GAZDASÁGI VERSENYHIVATAL
HUNGARIAN COMPETITION AUTHORITY
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The GVH approves acquisition of Intergas by Prímagáz, subject to conditions

The Hungarian Competition Authority (Gazdasági Versenyhivatal – GVH) has authorised the acquisition of Intergas by Prímagáz, subject to conditions. As a result of the transaction Prímagáz acquires 100 percent of the shares of Intergas.

In its decision made on 28 April 2010, the GVH granted authorisation to Prímagáz Hungary Industrial and Sales Corporation (Prímagáz) to acquire 100 percent of the shares of Intergas Hungária Commercial and Supplying Co. (Intergas) by imposing conditions on Prímagáz.

Almost 100 percent of the shares of Prímagáz – the biggest retail distributor of butane and propane gas (manufactured during the refining of crude oil or derived from natural gas), their mixture and of pure propane (altogether LPG products) in Hungary – are held by a company registered in The Netherlands, called PAM Gas B.V., which is a 100 percent subsidiary of SHV Holdings N.V., also registered in The Netherlands. The members of SHV group distribute propane and butane gas in 23 countries of 4 continents. Primagas Central Europe GmbH (PGCE) supplies the Central-European subsidiaries of SHV group with gas. (Altogether the Primagas-group)

Besides the purchase and storage of LPG products Prímagáz is active in filling LPG products in different types of pressure vessels (tanks, cylinder), and in direct and indirect sales of gas. Intergas is a private limited company, which is registered in Hungary and owned by the Development Capital Stock of the Hungarian Development Bank (MFB), Gáztrans Hungária Co. and a private person. It does not have proprietary rights in other Hungarian companies.

Besides wholesale and storage of LPG products, Intergas is active in their transloading and providing complex logistic services related to them.

In the course of the assessment of the transaction, the GVH analysed the phases of the LPG supply chain, namely LPG retail, purchase and transloading. The latter is closely related to import coming from the East and constitutes an essential logistical component in the LPG supply chain since the railway systems are of different gauges and gas products from the wagons for broad gauges are transloaded into the bulks of the wagons compatible with the standard European gauge.

The GVH also took into consideration that retail distribution of LPG products requires significant infrastructure and consequently costly investments, which means that it is not probable that a new entrant would enter the market. Regional wholesale and the entering of the Hungarian LPG import market can be realised at relatively moderate costs.

Both Primagas-group and Intergas are present on the market for transloading services, and their activities on the LPG purchase market also overlap to a certain extent. Above all these mentioned, Prímagáz is the most important player on the market for LPG retail in Hungary. According to the GVH, by acquiring Intergas, the market share of Primagas-group based on nominal transloading capacities would increase on the affected market for transloading from

18% to 39%, as a result of which Primagas-group would become the most significant player on this market. Furthermore Prímagáz would also acquire a gas transloading facility that is currently independent from the market players and freely accessible to those undertakings that do not possess transloaders. As a result of the concentration, the segment for transloaders would get significantly concentrated: the aggregate market share of the two most significant market players, Primagas-group and MOL would exceed 60% and only two independent transloaders would remain on the affected transloading market identified in the assessment of the concentration.

The GVH cannot refuse to grant authorisation if the concentration – in particular as a result of the creation or strengthening of a dominant position – would not significantly reduce competition on the relevant market (so called SIEC-test). However if it does, by considering the beneficial and detrimental effects of the concentration on competition, either the authorisation of the concentration can be refused, or in order to reduce the detrimental effects of the concentration, the GVH may impose conditions on the undertakings.

In the standpoint of the GVH, after the transaction, Primagas-group will become the most important player on the affected market for LPG transloading, and will remain the market leader on the affected retail market for LPG. With Intergas becoming part of Primagas-group the concentration has vertical effects, as a consequence of which Primagas-group will be interested in directly or indirectly refusing access to the transloading capacity of Intergas to its competitors on the lower levels of the vertical chain (refusal to supply). Prímagáz, which will become stronger in the transloading segment and which is interested in the retail segment, after the concentration might refuse to provide transloading services for its competitors or might make those services more expensive, which– as a result of the decrease in supply available for the retailers or/and increase in purchasing prices – might lead to increase in retail prices.

