

***Case No IV/M.1301 -
TEXACO / CHEVRON***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 30/10/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.10.1998

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

NOT TO BE PUBLISHED

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sirs,

Subject: Case No IV/M. 1301 – Texaco / Chevron

Notification of 29.09.1998 pursuant to Article 4 of Council Regulation (EEC) No 4064/89.

1. On 29.09.1998, the Commission received a notification of a concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89, by which Texaco Inc. and Chevron Corporation acquire within the meaning of Article 3(1)b of the Council Regulation joint control of a newly created company , to be known as “Fuel and Marine Marketing LLC”.
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 Texaco and Chevron are fully integrated oil companies, active world wide in exploration and production of mineral oil and gas, the operation of refineries, and the manufacture, supply and distribution of (refined) petroleum products and lubricants. In addition, Chevron is active in coal and chemicals, including a variety of additives used for fuels and lubricants.
4. The operation consists of the creation of a corporation under the laws of Delaware, U.S.A., of which Texaco will own 69 % and Chevron will own 31 % share. Through this joint venture, the parties will combine their respective world wide residual fuels and marine lubricants businesses.

II. CONCENTRATION

Joint control

5. Texaco will hold 69 % and Chevron will hold 31 % of the joint venture's share capital. The management will be composed by an equal number of members appointed by each party and these shall have equal voting rights. For decisions on various strategic matters, in particular the election of certain officers, the nomination of the president of the company as well as the approval of annual operating and capital budgets and the annual preparation of the five year business plan, unanimity will be required among the joint venture's shareholders. Consequently, the joint venture will be jointly controlled by Texaco and Chevron.

Full-function character

6. The joint venture will perform, on a lasting basis, all the functions of an autonomous economic entity and will bring about a lasting change in the structure of the parent undertakings. The joint venture will be active in the markets for the supply of residual fuels and marine lubricants and will have its own management and access to sufficient resources, including finance, staff and assets in order to conduct on a lasting basis its global business activities through its own management.
7. The parent companies are present in markets upstream of the joint venture (exploration, production and refining of crude oil). There is currently little integration between the two parent companies' exploration/production and refining activities and the downstream activities transferred to the joint venture. For example, the residual fuels business of Texaco currently obtains about [...] % of its supply from within the Texaco group and the rest from outside sources. The equivalent internal supply figure for Chevron has been in the range of [...] to [...] %. As a consequence, the joint venture will not be substantially dependent on purchases from or supplies to its parent companies for the conduct of its business. It is estimated by the parties that the joint venture will obtain approximately [...] of its feedstock and raw materials supplies from within the parents' groups and approximately [...] from third party sources. In so far as such transactions will be concluded with the parent companies, they will be on arm's length and at market conditions.
8. Research and development programs in the field of the products concerned will be notably carried out by the joint venture which will itself determine its R&D policy

and will be granted by its parents the relevant patents and know-how licences. It will also be granted the parents' trademarks.

9. For an interim period, not exceeding one year from the closing date, the parents' personnel will be on loan to the joint venture and certain other interim services will be supplied by them. The joint venture will for an initial period procure certain technical services from the parents' laboratories.
10. Although the principal activities of the joint venture relate to residual fuels and marine lubricants, the scope of the joint venture also includes some incidental distribution and sale of products, namely middle distillates, marine coolants and carbon black. The parent companies will not transfer their production activities relating to these products to the joint venture. This is so because all of these are by-products of the oil refineries, which the parents will continue owning and operating. Middle distillates are fuels principally used to power auxiliary engines of vessels (second engines, power generators, lifts, winches, etc). Vessel operators usually purchase marine fuels and middle distillates together, the volume ratio being 10:1. The same applies for the parent companies' marine coolants, which are used on vessel engines. Carbon black has no marine applications. It is an industrial feedstock used in the fuel blending process (i.e., it reduces viscosity). Only Texaco produces minimal quantities of carbon black within the EEA ([...] per year). Sales of carbon black by the joint venture are expected to constitute less than [...] % of the joint venture's turnover. These distribution agreements are not likely to affect the autonomous character of the joint venture, as they relate to by-products of the parent companies' non-transferred activities (i.e., refineries), two of which, namely middle distillates and marine coolants are supplied to the same customers as the main products of the joint venture, whereas carbon black will only represent a minimal part of the joint venture's turnover.
11. It can be concluded from the above that the joint venture will be geared to play an active role on the market on a stand-alone basis. Therefore, the present operation can be considered as leading to the creation of a full-function joint venture within the meaning of Article 3 (2) of the ECMR.

III. COMMUNITY DIMENSION

12. The combined aggregate world-wide turnover of Texaco and Chevron in 1997 exceeded ECU 5,000 million (Texaco and Chevron together: ECU 71,490 billion). The 1997 aggregate Community-turnover of each of the parties exceeded ECU 250 million, with turnovers respectively of ECU 9,515 and 1,079 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.

