



EUROPEAN COMMISSION  
DG Competition

***Case M.10941 - ENI / SONATRACH /  
EQUINOR / IN SALAH 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: 02/12/2022

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EUROPEAN COMMISSION

Brussels, 2.12.2022  
C(2022) 9138 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Eni Algeria Exploration B.V.  
Strawinskylaan 1725  
1077 XX Amsterdam  
The Netherlands

**Subject: Case M.10941 – ENI / SONATRACH / EQUINOR / IN SALAH JV  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup> and Article 57 of the Agreement on the European Economic  
Area<sup>2</sup>**

Dear Sir or Madam,

- (1) On 26 October 2022, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Eni Algeria Exploration B.V, a wholly-owned subsidiary of the Eni Group (“Eni”), will acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control of the In Salah gas production field in the Algerian territory, the company In Salah Gas Limited and the company In Salah Gas (Services) Limited (together, the “In Salah JV” or the “JV”, Algeria), together with Société Nationale pour la Recherche, la Production, le Transport, la Transformation, et la Commercialisation des Hydrocarbures s.p.a. (“Sonatrach”, Algeria) and Equinor ASA (“Equinor”,

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<sup>1</sup> 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.

<sup>2</sup> OJ L 1, 3.1.1994, p. 3 (the ‘EEA Agreement’).

Norway) by way of a purchase of shares (the “Transaction”)<sup>3</sup>. Eni is designated hereinafter as the ‘Notifying Party’ and, together with Sonatrach, Equinor and the JV as ‘Parties’ to the proposed Transaction.

## **1. THE PARTIES**

- (2) Eni is a global oil and gas group, active in the exploration, production, refining and sale of oil and natural gas, as well as the generation and supply of electricity Eni is headquartered in Rome and listed on the Borsa Italiana and the New York Stock Exchange.
- (3) Sonatrach is the national state-owned oil and gas company of Algeria and is active throughout the hydrocarbons value chain.
- (4) Equinor is the national state-owned oil and gas company of Norway and is active throughout the hydrocarbons value chain, as well as in other forms of energy, including renewable energy.
- (5) In Salah JV is a full-function joint venture, which is currently jointly controlled by British Petroleum p.l.c. (‘BP’ or ‘the Seller’, UK), Sonatrach and Equinor and is active in the exploration, development, production and upstream wholesale supply of natural gas in Algeria and the EEA, including Italy.
- (6) The In Salah JV consists in particular of
  - (a) the gas production field of In Salah in the Algerian territory, which is operated by the Joint Operating Body (“JOB”) . The JOB is a body without legal personality, composed of managers appointed by the stakeholders of the gas production concession awarded by the Algerian State with regard to the In Salah production field (currently BP, Equinor and Sonatrach);
  - (b) In Salah Gas Limited (“ISGL”), a company which sells natural gas produced in the In Salah gas field on the upstream gas wholesale market at the Algerian border for delivery in the EEA;
  - (c) In Salah Gas Services Limited (“ISGSL”), a company providing gas promotion and sales to ISGL under a service contract.

## **2. THE TRANSACTION**

- (7) The Transaction concerns the acquisition by Eni of BP’s controlling interest in the In Salah JV. The In Salah JV was created in 1996 as a joint venture, jointly controlled by Sonatrach (50%) and BP (50%).<sup>4</sup> Equinor entered as a new shareholder in the In Salah JV in 2004, and since then, the In Salah JV has been controlled jointly by Sonatrach, BP and Equinor.<sup>5</sup>

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<sup>3</sup> Publication in the Official Journal of the European Union No C 425, 8.11.2022, p. 4.

<sup>4</sup> The creation of the joint venture was notified to the Commission and the nature of joint control of In Salah JV by Sonatrach and BP was confirmed in the Commission decision of 12 February 1996 in case M.672 – BP/Sonatrach.

<sup>5</sup> The entry of Equinor in the In Salah JV with joint control was assessed by the Commission in the Commission decision of 19 December 2003 in case M.3230 – Statoil / BP / Sonatrach / In Salah.

- (8) On 6 September 2022 Eni and BP signed a sale and purchase agreement, pursuant to which Eni will acquire from BP:
- (a) A share of 33.15% in the rights of the gas production concession. The remaining percentage is held by Equinor (31.85%) and Sonatrach (35%);
  - (b) A 25.50% share in ISGL. The remaining percentage is held by Equinor (24.50%) and Sonatrach (50%); and
  - (c) A 25.50% share in ISGSL. The remaining percentage is held by Equinor (24.50%) and Sonatrach (50%).

***In Salah JV will be jointly controlled by Eni, Sonatrach and Equinor***

- (9) As mentioned in paragraph (7) above, the In Salah JV was created in 1996 as a joint venture, jointly controlled by Sonatrach (50%) and BP (50%). The creation of the In Salah JV was cleared by the Commission.<sup>6</sup>
- (10) Sonatrach and BP were found to have joint control over the In Salah JV on the basis of their equal representation in the In Salah JV's managing bodies. In particular, the managing bodies of the In Salah JV were (and still are) the below:
- (a) the JOB, consisting of four managers;
  - (b) the board of directors of ISGL, consisting of two directors; and
  - (c) the board of directors of ISGSL, consisting of two directors.
- (11) BP and Sonatrach were equally represented in the JOB, each appointing two out of four managers, as well as on the board of directors of ISGL and ISGSL, where each of BP and Sonatrach appointed one director. Unanimity was required for all decisions of the joint venture in all managing bodies, and there was no casting vote in favour of any of the co-controlling shareholders. Accordingly, the In Salah JV was found by the Commission to be jointly controlled by Sonatrach and BP.<sup>7</sup>
- (12) In 2004, when Equinor entered as a new shareholder of the In Salah JV by acquiring 49% of BP's controlling stake, BP and Equinor entered into a Joint Operating Agreement, which governed the relationship between themselves and vis-à-vis Sonatrach, as shareholders of ISGL and ISGSL, and as joint operators of the In Salah gas field on the basis of the gas production concession.
- (13) Pursuant to the Joint Operating Agreement, BP and Equinor each appoint one manager to the JOB, while the remaining two managers are appointed by Sonatrach. In addition, BP and Equinor jointly exercise (on a rotatory basis) the right to appoint one out of the two directors in each of ISGL's and ISGSL's board of directors, the remaining director being appointed by Sonatrach. Since decisions in both the JOB, as well as the board of directors of ISGL and ISGSL require unanimity, the In Salah JV was found by the Commission to be jointly controlled by Sonatrach, BP and Equinor.<sup>8</sup>

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<sup>6</sup> *Supra*, footnote 4.

<sup>7</sup> M.672 – BP/Sonatrach, paragraph 9.

<sup>8</sup> *Supra*, footnote 5.

- (14) Upon completion of the Transaction, Eni will succeed BP as shareholder in the In Salah JV, having the right to:
- (a) appoint one out of four managers to the JOB. Sonatrach will continue to appoint two managers, while Equinor will continue to appoint one manager;
  - (b) jointly appoint with Equinor, on a rotatory basis, one out of two directors in the board of directors of each of ISGL and ISGSL. The remaining director in the board of both ISGL and ISGSL will continue to be appointed by Sonatrach.
- (15) Since all decisions in the In Salah JV's managing bodies require unanimity, Eni will have a veto power and therefore be in a position to exercise decisive influence on the In Salah JV. It follows that Eni will acquire joint control over In Salah JV.

***The In Salah JV is a full-function joint venture***

- (16) As also documented by the Commission's previous decisions,<sup>9</sup> pre-Transaction the In Salah JV already performs, and will continue to perform on a lasting basis all the functions of an autonomous undertaking operating on the market for the exploration, development, production and upstream wholesale supply of natural gas. In particular, the In Salah JV will have sufficient resources to operate independently on a market since it:
- (a) has sufficient assets and financial resources to operate independently on the market. In particular, the In Salah JV operates its own gas field on the Algerian territory and autonomously carries out the activities of prospecting, appraisal, exploitation and transport of gas to the Algerian border. The In Salah JV further has its own dedicated marketing company, namely ISGL, which sells the gas produced by the JV. ISGL is further assisted by the promotion and sales services provided by ISGSL;
  - (b) sells the entirety of its gas output to the merchant market: it currently has gas supply contracts in place exclusively with third-party customers, namely [...].
  - (c) has its own dedicated management and employees.
  - (d) has been operating on the market since 1996, and is intended to continue doing so on a long-lasting basis.
- (17) The above will not change as a result of the Transaction. In Salah JV will therefore continue to be a full-function joint venture.

**3. UNION DIMENSION**

- (18) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Eni: EUR [...]; Sonatrach: [...]<sup>10</sup>; Equinor: EUR

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<sup>9</sup> See footnotes 4 and 5 above.

<sup>10</sup> [...]. With regard to Sonatrach's economic activities, it is noted that gas volumes supplied from Algeria to Italy and the EEA are publicly available. For the purposes of this assessment, the Commission will on a conservative basis allocate all exports from Algeria to Sonatrach, apart from the volumes allocated to the In Salah JV.

[...]; In Salah JV: EUR [...])<sup>11</sup>. Eni, Equinor and the In Salah JV have a Union-wide turnover in excess of EUR 250 million (Eni: EUR [...]; Equinor: EUR [...] billion; In Salah JV: EUR [...]), 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.

