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***Case No COMP/M.3288 - TNK-BP / SIBNEFT / SLAVNEFT JV***

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: 19/12/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19/12/2003

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 via their legal representative

Dear Sir/Madam,

**Subject: Case No COMP/M.3288 – TNK-BP/Sibneft/Slavneft JV**
**Notification of 20.11.2003 pursuant to Article 4 of Council Regulation No 4064/89[1]**

1. On 20 November 2003, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89, as last amended by Regulation (EC) No 1310/97, by which the undertaking TNK-BP, controlled by BP plc ('BP', United Kingdom), Alfa Finance Holdings SA ('Alfa', Luxembourg), Access ('Access', USA) belonging to the AI Petroleum Holdings LCC, and Renova Holding Ltd. ('Renova', Bahamas), acquire within the meaning of Article 3(1)(b) of the Regulation joint control of the undertaking Slavneft ('Slavneft', Russia) together with the undertaking Sibneft ('Sibneft', Russia), by way of purchase of shares.

## I. THE PARTIES

2. BP is the holding company of a multinational exploration, petroleum and petrochemicals group. Alfa is a Russian privately owned holding company. Alfa and its affiliates hold interests in a variety of sectors, primarily in the Russian Federation, including among others oil. Access is part of Al Petroleum Holdings LLC, a privately owned limited liability company holding interests in oil amongst others sectors. Renova is part of the privately owned Arsan Holding S.a.r.l., which holds interests in oil amongst other sectors. Alfa, Access and Renova are together referred to as AAR. TNK-BP is a full function joint venture jointly controlled by BP and AAR[2].

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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).

2 See case No. COMP/M.3119 – BP/ALFA GROUP/ACCESS/RENOVA/TNK-BP: In July 2003, the Commission cleared the establishment of the joint venture between BP and AAR ("TNK-BP"). At that

3. Sibneft is a vertically integrated oil and gas company, operating businesses in petroleum exploration, production, refining, and marketing in Russia and the CIS. International press coverage indicates that the Russian oil company Yukos has acquired control of Sibneft and that the acquisition of Sibneft by Yukos has been agreed by the Sibneft shareholders. However, at the time of drafting this decision the nature of the relationship between Sibneft and Yukos was not clear with some reports suggesting that the acquisition might not take place. For the purpose of this decision and based on the facts of this case, it can be left open whether Sibneft and Yukos belong to the same group, since this point is relevant neither for determining the Commission's jurisdiction nor for the competitive assessment.

4. Slavneft is a pre-existing oil company established in 1994 by the Russian state. In 2002, the Russian and the Belarusian governments each sold their stakes to private undertakings. Slavneft is currently jointly controlled by Alfa, Access and Renova on the one side and Sibneft on the other side. Slavneft's main activities include the exploration, production and refining of crude oil as well as the marketing and supply of oil and refined products. It also operates 600 service stations throughout Russia. Hence, Slavneft is a full function joint venture.

## II. THE OPERATION

5. AAR contribute their joint economic interest in the joint venture Slavneft to TNK-BP. After the transaction, BP, Alfa, Access and Renova will, through their joint control of TNK-BP on the one side, together with Sibneft on the other side jointly control Slavneft. The undertakings concerned according to Article 1 and 5 of the Merger Regulation are TNK-BP, Sibneft and Slavneft.[3]

## III. CONCENTRATION

6. In the light of the above, it can be concluded that the operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[4]. TNK-BP (including the turnover from its parents), Slavneft and Sibneft have a Community-wide turnover in excess of EUR 250 million but the undertakings concerned 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.

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time, AAR's interest in Slavneft was expressly excluded from the TNK-BP joint venture. Now, AAR's interest in Slavneft is contributed to TNK-BP.

3 See Commission notice on the concept of undertakings concerned under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (OJ C 66 of 02.03.1998, para. 22, 27 and 44).

4 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).

