EN

Case No COMP/M.4588 - PETROPLUS / CORYTON REFINERY BUSINESS

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 26/04/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.04.2007

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4588 – PETROPLUS / CORYTON REFINERY BUSINESS**
Notification of 19/3/2007 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 19/3/2007, 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 Refining and Marketing Limited ("Petroplus", United Kingdom) controlled by Petroplus Holding AG ("Petroplus Holding", Switzerland) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the Coryton Refinery Business ("Coryton Refinery Business", UK), comprising a crude oil refinery located in Coryton in the United Kingdom, together with an adjacent bulk terminal and bitumen business, all previously belonging to BP Oil UK Limited by way of purchase of assets.

2. After examination of the notification, the Commission has concluded that the operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

1 OJ L 24, 29.1.2004 p. 1.

I. THE PARTIES

3. **Petroplus** is a company registered in the United Kingdom that is indirectly owned by Petroplus Holdings AG, a Swiss company that is publicly owned and listed on the Swiss Stock Exchange. Petroplus Holdings AG is active principally in refining, storing, marketing, and international trading of crude oil and refined petroleum products.

4. **The Coryton Refinery Business** is a refinery located in Essex, United Kingdom, including all on-site fixed equipment, buildings, interconnecting pipeline manifolds, above ground and underground piping and appurtenances, as well as certain distribution assets, together with moveable assets, stock, operational service and supply contracts, and employees. It contains a bulk terminal adjacent to the refinery, including all on-site fixed equipment, buildings, interconnecting pipeline manifolds, above ground and underground piping and appurtenances, together with the bulk terminal business. The transaction comprises BP's UK bitumen manufacturing and marketing business, including the bitumen manufacturing assets located at the Coryton refinery, together with stock, operational service and supply contracts, licenses, employees, and customer contracts in the United Kingdom and Ireland.

II. THE OPERATION

5. The Transaction is structured as a sale of assets. The aforementioned businesses and assets will be included in the Coryton Refinery Business and transferred to Petroplus and controlled by Petroplus after the completion of the transaction.

III. CONCENTRATION

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

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (Petroplus […] million, Coryton Refinery Business […] million). Each of them have a Community-wide turnover in excess of EUR 250 million (Petroplus […] million, Coryton Refinery Business […] million), 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

<u>A. Product Market</u>

8. This transaction concerns the sector of crude oil refining. Crude oil refining involves the fractionation of crude oil into its component hydrocarbons. The Coryton refinery currently produces motor gasoline, diesel, LPG, kerosene, jet fuel, bitumen, heavy fuel oils (HFOs) and sulphur. The parties' activities overlap in the production of all these products at EEA level and in the production of only diesel, gas oil, kerosene and HFOs, in the UK.

9. In line with previous Commission's decisions, the relevant markets for fuel in this case are the markets for diesel, gas oil, kerosene and HFOs[2].

10. HFOs consist of residual fuel oils and heavy fuel oils (HFO). HFO can be further distinguished into marine and industrial oils, to account for their different end-uses. The parties, in line with a previous Commission decision[3], consider HFO as constituting one single market, without further need for differentiation.

11. However, for the purposes of the present case, it is not necessary to ultimately define the relevant product markets because the present case would not create competition concerns on any segment thereof.

12. Each of the above mentioned markets is further segmented to account for the different marketing channels. The above mentioned products can be sold directly from the refinery to third parties in cargo (*ex-refinery sales*). They can then be re-sold to retailers and other large industrial customers (*non–retail sales*). Non-retail sales, compared to ex-refinery sales, involve added value (including brand value) by the marketer such as, for instance, the provision of small parcels, storage at terminals.

13. Petroplus will acquire also a bitumen business, which is closely integrated with the Coryton refinery. However, Petroplus is currently not active in bitumen production or supply in the United Kingdom[4] In previous decisions the relevant geographic markets for bitumen and bitumen products have been defined as at least national. On a UK market there is no overlap. On an EEA wide market the combined market share would be below 15%[5].. Therefore the market for bitumen will not be further discussed in this decision.

