EUROPEAN COMMISSION
DG Competition

# *Case M.10619 - SNAM / ENI / JV*

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION
Date: 13/10/2022

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EUROPEAN COMMISSION

Brussels, 13.10.2022
C(2022) 7435 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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**Subject:** **Case M.10619 - SNAM / ENI / JV**
**Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]**

Dear Sir or Madam,

(1) On 8 September 2022, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Snam S.p.A. ('SNAM', Italy) and ENI S.p.A. ('ENI', Italy) will acquire within the

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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meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control of a joint venture ('JV', Italy) by way of purchase of shares ('the Transaction').[3] SNAM and ENI are designated hereinafter as the 'Notifying Parties' to the Transaction.

## 1. THE PARTIES

### 1.1. SNAM

(2) SNAM is the holding company of the SNAM group, which controls Snam Rete Gas S.p.A., the main gas transmission system operator ('TSO') in Italy, and it controls several companies active in the gas transmission, regasification, and storage markets in various EU countries, including infrastructures that are used to import gas into Italy.

(3) SNAM is indirectly controlled by Cassa Depositi e Prestiti S.p.A. ('CDP')[4], which is controlled by the Italian Government (namely, the Italian Ministry of Economy and Finance, 'MEF').

### 1.2. ENI

(4) ENI is part of the ENI group that is active across the entire oil and gas value chain. ENI controls entities that operate gas import pipelines into Italy and entities that manage transportation rights.

(5) ENI's main shareholders are CDP (25.96%) and MEF (4.37%). Nevertheless, for the following reasons the Commission considers that ENI is a separate economic unit from CDP and MEF with an independent power of decision, and therefore not controlled by CDP or MEF.[5]

(6) ENI is a listed company with an independent board of directors, which autonomously determines ENI's business plan and its strategies.[6]

(7) ENI's board of directors currently includes 9 members. According to ENI's bylaws, 7 out of the 9 members of the board must be independent directors (within the meaning of the Italian law and Corporate Governance Code), i.e. 7 out of 9 board members are not connected to ENI, MEF or CDP in a way that can influence their independence of judgement. All shareholders holding more than 0.5% of ENI's share capital are entitled to submit their own list of proposed directors and ENI's directors are appointed under a list voting mechanism whereby ENI's shareholders can vote their preferred list. CDP and MEF have the majority necessary to jointly vote the winning list. 6 members are selected from the winning

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3 Publication in the Official Journal of the European Union No C 351, 14.9.2022, p. 11.

4 See Italian Competition Authority decision of 8 August 2012, C11695 Cassa Depositi e Prestiti/SNAM.

5 The independence of ENI from CDP (and MEF) was previously confirmed both by the Commission (*M.9809 - ENI REWIND/CDP EQUITY/CIRCULARIT JV*; *AT.39315 – ENI*) and by the Italian Competition Authority (C11695 – *Cassa Depositi e Prestiti / SNAM*, which related to the acquisition of SNAM by CDP, and thus the unbundling of SNAM from ENI). ENI confirms that there have been no changes in its corporate structure since the adoption of the above decisions, which could impact the assessment on whether ENI and CDP and MEF are separate undertakings for merger control purposes.

6 See Form CO, paragraph 57.

list. Out of these 6 directors, 4 must be independent within the meaning of the applicable Italian securities law.

(8) In particular, under Articles 147 and 148 par. 3 of the Italian Legislative Decree no. 58/1998, a person may not be deemed independent if they have a relationship with the shareholder, the companies controlled by the shareholder, the companies the shareholder is controlled by and those companies subject to common control as with the shareholder. A person is further not deemed independent if they are related to the shareholder's directors in a way that could influence that person's independence of judgment.[7]

(9) It follows that 4 out of 6 directors, which might be appointed jointly by CDP and MEF, cannot be connected to either CDP or MEF in any way, such as being under an employment agreement or being otherwise remunerated by such entities, or maintain any other relationship of an economic or professional nature with such entities, which might impair their independence.[8]

(10) The other 3 directors also need to be independent within the meaning of the Italian securities law, and are appointed from lists submitted by other shareholders of ENI. It follows that 7 out of 9 directors of ENI have no dependence on any of ENI's shareholders.

(11) Further, there are no flows of sensitive information between ENI and CDP or MEF, as the latter only receive the business information that is available to all other shareholders of ENI, and therefore do not benefit from any preferential treatment.

### 1.3. JV

(12) The JV will constitute a new company established under the Italian laws, to which ENI will confer its shareholdings currently held in various entities , which (a) own and/or operate in a coordinated way the Tunisian and offshore sections of the gas import pipeline on the Algeria-Italy route ('Transmediterranean Pipeline'), and (b) provide ancillary services to the activities of transporting natural gas through the Transmediterranean Pipeline.

(13) The Transmediterranean Pipeline comprises the following interconnected sections:

(a) Section located in the Tunisian territory ('Transtunisian section'): this section is owned by SOTUGAT, a company controlled by the Tunisian State (and which is not part of the Transaction). It extends 370 kilometres across Tunisia from where it connects with the Enrico Mattei pipeline in Algeria[9] to its connection at the Tunisian coast with the submarine pipeline. Transportation rights over this section are held by Trans Tunisian Pipeline Company S.p.A. ('TTPC'), which is currently solely controlled (and 100% owned) by ENI. Operation and maintenance activities over the pipeline are performed by Sergaz S.A. ('Sergaz'), in which ENI holds sole control.

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7 See Form CO, footnote 17.

8 See Form CO, paragraph 57.

9 The Enrico Mattei pipeline that runs from the natural gas production fields located in the Algerian desert is owned by Sonatrach (which is controlled by the Algerian State) and is not part of the Transaction.

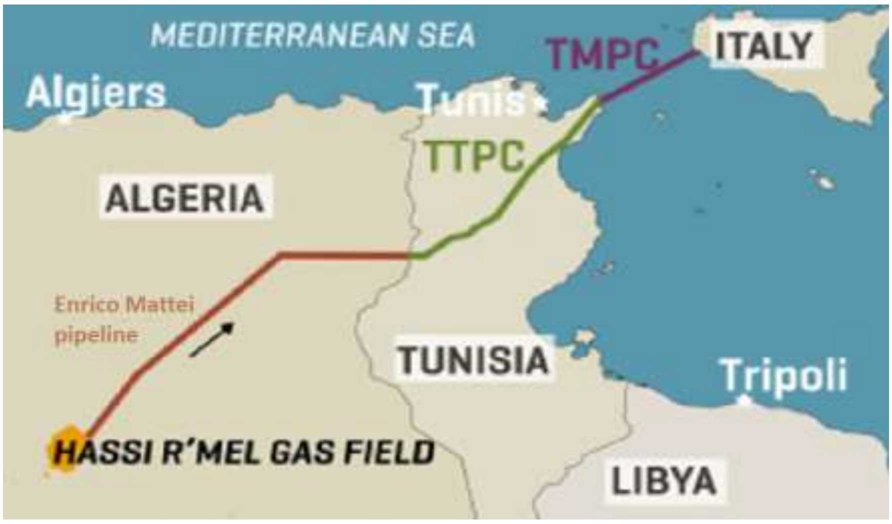
Scogat S.A. (‘Scogat’), which is solely controlled by ENI, is responsible for projects such as pipeline widening.

(b) Offshore section in the Sicily channel (‘Offshore section’): this section links the Tunisian coast with Sicily (at one of the entry points to the Italian transmission system). It is owned by Trans Mediterranean Pipeline Company (‘TMPC’), which is jointly controlled by ENI (which owns 50% of TMPC) and Sonatrach (the national state-owned oil and gas company in Algeria which owns the remaining 50%). Transportation rights over this section are managed by Transmed S.p.A. (‘Transmed’), which is jointly controlled by ENI and Sonatrach. Operation and maintenance activities over the pipeline are performed by Mariconsult S.p.A. (‘Mariconsult’), which is also jointly controlled by ENI and Sonatrach. Samco S.a.g.l. (‘Samco’), which is jointly controlled by ENI and Sonatrach, is tasked with administrative services.

(14) […].

(15) Figure 1 presents an illustration of the location of the Transtunisian and Offshore sections of the Transmediterranean Pipeline.

**Figure 1: Transmediterranean Pipeline**




## 2. THE TRANSACTION

(16) The controlling stakes held by ENI in the relevant entities (the ‘Businesses’) are:

(a) TTPC – 100%, TTPC in turn owns 0.05% of Scogat’s share capital;

(b) Sergaz – 66.1%;

(c) Scogat – 99.8%;

(d) TMPC – 50%, TMPC in turn owns 90% of Samco’s share capital;

(e) Transmed – 50%;

(f) Mariconsult – 50%;

(g) Samco – 5%, in addition to TMPC’s 90% share.

(17) Pursuant to a sale and purchase agreement ('SPA') signed on 27 November 2021, first ENI will transfer to the JV all of its interests constituting the Businesses, and then SNAM will acquire 49.9% of the JV.

### 2.1. The JV will be jointly controlled by SNAM and ENI

(18) The JV's board of directors will consist of four members (including the chair of the board and the CEO), two of which will be designated by ENI and two by SNAM. The chair of the board shall initially be appointed by SNAM and the CEO by ENI (this will rotate for both every three years), and neither will have casting votes. Board decisions on reserved matters of strategic importance (including approval of the JV's annual budget and business plan) shall be adopted with the favourable vote of all the JV's directors.[10] SNAM and ENI will therefore have joint control of the JV.

### 2.2. The JV is a full-function joint venture

(19) The companies that will be managed by ENI and SNAM through the JV constitute a single business that is already pre-Transaction performing, and will continue to be performing on a lasting basis, all the functions of an autonomous undertaking operating in the market as gas transmission pipelines. In particular, the JV will have sufficient resources to operate independently on a market since it:

(a) independently owns and/or operates the relevant pipeline sections,

(b) has the permits, resources, personnel, rights and assets needed to carry out its functions independently from its parents,

(c) has an independent management dedicated to its day-to-day operations, namely, a Board of Directors and a Managing Director,

(d) has secure financial resources through the contracts with the end-users so that they conduct their business activity independently from their parents.

(20) ENI mainly acts as a client of TTPC and TMPC and it pays the same tariff for using TTPC and TMPC as the […] third-party shippers (i.e. companies that buy and sell gas and arrange for its transportation) that have long-term agreements with TTPC and TMPC. As will be further explained in (85) *et seq.* below, all transport capacity of the Transmediterranean Pipeline is made available to customers through public procedures on a "first-come, first served" basis via the PRISMA European Capacity Platform, in line with European best practices. This also applies to ENI. Any agreement between the JV and ENI has so far been, and will continue post-Transaction to be, at arms' length and on the basis of prevailing market terms at the time.

(21) The Businesses are economically independent from their parents with regards to sales and purchases. They have entered into long-term agreements with […] third-party shippers; in 2020 these agreements covered a capacity of approximately […] billion cubic metres ('bcm') per year (out of the pipeline's technical capacity of 35.4 bcm). These third-party agreements have been entered into at market conditions following the procedure described in (81). The Businesses currently set

[10] The Shareholders Agreement provides mechanisms for resolving deadlocks […].

[…] their own pricing strategy (tariffs) under the aforementioned procedure. The Businesses therefore have (and the JV will continue to have) their own presence on the market for gas import infrastructure, with activities that go beyond one specific function of its parents.[11]

(22) Furthermore, the Businesses currently have, and the JV will continue to have, sufficient resources to operate independently on the market.

(23) In particular, TTPC and TMPC have the permits, resources, personnel, rights and assets needed to carry out the operation of the Transmediterranean Pipeline independently from their parents. TTPC and TMPC have an independent management dedicated to their day-to-day operations, namely, a Board of Directors and a Managing Director. In addition, TTPC and TMPC have a dedicated commercial unit in charge of the day-to-day business concerning the management of the capacity rights of the two sections of the Transmediterranean Pipeline, including the organisation of the capacity allocation procedures.[12]

(24) The JV will continue to have its dedicated companies (Sergaz and Scogat for the Transtunisian section; Mariconsult and Samco for the Offshore section) offering the JV all required operation, maintenance and other technical activities, as well as administrative and investments services.[13]

(25) Moreover, the Businesses currently have hundreds of their own employees (with only a very limited number of the employees being seconded by ENI) and the JV will continue to have its own resources and operative structure with managers and staff, including dedicated commercial, technical, financial and administrative units.[14]

(26) Finally, the Articles of Association provides that the JV will have a duration until 2100.

