

EN

***Case No COMP/M.6389 -
ENI / NUON BELGIUM /
NUON WIND BELGIUM
/ NUON POWER
GENERATION***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 07/12/2011

***In electronic form on the EUR-Lex website under document
number 32011M6389***



EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 07/12/2011
C(2011)9231

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.6389 – ENI / NUON BELGIUM / NUON WIND BELGIUM / NUON POWER GENERATION
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹**

1. On 4 November 2011 the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking ENI S.p.A. ("ENI", Italy) (the "notifying party") acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control over Nuon Belgium N.V. ("Nuon Belgium", Belgium) – holding the totality of the shares of Nuon Wind Belgium N.V. ("Nuon Wind Belgium", Belgium) – and Nuon Power Generation Walloon N.V. ("Nuon Power Generation", Belgium) (the "proposed transaction") (ENI, Nuon Belgium and Nuon Power Generation being the "Parties").²

I. THE PARTIES

2. **ENI** is the parent company of the ENI Group, an integrated energy group in Italy being active worldwide in the finding, producing, transporting, transforming and marketing of oil and gas; as well as in the generation and sale of electricity, petrochemicals, oilfield services, and construction and engineering services. In Belgium, ENI is present mainly through its subsidiary Distrigas, which is active on a number of gas supply markets.

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 328, 11/11/2011, p. 9

3. **Nuon Belgium** is a gas and electricity retailer in Belgium and is the mother company of Nuon Wind Belgium that owns and operates a power generating wind farm with three turbines in Belgium.
4. **Nuon Power Generation** is a company established to develop a Combined Cycle Gas Turbine (CCGT) power generation project in the Walloon area (Seneffe) in Belgium³.

II. THE OPERATION AND THE CONCENTRATION

5. ENI intends to [...] acquire sole control over Nuon Belgium from Nuon Sales N.V. ("Nuon Sales", the Netherlands) and over Nuon Power Generation from Nuon Energy Sourcing N.V. ("Nuon Energy Sourcing", the Netherlands) by way of purchase of shares on the basis of an SPA signed on 26 July 2011. The proposed transaction results in the acquisition of 100% of the shares in Nuon Belgium and Nuon Power Generation and therefore constitutes an operation of concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover in 2010 of more than EUR 5 000 million⁴ (ENI: EUR 98,523 million and Nuon Belgium with Nuon Power Generation: EUR [... million]). Each of them has an EU-wide turnover in 2010 in excess of EUR 250 million (ENI: EUR [... million] and Nuon Belgium with Nuon Power Generation: EUR [... million]), but only Nuon Belgium achieves more than two-thirds of its aggregate EU-wide turnover within one Member State, Belgium. The proposed transaction therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

IV. RELEVANT MARKETS

7. ENI (Distrigas) and Nuon Belgium are both present in the energy supply market. ENI (Distrigas) is also active in the trading of gas.
8. The notifying party puts forward that as a result of the proposed transaction, the Parties will have overlapping activities on the following product markets: (i) retail supply of gas to large industrial and commercial customers and (ii) retail supply of gas to small industrial and commercial customers.
9. As for vertical relationships, the notifying party submits that they exist with regard to the markets for (i) wholesale supply of gas (upstream) and supply of gas to dealers or supply of gas to household customers, respectively (downstream), and (ii) supply of gas to producers of electricity.
10. Regarding the market for gas trading, there is no horizontal or vertical relationship as unlike ENI (Distrigas), Nuon Belgium is not active on it.

³ [...]

⁴ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.04.2008, p. 1).

A. Relevant product markets

11. In previous cases concerning the natural gas industry, the Commission has distinguished separate markets for gas exploration/production, gas transport (via high pressure systems), gas distribution (via low pressure systems), gas storage, trading and gas supply activities⁵.

