

Commission Decision of 14 March 2006 declaring a concentration compatible with the common market and the functioning of the EEA Agreement (Case COMP/M.3868 — DONG/Elsam/Energi E2) (notified under document number C(2006) 793) (Only the English text is authentic) (Text with EEA relevance) (2007/353/EC) (revoked)

I. SUMMARY

- (1) This case concerns the acquisition of control by DONG of...  
This case concerns the acquisition of control by DONG of...
- (2) DONG is the Danish state-owned gas incumbent. Elsam and Energi...  
DONG is the Danish state-owned gas incumbent. Elsam and Energi...
- (3) The Decision concludes that the transaction leads to a significant...  
supply of wholesale gas for Denmark (and potentially also for...
- (4) The Decision concludes that the Commitments proposed by the parties...  
The Decision concludes that the Commitments proposed by the parties...
- (5) Consequently, the Commission declares the notified transaction compatible with the...  
Consequently, the Commission declares the notified transaction compatible with the...

II. EXPLANATORY MEMORANDUM

1. THE PARTIES
  - (6) DONG is the Danish state-owned gas incumbent active in exploration,...  
DONG is the Danish state-owned gas incumbent active in exploration,...
  - (7) Elsam and Energi E2 (E2) are the Danish electricity generation...  
Elsam and Energi E2 (E2) are the Danish electricity generation...
  - (8) KE and FE supply household and business customers with electricity...  
KE and FE supply household and business customers with electricity...
2. THE OPERATION AND THE CONCENTRATION
  - (9) This part of the Decision describes the proposed operation, constituting...  
This part of the Decision describes the proposed operation, constituting...
3. LEGAL AND REGULATORY FRAMEWORK
  - (10) The Decision discusses the applicable regulatory framework for gas and...  
The Decision discusses the applicable regulatory framework for gas and...
  - (11) The Danish natural gas market was first opened to competition...  
The Danish natural gas market was first opened to competition...
4. RELEVANT MARKETS
  - A. NATURAL GAS
    1. Relevant product markets

**Changes to legislation:** There are currently no known outstanding effects for the Commission Decision of 14 March 2006 declaring a concentration compatible with the common market and the functioning of the EEA Agreement (Case COMP/M.3868 — DONG/Elsam/Energi E2) (notified under document number C(2006) 793) (Only the English text is authentic) (Text with EEA relevance) (2007/353/EC) (revoked). (See end of Document for details)

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- (12) With respect to the relevant product markets in the field...  
 With respect to the relevant product markets in the field...  
 Market for gas storage and gas flexibility
- (13) With regard to gas storage and/or other gas flexibility tools,...
- With regard to gas storage and/or other gas flexibility tools,...
- (14) The parties proposed a product market for gas flexibility including...  
 The parties proposed a product market for gas flexibility including...
- (15) According to the Commission, these different flexibility tools can be...  
 storage in dedicated storage facilities, interruptibility or other modulation of...
- (16) The Commission's market investigation showed that, for Denmark, none of...  
 The Commission's market investigation showed that, for Denmark, none of...  
 Market for gas wholesale supplies
- (17) As regards gas wholesale supplies for Denmark, the Decision concludes...  
 irrespective of whether via the GTF, supply contracts or other...  
 which satisfy the needs of these customers to have access...
- (18) The Commission's market investigation provided strong indications for the existence...  
 The Commission's market investigation provided strong indications for the existence...
- (19) The proposed transaction also has an impact on wholesale in...  
 The proposed transaction also has an impact on wholesale in...  
 Market for supply of natural gas to central CHP plants...
- (20) The Decision considers that the supply of natural gas to...  
 The Decision considers that the supply of natural gas to...
- (21) Supply to central CHPs is also distinct from other retail...  
 Supply to central CHPs is also distinct from other retail...  
 Market(s) for supply of gas to decentral CHPs and to...
- (22) The Decision considers that the supply of natural gas to...  
 The Decision considers that the supply of natural gas to...
- (23) Small business customers do not belong to this product market...  
 Small business customers do not belong to this product market...
- (24) The Decision considers that supply to large industrial customers and...  
 The Decision considers that supply to large industrial customers and...  
 Market(s) for supplies of gas to households and small businesses...

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(25) The Decision considers that there exist(s) one or two separate market(s)...

The Decision considers that there exist(s) one or two separate market(s)...

(26) Demand and supply conditions between these two types of customers...

Demand and supply conditions between these two types of customers...

(27) The competitive assessment does not differ significantly between these two...

The competitive assessment does not differ significantly between these two...

2. Relevant geographic markets

Market for gas storage and gas flexibility

(28) DONG submitted that the relevant geographic market for gas flexibility...

DONG submitted that the relevant geographic market for gas flexibility...

