

***Case No COMP/M.5183 -
CENTREX / ZMB / ENIA
/ JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 15/09/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15-IX-2008
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5183 – Centrex / ZMB / Enìa / JV
Notification of 8 August 2008 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 8 August 2008, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No. 139/2004 by which the undertakings Centrex Europe Energy & Gas AG ("Centrex", Austria) (belonging to Centrex Group Holding Ltd. (Cyprus), ZMB GmbH ("ZMB", Germany) (ultimately controlled by OAO Gazprom ("Gazprom", Russia)), and Enìa S.p.A. ("Enìa", Italy) acquire joint control of the undertakings Enìa Energia S.p.A. ("Enìa Energia", Italy), currently wholly owned by Enìa, and SPV JV (Italy), a vehicle company constituting a joint venture, by way of purchase of shares and contribution of assets.

I. THE PARTIES

2. Centrex is active in the development and utilisation of energy production and distribution facilities mainly in EU and Community of Independent States ("CIS") countries. Its main activity is the sale of natural gas² sourced solely from Gazprom³. All the shares of Centrex Group Holding Ltd are held by the holding entity IDF Anlage-Gesellschaft Aktiengesellschaft m.v.K ("IDF", Liechtenstein). The majority of stake (of

¹ OJ L 24, 29.1.2004 p. 1.

² Form CO, p. 9

³ Form CO, p. 79

80%) in IDF is held by the Russian Commercial Bank Zurich (in which the main shareholder is the state-owned Bank of Foreign Trade of the Russian Federation), while Gazprom has the remaining 20%. The parties claim that Gazprom does not exercise either sole or joint control of IDF.⁴

3. ZMB, controlled by Gazprom, is active in the production and sale of Russian and Central Asian gas in Europe and CIS countries as well as in the planning and construction of gas facilities. Its parent company Gazprom is active in the exploration, production, transportation, refining and marketing of gas and petrochemical products. Gazprom is controlled by the Russian state.⁵
4. Enìa is the holding company of an Italian multi-utility group established as a result of the merger of the former utility companies controlled by the Italian municipalities of Parma, Piacenza and Reggio Emilia. Its activities are focussed on the supply of electricity and gas, water distribution, sewage, urban waste, district heating and related services.
5. Enìa Energia is the subsidiary of Enìa active in the supply of gas and electricity.
6. SPV JV is a joint venture that will be owned by ZMB (25%), Centrex (25%) and SINIT (50%), a company that is in its turn solely controlled by Enìa, but where also other Italian local energy companies⁶ hold stakes. SPV JV will be active in the purchase, import and sale of gas to Enìa Energia, Enìa Partners, industrial and thermo electric customers and other trading companies.

II. THE OPERATION

7. The proposed transaction consists in (i) the acquisition by Centrex, ZMB and Enìa of joint control of Enìa Energia, and (ii) the creation of a joint venture, SPV JV, controlled by the same parties.
8. Both companies are full-function joint ventures, controlled by the same companies, and linked *de jure* and *de facto* by mutual conditionality. They have been planned and will occur at the same time. Therefore they form one and the same transaction.
9. With respect to the full-functionality nature of the companies, it has to be noted that Enìa Energia is already an existing and fully operating company. Regarding SPV JV, it will source gas not only from Gazprom but also from third parties (around [...] from companies such as ENI, Edison or Sonatrach) and it is expected that its sales to companies other than the parent companies will be around [...].
10. In the amendment no 1 to the Joint Venture Agreement it is envisaged that at a later stage ZMB and Centrex will transfer to Enìa Energia further assets for an overall value

⁴ From CO, pp. 34-35

⁵ From CO, p. 38

⁶ Ascopiave S.p.A, Blugas S.p.A, Aemme Distribuzione S.r.l., Utilità progetti e sviluppo S.r.l., Ambiente Energia Brianza S.p.A. and Gelsia S.p.A.

equal to the value attributed to the Enìa Energia shares to be purchased by ZMB and Centrex. ZMB and Centrex have still to determine the assets to be contributed. The possible contribution of additional assets to Enìa Energia is thus at the moment still undefined and can therefore not be covered by this decision. Should such a transfer occur in the future, it may therefore need to be notified under the then applicable merger control rules.

III. THE CONCENTRATION

11. In the light of the above, the present transaction, which gives rise to the acquisition of joint control by Enia, ZMB and Centrex of two separate full function joint ventures, constitutes a single concentration under the terms of Article 3(1) b of the Merger Regulation.

IV. COMMUNITY DIMENSION

12. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Centrex EUR 387.1 million; Gazprom group EUR 50,687 million and Enìa EUR 1.208 million) at least two have a Community-wide turnover in excess of EUR 250 million in 2007 (Centrex EUR [...] million; Gazprom group Euro [...] million and Enìa EUR [...] million). None of the parties achieves more than two thirds of its Community wide turnover in any Member State. Therefore, the present transaction has a Community dimension pursuant to Article 1(2) of the Merger Regulation.

V. RELEVANT MARKETS

13. The markets on which the transaction may have an effect are (i) the supply of gas in Italy, (ii) the supply of electricity in Italy and the (iii) vertical relationship between the wholesale of gas to Italy and the supply to other trading companies or to the final customers.

