

***Case No COMP/M.3883 -
GDF / CENTRICA / SPE***

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

Article 6(1)(b) NON-OPPOSITION
Date: 07/09/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 07.09.2005

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case No COMP/M.3883 – GDF / CENTRICA / SPE
Notification of 02.08.2005 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 02.08.2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (“Merger Regulation”) by which the undertakings Gaz de France International S.A., controlled by Gaz de France S.A. (“GDF“, France), and Centrica Overseas Holding Limited, controlled by Centrica PLC (“Centrica“,UK) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the undertakings SPE S.A. („SPE“, Belgium), ALG Negoce S.A. („ALG“, Belgium, hitherto controlled by GDF but not by Centrica) and Luminus NV („Luminus“, Belgium, hitherto jointly controlled by Centrica and a holding company of Flemish communes called Publilium N.V. but not by GDF), by way of contribution agreements and purchase of shares. The acquired and contributed activities together constitute “New SPE“ (Belgium).
2. After examination of the notification, the Commission has concluded that the operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

¹ OJ L 24, 29.1.2004 p. 1.

I. THE PARTIES

3. **GDF** and **Centrica** are each active in production, trade and supply of gas and electricity. In Belgium, GDF is active on its own and through its subsidiary ALG, a joint venture with Walloon communes, and Centrica is active through Luminus, a joint venture with Flemish communes. ALG is active in the supply of gas and electricity in Belgium, mainly in the Liège province. **Luminus** is active in the supply of gas and electricity in Flanders.
4. **SPE** is a Belgian company active in the production of electricity (gas/steam turbines, hydro, wind and nuclear energy) and the supply of electricity products. It is also active, to a lesser extent, in the marketing of natural gas.

II. THE OPERATION

5. By the proposed transaction GDF and Centrica, will jointly acquire the majority (51%) in SPE through a joint holding company in which both have veto rights, , exercising joint control. In addition GDF and Centrica will, respectively, contribute ALG and Luminus to SPE, thus creating a larger company New SPE. The previous shareholders of SPE and the co-shareholders of GDF and Centrica in ALG and Luminus, respectively, will hold the remainder of shares in New SPE, also through a joint holding company. They will have a number of consultation rights but ultimately cannot veto business decisions.

III. CONCENTRATION

6. The operation concerns the acquisition by GDF and Centrica of joint control over New SPE consisting of SPE and the contributed activities of Centrica and GDF. The proposed transaction therefore constitutes a concentration within the meaning of Art. 3(1)(b) of the Council Regulation (EC) No 139/2004 between GDF, Centrica, Luminus and SPE.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (GDF: EUR 18 billion, Centrica: EUR 27 billion, Luminus: EUR 0.8 billion Euro, SPE EUR 0.6 billion). Each of the undertakings has a Community-wide turnover in excess of EUR 250 million (GDF: EUR [...], Centrica: EUR [...], Luminus: EUR [...], SPE 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.

V. COMPETITIVE ASSESSMENT

1. Relevant markets

Relevant Product Market

8. The activities of the undertakings concerned by this operation can be subdivided in two main economic sectors: (a) electricity and (b) natural gas. Each of these sectors can be

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).

broadly divided into *upstream* (exploration/production, trading/wholesale) activities, *transport* activities and *downstream* (supply/retail) activities.

A. Electricity

A.1 Upstream electricity market(s)(i.e. generation/trading/wholesale) and transport market(s)

