

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 21 December 2005

declaring a concentration compatible with the common market and the functioning of the EEA Agreement

(Case COMP/M.3696 — E.ON/MOL)

(notified under document number C(2005) 5593)

(Only the English text is authentic)

(Text with EEA relevance)

(2006/622/EC)

On 21 December 2005 the Commission adopted a Decision in a merger case under Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) ⁽¹⁾, and in particular Article 8(2) of that Regulation. A non-confidential version of the full Decision can be found in the authentic language of the case and in the working languages of the Commission on the website of the Directorate-General for Competition, at the following address: http://ec.europa.eu/comm/competiton/index_en.html

I. SUMMARY

- (1) This case concerns the acquisition by E.ON (Germany) of two subsidiaries of MOL, an integrated Hungarian oil and gas company, which are active in the wholesale, marketing and trading of gas, and the storage of gas. MOL also has a put option for two years to sell its gas transmission subsidiary to E.ON.
- (2) MOL already has, prior to the transaction, an almost exclusive control over the access to gas resources and gas infrastructures in Hungary. MOL owns the gas transmission network, all Hungarian gas storage facilities and has a quasi-monopoly position on the gas wholesale markets. MOL is already today the 'gatekeeper' for gas resources (both imports and domestic production) and gas infrastructure. This gatekeeper position will now be taken over by E.ON.
- (3) The essential change brought by the proposed transaction is that E.ON, unlike MOL, has strong market positions in

the retail supply of gas and electricity in Hungary. Therefore, except for the transmission and gas production businesses of MOL, the current transaction will create a vertically integrated entity along the gas and electricity supply chains in Hungary.

- (4) The Commission's market investigation has established that, owing to the new entity's nearly exclusive control over gas resources (mostly of Russian origin) available in Hungary and its vertical integration in the gas and electricity markets, the transaction would lead to a serious risk of foreclosure of competitors on the downstream gas and electricity markets. As mentioned, contrary to MOL, E.ON is active downstream of the gas wholesale market, in the retail and distribution of gas and electricity (through its control of two out of six regional gas distribution companies and of three out of six regional electricity distribution companies) as well as in the generation of electricity. This would lead to a change of incentives of the new entity vis-à-vis its downstream competitors. The new entity would thus have both the ability and the incentive to discriminate against its competitors in the downstream markets both in the gas and in the electricity sectors.

⁽¹⁾ OJ L 24, 29.1.2004, p. 1.

- (5) In order to remove the competition concerns identified during the procedure, E.ON submitted on 20 October 2005 a package of commitments. On 16 November 2005, E.ON submitted revised commitments. The final commitments were submitted on 8 December 2005. The Commission believes that the undertakings, substantially improved following the market test compared to E.ON's initial offer, meet the concerns expressed by third parties as regards the need to ensure sufficient liquidity of gas on the Hungarian wholesale gas market at price and conditions which will allow third parties to compete effectively with the new entity on the downstream gas and electricity markets in Hungary.
- (6) A clearance decision with conditions and obligations pursuant to Article 8(2) of the Merger Regulation is therefore proposed for adoption.

II. EXPLANATORY MEMORANDUM

A. THE PARTIES

- (7) E.ON Ruhrgas International AG ('E.ON') belongs to the E.ON group of companies, a privately owned energy group with a focus on the supply of electricity and gas.
- (8) MOL Hungarian Oil and Gas ('MOL', Hungary) is an integrated oil and gas group which is primarily active in Hungary on the markets for natural gas, oils, fuels and chemicals. It is a public company listed on the Budapest stock exchange. The Hungarian State still owns 12 % of share capital, plus a golden share.

B. THE OPERATION

- (9) The present case concerns a concentration by which E.ON acquires control of MOL Földgázellátó Rt. ('MOL WMT') and MOL Földgáztároló Rt. ('MOL Storage'). E.ON will also acquire MOL's shareholdings in Panrusgáz Magyar-Orosz Gázipari Rt. ('Panrusgáz'), a joint venture company between OAO Gazprom (Russia) and MOL.
- (10) Mol Földgázszállító Rt. ('MOL Transmission'), another solely-controlled subsidiary of MOL, is not acquired by E.ON through the present transaction. MOL is instead granted a put option under which MOL can require E.ON to purchase a 25 % plus 1 share or a 75 % minus 1 share interest in MOL Transmission during the next two years.
- (11) Finally, MOL retains control over its gas exploration and production business (the MOL upstream gas Exploration and Production division ('MOL E & P')). However, as part of the transaction, MOL and MOL WMT have entered into a new long-term gas supply agreement for the gas produced by MOL E & P (the 'Supply Agreement').

