EN

Case No COMP/M.7388 – MOL/ Lukoil Czech Republic

Only the English text is available and authentic.

REGULATION (EC) No 139/2004

MERGER PROCEDURE

Article 4(4)

Date: 24.10.2014

EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 24.10.2014
C(2014) 8068 final

PUBLIC VERSION

MERGER PROCEDURE

To the notifying party:

To the Office for the Protection of Competition

Dear Sirs,

Subject: Case M.7388 – MOL/ Lukoil Czech Republic
Commission decision following a reasoned submission pursuant to Article 4(4) of Regulation No 139/2004[1] for referral of the case to the Czech Republic.

Date of filing: 26 September 2014
Legal deadline for response of Member States: 20 October 2014
Legal deadline for the Commission decision under Article 4(4): 31 October 2014

I. INTRODUCTION

1. On 26 September 2014, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation with respect to the transaction cited above. The parties request the operation to be examined in its entirety by the competent authorities of the Czech Republic.

2. According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State

[1] OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

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where the concentration may significantly affect competition and which present all the characteristics of a distinct market.

3. A copy of this Reasoned Submission was transmitted to all Member States on 29 September 2014.

4. By fax of 10 October 2014, the Office for the Protection of Competition as the competent authority of the Czech Republic informed the Commission that the Czech Republic agrees with the proposed referral.

II. THE PARTIES

5. MOL Hungarian Oil and Gas Public Limited Company (together with all affiliates “MOL”) is active in Hungary and Central Europe on the markets for natural gas, oils, fuels and petrochemicals with a network of more than 1,700 filling stations in Central and South-Eastern Europe and Northern Italy. MOL’s principal activities are: (i) the exploration, production and refining of crude oil, (ii) the distribution of refined oil products both at wholesale and retail level, (iii) the production and sale of petrochemicals, (iv) the exploration and production of natural gas, and (v) transmission of natural gas in Hungary. In the Czech Republic MOL is active in the distribution of refined oil products both at wholesale and retail levels, with an network of 274 filling stations.

6. LUKOIL Czech Republic s.r.o. ("LUKOIL" or "Target") is a limited liability company incorporated in the Czech Republic, currently wholly owned by LUKOIL Europe Holdings B.V. and LUKOIL Holding GmbH (both 100% LUKOIL Group companies). The Target is currently active in the retail distribution of motor fuels, lubricants and convenience goods in the Czech Republic through a retail network consisting of 44 service stations. The Target also has marginal sales of transformer oil, so-called VG oil[2]. The Target is almost exclusively active in the Czech Republic and has only very minor sales in Belgium, Germany, Hungary and Slovakia. [3]

III. THE OPERATION AND CONCENTRATION

7. The transaction in question involves MOL, via its indirect subsidiary Slovnaft Česká Republica SPOL, s.r.o, acquiring sole control over the Target from LUKOIL Europe Holdings B.V. (Netherlands) and LUKOIL Holding GmbH (Austria). MOL and the Target are hereinafter together referred to as the "Parties".

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2 Sales of VG oil amounted to [0-50] tons and where achieved with just one single customer in the Czech Republic. These sales represent an estimated market share of [0-5]%.

3 With regard to the sales in Slovakia (ex-refinery sales of diesel) it should be observed that the contract in place between the Target and the customers have been discontinued and transferred to other Lukoil group companies and therefore do not form part of the proposed transaction. Also the sales in Hungary (ex-refinery sales) have been discontinued in February 2014 and transferred to another subsidiary of the Lukoil group. As regards to the Target's activities in Germany and Belgium, they only concern promotional activities and are marginal, amounting to EUR […] in Belgium and EUR […] in Germany.

IV. EU DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million [MOL EUR 19 734 million, Lukoil Czech Republic EUR 293.5 million]. Each of them has an EU-wide turnover in excess of EUR 250 million [MOL EUR […] million, Lukoil Czech Republic EUR […] million].

9. Lukoil Czech Republic achieves more than two-thirds of its aggregate EU-wide turnover within one and the same Member State, the Czech Republic, while MOL does not achieve more than two-thirds of its aggregate EU-wide turnover within one and the same Member State.

10. The notified operation therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

V. ASSESSMENT

A. Relevant product markets

11. Depending on the market definition adopted, the proposed transaction would lead to a number of horizontally affected markets in the retail sale of motor fuels in the Czech Republic.

