

***Case No COMP/M.1820 -  
BP / JV DISSOLUTION***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION

Date: 02/02/2000

*Also available in the CELEX database  
Document No 300M1820*



## COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 02.02.2000

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir,

**Subject: Case No COMP/M.1820 – BP / JV Dissolution**

Notification of 21 December 1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 21.12.1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89<sup>1</sup> (“the Merger Regulation”) by which BP Amoco p.l.c. (“BPA”) (United Kingdom) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of parts of the BP/Mobil Joint Venture (“the JV”). The JV will be dissolved. The vendor is Exxon Mobil Corporation (“ExxonMobil”) (USA).
2. On 22 December 1999, the Commission decided, pursuant to Article 7(4) of the Merger Regulation, to grant a derogation from the obligation, imposed by Article 7(1) of the Merger Regulation, to suspend the implementation of a concentration until it has been declared compatible with the common market pursuant to a decision under Article 6(1) (b) or Article 8(2) or on the basis of a presumption according to Article 10(6).
3. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

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<sup>1</sup> OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

## I. THE PARTIES

4. **BPA** is active in the exploration, production, refining, marketing and transportation of crude oil, natural gas, petroleum products and petrochemicals. On 29 September 1999, the Commission cleared BPA's acquisition of control of Atlantic Richfield Company<sup>2</sup>. However, this transaction has not yet been completed.
5. The JV<sup>3</sup> between BPA and Mobil Corporation ("Mobil") combined BPA's and Mobil's European fuel and lubricants businesses. By means of this transaction, BPA will acquire certain parts of the JV, the vendor (and the acquirer of the remainder<sup>4</sup>) being ExxonMobil (see further below).
6. The parts that BPA will acquire, referred to hereafter as "**the Business**" are:

### Fuels Business

BPA is to receive or retain all of the JV's fuels assets/activities (including Mobil's interests in the Coryton refinery), except: -

- the Gravenchon refinery's fuels leg and related assets;
- the bitumen marketing business at Dunkirk and Gravenchon;
- approximately [...] ExxonMobil branded service stations (which had been preserved in a number of EU jurisdictions in order to protect the Mobil trademark in Fuels);
- [an arrangement relating to Aral]; and
- [an arrangement for the working capital of the JV's fuels businesses].

### Lubricants business

The JV's lubricants business is to be split between BPA and ExxonMobil. BPA will acquire sole control over:

- the Coryton refinery's base oil manufacturing plant and the Neuhof base oil manufacturing plant (and the associated "special products"<sup>5</sup> and bitumen marketing businesses sources therefrom);

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<sup>2</sup> Case COMP/M.1532 – BP Amoco / Arco.

<sup>3</sup> Case IV/M.727 – BP / Mobil, decision of 7 August 1996.

<sup>4</sup> Case COMP/M.1822 – Mobil / JV dissolution, notified on January 4, 2000.

<sup>5</sup> This includes products such as white oils and paraffin waxes.

- the JV's lubricants businesses in Southern Europe (i.e. Greece, Portugal and Spain and related smaller jurisdictions);
  - The JV's Commercial Vehicle Lubricants ("CVL") Business (excluding Mobil branded CVL distributors);
  - BP and Duckhams branded Passenger Vehicle Lubricants ("PVL") business and all its branded distributors;
  - the Gent, Neuhof and Greek Batsons blending plants (as well as a 45% interest in a Turkish blending plant on the Bosphorus; the other 55% will remain with ExxonMobil).
  - BPA will also receive a balancing payment in cash since BPA will not be taking in kind quite its full 49% share of the JV's lubricants business.
7. In addition, the notification also indicates that BPA will acquire certain aviation fuel pipeline interests from Mobil.

## **II. CONCENTRATION**

8. The Concentration arises from the Statement of Principles ("SOP") signed on 30 November 1999 by BPA, Mobil Corporation and Exxon Mobil Corporation and the Transition Protocol ("TP") signed by those same parties on 16 December 1999. The SOP defines the manner in which the JV will be split (see above). The acquisition of sole control over the Business will be effected on 1 January 2000 by virtue of the TP giving immediate and binding effect to the key parts of the SOP, including the clauses whereby as of 1 January 2000, defined as the Economic Effective Date ("EED"), all risk and benefit from the operation of the Business will be for BPA's account and BPA will assume responsibility for the day-to-day co-ordination and management of the Business.
9. The TP does not deal with the aviation fuel pipeline interests that are only described in the SOP. [...].
10. The notified operation, limited to the Fuels and Lubricants businesses as described above, constitutes a concentration pursuant to Article 3(1)(b) of the Merger Regulation.

