



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.09.1999
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Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets.

COMMISSION DECISION

of 29.09.1999

**declaring a concentration to be compatible with the common market
and the EEA Agreement**

(Case No IV/M.1532 – BP Amoco / Arco)

(Only the English text is authentic)

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area, and in particular Article 57(2)(a) thereof,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings¹, as last amended by Regulation (EC) No 1310/97², and in particular Article 8(2) and Article 10(2) thereof,

Having regard to the Commission decision of 10 June 1999 to initiate proceedings in this case,

Having regard to the opinion of the Advisory Committee on Concentrations³,

WHEREAS :

1. On 4 May 1999, the Commission received notification pursuant to Article 4 of Regulation (EEC) No 4064/89 ("the Merger Regulation") of a proposed concentration by which the undertaking BP Amoco plc ("BPA") acquires control within the meaning of Article 3(1)(b) of the Merger Regulation of Atlantic Richfield Company ("Arco").
2. By decision of 10 June 1999, the Commission found that the notified operation raised serious doubts as to its compatibility with the common market and initiated proceedings pursuant to Article 6(1)(c) of the Merger Regulation.

I. THE PARTIES AND THE OPERATION

3. BPA is the holding company of a multinational oil exploration, petroleum and petrochemical group comprising three core businesses, that is, BP Amoco Exploration (oil and gas exploration and production); BP Amoco Oil (refining, marketing, supply and transportation); and BP Amoco Chemicals (manufacturing and marketing of petrochemicals and related products). The BP Amoco Group was formed as a result of the merger between The British Petroleum Company plc and Amoco Corporation⁴. It has well-established operations in Europe, the USA, Australasia and parts of Africa, and is expanding its presence in Asia and South America.
4. Arco is involved in the exploration for, production, transportation and sale of crude oil and natural gas and in the refining of crude oil and the transportation and marketing of petroleum products. Although it has operations in a number of countries such as Venezuela, Algeria, Tunisia, the United Kingdom and Indonesia, the bulk of its activities take place in the USA (i.e., approximately 86% of its total turnover in 1998).

¹ OJ L 395, 30.12.1989, p. 1; corrected version in OJ L 257, 21.9.1990, p. 13.

² OJ L 180, 9.7.1997, p. 1.

³ OJ C...,, p. ..

⁴ See Commission Decision of 11 December 1998 in Case IV/M.1293 - British Petroleum/Amoco Corporation.

II. CONCENTRATION

5. The concentration being notified is an acquisition of sole control within the meaning of Article 3(1)(b) of the Merger Regulation. It will result in BPA acquiring sole control of Arco. The concentration will be effected by means of share sale. This will be achieved by Arco being merged into a newly-established company incorporated in accordance with the laws of the State of Delaware, USA ("Newco"), which will itself be wholly owned by BPA. Following the merger of Arco with Newco, Arco will be the surviving legal entity and will, at that point, have become a wholly-owned subsidiary company of BPA. Thus, as result of these operations, BPA will have acquired ownership of the entire issued share capital of Arco.

III. COMMUNITY DIMENSION

6. Since the parties' combined aggregate world-wide turnover⁵ exceeds EUR 5 billion, they each have a Community-wide turnover of more than EUR 250 million , and they do not each achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State, the concentration has a Community dimension pursuant to Article 1(2) of the Merger Regulation.

IV. ASSESSMENT UNDER ARTICLE 2 OF THE MERGER REGULATION

A. Exploration, development, production and sale of crude oil and natural gas

7. Both parties are active in the exploration, development and production of crude oil and natural gas and in the decision initiating proceedings the Commission had expressed serious doubts on these markets. However, there are, for the reasons indicated below, no competition concerns on these markets.

Exploration, development and production process

8. Upstream activities comprise three types of commercial activity: the finding of new reserves, the development and the commercial exploitation of those reserves. The finding of new reserves is generally described as "exploration". Development concerns the setting up of adequate infrastructure for future production (oil platforms, pipelines, terminals, etc.). The exploitation of reserves is called "production and sales". Previous Commission decisions⁶ focussed primarily on the impact of the then notified transactions on the production and sales segment.

⁵ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C 66, 2.3.1998, p. 25). To the extent that figures include turnover for the period before 1 January 1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

⁶ See Commission Decision in Case IV/M.1200 – Arco/Union Texas, OJ C 16, 21.1.1999, p. 8; Commission Decision in Case IV/M.88 – Elf Enterprise, OJ C 203, 2.8.1991; and Commission Decision in Case IV/M.85 – Elf Occidental, OJ C 160, 20.6.1991.

9. Exploration and development is a time and capital-intensive activity, which includes a number of successive steps. Firstly, countries which believe that hydrocarbon reserves could be discovered on their territory (such a country is called the "host country") organise bids to grant exploration licences. The bidding processes vary from public auctions in the USA to situations where bidders are pre-selected by the host country. This pre-selection can be based to varying extents on technical capability, financial strength or other considerations (lobbying, cultural affinities, etc.).
10. Often, companies bid together in order to spread risks or to bring complementary skills. In some circumstances, host countries may require that some bidders join together in order to get the licence for exploration. Host countries may also require that their national oil companies be granted a share in any discovery made in the block under licence. In all cases when the licence is granted jointly to a number of companies, an operator for the block is named. The role of the operator is to manage technically and financially the exploration and possibly the development and production phases of the project. Most of the important decisions require unanimity from all the partners in the project.
11. The total time between the granting of a licence and actual production typically range from 5 years to 15 years. Costs of exploration and development projects can reach in the region of EUR 7 billion for projects in the so-called "frontier areas". The split of expenditures between the exploration stage and the development stage is typically respectively 15% and 85%.
12. It must also be mentioned that when production is started in a new area, infrastructure needs to be developed. This includes notably oil platforms, pipelines and terminals. Smaller fields, which would not be economical to develop on their own, can then be exploited through using the infrastructure already put in place for the bigger field. Such smaller fields are sometimes called "satellite fields". Exploration in the North Sea has typically followed that process.

