

***Case No COMP/M.5944 -
OSAKA/ UFG/
INFRASTRUCTURE
ARZAK / SAGGAS***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 21/09/2010

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EUROPEAN COMMISSION

Brussels, 21.9.2010
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties:

Dear Sir/Madam,

**Subject: Case No COMP/M.5944 - OSAKA/ UFG/ INFRASTRUCTURE ARZAK/
SAGGAS
Notification of 17 August 2010 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 16 July 2010, the Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Osaka Gas UK Ltd. belonging to Osaka Gas Co Ltd. ("Osaka", Japan) takes over from Endesa Generación S.A. ("Endesa", Spain) a 40% shareholding in the vehicle company Iniciativas de Gas, S.L. ("IG", Spain) and thereby an indirectly joint controlling shareholding in Planta de Regasificación de Sagunto S.A. ("Saggas", Spain) within the meaning of Article 3(1)(b) of the Merger Regulation by way of purchase of shares. The other controlling entities of Saggas are: Infrastructure Arzak BV ("Arzak", United Kingdom) controlled by RREEF Pan-European Infrastructure Fund LP ("RREEF", United Kingdom), ultimately managed by Deutsche Bank ("DB", Germany); and Union Fenosa GAS, S.A. ("UFG", Spain), jointly controlled by Gas Natural SDG, S.A. ("GN", Spain) and ENI S.p.A ("ENI", Italy). Currently, Saggas is jointly controlled by UFG, Arzak/RREEF, and Endesa.
2. This notification was declared incomplete in the sense of Article 5(2) of Commission Regulation (EC) No 803/2004 on 23 July 2010. The undertakings concerned provided

¹ OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

the information required and the notification became complete, within the meaning of Article 10(1) of the Merger Regulation, on 17 August 2010.

I. THE PARTIES

3. Osaka is a vertically integrated energy company active inter alia in trading and transportation of liquid natural gas ("LNG") and the production of electricity.
4. Arzak is a 100% wholly owned subsidiary of the investment fund RREEF, which was formed to invest in infrastructure assets. In turn, RREEF is a fund managed by RREEF Limited, a subsidiary of DB.
5. UFG is a joint-venture between GN and ENI. UFG is active in the supply of gas to undertakings and individuals.
6. Saggas runs the commercial and maintenance operations of the Sagunto regasification plant, situated in the port of Sagunto, Spain.

II. THE CONCENTRATION

7. The proposed transaction concerns the acquisition by Osaka of a 20% indirect joint controlling interest in Saggas, by way of acquisition of a 40% controlling² share in IG, from Endesa. IG is a joint venture holding company between Arzak and Endesa with a 50% controlling stake in Saggas. Following the proposed transaction, Osaka will replace Endesa as a shareholder in IG. Another vehicle company, Infraestructuras de Gas S.A. ("INF") holds the remaining 50% share in Saggas. INF is controlled by UFG which, in turn, is jointly controlled by ENI and GN³. The proposed transaction will lead to joint control over Saggas⁴ by Osaka (as a new controlling shareholder), Arzak and UFG (Osaka, Arzak and UFG together hereinafter the "notifying parties").
8. The proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

² Pursuant to clause 9 of IG's Shareholders' Agreement, for the valid adoption by the Board of Directors of certain strategic decisions (both of IG as well as of Saggas), the vote of Iberdrola (now RREEF) as well as the vote of Endesa (in the future Osaka) are required. These are the "notifying parties".

³ GN is jointly controlled by Repsol and La Caixa.

⁴ The current shareholding of Saggas is: 50% controlling shareholding by IG (Arzak: 60%; Endesa: 40%) and 50% controlling shareholding by INF (UFG: 85%; Oman Oil: 15%).

III. EU DIMENSION

9. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5,000 million (Osaka: 9,928 million EUR; GN: 14,879 million EUR; DB: 45,233 million EUR; ENI: 83,227 million EUR; Saggas: 78 million EUR)⁵. The following undertakings have an EU-wide turnover in excess of EUR 250 million for 2009: DB ([...] million EUR), ENI ([...] million EUR), GN ([...] million EUR). The EU-wide turnover of Osaka is [...] million EUR and of Saggas is [...] million EUR. DB and ENI do not achieve more than two thirds of their EU-wide turnover in any one Member State. GN achieves more than two thirds of its EU-wide turnover in Spain and Saggas achieves its entire turnover in Spain.
10. The proposed transaction therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

IV. MARKET DEFINITION

11. The proposed transaction concerns the following activities:
 - a) Infrastructure for gas import in Spain – horizontal overlap;
 - b) Generation and wholesale supply of electricity in Spain - possible coordination effects;
 - c) Retail supply of natural gas to electricity producers and generation and wholesale supply of electricity - vertical relationship;
 - d) LNG transport and infrastructure for gas import - vertical relationship.

Infrastructure for gas import

Product Market

12. In the previous decisional practice of the Commission⁶, 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 customers⁷ and (viii) the market for infrastructure operations for gas imports.

5 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).

