

***Case No COMP/M.4002 -  
OMV / ARAL CR***

Only the English text is available and authentic.

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

---

Article 6(1)(b) NON-OPPOSITION  
Date: 21/12/2005

***In electronic form on the EUR-Lex website under document  
number 32005M4002***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.12.2005

**SG-Greffe(2005) D/207586**

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4002 – OMV / ARAL ČR**  
**Notification of 17/11/2005 pursuant to Article 4 of Council Regulation**  
**No 139/2004<sup>1</sup>**

1. On 17/11/2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking OMV Aktiengesellschaft (“OMV”, Austria) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Aral ČR, a.s. (“Aral ČR“, Czech Republic) by way of purchase of shares.

## **I. THE PARTIES**

2. OMV is mainly active in the exploration, production, refining and distribution of mineral oil products. It operates a petrol station network under the brand names OMV, AVANTI and Stroh. Furthermore, OMV is active in the chemical industry and the exploration, production and distribution of natural gas. OMV’s activities in the Czech Republic are however limited to the retail supply of refined petroleum products (through its network of 146 petrol stations) and non-retail supply of gasoline, diesel and other petroleum products.
3. Aral ČR currently belongs to BP, a multi-national exploration, petroleum and petrochemicals group. Aral ČR is active only in retail and to a limited extent in non-retail sale of petroleum products (gasoline and diesel) in the Czech Republic, where it currently operates a network of 70 petrol stations.

---

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

## II. THE OPERATION AND CONCENTRATION

4. Under the terms of the Sale and Purchase Agreement signed by OMV and BP on 5 October 2005, OMV will acquire the entire share capital of Aral ČR. Following the transaction, BP will have no interest in Aral ČR. Even though BP retains its independent lubricants business in the Czech Republic operating currently within Aral ČR, this business will be extracted from Aral ČR prior to the completion of the transaction. Thus, the notified operation leads to acquisition of sole control over Aral ČR by OMV and constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## III. COMMUNITY DIMENSION

5. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>2</sup> (EUR 9.88 billion for OMV and EUR [...] for Aral ČR). Each of OMV and Aral ČR has a Community-wide turnover in excess of EUR 250 million (EUR [...] for OMV and EUR [...] for Aral ČR) and 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 according to Article 1(2) of the Merger Regulation.

## IV. COMPETITIVE ASSESSMENT

6. The notified operation has an impact on retail and non-retail sale of fuel in the Czech Republic.

### A. Relevant product markets

#### *Retail sale of fuel*

7. In line with the previous cases of the Commission, the parties are of the view that the relevant product market is retail sale of all types of fuel from branded and non-branded petrol stations to motorists.
8. The Commission has consistently considered this retail sale market as a separate market from the non-retail sale of fuel<sup>3</sup>. In these cases, the Commission held that the market includes sale of all types of fuel (i.e. in particular both gasoline and diesel). Even though there is no substitutability between these products at the demand side, there is a considerable degree of supply-side substitutability as both products are always available at the distribution level at the same point of sale. Furthermore, market shares for each type of fuel roughly coincide with the aggregate market share<sup>4</sup>. The market investigation in this case confirmed that this product market definition applies also to the retail sale of fuels in the Czech Republic.
9. The Commission also held in previous cases that, in some countries, it is possible to consider fuel retailing on motorways as a separate product market due to different competitive conditions on motorways (relating in particular to different characteristics

---

<sup>2</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).

<sup>3</sup> E.g. M.1383 – Exxon/Mobil, M.1628 – TotalFina/Elf, M.2389 – Shell/DEA or M.3291 – Preem/Skandinaviska raffinaderi

<sup>4</sup> M.1383 – Exxon/Mobil, M.1628 – TotalFina/Elf, M.2389 – Shell/DEA

of demand, higher prices, payment of a toll on motorways and higher barriers to entry)<sup>5</sup>.