Relevant product markets

13. It is often argued that exploration, development and production and sale are too closely inter-linked for more than one distinct product market to be defined. It may, however, be argued that exploration constitutes a separate product market. Indeed, it could be argued that a firm engaged in exploration has two categories of clients: the host country to which it has generally undertaken to provide a future flow of resources in case oil or gas is found; and the subsequent producers and sellers of oil and gas that may buy it out or join in the development and production. The transfer of rights over blocks is a widespread practice in the industry.
14. Since the possible contents of the underground are not known at the time of exploration, the Commission considers that it is not justified to make a distinction between exploration for oil and exploration for natural gas. As regards the development, production and sales product markets, since gas and crude oil have differing applications and are subject to varying pricing behaviour as well as cost constraints, the Commission considered it appropriate at the stage of the decision initiating proceedings to define one relevant product market for the development, production and sales of crude oil and another relevant product market for the development, production and sales of natural gas.

15. The parties have contested the existence of an exploration market arguing that it is too closely linked to the subsequent steps of the production process to make it a possible product market. As will be explained in the section on Effects of the merger on competition, it is not necessary for the appraisal of the effects on competition of the notified operation to define precisely the relevant product markets according to the various stages of the exploration, development, production and sales of respectively crude oil and natural gas.

Relevant geographic markets

16. The Commission considers that the exploration market is world-wide in scope and agrees with the parties that from a European-demand perspective the relevant geographic markets are world-wide in scope for development, production and sales of crude oil and probably include the EEA, Algeria and Russia for gas.
17. The Commission examined whether smaller geographic areas could constitute relevant markets. Some purchasers of gas make, for security of supply reasons, a distinction in their purchasing policy as to the origin of the gas on the basis of the perceived political risks and their influence on the security of supply with regard to Russian and Algerian gas (Russia accounted for approximately 17% of total Western European supply and Algeria for 12%). The most explicit example of this is the Spanish legislation ordering that not more than 60% of the natural gas demand can come from the same country. It is, however, unlikely that a price increase of gas produced in the EEA would not be defeated by a small increase in the proportion of gas purchased from Russia and Algeria. In any case, the precise definition of the relevant geographic market can be left open, as this does not alter the conclusion of the competitive assessment.

Market players

18. Traditionally, companies involved in the exploration, development and production and sales business were grouped in three categories with different profiles, strategic objectives and future exploration and development capabilities. The categories are: (i) the State-owned (mainly OPEC and some OECD based companies such as Statoil) producers; (ii) the ‘majors’, that is, vertically integrated oil companies with international activities; and (iii) a multitude of substantially smaller oil companies, most of which are non-integrated upstream explorers and/or producers.
19. The competition concerns identified by the Commission were raised mainly by the fact that as a result of the notified transaction, as well as of that notified by Exxon and Mobil, a distinct (fourth) tier of players might prevail on the exploration and development activities. This group of “super majors” would be composed of Exxon-Mobil, BP Amoco-Arco and Shell.

Position of the parties in the market

Exploration

20. There is no widely available or accepted indicator on the basis of which market shares can be calculated as a proxy to assess market power in the exploration market. Measurement of market shares could be carried out on the basis of the number of blocks where licences have been granted, the number of blocks where a given company is the operator, net acreage, total acreage under operatorship, capital expenditure in

exploration, etc. There is wide agreement that proxies based on number of blocks or acreage would not be reliable as they cover widely varying situations.

21. On the basis of capital expenditures, Exxon-Mobil, BP Amoco-Arco and Shell would represent together, with roughly equivalent shares, between 30% and 40% of the total capital expenditures in exploration, development and production scheduled for 1999. The next largest player would represent one-third of the average size of the three main players.
22. The parties have contested the adequacy of this measure of market power for the following reasons. First, capital expenditures vary according to the sites explored. This biases downwards the market share of national oil companies in low cost OPEC areas. Secondly, capital expenditures often do not reflect the correct share of ownership of the licence or of the output. This is because State companies often pay a share which is disproportionately lower than their licence interest or take of crude oil output. Thirdly, capital expenditures often include expenditure on investments such as gas liquefaction and infrastructure rather than sums invested purely in exploration.
23. Another possible way to measure market power would be to calculate the share of expected production of these companies (since current exploration and purchase of third-party rights will translate into future production). On the basis of the market investigation, the combined market share of the three super majors of the non-OPEC production, in some 10 years from now, would again be in the 30% to 40% range.

Production and sales

24. BPA and Arco would have together around [less than 15%] of respectively the world-wide production of crude oil and the European production of natural gas in 1998. These numbers would be [less than 25%] for a combined Exxon-Mobil and less than 20% for Shell. These numbers have not materially changed over the years. Of the total natural gas production in the EEA, the three super majors account for almost 40%. However, of the natural gas consumed in the EEA, the three super majors account for less than 30%.
25. The industry often refers to proven reserves as a proxy for market power. On this basis, the parties would hold approximately [less than 3%] and [less than 5%] of respectively the world-wide proven reserves crude oil and European wide proven reserves of natural gas. However the parties argue that proven reserves are not a relevant indicator of future production. Proven reserves as stated by the oil companies have just a stock function and, as any other private company, private oil companies need to limit as much as possible their stocks. By means of their proven reserves, the company indicates that it is (or is not) able to replace the foreseeable depletion of existing oil fields and thereby to remain a viable player on the market. However, national oil companies do not need to justify further exploration and development investments to their shareholders since they benefit from the national reserves which usually largely exceed their needs. Therefore, such an indicator involves an upward bias in favour of national companies.
26. Currently and for the foreseeable future, the OPEC producers collectively enjoy substantial market power in crude oil production. They control a substantial amount of production and proven reserves (approximately 40% and 75%, respectively, whereas

Saudi reserves account for more than one third of OPEC reserves). OPEC has been able in a number of instances in the past to influence⁷ crude oil prices up to a certain level.

27. Gazprom (17%) and Sonatrach (11%), the national Russian and Algerian suppliers, account for approximately 30% of EEA sales of natural gas and their reserves account for 88% (Gazprom 81.5%) of the combined proven reserves that can be sold in the EEA.