(27) Therefore, the JV will be a full-function joint venture.

## 3. UNION DIMENSION

(28) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million [in 2021, SNAM/CDP: [more than EUR 5 000] million; ENI: [more than EUR 5 000] million][15]. Each of them has a Union-wide turnover in excess of EUR 250 million [in 2021, SNAM/CDP: EUR [more than EUR 250] million; ENI: EUR [more than 250] million], but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension.

11 Form CO, paragraph 91.
12 Form CO, paragraph 89.
13 *Ibid.*
14 Form CO, paragraphs 89 and 96.
15 Turnover calculated in accordance with Article 5 of the Merger Regulation.

## 4. RELEVANT MARKETS

### 4.1. Introduction

(29) Natural gas originates in oilfields or natural gas fields. After being processed and purified at a treatment plant, natural gas can be supplied either in gaseous form through pipelines or in liquid form, as liquefied natural gas ('LNG'). When supplied as LNG, natural gas is converted into liquid form in a liquefaction plant, transported in specially-designed LNG tankers and then delivered for regasification at a receiving terminal ('regasification terminal') at the point of destination or used directly as LNG for certain specific applications. Once regasified, LNG is transported in the pipeline network where it is mixed with natural gas imported through international pipelines. It is then distributed and supplied to end customers.

(30) In the previous decisional practice of the Commission,[16] gas markets have been segmented into (i) the production and exploration for natural gas, (ii) gas wholesale supply, (iii) gas transmission (via high pressure systems), (iv) gas distribution (via low pressure systems), (v) gas storage, (vi) gas trading, (vii) gas supply to end customers[17] and (viii) the market for infrastructure for gas imports.

(31) SNAM and ENI[18] are active in the market for infrastructure for gas imports into Italy. SNAM controls (i) the Trans Austria Gas ('TAG') pipeline (jointly with Gas Connect Austria), which allows import of Russian gas and of gas available at the Central European Gas Hub ('CEGH') in Austria into Italy, (ii) two currently-operating LNG regasification terminals in Italy (the OLT offshore regasification terminal, with its entry point at Livorno, which is jointly controlled with First Sentier Investors ('FSI'), and the Panigaglia regasification terminal, with its entry point at Panigaglia, which is solely controlled by SNAM), and two planned LNG vessels in Italy[19] (Golar Tundra (which can also operate as an LNG regasification and storage terminal) and BW Singapore (FRSU 2)), which SNAM will solely control and which are expected to enter into operation in 2023 and 2024 respectively. ENI currently solely controls the undertakings operating the Transtunisian section, and jointly controls with Sonatrach the undertaking operating the Offshore section of the Transmediterranean Pipeline.[20]

(32) In addition, SNAM is present in the gas transmission via high pressure system market in Italy, as it operates the Italian gas transmission network. As the TSO, SNAM controls the interconnection points where import pipelines, including the Transmediterranean Pipeline, and LNG terminals interconnect with the Italian transmission system.

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16 Cases M.10139 DESFA/COPELOUZOU/DEPA/GASLOG/BTG/GASTRADE; M.9641 SNAM/FSI/OLT; M.3440 ENI/EDP/GDP; M.3294 EXXONMOBIL/BEB; M.3293 Shell/BEB; M.4180 Gaz de France/Suez; M.3868 DONG/Elsam/Energi E.

17 This market can be further subdivided according to different types of users (big and industrial, small and medium enterprises, households, etc.).

18 The Notifying Parties submit that Sonatrach, with the exception of its co-controlling participations in TMPC, Transmed and Marioconsult, has no other activities in the relevant markets.

19 SNAM's plans to increase its LNG activity are a response to the reduction of gas imports from Russia.

20 ENI also has joint control (with National Oil Corporation) of the Greenstream pipeline, which allows the import of Libyan gas into Italy but which is not part of the Transaction.

## 4.2. Product market definition

### *4.2.1. Infrastructure for gas imports*

(33) In previous decisions, the Commission considered the question whether the market for gas import infrastructure could be sub-segmented between (i) regasification services for the import of LNG (i.e. for the import of gas in liquefied form) and (ii) international pipelines (i.e. for the import of gas in gaseous form).[21] The Commission ultimately left open the exact market definition.[22]

(34) The Notifying Parties submit that international pipelines constitute a separate product market from regasification terminals.[23]

(35) The results of the market investigation conducted in the present case were inconclusive on whether regasification terminals and pipelines are substitutable.

(36) With regard to demand-side substitutability, the responses of customers were split, with a slight majority of those who provided a definite answer not considering the two types of gas import infrastructure as substitutable.[24] A majority of customers who provided a definite answer submitted that the differences in the regulatory and operational aspects between regasification terminals and international pipelines affect their substitutability from the demand side.[25] Respondents pointed specifically to the fact that, although both types of infrastructures ultimately deliver the same gas molecule to the market, they have different transport structures and logistics, whose associated risks differ accordingly. Thus, the decision to import gas in gaseous form via international pipelines or as LNG that requires regasification is part of the initial economic assessment of gas importers, and is a choice made for the long term. Gas importers can therefore not switch between pipelines and regasification terminals in a cost- and time-efficient manner due to the fact that the choice of the gas import infrastructure is defined by the upstream gas or LNG supply contract.[26] Further, the market investigation indicated that, while all customers import gas in gaseous form through international pipelines, less than half also import gas in liquefied form through regasification terminals.[27]

(37) Moreover, the results of the market investigation indicate that there is no substitution on the supply side between the provision of regasification services through LNG terminals and the provision of gas transport services through international pipelines in Italy. In fact, apart from SNAM, no other operator of a

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21 The Commission has in previous decisions (Cases M.9641 SNAM/FSI/OL; M.10139 DESFA/COPELOUZOU/DEPA/GASLOG/BTG/GASTRADE) concluded that underground gas storage represented a separate market the market for gas import infrastructure. In the present case, the Notifying Parties (Form CO, paragraph 159) and the vast majority of respondents to the market investigation confirmed that they consider gas storage to be a separate market from gas import infrastructure (see replies to question 17, Questionnaire 1 to customers and question 20, Questionnaire 2 to competitors). While SNAM is active in gas storage, neither ENI nor the JV will be, and therefore gas storage will not be dealt with further in this decision.

22 Cases M.10139 DESFA/COPELOUZOU/DEPA/GASLOG/BTG/GASTRADE, paragraph 36; M.9641 SNAM/FSI/OLT, paragraph 23.

23 See Form CO, paragraphs 162 et seq.

24 See replies to question 6, Questionnaire 1 to customers.

25 See replies to question 9, Questionnaire 1 to customers.

26 See replies to questions 5, 6.1, 7, 9.1, Questionnaire 1 to customers.

27 See replies to question 2 of Questionnaire 1 to customers.

gas import infrastructure offers both regasification services through LNG terminals and gas transport services through international pipelines.[28]

(38) The Commission considers that, for the purposes of this decision, it may be left open whether international pipelines and regasification terminals belong to the same relevant product market or belong to separate product markets, as the Transaction does not lead to serious doubts as to its compatibility with the internal market, regardless of the market definition adopted. The Commission will assess the Transaction both in the context of an overall market for gas import infrastructure, comprising gas pipelines and LNG terminals, as well as in the narrowest potential market for gas pipelines.[29]

*4.2.2. Gas transmission*

(39) The transmission of natural gas consists of physical gas transportation services via high-pressure pipelines to gas wholesale suppliers that aim to resell their gas either to other gas wholesalers, to distributors, or to large industrial customers that are directly connected to the gas transmission network.

(40) In its decisional practice, the Commission has consistently considered networks for gas transmission each as separate product markets (and thus natural monopolies).[30] The Notifying Parties do not challenge this conclusion.[31]

(41) The results of the market investigation confirm that the conclusions reached by the Commission in its previous practice are still valid for Italy today.[32] The Commission therefore considers that gas networks for the transmission of gas are natural monopolies and each of them constitute a distinct product market.

### 4.3. Geographic market definition

*4.3.1. Infrastructure for gas imports*

(42) In a recent decision referring to Italy, the Commission considered that the market for infrastructure for gas imports, comprising both international pipelines and LNG regasification terminals, was national in scope.[33] In a more recent decision referring to Greece, the Commission ultimately left open whether the geographic scope was national or wider.[34]

(43) The Notifying Parties submit that the Transmediterranean Pipeline is not a substitute for other gas import infrastructures into Italy, and constitutes therefore a

28 See replies to question 1, Questionnaire 2 to competitors.

29 A potential separate market for LNG regasification terminals would not be affected by the Transaction, as ENI is not active and the JV will not be active on this market.

30 Cases M.10139 DESFA/COPELOUZOU/DEPA/GASLOG/BTG/GASTRADE, paragraph 39; M.9641 SNAM/FSI/OLT, paragraph 29; M.6984 EPH/ STREDOSLOVENSKA ENERGETIKA, paragraph 25; M.3696 E.ON/MOL, recital 97.

31 See Form CO, paragraph 172.

32 See replies to question 19 of Questionnaire 1 to customers and question 16 of Questionnaire 2 to competitors.

33 M.9641 SNAM/FSI/OLT, paragraph 36.

34 Cases M.10139 DESFA/COPELOUZOU/DEPA/GASLOG/BTG/GASTRADE, paragraphs 47 – 49. See also M.5649 RREEF FUND/ ENDESA/ UFG/ SAGGAS, paragraphs 16-18; M.8771 Total/Engie, paragraphs 35-37.

separate market also geographically, namely the market for the import of Algerian gas into Italy.[35]

(44) In particular, the Notifying Parties submit that for a gas shipper (i.e. the actual customer of infrastructure for gas imports), different sources of gas are not always interchangeable, due to the different supply conditions applied (e.g. short-term supplies from spot markets versus long-term contracts with production fields). Gas shippers are influenced by which gas producer they have contracts with, and for a gas shipper having a long-term contract with the Algerian gas producer, a pipeline connecting Algeria to Italy is thus the only option for the import of such gas to Italy. According to the Parties, the geographic scope of the market should therefore encompass the import route from Algeria to Italy. Since the Transmediterranean Pipeline is currently the only pipeline serving the import route from Algeria to Italy, the Parties consider it a monopoly.[36]

(45) The results of the market investigation with regard to the substitutability between different pipelines, connecting the Italian transmission grid with different sources of gas, are open to interpretation.

(46) On the one hand, a clear majority of both customers and competitors submitted that different pipelines are generally not interchangeable.[37] Some of the customers replied that there could be some interchangeability between different pipelines connecting the Italian transmission grid with different spot markets in Europe, but the same would not apply when considering pipelines connected to gas production sites, such as the Transmediterranean Pipeline.[38]

(47) As TAP, the operator of the Trans Adriatic pipeline, connecting Italy with Caspian natural gas, noted "*[i]n relation to whether gas sourced from different sources is interchangeable for shippers of natural gas into Italy, TAP has no opinion. TAP does not assess other infrastructures as competitors, and does not adapt its offer on the basis of the other infrastructures offers. TAP focuses on the marketing of its own capacities and its own regulatory framework*".[39]

(48) Respondents noted that the lack of interchangeability from the demand side is mainly linked to the fact that different pipelines are connected to different sources of gas (i.e. specific gas production fields). Supply contracts with production fields are in turn usually long-term. As a result, the ability of gas importers to switch import infrastructure is linked to the existence and the duration of their upstream gas supply contracts.[40] These upstream gas supply contracts are also gas- or LNG-specific, which also defines the use of either pipelines or LNG terminals for the import into Italy.[41]

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35 See Form CO, paragraph 163 *et seq*.

36 *Ibid*.

37 See question replies to question 10 of Questionnaire 1 to customers; replies to question 8 of Questionnaire 2 to competitors.

38 See question replies to question 10 of Questionnaire 1 to customers.

39 Minutes of DG COMP call with TAP, 24.05.2022.

40 See replies to question 10.1 of Questionnaire 1 to customers.

41 See replies to question 5 of Questionnaire 1 to customers.

(49) From the perspective of the supply-side, substitutability between pipelines is limited by the fact that usually there will be only one pipeline connecting a gas production field with the Italian transmission network. In fact, the Transmediterranean Pipeline is the only infrastructure allowing for the import of natural gas (in gaseous form) originating from the Algerian gas production fields, into Italy.[42]

(50) On the other hand, the majority of both customers and competitors also replied that in their view the Transmediterranean Pipeline is in fact competing with other gas import infrastructures for customers,[43] which seems to be in contradiction with their view that different pipelines are in general not interchangeable.