10. The parties in this case argue that in the Czech Republic the motorway and off-motorway petrol stations belong to the same market because: (i) price differences between motorway and off-motorway petrol stations are minimal; (ii) there are no toll booth at entrances/exits to Czech motorways; (iii) most major retailers are present both on and off motorways; and (iv) retailers obtain their fuel supplies for both motorway and off-motorway stations through the same supply and distribution channels and with same conditions.
11. The market investigation however suggested that there may be differences between the retail sale of fuel on motorways and off-motorways in the Czech Republic. In particular, majority of responses in the market investigation indicated that prices are indeed higher in the petrol stations situated on motorways. Furthermore, it has been also suggested that demand characteristics are different, that procedures for developing new petrol stations are more complicated and that motorway petrol stations usually offer wider range of supplementary services.
12. However, as the transaction does not lead to competition concerns under any alternative market definition, it can be left open whether there is a separate market for retail sale of fuel on motorways in the Czech Republic.

#### *Non-retail sale of fuel*

13. In line with the previous Commission decisions, the parties are of the view that there are separate product markets for non-retail sale of each individual type of fuel (gasoline, diesel, fuel oil and LPG) to independent resellers and high volume end consumers<sup>6</sup>. As indicated in the previous Commission cases, it is not possible to aggregate the different types of fuel into one category because they are supplied for different uses to different types of customers.
14. The market investigation largely confirmed this definition of the relevant product market also for the non-retail sale of fuel in the Czech Republic. As activities of Aral ČR in the non-retail sale of fuels are limited to gasoline and diesel, only these two relevant non-retail markets are considered further in this decision.

### **B. Relevant geographic market**

#### *Retail sale of fuel*

15. The parties are of the view that the market for retail sale of fuel in the Czech Republic is national. The Commission has in previous cases considered that this market may indeed be national due to the following elements: (i) existence of overlapping catchment areas of petrol stations leading to a chain of substitution; (ii) many important parameters of competition (such as range of products, sources of supply, service level, quality, advertising, promotion and pricing policy) are decided at

---

<sup>5</sup> M.1383 – Exxon/Mobil, M.1628 – TotalFina/Elf

<sup>6</sup> M.1383 – Exxon/Mobil, M.1628 – TotalFina/Elf, M.2389 – Shell/DEA, M.3291 – Preem/Skandinaviska raffinaderi or M.3543 – PKN Orlen/Unipetrol

national or at least regional level; (iii) there are differences in taxation between individual countries<sup>7</sup>.

16. The market investigation largely confirmed that a number of parameters of competition are set at the national level, in particular as regards decisions concerning supply sources of fuel sold at petrol stations, range of products and services offered at the petrol stations, advertising and promotion or expansion of the petrol stations network. As regards pricing policy, it seems that it is generally set at the national level as well, even though it also contains a local element as individual petrol stations take into account prices set by their local competitors and adjust their prices accordingly. It should be also added that all the important competitors active in the retail market have a nation-wide network of petrol stations covering the whole Czech Republic. Therefore it seems that the geographic market for the retail sale of fuel in the Czech Republic might possibly be considered as national.
17. Nevertheless, some replies to the market investigation indicated that there are price differences in the retail sale of fuel within the Czech Republic, in particular in the metropolitan area of the Capital City of Prague and possibly also in other metropolitan areas such as Brno, Ostrava or Plzeň.
18. The exact geographic market definition can, however, be left open as the transaction does not lead to competition concerns either at a national level or at a narrower level of the individual large metropolitan areas.

