

***Case No COMP/M.5649 -  
RREEF FUND/  
ENDESA/ UFG/  
SAGGAS***

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: 21/10/2009

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.10.2009

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5649 - RREEF FUND/ ENDESA/ UFG/ SAGGAS  
Notification of 17.09.2009 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 17th September 2009, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking RREEF Pan-European Infrastructure Fund LP ("RREEF Fund", United Kingdom), ultimately managed by Deutsche Bank ("DB", Germany), ENDESA Generación S.A. ("ENDESA", Spain), controlled by the group ENEL S.p.A. ("ENEL", Italy) and UNION FENOSA GAS, S.A. ("UFG", Spain), which is a joint venture between Unión Fenosa S.A. (now Gas Natural SDG, S.A. "GN", Spain), and ENI S.p.A ("ENI", Italy), acquire, within the meaning of Article 3(1)(b) of the Council Regulation, joint control of the undertaking Planta De Regasificación De Sagunto S.A. ("SAGGAS", Spain) by way of purchase of shares in an existing joint venture. Currently, SAGGAS is jointly controlled by UFG, Iberdrola S.A. ("Iberdrola", Spain) and ENDESA.

**I. THE PARTIES**

2. RREEF Fund 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 Fund 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. ENDESA is active in the generation, distribution and supply of electricity in Europe, South America and North Africa. It is also active in electricity trading throughout Europe, and natural gas, coal mining and real estate in Spain.
4. UFG is a joint venture between ENI S.p.A and Unión Fenosa S.A<sup>2</sup> ("UF", acquired by Gas Natural SDG S.A.- hereinafter "GN"). UFG is active in the supply of gas to undertakings and individuals in Spain.
5. SAGGAS runs the commercial and maintenance operations of the Sagunto regasification plant, situated in the port of Sagunto, Spain.

## **II. THE OPERATION**

6. The notified concentration concerns the acquisition by RREEF Fund of an indirect joint controlling interest in SAGGAS, by way of the acquisition of 60% shareholding in one of its controlling holding companies, Iniciativas de Gas, S.L. ("IG"). IG is a joint venture holding company between Iberdrola and Endesa.

## **III. THE CONCENTRATION**

7. Through its acquisition of the 60% share capital of IG, RREEF Fund will replace Iberdrola as an indirect joint controlling shareholder of SAGGAS. The transaction will lead to RREEF Fund (as the new controlling shareholder), Endesa and UFG (the existing controlling shareholders) holding each an indirect joint controlling shareholding over SAGGAS. REPSOL and La CAIXA hold joint control over GN, which in turn, jointly with ENI, controls the other vehicle company, Infraestructuras de Gas S.A. ("INF")<sup>3</sup> which holds the other 50% in SAGGAS. As such, the proposed concentration constitutes a concentration within the meaning of Article 3(1) of the Merger Regulation.
8. On the same day<sup>4</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 (25%) of Bahia de Bizkaia Gas, S.L. ("BBG", an existing joint venture also consisting of a gas regasification plant)<sup>5</sup>. This second transaction relating to the acquisition of joint control over BBG is also a notifiable concentration under the ECMR, was notified to the Commission on September 4, 2009 (COMP/M.5602) and approved 09/10/2009.

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<sup>2</sup> Joint venture cleared by the Commission in Case M.3114

<sup>3</sup> The current shareholding of SAGGAS is: 50% controlling shareholding by IG (IBERDROLA, 60% and ENDESA, 40%) and 50% controlling shareholding by INF (UFG, 85% and Oman Oil, 15%)

<sup>4</sup> The sale and purchase agreement between RREEF Fund and IBERDROLA and the transaction relating to BBG were both signed on [...] 2009

<sup>5</sup> BBG manages the regasification plant in Bilbao, whose shareholding is divided as follows: 25% IBERDROLA, 25% EVE, 25% BP and 25% REPSOL. The notifying party acquired IBERDROLA's 25% shareholding in BBG

