

***Case No COMP/M.5519 -  
E.ON/ ELECTRABEL  
ACQUIRED ASSETS***

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: 13/10/2009

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.10.2009

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party**

Dear Sir/Madam,

**Subject: Case No COMP/M.5519 – E.ON/ ELECTRABEL ACQUIRED ASSETS  
Notification of 8 September 2009 pursuant to Article 4 of Council  
Regulation No 139/2004<sup>1</sup>**

1. On 8 September 2009, the Commission received a notification of a proposed concentration within the meaning of Article 4 of the Merger Regulation<sup>2</sup> by which E.ON AG ("E.ON", Germany) intends to acquire from Electrabel S.A./N.V. ("Electrabel", Belgium) sole control over two power plants (the "Acquired Assets") and certain drawing rights (the "Acquired Drawing Rights") within the meaning of Article 3(1)(b) of the Council Regulation (the "Proposed Transaction").

**I. THE PARTIES**

2. **E.ON** is an international vertically integrated energy company active on both the electricity and natural gas markets.
3. **The Acquired Assets** and the electricity generation capacity underlying the Acquired Drawing Rights are owned by Electrabel, which is part of GDF SUEZ SA, an international industrial and services group, which is active in electricity, natural gas, energy services, water and waste management.

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

<sup>2</sup> Council Regulation (EC) 139/2004

## **II. THE OPERATION**

4. The Proposed Transaction concerns the acquisition by E.ON of sole control over the Acquired Assets in Belgium from Electrabel: the i) hard coal power plant Langerlo (installed capacity of 556MW) and the ii) gas power plant Vilvoorde (installed capacity of 385MW). The Proposed Transaction also includes the acquisition by E.ON from Electrabel of the Acquired Drawing Rights - drawing rights to electricity capacity in Belgium (38.3% of the total capacity of the nuclear power plants Doel 1 and 2 representing 150 and 166MW, respectively; and 19.1% of the total capacity of the nuclear power plant Tihange representing 184MW) and a portfolio drawing right to be delivered in the Netherlands to an electricity capacity representing 270MW. The Acquired Drawing Rights expire[...].
5. The Proposed Transaction arises from the divestment by E.ON of power generation assets and electricity drawing rights that it undertook to divest under the Article 9 decision issued by the Commission on 26 November 2008<sup>3</sup>. E.ON and Electrabel intend to swap electricity generation assets and drawing rights in Germany, Belgium and the Netherlands respectively.
6. The Proposed Transaction comprises the acquisition of sole control over the Acquired Assets and of the transfer of the Acquired Drawing Rights.
7. The acquisition of sole control over the Acquired Assets constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.
8. According to E.ON, the Acquired Assets constitute a business to which a market turnover can be attributed and thus have a market presence within the meaning of point 24 of the Jurisdictional Notice<sup>4</sup>. Furthermore, E.ON informed the Commission that at least one client is attributed to the Acquired Assets.
9. The transfer of electricity drawing and portfolio rights is linked to the realisation of the asset transfer agreement, consequently there is no need to decide whether the Acquired Drawing Rights constitute a transfer of business within the meaning of the Merger Regulation<sup>5</sup>. Such a conclusion is also not necessary since the Proposed Transaction would have a Community dimension on the sole basis of the transfer of the Acquired Assets.
10. The Proposed Transaction thus constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **III. COMMUNITY DIMENSION**

11. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>6</sup>. Each of them has a Community-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate Community-wide

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<sup>3</sup> Cases COMP/B-1/39.388 and 389.

<sup>4</sup> Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentration between undertakings (2008/C 95/091) OJ C 95 of 16 April 2008, p. 1 – 48

<sup>5</sup> See point 39 of the Jurisdictional Notice.

<sup>6</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation.

turnover within one and the same Member State. The notified operation therefore has a Community dimension.

#### IV. COMPETITIVE ASSESSMENT

12. E.ON argues that the Proposed Transaction will have pro-competitive effects, as it will establish a new electricity producer in Belgium which will be in a better position to provide a competitive constraint on Electrabel, which has substantial market shares at all market levels. The duration of the drawing and portfolio rights is limited [...]. In the fourth quarter of 2009 approximately [...] % and in 2010 approximately [...] % of the electricity production from the Acquired Assets and drawing rights in Belgium could be sold to third parties.
13. In the absence of concrete E.ON business plans regarding future allocation of the electricity in the Belgian electricity downstream markets resulting from the Proposed Transaction, the latter is analysed on the basis of hypothetical scenarios prepared by E.ON.