Gas supply markets

12. In line with the finding in Case COMP/M.5549 - *EDF / Segebel*, the Commission considers that the activities of (i) supply of H-Gas and L-Gas to dealers, (ii) supply of H-Gas and L-Gas to producers of electricity, (iii) supply of H-Gas and L-Gas to large industrial and commercial customers, (iv) supply of H-Gas and L-Gas to small industrial and commercial customers and (v) supply of H-Gas and L-Gas to household customers constitute separate product markets⁶.

13. The notifying party agrees with this differentiation as far as it relates to the five types of customers enumerated above. It however questions the necessity of the distinction between H-Gas and L-Gas at supply level. It is claimed that, this differentiation on the basis of the calorific value of the natural gas has become unfounded in Belgium over the past few years⁷.

14. However, for the purposes of the proposed transaction, the Commission does not need to decide on whether the distinction between H-Gas and L-Gas is maintained since the proposed transaction does not give rise to competition concerns under any alternative market definition.

(i) *Gas supply to dealers*

⁵ Case COMP/M.3696 – *E.ON / MOL*, paragraph 88 or Case COMP/M.5549 – *EDF / Segebel*, paragraph 167.

⁶ Case COMP/M.5549, *EDF / Segebel*, 12 November 2009, paragraph 178.

⁷ First, regarding the demand side the notifying party alleges that the customers have no choice whether to source H-Gas or L-Gas since such decision is rather predetermined by the location of the customer. Furthermore, it is also claimed that H-Gas and L-Gas are perfect substitutes from the demand side perspective since customers look for energy as such, regardless of the calorific value. Additionally, it argues that suppliers active on the Belgian market do not calculate their prices on the basis of the calorific value but rather base their price structure on the demand profile, the client's size and the flexibility. Second, regarding the supply side, the notifying party puts forward that, despite the lasting existence of different infrastructures and balancing zones for both gas types in Belgium, these two zones are not sufficient as an argument to establish different product markets. It alleges that this is even more so, as the formal distinction between L-Gas and H-Gas zones is in discussion within the industry to disappear. Finally, it submits that as of 1 July 2009 the gas market has undergone a structural change as in the Netherlands the H/L-Gas conversion has become a standard service with a socialized cost. According to the notifying party, this change has had an impact on the Belgian gas market as now any gas company can provide L-Gas to their Belgian clients by the purchase of L-Gas on the Title Transfer Facility ("TTF", a virtual trading point for natural gas in the Netherlands) and the purchase of exit capacities on the border point with the Belgian L-Gas network. It submits that as an effect of this change, new suppliers of L-Gas have become active in the Belgian L-Gas market resulting in the erosion of ENI's(Distrigas') historically relevant market position through a long-term agreement with GasTerra for importing L-Gas from the Netherlands.

15. In Case COMP/M.4180 - *Gaz de France / Suez*⁸ this market was found to include the supply of gas to local authority utilities and third-party retailers, including national and international companies obtaining gas supplies in Belgium that are subsequently sold to their final customers in Belgium.

(ii) Gas supply to electricity producers

16. In Case COMP/M.4180 - *Gaz de France / Suez*⁹, the Commission found that the market for the supply of gas to electricity plants differs from other supply markets in that the competitive conditions are different, among other things because of the far larger and more variable consumption of gas by electricity plants than by big industrial customers.

(iii) Gas supply to large industrial and commercial customers

17. In Case COMP/M.4180 - *Gaz de France / Suez*¹⁰, it was found that large industrial and commercial customers differ from other industrial and commercial customers and from household customers, in particular in the volume of their demand, which largely exceeds the volumes required by the other types of customer. Accordingly, large industrial and commercial customers generally obtain lower prices and are often connected directly to the transmission network. However, the Commission did not finally decide on whether the relevant criterion to distinguish between large and small industrial and commercial customers either was the threshold of an annual consumption of >12 GWh or whether the customer is connected to the transmission (large) and not to the distribution (small) network. The decision could be left open because the data based on either of them largely showed the same results.

