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The Eon/RWE deal
Market dominance and shareholder value policy with regulatory approval

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1 Introduction

On September 17, 2019, EU Competition Commissioner Margrethe Vestager allowed the electricity company Eon to take over and break up RWE subsidiary Innogy under lenientconditions[1]. The transfer of the 76.8% shareholding in Innogy's distribution and retail business to Eon paves the way for a complex asset swap between Eon and RWE.[2] Meanwhile RWE's stake in Innogy has been transferred to Eon, following the European Commission's clearance of the transaction. This deal is accompanied by a complete division of business areas between the two most powerful German energy groups, Eon and RWE. While Eon will concentrate on sales and distribution grid operations, RWE will take over the conventional power plants of its former competitor as well as all renewable power generation facilities. RWE will also take back all the power generation facilities initially sold to Innogy about two years ago and will receive a 16.7 percent stake in Eon Corporation. To this end the German Federal Cartel Office (In German: Bundeskartellamt, BKartA) announced already on 26 February 2019 that it considers this participation to be unobjectionable.[3] Following the investigation, the Commission concluded the deal would not result in significant loss of competition in Europe, nor in Germany.

But there are numerous experts who have a different opinion and argue that the latest EU Commission approval in September 2019 is a "decision of enormous importance" that will "fundamentally change the entire sector"[4]. The result of this decision is that this mega-deal creates two monolithic giants in the German energy sector with unprecedented market power. If one compares the situation with the purchase of the electricity supplier Nuon by Vattenfall in 2009, questions arise. Back then, the competition authorities forced Vattenfall to divest parts of Nuon's business in individual cities, which resulted in the supplier "lekker energie". Following this example, the competition authorities should have consistently forced Eon to sell parts of the business, such as larger distribution companies.

A transaction of this magnitude should always be viewed critically in competition law. The legitimate question therefore arises as to why the German and European competition authorities (the Federal Cartel Office, the Federal Network Agency, the Monopolies Commission and the European Competition Commission) faced this deal

[1] https://ec.europa.eu/commission/presscorner/detail/en/IP_19_5582

[2] https://renews.biz/55403/eon-closes-deal-for-innogy-shares-from-rwe/

[3] Bundeskartellamt: Background information (FAQ) on the clearance of RWE AG's acquisition of a 16.67 % stake in Eon SE; available online at: https://www.bundeskartellamt.de/SharedDocs/Publikation/DE/Pressemitteilungen/2019/26_02_2019_EON_RWE_FAQs.html

[4] Zenke, I.; Heymann, T. : The energy blog of August 26, 2019: Energy industry warns of possible consequences of the Eon/RWE/innogy merger, available online at: http://www.derenergieblog.de/alle-themen/energie/energiewirtschaft-warnt-vor-moeglichen-folgen-durch-die-fusion-von-e-on-rwe-innogy/

with barely audible criticism and why they did not react with far-reaching prohibition requirements. "Competition doubts are certainly justified"[5]. Because if the two largest German energy groups completely eliminate each other's competition and completely divide up their business areas among themselves, this will have far-reaching consequences for the energy sector. Especially against the background that the energy transition in Germany has so far been characterised by decentralised structures and civic participation (especially in the case of electricity generation from renewable energies). In the following sections, we will demonstrate what this Eon/RWE deal means for competition and the energy transition.

2 Impact of the Eon/RWE deal on concession competition

By breaking up Innogy, Eon becomes by far the largest electricity and gas distribution network operator in Germany. As our calculations and research shows (see figure), almost 56 percent of the total of 14,000 electricity distribution grid concessions will then be in the hands of Eon.[6] In addition, Eon will in future own over 45 percent of all 6,000 gas distribution network concessions.[7] This will further shift the existing asymmetries in the awarding competition in favour of Eon. As a result competition for the award of distribution grid concessions will become more difficult for competing suppliers because they will have to compete with a very powerful Eon Group in the future. Eon can now also draw on the negotiating know-how of the former RWE subsidiary of the large grid operator Westnetz. In this way, the strategies that preserve the company's ownership can be applied even more consistently in the tough competition for Eon's distribution grid concessions[8] vis-à-vis competitors. The structure-conserving effect in the local distribution grid business is thus further reinforced.

