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***Case No COMP/M.7602 - DEUTSCHE TELEKOM GROUP/
MET HOLDING/ JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 19/08/2015

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EUROPEAN COMMISSION

Brussels, 19.8.2015
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties:

Dear Sir/Madam,

Subject: Case M.7602 - DEUTSCHE TELEKOM GROUP/ MET HOLDING/ JV Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²

- (1) On 17 July 2015, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertakings Magyar Telekom Nyrt. ("Magyar Telekom", Hungary), controlled by Deutsche Telekom AG ("Deutsche Telekom", Germany), and MET Holding AG ("MET Holding", Switzerland), will acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control in a newly created company constituting a joint venture ("JV") by way of purchase of shares (the "Transaction")³. Magyar Telekom and MET Holding are designated hereinafter as the 'Notifying Parties' and together with the JV as the 'Parties'.

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 OJ L 1, 3.1.1994, p.3 ("the EEA Agreement").

³ Publication in the Official Journal of the European Union No C 246, 28.07.2015, p. 7.

1. THE PARTIES

- (2) Magyar Telekom is a company primarily active in the provision of telecommunications services in Hungary. The company is controlled by Deutsche Telekom AG ("Deutsche Telekom", Germany). Magyar Telekom is also a retail energy supplier providing electricity and natural gas services to residential and also non-residential customers.
- (3) MET Group is a group of undertakings solely owned by the holding company MET Holding, active in Europe, in particular, in the trading of, and wholesale and retail sales of natural gas, electricity, oil products. It is engaged in the retail sale of natural gas in Hungary, Slovakia, Romania and Croatia and has started to build up its presence in the retail electricity markets.
- (4) JV will be active in the retail supply of natural gas and electricity in Hungary.

2. THE CONCENTRATION

- (5) The JV will be jointly controlled by Magyar Telekom and MET Holding.
- (6) Upon the establishment of the JV, MET Holding and Magyar Telekom will hold each a 50 % per cent of the shares in the JV. The Notifying Parties will have equal voting rights at the general meeting of JV, and they will be able to nominate an equal number of members to the board of directors. Voting rights and provisions on quorum will also ensure that both Parties are able to influence or block the decisions of the board. The Transaction therefore leads to an acquisition of joint control over JV by Magyar Telekom and MET Holding within the meaning of Article 3(1)(b) of the Merger Regulation.
- (7) The JV qualifies as a full function joint venture within the meaning of Article 3(4) of the Merger Regulation, as it will perform on the lasting basis all the functions of an autonomous economic entity.
- (8) The JV will have sufficient resources to operate independently on a market. Magyar Telekom and MET Holding will transfer to the JV customer contacts, sales related databases, contractual rights and obligations. As a result the JV will have access to sufficient resources including finance and assets in order to conduct on a lasting basis its business activities. The JV will also have a management fully dedicated to its day-to-day operations. It will be established for an undefined period of time.

3. EU DIMENSION

- (9) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Magyar Telekom EUR 62 658 million; MET Holding EUR [...])⁴. Each of them has an EU-wide turnover in excess of EUR 250 million (Magyar Telekom EUR [...]; MET Holding [...] EUR), 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 Turnover calculated in accordance with Article 5 of the Merger Regulation.

4. RELEVANT MARKETS

4.1. Product market definition

Retail supply of gas

- (10) The Commission has distinguished between the following product markets in the retail gas sector: (i) supply to household customers; (ii) supply to small industrial and commercial customers; (iii) supply to large industrial customers; (iv) supply to gas fired electricity power plants.⁵
- (11) The Notifying Parties claim that the distinction between large industrial and small industrial and commercial customers should be made according to the customers' reserved capacity for gas. The Notifying Parties submit that large customers have typically more than 500 m³/h and small industrial customers less than 500 m³/h of reserved gas capacity. ⁶ The majority of customers and competitors confirmed in the market investigation that in Hungary large industrial customers typically have more than 500 m³/h of reserved gas capacity. Competitors mainly confirmed that small industrial and commercial customers should be considered as the ones having less than 500 m³/h of reserved gas capacity. The distinction is therefore maintained for the present case.
- (12) Furthermore, the Notifying Parties claim that a distinction between electricity fired power plants and large industrial customers should not be made as both types of customers are served under similar contracts and both customers consume similar volumes of gas.
- (13) Customers and competitors in the market investigation did not provide a clear distinction with regard to large industrial customers and power plants. Several customers and competitors did not consider a significant difference between the two customer groups in terms of prices, commercial relationship or marketing. However, some market participants indicated that both customer groups could be considered as different due to specific supply requirements for power plants, such as flexibility in contracting, off-take obligation, special payment conditions, and penalties in the gas purchase contracts.
- (14) The Commission considers that the exact product market definition can be left open as the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition that is a retail gas market for large industrial customers with and without power plants.

