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***Case No COMP/M.7228 - CENTRICA/ BORD GAIS
ENERGY***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 13/06/2014

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party

Dear Sir/Madam,

**Subject: Case M.7228 - CENTRICA/ BORD GAIS ENERGY
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

(1) On 5 May 2014, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which Centrica plc. (Centrica) of the United Kingdom will acquire within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Bord Gáis Energy Limited (BGE or the "Target") of Ireland, a wholly owned subsidiary of Bord Gáis Eireann of Ireland, by way of purchase of shares. Centrica and BGE are designated hereinafter as the 'Parties' or 'parties to the proposed transaction'.

1. THE PARTIES

- (2) Centrica is an integrated energy company, which produces, sources and supplies gas and electricity for residential and business customers in the UK and North America.
- (3) BGE is a wholly owned subsidiary of Bord Gáis Eireann, with a focus on the purchase and supply of gas and electricity for residential and business customers in the Republic of Ireland.

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.

2. THE TRANSACTION AND THE CONCENTRATION

- (4) The Transaction involves the acquisition by a wholly-owned subsidiary of Centrica of sole control of BGE by way of acquisition of 100% of the issued share capital of BGE. The Transaction therefore constitutes a concentration within the meaning of Article 3(1) of the Merger Regulation.

3. EU DIMENSION

- (5) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million² (Centrica: EUR 29 500 million; BGE: 1 254 million EUR). Each of them has a EU-wide turnover in excess of EUR 250 million (Centrica: EUR [...]; BGE: [...]), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

4. MARKET DEFINITION

- (6) Both Parties are active in the wholesale supply and trading of gas in the United Kingdom (UK) and in the Republic of Ireland. Moreover, the Target is active in the retail supply of gas in the Republic of Ireland. Centrica is active in the retail supply of gas and in the retail supply of electricity in the UK.

Relevant product market

Wholesale Supply (and Trading) of Gas

- (7) The Commission has in the past considered a distinct market for the wholesale supply of gas (i.e. sales to suppliers with the purpose to further resell gas to other wholesalers or downstream suppliers).³ Such transactions encompass sales by shippers or suppliers with an upstream gas supply contract as well as those with domestic production.
- (8) The Commission has in the past considered a separate market for the wholesale trading of gas on the Zeebrugge gas hub.⁴ However, in another case the Commission considered to include sales on the gas hub in the wholesale market.⁵
- (9) The Commission considers that the exact product market definition can be left open as the concentration does not raise serious doubts under any plausible market definition.

Markets for the Retail Supply to Gas

- (10) The Commission has in the past considered distinct markets for (i) the retail supply of gas to gas-fired electricity plants,⁶ (ii) the retail supply of gas to large industrial

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

³ COMP/39.315 – ENI, of 29 September 2010.

⁴ See Case M.4180 *GDF/Suez* (2006), paragraph 72.

⁵ See Case M.5467 *RWE/Essent* (2009), paragraphs 119-121.

⁶ This distinction may however only apply to certain types of power plants: depending on their technical characteristics, some types of power plants may come within the market for industrial customers. For a discussion of that issue, see Case M.4180 *GDF/Suez* (2006), paragraphs 362-367,

customers,⁷ and (iii) the retail supply of gas to small customers.⁸ The Parties agree with this product market definition, which the Commission retains for the purpose of the present case.

