EN

Case No COMP/M.5740 - GAZPROM/ A2A/ JV

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 16/06/2010

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sir/Madam,

Subject: Case No COMP/M.5740 - GAZPROM/ A2A /JV
Notification of 7 May 2010 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 7 May 2010, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Gazprom Germania GmbH ("Gazprom Germania", Germany), which is ultimately controlled by OAO Gazprom ("Gazprom", Russian Federation) and the undertaking A2A Spa ("A2A", Italy), acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking PremiumGas S.p.A. ("PremiumGas", Italy), by way of purchase of shares in a company constituting a joint venture.

I. THE PARTIES AND THE OPERATION

2. **Gazprom Germania** is a wholly-owned subsidiary of OOO Gazprom Export which is in turn wholly owned by Gazprom. Gazprom Germania focuses on the sale of Russian and Central Asian gas in Europe and in the area of the Community of Independent States. It is also active in gas production and gas storage.

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.

3. **Gazprom** is the ultimate parent company of a Russian energy group active in the exploration, production, transportation, refining and marketing of natural gas and petrochemical products. The group is controlled by the Russian State. To date, as Premium Gas was not considered full functional, Gazprom is not directly active in Italy. However, it supplies gas to the Italian companies […] by virtue of long-term supply agreements with delivery points outside Italy.

4. **A2A** is the holding company of an Italian multi-utility group established in 2008 as the result of the merger of the former utility groups controlled by the municipalities of Milan and Brescia. A2A is mainly active in the production, sale and distribution of electricity and gas as well as in the supply of heating services, waste management and water. A2A exercises joint control, together with Electricité de France SA ("EDF") over Edison Spa ("Edison").

5. **PremiumGas** was established in September 2008. Its shares are owned for 50% by Gazprom Germania and for 50% by A2A Alfa Spa ("Alfa"). Alfa in turn is indirectly jointly held by A2A (70%) and Iride S.p.A. ("Iride", 30%).

II. FULL FUNCTION JOINT VENTURE

6. The Parties consulted the Commission in December 2008[2] about the full functionality of PremiumGas and the notifiability of the transaction establishing PremiumGas. At the time, the Commission considered PremiumGas not full functional on the ground that PremiumGas was planning to purchase the gas it was going to sell from one parent (Gazprom) only and sell it to the other (A2A)[3]. The Commission advised the Parties to contact the Commission again when a new Business Plan would be established which could change the operation's scope.

7. This new business plan ("General Business Plan") has been established in October 2009. The General Business Plan aims to increase PremiumGas's third-party activities significantly – making it into a mid-sized supply company on the Italian market – by quadrupling total gas sales volumes from gas year 2008/2009 to gas year 2011/2012[4]. The Business Plan also involves a significant increase in the JV's own infrastructure and personnel, i.e. the creation of an independent company structure, which so far has been largely reliant on resources from its parent companies. Thus the General Business Plan foresees, in particular, a diversification of PremiumGas' purchase and sale relations. It is planned that PremuimGas will procure by 2011/2012 [a significant proportion] of its needs from other suppliers than Gazprom. It aims to – by 2011/2012 – sell all the gas on the market at the best possible conditions and, as far as sales to the parent companies are concerned, at arm's length. Already for 2010, […]% of the sales are made to the third-party […][5] and no sales to A2A are planned but only to Iride ([…]% of the available gas). Sales to Iride are set to diminish in the coming years, while at the same time the JV is expecting

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[2] C.1006 ZMB/A2A/JV

[3] Letter of 4 March 2009

[4] The Business Plan aims to increase sales [very significantly] from […] in 2008/2009 to […] in 2011/2012.

[5] […].

to sell gas to other third-party customers particularly in the power plant segment but also, to a lesser extent to large industrial customers, SMEs and residential customers.

8. In addition, under the new "General Business Plan" the Parties intend to significantly increase the resources dedicated to PremiumGas, notably by increasing the presence of dedicated management and staff and by significantly augmenting planned expenses for rental and utilities, which demonstrate the intention of the Parties to equip the joint venture with the means that would allow the latter to progressively operate the day-by-day operations in full autonomy.

9. The Commission therefore considers that, after the adoption of the General Business Plan, PremiumGas constitutes a full functional joint venture.

III. EU DIMENSION

10. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5,000 million[6] (Gazprom EUR 96,619 million; A2A EUR […]). Each of them has an EU-wide turnover in excess of EUR 250 million (Gazprom EUR […]; A2A EUR […]), 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 EU dimension.

IV. RELEVANT MARKETS

11. The transaction horizontally relates to the Italian market for retail gas supply to final customers. In addition, there are vertical relationships between the upstream market of wholesale of natural gas and the downstream market of retail gas supply to final customers (including its subsegments).

12. For the purpose of this decision, the analysis will focus on the vertical relationship between the market for the wholesale of natural gas and the retail gas market.

13. The Parties' combined market shares with respect to gas supply to final customers are below 15% under any conceivable market definition,[7] therefore, this market is not considered to be affected horizontally but only in relation with the vertical link with the wholesale market.

Relevant Product Markets

Wholesale supply of gas

14. The notifying Parties submit that the wholesale supply of natural gas represents a relevant product market concerned by the proposed transaction.

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[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] See, for the definition of the markets for the supply of gas, paragraph 17 to 19 and 22.

