

***Case No COMP/M.4532 -  
LUKOIL /  
CONOCOPHILLIPS***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 21/02/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.02.2007

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4532 – Lukoil / ConocoPhillips**

**Notification of 17.01.2007 pursuant to Article 4 of Council Regulation No 139/2004<sup>1</sup> (the "Merger Regulation")**

1. On 17 January 2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No. 139/2004, by which the undertaking OAO LUKOIL ("LUKOIL", Russia) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of part of the undertaking ConocoPhillips ("COP", US), namely certain indirectly owned subsidiaries located in the EEA (the six "Target Companies"), by way of purchase of shares.

#### **I. THE PARTIES**

2. Lukoil is a Russian company active in oil and gas exploration and production and sale of petroleum products, including petrochemicals. It owns oil-refining capacity in Russia, Ukraine, Bulgaria and Romania. Lukoil's main [EEA] activities have consisted of the wholesale of refined products and motor fuel retailing in Cyprus, Estonia, Finland, Hungary, Latvia, Lithuania and Poland. In addition it is active in motor fuel retailing and refining of petroleum products in Bulgaria and Romania.
3. COP is an international, integrated energy company based in the US. The company has four core activities worldwide: petroleum exploration and production, petroleum

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<sup>1</sup> OJ L24, 29.1.2004 p.1.

refining, marketing, supply and transportation, natural gas gathering, processing and marketing and chemicals and plastics production and distribution. The six Target Companies are predominantly active in operating motor fuel retail service stations in Belgium, the Czech Republic, Finland, Luxembourg, Poland, Hungary and the Slovak Republic.

## **II. THE OPERATION AND CONCENTRATION**

4. The operation consists of the acquisition of sole control by Lukoil of the "Target Companies": COP Belgium NV, COP Czech Republic sro, COP Finland Oy, COP Hungary Trading Ltd, COP Poland SP zoo and COP Slovakia SRO. It is structured as a private acquisition of all the share capital of the Target companies by the buyers.
5. Through the proposed transaction, Lukoil will acquire sole control over the Target Companies and the operation thus constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **III. COMMUNITY DIMENSION**

6. The parties have a combined worldwide turnover of more than EUR 5 billion (Lukoil [€..million]; Target Companies [€..million]). The individual Community-wide turnover for each of at least two of the undertakings concerned exceeds EUR 250 million (Lukoil [€.. million]; Target Companies [€..million]). Neither Lukoil nor the Target Companies have achieved in 2005 two-thirds of their aggregate Community-wide turnover within one and the same Member State. The concentration therefore has a Community dimension.

## **IV. RELEVANT MARKETS**

### **A. Relevant product markets**

#### *Retail Sale of Motor Fuels*

7. The parties agree with prior Commission decisions which have found that there is a distinct product market for the retail sale of motor fuels.<sup>2</sup> In the *BP Mobil*<sup>3</sup> case it was found that the distribution of different retail motor fuels may well occur together so that different products are always available at the same point of sale. For example, service stations will generally always sell petrol, diesel and sometimes LPG as they seek to serve the maximum number of automotive customers. The aggregation of retail fuels into one category was supported by responses from third parties in that case.
8. The parties argue that the market for the retail sale of motor fuels includes "forecourt sales" being sales of motor fuel to motorists at retail service petrol stations. They argue that all other sales are to be treated as "non-retail", specifically D-points and Marine stations. In Finland, Lukoil sells fuel through *Marine stations, D-points and Rural Stations*. The parties consider that D-point and marine stations are separate product markets from the market for the sale of fuels through "standard" retail sites.

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<sup>2</sup> Case COMP/M.727, BP/Mobil; Case COMP/M.383 Exxon/Mobil

<sup>3</sup> Case COMP/M.727, BP/Mobil

9. The parties submit that *Marine stations* serve a set of customers different from other retail sites, namely boat owners as opposed to motorists. They are located in marinas, sell only marine diesel and require a different type of infrastructure. They are also operated on a seasonal basis. There is, therefore, according to the parties, no demand or supply side substitutability between marine stations and standard roadside service stations. This argument has been supported by the results of the market test.
10. Lukoil also operates separate networks of "*D-points*". The parties submit that D-points can only be used by professional drivers of heavy trucks, buses and coaches. The parties submit that there is therefore no demand or supply-side substitutability between D-points and standard retail sites, as the latter are for drivers of cars and light commercial vehicles. Pumps at D-point stations dispense only diesel at a high volumetric rate and cannot as such be used by ordinary cars and light commercial vehicles. They are located in industrial areas and along main roads, along routes frequented by professional drivers. Thus, whilst in *Statoil/SDS*<sup>4</sup>, which did not consider Finland, the Commission found that sales of diesel via high-speed pump may be part of the retail channel, the parties submit that this is not the case for Finland. However, the results of the market investigation have not been conclusive in this regard. In any event, for the purposes of this case, this point can be left open.
11. *Rural stations* are situated in isolated areas and have a far lower output than standard retail stations. Lukoil's involvement with these stations is more limited than is the case for standard retail stations. The parties therefore consider that Rural stations and standard retail stations could fall into separate product markets. However for the purposes of this case, this point can be left open.
12. Some previous Commission decisions have considered a further sub-division of the market for retail sale of motor fuels into *motorway* and *non-motorway sales*.<sup>5</sup> In other cases, the question has been left open.<sup>6</sup> In this case, given the absence of significant price differences between motorway and non-motorway retail sales of motor fuels and the fact that tolls are not charged for access to Finnish motorways, the parties submit that the market in Finland should not be further subdivided into motorway and non-motorway sales. In any event, for the purposes of this case, this point can be left open.