Relevant geographic market

Wholesale Supply (and Trading) of Gas

- (11) According to the Parties wholesale supply and trading of gas should be considered a market comprising the territory of the UK (including Northern Ireland) and the Republic of Ireland, because the conditions of competition are sufficiently homogeneous.
- (12) Firstly, the Parties note that gas supplies from the UK meet over 93% of the Republic of Ireland's annual gas demand. Only the remaining 7% stem from gas fields situated off the south coast of Ireland. The Parties argue that both Irish and UK wholesalers purchase gas at a price level which is set at the National Balancing Point (NBP) in the UK. Differences between the gas price in the UK and in the Republic of Ireland merely reflect the transport costs through the interconnectors between the UK and the Republic of Ireland.
- (13) Secondly, the Parties submit that there is sufficient capacity on the pipelines connecting the UK and the Republic of Ireland to ensure a sufficient supply of gas. There are currently two pipelines from Moffat in the UK to the Republic of Ireland ("IC1" & "IC2"). In that regard the Parties note that the Moffat Exit Point has a capacity of about 342 million kWh, out of which only about 249 million kWh are currently contractually used, leaving surplus available capacity of about 94 million kWh. Besides, the Parties note that there is also a pipeline from Moffat to Northern Ireland (i.e. the Scotland-Northern Ireland Pipeline or "SNIP").⁹ Furthermore, another pipeline connects the gas network of the Republic of Ireland with Northern Ireland (i.e. the South-North Pipeline).
- (14) Thirdly, the Parties submit that customers have a wide choice of suppliers who can meet their demand. The Parties note that there are over 200 licensed shippers in Great Britain who can supply gas at Moffat. If a given supplier would raise its prices, customers could readily switch to any other of these suppliers.
- (15) In the past the Commission has in some cases defined the market for the wholesale supply of gas to encompass various grids, if there are no bottlenecks or other obstacles, which might restrict free competition in 'balancing zones'.¹⁰

Case M.3696 *E.ON/MOL* (2005) paragraphs 107- 118 or COMP/39.316 – *Gaz de France* paragraph 13.

⁷ See Case M.4180 *GDF/Suez* (2006), paragraphs 78-81.

⁸ See e.g. Cases 39.315 *ENI* (2010) and 39.316 *GDF gas foreclosure* (2009) as well as Cases M.3440 *EDP/GDF/ENI* (2004), M.3696 *E.ON/MOL* (2005) and M.3868 *DONG/Elsam/Energi E2* (2006).

⁹ There is no physical reverse flow capacity on IC1, IC2 or SNIP and therefore there is no export from Ireland to GB.

¹⁰ COMP/39.316 – *Gaz de France*, of 3 December 2009; COMP/M.4180 *Gaz de France / Suez*, of 14 November 2006; COMP/M.3410 *Total / Gaz de France*, of 8 October 2004. A balancing zone should be understood as an entry-exit system, which may consist of more than one system, as defined in Article 2(13) of the Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas (OJ L 211, 14.8.2009, p.94), to which a specific balancing regime (for injections and off takes of gas) is applicable.

- (16) The market investigation in the present case confirmed that the geographic scope of the market is at least national and might encompass the Republic of Ireland and the United Kingdom. In particular, almost all responding customers from the Republic of Ireland considered that the conditions of competition are homogeneous in the area comprising the Republic of Ireland and the United Kingdom (including Northern Ireland). Furthermore, almost all of these companies actually purchase their gas in the United Kingdom. Moreover, almost all customers stated that the capacity of the interconnectors between Great Britain and the Republic of Ireland is sufficient.
- (17) However, the Commission considers that the exact geographic market definition can be left open, as the concentration does not raise serious doubts under any plausible geographic market considered, that is the UK and the Republic of Ireland as one geographic market or as separate geographic markets.

Markets for the Retail Supply of Gas

- (18) The Commission has in the past considered the respective markets for the retail supply of gas to gas-fired electricity plants, to large industrial customers, and to small customers to be national in scope.¹¹ The Parties agree with this geographic market definition. The Commission considers that the exact geographic market definition can be left open as the concentration does not raise serious doubts under the narrowest plausible geographic market definition, which is a national geographic market.

5. COMPETITIVE ASSESSMENT

- (19) The Parties' activities horizontally overlap in the market for the wholesale supply of gas in the UK/Republic of Ireland. Besides, there are vertical relationships between these activities and (i) the Target's activities in the supply of gas to large industrial customers in the Republic of Ireland, (ii) the Target's activities in the retail supply of gas to small commercial customers and households in the Republic of Ireland and (iii) Centrica's activities in the retail supply of gas to small commercial customers and households in the UK.