[5] ibidem.

[6] "The new Eon will have well over 100 direct and indirect shareholdings in distribution system operators. This gives access to almost 16 million outlets in majority shareholdings and another approx. 5 million in minority shareholdings. See slide presentation of LBD-Beratungsgesellschaft mbH on the occasion of the special symposium on the planned merger RWE/Eon on 21.02.2019 in Berlin on the topic: Presence of the new Eon in the area (participation in network and sales) - The position of the new Eon in newly developing markets.

[7] The new Eon will thus have "well over 100 direct and indirect shareholdings in distribution system operators for gas. This gives access to over 2 million outlets in majority shareholdings and a further approx. 670,000 in minority shareholdings. See slide presentation of LBD-Beratungsgesellschaft mbH on the occasion of the special symposium on the planned merger RWE/Eon on 21.02.2019 in Berlin on the topic: Presence of the new Eon in the area (participation in network and sales) - The position of the new Eon in newly developing markets.

[8] Berlo, K., & Wagner, O. (2012): Auslaufende Konzessionsverträge für Stromnetze : Strategien überregionaler Energieversorgungsunternehmen zur Besitzstandswahrung auf der Verteilnetzebene; Untersuchung und gutachterliche Stellungnahme. Expiring concession contracts for electricity grids : Strategies of large energy supply companies for safeguarding vested rights at the distribution grid ; investigation and expert opinion. https://nbn-resolving.org/urn:nbn:de:bsz:wup4-opus-48566

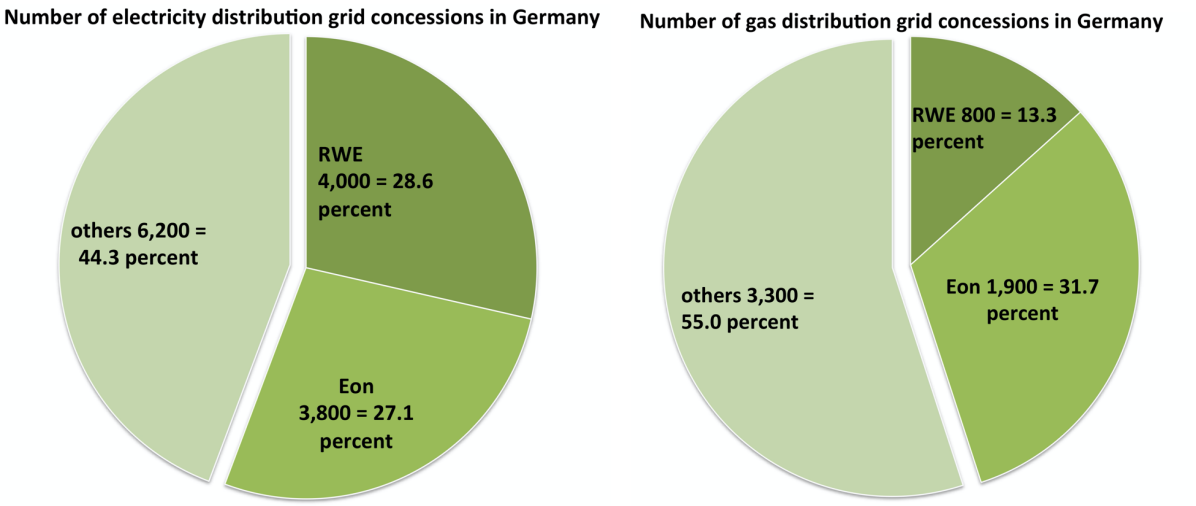

Figure 1: Number of concessions for electricity and gas to German energy companies