#### **4. RELEVANT MARKETS**

##### **4.1. Introduction**

- (19) As will be explained in more detail below, in the past, the Commission has distinguished between the following markets with respect to natural gas: (i) the exploration of crude oil and natural gas, (ii) the development, production and upstream wholesale supply of natural gas, (iii) the downstream wholesale supply of gas, (iv) gas transmission (via high pressure systems), (v) gas distribution (via low pressure systems), (vi) gas storage, (vii) gas trading, (viii) gas supply to end customers and (ix) the market for infrastructure operations for gas imports ('gas import infrastructure').
- (20) Eni, Sonatrach, Equinor and In Salah JV are all active in the market for the exploration of crude oil and natural gas, albeit with different geographic footprints. The In Salah JV conducts exploration only in its own gas field in Algeria, while Eni is active worldwide, including in the EEA and Italy. Equinor conducts exploration mainly in Northern Europe and Sonatrach focuses mostly on the Mediterranean.
- (21) Eni, Sonatrach, Equinor and In Salah JV are also active in the development, production and upstream wholesale supply of natural gas in the EEA. In this market, upstream producers and exporters sell large volumes of gas to downstream wholesalers/importers.
- (22) Eni is further active in the market for downstream wholesale supply of natural gas in Italy. In this market, wholesalers importing gas from producers/exporters operate and in turn sell the gas to other wholesalers/distributors and directly to large end-customers.
- (23) Eni is also active on the market for gas import infrastructure. The infrastructure for gas transport is an infrastructure that enables the natural gas to be imported from other production areas into a given area or a given transmission network. Eni jointly controls the Greenstream pipeline, which connects the Libyan gas network to the Italian gas network, as well as the Transmediterranean pipeline, which connects the Algerian gas network to the Italian gas network, together with Sonatrach and SNAM, the Italian gas transmission system operator.

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<sup>11</sup> Turnover calculated in accordance with Article 5 of the Merger Regulation.

## 4.2. Product market definition

### 4.2.1. *Exploration of crude oil and natural gas*

- (24) Based on the Commission's past decisional practice, exploration of crude oil and natural gas constitutes a distinct product market, comprising the activity of finding new hydrocarbons or crude oil and natural gas reserves. The Commission has previously not distinguished between the exploration of crude oil and the exploration of natural gas since the contents of underground reservoirs cannot be known at the exploration stage.<sup>12</sup>
- (25) The Notifying Party agrees with the view on market definition taken by the Commission.
- (26) The results of the market investigation did not provide reasons for the Commission to depart from the findings in its past decisions. For the purposes of this decision, and in line with its findings in previous cases, the Commission will consider a market for the exploration of crude oil and natural gas, without further distinguishing between crude oil and natural gas.

### 4.2.2. *Development, production and upstream wholesale supply of natural gas*

- (27) In its decisional practice, the Commission has generally considered a separate market for the development, production and upstream wholesale supply of natural gas where large upstream producers and exporters tend to sell large volumes of gas to downstream wholesalers/importers.<sup>13</sup> The Commission has also considered whether this market should encompass the upstream wholesale supply of liquefied natural gas ("LNG"), but ultimately left this question open.<sup>14</sup>
- (28) The Notifying Party submits that, as a result of the current geopolitical events, LNG has become a perfect substitute for natural gas via pipeline both in the EEA and Italy, and should therefore be considered as part of the overall market for upstream wholesale supplies of natural gas.<sup>15</sup>
- (29) In defining whether two products belong to the same relevant product market, the Commission will typically assess whether there is demand and supply substitution for the products in question.<sup>16</sup> The assessment of demand substitution entails a determination of the range of products, which are viewed as substitutes by the consumer.<sup>17</sup> Supply substitution may be taken into account in situations where its

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<sup>12</sup> M.9175 – *Total/Chevron Denmark*, para. 19; Case M.6910 – *Gazprom / Wintershall / Target Companies*, para. 46; M.8773 – *Letterone Holdings/BASF/Wintershall DEA*, para. 16 ; M.3086 – *Gaz de France/Preussag Energie*, para. 9.

<sup>13</sup> Commission decision of 7 March 2019 in case M.9175 – *Total/Chevron Denmark*, para. 19; Commission decision of 16 April 2014 in case M.6910 – *Gazprom / Wintershall / Target Companies*, para. 46.

<sup>14</sup> Commission decision of 28 June 2012 in case M.6477 – *BP/ CHEVRON/ ENI/ SONANGOL/ TOTAL/ JV (2012)*, paras. 15-17; Commission decision of 3 May 2007 in case M.4545 - *Statoil / Hydro*, paras 11-12.

<sup>15</sup> Form CO, paragraphs 195, 197-198.

<sup>16</sup> See Commission Notice on the definition of relevant market for the purposes of Community competition law ('the Market Definition Notice'), paragraph 13.

<sup>17</sup> See Market Definition Notice, paragraph 15.

effects are equivalent to those of demand substitution, namely when suppliers are able to switch production to the relevant products and market them in the short term without incurring significant additional costs.<sup>18</sup>

- (30) The results of the market investigation confirm the Commission’s practice to consider a separate market for the development, production and upstream wholesale supply of natural gas. The clear majority of operators in the upstream and downstream wholesale supply of natural gas confirmed that such a distinction is appropriate.<sup>19</sup> As one respondent notes in this regard, “*[i]n Italy the supply and import of natural gas is a distinct activity [from] the resale of the commodity to final users. Consequently, the distinction between upstream wholesale and downstream wholesale is still valid*”.<sup>20</sup>
- (31) With regard to whether the market should encompass both natural gas in gaseous form and LNG, the results of the market investigation were mixed.<sup>21</sup>
- (32) Considering demand substitution, while the majority of customers on the upstream wholesale market source both natural gas and LNG,<sup>22</sup> many view the two products as complementary rather than substitutable.<sup>23</sup> This is mainly because of the differences in the supply structure, the import infrastructure involved and logistics between the procurement of gas in gaseous form and LNG. As one respondent submits, “*LNG can be sourced from a wider geographical area and the amount for each transaction is large (0.1 bcm). Natural gas [in gaseous form] can be sourced from specific geographical locations and can be purchased in smaller batches*”.<sup>24</sup>
- (33) With regard to supply substitution, suppliers of natural gas in gaseous form and LNG are usually not the same parties.<sup>25</sup> As explained by a respondent “*[t]he supply of natural gas depends [on] the transport infrastructures available [in] the country of origin. Consequently, it might be the case that some countries are equipped with both export pipelines and LNG facilities meanwhile others with just one of the two (ie. Azerbaijan)*”.<sup>26</sup> In this same regard, another respondent notes “*[d]epending on the geographical source of the gas and the type of supplier, upstream suppliers usually specialize in the supply of either LNG or Natural Gas [in gaseous form]*”.<sup>27</sup>
- (34) In any case, the question of whether the market for the development, production and upstream wholesale supply of natural gas should encompass both natural gas in gaseous form and LNG can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market, irrespective of the precise market delineation. The Commission’s assessment does not change depending on whether LNG is considered part of the market, as the Parties’ market shares do not differ materially between the two alternative market delineations. This is shown in the Commission’s prospective analysis of the likely future developments on this

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<sup>18</sup> See Market Definition Notice, paragraph 20.

<sup>19</sup> See responses to question 4, eQ1 to competitors.

<sup>20</sup> See responses to question 4.1, eQ1 to competitors.

<sup>21</sup> See responses to question 6, eQ1 to competitors.

<sup>22</sup> See responses to question 7, eQ1 to competitors.

<sup>23</sup> See responses to question 6.1, eQ1 to competitors.

<sup>24</sup> *Ibid.*

<sup>25</sup> See responses to question 8, eQ1 to competitors.

<sup>26</sup> See responses to question 8.1, eQ1 to competitors.

<sup>27</sup> *Ibid.*



market, with the replacement of Russian gas supplies by alternative sources, including LNG, in paragraphs (72) *et seq.* below.

- (35) As the In Salah JV is not active in the supply of LNG, and the supplies of Eni, Sonatrach and Equinor into Italy (where, as will be explained below, the Commission focuses its analysis) are primarily in gaseous form, the Commission will analyse the effects of the Transaction under the most conservative approach, focusing its assessment on production and upstream wholesale supply of natural gas in gaseous form only.

#### 4.2.3. *Downstream wholesale supply of natural gas*

- (36) The Commission has previously found that the downstream wholesale supply of gas is a distinct product market. On this market importers/wholesalers, which procure natural gas from major producers, sell gas volumes to other resellers/distributors (wholesale supply), which in turn supply end-customers (retail supply), and may also sell directly to large end-customers.<sup>28</sup>
- (37) The Commission has further considered, and has ultimately left the question open in its decisional practice, whether gas trading on hubs should be included in the market for the downstream wholesale supply of natural gas. A gas hub is an instrument, which facilitates exchanges of gas amongst market players in order to allow buyers and sellers to find sufficient volume for supply or demand exceeding the capacities in the short term. At gas hubs, gas producers, downstream gas wholesalers and retailers as well as certain industrial customers can both physically as well as financially trade gas.<sup>29</sup> The hub can be either physical in nature or a virtual trading point.<sup>30</sup>
- (38) The Notifying Party submits that the downstream gas wholesale model in Italy offers traders two ways to buy and sell gas, namely either through over-the-counter, bilateral contracts with delivery at the Punto di Scambio Virtuale (PSV) or through transactions on the regulated exchange managed by the Gestore dei Mercati Energetici (GME).<sup>31</sup> In bilateral, over the counter sales, trading partners are generally in direct contact with each other or make use of a broker, and agreements on trading volumes and pricing are reached individually and bilaterally among the parties. Sales on regulated exchanges are, by contrast, cleared and settled by a central counterparty, usually an exchange platform, and subject to standard contracts for standard volumes.<sup>32</sup> According to the Notifying Party, the market for the downstream wholesale supply of gas in Italy should encompass both

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<sup>28</sup> Commission decision of 7 March 2019 in case M.9175 – Total/Chevron Denmark, paras. 33-34; Commission decision of 10 March 2017 in case Case M.7936 – Petrolin/Geoplin, para. 17; Commission decision of 16 April 2014 in case M.6910 – Gazprom / Wintershall / Target Companies, paras. 20-28.

