

***Case No COMP/M.3516 -  
REPSOL YPF / SHELL  
Portugal***

Only the English text is available and authentic.

**REGULATION (EEC) No 139/2004  
MERGER PROCEDURE**

---

Article 6(1)(b) NON-OPPOSITION  
Date: 13/09/2004

*Also available in the CELEX database  
Document No 32004M3516*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13/09/2004

SG-Greffe(2004) D/204002

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sir/Madam,

**Subject: Case No COMP/M.3516 - Repsol / Shell Portugal  
Notification of 9 August 2004 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 09.08.2004 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the Spanish undertaking Repsol YPF S.A. ("Repsol") acquires within the meaning of Article 3(1)(b) of the Council Regulation control of parts of Shell Petroleum's assets in Portugal ("Shell Portugal") by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EC) No 139/2004 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**

3. Repsol is active in the exploration, development, production, refining and marketing of petroleum, natural gas and derived products such as bitumen;
4. Shell Portugal supplies hydrocarbon products in Portugal, including automotive, aviation, marine fuels, aviation and marine lubricants, heavy fuel oil and bitumen.

---

<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

## II. CONCENTRATION

5. Through the notified transaction, Repsol will acquire sole control over Shell Portugal<sup>2</sup>, within the meaning of Article 3(1)(b) of the Merger Regulation.

## III. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>3</sup>. (Repsol: EUR 37,206 million and Shell Portugal: EUR [>250] million in 2003). Each of the parties has a Community-wide turnover in excess of EUR 250 million (Repsol: EUR [>250] million and Shell Portugal: EUR [>250] million in 2003). Repsol and Shell Portugal do not generate 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.

## IV. COMPATIBILITY WITH THE COMMON MARKET

### A. Relevant markets

7. At the distribution level downstream of refining, the operation concerns the retail and non-retail sales of motor fuels, which, as concluded by the Commission in BP/Mobil and Exxon/Mobil<sup>4</sup>, are to be considered as distinct product markets. Moreover, the transaction also results in an affected market for the sales of bitumen in the Portuguese market.

#### **Retail sales of fuels**

8. Retail motor fuels sales include sales made to motorists from branded and unbranded service stations. The products sold are predominantly gasoline and diesel. From the demand side there is no substitutability between these products, as motorists must use the type of fuel suitable for their vehicle. However, from the supply side there is substitutability as refineries can be run to produce different outputs of different types of fuels. 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. Also market shares for each type of fuel roughly coincide with the aggregate market share. As a consequence, in line with the Commission's previous decisions, in the retailing channel the relevant product market is constituted by the retail sales of motor fuels with no need for a further segmentation.

---

<sup>2</sup> Shell Portugal includes all assets and activities of the Shell Petroleum company in Portugal apart from its LPG business, the lubricant business for road transport, industry and construction, terminal ownership and operations relating to the Praia Formosa terminal in Madeira.

<sup>3</sup> 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.

<sup>4</sup> Case N° IV/M. 727 - BP/Mobil (7 August 1996) and Case IV/M.1383 Exxon/Mobil (29 September 1999)

9. As regards retailing sales on motorways, in line with the ENI/GALP decision<sup>5</sup>, it is not necessary to ascertain whether such sales constitute a market different from off-motorways retail sales. Fuel prices at motorway stations in Portugal are not different from non-motorway forecourts. In any event, regardless of the market definition being retained, the operation would not lead to competition concerns either in the on- or off-motorways retail market .
10. In line with the previously mentioned cases, the Commission considers the motor fuels retail market to be national in scope. Whilst the Portuguese islands Madeira and Azores could each be considered as geographically distinct markets, they are not affected by the transaction as Repsol's presence in Portugal is limited to the mainland.

