EN

Case No COMP/M.1891 -
BP AMOCO / CASTROL

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 18/05/2000

Also available in the CELEX database
Document No 300M1891

Office for Official Publications of the European Communities
L-2985 Luxembourg

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.05.2000

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Subject: Case No COMP/M.1891 – BP AMOCO / CASTROL

Notification of 10.04.2000 pursuant to Article 4 of Council Regulation (EEC) No 4064/89

1. On 10.04.2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which BP Amoco p.l.c. (BPA) acquires sole control of the whole of Burmah Castrol p.l.c. (Castrol) by way of public bid (recommended cash offer) for all the issued and to be issued share capital.

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. BP is the holding company of a multinational oil exploration, petroleum and petrochemical group comprising three core businesses: BP Exploration (oil and gas exploration and production), BP Oil (refining, marketing, supply and transportation) and BP Chemicals (manufacturing and marketing of petrochemicals and related products). BP Amoco was formed as a result of the merger between British Petroleum Company and Amoco Corporation. More recently, BP has merged with Atlantic Richfield Company.

4. Castrol is a UK based diversified group active in the manufacture and marketing of finished lubricants and chemicals (printing inks, metallurgical, construction and

Rue de la Loi 200, B-1049 Bruxelles/Wetstraat 200, B-1049 Brussel - Belgium
Telephone: exchange 299.11.11
Telex: COMEU B 21877. Telegraphic address: COMEUR Brussels.

mining chemicals). It is in the process of shedding its remaining fuel retail activities outside the EU.

II. CONCENTRATION

5. The notified operation concerns the acquisition of sole control by BPA over Castrol, an undertaking previously independent of the former, and therefore constitutes a concentration within the meaning of article 3(1) (b) of the Merger Regulation.

III. COMMUNITY DIMENSION

6. The combined aggregate worldwide turnover of the undertakings concerned exceeds € 5000 million (BPA € 110756 million, Castrol € 4468 million). The aggregate Community-wide turnover of each party exceeds € 250 million (BPA € 53225 million, Castrol € 1382 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

7. The economic sectors involved in the concentration are the downstream oil industry and the chemical industry. However, the effects of this concentration will primarily be in the oil industry, more specifically the lubricants market, as BPA has communicated its intention to shed most of Castrol's chemical business. Concerning the latter, the operation's effects will be limited to a horizontally affected market for cable compounds and a vertically affected market for Polyisobutylene (PIB).

MARKETS UPSTREAM OF LUBRICANTS (BASE OILS AND ADDITIVES)

8. The lubricants industry involves three different products with a vertical relationship: base oils, chemical additives and lubricants. Lubricants are blends of base oils and a number of chemical additives, each contributing their specific properties to the finished products.

9. The base oils used to formulate lubricants are, generally, mineral oils produced by oil refiners from the residue of crude oil left after separation of the other major oil products. Base oils have various performance capabilities due to their different chemical/physical compositions resulting from different crude feedstocks and refinery processes and are classified on the basis of their inherent characteristics. In Exxon/Mobil[1], Group I base oils (accounting for 95% of European demand) were considered as belonging to different product markets from the more sophisticated Group III / IV base oils.

---

[1] Case N° IV/M. 1383 Exxon/Mobil

MANUFACTURE AND MARKETING OF FINISHED LUBRICANTS.

10. In previous cases[2], the Commission has distinguished between automotive lubricants, industrial lubricants, international marine lubricants and aviation lubricants. While there is very limited demand side substitutability, there is a certain degree of supply-side substitutability between the different types of lubricants, albeit in different degrees.

11. **Automotive lubricants** are either engine oils or transmission oils. As these are substitutable from the supply side and as the range of products is fairly limited, they cannot sensibly be further divided. **Industrial lubricants** cover a vast number of specific products for different uses but customers demand the full range of lubricants for their operations rather than sourcing individual lubricants from different suppliers. This range effect, combined with the very strong supply side substitutability would seem to indicate a single market for industrial lubricants.