<sup>29</sup> Commission, decision of 3 December 2013, COMP/M.6910 – Gazprom / Wintershall / Target companies, para. 28

<sup>30</sup> Commission, decision of 23 June 2009, COMP/M.5467 – RWE / Essent, para. 117; Commission, decision of 14 November 2006, COMP/M.4180 – GDF / Suez, paras. 70 *et seq.*

<sup>31</sup> Form CO, paragraph 205.

<sup>32</sup> Form CO, paragraph 204.

contracts with delivery point at the PSV, and transactions on the regulated exchange managed by GME.<sup>33</sup>

- (39) The results of the market investigation confirm that the Commission’s decision practice is still relevant. A clear majority of respondents submit that the Commission’s practice of considering a separate market for the downstream wholesale supply of gas is appropriate.<sup>34</sup> As one respondent explains, “[t]he downstream wholesale market indeed covers the activities of reselling the gas at either the downstream wholesale level or the retail level”.<sup>35</sup>
- (40) The Commission further investigated whether it would be relevant to draw a distinction between whether the gas traded in the downstream wholesale market originated from LNG or natural gas in gaseous form. The market investigation clarified that such a distinction is not relevant for the downstream wholesale supply of natural gas.<sup>36</sup> One respondent explains in this regard “once the gas is on the Italian network, there is no difference between gas originating from gas in gaseous form or LNG”,<sup>37</sup> while another respondent explains that there are no differences in pricing, as “[o]nce the gas entered into the Italian transmission grid, the reference price is the PSV”.<sup>38</sup>
- (41) Lastly, the majority of all respondents submit that in Italy, the market for the downstream wholesale supply of gas consists of both bilateral transactions over the counter with delivery point at the PSV, and trading on the regulated exchange platform managed by GME.<sup>39</sup> The majority of both suppliers and purchasers in the Italian downstream wholesale supply market submit that they engage in both types of transactions.<sup>40</sup> In any case, the question whether bilateral transactions over the counter with delivery point at the PSV, and trading on the regulated exchange platform managed by GME belong to the same market can be left open, as Eni’s market shares would be close to identical under any alternative market delineation.<sup>41</sup>
- (42) The Commission will therefore conduct the assessment of the Transaction considering a market for the downstream wholesale supply of natural gas, without distinguishing further between (i) natural gas in gaseous form and natural gas that originated from LNG, and (ii) between bilateral, over the counter gas supply contracts with delivery point at the PSV and transactions on the regulated exchange managed by GME.

#### 4.2.4. Gas import infrastructure

- (43) In previous decisions, the Commission considered the question of whether the market for gas import infrastructure should be sub-segmented between

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<sup>33</sup> Form CO, paragraph 207.

<sup>34</sup> See responses to question 10, eQ1 to competitors; question 3, eQ2 to customers.

<sup>35</sup> See responses to question 10.1, eQ1 to competitors.

<sup>36</sup> See responses to question 11, eQ1 to competitors; question 4, eQ2 to customers.

<sup>37</sup> See responses to question 11.1, eQ1 to competitors.

<sup>38</sup> *Ibid.*

<sup>39</sup> See responses to question 12, eQ1 to competitors; question 6, eQ2 to customers.

<sup>40</sup> See responses to question 13, eQ1 to competitors; question 7, eQ2 to customers.

<sup>41</sup> See Form CO, Table: Downstream wholesale supply of natural gas in Italy in 2021 (broken down by OTC sales and sales on GME).

(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). In the most recent case relating to the Transmediterranean pipeline connecting the Italian transmission grid with the production fields in Algeria, the market investigation was inconclusive and the Commission left open whether international pipelines and regasification terminals belong to the same relevant product market.<sup>42</sup> The Commission further considered whether the Transmediterranean pipeline is a natural monopoly, since it is the only pipeline connecting the Italian transmission grid to the Algerian production fields.<sup>43</sup> However, the Commission eventually left this question open and conducted its analysis considering, on a precautionary basis, that the Transmediterranean pipeline belongs to the overall market for gas import infrastructure, while also considering the narrower potential market for international gas pipelines.<sup>44</sup>

- (44) The Notifying Party does not contest the Commission's previous findings.
- (45) The results of the market investigation do not provide reasons for the Commission to depart from the findings in its recent decisions. For the purposes of this decision and in line with its findings in its most recent case relating to the Transmediterranean pipeline, the Commission will conduct its assessment under the narrowest potential market definition, considering the Transmediterranean pipeline as a natural monopoly for the import of Algerian gas into Italy.<sup>45</sup>

### **4.3. Geographic market definition**

#### *4.3.1. Exploration of crude oil and natural gas*

- (46) In previous decisions, the Commission has defined the market for the exploration of crude oil and natural gas as worldwide in scope, because the companies engaged in exploration do not usually limit their activities to a specific geographic area.<sup>46</sup>
- (47) The Notifying Party agrees with the view on market definition taken by the Commission.
- (48) The results of the market investigation do not provide reasons for the Commission to depart from the findings in its past decisions. For the purposes of this decision and in line with its findings in previous cases, the Commission will consider a market for the exploration of crude oil and natural gas that is worldwide in scope.

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<sup>42</sup> Commission decision of 13 October 2022 in case M.10619 - SNAM / ENI / JV, paragraphs 34, 38.

<sup>43</sup> Commission decision of 13 October 2022 in case M.10619 - SNAM / ENI / JV, paragraphs 45 - 52.

<sup>44</sup> Commission decision of 13 October 2022 in case M.10619 - SNAM / ENI / JV, paragraphs 53.

<sup>45</sup> It is noted that in M.10619 the Commission considered as the most conservative approach a market delineation that would cover the Transmediterranean pipeline and the other gas import infrastructures connected to the Italian transmission grid. This is because, had the Transmediterranean pipeline been considered a natural monopoly, the transaction would not have given any horizontal or vertical overlap. In the present case, however, the most conservative approach is to consider the Transmediterranean pipeline as a natural monopoly, since it constitutes the only gas import infrastructure available to import the gas sold by the In Salah JV into Italy.

<sup>46</sup> M.8773 – *Letterone Holdings/BASF/Wintershall DEA*, para. 20.

#### 4.3.2. *Development, production and upstream wholesale supply of natural gas*

- (49) The Commission has previously found the market for upstream wholesale supplies of natural gas to potentially comprise the EEA, as well as at least imports from Algeria and Russia.<sup>47</sup> In some decisions concerning specific regional areas, the Commission has found that the market could be narrower in scope, i.e. either regional (i.e. encompassing several Member States) or national in scope, where there was limited interconnection infrastructure or a lack of available cross-border capacity.<sup>48</sup>
- (50) The Notifying Party submits that the geographic scope of the market should encompass the EEA, including exports from third countries into the EEA.<sup>49</sup>
- (51) The results of the market investigation indicate that, from a supply side, the geographic scope of the market for the development, production and upstream wholesale supply of natural gas is narrower than the EEA. In order to supply their gas, undertakings on this market depend on the available gas transport infrastructure, connecting their production fields with the downstream markets.<sup>50</sup> As a respondent explains, upstream gas wholesalers will supply their gas to the regions where there is the necessary infrastructure in place, to accommodate for the gas shipments: “[d]ue to the nature of pipelines which tend to be point-to-point, suppliers which rely on pipelines to provide gas in gaseous form supply to points where pipeline networks can deliver(...)”.<sup>51</sup> Gas production fields, however, are typically not connected through transport pipelines with each part of the EEA. Furthermore, the Commission received indications that limited interconnection infrastructure or lack of available cross-border capacity still exist within at least parts of the EEA, limiting flows of gas within the EEA.<sup>52</sup>
- (52) Since, as will be explained further below, the activities of both the In Salah JV and Eni on the market for the development, production and upstream wholesale supply of gas concern Italy, the Commission focused its market investigation on Italy.
- (53) With regard to the demand side, the majority of respondents in Italy who procure gas from the upstream wholesale market submit that they do so on an EEA-or-wider basis.<sup>53</sup> Regarding the countries outside the EEA, where the majority of respondents in Italy submits to source gas from, the most frequently mentioned are Algeria, Azerbaijan, Libya, Russia and for LNG, Qatar.<sup>54,55</sup>

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<sup>47</sup> Commission decision of 7 March 2019 in case M.9175 – Total/Chevron Denmark, para. 26; Commission decision of 19 December 2003 in case M.3230 – Statoil / BP / Sonatrach / In Salah JV, para. 12; Commission decision of 29 September 1999 in Case No IV/M.1383 - Exxon/Mobil, para. 18.

<sup>48</sup> Commission decision of 3 December 2013 in case M.6910 - Gazprom / Wintershall / Target Companies

<sup>49</sup> Form CO, paragraph 200.

<sup>50</sup> See responses to question 19.1, eQ1 to competitors.

<sup>51</sup> *Ibid.*

<sup>52</sup> See responses to question 21, eQ1 to competitors; question 8, eQ2 to customers.

<sup>53</sup> See responses to question 16, eQ1 to competitors.

<sup>54</sup> See responses to question 16.1, eQ1 to competitors.

<sup>55</sup> See responses to question 19.1, eQ1 to competitors.

- (54) As is evidenced by the origin of the composition of gas imported and consumed in Italy,<sup>56</sup> supplies of gas in gaseous form to Italy primarily originate outside the EEA, and in particular in Algeria, Azerbaijan, Libya, Russia, as well as within the EEA, primarily Norway. It follows that transport infrastructure is in place that enables upstream production and wholesale suppliers to sell gas from Algeria, Azerbaijan, Libya, Russia and Norway to the Italian gas network.
- (55) In light of the above, the Commission will conduct its analysis on the basis of a market that comprises upstream wholesale supplies of natural gas in gaseous form into Italy, including exports to Italy from Algeria, Azerbaijan, Libya and Russia.