9. At the upstream level, the operation concerns the production, trading and wholesale of electricity. In past Commission decisions³ it has been held that electricity generation does not constitute a separate market but that, rather, generation and wholesale of electricity constitutes one single market encompassing the domestic production of electricity at power stations within a certain geographic market (net of exports) as well as the electricity imported into this geographic market. Sales on such a wholesale market consist of bilateral sales and auction based sales. Whether they contain both captive (i.e. intra-group) and non-captive sales does not need to be answered for the purpose of the current case. Suppliers on such a wholesale market are producers, importers and traders. Customers are primarily operators supplying end-users and traders.⁴
10. Further, the Commission has found a separate market for the provision of balancing power, since this service is not easily substitutable with other electricity supply at wholesale level.⁵
11. Finally, past Commission decisions have considered whether there is a separate market for (financial) trading of electricity as many transactions at the trading level (e.g. at electricity exchanges) do not result in physical delivery of electricity, the nature of such trading thus focussing on the (financial) risk rather than at the product itself.⁶
12. In the present case, for the purpose of their notification, the notifying parties have accepted the approach laid down in past Commission practice, as described in the previous paragraphs. However, the exact product market definition can be left open as the transaction, on any possible market definition in the upstream electricity area, does not raise competition concerns.
13. The market definition for electricity transport (i.e. transmission and distribution) activities can be left open as, first, the joint venture will not have any activities in these areas, and, second, no coordination or vertical concerns arise.

A.2 Downstream (i.e. retail) electricity market(s)

14. At the downstream level, past Commission decisions have distinguished between the supply of electricity to large customers and to small customers.⁷ The first group

³ Cf. cases COMP/M. 3268 Sydkraft/Granninge (Commission decision of 30.10.2003) and COMP/M. 3440 ENI/EDP/GDP (Commission decision of 09.12.2004).

⁴ Under certain circumstances customers on the wholesale market may also include large 'industrial' customers.

⁵ Cf case COMP/M. 3440 ENI/EDP/GDP (Commission decision of 09.12.2004).

⁶ Cf. cases COMP/M.2947 - Verbund/EnergieAllianz (Commission decision of 11.06.2003) and COMP/M. 3268 Sydkraft/Granninge (Commission decision of 30.10.2003).

⁷ Cf. cases COMP/M.2947 - Verbund/EnergieAllianz (Commission decision of 11.06.2003), and COMP/M. 3440 ENI/EDP/GDP (Commission decision of 09.12.2004).

basically consists of large industrial and commercial customers whereas the second group consists of small industrial and commercial customers and residential customers. Furthermore, a distinction between small industrial and commercial customers on the one hand and residential customers on the other hand is conceivable in terms of potentially separate markets.

15. The notifying parties consider that it can be left open whether electricity supply to end customers should be sub-divided by type of end-user or constitutes a single supply market.
16. The Commission agrees that for the purpose of its assessment of the present case, the exact product market definition for electricity supply can be left open as the transaction, on any possible market definition in the downstream electricity area, does not raise competition concerns.

B. Natural Gas

B.1 Upstream natural gas market(s) and transport market(s)

17. In previous decisions, the Commission considered a number of upstream markets for natural gas, in particular (a) exploration of natural gas and oil, (b) development, production and sale of natural gas and (c) wholesale transmission of natural gas.⁸
18. The market definition for these activities as well as for (other) natural gas transport (including liquefaction and re-gasification) and storage activities can be left open as, first, the joint venture will not have any activities in these areas, and, second, no coordination or vertical concerns arise in these markets.

B.1 Downstream natural gas market(s)

19. In the EDP/ENI/GDP decision, which related to the Portuguese gas markets, the Commission considered that four categories of customers have to be distinguished in terms of natural gas supply market definition, namely (a) electricity producers, (b) intermediary supply companies⁹, (c) (eligible) large industrial and commercial customers (d) (eligible) small industrial and commercial customers and household customers.¹⁰ Furthermore, the latter group could conceivably be divided into possibly separate markets for (i) small industrial and commercial customers and (ii) household customers.¹¹ Also, a distinction between interruptible and non-interruptible customers may be relevant for issues of product market definition¹², in particular for large industrial customers. In the Belgian gas market(s), a distinction between the supply of “L-gas” (low calorific gas) and “H-gas” (high-calorific gas), also needs to be considered in terms of potentially separate product markets.

⁸ Cf e.g. cases IV/M. 1532 – BP/Amoco Arco (Commission decision of 29.09.1999) and IV/M. 1383 (Commission decision of 29.09.1999). Depending on third-party access rules to transmission pipelines and on the liquidity of the wholesale sector it is conceivable that at the current stage of the development of the gas markets the appropriateness of a separation, in terms of market definition, between the functions of wholesale and transmission of natural gas needs to be considered.