#### **Non-retail sales of fuels**

11. Non-retail sales are made to independent resellers and high volume end-consumers. As concluded in BP/Mobil, for the non-retail sales it is not possible to aggregate the different types of fuels into one category. The different fuels are supplied for different uses to different types of customer. The distribution channels can also differ significantly, the provision of fuel oil to a power generation plant will differ from the supply of LPG for domestic heating purposes. The investment required for these distribution channels will be different from that of retail fuels. Non-retail sales of fuels is therefore further subdivided into sales of gasoline, diesel, fuel oil and LPG.
12. The geographic scope of the non-retail fuels market is defined by the consumption area that a given supply point covers. These markets could be considered regional as transport costs limit the demand area that can be covered by a given supply point (refinery, import and storage terminals). However, according to the parties, the size and concentration of demand in the Portuguese market would lead to consider the market as being national in scope. The market investigation has shown that prices are decided and implemented at a national level. Moreover, while products are distributed on a sub-national level, there are overlaps between the supply points, and supply agreements exist between suppliers across the country. Also, non-retail customers buy product throughout Portugal. In any case, for the purpose of the proposed transaction, the exact geographic market definition can be left open, since on any possible geographic market definition, the concentration does not raise competition concerns.

#### **Sales of bitumen**

13. Bitumen products are mainly used in asphalt production and in the construction industry. On the basis of its characteristics and specific use, bitumen can be considered as a distinct market. Given the high cost of transportation (bitumen needs to be transported at temperatures above 130C°), bitumen is generally used within a 200 – 300 km radius of where it is sourced, therefore pointing to a market that is, in line with previous cases<sup>6</sup>, regional in scope. The parties submit that, for the same reasons as provided for non-retail fuels sales, the market may be considered as national in scope. The market investigation has confirmed price homogeneity across the country, and supply point chain substitution in favour of a national market. However, due to the

---

<sup>5</sup> Case COMP/M. 1859 ENI/Galp (29 June 2000)

<sup>6</sup> Case IV/M.1464, Total/Petrofina (26 March 1999)

significance of transport costs, the existence of regional areas within Portugal cannot be completely ruled out. Considering that each point of supply (refinery, import and storage terminals) can supply a geographic area (hinterland) within minimum 200 km of where the product will be used, 4 regions can be identified, comprising (a) the Porto region, (b) the Lisboa region, (c) the Southern region and (d) the Portuguese islands.

14. In any case, for the purpose of the proposed transaction, the exact geographic market definition can be left open, since on any possible geographic market definition, the concentration does not raise competition concerns.

## **V. COMPETITIVE ASSESSMENT**

15. Whilst the Portuguese energy sector is undergoing restructuring, including privatisation and market opening of retail fuel pricing, the incumbent oil company GALP / Petrogal (“Galp”) continues to lead the assessed markets. It operates the only two Portuguese refineries (located in Porto and Lisboa), controls most of the import terminals, in-land storage terminals and pipelines and as a result supplies almost all (90%+) of the hydrocarbon products consumed in Portugal. BP, Shell and CEPSA (a Spanish oil company jointly controlled by Total and Banco Santander) have historically strong positions in the retail of oil products and are joined by relative newcomers such as ExxonMobil, Repsol and Total.

### **Retail sales of fuels**

16. Combined, Repsol/Shell Portugal would account for [10-20] % (Repsol [<10]% and Shell [10-20]%) of retail sales on the Portuguese mainland (2003 market shares based on volume). Galp will remain by far the leading retailer with [30-40]% followed by BP with [10-20]%. Cepsa accounts for [<10]%. Unbranded retailers and hypermarkets each account for around [<10]%. Other integrated oil companies such as ExxonMobil and Total have below [<10]% market shares. On motor highways, the combined sales of the parties are in line with their market positions for off - motor highway sales of fuels. The combined entity’s market share in itself excludes the possibility of the merger leading to the creation or strengthening of a dominant position. Also with regard to unilateral effects, Repsol and Shell are clearly not each others closest substitutes as their geographical coverage is complementary. The market investigation also indicated the importance of historical presence. In this respect, Repsol is a relative newcomer significantly lagging behind Galp and BP.
17. Supermarkets and other independent resellers have increased competition in the Portuguese markets in recent years. These unbranded players and hypermarkets (including Leclerc, Intermarché and Carrefour) appear to compete on price, using lower prices to attract customers to their hypermarkets. The market investigation has indicated that most of the additional outlets, the creation of which can be expected in the foreseeable future, will be linked to hypermarkets located outside city centres. The increasing importance of hypermarkets will further exert price discipline over the parties and the established players in the Portuguese market.
18. Given the above described market structure, and considering that the transaction does not appreciably affect the competitive conditions in the market – due to the relatively limited overlap existing between the parties- risks of coordinated effects as a consequence of the concentration can also be ruled out. In the light of the above, the

transaction will not adversely affect the competitive conditions in the Portuguese retail market for fuels.

