EN

Case No IV/M.111 - BP / PETROMED

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 29.07.1991

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COMMISSION
OF THE EUROPEAN
COMMUNITIES

Brussels 29.07.1991

MERGER PROCEDURE
ARTICLE 6(1)b DECISION

PUBLIC VERSION

Registered with advice of delivery

To notifying party

Dear Sirs,

Subject: Case No. IV/M111 - BP/Petromed
Your notification persuant to Article 4 of Council Regulation Mo. 4064/89

1. The above mentioned notification concerns the agreement between BANCO ESPAÑOL DE CREDITO S.A. and CORPORACION INDUSTRIAL Y FINANCIERA DE BANESTO S.A. (the vendors), and BP ESPAÑA S.A., a wholly owned indirect subsidiary of the British Petroleum Company plc ("BP"), by which BP ESPAÑA S.A. will acquire the totality of the shares of PETROLEOS DEL MEDITERRANEO S.A. (PETROMED) owned by the vendors. Additionally, BP ESPAÑA S.A. undertakes to launch a public bid for the remaining shares of PETROMED. The public bid was announced on 30.6.1991.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No. 4064/89 (Merger Regulation) and does not raise serious doubts as to its compatibily with the common market.

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I. CONCENTRATION

3. By the above mentioned agreement, BP ESPAÑA S.A. by acquiring the entire share capital of PETROMED, will gain control of this company. Therefore, the operation is a concentration within the meaning of Article 3 (1)(b) of Council Regulation No. 4064/89.

II. COMMUNITY DIMENSION

4. The combined aggregate worldwide turnover of the parties to the proposed concentration was 47.124,8 million ECU in 1990. Both parties met the requirements of Article 1 (2)(b), BP and PETROMED each achieving a Community wide turnover of more than 250 million ECU in 1990, of which not more than two-thirds was achieved in one and the same Member State. Consequently, the proposed concentration has a Community dimension.

III. COMPATIBILITY WITH THE COMMOM MARKET

The Reference Markets

5. The sectors concerned by the concentration are those connected with crude oil refining and the subsequent marketing of refinery products. Within this broad description it is necessary to distinguish the following products:

- "major products" (distinguishing between gasolines, gasoil and fuel oil);
- liquid petroleum gas (LPG);
- lubricants (distinguishing vehicle, industrial and marine segments);
- bitumen;
- aviation fuels;
- petrochemicals.

6. The distribution of most of the 'major products' has, since 1927, been carried out through a state monopoly which was conferred on CAMPSA, a public company. CAMPSA owns the infrastructure for the 'primary distribution' of these products (ie. pipe-lines and depots), and it also has a monopoly on delivery to service stations that are subject to administrative concession.

All refiners are attibuted a "quota" that they may supply to CAMPSA. This quota is proportionate to their shareholding in CAMPSA. These shareholdings were originally calculated according to the refining capacity of each undertaking.

	% shareholding	Right to supply %
REPSOL SA[1]	15,61	0
REPSOL PETROLEO	41,07	50,1
CEPSA	14,64	17,9
PETRONOR (controlled 80% by Repsol)	12,98	15,8
PETROMED	7,51	9,2
ERTOIL	5,76	7
OTHERS(1)	2,43	0

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(1) As these companies have no refining activities they have no right to supply CAMPSA.

7. In respect of petrochemicals, there is no overlapping between Petromed and BP or any of its subsidiaries. In respect of LPG, the distribution of which is subject to a monopoly by REPSOL Butano SA, BP has no presence in the Spanish territory.

The geographic reference market

8. The production and marketing activities of PETROMED are basically confined to the Spanish territory, where BP has so far only been present through BPMED, its 50/50 marketing joint venture with Petromed. Since the acquisition of Petromed by BP will not significantly reinforce BP's position elsewhere, the analysis of the proposed concentration will focus on this Member State.