C. RELEVANT MARKETS

RELEVANT NATURAL GAS MARKETS

(a) *Relevant product markets*

- (12) Taking into consideration the specificities of the Hungarian gas markets, the Commission has identified the following relevant product markets in the gas sector:
- (i) Transmission of gas;
 - (ii) Distribution of gas;
 - (iii) Storage of gas;
 - (iv) Supply of gas to traders;
 - (v) Supply of gas to Regional Distribution Companies ('RDCs');
 - (vi) Supply of gas to large power plants;
 - (vii) Supply of gas to large industrial customers (with an hourly consumption exceeding 500 m³/hour);
 - (viii) Supply of gas to small industrial and commercial customers (with an hourly consumption below 500 m³/hour); and
 - (ix) Supply of gas to residential customers.
- (13) Since 1 July 2004, all non-residential customers have become eligible customers free to choose their supplier under Hungarian law. Residential customers will become eligible on 1 July 2007 at the latest.
- (14) The Hungarian natural gas sector is characterised by a hybrid model, with the coexistence of a regulated segment of the market (or 'public utility market'), resulting from the old gas regime in Hungary, and a liberalized segment of the market (or 'open segment of the market'). In the regulated segment of the market, the public utility wholesaler (MOL WMT) is under an obligation by law to cover the full natural gas demand for public utility purposes of the RDCs, whereas the RDCs are under an obligation to source their natural gas needs for their public utility customers exclusively from the public utility wholesaler (at regulated prices). The RDCs, the public utility suppliers, have in turn the exclusive right and obligation to supply the customers situated in their territory at regulated prices. Eligible customers have the choice between remaining supplied within a public utility contract by their historic gas supplier (their RDC or the public utility wholesaler, MOL WMT if the customer was supplied directly by MOL WMT) or terminating their public utility contract and purchasing their gas requirements from a trader or importing natural gas themselves. It is expected that this hybrid model will disappear after July 2007.

(15) The market investigation has confirmed that there exists a separate product market for the supply of gas to traders in Hungary, on which importers/producers sell gas to traders, and traders sell each other gas, for onwards supply on the open segment of the market. On the regulated segment of the market, the RDCs have the obligation to purchase gas for their public utility needs from the public utility wholesaler (MOL WMT).

(b) Geographical markets

(16) (In the present case the investigation has shown that all affected markets are national in scope with the exception of the markets for the distribution of gas and the supply of gas to residential customers, which are at present sub-national in scope (i.e. confined to specific distribution areas within Hungary).

RELEVANT ELECTRICITY MARKETS

(a) Relevant product markets

(17) Taking into consideration the specificities of the Hungarian markets, the Commission has identified the following relevant product markets in the electricity sector:

- (i) Transmission of electricity;
- (ii) Distribution of electricity;
- (iii) The provision of balancing power;
- (iv) Wholesale supply of electricity to traders;
- (v) Wholesale supply of electricity to the public utility wholesaler;
- (vi) Wholesale supply of electricity to RDCs;
- (vii) Retail supply of electricity to medium and large commercial and industrial customers;
- (viii) Retail supply of electricity to small commercial and industrial customers; and
- (ix) Retail supply of electricity to residential customers.

(18) The Hungarian electricity sector is also characterised by a hybrid model, including a regulated segment and an open segment. On 1 July 2004, all non-residential customers became eligible customers. Residential customers will become eligible on 1 July 2007. As in the gas sector, eligible customers have the right, but not the obligation

to switch suppliers, and may thus stay with their respective regional supplier in the context of a public utility contract. There are however more customers that have switched to the open segment of the market in the electricity sector than in the gas sector. In June 2005, the open segment represented 32 % of the total Hungarian electricity consumption.

(b) Geographical markets in electricity

(19) In the present case, most of the affected markets are national in scope with the exception of the market for the distribution of electricity and the retail supply of electricity to residential customers, which are at present sub-national in scope (i.e. confined to specific distribution areas within Hungary).

