

***Case No COMP/M.4672 -
E.ON / ENDESA
EUROPA / VIESGO***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 06/08/2007

***In electronic form on the EUR-Lex website under document
number 32007M4672***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 06.08.2007

SG-Greffe (2007) D/204944

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case No COMP/M.4672 - E.ON/ Endesa Europa/ Viesgo
Notification of 02.07.2007 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 02/07/2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation No 139/2004 by which the undertaking E.ON A.G. ("EON", Germany) acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of Endesa Europa, S.L. ("Endesa Europa", Spain), of certain assets and rights of Endesa, S.A., Madrid ("Endesa businesses", Spain) and of certain subsidiaries of the Italian company ENEL S.p.A in Spain ("Viesgo") by way of purchase of shares and assets.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 139/2004 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

3. E.ON is a service provider with its main activities in the gas and electricity sectors. Currently the company has five market units: (i) the Central Europe market unit, operating the electricity business and downstream gas business in Central Europe; (ii) E.ON's Pan-European Gas market unit, engaged in the upstream and

¹ OJ L 24, 29.1.2004 p. 1.

midstream gas business in Europe; (iii) the UK market unit, operating the electricity business and gas business in the UK; (iv) E.ON's Nordic market unit, operating in the electricity and gas business in Northern Europe; and (v) U.S. Midwest market unit which, active in the regulated and non-regulated utility business predominantly in Kentucky.

4. Viesgo is the Spanish subsidiary of Enel (the Italian incumbent electricity provider) and is active in the generation, distribution and supply of electricity in Spain.
5. Endesa is a Spanish electricity and to a minor extent gas operator that is also active in other European countries in South America and North Africa. Endesa Europa is the subsidiary of Endesa which will be sold to E.ON upon completion of the proposed transaction. Endesa Europa comprises Endesa's European activities outside Spain in France, Italy, Poland and Turkey. Upon completion of the proposed transaction E.ON will also acquire certain of Endesa's electricity assets in Spain (the Endesa businesses)².

II. THE OPERATION

6. On 21st February 2006, E.ON announced its intention to launch a public tender offer for the acquisition of Endesa³ Acciona S.A. and ENEL launched a joint takeover bid over Endesa on 26th March 2007. On 2nd April 2007, E.ON, ENEL and Acciona concluded an agreement whereby they agreed that Enel and Acciona – after having gained control over Endesa – will transfer to E.ON: Viesgo, all shares of Endesa Europa⁴ and some of Endesa's assets in Spain. After this agreement, E.ON withdrew its takeover bid on Endesa.

III. THE CONCENTRATION

7. As a result of this transaction, E.ON will exercise sole control over Viesgo, Endesa Europa, and Endesa businesses. The same buyer (E.ON) acquires these businesses and assets, as a whole, in the event that Acciona and Enel acquire control of Endesa. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

² The Endesa businesses, consist of (i) drawing rights over [...] MW of nuclear-generated electricity under a 10-year energy supply agreement; (ii) three power plants with a combined installed capacity of approximately [...] MW; and (iii) a combined cycle gas turbine plant currently under development with a total planned capacity of [...] MW

³ This concentration was cleared by the Commission on 25th April 2006 but was never implemented.

⁴ In the period between the execution of the Agreement and its final closing (once all conditions precedent have been satisfied), Enel and Acciona have the right (but not the obligation) to transfer to Endesa any assets of Endesa Europa that do not belong to the business located in France, Poland, Italy and Turkey. In any case, and for the purposes of this transaction, only the activities in the above-mentioned four countries are within the scope of the notification.

IV. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (E.ON EUR [...] million; Endesa Europa EUR [...] million; Viesgo EUR [...] million). Each of them has a Community-wide turnover in excess of EUR 250 million (E.ON EUR [...] million; Endesa Europa EUR [...] million; Viesgo EUR [...] 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. COMPETITIVE ASSESSMENT

A. PRODUCT AND GEOGRAPHIC MARKET DEFINITIONS

Relevant product markets

Electricity markets

9. On the basis of previous Commission's decisions, the following relevant product markets in the electricity sector could be distinguished: (i) generation and wholesale supply of electricity; (ii) transmission; (iii) distribution and (iv) retail supply⁵. As regards retail supply, a further distinction could be made between: (a) large industrial customers connected to the high voltage grid and (b) smaller industrial, commercial and domestic customers connected to the low-voltage grid. In relation to Spain, the Spanish NCA (Tribunal de Defensa de la Competencia, "TDC") has also identified a market for the supply of electricity in the context of technical restrictions⁶.