#### *Non-retail sale of motor fuels*

13. In previous Commission decisions, the Commission has found that unlike retail sale of motor fuels, the non-retail sale of fuels is not similarly aggregated.<sup>7</sup> Different fuels are supplied for different uses to different types of customer. Customers of non-retail sales are wholesalers and high volume end-customers and the products are not substitutable among each other in terms of demand.<sup>8</sup> The parties agree with this assessment.

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<sup>4</sup> Case COMP/M.3375 Statoil/SDS

<sup>5</sup> Case COMP/M.1628, TotalFina/Elf.

<sup>6</sup> Case COMP/M.3516, Repsol YPF/Shell Portugal, Case COMP/M.1859 ENI/GALP

<sup>7</sup> Case COMP/M.727, BP/Mobil

<sup>8</sup> Case COMP/M.1628, TotalFina/Elf.

### *Storage of refined oil products*

14. Previous Commission decisions have found a distinct product market for the storage of petroleum products, which should be distinguished from the storage of crude oil, vegetable oils, chemicals and gas, due to technical and commercial considerations.<sup>9</sup> In the *Pakhoed/Van Ommeren* case the Commission has found it unnecessary to further subdivide the market according to the function or type of tank concerned and has not proposed any subdivision on the basis of the petroleum products being stored.<sup>10</sup> The parties agree with this approach. They submit that the relevant product market consists of storage terminals for refined oil products.
15. Furthermore, previous Commission decisions have distinguished between import facilities with a very large capacity of between 30'000 m<sup>3</sup> to 50'000 m<sup>3</sup> and smaller secondary/coastal distribution facilities.<sup>11</sup> The parties agree with this distinction.

### *Conclusion on Relevant Product Markets*

16. Ultimately, the definition of the relevant product markets can be left open, since, on any reasonably defined market, the transaction will not give rise to competition concerns.

## **B. Relevant geographic markets**

### *Retail Sale of Motor Fuels*

17. Consistent with the Commission's approach in previous cases, the parties submit that the relevant geographic markets for retail sales of motor fuel are national.<sup>12</sup> From a supply side, many important parameters of competition, such as range of products, sources of such products, quality, service level, advertising, promotion and prices are not decided on a local, but rather on a regional or national level. Moreover, in fuel retailing, taxation affects the final pump price so heavily that differences between regions in a country tend to be limited.

### *Non-retail sale of motor fuels*

18. As regards non-retail sales of motor fuel, prior Commission decisions group the products into regional,<sup>13</sup> national or larger than national markets. In relation to Finland, the Commission has defined the market as being Scandinavia on the basis of significant trade flows.<sup>14</sup> The parties argue however that the relevant geographic markets for the various fuel products are at least EEA-wide and possibly wider. In this

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<sup>9</sup> Case COMP/M.1621 Pakhoed/Van Ommeren.

<sup>10</sup> Case COMP/M.1621 Pakhoed/Van Ommeren.

<sup>11</sup> Case COMP/ M.1628 TotalFina/Elf

<sup>12</sup> Case COMP/M.1383, Exxon/Mobil

<sup>13</sup> Case COMP/M.1383 Exxon Mobil

<sup>14</sup> Case COMP/M.3291 Preem/Skandinaviska Raffinaderi

respect, Lukoil has refining activities in Russia, the Ukraine, Romania and Bulgaria, (the two latter having just joined the EEA), yet it exports over half its production of refined products to the EEA, making some sales in every member state. A large part of these exports are immediately re-exported without having being released into the local market for consumption.

#### *Storage of refined oil products*

19. In relation to storage of refined oil products, previous Commission precedents have defined the relevant geographic market as covering the Antwerp-Rotterdam-Amsterdam region and hinterland (the "ARA"). Previous Commission decisions have found the market for storage at smaller, secondary distribution depots is however likely to be narrower, between 50km and 150 km radius and national or regional at its widest.<sup>15</sup> In line with these precedents, the parties submit that the geographic market for the storage of petroleum products is national or regional (based upon Turku in the case of Finland). In the case of the Benelux, the parties submit that primary storage in large terminals is likely to cover the ARA area and its hinterland (including Brussels), but that for secondary distribution terminals is more localized, with separate markets for an area of central Belgium focused on Brussels and Luxembourg.