⁹ Obviously, such a market is to be considered a (secondary) wholesale market rather than a retail market.

¹⁰ COMP/M. 3440 - ENI/EDP/GDP (Commission decision of 09.12.2004).

¹¹ Cf. COMP/M.3096 - TotalFinaElf/ MobilGas (Commission decision of 09.12.2004).

¹² Cf. e.g. COMP/M.3096 - TotalFinaElf/ MobilGas (Commission decision of 09.12.2004).

20. For the purpose of this decision, however, the exact market definition for these activities can be left open as on any possible market definition in the downstream electricity area, the concentration does not raise competition concerns.

Relevant geographic market

A. Electricity

21. The European Commission has, in past decisions, generally defined the electricity wholesale market as national in scope.¹³ Occasionally it has left open the possibility of wider than national markets¹⁴. In light of Council Directives 2003/54/CE and 2003/55/CE the possible emergence of wider than national markets needs to be examined. However, the Commission's market investigation in this case has not yielded any results that would point to the existence of a wider than national market. On the contrary, market participants have pointed out that the conditions at the interconnectors with France (non-availability of interconnection capacity for many market participants) and the differences in wholesale prices and in wholesale price dynamics between Belgium and the Netherlands, strongly militate in favour of the persistence of a national Belgian wholesale market. For the purpose of this decision, the electricity wholesale market in Belgium is therefore considered national in scope.
22. The possible market for balancing power/ancillary services has, in past Commission decisions been considered to be no wider than national.¹⁵ In case of smaller than national electricity balancing zones, the possibility of a smaller than national market has been considered.¹⁶ This question can, however, be left open for the purpose of the current decision.
23. Also the geographic scope of a potential market for (financial) electricity trading can be left open the purpose of this decision as the operation does not raise any concerns on any possible geographic scope of such a market.
24. The notifying parties hold that electricity supply markets in Belgium are national in scope. This is in line with previous Commission decisions.¹⁷ No market participant responding to the Commission's market investigation suggested that the geographic scope of supply markets might be currently wider than national. This is due, inter alia, to the need to procure balancing power and ancillary services within Belgium and to other existing entry barriers such as differences in regulatory regimes and the commercial need to build up a distribution network in Belgium. The existence of smaller-than-national markets along Belgian federal regional divisions (i.e. Flanders, Wallonia, Brussels) is, however, conceivable for household customers, as regulatory conditions in these three regions are not entirely homogenous, for example as regards the moments of the opening up of this customer group to competition in these

¹³ Cf. e.g. COMP/M. 3440 - ENI/EDP/GDP (Commission decision of 09.12.2004).

¹⁴ COMP/M. 3268 Sydskraft/Graninge (Commission decision of 30.10.2003) and COMP/M. 3665 Enel/Slevenske Elektrarne.

¹⁵ Cf. e.g. COMP/M. 3440 - ENI/EDP/GDP (Commission decision of 09.12.2004) and COMP/M.2947 - Verbund/EnergieAllianz (Commission decision of 11.06.2003).

¹⁶ COMP/M.2947 - Verbund/EnergieAllianz (Commission decision of 11.06.2003).

¹⁷ See cases COMP/M. 3075-3080 – ECS/Intercommunales (Commission decision of 13 February 2003).

regions.¹⁸ The Commission has considered whether there could be even narrower markets than these three Belgian regions (e.g. along the lines of the default suppliers) but has not found evidence to support such an assumption.

25. For the purpose of this decision, the question of whether the relevant geographic market of such a potential market of supply of electricity to household customers is national or whether the relevant geographic markets are sub-nationally regional (but at least as wide as Flanders, Brussels, Wallonia) can be left open as the concentration, on any of these possibilities, does not raise competition concerns. All other electricity supply markets are considered to be national in scope.