D. COMPETITIVE ASSESSMENT

GAS MARKETS

(a) MOL WMT holds a dominant position in the wholesale supply of gas in Hungary

- (20) Due to its previous position as legal monopolist, MOL WMT holds a dominant position in the wholesale supply of gas to RDCs and to traders in Hungary. While MOL WMT retains its former monopoly rights on the regulated segment of the market, the Commission's investigation has revealed the existence of significant barriers to entry on the open segment of the Hungarian gas market. The main barrier faced by new entrants in Hungary is the difficulty of access to competitive sources of gas, and the lack of liquidity of the Hungarian gas wholesale market.
- (21) In particular, MOL WMT controls and will keep controlling access to domestic gas resources and to competitive imports.
- (22) Hungarian domestic gas production is not negligible and amounted to approximately 3 bcm in 2004, accounting for about 20 % of the total national gas consumption. The investigation has also shown that Hungarian gas is competitive compared to imported gas.
- (23) Although MOL E & P is not being acquired by E.ON under the proposed transaction, MOL E & P and MOL WMT have entered into a 10-year supply agreement for the domestic gas produced by MOL E & P as part of the transaction. Under the terms of this supply agreement, the volumes of gas to be supplied by MOL E & P to MOL WMT are set by reference to MOL E & P's production forecasts. The Commission has found that no domestic gas will be available for third parties [...], as the contracted volumes correspond to MOL E & P's production forecasts and that the quantities available for third parties for the remainder of the contract will be at most [27-37 %] of MOL E & P's production forecasts.

- (24) Imports account for 80 % of total gas consumption in Hungary and are expected to increase, as domestic production is declining. There are two entry points from which to import gas, the Eastern entry point (Beregovo, at the Ukrainian border) and the Western entry point (HAG, at the Austrian border).
- (25) The investigation has shown that all gas imported in Hungary — and the only competitive source of gas — is gas from Russia (i.e., sourced from Gazprom), or gas from a CIS country (in particular Turkmenistan) transiting through Russia and Ukraine (i.e., via transit pipelines under the control of Gazprom). Alternative gas sources are not expected to be available in Hungary before 2012 when the NABUCCO pipeline (bringing gas from the Middle East and Caspian area) becomes operational.
- (26) Prior to the liberalisation, MOL had a monopoly to import gas into Hungary. In order to secure its gas supply, MOL WMT has entered into long-term supply agreements with a duration of up to [...] (until [...]) with Panrusgáz, Gaz de France ("GdF"), E.ON and Bothli-Trade (Bothli-Trade has assigned this contract to EMFESZ, the only new entrant so far on the Hungarian gas market). The gas purchased by MOL WMT from E.ON and GdF, imported through the Western entry point, is physically Russian gas and is approximately [27-37 %] more expensive than the gas purchased from Gazprom via Panrusgáz or from EMFESZ.
- (27) The market investigation has shown that it is currently difficult for new entrants to get access to Russian gas in parallel to MOL WMT's existing contracts. It appears that there would be no incentive on the part of Gazprom to sell 'more' gas for exports to Hungary, other than the gas necessary to cover the 'supply gap' between the future increase in the Hungarian demand and the demand already covered by the existing long-term import contracts of MOL WMT.
- (28) Gazprom already supplies through Panrusgáz, its joint venture with MOL, gas quantities covering most of the needs of Hungary. The Commission believes that it is not possible to purchase gas from Gazprom to compete with MOL WMT. First, Gazprom has no incentive to sell gas to another gas trader at a cheaper price as the quantities would simply displace the quantities it already sells for the Hungarian market. Secondly, any gas Gazprom would sell at a more expensive price would not be competitive in Hungary.
- (29) In addition, MOL WMT enjoys and will keep enjoying significant incumbency advantages vis-à-vis potential new entrants in terms of security of supply, cost of transmission and storage of gas, notably thanks to its large customer base and significant volume of sales.
- (30) For these reasons, already prior to the transaction, MOL WMT is dominant on the various Hungarian gas wholesale markets (gas supply to RDCs, gas supply to traders, gas supply to power plants).
- (b) Impact on the Hungarian gas markets**
- Supply of gas**
- *The new entity will have the ability and incentive to foreclose access to wholesale gas to its competitors (RDCs and traders) on the market for gas supply to small industrial and commercial customers*
- (31) The essential change brought about by the transaction is that E.ON, unlike MOL, is active in the retail supply of gas to small industrial and commercial customers through its RDCs. The merger will thus result in the creation of a vertically integrated company, active both in gas wholesaling and in gas retailing. Immediately after the transaction, the new entity is likely to have the ability and incentive to foreclose its actual and potential competitors on the downstream market for the supply of gas to small industrial and commercial customers, as its competitors would have to rely on the new entity to procure their wholesale gas.
- (32) Following the merger, the new entity will have the ability to foreclose access to gas and raise its rivals' costs in various ways. In the regulated segment of the market, where prices are regulated, the new entity could engage in non-price discrimination (such as delays in supply, reduction in quality of service, lack of flexibility, unwillingness to renegotiate, etc.). In the open segment of the market, it could directly increase the wholesale price of gas to traders and/or engage in non-price discrimination.
- (33) E.ON, through its RDCs, has a market share of around [15-25 %] on the market for gas supply to small industrial and commercial customers. The Commission's analysis indicates that the new entity's incentive to raise the costs of rivals and its optimal foreclosure strategy is likely to evolve with the regulatory environment.
- (i) Immediately after the transaction: as long as both retail prices to small industrial and commercial customers and wholesale gas prices are regulated, the new entity will have an incentive to raise the costs to rival RDCs through non-price discrimination. Simultaneously, it is likely to increase the price of wholesale gas to independent traders to capture customers that switch to the open segment of the market.

