

# A VIEW FROM ROME - GAS NATURAL & ENDESA PUT EUROPE'S ENERGY SECTOR TO THE TEST

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The proposed acquisition of Endesa by Gas Natural could be the first merger of its kind in the European energy sector. The resultant economic powerhouse, Gas Natural-Endesa, would be the top importer of gas, controlling 65% of gas sales in Spain and managing 90% of clients. The new entity would have a monopoly in the gas market, and be a strong member of the duopoly in electricity.

Cristina Cabello González, del Studio Legale Tonucci, en Roma, sugiere que la compra de Gas Natural a Endesa podría ir en perjuicio de otros operadores europeos. En este artículo afirma que sería más beneficioso para todos construir un mercado europeo competitivo, aunque bajo el auspicio de la UE, lo que promovería el desarrollo de mercados transfronterizos.

With the abandoning of nuclear energy and the limitations on the use of carbon imposed by the

Kyoto Protocol, new means of energy production will rely primarily on gas power plants. The transfer of assets to Iberdrola would strengthen the duopoly. The situation would be as beneficial in the gas sector, where only Spanish electric companies are likely to enter.

Moreover, in merging, Gas Natural could trump one of the few competitors capable of presenting an alternative energy offer to consumers, and it is not too daring to argue that each of the two companies could make more than two thirds of their European sale proceeds in Spain.

On the other hand, the pre-emptive agreement between Gas Natural and Iberdrola provides for the sale to Iberdrola of Endesa's assets which include, within electricity generation, power plants located in other EU Countries such as Italy.

Other EU Countries have, therefore, shown concern regarding the transaction. The Italian Antitrust Authority decided to comply with the request sent to the Commission by the Portuguese Antitrust Authority, to examine the effects of the takeover of Endesa by Gas Natural on the Portuguese and Italian markets and, consequently, to transfer the assessment of the compliance with antitrust laws of the concentration to the European Commission instead of the Spanish Antitrust Authority. According to the Italian Antitrust Authority, the operation could affect the electricity and gas markets of Spain and Portugal, and could involve an impact on competition in the territories of such States.

Nevertheless, the European Commission has rejected both requests. It held that it is not better placed than the Portuguese and Italian competition authorities to examine the effects of the proposed transaction on the respective markets.

These decisions are without prejudice to the Commission's assessment as to whether or not the Gas Natural/Endesa concentration has a community dimension, and so, whether the concentration falls within the sole jurisdiction of the European Commission or not.

The case remains open with further developments expected. It is, however, clear that such a merger would not be in the interest of the other European operators (primarily Edf, E.On, Rwe or Enel), who believe that the deal would be likely to reduce their opportunities for expansion in Spain.

As soon as the energy sector was liberalised by Europe, the debate on national monopolies recommenced. It would, therefore, be beneficial to build a competitive European market under EU control, which encourages the traditional operators to develop their markets abroad.

In light of the above, the impact of opening up the national energy markets to competition would be decisive: these markets are too closed and are characterised by a lack of competition because they are too regulated. It would, therefore, be an opportune moment to encourage a large merger to allow the development of European utilities in a context broader than a single energy market.