3 Distribution grids as a huge business area with excellent future prospects

All in all, the distribution grids involve a great deal of money. It is estimated that the sales volume nationwide has an annual value of around 20 billion euros. For the third regulatory period (gas: 2018 to 2022; electricity: 2019 to 2023), the Federal Network Agency has set the imputed return on equity at 6.91% for new plants and 5.12% for old plants; values that were confirmed by the Federal Court of Justice on 9 July 2019. For Eon, this means that the distribution networks are a secure and profitable business area, which, as a result of realisable economies of scale, ensures considerable profits.
Since the beginning of 2019, the BNetzA has approved the instrument of capital cost surcharges for the expansion and digitisation of electricity distribution networks. Since then, investments in the network infrastructure can be subject to surcharges on the revenue ceiling approved by the Federal Network Agency. This involves capital cost premiums totalling around EUR 900 million, which according to the BNetzA will involve planned investments of over EUR 10 billion.

4 Impact of the Eon/RWE deal on the retail electricity and gas business

As a customer business, Eon suddenly becomes by far the largest supplier of electricity and gas. Eon will supply around 50 million customers in Europe. In Augsut 2019, ten German energy suppliers such as Frankfurt's Mainova, Leipzig's Stadtwerke, Aachen's Stawag or Hesse's regional utility Entega appealed to the EU Commission in a joint statement to prohibit the deal or, if necessary, to approve it under strict conditions. They complained above all about Eon's increasing market power in the German sales business. In Germany the number of Eon customers will more than double. In addition to the existing approximately 6 million Eon customers there will then be 7.8 million (6.5 million electricity and 1.3 million gas customers) of innogy and its subsidiaries. If one takes into account Innogy's minority shareholdings in other suppliers such as municipal utilities, millions more customers could be attributed to Eon's sphere of influence. In addition, there are fears that Eon could use the revenues from the (regulated) grid business and the basic supply to offer competitive prices in the short term, squeeze out smaller competitors and thus close the market.[9] In addition, it is claimed that Eon could

[9] Elektrizitäts-Aktiengesellschaft Mitteldeutschland (EAM) et al (ten German energy suppliers). Gemeinsamer Standpunkt zum Fusionskontrollverfahren Eon/innogy: Common Position on the merger control proceedings Eon/innogy (2019): Available online at: http://www.derenergieblog.de/wp-content/uploads/Gemeinsamer-Standpunkt.pdf

dominate the price platforms which are important for sales to customers who are willing to switch, due to the large number of brands and group companies. Eon will be represented on the internet-price comparison sites throughout Germany with around 160 different electricity brands and 840 different electricity tariffs.[10] This will create the impression of a competition that does not exist in reality.
In this context, it is important to closely monitor the market dominance in the field of electricity generation. The analyses in the Federal Cartel Office's Market Power Report showed that RWE was already indispensable for meeting electricity demand "in a not inconsiderable number of hours over the twelve-month period under consideration". However in the opinion of the authority, the number of pivotal hours did not reach the level required for the assumption of a dominant position. According to the analyses carried out, RWE's withdrawal from nuclear power is likely to increase its market power to such an extent that the threshold for market dominance could be exceeded. Nevertheless, this increase would exist independent of the transaction under review, the effects of which will have been almost completely eliminated by the completion of the nuclear phase-out at the end of 2022[11].

5 Effects on the future market of e-mobility

In the field of **e-mobility,** Eon is also taking over all charging stations previously operated by Innogy. This makes Eon by far the largest supplier of electric charging stations or electric filling stations in Germany. The EU requirement to provide 34 motorway charging stations for electric vehicles is of little consequence. As Germany's largest electricity provider, Eon will in future have significantly better opportunities than all other competitors to further expand this comprehensive charging infrastructure. For this reason, Eon, as the largest supplier, can dominate an electricity sales market that promises enormous growth potential. Because in the course of decarbonization of the transport sector, electric mobility will play a very important role in the future. The climate package of the Federal Government's climate cabinet also shows the opportunities that e-mobility offers in the distribution grid sector. The expansion of the publicly accessible charging infrastructure is a basic prerequisite for the acceptance and growth of electromobility. The Federal Government's goal of expanding the publicly accessible charging infrastructure to a total of 1 million charging points by 2030 makes the expected dynamics clear. By way of comparison, there are currently around 14,500 filling stations for petroleum products such as diesel and petrol in Germany[12]. In the future, the expansion of the charging infrastructure, which is expected to generate large profits, is to receive considerable support from the federal government with corresponding subsidy programmes until 2025.