IV. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product market

13. The joint venture brings about the concentration of Texaco's and Chevron's world wide activities in (a) residual fuels and (b) marine lubricants.

(a) Residual fuels

14. Residual fuels comprise both marine fuels and industrial fuels.
15. Marine fuels are used in marine engines which power marine vessels; they are residual heavy fuels constituting bottom draw from the refinery, left at the end of the refining process after cleaner and higher value fuels such as diesel and petrol have been refined. They are viscous and high in contaminants and need to be heated before combustion in marine diesels. Marine fuels are also sold for consumption in marine type diesels used on-shore, e.g. for small scale power generation. Marine fuels are a commodity product for which technical specifications are the same world wide and are classified in different viscosities; they are bought and sold mostly on a spot basis. They may therefore be regarded as a separate product market. The Commission has already found the marine fuels market to constitute a separate product market, e.g. in Case No M. 063, Elf/Ertoil.
16. Industrial fuels are the other main category of residual heavy fuel oils. They are consumed by industrial and utility customers, e.g. for burning in steam boilers for power or in industrial furnaces or boilers in the manufacturing industries. The parties estimate that the market for industrial fuels is four times larger than the marine fuels market, but claim that the joint venture will concentrate on the marine markets, envisaging that marine business will be [...] percent of its over all business. There is no overlap on the industrial fuels market within the EEA, since Chevron is not present on that market.
17. However, it is not necessary to further define product markets, since on neither the marine fuels market, nor the industrial fuels market, nor on the combined marine/industrial fuels market, would the operation raise serious doubts as to its compatibility with the common market.

(b) Marine lubricants

18. Marine lubricants are used to lubricate marine diesel engines of deep draft vessels and are therefore specific lubricants because of the special features and performance requirements of marine diesel engines. The parties estimate [...] % of the joint venture's marine lubricants business world wide will be for ocean going vessels. There are three main types of these lubricants: cylinder oils, crankcase oils and trunk piston engine oils ("TPEO's").
19. About 90 % of all lubricants used on board of ships are used for lubrication of marine diesel engines. Other industrial oils and greases are, according to the parties, standard specification products with multiple applications outside the marine sector. Marine diesel lubricants are specially formulated to cope with the extreme conditions encountered in these engines, like very high firing pressures and piston crown temperatures. In addition, they need to run continuously for long periods at near maximum power and must operate up to 20,000 hours between major overhauls. Each grade of these lubricants has to be approved by the engine manufacturers and needs to be made to consistent standards around the world. They cannot be substituted by non-marine lubricants.

20. The Commission has recognised the existence of a separate marine segment of the lubricants market on a previous occasion (i.e., cases IV/M.098 - Elf/BC/Cepsa and IV/M.111 - BP/Petromed).
 21. However, it is not necessary to further define the relevant product markets because, in all alternative definitions considered, the operation would not raise serious doubts as to its compatibility with the common market.
- (c) Other product markets
22. In addition to the products mentioned above, the joint venture will be active in the distribution and sale of middle distillates, marine coolants and carbon black.
 23. Middle distillates, a refined product comparable to lighter gas oil diesel fuel, are considered by the parties to be part of the marine fuels businesses, since these distillates are used as fuels for ancillary engines on board of ships. The parties estimate that the sales of these products will constitute about [...] percent of the parties' sales of total marine fuels supply and [...] to [...] % of total fuels sales. These can be considered to constitute a separate product market from heavy fuels.
 24. Marine coolants are normally not sold in the course of marine businesses. However, Texaco has developed a new coolant with special anti-corrosive qualities particularly useful for marine use and approved by marine engine manufacturers. The marketing of these has been attributed to the joint venture, although Chevron has no marine coolants business. They are used both in deep draft and shallow draft vessels. These can be considered to be a separate product market.
 25. Carbon black is a specific derivative of residual fuel oil blending component and is an industrial feedstock used as raw material for some manufacturing industries. It can be considered a separate product market. The joint venture will have an option for sales of these residual blending components for applications other than the residual fuels market.

B. Relevant geographic market

(a) Residual Fuels

26. Residual fuels, taken either as a single market or as composed of two separate markets, that is, one for marine fuels and another for industrial fuels, would not constitute an affected market, either at world-wide or at EEA-wide level. It is therefore not necessary to further delineate the relevant geographic market for these products.

(b) Marine lubricants

27. Marine lubricants, taken either as a single market for all types of marine lubricants or as composed of three separate markets, that is, cylinder lubricants, crankcase oils and TPEO's, would not give rise to an affected market, either at world-wide or at EEA-wide level. It is therefore not necessary to further delineate the relevant geographic market for these products.

