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Case No IV/M.1137 -
**** EXXON / SHELL*

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08.07.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: **Case No IV/M.1137 - Exxon/Shell**

Notification of 25/05/98 pursuant to Article 4 of (EEC) Council Regulation No 4064/89

1. On 25/05/1998, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 as amended by Regulation 1310/97 by which the undertakings Exxon Chemical Company ('Exxon') and The Shell Petroleum Company Limited and Shell Oil Company ('Shell') form a full functioning joint venture ('JV') within the meaning of Article 3(1)(b) of the Council Regulation. The JV will be active in the area of lubricant and fuel additives.

I. THE PARTIES

2. Exxon is a diversified and global company, active in oil and gas exploration and the production and sale of chemical products, coal and power generation. Although incorporated in the USA, Exxon obtains more than 30% of its world-wide revenue through its business activities in the EEA.

3. Shell is also a diversified multi-national company and concerned with activities relating to the exploration and production of oil and gas and the production of chemicals and coal. Shell obtains more than 40% of its world-wide revenue through its business activities in the EEA.

II. CONCENTRATION

Rue de la Loi 200, B-1049 Bruxelles/Wetstraat 200, B-1049 Brussel - Belgium
Telephone: exchange 299.11.11
Telex: COMEU B 21877. Telegraphic address: COMEUR Brussels.

4. The operation consists of the formation of a joint venture (the JV) which will combine Exxon's and Shell's respective lubricant additives and fuel additives businesses. The JV will be active in the manufacture and sale of additives for lubricants and. Shell will contribute to the JV its entire world-wide lubricant and fuels additives business, currently carried out by Shell Additives. Exxon will contribute its fuel additives and its detergent inhibitor package lubricant additives business world-wide (currently carried out by Paramins). In accordance with an undertaking that the parties have given to the Commission (see below), most of Exxon's viscosity index improver business will be divested to a third party: the Oronite Additives Division of Chevron Chemical Company ('Chevron').

5. Exxon and Shell will each hold 50% of the JV. They will each appoint 3 members of the board. All substantial decisions, including those concerning the business plan and the budget, require unanimous decisions. The JV will thus be jointly controlled by Exxon and Shell.

6. The JV will perform on a lasting basis all of the functions normally carried out by other lubricant and fuel additives companies. It will be involved world-wide in the research and development, manufacture, marketing and sale of additives for lubricants and fuels; raw materials and components for such additives; and additives for certain other minor oil applications.

7. The operation consists thus of the formation of a full-function joint venture within the meaning of Article 3(2) of the Merger Regulation.

III. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover significantly exceeding ECU 5.000 million (Exxon: ECU 94,061 million; Shell: ECU 100,858 million). Each of them has a Community-wide turnover in excess of ECU 250 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.

IV. THE RELEVANT MARKETS

Relevant Product Markets

9. The JV will be active in lubricant and fuel additives. In fuel additives, the JV will result in a negligible overlap only in respect of merchant sales of gasoline and diesel additive packages and heavy fuel oil flow improvers. It is therefore not necessary to further delineate these products markets for the purpose of this decision.

10. The main impact of the operation is in lubricating oil additives. An oil lubricant consists of a base oil and additives. There are two principal categories of additives: DI packages (Detergent Inhibitor packages) and VI improvers (Viscosity Index improvers). DI packages serve to suspend oil contaminants and combustion by-products as well as to prevent oxidation of the oil with the resultant formation of varnish and sludge deposits. VI improvers modify the viscometric characteristics of lubricants by reducing the rate of thinning with increasing temperature and the rate of thickening with low temperatures.

VI improvers thereby provide enhanced performance at low and high temperatures. In most applications VI improvers have to be used with DI packages.