12. **International marine lubricants** are used to lubricate marine diesel engines of deep draft vessels running on heavy fuel (with high sulphur content) and are specially formulated to cope with the extreme conditions encountered in the engines of ocean going vessels. These lubricants require approvals from Original Equipment Manufacturers (OEMs). Lubricants for inland and coastal marine (coastal, fishing, inland waterways and ferries running on automotive fuel) are basically the same product as used in heavy duty diesel automotive engines, and as such there is supply substitutability between local marine and (commercial) automotive lubricants. The parties estimate that 90 % of marine lubricants are for ocean going vessels. There are three main types of these lubricants: cylinder oils, crankcase oils and trunk piston engine oils ("TPEO's"). There is no demand-side substitutability for these types of lubricants. In addition, customers purchase the entire range of lubricants required for a particular vessel from a single supplier. The above seems to indicate a single market for international marine lubricants. Marine lubricants are purchased independently from Marine fuels. The question was raised whether there would be a different market for customers with pre-destined routes (such as oil tankers and containerships). However, as these customer's supply and demand characteristics are not homogeneous nor sufficiently different from other deep-sea customers and as such customers invariably contract for supply at a wider range of ports (routing arrangements do change during the duration of the contract), this does not constitute a separate market.

13. **Aviation lubricants** are highly specialised products that are made to customer specifications and require approvals from relevant organisations including OEMs and the relevant military authorities. It seems relevant to distinguish jet lubricants from lubricants for piston driven aircraft (as used in light aircraft). The former are high performance ester-based turbine lubricants, while the latter are mineral based and usually less sophisticated than even some automotive lubricants. Mineral based lubricants can only obtain approval for the use in piston driven aircraft and the cost of obtaining these approvals is much lower than for turbine oils. Thus both demand- and supply considerations tend to indicate that lubricants for piston engine aircraft do not fall within the same product market as turbine oils.

---

[2] Case N° IV/M. 727 BP/Mobil, Case N° IV/M. 1301 Texaco/Chevron

OTHER MARKETS

14. PIB is produced through polymerisation of isobutylene, a by-product of the crude oil refining process and used as a raw material for the manufacture of fuels and lubricants additives on the one hand, and in a number of industrial applications such as sealants, adhesives and cable compounds on the other hand.

15. Cable compounds are used by cable manufacturers in traditional energy (paper wrapped cable technology) and telecoms cables to provide water resistance and to act as an electrical insulator. In terms of composition, a distinction can be made between PIB-based compounds, mineral based compounds and thixotropic gels. There is only an overlap for PIB-based compounds, for which demand-side substitutability exists with mineral based compounds for power and telecom cables and with thixotropic gels for optical fibre cables.

16. In any event, it is not necessary to further define any of these markets (finished lubricants, PIB and cable compounds) because in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of it.

B. Relevant geographic market

17. The relevant geographic market for (group I) **base oils** is the EEA.

18. The relevant geographic markets for **automotive and industrial lubricants** are, in line with the Commission's decision in BP/Mobil, at least national and probably as wide as the EEA (or Western Europe). The procurement of lubricants is indeed increasingly becoming international as OEMs increasingly solicit tenders on a pan-EU basis. More than 60% of all finished lubricants are supplied across Member States' borders. Furthermore, lubricants are specified according to international standards since the machinery in which they are used is similar or identical across boundaries.

19. The relevant geographic markets for **international marine lubricants** is, in line with previous decisions, to be considered as probably world wide and at least as EEA-wide. The owner of a vessel contracts with marine lubricant suppliers for delivery of a 'bundle' of lubricant types at a variety of nominated ports at which his vessel can be expected to call. Contracts for international marine are almost always global in nature as they are reflecting shipping routes, and prices are set in US dollars. While contract negotiations predominantly take place in Europe, the vessels usually lift the lubricants throughout the world at those locations that meet itinerary, on-board capacity and price requirements. As these ocean going vessels have significant lubricant storage capacity (usually for 1 to 3 months of operation), they have the flexibility of lifting lubricants at the cheapest of the ports where they have to dock, either to obtain bunker fuel or to load or unload cargo. The ocean going vessels have as such the possibility to exercise arbitrage.

