EN

Case No COMP/M.3664 - REPSOL BUTANO / SHELL GASS (LPG)

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 02/03/2005

In electronic form on the EUR-Lex website under document number 32005M3664

Office for Official Publications of the European Communities
L-2985 Luxembourg

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 02.03.2005

SG-Greffe(2005) D/200914

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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(1)(b) DECISION

To the notifying party :

Dear Sir/Madam,

Subject: **Case No COMP/M.3664 – Repsol Butano/Shell Gas. Notification of 23.12.2004 pursuant to Article 4 of Council Regulation No 139/2004[1].**

1. On the 23 December 2004**,** the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the "Merger Regulation") by which the Spanish undertaking Repsol Butano, S.A. ("Repsol"), part of Repsol Group, acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the Portuguese undertaking Shell Gas (LPG) S.A. ("Shell Gas") by way of purchase of shares.

2. This notification has been declared incomplete on 6 January 2005. The notification became complete within the meaning of Article 10(1) of the Merger Regulation on 13 January 2005. Accordingly, the notification became effective only this day.[2]

---

1 OJ L 24, 29.1.2004 p. 1.

2 It should be noted that the deadline for the Commission's decision, initially on 17 February 2005 (25 working days after the completion of the notification), has been postponed to 3 March 2005 following a commitment proposal filed by the parties pursuant to Article 6(2) of the Merger Regulation. For the reasons explained below, the Commission considered however that there was no need to condition its decision to the proposed commitments.

Commission européenne, B-1049 Bruxelles / Europese Commissie, B-1049 Brussel - Belgium. Telephone: (32-2) 299 11 11.

I. THE PARTIES AND THE CONCENTRATION

3. The Repsol Group is engaged in all aspects of the petroleum and natural gas business, including exploration, development and production of crude oil and natural gas, transportation of petroleum products, Liquefied Petroleum Gas ("LPG"), petroleum refining, production of a wide range of petrochemicals and marketing of petroleum products, petroleum derivatives, petrochemicals, LPG and natural gas. Repsol Butano is the company of the Repsol Group responsible for the LPG business.

4. Shell Gas is a subsidiary of The Shell Petroleum Company Limited. Shell Gas and its subsidiaries primarily own and operate Shell's LPG business in Portugal[3].

5. The notified operation consists in the acquisition of the entire share capital of Shell Gas by Repsol Butano pursuant to a Share Purchase Agreement signed on the 9 December 2004. It therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

II. COMMUNITY DIMENSION

6. The notified concentration does not meet the turnover thresholds of Article 1(2) and 1(3) of the Merger Regulation, because Shell Gas has a turnover of only […] million of Euro, all achieved in Portugal.

7. This concentration has however a community dimension, and therefore falls under the Commission's jurisdiction, because of the criterion laid down by Article 5(2) of the Merger Regulation.

8. According to this provision on the calculation of the turnover, when two or more transactions for the acquisition of different parts of an undertaking take place in a two years period between the same parties, these transactions shall be treated as one concentration. For the calculation of the turnover, the notified operation should therefore be considered together with the operation by which, in 2004, Repsol YPF (the ultimate parent company of the Repsol Group) acquired all assets and activities of Shell Petroleum in Portugal apart from its LPG business (see case COMP/M.3516). Considering that the latter concentration had Community dimension, as the turnover thresholds of Article 1(2) of the Merger Regulation were met, also the present concentration shall be deemed of Community dimension.

---

[3] Prior to the concentration cleared by the Commission with the decision *COMP/M.3516 Repsol YPF/Shell Portugal* of 13.9.2004, Shell undertook a restructuring of its business portfolio in Portugal. As a result of the restructuring, Shell Gas (LPG) SA was formed to conduct Shell's LPG business in Portugal. It should be noted that Shell's service stations in Portugal have been transferred to Repsol following the concentration *COMP/M.3516.* As a consequence, Shell Gas is not active in the retail supply of LPG for automotive use.