6 Future market digitization

In the course of digitization, data is considered the most important raw material of the 21st century, which is characterized by enormous innovative power, creative power and disruptive dynamics. In its climate protection package, the German government emphasizes that "climate protection and digitization are the engine of major changes in

[10] Lücking, G.: Der Eon/RWE-Merger, slide presentation on the occasion of the special symposium on the planned merger RWE/Eon on 21 February 2019 in Berlin.
[11] Federal Cartel Office's Market Power Report (Marktmachtbericht): https://www.bundeskartellamt.de/SharedDocs/Publikation/DE/Berichte/Marktmachtbericht%202019.html
[12] statista: Number of petrol stations in Germany until 2019, published by Ahlswede, A., on 09.08.2019.

our economy"[13] . As a result of the Innogy deal, Eon will have more energy-related data than any other energy company. As the largest distribution network operator, the company will also become the most important and largest metering point operator in Germany. This gives Eon direct access to millions of soon to be digitized electricity meters (smart meters). With the data obtained from this, Eon can develop digital and innovative services (such as smart home applications) and thus gain a clear competitive advantage over competitors who do not have such a large amount of data.
In the future, it will be unavoidable due to manifold data-technical networks that link or merge customer data from the distribution grid, sales and metering point area. The legislator will hardly be able to control and prevent this - despite existing unbundling regulations. Especially when such processes are separated from each other, for example, only by a cloud password (or a mouse click away). The largest distribution grid operator will have the most customer data and is also the largest player in the distribution of electricity and gas. As a result of the increasing importance of data, Eon can therefore generate synergy potential in customer acquisition and retention as well as in the development of new services. It is therefore to be expected that a major competitive advantage will also arise for Eon in the business areas of the future. Digitization will "turn previous business models of the energy industry upside down" and at the same time lead to a "growing together and networking of industries" (sector convergence).[14]
With the rapid pace of disruptive change, digitisation and sector convergence pose competitive risks, especially when digital data volumes are concentrated in a company that, like Eon, already has significant market power. It is worth pointing out the rapidly emerging market dominance of companies such as Google, Amazon or Facebook, that currently have little serious competition in their markets.

7 Effects on energy system transformation as a joint social task

The completion of the Eon/RWE deal has an impact on the energy transition in Germany due to the market changes it has triggered. This is because the break-up of Innogy and the resulting market sharing between Eon and RWE will create the two largest energy suppliers in Germany, which will henceforth operate with a mutual non-competition clause. In other words, two historical naysayers, pessimists and declared opponents of the energy system transformation are taking over important market leadership positions: RWE in the field of power generation, Eon in the sale of electricity and gas to end consumers and, in large parts of Germany, in local distribution grid operation. These are not good preconditions for the German energy transition, because:

- the previous drivers of the German energy transition (predominantly small operating companies, citizens' energy cooperatives and municipal utilities) are in competition with a large corporation (RWE) or "national champion" in the expansion of renewable energies;
- Eon and RWE are not primarily motivated by climate protection policy and the energy transition, but are primarily stock market and shareholder value-driven;
- the development of the stock market price of their shares is more important to Eon and RWE than the expansion of renewable energies and more important than the

[13] Climate Protection Programme 2030 of the Federal Government for the implementation of the Climate Protection Plan 2050 of October 2020, page 9. Online at: https://www.bundesregierung.de/resource/blob/975226/1679914/e01d6bd855f09bf05cf7498e06d0a3ff/2019-10-09-klima-massnahmen-data.pdf?download=1

[14] BDEW and Ernst & Young: Stadtwerkestudie 2019 - Ecosystems and convergence as growth opportunities for municipal utilities; available online at: https://www.bdew.de/media/documents/Pub_20190606_Stadtwerkestudie-2019.PDF

implementation of effective climate protection measures, which is why RWE, as Germany's largest electricity producer, will continue to strive to keep its existing coal-fired power plants in operation for as long as possible;
- In expanding renewables, RWE has stated that it will not focus on the expansion potential in Germany that is necessary for the energy transition, but will operate worldwide. This means that RWE intends to maximize the earnings prospects of the Group and its predominantly private shareholders by means of targeted cherry-picking on a global scale;