Effects of the merger on competition

28. The Commission raised the following serious doubts as to the effect on competition in the markets for exploration, development, production and sales of crude oil and natural gas. The notified acquisition together with the Exxon-Mobil merger could lead to the creation of a fourth tier of competitor in the industry composed of BP Amoco-Arco, Exxon-Mobil and Shell. Whatever the parameter retained (market capitalisation, oil and gas production, proven reserves etc.), there is now a material gap between these three super majors and the remaining majors.
29. It was considered whether it would be possible that the three super majors would in the future be in a privileged position to find and develop new important reserves compared to the other players in the market. This could come from their increased financial strength that would now enable them to hold a portfolio of risks of increased size. On the contrary the other competitors would have to pick and choose the areas where they intend to become active. Because of their less favourable access to capital and capacity to spread risks, smaller companies would, if they wanted to continue developing important fields, have to become smaller partners to the super majors to benefit from their combination of resources. Their only other alternative would be to become niche players focussed on exploration. This may result in the super majors controlling the access by other explorers to the new frontier areas, first at the time of the granting of the first licences and then for further surrounding blocks since the super majors will have built the necessary infrastructure.
30. Since the typical time lapse between the first stages of exploration and the start of production varies between 5 and 15 years, under this scenario there would be a possibility that within some ten years, new non-OPEC reserves and production would be influenced to a significant extent by the super majors.
31. This could affect the production and sales markets in the following way. The competitive constraints limiting OPEC's ability to function as a cartel would be lessened. These three companies would have the same interests as OPEC and would be likely to align themselves on the OPEC decisions by limiting output to a certain level without fearing that others would take advantage of this. This would translate into the strengthening of OPEC's dominant position in the crude oil market through the creation of an oligopolistic structure combining both OPEC and the three super majors, thus creating incentives for alignment on OPEC's commercial strategies. OPEC would then be in a position to raise and sustain prices at the highest price threshold above which new exploration would be triggered.

⁷ Prices in the crude oil trade markets may be significantly influenced by mere announcements following an OPEC meeting.

32. On the basis of the foregoing, the Commission concluded that the operation raised serious doubts as to its compatibility with the Common Market and the functioning of the EEA agreement, which should be further explored in an in-depth investigation.
33. The parties contested the Commission's serious doubts on mainly two grounds. First, the super majors would still be facing competitive constraints from smaller oil companies. Secondly, host countries control oil and gas production and in any case would have no incentives to let oil companies restrict production.
34. The market investigation confirmed that small explorers do not seem to believe that the emergence of a new class of super majors would threaten their position. Because of size differences they would not compete for the same type of exploration rights and they would not be dependent on the bigger explorers to sell their oil. In addition, majors such as Chevron, Texaco, Elf or Total would all seem to have unchanged capacity to explore and develop fields anywhere in the world. The parties have provided numerous examples of the involvement of majors in current projects all over the world.
35. Second, the market investigation confirmed that typical concession contracts between governments and explorers-producers prohibit the latter from limiting their output (and leave such a decision to the discretion of the government).
36. As to natural gas, it is unlikely that the parties, together with the other super majors, could control the EEA production and therefore that competition would be affected. Even if such a market did exist (in view of the perceived political risk attached to the gas production in Russia and Algeria), no collective dominance between the super-majors can be argued in view of the strong position of Norwegian gas delivered by competitors. In addition, producers of natural gas face very concentrated demand in the hands of the national wholesale gas transmission companies such as Gaz de France or Distrigaz.
37. Therefore, the Commission concludes that the concentration will not lead to the creation or strengthening of a dominant position on the markets for the exploration, development, production and sale of crude oil and natural gas.

B. Natural gas transportation and processing

38. The concentration raises competition concerns in the markets for: (i) natural gas transportation through pipelines in the Southern North Sea ('SNS'); and (ii) natural gas processing services in the SNS. These markets and the market for natural gas transportation through pipelines in the Northern North Sea ('NNS') will be dealt with further below.

Relevant product market

39. When natural gas emerges from the well head of a production facility, the stream contains gaseous hydrocarbons and hydrocarbon liquids. This unprocessed gas often requires transportation by pipeline to a facility at which it is processed by separating the gaseous and liquid constituents. Thereafter, the gaseous stream undergoes further processing/purification in order to produce gaseous hydrocarbons meeting the technical specification necessary for carriage in the transmission system into which it will be introduced ("pipeline quality gas"). Producers of natural gas carry out this

transportation and processing either through use of their own assets or, in some cases, by utilising pipelines and offshore/onshore gas processing facilities owned by other undertakings.

40. BPA is of the view that gas transportation and gas processing each fall in a separate product market. In the case of gas transportation, the relevant product market would be the market for the transportation by sub-sea pipeline of natural gas⁸. In the case of gas processing, BPA would regard the relevant product market as the market for processing natural gas.
41. Although the owners of a gas field require both transport and processing to be able to market their gas and will look for the cheapest overall combination, the Commission considers that it is appropriate to separate the transport and processing markets since the competitive conditions differ between transport and processing. For instance, it is apparent from the market investigation, that all combinations are possible between own (newly constructed) pipelines and/or processing facilities and third-party access (“TPA”) to existing pipelines and/or processing facilities.

Relevant geographic market

42. Arco's interests in the Community in gas transportation and processing infrastructure arise in relation to infrastructure located in only one Member State (the United Kingdom). These items of infrastructure are of two types: sub-sea gas pipelines and an interest in a gas processing facility. All of these assets are located on the part of the UK continental shelf lying to the east of the UK mainland and on the eastern UK mainland itself.
43. The relevant geographic market consists, from a demand perspective, i.e. owners of gas fields requiring transport and/or processing, of the (existing or newly constructed) infrastructure that forms a viable economic alternative. In this respect, the eastern part of the UK continental shelf can be divided into two areas: the NNS, which is the area of the North Sea lying to the north of latitude 55° N, and the SNS, the area of the North Sea lying to the south of latitude 55° N.
44. BPA considers that, although gas fields in the NNS could, in theory, look to processing facilities in the SNS, in most instances a gas field located in the NNS is likely to seek transportation to and processing of its output at NNS processing facilities. In fact, there is only one pipeline under construction linking an NNS gas field with a SNS processing facility.
45. Gas fields in the SNS have looked in the past, and will continue to look in the future, to the terminal areas on the coastline adjacent to the SNS for the processing of their output (although to a minor extent, SNS gas fields have invited bids for transportation via pipelines landing in the Netherlands). It is apparent from the market investigation that, for the SNS, unlike the NNS, the construction of new infrastructure is not a realistic alternative to the use of existing facilities since the SNS is a “mature gas province” where the new fields that might be discovered will be too small to support the construction of new infrastructure.

