

***Case No IV/M.1190 -
AMOCO / REPSOL /
IBERDROLA / ENTE
VASCO DE LA
ENERGIA***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERCER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 11/08/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11/08/1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M. 1190 AMOCO/REPSOL/IBERDROLA/ENTE VASCO DE LA ENERGIA

Notification of 9 July 1998 pursuant to Article 4 of Council Regulation 4064/89

1. On 9 July 1998 AMOCO POWER RESOURCES HOLDING II Ltd. ("AMOCO"), REPSOL S.A. ("REPSOL"), IBERDROLA S.A. ("IBERDROLA"), and ENTE VASCO DE LA ENERGIA ("EVE") notified to the Commission an operation by which they will acquire joint control of two newly created joint ventures BAHIA DE BIZKAIA ELECRICIDAD S.L. and BAHIA DE BIZKAIA GAS S.L.
2. After examination of the notification the Commission has concluded that the notified operation falls under the scope of Council Regulation No 4064/89 and does not raise any serious doubts on its compatibility with the common market and the functioning of the EEA Agreement.

I. THE PARTIES

3. AMOCO is a US holding company investing in electric power projects. It belongs to the US group AMOCO, which develops, constructs and operates electric power generation facilities, transmits, distributes and sells electricity, produces and markets crude oil, natural gas, refined products and chemicals. The AMOCO group activities are worldwide.
4. REPSOL is a Spanish company; its principal activities are the exploration and commercial exploitation of petroleum and related products, together with other sources of energy.

5. IBERDROLA is a Spanish company producing and supplying electricity and its derivatives.
6. EVE is a Spanish public entity operating in the Basque region of Spain. It operates in the field of energy and other synergistic fields, such as water and telecommunications.

II. THE OPERATION

7. Each of the parties will acquire a 25% stake in the two joint ventures. The joint ventures will respectively develop and operate an electricity production plant (the “power plant”) and a liquid natural gas (“LNG”) regasification plant (the “regasification plant”) in the North of Spain in Bilbao. The power plant will be integrated in the regasification plant, which will regasify LNG imported into Spain. The regasification services will be provided on behalf of the gas importer. The power plant will use approximately [>50] %¹ of the LNG regasified by the regasification plant to generate electricity. The power plant will be free to sell the electricity generated either to the Spanish electricity pool (a bid market) or to the eligible consumers under Spanish law. The remaining regasified LNG (i.e. approximately [<50] %) will be integrated in the network of [...].

III. CONCENTRATION

8. AMOCO, REPSOL, IBERDROLA and EVE will jointly control the two joint ventures with equal stakes in their capital. The Partners Agreements, which have been entered into by the parties, state that both the business plan and the budget shall be approved with a majority of 90% of the share capital of the joint ventures.
9. The joint ventures will be operated as independent companies. Each joint venture will have sufficient financial resources, staff and assets to perform on a lasting basis all the functions of autonomous economic entities. LNG will be supplied by third parties or the parents at arm’s length. Both the parents and third parties will have access to the regasification services on normal commercial conditions.
10. Therefore, the operation is a concentration within the meaning of Article 3(1)(b) of Regulation 4064/89.

IV. COMMUNITY DIMENSION

11. The combined aggregate worldwide turnover of AMOCO (ECU 31,998m), REPSOL (ECU 19,345m), IBERDROLA (ECU 4,886m) and EVE (ECU 149m) is in excess of ECU 5bn. AMOCO (ECU 930m), REPSOL (ECU 18,947m) and IBERDROLA (ECU 4,901m) have a Community-wide turnover exceeding ECU 250m and will not achieve more than two thirds of their aggregate Community-wide turnover within one and the same Member State.
12. The notified operation therefore has a Community dimension.

¹ Market shares or other figures considered as business secrets have been replaced by ranges in square brackets []. Text considered as business secret has been replaced by square brackets [].

V. THE RELEVANT MARKET

A. The relevant product market

Electricity

13. The power plant joint venture will generate and sell electricity in Spain using approximately [>50]% of the LNG regasified by the regasification plant.
14. In previous decisions² the Commission considered that electricity and gas constitute two different product markets, mainly because the demand-side substitutability could take place only over a long period of time and because it involves different choices of equipment, according to the source of energy chosen. There is no reason to deviate from this analysis in the present case.

Regasification services

15. Before the operation, all the regasification plants were owned and operated by ENAGAS, which was the sole importer of gas, both through pipelines and in liquid form into Spain. The joint venture is a first step in the development of a market for regasification services.

B. The relevant geographic market

Electricity and regasification services

16. The parties consider that currently the geographic market is largely national given the limited flow of electricity between Spain and other countries. However, it is not necessary to further delineate the relevant geographic market because, even on the narrowest market definition, effective competition would not be significantly impeded.
17. According to the parties the geographic scope of the regasification services is purely national. For the purposes of this case the definition of the relevant geographical market may be left open since, on the basis of the assessment set out below, a dominant position would not be created or reinforced even on the basis of a national market definition.

VI. ASSESSMENT

18. Electricity. The new Spanish regulatory regime (Law 54/1997) came into force on 1 January 1998. It is based on freedom of installation of generation facilities and setting of price under market conditions. In particular, the electricity price is determined through a bid and offer matching market (the “pool”) which is opened to all licensed generators, distributors, wholesalers and authorised buyers. The marginal price in the pool determines the general electricity price. The electricity company ENDESA is the market leader with a market share of [30-50]%, other relevant competitors are UNION FENOSA and HIDROCANTABRICO with market shares of [10-20]% and [<10]%

² IV/M.493 - Tractabel/Distrigaz II, IV/M 568 - EF/Edison-ISE and IV/M.931-Neste/IVO.

respectively. The planned capacity of the power plant is [800-1200] MW, accounting approximately for [<10]% of the current generation capacity in Spain. Accordingly, competition concerns on the market for the supply of electricity can be excluded.

19. Regasification services The regasification plant will regasify LNG imported into Spain. The regasification plant joint venture is expected to have an initial capacity of [2-3] bn m³/year, which will represent approximately [<15]% of the regasification capacity currently available in Spain. ENAGAS, a company controlled by GAS NATURAL which is a 45% subsidiary of REPSOL, until now the sole importer of gas into Spain, owns and operates the remaining regasification plants. The operation introduces an additional player in the emerging market for regasification services. REPSOL will not determine unilaterally the commercial policy of the regasification plant joint venture. A number of competitors are currently contemplating, in the light of the recent liberalisation of gas imports, the possibility of constructing their own regasification plants. Under Spanish law third parties may have access to uncommitted capacity at regasification plants. The commercial conditions of the regasification services are regulated with the Spanish Government fixing the maximum tolls to be paid to the regasification plants. The operation will not give rise to the creation or strengthening of a dominant position.

VI. ANCILLARY RESTRAINTS

20. The parties have indicated that the power plant joint venture will enter into a long-term gas supply agreement with a LNG supplier. As indicated above, a supplier in which [the parent companies] have an interest may be appointed as LNG supplier. The parties maintain that the long-term supply agreement should be considered as ancillary to the concentration.
21. The supply agreement has not yet been negotiated. The Commission is thus not in a position to assess it. Therefore, the above mentioned supply agreement is not covered by the present decision.

VII. CONCLUSION

22. 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 (EEC) No 4064/89 and Article 57 of the EEA Agreement.

For the Commission