

***Case No COMP/M.3874 -
CVC / RUHRGAS
INDUSTRIES***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 01/09/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 01/09/2005

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case No COMP/M.3874 – CVC/Ruhrgas Industries
Notification of 29 July 2005 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 29/7/2005, the Commission received a notification of a proposed concentration by which the undertaking CVC European Equity IV, belonging to the group CVC Capital Partners Group S.a.r.l. (“CVC”, Luxembourg) acquires control of the whole of Ruhrgas Industries (“RI”, Germany) by way of purchase of shares.

I. THE PARTIES

2. CVC is a group of companies, which provides investment and management advice to investment funds and management of investments on their behalf. It holds investments in various industries in Europe and in the Asia-Pacific region. Through its subsidiary ista, the CVC Group is active in the supply of metering services in a number of European countries.
3. RI is an international group of companies mainly active in the manufacture and sale of meters for gas, electricity and water consumption, and in the supply of related services (mainly maintenance and repair) as well as in the production of industrial furnaces. RI is currently controlled by E.ON Ruhrgas Aktiengesellschaft.

¹ OJ L 24, 29.1.2004 p. 1.

II. CONCENTRATION

4. CVC will acquire, through an indirectly held vehicle company the totality of the shares of RI and, consequently, sole control over the latter.

III. COMMUNITY DIMENSION

5. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (CVC: EUR 19.3 billion; RI: EUR 1.4 billion). Each of CVC and RI have a Community-wide turnover in excess of EUR 250 million (CVC: EUR [...]; RI: EUR [...]), 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.

IV. COMPETITIVE ASSESSMENT

A. Relevant product markets

6. The present transaction concerns the sectors of the production and sale of gas, electricity and water meters as well as the supply of metering and sub-metering services. While RI produces and sells gas, electricity and water meters, ista provides metering and sub-metering services. Currently some metering services are regularly supplied to the customers together with the corresponding meters.

(i) Meters

7. Meters are used in order to measure and bill the consumption of gas, electricity, water and heat. The parties submit that meters should be distinguished according to their application since they are not interchangeable from a demand-side perspective. A gas meter for example could not be used for the measuring of electricity. This lack of demand-side substitutability is also demonstrated by the fact that the supply of water, electricity and gas is measured in different units (in kilowatts/h for electricity and gas and cubic meters for water).
8. Furthermore, the parties state that all meters can be subdivided into residential meters for private homes and commercial and industrial meters (C&I meters) for business and industry applications. Residential and C&I meters mainly differ with regard to technology, accuracy, flow rates and prices. C&I water meters, for example, are characterized by higher flow rates (more than 2,000 liters per hour) and a different technology compared to residential water meters. Furthermore, they are according to the parties significantly more expensive than residential water meters. C&I meters are, moreover, frequently equipped with automated meter-reading (“AMR”) modules which allow for a remote reading of the meters and require the use of specific metering services only to a reduced extent.
9. While the distinction between a residential and a C&I segment applies to all types of meters, specific differentiations have to be considered for electricity meters on the one hand and for water meters as well as heat meters on the other hand. With regard to electricity meters, a third category of meters - apart from residential and C&I meters -

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).

comprises high-end electricity meters. Large energy supply companies use them to measure the consumption and to control the load flow of electricity in the (extra-)high voltage grid.

10. As to water meters, the parties submit that, within the market for residential water meters, it is appropriate to further distinguish utility water meters and sub-metering water meters. Utility water meters are normally located “behind the doorstep”, i.e. where the public service network is connected to proprietary installations on the premises. They measure the complete water consumption of all residential units together in one building. Conversely sub-metering water meters are used for the allocation of water consumption per residential unit within apartment buildings with at least two residential units.
11. According to the parties, residential utility and sub-metering water meters have different characteristics: utility water meters must have a higher flow rate than sub-metering meters and a guaranteed metering precision. Due to the more complex technology for higher measurement accuracy, prices for utility water meters are significantly higher than those for sub-metering water meters. Moreover, while sub-metering water meters are mainly sold to meter reading providers and subsequently sold or rented to real estate and housing companies, the large majority of the other meters are sold to the utilities. In most Member States utilities are still in charge of the installation, maintenance and exchange of gas, water and electricity meters, which remain the property of the utility.
12. The same distinction of residential meters in utility and sub-metering meters applies to heat meters, but not to gas or electricity meters. There is no need for an allocation of gas or electricity per residential unit, as every owner or tenant of a building or apartment has a direct supply contract with the utility (and thus a separate gas and/or electricity meter “behind the doorstep”).
13. The submission of the parties as regards to the subdivision of the meter markets goes broadly in line with the previous decision concerning this industry Siemens/Elektrawatt³, where the Commission held that gas, electricity and heat meters constitute separate markets (water meters were not affected by the concentration). Furthermore the Commission found that the market for electricity meters could be further sub-delineated to account for the differences existing between meters for residential use, C&I use and, high-end applications for high-voltage grid.
14. The market investigation in this case also broadly confirmed the view of the parties. Apart from the lack of demand-side substitutability, the market investigation also did not confirm a general supply-side substitutability, even though the major producers of meters usually offer several if not all types of meters. The majority of market participants found that producers specialised on one type of meter (water, gas, electricity, heat) were not able to easily switch to other types due to the differing technology.
15. In any event, for the purpose of the analysis of the present transaction, the exact definition of the relevant markets may be left open since even under the narrowest market definition no competition concerns arise.

