



EUROPEAN COMMISSION

DG Competition

Case M.8870 – E.ON / INNOGY

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Decision on the implementation of the commitments -
Purchaser approval

Date: 24/04/2020



Brussels, 24.4.2020
C(2020) 2757 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party

Dear Sir/Madam

Subject: Case M.8870 – E.ON/Innogy
Approval of Lichtblick as purchaser of E.ON's heating electricity business following your letter of 4 March 2020 and the Trustee's opinion of 7 April 2020

I. FACTS AND PROCEDURE

1. On 31 January 2019, the Commission received notification of an intended concentration, pursuant to Article 4 of the Regulation (EC) No 139/2004 ('the Merger Regulation'), by which E.ON SE ("E.ON", Germany) acquired, within the meaning of Article 3(1)(b) of the Merger Regulation, sole control over the distribution and consumer solutions business and certain electricity generation assets of Innogy SE ("Innogy", Germany). By decision of 17 September 2019 ("the Decision") adopted in application of Article 8 (2) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings¹ ("the Merger Regulation"), the Commission declared the Transaction compatible with the internal market subject to conditions and obligations (the "Commitments").
2. Under the Commitments, E.ON committed *inter alia* to divest (almost) all of E.ON Energie Deutschland GmbH ("EDG")'s special contract (Sondervertrag) customers

¹ L 24, 29.1.2004, p. 1-22.

supplied with electricity for heating purposes (Heizstrom) (the “Heating Electricity Divestment Business”). More specifically, the Commitments provide that the Heating Electricity Divestment Business shall include:

- a. The vast majority of EDG’s special contract customers supplied with heating electricity, currently in total c. [...] customers (the “Customer Portfolio”). This also includes, for customers supplied under separate meters (getrennte Messung), all corresponding household electricity special contracts relating to the Customer Portfolio (currently in total to c. [...]) customers).²
 - b. the main licences, permits and authorisations used in relation to the Heating Electricity Divestment Business,
 - c. all required contracts on transmission and distribution system operator level to deliver electricity to customers
 - d. customer, credit and other records relating to the Heating Electricity Divestment Business, to be transferred in full or in part;
 - e. all support required to ensure that the technical migration of the Customer Portfolio to the information technology system of the Purchaser(s) of the Heating Electricity Divestment Business is successfully completed.
 - f. at the option of the purchaser, a number of other assets (e.g. a non-exclusive licence for the “E.ON”-brand to be used as co-brand with the Purchaser’s brand for a transitional period of time, the electricity volumes already procured by EDG to service the Heating Electricity Divestment Business, etc.)
3. By letter of 4 March 2020, E.ON proposed Lichtblick SE ("Lichtblick") for approval by the Commission as purchaser of the Heating Electricity Divestment Business and submitted the Share Purchase Agreement, the Transitional Service Agreement, the EFET agreement³ and the Brand Licence Agreement (together, the ‘Transaction Documents’). [Details on the Transaction documents].
 4. Alcis Advisers, the appointed Monitoring Trustee (the "Trustee"), submitted on 7 April 2020 an assessment of Lichtblick’s suitability as a purchaser (the "Reasoned Opinion"). It concluded that Lichtblick meets the purchaser criteria set out in Section D of the Commitments. In its Reasoned Opinion, the Trustee also indicated that, on the basis of the Transaction Documents, the Divestment Business would be sold in a manner consistent with the Commitments.

II. ASSESSMENT OF THE PROPOSAL

5. LichtBlick is an energy company active *inter alia* in the retail supply of electricity in Germany. LichtBlick is solely controlled by Eneco Groep. However, recently a

² But excluding certain de minimis customer groups which are detailed in paragraph (8)(i) of this Part 1 of the Schedule I.

³ The EFET General Agreement is a framework agreement which sets out standardised terms and conditions for energy trading in the European energy industry. The prevailing agreement was concluded between EDG and Eneco and sets the general rules for energy trading between the two parties in both directions, i.e. buying and selling of electricity.

consortium of Mitsubishi Corporation and Chubu Electric Power Co. Inc. has made a binding offer to buy the shares of Eneco Groep (from the current shareholders being Dutch municipalities). As a result of this transaction, Mitsubishi Corporation will obtain sole control within the meaning of Article 3(1) EUMR over Eneco Groep. This transaction was notified to the Commission under case no. M.9699 – Mitsubishi Corporation / Eneco Groep on 16 January 2020 and was cleared on 7 February 2020.