⁸ Arco has no interests in on-shore production fields.

46. For these reasons, BPA considers that, as regards the market for the processing of gas and the market for sub-sea pipeline transportation of gas, the NNS and the SNS are separate geographic markets. Since Arco has no equity interests in the NNS gas processing market, this market is not further considered.
47. However, the geographic market is not smaller than that of the regions as defined above. There is ample evidence that the options for a new field are not limited to the different facilities at a single location (e.g. three gas processing facilities at Bacton) and/or a single location served with different pipelines (e.g. the three pipelines servicing the Bacton-Amoco processing plant).
48. For the above reasons, the Commission considers that, for both gas transportation and gas processing, the SNS and the NNS constitute distinct geographic markets.

Position of the parties in the market⁹

(a) NNS Pipelines

49. Table 1 gives an overview of the eight different pipelines linking NNS gas fields to the NNS gas processing plants, together with the parties' respective equity ownership and the name of the operator. The Miller pipeline currently transports only minimal quantities of gas and will be expanded (see paragraph 59). In addition, there is one pipeline (SEAL) currently under construction that will link NNS gas fields with a SNS processing facility. Arco has a [...] % interest in this pipeline. Overall, BPA has an equity ownership in three pipelines and Arco has an equity ownership in two pipelines. There is no overlap in the parties' ownership interests and in four of the nine pipelines, the parties have no interest.

Table 1 : NNS Pipelines

Gas Processing Facility	Pipelines	BPA/ARCO Equity Ownership in Pipeline	Operator
St. Fergus (Shell/Esso)	FLAGS	0	Shell
	Fulmar	0	Shell
St. Fergus (Total)	Frigg (2 pipelines)	0	Total
	Miller	BPA []%	BPA
St Fergus (Mobil)	Britannia	ARCO []%	Conoco/ Chevron
	SAGE (Beryl)	0	Mobil
	SAGE (Brae)	BPA []%	Mobil
Teesside (BPA)	CATS	BPA []%	BPA
Bacton (Shell)	SEAL	ARCO []%	Shell

Parties' data

50. These ownership interests give the parties an equity interest of around [15-25%] of the total nominal gas transportation capacity of the nine gas pipelines (assuming the expansion of the Miller pipeline) mentioned above. Of the total expected gas

⁹ In this section the references to capacity are based on actual capacity as indicated by the market players. Those references therefore constitute business secrets of the respective players that cannot be meaningfully summarised in a non-confidential manner. Although the nameplate capacity of the infrastructure is publicly available, this has proven not to be a reliable indicator in all markets.

transportation throughput for 1999 of 5058 mmscfd¹⁰, the parties' equity interests in each pipeline multiplied by the expected actual throughput in each pipeline, gives them a market share of around [10-20 %] .

(b) SNS Pipelines

51. Table 2 gives an overview of the different pipelines linking the SNS gas fields to the SNS gas processing plants in Dimlington, Easington, Theddlethorpe and Bacton. It also sets out the equity ownership of each of the undertakings concerned and the name of the operator. It can be seen that BPA has an equity ownership in ten pipelines and Arco has an equity ownership in seven pipelines. The parties' ownership overlaps in four of them. In four of the 17 pipelines, the parties have no interest.

Table 2 : SNS Pipelines

Gas Processing Facility	Pipelines	BPA/ARCO Equity Ownership in Pipeline	Operator
Dimlington (BPA)	Cleeton	BPA 100%	BPA
Easington (BPA & British Gas each have a processing Facility)	West Sole (2 lines)	BPA 100%	BPA
	Rough (2 lines)	0	BG
	Amethyst	BPA []% ARCO []%	BPA
Theddlethorpe (Conoco)	Viking	BPA 50%	Conoco
	LOGGS	BPA 50%	Conoco
	Caister-Murdoch	ARCO []%	Conoco
	Pickerill	ARCO []% BPA []%	Conoco
	Sean	BPA []% ARCO []%	Shell
Bacton (Shell)	Leman (2 pipelines)	0	Shell
	Sole Pit	0	Shell
Bacton (BPA)	EAGLES	ARCO []%, BPA []%	ARCO
	Leman	BPA []%	BPAmoco
	Inde	BPA []%	
Bacton (Phillips)	Thames	ARCO []%	ARCO
	Hewett (two pipelines)	ARCO []%	Phillips
	Lancelot	0	Phillips

Parties' data

52. These ownership interests give the parties an equity interest of around [between 30% and 50%] of the total nominal gas transportation capacity of the gas pipelines in operation. Of the total expected gas transportation throughput for 1999 of 4225 mmscfd, the parties' equity interests in each pipeline multiplied by the expected actual throughput in each pipeline, gives them a market share of [between 30% and 40%] .
53. British Gas has a market share of around 15%, and Conoco has around 10%.

(c) SNS Gas Processing

54. Table 3 lists the seven SNS gas processing facilities with the parties' respective ownership interests and the name of the operator. It can be seen that the parties have an interest in five of these facilities (BPA 4 + Arco 1) and that there is no overlap. These

¹⁰ Million Metric Standard Cubic Foot per Day.

ownership interests give the parties an equity interest of [between 40% and 50%] of the total nominal SNS gas processing capacity (Arco less than [...]). Of the total expected gas processing throughput for 1999, the parties' equity interests in each processing facility multiplied by the expected actual throughput in each facility gives them a market share of [between 30% and 40%] .