12. In addition, the transaction gives rise to two vertically affected markets, namely the market for the non-retail sale of diesel and gasoline where MOL is active and which are upstream from the market for retail sale of motor fuels.

(i) Retail sale of motor fuels

13. In its past decisions[4], the Commission found that the retail supply of motor fuels constitutes a separate relevant product market which exclusively applies to forecourt sales. This encompass sales made at all service stations, both branded and unbranded, in- and outside an integrated retail network.

14. As regards the aggregation of diesel, gasoline and automotive LPG into an overall motor fuels market, the Commission previously noted that, although no demand-side substitutability exists between the different types of fuels (as customers must use the type of fuel appropriate to their vehicle), these are always available at the wholesale level at the same point of sales and therefore substitutable from a supply-side perspective. The Commission however considered whether automotive LPG could constitute a separate relevant product market mainly due to the fact that not all gas stations are equipped with LPG but ultimately this question was left open.[5]

15. In addition, a further sub-segmentation of the overall product market for the retail sales of motor fuels, into motorway and non-motorway sales has also been considered in some cases, although the question was ultimately left open.

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4 COMP/M.7161 – DCC ENERGY/ QSTAR FÖRSÄLJNING/ QSTAR/ CARD NETWORK SOLUTIONS.

5 Only in case COMP/M.5005 Galp Energia/ExxonMobil Iberia (2008), the Commission finally decided that Bulk LPG and Bottled LPG belong to separate relevant product markets. In other cases, this possibility was left open: COMP/M.5637 Motor Oil (Hellas) Corinth Refineries / Shell Overseas Holdings (2010); COMP/M.3664 Repsol Butano / Shell Gass (LPG) (2005); M.3375 Statoil / SDS (2004).

(ii) Non-retail sales of diesel and gasoline

16. In previous decisions, the Commission has considered that the non-retail sale of refined fuel products, which is the secondary level of wholesale distribution of refined oil products and involve sales in smaller delivery sizes, may constitute a distinct product market consisting in the wholesale sale of fuel to independent resellers or retailers not integrated upstream as well as to large industrial and commercial consumers.[6] The Commission has further considered that non-retail sales may further be sub-segmented into sales of gasoline, diesel, domestic heating oil, heavy fuel oil[7] and LPG[8].

B. Relevant geographic market

(i) Retail sale of motor fuels

17. In previous Commission's decisions the geographic market for retail sales of motor fuels was defined as national in scope.[9] However, the Commission has also pointed out that there is a strong local element of the retail fuel market as vehicle owners usually resort to service stations in their vicinity.[10] Therefore, in some past decisions the market for the retail sales of motor fuels was analysed on the basis of infra-national markets[11]. With reference to the on-motorway segment, the market has been analysed on a motorway by motorway level.[12]

(ii) Non-retail sales of diesel and gasoline

18. According to previous Commission decisions, the market for the non-retail sales of diesel and the market for the non-retail sales of gasoline are likely national in scope (e.g. for the United Kingdom, the Netherlands, Sweden, Poland, Lithuania, Greece, Spain, Portugal, Poland and the Czech Republic). However, the Commission has considered whether this scope could both be wider (it was in fact decided to be Scandinavia-wide for Sweden, Finland, Denmark and Norway) as well as – exceptionally – narrower (macro-regional for Italy, local for France, and the border region of Poland and the Czech Republic – depending on the Member State concerned.[13] In some decisions the Commission therefore considered that the markets for the non-retail sales of fuels could be narrower than national in scope, in the radius of 100 to 150 Km from each point of sale, as resellers and end-users seek a nearby source of supply in order to economise on transportation costs.[14]

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6 See COMP/M.3291 Preem/Skandinaviska Raffinaderi (2003); COMP/M.3375 Statoil / SDS (2004); COMP/M.3543 PKN Orlen / Unipetrol (2005); COMP/M.3516 Repsol / Shell Portugal; COMP/M.4208 Petroplus / European Petroleum Holdings (2006); COMP/M.4545 Statoil / Hydro (2007); COMP/M.5005 Galp Energia / Exxonmobil Iberia (2008); COMP/M.5169 Galp Energia Espana / Agip Espana (2008).