(51) Taking the overall feedback into account, the Commission interprets the responses of the participants to the market investigation as follows:

(a) It is clear from the overall responses that, once a gas shipper has entered into a gas-supply contract with a specific source of gas (which will be gas- or LNG-specific), the available infrastructures for importing this gas into Italy are defined. Where there is only a single pipeline connecting Italy to the specific source of gas, there can be no competition among the various pipelines from that point on.[44]

(b) One customer explained in this regard that, when deciding to conclude a new gas-supply contract with a source of gas, they consider all relevant factors, such as gas price, logistic costs to bring gas to Italy, the flexibility of the supply contract, reliability of the gas source etc. At this moment, the relevant sources of gas and, as an extension, the relevant infrastructures are in competition with other sources and their infrastructures.[45]

(c) However, the feedback from the market investigation suggests that the choice of the import infrastructure plays only a minor role in the choice of the gas-supply contract in the upstream market. When asked to rank their criteria in deciding where to source gas from, customers ranked the price of the natural gas as the most important factor, followed by the features of the gas supply agreement, reliability of supplier and lastly the transportation tariffs and the need for portfolio diversification.[46]

(52) The Commission therefore understands that competition primarily takes place in the upstream market for the gas supply, and that the gas import infrastructure only plays a secondary role in the decision to source gas from one source or the other.

(53) In any case, and given the ambiguity of the feedback from the market investigation, the Commission considers that the question whether the Transmediterranean Pipeline is to be regarded as a natural monopoly can be left open, as the Transaction does not raise concerns regardless of the precise market delineation. For the purposes of this decision the Commission will conduct the assessment

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[42] See Form CO, paragraph 163.

[43] See replies to question 30 of Questionnaire 1 to customers; replies to question 28 of Questionnaire 2 to competitors.

[44] LNG terminals, on the contrary, not being linked to the geographic location of the source of gas, can still compete after the conclusion of the LNG-supply contract.

[45] See replies to question 1 of Questionnaire 1 to customers.

[46] See replies to question 12 of Questionnaire 1 to customers.

under the most conservative basis, considering that the Transmediterranean Pipeline does not constitute a monopoly and will consider a market covering other import infrastructures as well, whether both regasification terminals and international pipelines, or international pipelines alone.[47]

(54) With respect to the geographic scope of the market comprising all gas import infrastructures in Italy, the results of the market investigation confirmed that there are no reasons for the Commission to depart from the findings in its past decisions according to which the market for import infrastructure in Italy being national. The clear majority of all respondents replied that the Italian transmission network has no bottlenecks, allowing for gas to reach any part of the network, regardless of the entry point. The clear majority of all respondents also confirmed that gas imported in Italy is typically consumed within Italy and is not re-exported to other countries. Therefore, for the purpose of this decision, the Commission will conduct its assessment on the basis that the market for gas import infrastructure is national, covering import infrastructures (whether all import infrastructures or only international pipelines) that are connected to the Italian transmission network.[48]

*4.3.2. Gas transmission*

(55) In its past decisional practice, the Commission has generally considered the market for gas transmission to be national, although noting that the region covered by the physical infrastructure grid constitutes the narrowest possible delineation of the geographic market.[49]

(56) A majority of the respondents who expressed an opinion in the market investigation confirmed that the Commission's decisional practice of considering the market for gas transmission systems as being national, covering the physical infrastructure grid, is still valid for Italy today.[50]

(57) The Commission therefore considers the market for gas transmission to be national in scope, in line with its decisional practice.

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47 If the Transmediterranean Pipeline were considered a monopoly, the Transaction would not give rise to any horizontal overlaps with SNAM's activities in the operation of other gas import infrastructure. As regards the non-horizontal effects vis-à-vis SNAM's activities in the operation of the Italian gas transmission system, there would be no conceivable input, customer or rival foreclosure scenario, since both non-horizontally linked markets would constitute monopolies.

48 This includes pipelines, which, although being used for gas imports into Italy, are physically located within the territory of one or more countries other than Italy.

49 Cases M.10139 DESFA/COPELOUZOU/DEPA/GASLOG/BTG/GASTRADE, paragraph 52; M.9641 SNAM/FSI/OLT, paragraph 40; M.6984 EPH/ STREDOSLOVENSKA ENERGETIKA, paragraph 25; M.3696 E.ON/MOL, recital 126

50 See replies to question 23 of Questionnaire 1 to customers and question 20 of Questionnaire 2 to competitors.

## 5. COMPETITIVE ASSESSMENT

### 5.1. Affected markets

(58) As outlined in (31) above, both SNAM and the JV (currently through ENI)[51] are active on the market for gas import infrastructure and the possible sub-segment for international pipelines in Italy.

(59) Moreover, as described in (32), SNAM is active in Italy in the gas transmission market. Customers of international pipelines (i.e. gas shippers), once their gas loads have reached the Italian transmission network, need transmission services to deliver the commodity to their customers. Therefore, gas transmission and gas import infrastructures are neighbouring markets, since customers buy the respective services sequentially.

(60) In addition, gas import infrastructures need to be interconnected to the national gas transmission system. Such interconnection requires the construction of an interconnection point in the gas transmission network, which is carried out by the operator of the gas transmission system. Subsequently, gas import infrastructure require access to the transmission system on a rolling basis. Therefore, the gas transmission market (downstream) is vertically linked to the market for infrastructure for gas imports and its possible sub-segments (upstream).

(61) The Transaction would lead to the following horizontally affected potential markets: (i) overall market for gas import infrastructure in Italy; and (ii) international gas pipelines in Italy. The Transaction would lead to the following vertically affected potential markets (i) between the market for gas import infrastructure (upstream) and the market for gas transmission in Italy (downstream), and (ii) between the market for international pipelines (upstream) and the market for gas transmission in Italy (downstream). The Transaction would further lead to the following non-horizontally (conglomerate) affected markets: (i) between the market for gas import infrastructure and the market for gas transmission in Italy, and (ii) between the market for international pipelines and the market for gas transmission in Italy. The Commission will assess whether the Transaction could lead to competition concerns with respect to these relationships in sections 5.2 – 5.4 below.

### 5.2. Horizontal non-coordinated effects in the market for infrastructure for gas imports

#### *5.2.1. Analytical framework*

(62) Under Article 2(2) and 2(3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position.

51 Apart from the JV, ENI also has joint control over the Greenstream pipeline connecting Italy with Libya. However, as the Transaction will not result in SNAM and ENI combining their resources outside the JV, Greenstream does not affect the assessment of the horizontal unilateral effects of SNAM's acquisition of joint control in the Transmediterranean Pipeline. Greenstream will therefore be considered in the context of horizontal coordinated effects only.

(63) In this respect, a merger may entail horizontal and/or non-horizontal effects. Horizontal effects are those deriving from a concentration where the undertakings concerned are actual or potential competitors of each other in one or more of the relevant markets concerned. Non-horizontal effects are those deriving from a concentration where the undertakings concerned are active in different relevant markets.

(64) The Commission appraises horizontal effects in accordance with the guidance set out in the relevant notice, that is to say the Horizontal Merger Guidelines.[52] The Horizontal Merger Guidelines distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated and coordinated effects.

(65) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant horizontal non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, and the fact that the merger would eliminate an important competitive force. That list of factors applies equally, regardless of whether a merger would create or strengthen a dominant position, or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore, not all of these factors need to be present to make significant non-coordinated effects likely and it is not an exhaustive list.[53] Finally, the Horizontal Merger Guidelines describe a number of factors, which could counteract the harmful effects of the merger on competition, including the buyer power, entry and efficiencies.

### *5.2.2. Market shares*

(66) Tables 1 and 2 below show market shares for the overall market for gas import infrastructure (comprising both pipelines and LNG terminals), based on the infrastructures' technical capacity (Table 1, based on million cubic metres ('mcm') per day ('mcm/d')) and volume of actual gas injected into the Italian gas transmission network (Table 2, based on mcm). The Tables are for the period 2018 – 2021. They therefore do not include SNAM's two planned LNG vessels (Golar Tundra and BW Singapore (FRSU 2)) and other future changes; such changes are discussed in (69).

(67) Tables 3 and 4 below show market shares for the narrower potential market for gas pipelines excluding LNG terminals, based on the infrastructures' technical capacity (Table 3) and volume of actual gas injected into the Italian gas transmission network (Table 4).

[52] Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ('Horizontal Merger Guidelines'), OJ C 31, 05.02.2004.

[53] Horizontal Merger Guidelines, paragraph 26.

**Table 1: Market shares in the Italian market for gas import infrastructures based on technical capacity (2018 – 2021)**

| Controlling party | Gas import infrastructure | 2018 | | 2019 | | 2020 | | 2021 | |
|---|---|---|---|---|---|---|---|---|---|
| | | mcm/d | % | mcm/d | % | mcm/d | % | mcm/d | % |
| SNAM (joint) | TAG pipeline | [110-120] | [30-40] | [110-120] | [30-40] | [110-120] | [20-30] | [110-120] | [20-30] |
| SNAM (joint) | OLT LNG | [10-20] | [0-5] | [10-20] | [0-5] | [10-20] | [0-5] | [10-20] | [0-5] |
| SNAM (sole) | Panigaglia LNG | [10-20] | [0-5] | [10-20] | [0-5] | [10-20] | [0-5] | [10-20] | [0-5] |
| JV | Transmed pipeline | [100-110] | [20-30] | [100-110] | [20-30] | [100-110] | [20-30] | [100-110] | [20-30] |
| SNAM + JV combined | | **[240-250]** | **[60-70]** | **[240-250]** | **[60-70]** | **[240-250]** | **[60-70]** | **[240-250]** | **[60-70]** |
| ENI (joint) | Greenstream pipeline | [30-40] | [5-10] | [30-40] | [5-10] | [30-40] | [5-10] | [30-40] | [5-10] |
| TAP AG | TAP pipeline[54] | [0-5] | [0-5] | [0-5] | [0-5] | [20-30] | [5-10] | [20-30] | [5-10] |
| ExxonMobil, Qatar Petroleum | Adriatic LNG | [20-30] | [5-10] | [20-30] | [5-10] | [20-30] | [5-10] | [20-30] | [5-10] |
| FluxSwiss, SwissGas | Transitgas pipeline | [60-70] | [10-20] | [60-70] | [10-20] | [60-70] | [10-20] | [60-70] | [10-20] |
| Plinovodi | Interconnection with Slovenian network | [0-5] | [0-5] | [0-5] | [0-5] | [0-5] | [0-5] | [0-5] | [0-5] |
| **TOTAL** | | **[360-70]** | **100** | **[360-70]** | **100** | **[380-90]** | **100** | **[380-90]** | **100** |

*Source: Form CO, Table 9.*

54 The TAP entered into operation in December 2020.

**Table 2: Market shares in the Italian market for gas import infrastructures based on actual volumes (2018-2021)**

| Controlling party | Gas import infrastructure | 2018 | | 2019 | | 2020 | | 2021 | |
|---|---|---|---|---|---|---|---|---|---|
| | | Volume (mcm) | Market Share % | Volume (mcm) | Market Share % | Volume (mcm) | Market Share % | Volume (mcm) | Market Share % |
| SNAM (joint) | TAG pipeline | [20,000-30,000] | [40-50] | [20,000 - 30,000] | [40-50] | [20,000 - 30,000] | [40-50] | [20,000 - 30,000] | [30-40] |
| SNAM (joint) | OLT LNG | [1,000-5,000] | [0-5] | [1,000-5,000] | [5-10] | [1,000-5,000] | [5-10] | [1,000-5,000] | [0-5] |
| SNAM (sole) | Panigaglia LNG | [800-900] | [0-5] | [1,000-5,000] | [0-5] | [1,000-5,000] | [0-5] | [1,000-5,000] | [0-5] |
| JV | Transmed pipeline | [10,000-20,000] | [20-30] | [10,000 - 20,000] | [10-20] | [10,000 - 20,000] | [10-20] | [20,000 - 30,000] | [20-30] |
| SNAM + JV | | **[40,000-50,000]** | **[70-80]** | **[40,000 - 50,000]** | **[60-70]** | **[40,000 - 50,000]** | **[70-80]** | **[50,000 - 60,000]** | **[70-80]** |
| ENI (joint) | Greenstream pipeline | [1,000-5,000] | [5-10] | [5,000-10,000] | [5-10] | [1,000-5,000] | [5-10] | 1,000-5,000] | [0-5] |
| FluxSwiss, SwissGas | Transitgas pipeline | [5,000-10,000] | [10-20] | [10,000 - 20,000] | [10-20] | [5,000-10,000] | [10-20] | [1,000-5,000] | [5-10] |
| ExxonMobil, Qatar Petroleum | Adriatic LNG | [5,000-10,000] | [5-10] | [5,000-10,000] | [10-20] | [5,000-10,000] | [10-20] | [5,000-10,000] | [10-20] |
| Plinovodi | Interconnection with Slovenian network | [20-30] | [0-5] | [10-20] | [0-5] | [0-5] | [0-5] | [30-40] | [0-5] |
| TAP AG | TAP pipeline | / | / | / | / | [10-20] | [0-5] | [5,000-10,000] | [5-10] |
| Others | / | [90-100] | [0-5] | [40-50] | [0-5] | [30-40] | [0-5] | [10-20] | [0-5] |
| **TOTAL** | / | **[60,000-70,000]** | **100** | **[70,000 - 80,000]** | **100** | **[60,000 - 70,000]** | **100** | **[70,000 - 80,000]** | **100** |

*Source: Form CO, Table 12.*

(68) For the period 2018 – 2021, the combined market shares of SNAM and JV range from [60-70]% to [70-80]%. The market for gas import infrastructure in Italy is therefore horizontally affected.