### **Non-retail sales of fuels**

19. In the non-retail markets, a combined Repsol/Shell Portugal would account for [10-20] % (Repsol [<10]% and Shell [10-20]%) of diesel sales and [5-15]% (Repsol [<10]% and Shell [<10]%) of gasoline sales. Petrogal is the leader with [35-45]% in both markets followed by BP ([10-20]% for diesel and [15-25]% for gasoline). Cepsa accounts for respectively [<10]% (diesel) and [10-20]% (gasoline). The other oil companies, traders and independents account for less than 20% of the non-retail diesel and gasoline markets. [For heavy fuel pre-merger market shares are: Repsol 0%-10% and Shell 0%-10%. After the transaction the combined market share is 10%-15%. Market shares on a regional basis do not differ significantly from the above national market share positions. The combined entity's market share in itself excludes the possibility of the merger leading to the creation or strengthening of a dominant position
20. Non-retail sales in the Portuguese market basically consist of the four main players (Galp, BP, Shell and Cepsa) supplying independent resellers with product they buy themselves from the Galp refineries. Indeed, less than 10% of hydrocarbons consumed in Portugal are imported. Apart from a slight deficit in diesel, nearly all demand is satisfied by the output of the two Galp refineries. More than 60% of the non-retail volumes stem from ex-refinery sales with another 30% being supplied through CLC, the logistics company in which Galp holds 65% of the shares. BP (20%) and Shell (15%) hold the remaining shares in CLC. Repsol does not have logistics assets in Portugal.
21. Galp's control over the logistics that can import (terminal) and transport (pipelines) product to inland terminals effectively rules out significant imports in the Portuguese market. Indeed, the market investigation pointed to the dependency of resellers on sourcing, either directly or indirectly, from Galp. Repsol currently satisfies [<10]% of Portuguese diesel demand from its refinery in La Coruña, and may be in a position to increase imports when, post transaction, it will have access to Shell's storage capacity. With regard to unilateral effects, the consequences of Shell's disappearance as a supplier on this market are limited, as Shell purchases almost all the motor fuels it resells in Portugal from GALP. Also, the current transaction will not adversely change the competitive conditions in the market as there are no overlaps between the parties with regard to the logistic chain infrastructure. The parties' retail competitors that depend on supply and logistic infrastructure would thus not be in a worse situation than before the transaction. BP, Cepsa, ExxonMobil, Total and independent players would be in a position to capture market share from Repsol if the latter would raise its prices in view of adapting them to GALP's prices. As indicated above, whilst being fully supply dependent on GALP, these competitors have obtained significant market shares. Given the above described market structure, and considering that the transaction does not appreciably affect the competitive conditions in the market – due to the relatively limited overlap existing between the parties- risks of coordinated effects as a consequence of the concentration can also be ruled out.

