure access to the pipeline at least over the next decade. The transit prices are fixed and there is no possibility for an early termination of these contracts. In these circumstances, it can be excluded that Ruhrgas and GDF, once they own the pipeline, could impede Wingas' or Gazprom's use of the pipeline for imports into the EU over the next one to two decades.
20. As far as access to capacity in alternative pipeline systems is concerned, the parties have stated in the notification that the capacity of the second pipeline via Belarus and Poland to Germany, which currently accounts for 13 billion m³ of gas imported into Western Europe, will be expanded to 28 billion m³ in about three years time. Moreover, Russia and Poland are in the process of negotiating the construction of a second pipeline system, probably running mostly parallel to the existing one, which is expected to have an additional capacity of 28 billion m³. The two projects taken together would increase transport capacity into the EU by approximately 60% by the years 2006-2010. In this respect, it can be concluded that there would be sufficient alternative capacity available for additional exports of Russian gas in to the EU in the mid-term.
21. In view of existing long-term supply and transit contracts for the current gas imports and in view of the further pipeline projects to increase transport capacity into the EU, it can be concluded that the proposed operation will not reinforce Ruhrgas' or GDF's position on any of the markets concerned by the present operation.

VI. CONCLUSION

22. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

Signed by A. Diamantopoulou
For the Commission