- (ii) In July 2007: regulated prices are expected to be suppressed. At that point all eligible customers will have to switch to the open segment of the market. It is then likely that the new entity will have an incentive to foreclose all its downstream rivals on the market for the supply of gas to small industrial and commercial customers either by increasing the cost of gas or by reducing the quality of supply, whatever is optimal.
- (34) As a result, competitors of the new entity are likely to be marginalised, thereby allowing the new entity to gain increased market power on the downstream market for the supply of gas to small industrial and commercial customers. This input foreclosure is also likely to discourage new entries in this market as potential entrants will not expect to be in a position to contract gas supplies with the new entity under terms and conditions similar to those applicable to E.ON's affiliates. The Commission thus considers that the merger will significantly impede competition on the market for gas supply to small industrial and commercial customers.
- *The new entity will have the ability and incentive to foreclose access to wholesale gas to its competitors (RDCs and traders) on the market for gas supply to residential customers*
- (35) E.ON currently has a market share of around [15-25 %] on the market for gas supply to residential customers in Hungary. As in the market for gas supply to small industrial and residential customers, the new entity will have the ability and incentive to foreclose access to gas to its downstream competitors on the market for gas supply to residential customers, thereby significantly impeding competition thereon.
- (36) In the present case, since residential customers will become eligible in July 2007, i.e. only 18 months after the adoption of the present decision, the Commission considers that the main anticompetitive effects resulting from the merger will occur as from that date.
- (37) In addition to these future anticompetitive effects, the merger is also likely to produce immediate effects by (i) weakening rival retailers on the neighbouring and closely related market for the supply of gas to small industrial and commercial customers (which are likely entrants on the residential customer market); and (ii) discouraging potential new entrants to prepare their entry on the market (as market entry needs to be prepared well in advance).
- *The new entity will acquire a dominant position in the supply of gas to large industrial customers*
- (38) MOL WMT and RDCs have only been indirect competitors on the market for gas supply to large industrial customers as, on the regulated segment of the market, MOL WMT can only supply customers directly connected to the transmission network. In addition, RDCs are obliged to source their gas from MOL WMT. So far few customers have been able to obtain better offers on the open segment of the market from traders such as EMFESZ because regulated prices have remained quite low.
- (39) As of July 2007, the hybrid model and regulated prices will disappear for large industrial customers. Although MOL WMT, as a gas trader, would have been able to gain more large industrial customers connected to distribution networks, the merger results in the addition of MOL WMT's and E.ON's significant customer portfolios (for E.ON, through its controlled RDCs (KÖGÁZ, DDGÁZ) and, arguably, of FÖGÁZ, about which it has privileged information), to the new entity will therefore immediately gain access to a significant customer base (a combined market share of around [40-50 %] as opposed to its current competitor EMFESZ and to potential entrants.
- (40) For these reasons the Commission takes the view that the merger will significantly impede competition on the market for gas supply to large industrial customers through the creation of a dominant position.
- Storage of gas**
- (41) MOL Storage is the only company able to offer gas storage services in Hungary. Access to storage is essential for any gas supplier to be active on the gas wholesale and retail markets, essentially in order to manage the seasonal fluctuations in the demand of its customers. The Commission believes that as a result of the merger, the new entity will have the ability and incentive to reinforce its gas input foreclosure strategy by adopting discriminatory behaviour in granting access to storage, even in a scenario of fully regulated prices for storage services (as required under the resolution of the Hungarian Energy Office approving the transaction).
- (42) The new entity may also control the development of new storage capacities in Hungary in view of (i) MOL Storage's call option to purchase depleted fields from MOL E & P; and (ii) MOL's incentive to favour MOL Storage in selling depleted fields of MOL E & P due to its remaining 25 % shareholding in MOL Storage.