#### *Non-retail sale of fuel*

19. The parties are of the view that the geographic markets for non-retail sale of both gasoline and diesel are national. They argue that (i) there are no areas within the Czech Republic where competitive conditions for the non-retail supply of gasoline and diesel differ significantly; (ii) various factors indicate homogeneous conditions of competition throughout the Czech Republic; (iii) storage facilities are available across the entire territory of the Czech Republic; (iv) in most cases contracts with non-retail customers are negotiated and signed on a national level; (v) prices are set in a consistent way across the whole of the Czech Republic; and (vi) all suppliers pay similar tariffs for the primary transport through the Czech pipeline system owned by the state owned company Čepro which covers the entire territory of the Czech Republic.
20. The Commission has, however, in previous cases considered also possible narrower geographic market definition. It was suggested in some cases that the market may due to transport costs be rather regional, based on a radius of 100-150 kilometres from each point of supply (refinery or storage facility)<sup>8</sup>. In other cases, including the recent case relating specifically to the Czech Republic<sup>9</sup>, it appeared that the market for non-retail sale of fuels was rather national. The exact market definition was however left open.
21. The market investigation largely confirmed that conditions of non-retail sale of fuels are to a large extent homogenous throughout the Czech Republic and that existing

---

<sup>7</sup> M.1383 – Exxon/Mobil, M.1628 – TotalFina/Elf, M.2389 – Shell/DEA or M.3291 – Preem/Skandinaviska raffinaderi

<sup>8</sup> E.g. M.1383 – Exxon/Mobil

<sup>9</sup> M.3543 – PKN Orlen/Unipetrol

infrastructure system ensures same conditions for potential customers in the whole Czech territory. Only a minority of replies suggested that prices may to a certain extent differ depending on the distance from the refinery or storage depots. Furthermore, contracts for supply of gasoline and diesel to non-retail customers are usually negotiated at the national level.

22. However, the exact geographic market definition can be left open as the transaction does not lead to competition concerns under either national or narrower market definition.

### **C. Compatibility with the common market**

#### ***Retail sale of fuel***

23. The transaction would lead to horizontal overlaps between the petrol station networks of OMV and Aral ČR in the Czech Republic. On the basis of sales, OMV and Aral ČR are currently players number three and four respectively in the Czech market. The merged entity would have a national network of in total 216 petrol stations (146 OMV stations and 70 Aral stations). The combined market share<sup>10</sup> of the parties in the national retail sale market on the basis of sales in the period January-August 2005 amounted to [10 – 20%] ([5 – 15%] OMV and [0 – 10%] Aral ČR).
24. The merged entity would be the largest player in the Czech market on the basis of sales (with other competitors being Shell with around [10 – 20%] market share in the period January-August 2005, Benzina/Paramo with [10 – 20%], PAP-OIL with [0 – 10%], Jet, Esso, Euroil (Čepro) and Agip with [0 – 10%] market share each). On the basis of the number of petrol stations they would be the second largest player after Benzina/Paramo with more than 300 petrol stations.
25. Furthermore, the market investigation confirmed that there are no significant barriers to entry or expansion in the retail sale of fuel in the Czech Republic and that indeed a number of competitors of the parties plan to expand their petrol station network. Furthermore, it has been largely confirmed that independent petrol station operators and hypermarkets are able to compete effectively with the vertically integrated companies such as OMV, in particular due to their lower operating costs and more aggressive pricing policies.
26. Therefore, considering the moderate combined market share of the parties and presence of a number of important, both vertically integrated and independent competitors, the transaction would not significantly impede effective competition in the national market for retail sale of fuel in the Czech Republic.
27. In case only the market for retail sale of fuel on motorways is taken into account, the market share of the parties as of 2004 would be higher, amounting to around [25 – 35%] ([10 – 20%] OMV and [10 – 20%] Aral ČR). However, also in this segment there are important competitors present, in particular Shell with [25 – 35%] market share, Benzina/Paramo with [10 – 20%], Esso with [5 – 15%], Agip with [5 – 15%] and Jet with [0 – 10%]. Therefore, even though the motorways market segment seems to be slightly more concentrated and the combined entity would become a market

---

<sup>10</sup> The market shares of the parties and their competitors used in the decision are estimates provided by the parties which were largely confirmed by the market investigation. In case the market investigation revealed any discrepancies, these are always mentioned in the relevant part of the decision.

leader, the transaction would not significantly impede effective competition even in this possible narrower segment of the retail sale of fuel due to the still moderate combined market share of the parties and presence of very strong competitors.

