



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: 20/10/2020



Brussels, 20.10.2020
C(2020) 7363 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 MVM Magyar Villamos Művek Zrt. as purchaser of the Czech Divestment Business following your letter of 17 July 2020 and the Trustee's opinion of 2 October 2020

I. FACTS AND PROCEDURE

1. 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 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) compatible with the internal market subject to conditions and obligations (the "Commitments").
2. Under the Commitments, E.ON committed inter alia to divest Innogy's electricity retail business and gas retail business, its electricity and gas wholesale businesses, certain of its electricity generation activities, and a wide range of non-core activities in

¹ L 24, 29.1.2004, p. 1-22.

Czechia (the “Czech Divestment Business”). More specifically, the Commitments provide that the Czech Divestment Business includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Czech Divestment Business, in particular comprising the following business lines, as operated in Czechia:

- a. the retail supply of electricity,
 - b. the retail supply of gas,
 - c. the generation of electricity,
 - d. the distribution of electricity via local distribution systems,
 - e. the trading of electricity and gas,
 - f. the distribution and generation of heat,
 - g. the provision of e-mobility services,
 - h. the provision of compressed natural gas (“CNG”) motor fuels,
 - i. the distribution of photovoltaic systems,
 - j. the provision of energy consulting and auditing services to business customers,
 - k. the provision of home insurance services,
 - l. the provision of heating and cooling services,
 - m. the provision of lighting products, and
 - n. the provision of telecommunication services.
3. By letter of 17 July 2020, E.ON proposed MVM Magyar Villamos Művek Zrt. (“MVM” or the “**Purchaser**”) for approval by the Commission as purchaser of the Czech Divestment Business and submitted the Share Purchase Agreement and certain ancillary agreements² (together, the “Transaction Documents”).
 4. Alcis Advisers, the appointed Monitoring Trustee (the “Trustee”), submitted on 2 October 2020 a final assessment of MVM’s suitability as a purchaser (the “Reasoned Opinion”). It concluded that MVM 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 Czech Divestment Business would be sold in a manner consistent with the Commitments.

² In particular, the ancillary documents include four significant agreements: Transitional Services Agreement, Trademark License Agreement, Transition of Collateralisation Agreements, and Credit Facility Sale, Assignment and Assumption.

II. ASSESSMENT OF THE PROPOSAL

5. MVM is a state-owned energy group. MVM, including its subsidiaries, is solely controlled by the Hungarian State. MVM has an established footprint in the energy sector in Hungary, and it is active across the whole energy value chain, including generation, wholesale, distribution and retail supply of electricity as well as retail supply of gas.
6. In its last financial year (2019), MVM reported revenues of approx. EUR [...], of which approx. EUR [...] were generated in Hungary and EUR [...] in Czechia.³
7. In order to be approved by the Commission, the Purchaser of the Divestment Business must fulfil the following criteria set out in the Commitments⁴ and the Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the 'Remedies Notice')⁵:
 - a. the Purchaser shall be independent and unconnected to the Parties and their Affiliated Undertakings as well as to competitors that may create *prima facie* competition concerns;
 - b. it shall have the financial resources, the required expertise and incentive to maintain and develop the Czech Divestment Business;
 - c. it shall be in the position and have capabilities to continue the Czech Divestment Business as a viable and effective competitor;
 - d. the Purchaser of the Czech Divestment Business shall have proven experience and existing established activities in the energy sector;
 - e. the acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *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 Czech Divestment Business.
8. For the approval of the Transaction Documents, according to paragraph 35 of the Commitments, the Commission must verify whether the Divestment Business is being sold in a manner consistent with the Decision and the Commitments.
 - (a) **Independence from the Parties**
9. The Commission considers that MVM is independent from the Parties.
10. The Trustee investigated whether there are any structural links and/or commercial links between E.ON (and its Affiliated Undertakings) and MVM following the Proposed Transaction, and found that in the Czech market E.ON (and its Affiliated Undertakings) and MVM:

³ In Czechia MVM is only active in the wholesale markets of electricity and gas. [...].