20. **Jet engine aviation lubricants** were considered in the Exxon/Mobil decision to be a worldwide market. In contrast, **lubricants for piston engine aircraft** tend to be supplied to smaller airports via service companies offering lubricants along with fuels, tyres and related services. As such, the relevant geographic market is probably not wider than national.

21. The geographic scope for **PIB**, sold to either Additives or Industrials customers, was considered in BP/Amoco[3] to be the EEA at maximum. The market for **cable compounds** can equally be regarded as EEA wide as EEA compound producers source their supplies centrally from manufacturing plant in the EEA to their customers throughout the EEA.

22. In any event, it is not necessary to further define the relevant geographic market of any of these markets (finished lubricants, PIB and cable compounds), since, even on the basis of the narrowest possible geographical definition, effective competition would not be significantly impeded in the EEA or any substantial part of it.

V. ASSESSMENT

23. Following the dissolution of the BP-Mobil European downstream joint venture[4] (in which BP focused on the fuel retailing business and Mobil on lubricants), BPA has obtained both base oil production capacity and the Joint Venture's lubricants business in Greece, Spain and Portugal in addition to the commercial vehicles sector and the BP/Duckhams branded lubricants initially brought into the JV. Through the acquisition, BPA aims to strengthen its lubricants position with Castrol's strong brand, technical expertise and product research.

MARKETS UPSTREAM OF LUBRICANTS (BASE OILS AND ADDITIVES)

24. Upstream of lubricants manufacture, the impact of the operation is limited to a vertically affected market for base oils as only BPA has base oils production capacity (accounting for [<10%] of the supply of Group I and [<20%] for Group III/IV in the EEA). It is unlikely that the operation will lead to a significant reduction of BPA's participation in the merchant market as first of all, BP/Castrol's combined requirements will exceed BPA's production capacity. Secondly, part of Castrol's blending operations will continue to purchase their base oils requirements from competing refiners if that would be more economic than to source captively. Finally, even if all requirements were to be satisfied captively, significant base oils volumes would remain available for sale to the merchant market, itself characterised by overcapacity.

25. Both parties are absent in the additives market and the market for the provision of blending services (toll blending) remains unconcentrated and characterised by significant excess capacity. As such, post operation, there will be no bottlenecks in any of the relevant inputs upstream of lubricants manufacture.

MANUFACTURE AND MARKETING OF FINISHED LUBRICANTS.

26. The post-merger market for **automotive lubricants** will remain competitive as several major players are competing on a pan-European basis. On the basis of the parties' 1998 figures, BPA ([<10%]) and Castrol ([<10%]) will have a combined share of [<20%] of the market, followed by ExxonMobil ([10%-15%]), TotalFinaElf

---

[3] Case N° IV/M.1293 BP/Amoco

[4] Case N° COMP/M.1820 BP/JV Dissolution

([10%-15%]), Shell ([10%-15%]) and Texaco ([<5%]). These pan-regional players face competition from national integrated oil companies (such as Agip, Repsol, Cepsa, Petrogal, Statoil, Nynas), independent blenders (such as DEA/Fuchs) and OEM brands (Unipart, Fiat, GM/AC Delco and Ford/Motaquip) who both sell through their own franchised networks and retail multiples. Moreover, as confirmed in the market investigation, the influence and buying power of customers such as distributors or OEMs is likely to increase even further in the future.