³ IV/M. 913 Siemens/Elektrawatt.

(ii) Metering and sub-metering services

16. The transaction concerns in addition the sector of metering and sub-metering where ista is active. Metering is the activity of reading, recording, collecting and processing of consumption data in relation to meters. The customers are usually the utilities who, however, to some extent also provide metering services in-house. Metering services are regularly not offered as service package including the respective hardware. Utilities usually tender and award orders for services and hardware separately.
17. Sub-metering describes the reading, recording, collecting and processing of consumption-dependent data in relation to sub-meters in single residential units. It basically concerns the allocation of heat and water usage in apartment buildings and commercial premises and the consumption dependent billing of heat, warm water and cold water. Typical sub-metering customers are property managers, private owners and housing or real estate companies. The house owners can either buy the hardware used for sub-metering purposes or rent it from the sub-metering service providers. Usually sub-metering services are provided as a combination of services and hardware.
18. The parties submit that the relevant product market includes metering and sub-metering services, since both services require similar processes. These processes comprise the installation of the necessary devices, the reading of the data, the data processing which includes the calculation of prices on the basis of the consumption data and the preparation of the respective bill. The market investigation has shown that many companies are able to provide both types of services. However, the different groups of clients for both services (utilities for metering and housing companies for sub-metering) would nevertheless speak in favor of separate markets. Since the analysis does not change for both alternatives this question can be left open.
19. The parties submit, moreover, that neither a metering market nor a sub-metering market should be divided according to the substance measured, such as gas and water. For the reading, recording, collecting and processing of consumption data, it is according to the parties irrelevant whether the data comes from water, electricity or gas meters. Moreover, according to the parties, sub-metering of water and heat usually takes place as a combined process when the service providers read the sub-meters for water and heat in the residential units at the same time.
20. The market investigation has brought about mixed results in this respect. Since there is no precedent clearly showing the Commission's approach in this sector⁴, the parties have provided the relevant data for every sub-delineation of the metering markets. The definition of the relevant product market may be left open since even under the narrowest market definition the competitive assessment does not give rise to competition concerns.

B. Relevant geographic markets

(i) Meters

⁴ These sectors were previously examined by the Commission in the cases CVC/Viterra COMP M. 3160 and ACEA/BTICINO/Siemens metering/JV; COMP M. 3074. Both decisions were adopted by a simplified procedure.

21. In the decision Siemens/Elektrawatt, the Commission left open the definition of the relevant geographic market. The parties submit that the geographic dimension of all the above-mentioned meter and sub-meter markets should be the EU. The Measurement Instrument Directive⁵, even though not fully implemented yet, has according to the parties significantly accelerated the acceptance of common technical standards. The parties moreover, indicate that significant cross-border sales and the existence of a public tender system for the purchase of meters open the market to all major European producers.
22. The market investigation has brought about differing results in this respect, since many customers stated to use EEA-wide tenders to buy meters whereas others indicated to buy only from national suppliers. It, moreover, appears that different standards and regulatory requirements are still relevant in the different EEA-countries. However, most meter producers appear to be able to adapt to these national requirements. Cross-border sales of many meter producers reach significant rates, which would speak in favour of an EEA-wide market. On the other hand, local presence seems to be an essential factor in these markets, since most producers have local sales agents or subsidiaries in many Member States. However, the market definition can be left open since the transaction does not give rise to competition concerns neither under a national nor under an EEA-wide market definition.

(ii) Metering and sub-metering services

23. The parties submit that the relevant geographic market(s) for metering (including or excluding sub-metering) and the market(s) for sub-metering are national in scope, since the legal frameworks for metering and sub-metering in the Member States still are characterized by differences in national law. In contrast to hardware no common standards have evolved so far. This finding was broadly confirmed by the market investigation.

