



EUROPEAN COMMISSION  
DG Competition

***Case M.8771 - TOTAL /  
ENGIE (PART OF  
LIQUEFIED NATURAL  
GAS BUSINESS)***

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: 11/04/2018

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Brussels, 11.04.2018  
C(2018) 2238 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**To the notifying party**

**Subject: Case M.8771 - Total / Engie (Part of Liquefied Natural Gas Business)  
Commission decision pursuant to Article 6(1)(b) of Council  
Regulation No 139/2004<sup>1</sup> and Article 57 of the Agreement on the  
European Economic Area<sup>2</sup>**

Dear Sir or Madam,

(1) On 2 March 2018, the European Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004<sup>3</sup> by which Total S.A. ("Total" or the "Notifying Party") acquires sole control over parts of the liquefied natural gas ("LNG") business of Engie S.A. (the "Target Business").<sup>4</sup> Total is referred to hereinafter as the "Notifying Party" and together with the Target Business as the "Parties".

#### **1. THE PARTIES**

(2) Total is an international integrated energy producer active globally. Total is engaged in every segments of the oil and gas industry, both upstream

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<sup>1</sup> 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.

<sup>2</sup> OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

<sup>3</sup> OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

<sup>4</sup> OJ C 95, 13.3.2018, p. 21.

(hydrocarbon exploration, development and production) and downstream (refining, petrochemicals, specialty chemicals, trading and shipping of crude oil and petroleum products and marketing), as well as in the renewable energy and power generation sectors.

- (3) The Target Business comprises a range of LNG assets owned by energy company Engie including a portfolio of contracts for the supply, sale and regasification of LNG, as well as various equity and contractual rights over LNG shipping assets and over gas liquefaction plants, together with associated legal entities and relevant personnel in various jurisdictions.

## **2. THE OPERATION**

- (4) On or prior to completion, Engie will undertake a corporate restructuring as a result of which the Target Business [structure of the transaction]. On completion, Total will acquire ([structure of the transaction]) the entire issued share capital of HoldCo (the "Transaction").

## **3. THE CONCENTRATION**

- (5) By means of the Transaction, Total will acquire sole control over the Target Business. The Transaction therefore qualifies as a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **4. EU DIMENSION**

- (6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>5</sup>. Each of them has an EU-wide turnover in excess of EUR 250 million, 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.

## **5. COMPETITIVE ASSESSMENT**

- (7) Natural gas originates in oilfields or natural gas fields. After being processed and purified at a treatment plant, natural gas can be supplied either in gaseous form through pipelines or in liquid form, as LNG. When supplied as LNG, natural gas is converted in liquid form in a liquefaction plant, transported in specially-designed LNG tankers and then delivered for regasification at a receiving terminal at the point of destination or used directly as LNG for certain specific applications. Once regasified, LNG is transported in the pipeline network where it is mixed with "piped" natural gas.

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<sup>5</sup> Turnover calculated in accordance with Article 5 of the Merger Regulation.

- (8) The Parties are active across the LNG value chain and overlap in the upstream wholesale supply and related services including liquefaction, transportation and regasification services. However, the Transaction gives rise to a very limited number of plausibly affected markets.
- (9) Specifically, the Transaction leads to the following plausibly affected markets: (i) the liquefaction of natural gas into LNG in the Atlantic Basin; (ii) the upstream wholesale supply of LNG in Spain; and (iii) the regasification of LNG in France.
- (10) There are also vertical relations between the activities of the Target Business and Total's activities in the exploration of oil and gas, gas trading and the downstream wholesale supply of natural gas. However, Total's position in the relevant segments is modest and the only plausibly vertically affected market relates to the regasification of LNG, as discussed later on, and the downstream wholesale supply of natural gas in France.<sup>6</sup> Total's share of the latter market is well below 10% and has been decreasing over the past three years, while there is oversupply of regasification capacity in France. Hence, serious doubts of foreclosure effects can be excluded at the outset.

## **5.1. Product Market Definition**

### *5.1.1. Upstream wholesale supply of LNG*

- (11) In its decisional practice, the Commission has considered a market encompassing the development, production and upstream wholesale supply of natural gas.<sup>7</sup> However, in the recent Shell/BG case,<sup>8</sup> the Commission found that the upstream wholesale supply of LNG could form a separate product market from the upstream wholesale supply of natural gas by pipeline (i.e., non-liquefied natural gas).
- (12) The Notifying Party contends that the segmentation of the product market between LNG and piped/non-liquefied gas is artificial because the two: (i) are perfectly interchangeable; (ii) are in direct competition; and, (iii) their price dynamics are closely correlated.
- (13) Though not entirely conclusive, the outcome of the market investigation carried out in the present case reveals that LNG and non-liquefied natural gas present distinguishing features.

