

*Case No COMP/M.1822 -
MOBIL / JV
DISSOLUTION*

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 02/02/2000

*Also available in the CELEX database
Document No 300M1822*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 02.02.2000

SG(2000) D/101167

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party

Dear Sir,

Subject: Case No IV/M.1822 – Mobil/JV Dissolution

Notification of 4 January 2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 04.01.2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ (“the Merger Regulation”) by which Exxon Mobil Corporation (“ExxonMobil”) (USA) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of parts of the BP/Mobil Joint Venture (“the JV”). The JV will be dissolved. The vendor is BP Amoco p.l.c. (“BPA”) (United Kingdom)
2. On 22 December 1999, the Commission decided, pursuant to Article 7(4) of the Merger Regulation, to grant a derogation from the obligation, imposed by Article 7(1) of the Merger Regulation, to suspend the implementation of a concentration until it has been declared compatible with the common market pursuant to a decision under Article 6(1) (b) or Article 8(2) or on the basis of a presumption according to Article 10(6).
3. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES

4. **ExxonMobil** is active in the exploration, production, refining, marketing and transportation of crude oil, natural gas, petroleum products and petrochemicals; production and sale of coal and minerals; and power generation [typographic error]. The company results from the merger between Exxon Corporation (“Exxon”) and Mobil Corporation (“Mobil”). This merger has been cleared recently by the Commission, subject to conditions².
5. The JV³ between BPA and Mobil combined BPA’s and Mobil’s European fuel and lubricants businesses. By means of this transaction, ExxonMobil will acquire certain parts of the JV, the vendor (and the acquirer of the remainder⁴) being BPA (see further below).
6. The parts that ExxonMobil will acquire, referred to hereafter as “**the Business**” are:

Fuels Business

- the Gravenchon refinery’s fuels leg and related assets;
- the bitumen marketing business at Dunkirk and Gravenchon;
- approximately [...] ExxonMobil branded service stations (which had been preserved in a number of EU jurisdictions in order to protect the Mobil trademark in Fuels);
- [an arrangement relating to Aral]; and
- [an arrangement for the working capital of the JV’s fuels businesses].

Lubricants business

The JV’s lubricants business is to be split between BPA and ExxonMobil. ExxonMobil will acquire sole control over:

- the base oil manufacturing plant at the Gravenchon refinery and the JV’s interest in the base oil manufacturing plants at Dunkirk ([...]%) and Algeciras ([...]);

² Case COMP/M.1383 – Exxon/Mobil, decision of 29 September 1999.

³ Case IV/M.727 – BP / Mobil, decision of 7 August 1996.

⁴ Case COMP/M.1820 – BP / JV dissolution, notified on 21 December 1999.

- all blending plants which BPA is not taking (BPA acquires the Gent (B), Neuhof (D) and Batsons (EL) blending plants and a 45% share of Serviburnu (Turkey));
- the Mobil branded Passenger Vehicle Lubricants (“PVL”) business outside Southern Europe^{5]} and all [Mobil] branded distributors [outside Southern Europe^{6]};
- the JV’s industrial lubricants business outside Southern Europe;
- the wax emulsion business; and
- the [...] branded lubricants business in each country where the BP/Mobil JV is active.

II. CONCENTRATION

7. The Concentration arises from the Statement of Principles (“SOP”) signed on 30 November 1999 by BPA, Mobil Corporation and Exxon Mobil Corporation and the Transition Protocol (“TP”) signed by those same parties on 16 December 1999. The SOP defines the manner in which the JV will be split (see above). The acquisition of sole control over the Business will be effected on 1 January 2000 by virtue of the TP giving immediate and binding effect to the key parts of the SOP, including the clauses whereby as of 1 January 2000, defined as the Economic Effective Date (“EED”), all risk and benefit from the operation of the Business will be for ExxonMobil’s account and ExxonMobil will assume responsibility for the day-to-day co-ordination and management of the Business.
8. The notified operation therefore constitutes a concentration pursuant to Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

9. The combined aggregate world-wide turnover of the undertakings concerned (ExxonMobil and the Business) exceeds EUR 5 000 million and the aggregate Community wide turnover of each party exceeds EUR 250 million. They do not achieve more than two-thirds of their turnover in one and the same Member State. The notified operation therefore has a Community dimension. It does not constitute a co-operation case under the EEA agreement.