B. Competition Assessment

24. The transaction does not lead to any affected market at a horizontal level. RI is not active in the provision of metering or sub-metering services, whereas ista does not produce any meters. To a minor extent ista resells sub-metering meters independently from sub-metering services to very specific customer groups, such as craftsmen and architects. It is, however, only active on this reseller level and does not compete on the production level. The vast majority of the sub-metering meters bought by ista are sold in combination with the respective sub-metering services to the customers.
25. The merger can therefore be regarded as a vertical transaction taking into consideration that sub-meters are needed as necessary input for the provision of sub-metering services. For metering services this is not the case. However, vertical issues might occur with respect to a potential combined supply of metering services and meters in the future. Since RI does not produce any heat meters, this market is not considered any further even though ista also provides heat sub-metering services.

⁵ Directive 2004/22/EC of the European Parliament and of the Council of 31 March 2004, O.J 2004 L 135, 1-80

26. At a vertical level, the transaction would give rise to a number of affected markets depending on the definition of relevant markets retained.

(i) Vertically affected markets

27. RI sells meters of differing types in most Member States. Ista on the other hand offers metering services only in four countries: Finland, Spain, Sweden and the UK. Sub-metering services are supplied by ista in 13 Member States. Since C&I meters are mostly equipped with AMR, no strong vertical relations between these meters and metering services occur. However, since apparently not all C&I meters are AMR equipped and since the data received via AMR also need to be processed and used for billing purposes, these markets will also be assessed.

Gas - meters

28. If the markets for residential gas meters were to be defined as EU-wide, RI would have a market share of [30-40]% in value and [35-45]% in volume on this market. ista is active in metering in Finland, Sweden, Spain and the UK, which would therefore lead to vertically affected markets. ista achieves market shares in metering between [0-10]% and [0-10]% in all these national markets. It is, however, active in the specific segment of gas metering only in Spain ([0-10]% of market share). If the gas meter markets were considered as national, there would be vertically affected markets only in Spain (RI: [35-45]% (value), [30-40]% (volume)) and the UK (RI: [20-30]% (value), [50-60]% (volume)).

29. Vertically affected markets also exist on the market for gas C&I meters in Spain, on which RI reaches a market share of [55-65]% whereas ista achieves a market share of [0-10]% for gas metering. The parties confirmed that ista's gas metering completely relates to residential gas meters and not to C&I gas meters. A vertically affected market would therefore only exist if an overall market for gas metering or metering in general is assumed.

Electricity - meters

30. RI has a market share of [40-50]% in the UK market for C&I electricity meters. Ista at the same time reaches a market share of [0-10]% in the market for electricity metering, which more specifically relates completely to the reading of C&I meters. However, it has to be noted that ista is active in electricity trading and supply in the UK. In the framework of this activity it provides – as a pre-product – C&I electricity meters and metering services to its customers. These meters are according to the parties used in order to record consumption data and create accurate consumption profiles as a basis for the electricity agreements. ista's activity in C&I metering can therefore be regarded as part of its electricity trading activity and not as an independent offer on the metering market. As a consequence, this formally vertically affected market will not be regarded any further.

Water - meters

31. The metering markets in Sweden, Spain and the UK and the upstream market for water meters would be vertically affected markets, for any geographic definition of the latter (EEA or national). Finland would only be affected if an EEA-wide market for meters is assumed. RI has market shares [20-30]% (value) and [20-30]% (volume) on an EEA-wide market for utility water meters (but only between [15-25]% and [15-25]% on a market for residential water meters comprising both utility water meters and water sub-metering meters or on a water meter market even including C&I water meters in addition). On the nationally defined markets, RI reaches depending on the exact definition of the water meter markets market shares between [30-40] and [60-70]% in Sweden, between [25-35] and [30-40]% in Spain and between [50-60]% and [55-65]% in the UK. Ista has market shares between [0-10]% and [0-10]% for metering in general in these countries. The only country where it provides services especially for water metering is Spain, where it has a market share of [0-10]%.