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2 Case COMP/M. 1013, *Shell UK/Gulfoil; Totalfina/Elf*, and COMP/M.3543 - *PKN Orlen / Unipetrol*

3 Case COMP 4208 Petroplus/EPH.

4 The parties submit that Teesside refinery does not have the equipment that is required to produce bitumen. In particular, the parties submit that there is no distillation column at the Teesside refinery. Crude oil is first fractioned by heating in an “atmosphere tower” to separate out the lighter parts while the heavier fractions continue in liquid form. In order to derive bitumen from the liquid residue, the liquid residue must be further processed under pressure in a "distillation column". The liquid residue is therefore sold directly to third parties as a low sulphur fuel oil; even if the Teesside refinery did have a distillation column, the crude oil that supplied to the Teesside refinery (sourced from the Ekofisk oil field) is considered to be too light for the production of bitumen.

5 Petroplus entered into a [0-10]-year Cooperation Agreement with […] in December 2002, under which […] acquired the exclusive distribution rights for bitumen produced at Petroplus’s […] and […] facilities. […] also has a “right of purchase” regarding the bitumen production and marketing activities of any future refining business that Petroplus may acquire, but this right has been irrevocably waived by […] with respect to the UK bitumen business acquired by Petroplus in the context of this Transaction. Petroplus intends to maintain the acquired UK bitumen business as an independent downstream market participant and, post-Transaction, to compete vigorously with other market participants, including […], therefore no competition concerns are raised in this respect.

B. Geographic Market

14. The parties submit that the relevant geographic market for refining of fuels and ex-refinery sales is the EEA, due to the significant cross-border trade of refined petroleum products in Europe, resulting from the absence of tariff or substantial cost barriers.

15. According to the Commission's previous findings, the markets for non-retail fuels, including kerosene[6], for non-retail gas (heating) oil,[7] for HFO[8] are at least national. The parties agree with the Commission's findings in previous cases. However, for the purposes of the present case, it is not necessary to ultimately define the relevant geographic markets because the present case would not create competition concerns on any segment thereof.

C. Competitive Assessment

16. The aggregate market shares of the parties are below 5% in the EEA market in all possible submarkets for refining and ex-refinery sales. In the UK the parties' combined share of oil refining capacity would be [15-20]% whereas the combined market shares on the fuel oils ex refinery sales would exceed 15% only on the market for diesel [20-25]%). On the markets for non- retail sales, the parties' combined market shares would exceed 15% only on the markets for non-retail sales of gas oil only in [1-5] years time when the supply contract with BP will be terminated and the parties would have a market share of [15-20]%.

17. The parties submit that given that no customers are transferred with the Coryton business (apart from the bitumen business), their combined market shares (calculated on the basis of current Coryton sales) overestimates their position on the market.

18. Moreover, the parties submit that the majority of the Coryton refinery's production other than bitumen will initially continue to be supplied to BP UK (accounting for some [80-90]% of the Coryton refinery's total capacity in the first year post-closing). Petroplus will dispose through various ways the remaining [10-20]% of non-committed Coryton capacity. According to Petroplus it is highly unlikely that all non-committed Coryton capacity would be sold via its existing UK non-retail channels.

19. Given that i) the parties' position in the EEA on any segments on which their activities overlap would be very limited; ii) it is unlikely that the geographic dimension of the mentioned markets is national and iii) most of the capacity of the Coryton refinery is already booked for the next [1-5] years because of the existing supply contract with BP, the transaction does not seem likely to create any competitive concerns at horizontal level.

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6 Case COMP/M. 1013, *Shell UK/Gulfoil*,.

7 Case COMP/M.4208 - *Petroplus/EPH,* COMP/M. 1628 - *Totalfina/Elf*, and COMP/M.3543 - *PKN Orlen / Unipetrol*;

8 Case No. IV/M/3110 - *OMV/BP*."

20. Furthermore, given that the parties' market shares would be below 25% on any of the mentioned markets for both ex-refinery and non-retail sales, the proposed transaction does not give rise to any vertically affected market and is not likely to create competition problems at a vertical level.

VI. CONCLUSION

21. 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