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<sup>6</sup> Absent particular local market/regulatory circumstances, the sale and distribution of large volumes of gas to retailers and/or other wholesalers has been considered to form part of a market for the downstream wholesale supply of natural gas, defined as national in scope (M.6984 - EPH/Stredoslovenska Energetika ; M.3868 - DONG/Elsam/Energi E2). At that level, LNG has already been regasified so that it is indistinguishable from non-liquefied natural gas.

<sup>7</sup> Case M.6910 – Gazprom/Wintershall/Target Business Companies; Case M.6801 – Rosneft/TNK-BP; Case M.5585 – Centrica /Venture Production; Case M.4545 – Statoil/Hydro.

<sup>8</sup> Case M.7631 – Royal Dutch Shell/BG Group.

- (14) First, the market investigation confirmed that LNG was not substitutable with piped natural gas for certain applications.<sup>9</sup> As a respondent indicated: "*Although NG and LNG could be used interchangeably for most of applications, LNG could be used for heavy transportation, either vessels or trucks*".
- (15) Second, the market investigation indicated that LNG is in principle more flexible than non-liquefied natural gas, notably in terms of delivery destination. Overall, the investigation also revealed that flexibility may depend on various conditions and variables that are not necessarily identical for LNG and non-liquefied natural gas.<sup>10</sup>
- (16) Third, the market investigation elicited mixed results in terms of similarity of the prices for LNG and non-liquefied natural gas, respectively.<sup>11</sup> The market investigation also indicated that a direct correlation between the price of LNG and non-liquefied natural gas is difficult to establish.<sup>12</sup> For example, a competitor explained that "*an historical analysis of available price data lead us to say that LNG prices in the world are generally higher than pipeline gas*", while another one explained that "*[i]t depends on the specific case, including market as well as contractual conditions. LNG might in some cases be priced higher than pipe gas based on a higher degree of destination flexibility*".
- (17) In any event, the exact product market definition can be left open for the purpose of this decision since the Transaction does not lead to serious doubts as to its compatibility with the internal market irrespective of whether the upstream wholesale supply of LNG is considered as a separate market or as part of a broader market encompassing non-liquefied natural gas.

#### 5.1.2. *Liquefaction of natural gas into LNG*

- (18) In the past, the Commission considered the existence of a market encompassing the development, production and upstream wholesale supply of natural gas, which would also comprise the liquefaction of gas into LNG.<sup>13</sup> However, in Shell/BG, the Commission found that the liquefaction of natural gas into LNG could constitute a separate product market, upstream to the (upstream) wholesale supply of LNG.<sup>14</sup>
- (19) The Notifying Party claims that there is no meaningful competition at liquefaction level and that the appropriate market definition is the broader one including liquefaction into the upstream wholesale supply of natural gas.

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<sup>9</sup> Replies to question 4 of eQuestionnaire 2 – Customers and of eQuestionnaire 1 – Competitors.

<sup>10</sup> Replies to question 9 of eQuestionnaire 1 – Competitors.

<sup>11</sup> Replies to question 5 of eQuestionnaire 2 – Customers and of eQuestionnaire 1 - Competitors.

<sup>12</sup> Replies to question 6 of eQuestionnaire 2 – Customers and Replies to question 6 of eQuestionnaire 1 - Competitors

<sup>13</sup> Case M.6910 – *Gazprom/Wintershall/Target Business Companies*; Case M.6801 – *Rosneft/TNK-BP*; Case M.5585 – *Centrica/Venture Production*; Case M.4545 – *Statoil/Hydro*.

<sup>14</sup> EEA, North American east coast, Caribbean, South America and Northern and West Africa.

- (20) The market investigation carried out in the present case has revealed that there are certain – mainly US – companies offering liquefaction services on a stand-alone basis (via tolling arrangements). However, customers of the Parties do not normally source liquefaction services independently of the procurement of the gas; for the same reason, they most often don't have a choice of liquefaction facility.<sup>15</sup> Generally, the competitors of the Parties have indicated that they do not provide liquefaction services on a stand-alone basis service to other upstream wholesale suppliers.<sup>16</sup> Moreover, a number of competitors of the Parties do not own equity rights in liquefaction plants and some of them do not hold off-take rights from liquefaction plants either.<sup>17</sup>
- (21) The Commission therefore understands that liquefaction may be part of the logistics involved in the upstream wholesale supply of LNG or part of a separate market for the sale of LNG to wholesalers at liquefaction facilities.<sup>18</sup> In any event, if the liquefaction of natural gas was to be considered as a product market separate from the upstream wholesale supply market, it would be upstream of it since customers sourcing liquefaction services are the upstream wholesalers who then sell on the liquefied gas.
- (22) In any event, the exact product market definition can be left open for the purpose of this decision since the Transaction does not lead to serious doubts as to its compatibility with the internal market irrespective of whether liquefaction services are considered as a separate market or part of a broader market for the development, production and upstream wholesale supply of LNG or natural gas.