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

9. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5,000 million (GN, [...] million EUR; Deutsche Bank, [...] million EUR; ENI, [...] million EUR; ENEL, [...] million EUR; SAGGAS, [...] million EUR)<sup>6</sup>. The following undertakings have a Community-wide turnover in excess of EUR 250 million for 2008: Deutsche Bank ([...] million EUR), ENI ([...] million EUR), GN ([...] million EUR), ENEL ([...] million EUR). The Community-wide turnover of SAGGAS is [...] million EUR. [...], [...], [...] and [...] do not achieve more than two thirds of their Community-wide turnover in any one Member State. [...] achieves its entire turnover in Spain.
10. The notified operation therefore has a Community dimension.

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

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

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

11. In the previous decisional practice of the Commission<sup>7</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>8</sup> and viii) the market for infrastructure operations for gas imports.
12. The notifying party submits that the relevant product markets on which SAGGAS 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.
13. 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 the SAGGAS 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

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<sup>6</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>7</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>8</sup> This market can be further subdivided according to different types of users (big and industrial, small and medium enterprises, households, etc)

Spanish government, or access to capacity, since this is the prerogative of the technical system operator, ENAGAS.

14. In COMP/M. 1383 – Exxon / Mobil, the Commission decided that underground gas storage represented a separate market. In COMP/M.3440 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.
15. 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 definitions, the proposed operation does not give rise to competition concerns.

### **Relevant geographic markets**

16. In line with the Commission's findings in the previous cases that the geographic market could be national<sup>9</sup>, the parties submit that for the purposes of this case the relevant market is national and limited to Spain, where SAGGAS is active.
17. Other factors that account for a national market are that the infrastructure for gas imports regime is regulated at national level as provided under Spanish law, thereby forming a distinct area which is distinguishable from other neighbouring areas, and there is one single national level grid.
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 reasonable alternative market definition, the proposed operation does not give rise to competition concerns. In particular, RREEF has no any other interests in regasification plants, international pipelines or storage outside Spain.

### **B. ASSESSMENT**

19. The proposed operation gives rise to a horizontal overlap because RREEF Fund has entered into an agreement to acquire a controlling interest in BBG. This transaction was approved by the Commission 09/10/2009<sup>10</sup>. On the widest product market definition, that includes the international pipelines, regasification plants and underground storage, the SAGGAS' market share would be [10-20%]. However, RREEF's market shares acquired through the present transaction must be added to those acquired through its previous operation. That would result in a combined share of [20-30%] in the abovementioned product market. If the product market were to comprise regasification plants only, the combined market share of RREEF Fund would be [30-40%] in Spain (BBG [10-20%] and SAGGAS [20-

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<sup>9</sup> In COMP M.4110 E.ON / ENDESA the Commission has suggested that the gas market in Spain would be national in scope, but ultimately left the geographic market definition open.

<sup>10</sup> COMP/M.5602 RREEF FUND / BP / EVE / REPSOL / BBG

30%). RREEF and its partners will face competition from ENAGAS<sup>11</sup> (around [50-60%]).

20. Moreover, ENAGAS is building a new regasification plant in El Musel, due to come on stream in 2011. Endesa plans to build two new regasification plants, one in Gran Canaria and one in Tenerife, which would be commissioned in 2012 and 2011 respectively. In addition, all regasification plants, except for the one in Barcelona (ENAGAS), have plans to increase their capacity by 2016. As a result RREEF's market share will fall to [20-30%]<sup>12</sup> on the overall market including both regasification and supplies via pipelines, and would be [20-30%]<sup>13</sup> on the narrower market for regasification alone.

21. However, given the structure of the joint ventures, it is unlikely that RREEF Fund would be able to raise prices or restrict the use of the regasification plants as this would be against the interests of its joint venture partners who seek low regasification costs and assured availability to enable them to compete in the downstream markets. Therefore, the present transaction does not raise competition 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

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<sup>11</sup> ENAGAS owns and operates 3 out of the 6 regasification plants in Spain

<sup>12</sup> Estimated production capacity for 2011

<sup>13</sup> Estimated regasification capacity by 2016