EUROPEAN COMMISSION

DG Competition

Case M.9648 - NATURGY / SONATRACH / MEDGAZ

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 4(4)

Date: 4.3.2020

Brussels,4.3.2020
C(2020) 1524 final

PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying parties

To the Comisión Nacional de los Mercados y de la Competencia (Spain)

Subject: **Case M.9648 – Naturgy/Sonatrach/Medgaz**
Commission decision following a reasoned submission pursuant to Article 4(4) of Regulation No 139/2004[1] for referral of the case to Spain and Article 57 of the Agreement on the European Economic Area[2].

Date of filing: 11.02.2020
Legal deadline for response of Member States: 03.03.2020
Legal deadline for the Commission decision under Article 4(4): 17.03.2020

Dear Sir or Madam,

1. INTRODUCTION

(1) On 11 February 2020, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation with

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').

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respect to the transaction cited above. The parties request the operation to be examined in its entirety by the competent authorities of Spain.

(2) According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition and which presents all the characteristics of a distinct market.

(3) A copy of this Reasoned Submission was transmitted to all Member States on 11 February 2020.

(4) By letter of 17 February 2020, the Comisión Nacional de los Mercados y la Competencia ("**CNMC**"), as the competent authority of Spain, informed the Commission that it agrees with the proposed referral.

2. THE PARTIES

(5) Sonatrach is the national state-owned oil and gas company of Algeria. It is a group fully integrated all along the hydrocarbons value chain. Either on its own or in cooperation with foreign companies active in the oil, gas and energy sectors, it operates some of the most important deposits of oil and gas in different regions of the Algerian Sahara, where it owns six oil refineries, two petrochemical complexes, four LNG liquefaction complexes and two LPG separation complexes.

(6) Naturgy is a multinational group active in the energy sector, including integrating gas and electricity sectors in Latin America and in Spain. Regarding gas, Naturgy is present in a large part of the gas chain (i.e. mid and downstream markets, storage, distribution and retail businesses). It has interests in two liquefaction plants (in Damietta, Egypt, and Qalhat, Oman), two gas pipelines and eleven liquefied natural gas ("LNG") tankers. In particular, it has a concession over the Maghreb-Europe gas pipeline through Morocco that transports natural gas from the wells of Hassi R'Mel (Algeria) to Spain, Portugal and Morocco.

(7) Medgaz is an infrastructure by which natural gas is transported from Beni Saf in Algeria (where the natural gas is extracted) to Spain through the Almerian coast and the Mediterranean Sea. The infrastructure has a total capacity of 8.72 BCMs of natural gas, all of which is already contracted until [date]. Medgaz is currently being expanded to 10.9 BCM, with [0-2] BCMs of the new capacity already attributed to [Medgaz's customer] and the remaining [0-2] BCM still available for third parties.

3. THE OPERATION AND CONCENTRATION

(8) The transaction involves the acquisition of the 42.09% stake that Mubadala Investment Company PJSC ("**Mubadala**"), through its indirectly wholly-owned subsidiary Cepsa Holding LLC ("Cepsa Holding"), holds in Medgaz, S.A. ("**Medgaz**") by Naturgy Energy Group, S.A. ("**Naturgy**") (through [Naturgy's subsidiary]"[3]) and Sonatrach S.p.A. ("**Sonatrach**").[4] Naturgy and Sonatrach are together referred to as "the Parties".

3 [Information on Naturgy's subsidiary].

(9) Currently Medgaz is jointly controlled by Sonatrach and Mubadala through Cepsa Holding. Post-Transaction, Medgaz will be jointly controlled by Sonatrach and Naturgy.[5]

(10) Medgaz is currently a jointly-controlled full-function joint venture with its own structure and resources to manage its business and its own market presence[6] which is not limited in time, and will remain so post-Transaction.

(11) The proposed transaction would therefore result in a concentration within the meaning of Articles 3(1)(b) and 3(4) of the Merger Regulation.

