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***Case No COMP/M.6068 -
ENI / ACEGASAPS / JV***

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**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 11/04/2011

***In electronic form on the EUR-Lex website under document
number 32011M6068***



EUROPEAN COMMISSION

Brussels, 11.4.2011
C(2011) 2638 final

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PUBLIC VERSION

MERGER PROCEDURE

To the notifying parties

Dear Sir/Madam,

**Subject: Case No COMP/ M.6068 - ENI/ ACEGASAPS/ JV
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

1. On 8 March 2011 the Commission received a notification of a proposed concentration within the meaning of Article 4 of the Merger Regulation by which ENI S.p.A. ("ENI", Italia) and AcegasAps S.p.A. ("AcegasAps", Italy) acquire, within the meaning of Article 3(1)(b) of the Merger Regulation, joint control of the following assets: (i) Ramo Elettricità, (ii) Ramo Distribuzione gas and (iii) Isogas S.r.l. ("Isogas", collectively "the Target", Italy) currently belonging to Isontina Reti Integrate e Servizi S.p.A. ("IRIS", Italy) by way of purchase of shares².

I. THE PARTIES AND THE OPERATION

2. **ENI** is an Italian integrated energy company which is active worldwide in exploration and production of natural gas, natural gas supply, transmission, storage, distribution and trade, exploration and production of oil. In the electricity sector, it operates in the markets for generation and wholesale supply of electricity as well as in the retail sale of electricity.
3. **AcegasAps** is a multiutility group resulting from the merger between the public utilities of the Italian cities of Trieste and Padova. It is mainly active in those two cities where it operates both in the electricity and gas sector, in the management and distribution of water and the provision other municipal services.

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

² Publication in the Official Journal of the European Union No C 82, 16/03/2011, p.5

4. **The Target** consists of businesses and assets ((i) Ramo Elettricità, (ii) Ramo Distribuzione gas and (iii) Isogas), currently belonging to IRIS, a company which operates in the distribution and retail sale of electricity and gas in the area of Gorizia.
5. The envisaged transaction consists in the acquisition of the Target (currently belonging to IRIS) by NewCo Holding, a special purpose vehicle jointly controlled by ENI (70%) and AcegasAps (30%).
6. For this purpose, IRIS will first contribute the assets constituting the Target to a holding vehicle, NewCo Energia whose capital will be entirely purchased by NewCo Holding. Immediately after this acquisition, NewCo Energia and NewCo Holding will merge. At the completion of the merger, NewCo Energia will keep the electricity distribution business while the other assets of the Target will be contributed to two newly created holding vehicles, namely, NewCo D.G. which will own the gas distribution business and New Isogas which will be in charge of the sale of gas and electricity to end-customers.
7. Both ENI and AcegasAps will exert joint control over the three special purpose vehicles, namely, NewCo Energia, NewCo D.G. and New Isogas.
8. Thus, although ENI will have a 70% stake in respectively NewCo Energia and Isogas, AcegasAps (30% stake) will enjoy veto rights in relation to the approval of the budget and the business plan for both companies³. The share capital of NewCo D.G. will be instead equally owned by ENI and AcegasAps.
9. For the purpose of the present case there is no need to assess the full-functionality nature of the Target as the envisaged transaction consists of the acquisition of joint control over a pre-existing business with a market presence consistent with Paragraph 91 of the Commission Jurisdictional Notice.
10. It follows from the foregoing, that the operation consists in a concentration within the meaning of Article 3(4) of the Merger Regulation.

II. EU DIMENSION

11. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁴ (ENI: 83 000 million, AcegasAps: EUR 477 million, Target: [...]). Each of them has a EU-wide turnover in excess of EUR 250 million (ENI: [...], AcegasAps: EUR [...], Target: [...]), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

III. RELEVANT MARKETS

12. The envisaged transaction involves primarily the following markets: (i) wholesale supply of gas, (ii) supply of gas to end customers and (iii) gas distribution, each of them in Italy.

³ See point II of the term-sheets of respectively NewCo Energia and Isogas.

⁴ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

13. The parties' activities also horizontally overlap on the markets for retail sales of electricity to (i) large industrial customers connected to the high voltage grid and (ii) small customers connected to the low voltage grid. As in both cases the parties' joint market shares do not approach 15% under any alternative product market definition in Italy⁵, these markets are not considered to be affected and will not be dealt further in the present decision.
14. The only exception to the above would be the market for retail sale of electricity to small customers in the *Comune* of Gorizia⁶. However, this local area is not a substantial part of the internal market, therefore it will be not assessed either for the purpose of the present decision.