6. In the last financial year (2018), LichtBlick (including its ultimate parent entity, Eneco Groep, and its affiliates) reported a worldwide turnover of approx. EUR 4.1 billion. All turnover was generated in the EEA (EUR 687 million in Germany). Its total electricity turnover was approx. EUR 2.3 billion in 2018. Its turnover in electricity retail supply in Germany accounted for approx. 17% of its total worldwide turnover in its last financial year.
7. In order to be approved by the Commission, the Purchaser⁴ must fulfil the following criteria:⁵
 - a. the Purchaser shall be independent and unconnected to E.ON and its Affiliated Undertakings;
 - b. the Purchaser shall have the financial resources, the required expertise and incentive to maintain and develop the Heating Electricity Divestment Business;
 - c. the Purchaser shall be in the position and have capabilities to continue the Divestment Business as a viable and effective competitor;
 - d. the Purchaser shall have proven experience and existing established activities in the retail supply of electricity in Germany;
 - e. the Purchaser must neither be likely to create *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the respective Divestment Business.

(a) Independence from the Parties

8. The Notifying Party submits that Lichtblick is independent from E.ON and its Affiliated Undertakings. In support of this, the Notifying Party submits that:
 - a. There are no cross-shareholdings or other material structural links between E.ON and LichtBlick (including its parent Eneco Groep);
 - b. there have been no material commercial relationships with E.ON or its Affiliated Undertakings in the last five years, in particular no arrangements relating to German energy retail markets. The only exception is that LichtBlick, as a nation-wide energy supplier, has concluded standard supplier agreements, which cover grid usage, and metering basic contracts, which cover metering services, with every DSO of the E.ON group

⁴ See Section A of the Commitments.

⁵ Paragraph 34 of the Commitments.

- c. To the best of E.ON's and LichtBlick's knowledge, none of E.ON's and EDG's board or supervisory board members have any involvement in the management or supervisory board of LichtBlick (or Eneco Groep or Mitsubishi group companies).
 - d. There will be no ongoing link between E.ON and LichtBlick as a result of the sale of the Heating Electricity Divestment Business.
9. The Trustee in its Reasoned Opinion concluded that there is no significant corporate link between Lichtblick (including Eneco Groep and the Mitsubishi group) and E.ON (and its Affiliated Undertakings). The information collected by the Trustee confirms that E.ON (and its Affiliated Undertakings) and Lichtblick (including Eneco Groep and the Mitsubishi group):
- a. do not have any shareholders with significant shares in both companies;
 - b. do not have any material shareholdings in each other;
 - c. do not at this time participate in any joint venture, alliance or association (with the exclusion of industry associations or trade groups of which the companies may be members);⁶
 - d. did not have any commercial arrangements in 2017 and 2018 nor do they have any currently; and
 - e. do not have any member of the Management and/or the Supervisory Board in common.
10. In light of the above, the Commission concludes that Lichtblick (including Eneco Groep and the Mitsubishi group) is independent and unconnected to E.ON (and its Affiliated Undertakings), and therefore meets the Purchaser criterion set out in Section 34(a) of the Commitments.

(b) Financial resources, proven expertise, and incentive to maintain and develop the Heating Electricity Divestment Business

11. The Notifying Party submits that Lichtblick has significant free cash flow and ample financial resources to maintain and develop the Heating Electricity Divestment Business. Lichtblick would also have the incentive to maintain and develop the Heating Electricity Divested Business.
12. This view is shared by the Trustee. A number of elements point to Lichtblick having the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with E.ON and other competitors on the market.
13. First, Lichtblick has stable profitability and a solid balance sheet. In 2019 Lichtblick achieved revenues of EUR 679 million with gross profits of approximately of EUR 79 million and an EBITDA of approximately EUR 29 million. The cash-on-hand available to Eneco and LichtBlick is already more than sufficient to fund the Purchase

⁶ [Details on the ownership and control of one co-ownership].

Price to consummate the transaction.⁷ LichtBlick expects the Heating Electricity Divestment Business to remain a profitable and cash-generating enterprise post-closing, and considers it unlikely that there will be a need for LichtBlick to fund, i.e. cover for any losses in the foreseeable future. Nevertheless, should LichtBlick identify any future additional funding needs of the Heating Electricity Divestment Business, Eneco has stated that LichtBlick will have access to further short-term funding via its shareholder in the form of an intercompany revolving credit facility.

