

***Case No COMP/M.6302 -
F2i/ AXA FUNDS/ G6
RETE GAS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 24/08/2011

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Brussels, 24.08.2011

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying parties:

Dear Sir/Madam,

**Subject: Case No COMP/M.6302 – F2i/ AXA Funds/ G6 Rete Gas
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

I. INTRODUCTION

1. On 18 July 2011, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which F2i Fondi Italiani per le Infrastrutture S.G.R. S.p.A. ("F2i", Italy), acting on behalf of the F2i - Fondo Italiano per le Infrastrutture ("F2i Fund"), and three investment funds, namely AXA Infrastructure Investissement SAS, AXA UK Infrastructure Investment SAS, and AXA Infrastructure Partners FCPR (jointly referred to as the "AXA Funds"), indirectly managed by AXA Private Equity ("AXA" PE, France), which is part of the AXA Group ("AXA Group"), acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control over G6 Rete Gas S.p.A. ("G6 Rete Gas", Italy), currently owned by GDF Suez Energia Italia S.p.A. ("GSEI", Italy), which is part of the GDF Suez Group ("GDF Suez"), by way of a purchase of shares. F2i and AXA PE are together referred to below as "the notifying parties"².

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 222, 28.07.2011, p.19

II. THE PARTIES AND THE OPERATION

2. **F2i** is an asset management company which manages the assets of F2i Fund and acts on its behalf. F2i Fund is a closed-end fund investing in assets in infrastructure and in the network-based sectors.
3. **AXA PE** is part of the insurance company AXA Group. It is active in asset management and indirectly manages the three AXA Funds.
4. **G6 Rete Gas** is active in the provision of gas distribution and ancillary services. It holds distribution concessions in 474 Italian municipalities, where it has a legal monopoly to distribute natural gas to household, commercial and industrial users on behalf of retail suppliers. G6 Rete Gas operates a distribution network with a total grid length of 15,339 km, serving circa 991,000 final users over 12 Italian regions in North, Central and South Italy.
5. According to the Share Purchase Agreement signed on 6 June 2011, F2i and AXA PE (via the AXA Funds) will acquire 100% of G6 Rete Gas's via a jointly controlled company, in which they will hold 75% and 25% respectively. Joint control will be exercised through either a newly created special purpose vehicle, or Enel Rete Gas S.p.A. ("ERG"), which is already jointly controlled by F2i and AXA PE.
6. On 6 July 2011 and 11 July 2011 respectively, the notifying parties signed the Corporate Governance Side Letter setting out the general corporate governance principles that will apply to. The company will be managed on the basis of the governance rules applied to ERG, as set out in the relevant shareholders' agreement. These rules will apply whether it will be jointly controlled by a newly created special purpose vehicle or ERG.

Joint control

7. G6 Rete Gas's Initial Business Plan will cover a 3-year period and will be updated each year. It will be prepared by F2i in agreement with AXA PE.
8. AXA PE will enjoy veto rights over certain strategic business decisions concerning G6 Rete Gas: a) for a five-year period, AXA PE will be able to veto any material change to G6 Rete Gas' Initial Business Plan as updated/revised on an annual basis³; b) for a five-year period, AXA PE will be able to veto G6 Rete Gas's annual budget, should the latter materially differ from what was agreed in the Initial Business Plan as revised on a rolling basis, unless such difference is due to external factors (such as general market conditions) which are out of the parties' control/course of action and could not be foreseen at the time of the adoption/amendment of the relevant business plan; and c)

³ Following the expiry of the five-year period, in case G6 Rete Gas business performance has not met some predetermined financial criteria AXA PE will have power to veto the adoption of any new business plan aimed at taking corrective actions to redirect the business towards achieving the envisaged IRR/dividend yield targets.

AXA PE will also be able to veto decisions concerning G6 Rete Gas's strategic investments⁴.

9. After the initial five year period if certain financial criteria have not been met (rate of return, dividend) AXA PE will have a veto right over any new business plans and budgets designed to rectify the situation.
10. Based on the above, F2i and AXA PE will exercise joint control over G6 Rete Gas for a period long enough to bring about a lasting change in the structure of the undertakings concerned⁵. It follows that the proposed transaction is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

11. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁶ for the year 2010 (F2i: EUR [...] million; AXA 91 billion; G6 Rete Gas [...]). Each of F2i and AXA has a EU-wide turnover for the year 2010 in excess of EUR 250 million (F2i: [...]; AXA: [...]), without achieving more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
12. The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

IV. COMPETITIVE ASSESSMENT

13. The proposed transaction concerns the market for gas distribution in Italy where G6 Rete Gas is active.

A. Relevant product markets

The market for gas distribution

14. Previous Commission decisions⁷ identify several distinct activities within the natural gas sector: (i) exploration and production; (ii) transmission (via the high-pressure pipeline

⁴ In particular, i) the purchase, sale, divestment or exchange of G6 Rete Gas' going concerns, lines of business or shareholdings in excess of €[...], ii) the creation, release or cancellation of guarantees of any kind exceeding the value of €[...], iii) the assignment to third parties of concessions managed by G6 Rete Gas for an amount exceeding €[...], and iv) any other capital expenditure related to G6 Rete Gas core assets not contemplated in the Initial Business Plan and exceeding the value of €[...]. Additionally, AXA PE will enjoy a veto right with respect to the carrying out by G6 Rete Gas of other investments [...]