A. Relevant product markets

A.1 Wholesale supply of gas

15. The Commission has considered in its previous decisions that the wholesale market of gas includes gas sales made by importers (and re-importers) and producers to resellers and traders⁷.
16. With respect to Italy, the Italian Competition Authority ("AGCM") has defined a wider market for the wholesale supply of gas which also includes purchases of gas from large industrial customers for internal consumption (particularly for electricity generation purposes)⁸.
17. In any event, there is no need to conclude on this point as under any alternative product market definition the transaction will not raise competition concerns.

A.2 Supply of gas to end customers

18. In its past decisions, the Commission has identified the relevant product markets into which the gas sector can be segmented⁹. In particular, the gas supply activities can be subdivided in five markets, i.e. supply of gas to (i) dealers/resellers, (ii) gas-powered electricity plants, (iii) large industrial customers, (iv) small industrial customers, (v) household customers. The distinction between these groups has been made according to certain factors such as their use of gas, profile and volume of consumption, connection to transmission networks

⁵ COMP/M.3440 EDP/ENI/GDP, Case M.4180 *Gaz de France/Suez*.

⁶ In Gorizia the Target market share would be [90-100] % with respect to retail sales of electricity to households and [40-50] % with respect to small commercial customers. ENI's market share amounts to respectively [0-5] % [0-5] % for each customers group and AcegasAps only have a market share of [0-5] % in relation to retail sale of electricity to small commercial customers.

⁷ Case M.3868 *DONG/Elsam/Energi E2*; case COMP/39.315 – *ENI*, decision of 29 September 2010.

⁸ Decisioni AGCM del 24/5/2006 case C7703, *Azienda Mediterranea Gas e acqua/Azienda Energetica Metropolitana Torino*, decisione del 22/12/2009 case C10362, *Italtrading- Antonio Rettagliata - Carbotermo/Libera Energia*, decisione AGCM del 18/3/2010 nel caso C10499, *Enel Trade/Longanesi Developments*.

⁹ See cases COMP/M.4180 *GDF/Suez* - COMP/M. 3868, *Dong/Elsam/Energi* - COMP/M. 3440 *EDP/ENI/GDP* – COMP/M. 5918, *GDFS/Gaselys*.

and the purchase price¹⁰. The existence of separate markets for small industrial customers and for households or of a combined market for small customers (comprising both small industrial and commercial customers and households) has been partly left open and been partly decided on the specifics of the markets concerned¹¹.

19. The notifying parties submit that the above segmentation may in principle apply also to the Italian gas market, with one qualification in relation to the quantitative thresholds for identifying large and small customers. In fact, in line with the decisional practice of the AGCM¹² the parties maintain that the market for the supply of gas to end customers should be segmented along the following submarkets: i.e. supply of gas to (i) gas-powered electricity plants with gas consumption well above 200,000 cm per year, (ii) large customers (mainly industrial) with gas consumption above 200,000 cm per year and (iii) small customers with gas consumption below 200,000 cm per year including both households as well as small commercial customers.
20. This is also due to the fact that according to the Italian regulatory framework the economic terms and conditions of gas supply are regulated by the AEEG only in relation to customers with yearly consumptions below 200,000 cm unless these customers have chosen to switch to the market regime ("*regime di tutela*")¹³.
21. The market investigation fully confirmed the market segmentation proposed by the notifying parties. Moreover, while the majority of the respondents pointed out that (i) households and (ii) small commercial and industrial customers should be considered as belonging to separate market segments due to different needs and profiles on the demand side, some others considered instead that those users are part of the same product market.
22. In any event, there is no need to conclude on this point as under any alternative product market definition the transaction does not give rise to competition concerns.
23. To conclude, the Commission has also identified a distinct market for gas trading taking place on the relevant gas hub¹⁴. However, as neither AcegasAps nor the Target are active in gas trading this market will not be discussed further.

10 Case No COMP/M.4180 - Gaz de France/Suez, paragraphs 73-86, Case No COMP/M.5220 - Eni/Distrigaz, paragraph 15

11 Case No COMP/M.4180 - Gaz de France/Suez paragraphs 83-86.

12 Decisione AGCM del 28 febbraio 2001, caso C4438 – ENEL - France Telecom / New WIND e la decisione n. 19803 del 29/4/2009, caso A411A - SORGENIA/ACEA.