Gas markets

14. The Commission has previously considered the "up-stream" market for the development, production and wholesale of gas, for which in some cases it has been left open whether the appropriate relevant geographic market is the EEA, an area comprising those EEA countries in which gas from the Norwegian Continental Shelf is sold, or each individual country in which the gas is sold⁷, Italy in this case. For the purposes of this transaction, the final geographic market definition for wholesale of gas can also be left open since the final assessment does not change regardless of the definition retained.
15. The Commission has also considered the following gas markets⁸: (i) transmission via high-pressure pipeline grids, defined as a national market in case there is an integrated

⁷ See case M.4545 - Statoil/ Hydro, decision of 3 May 2007.

⁸ See for example case M.3696 – EON/MOL, decision of 21 December 2005.

national pipeline system (otherwise, this market may be sub-national), (ii) distribution, defined as sub-national, each distribution system constituting a separate market, (iii) storage, normally defined as a national market, and (iv) supply.

16. In addition, in previous decisions⁹ the Commission has considered the market for the supply of gas as a national market that can be segmented in four markets depending on the type of customer: (i) electricity producers, (ii) local distribution companies, (iii) large industrial customers with gas requirements above 2 million cubic metres (mcm) and (iv) small customers including smaller industrial, commercial and domestic customers, with annual requirements below 2 mcm. Other segmentations have however also been considered depending on the specific circumstances of each country (for example in the case COMP M.3696 – EON/MOL, the traders were included and the segmentation of the retail market was made on the basis of different consumption levels).
17. The parties consider that, given the Italian regulatory framework in which local distribution companies do not purchase gas to resell it but are simple providers of distribution services, it would not be appropriate to consider them as a class of gas customers. In addition, the parties submit that the data available do not allow a breakdown between customers above and customers below 2 mcm. The parties were able to provide, on the basis of the national regulator (Autorità per l'Energia ed il Gas)'s report, only a breakdown for customers above and below 0.2 mcm. In any case, it is not necessary to take a final position on this aspect since the final assessment does not change regardless of the final market definition retained.

Electricity markets

18. In previous decisions the Commission has considered the following electricity relevant product markets: (i) generation and wholesale, (ii) ancillary services, (iii) transmission, (iv) distribution, (v) supply to large industrial and commercial customers, (vi) supply to small customers and (vii) supply to residential customers¹⁰. The transaction only affects the markets for distribution and supply of electricity, which have been considered by the Commission as national markets.

VI. COMPETITIVE ASSESSMENT

19. The proposed transaction does not give rise to horizontally affected markets. Potentially affected markets arise at vertical level.
20. Enìa Energia is exclusively active in the Italian markets for the supply of gas and electricity to customers, markets in which neither Centrex nor Gazprom are active and therefore no horizontal anticompetitive effects arise.
21. In addition, Enìa Energia's market shares in these markets are very small. With respect to the gas markets, Enìa Energia market shares at national level are: [0-5%] for the

⁹ See case M.3440 – ENI/EDP/GPD, decision of 9 December 2004.

¹⁰ See for example cases M.3440 – ENI/EDP/GPD, decision of 9 December 2004, M.3729 – EDF/AEM/Edison and M.4180 – Gaz de France/Suez, decision of 14 November 2006.

supply to thermoelectric generators, [0-5%] for the supply of customers with consumption above 0.2 mcm and [0-5%] for customers with consumption below 0.2 mcm. With respect to the electricity markets, Enìa Energia supplies less than [0-5%] of the electricity supplied in Italy.

22. On a hypothetical EEA-wide upstream market for gas wholesale supply, Centrex and Gazprom would have a combined market share of around [20-30%] ([20-30%] Gazprom, [0-5%] Centrex). However, possible anticompetitive effects due to the positions of Centrex and Gazprom both in the upstream market for the procurement of gas to Italy and in the downstream markets (through this transaction) for gas and electricity supply are not likely to arise.
23. First, imports into Italy are well diversified, being around 30% from Russia and the rest: 35.6% from Algeria, 19.5% from Northern Europe, 10% from Libya and an additional 4% being re-gassified LNG. Gazprom and Centrex (who do not import gas directly to Italy but sell it to other Italian companies [...], which then import it into Italy) account for around [...] and [...] respectively of the total gas imported into Italy.
24. Moreover, all of the current supplies of Gazprom are committed through long-term contracts ([...]) with ENI and Edison which end [...] respectively.
25. Therefore, even if Gazprom may have the incentive to foreclose its competitors (for example, competitors supplying gas to industrial and thermoelectric customers on which SPV JV will be focussed), its ability to foreclose them is limited given the alternative sources of supply that the Italian gas companies have for the procurement of gas and the long term contracts referred to above that Gazprom is obliged to fulfil. There is also no indication that the proposed transaction will significantly enhance Gazprom's ability to foreclose its rivals.
26. Finally, the market shares of Enìa Energia in the related downstream markets (supply of electricity and gas) are very small, and SPV JV is a new company not currently active in the supply of gas to final customers.
27. In light of the not significant market position that Enìa Energia currently has on the downstream markets, it does not appear likely that the present transaction will give rise to any kind of customers foreclosure by preventing Gazprom's and Centrex's competitors on the upstream market for wholesale gas supply from accessing a critical number of customers on the downstream markets.

VII. CONCLUSION

28. 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