15. In *COMP/M.3868-Dong/Elsam/Energi E2*[8] the Commission considered that the wholesale market of gas in Denmark comprised the sales made by importers (and re-importers), producers and traders.

16. In the present case the Commission has assessed the impact on the Italian wholesale market of the relative strength of the upstream suppliers. There is, however, no need to decide on this aspect, neither on the exact product market definition in this case, as under any alternative market definition, there will be no competition concerns.

Retail supply of gas

17. In the past[9]**,** the Commission has considered that the market for the supply of gas can be divided in four segments comprising different classes of customers, namely (i) electricity producers for their gas fired plants (CCGTs), (ii) local distribution companies (hereinafter, LDCs), (iii) large industrial customers (with annual requirements above 2 million cubic metres, hereinafter LICs), (iv) small customers (with annual requirements below 2 million[10] cubic metres including small industrial, commercial and domestic customers, SCs).[11]

18. The Parties submit that it would not be appropriate to consider LDCs a class of final customers in Italy. Companies are legally required to unbundle, i.e. to separate in different legal entities their activities of gas supply from those of distribution. The Parties maintain that an LDC in Italy is merely a provider of local transportation service which it must provide to any trader that intends to supply gas to a customer connected to the grid of the LDC. In the view of the Parties, LDCs in Italy do not purchase gas to resell it (this is done by gas suppliers, traders and wholesalers) but only provide the service of local transportation.

19. Given that no competition problems would arise under any delineation, there is no need to decide on the precise segmentation of the product market at retail level.

Relevant Geographic Markets

20. The notifying Parties submit that the wholesale supply of natural gas has an EEA scope.

21. The Commission has in previous decisions considered the market for the wholesale of natural gas to be no wider than national[12]. The respondents to the market investigation have also indicated that the market for the wholesale of gas in Italy is national in scope.

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8 Para 83.

9 Case M.3440 – ENI/EDP/GDP, para 270.

10 Regarding the quantitative threshold for dividing between LICs and SCs, the Parties submit that it would be more appropriate, for the Italian market, to set it at 200,000 cubic metres rather than 2 million. The Italian Energy Authority has decided that companies supplying gas to final customers are obliged to continue to offer gas at a regulated price to household customers with a yearly consumption below 200,000 cubic metres. These claims were confirmed by the market investigation. However, there is no need to conclude on the precise threshold, as under either one, there would be no competition concerns.

11 Case M.3440 – ENI/EDP/GDP, para 270.

12 Case COMP/M.3868-Dong/Elsam/Energi E2, para 227.

22. On the downstream level, the Commission has considered the markets for retail gas supply to be often national[13] in scope. This has been largely confirmed by the market investigation.

23. For the purpose of this transaction, the above geographic market definitions will be maintained.

V. COMPETITIVE ASSESSMENT

Vertical relationships

Wholesale gas supply (upstream) – retail supply of gas (downstream)

24. Gazprom indirectly supplies around one-third of gas to Italy via a number of companies active in this sector, such as […].

25. The main players on the Italian gas wholesale market and their respective market shares are ENI ([30-40]%), Enel ([10-20]%), Gaz de France ([0-5]%) and Hera ([0-5]%). A2A/Edison has a market share of [5-10]%.

26. In the downstream retail supply market in Italy, Premium Gas' has a [0-5]% share while A2A has [5-10]% share in this market. If the market is further segmented at the level of the three relevant groups of customers, the combined market shares of Premium Gas and A2A are as follows: CCGTs: [10-20]%, LICs: [5-10]%, SCs: [5-10]%[14].The Parties submit that, nevertheless, no vertical problems arise from the operation. According to the Parties, because of (i) the limited combined market shares of the Parties on the downstream markets and (ii) the presence of the incumbent ENI and of a wide number of competitors belonging to multinational or Italian groups on this market, no customer foreclosure effects on the upstream gas market would materialise. Gazprom's competitors would be able to continue to supply gas to a significant number of companies. Also, input foreclosure on the downstream Italian gas and electricity market is, according to the Parties, not a risk, because this market is characterised by the incumbency of vertically integrated quasi-monopolies such as ENEL and ENI as well as by the presence of other competitors such as GdF and E.ON. The Parties submit also that Gazprom is bound by long-term supply agreements with […]. Moreover, A2A and Edison are already active in both the market for gas sale and the downstream electricity production market through CCGTs so that their incentives would not be affected by the operation.

27. The large majority of respondents to the market investigation expressed the opinion that no competition concerns would arise with regard to the markets described in this vertical link. Specifically, the market investigation indicated that as a result of this concentration Gazprom – despite its significant supplier position upstream – would not be able to leverage its position on the Italian wholesale or retail markets.

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13 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.

14 If the alternative threshold between LICs and SCs of 200,000 cubic metres is applied as suggested by the parties, the combined market shares would be [5-10]% (LICs) and [5-10]% (SCs) respectively.

28. In view of the above, both customer and input foreclosure seem unlikely in this case. The Commission therefore considers that the transaction does not raise serious doubts as to its compatibility with the internal market as regards the vertical relationship between the market for the wholesale gas supply and the market for retail supply of gas in Italy.

V. CONCLUSION

29. 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 European Commission,
(Signed)
Joaquín ALMUNIA
Vice-President of the European Commission