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Case No COMP/M.2681 - CONOCO / PHILIPPS PETROLEUM

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties

Dear Sir/Madam,

Subject: Case No COMP/M.2681 - CONOCO INC./ PHILLIPS PETROLEUM COMPANY

Notification of 05.02.02 pursuant to Article 4 of Council Regulation No 4064/89[1]

1. On the 05.02.2002, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No. 4064/89, whereby the undertaking Conoco Inc. (“Conoco”, USA) enters into a merger within the meaning of Article 3(1)(a) of the Council Regulation with Phillips Petroleum Company (“Phillips”, USA).

2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No. 4064/89 and that it does not raise serious doubts as to its compatibility with the common market and with the EEA agreement.

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1 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

3. Conoco is active in exploration, development, production, sale of crude oil and natural gas. This includes gas gathering, processing, marketing and the refining and sale of refined petroleum products. The company is also active in power generation.

4. Phillips is active in exploration, development, production, sale of crude oil and natural gas, including gas gathering, processing, marketing and the refining and sale of refined petroleum products. Philips has a 50% equity interest in a world-wide chemicals and plastics company named Chevron Phillips Chemical Company ("Chevron Phillips"). In addition, Phillips has a 30.3% interest in Duke Energy Field Services, which is active in gathering and processing natural gas in the United States and Canada.

II. THE OPERATION

5. Pursuant to the Merger Agreement, Conoco and Phillips will each merge with separate newly created companies. These undertakings are wholly owned by a newly created company (New Parent), which in turn is jointly owned by Conoco and Phillips. Consequently, the two companies will both become wholly owned subsidiaries of the New Parent.

III. CONCENTRATION

6. The operation constitutes a full merger within the meaning of Article 3(1)(a) of the Council Regulation.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[2] (Phillips: 50727 million €; Conoco 41923million €). Each of the undertakings has a Community-wide turnover in excess of EUR 250 million (Phillips: […] million €; Conoco […] million €), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

V. COMPETITIVE ASSESSMENT

V.1 THE RELEVANT MARKETS

8. The concentration concerns several product markets and a number of levels from the upstream activities to the refining of crude oil and petrochemicals downstream.

<u>Relevant upstream markets</u>

[2] Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

9. In the oil and gas sector the upstream activities comprise three types of commercial activities. These are 1) the finding of new reserves (i.e. exploration) and 2) the development of reserves (setting up adequate infrastructure for future production such as platform, pipelines etc) and the 3) exploitation of reserves (i.e. production and sales). The upstream producers sell crude oil to refiners and they use it in their downstream refining production whereby they process the crude oil into various end-user fuel products.

10. Consistent with previous Commissions decisions[3] the following markets are relevant where the parties would have horizontal overlapping activities:

    (1) The exploration of crude oil and natural gas (world-wide)
    (2) The development, production and sale of crude oil (world-wide)
    (3) The development, production and sale of natural gas (The geographic scope was considered to be EEA wide or possibly including Russia and Algeria, however, it was left open in previous decisions[4])
    (4) Gas transportation (UK Northern North Sea, UK Southern North Sea and Norway respectively)
    (5) Gas processing (UK Northern North Sea, UK Southern North Sea and Norway respectively)
    (6) Development, production and sale of natural gas liquids “NGL’s” (at least EEA wide)

11. These markets have broadly been confirmed by the Commission’s market investigation in the present case and for the purpose of this decision it is not necessary to further define these markets as this would not alter the competitive assessment (see below).

<u>Relevant downstream markets</u>

12. As regards downstream crude oil refining the parties have activities in the following areas which constitute distinct markets according to previous Commission decisions[5]:

- Retail sales of motor fuels (national)
- Non retail sales of bulk fuels and liquefied petroleum gas (LPG) (national/local)
- Refining of fuels and ex-refinery sales (EU or Western Europe)
- Petroleum coke (world-wide)

[3] COMP/M.1383 – Exxon /Mobil of 29.9.1999, COMP/M.1532 – BP Amoco/Arco, COMP M:1573 – Norsk Hydro/Saga

[4] COMP/M.1383 – Exxon /Mobil of 29.9.1999.

[5] COMP/M. 727 – BP/Mobil of 8 July 1996; COMP/M.1383 – Exxon /Mobil of 29.9.1999 and M. 2588 – Rheinbaun Brenstoff/SSM Coal.

13. Finally the parties have overlapping activities in petrochemicals (benzene)[6] which based on previous decisions is a least EEA wide and technology licensing for refining (world-wide).

14. The Commission's investigation in the present case has broadly confirmed the above mentioned definition of these downstream markets apart from thetechnology licensing for refining which is not necessary to define further for the purpose of this decision as it would not alter the competitive assessment.

ASSESSMENT

15. The market structure in the oil and gas sector is apart from state owned companies characterised by three international vertically integrated private players named "the super majors" (BP, ExxonMobil and Shell). Whatever parameters retained (market capitalisation, oil and gas production, proven reserves etc.), there is a considerable gap between these "super majors" and the remaining majors, such as Phillips and Conoco, which anyway have quite complementary capabilities and technologies, Conoco being more focused on oil refining, Phillips on petrochemicals.

16. According to the parties the only horizontally affected market is the market for natural gas processing in the UK South North Sea (UK SNS). The parties have not identified any vertically affected markets.

17. When natural gas emerges in a steam from the well-head of a production facility, the steam contains gaseous hydrocarbons and hydrocarbons liquids. This unprocessed gas often requires transportation by sub-sea pipe-line to the processing facility, where the gaseous steam is then subject to further processing/purification. This step takes place in order to produce gaseous hydrocarbons that meet the technical specification necessary for carriage in the transmission system into which it will be introduced (pipeline quality gas).

18. In previous cases the Commission has based the calculation of market shares on:

(1) the parties combined market share calculated according to their combined equity interest of the total nominal gas processing capacity in a specific geographic market

(2) the parties' share of total expected annual gas processing throughput (calculated according to their combined equity interest in the processing facility).

19. The parties combined equity interest give a combined market share of [10-15%] of the total gas processing capacity of the eight gas processing facilities in the UK SNS. However, based on the annual gas processing throughput, the parties have identified an affected market in the UK SNS where the parties' combined market share is around [< 20 %].

20. In previous decisions,[7] the Commission's principal competitive concern related to the extent to which third parties may be foreclosed from access to spare capacity, thereby

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6 COMP/M.2345, Deutche BP/Erdölchemie

7 COMP/M. 1532 – BP Amoco /Arco

being prevented from developing new competing gas fields. Gas processing facilities and pipelines are usually operated by different producers in a joint venture. The transport of unprocessed gas requires pipelines linking the gas fields with the necessary (off and on-shore) processing facilities and the processing facilities are essential requirements in order to sell pipeline quality gas.

21. Out of the eight gas processing facilities in the UK SNS, Phillips holds interest in the Bactus Phillips terminal […] whereas Conoco holds an interest in the Theddlethorpe terminal […]. […] there is no addition of veto rights compared to the situation prior to the merger. More generally, in […] facilities in the UK SNS neither of the parties will have a veto right after the merger and these […] facilities account for [> 80%] of the spare capacity in the UK SNS.

22. As to possible vertical effects, it is worth noting that both companies are already vertically integrated and are represented in a number of levels in downstream markets, such as purchase of crude oil for refineries and the sales of ex-refinery fuels and other products. The transaction does not change this situation so as to give rise to serious doubts about the creation or strengthening of a dominant position. This has been confirmed by the Commission's market investigation.

VI. CONCLUSION

23. 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