

Opinion of the Advisory Committee on concentrations given at its 130th meeting on 26 November 2004 concerning a preliminary draft decision relating to Case COMP/M.3440 — EDP/ENI/GDP

(2005/C 288/03)

(Text with EEA relevance)

1. The Advisory Committee agrees with the Commission that the notified operation constitutes a concentration within the meaning of Article 3(1)(b) of Regulation (EEC) No 4064/89 and that it has a Community dimension.
2. The Advisory Committee agrees with the Commission that for the purposes of assessing the present operation, the relevant product markets are:

in electricity:

- (a) the wholesale supply of electricity consisting of the production of electricity at power stations and electricity imported through interconnectors
- (b) the provision of balancing power and ancillary services, the exact delineation of this(these) emerging market(s) can be left open
- (c) the retail supply of electricity to Large Industrial Customers (LICs) (HV and MV)
- (d) the retail supply of electricity to small customers (i.e. smaller industrial, commercial and domestic customers) (LV);

in natural gas, as soon as the product markets are open:

- (e) gas supply to gas-fired power plants (CCGTs)
- (f) gas supply to local distribution companies (LDCs)
- (g) gas supply to Large Industrial Customers (LICs)
- (h) gas supply to small customers (i.e. smaller industrial, commercial and domestic customers).

3. The Advisory Committee agrees with the Commission that for the purposes of assessing the present operation, the relevant geographic markets are as follows:

- (a) the electricity wholesale market is Portuguese in scope and will remain so in the timeframe considered for the purposes of the decision, in particular in view of the different competitive conditions between both Iberian countries that currently exist and are likely to remain in the foreseeable future
- (b) the retail electricity markets are Portuguese in scope
- (c) the geographic market for electricity balancing power and ancillary services will remain national
- (d) with regard to the above gas product markets, that all markets except the market for supply of gas to small customers are national in scope whereas the exact geographic scope of the market for supply to small customers, which can be expected to become national within a short period of time after opening of the market to competition but which is no larger than national, can be left open.

4. The Advisory Committee agrees with the Commission that the notified concentration will strengthen:

- (a) EDP's dominant position in Portugal on the market for wholesale electricity
- (b) EDP's dominant position in Portugal on the market for ancillary services
- (c) EDP's dominant position in Portugal on the markets for retail electricity supply to LICs
- (d) EDP's dominant position in Portugal on the markets for retail electricity supply to small customers

- (e) GDP's dominant position in Portugal on the market for the supply of natural gas to CCGTs
 - (f) GDP's dominant position in Portugal on the market for the supply of natural gas to LDCs,
 - (g) GDP's dominant position in Portugal on the market for the supply of natural gas to LICs
 - (h) GDP's dominant position in Portugal on the national market (or on five regional markets) for the supply of natural gas to small customers;
- as a result of which effective competition will be significantly impeded in a substantial part of the common market within the meaning of Article 2(3) of the Merger Regulation.
5. The majority of the Advisory Committee agrees with the Commission that the commitments submitted by the parties are insufficient to remove:
- (a) the competitive concern in the wholesale electricity market resulting from the horizontal effects of the transaction (elimination of the main potential competitor)
 - (b) the competitive concerns in the wholesale electricity market resulting from each of the vertical effects:
 - (i) the privileged access to gas infrastructure
 - (ii) raising of rivals costs
 - (iii) access to proprietary information (gas price and daily nomination)
 - (c) the competitive concerns in the market for ancillary services
 - (d) the competitive concerns in the retail supply of electricity to LICs
 - (e) the competitive concerns in the retail supply of electricity to small customers
 - (f) the competitive concerns in the market for gas supply to CCGTs
 - (g) the competitive concerns in the market for gas supply to LDCs
 - (h) the competitive concerns in the market for gas supply to LICs
 - (i) the competitive concerns in the market(s) for gas supply to small customers
- and that, as a result, the concentration should be declared incompatible with the common market.
- A minority abstains.
6. The Advisory Committee agrees to ask the Commission to take into account the remarks and comments made by the Advisory Committee and recommend the publication of its opinion in the *Official Journal of the European Union*.
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