13 Please see Resolution ARG/gas 64/09 as of 28 May 2009.

14 See cases COMP/M.4180 GDF/Suez - COMP/M. 3868, Dong/Elsam/Energi - COMP/M. 3440 EDP/ENI/GDP – COMP/M. 5918, GDFS/Gaselys.

A.3 Distribution of gas

24. Distribution of gas refers to the transportation of natural gas from the transmission network to a low-pressure distribution network for delivery to final customers.
25. Pursuant to the Legislative Decree n.164/2000 (implementing Directive 98/30/EC in Italy) gas distribution is considered as a public service which is granted through bidding procedures by local authorities (*Comuni*)¹⁵ to private companies in regime of exclusive concession for a period no longer than 12 years.
26. According to the same Decree, distribution companies which have more than 100.000 customers cannot undertake other activities in the gas sector, particularly, supply of gas to end customers¹⁶. Moreover, local distributors apply the tariffs set by the Italian Regulator and cannot refuse gas suppliers' access to the distribution network, unless it is justified by technical reasons¹⁷.
27. Both the Commission as well as the AGCM consider gas distribution as a relevant product market¹⁸. The notifying parties share the same view.
28. For the purpose of the present decision, the market for distribution of gas is considered as a relevant product market.

B. Relevant geographic markets

B.1 Wholesale supply of gas

29. In case COMP/M.5740-Gazprom/A2A/JV the Commission considered that the market for wholesale supply of gas in Italy is national in scope¹⁹. The parties agree with this approach.
30. There are no special circumstances that would require the Commission to review this market definition for the purpose of the present decision.

B.2 Supply of gas to end customers

¹⁵ *Comune* is the smallest administrative unit according which the Italian territory is organised.

¹⁶ Starting from 1 January 2002 those undertakings which are active in gas distribution as well as in production and/or supply of gas will have to split their activities into separate legal entities, one in charge of operation of the distribution network and the other one in charge of supply to end customers.

¹⁷ Article 16 of the legislative Decree 164/2000.

¹⁸ M.4180 *GDF/Suez*; M.3696 *E.On/MOL*, decisioni AGCM del 22 luglio 2004, n. 13148 nel caso *AGA/ASA*, e del 27 dicembre 2007, n. 17786, nel caso *HERA/Comune di Pesaro/Aspes Multiservizi*.

¹⁹ See also case COMP/39.315 – *ENI*, decision of 29 September 2010.

31. The notifying parties consider, consistent with the Commission precedents, that the market for gas supply to large customers with gas consumption above 200,000 cm per year is national in scope²⁰. The vast majority of the respondents to the market investigation confirmed this view.
32. With respect to the supply of gas to households, the Commission discussed in some cases the possibility of a sub-national dimension due to differences in regulatory conditions, which were not homogeneous across the whole national territory, in particular as regards the opening of the market for gas supply to households to competition, without reaching a conclusion on this point²¹.
33. The AGCM considered in its precedents that the market for the supply of gas to small customers with gas consumption below 200,000 cm per year might encompass each area where the same distribution tariffs apply (corresponding to a single *Comune* or an aggregate of neighbouring *Comuni*). However, also in this case the geographic market definition has been left open²².
34. The notifying parties believe that the market for the supply of gas to small customers should be macro-regional in scope (i.e. an aggregate of neighbouring regions within Italy) pursuant to the reform adopted by the Italian Regulator on the geographic areas where homogeneous distribution tariffs apply²³. Following the parties' approach, the relevant geographic market for the supply of gas to small customers should be the North-East of Italy where the parties' activities exclusively overlap.
35. The market investigation did not support the notifying parties' view. The majority of respondents submitted that the market for supply of gas to small customers with gas consumption below 200, 000 cm per year is national in scope given that an increasing number of market players are able to offer gas at national level irrespective of the location of the end-customers whilst each customer can freely choose amongst providers which have a commercial offer in a given location. However, few competitors also explained that while the above consideration is correct with respect to the bigger players, it does not always apply to the smaller undertakings the activity of which has still a local focus. Additionally, they argue that the low switching rate of small customers which are still mostly supplied by the local incumbents show that the market for supply of gas to small customers is local in scope.
36. There is no need to conclude on the relevant geographic market definition as the transaction does not give rise to competition concerns. However, as the local level for

²⁰ Case M.4370 – EBN/Cogas Energy, para. 22, Case M.3448-Electricidade de Portugal/Hidroelectrica del Cantabrico, para 27; In COMP/M.3007- E.ON/TXU-Europe Group plc, national markets were considered for industrial and domestic customers.