⁴ Paragraph 34 of the Commitments.

⁵ Remedies Notice, paragraph 48.

- a. do not have any cross-shareholdings;
 - b. do not have any joint ventures and partnerships; and
 - c. do not have any common directors, members of management, or members of supervisory board.
11. Furthermore, MVM currently does not own any stakes (neither minority nor majority) in any Czech legal entity.
12. The Commission also assessed whether MVM and the Parties are unconnected and concluded that, while they are unconnected in the Czech market, there might be some connection between MVM and E.ON in Hungary in the future. However, as explained below, the Commission considers that this would not amount to a relevant connection for present purposes, as it would not prejudice MVM's suitability as the Purchaser.
13. In October 2019 an umbrella agreement was signed between E.ON, MVM and several third parties which may create a structural connection between the Parties in Hungary. The umbrella agreement foresees four different transactions between E.ON and MVM, one of which envisages that MVM would acquire (as a financial investor) a 25% minority shareholding in E.ON's Hungarian subsidiary 'E.ON Hungária Zrt' ("EHU") in May 2021.
14. If implemented, the latter transaction would create a connection between MVM and E.ON in Hungary. However, on the basis of the Trustee's Reasoned Opinion and its own assessment, the Commission considers that this connection would not amount to a relevant connection for present purposes, as it would not prejudice the suitability of MVM as the Purchaser of the Divested Business for the following reasons:
 - a. First, MVM would only acquire a minority non-controlling participation in EHU, with MVM's rights essentially being limited to minority shareholder protection rights.⁶
 - b. Second, the Czech and Hungarian markets are in different bidding zones⁷ and typically constitute separate relevant geographic markets from a competition perspective. Hungary and Czechia have no common border and trading between these countries is likely to be limited. This is also consistent with the evidence that the Parties' cross-border trading is marginal. EHU procures some small volume of electricity from the Czech wholesale electricity market

⁶ The Corporate Governance rules laid out in the Umbrella Agreement stipulate that:

- MVM would have the right to appoint [...];
- The CEO is to be appointed and strategic decisions are to be passed by [...];
- Consent of all shareholders is required [...]. Thus, governance rights of MVM are limited to the level of a financial investor and MVM would have no power to influence the operational and strategic decisions of EHU.

⁷ Nor is there apparently any immediate, short-term prospect that the bidding zones for these two countries would change. The ENTSO-E (the European Network of Transmission System Operators for Electricity) - which represents several electricity transmission system operators across Europe and which oversees the bidding zones review process - has recently noted (February 2020) that the Transmission System Operators of Central Europe, which include Czechia and Hungary, were not able to conclude on alternative configurations to be used for the bidding zone review. See <https://www.entsoe.eu/news/2020/02/18/bidding-zone-review-methodology-assumptions-and-configurations-resubmitted-to-nras/>

but the Czech Divestment Business is only marginally active in this market ([0-5] % market share). EHU does not sell electricity in Czechia and likewise the Czech Divestment Business does not sell electricity in Hungary.

- c. Third, given the lack of physical border between the Hungarian and the Czech markets and the fact that they are part of different bidding zones, no business strategy put in place by the Czech Divestment Business could have a material impact on EHU's economic activities (see also paragraph 30 below for additional details) and vice versa.

15. In light of the above, the Commission concludes that MVM is independent from the Parties. Although MVM is not unconnected with E.ON (and its Affiliated Undertakings) this fact does not prejudice its suitability as the Purchaser.