##### *Relevant Product and Geographic Markets*

14. Both E.ON and Electrabel are active on electricity markets in Belgium and the Netherlands. The Proposed Transaction mainly concerns the electricity markets in Belgium.
15. The relevant markets in *Belgium* are i) the market for generation and wholesale supply of electricity ("wholesale electricity market")<sup>7</sup> and ii) the market for retail supply of electricity to small and to large users. These markets are generally national in scope<sup>8</sup> with the exception of the market for retail supply of electricity to households which is regional in scope<sup>9</sup>.
16. The Commission has previously assessed the Dutch electricity markets similarly to the Belgian electricity markets<sup>10</sup>. The relevant markets in *the Netherlands* concern i) the market for generation and wholesale supply of electricity<sup>11</sup> and ii) the market for retail supply of electricity to small and to large users<sup>12</sup>. These markets are generally national in scope<sup>13</sup>.

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<sup>7</sup> Case COMP/M.4180 – *Gaz de France/Suez*, para. 674.

<sup>8</sup> Case COMP/M.4180 – *Gaz de France/Suez*, para. 696, para 728, 734, 738.

<sup>9</sup> Case COMP/M.4180 – *Gaz de France/Suez*, para. 742.

<sup>10</sup> Case COMP/M.4370 – *EBN/Cogas Energy*, para. 8-10, 14-16, COMP/M.1659 – *Preussen Elektra/EZH*, para. 7.

<sup>11</sup> Case COMP/M.5467 – *RWE/Essent*, para 23 and 52-56, Case COMP/M.3268 – *Sydkraft/Graninge*, para 14.

<sup>12</sup> Case COMP/M.5467 – *RWE/Essent*, para 57 – 60.

<sup>13</sup> Case COMP/M.5467 – *RWE/Essent*, para 61. There are a few possible exceptions to this market delineation: in the *RWE/Essent* decision the question was left open with regard to the wholesale supply and generation (Case COMP/M.5467 – *RWE/Essent*, para 26 - 32).

## *Competitive Assessment*

### **BELGIUM**

#### *Electricity - Horizontal Overlaps*

##### *a) Electricity generation and wholesale supply of electricity (wholesale electricity markets)*

17. The Parties' activities overlap horizontally in the wholesale electricity markets.
18. Following the Proposed Transaction, E.ON will own approximately [5-10] % of the total installed generation capacity in Belgium and the market share of Electrabel will decrease to [60-70] % from [70-80] %. In terms of installed capacity, post-transaction E.ON will be the third largest operator after Electrabel and SPE ([10-20] %).
19. E.ON is not currently active on the market for the wholesale electricity supply in Belgium. Electrabel is the market leader with [70-80] %, followed by SPE with [5-10]%. Based upon similar market shares of the electricity generation market shares, E.ON is likely to have [5-10] % post-transaction.

##### *b) Retail supply of electricity*

###### *Current situation*

20. Currently, almost all large industrial and commercial customers source their entire electricity requirements from Electrabel. E.ON purchases electricity from Electrabel and at Belpex, the Belgian Power Exchange. Electrabel holds [90-100] % of the market, while both E.ON and EDF have about [5-10] % each.
21. E.ON submits that while small industrial and commercial customers in Belgium source their electricity from various market players the market shares of Electrabel are still high at [50-60] %. E.ON currently has [5-10] % of the market with several participants: SPE/Luminus ([10-20] %), NUON ([5-10] %), Essent ([5-10] %) or EDF ([5-10] %).
22. E.ON is not active on the Belgian market for household customers. On this market Electrabel has [60-70] % in Flanders, [70-80] % in the Walloon and [90-100] % in the Brussels regions. Its main competitors are SPE/Luminus, NUON, Essent.

##### *c) Analysis on the basis of hypothetical market shares*

23. In the absence of any business plans or forecasts by E.ON indicating to which segment on the Belgian electricity market the electricity will be allocated, the Commission requested that E.ON presents hypothetical scenarios in order to simulate the impact of the Proposed Transaction on the Belgian market.
24. E.ON prepared two hypothetical simulations as a result of the Proposed Transaction.
25. The first is based upon Electrabel's current market position in the electricity wholesale market and the way Electrabel allocates its downstream supplies to respective retail and other markets. On the basis of this calculation of the post-transaction market shares of E.ON, the Proposed Transaction would not exceed 15%.

Table 1: E.ON – Belgium (2008)

E.ON Market	Current		Additional electricity TWh	Hypothetic / Future	
	TWh	Market Share		TWh	Market Share
Large industrial and commercial customers	[...]	[5-10]%	[...]	[...]	[10-20]%
Small industrial and commercial customers	[...]	[5-10]%	[...]	[...]	[10-20] %
<b>Household customers (overall)</b>	<b>0</b>	<b>0</b>	[...]	[...]	-
- Household customers (Flemish region)	0	0	[...]	[...]	[5-10]%
- Household customers (Walloon region)	0	0	[...]	[...]	[5-10] %
- Household customers (Brussels region)	0	0	[...]	[...]	[10-20] %
Others (Trading or other services)	0	-	[...]	[...]	-
<b>Wholesale supply</b>	<b>0</b>	<b>0</b>	[...]	[...]	<b>[10-20] %</b>

26. The second method is based upon E.ON's position in the retail markets and the way the overall figure of electricity sold by E.ON in the retail market is allocated to the respective retail markets. On the basis of this method of calculation, the Proposed Transaction would lead to combined market shares below 25% on any of the downstream retail markets.

