EN

Case No COMP/M.3096 - TOTALFINAELF / MOBIL GAS

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

Subject: **Case No COMP/M.3096 - TotalFinaElf/Mobil Gas Limited Notification of 30.01.2003 pursuant to Article 4 of Council Regulation No 4064/89**[1]

1. On 30.01.2003, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89[2] by which the undertaking TotalFinaElf Gas and Power Limited ("TFE", UK), belonging to the TotalFinaElf group, acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Mobil Gas Limited ("MGL", UK), belonging to the Exxon Mobil Corporation, by 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. TFE's principal activities are the trading of gas, electricity, liquefied natural gas and derivatives in the UK and Europe, electricity generation and the supply of natural gas and electricity to UK industrial and commercial customers. The TotalFinaElf group is vertically integrated upstream in the development and production of gas in the UK. It is

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).

2 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).

active in trading of gas on the UK market. TFE is a subsidiary of the TotalFinaElf Holding Europe, which itself is owned by TotalFinaElf SA, Elf Exploration Production and Elf Aquitaine.

4. MGL sells natural gas at the retail level to UK industrial and commercial customers. Its main assets are around 2,700 gas supply contracts under which natural gas is supplied to 8,366 supply points. ExxonMobil, its ultimate parent company, has activities on the upstream market for the development of oil and gas fields in the UK and the production of gas. Furthermore, the ExxonMobil group is active in gas trading on the UK market.

II. THE OPERATION

5. On the 21 January 2003, TFE and Mobil Oil Company Limited ("Mobil") entered into a Share Sale and Purchase Agreement, whereby TFE acquires 100% of the shares in MGL. The proposed transaction does not affect any upstream gas markets, as only the gas supply business of MGL is involved.

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 billion[3] (TFE Group €105,318 million, MGL €357 million). Each of the companies have a Community-wide turnover in excess of EUR 250 million (TFE Group €55,344 million, MGL €357 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 MARKETS

8. TFE and MGL are active in the supply of gas to industrial and commercial users in Great Britain. This includes supplies to public sector customers. The notified concentration will create horizontal overlaps on the markets for supply of gas to industrial and commercial users and interruptible gas. Although TFE is vertically integrated into the production and trading of gas, the transaction will not change its degree of vertical integration, as MGL is only active in the downstream market for supply of gas to customers in Great Britain.

<u>Gas</u>

A. Relevant product markets

9. According to TFE the relevant product market comprises natural gas, which is transported via a fixed pipeline network across the whole of Great Britain to

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3 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). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

consumers' premises where their consumption of gas is metered. TFE submits that a distinction should be made between the industrial market on the one hand and the domestic market on the other hand, which is based on the different conditions of competition that apply to these customer groups. Indeed, industrial and commercial customers enter into individually negotiated contracts where the price and duration of the contract may be negotiable, especially for large customers. In contrast, domestic customers purchase gas on suppliers' standard terms and on the basis of its prevailing tariff. According to the parties, it is not relevant to distinguish more narrow markets within the industrial and commercial segment.

10. The Commission agrees with TFE that natural gas constitutes a separate product market and this was confirmed during the market investigation. The Commission has previously subdivided the supply of gas into four sub-markets.[4] These consist of (i) the supply of gas to domestic customers, (ii) the supply of gas to small industrial customers (2,500 therms per annum to 25,000 therms per annum), (iii) the supply of large industrial customers (above 25,000 therms per annum) and (iv) the supply of interruptible gas, i.e. gas supplied to large customers who. unlike customers of the other markets, are prepared to incur interruptions to their supply in return for lower prices.