11. There is a certain degree of substitutability between base oils, DI packages and VI improvers in the production of oil lubricants. High grade base oils thus require less additives than lower grade base oils. It is thus possible to reduce the amount of DI packages and VI improvers in an oil lubricant by using higher grade base oils. Furthermore, VI improvers can be formulated to partly replace some of the components in the DI package and vice versa. However, VI improvers and DI packages are both essential components of an oil lubricant, and they are not interchangeable. DI packages and VI improvers are therefore not part of the same relevant product market.

12. ***VI improvers.*** There are different categories of VI improvers, namely olefin copolymers ('OCPs'), styrene isoprenes, and polymethacrylates ('PMAs'). Shell produces styrene isoprene polymers (which it markets under the trade name Shellvis) and PMAs. Exxon/Paramins currently manufactures OCPs, which are sold under the trade name of Paratone. The different types of VI improvers are substitutes in the main applications, but are not perfect substitutes in all applications. PMA's are for example superior to OCPs for usages in smaller applications like hydraulic oils and gear boxes, whereas PMA, OCP and styrene isoprene are interchangeable in crank cases of engines, which is the most important application accounting for more than 70% of the total European usage of viscometric products. Overall the parties, customers and competitors agree that there is a high degree of demand side substitutability between the different types of viscometric products for a wide range of applications. It appears, therefore, that VI improvers form one relevant product market.

13. ***DI packages.*** A DI package will typically include approximately 6 individual additive components, the most important being detergents, dispersants, corrosion inhibitors and antioxidants. The combination of these components and their proportion varies according to the end use and specification of the finished lubricant. This raises the questions whether (i) all DI packages constitute one product market, and whether (ii) there are separate product markets for the individual additive components.

14. As regards the first question, the parties are of the opinion that DI packages for engine (crankcase) and transmission applications are one distinct product market, which must be distinguished from DI packages for industrial applications. DI packages for industrial applications would contain fewer components and would not require extensive R&D or testing. The competitors in this market would also be different, with the majority being supplied by large chemicals companies, which would not be active in DI packages for engine and transmission applications. Of the notifying parties, only Exxon would be active in this market and only to a limited extent. The results of the investigation have confirmed that DI packages for industrial applications are indeed subject to different conditions of competition than DI packages for engine and transmission applications. Since Shell is not active in DI packages for industrial applications, the operation does not raise competition concerns in this area. It is therefore not necessary to further delineate this product market.

15. As regards DI packages for engine and transmission applications, the results of the investigation suggest that from a demand-side point of view these products probably do not constitute one product market, but that there could be different markets

depending on the application. A general distinction could be made between additives for crankcases of engines, additives for automatic transmission fluids, and gear oils. Crankcase applications could be further divided by engine types. A common distinction in the industry seems to be between automotive, marine, aviation, two-stroke, and tractor. The parties, however, also contend that from the supply side, suppliers of DI packages for a particular type of engine and transmission application can readily produce DI packages for other such applications. This has been confirmed by the investigation during which all competitors took the view that it would be relatively easy and costless to switch between the production of DI packages for different applications in the field of engine and transmission applications. However, it is not necessary to further delineate the product market as regards DI packages for engine and transmission applications, as in all alternative market definitions considered effective competition would not be significantly impeded in the EEA or any substantial part of that area.

16. As to the question whether there are separate product markets for components of DI packages, the parties argue that this is not the case, since the vast majority of additives are sold as pre-blended packages designed to produce a lubricant that meets with an approved performance test. The only DI package components manufactured and sold to third parties individually by both Shell and Exxon are DI detergents and dispersants. DI detergents fall into 3 types of chemical groups: sulphonates and phenates, which are manufactured by Exxon; and salicylates which are manufactured by Shell. Dispersants are made of polyisobutylene succinic anhydride (PIBSA) which in turn is made of polyisobutylene (PIB). However, as the concentration does not threaten to create competitive problems in either a market including DI packages and components or in separate product markets for components, it is not necessary to further delineate the relevant product markets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

V. RELEVANT GEOGRAPHIC MARKETS

17. According to the parties the relevant geographic market for both DI packages and VI improvers is the EEA area. This has been confirmed in the investigation by both competitors and customers. Most customers of lubricating oil additives are large oil companies who pursue a European wide purchasing policy which also means that DI packages and VI improvers are readily sold across the borders of the EEA countries.