## **III. COMMUNITY DIMENSION**

11. The combined aggregate world-wide turnover of the undertakings concerned (BPA and the Business) exceeds EUR 5 000 million and the aggregate Community wide turnover of each party exceeds EUR 250 million. They do not achieve more than two-thirds of their turnover in one and the same Member State. The notified operation therefore has a Community dimension. It does not constitute a co-operation case under the EEA agreement.

#### IV. ASSESSMENT

12. The concentration follows the commitments given to the Commission by Mobil and Exxon Corporation (“Exxon”) on 20 September 1999 to divest certain of Mobil’s interests in the JV. The Commission decision of 29 September 1999 whereby the merger between Exxon and Mobil is declared compatible with the common market and the functioning of the EEA Agreement is conditional on the compliance with the commitments offered (Case COMP/M.1383 – Exxon/Mobil).
13. In assessing the Exxon/Mobil merger, the Commission identified competition problems on the fuel retailing markets in Austria, Germany, Luxembourg, the Netherlands, the United Kingdom and on French motorways. In order to remedy these concerns, Exxon and Mobil committed to, amongst others, “the dissolution of the BP/Mobil JV with substantially all of the fuels assets being acquired by BPA”. As BPA had no fuel retailing activities in Europe other than via the JV, the notified operation does not create or strengthen a dominant position on the fuels markets.
14. The Commission also identified, in its Exxon/Mobil investigation, competition concerns with regard to the EEA market for Group 1 base oils. In order to remedy these concerns, the Commission accepted the commitment whereby “the control over approximately [...] barrels per day of base oil manufacturing capacity would be transferred (or returned) to BP Amoco and/or one or more third parties to be approved by the Commission.” This was further specified by means of “a transfer of ownership of the Coryton base oil manufacturing plant and (...) the Neuhof base oil manufacturing plant (...)” As BPA had no base oil activities in Europe other than via the JV, this acquisition does not create or strengthen a dominant position on the base oil markets.
15. With regard to the finished (automotive and industrial) lubricants markets and all other possible markets in which the Business is active (refining of fuels and ex-refinery sales; non-retail sales of fuels and bitumen), BPA had no activities on these markets within Europe other than via the JV. Furthermore, the Commission found in its Exxon/Mobil investigation that that merger (combining Exxon’s business together with the joint control over the JV business) would not create a competition problem on these markets. The concentration, re-establishing BPA as an independent competitor in these markets, will, therefore, not create or strengthen a dominant position on any of the lubricants markets, nor on the other possible markets.

#### Ancillary clauses

16. The clauses described below all relate to base oil and finished lubricants. In assessing their nature, it has be taken into account that the lubricant businesses that will be acquired by BPA have been operated by Mobil for the last three years<sup>6</sup>.

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<sup>6</sup> BPA and Mobil had joint control over all the JV’s activities, but BPA operated the fuels business and Mobil operated the lubricants business.

This implies that Mobil has much greater detailed knowledge of the customer base and it has the expertise, know-how and technology associated with the manufacture and the servicing and product development. In addition, ExxonMobil will become one of BPA's most important competitors and with the combination of Exxon's and Mobil's lubricants businesses coupled with Mobil's detailed knowledge and relationships with the customer base of the business acquired by BPA, ExxonMobil could, without the protection offered by some of the clauses described below, easily re-establish its lubricants market position to the detriment of BPA.