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

16. On the basis of the Trustee's Reasoned Opinion and of its own assessment, the Commission considers that MVM has sufficient financial resources and the proven expertise and incentive to maintain and develop the Czech Divestment Business as a viable and active competitive force.
17. First, the MVM Group is a sizable, growing and profitable company. In 2019, MVM's EBITDA amounted to [...], and operating profit to [...]. Over the past three fiscal years, revenue, EBITDA and operating profit have increased significantly.
18. Second, the Czech Divestment Business is profitable and cash-generating. While MVM estimates that due to the COVID-19 pandemic, the Czech Divestment Business is likely to experience a temporary deterioration in net working capital position during 2020 (with a likely recovery in 2021 as conditions normalise), MVM is fully prepared to support these working capital requirements. MVM intends to fund the ongoing operations of the Czech Divestment Business through its positive free cash flow and through working capital facilities provided by MVM Group.
19. Moreover, a number of elements point to MVM having adequate incentives to maintain and develop the Czech Divestment Business. MVM will pay a considerable purchase price premium above what the other bidders had been offering. MVM has substantial experience from the Hungarian gas and electricity markets, and the necessary resources to invest in the Czech Divestment Business after closing of the acquisition, if necessary. MVM has undertaken a thorough review of the Czech Divestment Business' competitive position and based on that, has presented a comprehensive and detailed strategy to develop the Czech Divestment Business going forward.
20. The acquisition of the Czech Divestment Business is seen by MVM as a first step of the transnational (outside Hungary) expansion in the energy retail sector. [...]. In MVM's assessment, a track record of successfully acquiring and managing the Czech Divestment Business would improve MVM's reputation and credibility as a buyer in similar transactions in the future.
21. In light of all the above, the Commission concludes that MVM has the financial resources, proven expertise and incentive to maintain and develop the Czech Divestment Business.

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

22. The Trustee considers in its Reasoned Opinion that MVM is in a position and has the capabilities to continue the Czech Divestment Business as a viable and effective competitor.
23. MVM is the largest retailer of gas and electricity in Hungary. It is a sizeable and profitable company with a solid financial position. MVM has recently shown growth of all relevant revenues and profitability indicators. From a revenue perspective, MVM is about four times the size of the Czech Divestment Business.
24. Moreover, the Czech Divestment Business has for a long time proven to be a business functioning largely as a stand-alone operation, with very little support from its parent group (E.ON) apart from financing/procurement collateral and IT. In any case, MVM has assembled an experienced team of internal experts to start preparing and executing the integration process but it does not anticipate having significant integration costs. To a significant extent, MVM will largely rely on the Czech Divestment Business' existing management. The IT transition will be covered by a [...] Transitional Service Agreement with the seller.⁸
25. In light of all the above, the Commission concludes that MVM is in the position and has the capabilities to continue the Czech Divestment Business as a viable and effective competitor.

(d) the Purchaser shall have proven experience and existing established activities in the energy sector

26. The Trustee considers in its Reasoned Opinion that MVM has proven experience and existing established activities in the energy sector.
27. As set out above, MVM is the largest retailer of gas and electricity in Hungary. It supplies a large portfolio of customers, from individual entrepreneurs to major factories, power plants, institutional partners, industrial producers and municipalities.
28. In addition to retailing, MVM is active in several other areas of the Hungarian energy sector:
 - a. Power generation - MVM is the largest producer of electricity in Hungary, with a total installed capacity of [...] and a total production of [...] of electricity in 2019.
 - b. Electricity wholesale - MVM is a major electricity wholesale trader in Hungary. In 2019, MVM Partner traded a volume amounting to [...] with a portfolio of around [...] partners and [...] power exchanges.
 - c. Gas wholesale - Hungarian Gas Trade Ltd. ("MFGK"), a member of MVM Group, is the leading player in the Hungarian natural gas wholesale market.

⁸ The Transitional Service Agreement covers a number of IT services (for example, secure data exchange, e-mail encryption, robotic platform, etc.) as well as a limited set of non-IT services (for example, provision of AFM consultancy, regulatory reporting) which can be necessary to ensure the continuous operation of the Divested Business.

MFGK is the main natural gas importer in Hungary through its long-term supply contract with Gazprom.