18. There are indications that if components of dispersants and detergents were separate product markets, they would at least be EEA-wide and probably global. All third parties confirmed that these products are widely traded. Exxon, for example, imports all phenates for own production and external sales from the US. There seem to be no major price differences between the EEA and other world regions. For the purposes of this case, it is however not necessary to further delineate the relevant geographic market because, in both alternative geographic market definition considered, effective competition would not be significantly impeded.

VI. ASSESSMENT

(1) VI Improvers

19. The combined EEA market share of the parties in the market for VI improvers would amount to [>50%] (based on merchant sales). With this market share, the JV would become the clear market leader in the EEA. The main competitors would be RohMax [<20%], Ethyl [<20%] and Lubrizol [<20%].

20. The Commission's investigation showed that it was likely that the operation would lead to the creation of a dominant position in this market. This preliminary finding is based not only on the high market shares, which have been relatively stable in the last years, but also on the existence of high barriers to entry. During the investigation, all of the competitors and most of the customers indicated that following the operation, the JV would be able to behave independently of its customers and its competitors. The parties have subsequently offered to modify the original concentration to remove these competitive concerns (see below).

(2) DI Packages

21. In relation to DI packages for engine and transmission applications, the parties' combined shares of EEA sales amount to [20-30%]. The main competitors are Lubrizol (>30%), Ethyl (>15%), Oronite (Chevron - >10%), and Adibis (BP - >5%). The investigation has confirmed that the parties would continue to be subject to effective competition by these competitors.

22. If one regarded the separate applications as product markets, the only overlap between Exxon and Shell would be in DI packages for automotive lubricants and for marine lubricants. In automotive the combined market share would amount to [<35%], while in marine it would amount to [<20%]. For both applications, there are important competitors with comparable market shares. In automotive, Lubrizol has a market share >30%, and Ethly >10%. In marine, Lubrizol and Chevron each have more than 30% of the market.

23. With respect to components of DI packages, i.e. dispersants and detergents, the investigation has confirmed the parties' view that all additive suppliers are largely self-sufficient in these products, and that trade among additive suppliers occurs mainly to overcome short-term supply problems. No competitive concerns have been raised as to the availability of these products after the concentration. If the different components were to be regarded as product markets on their own, it must also be noted that there is hardly any overlap between Exxon and Shell. Shell does not sell components of dispersants (i.e. PIBSA and PIB), while Exxon has minor sales of these products. As regards components of detergents, Exxon has only minor sales of phenates and sulphonates, while Shell only sells salicylates.

(3) Vertical Aspects

24. The Commission also examined possible vertical effects in the markets for VI improvers and DI packages. These arise from the fact that Exxon and Shell are independently of the JV active in the production of base oils which are used by producers of VI improvers and DI packages as a carrier for their product. The

investigation did however not find that these activities could further strengthen the competitive problems found in relation to VI improvers, or create competitive problems in relation to DI packages or components of DI packages. The demand of additive producers for base oil represents less than 8% of the total European base oil demand, and there seem to be sufficient supplies available outside of Exxon and Shell. No competitor raised a concern as regards the availability of base oils as a carrier for their own additives.

VII. ANCILLARY AGREEMENTS

25. The parties have requested that a number of ancillary restrictions should be assessed in conjunction with the concentration.

