EN

Case No COMP/M.5220 -
ENI / DISTRIGAZ

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.10.2008

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

Subject: **Case No COMP/M.5220 - ENI/ DISTRIGAZ**
Notification of 10/09/2008 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 10/09/2008 the Commission received a notification of a proposed concentration by which the undertaking Eni S.p.A. ("Eni", Italy) acquires within the meaning of Article 3(1)(b) of the Council Regulation (EC) No 139/2004 ("ECMR") control of the whole of the undertaking Distrigaz S.A. ("Distrigaz", Belgium), previously part of the Suez group ("Suez", France) by way of a purchase of shares.

2. Eni and Distrigaz will be referred together as the Parties hereafter.

I. THE PARTIES

3. **Eni** is an Italian integrated energy company divided in three main business divisions. Its Exploration & Production division includes the search for, production and sales of hydrocarbons. In the area of Gas & Power it is engaged in the supply and marketing of natural gas as well as the production and sale of electricity. Eni`s third business division consists of activities in refining and marketing of petroleum products. Other main areas of business are related to petrochemicals as well as construction and engineering activities.

4. **Distrigaz** is a Belgium company active in the natural gas business in Belgium, France Luxembourg, Germany and the Netherlands. It supplies natural gas to industries, resellers and electricity producers.

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1 OJ L 24, 29.1.2004 p. 1.

II. THE OPERATION

5. The envisaged transaction concerns the acquisition of sole control of Distrigaz by Eni. It has to be seen in context with a remedy in case COMP/M.4180 Gaz de France / Suez which required GDF and Suez to divest Suez's share in the capital of Distrigaz (57.243%). Following a bid process, Eni has been elected as proposed purchaser for the aforementioned share in the capital of Distrigaz.

6. On 31/07/2008 the Commission approved ENI as a suitable buyer in line with the previous procedure. In its decision, the Commission has stated that the proposed acquisition would not create prima facie competition concerns.

III. CONCENTRATION

7. According to the share and purchase agreement between Eni and Suez, Eni will acquire 57,243% of Distrigaz' share capital, i.e. Suez' whole interest in Distrigaz. This participation will allow Eni to exercise sole control over Distrigaz.[2]

8. It follows that the operation constitutes a concentration within the meaning of Article 3(1)b of the ECMR.

IV. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[3] (Eni: EUR 87.2 billion; Distrigaz: EUR 4.3 billion). Each of them have a Community-wide turnover in excess of EUR 250 million (Eni: EUR [CONFIDENTIAL]; Distrigaz: EUR [CONFIDENTIAL]), 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

1) RELEVANT MARKETS

10. The concentration concerns the Parties' overlapping activities downstream from the production of natural gas. Such activities include the supply of gas (including its different markets divided according to customer groups) and trading on gas hubs.

11. Additionally, as Eni (but not Distrigaz) is active on the upstream activities comprising the development, production and wholesale of natural gas, the proposed concentration gives rise to a vertical relationship between Eni and Distrigaz.

12. Finally, it can be noted that Eni and/or Distrigaz have booked capacities on several gas infrastructures (notably for LNG, transmission and storage) located in the countries where they supply gas.

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2 The other main shareholder of Distrigaz is Publigaz S.A. ("Publigaz"), a financial holding company controller by Belgian municipalities, which owns 31.25% of Distrigaz's share capital. [CONFIDENTIAL]

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).

Product markets

13. According to the Commission's decision-making practice[4] the following activities constitute separate product markets: (i) exploration/production of natural gas; (ii) gas wholesale supplies, (iii) gas transmission (via high pressure systems), (iv) gas distribution (via low pressure systems), (v) gas storage (vi) gas trading, (vi) gas supply, comprising several separate markets.

14. In so far as the notified transaction does not have any effects on the gas infrastructures markets, a precise definition of these markets is not necessary for the purposes of this decision. However, the situation concerning Eni's and Distrigaz' booked capacities on the different infrastructures described above will be taken into account in the analysis of the effects of the merger on the downstream markets for gas supply.

Gas supply

15. According to prior decisional practice, the gas supply activities have to be sub-divided in five markets, i.e. supply of gas to (i) dealers, (ii) gas-powered electricity plants, (iii) large industrial customers, (iv) small industrial customers, and (v) household customers.[5] The distinction between these groups has been made according to certain factors such as their use of gas, profile and volume of consumption, connection to transmission networks and the purchase price.[6]

16. In particular in France, as to the distinction between supply of gas to small and supply of gas to large industrial customers, the Commission left open the question as to which threshold has to be retained to delineate the border between small and large customers, i.e. an annual gas consumption of either 50 GWh or 5 GWh.[7] For the purposes of the present decision, this question can also be left open, since the proposed transaction does not lead to any competition concern under either threshold.