7 COMP/M.4934 - Kazmunaigaz/Rompetrol.

8 COMP/M.3291 - Preem/Skandinaviska Raffinaderi; COMP/M.3375 - Statoil/SDS; COMP/M.3543 PKN Orlen/Unipetrol; COMP/M.3516 - Repsol/Shell Portugal; COMP/M.4208 - Petroplus/European Petroleum Holdings; COMP/M.4545 - Statoil/Hydro; COMP/M.5005 - Galp Energia/Exxonmobil Iberia; COMP/M.5169 - Galp Energia Espana/Agip Espana.

9 Case IV/M.1383 – Exxon/Mobil, Case No COMP/M.1628 – TotalFina/Elf.

10 COMP/M.5781 – Total Holding Europe Sas/ERG spa/JV.

11 COMP/M.1013 Shell UK/Gulf Oil, COMP/M.7196 - Kuwait Petroleum Bv /Kuwait Petroleum Italia / Shell Italia / Shell Aviazione.

12 COMP/M.7196 - Kuwait Petroleum Bv /Kuwait Petroleum Italia / Shell Italia / Shell Aviazione.

13 COMP/M.3291 - Preem/Skandinaviska Raffinaderi; COMP/M.3375 - Statoil/SDS; COMP/M.3543 - PKN Orlen/Unipetrol; COMP/M.3516 - Repsol/Shell Portuga.

14 COMP/M.1383-Exxon/Mobil.

C. Assessment of the referral request

19. The proposed transaction mainly concerns the market for the retail sale of motor fuels in the Czech Republic where the activities of the Parties overlap as also confirmed by the Office for the Protection of Competition.

20. On the basis of the information provided by the Parties in the Reasoned Submission, and the elements highlighted by the Office for the Protection of Competition in their letter dated 10 October 2014, the proposed transaction is an appropriate candidate for pre-filing referral from the Commission to the Czech Republic in accordance with Article 4(4) of the EC Merger Regulation.

Legal requirements

21. According to Article 4(4) of the Merger Regulation, a concentration may be referred to a Member State if it may significantly affect competition in a market or markets and where the markets in question are within a Member State and present all characteristics of distinct markets.

a. The transaction may significantly affect competition in a market or markets.

22. The Commission notice on case referral in respect of concentrations[15] (point 17) indicates that, in seeking a referral under Article 4(4), *"the requesting parties are … required to demonstrate that the transaction is liable to have a potential impact on competition in a distinct market within a Member State, which may prove to be significant, thus deserving close scrutiny", and that "such indications may be no more than preliminary in nature…".* Hence, the existence of an affected market is generally considered sufficient to meet the requirements set forth in Article 4(4) of the Merger Regulation.

23. In the case at hand, the proposed transaction will generate a number of affected markets depending on the product and geographic market definition adopted.

i. Horizontal overlaps

24. If the relevant market was to be defined as the overall market for the retail sale of motor fuels in the Czech Republic, the post transaction combined market share in volume would be [10-20]% (MOL [5-10]%, LUKOIL [0-5]%).

25. If the relevant product market for the retail sale of motor fuels was to be segmented into on-motorway and off-motorway, the estimated combined market share of the Parties on the on-motorway segment in the Czech Republic would reach [30-40]%. On this market MOL would become the strongest player and its competitors would have significantly lower market shares. Shell, has an estimated market share of [20-30]% while OMV and Benzina, have significantly lower shares estimated in [10-20]% and [10-20]% respectively. In this context it is noted that MOL recently acquired the retail network of ENI in the Czech Republic. Therefore, this transaction further concentrates the market for retail sale of motor fuels in the Czech Republic.

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[15] OJ C 56, 05.03.2005, p. 2.

26. In addition, should the geographic market be defined as narrower than national, it is not to be excluded that additional affected markets would arise depending of the exact segmentation of the Czech territory. Particularly:

    i. on an hypothetical cluster comprising the administrative borders of the city of Prague, the combined market shares of the Parties would amount to [20-30]% in volume. On this hypothetical market the Parties' largest competitors would be OMV, with an estimated market share of [10-20]%, and Shell, with an estimated market share of [10-20]%; and,

    ii. on an hypothetical cluster comprising the territory included in a radius of 30 kilometres around the city centre of Prague, the combined market shares of the Parties would amount to [20-30]% in volume. On this hypothetical market the Parties' largest competitors would be OMV, with an estimated market share of [10-20]%, and Shell, with an estimated market share of [10-20]%.