### 5.1.3. *Regasification of LNG*

- (23) In previous decisions, the Commission has suggested that there may be a separate market for gas import infrastructure encompassing: (i) regasification services; (ii) interconnection points with international gas pipelines; and (iii) underground gas storage.<sup>19</sup> The Commission has nonetheless left the exact market definition open.
- (24) Total submits that the appropriate market definition should encompass all gas import capacity, including import capacity via gas pipelines and LNG terminals, and that no further segmentation is necessary or appropriate because the product supplied through regasification terminals and international pipelines is substitutable from a demand-side perspective.
- (25) The market investigation did not yield clear results in that connection. Certain customers indicated that faced with a small but significant and non-transitory increase in the price of LNG regasification services, they could switch to

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15 Replies to questions 19 and 20 of eQuestionnaire 1 – Competitors and Replies to question 15 of eQuestionnaire 2 – Customers.

16 Replies to questions 14-15 of eQuestionnaire 1 – Competitors.

17 Reply to question 14 of eQuestionnaire 2 – Customers.

18 Case M.7631 – Royal Dutch Shell/BG Group, para. 32.

19 Case M.5649 - RREEF FUND/ENDESA/UFG/SAGGAS.

importing (more) gas via international pipelines.<sup>20</sup> The willingness to perform such a switch is however described as dependent on other factors, including the price difference between LNG and non-liquefied natural gas and the geographic area to which the gas (or LNG) is imported, due to the difference of import infrastructure in each member state.

- (26) Certain competitors of the Parties also indicated that, faced with small but significant and non-transitory increase in price of regasification services, they could switch to procuring more gas volumes via international pipelines, at least to the extent that other factors also point toward a need to rebalance the mix of supply between LNG and non-liquefied natural gas.<sup>21</sup> For example, one competitor explained that "[t]rading of natural gas is price sensitive. Although we would not necessarily stop LNG trading activity, there would likely be a desire to increased imports of natural gas via international pipelines".
- (27) In any event, the exact product market definition can be left open for the purpose of this decision since the Transaction does not lead to serious doubts as to its compatibility with the internal market irrespective of whether LNG regasification services are considered to belong to a separate market or to be part of a broader market encompassing other gas import infrastructures aimed for non-liquefied gas.

## **5.2. Geographic Market Definition**

### *5.2.1. Upstream wholesale supply of LNG*

- (28) In the past, the Commission considered that the market for the upstream wholesale supply of LNG could be national or wider in scope, possibly encompassing the entire EEA; however, the precise geographic market definition was left open.<sup>22</sup> The Notifying Party claims that if a product market for the upstream wholesale supply of LNG was to be retained, the geographic scope of that market would be broader than national.
- (29) In the present case, the outcome of the market investigation was inconclusive as to whether a possible market for the upstream wholesale supply of LNG would be national, regional (group of member states) or EEA in scope. In particular, while certain customers and competitors responding to the market investigation share the view that prices of LNG are not homogenous in the EEA and that price differences across Member States or groups of Member States can be material, others consider that, independently on regional variations, e.g., between Northern and Southern Europe, prices are fairly correlated across Europe.<sup>23</sup>

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20 Replies to question 18 of eQuestionnaire 2 – Customers.

21 Replies to question 23 of eQuestionnaire 1 – Competitors.

22 COMP/M.6910 – Gazprom / Wintershall / Target Companies; Case M.7631, Royal Dutch Shell/BG Group, para. 30.

23 Replies to question 29 and 31 of eQuestionnaire 1 – Competitors.

- (30) In any event, the exact geographic market definition can be left open for the purpose of this decision since the Transaction does not lead to serious doubts as to its compatibility with the internal market irrespective of whether the upstream wholesale supply of LNG is considered to be national, regional or EEA-wide in scope.

#### 5.2.2. *Liquefaction of natural gas into LNG*

- (31) In Shell/BG, the Commission considered that the appropriate scope of the plausible market for natural gas liquefaction could be set at the level of the "Atlantic basin", comprising the EEA, the Northern American East Coast, the Caribbean, South America and Northern and Western Africa, possibly also including the Middle East and South Eastern Asia.<sup>24</sup>
- (32) The Notifying Party is of the view that the relevant geographic market should include at least liquefaction plants located in the Atlantic Basin, and could be broader, including the Middle East (in particular given that Qatar has been the largest exporter of LNG into the EU since at least 2014) and South Eastern Asia.
- (33) The market investigation was not entirely conclusive as regards the geographic scope of the possible market for natural gas liquefaction, a majority of competitors to the Parties indicated that they source LNG from the Atlantic Basin, including the Middle East.<sup>25</sup>
- (34) In any event, the exact geographic market definition can be left open for the purpose of this decision since the Transaction does not lead to serious doubts as to its compatibility with the internal market irrespective of whether the possible market for natural gas liquefaction is considered to be limited to the Atlantic Basin or wider in scope, especially including the Middle East region.