III. RELEVANT MARKET

Relevant product market

9. The parties of the concentration are both focused in the LPG business. The LPG consists of butane and propane gas, which are the product of either oil refining or natural gas. In spite of a number of technical differences (different pressures and boiling points, which determine how they are stored and conditioned), butane and propane appear mutually interchangeable for most uses (with the exception of LPG car fuel, which is always a mixture of the two gases with set proportions). For example, butane is used for mainly domestic purposes in conditioned form (in bottles) for auxiliary heating, production of hot water and cooking. It is also used in bulk, mainly for industrial purposes, its domestic usage being limited by the fact that it ceases to be a gas at temperatures of below 0°C. Propane is used for identical domestic purposes and for industrial energy production, its technical characteristics making it more suitable for distribution in bulk (in tanks), whatever the climatic conditions.[4]

10. In the notification, the parties argued that the overall LPG market should be considered as relevant, given that the product is basically the same irrespective of its presentation (bottled/bulk) and/or the customer. In the *TotalFina/Elf* case, which concerned the French markets, the Commission considered instead that there may be three distinct LPG markets: (i) conditioned LPG sold in bottles of different dimensions (weighing between 5,5 and 35 kilograms), (ii) LPG sold in bulk for mainly domestic purposes and (iii) bulk LPG for industrial use. The Commission considered in particular that these three markets may be differentiated by their modes of distribution, uses and quantities consumed. The LPG used as car fuel was also considered as belonging to a different product market.

11. The Commission's investigation in the present case confirmed that there is only a limited substitutability between bottled and bulk LPG. For domestic customers with a low consumption the bulk LPG does not appear to be a viable economic alternative, while industrial customers have a clear preference for bulk LPG. Furthermore, the commercialization channels for bottled and bulk LPG are very different in Portugal. As a matter of fact, the LPG operators generally sale bottled LPG to exclusive concessionaires, which then resale it to smaller retailers (only a limited amount of bottles is sold in their service stations). The bulk LPG is instead directly commercialized by the LPG operators, which therefore need a specific sale organization. In addition, the contractual relations for bulk LPG are generally more complex (essentially due to the installation and the maintenance of the tank) and the costs for changing supplier are higher.

12. The question whether bottled and bulk LPG belong to different product markets can however be left open, given that in any case the notified concentration will not give rise to competition concerns[5].

---

4 See Commission decision *TotalFina/Elf* of 9 February 2000 (case COMP/M.1628), in Official Journal L 143 of 29 May 2001, p. 1.

5 Even if this question is left open, for sake of completeness the Commission will consider differently the bottled and the bulk LPG and will refer to them as if they were different markets.

13. As for the possible sub segmentation of the supply of bulk LPG for domestic and industrial use[6], the Commission's investigation indicated that it is difficult to draw a clear line between different customers' groups. In any way, considering that the parties' market position in the supply of bulk LPG for domestic and industrial use does not change significantly, the question whether the supply of bulk LPG should be further subdivided according to the kind of customers can be left open.

14. Also the question whether the LPG used as car fuel belongs to a different product market can be left open, given that Shell Gas is not active in the retail supply of LPG for automotive use[7].

Relevant geographical market

15. In the notification, the parties suggested that the LPG market is national in scope. They underlined that the maximum economic range of supply for LPG is normally of 200 to 300 km from the storage facility, even if in certain circumstances longer distances may be run. They also noted that the trade areas and storage or bottling facilities overlap to a large extent, with the consequence that it would be difficult to isolate one regional area from the others. Additionally, the parties limited the scope of geographic market to mainland Portugal, due to the distinct geographic characteristics of Portuguese Islands (Acores and Madeira).

16. The parties exclude that the market may extend to Spain. They explain that oil companies establish specific sales networks and pricing policies for each country and the level of prices are significantly different in Spain and in Portugal. Furthermore, there are different regulatory requirements in terms of compulsory storage requirements, technical aspects and pricing regulation, that would limit the trade between Spain and Portugal.

17. The proposed national geographical definition of the markets appears consistent with the previous practice of the Commission[8]. Moreover, the Commission's market investigation in the present case confirmed the parties' view that the LPG markets are Portuguese in scope. The Commission considers that the relevant geographic market is mainland Portugal, and there is no need to determine if the Portuguese Islands (Acores and Madeira) constitute separate markets as there is no overlap due to the fact that Repsol Butano is not active in either of Portuguese islands.

---

6 Among the industrial customers are also considered the so called "reticulated" operators, which buy bulk LPG to supply end customers (mainly households) through local pipelines connecting a common tank with the customers' premises.

7 As already indicated, Shell's service stations in Portugal have already been transferred to Repsol following the concentration COMP/M.3516.

8 See the *Totalfina/Elf* case quoted above, point 273.

IV. COMPETITIVE ASSESSMENT

18. In the Portuguese LPG markets there are five main operators: Galp, BP, Shell, Esso and Repsol[9].

19. Galp is the incumbent Portuguese operator. It owns the only two refineries in Portugal, which produce approximately 40% of the LPG sold in the country, and the main LPG infrastructures (in some of them, however, other LPG operators have minority participations). Galp mainly sells the LPG produced in its refineries and has a market share of [40-50]% in the bottled LPG and of [35-40]% in the bulk LPG.