Table 3: SNS Gas Processing

Gas Processing Facility	BPA/ARCO Equity Ownership	Operator
Dimlington	BPA 100%	BPA
Easington (BPA)	BPA 100%	BPA
Easington (BG)	0	BG
Theddlethorpe	BPA 50%	Conoco
Bacton (Shell)	0	Shell
Bacton (BPA)	BPA []%	BPA
Bacton (Phillips)	ARCO []%	Phillips

Parties' data

55. Conoco and Exxon/Shell each have around 15%.

Competitive assessment

56. A key element in the operation of UK pipelines and processing facilities is that unanimous agreement is required amongst all the owners of the infrastructure with regard to major decisions, including the conditions of third party access to the infrastructure. As the main competition concern arising from an interest in such infrastructure is the possibility for the infrastructure owners to constrain the development of new, competing gas fields, the position of an individual company will depend not so much on its equity capacity share, but on the total capacity, and especially spare capacity¹¹, of the infrastructure in which it has an interest.
57. An increase in ownership resulting from the concentration in a particular infrastructure will, therefore, not endow BPA with any greater influence over this pipeline than exists prior to the concentration.

(a) NNS Pipelines

58. Of the seven pipelines currently in operation (disregarding Miller and the Seal pipeline under construction), BPA has an interest in two and Arco has an interest in one. These pipelines account for only half of the total capacity. Since there is currently, and for the coming two to three years, no spare capacity in the NNS pipelines, the competitive constraints for the owners of new gas fields do not depend on the equity interests of the owners of NNS pipelines and thus, in the context of this procedure, on the equity interests of BPA and Arco. There is therefore no dominant position on this market.
59. These competitive constraints are not fundamentally changed by the fact that in 2002, at least two other pipelines will become operational. They are the SEAL pipeline, where Arco has a []% interest, and the Miller pipeline, in which the owners (BPA []%, Conoco []% and Enterprise []%) plan to reach a capacity level of 1200 mmcf/d

¹¹ Defined as the unused capacity available in the infrastructure regardless the origin of the actual gas throughput (equity gas of the owners of the infrastructure + gas for which a TPA agreement is concluded).

by 2002, accounting for less than [between 10% and 25%] of total capacity. The SEAL pipeline will accommodate transport of gas from own resources (newly developed gas fields), whereas the Miller capacity is targeted to accommodate transport of Third Party gas. Therefore, the transaction does not result in a change of market power of the merged entity vis-à-vis the owners of new gas fields since the SEAL pipeline in which Arco has an interest does not accommodate transport of gas from the owners of new gas fields. In other words, the notified operation does not lead to the creation or a strengthening of a dominant position.

(b) SNS Pipelines

60. As a result of the transaction, BPA will achieve an equity interest in 13 of the 17 existing pipelines. The total capacity of the pipelines in which the parties have an interest accounts for [greater than 60%] of total capacity and it is apparent from the market investigation that the four pipelines in which the parties do not have an equity interest have limited spare capacity. Therefore, BPA would be in a position to control the access to pipeline transport for new fields in the area since it controls the pipelines with free capacity in the area. Since the SNS is a “mature gas province”, it is not likely that further large fields will be discovered. It is, therefore, unlikely that new infrastructure will be built.
61. Therefore, the Commission concludes that the concentration will lead to the creation of a dominant position in the SNS pipeline transport market. BPA can use this position to the detriment of the owners of new (small) gas fields by asking high transport tariffs or offering a limited transport service.
62. BPA has argued that it would not have any market power in the SNS pipelines market as a consequence of the concentration because: (i) the SNS is a mature gas province with plenty of available capacity in the existing pipelines, (ii) new infrastructure can be built, and (iii) an industry custom exists that does not allow BPA to exercise its equity rights in more than one piece of competing pipeline infrastructure. The Commission does not accept these arguments for the following reasons.
63. The Commission recognises that there is overall capacity under-utilisation in the SNS pipelines and, therefore, severe competition could be expected between the different pipelines whenever a new field (generally much smaller than the original fields) wants to negotiate third party access in order to attract the additional transport tariff income. However, it is apparent from the market investigation that the pipelines in which the parties do not have an interest have only limited spare capacity.
64. Second, even BPA recognises that no new major gas pipelines have been constructed in the SNS since 1992. This is not surprising since the fields that have developed recently in the SNS area are so-called satellite fields of previously developed larger fields. Furthermore, it is not expected that new large fields will be discovered. No new pipelines are therefore expected to be constructed as the expected cashflow of satellite fields is too small to recover the investment needed for constructing a new, dedicated pipeline. In fact, such fields cannot, in general, be developed without guaranteed TPA to pipelines and processing facilities.
65. Thirdly, the parties refer to the “step out” custom in the UK oil and gas industry, under which, if two or more of the pipelines in which a company has an interest compete, that company abstains from exercising its right to vote in more than one of the pipeline

consortia. BPA argues that it is thereby prevented from being able to exercise its right of veto so as to divert gas for example from the Bacton-Amoco line (where it has [...]%) to the Bacton-Leman line (where it has [...]%). The step-out custom is a general recognition of the fact that companies can at times find themselves in a position of conflicting interests when they hold ownership interests in infrastructure that is in competition to submit an offer for transportation and/or processing services to a potential user. Although it is rare for step-out obligations to be contained in the contract documentation relating to ownership of the various pieces of infrastructure, the custom is well established in the UK oil and gas industry. BPA believes that due observance of the step-out custom is an important factor in complying with the principle of non-discrimination (as contained in the Offshore Infrastructure Code of Practice) and hence avoiding sanctions under UK domestic law (i.e., Section 17 of the Petroleum Act 1998 and Section 12 of the Gas Act 1995).