27. If the operation's impact were to be considered on a national basis, then Austria ([…] %), Ireland ([…] %), Portugal ([…] %) and Greece ([…] %) would show market shares [between 25% and 40%]. The parties have suggested that in the case of Portugal, the relevant geographical market should be (if not the EEA) at least the Iberian peninsular. Indeed, competitors organise supply on an Iberian peninsular rather than a country base, differences in prices are arguably small and there is significant cross border trade between Spain and Portugal. On the same basis, Germany / Austria on the one hand and UK / Ireland could be considered as relevant markets. As such, market shares would be [15%-20%] for the Iberian peninsular, [15%-20%] for Germany / Austria and [20%-25%] for the UK and Ireland.

28. In Greece, Castrol has only a small share of the market ([<5%]), and as the case for Portugal, it is questionable whether the high combined market shares will be sustainable as the lubricants business that BPA is extracting from the JV is predominantly Mobil branded. Not only are the cited market shares based on the performance of the BP/Mobil JV, but in addition it is arguable that BPA will not be able to convince customers to dealing with BPA rather than Mobil as BPA is obliged to cease marketing the […] Mobil brand within a very limited time period.

29. For **industrial lubricants**, the parties' combined share will be [5%-10%]. ExxonMobil's share in the 1998 EEA finished industrial lubricants market was [20%-25%], Shell had [10%-15%], AGIP [5%-10%] and TotalFina [5%-10%]. The highest share on a national basis would be [20%-25%] for Portugal. Competition remains effective and the market will not be concentrated. In contrast with automotive lubricants, many industrial lubricants are developed and adapted for the use of the individual customer and the latter retains the know-how.

Restrictive covenants relating to the BP/JV dissolution for automotive/industrial lubricants.

30. Prior to the operation, BPA and Exxon/Mobil have entered into non-competition and non-solicitation clauses in relation to the BP/Mobil JV dissolution for the lubricants business to be acquired by BPA. For three years, ExxonMobil may not compete in the sector of automotive commercial vehicle lubricants using Mobil branded lubricants, but may compete using Exxon branded lubricants or through Mobil distributors located outside these countries using Mobil branded lubricants. For five years, ExxonMobil may not compete in Greece using Exxon or Mobil branded lubricants or in Spain and Portugal using Mobil branded lubricants. ExxonMobil may compete using Exxon branded lubricants in Spain and Portugal. In addition, ExxonMobil may not solicit existing lubricants customers of the lubricants businesses to be acquired by BPA (except for current Exxon customers), so long as they are BPA customers, using either Exxon or Mobil branded lubricants.

31. In its BP/JV dissolution decision, the Commission has considered these clauses as ancillary to the concentration on the basis that the mentioned lubricant businesses to be acquired by BPA have been operated by Mobil for the last three years, giving Mobil detailed knowledge of the customer base and the products (that are predominantly Mobil branded). Without the protection offered by these restrictive covenants, ExxonMobil could easily re-establish its lubricants market position to the detriment of BPA.

32. BPA/Castrol high combined market shares in automotive, and to a lesser extent, industrial lubricants will be exacerbated by these restrictive covenants, but not to the extent that they will effectively remove a key competitor. Indeed, ExxonMobil can continue to compete in these sectors with Exxon based lubricants in the sector of commercial vehicle lubricants, in Spain and in Portugal. In Greece, ExxonMobil currently supplies the independent national player EKO with technology and permits them to market the Exxon brand in Greece. Moreover, the operation will have limited impact in Greece as Castrol's increment to BPA's market share is only [<5%]. Finally, Mobil distributors outside Greece and the Iberian peninsular can be encouraged to sell Mobil products to BPA customers in these countries protected from direct competition by Mobil. It is to be noted that in the JV dissolution agreement, ExxonMobil had accepted a 5 year non-compete provision (which was scaled down by the Commission to 3 years) and that it was explicitly foreseen that BPA could acquire a lubricants competitor. In any case, the fact that these restrictive covenants have taken effect as from 01/01/2000, and not as of the date of local implementation of the JV dissolution foreseen later this year, is already reducing their effective duration. As such, and in the light of the BPA/Castrol operation, there is no need to reconsider the covenants approved for the BP/JV dissolution.