4. EU DIMENSION

(12) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million and two of the undertakings have a turnover of more than EUR 250 million (Naturgy: EUR […] million, Sonatrach: EUR […] million, Medgaz: EUR […] million). The Parties do not each achieve more than two-thirds of their aggregate EU-turnover in any one Member State. The notified operation therefore has an EU dimension within Article 1(2) of the Merger Regulation.

5. ASSESSMENT

(13) On the basis of a preliminary assessment of the information provided by the Parties in the Reasoned Submission, the proposed Transaction is an appropriate candidate for pre-filing referral from the Commission to the CNMC in accordance with Article 4(4) of the Merger Regulation.

(14) The Parties' activities result in reportable markets in the markets for (i) production, development and upstream wholesale supply of natural gas, (ii) gas import infrastructure, and (iii) retail supply of natural gas.

(15) The Commission has found the market for the production, development and upstream wholesale supply of natural gas, to be wider than national and potentially to comprise the EEA, Algeria and Russia.[7] The Parties' and Medgaz' combined market shares in this market under any plausible geographic market definition (i.e. regional to include the EEA, Algeria and Russia, or covering several Member States) are below 20%. This market is upstream of the market of gas import infrastructure in Spain, where the Parties' and Medgaz' combined market share is below 30%. Therefore these markets are not vertically affected. The product markets affected by

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4 Naturgy will acquire around 34.05% of Medgaz's share capital and Sonatrach will acquire around 8.04% of Medgaz's share capital.

5 Naturgy already holds a stake of 14.95% in Medgaz which will increase to 49%. Sonatrach also holds a stake in Medgaz which the Transaction will raise from 42.96% to 51%. Sonatrach will have the right to designate [0-5] members and Naturgy [0-5] members of the Board. Neither Sonatrach nor Naturgy will be able to reach on its own the required Super Majority of [>51]%, which is required to approve Medgaz's budget or business plans.

6 Although initially all of Medgaz's capacity was allocated to its shareholders, this is no longer the case and following the Transaction's completion, more than [40-50]% of Medgaz's capacity will be contracted by third parties different to its shareholders.

7 Case/M.9175 – *TOTAL / CHEVRON DENMARK*, paragraphs 26 et seq. and Case COMP/M.6477 – *BP/ CHEVRON/ ENI/ SONANGOL/ TOTAL/ JV*, where the geographic definition of the market was left open.

the Transaction are therefore the markets for (a) gas import infrastructure, and (b) retail supply of natural gas.

5.1. Relevant product markets

A. The market for gas import infrastructure

(16) In previous decisions the Commission considered a product market for gas import infrastructure but left open whether it should be segmented into infrastructure for (a) gas imports by pipeline, (b) LNG regasification, and (c) gas storage (in turn potentially divided in (i) cavern and (ii) pore storage facilities).[8] The CNMC has stated that at least pipeline and LNG infrastructure should be considered to be in the same market.[9]

(17) In line with the previous practice of the CNMC, the Parties submit that the only sub-segmentation that could be considered would be between gas import infrastructure for transport on the one hand, for which infrastructure for gas imports through pipelines and LNG constitutes a single market, and infrastructure for gas storage on the other hand. However, the Parties consider that the relevant market should include all types of storage facilities.

(18) For the purposes of the present decision, it can be left open whether the product market for gas import infrastructure should be further segmented as described in paragraph (16), since it would not affect the assessment of wether the proposed concentration meets the criteria for an Article 4(4) referral.

B. The market for retail supply of natural gas

(19) In previous decisions, the Commission considered a product market for retail supply of natural gas, and considered that this market could be further subdivided by customer group given different consumption profiles, supply conditions and flexibility. The groups vary between Member States but generally consist of (i) gas powered electricity plants, (ii) large industrial customers, (iii) small industrial customers and (iv) household customers.[10] For Spain, the CNMC has generally found three categories, namely (i) gas powered electricity plants, (ii) all industrial customers and (iii) commercial and household customers.[11]

(20) The Parties argue that it can be left open whether the market for retail supply of natural gas should be further subsegmented by customers groups.

