

***Case No COMP/M.3086 -
GAZ DE FRANCE /
PREUSSAG ENERGIE***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 25/04/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.04.2003

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party :

Dear Sir/Madam,

**Subject: Case No COMP/M.3086 - Gaz de France / Preussag Energie
Notification of 20.03.2003 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 20 March 2003, the Commission received a notification of a proposed concentration by which the undertaking Gaz de France ("GdF", France), wholly owned by the French state, acquires control of the German activities of the undertaking Preussag Energie GmbH ("PEG", Germany), belonging to the TUI Group 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 and with the EEA Agreement.

I. THE PARTIES

3. GdF is an integrated gas company, mainly active in France. Its activities involve the exploration/production, storage, transportation, distribution and supply of gas. GdF covers currently [0-10%] of its own needs as a gas supplier. GdF is also active in the fields of energy management and climatic and thermal engineering.

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).

4. PEG is an international oil and gas exploration and production company with activities in nine countries worldwide. The company is involved in the full range of activities in the upstream sector, including exploration, development, production and sale of crude oil and natural gas.

II. THE OPERATION

5. The proposed operation concerns the acquisition of sole control of the upstream activities of PEG in Germany. Prior to the proposed transaction, PEG has spun off its international activities.

III. CONCENTRATION

6. In the light of the above it can be concluded that the operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (GdF €[...] million, PEG Germany €[...]million). Each of the parties have a Community-wide turnover in excess of EUR 250 million (GdF €[...]million, PEG Germany €[...]million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

V. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

1. Upstream markets

a) Product markets

8. The markets concerned by this transaction are: (i) the exploration of crude oil and natural gas; (ii) the production and sale of crude oil; (iii) production and sale of natural gas. These product market definitions are in line with previous Commission's decisions³.
9. The exploration of crude oil and natural gas consist in finding new reserves of crude oil and natural gas. The production and sales concerns both the setting up of infrastructure and for the production and the exploitation of the resources.

b) Geographic markets

10. In line with previous Commission's decisions the geographic scope of the market for the exploration of crude oil and natural gas is worldwide in scope.⁴ Likewise the market for the production and sale of crude oil is worldwide, whereas the market for the production

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25).

³ See e.g. COMP/M.3052 – ENI/FORTUM GAS.

⁴ COMP/M.3052 – ENI/FORTUM GAS.

and sale of natural gas is at least EEA-wide and probably also encompasses Russia and Algeria.⁵

2. Downstream markets

a) Product market

11. Downstream, GdF supplies' gas to customers in France, where it holds very strong positions. The Commission has previously defined a product market for the supply of gas to eligible customers⁶ and separated the customers into different sub-segments.⁷ The Commission has not previously defined these markets in relation to France. However, the precise product market definition can be left open, since this transaction will only marginally influence GdF's position in France as described below.

b) Geographic market

12. As mentioned above, GdF holds strong positions in the supply to customers in France. There exists indications that the market is national.
13. However, it is not necessary to develop a precise definition of the geographic market, given that, whatever geographic market definition chosen, this operation will not result in any creation or reinforcement of dominant position in France or any other substantial part of the common market. In particular, although GdF is also developing activities in gas supply to customers outside France, GdF's strong position is limited to France.

3. Underground storage

a) Product market

14. Underground storage has previously been defined as being separate from other activities in the gas sector⁸. It consists of storage of natural gas primarily for distribution companies in order to produce flexibility in relation to seasonal swing in demand. There are two types of gas storage, namely pore and cavern storage. The market investigation showed that pore storage is especially well suited to cover changes in seasonal demand as well as for the storage of high volumes of gas. In comparison the cavern storage is especially well suited for covering local peak because of a high off-take and higher per hour capacity. The market investigation did not show a clear picture on the substitutability between pore and cavern storage. However, several third parties indicated that pore and cavern storage in general are substitutable for the storage of gas, taking into account the possible storage volume and off-take capacity as mentioned above. Based on this pore and cavern storage seem to some extent to be substitutable.
15. However, for the purpose of this decision it can be left open whether pore and cavern storage belong to the same product market, as in all possible market definitions, the transaction will not give rise to any competition concerns.