Gas markets

10. In line with previous Commission decisions, the following relevant product markets in the gas sector could be distinguished (i) wholesale, (ii) transmission, (iii) storage, (iv) distribution and (v) retail (which in turn can be divided into three relevant markets, namely the supply of natural gas to large industrial costumers, to small customers and to electricity generation plants using combined cycle gas turbines or "CCGTs")⁷.
11. For the purposes of the present case it is not necessary to conclude on the precise scope of the relevant product markets described above as, under any alternative market definition, the proposed operation does not give rise to competition concerns.

⁵ Cases M. 3440 EDP/ENI/GDP, M.4180- Gaz de France/Suez, M.3868 - Dong/Elsam/Energi E2, M.3696 - E.ON/Mol.

⁶ TDC report in case Gas Natural/Endesa

⁷ Cases M. 3440 ENI/EDP/GDP, M.4180- Gaz de France/Suez, M.3868 - Dong/Elsam/Energi E2, and COMP/M. 3696 E.ON/Mol, .

Relevant geographic markets

12. As regards the electricity markets, the notifying party considers, in line with previous Commission decisions that the markets referred to above (with the exception of electricity distribution), are at most national in scope.
13. With respect to the wholesale market, in some cases, in the light of Council Directives 2003/54/EC and 2003/55/EC, there may be emerging markets wider than national⁸. However, in particular as regards Italy, the Commission has previously assessed the wholesale market in Italy on the basis of four electrical zones (North, macro-south, macro-Sicilia and Sardinia), an assessment which in addition is in line with Italian Energy Authority and the Italian Competition Authority⁹. Finally, the Commission left the final definition open not deciding whether the market was national or zonal.¹⁰ In this case, the same approach can be retained since, regardless of the geographic market definition, the transaction does not give rise to competition concerns.
14. The markets for distribution of electricity have consistently been considered to constitute separate local markets¹¹.
15. As regards the gas markets, and in line with previous decisions, the notifying parties consider the markets to be no larger than national¹².
16. The Commission has already concluded recently¹³ that EEA-wide gas and electricity markets are not expected to arise in the near future; the competitive situation on these potential future markets will therefore not be analysed in detail in the current decision. In any case, given the limited significance of the businesses acquired by E.ON, at a supranational regional or even at EEA level, the impact of the transaction would be even lower than at national level.
17. For the purposes of the present case it is not necessary to conclude on the precise scope of the relevant geographic markets described above, as, under any alternative market definition, the proposed operation does not give rise to competition concerns.

B. ASSESSMENT

18. The concentration will not give rise to any affected markets, either horizontally or vertically. Both E.ON and Endesa Europa are present in the electricity and gas sector in the EEA while the centre of gravity of the concentration is focused on the electricity markets in Spain. The parties have very limited overlapping activities in electricity markets in France, Italy and Poland. E.ON does not carry out activities in Spain, where Viesgo is active and the Endesa businesses are located. The

⁸ Case COMP/M.4180 - Gaz de France/Suez.

⁹ Joint Report published on 9 February 2005.

¹⁰ Case COMP/M.3729 - EDF/AEM/EDISON.

¹¹ Case COMP/M.4110 - E.ON/Endesa.

¹² With the exception of exploration and development (world-wide) and up-stream wholesale of gas (EEA-wide plus Algeria and Russia, but final definition left open)

¹³ Case COMP/M.4110 - E.ON/Endesa.

competitive assessment below is focused on the effects of the proposed concentration in the markets where limited overlaps occur in these five Member States.

Horizontal overlaps

i) Electricity generation and wholesale in Spain:

19. Since E.ON is not currently active in Spain, the only overlap occurs between Endesa Businesses and Viesgo on the market for electricity generation and wholesale. The combined market share would be [5-10]% (Viesgo [0-5]%; Endesa businesses [0-5]%).
20. In light of i) the parties' reduced market share on this market, ii) the presence of other significant players such as Endesa (which, despite the sale of the Endesa businesses remains as a strong player with a share in generation capacity of 23.6%) and Iberdrola and iii) the fact that the sale of Endesa businesses would reduce the current level of concentration (mainly between Endesa and Iberdrola) in generation capacity in Spain, the transaction raises no competition concerns in this market in Spain.

ii) Electricity generation and wholesale in Poland:

