

EN

Case No COMP/M.5216
*– GAZ DE FRANCE/
SAVELYS*

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 4(4)
Date: 04-08-2008



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 04/08/2008
SG-Greffe(2008) D/205013/205014
C(2008) 4326

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 4(4) DECISION

To the notifying party
and French National Competition Authority

Dear Sirs,

Subject: Case No COMP/M.5216 – GAZ DE FRANCE/ SAVELYS
Reasoned submission pursuant to article 4(4) of Regulation No 139/2004
for referral of the case to France.

Date of filing: 27.06.08

Legal deadline for response of Member States: 28.07.08

Legal deadline for the Commission decision under Article 4(4): 04.08.08

I. INTRODUCTION

1. On 27.06.08, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Council Regulation (EC) No 139/2004¹ (the “EC Merger Regulation”) with respect to the Transaction by which the undertaking Gaz de France SA (“GDF”, France) acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of the undertaking Savelys SAS (“Savelys”, France).
2. The parties request the operation to be examined in its entirety by the competent authorities of the France.
3. According to Article 4(4) of the EC Merger Regulation, before a formal notification has been made to the Commission, the parties to the Transaction may request that their Transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition and which present all the characteristics of a distinct market.

¹ OJ L 24, 29.1.2004 p. 1

4. A copy of this Reasoned Submission was transmitted to all Member States on 07.07.08.
5. The Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes (DGCCRF) (the “French Competition Authority”), as the competent authority in France, has agreed with the proposed referral.

II. THE PARTIES

6. Gaz de France SA² ("GDF", France) is an energy group present across the entire gas value chain and related energy services and is active in exploration, production, transport, storage, distribution and sale of natural gas, mainly in France, but also in Belgium, Germany, the United Kingdom, Luxembourg, Hungary and Spain. GDF was transformed from a state-funded industrial and commercial establishment into a public limited liability company by a law adopted on 9 August 2004. Gaz de France S.A. is currently controlled by the French State, which owned 79,8% of the shares in GDF on 22 May 2008³. GDF and Suez⁴ implemented their merger on 22.07.08, which was conditionally approved by the Commission on 14 November 2006 (M.4180).⁵ The implementation of this merger reduced the shareholding of the French State to 35,7%.⁶
7. Savelys SAS ("Savelys", France): is a French company active in maintenance and replacement services for individual natural gas boilers. Its customers include private individuals, property management companies and social housing estate managers. Savelys achieves its entire turnover in France and is at present jointly controlled by GDF and Sigma 6.

III. THE CONCENTRATION

8. The Transaction involves a concentration pursuant to Article 3 of the EC Merger Regulation (EC) No 139/2004 by which the undertaking Gaz de France SA ("GDF", France) acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of the undertaking Savelys SAS ("Savelys", France) by way of purchase of the shares currently held by Sigma 6.

² GDF and Suez merged on 22.07.08, creating a new energy group named GDF Suez.

³ http://www.gazdefrance.com/EN/upload/documents/public/fusion-sg---uk---v15_1213597214.pdf consulted on 3 July 2008, slide 29.

⁴ The parties submit that this merger will not have any impact in GDF/ Savelys case since Suez has transferred its subsidiary Maisoning - which was active in the maintenance gas boiler market - to Domestria, a company controlled by Fleming Family and Partners (FF&P), a Scottish investment fund.

⁵ Press release: http://www.gdfsuez.com/uploads/media/CA_GDF_SUEZ_22-07-08_VA.pdf.

⁶ http://www.gazdefrance.com/EN/upload/documents/public/fusion-sg---uk---v15_1213597214.pdf consulted on 3 July 2008, slide 7.

9. Savelys is currently jointly controlled by GDF and Sigma 6, and is the result of a previous merger between CGST-Save, controlled by the GDF Group⁷, and Domoservices, which was the main operator in the individual boiler maintenance market in France.
10. Due to the vertical relationship existing between GDF and Domoservices, the merger between CGST-Save and Domoservice was authorised by Letter of the Minister of Economy of 25 June 2002 after a commitment by CGST to transfer 14 branch offices in order to restore the balance of competition in the departments affected.⁸ Since the merger, CGST-Save Domoservices is jointly controlled by GDF and Sigma 6.
11. In 2005, GDF increased its stake in Savelys (previously CGST-Save Domoservices) from 20% to 59%. This operation was also notified to the French Competition Authority. Nevertheless, the operation was not considered to be a concentration, since there was no change in control⁹. On the basis of the facts that founded the analysis of the French Competition Authority, as they are also set out in the Reasoned Submission, it appears that Savelys remained jointly controlled by GDF and Sigma 6.

