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***Case No COMP/M.7272 - FORTUM CORPORATION /
OAO GAZPROM / AS EESTI GAAS / AS VORGUTEENUS
VALDUS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 07/08/2014

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EUROPEAN COMMISSION

Brussels, 7.8.2014
C(2014) 5798 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.7272 Fortum Corporation / OAO Gazprom / AS Eesti Gaas / AS Vörguteenus Valdus
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹**

- (1) On 2/7/2014 the European Commission received the notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertakings Fortum Corporation ('Fortum', of Finland) and OAO Gazprom ('Gazprom', of Russia) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the undertakings AS Eesti Gaas ('EG', of Estonia) and AS Vörguteenus Valdus ('Valdus', of Estonia) by way of purchase of shares². Fortum and Gazprom are designated hereinafter as the 'Notifying Parties' and EG and Valdus as the 'Targets'.

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 Publication in the Official Journal of the European Union No C 219, 11.7.2014, p. 10.

1. THE PARTIES

- (2) Fortum is a Finnish-based energy group, primarily active in the Nordic countries and the Baltics, whose core business covers the generation, distribution and the sale of electricity and heat, the operation and maintenance of power plants, as well as energy-related services.
- (3) Gazprom is a Russian-based energy group active in the exploration, production, transportation, refining and marketing of natural gas and petrochemical products.
- (4) EG is a public limited company established in Estonia that is engaged in the import and sale of natural gas and, to a minor extent, in the sale of electricity.
- (5) Valdus is a public limited company established in Estonia active as the gas transmission system operator (“TSO”) in Estonia.

2. THE TRANSACTION AND THE CONCENTRATION

- (6) EG's and Valdus' current shareholders are Gazprom 37.03%, E.ON 33.66%, Fortum 17.72 %, Itera Latvija 10% and others 1.6 %. EG and Valdus are currently under the joint control of E.ON and Gazprom.
- (7) E.ON and Fortum entered into a share purchase agreement by which E.ON will sell its shares in EG and Valdus. After the transaction the corporate structure of the Targets will be the following: Gazprom 37.03%, Fortum 51.38%, Itera Latvija 10% and others 1.6 %. The Targets will be jointly controlled by Gazprom and Fortum.
- (8) The Supervisory Board of the Targets is responsible for approving the business plan, annual budget and investment plan. In addition, it is responsible for supervising and appointing the Board of Directors/Management Board of the Targets.
- (9) Decisions in the Supervisory Board of the Targets can be adopted only if 75% of members are present and the quorum for decisions is 75% of the votes. The Supervisory Board will be composed of 11 members: Gazprom 4 members (37.03% of total votes); Fortum 5 members (51.38% of total votes); Itera Latvija 1 member (10 % of total votes) and others 1 member (1.6 % of total votes). Accordingly Gazprom and Fortum will be capable of blocking strategic commercial decisions.
- (10) By way of this transaction Fortum and Gazprom will therefore acquire joint control over the Targets.
- (11) The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

- (12) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million³ (Fortum: EUR 6 056 million; Gazprom: EUR 123 941 million; Targets combined: EUR 220 million). Each of at least two of the undertakings concerned has an EU-wide turnover in excess of EUR 250 million (Fortum: EUR [...] million; Gazprom more than EUR 250 million; Targets combined: EUR 220 million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The concentration therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

4. MARKET DEFINITION

Downstream wholesale supply of gas

- (13) Regarding the product market definition, the Commission previously defined the downstream wholesale supply of gas as an activity where gas wholesalers procure gas from producers for resale to other wholesalers or downstream distributors.⁴
- (14) Regarding the geographic market definition, the Commission previously delineated the downstream wholesale supply markets along existing regional grid areas.⁵
- (15) The Commission considers that the exact product and geographic market definition can be left open in this case as the present concentration does not raise serious doubts under any plausible market definition.

Retail supply of gas

- (16) Regarding the product market definition, the Commission previously considered that the retail supply of gas could be segmented into separate markets: 1) retail supply of gas to gas fired power plants; 2) retail supply of gas to large industrial customers; 3) retail supply of gas to small industrial customers; 4) retail supply of gas to household customers.⁶
- (17) As to the geographic market definition, the Commission has generally considered that the markets for retail supply of gas are national and the market for retail supply of gas for households is regional in scope.⁷
- (18) The Commission considers that the exact product and geographic market definition can be left open in this case as the concentration does not raise serious doubts under any plausible market definition.