#### 4.3.3. *Downstream wholesale supply of natural gas*

- (56) The Commission has defined the geographic market for the downstream wholesale supply of natural gas to be (at least) national in scope in most cases.<sup>57</sup> In some instances, the Commission has considered whether several gas hubs (located in different Member States) could be considered as part of the same geographic market, for reasons of price convergence, leaving however the question open.<sup>58</sup>
- (57) The Notifying Party submits that, because European gas hubs are increasingly interconnected, with a growing number of physical connections and bi-directional supply flows, there is increased liquidity and price convergence across the EEA and that, therefore, the geographic market is wider than national.<sup>59</sup>
- (58) Responses to the market investigation were not conclusory regarding a wider than national geographic market. Some actors on this market submit that they could acquire gas directly from downstream wholesale markets of adjacent countries (e.g. Austria, Switzerland) for their requirements in Italy.<sup>60</sup> However, the majority of all respondents who provided a definite answer submit that less than 15% of the gas that is traded on the Italian downstream wholesale market (i.e. through PSV and GME) is further exported, in order to cover demand outside Italy,<sup>61</sup> which suggests that gas flows across a region wider than national remain limited. Conversely, inasmuch, the results of the market investigation suggest that the market for downstream wholesale supply of gas with regard to Italy is at least national in scope.
- (59) In any case, the exact geographic scope of the market can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition. For the purposes of this decision, the Commission will conduct the assessment on the narrowest potential geographic scope, considering the market for downstream wholesale supply of natural gas in Italy to be national in scope.

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<sup>56</sup> See Form CO, Table: Development, production and upstream wholesale supply of natural gas in Italy in 2021 (National producers and major exporters to Italy)

<sup>57</sup> Commission, decision of 14 December 2020, M.9990 – Vattenfall / Engie / Gasag, para 32 – 34; Commission, decision of 15 June 2018, M.8660 – Fortum / Uniper, para 142; Commission, decision of 26 July 2016, AT.39767 – E.ON Gas, para 21; Commission, decision of 3 December 2010, COMP/M.6910 – Gazprom / Wintershall / Target Companies, para 62 – 64.

<sup>58</sup> M.6910 - Gazprom/Wintershall/Target Companies, para. 90.

<sup>59</sup> Form CO, paragraph 209.

<sup>60</sup> See responses to question 9, eQ2 to customers.

<sup>61</sup> See responses to question 21, eQ1 to competitors; question 8, eQ2 to customers.

#### 4.3.4. *Gas import infrastructure*

- (60) In recent decisions, the Commission considered that the market for gas import infrastructures was at least national in scope.<sup>62</sup> In its most recent decision, relating to Italy, the Commission confirmed that the market is national in scope, and conducted its assessment on the basis of a market that comprises gas import infrastructures that are connected to the Italian transmission grid.<sup>63</sup>
- (61) The Notifying Party does not contest the Commission's previous findings.
- (62) The results of the market investigation do not provide reasons for the Commission to depart from the findings in its recent decisions. As explained in paragraph (45) above, for the purposes of this decision and in line with its findings in its most recent case relating to the Transmediterranean pipeline, the Commission will conduct its assessment under the narrowest potential market definition, considering the Transmediterranean pipeline as a natural monopoly for the import of Algerian gas into Italy.

## **5. COMPETITIVE ASSESSMENT**

### **5.1. Affected markets**

- (63) As mentioned in paragraph (20), all Parties are active on the global market for the exploration of crude oil and natural gas. However, their combined market share is below [0-5]%, and therefore this market is not affected and will not be discussed further in this decision.
- (64) Eni and the In Salah JV are further active on the market for development, production and upstream supply of natural gas. While Eni produces and sells gas in the EEA including in Italy, the In Salah JV only produces gas in Algeria and sells it at the Algerian border where it is purchased by [...] major gas importers, i.e., [...] for resale in Italy.
- (65) Equinor and Sonatrach are also active on the market for development, production and upstream supply of natural gas outside the scope of activities of the In Salah JV. However, as the Transaction will not result in Eni combining its resources with Equinor and Sonatrach outside the JV, the independent activities of Equinor and Sonatrach outside the JV do not affect the assessment of the horizontal unilateral effects of Eni's acquisition of joint control in the In Salah JV. Such independent activities of Equinor and Sonatrach will therefore be considered in Section 5.2 below, in the context of horizontal coordinated effects.
- (66) The Parties' market shares on the market for development, production and upstream supply of natural gas are shown in Table 1 below:

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<sup>62</sup> Commission decision of 26 November 2021 in case M.10139 – DESFA / COPELOUZOU / DEPA / GASLOG / BTG, paragraph 49; Commission decision of 11 February 2020 in case M.9641 - SNAM/FSI / OLT, paragraph 36.

<sup>63</sup> Commission decision of 13 October 2022 in case M.10619 – SNAM / ENI / JV, paragraph 54.

**Table 1: Parties market shares in the development, production and upstream wholesale supply of natural gas (sales) - 2021**

Party	Sales to EEA		Sales to Italy	
	Billion cubic meters (bcm)	Market share (%)	Billion cubic meters (bcm)	Market share (%)
In Salah JV <sup>64</sup>	[...]	[0-5]%	[...]	[5-10]%
ENI	[...]	[0-5]%	[...]	[0-5]%
<b>Total ENI + JV</b>	[...]	<b>[0-5]%</b>	[...]	<b>[10-20]%</b>
Equinor (outside the JV)	[...]	[10-20]%	[...]	[0-5]%
Sonatrach (outside the JV)	[...]	[5-10]%	[...]	[30-40]%
<b>Parties combined</b>	[...]	<b>[20-30]%</b>	[...]	<b>[40-50]%</b>
BP <sup>65</sup>	[...]	[5-10]%	[...]	[0-5]%
Shell	[...]	[0-5]%	[...]	[0-5]%
Total Energies	[...]	[0-5]%	[...]	N/A
Supplies from Russia	139.3	34%	29.2	39%
Supplies from Norway	74.2	18%	N/A	N/A
Supplies from Libya	N/A	N/A	3.2	5%
Supplies from Azerbaijan	N/A	N/A	7.2	10%
<b>Total</b>	<b>412</b>	<b>100%</b>	<b>76.2</b>	<b>100%</b>

*Source: Form CO, Tables: EEA producers and major exporters to the EEA in 2021; Development, production and upstream wholesale supply of natural gas in Italy in 2021 (National producers and major exporters to Italy); paragraph 451.*

- (67) The competitive assessment will be conducted on the narrowest potential geographic market, namely the market for development, production and upstream wholesale supplies to Italy. The Commission notes, however, that as shown in Table 1 above, if the market was EEA-wide, the combined market share of Eni and the In Salah JV would be [0-5]%. On the narrowest potential market for upstream

<sup>64</sup> As explained in paragraph 64 above, the In Salah JV supplies its gas within Algeria to Shell, Gunvor and Vitol. However, as the gas volumes supplied by the In Salah JV are subsequently imported by Shell, Gunvor and Vitol into Italy, the Commission considers such supplies as part of the market for development, production and upstream wholesale supply into Italy.

<sup>65</sup> With regard to BP, the Notifying Party has only submitted a percentage of the estimated upstream wholesale supplies in the EEA. The Commission has calculated the respective volumes supplied by BP in the EEA on the basis of this percentage, while it considers BP's share in Italy as [0-5]%.

wholesale supplies to Italy, the combined market share of Eni and the In Salah JV would be [10-20]%. It follows that the Transaction does not give rise to an affected market on the market for the development, production and upstream supply of natural gas when assessing unilateral effects.

- (68) As further shown in Table 1 above, Equinor and Sonatrach are also active on the market for the development, production and upstream wholesale supply of natural gas outside the scope of activities of the In Salah JV. On an EEA wide basis, the Parties' combined market share would be [20-30]%, while considering the narrowest possible market for the development, production and upstream wholesale supplies into Italy, the combined market share of all Parties would be [40-50]%. As explained above, the independent activities of Equinor and Sonatrach on this market will be considered in Section 5.2 below in the context of horizontal coordinated effects only.
- (69) As mentioned in paragraph (22) above, Eni is further active in the market for downstream wholesale supply of natural gas in Italy. In this market, wholesalers source and import gas from upstream wholesalers and in turn sell the gas to other wholesalers/distributors, as well as directly to large end-customers. Table 2 below shows Eni's share in the import<sup>66</sup> of natural gas in Italy.

**Table 2: Market shares in the downstream wholesale supply of gas in Italy – 2021**

<b>Party</b>	<b>Billion cubic meters (bcm)</b>	<b>Share (%)</b>
Eni	34.3	[40-50]%
Edison	11.1	[10-20]%
Azerbaijan Gas Supply Company	5.9	[5-10]%
Enel Global Trading	5.8	[5-10]%
Shell	4.7	[5-10]%
Gunvor	2.1	[0-5]%
DXT Commodities	1.2	[0-5]%
Axpo Solutions	0.9	[0-5]%
Engie Italia	0.6	[0-5]%

*Source: Form CO, Table: Major Importers into Italy in 2021;*

<sup>66</sup> The Commission notes that, once gas is imported into Italy, it might be traded multiple times between undertakings active on that downstream wholesale market, before it is supplied to large end-customers or to retailers/distributors. As a result, the total size of the market for downstream wholesale supplies appears inflated compared to the actual volumes of gas, which are imported into Italy. This in turn leads to Eni's market share in the downstream wholesale supply in Italy to be significantly lower, namely below [10-20]% under any potential market definition, than its share of imports into Italy. It follows that, if Eni's shares on the supply side of the market for downstream wholesale supply of gas in Italy were to be considered, the Transaction would not have given rise to vertically affected markets. The Commission therefore considers on a conservative basis Eni's share in the imports of gas in Italy as relevant for the assessment of the vertical effects brought about by the Transaction.