B. Natural gas

26. The geographic scope of upstream natural gas markets and of transport (and storage) markets can be left open for the purpose of the current decision as, first, the joint venture will not have any activities in these areas, and, second, no coordination or vertical concerns arise in these markets.
27. The notifying parties submit that the market/s for the supply of natural gas to eligible customers is/are national in scope. No market participant responding to the Commission's market investigation suggested that the geographic scope of such market/s might currently be wider than national. This is due, inter alia, to the need to procure flexibility services within Belgium and to the need to attain a critical mass of customers and sales in order to cover fixed costs within Belgium. However, the existence of smaller-than-national markets along Belgian federal regional divisions (i.e. Flanders, Wallonia, Brussels) is conceivable for household customers, as regulatory conditions in these three regions are not entirely homogenous, for example as regards the moments of the opening up of this customer group to competition in these regions.¹⁹ The Commission has considered whether there could be even narrower markets than these three Belgian regions (e.g. along the lines of the default suppliers) but has not found evidence to support such an assumption.
28. For the purpose of this decision, the question whether the relevant geographic market of such a potential market of supply of natural gas to household customers is national or whether the relevant geographic markets are sub-nationally regional (but at least as wide as Flanders, Brussels, Wallonia) can be left open as the concentration, on any of these possibilities, does not raise competition concerns. All other natural gas supply markets are considered to be national in scope.

2. Competition analysis

Horizontal overlaps

A. Electricity

29. Horizontal overlaps arise from this concentration both upstream, i.e. in generation/trading/wholesale activities, and downstream, i.e. in supply activities.

¹⁸ In Flanders household customers were opened to competition on 01.07.2003, in Wallonia they will be opened to competition on 01.01.2007 and in Brussels on 01.07.2007.

¹⁹ In Flanders household customers were opened to competition on 01.07.2003, in Wallonia they will be opened to competition on 01.01.2007 and in Brussels on 01.07.2007.

- Upstream: generation/trading/wholesale market(s)

30. SPE produces about [5-15]% of the electricity generated in Belgium. None of the other parties to the concentration are active in electricity production in Belgium. Centrica imports a very small amount of electricity into Belgium (less than [0-10]% of Belgian consumption). There is a very limited overlap of power trading activities on the Belgian electricity grid (Centrica: [0-10]%, SPE: [0-10]%). None of the parties is active in power balancing in Belgium. The market investigation showed that Electrabel enjoys a very strong position in all wholesale activities in Belgium and will remain far ahead of the merged entity after the proposed merger in terms of market share and market power. It is worth noting that in the view of the notifying parties, shared by other market participants, Electrabel is the dominant player in all of these activities. The small horizontal overlap resulting from the concentration therefore does not give rise to competitive concerns on any possible market definition in upstream electricity markets.

- Downstream: supply market(s)

31. The parties' combined market shares are (or - for not yet liberalised markets - can be expected to be on liberalisation) in the range of [10-20]% (for all customers), around [5-15]% (for all industrial and commercial customers), [0-10]% (for large industrial customers), [10-20]% (for small industrial and commercial customers), [15-25]% (for eligible residential customers in Belgium), [15-25]% (for eligible residential customers in the Flemish Region), [15-25]% (for eligible residential customers in the Walloon Region in 2007), [0-10]% (for residential customers in Brussels in 2007). The overlap in the parties' activities on these markets is currently less than [0-10]% on all markets.²⁰ The incumbent operator, Electrabel's, market shares are above 75% on all possible supply markets.²¹
32. The market investigation has confirmed that the operation will create a stronger second-ranked competitor. However the new entity will be much smaller than the incumbent on all possible electricity supply markets in Belgium. Alternative suppliers are present on all markets (e.g. Essent, EdF, Nuon, RWE Solutions). Market participants have confirmed that the parties to the concentration currently are not particularly close competitors. The operation, viewed as a horizontal concentration, therefore does not raise concerns on any possible electricity supply market in Belgium.

B. Natural Gas

33. In the natural gas sector horizontal overlaps will arise from the concentration only in Belgium. Horizontally affected markets could only arise in a number of possible supply markets.
34. Parties' combined market shares on a total supply market for all Belgian gas customers are [5-15]% and can be expected to be around [10-20]% in the year of full liberalisation, i.e. in 2007. Their combined market shares in the segment or market of

²⁰ Subsequent to full liberalisation of the Brussels and Walloon regions the overlap in the parties' activities may attain 9% for a potential market of (all) Belgian residential customers.