Transmission of gas

- (43) MOL Transmission owns and manages the high pressure grid in Hungary. The 25 %+1 minority shareholding that MOL would retain in MOL WMT gives MOL Transmission an incentive to reinforce the gas input foreclosure strategy to the detriment of E.ON's competitors downstream through discriminatory behaviour in granting access to the transmission network.

ELECTRICITY MARKETS

- (44) The Commission's market investigation has also identified competition concerns on various electricity markets, resulting from the vertical integration of MOL WMT's activities in the upstream market of gas supply to large power plants with E.ON's activities in the downstream markets of electricity generation/wholesale and electricity retail.

- (45) Whereas MOL is not active in the electricity markets, E.ON has made significant investment in the electricity sector in Hungary since 1995. The group is currently active at the generation level with a small size gas-fired power plant in Debrecen (95 MW), and at the wholesale and retail supply level with ownership of three out of the six electricity RDCs and the electricity trading company E.ON EK. In addition, E.ON controls various companies involved in electricity retail supply in neighbouring countries.

- (46) Prior to the transaction, MOL WMT is already dominant in the market for the supply of gas to large power plants. The fundamental change brought about by the transaction is that the new entity not only has the ability but is now also likely to have the incentive to exploit its position as gatekeeper of gas resources in Hungary to foreclose its actual and potential competitors on the downstream electricity markets of wholesale supply of electricity to traders, retail supply of electricity to medium and large industrial and commercial customers, retail supply of electricity to small industrial and commercial customers, and retail supply of electricity to residential customers.

Electricity generation/wholesale

- (47) Total generation capacity in Hungary is approximately 8 000 MW in 2005, to be compared with the country's peak load of 6 350 MW (in 2004). The Hungarian electricity generation is split between nuclear energy (1 800 MW installed capacity) and lignite, gas and coal power plants (5 700 MW installed capacity). Almost 40 % of electricity consumed in Hungary is generated by the

Paksi nuclear power plant, the remaining 60 % is mainly generated by power plants burning hydrocarbons (lignite, gas and coal) and by imports. The major part of the large power plants' capacity is booked under long-term power purchase agreements ('PPAs') with MVM, the Hungarian electricity incumbent and public utility wholesaler. The market investigation has established that the total capacity booked under PPAs amounted to 4 000-5 000 MW in 2005.

- (48) It is estimated that significant new electricity generation capacity (5 000 MW or 60 % of current installed capacity) will be needed in Hungary by 2020 to replace old power plants (3 500 MW) and to satisfy the increase in demand. Accordingly, Hungarian electricity generation capacity should increase from 8 000 MW to approximately 10 500 MW.

- (49) The Commission's market investigation on existing new power plants projects in Hungary has established that gas will be the predominant fuel for new power plants. The Hungarian energy regulator considers that gas-fired power plants could reach approximately 60 % of new generation capacity.

- (50) Electricity imports into Hungary are essentially made by electricity traders for transit or to supply medium and large customers. MVM, the public utility wholesaler, accounted for [30-40 %] of electricity imports in 2003. E.ON was the second largest importer, ahead of other electricity traders, with [10-20 %] of imports. According to a 2005 study of MAVIR, the electricity transmission operator, Hungarian electricity imports are expected to decline over the next 10 years, while the total electricity demand will continue to increase in Hungary. The share of electricity imports in the total electricity demand would therefore decline while the share of domestic production would increase.

- (51) Prior to the transaction, MOL WMT already has a dominant position in the market for the supply of gas to large power plants. Following the transaction, the new entity will thus have the ability to determine its competitors' power plants gas supply conditions (prices, rules for nomination, take-or-pay penalties, interruptibility, etc.) and to discriminate against rival power generators in several ways.

- (52) The Commission's investigation has shown that, immediately after the transaction, E.ON is likely to pursue two strategies to strengthen its position in both electricity generation/wholesale supply and electricity retail supply in Hungary.