#### 5.2.3. *Regasification of LNG.*

- (35) In past decisions, the Commission suggested that the market for gas import infrastructure, including LNG regasification terminals, was national in scope but ultimately left the exact market definition open.<sup>26</sup> The Notifying Party submits that the relevant geographic market for gas infrastructure is broader than national.
- (36) Customers responding to the market investigation indicated that they generally use the regasification terminals in the Member State where the LNG is sold and, as explained above, they would not switch to terminals located in a different Member State if faced with small but significant and non-transitory increase in price of regasification services.<sup>27</sup> Likewise, competitors to the Parties have explained that LNG is typically regasified as close as possible to the place of

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24 Case M.7631, Royal Dutch Shell/BG Group, paras. 40-41.

25 Replies to question 33 of eQuestionnaire 1 - Competitors

26 Case M.5649 – RREEF FUND/ENDESA/UGF/SAGGAS.

27 Replies to question 18 and 33 of eQuestionnaire 2 – Customers



consumption.<sup>28</sup> Conversely, regasifying LNG in another Member State to have it then transported to its final destination is generally possible but more expensive.

- (37) In any event, the exact geographic market definition can be left open for the purpose of this decision since the Transaction does not lead to serious doubts as to its compatibility with the internal market irrespective of whether the possible market for LNG regasification is considered to be national or wider in scope.

### **5.3. Competitive assessment**

- (38) As noted, when considering the narrowest plausible alternative and applying the most conservative calculation methodologies, the Transaction gives rise to the following horizontally affected markets:

- a. Upstream wholesale supply of LNG in Spain;
- b. Liquefaction of natural gas in the Atlantic Basin; and,
- c. Regasification of LNG in France.

#### *5.3.1. Upstream wholesale supply of LNG in Spain.*

- (39) On a plausible market limited to the upstream wholesale supply of LNG (excluding non-liquefied natural gas), the combined market share of the Parties remains limited irrespective of the geographic market definition retained.<sup>29</sup> In fact, Spain is the only EEA Member State where the combined market share of the Parties would slightly exceed [20-30]%.

##### **5.3.1.1. Market structure**

- (40) The Notifying Party has relied on two alternative methodologies for calculating market shares: (i) [a methodology based on IHS Markit data] and (ii) the alternative methodology.
- (41) Under [a methodology based on IHS Markit data], volumes are attributed to the company responsible for chartering the vessel used for the delivery of the LNG at the terminal of destination. Under this methodology, the identity of the company to which the volumes is allocated depends on the contractual arrangements (the seller in case of DES contracts and the buyer in the case of FOB contracts). This methodology is therefore not entirely accurate, but it contains competitors' data.
- (42) Under the alternative methodology, LNG sales volumes are attributed to suppliers irrespective of whether the said volumes: (a) are purchased by that supplier from a liquefaction plant and resold to a purchaser of LNG; or (b) are delivered to a purchaser of LNG by a third party on behalf of the supplier in question. This methodology may provide a more reliable estimate of the position and activities of the Parties given that it captures their sales in each EEA

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28 Replies to question 35 of eQuestionnaire 1 – Competitors.

29 Under a wider product market definition encompassing upstream wholesale of both piped natural gas and LNG, the combined market shares of the Parties will be lower and below 20% in any geographic market.

Member State, rather than attributing their sales to the entities that happen to charter the vessels. However, due to the lack of publicly available data, sales figures of competitors are not available under that methodology.

- (43) The tables below illustrate the Parties' and their competitors market shares (when available) under the two alternative methodologies:

*Table 1 - Upstream wholesale supply (LNG only) in Spain – [a methodology based on IHS Markit data]*

Spain	Upstream wholesale supply (LNG only) – [a methodology based on IHS Markit data]					
	2016		2015		2014	
	Volume (mtpa)	%	Volume (mtpa)	%	Volume (mtpa)	%
Total	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Target Business	[...]	[0-5]%	[...]	[0-5]%	[...]	[10-20]%
<b>Combined (Total and Target Business)</b>	[...]	[0-5]%	[...]	[0-5]%	[...]	[10-20]%
Nigeria LNG	[...]	[30-40] %	[...]	[20-30]%	[...]	[10-20]%
Sonatrach	[...]	[20-30]%	[...]	[10-20]%	[...]	[10-20]%
Shell-BG	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Qatargas	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
ENI	[...]	[0-5]%	[...]	[5-10]%	[...]	[10-20]%
RasGas	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Gas Natural Fenosa	[...]	[0-5]%	[...]	[5-10]%	[...]	[5-10]%
Statoil	[...]	[0-5]%	[...]	[0-5]%	[...]	[5-10]%
<b>Total Market</b>	<b>10.3</b>	<b>100%</b>	<b>10.0</b>	<b>100%</b>	<b>11.2</b>	<b>100%</b>

Source: Form CO.