(21) For the purposes of the present decision, it can be left open whether the product market for the retail supply of natural gas should be further segmented by customer group, since it would not affect the assessment of whether the proposed concentration meets the criteria for an Article 4(4) referral.

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8 Cases COMP/M.8771 – *Total/ENGIE (Part of Liquefied Natural Gas Business),* Case COMP/M.5649 – *RREEF Fund/Endesa/UFG/Saggas*, Case COMP/M.5549 – *EDF/Segebel*.

9 Case C/0098/08 – *Gas Natural/Unión Fenosa*.

10 Case COMP/M.6910 – *Gazprom/Wintershall/Target Companies.*

11 This is the segmentation contained in the different CNMC's annual reports on the Spanish gas sector, available for the different years at https://www.cnmc.es/listado/sucesos_energia_mercado_gas_informes_anuales_gas/block/250.

5.2. Relevant geographic market

A. The market for gas import infrastructure

(22) In previous decisions, the Commission has left open whether these markets should be considered national or wider than national.[12] The CNMC has defined the market for gas import infrastructure in Spain as national.[13]

(23) The Parties argue that in the case of Spain, the geographic market should be national. Portuguese gas import infrastructures are not an option for market players wishing to import gas into Spain (gas flow from Portugal towards Spain is negligible). Furthermore, import infrastructures in both Portugal and Spain are subject to their own separate regulation system. Similarly, there is limited gas pipeline capacity linking Spain with France and there are different regulatory regimes.

(24) For the purposes of the present decision,. the definition of the geographic market can be left open, as it would not affect the assessment of whether the proposed concentration meets the criteria for an Article (4)4 referral.

(25) If the market for gas import infrastructure is considered to be national, the Spanish market would be affected.

B. The market for retail supply of natural gas

(26) As regards the market for retail supply of natural gas, the Commission has generally held that its geographic scope is national.[14] Narrower geographic market definitions have been considered but not wider than national.

(27) The Parties do not contest this assessment.

(28) For the purposes of the present decision there is no need to deviate from previous Commission decisions and therefore the markets can be considered to be national or narrower.

5.3. Assessment of the referral request

(29) Following a preliminary assessment, the proposed Transaction meets the legal requirements set out in Article 4(4) of the Merger Regulation.

5.3.1. Legal requirements

(30) According to the Commission Notice on case referral, in order for a referral to be made by the Commission to one or more Member States pursuant to Article 4(4), the following two legal requirements must be fulfilled:

a) there must be indications that the concentration may significantly affect competition in a market or markets,[15] and

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12 Case COMP/M.8771 – *Total/ENGIE (Part of Liquefied Natural Gas Business).*

13 Case C-0214/10 – *Enagás/BBG/JV.*

14 See, for instance, Case COMP/M.7936 – *PETROL / GEOPLIN*, 2017, which refers to Case COMP/M.5740 – *Gazprom / A2A / JV*, Case COMP/M.6068 – *ENI/ ACEGASAPS/ JV* and Case COMP/M.3230 – *Statoil / BP / Sonatrach / In Salah JV.*

b) the market(s) in question must be within a Member State and present all the characteristics of a distinct market.[16]

(31) On the basis of the information submitted in the Reasoned Submission, the Transaction gives rise to affected markets in the markets for (a) gas import infrastructure in Spain (where the Parties and Medgaz have a combined market share of [20-30]% on the overall market for all gas import infrastructure) and (b) retail supply of natural gas in Spain (where the Parties and Medgaz have a combined market share of [40-50]%).

(32) As established in footnote 21 of the Commission Notice on case referral in respect of concentrations (the "**Referral Notice**"), the existence of affected markets within the meaning of Form RS would generally be considered sufficient to meet the requirements of Article 4(4). As outlined in paragraph (31), the combined market shares of the Parties and Medgaz exceed (a) 20% in the markets for gas import infrastructure in Spain and (b) 30% for retail supply of natural gas in Spain. These markets are therefore affected and this is a sufficient indication that the concentration may significantly affect competition in these markets in Spain.

(33) Therefore, the first requirement of Article 4(4) of the Merger Regulation is met.

