

***Case No COMP/M.3665 -
ENEL / SLOVENSKE
ELEKTRARNE***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 26/04/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.04.2005

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sir/Madam,

**Subject: Case No COMP/M.3665 Enel / Slovenske Elektranre
Notification of 17/03/2005 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 17/03/2005, the Italian undertaking Enel SpA (“Enel”) notified its intention to acquire, within the meaning of Article 3(1)(b) of the Council Regulation (EC) No 139/2004 (“EC Merger Regulation”), sole control over of the whole of the Slovak undertaking Slovenske Elektranre a.s. (“SE”) by way of purchase of shares.

I. THE PARTIES

2. Enel is active in the generation, transmission, distribution and supply of electricity, mainly in Italy, where it is the main provider of electricity to both domestic and industrial users. It is also active in the Southern-Eastern Europe, namely in Bulgaria and Romania. Furthermore, Enel Trade S.p.A., belonging to the Enel Group, is responsible for the purchase and sale of natural gas for domestic electricity generation and gas operations in the Italian market. The Italian State holds, through the Ministry of Economy and Finance and the “Cassa depositi e prestiti”, 41.8 % of the shares in Enel. The remaining 58.2% shareholding is publicly floated.
3. SE is the main producer and supplier of electricity in Slovakia. It purchases electricity from independent power producers in Slovakia and abroad. SE also provides ancillary services to SEPS, the Slovak Transmission System Operator (TSO). In addition to its core business, SE is also active in a number of other business activities including: heat production and sale, transport and storage of

¹ OJ L 24, 29.1.2004 p. 1.

nuclear materials, leasing of telecommunications networks, construction services in the power sector and rent of recreational premises. However the parties submit that the revenues derived from these activities are not significant and do not lead to any overlap with ENEL.

II. THE OPERATION AND CONCENTRATION

4. On June 2002, the Slovak Government approved the selling to a strategic investor of 66% of the share capital of SE, which is entirely held by the Slovak National Property Fund (NPF). Enel submitted a binding offer on July 2004 and on the 17th of February 2005 a final agreement was signed by the parties.
5. Following the transaction, SE own two nuclear power plants, namely EMO 1&2 (880 MW) and EBO V2 (880 MW), two thermal power plants, namely EVO (1.320 MW) and ENO (522 MW), and several hydro power plants with a total capacity of 1.653 MW. The overall installed capacity of the plants involved in the transaction is 5.225 MW. The framework of the transaction includes the drafting of a feasibility study for the realisation of the nuclear power plant EMO 3&4 (880MW) to be finalised within 12 months from the closing of the transaction. The other plants currently owned by SE will be transferred to other State entities before the closing of the transaction.
6. With a 66% of SE's share capital, ENEL will be entitled to appoint [...] members of the Management Board and [...] members of the supervisory Board. The parties submit that the NPF (which will hold the remaining shareholding in SE) may have substantial veto rights on some matters. However these rights are not such as to give NPF joint control of SE in the sense of the Commission Notice on the control of concentrations between undertakings. Therefore SE will be solely controlled by Enel.

III. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (€ 32.374 million for Enel, € 1.225 million for SE)². SE is the sole undertaking achieving more than two third of its turnover in one and the same Member State (Slovakia). The notified operation therefore has a Community dimension.

IV. COMPETITIVE ASSESSMENT

A. Relevant product markets

(1) Electricity

8. Parties have identified, on the basis of previous Commission decisions³, the following markets in the electricity sector:

² 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).

³ Case COMP. M.3440-EDP/ENI/GDP

- wholesale supply of electricity;
 - ancillary services;
 - transmission;
 - distribution;
 - retail supply (with a possible distinction between large (industrial) and small (commercial and residential) customers⁴).
9. SE is not active in the transmission sector (transport of electricity over high voltage grid), in the distribution (transport of electricity over low voltage grid) or in the retail supply of electricity. Therefore, the only markets which are relevant for the analysis of the present transaction are the wholesale supply of electricity⁵ and the provision of ancillary services.

(a) Wholesale supply of electricity

10. The wholesale supply of electricity, as defined in recent decisions of the Commission⁶, encompasses the production of electricity at power stations and the import of electricity through interconnectors for purpose of resale to retailers or to a lesser extent directly to large industrial end-users.