The GVH has established that on the market for purchases with Hungarian relevance, in the presence of MOL, as the sole producer and the market leader with significant amount of transloaded import coming from the East, the only available effective way to purchase gas from an independent source is to take part in the import from the East, which is not feasible without access to the transloading services. Considering that after the concentration only a little proportion, an estimated maximum of 10% of the total capacity of the transloading market would remain accessible for those competitors that do not possess transloading facilities, Primagas-group would have the ability to vertically foreclose the market.

The incentive to exclude actual (or potential) competitors theoretically might also depend on the fact to what extent the vertically integrated company's unit at a lower level in the supply chain might make use of the higher price level evolved at a lower level in the supply chain as a result of the strategy aimed at excluding competitors or raising the rivals' costs (RRC). The higher is the market share of the undertaking coming into existence as a result of the concentration at the lower level of the supply chain, the higher is the turnover which is affected by the increasing margin. Since Prímagáz is the biggest player with more than one third share of the retail market, the GVH established that the interest of Primagáz in excluding competitors on the transloading market has to be considered.

Considering the oligopol structure of the gas purchasing and transloading market, one cannot neglect the incentive of the market players to react to the new situation that has been created as a result of the concentration in an individual (non-coordinative) way, by maximizing their profit, raising their prices and/or moderating their sales, which may strengthen the effect of the vertical foreclosing practice of Prímagáz.

The GVH has identified neither any likely entry to the transloading market within a reasonable period of time nor any balancing factors relating to the improvement of the buying power or the cost-efficiency.

The GVH has identified that the concentration would presumably entail harmful vertical (foreclosure) effects, horizontal effects were only identified in the vertical context while *portfolio*- or *conglomerate effects* were not presumable.

In order to reduce the detrimental effects of the concentration identified by the GVH in the course of the investigation Prímagáz offered to give access monthly to at least 20 percent of its total transloading capacity measured at the time of the remedies offered for two years as far as 1 May 2012 to undertakings that are independent from Prímagáz-group and that do not have direct or indirect control over PB gas transloading stations in Hungary under non-discriminatory business terms and conditions.

In order to make the conditions binding on Primagáz, the GVH considered whether the transloading capacity of Intergas, which is of significant status for those LPG retailers that do not possess own transloading capacity, would be accessible in an adequate extent to the latter. The GVH also examined whether the conditions for providing transloading services (price, discount, service content, registering and annulations, etc.) constituting the subject of the remedies meet the common business practices, ensure the possibility for the independent market players mentioned to be able to be present on the market by giving them access to transloading capacities. The GVH also asked for the opinion of the market players potentially concerned by the remedies (market test). It took into account as well that the conditions imposed on the parties should be proportionate to the possible detrimental effects. Considering all the above mentioned, the GVH, which paid special attention to the circumstances revealed concerning the entering of the transloading market, regarded appropriate to determine the duration of the conditions in a limited period of time (2 years). The GVH deemed that the conditions imposed will be enforceable and controllable in the course of this period. The GVH may hold several post-investigations in order to continuously check the compliance with the conditions imposed for a longer period of time. In the case of the present transaction, post-investigations will only be justified if the market players indicate to the GVH that the conditions have not been kept, or if Prímagáz – referring to changes in market conditions – asks for the modification or cessation of the conditions.

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Hungarian Competition Authority
Communication Team

Further information:
Jozsef SARAI
Hungarian Competition Authority
Address: 1054 Budapest, V., Alkotmány u.5.
Postal address: 1245 Budapest, 5. POB. 1036
Tel: +36-1-472-8933
email: press@gvh.hu
http://www.gvh.hu