



OPINION

of the ADVISORY COMMITTEE on MERGERS

20th August 2019

CASE M.8870 E.ON / Innogy

Rapporteur: Denmark

Jurisdiction

1. The Advisory Committee (9 Member States) agrees with the Commission that the notified transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Council Regulation (EC) No 139/2004 of 20.1.2004 on the control of concentrations between undertakings ("the Merger Regulation")¹.
2. The Advisory Committee (9 Member States) agrees with the Commission that the notified transaction has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

Product market definition

3. The Advisory Committee (9 Member States) agrees with the conclusions reached by the Commission in the draft Decision in relation to the definition of the relevant product markets for:
 - a. The generation and wholesale supply of electricity in Germany, Czechia and Hungary.
 - b. Distribution of electricity in Germany, Czechia, and Hungary.
 - c. Retail supply of electricity in Germany, Czechia, Hungary, Slovakia, and the United Kingdom.
 - d. Retail supply of heating electricity in Germany.
 - e. Downstream wholesale supply of gas in Czechia.
 - f. Distribution of gas in Germany, Czechia, and Hungary.
 - g. Retail supply of gas in Germany, Czechia, Hungary, Slovakia, and the United Kingdom.
 - h. Metering in Germany, and the United Kingdom.
 - i. E-mobility in Germany.
 - j. Street lighting in Hungary.

¹ OJ L 24, 29.1.2004, p. 1.

Geographic market definition

4. The Advisory Committee (9 Member States) agrees with the conclusions reached by the Commission in the draft Decision in relation to the definition of the relevant geographic markets for:
 - a. The generation and wholesale supply of electricity in Germany, Czechia and Hungary.
 - b. Distribution of electricity in Germany, Czechia, and Hungary.
 - c. Retail supply of electricity in Germany, Czechia, Hungary, Slovakia, and the United Kingdom.
 - d. Retail supply of heating electricity in Germany.
 - e. Downstream wholesale supply of gas in Czechia.
 - f. Distribution of gas in Germany, Czechia, and Hungary.
 - g. Retail supply of gas in Germany, Czechia, Hungary, Slovakia, and the United Kingdom.
 - h. Metering in Germany, and the United Kingdom.
 - i. E-mobility in Germany.
 - j. Street lighting in Hungary.

Competitive Assessment

5. The Advisory Committee (9 Member States) agrees with the Commission's assessment that the notified transaction would significantly impede effective competition as a result of horizontal non-coordinated effects in:
 - a. Retail supply of heating electricity to households and SMEs in Germany.
 - b. Installation and operation of public EV CS on motorways in Germany.
 - c. Retail supply of electricity to customers connected to the low-voltage network in the Czechia.
 - d. Retail supply of gas to small customers in Czechia.
 - e. Retail supply of gas to large customers in Czechia.
 - f. Retail supply of electricity to Competitive-SME customers in Hungary.
 - g. Retail supply of electricity to large industrial customers in Hungary.

6. The Advisory Committee agrees with the Commission's assessment that the notified transaction would not significantly impede effective competition as a result of horizontal non-coordinated effects in the following affected markets:
 - a. Retail supply of electricity in Slovakia. 6 Member States voted in favour. 2 Member States abstained. 1 Member State voted against.
 - b. Retail supply of gas in Slovakia. 7 Member States voted in favour. 2 Member States abstained.
 - c. Retail supply of gas in the United Kingdom. 9 Member States voted in favour.
 - d. Metering services for energy (electricity and gas) in the United Kingdom. 9 Member States voted in favour.

7. The Advisory Committee (9 Member States) agrees with the Commission's assessment that the notified transaction would not significantly impede effective competition as a result of non-horizontal effects in:
- a. Any of the markets vertically affected in Germany.
 - b. Any of the markets vertically affected in Czechia.
 - c. Any of the markets vertically affected in Hungary.
 - d. Any of the markets vertically affected in Slovakia.
 - e. Any of the markets vertically affected in the United Kingdom.

Commitments

8. The Advisory Committee (9 Member States) agrees with the Commission that the final commitments offered by the Notifying Party on 3 July 2019 remove the significant impediment to effective competition identified in the draft Decision.
9. The Advisory Committee agrees with the Commission that, subject to the full compliance with the final commitments offered by the Notifying Party on 3 July 2019, the notified transaction would not significantly impede effective competition in the internal market or in a substantial part of it. 8 Member States voted in favour. 1 Member State voted against.

Compatibility with the internal market and the EEA Agreement

10. The Advisory Committee agrees with the Commission that the notified transaction must therefore be declared compatible with the internal market and the functioning of the EEA Agreement in accordance with Article 2(2) and 8(2) of the Merger Regulation and Article 57 of the EEA Agreement. 8 Member States voted in favour. 1 Member State voted against.

I hereby confirm that Ireland, Slovenia and United Kingdom participated in this Advisory Committee meeting via videoconferencing link and asked me to sign the Opinion of the Advisory Committee on their behalf.

Patrick LINDBERG
Chair of the Advisory Committee meeting