Gazdasági Versenyhivatal

The Authorization of the MVM-E.ON transaction

The Gazdasági Versenyhivatal (GVH – the Hungarian Competition Authority) cleared the acquisition of E.ON Földgáz Trade Zrt. and E.ON Földgáz Storage Zrt. by Magyar Villamos Művek Zrt.

The most important field of activity of Magyar Villamos Művek Zrt. (MVM) and undertakings controlled by MVM is connected to the electricity industry. Activities of the MVM Group extend to the production and transmission of electricity, system operation and electricity trade, thus it can be regarded as a vertically integrated group of undertakings which also provides other services related to the market of electricity. Since 2011 both the wholesale and retail of natural gas have become part of its activities as well; however its market share does not exceed 20% in any segment of the natural gas industry (primary procurement and sale of gas to retailers, power plants and industrial consumers). The majority shareholder (with 99.98%) of MVM is the Hungarian State, which practices its proprietary rights through Magyar Nemzeti Vagyonkezelő Zrt. (hereinafter: MNV).

100% of the shares of E.ON Földgáz Trade Zrt. (EFT) and E.ON Földgáz Storage Zrt. (EFS) are owned by members of the same group of undertakings (E.ON-Group), E.ON Ruhrgas International GmbH and E.ON Gas Storage GmbH.

The acquisition of 100% of the shares of the two undertakings (EFT, EFS) by MVM was the aim of the transaction.

The range of activities of E.ON Földgáz Trade Zrt. extends to the wholesale and retail trade of natural gas, providing related services, and gas transport through the borders of Hungary. EFT sells gas in Hungary to retailers/traders, typically to universal service providers, industrial consumers and power plants.

E.ON Földgáz Storage Zrt. is entitled to engage in natural gas storage activities at its storage sites in Hungary.

When defining the relevant product market in the proceeding, the GVH established that natural gas trade does not constitute a single market: the sale to groups of customers in significantly different positions belongs to different relevant product markets; moreover the natural gas storage activity was also considered as a separate product market. In line with previous investigations of the GVH – and in accordance with the practice of the European Commission – the production and wholesale of electricity were considered as identical markets.

With the acquisition of EFT and EFS (E.ON Natural Gas Companies), MVM will become the number one natural gas provider in Hungary, with a market share of 70-

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80% in primary procurement and 60-65% on wholesale markets. As a result of this, the GVH had to specifically evaluate what effect the merger would have on cross-border capacities and therefore on the liquidity of the Hungarian gas wholesale market.

In particular, the GVH analysed how much the transaction would affect the so called "HAG" natural gas pipeline crossing the Austrian-Hungarian border. The importance of the HAG pipeline has been increasing lately on the Hungarian market due to the fact that significantly cheaper gas can be imported through it from the West than from the East. The GVH established that the order of the Ministry of National Development allocated a significant amount of the cross-border capacities to MVM and EFT (until the end of 2013/2014 gas year, 1 July 2014.) practically prevents market players other than MVM and EFT from gaining access to the HAG pipeline, the only competitive source of natural gas procurement available. The capacities allocated to MVM and EFT would be placed in one hand through the merger, and consequently the MVM Group would acquire such large influence in natural gas procurement and natural gas trade which could lead to the substantial lessening of competition. The proceeding competition council decided however, that even if the order was to be kept in effect beyond the 2013/2014 gas year the identified competition concern would only persist for a relatively short period of time (for one and a half years, i.e. two gas years at the longest). The proceeding competition council was of the opinion that in order to avoid a hypothetical, future and transitional competition problem from occurring (since the keeping in effect of the order cannot be foreseen with due certainty at the moment of the authorization) at the time of the authorization of the merger, it would be a disproportionate competition supervision intervention to prohibit the merger. Consequently, the proceeding competition council did not consider it justified to impose conditions or obligations for the relatively short period of time regarding the usage of the HAG pipeline in an anti-discriminatory manner. However, the EU regulation that will no longer allow this kind of allocation of cross-border capacities is expected to enter into force in 2015. No harmful vertical effects of the deal – basically due to the comprehensive regulation of natural gas storage activities – could be identified. It is expected that as a result of the transaction portfolio effects will emerge, but the positive effects (economies of scope, one-stop-shop purchasing) will outweigh the negative ones, and the latter could not be considered severe enough to make the blocking of the deal justified.

The present transaction did not reach the legal thresholds required for the involvement of the European Commission, thus it falls under the exclusive jurisdiction of national authorisations. Besides Hungary, the transaction was investigated by the competition authorities of Germany, Austria, Romania and two non-EU states, Serbia and Ukraine. The GVH unconditionally authorised the acquisition in a full procedure (second phase).

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