(69) There are several scenarios that might affect the market shares in the market for gas import infrastructure in Italy in the coming years. First, as noted in (31), as a response to the reduction of gas imports from Russia, SNAM plans to increase its LNG activity, with acquisitions of two LNG vessels: (i) Golar Tundra, which is forecast to cover [0-10]% of Italian gas demand at least for the 2023-2029 period (under the assumption that there are no gas imports from Russia and domestic demand and supply from non-Russian gas sources is stable); and (ii) BW Singapore (FRSU 2), which is planned to enter into operation in 2024 with the same capacity as Golar Tundra. Second, in a scenario where, due to current geopolitical events, gas imports from Russia would reduce significantly, the TAG pipeline could run empty and be completely unused for import purposes. Lastly, depending on the demand in the market, the TAP pipeline may be expanded progressively during the next 5 years, up to a doubling of its capacity. If all 3 points were to happen in the future, SNAM's total market share would decrease to [40-50]% in terms of technical capacity in 2027 (excluding the capacity of TAG, which in this case would remain unutilised).

(70) Tables 3 and 4 below relate to the possible sub-segment for gas pipelines in Italy for the period 2018 – 2021. They show that the combined market shares of SNAM and the JV could be even higher than the market for gas import infrastructure in Italy, ranging from [60-70]% to [80-90]%. In the coming years these shares will be lower if the capacity of the TAP pipeline expands and use of the TAG pipeline is reduced.

**Table 3: Market shares in the Italian market for gas import pipelines based on technical capacity (2018 – 2021)**

| Controlling party | Gas import infrastructure | 2018 | | 2019 | | 2020 | | 2021 | |
|---|---|---|---|---|---|---|---|---|---|
| | | mcm/d | % | mcm/d | % | mcm/d | % | mcm/d | % |
| SNAM (joint) | TAG pipeline | [110-120] | [30-40] | [110-120] | [30-40] | [110-120] | [30-40] | [110-120] | [30-40] |
| JV | Transmed pipeline | [100-105] | [30-40] | [100-105] | [30-40] | [100-105] | [30-40] | [100-105] | [30-40] |
| SNAM + JV | | [210-220] | [60-70] | [210-220] | [60-70] | [210-220] | [60-70] | [210-220] | [60-70] |
| ENI (joint) | Greenstream pipeline | [30-40] | [10-20] | [30-40] | [10-20] | [30-40] | [5-10] | [30-40] | [5-10] |
| TAP AG | TAP pipeline | [0-5] | [0-5] | [0-5] | [0-5] | [20-30] | [5-10] | [20-30] | [5-10] |
| FluxSwiss, SwissGas | Transitgas pipeline | [60-70] | [20-30] | [60-70] | [20-30] | [60-70] | [10-20] | [60-70] | [10-20] |
| Plinovodi | Interconnection with Slovenian network | [0-5] | [0-5] | [0-5] | [0-5] | [0-5] | [0-5] | [0-5] | [0-5] |
| **TOTAL** | | **[310-320]** | **100** | **[310-320]** | **100** | **[340-350]** | **100** | **[340-350]** | **100** |

*Source: Form CO, Table 10.*

**Table 4: Market shares in the Italian market for gas import pipelines based on actual volumes (2018-2021)**

| Controlling party | Infrastructure | 2018 | | 2019 | | 2020 | | 2021 | |
|---|---|---|---|---|---|---|---|---|---|
| | | Volume (mcm) | Market Share % | Volume (mcm) | Market Share % | Volume (mcm) | Market Share % | Volume (mcm) | Market Share % |
| SNAM (joint) | TAG pipeline | [20,000 - 30,000] | [50-60] | [20,000 - 30,000] | [50-60] | [20,000 - 30,000] | [50-60] | [20,000 - 30,000] | [40-50] |
| JV | Transmed pipeline | [10,000 - 20,000] | [30-40] | [10,000 - 20,000] | [10-20] | [10,000 - 20,000] | [20-30] | [20,000 - 30,000] | [30-40] |
| SNAM + JV | | [40,000 - 50,000] | [70-80] | [30,000 - 40,000] | [70-80] | [40,000 - 50,000] | [70-80] | [50,000 - 60,000] | [80-90] |
| ENI (joint) | Greenstream | [1,000-5,000] | [5-10] | [5,000-10,000] | [10-20] | [1,000-5,000] | [5-10] | [1,000-5,000] | [5-10] |
| FluxSwiss, SwissGas | Transitgas pipeline | [5,000-10,000] | [10-20] | [10,000 - 20,000] | [10-20] | [5,000-10,000] | [10-20] | [1,000-5,000] | [0-5] |
| Plinovodi | Interconnection with Slovenian network | [20-30] | [0-5] | [20-30] | [0-5] | [0-5] | [0-5] | [30-40] | [0-5] |

| Controlling party | Infrastructure | 2018 | | 2019 | | 2020 | | 2021 | |
|---|---|---|---|---|---|---|---|---|---|
| | | Volume (mcm) | Market Share % | Volume (mcm) | Market Share % | Volume (mcm) | Market Share % | Volume (mcm) | Market Share % |
| TAP AG | TAP pipeline | [0-5] | [0-5] | [0-5] | [0-5] | [10-20] | [0-5] | [5,000-10,000] | [10-20] |
| Others | / | [90-100] | [0-5] | [40-30] | [0-5] | [30-40] | [0-5] | [10-20] | [0-5] |
| **TOTAL** | / | **[50,000 - 60,000]** | **100** | **[50,000 - 60,000]** | **100** | **[50,000 - 60,000]** | **100** | **[60,000 - 70,000]** | **100** |

*Source: Form CO, Table 13.*

### 5.2.3. *The Notifying Parties' view*

(71) The Notifying Parties submit that the Transaction will not lead to negative horizontal non-coordinated effects in the market for gas import infrastructure in Italy, or the possible segment for gas pipelines, due to: (i) the fact that the Transmediterranean Pipeline is not a close competitor with any other gas import infrastructure in Italy, for the same reasons the Notifying Parties submit it constitutes a monopoly;[55] and (ii) the fact that SNAM will be effectively constrained by sectoral regulation, namely that it must allocate the available capacity of its import infrastructures in Italy and Austria (i.e. the TAG pipeline and the OLT and Panigaglia LNG terminals), which are all regulated, on the basis of transparent and non-discriminatory procedures in light of criteria set out by the Italian and Austrian[56] regulatory authorities ('ARERA' and 'E-Control'), and under tariffs approved by the regulators.

*No closeness of competition between the Transmediterranean Pipeline and other gas import infrastructures in Italy*

(72) Similarly to the arguments outlined in (43) - (44), the Notifying Parties submit that competition between gas import pipelines/infrastructures is very limited, and that pipelines can not be seen as really substitutable unless they run in "parallel" allowing import of gas from the same origin or unless they originate from liquid gas markets and are designated to serve the same end-market.[57]

*The highly regulated regime of SNAM's existing gas import infrastructures*

(73) The Notifying Parties submit that SNAM's existing gas import infrastructures (the TAG pipeline, and the OLT and Panigaglia LNG terminals) are subject to a stringent sectoral regulatory framework, which requires SNAM to comply with the principles of objectiveness, neutrality, transparency, impartiality and non-

55 See Form CO, paragraph 201.

56 The TAG pipeline, although being connected to the Italian gas transmission grid, is physically located in Austria, and therefore subject to the supervision of E-Control.

57 See Form CO, paragraphs 201.

discrimination, and which prevents SNAM from exercising any form of market power.[58]

(74) SNAM is bound by third-party access ('TPA') rules. Article 32 of EU Directive 2009/73/EC (the 'Third Gas Directive') provides for regulated TPA to gas transmission systems and import infrastructure "*based on tariffs, applicable to all eligible customers, including supply undertakings, and applied objectively and without discrimination between system users*". It also mandates that access to the transmission system may only be refused in very limited instances (e.g. lack of capacity). In the case of refusal, the operator must provide 'duly substantiated reasons'. The procedures and codes for the TAG pipeline and the OLT and Panigaglia LNG terminals, as approved by E-Control and ARERA, all include TPA rules.[59]

(75) TPA must be provided under pre-defined regulated tariffs. The regime of allowed revenues, in particular, is set out in EU Regulation (EU) 2017/460, establishing a network code on harmonised transmission tariff structures for gas, and includes rules on the application of a reference price methodology, the calculation of reserve prices for standardised capacity products, as well as publication and consultation requirements.

(76) In practice, the national regulator sets the allowed revenue of each import infrastructure. When setting the allowed revenue of an infrastructure, the regulator considers the infrastructure's operational expenses and capital expenditure costs that that infrastructure is entitled to recover based on the applicable rules.[60]

(77) Subsequently, the infrastructure's tariffs are calculated in order to recover the allowed revenues, according to the tariff methodology defined by the regulator, which considers, among other things, the capacity booking forecasts for each infrastructure. The tariffs are then paid by users of such infrastructure according to their actual bookings.

(78) As the actual revenues made by an import infrastructure might ultimately differ from the allowed ones, the infrastructure's tariffs of the subsequent year are adapted in order to balance any under- or over-performance of the infrastructure in the previous year.

(79) The regime of allowed revenues applies as described above to both OLT and Panigaglia LNG terminals.[61]

(80) With reference to TAG, an adaptation of the transmission tariffs in the following year would only take place in case TAG were to exceed its allowed revenues. The difference with TAG is that a recuperation of any revenues below the allowed revenues is not foreseen. In other words, with respect to TAG there is only a cap in

58 See Form CO, paragraphs 243 – 245; paragraph 303 et seq.

59 See Form CO, paragraphs 309 – 312; 324 – 329, and the "*Procedure for the access to the TAG gas transmission system and gas transmission services*" and the OLT and GNL Italia "*Regasification Codes"*.

60 See Form CO. paragraph 276 - 278.

61 See Form CO, paragraph 280.

respect to the maximum allowed revenues, while there is no guaranteed minimum revenue.[62]

*The regime applicable to the Transmediterranean Pipeline*

(81) EU regulation of gas markets is only applicable to the (portion of) infrastructures located within the EU. Most of the Transmediterranean Pipeline is located outside the EU, with the exception of the portion of the Offshore Section that is located within the Italian territorial sea.

