

***Case No COMP/M.3293 -
SHELL / BEB***

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

Article 6(1)(b) NON-OPPOSITION
Date: 20/11/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20/11/2003

SG (2003) D/233007

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sir/Madam,

**Subject: Case No COMP/M.3293 - SHELL / BEB
Notification of 22.10.2003 pursuant to Article 4 of Council Regulation
No 4064/89¹.**

1. On 22.10.2003, the Commission received a notification of a proposed concentration by which the German undertaking Shell Erdgasbeteiligungsgesellschaft mbH, belonging to the Royal Dutch/Shell Group ("Shell"), acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of one half of the gas marketing business ("Shell basket", Germany) of the undertaking BEB Erdgas und Erdöl GmbH ("BEB", Germany) by means of transfer of assets.
2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and that does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

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).

3. Shell is active world-wide in the exploration, production and sale of oil and natural gas, the production and sale of chemicals, power generation and the production of energy from renewable sources.
4. BEB is a 50/50 German gas joint venture controlled by Shell and the ExxonMobil Group (“ExxonMobil”) active in production, purchase, transport, storage and marketing of natural gas in Germany, mainly in the Northwest region.

II. THE OPERATION

5. Shell and ExxonMobil have agreed to split the business of (downstream) supply of gas (or “gas marketing business”) presently conducted by BEB into two equal parts (namely, the “Shell basket” and the “ExxonMobil basket”). BEB will continue to be engaged in the business of production, transportation and storage of natural gas. The acquisition by ExxonMobil of its basket constitutes a separate concentration notified to the Commission on 17 October 2003 (Case COMP/M.3294 – ExxonMobil/BEB).
6. The Shell basket will consist of employees, existing gas purchase and sales contracts and related contractual entitlements and rights to transport and storage natural gas, representing half of the business. [...]
7. The Shell basket assets will then be transferred to a partnership under the German law (Kommanditgesellschaft, or the “Shell KG”) formed by Shell through a wholly owned affiliate (Shell Energy Deutschland GmbH) acting as unlimited and controlling partner, and by BEB acting as limited and non-controlling partner.
8. BEB will no longer be authorised to enter into new gas marketing business and the Shell KG will be limited to handling the transferred activities, all new or renewal contracts being entered into by Shell for its own account. Consequently, from then on all German gas marketing will be conducted by Shell only.
9. In light of the above, the transaction leads to the acquisition by Shell of sole control of the Shell basket constituting a concentration in the sense of article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

10. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (EUR 190,435 million, of which the Shell Group excluding the Shell basket accounts for EUR [...] million and the Shell basket accounts for EUR [...] million). Each of Shell and the Shell basket have a Community-wide turnover in excess of EUR 250 million (Shell: EUR [...] million and the Shell basket: EUR [...] million),² 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.

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). All turnover figures relate to the year 2002.

IV. COMPETITIVE ASSESSMENT

Relevant product markets

11. The impact of the transaction is in the natural gas sector, concerning specifically BEB's gas marketing activities in Germany. In previous decisions³ the Commission has distinguished, upstream, separate markets for the exploration of oil and natural gas on the one hand and the development, production and sale of gas on the other hand, which coincides with the party's definition. As to logistics, the Commission has also concluded in the past⁴ that gas transportation and gas storage form distinct markets.
12. With regard to the downstream supply of gas, the notifying party states that two separate relevant product segments can be distinguished: (i) wholesale distribution (or "wholesale gas transmission"), where operators ("wholesale gas transmission companies", i.e. "wholesale distributors")⁵ aggregate gas that they obtain directly or indirectly from various producers and then sell to other wholesale distributors, local distributors and large end users, such as power generators or large industrial users, and (ii) local distribution, where operators ("local distributors") purchase the gas from the wholesale distributors and sell it to large and small end users.
13. However, the Commission has, within wholesale (or wholesale transmission), further distinguished⁶ between two levels constituting separate relevant product markets: "long-distance" wholesale and the "short-distance" (regional) wholesale. In the framework of "long-distance" wholesale operators sell gas that they have imported directly from foreign producers and transport it over long-distance pipelines to "short distance" (regional) wholesalers or directly to certain large end-customers such as large business users and electricity generators. The "short-distance" (regional) wholesalers sell to local distributors and to certain end customers.
14. The notifying party does not agree with this distinction between "short distance" and "long distance" wholesale markets. It argues that "short-distance" wholesalers increasingly have a choice to contract imports or to buy local production, being able to modify their purchasing decisions should long-distance wholesalers increase prices. Shell also points out that there are no significant entry barriers for gas distribution in Germany, as it is possible to negotiate access to the infrastructure needed for delivery under the third-party access rules.
15. A possible market definition could also focus on a distinction between categories of end customers, that is large business users and power generators on the one hand and small household and commercial customers on the other hand. The notifying party contends

³ Commission Decision of 29/09/1999 in Case No IV/M.1383 – Exxon/Mobil; more recently, e.g. Commission decisions of 23/01/2003 in Case COMP/M.3052 - ENI / FORTUM GAS, and of 25/04/2003 in Case COMP/M.3086 – Gaz de France / Preussag Energie.