⁵ COMP/M.6910 Gazprom/Wintershall/Target Companies, COMP/M.4180 Gaz de France/Suez, COMP/M.3440 EDP/ENI/GDP and COMP/M.5740 Gazprom/A2A/JV. The market for retail gas supply to household customers is not affected by the current transaction.

⁶ This approach was followed by the Hungarian Competition Authority in Decision no Vj/31/2013.

4.2. Geographic market definition

- (15) In relation to the geographic market definition, the Commission has defined in its previous decisions the gas retail markets as not wider than national.⁷ The Parties agree with this definition.
- (16) The Commission considers that the exact geographic market definition can be left open as the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

5. COMPETITIVE ASSESSMENT

- (17) The Parties' activities lead to horizontally affected retail gas markets in Hungary for (i) small industrial and commercial customers, (ii) large industrial customers and (iii) large industrial customers and power plants.⁸
- (18) The market shares of the Parties for the affected retail gas markets in Hungary for the year 2014 are presented below:

	Magyar Telekom		MET Holding		Combined	
	VALUE	VOLUME	VALUE	VOLUME	VALUE	VOLUME
Small industrial and commercial customers	[0-5] %	[5-10] %	[10-20] %	[10-20] %	[10-20] %	[20-30] %
Large industrial customers	[0-5] %	[0-5] %	[20-30] %	[30-40] %	[30-40] %	[30-40] %
Large industrial customers and power plants	[0-5] %	[0-5] %	[20-30] %	[20-30] %	[20-30] %	[30-40] %

Source: Form CO

- (19) The Commission considers that the increment brought by the transaction is small. The market share of Magyar Telekom on any of the above mentioned plausible markets does not exceed 5 % in Hungary.
- (20) On the market for small industrial and commercial customers the Parties will face a number of strong competitors, such as Fogaz (20-25 %), Tigaz (17-22 %), E.ON (12-17 %), and MVM Group (2-7 %)⁹. Fogaz and Tigaz are stronger than the Parties post-transaction and each of these competitors has a higher market share than Magyar Telekom.
- (21) On the retail gas markets for (i) large industrial customers and (ii) large industrial customers and power plants a number of competitors with significant market shares will remain active, such as: MVM Group (19-24 %), Fogaz (9-14 %), Tigaz (5-10 %) and E.ON (4-9 %)¹⁰.

⁷ Case COMP/M.5740 – GAZPROM/A2A/JV; Case COMP/M.3868 – Dong/Elsam/Energi E2.

⁸ The combined market share of the Parties on the retail markets for electricity in Hungary does not exceed 5 %.

⁹ The market shares estimates are provided for both - value and volume.

¹⁰ The market shares estimates are provided for both - value and volume.

- (22) Even though on the retail gas markets for (i) large industrial customers and (ii) large industrial customers and power plants the combined entity has the highest market share post-transaction, the Commission considers that the Transaction will have limited impact on the market as Magyar Telekom is not a significant competitor on both of these markets. Each of the competitors has a higher market share than Magyar Telekom.
- (23) In addition, during the market investigation the majority of competitors and customers indicated that Magyar Telekom is not an important or price aggressive competitor on the two markets.
- (24) Moreover, the combined entity will be restrained by potential competitors. Firstly, in 2015 Elmu-Emasz Group announced entry into the market for large industrial customers. The new entrant intends to acquire 10-15 % of the market share. Secondly, there are several companies that have already received licenses for operation in retail supply of gas from the Hungarian authorities and planning to start their activities in the near future.¹¹
- (25) The limited competitive impact by the Transaction was also confirmed by the market investigation. The customers in the market investigation stated that they see sufficient alternatives to Magyar Telekom and MET Holding for gas supply procurement.
- (26) Finally, the majority of customers and competitors stated in the market investigation that the transaction will not have any effect on the Hungarian retail gas markets for (i) small industrial and commercial customers; (ii) large industrial customers; (iii) large industrial customers and power plants.
- (27) Based on the above and all the available evidence, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the Hungarian retail gas markets for (i) small industrial and commercial customers, (ii) large industrial customers and (iii) large industrial customers and power plants.
- (28) In addition, the Commission considers that the Transaction is unlikely to give rise to conglomerate effects in relation to telecom and energy provision services. Firstly, the JV will only be active on retail markets for gas and electricity and secondly, post transaction the JV will face competition from a number of significant competitors (see paragraphs 20 and 21 above). The Commission therefore considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to conglomerate effects.

¹¹ Full list of companies that received licenses for their activities is provided on www.mekh.hu.

6. CONCLUSION

- (29) 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 and Article 57 of the EEA Agreement.

*For the Commission
(Signed),
Miguel ARIAS CAÑETE
Member of the Commission*