17. A further distinction can also be made between high calorific value gas (H gas) and low calorific value gas (L gas), since H gas and L gas are not always substitutable for each other. In *Gaz de France / Suez* the Commission found that H gas and L gas do not belong to the same product market in Belgium and in France.[8]

18. Finally, the Commission found, in *Gaz de France / Suez,* that customers who had exercised their eligibility – and were therefore supplied under free prices – could not go back to regulated tariffs. Thus, there was found to be an asymmetric competitive constraint between regulated tariffs and free prices.[9] In that case, the Commission

[4] See: COMP/M.3440 *EDP/GDP/ENI*, of 9 December 2004, COMP/M.3696 *E.ON/MOL*, of 12 December 2005, COMP/M.3886 *Dong/Elsam/Energi E2*, of 15 March 2006, and COMP/M.4180 *Gaz de France /Suez*, of 14 November 2006.

[5] See Case COMP/M.4180 GDF/Suez, paragraph 63

[6] See case COMP/M.4180 GDF/Suez, paragraphs 73-86

[7] See case COMP/M.4180 GDF/Suez, paragraph 360.

[8] Case COMP/M.4180 GDF/Suez, paragraphs 64-69 and 344-345.

[9] However, it has to be noted that since the adoption of GDF/Suez decision, there were some changes in the French regulation. Currently, French residential customers can switch back to regulated tariffs when they

concluded that the markets to be assessed were the markets for gas supply to customers who had exercised their eligibility.

19. For the purposes of this decision the markets for gas supply to customers who have exercised their eligibility can be retained as a worst case scenario. Indeed, if a wider market was considered, the Parties' market shares would be significantly lower, since a strong proportion of gas volumes (about 44% for non residential customers[10]) is still supplied under regulated tariffs by the incumbents. Conversely, this worst case scenario underestimates the weight of the incumbents - i.e. Gaz de France ("GDF"), Tegaz (Total group) and to a very minor extent the 22 local distribution companies - on the markets for gas supply.

20. For the purposes of this decision, it is however not necessary to define a market of customers that have not exercised their eligibility since neither of the parties serve such customers.

Trading on gas hubs

21. A gas hub is an instrument which facilitates exchanges of gas among market players in order to allow buyers and sellers to find sufficient volumes for supply or to sell exceeding their capacities in the short term. It can be either physical in nature or a virtual trading point. Given the different operation of trading hubs (a more immediate meeting of supply and demand, where parties act as both sellers and buyers) and different arrangements governing access to the hub, the market for trading on gas hubs has been defined as being distinct from the supply markets.[11]

22. As regards trading of liquefied natural gas (LNG), it can be left open if these activities form a different product market or are part of the markets for supply and trading of gas as defined above since the Parties' overlap is minimal and the proposed transaction does not give rise to any competition concerns under either market definition.

Development and production of gas

23. In the upstream market, the decisional practice is for the activities of development and production on gas fields to form one separate product market. However, the Commission has left open the questions as to whether a distinction should made between H gas and L gas and as to whether LNG supplies should be distinguished from supplies of piped natural gas. [12]

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move into a new dwelling, although this provision will be in place only until 30 June 2010, and that professional customers who have exercised their eligibility for their existing premises can opt for regulated tariffs for their new premises to the extent the former occupant of these premises did not subscribe to a free tariff offer. In addition, Altergaz promotes its tariffs for residential customers as being below regulated tariffs.

[10] 42% on 30 June 2008. See Observatoire des marchés de l'électricité et du gaz –2ème trimestre 2008 – Commission de Régulation de l'Energie.

[11] Case COMP/M.4180 GDF/Suez, paragraphs 70 - 72

[12] Case COMP/M.4545 Statoil/Hydro, paragraphs 9-12.

24. For the purposes of this decision, these questions can also be left open, since the proposed transaction does not give rise to competition concerns under any alternative product market definition.

Geographic markets

Gas supply

25. In its previous decisions, the Commission has always held that the geographic markets for gas supply were not wider than national.

26. Both Eni and Distrigaz supply gas in Germany and France (but do not overlap in other countries).

27. As to France, the geographical markets are defined according to the existing balancing zones. Competitive conditions between these zones are significantly different due to barriers to entry from one zone to another such as transmission costs, different physical congestion, insufficient interconnection capacity and considerable different link tariffs. Therefore, France has to be divided into the following areas: North of France (sub-divided into a High calorific "H" gas and Low calorific "L" gas zone), East of France, West of France, South of France and South West of France.[13]

28. It can be noted that the North, East and West zones will be merged into one single new North zone as of 1 January 2009. [14] This new geographic market is therefore taken into account for the purposes of the competitive assessment.