(34) With regard to the second requirement, the CNMC and the Parties consider that the market for gas import infrastructure is national (Spain). As stated in paragraph (23), according to the Parties, neither the Portuguese nor French import infrastructures are sufficiently connected to the Spanish network to offer an alternative, and there are different national regulatory regimes. In addition, should the market for gas import infrastructure be EEA-wide, this market would not be an affected market, which is a further indication that the principal effects of the transaction would be restricted to Spain.

(35) As indicated in paragraphs (26)-(28), the market for retail supply of natural gas is national (Spain) or smaller than national.

(36) Both markets present, therefore, all the characteristics of a distinct market.

(37) Therefore, the second legal requirement of Article 4(4) of the Merger Regulation is met.

(38) In view of the foregoing, the preliminary assessment suggests that, for the market for gas import infrastructure, the proposed transaction may significantly affect competition within Spain and that the effects of the Transaction would be restricted to Spain. Furthermore, the market in question presents all the characteristics of a distinct market.

(39) Similarly, for the market for retail supply of natural gas, the preliminary assessment suggests that the proposed transaction may significantly affect competition within Spain and that the effects of the Transaction would be restricted to Spain. Furthermore, the market in question presents all the characteristics of a distinct market.

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15 Further developed in point 17 of the Commission Notice on Case Referrals.

16 Further developed in point 18 of the Commission Notice on Case Referrals.

5.3.2. *Additional factors*

(40) In addition to the verification of the legal requirements, point 19 of the Referral Notice provides that it should also be considered whether the referral of the case is appropriate, and in particular “whether the competition authority or authorities to which they are contemplating requesting the referral of the case is the most appropriate authority for dealing with the case”. In addition, point 23 of the Notice states that "Consideration should also, to the extent possible, be given to whether the NCA(s) to which referral of the case is contemplated may possess specific expertise concerning local markets, or be examining, or about to examine, another transaction in the sector concerned".

(41) In this case, the Parties submit that the Transaction affects markets that are subject to complex national regulations and therefore the CNMC, which is also the Spanish Energy Authority, is well placed to analyse the Transaction. The Commission agrees with this assessment.

(42) According to point 20 of the Referral Notice, “concentrations with a Community dimension which are likely to affect competition in markets that have a national or narrower than national scope, and the effects of which are likely to be confined to, or have their main economic impact in, a single Member State are the most appropriate candidate cases for referral to that Member State”. As set out in paragraphs (30)-(39), this applies to the present case. The impact of the case would occur only in Spain and referral is made to Spain only, so “the benefit of a ‘one-stop-shop’” is preserved.

(43) Point 21 of the Referral Notice refers to concentrations that potentially engender “substantial cross-border effects” and stipulates that a “considerable margin of discretion should be retained in deciding whether or not to refer such cases”. The preliminary assessment suggests that the concentration in Spain will not have significant repercussions in geographic markets in other Member States. Likewise, the concentration does not pose a risk of fragmentation of the common market.

(44) As the principal impact of the concentration concerns Spain, point 22 of the Referral Notice about concentrations affecting national markets in more than one Member State, does not apply. As the case should be referred to Spain only, the benefit of a one-stop-shop is preserved.

(45) The Commission considers, on the basis of the information submitted in the Reasoned Submission, that the principal impact on competition of the concentration is liable to take place in the Spanish market and that the requested referral would be consistent with points 17-23 of the Referral Notice.

5.3.3. *Conclusion on the referral*

(46) The proposed Transaction is a concentration within the meaning of Article 3 of the Merger Regulation and it has an EU dimension. In addition, it may significantly affect competition in Spain which presents all the characteristics of a distinct market. Therefore, the case meets the legal requirements set out in Article 4(4) of the Merger Regulation.

(47) Moreover, as outlined in paragraph (41), the CNMC can be considered to possess specific expertise concerning the local markets in question.

6. CONCLUSION

(48) For these reasons, and given that Spain has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by the CNMC. This decision is adopted in application of Article 4(4) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Olivier GUERSENT
Director-General