EN

Case No COMP/M.3052 - ENI / FORTUM GAS

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

Subject: **Case No COMP/M.3052 – ENI/Fortum**
Notification of 11.12.2002 pursuant to Article 4 of Council Regulation No 4064/89[1]

1. On 11 December 2002 the Commission received a notification of a concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (here after: "the Merger Regulation") by which the Italian undertaking ENI S.p.A. ("ENI") acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of the Norwegian undertaking Fortum Petroleum AS ("FPAS") by way of purchase of shares.

2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and that it does not raise serious doubts as to its compatibility with the common market.

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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).

I. THE PARTIES

3. ENI is a vertically integrated energy company. It is active at all levels of the energy supply and distribution chain, that is: exploration and production of crude oil and natural gas; transport, distribution, supply and sale of natural gas; electricity generation; refining and marketing of petroleum products; oilfield services and engineering; and petrochemicals industries.

4. FPAS is a wholly owned subsidiary of the Finnish group Fortum Oyj. It is a relatively small energy company, which is only active in the upstream activities of the sector, that is: exploration and production of crude oil and natural gas; and transport of natural gas. Its exploration and production activities are limited to the Norwegian Continental Shelf ("NCS").

II. THE OPERATION

5. The operation consists in the acquisition by ENI, through its subsidiary ENI International BV, of the entire issued share capital of FPAS.

III. CONCENTRATION

6. As a result of the subject transaction, ENI will acquire sole control of the entire FPAS business. The operation thus constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

7. The turnover of FPAS is below the threshold specified in Article 1(2)(b) of the Merger Regulation. Nevertheless, the parties satisfy the thresholds specified in Article 1(3) of the Merger Regulation. The combined aggregate worldwide turnover of ENI and FPAS is more than 2,500 millions euros (49,846 million euros for ENI and [CONFIDENTIAL] million euros for FPAS) and the individual Community-wide turnover of each party is over 100 million euros ([CONFIDENTIAL] million euros for ENI and [CONFIDENTIAL] million euros for FPAS). ENI and FPAS achieve a combined aggregate turnover in excess of 100 millions euros in three Member States (France, Germany and United Kingdom) and each of them achieves a turnover above 25 millions euros in each of these three Member States. The parties do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The concentration therefore has a Community dimension.

V. THE RELEVANT MARKETS

8. The concentration concerns several product markets and a number of levels from the upstream activities to supply of natural gas downstream.

A) Relevant product markets

9. The notifying party submits that the relevant product markets involved in this transaction are: (i) the exploration of natural gas and crude oil; (ii) production and sale of crude oil; (iii) production and sale of natural gas; (iv) processing of natural gas; (v) transport of natural gas.

10. Exploration of natural gas and crude oil consists in finding new reserves of hydrocarbon resources, whereas production and sale encompasses both the setting up of adequate infrastructures for the production and the exploitation of the resources. The processing of natural gas aims at purifying the gas so that it meets the technical specifications necessary for carriage in the transport system. Transport of natural gas means the transport of natural gas through a high-pressure network of pipelines from the gas fields to the processing facilities and then to a final coastal landing terminal.

11. These market definitions are in line with those adopted by the Commission in its previous decisions relating to the same economic sector[2]. In those decisions, the Commission has notably concluded that whereas the exploration of natural gas and crude oil constitutes one single product market[3], the production and sale of these two types of hydrocarbons belongs to two distinct product markets[4]. The Commission has also concluded that there are two separate product markets for natural gas transport and natural gas processing[5].

12. From these markets must be distinguished the downstream markets for the supply of natural gas to customers. ENI is present is present on those markets at different levels in some Member States, so that these markets should also be considered for the purposes of the assessment of the proposed concentration. However, it is not necessary to precisely define those markets either, since the present concentration does not give rise to competition concerns under any of the possible market definitions.

B) Relevant geographic markets

13. As regards the market for the exploration of crude oil and natural gas, the notifying party submits that this market is worldwide in scope. This is in line with the conclusion reached by the Commission in previous decisions[6].

14. As regards the markets for production and sale of natural gas, the notifying party submits that this market is at least EEA-wide and probably also encompasses Russia and Algeria, whereas the market for the production and sale of crude oil is world-wide. This is also consistent with the geographic definition retained by the Commission in previous decisions[7].

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2 See *inter alia* cases COMP/M.2208 - Chevron/Texaco and COMP/M.1383 – Exxon/Mobil.

3 See *inter alia* case COMP/M.2745 – Shell/Enterprise Oil.

4 See *inter alia* case COMP/M.1532 – BP Amoco/Arco.

5 See *inter alia* cases COMP/M.1532 - BP Amoco/Arco and COMP/M.2745 – Shell/Enterprise Oil.

6 See *inter alia* case COMP/M.2681 – Conoco/Philipps.

7 See *inter alia* case COMP/M.1383 – Exxon/Mobil.

15. As regards the markets for transport and processing of natural gas, in the Shell/Enterprise Oil decision[8] the Commission has considered the possibility to divide the UK North Sea into two separate geographic markets, i.e. North and South UK North Sea – even though it did not reach a formal conclusion on this point. Alongside this consideration, it could be argued that the Norwegian Continental Shelve itself could be divided into separate geographic markets[9]. However, it is not necessary for the purpose of this decision to exactly define the geographic scope of these markets. Indeed, whatever market definition chosen, the proposed transaction does not give rise to any competitive concerns.

16. As regards the possible downstream markets for supply of natural gas, the notifying party submits that these markets are national in scope. Even though it cannot be excluded that certain supply markets are narrower in scope according to the customer groups and the Member State envisaged[10], for the purposes of the assessment of this transaction, the geographic scope of these markets can be left open.