28. Furthermore, the parties claim that even if the geographic market was considered narrower than national, they would have the highest market share in the Prague metropolitan area amounting in 2004 to [20 – 30%] ( [10 – 20%] OMV and [5-15%] Aral ČR), with other competitors being Shell with [15 – 25%], Agip with [5 – 15%], Benzina/Paramo with [5 – 15%], Esso and Jet with [0 – 10%] each). Even though some replies in the market investigation suggested that the combined market share of the parties in the Prague metropolitan area may be slightly higher, it would in any event not exceed 30%. For any other major metropolitan area in the Czech Republic, the market share of the parties would be below 25% in each instance. Furthermore, there are no significant barriers to entry or expansion and in particular petrol stations operated by hypermarkets provide additional competitive pressure in all larger metropolitan areas. Therefore, the transaction would not significantly impede effective competition even under possible narrower geographic market definition.
29. Finally, even though the retail sale market is relatively transparent and the commodity sold rather homogenous, the transaction would not significantly impede effective competition due to coordinated effects under any possible market definition. There are relatively high differences between the leading players on the market with regard to their market shares, cost structure and level of vertical integration. Furthermore, overall the market is rather fragmented with the five biggest players representing less than 50% of the national market and with an important fringe of a large number of aggressively competing smaller independent petrol stations (together representing around 30% of the market) and a rapidly growing number of petrol stations operated by hypermarkets (together representing around 7% of the market).
30. Therefore, the transaction would not significantly impede effective competition in the retail sale of fuel in the Czech Republic under any alternative market definition.

#### *Non-retail sale of fuel*

31. Both parties are active in the non-retail sale of gasoline and diesel in the Czech Republic. While OMV is vertically integrated into production of gasoline and diesel (in particular in its refinery in Schwechat/Vienna, Austria, relatively close to the Czech borders), Aral ČR acts merely as a trader without access to any own upstream supply sources and its non-retail activities are rather marginal.
32. The parties estimate that their combined market shares in the non-retail sale of gasoline and diesel on the national level in 2004 would amount to [5 – 15%] (OMV [10 – 20%], Aral ČR [0 - 10%] ) and [5 – 15%] (OMV [5 - 15%], Aral ČR [0 - 10%] ) respectively. The parties also submit that their non-retail sales are evenly distributed throughout the territory of the Czech Republic and that their market shares would not substantially differ in any possible narrower geographical area. The market investigation confirmed the moderate market position of the parties which would not be particularly stronger even in any narrower geographic part of the Czech Republic.
33. As has been found by the Commission in the recent case M.3543 – PKN Orlen/Unipetrol and confirmed by the market investigation in this case, there are other important competitors in the non-retail Czech market including the market leader PKN Orlen with market share exceeding 25% for both gasoline and diesel. Other important competitors

with a market position comparable to the combined position of the merged entity are Čepro, the state owned company operating the pipeline system and storage depots throughout the Czech Republic, and Slovnaft. Other vertically integrated international companies such as AGIP/ENI, ConocoPhillips and Shell are also significant players in the non-retail sale of both gasoline and diesel in the Czech Republic.

34. Finally, even though the commodity sold is rather homogenous, the transaction would not significantly impede effective competition due to coordinated effects under any possible market definition. First, the non-retail markets are less transparent than the retail market as regards both prices and volumes sold. Furthermore, there are relatively high differences between the leading market players with regard to their market shares, cost structure and level of vertical integration. In particular, the incentives of the state owned pipeline system operator Čepro differ to the other leading players. There is also an important number of smaller independent operators in the non-retail markets which are not vertically integrated either to the retail market or to upstream production markets and concentrate fully on the non-retail activities.
35. Therefore, the transaction would not significantly impede effective competition in the non-retail sale of gasoline and diesel in the Czech Republic under any alternative market definition.

## **V. CONCLUSION**

36. 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