*Table 2 - Upstream wholesale supply (LNG only) in Spain – alternative methodology*

Spain	Upstream wholesale supply (LNG only) – Alternative methodology					
	2016		2015		2014	
	Volume (mtpa)	%	Volume (mtpa)	%	Volume (mtpa)	%
Total	[...]	[10-20]%	[...]	[10-20]%	[...]	[5-10]%
Target Business	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
<b>Combined (Total and Target Business)</b>	[...]	<b>[20-30]%</b>	[...]	<b>[10-20]%</b>	[...]	<b>[10-20]%</b>
<b>Total Market</b>	<b>10.3</b>	<b>100%</b>	<b>10.0</b>	<b>100%</b>	<b>11.2</b>	<b>100%</b>

Source: Form CO.

#### 5.3.1.2. Assessment

- (44) For the reasons below, the Commission takes the view that the Transaction will not result in a significant impediment of effective competition in relation to the upstream wholesale supply of LNG.

- (45) First, the market share of the merged entity remains limited, just around or above [10-20]%. Thus, under any alternative plausible product and market definition and irrespective of the calculation methodology adopted, the combined market share of the Parties remains below 25%, which typically entails a presumption of compatibility with the internal market.<sup>30</sup>
- (46) Second, the merged entity will continue to face competition from a significant number of competitors. Customers responding to the market investigation indicated that competitors such as Gas Natural Fenosa, Nigeria LNG, Statoil, ENI, Shell, Engie, Koch, QatarGas, BP and Cheniere supply LNG in Spain at upstream wholesale level,<sup>31</sup> which is consistent with the views expressed by the competitors of the Parties.<sup>32</sup>
- (47) Third, none of the customers responding to the market investigation indicated that the Parties were significant competitors in Spain. To the contrary, the majority of customers consider Gas Natural Fenosa as the strongest competitor to each of the Parties followed by players such as Shell, Endesa and QatarGas.<sup>33</sup> This is consistent with the views expressed by the competitors of the Parties.<sup>34</sup>
- (48) Fourth, the majority of customers who responded to the market investigation indicated that a sufficient number of alternative suppliers serving the Spanish market will remain post-Transaction.<sup>35</sup>
- (49) Finally, a majority of customers and competitors do not foresee that the Transaction will have an appreciable impact on the supply of LNG at EEA level or in Spain.<sup>36</sup> As explained by a customer responding to the market investigation: "*there are many alternatives and the current weight of both companies in the LNG supply to Europe is not very significant*".

#### 5.3.1.3. Conclusion

- (50) In light of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the upstream wholesale supply of LNG in Spain.

#### 5.3.2. *Liquefaction of gas into LNG in the Atlantic Basin.*

- (51) As noted, though it seems to have little relevance in the present case, the existence of a separate market for liquefaction services has been considered plausible in the recent past, and defined as covering at least the Atlantic Basin.

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30 Merger Regulation, recital 32.

31 Replies to question 37.2 of eQuestionnaire 2 – Customers

32 Replies to question 39 of eQuestionnaire 1 - Competitors

33 Replies to question 38.2 of eQuestionnaire 2 – Customers

34 Replies to question 40 of eQuestionnaire 1 - Competitors

35 Replies to question 39.2 of eQuestionnaire 2 – Customers.

36 Replies to questions 50 and 51 of eQuestionnaire 2 – Customers and Replies to question 51 of eQuestionnaire 1 – Competitors.

- (52) Liquefaction plants are generally owned and operated by joint ventures and are generally made up of different "trains" used to convert natural gas into LNG. Total has an interest in 21 liquefaction trains. These 21 separate liquefaction trains relate to eight of the 29 liquefaction plants worldwide. The total existing and projected liquefaction capacity is a publicly available data.

#### 5.3.2.1. Market structure

- (53) In order to calculate their respective market shares, the Parties put forward three alternative methodologies:

- a. The "equity rights" methodology whereby each of the Parties is allocated a share of capacity in each train proportional to the equity rights owned in that train. If this methodology is adopted, the 2016 combined market share of the Parties would be [0-5]% on a worldwide level and [5-10]% in the Atlantic Basin. By 2022, the market share of the combined entity is projected to reduce to [0-5]% at worldwide level and [5-10]% in the Atlantic Basin;
- b. The "contracted off-take rights" methodology whereby each Party is allocated a share proportional to the share of contracted LNG off-take rights under long-term and medium-term contracts in force at the end of 2016. If this methodology is adopted, the 2016 combined market share of the Parties would be [5-10]% on a worldwide level and [10-20]% in the Atlantic Basin. By 2022, the market share of the combined entity is projected to reach [5-10]% at worldwide level and [10-20]% in the Atlantic Basin;
- c. The "veto rights" methodology whereby 100% of the nominal capacity of each of the plants over which the Parties have control or a technical right of veto, is attributed to the Parties. This methodology is very conservative as it leads to multiple counting. For example, the overall liquefaction capacity of a plant that is jointly controlled by four market players is allocated in its entirety to each of the four players, yet it is only counted once in the market size estimate.