20. BP, Shell and Esso are international oil companies, which import LPG in Portugal through maritime vessels and to a certain extent purchase it from Galp (with which, for this purpose, they established contractual relations). Each of these companies owns at least an import terminal, a storage facility and a bottling plant in Portugal.[10] They also have contractual relations with Galp for the use of its infrastructures and to comply with the compulsory storage requirements established by the Portuguese law. BP, Shell and Esso have market shares of respectively [<30]%, [10-15]% and [5-10]% in the bottled LPG and of [30-35]%, [15-20]% and [<5]% in the bulk LPG.

21. Repsol is by far the leading company in the Spanish LPG markets, with a share of around [<85]% in the bottled LPG and [<75]% in the bulk LPG. It entered the Portuguese LPG markets in 1994 and since then only imports LPG in Portugal by lorry from its refinery in La Coruña, its storage facility in Mérida and an import terminal in Huelva (all located in Spain, respectively near the Northern, Central and Southern border with Portugal). […]. It has a market share of [<5]% in the bottled LPG and of [<5]% in the bulk LPG.

22. Until recently, Repsol did not have any LPG infrastructure in Portugal. Following its acquisition of Shell's Portuguese oil assets in 2004, it acquired however a participation in a logistic company, CLC, which controls a big multi-product storage facility in Aveiras (in the Lisbon area), connected via pipeline to an import terminal in Sinés (in the South of Portugal)[11]. Furthermore, in the framework of the same operation, Repsol acquired all Shell's service stations in Portugal, which represent important selling points for bottled LPG. Finally, Repsol is in the process of acquiring a chemical company, Borealis Polimeros, which have a small participation in Sigás, which owns and operates the Sinés storage caverns[12].

---

[9] All data concerning market shares are expressed in quantities (tons), is for 2003 and deal only with mainland Portugal. It should be noted that they are calculated on the basis of LPG sold to distributors or end-customers by the market players but do not reflect sales of LPG between market players[…]

[10] For instance, Shell owns two import facilities: in Banatica in the Lisbon region and, jointly with BP, in Matosinhos, in the north of Portugal – […].

[11] This transaction was cleared by the Commission in case M.3516. Repsol's acquisition of a stake in CLC is however not yet effective, since it has been challenged by Galp before an arbitration court. After this transaction, CLC's shareholders are Galp (65%), BP (20%) and Repsol (15%). […].

[12] The Sinés caverns are the larger LPG storage facility in Portugal. They are owned and operated by Singás, in which Galp, BP and Borealis have respectively a 63%, 32% and 5% shareholding[…].

23. The oligopolistic structure and the specific characteristics of the Portuguese LPG markets do not seem to create a favourable environment for a strong competition among the main operators. This is essentially because:

   - LPG is a homogeneous product whether it is sold in bottles or in bulk;

   - the markets (both for bulk and bottled LPG) are characterized by a high price transparency (the operators send their price lists to thousands of customers and generally do not negotiate prices with them);

   - demand for LPG have a limited price elasticity (as for any energy product), however the overall LPG demand is declining, due to the gradual expansion of the natural gas transport and distribution networks;

   - there are important barriers to entry, essentially determined by transport costs, compulsory storage requirements and the difficulty to have access to LPG infrastructures;

   - customers who want to change bulk LPG supplier incur important switching costs, mainly linked to the removal of the infrastructures (tanks) installed by the previous supplier;

   - customers are generally very loyal to a particular brand of bottled LPG and would reluctantly switch to different ones;

   - as mentioned above, there are significant relations between the different operators for the supply of LPG and for the use of LPG infrastructures.

24. The relatively low degree of competition in the Portuguese LPG markets seems to be confirmed by the stability of the main operators' market shares in the last […] years, which only faced a little reduction since Repsol's entry in 1994[13].

25. In such quite stable markets, Galp is generally perceived to be acting as a "price leader", while BP, Shell and Esso are considered as "price followers"[14]. Considering the abovementioned characteristics of the LPG markets, it appears that these companies do not have an incentive to compete fiercely on prices, but prefer to retain their market position, realizing higher margins. In this respect, it is interesting to note that, while qualifying itself as "market leader" and "price leader", in its answers to the Commission market investigation, Galp clearly indicated that it has a "strategy to maintain its market position" (around 45% in the bottled LPG and of 38% in the bulk LPG).