6 Case COMP/M.3440 - ENI/EDP/GDP, Case COMP/M.3294 - EXXONMOBIL/BEB, Case COMP/M.3293 - Shell/BEB; Case COMP/M.4180 - Gaz de France/Suez, paragraph 341; Case COMP/M.3868 - DONG/Elsam/Energi E2.

7 This market can be further subdivided according to different types of users (big and industrial, small and medium enterprises, households, etc).

13. The notifying parties submit that the relevant product market 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 parties affirm in addition 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. In the notifying parties' view no further segmentation in this market (for example, on the basis of regasification plants alone) would be necessary or appropriate since the ultimate product supplied from the regasification plants (regasified LNG), and that supplied from the international pipelines and storage facilities (natural gas) are 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.
15. In two recent cases⁸ the Commission has considered that the market for infrastructure for gas import could be sub-segmented into the following relevant product markets: (i) regasification services; (ii) the interconnection points with the international gas pipelines and (iii) underground gas storage. However, in those cases 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.

Geographic Market

17. In line with the Commission's findings in previous cases according to which the geographic market could be national, the notifying parties submit that for the purposes of the proposed transaction the relevant market is national and limited to Spain, where Saggas is active.
18. Other factors that account for a national market are that the infrastructure for gas imports is regulated at national level as provided under Spanish law, thereby forming a distinct area which is distinguishable from other neighbouring areas. Furthermore, there is one single national grid.
19. For the purposes of the present case it is not necessary to conclude on the precise scope of the relevant geographic market described above, as, under any reasonable alternative market definition, the proposed operation does not give rise to competition concerns. In particular, Osaka has no other interests in regasification plants, international pipelines or storage in the EEA.

⁸ Case COMP/M.5602 - RREEF FUND / BP / EVE / REPSOL/ BBG; Case COMP/M.5649 - RREEF FUND / ENDESA / UFG / SAGGAS.

Generation and wholesale supply of electricity

20. Osaka, through its 100% Dutch subsidiary Osaka Gas Energy Europe B.V., has a [...] stake in and jointly controls the Spanish company Bizkaia Energía, S.L. ("BESL"), a company that owns a combined cycle power plant in Amorebieta, Spain. UFG, indirectly through its wholly owned subsidiary Nueva Electricidad del Gas, S.A.U. has also an electricity generation activity in Spain.

Product Market

21. The Commission in its previous decisions⁹ has segmented the electricity product markets as follows: (i) generation and wholesale supply of electricity; (ii) transmission; (iii) distribution; (iv) retail supply, and (v) the provision of regulating/balancing power services.

22. Pursuant to the Commission's decisions in previous cases¹⁰, the market for generation and wholesale supply of electricity is the relevant market for the case at hand, which comprises electricity generation in power stations and electricity that is physically imported via interconnectors to be sold to retailers.

23. The notifying parties agree with these delineations.

Geographic Market

24. In previous Commission decisions the Spanish market for the generation and wholesale supply of electricity market was found to be national in scope¹¹. The notifying parties agree with the geographic scope of the market.

Conclusion on the product and geographic market definition

25. For the purpose of the proposed transaction, the precise product and geographic market definitions can be left open, as under any alternative delineation, there would be no competition concerns.

Retail supply of natural gas to electricity producers

Product Market

26. The Commission has analyzed the gas supply market in previous decisions¹², concluding that it could be divided into the following distinct markets:

9 Case COMP/M. 3440 - ENI/EDP/GDP, paragraph 31, Balancing power and ancillary services: Case No COMP/M.5827 -ELIA/ IFM/ 50HERTZ paragraphs 13-17.

10 Case COMP/ M. 3440 - ENI/EDP/GDP, paragraph 37 and Case COMP/M.4180 - Gaz de France/Suez paragraph 674.

11 Case COMP/M.3440 - ENI/EDP/GDP, paragraph 77.

12 Case Comp/M.4180, Gaz de France /Suez., paragraphs 63, 73-86.

- (i) supply of gas to dealers;
- (ii) supply of gas to gas-powered electricity plants;
- (iii) supply of gas to large industrial customers;
- (iv) supply of gas to small industrial and commercial users;
- (v) supply of gas to household customers.

27. The notifying parties agree with these delineations.

Geographic Market

28. The parties submit that, in line with previous Commission decisions¹³, the geographic scope of the market would be national, and limited to Spain.

Conclusion on the product and geographic market definition

29. For the purpose of the present decision, it is not necessary to precisely define the product and geographic scope of the market since under any market delineations there would be no competitions concerns.

LNG transport

Product market

The notifying parties submit that the relevant product market would be the market of LNG transportation by vessels especially designed to transport LNG.

30. The market definition can be left open as under any alternative market definition there would be no competition concerns.

Geographic market

31. According to the notifying parties, the geographic scope of the market would be worldwide as the origins and destinations of LNG can have different locations worldwide.

Conclusion on the product and geographic market definition

32. The precise scope of the product and geographic market can be left open as the proposed transaction does not raise any competition concerns.

