

***Case No COMP/M.4368 -
EDISON / ENECO
ENERGIA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 19/10/2006

***In electronic form on the EUR-Lex website under document
number 32006M4368***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.10.2006

SG-Greffe(2006) D/206296

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4368 - Edison / Eneco Energia
Notification of 15/09/2006 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 15/09/2006, the Commission received a notification of a proposed concentration by which the undertaking Edison S.p.A. (“Edison”, Italy) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of Eneco Energia s.r.l.(“Eneco”, Italy) by way of purchase of shares.
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.

I. THE PARTIES

3. Edison is an Italian company listed on the Italian stock exchange active mainly in the generation, transmission and supply of electricity, the production of hydrocarbons, and the exploration, production, transportation, distribution and supply of natural gas. The Edison group is also active in the water sector. Edison is jointly controlled by Electricité de France S.A. (EDF) and AEM S.p.A. (AEM)².

¹ OJ L 24, 29.1.2004 p. 1.

² Case No. COMP/M.3729, *EDF/AEM/Edison*, 12/08/2005.

4. EDF is a French public company listed on the Euronext stock Exchange. EDF's main activities include generation, transmission, distribution, supply and trade of electricity.
5. AEM is an Italian public company listed on the Italian stock exchange active in Italy in the management of public utility services and, in particular, in electricity generation, transmission, distribution, trading and sale; gas and heat distribution and sale; telecommunications networking and services and city lighting.
6. Eneco, which belongs up to now to the Luxembourgian company PIN, is an Italian company active in the retail supply of electricity to eligible (non-regulated) customers in Italy.

II. THE OPERATION

7. Edison will acquire 70% of Eneco's shares from PIN. According to the shareholders' agreement signed between Edison and PIN, Eneco's board of directors will comprise five members, three of which appointed by Edison and two appointed by PIN and will adopt its decisions with the favorable vote of the majority of its members (i.e. three out of five). Moreover Edison will also appoint a Chief Executive Officer, who will have managing powers. Finally Eneco's economic dependence on Edison is strengthened by the obligation incumbent upon Eneco to source all its electricity requirements from Edison.

III. CONCENTRATION

8. In light of the above, it appears that Edison will acquire sole control over Eneco. Accordingly, the transaction qualifies as a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (Edison, AEM and EDF will have together a turnover of 55 394 million Euros, Eneco 261 million Euros)³. Each of them have a Community-wide turnover in excess of EUR 250 million (Edison, AEM and EDF will have together a Community-wide turnover of 51965 million Euros; Eneco 261 million Euros), 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 within the meaning of Article 1(2) of the Merger Regulation.

V. COMPETITIVE ASSESSMENT

A. Relevant markets

10. The proposed transaction concerns the electricity sector in Italy and, in particular, the market for retail distribution of electricity to eligible customers, which is the only

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).

market where the parties' activities overlap. In addition, Edison is active in the upstream vertically related market for the generation and wholesale supply of electricity.

a) Generation and wholesale supply of electricity

11. The Commission has considered in a recent decision⁴ that the Italian wholesale supply market 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. Moreover, in the same case the Commission has considered as part of the same market electricity sold through bilateral contracts and electricity exchanged on the power exchange (IPEX).
12. In previous decisions, the Commission has generally considered wholesale electricity markets national in scope.⁵ However, in Italy, the legal framework and network constraints might lead to the definition of narrower geographic markets. It has been shown that, even though some geographical zones often have the same price, others are very frequently isolated because of physical network limitations. In light of the differences and analogies existing between the different zones, the Italian Authority for electricity ("AEEG") and the Italian Competition Authority ("ICA") have distinguished the national electricity sector in four macro-zones: North zone, Macro-South zone (covering the zones of Centre North, Centre South and South), Macro-Sicily (covering the geographical zones of Sicily and Calabria) and Sardinia.
13. In its previous Italian case⁶, the Commission noted that the functioning of the Italian electricity market, the frequency of splitting into different pricing zones and statistical data about price differences pointed towards the existence of four distinct zonal markets but left ultimately open the exact definition of this geographic market.
14. In the present case, the analysis carried out by the Commission shows that the transaction does not raise any competition concerns on any possible definition of the relevant geographic market. Accordingly, the issue of whether the geographic market has a national or zonal dimension can be left open.

b) Retail supply of electricity

15. Retail supply of electricity consists of the sale of electricity to final consumers. On the supply side, operators active in this market include the retailers, which may be vertically integrated with electricity generators and source electricity from a parent company, or acquire it on the free wholesale market, through bilateral contracts or on the IPEX. On the demand side, this market would include all "eligible" customers.
16. In previous decisions, the Commission as well as the ICA have considered that the Italian retail electricity market is national in scope. In the present case, the Commission did not find any element to depart from its previous position. However, for the sake of completeness, the Commission has analysed the parties' position also at a macro-

⁴ Case No. COMP/M.3729, *EDF/AEM/Edison*.

⁵ *Inter alia*, Case No. COMP/M.3440 *ENI/EDP/GDP*.

⁶ Case No. COMP/M.3729, *EDF/AEM/Edison*.

regional level and has concluded that the transaction is not likely to raise competition concerns even at macro-regional level.

B. Competitive assessment

a) Horizontal overlaps

17. The parties' activities overlap only in the market for the retail supply of electricity to eligible customers. On this market the parties and their parent companies would have a combined market share of 17% (Edison 13%⁷; Eneco 2.6% and AEM 1.4⁸). Upon Commission's request, the parties have provided also the relevant market share data at macro-zonal level. At this level they would have combined market shares ranging from [0-5]% in Sardinia to [15-20]% in the Macro-South.
18. However, the merged entity will have to face the competitive constraints exercised by a number of significant competitors, inter alia Enel (13.5%), Eni (7.5%), the incumbent in respectively the gas and electricity sector, and EGL Italia (13%) as well as by smaller players with significant sales. In this respect the market appears to be still fragmented both on national and macro-zonal level.
19. In light of the parties' limited market position and of the presence of other competitors active at both national and macro-regional level, it appears unlikely that the proposed transaction could have any anti-competitive effect on this market.

b) Vertically related markets

20. On the vertically related market for wholesale supply of electricity, Edison has a market share of [5-10]%⁹ whereas AEM has a market share of [0-5]%. The parties submit that, according to their best estimates, their market share would not exceed 25% even at a macro-regional level. Thus this market is not vertically affected. Moreover, in view of the limited position of the parties and of the presence of other significant players, inter alia of the formerly mentioned incumbents Eni and Enel, it seems unlikely that the proposed transaction will create risks of foreclosures on either the wholesale or the retail market at either national or zonal level.

⁷ Edison has a market share of 11% but has recently acquired EEI which has a market share of 2% (Case n° COMP/M.4127 – Edison/EEI, 31/08/2006).

⁸ Main sources :AEEG 2005.

⁹ Following the recent acquisition of EEI.

VI. CONCLUSION

21. 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