21. E.ON and Endesa Europa have a very limited share in this market. A major part of the installed capacity (BOT [20-25]%, PKE [15-20]%, Koźienice [5-10]%, PAK [5-10]% and ZEDO [5-10]%), is still partially owned by the Polish State. E.ON, through its subsidiaries E.ON Sverige and E.ON Edis, owns non-controlling interests in two power generation companies representing about [<1] % of total installed capacity. Endesa Europa owns a stake of [...] % in the Polish power plant in Białystok (through SNET¹⁴) which accounts for around 1% of the total generation capacity installed in Poland. In terms of electricity wholesale, the combined market share is also very low, around [0-5]% (E.ON [<1]% and Endesa [<1]%).
22. In light of the foregoing the transaction is not likely to have any negative effect on this market.

iii) Electricity wholesale and retail supply in Italy:

23. In the wholesale market, Endesa Italia's (the Italian subsidiary of Endesa Europa) market share at national level is approximately [5-10]%, while E.ON is a small player with no power generation assets in Italy¹⁵, with a market share (via electricity imports and purchases from other power generators/wholesalers) of about [0-5]%. The parties have not been able to provide wholesale data for the four macro-zones in which Italy has been previously divided (North, macro-south, macro-Sicilia and Sardinia). However, given (i) that E.ON imports around [...] %

¹⁴ Endesa holds a 65 % interest in SNET. The remaining shares are held by the French state (through CDF) and EdF.

¹⁵ Eon has obtained the relevant authorisation for the construction of a CCGT power plant in Livorno Ferraris, VC, with a total capacity of [...] MW. The works for the construction will start by spring [...].

of its sales through the northern Italian border, (ii) that Endesa's generation position in the "North" area is below [5-10]% and (iii) that the rest of E.ON's sales depends on other national producers, competitive concerns are not expected to arise in any of the zonal markets or in Italian market for wholesale of electricity¹⁶.

24. In the retail market Endesa Italia, through Ergon Energia is active on the segment for the retail supply of electricity to medium-large customers with a market share of approximately [0-5]%. E.ON is a minor player with a market share well below [0-5]%. The parties' activities do not overlap on the segment for small customers where Endesa is not active. The parties' position will not exceed [0-5]% on a market including both large industrial and small customers.
25. In light of the foregoing the transaction is not likely to have any negative effect on these markets.

iv) Electricity retail supply to large industrial customers in France:

26. If retail supply is considered as a whole, in 2006 E.ON supplied a small amount of [...] TWh resulting in a market share slightly below [<1]%, while Endesa Europa's market share via its subsidiary SNET is [0-5]%. On a narrower segment including exclusively supply to large industrial customers (E.ON is only active in this segment of eligible customers), the parties would have a combined share of around [0-5]% (Endesa [0-5]%; E.ON slightly below [<1]%).
27. In light of the foregoing the transaction is not likely to have any negative effect on this market.

v) Gas markets

28. The transaction does not lead to affected markets in the gas sector. In France and Poland, Endesa Europa is not active at all in the gas sector, while in Italy it supplies small quantities to its own power plants for captive use and is not active in the merchant market. In Spain, neither E.ON nor Endesa businesses supply gas to the merchant market. Therefore the transaction is not likely to have any negative effect on the gas markets.

Vertical relationships

29. Given the presence of the parties in both the electricity and the gas sectors, the transaction also leads to the creation of some vertical relationships. However, these relationships are limited to France, Italy and Poland, where theoretically a vertical relationship could take place since Endesa Europa has generation assets and E.ON has gas retail supply activities (to large industrial customers in France and Italy, but not to power generation plants); however, E.ON's market shares are negligible (below [0-5]% in the three countries).

¹⁶ E.ON does not have activities in the wholesale supply of electricity in the zonal market of Sardinia, where Endesa's generation capacity has been found to be indispensable to cover the demand for 67% of the time. In case COMP/M. 3729 EDS/AEM/EDISON Endesa's market share in Sardinia was 30.8% (2004), whereas its share in the zonal markets of North, Macro-South and Macro-Sicily ranged from 4.1% to 7.7%. The decision does not specify E.ON's position on these zonal markets, but "others" represented jointly 0.5% to 6.1%. Even when combining the maximum share of "others" with Endesa's market share in each of these three zonal markets, this would not give rise to serious doubts as to the compatibility of the proposed transaction with the common market.

Conclusion

30. Given the limited overlaps and vertical relationships created by the transaction, the Commission competitive assessment is that the operation is not likely to create significant competitive concerns.

VI. CONCLUSION

31. Against the background of the above analysis it can be concluded that the proposed concentration does not raise serious doubts as to its compatibility with the common market or the EEA Agreement.
32. For the above reasons, the Commission has therefore 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)
Joe BORG
Member of the Commission