

***Case No COMP/M.2761 -  
BP / VEBA OEL***

Only the English text is available and authentic.

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

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Article 6(2) NON-OPPOSITION  
Date: 01/07/2002

*Also available in the CELEX database  
Document No 302M2761*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, **01/07/2002**

SG (2002) D/230448

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(2) DECISION

**To the notifying party**

Dear Sir/Madam,

**Subject: Case No COMP/M.2761 – BP/Veba Oel  
Notification of 04.04.02 pursuant to Article 4 of Council Regulation  
No 4064/89<sup>1</sup>**

1. On 29/05/2002, the Commission received a notification of a proposed concentration in the oil industry pursuant to Article 4 of Council Regulation (EEC) No 4064/89, by which BP p.l.c. (UK) acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of the whole of Veba Oel AG (Germany), which is currently jointly controlled by BP and E.ON (see case M.2533 BP/E.ON).
2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No. 4064/89 and that, subject to the full compliance with the attached commitments, it does not raise serious doubts as to its compatibility with the common market and with the EEA agreement.

**I. THE PARTIES**

3. The British BP plc. (“BP”) is the holding company of a world-wide active exploration, petroleum and petrochemicals group of companies comprising four core businesses: (1) the exploration and production of crude oil and natural gas; (2) oil refining, marketing, supply and transportation of refined products; (3) manufacturing and marketing of petrochemicals and related products, and (4) solar energy.
4. Veba Oel AG (“Veba Oel”) is active in oil refining, downstream oil products (under the “Aral” brand) and petrochemicals. Veba Oel’s activities focus on Germany, but it

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<sup>1</sup> 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).

also operates in Austria, Luxembourg and some Eastern European countries in the marketing of downstream oil products and has minor activities in lubricants in a number of Member States. The upstream exploration and production business of Veba Oel has recently been sold to PetroCanada, a transaction which fell outside the Commission's jurisdiction.

5. The transformation of Veba Oel, previously a fully owned subsidiary of E.ON, into a JV jointly controlled by BP and E.ON was examined by the Commission in case M.2533-BP/E.ON ("the BP/E.ON case"). The part of the case concerning petroleum products in Germany was referred to the German Competition Authority under Article 9. The Bundeskartellamt cleared the transaction subject to several undertakings in the motor and jet fuels markets on 19 December 2001. For the remaining petrochemicals part of the transaction, the Commission entered into a Phase 2 investigation and cleared the concentration subject to conditions and obligations relating to ethylene on 20 December 2001. This operation was put into effect on 1 February 2002.

## **II. THE OPERATION**

6. According to the agreements in the BP/E.ON case, BP acquired 51% of the shares of Veba Oel, and E.ON had a put option for the remaining 49% for a fixed price. The present transaction is a result of E.ON exercising this put option. BP acquires the remaining 49% of the shares of Veba Oel, representing a change from joint to sole control over Veba Oel by BP.

## **III. CONCENTRATION**

7. As a result of the operation, BP will acquire control of the whole of Veba Oel. The operation thus constitutes a concentration within the meaning of Article 3(1)(b) of the Council Regulation.

## **IV. COMMUNITY DIMENSION**

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>2</sup> (BP: EUR 281 976 million; Veba Oel: EUR 26 899 million). Each of the undertakings has a Community-wide turnover in excess of EUR 250 million (BP: EUR [...]; Veba Oel: EUR [...]), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

## **V. COMPETITIVE ASSESSMENT**

9. As mentioned above, the present transaction is a follow up to the BP/E.ON case, which resulted in BP acquiring joint control of Veba Oel. The combination of BP's and Veba Oel's petroleum activities affects a variety of markets for petroleum products mainly in Germany, such as motor fuels (gasoline and diesel) retailing, motor fuels wholesaling, light heating oil, jet fuel, liquefied petroleum gas (LPG), heavy fuel oil, bitumen and lubricants. In addition, the parties are active in petrochemicals, in

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<sup>2</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

particular in the supply of ethylene on the pipeline network “ARG+”, which links producers and customers in Germany Belgium and the Netherlands.

10. As regards petrochemicals, the Commission found in the BP/E.ON case that the combination of BP’s and Veba Oel’s competitive positions would lead to collective dominance on the market for the supply of ethylene on the ARG+ market, held by BP/Veba together with Shell/DEA. In essence, this assessment was based on the duopolists’ high market shares, their strong position in essential infrastructure, their symmetry in market position, company structure, cost and strategic interest, the lack of sufficiently strong competitors, as well as on a particular market situation which provided transparency and means of tacit co-ordination and retaliation.
11. With regard to petroleum products, the Bundeskartellamt concluded, in line with the Commission’s Art. 9 referral decision of 6 September 2001, that the combination of BP and Veba Oel would result in a collective dominant position, held by BP/Veba Oel together with Shell/DEA and ExxonMobil, on the German market for motor fuels retailing, and on the market for the supply of jet fuel A1 at the Frankfurt airport. This conclusion was essentially based on the high and symmetric market shares of the oligopoly members, their possibility to control essential infrastructure and the resulting lack of viable competitors which would be able to constrain the competitive position of the oligopoly.
12. In both proceedings, the parties submitted commitments to eliminate the competition concerns identified by the Commission and the Bundeskartellamt. As regards ethylene, the parties essentially committed to divest BP/Veba Oel’s shareholdings in the ARG pipeline company. With regard to petroleum products, the parties committed to divest petrol stations and shareholdings in a refinery in Southern Germany, as well as to secure jet fuel supply at Frankfurt airport at preferential conditions. In the light of these commitments, the Commission and the Bundeskartellamt concluded that the transaction, subject to full compliance with these undertakings, will not create or strengthen a dominant position.
13. The present transaction, consisting in the shift from joint to sole control, does not change the structure of the affected markets any further. The combination of BP’s and Veba Oel’s oil and petrochemicals businesses and the related market power already resulted from the BP/E.ON transaction transforming Veba Oel into a joint venture between BP and E.ON. There are no indications that the presence of E.ON in the Veba Oel joint venture could have led to a market behaviour on the part of Veba Oel different from a behaviour under sole control by BP. BP appointed the majority of the members of the management board and of the supervisory board. In practice, [...] BP was running the day-to-day business. For example, BP started to re-brand its petrol stations in Germany into Veba Oel’s Aral brand. Both parties to the BP/E.ON case indicated that that case was only the first step to BP acquiring sole control over Veba Oel, which was reflected in the put option for E.ON already included in the agreements leading to the earlier case. Against this background, there are no indications that E.ON had any specific own interests differing from those of BP with regard to the competitive behaviour of Veba Oel, which could have translated into a different business strategy on the part of Veba. Both the Commission in its Article 9 and final decisions and the Bundeskartellamt in its own final decision analysed the BP/E.ON case as a full combination of BP’s and Veba Oel’s positions.