8 Public value instead of shareholder value

If it is to succeed, the energy system transformation, as a joint social task, must focus much more strongly on the common interests of civil society, citizens in the cities and municipalities rather than on the one-sided shareholder value interests of large energy companies. Such a public value orientation is also established practice in view of increased climate protection efforts, as is already being done by municipal utilities in many cases, see the following table overview.

Public Value of Stadtwerke		
Value for the individual citizen	**Value for the local community**	**Value for the regional economy**
Individual use of the products and services of the Stadtwerk, for example: ▪ Strong customer focus with local customer service centre ▪ Tariff development which has a focus on social responsibility ▪ Fair partner with increased trust in the entity ▪ Quick support with individual problems or queries ▪ Emphasis on quality in delivery of services ▪ Compliance with a Corporate Social Responsibility (CSR) approach to business ▪ Possibility for ongoing engagement in circumstances of energy poverty	Business use of products and services of the Stadtwerk and cooperation and collaboration opportunities, for example: ▪ Transfer of profits and tax concessions to municipal budgets and provision of localised discounts for energy ▪ Sponsorship of local clubs and initiatives ▪ Cross-subsidisation of local services (e.g. public transport, swimming pools) ▪ Integration into the local "Agenda 21" plan ▪ Local political influence and citizen participation ▪ Local problem solving competencies developed ▪ Synergies with other municipal services (e.g. infrastructure developments such as internet services) ▪ Partner for environment protection ▪ Support during natural disasters	Economic benefits to the wider region, for example: ▪ High regional economic value ▪ Increase in local employment ▪ Awarding of contracts to local and regional suppliers ▪ Reliable partner for local businesses ▪ Energy offers which allow for the increased competitiveness of local businesses ▪ Focus on long term customer and business relationships with service providers ▪ Support for local and regional start-ups ▪ Design of digital structural changes ▪ Formation of, or participation in, local and regional business networks

Figure 2: Public value of municipal utilities (Stadtwerke)
Source: Berlo/Herr/Wagner/Company (2018)[15]

9 Municipal utilities as an important competitive corrective measure are weakened by the decision of the cartel authorities

The creation of a complete market division between Eon and RWE will significantly weaken the competitive position of municipal utilities in the sale of electricity and gas and in the competition for distribution grid concessions. As the largest supplier of grid-

[15] Berlo, K.; Mr, C.; Wagner, O. and Company, M. (2018): Explorative Untersuchung zu Erfolgspotentialen bei neugegründeten Stadtwerken : eine Sondierungsstudie zur kommunalen Energieversorgung ; Ergebnisse einer Befragung bei neugegründeten Stadtwerken im Energiebereich (2018) Exploratory study on success potentials of newly founded municipal utilities: an exploratory study on municipal utilities ; results of a survey of newly founded municipal utilities in the energy sector, Wuppertal Institute for Climate, Environment and Energy; available online at: https://nbn-resolving.org/urn:nbn:de:bsz:wup4-opus-71566

bound energy, Eon dominates the German sales market for electricity and gas. This means, for example, that wherever Eon acts as a basic supplier, above-average electricity and/or gas tariffs can be realized. In Germany, the company with the most customers in the local distribution network is the basic supplier. It has special duties but also privileges. Many customers (especially low-income households) depend on being supplied by the basic supplier. Although the share of households of the basic supplier is steadily declining, it is still around 28 percent for electricity customers. The basic supply tariff in Germany is above average.
It stands to reason that the Eon/RWE deal will lead to an increase in cooperation and joint municipal undertakings among cities and municipalities. For it can be assumed that more and more municipalities will no longer be prepared to leave their local energy supply to predominantly shareholder value interests of powerful energy companies. Against the background of the new situation on the energy market, small and medium-sized neighbourhood communities will establish joint municipal utilities (without Eon's participation) in future municipal utility companies in cooperation. A wave of mergers of existing municipal utilities in the distribution grid business is not to be expected, as it has been shown that smaller municipal distribution grid operators are also able to operate efficiently and economically.[16]