⁵ Commission Consolidated Jurisdictional Notice under Council Regulation (EC)139/2004, O.J. 2008 c95 of 16 April 2008.

⁶ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

⁷ COMP/M.3696 - *E.ON/MOL*, paragraphs 87 and followings.

grid); (iii) distribution (via medium- and low-pressure pipeline grids), (iv) storage; and (v) trading and supply.

15. Gas distribution has been defined in previous Commission decisions as the distribution (*i.e.* transport) of natural gas through a medium/low pressure pipeline network to final customers⁸. Supply activities (*i.e.* sales of gas to final customers) do not belong to this market.
16. In Italy under Decree 164/2000⁹, gas distribution is regarded as a public service, and it is carried out on an exclusive basis. Concessions are granted by the municipalities to distributors for a fixed period. The duration may vary from municipality to municipality. The network infrastructures belong to the distributors or to the municipalities which tender them out to distributors via public bids.
17. In line with the Commission's¹⁰ and the Italian Competition Authority's ("ICA")¹¹ past practices, the notifying parties submit that gas distribution through a medium/low pressure pipeline network to final customers constitutes the relevant product market for the purpose of the present transaction.

B. Relevant geographic markets

18. In a previous decision, the Commission considered the gas distribution market to be either national or local, depending on the legislative framework in force at national level¹².
19. According to the relevant Italian legislation (Decree/164/2000), gas distribution in Italy is carried out at local level by single companies on an exclusive basis under concessions granted by local authorities (the municipalities). For a given number of years, companies awarded with the gas distribution concession operate a legal monopoly covering the geographic area concerned by the municipality concession.
20. However, as regards the Italian gas distribution market, the Commission has not come to a conclusion with respect to the geographic scope of the market¹³.
21. The Italian Competition Authority has considered both the national market and the relevant local markets as defined by the concessions¹⁴.

⁸ COMP/M.4180 - *GDF/Suez*, COMP/M.3696 - *E.On/MOL*.

⁹ Decree 164/2000 implements Directive n. 98/30/CE concerning common rules for the establishment of the internal market for natural gas.

¹⁰ COMP/M. 6068 – *ENI/Acegas/Aps/JV*, paragraphs 27-28.

¹¹ Decision of 22 July 2004, n. 13418, in case *AGA/ASA* and 27 December 2007, n. 17786 in case *HERA/Comune di Pesaro/Aspes Multiservizi*.

¹² COMP/M.3696 – *E.On/MOL*.

¹³ COMP/M.6068 – *ENI/Acegas/Aps/JV*, paragraphs 37-79.

¹⁴ Decision of 3 August 2007, 17203, in case *Tosaca Energia/Ramo d'Azienda Italgas*.

22. The notifying parties submit that the competitive situation of the gas distribution market can be properly assessed only at the national level for the following reasons.
23. First, the examination of the individual local concession markets only provides a micro-picture of the competitive situation, given that each concession represents a legal monopoly on its own. As each distributor has the exclusive right to manage a local pipeline network by virtue of the relevant concession, competition in such market is only possible when companies participate to an open procedure once the concession expires ("competition for the market").
24. Second, reference to a "regional" market is not relevant either, provided that each local municipality awards its own concession independently of neighboring municipalities and under its own terms as regards duration of the concession, commercial terms.
25. Finally, defining the market as having a national scope would capture the broader competitive picture and reflect the overall competitive strength of each actor in the market for gas distribution as market players compete for the awarding of gas distribution concessions throughout Italy. It should be noted that there are a very large number of individual concessions¹⁵.
26. For the purposes of the present decision, it is not necessary to conclude on the precise scope of the geographic market as, under any alternative market definition, the proposed transaction does not give rise to any competition concerns.

C. Competitive Assessment

27. The proposed transaction will only give rise to a limited horizontal overlap between F2i and G6 Rete Gas' activities in the market for gas distribution via medium- and low-pressure pipelines in Italy. The parties' combined market share is approximately 17% (F2i: 13% and G6 Rete Gas: 4%) in 2010.
28. Post-merger, the gas distribution market will remain competitive due to the presence of the market leader ENI (Italgas) (22.9%) as well as of other important players, such as Hera (6.4%) and A2A (6.2%), which would continue to compete *vis-à-vis* F2i Reti Italia for the granting of gas distribution concessions across Italy.
29. As a result, at national level, the proposed transaction does not give rise to any competition concerns, due to the limited market combined market share of F2i Reti Italia and G6 Rete Gas as indicated above.
30. At local level, the proposed transaction does not give rise to any material change as it concerns only the substitution between two operators (from GDF Suez Italia to F2i) in the provision of gas distribution for a service granted under a local monopoly regime, regulated by the law and provided under the supervision of the Italian Energy Authority.
31. The notifying parties submit that the proposed transaction would bring about pro-competitive effects allowing synergies between F2i and G6 Rete Gas and enabling the

¹⁵ According to the Italian Energy Authority 2011 report, the national market for gas distribution will remain to a large extent fragmented, with as many as 240 local distributors active in 2010.

new entity to compete more effectively on the Italian gas distribution market. Furthermore, F2i and G6 Rete Gas are active only in the market for gas distribution, unlike their main competitors, which are vertically integrated.

32. Finally, given that neither the notifying parties nor G6 Rete Gas are active at any level other upstream or downstream level of the natural gas chain, the proposed transaction does not give rise to any vertically reportable markets.

VI. CONCLUSION

33. 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)
László ANDOR
Member of the Commission*