(82) The portion of the TMPC located within the EU (i.e., in the Italian territorial sea) has been granted an exemption until May 2030 by the Italian Ministry of Economic Development under Article 49(a) of the Third Gas Directive.[63] This exemption was based among other things on the concern that applying a stringent regulatory regime on only the part of the Offshore section that lies within the Italian territorial sea "*would entail a double regulatory regime to the same [Transmediterranean] pipeline, with risks of interference in the technical management (proper technical functioning requires the pipeline to be operated in its entirety) and in the commercial management (the existing transmission contracts for the pipeline do not provide for a split and would have to be amended accordingly).*"[64]

(83) As a result, the Transmediterranean Pipeline is not subject to TPA rules or regulated tariffs.[65]

(84) Nonetheless, the Notifying Parties submit that the methodology applied to allocate capacity on the Transmediterranean Pipeline is in line with the European best practices on transparency and non-discriminatory capacity allocation management.[66]

(85) In particular, from 2019 onwards, gas transport capacity via the Transmediterranean Pipeline has been made available to market players through public procedures on a "first come, first served" basis. All the available capacity is offered through the PRISMA European Capacity Platform[67], in line with European best practices.[68]

(86) As regards the tariffs applied for the Transmediterranean Pipeline, these are calculated based on a formula which is described in the contract a user will conclude with each section of the pipeline.[69] The amount of the tariff depends

62 See Form CO, paragraph 281.

63 As modified by Directive (EU) 2019/692 of the European Parliament and of the Council of April 17, 2019.

64 See Form CO, paragraph 417.

65 Form CO, paragraph 375.

66 *Ibid.*

67 PRISMA is a European gas capacity platform, offering to transmission and storage system operators a single place to market their capacity products.

68 Form CO, paragraph 377. In practice, a user will have to book capacity for the Transtunisian section through PRISMA, and then request the respective capacity in the Offshore Section. The capacity booking of the Offshore Section is thus synchronised with the Transtunisian Section.

69 Although the process for capacity booking is synchronised between the Transtunisian and the Offshore Sections, users still need to conclude separate contracts for each of the Transtunisian Section and the Offshore Section, with separate transportation tariffs.

exclusively on the capacity booked, and varies according to the duration of the contract (multiannual, annual or less than annual) with the cost for long-term contracts typically being less than the cost for short-term contracts. Each time a user acquires a new capacity product, a transportation tariff applies for the whole duration of the relevant transportation agreement, which is not subject to renegotiation. The conditions and tariffs apply indistinctively to all users, […].[70]

*Restrictions in the SPA agreement*

(87) Lastly, the Notifying Parties submit that the involvement of SNAM in the JV will not affect the incentives of the JV to increase the tariffs for the Transmediterranean Pipeline. […].[71]

### 5.2.4. *The Commission's assessment*

(88) The market shares in the market for gas import infrastructure into Italy, including the possible sub-segment of gas pipelines, are set out in Tables 1 – 4 above.

(89) The market shares of SNAM and the JV in the overall market for gas import infrastructure into Italy will range from [60-70]% to [70-80]%, depending on whether market shares are calculated on the basis of the infrastructure's technical capacity or actual volumes of gas imported. The increment that will result from the Transaction will range from [20-30]% to [20-30]%.

(90) The market shares for SNAM and the JV in the possible sub-segment for gas pipelines used for gas import into Italy will range from [60-70]% to [80-90]%. The increment that will result from the Transaction will range from [30-40]% to [30-40]%.

(91) Despite market shares being high, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to horizontal non-coordinated effects.

(92) In particular, the Commission has identified two potential scenarios, by which the Transaction could lead to a significant impediment to effective competition, as a result of horizontal non-coordinated effects:

(a) SNAM could increase the tariffs for use of, or limit the access to its other gas import infrastructures in Italy, so as to make additional profits, while recapturing some of any diverting gas shippers through the Transmediterranean Pipeline (assessed in Section 5.2.4.1 below);

(b) SNAM could increase the tariff for use of, or limit the access to the Transmediterranean Pipeline, so as to make additional profits, while recapturing some of any diverting gas shippers shipping gas to Italy through the other gas import infrastructure it controls in Italy (assessed in Section 5.2.4.2 below).

(93) The Commission does not consider the above theories of harm as plausible, for the reasons set out below.

[70] Form CO, paragraph 399 et seq.
[71] Form CO, paragraph 469.

*Lack of closeness of competition between the Transmediterranean Pipeline and the other gas import infrastructures in Italy*

(94) As a general remark applying to both potential horizontal theories of harm, the Commission notes that, on the basis of its considerations set out in recitals (45) - (52) above, the Transmediterranean Pipeline is not a close substitute for any other import infrastructure used to import gas into Italy.

(95) As mentioned in (46) above, a clear majority of gas shippers replied that the Transmediterranean Pipeline is not substitutable with other gas import infrastructure in Italy.

(96) Substitution between the Transmediterranean Pipeline and other gas import infrastructures in Italy is significantly limited by the existence of the upstream gas supply contract of the gas shipper. Such gas supply contracts will be gas- or LNG-specific,[72] limiting the gas shipper's choice to import through pipelines or LNG terminals respectively. Further, the geographic location of the source of the gas also defines the available infrastructure for its import into Italy. For a gas shipper having a contract for the sourcing of gas (in gaseous form) from the Algerian gas production fields, the Transmediterranean Pipeline is the only available infrastructure for the import of such gas into Italy. Moreover, gas shippers sourcing gas from Algeria typically have long-term gas supply contracts with Algerian producers, and also corresponding long-term contracts with the Transmediterranean Pipeline with a typical duration of […],[73] which further limits the ability of such gas shippers to switch to another import infrastructure. As a gas shipper submitted "*[p]ipelines in Italy connected to production sites require long terms contract which are binding for all the contractual period and cannot be terminated in advance /switched in order to use other pipelines.*"[74]

(97) Even for the gas shipper who is not bound by an existing gas supply contract and who wishes to enter into a new gas supply contract considering its available options in terms of gas sources, the available infrastructure for the import of such gas into Italy cannot be considered to be closely competing. As mentioned in (51) above, the relevant factors that will weigh in the gas shippers' decision as to where to source gas from will primarily be the price of the natural gas, followed by the features of the gas supply agreement and the reliability of the gas supplier. The tariffs for the transportation of the gas to the point of destination, or other criteria, are deemed by gas shippers as less important. It follows that the gas shippers' decision on the geographic origin of the gas it will source will be driven mainly by the elements of the upstream market for the gas wholesale supply, with the elements relating to the gas import infrastructure only playing a limited role.

(98) This is also evidenced by the limited incidence of the gas transportation cost, compared to the price of the commodity. Table 5 below provides a comparison per infrastructure between the average cost of gas of the respective gas source and the average cost for transport of the gas up to the entry point of the Italian gas network in megawatt hours (MWh).

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72 *Supra, (36).*
73 Form CO, paragraph 468.
74 See replies to question 10.1, Questionnaire 1 to customers.

**Table 5: Comparison between the average cost of gas and the average cost of transport per import infrastructure in Italy** [75]

| Infrastructure | 2019 - Cost of: | | | 2020 - Cost of: | | | 2021 - Cost of: | | |
|---|---|---|---|---|---|---|---|---|---|
| | Gas (€/MWh) | Transport (€/MWh) | Transport / gas (%) | Gas (€/MWh) | Transport (€/MWh) | Transport / gas (%) | Gas (€/MWh) | Transport (€/MWh) | Transport / gas (%) |
| TAG pipeline[76] | [10-20] | [0-5] | [0-5] | [10-20] | [0-5] | [5-10] | [40-50] | [0-5] | [0-5] |
| Transmed pipeline | [20-30] | [0-5] | [0-5] | [10-20] | [0-5] | [5-10] | [10-20] | [0-5] | [5-10] |
| Transitgas pipeline | [10-20] | [0-5] | [10-20] | [5-10] | [0-5] | [10-20] | [40-50] | [0-5] | [0-5] |
| TAP pipeline | N/A | N/A | N.A | N/A | N/A | N/A | [50-60] | [5-10] | [10-20] |
| OLT LNG | [10-20] | [0-5] | [20-30] | [5-10] | [0-5] | [30-40] | [20-30] | [0-5] | [10-20] |
| Panigaglia LNG | [10-20] | [0-5] | [5-10] | [10-20] | [0-5] | [5-10] | [20-30] | [0-5] | [5-10] |
| Adriatic LNG | [10-20] | [0-5] | [20-30] | [5-10] | [0-5] | [40-50] | [20-30] | [0-5] | [10-20] |

*Source: Form CO, Table 5.*

(99) As can be seen from Table 5 above, transmission tariffs of import pipelines are normally below or around [10-20]% of the cost of the commodity. As a result, transmission tariffs do not typically play a major role in the gas importers' decision on the geographic location of the source of their gas supply.

(100) This relationship between the transportation costs and the price of the commodity further indicates that an operator of an import pipeline cannot likely divert gas importers to other infrastructures by leveraging the level of the transportation costs. If SNAM were to increase post-Transaction the tariffs in the Transmediterranean Pipeline or the other gas import infrastructure it controls in Italy, this would be unlikely to result in gas shippers disregarding their upstream gas supply contracts and switching to other gas import infrastructure (and gas supply sources) in order to benefit from lower transportation tariffs.

(101) Table 5 also shows the differences (which are often large) between the transportation costs applicable in each import infrastructure in Italy, which further evidences a lack of close competition between the import infrastructures.

(102) On the basis of the above, the Commission considers that competition between the Transmediterranean Pipeline and the other import infrastructures in Italy is inherently limited, in the sense that the import infrastructure constitutes a minor factor in the gas shippers' decision on the geographic location of their source of gas, which neither of the Notifying Parties can influence.

75 Data on the Greenstream pipeline was provided by ENI to the Commission but it is not included here as ENI requested that it be kept confidential and not shared with SNAM.

76 Figures refer to transport from the liquid hub of CEGH in Austria.

#### *5.2.4.1. SNAM does not have the ability or the incentives to increase tariffs in or limit access to TAG pipeline, or OLT and Panigaglia LNG terminals*

(103) Regarding the first leg of this first of the two scenarios outlined in (92) above, the Commission considers that SNAM would have neither the ability nor the incentive to increase the tariffs of its TAG pipeline or OLT and Panigaglia LNG terminals in order to make additional profits by the increased tariffs, while recapturing part of the diverging users through the Transmediterranean Pipeline.

*Ability of SNAM to increase tariffs in TAG, OLT or Panigaglia*

(104) First, even if the Transmediterranean Pipeline were to be considered to be competing closely with the other gas import infrastructure in Italy, SNAM would be prevented by sectoral regulation from exercising market power by increasing prices in the import infrastructure it controls, or by limiting access to their capacity.

(105) As stated by the Notifying Parties (see (73) - (80)), the gas import infrastructure currently controlled by SNAM in Italy (i.e. the TAG pipeline and the OLT and Panigaglia LNG terminals), are fully regulated with respect to the applicable tariffs and the non-discriminatory allocation of their capacity.

(106) The tariffs in SNAM's current infrastructure connected to the Italian network are pre-defined on the basis of a calculation method set by the relevant regulator, which SNAM cannot influence and which aims at generating pre-defined returns, i.e. the allowed revenues. In other words, it is the pre-defined allowed revenues of each infrastructure that will define the level of the applicable tariffs, rather than the opposite. Should the application of the regulated tariffs lead to returns that exceed the allowed revenues (e.g. due to higher utilisation than expected), the excess will be rebated in the subsequent year and the tariffs will be adjusted accordingly (see in this regard also the views of the Notifying Parties in (78)).

(107) A clear majority of both customers and competitors responded that sectoral regulation with regard to tariffs of gas import infrastructure is effective in preventing operators of import infrastructure from influencing tariffs.[77] As one gas shipper noted, *"[t]he gas transmission tariffs are defined by EU regulations and approved by the Italian regulator. Therefore, [the operator of the infrastructure] does not have any capability to unilaterally increase tariffs".*[78] Another gas shipper explained, "*[d]ue to tariff regulation and other regulatory measures, the raising [of] prices above regulatory levels (…) are prevented*".[79]

(108) ARERA, the Italian energy regulator, also expressed its confidence in the sectoral regulation's efficacy in preventing SNAM from influencing tariffs in the import infrastructures it currently controls: *"The tariffs applied to European pipelines, such as the TAG, are based on similar approaches applied by each Member State, i.e. an entry-exit system where the price for accessing the system is regulated based on general principles set at European level. For the use of regasification plants, instead, the price paid depends on the regulatory regime in place; for some*

[77] See responses to question 29, Questionnaire 1 to customers; question 27, Questionnaire 2 to competitors.

[78] See responses to question 29.1, Questionnaire 1 to customers.

[79] See responses to question 29.1, Questionnaire 1 to customers.