(29) However, the results of the market investigation showed that the...

most flexibility tools are available only on a national level,...

(30) As regards the Swedish market for storage/other flexibility tools, the...

As regards the Swedish market for storage/other flexibility tools, the...

Market for gas wholesale supplies

(31) DONG submitted that the relevant geographic market for gas wholesale...

DONG submitted that the relevant geographic market for gas wholesale...

(32) The market investigation provides strong indications that the market for...

all gas consumed in Denmark is Danish (offshore) gas, in...

(33) In its reply to the Article 6(1) (c) decision, DONG...

In its reply to the Article 6(1) (c) decision, DONG...

Market for the supply of natural gas to central CHPs...

(34) The market for the supply of natural gas to central...

The market for the supply of natural gas to central...

Market(s) for supply of gas to decentralised CHPs and large...

(35) The market or markets for the supply of natural gas...

The market or markets for the supply of natural gas...

Market(s) for supplies of gas to households and small businesses...

(36) The Decision considers that the market(s) for supply to businesses...

The Decision considers that the market(s) for supply to businesses...

3. Conclusion on relevant markets in the natural gas sector

**Changes to legislation:** There are currently no known outstanding effects for the Commission Decision of 14 March 2006 declaring a concentration compatible with the common market and the functioning of the EEA Agreement (Case COMP/M.3868 — DONG/Elsam/Energi E2) (notified under document number C(2006) 793) (Only the English text is authentic) (Text with EEA relevance) (2007/353/EC) (revoked). (See end of Document for details)

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- (37) The Decision considers that the following relevant markets exist:  
the Danish market for storage or alternatively the Danish market...
- B. ELECTRICITY**
1. Relevant product markets
- Generation and wholesale of physical electricity;  
Ancillary services
- (38) An important part of the sales and purchases of wholesale...  
An important part of the sales and purchases of wholesale...
- (39) The immediate customers of ancillary services are TSOs, who are...  
The immediate customers of ancillary services are TSOs, who are...
- (40) However, the Decision considers that the precise delineation of this...  
However, the Decision considers that the precise delineation of this...
- Financial derivatives of electricity
- (41) The Decision considers a separate market for financial electricity, since...  
The Decision considers a separate market for financial electricity, since...
- Electricity retail
- (42) The Decision considers separate markets for supplies to customers with...  
The Decision considers separate markets for supplies to customers with...
2. Relevant geographic markets
- Wholesale of physical electricity
- (43) The Decision considers that the competitive effects of the merger...  
The Decision considers that the competitive effects of the merger...
- (44) All other geographic market definition issues for the wholesale electricity...  
All other geographic market definition issues for the wholesale electricity...
- Ancillary services
- (45) The Decision regards that ancillary services are national in scope,...  
The Decision regards that ancillary services are national in scope,...
- Financial derivatives of electricity
- (46) As regards financial derivatives of electricity, the Decision considers the...  
As regards financial derivatives of electricity, the Decision considers the...
- Electricity retail
- (47) In electricity retail markets, the Decision considers that the market...

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In electricity retail markets, the Decision considers that the market...

3. Conclusion on relevant markets in electricity  
(48) The Decision therefore defines the following electricity markets:

wholesale of electricity (being East Danish and West Danish respectively...

C. OTHER MARKETS

- (49) A number of other markets are affected by the proposed...

A number of other markets are affected by the proposed...

5. COMPETITIVE ASSESSMENT

- (50) The Decision examines the argument set out by DONG concerning...  
The Decision examines the argument set out by DONG concerning...

A. NATURAL GAS

1. Market for gas storage and gas flexibility

- (51) Based on the market investigation undertaken in this case, the...

Based on the market investigation undertaken in this case, the...

- (52) The Decision considers that access to storage/flexibility is a necessary...

The Decision considers that access to storage/flexibility is a necessary...

- (53) Therefore, the Decision considers that the acquisition of E2 and...

Therefore, the Decision considers that the acquisition of E2 and...

- (54) For these reasons, the Decision concludes that the operation would...

For these reasons, the Decision concludes that the operation would...

- (55) As regards the Swedish storage/flexibility market, the Decision concludes that...

As regards the Swedish storage/flexibility market, the Decision concludes that...

2. Market for gas wholesale supplies

- (56) During the investigation, the Commission and DONG have taken different...

During the investigation, the Commission and DONG have taken different...

- (57) The Decision concludes that DONG is dominant on the Danish...

operators in the Danish offshore area, imports from Germany south...

- (58) The Decision concludes that these competitive constraints are weak or...

The Decision concludes that these competitive constraints are weak or...

- (59) The Decision thereafter examines whether the transaction will lead to...

The Decision thereafter examines whether the transaction will lead to...

- (60) According to the Commission, it is sufficient that E2 and...

