

***Case No COMP/M.5602 -  
RREEF FUND/ BP/  
EVE/ REPSOL/ BBG***

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: 09/10/2009

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 09.10.2009

SG-Greffe(2009)  
D/6552/6553/6554/6555  
C(2009) 7880

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5602 - RREEF FUND/ BP/ EVE/ REPSOL/ BBG  
Notification of 04.09.2009 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 04.09.2009, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation No 139/2004 ("the Council Regulation") by which the undertakings RREEF Pan-European Infrastructure Fund LP ("RREEF", UK), which is ultimately managed by Deutsche Bank ("Deutsche Bank", Germany), BP PLC ("BP", United Kingdom), Ente Vasco De La Energia ("EVE", Spain) and REPSOL YPF, S.A. ("REPSOL", Spain), will acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control over Bahía De Bizkaia Gas, S.L. ("BBG", Spain), by way of purchase of shares. Currently, BBG is jointly controlled by IBERDROLA S.A. ("IBERDROLA", Spain), BP, EVE and REPSOL.

**I. THE PARTIES**

2. RREEF is a private equity infrastructure fund for third party investors, including a number of large pension funds and insurance companies. It is active in real estate and infrastructure investments. RREEF is ultimately managed by Deutsche Bank, a global provider of financial services.

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

3. BP is global energy company, active in the exploration, development and production of oil and gas, in the refining, manufacturing and marketing of oil products and petrochemicals and in the development of renewable energies.
4. EVE is a public entity operating in the Basque region of Spain in the field of energy, water and telecommunications.
5. REPSOL is active in Spain, in the exploration and commercial exploitation of petroleum and related products, together with other sources of energy.
6. BBG runs the commercial and maintenance operations of an LNG regasification plant, situated in Bilbao, Spain.

## **II. THE OPERATION**

7. The notified concentration concerns the acquisition by RREEF FUND of IBERDROLA's 25% joint controlling interest in BBG. Presently IBERDROLA, BP, EVE and REPSOL have each 25% joint control over BBG. The sale and purchase agreement between RREEF FUND and IBERDROLA in relation to the transaction was concluded on [...] 2009.

## **III. THE CONCENTRATION**

8. Through the acquisition of the 25% IBERDROLA's shareholding in BBG, RREEF FUND will replace IBERDROLA as a joint controlling shareholder of BBG. The transaction will lead to RREEF FUND (as the new controlling shareholder), BP, EVE and REPSOL (the existing controlling shareholders) holding each a 25% joint controlling shareholding over BBG. As such, the proposed concentration constitutes a concentration within the meaning of Article 3(1) of the Merger Regulation.
9. On the same day<sup>2</sup> that the sale and purchase agreement relating to this transaction was entered into, RREEF FUND also agreed to a second transaction in the same market, by which RREEF FUND will acquire a significant stake (30%) of Planta De Regasificación De Sagunto, S.A. ("SAGGAS", an existing joint venture also consisting of a LNG regasification plant)<sup>3</sup>. This second transaction relating to the acquisition of joint control over SAGGAS is also a notifiable concentration under the ECMR and was notified to the Commission on 17.09.2009 (M.5649).

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<sup>2</sup> The sale and purchase agreement between RREEF FUND and IBERDROLA and the transaction relating to SAGGAS were both signed on [...] 2009.

<sup>3</sup> SAGGAS manages the regasification plant in Sagunto, Spain, whose shareholding is divided as follows: 50%controlling shareholding by IG (IBERDROLA, 60% and ENDESA, 40%) and 50% controlling shareholding by INF (UFG, 85% and Oman Oil, 15%). RREEF intends to acquire IBERDROLA's 60% shareholding in IG (30 % in SAGGAS)

#### **IV. COMMUNITY DIMENSION**

10. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5,000 million (Deutsche Bank, [...] million EUR; BP, [...] million EUR; EVE, [...] million EUR; REPSOL, [...] million EUR; BBG, [...] million EUR)<sup>4</sup>. The following undertakings have a Community-wide turnover in excess of EUR 250 million for 2008: Deutsche Bank ([...] million EUR), BP ([...] million EUR), REPSOL ([...] million EUR). The Community-wide turnover of EVE is [...] million EUR and of BBG [...] million EUR. [...] do not achieve more than two thirds of their Community-wide turnover in any one Member State. [...] achieves more than two thirds of its Community-wide turnover in Spain. [...] achieve their entire turnover in Spain.
11. The notified operation therefore has a Community dimension.