18. The notifying party submits that the proper criterion should be to which network the customer is connected to.

19. However as no competition concerns arise regardless of the criterion adopted, the exact scope of the product market definition can be left open.

(iv) Gas supply to small industrial and commercial customers

20. In its previous decisions the Commission found that the market for the supply of gas to small industrial and commercial customers differs from the market for large industrial and commercial consumers due to the volume of consumption and to the fact that small undertakings are not connected to the transmission network but rather to the distribution network¹¹. At the same time, the market also seems to differ from supply to household customers as to the quantity purchased and the degree of fidelity to the default supplier¹² usually characterizing these markets after liberalization. Consequently, for the sake of

⁸ Case COMP/M.4180 - *Gaz de France / Suez*, 14 November 2006, paragraph 73.

⁹ Case COMP/M.4180 - *Gaz de France / Suez*, 14 November 2006, paragraph 77.

¹⁰ Case COMP/M.4180 - *Gaz de France / Suez*, 14 November 2006, paragraph 78.

¹¹ Case COMP/M.4180 - *Gaz de France / Suez*, 14 November 2006, paragraph 78.

¹² Case COMP/M.4180 - *Gaz de France / Suez*, 14 November 2006, paragraph 84.

the proposed transaction, the market for supply of gas to small industrial and commercial customers will be considered.

(v) ***The market for gas supply to household customers***

21. The Commission found that competition in this market – in spite of liberalization – has developed differently from other supply markets, including the market for small industrial and commercial customers. This was mainly due to the major role played by the default suppliers, to which all former customers of the local authority utilities who had not chosen any supplier were transferred once they became eligible and that many more small industrial and commercial customers changed supplier than did household customers¹³. Consequently, for the sake of the proposed transaction, the market for supply of gas to household customers will be considered.

B. Relevant geographic market

22. In previous decisions of the Commission, the gas supply markets in Belgium were all found to be national in scope with the exception of the market for gas supply to household customers for which the definition of whether the market was national or regional was ultimately left open¹⁴.

23. The notifying party submits that all gas supply markets are national in scope.

24. In any event, the definition of the relevant geographic market with regard to the market for gas supply to household customers can be left open as the proposed transaction does not give rise to competition concerns under any alternative market definition.

V. COMPETITIVE ASSESSMENT

25. The notifying party puts forward that as a result of the proposed transaction, the Parties will have overlapping activities on the following product markets: (i) retail supply of gas to large industrial and commercial customers and (ii) retail supply of gas to small industrial and commercial customers.

26. As for vertical relationships, the notifying party submits that they exist on the markets for (i) wholesale supply of gas (upstream) and supply of gas to dealers or supply of gas to household customers, respectively (downstream), and (ii) wholesale supply of gas (upstream) and supply of gas to producers of electricity.

27. Regarding the market for gas trading, there is no horizontal or vertical relationship as unlike ENI (Distrigas), Nuon Belgium is not active on it.

A. Horizontal effects

a) Gas supply to large industrial and commercial customers

¹³ Case COMP/M.4180 - *Gaz de France / Suez*, 14 November 2006, paragraph 84.

¹⁴ Case COMP/M.4180 - *Gaz de France / Suez*, 14 November 2006, paragraph 105; case COMP/M.5549 - *EDF / Segebel*, adopted on 12 November 2009, paragraph 185.

