EN

Case No COMP/M.4208 - PETROPLUS / EUROPEAN PETROLEUM HOLDINGS

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 29/05/2006

In electronic form on the EUR-Lex website under document number 32006M4208

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

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.05.2006
SG-Greffe (2006) D/202780

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4208 – Petroplus/European Petroleum Holdings
Notification of 18.04.2006 pursuant to Article 4 of Council Regulation No 139/2004[1]**

1. On 18.04.2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Petroplus International B.V. ("Petroplus", The Netherlands) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of European Petroleum Holdings NV ("EPH", Netherlands Antilles) by way of purchase of shares.

I. THE PARTIES

2. Petroplus is a Dutch registered midstream oil company controlled by portfolio companies of the Carlyle Group. It has four main areas of activities: refining of crude oil, storage, marketing and international trading of crude oil and refined petroleum products. Petroplus owns and operates 4 refineries: one in Switzerland, one in the UK and two in Belgium (the fifth one located in the UK is not operative). The company's logistics division is active in 6 countries, owning several storage facilities in the UK, the Netherlands, Belgium, Germany, Switzerland and Denmark. Besides, Petroplus provides to a limited extent oil tank cleaning services to third parties.

3. EPH, a midstream oil company as well, has three primary businesses: refining crude oil into petroleum products, operating one refinery in Antwerp, international trading with crude oil and refined petroleum products, and the wholesale marketing of petroleum

[1] OJ L 24, 29.1.2004 p. 1.

products. To a very minimum extent EPH is also present in the retail marketing of road transport fuels in Belgium.

4. Petroplus and EPH realise over 80% of their turnover in three Member States: Belgium, The Netherlands and the UK. The acquisition of EPH is an opportunity for Petroplus to grow in the midstream petroleum sector in Western Europe.

II. THE OPERATION AND CONCENTRATION

5. The envisaged transaction concerns the acquisition of the sole control of EPH by Petroplus, pursuant to a share purchase agreement entered into by the parties on 12 April 2006. The transaction will be carried out by means of vehicle companies controlled by the Carlyle funds, which will acquire the entire issued capital and thereby, indirectly, the entire share capital and voting rights of EPH's subsidiaries.

6. The proposed concentration, therefore, constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

7. The combined aggregate worldwide turnover of the undertakings concerned is more than €5 billion (Petroplus € 6,623 billion, EPH € 1,986 billion). The aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than € 250 million (Petroplus € 4,557 billion, EPH € 1,399 billion). None of the parties achieved more than two-thirds of their Community-wide turnover in 2004 in one Member State. The operation has therefore a Community dimension in the sense of Article 1(2) of Council Regulation (EC) No 139/2004.

IV. COMPETITIVE ASSESSMENT

A. Relevant product and geographic markets

8. In general terms, the business sector concerned by the transaction is the midstream oil sector, as neither of the parties are active in the upstream field of exploration and/or the commercial exploitation of crude oil, nor do they carry out downstream activities as for example base oil and petrochemicals manufacturing.

9. Out of several product categories that the parties are offering, there is an overlap in the two undertakings' activities with respect to the non retail (wholesale) sale of road transport fuels (diesel, Petrol,), domestic heating oil. Both parties sell residual fuels (marine and industrial fuels), naphta and sulphur and engage in the international trading of crude oil and refined petroleum products to a limited extent.

10. In line with the Commission's past practice in its decisions and based on the narrowest approach, the following product and geographic markets could be considered to be relevant to the transaction:

- the national markets of the retail sales of road transport fuels[2],

- the (at least) national markets of the non-retail sales of each refined petroleum product, i.e. the markets for the non retail sales of diesel, petrol, LPG, domestic heating oil, vacuum gas oil (VGO)[3],

- the (at least) national markets of the sales of residual fuels, i.e. marine fuels and industrial fuels[4],

- the EEA-wide market of the sales of naphta and sulphur[5],

- the EEA-wide or worldwide markets of international trading of crude oil and refined petroleum products[6],

- and possibly the regional (Amsterdam-Rotterdam-Antwerp-range, or ARA-range) market of crude oil refining and storage[7].

11. For the purpose of the present transaction, the exact product market definition for the proposed product markets and their geographic scope may, however, both be left open, since in all alternative market definitions, the operation does not appear to raise any competition concerns.