10 Change-of-control clauses as an opportunity for municipalities

Based off the historical origins of RWE and Innogy, the company was closer to the municipalities and their political decision-makers than Eon due to close municipal political ties. Therefore, market observers now expect several municipalities to put their concessions out to tender again and increase the number of remunicipalisations. Numerous cities and municipalities are already trying to determine whether they can make use of their change-of-control clause. The main objective is to transfer the municipal utility shares previously held by RWE into municipal ownership or to acquire a stake in another strategic partner instead of (future) Eon.
In many cases, the change-of-control clauses are even included as part of the concession contract between the municipality and the energy supplier. This gives the city, as the grantor of the concession, a special right of termination. After the conclusion of the concession agreement, due to a change of ownership for example, another company (in this case Eon instead of RWE) can exercise a dominant influence on the distribution system operator as a special right of termination can arise. It can then either remunicipalise the distribution grid, look for another distribution grid operator or, in the case of an existing semi-public company (with a former RWE or Innogy shareholding), look for a new strategic partner. All municipalities that had agreed to a change-of-control clause with RWE are well advised to have the application of the clause reviewed.

11 Shareholder value interests as drivers of mega-deals

The economic reasons for the Eon/RWE deal are still lagging behind. The two largest German energy groups had not succeeded in adapting their business model to the

[16] Müller-Kirchenbauer, J.; Leprich, U. (2013): Anforderungen an leistungsfähige Verteilnetze im Rahmen der Energiewende, In: EnWZ - Zeitschrift für das gesamte Recht der Energiewirtschaft, Heft 3/2013. Requirements for efficient distribution networks in the context of the energy turnaround, In: EnWZ - Zeitschrift für das gesamte Recht der Energiewirtschaft, issue 3/2013, pp. 99-104.

(new?) requirements of the energy transition[17]. This had already been confirmed in April 2013 in a ZfK ad hoc survey of energy industry executives. More than 70 percent of those surveyed (all from the energy industry) said that the RWE Group currently has no functioning business model. Corresponding developments could also be found at Eon. As a result, the profit trends and share prices of the two groups were caught in an unstoppable downward spiral (see graph). Between 2009 and 2019, Eon and RWE suffered the biggest stock market losses in their corporate history. At the same time, dividend payments shrank rapidly. RWE even felt compelled not to offer its shareholders a dividend in 2015 and 2016. As a result, the dividend yield also slipped to a historic low.

