EN

Case No COMP/M.4723 - ENI / EXXON MOBIL (Hungarian, Czech and Slovak Package)

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 24/07/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

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PUBLIC VERSION

MERGER PROCEDURE

ARTICLE 6(1) (b) DECISION

To the notifying party:

Dear Sir/Madam,

Subject: **Case No COMP/M.4723 - ENI/ EXXON MOBIL (Hungary, Czech Republic and Slovakia)**
Notification of 19.06.2007 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 19/06/2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the "Merger Regulation") by which the undertaking Eni S.p.A. ("Eni", Italy) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of ExxonMobil Hungaria ("Esso Hungaria", Hungary), Esso spols s.r.o ("Esso Ceska", Czech Republic) and Esso Slovensko spol, s r.o. ("Esso Slovensko", Slovakia) and certain assets and contracts of ExxonMobil's relating to the lubricants business in these countries ("Lubs Assets and Contracts") by way of purchase of shares and assets.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

1 OJ L 24, 29.1.2004 p. 1.

I. THE PARTIES

3. **Eni** is active worldwide in the finding, producing, transporting, transforming and marketing of oil and gas.

4. **Esso Hungaria, Esso Ceska and Esso Slovensko** are present respectively in Hungary, Czech Republic and Slovakia mainly at the motor fuel retail level, with a network of respectively […] service stations in Hungary, […] service stations in Czech Republic, and […] service stations in Slovakia. Moreover, Esso Ceska and Esso Slovensko are present in the supply of jet fuel respectively in Prague's airport and Bratislava's airport.

5. **Lubs Assets and Contracts** consists of certain commercial assets and customer contracts belonging to ExxonMobil and engaged, inter alia, in the marketing and sale of branded and unbranded lubricants and specialties in the Czech Republic, Hungary and Slovakia.

6. Esso Hungaria, Esso Ceska and Esso Slovensko and Lubs Assets and Contracts will henceforth be referred to as "the Target".

II. THE TRANSACTION

7. On April 27, 2007, ExxonMobil (through some of its affiliates) and Eni (through some of its affiliates) entered into several agreements for the acquisition by Eni of: i) 100% of ExxonMobil's affiliate companies active in the retail sale of fuel markets in the Czech Republic, in Slovakia and in Hungary as well as in the jet fuel markets in Prague's and Bratislava's international airports; ii) certain commercial assets and contracts of Exxon in both the automotive and industrial lubricants markets in the same countries.

8. Each Sale and Purchase of Shares/Quotas agreement relating to each of Esso Hungaria, Esso Ceska and Esso Slovensko is subject to concurrent satisfaction of the conditions precedent listed in all the other Sale and Purchase of Shares/Quotas agreements Similarly, the completion of each agreement for the acquisition of ExxonMobil's Lubricant Assets and Contracts is subject to the completion of the agreement for the sale and purchase of the Exxon's affiliate company operating in the same Member State. Accordingly, all the agreements for sell of different assets and contracts in Hungary, Czech Republic and Slovakia are interdependent on each other.

9. As a result, all the transactions referred to above constitute a single concentration as they are interdependent, i.e. none of them will be carried out without the others. Furthermore, they have been entered into by the same parties (Eni and ExxonMobil), with Eni acquiring sole control of all ExxonMobil's affiliates and assets. Therefore, for the purpose of assessing the Community dimension of the concentration, the target companies and assets have to be taken as a whole.

III. THE CONCENTRATION

10. Through the proposed transaction, Eni would acquire sole control over of the whole of Esso Hungaria, Esso Ceska, Esso Slovensko, and Lubs Assets and Contracts. The operation thus constitutes a concentration within the meaning of Article 3.1(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

11. The transaction has a Community dimension pursuant to Article 1(2) of the Merger Regulation. The parties have a combined aggregate worldwide turnover in excess of €5,000 million (Eni: EUR 86,105 million; the target: EUR […]) and each has a Community-wide turnover in excess of €250 million (Eni: EUR […]; the target: EUR […]), when considering the turnover of Esso Hungaria, Esso Ceska, Esso Slovensko and Lubs Assets and Contracts cumulatively (as foreseen by article 5(2) of the Merger Regulation and paragraphs 32-35 of the Notice on Calculation of Turnover).