Table 2: E.ON – Belgium – Retail Markets (2008)

E.ON Market	Current		Additional electricity TWh	Hypothetic / Future	
	TWh	Market Share		TWh	Market Share
Large industrial and commercial customers	[...]	[5-10]%	[...]	[...]	[10-20]%
Small industrial and commercial customers	[...]	[5-10]%	[...]	[...]	[20-30]%
Household customers (overall)	0	0	0	0	0 %

27. However, even this scenario would not raise competition concerns, as Electrabel has very high market shares on the Belgian retail electricity downstream markets on which E.ON will be in a position to reinforce its presence following the Proposed Transaction.

## THE NETHERLANDS

### *Electricity - Horizontal Overlaps*

28. As a result of the Proposed Transaction, E.ON will acquire a portfolio drawing right to an electric capacity currently representing 270 MW from Electrabel's portfolio. The delivery point for such electricity shall be the electricity hub TenneT in the Netherlands. In terms of availability and costs, the portfolio delivery shall be structured as if Electrabel made available electricity generated at nuclear power plants Doel 1, Doel 2 and Tihange 1. However, the electricity which will be made available to E.ON at the delivery point is not bound to derive from a specific Electrabel power plant. Thus, the location of the electricity generation is irrelevant.

#### *a) Electricity Generation and Wholesale Supply*

29. According to E.ON, on the electricity markets in the Netherlands the incumbent participants Essent and Nuon, together with Electrabel, control [50-60] % of total installed capacity of 25,261 MW. E.ON's share ([...] or [5-10] %) of installed capacity in the Netherlands would not change post-transaction.

30. Nevertheless, in terms of wholesale supply, the Proposed Transaction on the Dutch wholesale electricity market will lead to a limited increase in E.ON's market share from [5-10] % to [10-20] % (for comparison, Electrabel has [10-20] %, Essent [10-20] % and Nuon – [10-20] %).

#### *b) Retail supply of electricity*

##### *Current situation*

31. At [10-20] % ([...]), E.ON's share on the market of supply to industrial and commercial customers in the Netherlands is modest, compared to other market participants such as Essent ([20-30] %), Delta ([20-30] %), Eneco ([10-20] %) and Nuon ([10-20] %).

32. E.ON's market share of the Dutch market for the supply to household customers is currently [0-5] % ([...]). The main players on the market are Nuon ([20-30] %), Essent ([20-30] %), Eneco ([20-30] %), followed by Delta ([0-5] %).

#### *c) Analysis on the basis of hypothetical market shares*

33. E.ON believes that the Proposed Transaction does not directly affect the retail markets in the Netherlands. However, at Commission's request, E.ON provided calculations of hypothetical future market share in the retail market.

34. If the method of calculation explained in paragraph 25 of the present Decision is applied to the market share of E.ON following from the position of Electrabel in the retail markets, E.ON's market share would remain constant – [10-20] % in the market for industrial and commercial customers, and under [0-5] % in the household market. Hence the Proposed Transaction would not lead to affected markets.

35. In case the calculation similar to one explained in paragraph 26 of this Decision were to be made for the Netherlands, the Proposed Transaction would lead to a market share in electricity supply to industrial and commercial customers.

Table 3: E.ON – The Netherlands – Retail Markets (2008)

<b>E.ON</b>	<b>Current</b>		<b>Additional electricity</b>	<b>Hypothetic / Future</b>	
<b>Market</b>	<b>TWh</b>	<b>Market Share</b>	<b>TWh</b>	<b>TWh</b>	<b>Market Share</b>
Industrial and commercial customers	[...]	[10-20]%	[...]	[...]	[10-20]%
Household customers	[...]	[0-5]%	[...]	[...]	[0-5]%

36. E.ON considers wholly unrealistic the scenario where nearly all of the electricity of the portfolio drawing right would be sold on the market for industrial and commercial customers.
37. The Commission takes the view that even the scenario above does not raise competition concerns.
38. E.ON submits that no vertical relationships exist between the Parties' activities. In any case, taking into account the Parties' horizontal market shares below 30%, the analysis of vertical issues is not necessary<sup>14</sup>.
39. Given the above, the Proposed Transaction does not raise serious doubts as to its compatibility with the common market.

## **V. CONCLUSION**

40. 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)*  
 Janez POTOČNIK  
 Member of the Commission

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<sup>14</sup> See point 25 of the Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2008/C 265/07) OJ C 265, 18.10.2008, p. 6 – 25.