29. As to Germany, the decisional practice has defined the gas supply markets as being regional mainly divided along the former demarcation of regions which were reserved for a single supplier before the liberalisation process started in 1998.[15] In particular, both the importers/suppliers (also defined as "long-distance transmission companies") and the regional suppliers (also defined "short-distance transmission companies") have been considered mainly regional and their areas of operation coincide with the geographic extension of the 19 demarcation regions existing before the liberalization process.

30. On 1 February 2006, the German energy regulator (Bundesnetzagentur) broke Germany down into 19 vertically integrated market zones. Each zone consists of an aggregation of networks/subnetworks of interconnected operators, within which a virtual trading point exists on the transmission (high pressure) grid where gas can be delivered and traded. Grid operators are responsible for overseeing zonal balancing.

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[13] Case COMP/M.4180 GDF/Suez, paragraphs 380-385.

[14] See: "Proposition tarifaire de la Commission de régulation de l'énergie du 10 juillet 2008 pour l'utilisation des réseaux de transport de gaz naturel" and press release dated 25 September 2008 ("Les nouveaux tarifs d'utilisation des réseaux de transport de gaz naturel entreront en vigueur le 1er janvier 2009") – Commission de régulation de l'énergie..

[15] See e.g. case COMP/M.1383 Exxon/Mobile and COMP/M.2822 ENBW/ENI/GVS

31. Since 2006 the original 19 areas have been progressively reduced and an agreement between the operators was formalised by the Bundesnetzagentur in July 2008, according to which the market areas should be reduced to 8 zones.

32. For the purposes of the present decision, the precise geographical market definition can be left open as the competitive assessment does not change irrespective of the possible geographic market definition for Germany.

Trading on gas hubs

33. In the decision *Gaz de France / Suez,* the Commission found that the competitive conditions on the Zeebrugge hub had considerably converged, and would even more intensely do so in the near future, with those of the National Balancing Point (NBP) in the UK. The two hubs were considered as belonging to the same geographical market, while the Dutch TTF (Title Transfer Facility) was considered as part of a separate geographical market, due to the significant price and fluctuation differences.[16]

34. For the purposes of this decision, the precise geographic market definition can be left open since the proposed transaction does not lead to competition concerns under any alternative geographic market definition.

Development and production of gas

35. In previous decisions the Commission has indicated that this market most likely comprises the EEA, plus Russian and Algerian imports, but has left open the exact geographic market definition. However, in *Statoil / Hydro*, the Commission underlined that there is a limitation in the access to alternative sources of supply, depending on pipeline connections and available import capacities (including import infrastructures for LNG). Taking into account these limitations, the Commission stressed that "*Norwegian gas (produced inter alia by both Statoil and Hydro) does not exert the same level of competitive pressure throughout the EEA or even in the various countries, taken as a whole or individually, where Norwegian gas is sold either directly via pipelines from the Norwegian Continental Shelf ("NCS") or via swaps*." Thus, for the purposes of the decision in the *Statoil / Hydro* case, the Commission envisaged different alternative geographic markets[17] but left open the precise geographic scope of the relevant market.

36. For the purposes of this decision, the question of the appropriate relevant geographic market can also be left open, since the proposed transaction does not give rise to competition concerns under any reasonable geographic market delineation.

2) HORIZONTAL ASPECTS

37. The Parties' activities overlap in Germany, on the market of gas supply to dealers and on the market of gas supply to large industrial customers, as well as in France on the markets of gas supply to large industrial customers and on the markets of gas supply to small industrial customers.

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[16] Case COMP/M.4180 GDF/Suez, paragraphs 87-99.

[17] COMP/M.4545 Statoil/Hydro, paragraph 16. The geographic market envisaged was alternatively (i) the EEA, (ii) an area comprising those EEA countries in which gas from the NCS is sold, (iii) each individual country in which Statoil and Hydro sold gas.

Gas supply in Germany

38. Distrigaz is active in the following balancing zones: Ontras, RWE H gas, Wingas and BEB, with very limited sales of gas amounting only to [CONFIDENTIAL] (as compared with the total supplies of gas in Germany amounting to more than 900 TWh).