- (54) The Transaction will generate an affected market only if the "veto rights" methodology is adopted. If this methodology is applied, the 2016 combined market share of the Parties would be [10-20]% on a worldwide level and [20-30]% in the Atlantic Basin. By 2022, the market share of the combined entity is projected to reach [10-20]% at worldwide level and [20-30]% in the Atlantic Basin.

#### 5.3.2.2. Assessment

- (55) The Commission takes the view that the Transaction will not result in a significant impediment of effective competition in relation to liquefaction.
- (56) First, even under the most conservative market share calculation method the combined market share of the Parties is not very large. Moreover, the Parties' market position is overstated since this methodology entails that a significant proportion of liquefaction capacity is double counted.

- (57) Second, customers and competitors responding to the market investigation indicated that while Total is considered to hold significant interests in a range of liquefaction facilities, the Target Business is not.
- (58) Third, all customers responding to the market investigation indicated that they will have a sufficient number of alternative suppliers post Transaction. This is also supported by the responses of competitors who indicated that there is sufficient spare liquefaction capacity available in the Atlantic Basin.<sup>37</sup>
- (59) Fourth, competitors responding to the market investigation indicated that in the last years they did not have difficulty in accessing liquefaction capacity as such. Some competitors indicated that the difficulty was rather in obtaining prices that would make LNG competitive with non-liquefied natural gas in the EEA. The Commission considers that this supports the view that LNG and non-liquefied natural gas constrain each other rather than pointing to a competitive issue on any possible liquefaction market.
- (60) Fifth, the Commission considered in Shell/BG that there are significant imports of LNG into the EEA from regions outside the Atlantic Basin and that suppliers active in the Atlantic Basin would likely face competition from large suppliers such as Qatar Petroleum. This finding is still valid, notably since Qatar is in fact the main LNG supplier to the EU representing 46% of EU imports in the second quarter of 2017.
- (61) In that decision, the Commission also took into account the fact that “(*Shell and BG*) share of long-term contracted offtake rights (i.e. the right to off-take LNG at liquefaction plants) within the Atlantic basin amounted to only [20-30]%, which means that a significant proportion of the offtake rights at the liquefaction facilities within the Atlantic basin over which the merged entity (*Shell/BG*) would hold a technical right of veto would already be contracted to third parties on a long-term basis”. The fact that a significant proportion of the offtake rights are contracted under long-term agreements still holds true and Total's share of long-term and medium-term offtake rights in the Atlantic Basin amounted to only [10-20]% in 2016 and is expected to amount to [10-20]% in 2022.

#### 5.3.2.3. Conclusion

- (62) In light of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the liquefaction of LNG in the Atlantic Basin.

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<sup>37</sup> Replies to question 47 of eQuestionnaire 1 – Competitors. In Shell/BG, the Commission also observed that sufficient capacity would remain available in 2019, 2022 and 2026 in the Atlantic Basin, when a number of large offtake contracts are expected to end at the same time. There is no reason to deviate from this finding in the present case.

### 5.3.3. Regasification of LNG in France.

(63) As noted, the narrowest plausible alternative market in relation to gas import infrastructure would be to consider independently LNG regasification facilities on a national level. As a result, the only affected market would be the supply of regasification services in France.

(64) There are four large scale regasification terminals in France, as follows:

Table 3 – List of French LNG terminals.

Country	Name of installation	Total Nom. Annual Cap. bcm (N)/year (2016)		Total Nom. Annual Cap. in mtpa of LNG (2016)	
France	Fos-Tonkin LNG Terminal	3.00	34.25	2.2	25.00 <sup>38</sup>
	Montoir-de-Bretagne LNG Terminal	10.00		7.3	
	Fos Cavaou LNG Terminal	8.25		6.0	
	Dunkerque LNG Terminal	13.00		9.5	

Source: Form CO.

#### 5.3.3.1. Market structure

(65) The tables below present the Parties' current and projected share of capacity rights in the French terminals.