26. Such approach appears also justified by the fact that:

   - on the one hand, BP, Shell and Esso depend to a large extent from Galp for their LPG sourcing, either because they need access to an import terminal controlled by Galp or because they purchase LPG in Portugal from this company;

---

13 In this regard it should be mentioned that in 1997 BP acquired Mobil's LPG assets and increased accordingly its market share.

14 This has been clearly indicated by Galp, BP and Esso in their answers to the Commission's market test.

- on the other hand, Galp has a market share corresponding more or less to its Portuguese production and does not have spare capacity in its refineries and LPG infrastructures. As a matter of fact, this company explained that its production and infrastructural capacity is just sufficient for its current sales and for its contractual obligations […] and that it does not foresee any expansion in the coming years.

27. Repsol's strategy in the Portuguese LPG markets appears to be different from the one of the other big operators. As indicated, this company is by far the leading LPG operator in the Spanish market, where the prices for bottled LPG are set by the regulator at a level much lower than the one of the Portuguese market[15]. This gives to Repsol a strong incentive to expand in the Portuguese markets in order to maximise its profits and realise all the possible synergies. Being independent from Galp for its LPG sourcing and not having capacity constraints in the Spanish facilities used to supply the Portuguese markets, this company has been able to adopt an aggressive price policy, even if it has to bear transport costs higher than that of its competitors.

28. Repsol's aggressive price policy aimed at expanding in the Portuguese markets has been generally confirmed by our market investigation and clearly underlined by Repsol itself. […].

29. Repsol's strong commitment to expand in the Portuguese LPG markets is also reflected in its growing investments and is clearly indicated in the strategic plans elaborated in the last years. In particular, in the most recent strategic plan […][16].

30. As indicated, notwithstanding its efforts, Repsol's expansion in the Portuguese markets encountered a significant obstacle in the absence of LPG infrastructures in the country, which determined higher transport costs and a limited operational flexibility.

31. […][17].

32. Repsol's ability to expand in the Portuguese LPG markets might have been increased following the abovementioned acquisition of minority participations in CLC and in the Sinés storage caverns. There is however a substantial uncertainty concerning the impact of such acquisitions on Repsol's logistic organisation, given that: (i) as already mentioned, the acquisition of the participation in CLC has been challenged by Galp before an arbitration court; (ii) it is likely that a larger part of Borealis' capacity in the Sinés caverns will be needed by this company for its chemical production.

33. In such a situation, it appears that the acquisition of Shell Gas, and in particular of its LPG infrastructure, will give to Repsol the ability to compete more effectively in the Portuguese markets and challenge the Galp's and BP's position. Having access to Shell's LPG infrastructures, Repsol will indeed significantly reduce its transport costs and gain the needed flexibility to more effectively operate and compete in the Portuguese markets.

---

15 Due to price regulation, prices for bottled LPG are around 40% lower in Spain than in Portugal.

16 […].

17 Repsol's answer to the Commission's information request of 27.1.2005, point 16.

34. As already indicated, Repsol is the leading LPG operator in the Spanish markets, where prices for bottled LPG are set by the national authorities at a very low level. Even after the acquisition of Shell Gas, Repsol will therefore have a continued incentive in selling the higher quantity possible of LPG in Portugal in order to benefit of the higher margins in this country. Furthermore, it will have a strong incentive in fully profiting of the synergies and economies of scale which it might realise operating on a wider scale in the two sides of the border.

35. In light of the foregoing considerations, it therefore appears that, after the notified merger, Repsol will extend its ability to effectively compete in the Portuguese LPG markets and will likely enjoy maintained incentives to do so.

36. In any case, given Repsol's weak competitive position (also reflected in its limited market shares) prior to the notified transaction, even if the notified merger should result in the elimination of the competitive pressure currently exerted by this company, this would not determine a significant impediment of effective competition in the Portuguese markets for LPG.

37. Due to the little change brought by the merger to the competitive structure of the relevant markets, it appears also unlikely that the notified merger will significantly increase the risk of coordination or tacit collusion among the LPG operators active in the Portuguese markets.

38. In this regard, it should be recalled that these markets are already very concentrated and the LPG operators already have significant structural and contractual relations among them. In particular, after its recent acquisitions in CLC and Sigás, Repsol already established structural and contractual links with Galp and BP.

39. Furthermore, it should be pointed out that, after the notified merger, the four main LPG operators will still have clearly asymmetric positions in the Portuguese markets and will maintain different strategic goals.

V. CONCLUSION

40. For the above reasons, the Commission has decided not to oppose the notified concentration 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 (EC) No 139/2004.

For the Commission

signed
Neelie Kroes
Member of the Commission