(53) As regards new power plants, E.ON is likely to increase the cost of gas to its competitors' new gas-fired power plants, with the aim to deter these rivals from building new gas-fired power plants and to favour its own new power plants projects. This strategy would be attractive for E.ON in view of its strong interest in expanding significantly its power generation capacity in Hungary. E.ON may also discriminate against new gas-fired power plants that do not supply its downstream electricity retail affiliates. This strategy would be economically rational as it would provide E.ON with a certain degree of control over the electricity generation/wholesale market and additional competitive advantage on the electricity retail market.

(54) As regards existing power plants, the new entity is likely to implement the same foreclosure strategies with the objective of limiting their ability to compete on the open segment of the generation/wholesale market and to eventually induce them to exit the market. Several market players have expressed the concern that E.ON would then seek to acquire their assets.

(55) In the future liberalized regulatory framework characterized by greater power generation capacity available on the open segment of the market (and by E.ON's larger share in power generation), the foreclosure strategies described above will be even more effective and therefore damaging. They would reduce the ability of rival gas-fired power plants to compete and limit the scope for the development of the competitive electricity wholesale market.

(56) E.ON's strategy would lead to a slower and less competitive development of new generation capacity in Hungary starting immediately after the transaction (compared to a situation where new power plants would be built by distinct market players) and ultimately to higher electricity wholesale prices. It would thus impede effective competition on the market for generation/wholesale supply of electricity to traders.

Electricity retail

(57) E.ON is clearly the leading player in the retail supply of electricity in Hungary. It is the only group with strong positions in both the regulated segment (with three out of six RDCs) and the open segment (E.ON EK is one of the three largest electricity traders in Hungary), with a market share around [40-50 %].

(58) E.ON's strategy on the electricity generation/wholesale market would significantly impede competition on all the markets for the retail supply of electricity. This impact would first result of the non-competitive development in new generation capacity and higher wholesale prices. Second, the new entity's likely strategy to link the gas supply and electricity purchase of gas-fired power plants would reduce the ability of rival electricity retailers to source competitive electricity and would increase the new entity's already strong market power in electricity retail. Finally, the Commission's market investigation has indicated that dual offers (gas and electricity) are likely to play an important role in Hungary. According to the Commission, E.ON will have the ability and incentive immediately after the transaction to prevent any other company active in electricity retail from developing dual offers by foreclosing access to gas resources to those competitors willing to pursue this marketing strategy, thereby significantly impeding competition on the markets for the supply of electricity to small industrial and commercial and residential customers.

E. COMMITMENTS

(59) In order to remove the competition concerns described above on the gas and electricity markets, E.ON submitted on 20 October 2005 a package of commitments. On 16 November 2005, the E.ON submitted revised commitments and on 8 December, the final version of the commitments was submitted. The Commission believes that the undertakings, substantially improved following the market test compared to the parties' initial offer, meet the concerns expressed by third parties as regards the need to ensure sufficient liquidity of gas on the Hungarian wholesale gas market at price and conditions which will allow third parties to compete effectively with the new entity on the downstream gas and electricity markets in Hungary.

UNBUNDLING

(60) First, pursuant to the commitments, MOL will divest its remaining shareholdings of 25 % + 1 share in MOL Storage and MOL WMT within six months following the date of closing. In addition, MOL will not to acquire direct or indirect minority stakes in MOL WMT and MOL Storage for a period of 10 years as long as E.ON is a majority shareholder of these companies.

(61) The divestiture of MOL's 25 % shareholdings in MOL Storage and MOL WMT pursuant to the commitments removes the concerns stemming from the structural links between MOL and E.ON. The market test has, to a large extent, welcomed the severing of the structural links between the parties.

(62) Secondly, pursuant to the commitments, MOL will not exercise the put option for the 25 % + 1 share interest in MOL Transmission. In addition, MOL will not sell to E.ON or any of its affiliates, for a period of 10 years as long as E.ON is a majority shareholder of MOL WMT and MOL Storage, a share interest in MOL Transmission that would not result in the acquisition of sole or joint control over MOL Transmission by E.ON.

(63) This remedy will provide the competent competition authorities with the opportunity to review the creation of any structural link between the new entity and MOL Transmission (notably if the put option is exercised) in the framework of the market conditions prevailing at such time.