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According to the Commission, it is sufficient that E2 and...

(61) The Commission's investigation and the Decision conclude that the proposed...

The Commission's investigation and the Decision conclude that the proposed...

(62) In addition to these horizontal effects, the Decision concludes that...

In addition to these horizontal effects, the Decision concludes that...

(63) The parties submitted that so far Elsam has sourced from...

The parties submitted that so far Elsam has sourced from...

(64) The Decision concludes that even if the foreclosure effect was...

The Decision concludes that even if the foreclosure effect was...

(65) The Decision concludes the proposed concentration removes significant competitive constraints...

The Decision concludes the proposed concentration removes significant competitive constraints...

(66) As regards gas wholesale supplies in Sweden, DONG has a...

As regards gas wholesale supplies in Sweden, DONG has a...

3. The market for the supply of natural gas to central...

(67) The Decision considers that no customer foreclosure or input foreclosure...

The Decision considers that no customer foreclosure or input foreclosure...

(68) As regards potential competition, the Decision concludes that it is...

As regards potential competition, the Decision concludes that it is...

(69) The Decision therefore considers that the concentration does not lead...

The Decision therefore considers that the concentration does not lead...

4. Market(s) for supplies to industrial customers and decentral CHPs

(70) The Decision finds that DONG is dominant and will remain...

The Decision finds that DONG is dominant and will remain...

(71) DONG's dominance upstream in wholesale, storage, offshore gas and import...

DONG's dominance upstream in wholesale, storage, offshore gas and import...

(72) Furthermore, DONG's competitors cannot challenge DONG's dominance, since HNG/MN and...

Furthermore, DONG's competitors cannot challenge DONG's dominance, since HNG/MN and...

(73) E.ON and Shell both have a very modest market share...

E.ON and Shell both have a very modest market share...

(74) The Decision also finds other indications of DONG's entrenched dominance...

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The Decision also finds other indications of DONG's entrenched dominance...

(75) The Decision finds that the proposed operation strengthens DONG's dominance...

The Decision finds that the proposed operation strengthens DONG's dominance...

(76) The proposed operation raises entry barriers because it will be...

The proposed operation raises entry barriers because it will be...

(77) The proposed operation furthermore strengthens DONG's dominance due to elimination...

The proposed operation furthermore strengthens DONG's dominance due to elimination...

(78) E2 and Elsam both have access to large quantities of...

E2 and Elsam both have access to large quantities of...

(79) NESA and KE have strong energy brands and can achieve...

NESA and KE have strong energy brands and can achieve...

(80) For these reasons, the Decision concludes that the proposed operation...

For these reasons, the Decision concludes that the proposed operation...

5. Market(s) for supplies of gas to households and small businesses...

(81) The Decision finds that DONG is dominant in two regional...

The Decision finds that DONG is dominant in two regional...

(82) On the alternative assumption of a national market, DONG and...

On the alternative assumption of a national market, DONG and...

(83) The Decision finds that DONG's dominance will be strengthened by...

The Decision finds that DONG's dominance will be strengthened by...

(84) The concentration will raise entry barriers due to higher storage...

The concentration will raise entry barriers due to higher storage...

(85) The concentration will eliminate some potential competition from KE and...

The concentration will eliminate some potential competition from KE and...

(86) On the other hand, many of KE's customers already will...

On the other hand, many of KE's customers already will...

(87) The Decision also acknowledges that other electricity supply companies could...

The Decision also acknowledges that other electricity supply companies could...

(88) For these reasons, the Decision concludes that the proposed merger...

For these reasons, the Decision concludes that the proposed merger...

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6. Conclusion on the assessment of the natural gas markets prior...
- (89) The Decision concludes that the transaction leads to a significant... supply of wholesale gas for Denmark (and potentially also for...
- B. ELECTRICITY
- (90) The Decision finds that the concentration does not give rise... The Decision finds that the concentration does not give rise...
1. Electricity wholesale
- (91) The Decision finds, that prima facie Elsam and E2 hold... The Decision finds, that prima facie Elsam and E2 hold...
- (92) However, the horizontal effects of the proposed transaction will most... However, the horizontal effects of the proposed transaction will most...
- (93) As to vertical effects, the Decision finds that DONG is... As to vertical effects, the Decision finds that DONG is...
- (94) DONG is also unlikely in the future to be able... DONG is also unlikely in the future to be able...
- (95) The effect of the merger on the otherwise positive impact... The effect of the merger on the otherwise positive impact...
- (96) These considerations and findings concerning horizontal and vertical effects of... These considerations and findings concerning horizontal and vertical effects of...
- (97) In a wider Nord Pool context, the parties will have... In a wider Nord Pool context, the parties will have...
2. Ancillary services
- (98) The Decision finds that pre-merger Elsam and E2 had to... The Decision finds that pre-merger Elsam and E2 had to...
3. Financial derivatives of electricity
- (99) On a Nordic market for trading in financial derivatives of... On a Nordic market for trading in financial derivatives of...
- (100) Regarding potential area markets for CfDs for East and West... Regarding potential area markets for CfDs for East and West...
4. Retail supply of electricity to business customers
- (101) The Decision finds that that the current competition level in... The Decision finds that that the current competition level in...
5. Retail supply of electricity to small standard load profile customers...
- (102) The operation will also lead to some market share overlaps... The operation will also lead to some market share overlaps...
- (103) Even though NESAs and KEs were among the more important... Even though NESAs and KEs were among the more important...