(b) Ancillary services market

11. The ancillary services market consists of reserve capacity and services provided so that the TSO can fulfil its duty, at the national level, to maintain the quality of supplies and operational reliability of the system, including the balance between supply and demand. These services are provided by wholesale market participants at the request of the TSO.

2) The heat markets

12. Parties submit that, as regards heat, the following markets should be distinguished in heat generation, heat generation and transmission and heat transmission for customer or end-user. SE is active only in the sectors of heat production and sales.
13. However, for the purpose of the present decision, the precise delineation of the above-described product markets can be left open, as the conclusions of the Commission's investigation remain unaltered irrespective of the definition retained.

B. Relevant geographic markets

14. The parties submit that due to the convergence of the different national legislation, which followed the EU accession, and to the high level of interconnection, the

⁴ Case COMP. M.3440-EDP/ENI/GDP

⁵ including wholesale supply to large customers

⁶ Case COMP. M.3440-EDP/ENI/GDP

geographic scope of the wholesale market should be the CENTREL area, which includes the Central European countries, Poland, Hungary, Czech Republic and Slovakia. However, some evidence also points towards possible segmentation between the wholesale markets of the CENTREL countries, and thus towards national markets. The question as to whether the geographic scope of the relevant wholesale electricity market is limited to Slovakia or encompasses a wider area (up to CENTREL) can, however, be left open for the purpose of the present decision.

15. As for the other markets (ancillary services and heat), the parties submit that they should be analysed at a national level. In a recent decision⁷, the Commission has considered ancillary services market as national in scope. In this case also, it appears that ancillary services should be considered at a national level due to the fact that the balance of the system is managed by the TSO at the national level. However, for these services, as further explained below, the definition of the relevant markets may be left open for the purpose of the analysis of the present transaction.

C. Competitive assessment.

16. In the Slovak Republic generation/wholesale activities were fully liberalized on 1 January 2005. As a result there is no price regulation at a wholesale level. Also, import and export prices are determined by bilateral contracts and since 1 January 2005 there are no limits on the amounts of electricity that can be imported.
17. If the market is analysed at a national level, SE is the biggest provider of electricity in Slovakia with almost 83% of the installed capacity and 84% of generation effectively produced. SE is the main supplier of electricity for the three regional distribution companies in Slovakia and also directly supplies electricity to four large customers in Slovakia, which are the only customers connected directly to the high voltage transmission grid. If the market is analysed at CENTREL level as submitted by the parties, the market position of SE will be significantly lower with [5-15]% in installed capacity and [5-15]% in generation.
18. However, there would not be any overlap in the market for wholesale electricity between the parties' activities for any geographic market definition (national or as wide as CENTREL) since Enel is not active either in Slovakia or in any other CENTREL country. Besides, there is no evidence that, absent the merger, ENEL would be a timely, effective and likely entrant in those markets or that SE would be a likely potential candidate in the Italian or Austrian markets.
19. Since Enel does not have any activity in the natural gas market in Central Europe, the transaction would not give rise to competition concerns from a vertical standpoint either.
20. Concerning the ancillary services market, SE was the only provider of ancillary services in Slovakia, until 2004, when the Regulatory Office of Network Industries (RONI) issued a decision capping SE's share of ancillary services and new players entered this market. SE has a current market share of about 95%. In accordance with the draft "Decree on the Rules of the Electricity Market", drafted by RONI

⁷ Case COMP. M. 3440 EDP/ENI/GDP

and issued by the Slovak Government 1 April 2005 (as stated in the “New Act on Regulation in Network Industries” approved by the Parliament in October 2004), market mechanisms will be introduced, probably in the form of auctions, in the ancillary service market. According to the parties these changes are expected to reduce significantly, in the short-term, SE’s market share. However, even, in this market there are no competition concerns arising from the proposed operation since ENEL is not active on this market in Slovakia or in any CENTREL country.

21. Lastly, there are no affected markets in the heat sector, irrespective of the product and geographic market definition retained. In addition there are no overlaps between SE’s and Enel’s activities.

V. CONCLUSION

22. 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 (EC) No 139/2004.

For the Commission

(Signed)

Neelie KROES

Member of the Commission