66. The Offshore Infrastructure Code of Practice (issued by the UK Government's Department of Trade and Industry) is a code adopted by all owners of offshore oil and gas transportation infrastructure and aims to ensure objectivity and transparency in the processes of making infrastructure available to third-party users. Section 17 of the Petroleum Act 1998 provides the legal basis upon which the UK authorities can require the granting to third parties of access to oil and gas pipelines on reasonable terms following an initial refusal by the infrastructure owners to do so. Section 12 of the Gas Act 1995 provides the legal basis upon which the UK authorities can require the granting to third parties of access to gas processing facilities on reasonable terms following an initial refusal by the facility owners to do so.
67. The market investigation has confirmed the existence of such a step-out custom as described by the parties. However, the 'step-out' custom is as such not a part of the voluntary Code of Practice. The respect of the custom, therefore, relies solely on the unilateral behaviour of all the companies concerned. The future behaviour of BPA would therefore only be constrained by its voluntary commitment to a custom which is not necessarily enforceable.
68. Even if it were accepted that the step-out custom is a reflection of the Code of Practice which in turn might be enforceable by the UK authorities, that would not be sufficient. The Commission cannot, in assessing concentrations pursuant to the stringent criteria of Article 2(3) of the Merger Regulation, accept that the presence of a regulator whose function is to monitor and sanction the behaviour of the companies in question justifies the conclusion that no dominant position is created.
69. The Commission considers therefore that the concentration would create a dominant position on the SNS gas pipelines market.

(c) SNS Gas Processing

70. The parties will have, as a consequence of the concentration, an interest in five of the seven gas processing facilities servicing the SNS sector. In addition, their share of the existing capacity and of the actual throughput is in excess of 40%. Furthermore, the two facilities in which the parties do not have an interest have a limited spare capacity at peak times. On the other hand, the facilities in which the parties have an interest have spare capacity in excess of 50% even at peak times. The merged entity might therefore be in a position to control the access for new fields in view of its sole ownership of two facilities and its shared ownership of three facilities where its control

results from the unanimity requirements in two of these facilities. The available free capacity at peak times in the third terminal (Bacton – BPA), where each of the participants is free to offer its spare capacity to third parties, accounts for less than [between 10% and 20%] of the total capacity. However, BPA owns [more than 25 %] of the total capacity in the terminal. The free capacity in this terminal available for the other owners only amounts to around 5% of the total capacity. In addition, it cannot be excluded that BPA could, in view of its operation of the terminal, further reduce the availability of this free capacity.

71. The arguments made by BPA as described above with regard to SNS pipelines have also been made for the SNS processing market. For the same reasons as expressed above, they cannot be accepted.
72. The concentration will therefore create a dominant position on the SNS gas processing market as well.

V.COMMITMENTS PROPOSED BY THE PARTIES

A. Commitments

73. BPA has given a commitment to the Commission to divest the equity interests that Arco currently holds in [certain pieces of SNS gas transportation and processing infrastructure]. These equity interests will be divested to one or more purchasers approved by the Commission. In addition, BPA has given a commitment not to re-acquire any of those assets without the Commission’s prior approval.
74. The full text of the undertakings is in the Annex.

B. Assessment

75. The divestiture by BPA of the interests held by Arco in those pipelines and processing facilities where BPA currently has no interest means that the competitive situation of BPA will be the same before and after the concentration. That is because, as indicated above, in the SNS pipelines and processing facilities TPA is accorded on the basis of unanimous agreement between the owners. The competitive situation therefore depends on the number of pipelines in which a company has an interest and the total spare capacity of those pipelines. The divestiture of the equity interests in the “additional” infrastructure therefore eliminates the overlap on the relevant markets between BPA and Arco. The Commission therefore concludes that, as a consequence of the commitments, there will be no creation of a dominant position on the relevant markets.

VI. CONCLUSION

76. Having regard to Article 10(2) of the Merger Regulation, the Commission concludes that the commitments given by BPA are sufficient to remove its serious doubts, identified in its decision initiating proceedings and in its subsequent investigation of the operation, in relation to Article 2(2) of the Merger Regulation.
77. The operation is, therefore, subject to the condition of full compliance with the commitments in the Annex, compatible with the common market and with the EEA Agreement.

HAS ADOPTED THIS DECISION :

Article 1

Subject to the condition of full compliance with the commitments with regard to the divestiture of [certain pieces of SNS gas transportation and processing infrastructure] which are set out in the Annex, the concentration notified by BP Amoco plc on 4 May 1999 relating to the acquisition of control of Atlantic Richfield Company is declared compatible with the common market and with the EEA Agreement.

Article 2

This Decision is addressed to:

BP Amoco p.l.c.
Britannic House
1, Finsbury Circus
UK – London EC2M 7BA

Done at Brussels, 29.09.1999

For the Commission,

Mario MONTI
Member of the Commission

Undertakings presented by BP Amoco p.l.c. pursuant to Article 8(2) of Council Regulation (EEC) No 4064/89 with a view to eliminating competition concerns

1. Definitions

1.1 In these undertakings:

"ABL" means Arco British Limited (a wholly owned subsidiary of ARCO);

"Approval Date" means the date of the Decision issued by the Commission pursuant to Article 8(2) of Council Regulation (EC) 4064/89 declaring the concentration between BPA and ARCO compatible with the Common Market subject to BPA complying with the undertakings set out herein or, in the absence of any such Decision, the date upon which, pursuant to Article 10(6) of that Regulation, the said concentration is deemed to have been declared compatible with the Common Market;

"ARCO" means Atlantic Richfield Company;

"BPA" means BP Amoco p.l.c.;

"BP Amoco Affiliate" means any company over which, for the purposes of Article 3(3) of Council Regulation (EC) 4064/89, BPA has the possibility of exercising decisive influence;

"Commission" means the Commission of the European Communities;

[...]

"Merger Agreement" means the Agreement and Plan of Merger dated as of 31st March 1999, and made among BPA, ARCO and Prairie Holdings, Inc;

"Nominee" means the person appointed by BPA pursuant to paragraph 2.5, 2.6 or 2.7 (as the case may be) below;

"Relevant Assets" means the following: [...]

[...].