VI. COMPETITIVE ASSESSMENT

17. Since ENI is a vertically integrated oil and gas company, the transaction raises both horizontal and vertical issues, even though FPAS is only active in the upstream markets.

Horizontal issues

18. Due to the low market shares of FPAS, the transaction does not bring about any horizontally affected markets.

19. In the market for exploration of crude oil and natural gas, the notifying party submits that "proven" reserves is the most accurate method of assessing the potential value of the blocks under licence to companies and therefore their market shares. On this basis, the merged entity's share would be below [0-5%], that is to say it will hold less than [0-5%] of the worldwide reserves of oil and gas. In with respect, the proposed transaction will not have a significant impact on the licences in Norway, since the addition of equity interest that the merging parties have in the same licences will not give them any form of control over these licences and, consequently over the totality of the oil or gas produced under these licences.

20. In the markets for production and sale of crude oil and natural gas, the accretion in market shares is below [0-5%]. The merged entity' share of the market for the production of oil will be of [0-10%], whereas its share of the EEA market for the production of gas will be in the range of [5-15%] (with an increment of [0-5%]). On the latter market, the merged entity' share would even be lower if the relevant geographic market were to be defined as covering EEA plus Russia and Algeria.

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8 Case COMP/M.2745 – Shell/Enterprise Oil.

9 See case COMP/M.1573 - Norsk Hydro/Saga.

10 See case COMP/M.2822 –EnBW/ENI/GVS.

21. In the market for gas transport, the parties have overlapping equity interests in several gas pipelines linking the NCS to Continental Europe and the UK. Nevertheless, the transaction will not result in the merged entity having a controlling interest in any of these pipelines. Moreover, the notifying party explains that the Norwegian Government has set up a State-owned company, Gassco, whose task has been to operate almost all of the gas pipelines on and from the NCS since 1 January 2002. The ownership of these pipelines was transferred on 1 January 2003 from the producers to a newly created joint venture Gassled (that will be operated by Gassco). Producers have received shares in Gassled's capital in exchange for their interests in the pipelines. The intention of the Norwegian Government in setting up this new system is to ensure that the gas transport facilities serve all individual producers on a non-discriminatory basis. The merged entity will hold less than 2% of Gassled (ENI: 0.862% and FPAS: 0.807%), the main shareholder being (indirectly) the Norwegian State. The merged entity will not have veto rights in relation to the decisions taken by Gassled.

22. As regards the market for processing of natural gas, the parties have both minor equity interests in the gas terminal located in Dunkerque. The merged entity only holds a [0-5%] interest in the company which operates this terminal. Gassco has managed the operation of the terminal since 1 January 2003. The merged entity will not enjoy any veto rights over the terminal's spare capacity.

Vertical issues

23. Finally, the impact of the proposed transaction should also be assessed in the Italian and German markets for the supply of natural gas where ENI is active. It should be noted that ENI is a new entrant in the German market since its recent joint acquisition with EnBW of a gas distribution company, GVS[11]. According to the notifying party, the take-over of FPAS will not strengthen ENI's position in these markets.

24. As for the German market, the notifying party first explains that GVS held in 2000 a [0-15%] share of the German market for the wholesale of natural gas to local distribution companies. It should nevertheless be noted that in the aforesaid decision relating to the acquisition of GVS, the Commission found that GVS is the main supplier to local gas distributors in Baden-Württemberg with a market share in the range of [>75%]. It could be argued that the proposed transaction could strengthen GVS' already dominant position in that market by giving it access to additional sources of supplies through the merged entity.

25. However there are two main reasons that will prevent that scenario to occur in a foreseeable future. First, the entire FPAS' production and sales of natural gas amounts to only [0-5%] of the EEA-wide market (and even less if the relevant geographic market is be considered as that of EEA plus Russia and Algeria). Second, FPAS' natural gas production amounts to less than [0-5%] of the annual German consumption of natural gas. Finally, FPAS has entered into long-term supply contracts for the full of its production. None of these contracts will expire before [CONFIDENTIAL] and the most important of them in terms of quantity supplied will expire in [CONFIDENTIAL]. Consequently FPAS' production will not be available for sale in Germany or in Baden-Württemberg until [CONFIDENTIAL] at the earliest.

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11 See case COMP/M.2822 – EnBW/ENI/GVS.

26. Therefore, the proposed concentration will thus not imply foreclosure effects that could lead to a creation or strengthening of a dominant position on the part of GVS on the downstream markets for the supply of natural gas in Germany.

27. As regards the Italian market, the notifying party submits three main reasons why the operation will not strengthen ENI's position. First, as mentioned above, FPAS' production and sales of natural gas amounts to only [0-5%] of the EEA-wide market (and even less if the relevant geographic market is be considered as that of EEA plus Russia and Algeria). Second, FPAS' production and sale of natural gas amounts to only [0-5%] of the annual Italian natural gas consumption. Third, as explained above, all FPAS' production of natural gas is sold under long term contracts and none of them will expire until [CONFIDENTIAL]. Finally, the notifying party submits that new legislation[12] has come into force in Italy since 1 January 2003 that impedes ENI from introducing any additional volumes of natural gas in this Member State.

28. Therefore, the proposed transaction will not lead to foreclosure effects that can strengthen ENI's position on the downstream markets for the supply of natural gas in Italy.

VII. CONCLUSION

29. 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.

For the Commission

Signed by Mario MONTI
Member of the Commission

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12 Legislative Decree N° 164, dated 23 May 2000, implementing EC Directive 98/30 cited above.