IV. COMMUNITY DIMENSION

12. The concentration has a Community dimension within the meaning of Article 1 of the EC Merger Regulation because the conditions of Article 1 (2) of the EC Merger Regulation are fulfilled: the combined aggregate worldwide turnover of GDF and Savelys exceeds 5 000 million EUR, GDF and Savelys each have a Community-wide turnover in excess of 250 million EUR and GDF achieved more than one third of its aggregate Community-wide turnover outside France in 2007.
13. The notified operation therefore has a Community dimension within Article 1(2) of the EC Merger Regulation.

⁷ In this previous Transaction, the GDF group was considered as exercising a decisive influence over CSGT Save, even though its shareholding was limited to 20% of the capital, given the accumulation of the following factors: (i) it was the sole industrial operator with an interest in the capital, (ii) GDF a role in the adoption of important decisions, (iii) the consolidation of the participation of GDF's shareholding by using the equity method, a right of preferential pre-emption and (iv) different veto rights from the other minority shareholders.

⁸ Letter of 25 June 2002 authorising the acquisition of Domoservices by CGST-Save, BOCCRF No 2 of 12 March 2004. This authorisation was preceded by a commitment by CGST-Save to transfer 14 branch offices (Caen, Lorient, Rennes, Angers, Montargis, Blois, Bourges, Châteauroux, Poitiers, Niort, Valence, Grenoble, Montluçon and Nevers) with all their tangible and intangible assets in order to restore the balance of competition in the departments affected.

⁹ In spite of GDF's stake (59%), Sigma 6 had the right to appoint 4 of the 7 members of the 'conseil de surveillance', which in turn designated the members of the Board of Directors. In view of this, the French Minister of Economy considered that Sigma 6 would exercise a decisive influence over Savelys. Thus Savelys would be jointly controlled by GDF and Sigma 6 after the operation.

V. ASSESSMENT

A. Relevant product markets

Gas supply market

14. On the basis of the information submitted by the parties, the following gas supply markets could be considered: (i) gas supply to large industrial customers; (ii) gas supply to small industrial and commercial customers; (iii) gas supply to gas-fired power plants; (iv) gas supply to dealers (local distribution companies); (v) gas supply to household customers.
15. Nevertheless, the precise definition of the relevant product markets can be left open, since it would not affect the assessment of whether the proposed concentration meets the criteria for an Article 4(4) referral.

Maintenance of individual gas boilers market

16. On the basis of the information submitted in the Reasoned Submission, the relevant product market would be the market for the maintenance of gas individual boilers fitted for private customers. This maintenance activity comprises all the technical services needed to keep boilers in good operating order and prevent breakdowns. The parties also submit that this market could be divided into two separate markets based on the type of customer: private customers (individuals and property managers) and social housing managers (who sign contracts for all the individual boilers corresponding to the occupants of a building)¹⁰.
17. The product market definition can be left open, since it would not affect the assessment of whether the proposed concentration meets the criteria for an Article 4(4) referral.

B. Relevant geographic market

Gas supply market

18. On the basis of the information submitted in the Reasoned Submission, each balancing zone¹¹ constitutes a separate geographic market in terms of gas supply due to the heterogeneous competitive conditions prevailing in the various balancing zones in France.

¹⁰ Ibid.

¹¹ Order of the French Ministry of Industry, of 25 May 2005, defining the balancing zones for natural gas transmission networks, in which a balancing zone was defined as a geographical zone of the main transport network on which the shipper must maintain the daily balance between gas supply and consumption.

19. Nevertheless, since the result of the analysis would be the same, the definition of the geographic market can be left open, as it would not affect the assessment of whether the proposed concentration meets the criteria for an Article 4(4) referral.

Maintenance of individual gas boilers market

20. Concerning the market for maintenance of individual boilers, and based on the information submitted, the geographic focus of the proposed concentration appears to be confined to France. Furthermore, the markets would be primarily “local” in scope, since a significant percentage of the total cost of the service accounted for by labour and travelling costs¹².
21. Nevertheless, since the result of the analysis would be the same, the definition of the geographic market can be left open, since it would not affect the assessment of whether the proposed concentration meets the criteria for an Article 4(4) referral.