14. Second, LichtBlick has significant expertise and solid capabilities in operating as an energy retailer. Lichtblick was established in 1998, and it was one of the first independent players in the German market to focus on the distribution of electricity and gas from renewable energy sources to a retail and commercial customer base. Its customer portfolio currently includes approx. [...] households for regular electricity, [...] customers for heating electricity customers, [...] households for gas and [...] B2B customers, in total approx. [...]. The number of contracts managed by LichtBlick has remained fairly stable in recent years and Lichtblick has been able to significantly reduce the churn rate approaching the level of larger and more established suppliers, like EDG, [details on E.ON's customer base].
15. Third, LichtBlick has a proven track record of integrating customer portfolios. Over the recent years, LichtBlick has acquired several retail supply businesses and customer portfolios in Germany, including Norland Energie (2013), Clevergy (2013), Secura Energie (2014) and Tchibo Energie (2015). The successful transfer of almost 100% of four previously acquired customer portfolios into LichtBlick's systems was based, among other things, on an effective migration process which is fully automated and is using established procedures for the change of suppliers. Such automated process, along with a scalable IT-infrastructure, constitutes a key element in LichtBlick's general integration approach. As a result of several acquisitions, LichtBlick has also assembled an experienced team of internal and external resources allowing for a rapid and effective execution of the acquisition and integration of third-party portfolios from market participants.
16. Finally, Lichtblick is likely to have the incentive to maintain and develop the Heating Electricity Divestment Business. Heating electricity has become a focus area of LichtBlick in recent years as gross profits per customer are above average, and heating electricity will gain importance as one of several ways to decarbonise private energy consumption which is one of LichtBlick's key marketing and sales arguments. According to its business plan for the period 2020-2022, Lichtblick expects to be able to steadily grow the number of contracts and the associated revenues and to achieve an increment of more than [...]% in the revenues by 2022. The M&A activities mentioned in paragraph 15 above also support the view that Lichtblick is committed to growing its presence and market position in Germany. The acquisition of the Heating Electricity Divestment Business would enable LichtBlick to increase its customer base [details of the size of Lichtblick's customer base] and significantly enhance its position in the domestic electricity market in Germany.
17. In light of all the above, the Commission concludes that Lichtblick has the financial resources, proven expertise and incentive to maintain and develop the Heating Electricity Divestment Business and therefore it meets the Purchaser criterion set out in Section 34(b) of the Commitments.

⁷ [Details on the purchase price funding].

(c) Position and capabilities to continue the Divestment Business as a viable and effective competitor

18. The Notifying Party submits that Lichtblick is in a position and has the capabilities to continue the Heating Electricity Divestment Business as a viable and effective competitor.
19. This view is shared by the Trustee and by the Commission. First, while currently small, LichtBlick already operates a heating electricity business. In 2019, LichtBlick served some [...] contracts in its heating electricity portfolio. Second, LichtBlick's existing operations cover the whole value chain of electricity retail supply, including marketing, sales, customer service, IT and procurement and provides LichtBlick with the necessary knowledge about all processes required to serve customers' and regulatory authorities' needs. LichtBlick employs experienced personnel and has developed comprehensive risk management measures to cope with the risks involved in supplying end customers in the energy business.
20. The Trustee also considers that LichtBlick's business plan for the Heating Electricity Divestment Business is an overall balanced view of the opportunities and risks the acquisition offers to the Purchaser. It is neither overly optimistic nor without growth ambition. Inherent risks have been addressed and factored in.
21. In light of all the above, the Commission concludes that Lichtblick is in the position and has the capabilities to continue the Heating Electricity Divestment Business as a viable and effective competitor and therefore it meets the Purchaser criterion set out in Section 34(c) of the Commitments.

(d) the Purchaser shall have proven experience and existing established activities in the retail supply of electricity in Germany

22. The Notifying Party submits that Lichtblick has proven experience and existing established activities in the retail supply of electricity in Germany.
23. The Trustee and the Commission share this view. The Notifying Party notes that Lichtblick has a portfolio of more than 613,000 customers, it employs 500 people and it has a turnover of around EUR 700 million (in 2018). LichtBlick is among the top 10 electricity suppliers in Germany and is active in the market with several different brands: LichtBlick Strom, LichtBlick Gas, LichtBlick FahrStrom, Strom09 and KiezStrom.
24. LichtBlick continuously invests in developing new innovative solutions. For example, in 2019 it developed "SchwarmDirigent" a solution that provides the digital capabilities to optimise and control decentralised generation capacities on behalf of LichtBlick's customers. Also, Lichtblick has a solid reputation as a result of its uniform pricing strategy and its environmentally friendly approach. LichtBlick received a number of awards, in particular recognising its commitment to customer service.
25. In light of all the above, the Commission concludes that Lichtblick has proven experience and existing established activities in the retail supply of electricity and therefore it meets the Purchaser criterion set out in Section 34(d) of the Commitments.

