EN

Case No COMP/M.1859 - ENI / GALP

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 29/06/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

Dear Sirs,

Subject: Case No COMP/M.1859 – ENI/GALP
Notification of 24.05.2000 pursuant to Article 4 of Council Regulation (EEC) No 4064/89

1. On 24 May 2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the Italian energy company ENI S.p.A., through its subsidiaries AgipPetroli S.p.A. ("AGIP"), Snam S.p.a. ("SNAM") and Società Italiana per il Gas per Azioni ("ITALGAS"), acquires joint control of the Portuguese refiner Petróleos e Gás de Portugal, SGPS, S.A. ("GALP"). This is done by way of purchase of shares, in particular from the Portuguese State which had sole control over GALP.

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. AGIP, SNAM and ITALGAS (the 'ENI companies') are respectively active in the refining and marketing of petroleum products, the supply and transmission of natural gas and the retail distribution of natural gas and water supplies in Italy. All aforementioned companies are controlled by the State-owned Italian energy company ENI, that is active world-wide in the oil and gas, petrochemicals and engineering sectors.

4. GALP is a holding company, controlled by the Portuguese State, combining its interests in the Portuguese oil company Petrogal (active in the refining, transport,

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storage and marketing of petroleum products principally in Portugal) and the Portuguese gas companies Gás de Portugal and Transgás that operate the Portuguese gas transmission network and which have interests in local gas distribution companies.

5. The notified operation concerns the acquisition of joint control by the ENI companies, over GALP, an undertaking previously independent of the ENI companies and exclusively controlled by the Portuguese State . As a result of the transaction, the ownership of GALP will be restructured, with the Portuguese State holding 48,31%, the ENI companies 33,34%, the Portuguese electricity company EDP 14,27%, the Spanish electricity utility company IBERDROLA having 4% and NETGÁS/PORTGÁS holding the remaining 0,4%.

II. CONCENTRATION

6. The Shareholders Agreement provides that the Portuguese State and the ENI Companies shall co-ordinate their positions in GALP's management board and shareholders meeting and that strategic decisions will require the agreement of both the Portuguese State and the ENI companies. As such, the proposed concentration is an acquisition of joint control within the meaning of Article 3(1)(b) of the Council Regulation.

III. COMMUNITY DIMENSION

7. The combined aggregate worldwide turnover of the undertakings concerned (1999 figures) exceeds € 5000 million. The aggregate Community-wide turnover of each party exceeds € 250 million. They do not achieve more than two-thirds of their aggregate Community-wide turnover within in one and the same Member State. The notified operation, therefore, has a Community dimension according to Article 1(2) of the Merger Regulation.

IV. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product markets

8. The economic sectors involved in the concentration are the upstream and downstream oil industry, the production and sale of natural gas and the production and sales of various (petro-)chemical products. While the ENI companies and GALP are both active in a wide range of activities at all levels of the oil and gas industry, there is very limited geographic overlap between their businesses. As such, the effects of this concentration will be in the oil industry, more specifically the marketing of petroleum products and only to a small extent in the area of petrochemicals.

MARKETING OF PETROLEUM PRODUCTS

9. At the distribution level downstream of refining, the operation covers the retail sales of motor fuels and the non-retail sales of fuels. As concluded by the Commission in BP/Mobil[1] and Exxon/Mobil[2], retail sales and non-retail sales are to be considered as distinct product markets. Concerning the retail sales of motor fuels, the

[1] Case N° IV/M. 727 - BP/Mobil

[2] Case N° IV/M. 1383 - Exxon/Mobil

Commission's previous conclusion not to further distinguish motor fuels can be maintained as there is a considerable degree of supply side substitutability at the refining level. In addition, the distribution of these products is made at the same point of sales in order to serve the maximum number of automotive customers (market shares for each type of fuel roughly coincide with the aggregate market share). It is not necessary to ascertain whether fuel retail sales on motorways constitute a market different from off-motorways retail sales. Firstly, ENI (operating under the AGIP brand) does not have service stations located along motorways in the affected geographical market. Secondly, even in a market limited to off motorways sales, the operation would not lead to competition concerns.

10. As concluded in BP/Mobil, in the non-retail market, it is not possible to aggregate the different types of fuels into one category as each refined product constitutes a relevant product market. Non-retail sales of fuels is therefore further subdivided into sales of gasoline, diesel, fuel oil and LPG.

PETROCHEMICAL PRODUCTS

11. The operation creates horizontal overlaps in the Community in four chemical products, namely, benzene, toluene, orthoxylene and paraxylene. The question whether each of these products constitutes a product market in itself may be left open in the present case, as, no matter the exact delineation of the market, effective competition would not be significantly impeded in the EEA or any substantial part of it.

B. Relevant geographic market

12. In line with the findings in Exxon/Mobil concerning motor fuel retailing in other countries the Commission has found that this activity corresponds to a national market in Portugal as well.

13. The parties argue that the relevant geographic market for the non-retail fuel products is at least national. This is because, even if the products are distributed on a sub-national level, there is price transparency, overlapping supply boundaries and supply agreements between suppliers. On the other hand, the Commission has found in previous cases[3] that the geographic market can be narrower in scope as resellers and end-users seek to economise on transportation costs. As such, each point of supply can supply a certain geographic area (hinterland), of which the radius is a function of the transport costs for transporting the products to the final destination. However, since the operation does not raise competition problems under any envisegeable market definition.