3 Turnover calculated in accordance with Article 5 of the Merger Regulation.

4 COMP/39.315 – ENI.

5 Case M.6984, EPH/Streodoslovenska Energetika.

6 Case M.6984, EPH/Streodoslovenska Energetika. Case M.6068 ENI/ACEGASAPS/JV.

7 Case M.6984, EPH/Streodoslovenska Energetika. Case M.6068 ENI/ACEGASAPS/JV.

District heating

- (19) Regarding the product market definition, the Commission previously regarded the provision of district heating services as a separate market.⁸
- (20) Regarding the geographic market, the Commission considered the market as local or limited to the relevant district heating network.⁹
- (21) The Commission considers that the exact product and geographic market definition can be left open in this case as the concentration does not raise serious doubts under any plausible market definition.

5. COMPETITIVE ASSESSMENT

- (22) The transaction whereby Fortum replaces E.ON as a jointly controlling shareholder with Gazprom in EG and Valdus leads to affected markets¹⁰ only in Estonia. With regard to the acquisition of EG the concentration results in (1) a horizontal overlap on the Estonian market for retail supply of gas to small industrial customers. The concentration also leads to vertical overlaps in Estonia between the markets for (2) downstream wholesale supply of gas and the retail supply of gas to small industrial customers and (3) the retail supply of gas to large industrial customers and district heat facilities and district heating.

Horizontal overlap – retail supply of gas to small industrial customers

- (23) EG is active on the market for retail supply of gas to small industrial customers in Estonia. It has a market share of around [70-80]%. Fortum resells only very small quantities of gas to [...] small industrial customers in Estonia corresponding to a market share of [0-5]%.

(24) Therefore, the concentration entails only a marginal overlap and brings about a very small increment on the market for retail supply of gas to small industrial customers in Estonia.

(25) In addition, the Commission notes that there are a number of competitors active on the market for retail supply of gas to small industrial customers such as Adven Eesti AS with a market share of around 20 %, Energate OU with a market share of below 10 % market share and Gasum Eesti AS with a market share of less than 3 %.
- (26) In view of the above, and particular the very limited increment in market shares the Commission considers that the proposed concentration does not raise serious doubts as a result of the horizontal overlap on the market for retail supply of gas to small industrial customers in Estonia.

⁸ Case M.5365 IPO/ENBW/PRAHA/PT.

⁹ Case M.5365 IPO/ENBW/PRAHA/PT.

¹⁰ See section 6.3 of the form CO annexed to the Commission Implementing Regulation (EU) No 1269/2013 of 5 December 2013 (14.12.2013 OJ L 336/1).

Vertical overlap – downstream wholesale supply of gas and retail supply of gas to small industrial customers

- (27) EG is active on the market for downstream wholesale supply of gas in Estonia. EG is the only wholesale supplier of gas in Estonia. Fortum is active on the market for retail supply of gas to small industrial customers in Estonia. Fortum's retail supply activity represents, however, only [0-5]% of the market.
- (28) Fortum currently purchases its gas requirements from EG. Fortum's purchases from EG represent around [0-5]% of the entire downstream wholesale market in Estonia.
- (29) In view of the above, and in particular EG's pre-existing position on the market for downstream wholesale supply of gas in Estonia and Fortum's negligible activity on the market for retail supply of gas in Estonia, the transaction is unlikely to lead to any form of input or customer foreclosure. The Commission therefore considers that the proposed concentration does not lead to serious doubts as a result of this vertical overlap.

Vertical overlap – retail supply of gas and district heating

- (30) EG is active in the retail supply of gas including the supply of gas to large industrial customers and district heating facilities in Estonia. EG's market share in this segment is close to 100 %. Fortum has two district heating plants in Estonia: Pärnu and Tartu. If each district heating plant was considered a separate market Fortum would hold a monopoly position.
- (31) The gas purchased by Fortum for the district heating plants in Pärnu and Tartu accounts for approximately [0-5]% of the total retail supply of gas in Estonia and less than [0-5]% of the total retail supply of gas to gas powered plants in Estonia. Pre-transaction Fortum purchases all gas required for its district heating plants from EG.
- (32) In view of the above, and in particular the pre-existent position of Fortum as a minor buyer of gas for its district heating plants, the transaction is unlikely to lead to any form of input or customer foreclosure. The Commission therefore considers that the proposed concentration does not lead to serious doubts as a result of this vertical overlap.

6. CONCLUSION

- (33) 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)

Martine REICHERTS

Member of the Commission