39. Eni is active in Germany directly and through a joint venture, GVS, jointly controlled with EnBW.

40. The only overlaps in Germany arise in the supply of gas in the Wingas zone (where Distrigaz, Eni and GVS operate), on the market for gas supply to large industrial customers, and in the RWE H zone (where Distrigaz and GVS are active) on the market for gas supply to dealers.

41. However, the Parties' combined share is below 5% in each of the German zones mentioned above[18]. The transaction is therefore unlikely to lead to competition concerns in Germany.

Gas supply in France

42. The proposed transaction gives rise to affected markets in France only, where the Parties have a combined share above 15% regarding gas supply to large industrial customers who have exercised their eligibility. The French markets of gas supply to industrial customers who have exercised their eligibility are discussed in turn below.

43. Eni has provided the Commission with an estimate of the Parties' market shares on (i) gas supply to small industrial customers and (ii) gas supply to large industrial customers, in both cases, per balancing zone. These data were provided for both thresholds (5 Gwh and 50 Gwh) envisaged for the purpose of distinguishing small from large customers.

44. Eni submits that GDF is still by far the largest player and that the proposed transaction is unlikely to raise competition concerns. However Eni states that it has not been in a position to provide reliable market shares for its competitors for the market for gas supply to large industrial customers on the one hand, and for the market for gas supply to small industrial customers on the other hand.

45. The Commission launched a market investigation which enabled, inter alia, to check the Parties' market shares and to calculate the corresponding market share of their competitors.

46. The results of the market investigation have largely confirmed the Parties' market shares estimated by Eni.[19] They have also shown that the players' market shares do not significantly differ according to the threshold retained to distinguish small from large customers. Accordingly, for the purposes of the present decision - as in *Gaz de France /*

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[18] It has to be noted that, according to the data provided by Eni, the future delimitation of markets areas in Germany will not lead to any new overlap between the Parties nor an increase in the Parties' combined market share in the areas where their activity currently overlap.

[19] Eni's market shares include Altergaz' market shares, since Eni acquired a control over Altergaz in June 2007.

Suez - the threshold of 50 GWh will be retained to illustrate the difference between small and large industrial customers.

47. As to supply of H gas (under free prices) to all industrial customers, Eni and Distrigaz represent together about [10-20]% (Eni: [5-10]%; Distrigaz: [10-20]%) of the volumes sold in France. Along with Tegaz (Total group) and EDF, which each represent [10-20] % of the volumes sold, and other players with a share of [0-5] % (inter alia E.On, Gazprom and Gas natural), the new entity will continue to face GDF which is still the largest player by far with a share of [50-60] %.

48. It has to be borne in mind that the weight of GDF, and to a lesser extent Tegaz (the other incumbent which also supplies gas under regulated tariffs), is actually more important since about 44% of gas volumes were supplied to industrial customers under regulated tariffs in 2007.

49. As to the market for H gas supply to small industrial customers, the Parties have a combined market share below 10% in each balancing zone (including the new North balancing zone, which will result from the merger of the current North, East and West zones as of 1 January 2009). GDF is still the dominant player with a market share between [60-70] % (current North, East, future North and South West zones) and [70-80] % (West and South). The other main competitors facing GDF are EDF, with a market share of [10-20] % in each balancing zone, and Tegaz ([0-5] % in the North, East, and South zones; [5-10] % in the West and new North zones; [10-20] % in the South West zone).

50. Accordingly, the proposed transaction is unlikely to raise competition concerns on the markets for gas supply to small industrial customers.

51. As to the market for H gas supply to large industrial customers, the Parties and their competitors' market shares are set out in the table below.

In %	North H	East	West	*Future North*	South	South West (TIGF)
ENI	[10-20]	[0-5]	[0-5]	*[5-10]*	[0-5]	0,0
DISTRIGAZ	[10-20]	[20-30]	[0-5]	*[10-20]*	[5-10]	[0-5]
ENI+DISTRIGAZ	*[20-30]*	*[20-30]*	*[5-10]*	*[20-30]*	*[10-20]*	*[0-5]*
GDF	[40-50]	[40-50]	[40-50]	*[40-50]*	[50-60]	[10-20]
TEGAZ	[5-10]	[0-5]	[20-30]	*[5-10]*	[10-20]	[80-90]
E.ON	[0-5]	[5-10]		*[0-5]*	[0-5]	
WINGAS	[0-5]			*[0-5]*		
EDF	[5-10]	[5-10]	[10-20]	*[5-10]*	[5-10]	
GAZPROM	[5-10]	[0-5]		*[5-10]*	[0-5]	
GAS NATURAL	[0-5]	[0-5]	[0-5]	*[0-5]*	[0-5]	

Source: Form Co for the Parties' market shares; market investigation for the Parties' competitors' market shares.