2. Divestment of Relevant Assets and Related Matters

- 2.1** BPA hereby undertakes to the Commission:
- 2.1.1** to procure that ABL shall, no later than by [a specified time], have transferred legal title to the Relevant Assets to one or more purchasers approved by the Commission; and
- 2.1.2** not without the Commission's prior approval to re-acquire, and to procure that the BP Amoco Affiliates shall not without the Commission's prior approval re-acquire, any of the Relevant Assets, provided that if by the fourteenth day after the date upon which BPA sends a written request to the Commission seeking such approval, the Commission has not given written notice to BPA denying such approval, the Commission shall be deemed to have given such approval.
- 2.2** If at any time after the Concentration Completion Date the Commission has reasonable grounds to suspect that BPA is failing to comply diligently with the undertaking given in paragraph 2.1.1 above, the Commission shall have the power to appoint a Trustee.
- 2.3** If by [a specified date], ABL has not transferred legal title to the Relevant Assets to one of more Purchasers approved by the Commission, BPA shall appoint a Trustee.
- 2.4** The appointment of a Trustee pursuant to paragraphs 2.2 and 2.3 above shall be effected, and the mandate of any Trustee so appointed, shall be as described in the Appendix hereto.
- 2.5** By [a specified date] after the Approval Date, BPA shall submit to the Commission the name of a person, independent of BPA, who BPA considers appropriate (in view of that person's knowledge and experience) to act as BPA's nominee (the "Nominee") for the purposes of participating after the Concentration Completion Date in any discussions with the owners of equity interests in the Relevant Assets and exercising ABL's right to vote at meetings of the Operating Committees of the Relevant Assets in regard (in either case) to the transportation and/or processing in any of the Relevant Assets of gas owned by any party which does not own an equity interest in the Relevant Asset in question.
- 2.6** If the Commission rejects the name submitted to it by BPA pursuant to paragraph 2.5 above, BPA shall, within seven days of receiving written notice of such rejection, submit the name of an alternative person to act as Nominee, provided that if by the fourteenth day after that date upon which BPA submits the name of a person to act as Nominee (whether pursuant to paragraph 2.5 above or pursuant to this paragraph 2.6), the Commission has failed to give BPA written notice of rejection of the person so named, that person shall be deemed to have been approved by the Commission to act as Nominee.
- 2.7** In the event that the Commission, upon reasonable grounds, rejects two individuals proposed consecutively by BPA to act as Nominee, the Commission shall name an alternative individual having the requisite degree of knowledge and experience to act as Nominee, and within seven days of the Commission having done so, BPA shall appoint that person as Nominee.

2.8 If upon reasonable grounds the Commission considers that the Nominee is failing to carry out diligently his/her mandate, the Commission shall be entitled to give written notice thereof to BPA, in which event a new person shall be appointed (in accordance with the procedure described in paragraphs 2.5 - 2.7 above, mutatis mutadis) to act as Nominee.

2.9 The Nominee's mandate shall be to ensure that during the period commencing on the Concentration Completion Date and ending on the date upon which legal title to a Relevant Asset is transferred to a purchaser approved by the Commission, ABL's rights under the Operating Agreement (or similar) in relation to the transportation and/or processing in that Relevant Asset of gas owned by parties who have no equity interest in that Relevant Asset, are exercised in the best interests of the Relevant Asset in question. In addition to the foregoing, the Nominee shall from time to time (and no less frequently than every two months) provide a written report to the Commission on progress in the discharge of the Nominee's mandate.

3. Notices and Other Communications

3.1 All notices and other written communications between the Commission and BPA required by or relating to the undertakings contained herein (including the Appendix hereto) shall be sent by facsimile or by overnight courier to the following number/address:

If to the Commission:

- if by facsimile : 00 322 296 43 01;
- if by courier:

Commission of the European Communities (DGIV B)
150 Avenue Cortenbergh
Brussels
Belgium

marked for the attention of The Director in Charge of Merger Control;

If to BPA:

- if by facsimile : 00 44 171 496 4571;
- if by courier:

BP Amoco Legal
BP Amoco p.l.c.
Britannic House
1 Finsbury Circus
London EC2M 7BA
United Kingdom

marked for the attention of Juan A. Rodriguez, Solicitor.

3.2 Each notice and other communication sent by facsimile shall be deemed to have been received on the day and at the time indicated in the transmission report issued by the facsimile unit from which the said notice or other communication was sent unless such time is after 5:00pm in the country of receipt or such day is not a working day in the country of receipt, in which event the said notice or other communication shall be deemed to have been received at 10:00am on the next working day in the country of receipt. Each notice and other communication sent by overnight courier shall be deemed to have been received on the day and at the time indicated in the acknowledgement of receipt given to the individual who effects such delivery unless such time is after 5:00pm in the country of receipt or such day is not a working day in the country of receipt, in which event the said notice or other communication shall be deemed to have been received at 10:00am on the next working day in the country of receipt.

4. Reports and Approval of Purchaser(s) of Relevant Assets

4.1 BPA shall:

4.1.1 promptly inform the Commission of all material developments (including but without limitation the identity of any proposed purchaser of the Relevant Assets) that relate to the compliance by BPA with the undertakings set out herein; and

4.1.2 every two months during the period commencing on the Approval Date and ending at such time as legal title to the Relevant Assets has been transferred to one or more purchasers approved by the Commission), send to the Commission a written report describing the current status of the divestment process being followed in relation to the Relevant Assets.

4.2 At such time as BPA gives notice to the Commission of the identity of any proposed purchaser of any of the Relevant Assets, BPA shall include in such notice such information as BPA possesses in regard to the matters indicated in (i) - (iv) of paragraph 4.3 below.

4.3 The Commission shall use its best endeavours to inform BPA within fourteen days after receiving any notice sent pursuant to paragraph 4.2 above of the suitability of any proposed purchaser(s) of the Relevant Assets. The Commission, in determining whether any proposed purchaser is suitable, will take into account whether the prospective purchaser concerned: (i) appears to it to possess the status and resources necessary to own the Relevant Asset in question as a viable competitor to BPA, (ii) is independent of BPA, (iii) can be shown not to have significant and relevant commercial connections with BPA which may call into question its independence from BPA and, (iv) has, or reasonably can obtain, all necessary approvals from the relevant competition authorities and other regulatory authorities in the European Community and elsewhere (if necessary). If by the end of the fourteenth day after receiving any notice sent pursuant to paragraph 5.2 above, the Commission has not given BPA written notice of rejection of any proposed purchaser (specifying in reasonable detail the reasons for such rejection), the proposed purchaser(s) named in that notice shall be deemed to have been approved by the Commission as suitable to purchase the Relevant Asset in question.