#### **V. COMPETITIVE ASSESSMENT**

##### **A. PRODUCT AND GEOGRAPHIC MARKET DEFINITIONS**

###### **Relevant product markets**

12. In the previous decisional practice of the Commission<sup>5</sup>, the gas markets have been segmented into i) the production and exploration for natural gas, ii) gas wholesale supply, iii) gas transmission (via high pressure systems), iv) gas distribution (via low pressure systems), v) gas storage, vi) gas trading, vii) gas supply to end customers<sup>6</sup> and viii) the market for infrastructure operations for gas imports.
13. The notifying party submits that the relevant product markets on which BBG is active is the market for infrastructure for gas import, encompassing: (i) regasification services; (ii) the interconnection points with the international gas pipelines and iii) underground gas storage. The notifying party affirms that regasification plants and international pipelines are the only two technical options to import gas in Spain and that storage infrastructure should also be taken into account as part of one single market for infrastructure, since storage is closely linked to gas imports and represents a “holding area” for gas which has been imported into Spain but is not yet required for use.
14. The notifying party's view is that no further segmentation in this market (for example, on the basis of regasification plants alone) would be necessary or appropriate, since the ultimate product from each of the regasification plants, international pipelines and storage facilities is viewed as substitutable from a demand perspective. Furthermore, all three forms of infrastructure are jointly regulated, their capacity is jointly monitored and future development plans for the gas import sector are made on the basis of the joint development of each type of infrastructure. The parties mention also that the segment of the gas market where

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<sup>4</sup> 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)

<sup>5</sup> M.3440 ENI/EDP/GDP, M.3294 EXXONMOBIL/BEB, M.3293 Shell/BEB, M.4180 Gaz de France/Suez, M.3868 DONG/Elsam/Energi E2

<sup>6</sup> This market can be further subdivided according to different types of users (big and industrial, small and medium enterprises, households, etc)

the BBG plant is active is a regulated one. Therefore, no player in this market, regardless the market share, can control prices, as they are established by the Spanish government, or access to capacity, since this is the prerogative of the technical system operator, ENAGAS.

15. In COMP/M. 1383 – Exxon / Mobil, the Commission decided that underground gas storage represented a separate market. In COMP/M.3696 EDP/ENI/GDP, taking into account the specifics of the Portuguese market (in relation to its late liberalization) the Commission considered that the following business activities could constitute relevant markets: the operation of transport and other infrastructure (importation pipeline, high pressure network, medium and low pressure networks, storage capacity and LNG terminals and regasification plants). However, in that case and also in COMP/M.4180 GDF/Suez, the Commission left the precise definition of the gas infrastructure markets open.
16. For the purposes of the present case it is not necessary to conclude on the precise scope of the relevant product markets described above as, under any alternative market definition, the proposed operation does not give rise to competition concerns.

#### **Relevant geographic markets**

17. In line with the Commission's findings in the previous cases that the geographic market could be national, the parties submit that for the purposes of this case the relevant market is national and limited to Spain, where BBG is active.
18. For the purposes of the present case it is not necessary to conclude on the precise scope of the relevant geographic markets described above, as, under any alternative market definition, the proposed operation does not give rise to competition concerns.

#### **B. ASSESSMENT**

19. In case the product market were to be defined as encompassing the international pipelines, regasification plants and underground storage, as the parties submit, the BBG's market share would be [10-20%]. The most reasonable market would comprise the regasification plants and the international pipelines since they are the substitute of each other. On this basis the market share of BBG would still be close to [10-20%]. If the relevant product market were limited to the regasification plants only, then the market share of BBG would be [10-20%]<sup>7</sup>. Notwithstanding this size of market share (below ENAGAS<sup>8</sup> around [50- 60%]) it is unlikely that the transaction would raise any competition concerns.

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<sup>7</sup> Based on 2007 production levels, the market share in the total gas imports in Spain is: 68.4% for regasification plants, 31.4% for international connection pipelines and 0.3% for underground storage

<sup>8</sup> ENAGAS owns and operates 3 out of the 6 regasification plants in Spain

### **Horizontal overlaps and vertical relationships**

20. RREEF states that it does not carry out any activity that overlaps with activities of the other parties to this transaction and has no existing interests in the relevant market. This transaction is essentially a change of identity of one of the controlling shareholders in an existing joint venture where the shareholder to be is a private equity investment fund with no existing interests in the market for infrastructure for gas imports in Spain. Therefore, the entry of RREEF FUND into the joint venture BBG, will not give rise to any competition concerns resulting from horizontal overlaps or vertical relationships.

### **Conclusion**

21. Given that there are no horizontal overlaps or vertical relationships created by the transaction, the Commission competitive assessment is that the operation is not likely to create significant competitive concerns.

## **VI. CONCLUSION**

22. 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.
23. For the above reasons, the Commission has therefore 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