- (70) As can be seen from Table 2 above, Eni's share of imports of natural gas in gaseous form into Italy is [40-50]%. The Transaction therefore gives rise to a vertically affected link between the market for development, production and upstream supply of natural gas (upstream), where both Eni and the In Salah JV are active, and the market for the import and downstream wholesale supply of natural gas in Italy (downstream), where only Eni is active.
- (71) Lastly, as mentioned in paragraph (23), Eni jointly operates the Transmediterranean pipeline, which is the only gas import infrastructure available for the import of Algerian gas in gaseous form into Italy. Eni's rivals in the downstream wholesale of natural gas in Italy require access to the Transmediterranean pipeline, in order to import gas procured from Algeria. The Commission will therefore assess whether the Transaction will affect Eni's ability and incentives to engage in an input foreclosure strategy in the context of the pre-existing vertical link between the operation of the Transmediterranean pipeline by Eni (upstream), and Eni's activities in the downstream wholesale of gas in Italy (downstream).

*Recent changes brought about by Russia's war on Ukraine and weaponisation of gas supplies do not change the Commission's conclusions regarding the markets affected by the Transaction*

- (72) The Commission's assessment of the affected markets does not change if more recent market data are considered. To capture the impact of the recent market developments, in particular of the turmoil resulting from Russia's war against Ukraine, the Commission requested the Notifying Party to provide data from 2022 up to the date of notification, as well as estimates on the evolution of the markets identified in the paragraphs (24)-(71) above. As indicated in the Commission's REPowerEU plan<sup>67</sup> to make Europe independent from Russian gas supplies, additional LNG supplies from sources such as Qatar, US, Egypt and West Africa will play a vital role in the efforts for the replacement of Russian gas supplies.<sup>68</sup> As a result, upstream wholesale supplies of LNG will in the future likely become increasingly substitutable with supplies of gas in gaseous form. In this light, and in order to present the Parties' future position on the market in the most credible manner, the below prospective analysis takes into account also the imports of LNG into the EEA.
- (73) As mentioned by the Notifying Party, the Commission notes that the fluidity of the current geopolitical environment makes it impossible to have an accurate prediction of the future composition of gas supplies. However, the current and expected replacement in the sourcing of natural gas originating from gas fields in Russia – and consequent displacement of competitors in the upstream market for the development, production and upstream wholesale supply of natural gas – are sufficient to indicate that the Transaction is not likely to result in a significant detrimental effect on competition at either level of supply, even in the scenario of a significant replacement of upstream wholesale supplies of gas from Russia by alternative sources, including LNG.

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<sup>67</sup> See press release for a summary [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_1511](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_1511).

<sup>68</sup> REPowerEU: Joint European Action for more affordable, secure and sustainable energy, COM(2022) 108, Section 2.1.1.

- (74) *First*, whilst overall sales in the EEA have seen only a relatively small decrease – from 412 bcm in 2021 to 191-201 bcm in the first half of 2022 – sales of natural gas with Russian origin have decreased sharply in 2022. This led to a reconfiguration of the relative positions of upstream producers and wholesalers of natural gas in the EEA: supplies originating from Russia decreased from 34% in 2021 to 23% in Jun 2022, with supplies from other origins (including from Azerbaijan, Qatar, United States and Norway) having increased their share of overall demand. For example, supplies from Norway increased from a share of 18% to 32% of EEA demand.<sup>69</sup> Meanwhile, the output of natural gas and the relative combined share of the In Salah JV and Eni remained constant at [0-5]% in the first half of 2022 (as in Table 1 above).<sup>70</sup>
- (75) *Second*, a similar trend is apparent when looking at the imports to Italy of gas: while overall demand saw a slight decrease (from 48.1 bcm 47.3 bcm in the first half of 2021 and 2022 respectively), Russian suppliers experienced a sharp decrease in their relative share (from 39-40% to 23% in that period), with the rest of demand being captured by suppliers such as those from Azerbaijan (from 9-10% to 14%), or Norway and the Netherlands (from 4% to 10%). In this context, the In Salah JV’s relative importance as a producer and upstream wholesaler of natural gas remained constant through 2021 and 2022, even where supplies only to importers into Italy are considered.<sup>71</sup>
- (76) *Third*, efforts led by Italy to diversify its supply base of natural gas – the *Piano Nazionale di Contenimento dei Consumi di Gas Naturale* (Italy’s National Plan to Contain the Consumption of Natural Gas),<sup>72</sup> of 6 September 2022 – suggest that in the period until 2025, on aggregate, “new” gas supplies intended to replace Russian gas that have their origin in the Democratic Republic of Congo, Angola, Qatar, Egypt, Nigeria, Indonesia, Mozambique and Libya (expected to increase 11.2 billion standard cubic meters) exceed those that are predicted to originate from the gas fields of Algeria, Azerbaijan and Italy (expected to increase 5.9 billion standard cubic meters). This suggests that the In Salah’s current share of Italy’s gas demand is likely to remain at levels consistent with those of 2021.
- (77) *Fourth*, Eni is the downstream wholesaler of natural gas in Italy that is most exposed to Russian natural gas supply, with approximately [...] % of its 2021 imports to Italy originating from Russia.<sup>73</sup> For this reason, in the first half of 2022, Eni’s share of supply in the market for downstream wholesale of natural gas to Italy was the most affected by the decrease in gas flows originating from Russia: Eni’s overall imports from Russian gas fields decreased by [...] %; Eni compensated the shortfall by increasing its gas imports from alternative sources (mainly from Norway and the Netherlands); and Eni’s overall share of supply in the market for downstream wholesale of natural gas is estimated to have decreased from [40-50] % in 2021, to [40-50] % in the first half 2022. Likewise, the potential

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<sup>69</sup> It is noted that, despite the increase in the supplies from Norway, Equinor’s share rose from [10-20] % in 2021 to only [10-20] % in the first half of 2022.

<sup>70</sup> See Form CO, Section 7.3.2.1.

<sup>71</sup> See Form CO, Section 7.3.2.2

<sup>72</sup> See

[https://www.mite.gov.it/sites/default/files/archivio/comunicati/Piano%20contenimento%20consumi%20gas\\_MITE\\_6set2022\\_agg.pdf](https://www.mite.gov.it/sites/default/files/archivio/comunicati/Piano%20contenimento%20consumi%20gas_MITE_6set2022_agg.pdf).

<sup>73</sup> See Form CO, Section 7.3.3.

impact of a complete termination of supplies from Russian gas fields is likely to have a proportionately higher impact on Eni's share. The Commission notes, however, that the reconfiguration of the origin of gas supplies is at the present stage volatile. The Commission therefore takes the view that to consider Eni's share of supply of 2021 is likely to be a conservative measure of its relative importance as a downstream wholesaler of natural gas in Italy in the medium-term.

- (78) *Finally*, the Commission conducted its market investigation in a context in which the market turmoil and consequences originated by Russia's war on Ukraine were of public knowledge. The Commission takes the view that responses from the market participants regarding the impact of the transaction take into account the ongoing reconfiguration of gas supplies.
- (79) For the reasons set out above, the Commission considers in its assessment of the Transaction market data from 2021.

## **5.2. Horizontal coordinated effects on the market for development, production and upstream wholesale supply of natural gas**

- (80) As mentioned in paragraph (68), Eni, Sonatrach and Equinor are all active on the market for the development, production and upstream wholesale supply of natural gas also outside the scope of activities of the In Salah JV. There is no other affected market where all the Parties will be active. As the Transaction will not result in Eni combining its resources with Equinor and Sonatrach outside the JV, the independent activities of Equinor and Sonatrach outside the JV do not affect the assessment of the horizontal unilateral effects of Eni's acquisition of joint control in the In Salah JV. In this light, the Commission will assess below only the possibility of the Transaction giving rise to horizontal coordinated effects between Eni, Sonatrach, Equinor and the In Salah JV in the market for development, production and upstream wholesale supply of natural gas in the EEA, and in the narrowest potential market i.e. the market for the development, production and upstream wholesale supply of natural gas in Italy.

### *5.2.1. Analytical framework*

- (81) As set out in the Horizontal Merger Guidelines,<sup>74</sup> 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.<sup>75</sup> 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

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<sup>74</sup> Horizontal Merger Guidelines, paragraphs 22, 39 et seq.

<sup>75</sup> Horizontal Merger Guidelines, paragraph 42.

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.<sup>76</sup> In addition, structural links such as cross-shareholding or participation in joint ventures may also help in aligning incentives among the coordinating firms.<sup>77</sup>

- (82) To find coordinated effects, evidence is needed of the horizontal merger changing 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.
- (83) According to the Horizontal Merger Guidelines, coordination is more likely to emerge if competitors can arrive easily at a common perception as to how the coordination should work.<sup>78</sup> 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.<sup>79</sup>

#### 5.2.2. *The Notifying Party's views*

- (84) The Notifying Party submits that the Transaction will not give rise to coordinated effects because: (i) the In Salah JV predates the Transaction, while its current shareholders have been present on the market for the development, production and upstream wholesale supply of natural gas, along with the JV, for several years. The replacement of BP by Eni as a shareholder of the JV will therefore not increase the risk of coordination; (ii) the combined share of all Parties will remain below [40-50]%, even if a market comprising only Italy is considered. The risk of coordination is therefore limited; and (iii) the interests of the JV parents are not aligned. While Eni is mainly active on the downstream wholesale market, Equinor and Sonatrach are mainly producers and upstream wholesalers, where Eni's market share in the EEA and Italy is negligible.<sup>80</sup>

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

- (85) The Commission considers that the Transaction will not lead to an economic environment that will favour coordination between Eni, the In Salah JV, Sonatrach and Equinor on the market for the development, production and upstream wholesale supply of natural gas.
- (86) *First*, the Transaction will not alter the conditions prevailing already pre-Transaction on the market, in a way that would render coordination more likely. The In Salah JV has been controlled since its creation by undertakings active on the market for development, production and upstream wholesale of natural gas, where the JV itself is active. This will not change through the

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<sup>76</sup> Horizontal Merger Guidelines, paragraph 47.