Horizontal effects

Wholesale Supply (and Trading) of Gas

- (20) On the basis of a geographic market encompassing the UK and the Republic of Ireland the Transaction leads to a horizontal overlap on the wholesale market (including trading) for the supply of gas. However, the Parties estimate that their combined market share in such a market is very limited and in any case below 20% under any market definition, both for the market for the trading of gas at the NBP and for the market for wholesale supply of gas.
- (21) As regards the market for the trading of gas, if the market would be as narrow as the NBP, the Parties' share on this market by volume would be below 10%.

¹¹ COMP/M.6068 *ENI/ ACEGASAPS/ JV*, of 11 April 2011; COMP/M.5740 *Gazprom / A2A / JV*, of 16 June 2010; COMP/M.5496 *Vattenfall / Nuon Energy*, of 22 June 2009; COMP/M.4672 *E.on / Endesa Europa / Viesgo*, of 6 August 2007; COMP/M. 4110 *EON / Endesa*, of 25 April 2006; COMP/M.3230 *Statoil / BP / Sonatrach / In Salah JV*, of 19 December 2003; COMP/M.3007 *E.on / TXU Europe Group*, of 18 December 2002.

- (22) As regards the market for the wholesale supply of gas, the Parties note that most retail suppliers purchase gas on trading platforms such as the Trayport or the ICE. On these platforms gas is both traded between wholesalers as well as sold to retail suppliers. Many players are both active in the trading of gas as well as in the retail supply of gas. Therefore there is no clear distinction between the wholesale trading market and the market for gas supply to retailers. Indeed, the Commission noted in the past that it is difficult to estimate the market size of the UK wholesale market, since the same volume of gas can be bought just once, or many times in a succession of separate trading deals.¹²
- (23) In any case, the Parties submit that their market share on these trading platforms is a good proxy for their market share in the wholesale supply of gas and that their market share in this market is not materially different from their overall share in the wholesale trading of gas at the NBP in which the Parties' share would be below 10%.
- (24) Moreover, the Parties note that they compete with a number of other players. There are more than 200 companies licenced for the wholesale market. Many of these companies are themselves retail suppliers of gas, such as RWE, EDF, E.ON, Gazprom, SSE, Scottish Power, BP, Petronas, Statoil, Total and Shell.
- (25) On the basis of a national market for the wholesale supply (and trading) of gas in the UK the Parties further submit that the Target is essentially a customer of wholesale suppliers. The volumes it sells are very small and its activities as a seller are limited to situations in which e.g. it has purchased more gas on a given day than its customers have required (so that it sells small quantities at the NBP for balancing purposes).
- (26) On the basis of a national market for the wholesale supply (and trading) of gas in the Republic of Ireland, the Parties submit that there is no overlap between their activities, because Centrica is not active in the wholesale supply of gas in the Republic of Ireland. Its activities are limited to selling gas in the UK. Although the Parties do not exclude that some of these sales are then shipped to the Republic of Ireland, the Parties note that Centrica generally has no knowledge of or influence over where its customers ship their supplies.
- (27) Based on the available information, the Commission considers that it can be expected that the Parties' market share will remain modest under any plausible geographic market definition and that the Parties will continue to face competition from numerous significant competitors. Therefore, the Commission considers it unlikely that non-coordinated horizontal effects will result from the concentration.
- (28) In view of the above and all available evidence, the Commission considers that the concentration does not give rise to serious doubts as to its compatibility with the internal market in relation to the market for the wholesale supply (and trading) of gas under any geographic market definition considered, that is the UK and the Republic of Ireland as one geographic market or as separate geographic markets.

¹² COMP/M.5585 Centrica / Venture Productions, para. 26.