Products subject to the monopoly

9. Since the distribution of these products is subject to the monopoly, the geographic reference market is the Spanish peninsula and the Balearic Islands. In reaching this conclusion, the Commission has taken into account the following additional factors:

- Only Spanish undertakings own or operate refineries on territory as defined, save for the recent entry of Société nationale ELF AQUITAINE in the capital of CEPSA

- The established refiners in Spain control the access to the primary distribution logistics and to the main part of the retail distribution network (petrol stations) through CAMPSA.

- Spanish legislation provides that operators of parallel networks (ie. 'non-CAMPSA' distribution and marketing networks) may not be supplied by other Spanish refiners with the aim of marketing their products on the Spanish peninsula or the Balaeric Islands.

- Imports are subject to quantitative restrictions.

10. The "transitional period" for the Spanish state monopoly, provided for in the Act of Accession, lapses on January 1st 1992. This is unlikely to have a foreseeable effect on the position described above in the short to medium term for the following reasons:

- the equipment used hitherto for the distribution in bulk of refined products will remain the property of CAMPSA;
- the creation of a new retail distribution network requires heavy investment in terms of time and money.

Products outside the Monopoly

11. The geographic reference market definition outlined above also applies to those products which are not subject to the state monopoly. This is for the following reasons:

- the nature of the products and their high transport/unit cost ratio;
- the distribution network, and in particular the conditions relating to access to primary distribution facilities;
- the existence of import quotas. This, combined with the prohibition on refining within Spain by foreign producers, results in a marginal presence of such companies in Spain;
- the importance of brands.

For certain by-products, such as lubricants or petrochemicals, trade with other Member States has been liberalised, or will be liberalised in the very near future. For these products it is possible that the geographic reference market is larger than the Spanish peninsula and the Balearic Islands, although the consideration of a larger market would not affect the assessment of the proposed concentration.

The Canary Islands

12. The Canary Islands constitute a distinct geographic reference market. This conclusion is reached in the light of the following:

- the distance from Spain of the Canary Islands;
- the absence of a distribution monopoly;
- the particular regulations governing customs and marketing in the Canary Islands.

Neither PETROMED nor BP have any presence in the Canary Islands other than the marketing activities of BPMED.

Assessment of the proposed concentration

13. All activities of BP in the Spanish oil market are carried out through BPMED. The assessment of the proposed concentration must therefore take into account the consolidated position of PETROMED and BPMED. The consolidation of these two operators will not have a major impact on the relevant markets.

Market shares

14. The combined market share held by the merged entity will not attain 15 % in any of the oil markets affected by the concentration (the Spanish peninsula and the Canary Islands).

On the basis of 1990 sales figures, the merged entity's market shares exceed 10 % in only two submarkets: gasoline (12.00 %) and bitumen (12.8 %). On the basis of 1991 forecasts, the merged entity will attain market shares exceeding 10 % in fuel oils (10.5 %), certain segments of the gasoil market (marine gasoil 12.0 %) and bitumen (10,2 %). For the rest, market shares are below 10 %. As to the Canary Islands market shares are even lower (excepting for aviation fuels: 11 %).

Competitors

15. REPSOL has a total refining capacity in Spain representing nearly 6 times that of PETROMED. CEPSA's refining capacity, including ERTOIL is nearly 3 times larger than PETROMED's. Both REPSOL and CEPSA/ERTOIL are present in all of the relevant markets, with shares largely exceeding that of the merged entity.

16. The fact that BP, one of the main international refiners with significant financial resources acquires PETROMED is not likely to grant to PETROMED a major advantage over its competitors.

CEPSA is jointly controlled by BANCO CENTRAL and ELF AQUITAINE. The combined aggregate turnover of these three companies exceeded 35.000 million ECUs in 1990.

REPSOL on its part is a state owned company, holding a majority state in CAMPSA, and therefore enjoys a privileged position in respect of the distribution logistics and network.

Conclusion

17. Taking into account the relatively low market shares attained by the combined entity and the strength of competitors relative to PETROMED and BPMED, the proposed concentration does not create or strengthen a dominant position in any of the reference markets as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.

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For the above reasons the Commission has decided not to oppose the notified concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)(b) of Council Regulation No. 4064/89.

For the Commission,