(c) Other markets

28. In the markets of middle distillates, marine coolants and carbon black, either at world-wide or EEA-wide level, the combined shares would not give rise to any affected markets. Therefore, it is not necessary to further define a geographical market for these products.

C. Competitive Assessment

29. The operation does not give rise to any affected markets. In fact, the market shares of the joint venture in any possible product or geographic market definition are below 15%.

(a) Residual Fuels

30. In the market for residual fuels, comprising both marine and industrial fuels, the combined market shares world-wide would be of [...] %, whereas at EEA level these would be of [...] %.
31. If the market for marine fuels were taken as a separate product market, the market shares of the joint venture would be of [...] % at world-wide level and of [...] % at EEA level.
32. If the industrial fuels were taken as a separate product market, the combined market share world-wide would be of [...] %. At European level, there is no market overlap, Chevron not being present within the EEA.

(b) Marine Lubricants

33. In the market of all types of marine lubricants (i.e., cylinder, crankcase and TPEO's) taken together and used in deep draft vessels, inland waterway ships and power/utility plants, the joint venture's market share would be less than 15 % at both world-wide and EEA-wide level [i.e., [...] % world-wide and [...] % EEA-wide]. On the market of these types of oils taken together and for use in deep draft vessels only, the combined market share would be less than 15 % at both world-wide and EEA-wide [i.e., [...] % world-wide and [...] % EEA-wide].
34. Even if the different types of lubricants used in deep draft vessels, in inland waterway shipping and for power and utility would each be considered different product markets, the joint venture's market shares would not exceed 15 % on the EEA-market. In particular, the joint venture would have [...] % of the cylinder lubricants market, [...] % in the crankcase oils market, [...] % in the TPEO's market.

(c) Other markets

35. In the market for middle distillates, the joint venture's market share world-wide will be less than [...] % [less than 5 %]. In the market for marine coolants, there is no overlap in the parent's activities, since only Texaco is active in this product, with an estimated world-wide share of less than [...] % [less than 5 %]. Finally, in the market for carbon black, the joint venture will have less than [...] % [less than 5 %] of the world-wide market.

V. ANCILLARY RESTRAINTS

36. The notifying parties have requested that a number of restrictions contained in the arrangements be considered as ancillary to the concentration.
- (a) Technology and trademark licenses
37. The technology transfer and licensing agreements provide for the transfer and licensing, on exclusive and non-exclusive terms, of necessary intellectual property and trade names to the joint venture. To the extent that these agreements contain restrictions to competition, such restrictions are directly related and necessary for the implementation of the joint venture and may be considered ancillary to the concentration.. Moreover, they constitute an evidence of the effective withdrawal of the parent companies from the activities which have been transferred to the joint venture.
- (b) Agreements for the interim provision of services
38. The parents will provide a certain number of services to the joint venture, such as technical services, loaned personnel, administrative services, etc. These services are designed to assist the transition of the joint venture business from two separate businesses, integrated within larger groups, into a single self-standing business. Their duration is limited to less than one year from the closing date. To the extent that these agreements contain restrictions to competition, such restrictions may be considered ancillary to the concentration.
- (c) Purchase and supply agreements between the joint venture and its parents
39. The arrangements provide for a number of purchase and supply agreements. All such agreements will be at arm's length and at market prices. Moreover, it is anticipated that more than three-quarters of the joint venture's total requirements of raw materials will be purchased from third parties, and only a small percentage, less than [...] %, of the joint venture's output will be supplied to its parents. The agreements in question are the following:
- (i) Supply from the joint venture to Chevron's vessels of marine lubricants and marine fuels. The intention is that the joint venture would be a preferred supplier to the Chevron shipping operation (Texaco does not own any fleet). This arrangement in effect continues the existing arrangement for supply to the Chevron shipping operation following the start-up of the joint venture. Their duration is of one year for marine fuels and three years for marine lubricants. After this period, the parents will purchase from third parties or from the joint venture at arm's length and at market conditions. To the extent that this arrangement contains restrictions to competition, such restrictions may be considered ancillary to the concentration.
- (ii) Purchase by the joint venture from the parents of additives, residual fuel oil and crude oil, blending arrangements for marine lubricants, tankage and terminalling facilities, ship, barge and terminal vetting services and recycled used oil These agreements are intended to enable the joint venture, in the initial period following its formation, to have access to continuing arrangements for supply from its parents of key inputs and facilities. Their duration is limited to one year (lubricant

additives, blending contracts and vetting services) or to two years (tankage and terminalling and recycled used oil) from the closing date. After the expiry of these interim periods, the joint venture is free to procure its requirements from third parties or continue to trade with its parents for further periods at arm's length and at market prices. To the extent that these agreements contain restrictions to competition, such restrictions may be considered ancillary to the concentration.

VI. CONCLUSION

40. 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,