26. The parties have agreed not to compete within the scope of the JV for as long as they own all or part of an interest in it, and for [a fixed period]. They covenant not to engage, directly or indirectly, in the sale of additives, or certain intermediates ultimately intended for use in manufacturing additives, anywhere in the world. The parties retain the right to sell to third companies with whom they have technical service agreements for the right to receive technical information for the blending, distribution and marketing of lubricants and additives. The parties can also sell additives as distributors for the JV, to the general public and 'to users of finished lubricants'. As long as they are an expression of the parents' withdrawal from the market of the JV, the non-competition clauses provided in the AJVA (section 9.06) must be regarded as an integral part of the concentration (Point V.A. of the Notice on Ancillary Restrictions). This integrality does not include the situation where the parents retain a non-controlling interest in the JV, nor the [a fixed period] after the termination of the JV. Both these cases refer to future concentrations, which are disjoint from the present one. Hence, to the extent that they refer to these situations, the non-compete clauses are neither an integral part of nor ancillary to the present concentration.

27. Both parties have conferred certain intellectual property rights to the JV. Certain such licences confer exclusive rights on the JV, or reserve for the parent-licensor the exclusive right to use the technology outside the JV's field of operation. Also, the JV will be granted a licence to further technology to which the parent's additives businesses had access for the exclusive purpose of research in the JV's field of operation. These licence agreements serve as a substitute for the transfer of property rights and are necessary to the JV's formation. They can therefore be regarded as directly related and necessary to the implementation of the concentration.

28. As regards additive components, the parties have agreed that to the extent that either parent retains the right to manufacture additive components within the JV field using technology assigned or licensed to the JV, each parent shall give the JV a right of first refusal before exercising such right. Conversely, in the event that the JV is unwilling to supply to either parent a particular additive made using technology that is assigned or exclusively licensed to the JV by that parent, the JV shall, for [less than 10 years] from completion, grant back a license of this technology. The parent may use this license only to make additives for its own internal consumption. These provisions aim at ensuring each parent for a transitional period access to components for use in their finished lubricants that

were previously supplied captively. They can therefore be regarded as directly related and necessary to the implementation of the concentration (Point V.B. of the Notice on Ancillary Restrictions).

29. The JV will acquire an interest in two Shell plants, which produce polymers both for VI improvers and other non-additive applications. The arrangements foresee that the JV will undertake to use certain facilities in which it acquires an interest only within its field of operation, while Shell agrees to use such facilities only outside the JV field. In addition, they agree to co-operate on material decisions that would result in a change in the production capacity or quality of the polymers, which are produced in these plants. These arrangements serve as a substitute for the transfer of property rights. To the extent that they include restrictions of competition they can be regarded as necessary to the concentration.

VIII. MODIFICATIONS TO THE ORIGINAL CONCENTRATION

30. To remove the competitive concerns raised by the operation in the market for VI improvers, Exxon has submitted undertakings to the Commission. The text of these undertakings is annexed and forms an integral part of this decision.

31. Exxon undertakes to divest its world-wide business relating to the research, development, manufacturing, marketing, and sale of viscosity index improvers derived from olefin copolymers (OCP) and used in crankcase lubricating applications of any kind to Chevron Chemical Company LLC (Chevron). Furthermore, Exxon undertakes not to close its JV with Shell in Europe until such time as it has effectively transferred its VI business to Chevron in Europe and the United States. If, for any reason, this divestiture is not consummated, Exxon has a limited time period to sell the VI business to a third party purchaser whose identity would need to be approved by the Commission. In this case, Exxon undertakes not to close its JV with Shell until the sale to this third party purchaser will have been completed.

32. The effect of these undertakings is to divest the majority of Exxon's European VI improver business. Of Exxon's current European VI improver business, the JV will only retain Exxon's activities in the resale of third-party PMA-based VI improver for use in non-crankcase applications, as well as its activities in OCP-based VI improvers for non-crankcase applications. Its sales of PMA-based and OCP-based VI improvers for non-crankcase applications accounted for less than 1% of 1997 EEA sales. In addition, the JV will act as a reseller of certain products transferred to Chevron to fulfil obligations to certain existing customers who will not be transferred to Chevron because of the nature of the agreements with these customers and/or the customer's desire to source all lubricant additives from a single supplier. The value of these sales corresponds to around [<10%] of the EEA market.