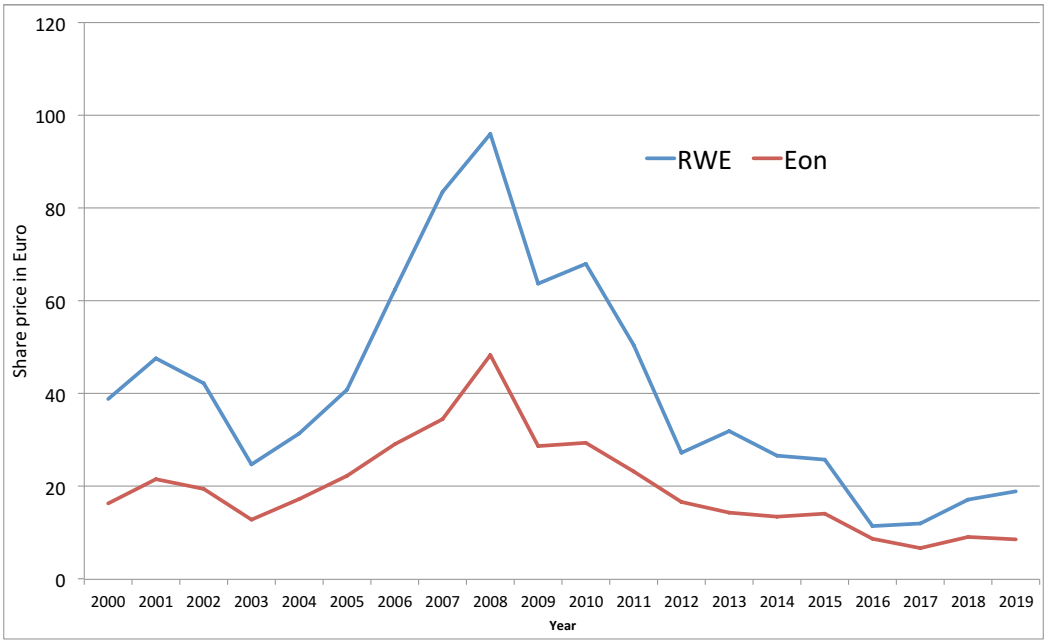

Figure 3: RWE and Eon share price trends based on share prices at the beginning of the respective year

The losses in value were particularly high for large financial investors such as BlackRock, who owns significant share packages from both German energy groups. BlackRock currently holds a 6.5 percent stake[18] in Eon and a 5.95 percent stake in RWE. The US financial investor has lost the equivalent of US$1.089 billion over the last ten years through its RWE stake alone. In the case of Eon, BlackRock even had to [19]accept losses of 2.184 billion US dollars in the same period.

BlackRock, who regularly invites the management boards of RWE and Eon to their US headquarters[20] [21], was therefore particularly interested in the fact that the business

[17] Wagner, O. et al.: Surviving the energy transition : development of a proposal for evaluating sustainable business models for incumbents in Germany's electricity market. In: energies 13/3, 2020. https://doi.org/10.3390/en13030730

[18] Statista, status: April 2019

[19] energiezukunft - Das Portal für Erneuerbare Energien und die bürgernahe Energiewende (2019): Blackrock loses 90 billion through fossil investments; available online at: https://www.energiezukunft.eu/wirtschaft/blackrock-verliert-90-milliarden-durch-fossile-investitionen/, online report of 02.08.2019; call of 21.10.2019.

[20] In the arte-docu entitled "BlackRock - The uncanny power of a financial group", which will be broadcast in September 2019, Eon boss Johannes Teyssen is quoted as saying that BlackRock "brought one into their

models of Eon and RWE had to change as quickly as possible in terms of competitive strategy and value creation. And in such common ownership constellations, major investors like BlackRock pay less attention to the individual performance of their shareholdings and more to the overall economic development of both groups. This means that the "interest in the total market return is in the foreground"[22]. Common ownership investors[23] [24] are also keen to defuse the competitive and rivalry situations of the groups concerned. In this way, the profit margins, dividend payments and share price development of both groups can be improved sustainably.[25] In this context, the following facts are also questionable: as only about 40 percent of the voting capital is usually present at an Eon shareholders' meeting, RWE has almost a majority of 16.7 percent. If the power plant operator RWE reaches an agreement with the US investment company Blackrock, RWE could control the shareholders' meeting of its customer Eon. RWE's planned 16.7 percent stake in Eon is therefore a questionable interlocking of interests.[26]

12 Conclusion and conclusions on the Eon/RWE deal

The Eon/RWE deal to break up Innogy, which was already announced in March 2018, should not have been approved by the EU Competition Commission for competition reasons. The German supervisory authorities should not have accepted the complete division of business between Eon and RWE. Instead there were indications from the German Federal Cartel Office and the Monopolies Commission that the deal did not essentially endanger competition and that there was no reason to fear a dominant position of Eon and RWE.