C. Assessment

22. On the basis of the information provided by the parties in the Reasoned Submission, the proposed transaction is an appropriate candidate for pre-filing referral from the Commission to the French Competition Authority in accordance with Article 4(4) of the EC Merger Regulation.
23. The transaction meets the legal requirements set out in Article 4(4) of the EC Merger Regulation. The transaction is a concentration within the meaning of Article 3 of the EC Merger Regulation, it has a Community dimension and it may significantly affect competition in distinct markets in France.

France is a distinct market

24. Based on the information submitted in the Reasoned Submission, the geographic focus of the proposed concentration appears to be confined to France. Furthermore, the maintenance of individual gas boilers market is likely to be primarily “local” in scope, owing to the significant percentage of the total cost of the service accounted for by labour and travelling costs in the individual boiler maintenance market in France.
25. In addition, there are no affected markets outside France, since Savelys has no current activities in the EEA outside France.
26. In view of the foregoing, the principal effects of the proposed operation would be restricted to France. Furthermore, the markets in question present the characteristics of a distinct market.

Competition may be significantly affected

27. According to the parties, it appears to be no horizontal overlap between Gaz de France and Savelys. However, there is a possible concern due to the vertical relationship

¹² Case COMP. M. 4180 Gaz de France/ Suez: 20-30% of billings to the client relate to travelling.

between the parties, since Gaz de France is active in the upstream market of supply gas and Savelys is active in the downstream market for maintenance of individual gas boilers. Thus, there is a possible risk of market foreclosure as a result of the vertical links between the parties.

28. In that regard, the parties submit that Savelys' market share in the market for maintenance of gas boilers of individuals and property managers is below 25% on a national level. On a regional level, Savelys has a market share above 25% in 45 French departments. Concerning the market for maintenance of gas boilers of social housing managers, Savelys' market share is [30-40]% on a national level. On a regional one, Savelys has a market share above 25% in 66 French departments.
29. On the other hand, the parties submit that GDF market share in the market of supply gas for household customers is 92-96% on a national level in 2007 and 46-50% on the clients that have exercised their eligibility¹³ If a narrower market is considered, GDF market shares per balancing zone are as ff.: Zone Nord 95-97%, Zone Est 77-81%, Zone Sud 96-100%, Zone Ouest 96-100% and Zone Sud-Est 75-79%.
30. The above information and the other information provided by the parties in the Reasoned Submission indicate that competition in the market for maintenance individual gas boilers for private customers in France may be significantly affected by the proposed concentration.

Additional factors

31. On the basis of the information provided by the parties, the locus of the competitive effects of the concentration is within France and the relevant geographic market is likely to be local in scope. Moreover, considering their previous experience in this sector¹⁴, the French Competition Authorities are the best placed to scrutinise this operation.

VI. REFERRAL

32. On the basis of the information provided by the parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the EC Merger Regulation in that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market. The Commission notice on case referral in respect of concentrations¹⁵ (point 17) indicates that, in seeking a referral under Article 4(4), *“the merging parties are ... required to demonstrate that the Transaction is liable to have a potential impact on competition in a distinct market within a Member State, which may prove to be significant, thus*

¹³ France transposed the Gas Directive of 26 June 2003 by means of the Law of 9 August 2004. The Law of 3 January 2003 and Decree No 2003-302 of 1 April 2003, as amended by Decree No 2004-420 of 18 May 2004, provided for the eligibility of all gas purchasers, with the exception of final consumers, who became eligible on 1 July 2007. Eligible customers have the option not to exercise their eligibility. In this case they remain subject to regulated tariffs. It should be noted, as well, that the rate of exercising eligibility is rising very quickly with the advent of the full opening-up of the market.

¹⁴ Letter of 25 June 2002 authorising the acquisition of Domoservices by CGST-Save, BOCCRF No 2 of 12 March 2004.

¹⁵ OJ C 56, 05.03.2005, p.2.

deserving close scrutiny”, and that “such indications may be no more than preliminary in nature...”. The Commission considers, on the basis of the information submitted in the Reasoned Submission, that the principal impact on competition of the concentration is liable to take place on distinct markets in France, and that the requested referral would be consistent with point 20 of the notice.

VII. CONCLUSION

33. For the above reasons, and given that France has expressed its agreement, the Commission has decided to refer the Transaction in its entirety to be examined by France. This decision is adopted in application of Article 4(4) of Council Regulation (EC) No 139/2004.

For the Commission,
(signed by H. Drabbe)
Philip LOWE
Director General