28. When the market is defined as natural gas deliveries to industrial customers via the transmission grid, there is no overlap between the activities of ENI(Distrigas) and Nuon Belgium. Consequently, the market is not a horizontally or vertically affected market, since Nuon Belgium does not supply gas to customers connected to the transmission grid. Further sub-division between H-Gas and L-Gas is irrelevant in this context.
29. Regarding the supply of gas to large industrial and commercial customers the Parties' activities only overlap horizontally if the distinguishing criterion of annual consumption >12 GWh were assumed. According to the notifying party no data on market shares based on this market definition exists. However, it is put forward that in 2010 the annual sale of the Parties to customers with an annual consumption of >12 GWh were as it is set out below¹⁵:

	Product market: supply of gas to large industrial consumers (>12 GWh)	Geographic market	Annual sale in TWh
ENI(Distrigas)	H-Gas & L-Gas	national	[...]
	L-Gas		[...]
	H-Gas		[...]
Nuon Belgium	H-Gas & L-Gas	national	[...]1
	L-Gas		[...]
	H-Gas		[...]

30. The table above shows that even under this market definition, the increase in ENI's(Distrigas') sales volume as a result of the proposed transaction would be minimal with only [0-5] % (or respectively [0-5]% in L-Gas and [0-5]% in H-Gas).
31. The Parties were not in a position to supply precise market share figures for a market for supply of gas to large industrial consumers using the >12 GWh threshold. On a market for supplies to large industrial customers that is defined on the basis of (as above) the connection to the gas transmission system, Distrigas's 2010 market share was 52.1%, down 17.9 % as compared to the previous year. Strongest in presence are GDF Suez(Electrabel) (27.1%, up 5.9% as compared to the previous year) and EDF(SPE) (9.9%). Also in 2010, several new entrants that supply customers connected to the transmission network (as well as the distribution network) appeared, including RWE and E.ON¹⁶.

¹⁵ Form CO paragraph 69.

¹⁶ CREG, "le développement des marchés de l'électricité et du gaz naturel en Belgique, Année 2010".

32. From the Commission's decision in the case COMP/M.4180 – *Gaz de France / Suez*, it appears that a market for supplying large industrial customers using the level of connection criterion is smaller in size than when the 12 GWh criterion is used¹⁷ and, hence, the latter by necessity includes also customers connected to the distribution grid, in particular smaller industrial and commercial customers. Distrigaz's market share for supplying these customers is (significantly) lower (see table below) than those connected to the gas transmission network. Consequently, even if no precise figure can be provided, the market share of ENI(Distrigaz) on a market for supplies to large industrial customers delimited by the 12GWh threshold can only be smaller than when measured using the level of connection as a criterion i.e. 52.1%.
33. In view of this market share and, in particular, the very small increment (below [0-5]%, given that Nuon's sales amount to only [0-5]% of Distrigaz' sales) and the significant expansion and entry by competitors¹⁸ that took place to supply larger industrial customers, the proposed transaction will not significantly impede effective competition relating to the market of supply of gas to large industrial and commercial customers in Belgium.

b) Gas supply to small industrial and commercial customers

34. In accordance with the estimation of market shares provided by the notifying party¹⁹ based on the differentiating criterion of the connection to the distribution network, the Parties' combined market shares in 2010 remain below 25%, irrespective of the exact product market definition applied.

	2010	Total market volume in TWh	ENI sales volume in TWh	Nuon Belgium sales volume in TWh	ENI market share	Nuon Belgium market share	Combined market share
2010	H-Gas & L-Gas	[35-40]	[...]	[...]	[10-20]%	[0-5]%	[10-20]%
	L-Gas	[15-20]	[...]	[...]	[10-20]%	[0-5]%	[10-20]%
	H-Gas	[20-25]	[...]	[...]	[10-20]%	[0-5]%	[10-20]%

¹⁷ Case COMP/M.4180 - *Gaz de France / Suez*, 14 November 2006, paragraph 80

¹⁸ Entry and expansion were described in relation to a market for supplying customers connected to the gas transmission system. However, entry and expansion in this market must be necessity also have taken place in a market delimited by the 12GWh threshold, as this market is larger.

¹⁹ Form CO, paragraphs 89 and 91.

