

***Case No COMP/M.3730 -
LUKOIL / TEBOIL /
SUOMEN PETROOLI***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 17/03/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17/03/2005

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3730 – LUKOIL/TEBOIL/SUOMEN PETROOLI
Notification of 11/02/2005 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 11/02/2005, the Commission received a notification by the group OAO Lukoil (“Lukoil”, Russian Federation) of a proposed concentration by which it would acquire sole control of the undertakings OY Teboil Ab and Suomen Petrooli Oy (“Target”, Finland) by means of purchase of shares.

I. THE PARTIES

2. Lukoil is a Russian company active in oil and gas exploration, producing, refining and selling petroleum products principally in the Russian Federation, Ukraine, Bulgaria, Romania, in certain other central and eastern European countries and in the United States. Lukoil’s presence in Finland is very limited focusing on the sales of a few products mainly to wholesalers and re-sellers.
3. The Target comprises two sister companies primarily operating retail petrol service stations in Finland, manufacturing and selling lubricants, as well as selling refined oil products to non-retail customers. The Target is currently owned by TB Capital, based in the British Virgin Islands.

¹ OJ L 24, 29.1.2004 p. 1.

II. THE CONCENTRATION

4. Through the proposed transaction Lukoil, would acquire sole control of the Target by means of an agreement to be executed between TB Capital and Lukoil Finland. The acquisition by Lukoil of both target companies constitutes one and the same concentration as the two target companies, which are run as one operation, are being purchased by one buyer from one seller pursuant to one acquisition agreement whereby the completion of the acquisition of both target companies will be simultaneous. The notified transaction therefore constitutes a concentration within the meaning of the Merger Regulation

III. COMMUNITY DIMENSION

5. The undertakings concerned have a world-wide turnover in excess of EUR 5 billion (Lukoil: EUR 17,061; Target: EUR 682.6 in 2003) and each of them has a Community-wide turnover in excess of EUR 250 million (Lukoil: EUR 5,414; Target: EUR 682.6 in 2003). The notified transaction therefore has a Community dimension.

IV. COMPETITIVE ASSESSMENT

6. This concentration concerns the petroleum industry, which is normally divided into upstream and downstream sectors. Only some distinct parts of upstream and downstream petroleum activities are relevant for the present transaction. Lukoil's relatively small presence in Finland is limited to sales of a few products to wholesalers and re-sellers but not to end-customers. Thus the principal effect of Lukoil's acquisition of the Target will be to allow it to become a new entrant in retail and non-retail sales to end-customers of refined petroleum products in Finland. The transaction has therefore a limited competitive impact.
7. The Commission has focused its investigation on a limited number of possible affected markets arising from the transaction. The Target is engaged primarily in the operation of retail service stations and in the non-retail sales of refined oil products in Finland involving sales to end-customers of gasoline, diesel oil, liquified petroleum gas ("LPG"), lubricants and fuel oil. The parties have overlapping activities with regard to non-retail sales of lubricants and base oils. Vertical relationships exist with regard to non-retail sales of fuel oil and base oil.

a) Product and geographical markets

Horizontal overlaps

Non-retail sales of lubricants

8. Finished lubricants are produced by lubricant "blenders" by blending chemical additives into base oils to obtain the properties required. Lubricants have several uses, but their main function is to reduce friction and wear between moving parts. The Commission has in the past found that lubricants have four general types of application (automotive, industrial, marine, jet), each of them constituting a separate product market, due to the limited demand and supply side substitutability.
9. The Commission found that the supply of each of these lubricant types is at least national and likely EEA-wide in scope. As the transaction will not lead to negative competition effects,

regardless of whether the market is defined as national, Scandinavian or EEA, the exact definition of the relevant geographic market can be left open.

Base oils

10. Base oils, which are used to formulate lubricants, are generally mineral oils produced by oil refiners from the residue of crude oil left after the separation of other major oil products. Base oils have also various performance capabilities.
11. In previous decisions, the Commission has found five performance-related categories of base oils and that Group I base oils constitute a separate product market, but has left open a further delineation of the other groups. The geographic scope of the market for the production and sale of Group I base oil products has been held EEA-wide. However, the market for base oils does not result in a horizontally affected market and will therefore not be further addressed in this decision.

Vertical relationships

12. The nature of the oil industry creates a number of vertically related product markets. As the Target is only involved in the downstream activities of the petroleum industry, and as Lukoil is a vertically integrated petroleum company, there are some vertical relationships. The parties argue that the actual existing vertical relationships between Lukoil and the Target involve the supply of base oils (which the Target uses primarily to blend into finished lubricants) and fuel oil, (which the Target occasionally purchases from Lukoil). However, the market for base oil does not result in a vertically affected market within the meaning of the Implementing Regulation², and will therefore not be further addressed in this decision.

Non-retail sales of refined oil products (fuel oil)

13. In its previous decisions the Commission has stated³ that the non-retail sales of each of the refined products (gasoline, diesel, LPG, fuel oil) constitutes a distinct relevant product market. These products are not substitutable among each other in terms of demand. Non-retail sales targets wholesaler and high volume end-customers.
14. As regards the geographical scope of the market for non-retail sales of refined oil products, the Commission has in the past suggested that these markets are local in scope⁴. However, in a recent case⁵, the Commission found that the scope of the non-retail market in Scandinavia may be regional in scope (i.e. Denmark, Finland, Norway and Sweden) due to the intensity of imports and exports within the region. As the transaction will not lead to negative competition effects, regardless of whether the market is defined as national, Scandinavian or EEA, the exact definition of the relevant geographic market can be left open.

b) Assessment

Horizontal overlaps

² Commission Regulation (EC) No 802/2004 of 7 April 2004

³ COMP/M.1628 – Totalfina/Elf, 26/03/1999, par. 27.

⁴ Case IV M.1383 Exxon/Mobil, 29/09/1999.

⁵ Case COMP M.3291 Preem/ Skandinaviska Raffineradi, 1/12/2003.

Non-retail sales of lubricants

15. In lubricants (and even if the market is subdivided by type of lubricant), the combined market share of the parties in the EEA is less than [0-10]%. No overlapping activities exist if the market is defined as Scandinavia or Finland, and even looking narrowly at the Baltics (in aggregate or for each country individually), the combined shares (2004) of the parties are below 15%. Therefore no affected market can be identified with regard to lubricants.

Vertical relationships

Non-retail sales of refined oil products (fuel oil)

16. Lukoil's and the Target's market shares in the different markets for non-retail sales of refined oil products (fuel oil, LPG, gasoline, diesel) that may be subject to competition on a wider geographic scope than Finland, such as Scandinavia or the EEA, are limited and always far below 25%. The parties argue that there may be one possible vertically affected market, because the Target has [25-35]% market share on a narrowly defined market of non-retail sales of fuel oil in Finland. However other strong international groups such as Neste/Fortum ([35-45]%), Shell ([10-20]%), ExxonMobil ([5-15]%) are active on this market.
17. The proposed transaction will not have any adverse effect on competition by virtue of any vertical integration of the parties as there are no foreclosure issues given the fragmented supply of upstream fuel oil products and the wide array of downstream outlets and choice in the market. This view has been confirmed by the market investigation and no third party has highlighted any concern as regards possible negative competition effects as a result of the concentration.

IV. CONCLUSION

18. 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)
Neelie KROES
Member of the Commission