11. In the present case the relevant affected product market concerns only (i) the supply of gas to large industrial and commercial customers and (ii) the supply of interruptible gas. The above mentioned sub-segmentation has largely been confirmed by the market investigation. The applied segmentation is generally used within the industry, and third parties have pointed to price differences between the different customers groups. These customers have different consumption profiles and face different transport cost. The precise product market definition can however be left open, since in all possible product market definitions, the concentration will not create any significant competition concerns. The Commission has furthermore considered whether, the supply of gas to electricity generators could be considered to be separate sub-segment within the gas market. This is primarily based on the high consumption pattern of electricity generators and the length of their supply contracts. However, for the purpose of this decision the question can be left open, since both TFE and MGL[5] are only marginally active in the supply of gas to electricity generators. The inclusion of the supply of gas to electricity generators in the industrial and commercial and interruptible sub-segments would further dilute the parties markets as describe below.

B. Relevant geographic markets

12. The Commission has recently defined the geographic market for the supply of gas to be national in scope.[6] TFE considers the geographic market to be Great Britain. This was confirmed by the market investigation. Natural gas is transmitted and distributed in Great Britain through a single transport company, Transco, which operates both the high-pressure National Transmission System and the lower pressure distribution

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4 COMP/M.3007 – E.ON/TXU-Europe Group plc. Decision of 18 December 2002.

5 TFE has informed the Commission that in 2002 MGL did not supply gas to electricity generators.

6 COMP/M.3007 – E.ON/TXU-Europe Group plc.

networks. This pipeline network serves the majority of the population of Great Britain. Furthermore, there are no major differences in the regulatory framework for England, Wales and Scotland. Based on this, it is the Commission's view, that the geographic scope of the markets is Great Britain.

VI. COMPETITIVE ASSESSMENT

Horizontal issues

13. Based on the product market definition withheld by the Commission in previous cases, the transaction will give rise to two affected markets (i) the supply of gas to large industrial and commercial customers and (ii) the supply of interruptible gas.

14. Based on figures from DTI[7] the natural gas consumption in the United Kingdom amounted to 1,110.1 TWh in 2001 of which 379.2 was consumed by domestic users. The market in Great Britain for the supply of natural gas to industrial and commercial customers totalled 730.9 TWh in 2001. The DTI figures do not separate the consumption of gas according to the sub-segmentation used by the Commission.

15. Datamonitor, a market analysis company, provides market share figures based on (i) small industrial and commercial, (ii) large industrial and commercial and (iii) interruptible gas. The Datamonitor figures only include "normal" customer sites. Such implies that oil refineries, electricity generation and CHP (Combined Heat and Power) sites are not included within Datamonitor's definitions of supplier sites and market shares. Based on this, TFE argues that the Datamonitor figures understate the size of the total industrial and commercial market and the market for interruptible gas (including electricity generation) by 390.9 TWh. TFE submits that these volumes of gas should accordingly be allocated to either large industrial and commercial customers or to interruptible gas to fully reflect its market position.

16. However, as the parties' supply of gas to electricity generators is limited, the Datamonitor figures can be used for the competitive assessment. Using the Datamonitor figures implies, that the competitive assessment is based on the most narrow market definition and thus a worst case scenario.[8] Under the assumption that the supply of gas to electricity generators could be considered as a separate market, the parties' market share would be below 7% of such market. As such, it can be left open whether the supply of gas to electricity generators constitutes a separate sub-segment, as this would not alter the competitive assessment.

<u>Large industrial and commercial customers</u>

17. The combined market share of TFE and MGL (based on volume of gas supplied in August 2002) was 25.5% (TFE 12.7% and MGL 12.8%). The corresponding market share based on number of sites/customers supplied is 20.6% (TFE 12.1% and MGL 10.5%). The new entity will continue to face competition (based on volume figures) from Powergen/TXU with 20%, British Gas with 12%, Shell Gas Direct with 12%,

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[7] UK Energy in Brief, December 2002, Department of Trade and Industry.

[8] Datamonitor estimates the total market for large industrial and commercial customers to be 161.2 TWh and the total market for interruptible gas to be 116.1 TWh on figures from August 2002.

