

**THE EUROPEAN COMMISSION APPROVES  
THE MERGER OF GAZ DE FRANCE AND SUEZ**

On November 14, 2006, the European Commission (*the Commission*) approved the €78 billion (\$100 billion) merger of Gaz de France S.A. and Suez S.A. (*the Parties*). Upon consummation, the transaction would produce the second-largest energy company in Europe. The firm's Paris and Brussels offices advised Gaz de France on the antitrust aspects of the transaction, including its filing with the Commission. The Commission's approval is significant, in part, because it comes as the Commission is developing an EU-wide power and gas market and encouraging national governments to cede control of energy regulation. The firm's work on the matter was led by partner Jacques-Philippe Gunther.

**Background**

Gaz de France is active in the gas sector (it owns most of the transport, storage, distribution and liquefied natural gas terminal infrastructures in France and is also the incumbent supplier), electricity generation, electricity retail, and energy services (notably heating networks). It operates mainly in France and Belgium where, along with another entity, it has joint control over SPE, the second-largest player in the Belgian electricity and gas markets.

Suez is active in the gas and electricity sectors, through subsidiaries such as Electrabel (electricity and gas), Distrigaz (gas), Fluxys (gas infrastructures in Belgium) and Suez Energy Services (energy services sectors). It operates mainly in Belgium and France.

The transaction was notified to the European Commission on May 10, 2006. After an initial review period of 25 working days (approximately 1.5 months), the Commission concluded that it had serious doubts as to whether the transaction would be lawful under European competition law. An in-depth investigation was launched on June 19, 2006, thus extending the procedure by a period of 90 working days (approximately 4.5 months).

The Commission then conducted a thorough market test, requiring market participants (competitors, suppliers and customers) to answer detailed questionnaires regarding the anticipated competitive effects of the transaction in the various relevant markets. On the basis of the feedback it received from market participants, on August 18, 2006, the Commission sent a Statement of Objections to the Parties that explained in detail its concerns regarding the anticipated anticompetitive effects of the transaction.

In substance, the Commission's concerns were the following:

- **In Belgium**, the Commission found that the merger, as originally planned, would have led to very high combined shares of the gas and electricity markets and would have eliminated Gaz de France as the strongest competitor to Suez. In this regard, the

Commission found that Gaz de France was in a unique position to compete with Suez and that no other company would be able to reproduce the same level of competitive pressure in the gas and electricity markets. The Commission also took the view that high barriers to entry into those markets (such as access to gas and electricity generation capacities and to transport and distribution infrastructures) would have further strengthened Suez's dominant position.

- **In France**, the Commission found that the merger would have strengthened Gaz de France's dominant position in the gas markets by removing the competitive pressure exerted by Distrigaz, one of its best-placed competitors. The Commission also took the view that high barriers to entry (relating to access to gas and infrastructures) would have amplified the horizontal effects of the merger in the gas markets.

Furthermore, concerning heating networks, the Commission found that, by combining the largest operator (Suez) with the third largest (Gaz de France) and leaving only one credible competitor (Dalkia), the transaction would have significantly impeded competition.

The Parties challenged some of the Commission's conclusions in their response to the Statement of Objections that was filed on September 1, 2006. In an effort to meet the Commission's concerns, the Parties offered a first set of commitments on September 20, 2006. After the Commission had conducted a market test of the Parties' commitments, the Commission concluded that those commitments did not meet all the concerns identified in the Commission's Statement of Objections and were insufficient to allow the Commission to clear the transaction.

The Parties then submitted a second remedies package that the Commission found to be sufficient to address its competitive concerns and to permit the transaction to be cleared.

The commitments offered by the Parties and accepted by the Commission are, in substance, the following:

- The Parties offered to divest Distrigaz (including its French activities) and of Gaz de France's stake in SPE. This effectively allowed the Parties to eliminate all competitive overlaps in France and Belgium and to fully restore the competitive pressure exercised on each of the Parties.
- In order to address the concerns expressed by the Commission with respect to barriers to entry, the Parties agreed to relinquish control over Fluxys, the Belgian gas infrastructure operator, and to facilitate the entry of new competitors through the development of new gas infrastructures.
- Finally, the Parties agreed to divest Cofathec Coriance, a Gaz de France subsidiary that is active in the heating network sector, thus removing all overlaps between the Parties in this market.

Subject to implementation of these commitments, the Commission cleared the transaction in its decision dated November 14, 2006 (not yet publicly available).

### **Implications**

This case illustrates the Commission's concerns with respect to competitive conditions in energy markets. These concerns had prompted a sector enquiry by the Commission in 2005 to identify "obstacles to better performing markets." Within this framework, the Commission carefully reviewed the impact of the reported transaction (taking into account both actual and potential competition), conducted thorough market tests, gathered responses of hundreds of market participants, and liaised closely with the entities that regulate energy in several EU Member states. Despite that extensive investigation, the Parties were able to devise remedies to satisfy the Commission's concerns while still achieving the primary business objectives of the transaction.

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January 8, 2007

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