Table 4 - Parties' capacity rights in regasification terminals 2016

Re-gasification terminal	Regasification capacity (mtpa)	Total		Target Business		Combined	
		mtpa	%	mtpa	%	mtpa	%
<b>All France</b>	<b>25.0<sup>39</sup></b>	[...]	[10-20]%	[...]	[30-40]%	[...]	[40-50]%
Fos Cavaou	6.0	[...]	[20-30]%	[...]	[60-70]%	[...]	[80-90]%
Fos Tonkin	2.2	[...]	[0-5]%	[...]	[80-90]%	[...]	[80-90]%
Montoir-de-Bretagne	7.3	[...]	[0-5]%	[...]	[40-50]%	[...]	[40-50]%
Dunkerque	9.5	[...]	[10-20]%	[...]	[0-5]%	[...]	[10-20]%

Source: Form CO.

38 Includes Dunkerque, operational from Q1- 2017.

39 Includes Dunkerque, operational from Q1 2017.

Table 5 - Parties' capacity rights in regasification terminals 2022

Country / re-gasification terminal	Regasification capacity (mtpa)	Total		Target Business		Combined	
		mtpa	%	mtpa	%	mtpa	%
<b>All France</b>	<b>30.5</b>	[...]	<b>[10-20]%</b>	[...]	<b>[20-30]%</b>	[...]	<b>[30-40]%</b>
Fos Cavaou <sup>40</sup>	11.9	[...]	[10-20]%	[...]	[30-40]%	[...]	[40-50]%
Montoir-de-Bretagne <sup>41</sup>	9.1	[...]	[0-5]%	[...]	[60-70]%	[...]	[60-70]%
Dunkerque	9.5	[...]	[10-20]%	[...]	[0-5]%	[...]	[10-20]%

Source: Form CO.

### 5.3.3.2. Assessment

- (66) For the reasons below, the Commission takes the view that the Transaction will not result in a significant impediment of effective competition on a market for the regasification of LNG in France.
- (67) First, the capacity of regasification terminals in the EEA and in France is structurally underutilised. The table below provides a breakdown of the estimated utilisation rate of regasification terminals in the EEA in 2016 and the first half of 2017.

Country	Name of installation	Utilisation rate 2016 <sup>42</sup>	Utilisation rate first-half of 2017 <sup>43</sup>
Belgium	Zeebrugge LNG Terminal	[20-30]%	[10-20]%
France <sup>44</sup>	<b>Fos-Tonkin LNG Terminal</b>	<b>[30-40]%</b>	<b>[40-50]%</b>
	<b>Montoir-de-Bretagne LNG Terminal</b>		
	<b>Fos Cavaou LNG Terminal</b>		
	<b>Dunkerque LNG Terminal</b>		
Greece	Revithoussa LNG Terminal	[10-20]%	[30-40]%
Italy	Panigaglia LNG terminal	[40-50]%	[50-60]%
	Porto Levante LNG terminal		
	FSRU OLT Offshore LNG Toscana		
Lithuania	FSRU Independence	[30-40]%	[20-30]%

40 Includes a planned expansion of 2.75 bcm in 2020 and 5.5 bcm in 2022 (in total, approximately 5.9 mtpa).

41 Includes a planned expansion of 2.5 bcm in 2020 (approximately 1.8 mtpa).

42 Calculated on gross imports.

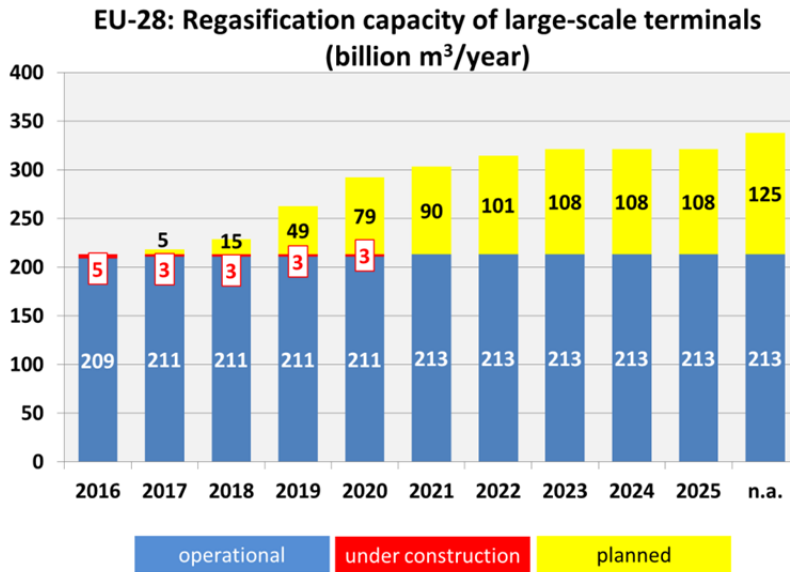
43 Calculated on gross imports.

44 Dunkerque excluded from the calculation of utilisation rate because it started operating only in late December 2016 and its utilisation rate has since then been particularly low.