27. Also, as explained by the Office for the Protection of Competition, additional markets could be affected if the past practice of the Office for Protection of Competition itself, based on catchment areas, is followed.

ii. Vertical links

28. Given MOL's position the upstream markets for non-retail sale of diesel and the market for non-retail sale of gasoline are also affected by the proposed transaction.

29. On the upstream market for the non-retail sales of diesel in the Czech Republic, MOL has an estimated market share of [0-5]% in volume while on the market for the non-retail sales of gasoline MOL's estimated market shares amounts to [5-10]%. On the downstream retail sales of motor fuels on motorways in the Czech Republic market, the estimated combined market share of the Parties would be [30-40]%.

30. In light of the above, the Commission considers, and the Office for Protection of Competition agrees that first requirement set forth by article 4(4) of the Merger Regulation is met.

b. The market in question must be within a Member State and must present all the characteristics of a distinct market.

31. According to paragraph 18 of the Commission Notice on case referral, the second requirement set forth by article 4(4) of the Merger Regulation is satisfied if the geographic scope of the markets where competition is affected is national or narrower than national.

32. As indicated above, the market for the retail sale of refined fuel products has been defined as national or narrower than national. In fact, the Commission has considered that there is a strong local element of the retail fuel market as vehicle owners usually resort to service stations in their vicinity. It also appears a common practice in this industry for suppliers to monitor neighbouring retail fuel stations around each of their own retail fuel stations in a given country, region or local area.

33. As to the market for the non-retail sales of diesel and the market for the non-retail sales of gasoline, with reference to the Czech Republic the Commission has in the past considered these markets as national or narrower than national in scope.[16]

34. According to the Office for the Protection of the proposed transaction will impact only and in particular the territory of the Czech Republic or a subset of such territory.

35. Therefore, the Commission considers that the second legal requirement set forth by article 4(4) of the Merger Regulation is met.

(2)Additional factors

36. According to paragraphs 9 to 14 of the Notice on case referral, jurisdiction should only be re-attributed to another authority where the latter is the more appropriate for dealing with the concentration, and taking into account the benefits of one-stop-shop and legal certainty.

37. The Office for the Protection of Competition has dealt with the market for retail sales of motor fuels several times and recently in 2012 with regard to the merger (ref. No. S459/2012) related to MOL's acquisition of sole control of PAP OIL čerpací stanice, s.r.o. As confirmed by the Office for the Protection of Competition in its letter dated 10 October 2014 in this case, even though the definition of the relevant market was left open, it assessed the impact of the merger both on the Czech national market for retail sales of motor fuels and, more importantly, on local markets for retail sales of motor fuels where demand side arguments were emphasized.

38. In addition, the geographic scope of the market for retail sales of motor fuels may require investigative efforts at local level and therefore the Office for the Protection of Competition seems better placed to deal with the proposed transaction. Indeed, the customers in the concerned market are end-consumers in the Czech Republic who buy motor fuels at petrol stations, and therefore a market investigation carried out by the Office for the Protection of Competition appear to be better suited to properly reach the demand side of the market, to understand its main characteristics and to deal with possible concerns.

39. Finally, a referral of the proposed transaction to the Office for the Protection of Competition satisfies the need to preserve the benefit of a "one-stop-shop". In this case, the overlaps between Parties' activities are limited to the Czech Republic, the markets affected by the transaction are of national or infra-national dimension, and, therefore, the Czech Republic seems to be the only Member State concerned. Accordingly, even in case of referral of the proposed transaction, the benefit of the "one-stop-shop" would be preserved

VI. REFERRAL

40. On the basis of the information provided by the parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market. The Commission considers, on the basis of the information submitted in the Reasoned

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[16] COMP/M.3543 - PKN Orlen/Unipetrol, COMP7M.3516 Repsol YPF/Shell Portugal and COMP/M.1383 - Exxon/Mobil.

Submission, that the principal impact on competition of the concentration is liable to take place on distinct markets in the Czech Republic, and that the requested referral would be consistent with point 20 of the Notice.

VII. CONCLUSION

41. For the above reasons, and given that the Czech Republic has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by the Czech Republic. This decision is adopted in application of Article 4(4) of the Merger Regulation.

For the Commission
(Signed)
Alexander ITALIANER
Director General