Water - sub-metering

32. Furthermore, if metering and sub-metering are defined as two distinct markets, Austria, the Czech Republic, Denmark, Luxembourg, the Netherlands, Poland and Slovakia would be vertically affected markets with respect to sub-metering. Ista has sub-metering market shares with only marginal variation between value and volume figures of round-about [20-30]% in Austria, [20-30]% in the Czech Republic, [35-45]% in Denmark, [50-60]% in Luxembourg, [65-75]% in the Netherlands and [30-40]% in Poland. It reaches, moreover, between [15-25]% (in value) and [20-30]% (in volume) in Slovakia.
33. RI has market shares of [0-10]% or less in Austria ([0-10]%), Denmark ([0-10]%), Luxembourg ([0-10]%) and the Netherlands ([0-10]%) in the corresponding sub-metering water meters markets. Its market shares exceed [0-10]% in the Czech Republic ([5-15]%), Poland ([10-20]%) and in Slovakia ([5-15]%).
34. Similarly, if the sub-metering water meters market were to be defined at EU level, RI would have a market share of [10-20]% in terms of value and [10-20]% in terms of volume on this market. However, due to Ista's market shares in the downstream market, this market would be considered as vertically affected market together with the national markets for sub-metering mentioned above as well as Italy ([40-50]%) and Spain ([25-35]%), where RI does not sell any sub-metering water meters and which are only affected if an EU-wide market for sub-metering water meters is assumed.

(ii) Potential foreclosure

Gas meters / Water meters

35. The market investigation has not brought about significant concerns with respect to the proposed transaction on the residential (utility) gas meter markets or the residential (utility) water meter markets. Foreclosure does not seem likely even though RI achieves significant market shares in the majority of the affected meter markets. It has to be noted that meters are at present usually not supplied to the customers as a package with the respective metering services. Therefore, given that goods and services are sold independently any foreclosure possibility at the current status is to be excluded.
36. However, even if a combined supply evolved in the near future a foreclosure effect cannot be expected. It seems unlikely that RI would in the future (exclusively) focus on

supplying ista to the detriment of the other providers of metering services. In view of the very small market shares of ista in all corresponding metering markets, the profitability of such a strategy has to be doubted.

Water sub-metering

37. On the water sub-metering market, package sales of metering services including the corresponding hardware are common. ista's market shares are in some markets significantly above 25% which raises the issue of a potential foreclosure of RI's competitors in the production of sub-metering water meters who might be at risk to lose access to the major customer ista as a consequence of the transaction. Also in this respect the market investigation did not show any likely anticompetitive effects resulting from the merger.
38. In Austria, Denmark, Luxembourg and the Netherlands, a foreclosure effect does not appear to be likely since RI's activities are very limited in the market for water sub-metering meters in all of these countries (below or equal [0-10]%). In Austria, anticompetitive effects cannot be expected since ista's market share does not reach a critical level but only slightly exceeds the threshold for a vertically affected market ([20-30]%). The market investigation has not indicated any competition concerns here.
39. ista reaches its highest market shares in Denmark ([35-45]%), Luxembourg ([50-60]%) and the Netherlands ([65-75]%). It has to be considered, that these markets are comparatively small, in particular the two latter ones. The market volume of water sub-metering meters is estimated at 2.2 million Euro in Denmark, 16,000 Euro in Luxembourg and 390,000 Euro in the Netherlands. There are no major local producers of water sub-metering meters in these three countries, but the customers there are supplied from abroad mainly by the large producers who are mostly active in all EEA-countries. It appears that the reason why no significant concerns in this respect were raised in the market investigation can be found in the fact that the disadvantages which competing suppliers had to suffer in case ista decided to mainly use RI's sub-metering meters in the future are rather limited.
40. In the Czech Republic, Poland and Slovakia, RI's market shares range between [0-10]% and [10-20]% while ista's market shares for water sub-metering in these three countries reach values between [15-25]% and [30-40]%. In all these countries, other producers of water sub-metering meters appear to still have sufficient alternative customers even if ista should decide in the future to mainly source these meters from RI.
41. Italy and Spain are only affected if an EEA-wide market for meters is assumed, since RI does not sell water sub-metering meters in these two countries. Ista reaches market shares in the national water sub-metering markets of [40-50]% (Italy) and [25-35]% (Spain). However, it has to be considered that in assessing a foreclosure effect in these differing geographic markets, only the EEA-wide perspective applies since only the meter producers are affected by a potential foreclosure which could occur if ista was an essential customer.
42. However, on an EEA-wide level, ista would have a calculative market share of [20-30]%. Even though ista itself operates in national markets, this calculative market share can be used as an indication as to how much the producers of water sub-metering meters depend on ista. It can be concluded, that the producers still have sufficient alternative customers in Europe even if in some countries ista's market shares are high.

This goes in line with the fact that no concerns in this respect were raised during the market investigation.

V. CONCLUSION

43. 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