33. The **international marine lubricants market** has become highly concentrated as, further to the Texaco/Chevron FAMM JV and the Exxon/Mobil merger, the five major players control [>90 %] of the global market. After the operation, BPA/Castrol would have an EEA market share of [25%-30% compared to] Exxon/Mobil with [25%-30%], Shell [15%-20%], Texaco/Chevron [10%-15%] and TotalFinaElf [5%-10%].

34. Some customers are concerned that post-merger there will be a player less in the market although they have equally indicated that international marine lubricants will remain to be a buyer market and that it is unlikely that the new entity would be able to raise prices above competitive levels while retaining its existing level of business. The market investigation clearly indicates that the main players compete vigorously among each other, face significant customer switching and go at great length to expand.

35. However, some of the major customers have indicated that the recent consolidation wave in this market has resulted in a limited number of major players incorporating former outsiders such as Fina, Elf, Chevron and now Castrol, facilitating co-ordination on prices and reducing the customers' negotiation power on prices, quality and service.

36. The market investigation has indicated that due to the number of active suppliers and the market's characteristics, the concentration does not give rise to oligopolistic dominance. In fact,

a) International Marine lubricant contracts are for heterogeneous bundles of products (of the two main grades and some 30 other grades required on a vessel), volumes, services and locations. The supplier needs to be able to offer the service requirements at ports chosen by the ship owner. Each supplier maintains a global network of supply points (all majors have between 800 and 1200 supply points) in order to be able to offer maximum choice and flexibility to its customers. Many of these supply points do not supply on a regular basis but in response to customer demand who is seeking suppliers with global coverage. As such, servicing schedules differ both in geography as in products lifted. Services, such as engine performance monitoring, used oil analysis but also logistical services are becoming increasingly important in this market.

b) For technical reasons, marine lubricants are purchased for each ship from a single supplier (mixing lubricants from different suppliers may lead to engine failure). However, as confirmed by the information on contract switching provided by the parties and their competitors, customers multi-source their requirements for their fleet and switch suppliers between the major players. As such, competitors have limited insight on vessels that are up for contract renewals unless they are invited to tender. Sharing customers or geographic areas is under these conditions not evident.

c) Individual contracts are concluded on the basis of a technical presentation taking into account past performance, followed by an informal bidding process and ending with intense individual negotiations that are generally structured around the high volume products. Customers put suppliers against each other in a bidding process in order to obtain the best prices for valuable, lumpy contracts.

d) Prices are not transparent Marine lubricant is generally sold pursuant to 3 to 5 year contracts which provide for the procurement at a number of lifting destinations around the world of the entire range of lubricants required on a particular vessel. The supply contract sets out the prices of products at each supply point, although prices are renegotiated when market prices change. Prices vary between each port as they are based on a discount (rebate) structure taken off a global price list. The rebates reflect cost differences between ports (notably logistical considerations such as distance between blending plants and the supply point), the location of rival supply points as well as the importance of demand. The three largest worldwide ports of Singapore, Houston and Rotterdam/Antwerp have similar prices and service levels based on their large scale and well supported logistics. Through the bidding process and multi-sourcing, prices are transparent to the customer but remain non-transparent to competitors. Even if the competitors would have limited insight on competitor’s prices in major ports, then this does not render the competitor’s pricing policy transparent for the complete bundle of ports chosen by the customer as the competitors’ cost structures for these secondary ports are not similar. As such, prices are difficult to monitor or calculate and co-ordination between competitors would be difficult to achieve.

e) The customers are sophisticated global ship owners and management operators with strong buyer power due to the size of their contracts (the top […] of BPA’s customers account for […] % of its volume), multi-sourcing and their international knowledge. Recent consolidation in the shipping market and the emergence of buying consortia concentrating demand have increased their leverage to gain concessions from their suppliers and flexibility in honouring their supply contracts.