## Sales of bitumen

22. Considering the market as national in scope, Galp is the main supplier of bitumen to the Portuguese market with a [30-40]% market share. Shell Portugal is number 3 with [15-25]%. Shell imports a substantial part of its sales from its own refinery in France (le Petit Couronne) and to a lesser extent from Cepsa's Spanish refinery. Shell has the necessary logistics infrastructure to support these imports. Repsol has a [10-20]% market share, part of which is imported by truck from its La Coruña refinery in Spain. Combined, the parties would have a [30-40]% market share which would slightly stay behind the incumbent, Galp.
23. On the basis of a regional market approach, the parties would have a [30-40]% market share for the Porto region (both [10-20]%), followed by Cepsa with [20-30]%, ExxonMobil with [<10]% and Nynas with [<10]%. Galp remains the market leader with [30-40]%. In the Lisboa region, the parties have a [30-40]% market share (Repsol [10-20]% and Shell [20-30]%), followed by Cepsa with [20-30]%. Also in this region, Galp will remain the market leader with [30-40]%. In the South region, Galp has a [40-50]% market share, followed by the parties with [25-35]% (Repsol [10-20]% and Shell [10-20]%) and Cepsa with [20-30]%. It can therefore be concluded that the market positions on the regional markets are closely related to those on the national market. In the islands region, due to the distance from the Portuguese mainland a market in itself, the parties had (on the basis of 2003 sales) a market share of [70-80]% (Repsol [40-50]% and Shell [30-40]%), with Galp ([10-20]%) and Cepsa ([<10]%) accounting for the remainder. However, should Madeira and Azores be regarded each as distinct geographic markets on the basis of the distance between them, the concentration would not lead to overlaps as Repsol only had sales in Madeira whilst Shell made all its bitumen sales on the Azores.
24. On the basis of the Commission's market investigation, no competition concerns arise from this transaction. As to the risk of unilateral effects, Galp will remain in a position to meet demand at the lowest cost in most of the territory of Portugal, thanks to its two refineries. Even in a growing market it will be in a position to maintain or increase its market leadership in the two most important Portuguese regions as its refineries, in particular the Porto refinery, have significant flexibility in increasing bitumen production capacity. Cepsa supplies Portugal via its Spanish Huelva refinery (near to the South of Portugal) which is capable of supplying all regions by ship through Cepsa import terminals. ExxonMobil has a stable position in the Porto region, where it sources bitumen from Galp and through imports using its import terminal. Repsol and Shell are not each other's closest alternatives. Whilst Repsol imports the product by truck from its Spanish La Coruña refinery for the Porto region, it is highly dependent on Galp sourced product for the other regions as it has no bitumen storage terminals in Portugal. Shell has instead import terminals in both the Porto and Lisboa region, but it is stronger in the latter region. Post transaction, Repsol may be able to import product from its highly efficient bitumen-only refinery in Tarragona (Spain)<sup>7</sup> by using Shell's import terminals in Lisboa and reduce the dependency of the new entity on Galp and Cepsa's Spanish

---

<sup>7</sup> The Tarragona plant is a bitumen only refinery. The bitumen only refineries, opposing to a normal refinery are focusing on a single product instead of producing a range of end products. As a consequence, these plants produce bitumen for a lower cost. Such refineries are often transporting their products overseas by ships, as the cost efficiencies gained through the production can "finance" the costs to be paid for the transportation on ship.

refineries. There is also an effective spot market as bitumen is imported into the Portuguese market when prices reach a higher level than in the rest of Europe. Nynas, the Swedish bitumen specialist has in this way been able to capture a [ $<10$ ] % market share in Portugal through imports. Finally, demand is concentrated in the hands of big construction companies that purchase bitumen through bidding procedures. None of the firms contacted by the Commission has raised concerns with regard to this transaction.

25. Given that the future market structure will consist of three strong players that accounted historically for the vast majority of bitumen sales in Portugal and given the commodity nature of bitumen, the Commission has looked at the risk of coordinated effects resulting from the operation. On the basis of its market investigation, the Commission concludes that such effects are unlikely. Post transaction, Repsol will be less dependent on Galp supplies in Portugal, as it will be in a position to import the product from its Spanish refineries and store it in the newly acquired logistic facilities. This should in turn increase pressure upon Galp to defend its market share. The transaction will also increase pressure upon Cepsa, [...]. Finally, the presence of smaller players and the spot market will exert price discipline over Galp and the established players in the Portuguese market.
26. Apart from the fact that the parties' bitumen sales do not overlap for each of Madeira and Azores, the new entity will not be better placed than its competitors for making bitumen sales to these islands. Neither Shell nor Repsol hold logistic assets on the islands (where the bitumen storage is owned by independent operators) which makes that these markets are contestable by European refiners or the spot market. With regard to Madeira, especially Cepsa is well placed to compete for bitumen sales as it has a refinery on the Canary islands. Galp and Repsol will continue supplying Madeira from respectively their Portuguese and Spanish refineries. For the Azores, at a significant distance from both the Portuguese mainland and Madeira, all European refiners are equally well placed to meet demand. Finally, it needs to be emphasised that on the islands, demand is relatively insignificant (3% of total Portuguese demand) and lumpy, with both Repsol's and Shell's 2003 market share representing [...] bitumen [...] delivery each.
27. In view of the foregoing, it can be concluded that the proposed operation would not, in any of the markets considered, impede effective competition in particular as a result of creating or strengthening a dominant position in the EEA or any substantial part of it.



## **VI. CONCLUSION**

28. 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 (EC) No 139/2004.

For the Commission

(signed)  
Stavros DIMAS  
Member of the Commission