- d. Gas storage - it operates four underground storage facilities with a combined working capacity of [...].
 - e. Transmission System Operator - the transmission grid in Hungary is owned by MAVIR Ltd., a subsidiary of the MVM Group. MAVIR is responsible for the management, operation, modernisation, and necessary enlargement of the high-voltage transmission.
29. In recent years MVM expanded the scope and scale of its operations significantly, through a series of transactions, notably with the acquisition of (in 2013) E.ON Földgáz Trade Ltd (today MFGK) and E.ON Földgáz Storage Ltd (today MFGT), and the acquisition of NKM in 2018/2019. These transactions further strengthened MVM's wholesale and retail presence in Hungary.
30. In light of all the above, the Commission concludes that MVM has proven experience and existing established activities in the retail supply of electricity.

(e) Absence of *prima facie* competition concerns

31. The Trustee submitted in its Reasoned Opinion that the acquisition of the Czech Divestment Business by MVM does not raise *prima facie* competition concerns. For the following reasons the Commission considers this to be the case.
32. First, MVM's presence in the Czech energy markets is very limited. MVM is active in the wholesale supply of electricity and the (downstream) wholesale supply of gas. However, [its market share is [0-5]]% in the wholesale supply of electricity and [0-5]% in the wholesale supply of gas and the acquisition of the Divestment Business would not give rise to any affected market (either horizontally or vertically).
33. Second, MVM's possible acquisition of a minority stake in EHU does not raise *prima facie* competition concerns either. As set out in paragraph 10, trading between Hungary and Czechia is very limited. The two countries are in different bidding zones and they typically constitute separate relevant markets for the purposes of merger control. It is also worth noting that the Czech Divestment Business has no sales to Hungary, nor has EHU any sales to Czechia.⁹
34. The Commission also assessed whether post-merger MVM may have incentives to meet all its electricity retail requirements in Czechia with its generation capacity located in Hungary, and whether this may impair the ability of competing wholesalers to find sufficient routes to the market. However, this appears to be unlikely as transporting electricity from Hungary to Czechia would probably entail some material costs as the border interconnections between Hungary, Slovakia and Czechia are sometimes congested. In any case, even assuming that MVM would post-merger trade internally with the Czech Divested Business to a large extent, this would not have any significant effect on competition. Competing wholesalers in Czechia would still have

⁹ The Commission also notes that MVM's stake in EHU corresponds to a relatively small share of MVM's total revenues (well below 10%).

access to a significant part of the demand as the Czech Divested Business' share on a national basis is limited ([0-5]% for both for small customers and large customers).

35. The Commission therefore considers that the potential structural link between MVM and E.ON would not alter MVM's incentives to maintain the Czech Divestment Business as an independent and effective competitor in Czechia.
36. MVM's acquisition of the Czech Divestment Business is notifiable to the European Commission under the EU Merger Regulation and will thus be further reviewed as part of the Commission's merger proceedings.
37. In light of the above, the Commission concludes that the acquisition of the Czech Divestment Business by MVM does not raise *prima facie* competition concerns.

(f) Consistency with the Commitments

38. The Trustee considers in its Reasoned Opinion that the Transaction Documents are consistent and compliant with the Commitments.
39. The Trustee has also confirmed that the terms and conditions of the Transaction Documents are suitable to ensure the Czech Divestment Business' continued economic viability, marketability and competitiveness.
40. In light of the above, the Commission concludes that the Transaction Documents are consistent with the Commitments.

III. CONCLUSION

41. On the basis of the above assessment, the Commission approves MVM as a suitable purchaser of the Czech Divestment Business.
42. On the basis of the Transaction Documents, the Commission further concludes that the Czech Divestment Business is being sold in a manner consistent with the Commitments.
43. This decision only constitutes approval of the proposed purchaser identified herein and of the Transaction Documents. This decision does not constitute a confirmation that E.ON has complied with its Commitments.

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