35. Taking into account the fact that post merger the Parties' combined market shares will remain relatively limited with insignificant increment between [0-5]% and since strong competitors are present in the market (Electrabel: [60-70]% and SPE: [10-20]%)²⁰ the proposed transaction does not raise any competition concern on the examined market.
36. Should the product market be considered taking into account a distinction between large and small industrial and commercial customers on the basis of an annual consumption of > or <12 GWh, respectively, the Parties combined market shares would still be significantly below 25%.

	ENI sales volume in TWh	Nuon Belgium sales volume in TWh	Cobined sales volume in TWh	Total market volume (2005) in TWh	Combined market share (regarding total market volume 2005)
L-Gas	[...]	[...]	[...]	11.15	[0-5]%
H-Gas	[...]	[...]	[...]	12.91	[0-5]%

37. It follows from the above that no competition concerns arise from the proposed transaction with regard to horizontal overlaps.

B. Vertical effects

a) Supply of gas to dealers (upstream) and to household customers (downstream)

38. On the market for wholesale supply of gas to dealers or retail supply to household customers respectively, the markets are vertically affected since ENI(Distrigas) is active on the market for supply of gas to dealers and Nuon Belgium is present on downstream level.
39. The notifying party submits that ENI(Distrigas) in 2010 had a market share of approximately [40-50]% on the market for gas supply to dealers which had however decreased significantly over the last years (see table below)²¹.

	Total market volume in TWh	ENI sales volume in TWh	ENI market share
2008	88.4	[...]	[...]%
2009	87.6	[...]	[...]%
2010	101.2	[...]	[40-50]%

²⁰ Form CO, paragraph 89.

²¹ Form CO, paragraph 92.

40. According to the notifying party, its considerably high market share in this market will have dropped from October 2011 representing [90-100]% of Distrigas' sales to the dealer's segment expired at the end of September 2011. The notifying party expects its market share to drop below [10-20]% as it alleges that Electrabel in the future will only source [5-10] TWh (of totally circa [5-10] TWh) from Distrigas. According to the information obtained from Electrabel during the administrative procedure, ENI and Nuon signed a supply agreement of a duration of [...] years as of [...] for a contractual volume of [5-10] TWh of L-Gas and [10-20] TWh of H-Gas. Applying an increase of volume of [0-5] TWh to the 2010 total market volume the notifying party states to have a market share of only [5-10]% (or [0-5]% in H-Gas and [10-20]% in L-Gas) as of[...].
41. The proposed transaction would therefore be of no concern neither regarding customer nor input foreclosures post merger taken into account the decreasing market shares of ENI on the Belgian wholesale supply market and also the very low market shares of Nuon Belgium on the different Belgian retail markets [(0-5)]²².

b) Gas supply to Nuon Belgium as electricity producer

42. ENI is active on the market for supply of gas to electricity plants, while Nuon Belgium and Nuon Power Generation are not currently active on the market for electricity production.
43. However, Nuon Power Generation is developing a project of CCGT power plant to be built and operated in Seneffe (Walloon, Belgium) of 450 MW whose annual consumption is of [...] TWh. According to the notifying party, the production, if the plant is built, can start the earliest in [...] ²³.
44. ENI's market share on this market was [30-40]% (only H-Gas) in 2010 while [...]TWh of Nuon Power Generation (in case it comes on line) represents [0-5]% of market demand²⁴.
45. The proposed transaction would be of no concern neither regarding customer nor input foreclosure post merger even taken into account the CCGT project of Nuon Power Generation to be built and operated in Seneffe (Walloon, Belgium) of 450 MW whose annual consumption is of [...] TWh.
46. Therefore the proposed transaction does not give rise to any serious concerns as to its compatibility with the common market.

V. CONCLUSION

47. For the above reasons, the European Commission has decided not to oppose the proposed transaction 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.

²² Form CO, paragraphs 89 – 102.

²³ Form CO, paragraph 58.

²⁴ The Seneffe CCGT plant will be connected to the H-Gas network.

For the Commission

(signed)
Joaquín ALMUNIA
Vice-President