*terminals, the price is a regulated tariff. (...) other terminals are instead exempted, and they can freely decide on the price to be paid by users (there is one example in Italy of a regasification plant being exempted).*[80] *Altogether, ARERA considers the existing regulatory regime to be efficient in preventing SNAM from exercising market power".*[81]

(109) It follows that SNAM is not able to influence the tariffs in the TAG pipeline and OLT and Panigaglia LNG terminals. Even under the assumption that it could influence tariffs, this would ultimately have no effect in SNAM's revenues from these infrastructures, as any earnings above the allowed revenues would be rebated in the subsequent year.

(110) Second, assuming to the contrary that SNAM could increase tariffs in its currently controlled infrastructure in Italy, and benefit from such increased tariffs, SNAM would in any case not be in a position to unilaterally do so with regard to the TAG pipeline and OLT LNG terminal. This is because SNAM only jointly controls those infrastructures with GCA and FSI respectively. The co-controlling parties of these infrastructures would be unlikely to align with a strategy of SNAM to increase tariffs in the respective infrastructures, in order to make additional profits by the increased tariffs while recapturing part of the diverging users through the Transmediterranean pipeline. This is because, unlike SNAM, GCA and FSI do not control other gas import infrastructures in Italy and would therefore not be able to recapture any users diverging from the TAG pipeline or the OLT LNG terminal due to the increased tariffs. It follows that such a strategy would be unprofitable for GCA and FSI, who would have an incentive to oppose SNAM in pursuing such strategy.

(111) SNAM could also not apply this strategy in a profitable manner through its solely-controlled Panigaglia LNG terminal alone, as this infrastructure accounts for only [0-10]% of the total import capacity into the Italian network, and only [0-10]% of the actual import volumes into Italy. The part of any diverging users from Panigaglia that SNAM would possibly recapture through the Transmediterranean pipeline would therefore be too insignificant to incentivise SNAM in pursuing such a strategy.

*Incentives of SNAM to increase tariffs in TAG, OLT or Panigaglia*

(112) Even if this strategy were to be implemented successfully and diverting users from TAG, OLT and Panigaglia were recaptured by the Transmediterranean Pipeline, this would not translate into increased profits for SNAM, at least before 2029. As mentioned in (87), the SPA between the Notifying Parties with regard to the JV sets forth […]. SNAM will therefore have no incentives to divert users from TAG, OLT or Panigaglia to the Transmediterranean Pipeline.

(113) Regarding the second leg of this first scenario, the Commission considers that SNAM would not have the ability or the incentives to limit the capacity of the TAG pipeline and the OLT and Panigaglia LNG terminals that is made available to gas shippers, in order to divert such gas shippers to the Transmediterranean Pipeline,

[80] This is neither OLT, nor the Panigaglia LNG terminal, to which regulated tariffs apply.
[81] Minutes of the call with ARERA, 23.05.2022.

which is not subject to regulated tariffs and allowed revenues. The Commission, however, does not consider the implementation of this strategy to be feasible, for the reasons set out in (114) - (119) below.

*Ability of SNAM to limit access to TAG, OLT and Panigaglia*

(114) *First,* as explained in (74), TPA rules apply fully to the TAG pipeline and the OLT and the Panigaglia LNG terminals, which would prevent SNAM from implementing such a strategy. Accordingly, SNAM has to make available to market participants at all times the maximum capacity of all these infrastructures, under public, transparent and non-discriminatory allocation mechanism.[82] In this regard, TAG offers its capacity through auctions on PRISMA, while the OLT and Panigaglia LNG terminals offer their capacity through auctions supervised by ARERA.[83]

(115) A clear majority of both customers and competitors confirmed that sectoral regulation is sufficient in preventing SNAM from exercising market power by limiting access to the gas import infrastructure it controls.[84] One gas shipper noted in this regard that it "*considers the Italian regulation to be effective in preventing TSO from exercising market power with respect to gas transmission tariffs and third party access*". As noted in (107), another gas shipper explained that *"[d]ue to tariff regulation and other regulatory measures, (...) restricting access to pipelines/terminals [is] prevented".*[85] As mentioned above, ARERA confirms the view that *"the existing regulatory regime to be efficient in preventing SNAM from exercising market power."*[86]

(116) *Second,* the Transmediterranean Pipeline is not a close substitute, meaning that a limitation of access to the TAG pipeline, the OLT or the Panigaglia LNG terminals would not likely result in users of such infrastructure switching to the Transmediterranean Pipeline. As explained in (96), a user of TAG, OLT, or Panigaglia will not be able to switch to the Transmediterranean Pipeline in order to import into Italy the gas sourced through its pre-existing gas supply contracts with sources other than the Algerian production fields. Conversely, in order to use the Transmediterranean Pipeline for importing gas into Italy, a shipper must have a gas supply contract with the Algerian production fields, which a user of TAG, OLT or Panigaglia does not necessarily have.

(117) *Third,* as explained in (110), the co-controlling parties of TAG and OLT would have incentives to oppose to such a strategy of SNAM. SNAM could in turn not apply this strategy in a profitable manner through the Panigaglia LNG terminal alone, due to this infrastructure's limited market share.

82 Form CO, paragraph 233.
83 Form CO, paragraphs 310; 324 *et seq*.
84 See responses to question 29, Questionnaire 1 to customers; question 27, Questionnaire 2 to competitors.
85 See responses to question 29.1, Questionnaire 1 to customers.
86 Minutes of the call with ARERA, 23.05.2022.

*Incentives of SNAM to limit access to TAG, OLT and Panigaglia*

(118) As explained in (112), even if SNAM were successful in implementing such a strategy and divert users from TAG, OLT and Panigaglia to the Transmediterranean Pipeline, this would not translate into additional profits for SNAM, […].

(119) On the basis of the foregoing, the Commission considers that SNAM neither has the ability nor the incentives to increase tariffs in or limit access to the TAG pipeline, the OLT LNG terminal or the Panigaglia LNG terminal, in order to profit from the increased tariffs while recapturing part of any diverting users through the Transmediterranean Pipeline.

*5.2.4.2. SNAM does not have the ability or the incentives to increase tariffs in or reduce access to the Transmediterranean Pipeline*

(120) As stated by the Notifying Parties (see (81) - (83) above), the Transmediterranean Pipeline is not subject to EU sectoral regulation with regard to tariffs. Nonetheless, the Commission does not consider that SNAM could engage in a strategy whereby it would increase tariffs in, or limit access to, the Transmediterranean Pipeline in order to profit from the increased tariffs while recapturing any diverting users through TAG, OLT or the Panigaglia LNG terminal, for the following reasons.

*Ability of SNAM to increase tariffs in, or limit access to the Transmediterranean Pipeline*

(121) *First*, as explained in (116), the Transmediterranean Pipeline is not a close substitute to TAG, OLT or the Panigaglia LNG terminal. Users of the Transmediterranean Pipeline who would face increased tariffs or limited access to capacity would not be able to circumvent this by switching to another gas import infrastructure. Even for gas shippers who have no pre-existing gas supply contract, and are considering entering into such contract with a gas supplier, the available import infrastructure for importing such gas into Italy will only play a minor role in choosing their gas supplier, as explained in (51) *et seq*. A strategy by which SNAM would seek to divert users of the Transmediterranean Pipeline to its other infrastructures in Italy would therefore not be feasible.

(122) *Second*, an attempt by SNAM to increase tariffs or limit access to the Transmediterranean Pipeline would face resistance by the other, jointly controlling parties, who have diverging interests. As mentioned in (13), TTPC, who operates the Transtunisian Section will be jointly controlled by SNAM and ENI, while TMPC, who operates the Offshore section, will be jointly controlled by SNAM, ENI and Sonatrach. ENI, being a gas shipper and the main user of the Transmediterranean Pipeline, would itself have to bear the tariff increase. While the cost for ENI of any such increase would in part be offset by the share of any corresponding increase in profit that ENI would receive, the fact that ENI will hold only 25.05% of the shares in TMPC means that ENI's net final position in case of a revenue increase on the Transmediterranean Pipeline would overall be a loss.[87] Although, hypothetically, ENI could reserve for itself lower tariffs for the use of

[87] Form CO, paragraph 465.

the Transmediterranean Pipeline, given that the Transmediterranean Pipeline is not subject to the EU regulatory regime, ENI has already pre-Transaction applied methodologies which are in line with the European best practices on transparency and non-discriminatory capacity allocation. As explained in (85), since 2019 capacity in the Transmediterranean Pipeline is made available to market players through public procedures on a "first come, first served" basis via the PRISMA platform. The Transaction will not likely change ENI's incentives with regard to the tariffs applied for the Transmediterranean Pipeline, and ENI would not have an interest in endorsing a strategy to increase tariffs.

(123) For Sonatrach, being the national gas producer of Algeria, a reduced utilisation of the Transmediterranean Pipeline would mean a bottleneck in its sales of gas to Italian importers. Sonatrach rather has an interest in maximising gas volumes shipped through the Transmediterranean Pipeline. As can be deduced from the comparison between the price of Algerian gas and the transport costs for gas through the Transmediterranean Pipeline in Table 5, Sonatrach has an interest in selling more gas quantities, rather than selling less at a higher cost of transport.

*Incentives of SNAM to increase tariffs in, or limit access to the Transmediterranean Pipeline*

(124) *First,* as explained in (106), SNAM would not make additional profits by recapturing any diverting users of the Transmediterranean Pipeline through TAG, OLT or the Panigaglia LNG terminal. As all three of these infrastructures are subject to allowed revenues, the increased revenues resulting from an increased utilisation of such infrastructure in one year would be offset by the adjustment of the tariffs in the subsequent year. SNAM would therefore have no incentives to divert users from the Transmediterranean Pipeline to the other gas import infrastructures it controls in Italy.

(125) *Second,* SNAM would not make any increased profits by the increase in the tariffs of the Transmediterranean Pipeline either, […].

(126) On the basis of the above, the Commission considers that SNAM neither has the ability nor the incentives to increase tariffs in or limit access to the Transmediterranean Pipeline, in order to profit from the increased tariffs while recapturing part of any diverting users through the TAG pipeline, the OLT or Panigaglia LNG terminals.

*5.2.5. Conclusion on horizontal non-coordinated effects*

(127) Based on the foregoing, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to horizontal non-coordinated effects in the market for infrastructure for gas imports into Italy, and its possible sub-segment for gas import pipelines.

## 5.3. Horizontal coordinated effects in the market for infrastructure for gas imports

(128) SNAM and ENI are active and the JV will be active in the market for gas import infrastructures in Italy. There are no other markets where the JV and any of the Notifying Parties remain active.[88] There is also no other market where SNAM, the JV and Sonatrach will be active. In this light, the possibility of the Transaction giving rise to coordinated effects between SNAM, ENI and the JV in the market for gas import infrastructure in Italy is assessed below.

### 5.3.1. *Analytical framework*

(129) As set out in the Horizontal Merger Guidelines,[89] concentrations may significantly impede effective competition by creating or strengthening a dominant position by changing the nature of competition in such a way that firms would significantly be more likely to coordinate and raise prices or otherwise harm effective competition. In such a case, the merger would (a) increase the likelihood that firms are able to coordinate successfully, or (b) make existing coordination easier, more stable or more effective, either by making the coordination more robust or by permitting firms to coordinate on even higher prices, for example by facilitating the detection of deviation, limiting the ability and incentives of some market players to deviate and allowing more efficient retaliation.[90] In complex economic environments, for example with differentiated products, coordinating firms may find ways to reach the terms of coordination: establishing a small number of reference pricing points, or a fixed relationship between base prices and a number of other prices (prices moving in parallel). Market transparency through publicly available key information or, for example, by information exchanged through structural links between competitors may further facilitate coordination.[91] In addition, structural links such as cross-shareholding or participation in joint ventures may also help in aligning incentives among the coordinating firms.[92]

(130) To find coordinated effects, evidence is needed that the horizontal merger changes the nature of competition in such a way that firms that previously were not coordinating their behaviour are now significantly more likely to coordinate and raise prices or otherwise harm effective competition. A merger may also make coordination easier, more stable or more effective for firms that were coordinating prior to the merger.

(131) According to the Horizontal Merger Guidelines, coordination is more likely to emerge if competitors can easily arrive at a common perception as to how the coordination should work.[93] Generally, the less complex and more stable the economic environment, the easier it is for the firms to reach a common understanding on the terms of coordination.[94]

88 […]; see Form CO, paragraph 134.
89 Horizontal Merger Guidelines, paragraphs 22, 39 et seq.
90 Horizontal Merger Guidelines, paragraph 42.
91 Horizontal Merger Guidelines, paragraph 47.
92 Horizontal Merger Guidelines, paragraph 48.
93 Horizontal Merger Guidelines, paragraph 43.
94 Horizontal Merger Guidelines, paragraph 44.