B. Competitive Assessment

Non-coordinated effects

12. First, as far as the relevant, but neither horizontally nor vertically affected, markets are concerned, Petroplus and EPH have the following respective combined market shares: [0-10]*% in the non retail sales of petrol in the UK; [5-15]*% in the non retail sales of domestic heating oil in Belgium and [5-15]*% in the same market in the UK; [5-15]*% in the sales of marine fuels in Belgium; [0-10]*% in the sales of industrial fuels in Belgium; [0-10]*% in the EEA-sales of naphta; [0-10]*% in the EEA-sales of sulphur; [0-10]*% in the international trading of crude oil on an EEA-wide market, [0-10]*% on a worldwide market; [0-10]*% in the international trading of refined petroleum products on an EEA-wide scope, and a share of [0-10]*% on a worldwide scope. Furthermore, if a separate market for refining would be defined, the market of crude oil refining has also to be considered in view of the Parties' overlapping activities in the ARA-range in this market, being the fifth largest in the region. Finally, on the market for the retail sales of road transport fuels which market could be vertically linked to the parties' refining and wholesale activities, only EPH is present with [0-10]*% in Belgium.

[2] Case COMP/M.3291 – *Preem/Skandinaviska Raffinderi*

[3] Case COMP/M.1628 – *Totalfina/Elf*, Case COMP/M.3543 – *PKN Orlen/Unipetrol*

[4] Case IV/M.1301 - *Texaco/Chevron*

[5] Case COMP/M.3110 - *OMV/BP* and Case COMP/M.1628 – *Totalfina/Elf*

[6] Case IV/M.85 - *Elf/Occidental* and Case COMP/M.2588 – *Rheinbraun Brennstoff/SSM Coal*

[7] Case IV/M.727 – *BP/Mobil*

13. Even setting aside the Parties' arguments that there are no overlaps in the Parties' activities of refining and storage because the facilities are either contracted to third parties or are for captive use, on the basis of the total refining capacity in the ARA-range, the Parties have a combined market share of not more than [5-15]*% in refining. As regards storage, although EPH's storage tanks are exclusively for its own use, even if its captive capacity was included, the Parties' combined position would not exceed [10-20]*% of the total available storage capacity in the ARA-range. It would then still be behind its competitor Vopak ([35-45]*%) and be closely followed by Oiltanking ([10-20]*%). Thus, the transaction does not lead to competitive problems in the markets for crude oil refining and storage of refined petroleum products.

14. In view of the position of the Parties there are three markets that are horizontally affected by the concentration:

- the market for the non retail sales of diesel in the UK,
- the market for the non retail sales of domestic heating oil in the Netherlands, and
- the market for the sales of marine fuels in the ARA-range.

In these three affected markets the parties' combined market shares amount to [15-25]*% (non retail sales of diesel in UK), [15-25]*% (non retail sales of domestic heating oil in the NL) and [15-25]*% (marine fuel sale in ARA) respectively.

15. A market investigation confirmed that in each of these markets there are at least two or three major oil companies present with market shares of similar size (all market shares are based on the Parties' estimates): a) in the non retail sales of diesel in the UK Shell, Total and Conoco have [15-25]*%, [20-30]*% and [15-25]*% market shares respectively; b) in the non retail sales of domestic heating oil in the Netherlands Shell ([10-20]*%), Exxon ([5-15]*%) and BP ([5-15]*%) represent strong competitive pressure; c) in the marine fuel sales segment in the ARA-range the presence of Exxon ([5-15]*%), Total ([10-20]*%) and Shell ([10-20]*%) is significant. The market investigation also supported that in addition to these strong international competitors, a considerable amount of all the three affected markets is supplied by smaller independent competitors: in the non retail sales of diesel in UK these smaller players (such as DCC with [0-10]*%, Mabanaft –[0-10]*%, Bayford & Co – [0-10]*% etc.) account for not less than [15-25]*% of the market. Similarly in the non retail sales of domestic heating oil in the Netherlands market players other than the above mentioned three big ones (e.g. Van der Sluijs Handelsmaatschappij BV – about [0-10]*%, Licorme Petroleum Nederland BV – around [0-10]*%) together cover [40-50]*% of the market. This is the case in the marine fuels in the ARA-range as well: smaller players like Atlantic Aardolieproducten Maatschappij BV – around [0-10]*%, Postoils BV – around [0-10]*%, Oilchart International NV – around [0-10]*%.

16. Overall, regardless of market definition the parties' combined market share in respect of the above overlaps in relevant markets should not give rise to concern, as in all instances they would be below 15%. In the three affected markets the combined shares are below [25]*% on a national basis and in any event the incremental share is moderate ([0-10]*%, [0-10]*%, [0-10]*%) Moreover, the parties already face and will continue to face many powerful competitors in the midstream oil sector, such as Exxon, Shell, BP, Total, Conoco.

17. The market investigation did not reveal any new elements, the respondent market participants took the general view that the proposed transaction would raise no competition concerns at all in the midstream oil sector. No customer has informed the Commission that he would in any way be over-dependent on the new entity for supplies.

18. In the light of the above, the Commission has concluded that no serious doubts are raised that the notified concentration would significantly impede effective competition within the common market and the EEA.

V. CONCLUSION

19. 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 (EC) No 139/2004.

For the Commission
signed
Neelie KROES
Member of the Commission