



EUROPEAN COMMISSION
DG Competition

***Case M.8953 - SNAM /
DESFA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 13/07/2018

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EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 13.7.2018
C(2018) 4748 final

PUBLIC VERSION

To the notifying party

**Subject: Case M.8953 - SNAM/DESFA
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**

Dear Sir or Madam,

- (1) On 08.06.2018, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation. This notification concerns the following undertakings:
 - Snam (of Italy), controlled by Cassa Depositi e Prestiti S.p.A. ('CDP', of Italy),
 - Hellenic Gas Transmission System Operator ('DESFA', of Greece).
- (2) Snam acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of DESFA. The concentration is accomplished by way of purchase of shares.³ (Snam is designated hereinafter as the 'notifying party' and Snam and DESFA together as the 'parties to the proposed transaction'.)

1. THE PARTIES

- (3) Snam is the holding company of the Snam Group, which owns the main gas transmission system operator ('TSO') in Italy, and has several participations in companies active in gas transmission and storage throughout the EU,

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 C208, 15.06.2018, p. 13.

- (4) CDP is a joint-stock company under public control of the Italian Government,
- (5) DESFA was established in 2007 with the objective of operating, maintaining, managing, exploiting and developing the Hellenic Gas Transmission System, including its interconnections with Turkey and Bulgaria, and the LNG terminal located in Revythousa island.

2. THE OPERATION AND THE CONCENTRATION

- (6) Snam will acquire the shares in DESFA via a Special Purpose Vehicle ('SPV'), which will be owned 60% by Snam, and 20% by Fluxys (Belgian TSO) and Enagas (Spanish TSO) respectively. According to the SPV Shareholders' Agreement ('SHA'), [Snam appoints a majority of Directors and has a veto in the shareholders' meeting]. Therefore, Snam holds sole control over SPV.
- (7) Pursuant to a share sale and purchase agreement ('SPA'), SPV will acquire shares representing 66% of the total voting rights of DESFA. The remaining 34% of DESFA's voting rights will be held by the Hellenic Republic. As decisions in relation to DESFA's commercial strategy will be adopted by simple majority and quorum, SPV holding a majority of shares and votes will exercise decisive influence over DESFA. Moreover, the Hellenic Republic does not retain any veto rights beyond the protection of the interest of a minority shareholder. Thus, DESFA will be solely controlled by SPV and therefore Snam.
- (8) In light of the above, the notified transaction constitutes a concentration pursuant to Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

- (9) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁴ (EUR 26 824 million). Each of them has an EU-wide turnover in excess of EUR 250 million (Snam: EUR [...], DESFA: EUR 269 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.

4. COMPETITIVE ASSESSMENT

4.1. Market definition

- (10) In keeping with the Commission's decision-making practice, the different activities associated with the gas sector can be separated into different relevant markets, ranging from exploration to supply to the final consumer.

⁴ Turnover calculated in accordance with Article 5 of the Merger Regulation.

- (11) Within the gas transport/infrastructure markets⁵ the following two types of transport activities must be distinguished due to significantly diverging competitive conditions:⁶ (i) gas transmission services (the high-pressure pipeline grid) and (ii) gas distribution services (medium- and low-pressure pipeline grids).⁷ Moreover, the Commission has also previously distinguished capacity-related services for gas imports (gas infrastructures markets).⁸
- (12) The notifying party equally submits that there is a separate market for the transmission of natural gas. Furthermore, it states that the transport of natural gas through a high pressure network ("transmission network") is to be considered a natural monopoly, in line with previous Commission decisions.⁹
- (13) In view of the above, the Commission considers that a separate market for the transmission of natural gas exists in Greece.
- (14) The Commission has consistently considered that each balancing zone¹⁰ is considered as a separate geographic market, in view of the differing conditions for transporting gas to and between the zones, as well as differing market shares between suppliers.¹¹
- (15) In the present case, DESFA's transmission network for natural gas is the only one in Greece, constituting a single balancing zone.¹² In view of this fact and the above, the Commission considers that the geographic scope of the market for the transmission of natural gas is national, encompassing the territory of Greece.

⁵ Case No COMP/39.317 – E.ON Gas, of 4 May 2010; COMP/M.3696 *E.ON / MOL*, of 12 December 2005; Case No COMP/M.3410 *Total / Gaz de France*, of 8 October 2004; Case No COMP/M.493 *Tractabel / Distrigaz (II)*, of 1 September 1994.

⁶ Case No COMP/39.316 – *Gaz de France*, of 3 December 2009; Case No COMP/39.402 – RWE Gas Foreclosure, of 18 March 2009.

⁷ Transmission networks transport gas at higher pressure over long distances and are connected only to large final customers, such as large industrial consumers. By contrast, distribution networks serve to distribute the gas locally to smaller final customers, such as households. Regulation applying to transmission systems differs from regulation applying to distribution systems.

⁸ Case No COMP/M.5649 - *RREEF FUND / ENDESA / UFG / SAGGAS*, paragraph 11. See also Case No COMP/39.316 – *Gaz de France*, para. 14.