f) The marine industry is not capacity constrained as all relevant inputs upstream of lubricants manufacture are available. The product is delivered from blend plants using either barges or tank trucks and dedicated local storage or physical presence of the supplier at ports is not essential. Some national blenders compete in the international marine lubricants market through subcontracting and re-branding supply from competitors or distributors in major lifting ports or along major shipping routes. Elf has increased its position in this way and AGIP, KPC and Statoil ([…]) are considered to be credible alternative suppliers with potential for growth. However, due to the importance of economies of scale, brand recognition, track record, OEM accreditation costs and the costs for maintaining a global distribution/delivery network, new market entrance is unlikely.

37. It appears that only those marine lubricant price increases which directly reflect increased costs are sustainable. As a reaction to dramatic cost increases since the beginning of 1999(up to 30% based on base oil / additive price increases reflecting the evolution of crude oil) the major competitors have recently increased prices between 9% and 11%. The parties however submit that this correction (the first since 1996) is the only possible way to take account of higher input costs as customers do not accept any reductions in discount levels previously agreed. The market investigation has shown that customers with predestined routes (as such reducing their possibility for arbitrage) obtain the lowest prices due to their predictable shipping patterns and requirements (reducing logistical costs) in the major ports (where prices are lowest) and the strong competition to contract these valuable customers (containerships for instance are the largest customers for marine lubricants).

38. BPA's **aviation lubricant business** is limited to piston driven aircraft as BPA has no presence in the military or civil jet turbine lubricants segment[5], in which Castrol is only to a limited extent ([…] %) active. BPA nor Castrol produce piston driven aircraft lubricants. Both source the finished lubricant from the same supplier and sell the re-branded and re-packaged product to airfield service companies. The overlaps for piston driven aircraft lubricants are limited to the UK where the combined entity would have [20%-25%] of the market. The operation will in any case not give rise to competition concerns as there are a number of other significant players such as Baker aviation lubricants ([35%-40%]), Shell ([15%-20%]) and ExxonMobil ([10%-15%]).

OTHER MARKETS

39. BPA has communicated its intention to shed most of Castrol's chemical business. In any case, with exception to PIB and cable compounds, there are no overlaps between BPA and Castrol's chemical businesses.

40. In the market for Polyisobutylene (PIB) there is no horizontal overlap since Castrol does not produce PIB. BPA does account for approximately […] % of the PIB used as a base stock in two-stroke engine and industrial lubricants. However, PIB only accounts for <5% of total base stock for automotive and less than 10% of total base stock for industrial lubricants. Therefore, BPA's acquisition of Castrol will not

[5] Further to the application of the undertakings in Exxon/Mobil, BP is a candidate for the acquisition of the Exxon jet aviation lubricants. If the BP bid would prove to be successful, […].

adversely affect the availability of PIB either in terms of volumes available to third parties or in terms of prices at which it is available as there are sufficient alternative sources and alternative inputs supplies.

41. In the market for cable compounds, the parties' EEA market share would be [40%-50%] (BPA [<5%] and Castrol […] %). BP's presence is however limited to PIB cable compounds, for which demand is decreasing rapidly as the paper wrapped cable technology is becoming obsolete and displaced by alternative solutions. Currently, 85% of new power cables are plastic and for the remaining 15%, mineral based compounds are increasingly preferred as a substitute for PIB based compounds from a manufacturing and fitting perspective. Equally so for the telecoms sector, dry cable technologies are being used instead of traditional PIB or mineral oil based compounds. This trend is reflected in BPA's cable compounds market share (only PIB based) which has […]. The customers, cable manufacturers with significant countervailing purchasing power such as Pirelli, have not indicated concerns.

42. 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.

VI. CONCLUSION

43. For the above reasons, 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.

For the Commission,