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headquarters to talk to them about business policy"; available online at: https://www.youtube.com/watch?v=JR_UyV32Ba4

[21] Wirtschaftswoche (2018): How Blackrock controls the corporations, by Book, S. and Hennersdorf, A., 02 April 2018; available online at: https://www.wiwo.de/unternehmen/dienstleister/blackrock-wie-blackrock-die-konzerne-kontrolliert/21126514.html

[22] Wambach, A.; Weche, J. P. (2016): Do institutional investors endanger competition? in: Wirtschaftsdienst 2016, Zeitschrift für Wirtschaftspolitik, Issue 12, p. 900 ff., available online at: https://archiv.wirtschaftsdienst.eu/jahr/2016/12/gefaehrden-institutionelle-anleger-den-wettbewerb/

[23] "Institutional investors can influence the management of their portfolio companies not only directly through the exercise of voting rights. For example, they regularly contact the management of their portfolio companies in the run-up to shareholders' meetings in order to prepare for them. Amra Balic, the person responsible for corporate dialogue and voting rights for European holdings at BlackRock, recently commented on this in an interview: When it comes to the point where we have to speak at a general meeting to assert our interests, that is a sign that the dialogue with a company has failed. In general, discussions between representatives of institutional investors and managers as well as supervisory board members of portfolio companies "behind the scenes" are of some importance; this was revealed by a recent survey of 143 major institutional investors. In addition to the exercise of voting rights and a constant dialogue between institutional investors and portfolio companies, the possibility of divestment is also traditionally already taken into account. (Wambach/Weche, 2016, S 902)

[24] DIW Wochenbericht Nr. 30.2017: Changes in Joint Ownership Structures of German Companies by Seldeslachts, J.; Newham, M. and Banal-Estanol, A.3; available online at: https://www.diw.de/documents/publikationen/73/diw_01.c.562460.de/17-30-1.pdf

[25] It can neither be proven nor refuted that the Eon/RWE deal was brought about by the direct influence of BlackRock boss Larry Fink. But even Prof. Achim Wambach, Ph.D., President of the Centre for European Economic Research (ZEW) Mannheim and Chairman of the Monopolies Commission, sees opportunities for large financial investors to exert strong influence on the business policy of corporations in which they hold a minority stake within the framework of a common ownership constellation. However, as head of the German Monopolies Commission, Wambach does not see any competition concerns in the Eon/RWE deal.

[26] https://www.welt.de/wirtschaft/article189285853/Energiekonzern-EWE-kritisiert-Verflechtung-von-E-on-und-RWE.html

If the German Cartel Office, the Federal Network Agency and the Monopolies Commission remain inactive in such mega-deals, this is also a sign of the neo-liberal economic policy that has been postulated and pursued by federal policy since the 1990s. Privatisation, deregulation, wage restraint, tax cuts, a lean state and the interests of large companies increasingly determine the economic policy compass[27]. For example, in February 2019, Federal Minister of Economics Altmaier called for the "lowering of the cartel thresholds" and the "creation of national champions"[28]. In our opinion, such an easing of antitrust law opens the door to future mega-mergers, which could lead to the emergence of further corporate giants.

13 Recommendations for municipalities and public utilities

In view of the effects of the Eon/RWE deal described above, municipal utilities in Germany should not accept the decision of the EU Competition Commission taken within the framework of merger control. It is therefore advisable to take legal action against the approval of EU Competition Commissioner Margrethe Vestager and to join the announced legal action of Mainvoa. Municipalities that have a change-of-control clause in their contracts should examine whether and to what extent they can make use of it. In addition, cities and municipalities will in future have the opportunity (when the concession agreements expire) to withdraw from the market power of the new Eon Group. Medium-sized and small municipalities also have the opportunity to transfer local energy supply into their own hands by establishing a joint distribution grid company (remunicipalisation) in the electricity and/or gas sector and to perceive the energy turnaround as a municipal task of shaping public value.[29]

[27] Lobbypedia (website): Neoliberalism - Role of the State, available online at: https://lobbypedia.de/wiki/Neoliberalismus#Rolle_des_Staates; call for proposals of 26.10.2019.

[28] Handelsblatt of 05.02.2019: This is the new industrial policy strategy of Minister of Economics Altmaier; available online at: https://www.handelsblatt.com/politik/deutschland/wirtschaftspolitik-das-ist-die-neue-industriepolitische-strategie-von-wirtschaftsminister-altmaier/23950112.html?ticket=ST-51806870-h6tXwpAlgs6mFtrOEdbq-ap4; call of 26.10.2019

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