GAS RELEASE AND CONTRACT RELEASE

(64) E.ON undertakes to implement a gas release program in Hungary by way of business-to-business internet auctions. The gas release program foresees eight annual auctions of 1 bcm of gas (in 2006, 2007, 2008, 2009, 2010, 2011, 2012 and 2013) and will have a duration of nine years until July 2015. The Hungarian Energy Office and a Monitoring Trustee will supervise the auctions and the implementation of the gas release program.

(65) In addition, E.ON undertakes to assign to a third party (the 'Third Party') half of the contract between MOL WMT and MOL E & P for the supply of domestic gas ('Supply Contract') within six months from the date of the closing. Once the contract assignment becomes effective, the Third Party will take over all the rights and obligations of MOL WMT under the Supply Agreement for the part assigned to it. The assignment will become effective at the beginning of the gas year 2007 (July 2007) and will be valid for the whole duration of the Supply Contract, until July 2015. The part of the Supply Contract to be assigned represents approximately 7.6-10 bcm of gas in total, with the volumes to be released in the first year amounting to 1.2 bcm.

(66) To assess properly whether the gas release and the contract release commitments submitted by the parties are suitable to remove the competition concerns identified during the procedure, the Commission has reviewed existing similar programs in various European countries and carried out a market test with Hungarian gas and electricity operators.

(67) The Commission has reached the conclusion that the gas release program and the contract release as offered by the parties, incorporating the amendments and improvements proposed by third party respondents to the market test,

are sufficient to remove all the competition concerns resulting from the transaction. In particular, the combination of the gas release program and the contract release will ensure that all market participants (whether gas customers or traders) will have the ability to source their gas needs under competitive and non-discriminatory conditions and, for at least a significant part, independently from the merged entity.

(68) The Commission considers that the total volumes of gas to be released are suitable to create sufficient liquidity of gas on the Hungarian wholesale gas markets so as to ensure that effective competition can develop and remain sustainable on the downstream gas and electricity markets. The total quantities of gas to be released through both remedies are significant in comparison to other existing gas release programs (2 bcm on a yearly basis, or up to 14 % of total Hungarian domestic consumption).

(69) The duration of the gas release program and contract release (until July 2015) will ensure that sufficient liquidity will be available for a sufficiently long time until the market structure and competitive conditions have changed. Furthermore, the price mechanism foreseen for both the gas release program and the contract release will ensure that successful bidders will obtain gas at the same (or possibly better in the case of the gas release program) competitive conditions as the new entity. The Commission considers this pricing mechanism is attractive for third parties and will provide good incentives to participate actively in the gas release program's auctions.

(70) With respect to the gas release program, the Commission believes that the program offered by the parties is designed, as regards its main features (volumes, duration, price mechanism) and in its more technical features (size of lots, duration of contracts, flexibility rules) largely in line with the criteria considered to be most relevant for the successful implementation of gas release programs. The detailed rules for the effective implementation of the auction and the gas supply contracts will be elaborated by the parties under the scrutiny of the Hungarian Energy Office, and submitted to the Commission for its approval.

(71) With respect to the contract release, the Commission believes that the Third Party assignee of the contract release will constitute a sizeable and sustainable competitive force in the Hungarian gas markets. It will have sufficient long-term gas resources to develop its position on the Hungarian gas markets and introduce liquidity on these markets

ACCESS TO STORAGE

- (72) E.ON undertakes to grant access to storage capacities at regulated prices and conditions to gas customers and traders that purchase gas directly through the gas release program or the contract release. In particular, E.ON undertakes to offer access to sufficient storage capacities for those end users and wholesalers even if they purchase gas for the first time (for new customers) or develop an increased demand for storage (as the current regulatory framework only guarantees transfer to the new supplier of the storage capacity up to the existing consumption of existing customers).
- (73) The Commission considers that this commitment is sufficient to grant an effective and non-discriminatory access to the storage capacities for the relevant gas quantities and will enable traders and customers to structure

the acquired gas according to their own or their customers' needs. The commitment on storage will contribute to make the gas and contract release attractive for third parties.

F. CONCLUSION

- (74) For the reasons mentioned above, considered individually or together, the Commission has come to the conclusion that the commitments submitted by E.ON are sufficient to address the competition concerns raised by this concentration.
- (75) The Commission's Decision therefore has declared the notified transaction compatible with the common market and the functioning of the EEA Agreement pursuant to Article 8(2) of the Merger Regulation.
-