(e) Absence of *prima facie* competition concerns

26. The Notifying Party submits that the acquisition of the Heating Electricity Divestment Business by Lichtblick will not create any competition concerns as the horizontal overlaps between LichtBlick and the Heating Electricity Divestment Business are very limited and there are no vertical links.
27. The Trustee considers that the acquisition of the Heating Electricity Divestment Business will not create competition concerns. The Commission agrees with the Trustee's assessment.
28. First, Lichtblick has a very small position in the supply of heating electricity in Germany. LichtBlick currently serves only approx. [...] heating electricity customers. This represents a share of approx. [0-5]% of the market on a nationwide basis. After the acquisition of the Heating Electricity Divestment Business, Lichtblick would have a share of [10-20]%. Lichtblick's market share would not be significantly different were local markets considered as LichtBlick's customers are not particularly geographically concentrated in certain regions. In particular, as LichtBlick is not the basic supplier in any region, the increment created by the transaction would be minimal (below or slightly above [0-5]%) also at local level. The only exception is the Hamburg area (Stromnetz Hamburg GmbH), where LichtBlick holds a higher market share. However, even there, LichtBlick's share is only approx. [5-10]% and the Heating Electricity Divestment Business holds a share of approximately [5-10]%, so that the combined share amounts to approximately [10-20]%.⁸
29. Second, the Heating Electricity Divestment Business will also include a limited number of (non-heating) electricity supply contracts to household customers in special contracts (approx. [...] customer contracts). However, the acquisition of the Heating Electricity Divestment Business would only result in a minor horizontal overlap. Currently LichtBlick has a share of approx. [0-5]% in the market for the retail supply of electricity to special contract customers in Germany and the acquisition would create an increment of only [0-5]%.
30. Third, after the acquisition of a controlling stake in Eneco Groep, Mitsubishi will be a shareholder of LichtBlick and Mitsubishi has no power generation activities in Germany.
31. In light of the above, the Commission concludes that the acquisition of the Heating Electricity Divestment Business by Lichtblick does not raise *prima facie* competition concerns, and Lichtblick therefore meets the Purchaser criterion set out in Section 34(e) of the Commitments.
32. The acquisition of the Heating Electricity Divestment Business by Lichtblick triggers an obligation to notify the Federal Cartel Office in Germany. The German Federal Cartel Office has already reviewed the transaction and granted unconditional merger control clearance on March 24th, 2020 (B8-35/20). The acquisition of the Heating Electricity Divestment Business by LichtBlick is not subject to any other filing obligations. As all the necessary approvals have been obtained in time, the closing of the transaction will not be delayed by any of them.

⁸ There will not be any additional horizontal overlaps after closing of the Mitsubishi/Eneco transaction as Mitsubishi has no activities in the retail supply of (regular or heating) electricity in Germany.

(f) Consistency with the Commitments

33. The Trustee and the Commission consider that the Transaction Documents, as listed in paragraph 3 above ([details on the Transaction documents]), are consistent and compliant with the Commitments.
34. [Details on the Transaction documents and contractual negotiations]⁹ [details on the Transaction documents and contractual negotiations].¹⁰ [Details on the Transaction documents and contractual negotiations].¹¹
35. [Details on the Transaction documents and contractual negotiations],¹² [details on the Transaction documents and contractual negotiations]¹³ [details on the Transaction documents and contractual negotiations].
36. [Details on the Transaction documents and contractual negotiations].

III. CONCLUSION

37. On the basis of the above assessment, the Commission approves Lichtblick as a suitable purchaser.
38. On the basis of the Transaction Documents ([details on the Transaction documents]), the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments.
39. This decision only constitutes approval of the proposed purchaser identified herein and of the Transaction Documents ([details on the Transaction documents]). This decision does not constitute a confirmation that E.ON has complied with its Commitments.
40. This decision is based on paragraph 35 of the Commitments attached to the Commission Decision of 17 September 2019.

For the Commission

(Signed)
Olivier GUERSENT
Director-General

⁹ [Details on the Transaction documents and contractual negotiations].
¹⁰ [Details on the Transaction documents and contractual negotiations].
¹¹ [Details on the Transaction documents and contractual negotiations].
¹² [Details on the Transaction documents and contractual negotiations].
¹³ [Details on the Transaction documents and contractual negotiations].