

***Case No COMP/M.5170 -  
E.ON / ENDESA  
EUROPA / VIESGO***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 19/06/2008

***In electronic form on the EUR-Lex website under document  
number 32008M5170***



EUROPEAN COMMISSION

Brussels, 19/06/2008

SG-Greffe (2008) D/203950  
C(2008) 3096

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5170 – E.ON/ Endesa Europa/ Viesgo  
Notification of 13.05.2008 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>

1. On 19/05/2008, the Commission received a notification of a proposed concentration by which the undertaking E.ON A.G. ("E.ON", 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. ("Endesa's 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.

## I. THE PARTIES

2. E.ON is a service provider mainly active in the generation and supply of electricity and gas in various countries in the EU. It is also active in the US.
3. Viesgo is the Spanish subsidiary of Enel and is active in the generation, distribution and supply of electricity in Spain
4. Endesa is a Spanish electricity operator that is also active in other European countries (though to a limited extent), in particular in Portugal, France, Italy, Germany and

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

Poland. In addition, Endesa is active in South America and North Africa. In Spain, Endesa is also present in the gas sector.

## **II. THE CONCENTRATION**

5. The notified concentration consists of the acquisition of control by E.ON of Viesgo, all shares of Endesa Europa, and certain assets and rights of Endesa in Spain.
6. This transaction has been already notified to and authorized by the Commission's decision COMP/M.4672-E.ON/Endesa Europa/Viesgo of 6 August 2007. However, Enel, E.ON and Acciona on 18 March 2008 have concluded another agreement whereby they modified their initial agreement<sup>2</sup> of last year in relation to the assets to be transferred to E.ON. In particular, the new agreement excludes one of the power plants from the portfolio of Endesa assets to be divested to E.ON (the Foix power plant) and substitutes one power plant (Besos 3) for another one (Tarragona 1). Moreover, the negotiations on the initial rights to be transferred from Endesa's nuclear plants to E.ON (initially [...] MW) are not closed yet and it may be that the final rights transferred to E.ON are in the range from 0 MW to the maximum [...] MW
7. Given that the perimeter of the concentration has been changed, the Commission's decision of 6 August 2007 would not cover the actually implemented concentration. The now submitted notification deals with the final agreement between the parties

## **III. COMMUNITY DIMENSION**

8. The notified operation has a Community dimension under Article 1(2) of the Merger Regulation. 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 have 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.

## **III. COMPETITIVE ASSESSMENT**

### **PRODUCT AND GEOGRAPHIC MARKET DEFINITIONS**

#### **A. Relevant product markets**

9. On the basis of previous decisions of the Commission<sup>3</sup>, the notifying parties have defined the following relevant product markets in the electricity sector: generation and wholesale supply of electricity; transmission; distribution and retail supply. As regard retail supply, a further distinction could be made between: (a) large industrial

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2 By this initial agreement, E.ON would purchase ENEL's subsidiary Viesgo, Endesa Europa and the Endesa businesses, consisting 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 [...] MW.

3 COMP M. 3440 ENI/EDP/GDP, COMP M.4110 E.ON/Endesa

customers connected to the high voltage grid and (b) smaller industrial, commercial and domestic customers connected to the low-voltage grid.

## **B. Relevant geographic markets**

10. In line with the previous Commission decision of 6 August 2007, as regards the electricity markets, the notifying party considers that the markets referred to above (with the exception of electricity distribution), are at most national in scope<sup>4</sup>. However, as regards Italy, four electrical zones (North, macro-south, macro-Sicilia and Sardinia) have been considered in the past with respect to the wholesale market.
11. The markets for distribution have consistently been considered to constitute separate local markets.
12. For the purposes of the present decision it is not necessary to conclude on the precise scope of the relevant product and geographic markets described above as, under any alternative market definition, the proposed operation does not give rise to competition concerns.

## **C. Competitive assessment**

13. The concentration will not give rise to any competition concerns. As already assessed in the previous decision of 6 August 2007, the only very limited overlaps occur on the following markets: (i) electricity generation and wholesale in Spain, (ii) electricity generation and wholesale in Poland, (iii) electricity wholesale and retail supply in Italy, (iv) electricity retail supply to large industrial customers in France and (v) some vertical relationships between the gas and electricity activities of the parties limited to France, Italy and Poland, where theoretically a vertical relationship could take place since Endesa has generation assets and E.ON has retail supply activities (to large industrial customers in France and Italy, but not to power generation plants). As explained in the aforementioned decision, the overlaps resulting from the concentration as initially envisaged do not give rise to competitive concerns.
14. As mentioned above, the main amendments to the initial perimeter of the transaction that was approved by the Commission's decision of 6 August will consist of (i) the exclusion of the Foix power plant from the portfolio of Endesa assets to be divested to E.ON and (ii) the substitution in the same portfolio of Besos 3 power plant for the Tarragona 1 plant. Moreover, the negotiations on the initial rights to be transferred from Endesa's nuclear plants to E.ON (initially [...] MW) are not closed yet and it may be that the final rights transferred to E.ON are in the range from 0 MW to the maximum [...] MW.
15. However, these changes will not lead to any change of the assessment of the present transaction as carried out by the Commission in its previous decision on this case of 6 August 2007 as the impact on the markets where the parties' activities overlap is negligible.
16. In particular, due to these changes, which only affect to E.ON's position in Spain, E.ON's share of installed generation capacity in Spain will decrease, even if the [...] MW drawing rights are finally totally transferred to E.ON, by around [0-3]%, from

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<sup>4</sup> Case COMP/M.3440 ENI/EDP/GDP.

[5-10]% to [ $<5$ ]%, which represents only a marginal difference from the result of the transaction as previously notified to the Commission<sup>5</sup>.

17. In terms of production also the change is minimal, from [difference  $<1\%$ ].
18. For these reasons and also considering that the conditions of competition in the Spanish market for the wholesale supply of electricity did not materially change in the last year and that a number of other companies such as Endesa, Iberdrola, Unión Fenosa and EDP/Hidroeléctrico are also present in this market there is no reason for the Commission to depart from its previous decision of 6 August 2007.

#### **IV. CONCLUSION**

19. 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.
20. 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

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<sup>5</sup> The combined market shares before the modification of the scope of the transaction was about [20-30]% (see COMP/M.4685 Enel/Acciona/Endesa).