IV. ASSESSMENT

10. The concentration follows the commitments given to the Commission by Mobil and Exxon on 20 September 1999 to divest certain of Mobil’s interests in the JV.

⁵ [The definition of “Southern Europe” in the Statement of Principles refers to the following countries: Greece, Spain, Gibraltar, Malta and Portugal.]

⁶ [Includes branded distributors for CVL.]

The Commission decision of 29 September 1999 whereby the merger between Exxon and Mobil is declared compatible with the common market and the functioning of the EEA Agreement, is conditional on the compliance with the commitments offered. By means of the present concentration, ExxonMobil acquires sole control over some of the businesses and assets in the JV which ExxonMobil, pursuant to the commitment, did not need to divest off.

11. In assessing the Exxon/Mobil merger, the Commission identified competition problems on the fuel retailing markets in Austria, Germany, Luxembourg, the Netherlands, the United Kingdom and on French motorways. In order to remedy these concerns, Exxon and Mobil committed to, amongst others, “the dissolution of the BP/Mobil JV with substantially all of the fuels assets being acquired by BPA”. The commitments clarified that “ExxonMobil may in any event retain from the BP/Mobil JV the fuels leg of the Gravenchon refinery.” BPA will acquire all of the fuels assets of the JV with the exception of those listed above. In accepting the commitment and, hence, a conclusion that the Exxon Mobil merger would not create or strengthen a dominant position on the above fuels markets, the Commission has already accepted that the retention of the most important retained fuel asset, the Gravenchon refinery, does not pose a competition problem. In addition, no competition concern has been identified on the bitumen market. The retention of the [...] service stations (or [...] in the markets where the Commission has identified concerns) has negligible influence on the relevant fuel retailing markets. It can, therefore, be concluded that this acquisition does not create or strengthen a dominant position on the fuels markets.
12. The Commission also identified, in its Exxon/Mobil investigation, competition concerns with regard to the EEA market for Group 1 base oils. In order to remedy these concerns, the Commission accepted the commitment whereby “the control over approximately [...] barrels per day of base oil manufacturing capacity would be transferred (or returned) to BP Amoco and/or one or more third parties to be approved by the Commission.” This was further specified by means of “a transfer of ownership of the Coryton base oil manufacturing plant and (...) the Neuhof base oil manufacturing plant (...).” Subject to the fulfilment of these conditions, the Commission concluded that the ExxonMobil merger would not create or strengthen a dominant position of this market. These identified businesses are being acquired by BPA. It can, therefore, be concluded that the acquisition by ExxonMobil of the remainder of the base oil businesses of the JV does not create or strengthen a dominant position.
13. With regard to the finished (automotive and industrial) lubricants markets and all other possible markets in which the Business is active (refining of fuels and ex-refinery sales; non-retail sales of fuels and bitumen), the Commission found in its Exxon/Mobil investigation that the merger (combining Exxon’s business together with the joint control over the JV’s relevant business) would not create a competition problem. The acquisition by ExxonMobil of a part of the assets and businesses of the JV in these markets will, therefore, not create or strengthen a dominant position on any of the lubricants markets, nor on the other possible markets.

Ancillary clauses

14. [3 year non-solicitation clause on BPA for certain customers purchasing certain products in certain territories].
15. [during 5 year a specific mechanism is agreed to allocate certain businesses for certain customers who wish to have a single source of supply].
16. The Commission considers that the non-solicitation provision for 3 years can be considered ancillary to the concentration in order to preserve the value of Mobil's [...] business. The mechanism for allocating customers that decide to have a single source of [...] supplies is necessary in view of the fact that [the relevant business is split between Mobil and BPA]. The five year duration of this mechanism is considered proportional to the potential detrimental effects for the acquired businesses resulting from the unilateral decisions of the clients to have a single source of supply.
17. Therefore, the clauses described above are directly related and necessary to the implementation of the concentration.

VII. CONCLUSION

18. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,

Mario MONTI
Member of the Commission