<sup>77</sup> Horizontal Merger Guidelines, paragraph 48.

<sup>78</sup> Horizontal Merger Guidelines, paragraph 43.

<sup>79</sup> Horizontal Merger Guidelines, paragraph 44.

<sup>80</sup> Form CO, paragraphs 448 et seq.

Transaction, as the Transaction entails the replacement of an existing jointly controlling shareholder of the JV, namely BP, by Eni.

- (87) In fact, as shown in Tables 1 and 2, Eni has only limited activities in the market for development, production and upstream wholesale supply of gas, with a market share of [0-5]% in the EEA and [0-5]% in Italy, while the focus of Eni's activities is mainly on the downstream supply of gas in Italy. By comparison, BP has a stronger presence in the market for the upstream wholesale supply, with a market share of up to [5-10]% in the EEA.<sup>81</sup> It follows that the combined market share of the In Salah JV and its parents will likely reduce as a result of the Transaction in the EEA. With respect to Italy, since BP is not active there, there will be a limited increase in the combined market share of all Parties from [40-50]% to [40-50]%, which the Commission considers in the present case as unlikely to increase the risk of coordination on the market. The Transaction is therefore unlikely to make coordination more likely than in the situation prevailing pre-Transaction.
- (88) *Second*, as mentioned in paragraph (51), suppliers in the market for the development, production and upstream wholesale of natural gas supply to any downstream market, which is sufficiently connected with their production fields.. As can be deduced from Table 1 above, more than [90-100]% of Equinor's supplies into the EEA are to markets other than Italy. For Eni this percentage is [60-70]% while for Sonatrach it is [30-40]%. It follows that Equinor's interest in the Italian market for upstream wholesale supplies is limited, while Eni and Sonatrach too have considerable activities outside Italy. Furthermore, the geographic footprint of the activities of Sonatrach and Equinor is considerably different. While Equinor focuses more on the markets in northern Europe, Sonatrach supplies mostly in the region of the Mediterranean.<sup>82</sup> As regards Eni, its activities on the market for development, production and upstream wholesale supply of gas are in any case limited. Under these circumstances, and in light of the Parties' overall activities on the market for development, production and wholesale supply of natural gas, it is unlikely that the participation of Equinor, Sonatrach and Eni in the In Salah JV will converge their interests to a sufficient degree with regard to their upstream wholesale supplies into Italy, in order to give rise to coordination in that market.<sup>83</sup>
- (89) *Third*, post-Transaction [50-60]% of upstream wholesale supplies to Italy will continue to be represented by upstream wholesale suppliers other than the Parties. This includes producers from Azerbaijan, Libya and Russia, which moreover have highly asymmetric market shares, as shown in Table 1. The sufficient number of different suppliers to Italy and their respective market shares will render coordination between Eni, the JV, Sonatrach and Equinor unlikely.<sup>84</sup>
- (90) *Fourth*, the interests of the Parties are not aligned. While Sonatrach, Equinor and the JV are primarily active on the market for the development, production and upstream wholesale supply of gas, Eni's activities on this market are limited while

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<sup>81</sup> See Table 1 above.

<sup>82</sup> See Form CO, paragraph 446.

<sup>83</sup> Horizontal Merger Guidelines, paragraph 43.

<sup>84</sup> See Horizontal Merger Guidelines, paragraph 48.

it has a much stronger presence on the market for the downstream wholesale supply in Italy.<sup>85</sup>

- (91) Coordination among operators on the upstream wholesale market, aiming at increasing their profits, would not be to the benefit of Eni. This is because Eni, as primarily a customer of such upstream wholesalers, would have to bear the increased costs, which would result from a coordination of its suppliers on the upstream wholesale market. Given that Eni’s activities on the upstream wholesale market are limited, the increased costs it would incur would not be offset by the increased profits that would result from such coordination. It follows that the misaligned interests of the Parties would make it unlikely that the Parties would reach a common understanding on the terms of coordination.<sup>86</sup>
- (92) In addition, despite Eni’s high share on the market for downstream wholesale supplies of gas in Italy, Eni would not be in a position to profitably increase prices on the downstream wholesale market, in order to pass on to its customers on this market the higher prices that would result from the coordination in the upstream wholesale market.
- (93) As many respondents to the market investigation submit, prices in most European downstream wholesale markets are correlated, as they follow the same pricing patterns.<sup>87</sup> The spread between prices in different European downstream wholesale markets reflects the balance between supply and demand in each given market.<sup>88</sup>
- (94) In recent years, the spread between TTF, the most liquid gas hub in the EU, the prices in which act as a reference point for most transactions at EU level,<sup>89</sup> and the PSV, which accounts for 92% of transactions in the Italian downstream wholesale market,<sup>90</sup> has progressively decreased, as shown in Table 3 below.

**Table 3: Spread between Italian PSV and TTF (annual average)**

Year	PSV (€/MWh)	TTF (€/MWh)	Spread (€/MWh)
2015	22.14	19.84	2.31
2016	15.73	14.18	1.55
2017	19.96	17.33	2.62
2018	24.57	22.97	1.60
2019	16.24	13.50	2.73
2020	10.58	9.41	1.17
2021	47.59	46.87	0.72

*Source: Form CO, Table : Spread between Italian PSV and TTF (annual average)*

<sup>85</sup> Form CO, paragraph 141.

<sup>86</sup> Horizontal Merger Guidelines, paragraph 43.

<sup>87</sup> See responses to question 30, eQ1 to competitors; question 12, eQ2 to customers.

<sup>88</sup> *Ibid.*

<sup>89</sup> See Form CO, paragraph 111.

<sup>90</sup> See Form CO, paragraph 407.

- (95) Furthermore, the Transgas and TAG pipelines, which allow the import into Italy of gas traded in the European spot markets (including TTF) have spare capacities of 10% and 30% respectively.<sup>91</sup> Spot markets, in turn, allow for gas to be traded and delivered on a short term basis.<sup>92</sup>
- (96) It follows that, should Eni attempt to increase prices in the Italian downstream wholesale market, thereby increasing the spread between the PSV and TTF, it would invite its competitors in the downstream wholesale market to import gas into Italy in the short term from the European spot markets, in order to make profit from such increased spread. These additional imports would in turn create downward price pressure in the Italian downstream wholesale market, thereby offsetting the attempt by Eni to increase prices on that market. Eni will therefore not be in a position to increase prices in the downstream wholesale market in Italy, in order to pass on the increased prices it would face in the upstream wholesale market, should it participate in a coordinating behaviour in this market.
- (97) *Fourth* as discussed in paragraphs (72) *et seq.* above, the current situation with 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 the development, production and upstream wholesale supply. New LNG and non-Russian gas supply sources have gained, and will likely further gain importance, which is likely to substantially reallocate the market shares in the upstream wholesale markets in the coming years. In its REPowerEU plan<sup>93</sup> the Commission has identified LNG as one of the concrete alternatives to replace dependence from Russian gas. For this to happen, the EU must ensure supplies from LNG sources that will be in addition to the natural gas currently supplied by the Parties in the EEA (including Italy). Such additional LNG supplies will likely originate from countries such as Qatar, USA, Egypt and West Africa.<sup>94</sup> Such a dynamic economic environment and the entry of new upstream wholesale suppliers in Italy, in turn, would not favour coordination between the Parties<sup>95</sup>, particularly in view of their limited market shares.
- (98) Lastly, the majority of respondents to the Commission's market investigation confirmed that they expect no negative effects from the Transaction on either the market for the development, production and upstream wholesale of natural gas in general,<sup>96</sup> or themselves.<sup>97</sup>

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

- (99) 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 the development, production, and upstream wholesale supply of natural gas in the EEA or Italy.

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<sup>91</sup> See Form CO, paragraph 287.

<sup>92</sup> Unlike supplies from upstream wholesalers, which are typically concluded under long-term contracts. See Form CO, paragraph 22.

<sup>93</sup> *Supra*, footnote 67.

<sup>94</sup> *Supra*, footnote 68.

<sup>95</sup> See Horizontal Merger Guidelines, paragraph 45.

<sup>96</sup> See responses to question 31, eQ 1 to competitors.

<sup>97</sup> See responses to question 33, eQ 1 to competitors; question 17, eQ 2 to customers.