### 5.3.2. *The Notifying Parties' view*

(132) The Notifying Parties submit that the Transaction will not give rise to coordinated effects because: (i) there is limited substitutability (if any) between the transmission services offered in the market; (ii) the Transaction would not significantly alter the existing degree of transparency on the market; (iii) the sectoral regulation prevents the possibility that the Transaction might create the conditions for coordination in the transmission or regasification service market; and (iv) in the current scenario there is a high spare capacity in each and all transmission and regasification systems.[95]

### 5.3.3. *The Commission's assessment*

(133) As regards the overall market for infrastructure for gas imports in Italy, the Commission considers that the Transaction will not lead to an economic environment that will favour coordination between SNAM, the JV and ENI.

(134) *First*, as explained in (102), the Commission considers that competition between the various import infrastructures in Italy is limited, in the sense that the import infrastructure constitutes a minor factor in the gas shippers' decision on the geographic location of their source of gas, which neither SNAM, the JV or ENI can influence. Any coordination between SNAM, the JV and ENI would have a limited impact on the behaviour of gas shippers, who decide on the geographic origin of their sources of gas supply based primarily on the factors of the upstream market for gas supply (i.e. price of the commodity, features of the gas supply contract, reliability of the gas supplier), rather than on the cost of transportation of the gas into Italy, or other factors. In this respect, the Transaction will have limited impact on the nature of competition between SNAM, the JV and ENI in the market for gas import infrastructures in Italy and would not make a coordination between them more likely.

(135) Second, even under the assumption that there is significant competition between the different gas import infrastructures in Italy, a number of operators, with different market shares and different infrastructures (pipelines and regasification terminals), will remain active in the market. Currently, apart from SNAM and ENI, there are other operators of gas import infrastructure in Italy, namely TAP operating the TAP pipeline, FluxSwiss and SwissGas jointly operating the Transitgas pipeline, ExxonMobil and Qatar Petroleum jointly operating the Adriatic LNG terminal, and Plinovodi operating the Slovenian gas network, which is connected to the Italian network. Those infrastructures together account for around 30% of the overall import capacity to the Italian network. Even if only considering the international pipelines in Italy, excluding regasification terminals, the TAP and Transitgas pipelines and the interconnection point with the Slovenian gas network account for 28% of the overall import capacity to the Italian network. The significant number of different gas import infrastructure operators in Italy and their respective capacities will render coordination between SNAM, the JV and ENI unlikely.

[95] Form CO, paragraph 483.

(136) Table 1 and Table 2, the different operators of gas import infrastructure are also highly asymmetrical in terms of market shares and capacities. Furthermore, as indicated by Table 5, there is significant difference in the cost of transport among the various gas import infrastructures. Such asymmetry in the market for gas import infrastructure would render coordination between the competitors unlikely.[96] The Transaction will therefore not change the nature of competition and the competitors would remain differentiated, implying a limited risk of increased coordination.

(137) *Fourth*, the current situation with the reduced imports of natural gas from Russia and the reallocation of the sources of gas supplies for Europe and Italy creates a new dynamic environment in the market for gas import infrastructure. LNG and non-Russian gas supply sources have gained importance, and so have the respective gas import infrastructures which can be used for their import. This is likely to substantially reallocate the market shares for gas import infrastructures in Italy in the coming years (at least as far as volumes of actual flows are concerned). Such a dynamic economic environment, in turn, does not favour coordination.[97]

(138) *Fifth*, a number of recent and new entries of considerable value are identified in the market for infrastructure of gas imports. The TAP pipeline only entered into operation in December 2020, and is expected to expand its capacity up to a double in the coming 5 years. Furthermore, as a response to the reduction of gas imports from Russia, SNAM plans to increase its LNG activity by entering into operation two new LNG terminals in 2023 and 2024 respectively.[98] The Adriatic LNG terminal can also increase its capacity from 8 bcm to 9 bcm without further investments needed, and up to 11 bcm in case of further investments.[99] Depending on the possible further reductions of gas imports from Russia, the TAG pipeline could see a significant reduction in its utilisation and even run completely empty. There are also new potential import infrastructures being explored that have gained in relevance in the context of the current geopolitical events, in particular the Eastmed/IGI Poseidon pipeline[100]

(139) A clear majority of both customers and competitors indeed expect new gas import infrastructures to be set up in Italy in the following two to five years.[101] One gas shipper noted in this regard that *"[t]he international geopolitical situation is imposing European nations to search for new gas supplies. This in order to overcome their demand as well as to effectively diversify their portfolio. The consequence of this is the setting up of new gas import infrastructure in Italy too".[102]* It follows that such volatility with regard to market participants would generally not allow for sustainable coordination between competitors.[103]

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96 See Horizontal Merger Guidelines, paragraph 48.
97 See Horizontal Merger Guidelines, paragraph 45.
98 *Supra, (31).*
99 Form CO, paragraph 431.
100 Form CO, paragraph 431. The EastMed pipeline (a joint venture between EDISON S.p.A. and DEPA International Projects AS) is currently in the design phase and aims to connect Italy with the Levantine Basin located in the Eastern Mediterranean.
101 See replies to question 32, Questionnaire 1 to customers; question 30, Questionnaire 2 to competitors.
102 See replies to question 32.1, Questionnaire 1 to customers.
103 See Horizontal Merger Guidelines, paragraph 45.

(140) *Lastly*, as explained in (106), tariffs applied in the TAG pipeline, the OLT and the Panigaglia LNG terminals are extensively regulated and the allocation of the respective capacity is subject to TPA rules. It is therefore unlikely that these infrastructures can be part of a wider coordination between SNAM, the JV and ENI with regard to increasing tariffs or limiting access to the available capacity.

(141) There would thus only potentially be scope for coordination between the non-regulated infrastructure operated by SNAM, the JV and ENI, namely the Transmediterranean and Greenstream pipelines. However, the Transaction will lead to a reduction of ENI's controlling stake in the Transmediterranean Pipeline. Pre-Transaction ENI jointly controls the Greenstream pipeline (with National Oil Corporation) and the Offshore section of the Transmediterranean Pipeline (with Sonatrach), while it solely controls the Transtunisian section. The Transaction will result in the entry of SNAM as an additional jointly controlling party in the operation of the Transmediterranean pipeline, who is not active on the same markets as ENI and Sonatrach, and therefore has diverging interests. Therefore, the Transaction renders coordination between the Transmediterranean and Greenstream pipelines less likely than before.

(142) Apart from the likelihood of coordination to emerge in a market, the Commission also assesses whether such coordination would be sustainable and successful in attaining the expected outcome.

(143) Coordination is not sustainable unless the consequences of deviation are sufficiently severe to convince coordinating firms that it is in their best interest to adhere to the terms of coordination (i.e. deterrent mechanisms).[104]

(144) In the present case, no credible deterrent mechanism could be applied by either SNAM, the JV or ENI, with the aim of preventing deviation from coordination. As mentioned in (140), the regulated infrastructures in Italy currently controlled by SNAM have no option but to provide their services under the regulated tariffs and in accordance with TPA rules. Furthermore, the existing transparency in the market, which results from sectoral regulation, would make any attempt of a competitor to apply such deterrent mechanisms visible to ARERA, who is in charge of supervising the market and enforcing adherence to regulation. As regards the non-regulated infrastructure of the Notifying Parties, namely the Transmediterranean and Greenstream pipelines, as mentioned in (141), the Transaction will reduce the likelihood of coordination, due to the entrance of SNAM as an additional jointly controlling party in the Transmediterranean Pipeline, and the reduction of ENI's influence over the Transmediterranean Pipeline.

(145) Coordination is also not effective in attaining the expected outcome by the coordinating competitors, if actions of non-coordinating firms are able to jeopardise such outcome.[105]

(146) As mentioned in (135) above, apart from the Notifying Parties, there are currently 4 other undertakings active in gas import infrastructure in Italy, with TAP having

104 See Horizontal Merger Guidelines, paragraphs 52.
105 See Horizontal Merger Guidelines, paragraph 56.

entered into operation only in December 2020, and further entries being expected in the next two to five years. These other undertakings, and additionally any new entrants with the capacity that will be brought by them will be sufficient to offset any attempt by SNAM, the JV and ENI to coordinate with the aim of increasing tariffs, reducing capacities or reducing innovation.

#### 5.3.4. *Conclusion on horizontal coordinated effects*

(147) In light of the above considerations, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to horizontal coordinated effects in the market for gas import infrastructure in Italy.

### 5.4. Non-horizontal effects

(148) First, gas import infrastructures need to be interconnected to the national gas transmission system, which requires the construction of an interconnection point in the gas transmission network, which is carried out by the operator of the gas transmission system. Subsequently, operators of gas import infrastructures require access to the transmission system on a rolling basis. Therefore, the Transaction will, from the perspective of operators of gas import infrastructures and the operator of gas transmission networks, bring about a vertical relationship in Italy between the upstream market for infrastructure for gas imports (and its possible sub-segment for international gas pipelines), where SNAM and ENI are both active and the JV will be active, and the downstream market for gas transmission, where SNAM has a natural monopoly.

(149) Furthermore, customers of international pipelines (i.e. gas shippers), once their gas loads have reached the Italian transmission network, need transmission services to deliver the commodity to their customers. Since customers sequentially buy the services of gas import infrastructures and the services of gas transmission networks, those are considered neighbouring markets. Therefore, the Transaction will, from the perspective of gas shippers, bring about a conglomerate relationship in Italy between the market for infrastructure for gas imports (and its possible sub-segment for international gas pipelines), where SNAM and ENI are both active and the JV will be active, and the market for gas transmission in Italy, where SNAM has a natural monopoly.

#### 5.4.1. *Analytical framework*

(150) The legal test for the assessment of non-horizontal effects of a merger is set out in the Merger Regulation and the Commission's Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ('Non-horizontal Merger Guidelines').[106]

(151) Non-horizontal effects can be distinguished between vertical and conglomerate effects.[107]

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106 OJ C 265, 18.10.2008, p. 6.

107 Non-horizontal Merger Guidelines, Sections IV. and V.

(152) According to the Non-horizontal Merger Guidelines, foreclosure effects in a vertical scenario may occur where actual or potential rivals' access to supplies (i.e. input foreclosure) or markets (i.e. customer foreclosure) is hampered or eliminated as a result of the merger, thereby reducing these companies' ability and/or incentive to compete.[108]

(153) In assessing the likelihood of an anticompetitive input foreclosure scenario, the Commission examines, whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs, whether it would have the incentive to do so, and whether a foreclosure strategy would have a significant detrimental effect on competition downstream.[109] Those conditions are cumulative.[110]

(154) Similarly, in assessing the likelihood of an anticompetitive customer foreclosure scenario, the Commission examines whether the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals, whether it would have the incentive to reduce its purchases upstream, and whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.[111] Those conditions are cumulative.[112]

(155) Foreclosure effects may also occur in a conglomerate scenario, where the combination of products in related markets may confer on the merged entity the ability and incentive to leverage a strong market position from one market to another by means of tying or bundling or other exclusionary practices, thereby foreclosing its rivals in any of those markets.[113]

(156) In assessing the likelihood of an anticompetitive rival foreclosure scenario in relation to conglomerate effects, the Commission examines, first, whether the merged entity would have, post-merger, the ability to foreclose its rivals, second, whether it would have the economic incentive to do so, and third, whether a foreclosure strategy would have a significant detrimental effect on competition.[114]

### 5.4.2. *The Notifying Parties' view*

(157) The Notifying Parties submit that there is no risk of foreclosure as a result of this Transaction because, apart from the period of the construction of a new entry point in the national gas transmission system, in order to connect a new import infrastructure, the operator of the import infrastructure is not a customer of SNAM in its capacity as the Italian TSO. The Notifying Parties further submit that access to the Italian gas transmission network is strictly regulated, which eliminates the risk of discrimination and foreclosure.[115]

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108 Non-horizontal Merger Guidelines, paragraph 18.
109 Non-horizontal Merger Guidelines, paragraph 32.
110 See Judgement of the General Court in case T-370/17 – KPN v Commission, paragraph 119.
111 Non-horizontal Merger Guidelines, paragraph 59.
112 See Judgement of the General Court in case T-370/17 – KPN v Commission, paragraph 119.
113 Non-horizontal Merger Guidelines, paragraph 93.
114 Non-horizontal Merger Guidelines, paragraph 94.
115 Form CO, paragraphs 504 *et seq*.