5. Duration of Undertakings

The undertakings given by BPA herein shall automatically lapse if and at such time as the Merger Agreement is terminated pursuant to Article V thereof, or, if for any other reason, the proposed concentration between BPA and ARCO does not proceed or is abandoned.

APPENDIX

- 1(a) If the Commission decides to exercise the powers referred to in paragraph 2.2 above, it shall request BPA to propose to the Commission, within seven days of BPA receiving notification of such request, the names of at least two experienced investment banks or similar such institutions, independent from BPA, whom BPA considers appropriate to be appointed as Trustee.
 - (b) If by the later of the Relevant Date and the Concentration Completion Date, ABL has not transferred legal title to the Relevant Assets to one or more purchasers approved by the Commission, BPA shall, by the seventh day after the later of the Relevant Date and the Concentration Completion Date, propose to the Commission the names of at least two experienced investment banks or similar such institutions, independent from BPA, whom BPA considers appropriate to be appointed as Trustee.
 - (c) The Commission shall have the discretion to approve or reject one or both of the names submitted by BPA pursuant to paragraphs 1(a) and/or 1(b) of this Appendix, save that if by the fourteenth day after the date upon which BPA submits such names, the Commission has not given BPA written notice that the Commission rejects the institutions so named by BPA, such institutions shall be deemed to have been approved by the Commission. If, pursuant to the foregoing, only one name is approved, BPA shall appoint the institution concerned as Trustee. If more than one name is approved, BPA shall be free to choose the Trustee to be appointed from among the names approved.
 - (d) If all the names submitted pursuant to paragraph 1(c) of this Appendix are rejected, BPA will submit the names of at least two further such institutions (“the further names”) within seven days of being informed of the rejection. If only one further name is approved by the Commission (or deemed to have been so approved because the Commission has failed within fourteen days of receiving the further names to have given BPA written notice that the Commission rejects such further name), BPA shall appoint the institution concerned as Trustee. If more than one further name is approved, BPA shall be free to choose the Trustee to be appointed from among the names approved.
 - (e) If all further names are rejected by the Commission, the Commission shall nominate a Trustee to be appointed by BPA.
2. As soon as the Commission has given approval to one or more names submitted, or nominated a Trustee, BPA shall appoint the Trustee concerned within seven days thereafter.
 3. The Trustee’s mandate shall comprise the following functions:
 - (a) to monitor BPA's maintenance of the viability and market value of the Relevant Assets, and that each of the Relevant Assets is being operated in the normal course of business and consistent with its status;
 - (b) to monitor the satisfactory discharge by BPA of its obligations under the undertaking given in paragraph 2.1.1 above (save that any Trustee appointed pursuant to paragraph 2.3 above shall, in addition to the other duties forming

part of his/her mandate, be required by [...] after his/her appointment to transfer legal title to the Relevant Assets to one or more purchasers approved by the Commission [...]). In particular, the Trustee shall:

- (i) monitor and advise the Commission as to the adequacy of the procedure for selecting purchasers to purchase the Relevant Assets and as to the conduct of the negotiations with each such purchaser;
 - (ii) monitor and advise the Commission as to whether the agreements to be entered into with each purchaser of one or more of the Relevant Assets will properly provide for the divestiture of the Relevant Asset(s), as provided for in the undertaking given in paragraph 2.1.1 above; and
- (c) to provide written reports (“the Trustee's reports”) to the Commission on progress in the discharge of the Trustee’s mandate, identifying any respects in which he/she has been unable to discharge his/her mandate. Such reports shall be provided at regular monthly intervals commencing one month after the date of his or her appointment, or at such other time(s) or time periods as the Commission may specify.
4. At any time during the term of the Trustee’s appointment, the Commission may, if on reasonable grounds, it believes that the undertaking given in paragraph 2.1.1 above is not being properly complied with, request the Trustee to carry out the following additional functions (“the Request”), and the Trustee’s mandate shall be deemed to be extended accordingly (save that in the event of conflict with the initial functions (as specified in paragraph 3 of this Appendix), the Trustee shall give priority to the discharge of these additional functions):
- (a) to ensure that the Relevant Assets are not being operated other than in the normal course of business consistent with their status;
 - (b) to ensure the proper divestment of the Relevant Assets;
 - (c) in the Trustee’s reports, or in any event within no later than one month of being notified of the Request, to submit to the Commission a proposal for the method and timescale proposed by the Trustee for the divestiture in accordance with the undertaking given in paragraph 2.1.1 above of the Relevant Assets (in which event the Commission will, as soon as reasonably practicable, approve the proposal or indicate any changes that it may require);
 - (d) in the Trustee’s reports, or as soon as negotiations are entered into with prospective purchasers, to provide to the Commission sufficient information to enable the Commission to decide on the suitability of the purchaser(s) in question;
 - (e) to break off negotiations with any prospective purchasers, or to instruct BPA to break off such negotiations, if it appears to the Commission that the negotiations concerned are being conducted with an unsuitable purchaser; and
 - (f) to submit to the Commission for approval an agreement for sale and purchase of the Relevant Assets (or any of them); such agreement to be unconditional on both purchaser and seller and irrevocable except for the approval(s) required

from the Commission, and any approvals required from any other authority or person.

5. BPA undertakes to provide the Trustee with all such assistance and information, including copies of all relevant documents, as he or she may reasonably require in carrying out his or her mandate, and to pay reasonable remuneration for his/her services.
6. If BPA should announce that the proposed concentration between BPA and ARCO has been irrevocably abandoned, the Trustee's mandate(s) shall be deemed to be discharged, and his/her appointment shall forthwith be terminated.