²¹ Case M.4180 *Gaz de France/Suez*.

²² Decisione AGCM n. 17723 del 13/12/2007, caso C8835, *AEM / ASM Brescia*.

²³ On December 2008 the Italian Regulator introduced a new repartition of the territory along 6 macro-regions where the gas distribution tariffs will be homogenously applied for the next three years 2009-2012 (delibera ARG/GAS159/08). Those macro-regions would approximately correspond to (i) North-West, (ii) North-East, (iii) Centre, (iv) Centre-Eastern-South, (v) Centre-Western-South, (vi) South of Italy.

the present case (i.e. *Comuni* of (i) Gorizia, (ii) Monfalcone and (iii) Cormons-Gradisca)²⁴ does not constitute a substantial part of the internal market, the lowest level examined in this decision will be the macro-regional level (i.e. North-East tariff area)²⁵.

B.3 Distribution of gas

37. According to the Commission practice, the market for the distribution of gas can be either national or local in scope depending on the national regulatory framework of the Member State concerned²⁶.
38. Also the AGCM²⁷ has assessed the transactions affecting the market for gas distribution considering both the national as well as the local dimension.
39. In any event, there is no need to conclude on the exact geographic dimension of the market for gas distribution as the envisaged transaction does not give rise to competition concerns. However, for the same reasons as explained above, the local level for the present case does not constitute a substantial part of the internal market therefore it will not be assessed in the present decision.

IV. COMPETITIVE ASSESSMENT

40. The envisaged transaction results in the following horizontally affected markets: (i) wholesale supply of gas, (ii) supply of gas to end customers²⁸ (under the alternative product market segmentations) and (iii) gas distribution, each of them in Italy. Additionally, the transaction gives rise to a minor vertical relationship between the upstream market for (i) wholesale supply of gas and the downstream market for (ii) gas supply to end customers both in Italy.

C. Horizontal overlaps

C.1 Wholesale supply of gas

41. On the Italian market for wholesale supply of gas the transaction would give rise to a minor horizontal overlap between ENI which is the first player (32.7%) and the Target which has

²⁴ It results from the information provided by the parties that the only three local areas where the parties' activities horizontally overlap are the *Comuni* of Gorizia, Monfalcone and Cormons Gradisca. Gorizia which is the biggest among those three has a population of 36.000 inhabitants and its gas consumption by small customers' accounts for 0.051% of the total gas consumption by small customers in Italy.

²⁵ Analogous conclusion with respect to Germany has been reached in case COMP/M.4890 – ARCELOR/FERNGAS.

²⁶ Case M.3696-E.On/MOL

²⁷ Provvedimento dell'Autorità n. 17203 reso nel caso *Toscana Energia/Italgas*.

²⁸ According to the information provided by the parties, the transaction does not give rise to horizontal overlaps on the market for the supply of gas to gas powered electricity plants as the Target does not operate on this market.

market share well below 1%²⁹. ENI's main competitors on this market are, *inter alia*, Enel Trade (8.9%), Edison (7.8%), GDFS (5.1%), etc.

42. As a consequence, the transaction would not have any impact on the competitive structure of the market.
43. It follows from the above that the envisaged transaction will not significantly impede effective competition on the market for wholesale supply of gas in Italy.

C.2 Supply of gas to end customers

C.2.1 Supply of gas to dealers

44. On the market for the supply of gas to dealers in Italy the increment to ENI's market share (23.7%) brought by the transaction would be well below 1%³⁰. Therefore, the competitive structure of the market will remain unchanged post-transaction. Moreover, the same players mentioned above in relation to the market for wholesale supply of gas will exert competitive pressure on the merged entity.
45. It follows from the foregoing that the envisaged transaction will not significantly impede effective competition on this market in Italy.

C.2.2 Supply of gas to large customers with gas consumption above 200,000 cm per year

46. On a national-wide market for supply of gas to large customers with gas consumption above 200.000 cm per year³¹, the transaction would result in a small market share increment of [0-5] % (AcegasAps: [0-5] % and the Target [0-5] %) to the market share of ENI ([40-50] %).
47. The envisaged transaction will not have any material impact on the competitive structure of this market. Thus, post-transaction ENI will continue facing competitive pressure from its current main competitors such as Enel (10%-15%) Energie Investimenti (10%-15%) and Edison (5%-10%).
48. It follows from the above that the envisaged transaction will not significantly impede effective competition on this market in Italy.