### 5.3. Vertical effects

#### *Analytical framework*

- (100) 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'). 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.<sup>98</sup>
- (101) When assessing the likelihood of an anticompetitive input foreclosure scenario, the Commission examines whether, post-merger, (i) the merged entity would have the ability to foreclose substantially access to an input, (ii) the merged entity would have the incentive to do so, and (iii) whether a foreclosure strategy would have a significant detrimental effect on competition downstream.<sup>99</sup> Those conditions are cumulative.<sup>100</sup>
- (102) Similarly, when assessing the likelihood of an anticompetitive customer foreclosure scenario, the Commission examines whether, post-merger, the merged entity (i) would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals, (ii) whether it would have the incentive to reduce purchases from upstream rivals, and (iii) whether a customer foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.<sup>101</sup> Those conditions are cumulative.<sup>102</sup>
- (103) As a result of the findings in Sections 4.2 and 4.3 above, the Commission assesses the impact of the Transaction in the following vertically affected markets:
- (a) the market for the upstream wholesale supplies of natural gas in gaseous form into Italy, including exports to Italy from Algeria, Azerbaijan, Libya and Russia (where both Eni and the JV are active), and the downstream market for the wholesale supply of gas in Italy (where Eni is active); and
  - (b) the upstream market for gas import infrastructure (where Eni jointly operates the Transmediterranean pipeline) and the downstream market for the wholesale supply of natural gas in Italy (where Eni is active).

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<sup>98</sup> Non-horizontal Merger Guidelines, paragraph 18.

<sup>99</sup> Non-horizontal Merger Guidelines, paragraph 32.

<sup>100</sup> See Judgement of the General Court in case T-370/17 – KPN v Commission, paragraph 119.

<sup>101</sup> Non-horizontal Merger Guidelines, paragraph 59.

<sup>102</sup> See Judgement of the General Court in case T-370/17 – KPN v Commission, paragraph 119.



5.3.1. *The vertical relationship between the JV in the upstream market for the development, production and wholesale supply of natural gas, and Eni's presence in the downstream market for the downstream wholesale supply of natural gas*

*Input foreclosure*

5.3.1.1. The Notifying Party's views

(104) The Notifying Party submits that the strengthening of Eni's pre-existing vertical integration between the upstream and downstream gas wholesale markets will not give rise to any competition concerns. According to the Notifying Party, (i) the full function nature of In Salah JV means that the commercial interests of three controlling shareholders are not aligned with Eni's, and therefore Eni would not have the ability to determine the JV's conduct post-merger, (ii) there are sufficient alternative gas producers in the upstream market for the development, production and wholesale of natural gas (the input market), who could offset the effects of a potential input foreclosure strategy post-merger, (iii) Eni cannot purchase natural gas produced by the JV at least until the term of its existing agreements, in [...], and therefore any hypothetical effects could only arise in the medium-term, (iv) any hypothetical effects would be eliminated by the regulatory cap imposed on downstream wholesalers of natural gas, whereby Eni would be required to auction any imported gas in excess of 55% of the total gas consumption in Italy, and (v) even if Eni were able to secure for itself the gas production of the JV, that this would not affect prices in the Italian the downstream market for the downstream wholesale of natural gas that follow closely those practiced in TTF, the most liquid gas hub in Europe.

5.3.1.2. The Commission's assessment

(105) To assess the vertical relationship created by the Transaction, the Commission requested the Notifying Party to identify their market shares in (i) the market for the development, production and upstream wholesale supply of natural gas market (the input market), and (ii) the market for the downstream wholesale supply of gas (the downstream market). The market shares of the parties are represented in Tables 1 and 2 above.

(106) The Commission bases itself on the most conservative approach, in which post-merger Eni would be able to determine the commercial behaviour of the In Salah JV. This is because a hypothetical input foreclosure strategy is predicated on Eni's ability to decide not to deal with its actual or potential competitors, failing which no possible vertical concerns can arise. However, the Commission notes that due to the full function nature of the In Salah JV, the incentives of the other parties to the JV in its commercial behaviour need to be taken into account. The Commission concludes that the interests of Equinor and Sonatrach are not necessarily aligned with those of Eni in pursuing an input foreclosure strategy. This is because (i) Equinor and Sonatrach have an immediate interest in selling the natural gas produced by In Salah JV at the best available price to maximise their own revenues as shareholders, (ii) the JV's shareholders' agreements require [...] and (iii) Equinor and Sonatrach are not competitors of Eni in the downstream market of Italian downstream wholesale supply of gas and, therefore, do not have an interest at competition at that level of supply. Further, the overwhelming majority of respondents to the market investigation did not indicate that there would be

reasons, outside of the scope of the JV agreements, for Eni to exercise a sole influence in the JV's commercial behaviour.<sup>103</sup> It follows that the terms under which Eni could influence the In Salah JV's behaviour limit its ability to engage into input foreclosure strategies.

- (107) In any event, even based on the most conservative approach, the Commission concludes that post-merger Eni will not have the ability to engage in an input foreclosure strategy, resulting in a significant detrimental effect on competition downstream, for the following reasons.
- (108) *First*, Eni post-merger will not acquire a significant degree of market power in the upstream market.<sup>104</sup> Eni will remain a minor player in the market for the development, production and upstream wholesale of natural gas post-merger even in the conservative scenario in which Eni would be able to determine the commercial behaviour of the JV (and, thus, where Eni would control the sale of the In Salah JV gas output, in addition to its existing gas production capacity). On the supply side, in the area comprising the countries and/or regions that supply Italy with gas, Eni has in this scenario a market share of [0-5]%. If only gas volumes supplied to Italy are considered – i.e., the area to which the In Salah JV currently supplies its gas production –, the aggregation of the JV's production with Eni's production capacity would result in a share that would cover only [10-20]% of demand.<sup>105</sup> Such levels typically indicate that, post-merger, Eni would not have the ability to engage in an input foreclosure strategy.
- (109) *Second*, a large majority of the respondents to the market investigation confirmed that, if Eni captures all the supplies from the JV to itself, customers downstream will have access to sufficient alternative suppliers to procure gas.<sup>106</sup> Several respondents indicated that they have a “*diversified gas import portfolio*”<sup>107</sup> and/or did not purchase gas from Algeria altogether,<sup>108</sup> and affirmed that they could “*accede to alternative suppliers if needed.*”<sup>109</sup> The market investigation therefore confirms that, post-merger, Eni would not have the ability to affect negatively the overall availability of gas, and in particular of gas for the Italian market.<sup>110</sup>
- (110) Because the conditions to find an anticompetitive input foreclosure scenario are cumulative (see (101) above), it is not necessary to assess whether Eni would have an incentive to foreclose the access of its rivals downstream to the gas volumes produced by the In Salah JV.
- (111) Furthermore, the Commission notes that most responses from customers and competitors in the market investigation indicate that the Transaction will have a neutral impact on the availability of upstream production and wholesale supply of natural gas to downstream wholesalers. Some respondents suggest that Eni's entry

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<sup>103</sup> Responses to question 25 of eQ1 to competitors.

<sup>104</sup> Non-horizontal Merger Guidelines, paragraph 35 r

<sup>105</sup> See Form CO, Table: Development, production and upstream wholesale supply of natural gas in Italy in 2021 (National producers and major exporters to Italy). Italy's total demand in 2021 amounted to 76.2 bcm, while the In Salah JV and Eni together produced and supplied in total [...] bcm.

<sup>106</sup> Responses to question 26 of eQ1 to competitors.

<sup>107</sup> Response from [...] to question 26 of eQ1 to competitors.

<sup>108</sup> Responses from [...] to Question 26 of eQ1 to competitors.

<sup>109</sup> Response from [...] to question 26 of eQ1 to competitors.

<sup>110</sup> Non-horizontal Merger Guidelines, paragraph 36.

in the JV may increase exports to Italy.<sup>111</sup> Other respondents claim that the entry of Eni in the In Salah JV could provide additional liquidity and alternatives to market participants.<sup>112</sup> Most respondents indicate that the effect of the Transaction in the Italian market is unclear,<sup>113</sup> or neutral, and do not expect their companies to be impacted by the Transaction.<sup>114</sup>

- (112) The Commission therefore concludes that, post-merger, Eni is not likely to engage in a strategy of input foreclosure that would result in a significant detrimental effect on competition in the market for downstream wholesale supply of natural gas.

#### *Customer foreclosure*

##### 5.3.1.3. The Notifying Party's views

- (113) The Notifying Party submits that its acquisition of joint control in the In Salah JV will not enable Eni to engage in a strategy of customer foreclosure that would have a significant detrimental effect in the market for the downstream wholesale supply of natural gas. In the Notifying Party's view, a customer foreclosure strategy would not be feasible because Eni could not discontinue its purchasing from other producers and/or upstream wholesale suppliers of natural gas – Eni would need to purchase [80-90]% of its gas demand from suppliers other than the In Salah JV because of the limited gas production capacity of the JV.

##### 5.3.1.4. The Commission's assessment

- (114) As noted in paragraphs (102) and (105) above, to assess whether Eni could pursue a strategy of customer foreclosure as a result of the Transaction, the Commission requested the Parties' market shares in (i) the market for the development, production and upstream wholesale supply of natural gas (the input market), and (ii) the market for the downstream wholesale supply of natural gas (the downstream market).
- (115) As explained in paragraph (106), the Commission takes into account the most conservative scenario, where Eni would be able to direct the In Salah JV to supply its production of gas as part of the hypothetical strategy to foreclose other upstream.
- (116) Even in this most conservative scenario, the Commission concludes that post-merger Eni will not have the ability to engage in a customer foreclosure strategy, resulting in a significant detrimental effect on competition downstream, for the following reasons.
- (117) *First*, although Eni has a market share of [40-50]% in the market for downstream wholesale of natural gas in Italy, the Commission notes that due to the particular characteristics of the Italian gas market, this share of supply is not representative of Eni's importance as a customer of the producers or upstream wholesalers that

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<sup>111</sup> Response from [...] to question 31.1 of eQ1 to competitors, response from [...] to question 32.1 of eQ1 to competitors.

<sup>112</sup> Response from [...] to question 33.1 of eQ1 to competitors.

<sup>113</sup> Response [...] to question 33.1 of eQ1 to competitors.