⁵ See COMP/M.3052 – ENI/FORTUM GAS paragraph 13.

⁶ See COMP/M.3075 to 3080 ECS Intercommunales en Belgique.

⁷ COMP/M.3096 – TotalFinaElf/Mobil Gas.

⁸ COMP/M.1383 – Exxon Mobil, paragraph 261

b) Geographic market

16. As concerns the market for underground storage of gas a distinction has to be made on the type of storage i.e. pore and cavern storage. The economic radius for pore storage is less than 200 kilometres whereas cavern, the economic distance from the end user is limited to 50 kilometres.⁹ Competitive pressure exists in terms of radiuses from other competing gas storage facilities. These radiuses are in terms of a pore storage a circular area of 200 km and for a cavern storage a circular area of 50 km.

VI. COMPATIBILITY WITH THE COMMON MARKET

Horizontal effects

17. On the worldwide market for crude oil and gas exploration the parties' combined market share will be [0-5]% of proven reserves and [0-5]% of annual oil and gas production in 2001.
18. On the market for oil production and sales the parties' combined market share on the worldwide market will be [0-5]% of proven reserves and [0-5]% of annual production in 2001. On the market for the production and sale of natural gas the parties' combined market share of proven reserves will be [0-5]% in the EEA and [0-5]% in EEA, former Soviet Union and Algeria. The corresponding market share of annual production are [0-5]% for the EEA and [0-5]% in EEA, former Soviet Union and Algeria.
19. On the market for gas storage, the parties' combined market share on a national basis will be [0-10]%. However, as mentioned, the geographic scope of the market for gas storage is characterised by "overlapping" catchment areas. GdF holds a pore storage facility in Berlin the capacity of which is however not at present made available to third parties. Similarly, PEG operates a pore storage facility in Reitbrook outside Hamburg. Assuming that pore and cavern storage facilities are separate product markets, the transaction will not give rise to a direct geographic overlap on a city basis concerning Berlin and Hamburg. The respective pore storage facilities of the parties are however overlapping based on a circular radius of 200 kilometres from each other. But the parties would face competitive pressure from large pore facilities, the supply area of which would overlap with that of the parties. These competing facilities are the Rehden, Bad Lauchstädt and Dötlingen areas.
20. GdF markets storage services based on its cavern storage facility in Peckensen outside Steinitz. PEG does not own any cavern storage facilities in the northern part of Germany.
21. Considering both pore and cavern storage as belonging to the same product market, the transaction would give rise to an overlap between GdF's Peckensen cavern storage facility and PEG's pore storage in Reitbrook, since Peckensen is situated within 200 kilometres from the Reitbrook site. However, the parties' combined market share within 200 kilometres from Reitbrook would only be [0-10]% or [...] Mcm out of a total storage capacity of [...] Mcm.

⁹ COMP/M.1383 – Exxon/Mobil paragraph 262.

22. Looking at the Peckensen site it would face competitive pressure from the pore storage facilities of Rehden and Dötlingen as well as the pore storage facilities at Kircheiligen and Bad Lauchstädt.
23. Based on the above it can be concluded, that the transaction will not give rise to any concerns on the market for gas storage.

Vertical effects

24. GdF plays the role of the incumbent in the downstream markets of the French gas industry. So the acquisition of the mentioned activities in Germany as described above will make this market affected by the present concentration.
25. GdF holds a very strong market position in France. The parties estimate their national market share to be from [75-85]% on the market for supply of the eligible customers in 2002. Nevertheless, this operation is not likely to lead to any significant competitive effects given the very low market shares of the new combined entity on upstream markets such as (i) gas and crude oil exploration and (ii) gas development production and sales as explained above. Furthermore according to the parties, the PEG gas volume available for possible import into France should not represent more than [0-5]% of the total gas consumption in France and [...] [0-5]% of the consumption of gas by eligible customers in France. Consequently the existing and potential competition against GdF are not likely to be affected by this merger.

VII. CONCLUSION

26. 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
Philippe BUSQUIN
Member of the Commission