Country	Name of installation	Utilisation rate 2016 <sup>42</sup>	Utilisation rate first-half of 2017 <sup>43</sup>
Netherlands	Gate terminal, Rotterdam	[10-20]%	[10-20]%
Poland	Swinoujscie LNG Terminal	[20-30]%	[30-40]%
Portugal	Sines LNG Terminal	[20-30]%	[40-50]%
Spain	Barcelona LNG Terminal	[20-30]%	[20-30]%
	Huelva LNG Terminal		
	Cartagena LNG Terminal		
	Bilbao LNG terminal		
	Sagunto LNG terminal		
	Mugardos LNG Terminal		
	Gijón (Musel) LNG terminal		
United Kingdom	Isle of Grain LNG terminal	[20-30]%	[10-20]%
	Milford Haven - Dragon LNG terminal		
	Milford Haven - South Hook LNG terminal		

Source: Form CO.

(68) Second, EU regasification capacity is expected to increase significantly over the coming years, with no less than a 50% increase expected by 2025.



Source: Form CO/Gas Infrastructure Europe – LNG investment database



- (69) Third, access to the Fos-Tonkin, Fos Cavaou and Montoir-de-Bretagne terminals is governed by French regulation according to a “use it or lose it” mechanism.<sup>45</sup> Under that mechanism, suppliers that do not use the capacity they have booked are obliged to release it back. In practice:
- a. Holders of regasification capacity have to inform the operator of the terminal, at the latest on the 20th day of month M-1, of their requested monthly schedule of unloading operations for month M, as well as their draft unloading schedules for months M+1 and M+2;
  - b. The terminal operator publishes, on the 25th day of month M-1 for month M, the available capacity by taking into account the subscribed capacity that is not subject to a schedule request. For information, the operator also publishes this data for months M+1 and M+2. The information about available capacity is then updated on a daily basis;
  - c. If the schedule for month M shows no available unloading slot, each cancellation of an unloading operation without notice, unless for reasons of force majeure, is formally noted and communicated to the regulator. When the terminal’s capacity is fully booked, the regulator may require a particular supplier to release subscribed capacity on a case by case basis, in order to free capacity at the terminal; and
  - d. If access to the terminal’s regasification capacity is seen to be congested, the terminal operator will, upon the French regulator' request, provide it with full information on subscription requests for the period of congestion.
- (70) The Dunkerque LNG Terminal operational since December 2016 is currently exempted from this regulatory scheme but is subject to a “*use it or lose it*” mechanism similar to that described above. In effect, by virtue of the French governmental decree granting the exemption, Dunkerque LNG has to ensure that there is a mechanism in place whereby capacities subscribed but not used are made available to other market players.
- (71) Fourth, customers responding to the market investigation indicated that they never had issues in accessing [...] capacity in the EEA in general and in France in particular. To the contrary, a customer indicated that “*European market is long in regasification*”.<sup>46</sup> Competitors responding to the market investigation gave similar indications and explained that “[i]n general terms, there is available regasification capacity in the EEA” and “[m]ore generally the average load factor of LNG terminals in Europe has been quite low during the 5 past years so that there has not been actually any problem of access”.<sup>47</sup>

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45 Tariffs are also set in accordance with rules and principles set out by the regulator, and each of the three regulated terminals is subject to a “ship or pay” clause.

46 Replies to question 48 of eQuestionnaire 2 – Customers.

47 Replies to question 49 of eQuestionnaire 1 – Competitors.

\* should read: “regasification”.

### 5.3.3.3. Conclusion

(72) In light of the above considerations, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the regasification of LNG in France.

### 5.3.4. State aid aspects

(73) In its assessment, the Commission took into account the grant of State aid to the undertakings concerned:<sup>48</sup> the Target Business includes the entity GDF Suez LNG Supply S.A., which is currently subject to an in-depth State aid investigation initiated pursuant to Article 108(2) TFEU with respect to tax rulings granted by Luxembourg.<sup>49</sup> However, the potential State aid in question is not inherent in the Transaction and the consequences of the ongoing proceedings have been factored into the Parties' contractual arrangements. In any event, the potential aid would not increase the financial and resulting commercial strength of the merged entity in a manner that would alter the outcome of the merger control assessment of the Transaction, notably in view of the constraints remaining on the merged entity.

## 6. CONCLUSION

(74) 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)*

*Margrethe VESTAGER*

*Member of the Commission*

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<sup>48</sup> Case T-156/98, *RJB Mining plc v Commission* [2001] ECR II-337, para. 114.

<sup>49</sup> Commission decision of 19 September 2016 in Case SA.44888 (NN/2016) (ex EO/2016) – *Luxembourg/Possible State aid in favour of GDF Suez*, C(2016) 5612 final.