⁴ Commission Decision of 29/09/1999 in Case No IV/M.1383 – Exxon/Mobil (paragraph 69).

⁵ The notifying party also refers to these as "wholesale redistributors".

⁶ Commission Decision of 29/09/1999 in Case No IV/M.1383 – Exxon/Mobil (paragraph 69).

that such a sub-division is not realistic since: (i) gas is a commodity product with the same specifications for all users and provided through a common distribution chain, (ii) in Germany all customers are free to choose their supplier and suppliers are free to choose where they want to focus their marketing efforts, (iii) there are no barriers between any of the these market segments, and (iv) the price differences are due to the various services supplied. In addition a distinction in large customers between customers which can be supplied on an interruptible basis and customers who cannot could be made.

16. However, a final decision on these issues is not necessary since the assessment of the case does not change.

Relevant geographic markets

17. In a previous decision⁷ the Commission considered the market for exploration of oil and natural gas to be worldwide and the market for development and production of natural gas to probably include the EEA, Algeria and Russia. It did not have to decide on the question, however. The same applies in the present case as under none of the conceivable market definitions competition problems arise.
18. As regards the downstream supply of gas, the notifying party submits that there exists a wholesale market which is at least national and possibly wider in scope. This is due to the market evolution as a result of the ongoing liberalisation of the gas sector following the EC Gas Directive⁸. All Germany is interconnected by a series of transmission lines which, together with the non-discriminatory access to them, facilitates competing suppliers at national level to bid for the supply of gas to local distributors, power generators or industrial customers.
19. The Commission in the Exxon/Mobil⁹ case considered whether the wholesale markets might still be regional rather than national according to the traditional distribution areas of each regional operator, i.e. along the former regional monopolies, but leaving the final definition open. In a more recent case¹⁰ the Commission decided that the market for “short-distance” (regional) wholesale transmission of gas within Germany is still regionally limited to the previous incumbency areas prior to liberalisation. and is likely to remain so in the future.

⁷ E.g. Case No IV/M.1532 – BP Amoco / Arco, Commission decision of 19 September 1999.

⁸ Directive 2003/55/EC of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC.

⁹ Commission Decision of 29/9/1999 in Case COMP/M.1383 – Exxon/Mobil.

¹⁰ Commission Decision of 17/12/2002 in Case COMP/M.2822 – EnBW/ENI/GVS, OJ L248/30.09.2003.

20. For the purpose of the present case these wholesale markets are considered to be no wider than national as customers continue to be supplied on no wider than national basis. For the rest, the precise geographic definition for these wholesale markets can be left open as the concentration does not give rise to competition concerns under any of the possible alternative definitions. The same applies to the possible definitions of markets according to customer categories.
21. In any event, regarding regarding a more specific market for small end users (households and commercial customers), it is not necessary to take a final definition of the geographic markets as these segments/markets are not affected by the transaction.

Assessment

22. Regarding the markets of exploration of oil and natural gas and of development and production of natural gas, the new entity will hold a market share of well below 25% on any conceivable geographic market delimitation.
23. The proposed concentration does not give rise to horizontal overlaps in the gas supply markets concerned since Shell is not active in any of these markets in Germany outside BEB.
24. Due to Shell's and BEB's¹¹ activities in the upstream and logistics markets a number of vertical relationships may arise. However, on account of none of these relationships does the operation give rise to concerns because,
 - (i) as regards the vertical relationship between the upstream activities and downstream supply of gas, the new entity's downstream market shares in gas supply will only be half as big as those of BEB (jointly controlled by Shell and ExxonMobil) before the proposed concentration, and its and BEB's combined upstream market shares will be well below 25% on any conceivable geographic market delimitation;
 - (ii) as regards the vertical relationship between logistics¹²-and supply, neither the market shares nor the situation of control on the logistics markets change and the new entity's market shares in downstream gas supply will be smaller than BEB's own shares before the proposed concentration.
25. In the light of the above, it can be concluded that the proposed operation does not lead to the creation or strengthening of a dominant position on any market.

¹¹ BEB maintains its activities in the fields of production, transportation and storage of natural gas. (Cf paragraph 5 above.)

¹² With regard to logistics activities it could also be noted that non-discriminatory access to transport and storage facilities will tend to be facilitated as a consequence of the settlement in the *Marathon* case (See IP/03/1129 of 29.07.2003 "Commission settles Marathon case with German gas company BEB") and the implementation of the Second EC Gas Directive (Directive 2003/55/EC of 26 June 2003).

V. CONCLUSION

26. 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)

Franz FISCHLER
Member of the Commission