33. Following the divestiture Exxon would have a [<10%] EEA market share of VI improvers sales, as opposed to its former [30-40%] share. The JV's post-concentration share of EEA sales would then amount to [<25%]. Chevron would become the EEA market leader with a market share of [25-35%]. RohMax and Ethyl would follow the JV as both have an EEA market share >15%.

34. The Commission has conducted a market test to verify that these undertakings are sufficient to remove the competitive concerns raised by this operation. This market test has confirmed that Chevron can in principle be regarded as an independent and viable competitor with the financial resources and expertise to act as a competitive force in competition with the JV and other competitors. Chevron is currently a major competitor in the DI packages market, but contrary to the other producers in this sector, has so far no production capacity for VI improvers.

35. The Commission takes note of the fact that the acquisition of Exxon's VI improver business by Chevron constitutes a concentration, which has been notified in several Member States. The Commission decision in this case is thus taken without prejudice to the outcome of these proceedings. In addition, the Commission notes that in the context of this divestiture, Chevron and Exxon have entered into contracts, which could constitute restrictions of competition. These agreements are not ancillary to the creation of the JV and can thus not be covered by a decision under the Merger Regulation. Exxon and Chevron have notified these agreements under Regulation 17/62 (Case 37.079 Exxon/Chevron). The Commission decision in this merger case is thus taken without prejudice to the outcome of this procedure.

36. If for reason of these proceedings, the sale of Exxon's VI improver business to Chevron could not be completed, the undertakings stipulates that the JV can not be closed until another acceptable purchaser is found. The Commission is therefore ensured that the JV will not proceed unless the competitive problems identified have been removed. The undertakings given by Exxon are therefore sufficient to remove the competitive problems raised by this operation.

IX. CONCLUSION

37. For the above reasons and subject to full compliance with the undertakings referred to in Section VIII, 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, as amended by Regulation 1310/97, and Article 57 of the EEA Agreement.

For the Commission

Annex

In the context of the formation of the joint venture (the "Joint Venture") between Exxon Chemical Company, a division of Exxon Corporation ("Exxon"), and The Shell Petroleum Company Limited and Shell Oil Company (together with other members of the Royal Dutch/Shell group, "Shell"), Exxon hereby undertakes to sell, convey, assign, and transfer (or shall cause its affiliates to sell, convey, assign, and transfer) to Chevron Chemical Company LLC ("Chevron") its world-wide business relating to the research, development, manufacturing, marketing, and sale of viscosity index improvers ("VII") derived from olefin copolymers ("OCP") and used in crankcase lubricating applications of any kind ("Exxon Crankcase VII Business"). "Crankcase" in this context means the housing of the crankshaft of an engine which functions as a reservoir for a lubricating composition.

Exxon hereby undertakes not to close the Joint Venture in Europe until such time as it has effectively transferred its Crankcake VII Business to Chevron in Europe and the United States. If the divestiture to Chevron would, for any reason, not be consummated, then Exxon undertakes not to close the Joint Venture in Europe unless and until it has closed a sale to an alternative purchaser that is a viable existing or prospective competitor in the supply of VII products and that is independent of and unconnected to either Exxon or Shell. If within one month of Exxon's proposal to the Commission of such alternative purchaser, the Commission does not formally indicate its disagreement regarding the proposed purchaser's ability to maintain and develop Exxon's Crankcase VII Business as an active competitive force, the divestiture to such purchaser will be allowed to proceed.

Exxon will inform the Commission of the completion of the transfer of the Exxon Crankcase VII Business to Chevron or an alternative valid purchaser. Such transfer shall have occurred in Europe within twelve months from the date of the Commission's decision authorizing the Joint Venture, unless extended by the Commission at Exxon's request. Every three months or at the Commission's request, Exxon shall report in writing to the Commission on developments concerning the transfer of its Crankcase VII Business to Chevron or the status of negotiation with potential alternative purchasers.