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Case No IV/M.1135 - ELF / TEXACO / ANTIFREZE JV

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 18/08/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties

Subject: Case No IV/M. 1135 – ELF / TEXACO – Antifreeze JV
Notification of 14.07.1998 pursuant to Article 4 of Council Regulation (EEC) No 4064/89.

1. On 14.07.1998, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 ("ECMR"), by which ELF Oil Belgium N.V., belonging to the Elf Aquitaine Group ("ELF") and S.A. TEXACO Belgium N.V., belonging to the Texaco Group ("TEXACO"), acquire within the meaning of Article 3(1)b of the Council Regulation joint control of a newly created company ("ETC").

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

I. THE PARTIES AND THE OPERATION

3. Both ELF and TEXACO are fully integrated oil companies, active worldwide in exploration and production of mineral oil, the operation of refineries, and the manufacture of petroleum products and lubricants. The parties in particular both manufacture and market antifreeze and cooling liquid products internationally. However, following a divestiture of some of its chemical activities, TEXACO no longer owns any plant producing antifreeze, but relies entirely on third parties on the basis of toll processing agreements.

4. The operation consists of the creation of a Belgian limited liability company ("ETC"), of which each parent company will own a 50% share. ETC will be active in Europe, in the development, production and distribution of anti-freezes and related products such as coolants and corrosion inhibitors. Most of the business activities of the parents in this area will be transferred to the joint venture.

II. CONCENTRATION

Joint control

5. TEXACO and ELF will each hold 50% of ETC's share capital. The Board of Directors will be composed by an equal number of members appointed by each party. For decisions on various strategic matters, in particular the appointment and dismissal of the General Manager as well as the approval of annual budget and operating plan, unanimity will be required among ETC's shareholders or directors. Consequently, ETC will be jointly controlled by ELF and TEXACO.

Full-function character

6. ETC will perform, on a lasting basis, all the functions of an autonomous economic entity. The joint venture will operate its own production plant, to be constructed at Schoten (Belgium), with the exception of a filling line and some storage tanks to be operated by ELF under a toll processing agreement of limited duration, and on arm's length basis. According to the parties, arrangements of this kind are common practice in this chemical sector. Indeed, three of the major players also subcontract part of their production. In any event, the subcontracted filling of packaged products concerns only a limited part of the added value in this business. Furthermore, ETC's products are sold in bulk to a large extent. TEXACO and ELF will continue to operate their respective production plant in Spain and Turkey. Nevertheless, these retained activities of the parent companies are of limited scope, accounting for 5% of the projected sales of the JV.

7. Although the personnel of the joint venture will be seconded by the parent companies, they will be placed under the authority of ETC's own management. R&D programs in the field of the products concerned will be notably carried out by an Economic Interest Group to be set up between ETC and TEXACO. However, ETC will itself determine its R&D policy and will be granted by its parents the relevant patents and know-how licences.

8. ETC will purchase its raw material (mainly ethylene glycol) on the open market. It will process or decide on the operation of the processing units producing the bulk of its antifreeze production. It will also be responsible for the marketing and distribution of its products, that will be supplied to car manufacturers, petroleum companies, independent blenders and mass-market distribution. However, the respective sales organisations of ELF and TEXACO will continue to supply the retail distribution channel made up of garages and service stations. This demand, which comprises a large number of outlets with only small sales, requires a large sales force and specific packaging, often brand identified. Therefore, for economic reasons, this retail business will remain supplied by the parent companies, through piggybacking on their respective lubricants sales organisations. The volume of sales concerned by this retail channel is nevertheless limited, accounting for approximately 25% of the total sales of

the parties. Furthermore, ETC's products will also be sold to garages and service stations through competitors of the parent companies.

9. It can be concluded from the above that ETC will be geared to play an active role on the market. The arrangements submitted by the parties, which provide that certain services will be rendered by the parent companies, do not affect the full-function character of ETC. Therefore, the present operation can be considered as a concentrative joint venture within the meaning of Article 3 (2) of the ECMR.