¹³ Case Comp/M.4180, Gaz de France /Suez paragraph 105; Case Comp/ M.3440 ENI/EDP/GDP, paragraphs 272-273.

V. COMPETITIVE ASSESSMENT

A. HORIZONTAL EFFECTS

33. Saggas runs the commercial and maintenance operations of the Sagunto regasification plant, situated in the port of Sagunto, Spain. The production process undertaken at the Sagunto regasification plant includes the reception, storage and shipping of natural gas. LNG arrives at the plant in methane carrying ships, is stored, returned to its gaseous state and is then channelled to the general network of gas pipes, after being metered and odorized.
34. Osaka confirmed that it has no existing shareholdings in the possible relevant markets (regasification services, the interconnection points with the international gas pipelines and underground gas storage) as it does not control, directly or indirectly, any undertaking active on these markets. Therefore the proposed operation will not give rise to any horizontal overlap in relation to regasification.
35. The proposed transaction is essentially a change of identity of one of the controlling shareholders in an existing joint-venture where the new controlling shareholder has no existing interests in the market for infrastructure for gas imports in Spain.
36. Therefore, it can be concluded that the proposed transaction does not raise concerns that it could lead to a significant impediment to effective competition in relation to the market for infrastructure for gas import.

B. POSSIBLE COORDINATION EFFECTS IN THE MARKET FOR GENERATION AND WHOLESALE SUPPLY OF ELECTRICITY IN SPAIN

37. As already mentioned in recital 20, Osaka has a [...] stake in and jointly controls BESL's combined cycle power plant in Amorebieta, Spain.
38. In the market for electricity generation in Spain, BESL's market share is estimated to be less than [0-5]%. If a narrower market were to be taken into consideration, namely the potential Spanish sub-market for the generation of electricity by combined cycle power plants, BESL's market share would be of approximately [0-5]%. Arzak is not active on the market for the generation of electricity in Spain. UFG, indirectly through its wholly owned subsidiary Nueva Electricidad del Gas, S.A.U. has a limited presence in electricity generation with a market share of less than [0-5]%.
39. Therefore although the operation would create a structural link between two electricity producers in Spain, their combined market share is less than [0-5]% and it is unlikely that the proposed transaction would enable them or give them the incentive to coordinate their behaviour. Therefore, this aspect of the proposed concentration will not raise competition concerns.

C. VERTICAL RELATIONSHIPS

Retail supply of natural gas to electricity producers (upstream) - Generation and wholesale supply of electricity (downstream)

40. Arzak has a joint controlling stake in BBG, another regasification plant. It is therefore necessary to examine whether Arzak and Osaka through their holdings in BBG and Saggas would be able and have the incentive to restrict the supply of gas to competing electricity producers. Saggas and BBG have an estimated combined share of [20-30]% ([10-20]% BBG and [10-20]% Saggas) in a market for infrastructure for gas import. When considering the possible sub-market of regasification plants only, their estimated combined market share would amount to [30-40]% ([10-20]% BBG and [20-30]% Saggas).
41. The Saggas and BBG regasification plants provide a service to gas importers and do not sell themselves regasified LNG. Access to and the fees for using a regasification plant are regulated to ensure equality of treatment for all parties. In this situation it is extremely unlikely that Osaka and Arzak could restrict the supply of gas to competing electricity producers.
42. Even if they could restrict the supply of gas, given their very low combined market shares downstream they would have no incentive to do so. They would be unable to consume any significant amount of gas themselves and the construction of additional generating capacity is a long and expensive process.
43. Furthermore, BESL has entered into an exclusive long-term tolling agreement with [...] until 2020. Pursuant to this agreement, [...] provides the gas to BESL and off-takes the electricity generated by BESL. Thus, BESL just provides a facility to [...] for a fee. BESL cannot determine the price of the gas to be carried into BESL nor does it acquire the gas. Instead, the gas is brought to BESL by [...], and as a consequence, the gas price is set by [...].
44. Therefore, it can be concluded that the proposed transaction does not raise concerns that it could lead to a significant impediment to effective competition in relation to the vertical relationship described above.

LNG transport (upstream) - Infrastructure for gas import (downstream)

45. As mentioned in recital 40, Saggas and BBG have a combined share of [20-30]% in a market for infrastructure for gas import and [30-40]% when considering the possible sub-market of regasification plants only.
46. Osaka owns six LNG vessels, which represent approximately [5-10]% of the world trade volume in LNG. However, it has no activity in the EEA.
47. Given that Osaka does not transport LNG to regasification plants in Spain, no competition concerns will arise as a result of the vertical relationship between the upstream market for transportation of LNG by vessels and the downstream market of infrastructure for gas import, under any potential geographic market definition. Moreover, even if at some future date Osaka were to start shipping LNG to Europe, its small share, of estimated [...], of carrier capacity would not allow it to restrict the supply of LNG to competing regasification plants.

48. Therefore, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with regard to the vertical link described above.

VI. CONCLUSION

49. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission,
(signed)
Joaquín ALMUNIA
Vice-President of the European
Commission