²¹ Regarding Electrabel's position in electricity supply see also cases COMP/M. 3075-3080 - ECS/Intercommunales, decisions of 13.02.2003.

industrial commercial customers are around [10-20]%, a value that is similar for the two sub-groups of (i) large industrial/ commercial customers and (ii) small industrial/ commercial customers.

35. For eligible residential customers their combined market share is [5-15]% in 2004 (i.e. for Flanders as the only liberalised region) and is expected to be [5-15]% in the year of full liberalisation, 2007, for all of Belgium. In 2007, their combined shares are expected to be [0-10]% in Brussels and some [15-25]% in Wallonia (the latter with a negligible overlap of less than [0-10]%).
36. Parties estimate that taking account of the L-Gas and H-Gas distinctions may lead to variations in above market shares of up to +/- [0-10]%. This small variation therefore cannot change the competitive assessment.
37. The parties are currently not supplying natural gas to Belgian power producers and will continue to be a potential supplier of power producers. The operation therefore cannot have a negative effect stemming from the horizontal combination of the parties' activities on such a market.
38. Regarding the sale of natural gas to intermediaries there is no horizontal overlap in activities and GdF's market share is small [5-15]% and is largely due to its supply to other parties to the concentration.
39. The market shares of the incumbent operator Distrigaz/Electrabel are above 70% on any potentially affected natural gas market in Belgium,²² or, for residential customers in Brussels and Wallonia, can be expected to be above 70% in the year of liberalisation.
40. The operation will therefore create a stronger second player. However the new entity will be much smaller than the incumbent on all possible natural gas supply markets in Belgium. The Commission's market investigation has confirmed that competitors are present on all liberalised markets (for industrial and commercial customers mainly Wingas, but also BP Gas and Power, Nuon and Essent; for residential customers mainly Nuon), except for potential "L"-gas markets in which the situation does not substantially change as a result of the operation. The market investigation has also confirmed that the parties are not each other's closest competitors. The operation, viewed as a horizontal concentration, therefore does not raise concerns on any possible natural gas supply market in Belgium.

Vertical relationships

41. A number of vertical relations (i) between natural gas markets (ii) between electricity markets and (iii) between natural gas and electricity markets also need to be considered. However, in none of these respects does the operation lead to the risk of input foreclosure or customer foreclosure. In regard to (i), this is because, first, the technical possibility for purchasing gas in Belgium at the Zeebrugge hub, for importing gas into Belgium through the Zeebrugge LNG terminal and through the high entry point capacity in Belgium remains unaffected by the concentration and, second, because the parties do not supply any competitor with natural gas and source natural gas either from Distrigaz or from each other. In regard to (ii), this is because no

²² Regarding Distrigaz'/Electrabel's position in natural gas supply see also cases COMP/M. 3075-3080 - ECS/Intercommunales, decisions of 13.02.2003.

alternative retail supplier is dependent on the electricity produced by the parties and no electricity producer, importer or trader is dependent on sales to the parties in Belgium. In regard to (iii), this is because no electricity producer is dependent on natural gas supply by the parties (currently Distrigaz supplies gas to all power producers using natural gas for power production), and the parties do not constitute a large enough share of gas demand for power production purposes in Belgium for the operation even hypothetically to foreclose the market to other competitors.

No risk of coordination

42. Risks of coordination of competitive behaviour between Centrica and GdF as consequence of the proposed concentration, on markets other than Belgium where they are both active (notably in the UK) can be excluded in view of the small size of the joint venture in relation to these other markets, which is not sufficient to provide incentives to GdF's and Centrica's to align their competitive behaviour on markets outside Belgium.

VI. CONCLUSION

43. It can therefore be concluded that the concentration will not significantly impede effective competition in the common market or in a significant part of it, in particular as a result of the creation or strengthening of a dominant position.
44. 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