#### *Conclusion on Relevant Geographic Markets*

20. Ultimately, the definition of the relevant geographic markets can be left open, since, on any reasonably defined market, the transaction will not give rise to competition concerns.

### **V. COMPETITIVE ASSESSMENT**

#### *A) Horizontal overlaps*

##### *Retail Sale of Motor Fuels*

21. The Target Companies are active in the retail sale of motor fuels in Belgium, the Czech Republic, Finland, Luxembourg, Poland, Hungary and the Slovak Republic. Within the EEA, LUKOIL is active in retail sale of motor fuels in Cyprus, Estonia, Finland, Hungary, Latvia, Lithuania and Poland. There is therefore a horizontal overlap between the parties in the retail sale of motor fuels in Finland, Hungary and Poland.
22. The parties' combined market shares in Hungary and Poland are very small and do not give rise to an affected market (<5% and <5%, respectively according to the number of sites and [0-10]% and [0-10]%, respectively by volume).
23. The parties' combined shares in Finland do give rise to an affected market, with a combined market share of [15-25]% by number of sites with a small increment of <5%.<sup>16</sup> However, this would place LUKOIL second on the market, behind the market leader "Neste", which holds [25-35]% of the market by number of sites. Thus whilst LUKOIL would gain market share, it would remain the second largest market player and would continue to be followed by ABC (the hypermarket retailer) with [5-15]%,

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<sup>15</sup> Case COMP/M.1628, TotalFina/Elf and Case COMP/M.1464 Total/Petrofina

<sup>16</sup> This data relates to Standard Retail Stations including Rural Stations and D-points. Alternative definitions proposed, which exclude rural stations and/or D-points do not change the analysis.

Shell [10-20]% and ExxonMobil with [5-15]%, amongst others, depending on number of sites or volume.

#### *Storage of refined oil products*

24. COP Belgium owns a storage terminal in Brussels, used by a number of other companies. As a secondary distribution depot for loading distribution trucks, it serves a small geographic area of about 50km radius around Brussels. On the other hand, LUKOIL has a 50% stake in a storage terminal in Rotterdam in the Netherlands. However, whereas the Brussels depot is used solely for secondary distribution of diesel, petrol, mazout and kerosene to service stations and end use customers in the Brussels area, LUKOIL's Rotterdam storage facility is licensed and used to store high sulphur fuel oil used by ships. Thus there is no actual overlap between the parties in fuel storage within the Benelux.
25. COP Finland owns a small secondary distribution terminal at Turku in Finland. This is currently leased to Neste, which uses it for storage of jet-fuel. LUKOIL also owns a secondary distribution terminal in Turku and seven other terminals in Finland. The parties' total combined capacity is [...]m<sup>3</sup>. Out of a total Finnish storage capacity of about 10 million m<sup>3</sup>, this represents [<5]% of the market and thus does not raise competition problems.

#### *Conclusions on horizontal issues*

26. The horizontal overlaps between the parties are limited. The proposed transaction does not change the market structure significantly in the national markets in question where, in each case, several major competitors will remain active.

#### *B) Vertical issues*

27. There is no horizontal overlap between LUKOIL and any of the Target Companies in relation to the non-retail sale of diesel and petrol. However, there is a potential vertical link between the parties given that LUKOIL operates in non-retail sales of petrol and diesel and COP operates on the downstream markets for retail sales of motor fuels.
28. On an EEA-wide basis, LUKOIL supplies [<5]% of all petrol and [<5]% of all diesel. On a Scandinavian wide basis, LUKOIL supplies [<5]% of all petrol consumed and [10-20]% of all diesel. Thus, whilst LUKOIL is active on the upstream level, the scope of its activities is relatively limited and does not give rise to an affected market seen on either an EEA-wide or Scandinavian wide basis.
29. Downstream, the parties have combined market shares of about [15-25]% by number of sites on the Finnish market for retail of motor fuels based on standard retail sites, rural stations and D-points. None of the respondents to the Commission's investigation has pointed to this level of vertical integration as possibly leading to competition concerns.
30. The parties' combined market share for retail of motor fuels is [<10]% by either number of sites or volume in each of the other countries in which the Target Companies are active.

#### *Conclusions on vertical issues*

31. There are no indications that the proposed concentration will give rise to foreclosure or other competition concerns at either upstream or downstream level. Post-transaction, there will remain numerous other upstream suppliers of petrol and diesel on a non-retail basis (whether ex-refinery or wholesale, including major refiners and traders) and numerous downstream retailers, including major international, national oil companies and independent players.

## **VI. CONCLUSION**

32. 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 the Merger Regulation.

For the Commission,  
signed,  
Neelie KROES  
Member of the Commission