## V. COMPETITIVE ASSESSMENT

8. As will be shown below, the operation will not create nor strengthen a dominant position under any alternatives considered. This applies whether or not one takes account of the proposed transaction notified to the Commission on 20 November 2003, in case COMP/ M.3230 – Statoil/BP/Sonatrach/ In Salah JV.

<u>Relevant Markets</u>

9. In line with the Commission's previous decisions in the sector[5], the parties have identified the following relevant product and geographic markets where the proposed transaction will give rise to overlaps. For the purpose of this decision there is no reason to deviate from the Commission's previous findings:

– Exploration for crude oil and gas world-wide;

– Development and production of crude oil world-wide;

– Development and production of gas in EEA and possibly Russia and Algeria; and

– Certain feedstocks and petrochemicals in Europe and world-wide, see below.

<u>Assessment</u>

10. For the purpose of the competitive assessment, it is assumed as a "worst case scenario" that Sibneft and Yukos belong to the same group. In assessing the parties' position on the petrochemical markets, Yukos' position is based on information from the notifying parties on Yukos' capacity and/or statistics on imports from Russia into the EU. The position is again based on a "worst case scenario", that is assuming that all imports from Russia to the EU (based on trade statistics) are from Yukos or assuming that Yukos produces at full capacity and the total production is exported to the EU.

*Horizontally overlapping activities affected markets*

11. The following list shows the parties' combined market shares on the relevant markets where their activities overlap horizontally:

– On the world-wide market for exploration for crude oil and gas, the parties' combined market share would be [0-10]% (BP [0-5]%, TNK [0-5]%[6], Slavneft [0-5]%, Sibneft [0-5]% and Yukos [0-5]%);

– On the world-wide market for development and production of crude oil, the parties' combined market share would be [0-10]% (BP [0-5]%, TNK [0-5]%, Sidanco [0-5]%, Slavneft [0-5]%, Sibneft [0-5]% and Yukos [0-5]%);

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5 See e.g. Case No. M.1383 – Exxon/Mobil, M.2745 – Shell/Enterprise, M.2681 – Conoco/Phillips Petroleum, COMP/M.3056 – Celanese/Degussa/JV (European Oxo Chemicals), COMP/M.1078 – BP/Hüls, and M.1966 – Phillips/Chevron/JV.

6 TNK's market share includes figures from Sidanco, a company previously controlled by TNK; now both are part of BP-TNK (see case No. COMP/M.3119).

– On a market for development and production of natural gas in the EEA, only BP is currently active. None of the other parties has sales or even reserves within the EEA. The proposed transaction would thus not give rise to a horizontal overlap.. Including Russia and Algeria in the geographic market, no overlap would arise in terms of sales either. In particular, all Russian gas is sold by Gazprom and neither Slavneft nor Sibneft nor Yukos engage in sales themselves. A negligeable overlap would occur on the basis of a comparison of proven reserves, of which the parties would hold [0-5]%.

12. With regard to certain feedstocks and petrochemicals, horizontally affected markets could only arise with regard to butanol[7] and with regard to polystyrene[8].

– On the overall world-wide market for butanol (estimated by the parties to be around 1301 kt[9]), BP and Yukos have a combined market share of [0-10]%. On an EEA market for butanol (estimated by the parties to be around 305 kt), their combined market share would be [10-20]%.

Following the Commission's previous decision, butanol may be further sub-divided into n-butanol and iso-butanol.[10] For the purpose of the competitive assessment, only n-butanol is considered because it is only here the proposed transaction results in an overlap since Yukos, according to the parties, has no iso-butanol production capacity.[11] The parties estimate that the overall EEA merchant market for n-butanol in 2002 to be approximately 199 kt of which BP accounted for approximately […] kt or [10-20]%. Neither Sibneft, Slavneft nor TNK produce n-butanol. If <u>all</u> imports from Russia to the EU[12] (3 kt) would come from Yukos, the parties' combined market share would be [15-25]% (BP [15-25]% and Yukos [0-5]%). Yukos' total capacity in 2003 was […] kt. On a world-wide merchant market for n-butanol estimated by the parties to be around 720 kt, BP would have a market share of approximately [0-10]%. If Yukos produced at full capacity and sold its production on the world-wide merchant market, its market share would be approximately [0-10]%. The parties combined market share would thus under a worst case scenario be approximately [5-15]%. According to the parties, the main players are Oxo Chemicals, Dow Chemicals, BASF, SASOL and Eastman.