<sup>114</sup> Responses to Questions 33 and 33.1 of the eQ1 to competitors.

supply Italy with natural gas. This is because, at this level of supply, production and upstream wholesale suppliers of gas can sell their gas to countries or regions other than Italy, thereby decreasing Eni's ability to engage in customer foreclosure strategies. Thus, for the purposes of its assessment, the Commission views Eni's share of demand in the supply available from suppliers active in the upstream wholesale supply of natural gas in gaseous form into Italy (i.e., including suppliers from Italy from Algeria, Azerbaijan, Libya and Russia) as being of greater relevance. In that respect, on aggregate, Eni represents [10-20]% of the demand of such suppliers.<sup>115</sup>

- (118) Because Eni represents only [10-20]% of total imports of gas in the countries or regions that supply Italy, Eni cannot be characterised as a customer with a significant degree of market power, such that its hypothetical foreclosure could generate concerns.<sup>116</sup> Conversely, the Commission finds that other producers and upstream wholesalers of natural gas would have sufficient economic alternatives. It follows that Eni would not have the ability to engage in a strategy of customer foreclosure of other producers and upstream wholesalers of natural gas.
- (119) *Second*, the Commission agrees with the Notifying Party's claim that the gas volumes that Eni would hypothetically acquire as a result of the Transaction – [10-20]% of its current demand<sup>117</sup> – are insufficient to generate a significant foreclosure of other producers and upstream wholesalers of natural gas. Post-merger, Eni would still need to procure the bulk of its gas imports from other suppliers, rendering a potential customer foreclosure strategy limited in size. The Commission concludes that a limited substitution in the origin of the gas imports acquired by Eni – which would start purchasing from the In Salah JV and stop purchasing from others – would not preclude producers and upstream wholesalers of natural gas from a meaningful customer base (including Eni).<sup>118</sup>
- (120) *Third*, none of the respondents to the market investigation indicated that customer foreclosure could be a concern or likely outcome of the Transaction.<sup>119</sup>
- (121) Finally, as noted in (101) above, because the conditions to find an anticompetitive customer foreclosure scenario are cumulative, it is not necessary to assess whether Eni would have an incentive to cease purchasing from rival producers and wholesale suppliers of natural gas as part of a customer foreclosure strategy.
- (122) The Commission therefore concludes that, post-merger, Eni is not likely to engage in a strategy of customer foreclosure that would result in a significant detrimental effect on competition in the downstream market for the wholesale of supply of natural gas.

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<sup>115</sup> See response to question 4, RFI 2.

<sup>116</sup> Non-horizontal Merger Guidelines, paragraph 61.

<sup>117</sup> As noted in Table 1, the In Salah JV currently has an annual production capacity of [...] bcm. In 2021, Eni purchased around [...] bcm from suppliers of natural gas in gaseous form that supply Italy (producers from Italy, Algeria, Azerbaijan, Libya and Russia), which represents a share of approximately [10-20]% of total supply (estimated at around [...] bcm).

<sup>118</sup> Non-horizontal Merger Guidelines, paragraph 60.

<sup>119</sup> Responses to Question 33.1 of the Q1 - Questionnaire to competitors.

5.3.2. *The vertical relationship between the operation of the Transmediterranean pipeline by Eni (upstream) and the activities of Eni on the market for the downstream wholesale supply of natural gas in Italy.*

(123) As mentioned in paragraph (71), Eni jointly operates the Transmediterranean pipeline, which is the only gas import infrastructure available for the import of Algerian gas in gaseous form into Italy. Eni's rivals in the import and downstream wholesale supply of natural gas in Italy require access to the Transmediterranean pipeline, in order to import into Italy gas procured from Algeria. Although the vertical link between Eni's operation of the Transmediterranean pipeline and its activities on the Italian downstream wholesale market predates the Transaction, the Commission will nonetheless assess whether the Transaction will affect Eni's ability and incentives to engage in an input foreclosure strategy, by which it would limit the ability of its rivals on the downstream wholesale market to compete effectively for the procurement of Algerian gas.

5.3.2.1. The Notifying Party's views

(124) The Notifying Party submits that the Transaction will not affect its ability or incentives to engage into a foreclosure strategy with regard to the Transmediterranean pipeline. According to the Notifying Party, (i) the fact that Eni has recently divested a jointly controlling stake in the Transmediterranean pipeline to Snam evidences the fact that Eni does not consider a strategy by which it would foreclose access to the Transmediterranean pipeline; (ii) the diverging interests of the other jointly controlling shareholders of the joint venture operating the Transmediterranean pipeline would mean that Eni would not have the ability to determine the conduct of such joint venture; (iii) the regulatory regime applicable to the Transmediterranean pipeline would prevent Eni from engaging into such a foreclosure strategy.<sup>120</sup>

5.3.2.2. The Commission's assessment

(125) The Commission does not consider that the Transaction would increase Eni's incentives or ability to engage in a foreclosure strategy, by which it would limit access to the Transmediterranean pipeline to its rivals in the Italian downstream wholesale market, so as to limit the competition it faces for the procurement of Algerian gas. This is for the following reasons:

(126) *First*, Eni procures significant quantities of Algerian gas already pre-Transaction. Out of the 34.3 bcm of natural gas imported by Eni into Italy in 2021,<sup>121</sup> [10-20] bcm were procured from Algeria, under three long term contracts with Sonatrach ending in 2027.<sup>122</sup> Eni's competitors in the downstream wholesale market in Italy accounted for approximately [50-60]% of all imports of Algerian gas into Italy in 2021.<sup>123</sup> It follows that Eni would in theory already have the incentives to foreclose its competitors for the procurement of Algerian gas from access to the Transmediterranean pipeline, but has not previously engaged into such a

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<sup>120</sup> See response from the Notifying Party to question 6, RFI 1.

<sup>121</sup> See Table 2 above,

<sup>122</sup> See response from the Notifying Party to question 3, RFI 1.

<sup>123</sup> See Response to question 8, RFI 1.

behaviour.<sup>124</sup> The Transaction is not likely to alter such incentives, as it will not result in Eni entering into a new geographic market for the procurement of its gas supplies.

- (127) The majority of Eni’s competitors on the downstream wholesale market confirmed that they do not consider it likely that Eni will attempt to foreclose them from access to the Transmediterranean pipeline.<sup>125</sup> As one respondent notes, “*ENI could have done it before but never did*”.<sup>126</sup>
- (128) *Second*, on 13 October 2022 the Commission cleared the divestment by Eni of a joint-controlling stake in the joint venture operating the Transmediterranean pipeline to Snam, the Italian gas transmission system operator.<sup>127</sup> Prior to this transaction, Eni was solely controlling the trans-Tunisian section, while it was jointly controlling, together with Sonatrach, the offshore section of the Transmediterranean pipeline.<sup>128</sup> By way of Eni’s divestment, Snam was added as a jointly controlling shareholder in the trans-Tunisian section (together with Eni) and the offshore section (together with Eni and Sonatrach). The fact that Eni reduced its joint-controlling stake in the Transmediterranean pipeline by adding Snam as a jointly controlling partner, a company not active on the gas supply markets, and therefore not sharing common interests with Eni, indicates that Eni is not contemplating a foreclosure strategy with regard to the Transmediterranean pipeline.
- (129) *Third*, an attempt by Eni to limit access to the Transmediterranean pipeline would face resistance by the other, jointly controlling parties, who have diverging interests. As mentioned in paragraph (128), the various sections comprising the Transmediterranean pipeline are jointly controlled by Eni, Snam, the Italian transmission system operator, and Sonatrach.
- (130) A foreclosure strategy by Eni, which would result in less competition for the procurement of Algerian gas, would be in direct conflict with the interests of Sonatrach. Being the national gas producer of and the incumbent gas wholesaler in Algeria, Sonatrach rather has an interest in maximising the number of downstream wholesalers competing for its output, in order to supply at the best available price and maximise its revenues.
- (131) In addition, both Sonatrach and Snam would incur losses by a decreased utilisation of the Transmediterranean pipeline as an effect of a hypothetical foreclosure strategy by Eni, while making no profits in return.
- (132) It follows that, due to the diverging interests of the other jointly controlling shareholders of the joint venture operating the Transmediterranean pipeline, Eni would not have the ability to implement a potential strategy by which it would

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<sup>124</sup> See responses to question 27, eQ 1 to competitors.

<sup>125</sup> *Ibid.*

<sup>126</sup> See responses to question 27.1, eQ 1 to competitors.

<sup>127</sup> Commission decision of 13 October 2022 in case M.10619 - SNAM / ENI / JV,

<sup>128</sup> The Transmediterranean pipeline comprises two interconnected sections: (a) the trans-Tunisian section extends 370 kilometres across Tunisia, connecting the Enrico Mattei pipeline at the Algerian border with the offshore section at the Tunisian coast; (b) the offshore section in the Sicily channel, connecting the Tunisian coast with an entry point to the Italian transmission grid in Sicily.

foreclose its rivals from access to the pipeline. This is also confirmed by the Commission's market investigation.<sup>129</sup> As one respondent submits, “[i]t is not likely that the other shareholders of the Transmediterranean Pipeline would agree” to such a strategy by Eni.<sup>130</sup>

### 5.3.3. Conclusion on vertical effects

- (133) 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 vertical effects in:
- (a) the market for the development, production and upstream wholesale supply of natural gas in the EEA (where both Eni and the JV are active), and the downstream wholesale supply of gas in Italy (where Eni is active); and
  - (b) the market for gas import infrastructure in the upstream (where Eni jointly operates the Transmediterranean pipeline) and the market for the downstream wholesale supply of natural gas in Italy (where Eni is active).

## 6. CONCLUSION

- (134) 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*

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<sup>129</sup> See responses to question 27, eQ 1 to competitors.

<sup>130</sup> See responses to question 27.1, eQ 1 to competitors.