GdF with 10%, Statoil with 8%, BP Gas with 7% and a number of smaller competitors. Attributing the supply of gas to electricity generators, CHP and oil refineries to the market for large industrial and commercial customers, as advocated by TFE, would reduce the parties' market share.

18. The Commission's market investigation shows that customers generally invite 3-5 suppliers to bid for their contracts. Contracts are generally made on an annual basis, although contracts can vary from three months to several years. The main criterion for selecting a supplier is price and the security of supplies. Some respondents use dual sourcing in order to reduce their dependency of an individual supplier. The market investigation has furthermore showed that customers, in general, face little difficulties in changing suppliers.

19. Some respondents to the market investigation have expressed concerns that the ongoing consolidation in this industry makes it more and more difficult to obtain a sufficient number of bids, when contracts are up for renewal. Whilst agreeing that, on the face of it, the proposed transaction would not significantly change the competitive balance in the market, respondents are concerned that the ongoing consolidation might impact the competitive nature of the sector.

20. The Commission's market investigation showed that the supply of gas to industrial and commercial customers in general, is competitive. Prices are transparent and the margins made on the supply of gas are considered by market participants as relatively low. The proposed transaction is unlikely to change this situation. TFE will continue to face competition from a number of competitors, which are all considered to compete effectively with the parties.

21. It can therefore be concluded, that the proposed transaction will not create or strengthen a dominant position on the market for the supply of gas to large industrial and commercial customers.

Interruptible gas

22. Both TFE and MGL are active on the market for the supply of interruptible gas. The market for interruptible gas only targets large customers who, unlike the other customers, can afford to incur interruptions to their supply in return for lower prices. Any supply point that has a daily metering and annual consumption level in excess of 200,000 therms (5.86 GWh) can in theory apply for interruptible gas status.

23. Based on the Datamonitor figures, which exclude supplies to electricity generators, CHP-plants and oil refineries - to a large extent the customers of interruptible gas, the parties' combined market share based on volume in 2002 is 25% (TFE 11.3% and MGL 13.7%). The main competitors of TFE in this market are BP Gas (20%), GdF (14%), British Gas (10%), Shell Gas Direct (11%), Statoil UK (12%) and Powergen/TXU (7%). Based on the number of supply sites, the parties' market share is 16.5%.

24. As for large industrial and commercial customers, the customers for interruptible gas are large sophisticated buyers. The use of tendering procedures is widely used and price is the main criterion for choosing a supplier. Contracts for the supply of interruptible gas are generally short term, ranging from three month to three years. Most of the respondents to the Commission's market investigation contract interruptible gas on an

annual basis. In general, changing suppliers is regarded as being relatively easy, although it takes time to change suppliers and billing disputes could further prolong this period. One respondent submits that difficulties in changing supplier are related to the inefficient transfer system of Transco.

25. The proposed transaction is not likely to have a major impact on the competitive situation in the market. TFE will continue to face significant competitors that are all able to compete effectively. Based on the above, it can be concluded that the transaction will not create or strengthen a dominant position on the market for the supply of interruptible gas in the United Kingdom.

Vertical issues

26. Although both TFE and ExxonMobil are active in the upstream markets concerning the exploration, production, sale, transport, processing and trading of natural gas, TFE will only acquire the supply business of MGL, with ExxonMobil continuing to act as an independent operator on the upstream markets.

27. A number of third parties have raised concerns relating to the effect on the market for trading of natural gas. TFE trades on a number of wholesale gas markets in the UK such as SpectronOnLine, ICE, IPE, and PrebonOnLine. Based on the volumes traded in 2002, TFE's share of traded volumes does not exceed 7%. Based on the limited horizontal overlap and the lack of any vertical impact of the transaction, it seems unlikely that the transaction will reinforce vertical integration and thereby significantly affect any upstream markets.

VII. CONCLUSION

28. 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

Mario MONTI
Member of the Commission