### 5.4.3. *The Commission's assessment*

(158) The Commission notes that the vertical effects in the affected markets are not adequately represented through the classic schemes of input and customer foreclosure in the Commission's Guidelines on Non-Horizontal Mergers[116] because SNAM as the operator of the gas transmission system in the downstream market is in fact not a customer of the gas import infrastructure in the upstream market, and neither are operators of gas import infrastructures suppliers of a service to SNAM as the operator of the gas transmission system. Rather, it is the gas shipper who is the customer of both the gas import infrastructure and the gas transmission system, who are in turn each supplies shippers with their respective service. Therefore, (i) operators of gas import infrastructure cannot conceivably foreclose inputs for a gas transmission system operator (as in the case of Italy all gas import infrastructure is connected to the transmission system of SNAM) and (ii) SNAM could not foreclose operators of gas import infrastructure, by not purchasing their services.

(159) The Commission has instead identified two possible scenarios by which the Transaction could bring about a significant impediment to effective competition:

a) SNAM could restrict access to the Italian gas transmission system by competing gas import infrastructure providers in the upstream, in order to favour its own import infrastructures; alternatively, SNAM could increase prices or degrade quality at the interconnection points of competing gas import infrastructure with the Italian gas transmission network, in order to favour its own gas import infrastructure.

b) SNAM could strategically limit investments in the Italian gas transmission system, in order to limit the interconnection of new competing gas import infrastructures, and thus limit competition to its own gas import infrastructure.

(160) The Commission has further identified one relevant conglomerate scenario, that give rise to a significant impediment to effective competition:

a) Vis-à-vis gas shippers, SNAM could make access to the Italian gas transmission network conditional upon importing gas through its own import infrastructure, so as to foreclose its rivals on the market for gas import infrastructure.

(161) The Commission does not consider the aforementioned vertical and conglomerate theories of harm as plausible, for the reasons set out below.

A. Vertical effects

a. SNAM could hypothetically increase transmission tariffs, restrict access or degrade quality at the various entry points of the Italian transmission system, to which competing gas import infrastructures are connected.

(162) Gas transmission is subject to national legislation[117] monitored by ARERA in order to guarantee all users of the network the freedom of access on equal terms to the

116 See Guidelines on Non-Horizontal Mergers, paragraphs 31 et seq,: 58 et seq.
117 Letta Decree (Legislative Decree No. 164/2000).

transmission network, as well as impartiality and neutrality of the respective service.

(163) In communications held with the Commission, ARERA expressed its confidence in the effective implementation of such legislation. With regard to the transmission tariffs applied by SNAM as the TSO of the Italian transmission network, ARERA submitted that *"[t]here is a European Regulation - Commission Regulation (EU) 2017/460 of 16 March 2017 - containing the principles for setting the tariff to access the system, including possible specific algorithms to be applied by regulatory authorities. The tariffs being fully regulated, there is no possibility for SNAM to exercise any kind of market power that impacts on the price for gas transmission. In a given point, the tariff is the same for any user."* [118] Likewise, the clear majority of all respondents in the market investigation submitted that sectoral regulation for gas transmission is effective to prevent SNAM from exercising market power on the downstream gas transmission market.[119] More precisely, the clear majority of both customers and competitors replied that they did not consider it likely that SNAM would post-Transaction increase the entry tariffs at the entry points of competing gas import infrastructure, since SNAM would be constrained by sectoral regulation.[120] One competitor noted that "(…) *the regulations and the controls currently in force would prevent SNAM to implement such measures*".[121]

(164) Likewise, ARERA was clear in that SNAM has no possibility to influence the allocation of capacity in the Italian gas transmission system, so as to favour one import infrastructure over the other: *"All the European TSOs participate in the PRISMA platform, which means that the allocation of capacity is made by the central platform, not directly by SNAM. SNAM does not allocate nor influence the entry-exit capacity allocation. There is no way for SNAM to allocate more capacity to an entry point owned by itself compared to an entry point owned by a competitor. Preferential allocation is not possible as it is a market-based system".*[122] This was also confirmed by the clear majority of both customers and competitors, who submitted that SNAM will post-Transaction not likely reduce the capacity at the entry points of competing gas import infrastructure.[123] One customer noted in this regard "*[w]e don't see any reason for SNAM to reduce Italian entry capacity and consider the Italian regulation to be effective in preventing SNAM from exercising market power with respect to availability of existing technical/commercial transmission capacities*".[124] TAP, an operator of a competing gas import infrastructure noted in the same manner that *"the regulatory framework, including ARERA's supervision powers, safeguards shippers - who wish to benefit from TAP's transmission activities in the Italian network – from any potential discriminatory behaviour".*[125]

(165) Lastly, SNAM will not have the ability to degrade the quality of services at the entry points of competing gas import infrastructure. In fact, investments into the

118 See Minutes of the call between DG COMP and ARERA, 23.05.2022.

119 See replies to question 34, Questionnaire 1 to customers; question 32, Questionnaire 2 to competitors.

120 See replies to question 35, Questionnaire 1 to customers; question 33, Questionnaire 2 to competitors.

121 See replies to question 35.1, Questionnaire 1 to customers.

122 See Minutes of the call between DG COMP and ARERA, 23.05.2022.

123 See replies to question 37, Questionnaire 1 to customers; question 35, Questionnaire 2 to competitors.

124 See replies to question 37.1, Questionnaire 1 to customers.

125 See Minutes of the call between DG COMP and TAP, 24.05.2022.

gas transmission network are set out by the Ten Year Development Plan ('TYDP'), which is developed by SNAM and updated each year based on a regulated procedure. In particular, each year SNAM submits an updated TYDP to public consultation, where stakeholders, including SNAM's competitors, may provide their feedback on the investment proposals. After assessing the outcome of the consultation, SNAM submits the TYDP to ARERA for approval. ARERA, taking into consideration the results of the public consultation, may require modifications to the TYDP, particularly in relation to the inclusion or removal of proposed investments.[126] As ARERA confirmed, *"[i]n this procedure, it is very difficult for SNAM to exert influence, as all the stakeholders are participating. Furthermore, ARERA has the power to intervene to recalibrate an investment but ARERA has never done this."*[127] The clear majority of both customers and competitors again responded that they considered it unlikely that SNAM would post-Transaction degrade quality at the entry points of competing infrastructure.[128] One customer noted that *"[w]e don't see any reason for SNAM to reduce service quality at Italian entry points and consider the Italian regulation to be effective in preventing SNAM from exercising market power with respect to service quality of existing gas transmission capacities".*[129]

(166) The Commission therefore considers that SNAM would have no ability to restrict the provision of gas transmission services to upstream gas import infrastructure providers by any means.

(167) Absent the ability to foreclose competing import infrastructures from access to the Italian gas transmission network, it is not necessary to assess whether SNAM would have had the incentives to do so. However, the Commission notes that SNAM is already pre-Transaction vertically integrated as it is active in the market for gas import infrastructure in the upstream, where it currently has a market share ranging from [30-40]% - [40-50]% depending on the market delineation, and in the operation of the Italian gas transmission network in the downstream, where it has the natural monopoly. The Commission therefore considers that the addition of the operation of the Transmediterranean Pipeline into SNAM's activities will not change the incentives of SNAM to engage into a foreclosure strategy against its competitors in the market for gas import infrastructure.

(168) In fact, as discussed in (87), even in case such a strategy would lead to an increased utilisation of the Transmediterranean Pipeline, SNAM would not make additional profits from it, […].

(169) With regard to the other gas import infrastructure currently controlled by SNAM, the vertical relationship is pre-existing and SNAM's incentives will not change from the Transaction. In any case, given the fact that such infrastructures are subject to allowed revenues,[130] a foreclosure strategy by SNAM aiming to increase the utilisation of such infrastructures would not translate into increased revenues for SNAM.

126 Form CO, paragraph 523.
127 See Minutes of the call between DG COMP and ARERA, 23.05.2022.
128 See replies to question 39, Questionnaire 1 to customers; question 37, Questionnaire 2 to competitors
129 See replies to question 39.1, Questionnaire 1 to customers.
130 *Supra*, (75)

b. *SNAM could strategically limit investments in the Italian gas transmission system to limit interconnection of new competing gas import infrastructures and thus limit competition to its own gas import infrastructure.*

(170) The Commission also considers this scenario not plausible, because SNAM has no discretion on whether to undertake or reject investments in the Italian gas transmission network with respect to interconnection of competing projects.[131] As explained in (165) such investments are undertaken under the TYDP, which SNAM has to develop on the basis of a transparent and regulated procedure, taking into account the public consultation with stakeholders, while ARERA has the power to require modifications to the TYDP.

(171) As submitted by ARERA, *"[t]he so-called 'Ten-Year Network Development Plan' is planned by the TSO and takes into account the need of transmission capacity in the future. Commission Regulation (EU) 2017/459 of 16 March 2017 sets up a specific procedure ("Incremental capacity process") for creating new or additional capacity at an entry or exit point, divided into a binding phase and a non-binding phase, where market participants express their interest for entry capacity. Only in case of sufficient capacity demand, the permission for a new entry point will be granted by the authorities. In this procedure, it is very difficult for SNAM to exert influence, as all the stakeholders are participating. Furthermore, ARERA has the power to intervene to recalibrate an investment but ARERA has never done this."*[132]

(172) Moreover, a majority of customers and a clear majority of competitors submitted that SNAM would post-Transaction not likely limit investments on the transmission system, in order to refuse the interconnection of new, competing infrastructures.[133]

(173) The Commission therefore considers that SNAM does not have the ability to strategically limit investments in the transmission network so as to prevent new, competing infrastructures from being connected to the network.

(174) Absent the ability, there is no need for the Commission to assess the incentives of SNAM to engage in a strategy whereby it would limit investments into the Italian gas transmission network, in order to prevent new, competing infrastructures from being connected to the network. However, as explained in (167), the Commission does nonetheless not consider that the Transaction would change SNAM's incentives in this regard. This is because SNAM is already pre-Transaction vertically integrated with significant market shares in both markets for gas import infrastructure in the upstream, while SNAM would not benefit from an increased utilisation of either the Transmediterranean Pipeline or its currently controlled gas import infrastructures, as explained in (167).

B. Conglomerate effects

(175) As mentioned in (149), in order to transport gas from a specific source into Italy, gas shippers need to sequentially book capacity at both the import infrastructure

131 Form CO, paragraph 520.

132 See Minutes of the call between DG COMP and ARERA, 23.05.2022.

133 See replies to question 41, Questionnaire 1 to customers; question 39, Questionnaire 2 to competitors

and the Italian gas transmission network. SNAM could therefore in theory make access to the gas transmission network conditional on using its own infrastructure for the import of the gas into Italy.

(176) For the same reasons discussed in (162) *et seq.*, SNAM will not have the ability to limit access to the Italian gas transmission system to any user and in any way. It follows that SNAM will also not have the ability to make access to the gas transmission system conditional on using a specific gas import infrastructure, as this would amount to a limitation of access to the transmissions system. As explained in (162) *et seq*., both ARERA and the respondents to the Commission's market investigation confirmed that the sectoral regulation is effective in preventing SNAM from limiting access to the Italian gas transmission system. The Commission therefore considers that SNAM lacks the ability to make access to the Italian gas transmission network conditional on using its own gas import infrastructure.

(177) Absent the ability of SNAM to make access to the Italian transmission network conditional upon using its own infrastructure for the import of gas, the Commission does not have to assess SNAM's incentives. However, similarly with (167), the Commission does nonetheless not consider that the Transaction would change SNAM's incentives in this regard. This is because SNAM is already pre-Transaction active, with significant market shares, in both neighbouring markets for gas import infrastructure in the upstream, while SNAM would not benefit from an increased utilization of either the Transmediterranean Pipeline or its currently controlled gas import infrastructures, as explained in (167).

#### *5.4.4. Conclusion on non-horizontal effects*

(178) In light of the above considerations, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to non-horizontal effects in the markets for gas import infrastructure in the upstream (where SNAM, ENI and the JV are active) and gas transmission in the downstream.

## 6. CONCLUSION

(179) 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*
*Executive Vice-President*