⁹ COMP/M.3696 *E.ON/MOL*, of 12 December 2005.

¹⁰ A balancing zone is essentially an entry-exit system (including entries from storage and LNG into the transmission system and exits from the transmission system into storage) to which specific balancing rules and agreements (including the procurement of flexible gas, balancing services and imbalance charges) apply.

¹¹ See Case 39.402 *RWE gas foreclosure* (2009), para 16 and Case M.4180 *GDF/Suez* (2006), para. 380-385. A balancing zone may be wider than the relevant gas grid in case of grid co-operations, like in Germany.

¹² A balancing zone is essentially an entry-exit system (including entries from storage and LNG into the transmission system and exits from the transmission system into storage) to which specific balancing rules and agreements (including the procurement of flexible gas, balancing services and imbalance charges) apply.

4.2. Competitive Assessment

- (16) DESFA is active in the transmission of natural gas in Greece, while Snam is not active in the same product and geographic market, or in a product market which is upstream or downstream from those markets.
- (17) Therefore, none of the parties to the proposed transaction are engaged in business activities in the same product and geographic market, or in a product market which is upstream or downstream from a product market in which any other party to the concentration is engaged.
- (18) During the procedure, the Commission received a submission expressing concerns resulting from the merger regarding (i) preferential treatment of the connection of infrastructure projects transiting Greece with the Greek natural gas transmission network in which the notifying party has a participation to the detriment of other projects and (ii) development of an incremental capacity project (foreseen in Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems ('Regulation 2017/459'¹³) requested by a third party (gas shipper) by Snam and DESFA (as the operators of the Greek and Italian gas networks) which would create an additional connection between the Greek and Italian gas networks to the detriment of the two pipeline projects under development (so-called TAP¹⁴ and so-called IGI Poseidon¹⁵); according to the complainant, this would allow the notifying party to maximise profit at the expense of consumers, who would have to pay for this investment via the tariffs.
- (19) The concern expressed under (i) appears to relate to a situation whereby the notifying party via DESFA would be favouring the planned transit pipeline investment of its own parent company Snam (which has a 20% share in TAP) over competing planned transit pipeline projects as it would increase its revenues from the transit fees. Currently and pre-merger DESFA is controlled by DEPA, while at the same time DEPA has a 50% shareholding in a planned transit pipeline leading from the Greek territory to Italy, the IGI Poseidon pipeline project; whereas post-transaction DESFA would be controlled by Snam, while at the same time Snam has a 20% shareholding in a planned transit pipeline from the Greek territory to Italy, the TAP. It should therefore be considered that pre-merger, DESFA is owned by an entity (DEPA) which has to be considered to have similar alleged ability and incentive to favour a related planned transit pipeline. In addition to this, the Commission considers the concern unfounded for the following reasons. Firstly, in general, any alleged ability of DESFA to favour a related planned transit pipeline is limited to interconnection with the Greek natural gas transmission network. DESFA does not have any influence on the approval and construction of planned transit pipelines in Greece, neither on their interconnection with the Italian natural gas system. Secondly, the TAP project is

¹³ Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013, OJ L 72, 17.3.2017, p.1-28.

¹⁴ Trans Adriatic Pipeline project, in which Snam has a 20% shareholding. This pipeline spans Greece and Albania to reach Italy.

¹⁵ A joint venture between Edison (50%) and DEPA (50%), which develops a pipeline project spanning Greece to reach Italy.

scheduled for 10 bcm/a and already fully backed and booked by gas transport agreements for 25 years as of its start of operation. According to the information provided by the notifying party, [TAP's commercial policy]. Snam as owner of DESFA would therefore have no interest to prevent further planned transit pipelines to be connected to the Greek natural gas transmission system, which would allow additional regulated revenue. Finally, even though TAP can be expanded to a capacity of 20 bcm/a which could provide space for further natural gas transports to Greece, this decision cannot be taken by Snam unilaterally with its 20% shareholding in TAP. The Commission therefore considers that the transaction does not raise serious doubts as to its compatibility with the internal market from this point of view.

- (20) As to (ii), the Commission considers that any such behaviour by the notifying party would not be merger specific. First, the capacity was requested by a natural gas company (as opposed to capacity planned by the transmission system operators themselves). Second, the procedure was started pre-merger in line with Regulation 2017/459 in April 2017, even before the non-binding expression of interest for DESFA was submitted by Snam (and others). Third, DESFA and Snam pre-merger and post-merger would have the same duties, obligations and interest to build such an additional infrastructure under the Regulation in order to increase their regulated revenues. The Commission therefore considers that the transaction does not raise serious doubts as to its compatibility with the internal market from this point of view.
- (21) Moreover, as set out above, currently DESFA is controlled by DEPA, the largest wholesale company in the natural gas market in Greece. Therefore, the transaction moves DESFA to the full ownership unbundling-model, creating a market structure in which the regulated activity of transmission is separated from the non-regulated activities on gas wholesale and retail markets, which can be considered as a pro-competitive development.

5. CONCLUSION

- (22) 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