Vertical effects

Wholesale Supply and Retail Supply to Large Industrial Customers in the Republic of Ireland

- (29) The Parties estimate that – while Centrica is not active in this market - the Target's share in the market for the retail supply of gas to large industrial customers in the Republic of Ireland amounts to [50-60]%. The Target's main competitors are Vayu ([20-30]%), SSE ([10-20]%), Viridian ([5-10]%), Gazprom ([0-5]%) and ESB ([0-5]%).
- (30) Based on the available information, the Commission considers that the merged entity will not have the ability to engage in input foreclosure to the detriment of its downstream competitors in the retail supply of gas to large customers. This is because the combined entity's share in the upstream market for the wholesale supply of gas is less than 20%. The Target's competitors in the retail supply of gas to large customers can easily source their supplies at the NBP in the UK and there are no constraints regarding the transport of such volumes to the Republic of Ireland.
- (31) Moreover, the Parties submit that the merged entity will not have the ability to engage in customer foreclosure to the detriment of its upstream competitors in the market for wholesale supply of gas.
- (32) Indeed, in the Commission's view it is unlikely that the merged entity will have the ability to engage in customer foreclosure.
- (33) Firstly, competing wholesale gas suppliers will still be able to sell their gas to the remaining large industrial customers in the Republic of Ireland, which account for [50-60]% of this market.
- (34) Secondly, competing wholesale gas suppliers will also be able to sell their gas to small customers in the Republic of Ireland, where the new entity's share accounts for less than half of the market.
- (35) Thirdly, competing wholesale suppliers will also be able to sell gas to the remaining customers in the markets for the retail supply of gas in the UK. Here the new entity's market share does not exceed [30-40]% in the market for small customers and not more than [30-40]% in the market for large industrial customers.
- (36) It follows that competing wholesale suppliers will have sufficient economic alternatives to sell their output, if the new entity engages in customer foreclosure.
- (37) In view of the above and all available evidence, the Commission considers that the concentration does not give rise to serious doubts as to its compatibility with the internal market as a result of the vertical relationship between the wholesale supply and retail supply of gas to large industrial customers in the Republic of Ireland.

Wholesale Supply and Retail Supply to Small Commercial Customers and Households in the Republic of Ireland

- (38) The Parties estimate that – while Centrica is not active in this market – the Target's share in the market for the retail supply of gas to small commercial customers and households amounts to [40-50]%. The Target's main competitors are SSE ([10-20]%), Viridian ([10-20]%), Vayu ([5-10]%), Flogas ([5-10]%), Gazprom ([5-10]%) and ESB ([5-10]%).

- (39) The Commission agrees that in view of these facts, and in particular the fact that the Target has at least 6 competitors in this market, all of which have a non-negligible market share as well as the facts set out in paragraphs 30 to 35 above, the concentration is unlikely to give rise to any form of input or customer foreclosure.
- (40) In view of the above and all available evidence, the Commission considers that the concentration does not give rise to serious doubts as to its compatibility with the internal market as a result of the vertical relationship between the wholesale supply and retail supply of gas to small commercial customers and households in the Republic of Ireland.

Wholesale Supply and Retail Supply to Small Commercial Customers and Households in the UK

- (41) The Parties estimate that – while the Target is not active in this market – Centrica’s share in the market for the retail supply of gas to small commercial customers and households amounts to [30-40]%.
- (42) The Commission agrees that in view of these facts, as well as the facts set out in paragraphs 30-35 above, the concentration is unlikely to give rise to any form of customer or input foreclosure.
- (43) In view of the above and all available evidence, the Commission considers that the concentration does not give rise to serious doubts as to its compatibility with the internal market as a result of the vertical relationship between the wholesale supply and retail supply of gas to small commercial customers and households in the UK.

6. CONCLUSION

- (44) For the above reasons, the European 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)
Maroš Šefčovič

Vice-President