III. COMMUNITY DIMENSION

10. The combined aggregate world-wide turnover of ELF and TEXACO in 1997 exceeded ECU 5,000 million (ELF and TEXACO together: ECU 81,8 billion). The 1997 aggregate Community-turnover of each of the parties exceeded ECU 250 million, with turnovers respectively of ECU 25,6 and 10,7 billion. The parties do not achieve more than two-thirds of their Community-turnover within one and the same Member State. Therefore, the proposed operation has a Community dimension in accordance with Article 1 (2) of the Merger Regulation. It does not constitute a co-operation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

IV. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product market

11. According to the parties, anti-freeze products, coolant products and corrosion inhibitors are essentially the same products based on a mixture of glycol and additives, the distinction resulting from the dilution and the use of the mixture. The products can be sold as concentrates or as dilutions. As regards the distribution channels, the parties distinguish between a "first fills" market, consisting of the sale of first fills products to automotive constructors and an "after sale" market, which include sales to automotive constructors, petroleum companies, independent blenders and distributors. Within the retailers, one can further distinguish between mass-market distribution and the garages/service stations channel. However, it is not necessary to further define the relevant product markets because, in all alternative definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

B. Relevant geographic market

12. The notifying parties submit that the relevant geographic market is at least European-wide, including Russia and Eastern Europe, mainly on the ground that most suppliers usually market the products on a pan-European basis. In particular, the parties refer to the territory of the joint venture, which will cover the whole European territory. However it is not necessary to further delineate the relevant geographic markets, since the proposed operation does not raise serious doubts, whatever the geographic definition of the relevant market.

C. Assessment

Dominance

13. Coolants/antifreezes are mainly composed of an ethylene derivative (glycol). The main use of ethylene glycol is the manufacturing of fibre grade polyesters (52% of the demand), antifreeze and coolant products being the second largest application (22% of the demand for glycol). At least 90% of the parties' products are used as engine coolants for cars and trucks. According to the parties, coolants can be considered as a niche market, notably because these products result in the lowest profit margins of the whole ethylene chain. On the supply side, the main ethylene producers have a traditionally strong presence on the market for antifreeze and coolant products.

14. Taking into account DOW's activity in Germany, which was acquired by TEXACO in 1997, the joint venture will have approximately [between 10 and 20 %] of the overall market (based on the volumes of coolants/antifreeze/corrosion inhibitors' concentrates sold in an area comprising the EEA and Eastern Europe, including Russia and Turkey). Two other producers have comparable market shares (BP and Petrochem). The market leader is BASF, with a market share of approximately [between 30 and 40 %]. Furthermore, there are a number of other companies also active as antifreeze producers, amongst them large industrial companies (Henkel, Hoechst), as well as specialised independent producers (Acia). ETC's will be strongest on the "first fills" market for engine coolants, in so far as this segment can constitute a separate market. It will hold a share of approximately [between 20 and 30 %] at European level, far behind BASF. Even at national level the parties' positions will not significantly differ, exceeding 30% only in Belgium [between 55 and 65 %]. However, since the "first fills" market is characterised by the significant buying power of the automotive manufacturers, the creation or strengthening of a dominant position can be excluded, even on a narrowest basis.

15. It can be concluded from the above that, given the presence of a number of competitors, the absence of barriers to entry on the relevant market, and the generally strong countervailing power of the demand side, the proposed concentration will not raise serious doubts, even on the narrowest possible segment.

Co-ordination aspects

16. As already stated, antifreezes and coolants retailed by garages and service stations will remain supplied by the respective sales organisations of ELF and TEXACO, as part of their range of lubricant products. As a result, the parent companies will remain competitors with regard to a specific segment of the after sale market. Nevertheless, the volumes of antifreezes and coolants sold by the parent companies are limited (8500 tons, corresponding to a turnover of at most ECU 10 million). Moreover, the combined position of the parties on this channel is not significant (accounting for 3-4% of the total after sale market for antifreeze products, or 5% of the total volume of sales achieved with garages/service stations). As regards lubricants, the parent companies also have limited positions. In view of the insignificant interests kept by the parent companies on the specific distribution channel mentioned, a co-ordination of the parents' behaviour on after sale markets or any other market is unlikely to be expected. In any event, the modest market positions held by the parties are such that

there would not be any appreciable restriction of competition resulting from a co-ordination between the parties.

17. Similarly, the antifreezes/coolants produced in Spain and Turkey account for only 4% of the total production of the parties and are mainly intended for distribution to the national affiliates of multinational OEMs. If one considers a European market, the positions held by the parties would be negligible. At national level, where only Spain would be concerned, the parties combined market shares (e.g. 10-11% of the Spanish market for engine coolants) would be too small to give rise to concerns about co-ordination. In the light of the above, it is therefore not necessary to further examine the application of Article 2 (4) on the present operation.

V. CONCLUSION

18. 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 functioning of the EEA Agreement. This decision is adopted in application of Article 6 (1) (b) of Council Regulation (EEC) No 4064/89 and Article 57 of the EEA agreement.

For the Commission,