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- (104) On the assumption of regional markets, the Decision finds that...
- On the assumption of regional markets, the Decision finds that...
6. Conclusion on competitive assessment for electricity markets
- (105) The Decision finds that the concentration does not lead to...
- The Decision finds that the concentration does not lead to...
6. COMMITMENTS
- A. DESCRIPTION OF THE COMMITMENTS
1. Storage divestiture
- (106) With a view to addressing the competition concerns on the...
- With a view to addressing the competition concerns on the...
2. Gas Release Programme
- (107) With a view to addressing the competition concerns put forward...
- With a view to addressing the competition concerns put forward...
- B. ASSESSMENT OF THE COMMITMENTS SUBMITTED
1. Effect of the proposed commitments on the storage/flexibility market
- (108) The main effect of the proposed Commitments on the storage/flexibility...
- The main effect of the proposed Commitments on the storage/flexibility...
- (109) The divestiture of the larger of the two Danish storage...
- The divestiture of the larger of the two Danish storage...
- (110) The divestiture of the Lille Torup storage facility is generally...
- The divestiture of the Lille Torup storage facility is generally...
- (111) A positive impact on flexibility available in Denmark will also...
- A positive impact on flexibility available in Denmark will also...
- (112) Both elements of the Commitments, i.e. the storage divestiture and...
- Both elements of the Commitments, i.e. the storage divestiture and...
2. Effect of the proposed commitments on the wholesale market for...
- (113) The Commission has concluded that the gas release programme offered...
- The Commission has concluded that the gas release programme offered...
- (114) As to the gas release programme, the quantities offered of...
- As to the gas release programme, the quantities offered of...
- (115) First, with regard to customer foreclosure, these quantities will, in...
- First, with regard to customer foreclosure, these quantities will, in...
- (116) The quantities will, secondly, compensate for the elimination of potential...

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The quantities will, secondly, compensate for the elimination of potential...

(117) It should also be considered that these quantities will include...

It should also be considered that these quantities will include...

(118) An element of specific importance is the customer release provision...

An element of specific importance is the customer release provision...

(119) Regarding the duration and volume of the gas release programme...

Regarding the duration and volume of the gas release programme...

(120) Also the storage divestiture remedy will have a beneficial effect...

Also the storage divestiture remedy will have a beneficial effect...

3. Effect of the proposed commitments on natural gas retail markets...

Market(s) for supplies to industrial customers and decentral CHPs and...

(i) The raising of entry barriers (vertical problems)

(121) The Decision finds that the gas release programme remedies any...

The Decision finds that the gas release programme remedies any...

(122) More specifically, the Gas Release Programme addresses the concern relating...

More specifically, the Gas Release Programme addresses the concern relating...

(123) The annual amount of gas to be released will have...

The annual amount of gas to be released will have...

(124) Any concerns relating to the removal of flexibility of central...

Any concerns relating to the removal of flexibility of central...

(125) The Decision therefore concludes that as an effect of the...

The Decision therefore concludes that as an effect of the...

(ii) Elimination of potential competition

(126) The Decision considers that the overall lowering of entry barriers...

The Decision considers that the overall lowering of entry barriers...

(127) Regarding the Gas Release Programme this is in particular achieved...

Regarding the Gas Release Programme this is in particular achieved...

(128) Second, the storage divestiture remedy will facilitate entry by introducing...

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Second, the storage divestiture remedy will facilitate entry by introducing...

7. CONCLUSION

(129) The Decision concludes that the proposed concentration with the submitted...

The Decision concludes that the proposed concentration with the submitted...

(130) Consequently, the Commission declares the notified transaction compatible with the...

Consequently, the Commission declares the notified transaction compatible with the...

**Changes to legislation:**

There are currently no known outstanding effects for the Commission Decision of 14 March 2006 declaring a concentration compatible with the common market and the functioning of the EEA Agreement (Case COMP/M.3868 — DONG/Elsam/Energi E2) (notified under document number C(2006) 793) (Only the English text is authentic) (Text with EEA relevance) (2007/353/EC) (revoked).