52. The proposed transaction would give rise to a significant increment on the current and the future North zones. On the future North zone the Parties have a combined market share of about [20-30]% (Eni: [5-10]%, Distrigaz: [10-20]%). However GDF, with a market share of [40-50] %, still remains by far the largestplayer. Despite the strong position of GDF and the significant combined market share of the Parties, five further competitors remain,, three of which have a market share of [5-10]% (Tegaz, EDF and Gazprom].

53. The proposed transaction would give rise to a minimal increment on the South zone and no increment on the South West zone. In addition, GDF and Tegaz enjoy a leading position respectively on the South and South West zones.

54. Accordingly, the proposed transaction is unlikely to raise competition concerns on the markets for H gas supply to large industrial customers.

55. As to L gas supply to industrial customers, the Parties have a combined share of [10-20]% (Eni: [5-10]%; Distrigaz: [0-5]%) on the market for gas supply to large industrial customers and [5-10]% (Eni: [0-5]%; Distrigaz: [0-5]%) on the market for gas supply to small industrial customers. GDF is still the largest player with a market share of [80-90] % on both markets.

56. Accordingly, the proposed transaction is unlikely to raise competition concerns on the markets for L gas supply to (i) large industrial customers and (ii) small industrial customers.

Trading on gas hubs

57. In view of trading activities on gas hubs, the combined market share of Eni and Distrigaz is well below 15% whatever the geographic market considered. Therefore, the concentration does not raise competitive concerns on this product market.

3) VERTICAL ASPECTS

58. As regards a possible vertical effect due to Eni`s presence on the upstream market for development and production of gas, no anticompetitive results can be expected for the following reasons.

59. Eni`s market share on this market is limited, irrespective of the precise product (with and without distinguishing separate markets for LNG, H gas and L gas[20]) and geographic market definition.

60. If the geographic market, as proposed by the Parties were to be defined as comprising the EEA production of gas plus Russian and Algerian imports, Eni`s market share according to volume of production would amount to [0-5]%. If Libyan exports were to be taken into account additionally, it would amount to [0-5]%.

61. Likewise, Eni has limited market shares (well below 10%) when considering the areas of the EEA (i) either comprising the countries where Eni currently sell gas as a wholesaler (ii) or where Eni has the ability to directly deliver gas as a wholesaler (i.e. landing points for pipelines), (iii) consisting of each country (i.e. France and Germany) where Eni sells gas as a wholesaler and where Distrigaz is active at the downstream level.

62. As regards a possible vertical effect due to the rights of use of gas infrastructures, no anticompetitive results can be expected for the following reasons.

63. Firstly, Distrigaz has no capacity booking on any gas infrastructure in Italy (where Eni is a gas incumbent).

[20] Eni has provided figures for the following alternative product markets: (i) H gas excluding LNG, (ii) L gas, (iii) H gas and LNG together, (iv) H gas, L gas and LNG together.

64. Secondly, Eni has very limited booking capacities in Belgium (where Distrigaz is an incumbent) on the gas transmission network, at the ZPT entry point ([CONFIDENTIAL]% of the capacities) and at the Eynatten exit point [CONFIDENTIAL] towards Germany. On these two points Distrigaz' booking capacities represent [CONFIDENTIAL]% of the total capacity.

65. However, (i) [CONFIDENTIAL] and (ii) the amount of capacity Eni holds at ZPT is insignificant (less than 1% of total Belgian import capacity) and thus does not appreciably affect Distrigaz position on the Belgian market. Finally, [CONFIDENTIAL].

66. Thirdly, Eni and Distrigaz have some booking capacities on the transmission network in Germany.

67. However there is no overlap between the Parties' booking as at any entry or exit point and Distrigaz' booking capacities are very limited: [CONFIDENTIAL]% at the entry point of Eynaten [CONFIDENTIAL], and [CONFIDENTIAL]% at the entry point of Gross Koris [CONFIDENTIAL].

68. Fourthly, Eni and Distrigaz have some booking capacities on the transmission network and Distrigaz has some storage booking capacities, in France were the Parties supply gas. However these booking capacities do not overlap and they moreover represent a very limited proportion of the capacities.

4) CONCLUSION OF THE COMPETITIVE ASSESSMENT

69. In the light of the above, the Commission concludes that the proposed transaction does not raise competition concerns.

70. This conclusion is supported by the results of the market investigation since the third parties questioned did not raise serious competition concerns.

VI. CONCLUSION

71. 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