14. In the Parties' view, the relevant geographical market for petrochemicals (and with specific reference to paraxylene) is at least EEA-wide. The market investigation has not indicated elements that could contradict this view. For the purpose of the present notification, it can be left open whether the market could be wider than EEA, as even under any wider definition of the market, competition would not be significantly impeded in the EEA or any substantial part of it.

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[3] Case N° IV/M. 1383 - Exxon/Mobil, Case N° IV/M. 1628 - TotalFina/Elf

V. ASSESSMENT

MARKETING OF PETROLEUM PRODUCTS

15. Concerning the marketing of petroleum products, the transaction involves four affected markets: retail sales of motor fuels in Portugal, non-retail sales of motor gasoline in both Portugal an Spain and non-retail sales of diesel in Portugal.

Portugal

16. Concerning retail sales of motorfuels in Portugal, the parties' combined market shares will amount to [45%-50%] on an overall market covering motorways and non-motorways. Although GALP's leading position [45%-50%] is uncontested, the competitive conditions in this market will not be appreciably changed through the operation as the addition of ENI's share (through AGIP) represents a mere [0%-5%]. Several strong multinational oil companies such as BP Amoco [20%-25%], Shell [15%-20%], Repsol [5%-10%] and a growing number of recent entrants, both independent "white pumps" and hypermarkets, will continue to compete. The situation would essentially be the same if the relevant product market were limited to retail sales off motorways. The combination of GALP's and ENI's activities in the said market would thus not lead to the creation or strengthening of a dominant position.

17. On the non-retail markets in Portugal (gasoline and diesel), the liberalisation has led to the emergence of competition from non-vertically integrated players. The effect of ENI's disappearance as a supplier unconnected to GALP on this market is considered as minimal by the market, as ENI purchases almost all the motor fuels it resells in Portugal from GALP. Through Petrogal, GALP controls and operates Portugal's only two crude oil refineries, located in Porto and Sines, and almost all the distribution logistics infrastructure (import terminals / storage facilities / pipelines) in the country. Third parties have indicated that this poses difficulties for both non-vertically integrated players and for vertically integrated players to have product access and that this may make it difficult for new players to enter the market. However, the operation will not appreciably change the competitive conditions in the market as ENI has no interests in any infrastructure of the logistic chain

18. The other competitors depending on supply and infrastructure would thus not be in a worse situation than before the operation. In particular, they should be able to win the market shares formerly held by ENI if this company would raise its prices to adapt them to GALP's prices. Although being fully supply dependent on GALP, these competitors have obtained significant market shares, as illustrated by the following figures (concerning a possible national market and for diesel and for gasoline respectively): Repsol [5%-10%] respectively [20%-25%], BP/Amoco [15%-20%] respectively [15%-20%], Cepsa [10%-15%] respectively [10%-15%] and Shell [15%-20%] respectively [0%-5%]. For these reasons, the arithmetical addition of ENI's market shares [0%-5%] respectively [5%-10%] to GALP's existing shares [35%-40%] respectively [35%-40%] is not sufficient to conclude that the operation would create or strengthen a dominant position.

Spain

19. The concentration of Galp and ENI will not pose further additional supply difficulties for non-vertically integrated players in the oil market because non-vertically integrated players are not supply dependent on GALP or ENI (the parties do not own or operate crude oil refineries in Spain), nor is there any control by the parties on the logistical infrastructure. This infrastructure is, on the contrary, de facto controlled by the Compania Logistica de Hidrocarburos (CLH) in which Repsol, Cepsa and to a smaller extent BP Amoco and Shell participate. These are moreover the leading players in Spain, as illustrated by the following figures: Repsol [40%-45%], Cepsa [20%-25%], BP-Mobil [5%-10%] and Shell [0%-5%]. Moreover, even in terms of market shares, ENI's position [15%-20%] will only be reinforced 'de minimis' by GALP's market share of [0%-5%].

Petrochemical products

20. On a product by product basis, the only product in which the parties' aggregate share of sales on EEA basis exceeds 15% is paraxylene [15%-20%]. Competitors such as ExxonMobil (25%-30%) and ICI [15%-20%] have market shares well above this percentage. Other competitors are Cepsa [0%-5%], Veba [5%-10%], Shell [0%-5%] and TotalFina [5%-10%]. Neither under this product/geographic market definition nor under any other possible definition the transaction raises competitive concerns.

VI. ANCILLARY RESTRAINTS

21. As part of the transaction, the ENI companies will enter into a Strategic Partnership Agreement with GALP, providing a framework for co-operation and the contribution of expertise for the development and implementation of projects with GALP, both upstream and downstream for oil and gas, in the Iberian Peninsula and other Portuguese speaking countries. The notifying parties have asked the Commission to declare this agreement ancillary to the operation. However, the scope of this agreement is vague and not limited in time. In its present form, they cannot be considered as directly related and reasonably necessary to the operation at stake. As such, this Strategic Partnership Agreement is thus not covered by the present decision.

VII. CONCLUSION

22. In view of the foregoing, it can be concluded that the proposed operation would not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area. Therefore, the Commission decides 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 agreeement.

For the Commission,
Mario MONTI