#### *Non-competition obligations*

17. For three years, ExxonMobil agrees not to compete in the [...] with the [...] business to be acquired by BPA using [...]. ExxonMobil may compete using [...]. In addition, Mobil distributors may continue to compete in the [...] using [...].
18. For five years, ExxonMobil may not compete in [...] with any part of the [...] businesses to be acquired by BPA using [...], or in [...] using [...]. ExxonMobil may compete using [...].
19. For three years, ExxonMobil may not compete in [...] in the [...] using [...]. ExxonMobil may compete using [...].
20. In general, non-competition obligations of up to three years can be considered reasonably necessary and directly related to the implementation of the concentration when the transfer includes elements of goodwill and know-how. In the present case, this is reflected in the contractual clauses for the products and countries indicated in the above paragraphs 17 and 19. BPA has argued that a five year period is required in [...] as [...] BPA has acquired the [...] businesses and the [...] business which will make them, according to BPA, particularly vulnerable as ExxonMobil has acquired the [...] and the [...]. However, the Commission considers that this vulnerability is not sufficiently motivated to justify a five year duration of the non-compete obligations as directly related and necessary to the concentration. Consequently, this decision does not cover the non-compete obligations beyond the period of three years.
21. By acquiring the [...] businesses in [...], BPA has acquired [...] ExxonMobil's [...] activities in [...]. The protection against competition from the vendor, i.e. ExxonMobil with the [...], is therefore, for a three year duration, considered ancillary to the concentration.

#### *Non-solicit obligations*

22. For five years, ExxonMobil may not solicit [...] customers of the [...] businesses to be acquired by BPA (except for [...] customers), so long as they are [...] customers, using either [...].
23. For [...] customers (mostly [...] customers that also purchase [...]), ExxonMobil may not solicit BPA's [...] business for five years.

24. The Commission agrees with BPA that five years is reasonably necessary and directly related to the implementation required because BPA acquires the goodwill but only has the benefit of the [...] for [...]. With regard to the [...] customers, the five years is also required as [...].

*Supply and purchase agreements*

25. Existing supply arrangements will continue on current terms in relation to [...]. New [...] supply arrangements will be entered into where necessary either on current terms or on [...] terms whichever is more favourable. The total duration of the (existing and new) agreements is at most five years from 1<sup>st</sup> January 2000. A five year time period has been agreed in particular with regard to the output of the [...]. For some other [...] the parties have already limited the duration of the supply arrangements to [less than five years]. All the agreements are non-exclusive.
26. At BP's request, ExxonMobil will purchase [...] metric tonnes of [...] a year (i.e., about [...] out of [...] barrels output per day) from [...] for [less than five years] years. No [...] purchases will be made by ExxonMobil from BP at [...]. Mobil shall supply [...] to BP at [...] including the supply for up to five years of [...] as currently apply within the JV and [...] on the same bases as currently apply within the JV.
27. The Commission considers that the above agreements are reasonably necessary and directly related to the implementation of the concentration for the reasons given below.
28. BPA has indicated that the obligations on Mobil to continue the existing supply arrangements and to meet the requirements of the ongoing [...] business will enable it to ensure continuity of the [...] business it is acquiring. The different time periods reflect the time BPA needs to establish its own alternative technology and packaging, to find alternative sources of supply and to obtain the necessary product approvals.
29. The five year [...] supply agreement in [...] is a direct consequence of the fact that, [...], Mobil will be acquiring the [...] ([...]). The agreement therefore ensures the continuity of supply for BPA as there appear to be no immediate economically viable alternatives available to fulfil BPA's total demand for this area. There is a particular need for continued supply from [...] of [...] meeting BPA's specification (targeted specially at the [...] region) as the JV had invested in the necessary equipment only at [...]. Failure to secure that supply would, therefore, jeopardise BPA's continued ability to supply [...].
30. So far as the requirement that Mobil purchase [...] metric tonnes of [...] a year from [...] is concerned, BPA regards this provision as essential to enable it to become a [...] in, amongst others, the [...]. It is for a duration of [less than five] years. BPA has agreed to acquire [...] from the JV, but the [...] capacity [...] will still exceed the requirements of [...] BPA [...]. The volume to be supplied to Mobil represents [...] and it is also roughly the requirement that Mobil takes to supply its [...]. If BPA did not enter into the purchase arrangements with Mobil

for the sale of this surplus capacity on [...], the most likely alternative, in this interim period, would be [...]. [...].

## **VII. CONCLUSION**

31. 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.

For the Commission,

Mario MONTI  
Member of the Commission