C.2.3 Supply of gas to small customers with gas consumption below 200,000 cm per year

49. At national level the transaction would lead to a combined market share of [20-30] % (ENI: [20-30] %, AcegasAps: [0-5] %, the Target: [0-5] %) on the market for gas supply to small customers with gas consumption below 200.000 per year. ENI's main competitors are Enel (10%-15%), Energie Investimenti (5%-10%), Hera (5%-10%) and E.On (5%-10%) which will still constrain the merged entity post-transaction. In any

²⁹ The notifying parties submit that the Target has a market share of [0-5] % in the Italian market for wholesale supply of gas.

³⁰ According to the information provided by the notifying parties the Target's market share amounts to [0-5] %.

³¹ Within the category of large customers with gas consumption above 200.000 cm per year are also included (although in small percentage) commercial and households customers.

event, considering the small market presence of both AcegasAps and the Target, ENI's market power will not be materially strengthened by the transaction.

50. It follows from the foregoing that the envisaged transaction will not significantly impede effective competition on the Italian market for the supply of gas to small customers with gas consumption below 200,000 cm in Italy.

51. Analogous conclusion is reached considering the impact of the transaction at macro-regional level in the North-East tariff area where the activities of notifying parties as and the Target exclusively overlap. On this market the parties' joint market share would not approach 15% while other market players have analogous or even higher market shares.

Table 1 — Supply of gas to small customers with gas consumption below 200, 000 cm per year at macro-regional level

North-East tariff area						
	2009		2008		2007	
Players	Volume (Mm ³)	Market shares	Volume (Mm ³)	Market shares	Volume (Mm ³)	Market shares
ENI	[...]	[10-20] %	[...]	[10-20] %	[...]	[10-20]%
AcegasAps	[...]	[0-5] %	[...]	[0-5] %	[...]	[0-5]%
Target	[...]	[0-5] %	[...]	[0-5] %	[...]	[0-5]%
A2A		15-20%		15-20%		15-20%
Hera		10-15%		10-15%		10-15%
Enel		5-10%		5-10%		5-10%
Ascotrade		5-10%		5-10%		5-10%
E.On		3-7%		3-7%		3-7%
Altri		35-40%		35-40%		35-40%
Total	14.401	100%	13.860	100%	12.463	100%

Source: Form CO

52. It can be concluded from the above that the envisaged transaction does not significantly impede effective competition on the market for gas supply to small customers in Italy under any alternative geographic market definition.

C.2.4 Supply of gas to (i) large industrial customers, (ii) households and (iii) small commercial customers

53. The competitive assessment of the transaction would lead to the same conclusion as above even evaluating the impact of the operation under alternative product market segmentations, that is to say, with respect to the gas supply to respectively (i) industrial customers, (ii) households and (iii) commercial customers (regardless of the gas consumption) in Italy.

54. As it appears from table 2, on the potential market for supply of gas to industrial customers, the joint market share of AcegasAps and the Target would not reach 1%. As a consequence, the market position of ENI in relation to this market segment would remain substantially unchanged post-transaction.

Table 2– Market shares of the first three players on the market for gas supply to industrial customers in Italy

	2009	2008	2007
<u>Players</u>			
- ENI	41,4%	45,6%	55,1%
- ENEL	7,8%	11,8%	6,8%
- Energie Investimenti	11%	8,1%	5%
<u>Others</u>	39,8%	34,8%	33%
- thereof the Target	[0-5] %	[0-5] %	[0-5] %
-thereof AcegasAps	[0-5] %	[0-5] %	[0-5] %

Source: Form CO

55. The same consideration is true with respect to (i) households and (ii) commercial customers.

56. As displayed in the below tables, given the minor market presence of both the Target and AcegasAps in both alternative market segments, the envisaged transaction will not materially affect the competitive structure of the market for supply of gas to end customers in Italy.