14. Therefore, there are no additional competition concerns arising from the present transaction.
15. However, in the present procedure it has to be taken into consideration that the period within which some of the undertakings offered vis-à-vis the Commission and the Bundeskartellamt with regard to the BP/E.ON case must have been fulfilled will elapse only after the legal deadline for an investigation of the present operation under the Merger Regulation. As far as, and as long as the parties have not fulfilled all conditions and obligations attached to the decisions in the BP/E.ON case it is necessary that the competition concerns resulting from the combination of BP and Veba Oel continue to be addressed if BP acquires sole control instead of joint control over VEBA Oel.

## **VI. COMMITMENTS SUBMITTED BY BP**

16. BP submitted, for the purposes of the present transaction, commitments designed to address this situation. Following these commitments, it agrees to comply, or to procure compliance from any of its group companies, with the commitments submitted by BP to the Commission and to the Bundeskartellamt in the BP/E.ON case and referred to in the Commission's or the Bundeskartellamt's decision respectively, subject to the same rights and conditions as are set out in said commitments as amended from time to time. The full text of the commitments offered by BP as regards the present transaction is attached in the Annex.
17. The commitments offered in the BP/E.ON Case (the "BP/E.ON Commitments") vis-à-vis the Commission have been offered jointly by BP and E.ON. E.ON's undertakings, however, were limited insofar as they were only given for so long as E.ON has a controlling interest in Veba Oel. After consummation of the present transaction and the acquisition of sole control by BP of Veba Oel, BP will therefore have the sole responsibility of complying with the BP/E.ON Commitments insofar as they have not yet been fulfilled.
18. The commitments vis-à-vis the Bundeskartellamt have only been offered by BP (and its subsidiary Deutsche BP AG). As regards these commitments, BP (including its subsidiary) is and remains to be solely responsible.
19. The commitments offered by BP as regards the present transaction refer to the BP/E.ON Commitments "as amended from time to time". The content of the conditions and obligations attached to the decision of the Commission and the Bundeskartellamt, respectively, may be amended upon application of the respective review clause. The present commitments include any of these amendments.
20. As set out in detail in the Commission Decision and the decision of the Bundeskartellamt in the BP/E.ON case, the commitments offered by the parties will eliminate the identified competition concerns in this case. In the light of the confirmation of these commitments in the present case, it is concluded that also the present transaction, subject to full compliance with the undertakings offered in the present case, will not create or strengthen a dominant position.
21. Pursuant to the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the common market.

22. The Commission's decision in the present case is in the same way subject to the conditions and obligations as set out in the Commission's decision in the BP/E.ON case. Therefore, the present decision of the Commission is conditional upon full compliance with the provisions of the commitments as listed in Article 2 of the Commission's decision in the BP/E.ON case and set out in par. 151 of this decision. The present decision is further subject to the compliance with the obligations as listed in Article 3 of the said decision and set out in par. 151 of this decision. All this applies insofar as the BP/E.ON Commitments have not yet been fulfilled.
23. The Bundeskartellamt's decision defined the commitments offered by BP as "Auflagen" which leads to similar legal consequences as the qualification of commitments as obligations under the Merger Regulation. Therefore, the respective commitments of BP in the present transaction shall be obligations upon BP insofar as those commitments have not yet been complied with.

## **VII. CONCLUSION**

24. For the above reasons, and subject to full compliance with the submitted commitments, 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 (2) of Council Regulation (EEC) No 4064/89.

For the Commission  
**Signed by F. FISCHLER**  
Member of the Commission

## ANNEX

### **Case M.2761 – BP/ Veba Oel**

#### **COMMITMENTS TO THE EUROPEAN COMMISSION**

Pursuant to Article 6(2) of Council Regulation (EEC) No. 4064/89, as amended (“ECMR”), and in order to enable the European Commission (“the Commission”) to declare the acquisition of sole control over Veba Oel compatible with the common market and the EEA Agreement by a decision pursuant to that provision, BP p.l.c. (“BP”) hereby provides the following commitments to the Commission:

1. BP agrees to comply, or to procure compliance from any of its group companies, with the commitments submitted by BP to the Commission in case COMP/M.2533 *BP/E.ON* and referred to in the Commission’s decision of 20 December 2001, subject to the same rights and conditions as are set out in said commitments as amended from time to time.
2. BP agrees to comply, or to procure compliance from any of its group companies, with the commitments submitted by BP to the Bundeskartellamt in case B 8 -50500-U- 130/01 - *BP/E.ON (Aral)* and referred to in the Bundeskartellamt’s decision of 19 December 2001, subject to the same rights and conditions as are set out in said commitments as amended from time to time.