– The parties estimate that the total EU[13] market for polystyrene in 2002 was 2,000 kt of which BP sold approximately […] kt onto the market. Yukos' polystyrene

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7 See case No. COMP/M.3056 – Celanese/Degussa/JV (European Oxo Chemicals), para 80.

8 Se case No. COMP/M.1078 – BP/Hüls, para 7 – 9 (market definition left open).

9 USA is excluded from the total figure. Including the USA the market would be larger.

10 See case No. COMP/M.3056 – Celanese /Degussa/JV (European Oxo Chemicals), para 81.

11 BP has a market share of [5-15]% of the iso-butanol market in Western Europe and [0-5]% world-wide.

12 Eurostat data only concerns the EU; if imports to the EEA (EU plus Iceland, Norway and Liechtenstein) were to be included the situation is not likely to be significantly different.

13 The market situation would not be significantly different if the assessment were to be based on a Western European market rather than on an EU-wide market.

capacity is […] kt in 2003. As neither Sibneft, Slavneft nor TNK produce polystyrene, the transaction only gives rise to an overlapping activity, if it is assumed that Yukos would produce at full capacity and sell all of its production into the EU, and the parties' combined market share would be [10-20]% (BP [10-20]% and Yukos [0-5]%). On a world-wide market for polystyrene (estimated by the parties to be 11,000 kt), BP would have sales of […] kt corresponding to a market share of [0-5]%. Yukos' world-wide market share will be negligible and will no give rise to competition problems. According to the parties, the main players on the polystyrene market are BASF, Dow Chemicals, Total, Nova, BP and Enichem.

The contribution of market shares on both the market for n-butanol and the market for polystyrene does not give rise to competition concerns.

*Vertically affected markets*

13. The only vertically affected markets that would arise as a result of the proposed transaction are the market for cyclohexane in Western Europe[14] and the market for benzene in Western Europe or world-wide.[15]

14. Cyclohexane is an aromatic derived from benzene and is used as an intermediate to produce nylon. BP has a market share of [20-30]% but none of the other companies are active on this market. BP's position on the market for cyclohexane is not changed as a result of the proposed transaction.

15. BP, TNK, Slavneft, Sibneft and Yukos are all active on the upstream product market for benzene but their market shares on this market are small. BP's market share of the Western European market is [0-10]%. All of TNK's and Slavneft's benzene is sold in Russia or Belarus. Sibneft only exported […] kt of benzene to European traders in 2002, equalling a share of the market of [0-5]%. If all import of Russian benzene came from Yukos, Yukos would have a market share of [0-5]%. On a world-wide market for benzene, BP sells […] kt, Sibneft sells […] kt, Slavneft sells […] kt and TNK sells […] kt. Yukos' benzene capacity in 2003 is […] kt. The total world-wide merchant market is by the parties estimated to be around 11,000 kt of which the Yukos capacity represents a very small proportion and the parties' combined market share would be [0-10]%.

16. According to the parties, only 12% of the benzene is used in the manufacture of cyclohexane. Benzene is used for other purposes, such as ethylbenzene for styrene, cumene for phenol and synthetic detergents. The main players in the benzene market are Total, Dow Chemicals, Shell, ExxonMobil, BASF, Huntsman, SABIC and CEPSA. The proposed transaction does not give rise to competition concerns on the either the market for cyclohexane or for benzene.

## VI. CONCLUSION

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[14] See case No. COMP/M.1966 – Phillips/Chevron/JV (market definition left open).

[15] See case No. COMP/M.2345 – Deutche BP/Erdölchemie, para 11 and 22. The product market was defined and the geographic scope of the market was left open, being either Western Europe (EEA and Switzerland) or world-wide.

17. 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, signed,
Mario MONTI
Member of the Commission