Table 3 - Market shares of the first three players on the market for gas supply to households in Italy

	2009	2008	2007
<u>Players</u>			
- ENI	27,1%	29,3%	29,0%
- ENEL	15,4%	12,7%	10,0%
- Hera	5,6%	6,1%	5,5%
<u>Others</u>	51,9%	52,1%	55,5%
- thereof the Target	[0-5] %	[0-5] %	[0-5] %
- thereof AcegasAps	[0-5] %	[0-5] %	[0-5] %

Source: Form CO

Table 4 - Market shares of the first three players on the market for gas supply to non households (commercial customers and service providers) in Italy

	2009	2008	2007
Players			
- ENI	23,2%	20,4%	30,1%
- Energie Investimenti		10,2%	
-Hera ³²	9,5%		11,3%
- ENEL	8,4%	9,9%	5,7%
Others	58,95%	59,5%	53%
- thereof the Target	[0-5] %	[0-5] %	[0-5] %
- thereof AcegasAps	[0-5] %	[0-5] %	[0-5] %

Source: Form CO

57. Finally, the transaction would not give rise to competition concerns even segmenting the macro-regional market for the supply of gas to end-customers according to the customer group (i.e. households and non households). Thus, the parties' combined market presence would be limited on the market for gas supply to households while on the market for gas supply to commercial and industrial customers, the increment to ENI's market share would be marginal. As a result, the competitive structure of this market segment would not be materially affected by the envisaged transaction.

Table 5 — Supply of gas to end customers (household and non households) at macro-regional level

North-East tariff area 2009				
Players	Households		Commercial and industrial customers	
	Volume (Mm ³)	Market shares	Volume (Mm ³)	Market shares
ENI	[...]	[10-20] %	[...]	[20-30] %
AcegasAps	[...]	[0-5] %	[...]	[0-5] %
Target	[...]	[0-5] %	[...]	[0-5] %
Total	~11.000	100%	~14.000	100%

Source: Form CO

58. It follows from the above that the transaction does not significantly impede effective competition on the market for gas supply to end customers under any alternative product and geographic market definition.

³² The parties state that in the Report of the Italian Regulator to the Commission for the year 2010 Energie Investimenti was represented as the second player at national level instead of Hera only in 2008.

C.3 Distribution of gas

59. On the Italian market for gas distribution the parties' combined market share would amount to [20-30] % (ENI: 22.6%, AcegasAps: [0-5] % and the Target: [0-5].% Also in this case, the increment to the market share of ENI which is the leader in gas distribution in Italy would be low. Therefore, no main change to the competitive structure of the market will occur post-transaction. To the contrary, the main players such as F2i Reti Italia (9.9%), Hera (6.5%) A2A (6.1%) will all remain active on the market.
60. It follows from the foregoing that the transaction does not significantly impede effective competition on the market for gas distribution in Italy.

D. Vertical relationship

Wholesale supply of gas/supply of gas to end customers

61. The transaction gives rise to a small vertical relationship between the upstream market for wholesale supply of gas in Italy where ENI is the leader (32.7%) and the downstream markets for supply of gas to end-customers where both the Target and AcegasAps are present with a limited market presence (not exceeding 3%) at national level³³.
62. In view of the low market shares of AcegasAps and the Target with respect to the supply of gas to end-customers at national level and given that AcegasAps and the Target (whose gas consumption accounts for less than 0.5% of the gas sold to end customers in Italy) purchase already almost the totality of their gas requirements from ENI, any risk of input foreclosure can be ruled out.
63. It follows from the above that the envisaged transaction will not significantly impede effective competition on the market for supply of gas to end customers.

E. Co-ordination between the parents of the joint venture

64. The notifying parties argue that the existence of any spill-over effects within the meaning of Article 2(4) of the Merger Regulation as a result of the proposed transaction can be discarded for the following reasons.
65. First, there are marked asymmetries between ENI and AcegasAps' respective positions in the markets for supply of gas to end customers in Italy, since the former is the market leader and latter a marginal operator at national level. Second, both companies have different costs structures and a different geographic focus, in fact, ENI is a big national player while AcegasAps is a regional operator. Finally, the joint venture only constitutes a marginal part of the parents' portfolio.

³³ According to the information provided by the notifying parties, the only exception regards the Target market shares in the market for supply of gas to end-customers in the *Comuni* of Gorizia, Manofalcone and Cormons-Gradisca where it is the historical incumbent. However, in each of those areas AcegasAps and ENI either do not have a market presence or they have a market share below 0%. In any event, as those local areas do not form part of the internal market, the impact of the transaction at local level is not assessed in the present decision.

66. The same considerations as above apply to the risk of co-ordination on the markets for wholesale supply and retail sale of electricity to big industrial customers in Italy where, contrary to the gas markets, ENI has a limited market share (<10%) and AcegasAps is a marginal player (<1%).
67. Therefore, it can be excluded that the notified transaction will lead to a co-ordination of the competitive behaviour of the parent companies of the joint venture within the meaning of Article 2(4) of the Merger Regulation.

V. CONCLUSION

68. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission

(signed)
Joaquín ALMUNIA
Vice-President