V. RELEVANT MARKETS

12. The concentration concerns a) the retail sale of motor fuel, b) the sale of automotive and industrial lubricants.

a) Motor Fuel

13. Retailing of motor fuels includes sales of different types of fuels (mainly gasoline and diesel) made to motorists from branded and unbranded service stations. According to the Commission practice, there is no need for a segmentation according to the type of fuel in the retail channel since, although from the demand side there is no substitutability between these products, 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.[2]

14. The Commission also held that in some countries it could be theoretically possible to further segment the market between sales made on motorways and off-motorways. As regards the relevant countries (Hungary, Czech Republic and Slovakia), however, Eni submits that the motor fuel retail sale on motorway does not represent a separate market. This is due, most notably, to the very limited development of the motorway network in these countries and to the absence of booths at the entry/exit of the motorways, the toll collecting system being based on periodical fees paid by motorists (so called "sticker" or "*vignette*" system). Considering that (i) there are no physical or economic barriers that impede or discourage motorists from exiting the motorway network and (ii) many petrol stations (including those run by hypermarkets) are located nearby the motorway entries/exits and are easily visible and accessible (even by truck drivers) from the motorway, Eni concludes that, on the demand side, roadways and motorways are mutually permeable and therefore motorway motorists cannot be considered as "captive customers" for motorway petrol stations.

15. In support to its argument, Eni highlights the negligible price difference between motorway petrol stations and ordinary roadway ones in the relevant countries. As far as Eni is concerned, in 2006 average price per litre on motorways was [3] […] As a consequence, Eni argues that the location of a petrol station on a motorway is not a decisive factor for setting the price at the pump.

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2 See, *inter alia*, case IV/M.1383 - Exxon/Mobil, case IV/M.1628 – Totalfina/Elf.

3 […]

16. In conclusion, Eni submits that a distinction between motorways and roadways is not relevant for Hungary, Czech Republic and Slovakia, and the market for retail sale of motor fuel should accordingly be considered as a whole.

17. In any event, the precise market definition can be left open for the purpose of this case.

18. As to the geographic scope, in line with previous decisions of the Commission,[4] Eni considers the motor fuels retail market to be national in scope.

b) Lubricants

19. Eni submits, in line with past Commission decisions, that despite some supply side common features, this market should be subdelineated into automotive lubricants and industrial lubricants, due to very limited demand side substitutability.[5]

20. As to the geographic scope**,** the Commission has consistently held that these markets are at least national and probably as wide as the EEA.[6]

21. At any rate, the precise geographic market definition can be left open for the purpose of this case.

VI. COMPETITIVE ASSESSMENT

a) Motor fuel

22. Eni is active in Hungary through its Agip brand. It runs […] service stations representing [5-15]% of the total retail network (amounting to […] service stations as of 2006). Esso Hungaria runs […] service stations representing approximately [0–5]% of the Hungarian retail network. The parties' combined market share ([5-15]% of all service stations and [5-15]% of all sales) and the fact that Eni, following the concentration, would have to face the local incumbent Mol ([30-40]%market share) and new entrants like Tesco, Auchan and Metro shows a competitive environment. Therefore, the proposed concentration does not give rise to any competition concerns in Hungary.

23. Eni is active in Czech Republic through its Agip brand. It runs […] service stations (all owned by the company) representing [0-5]% of the total retail network (amounting to […] service stations in 2006). Esso Ceska runs […] service stations representing approximately [0-5]% of the Czech overall retail network and is not active at the refining level. The presence of many competitors such as Shell ([10-20]% market share), OMV ([10-20]% market share) and the local operator Benzina (Unipetrol [10-20]% market share) and the parties' low combined market share ([0-5]% out of total of service stations and [5-15]% of total sales) indicates that the proposed concentration does not give rise to any competition concerns in Czech Republic.

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4 See, *inter alia*, case Comp/M.4208, Petroplus European Petroleum Holdings, case Comp/M.4002 – OMV/Aral CR, case Comp/M.3516 – Repsol YPF/Shell Portugal, case Comp/M.3110 – OMV/BP Southern Germany Package, case Comp/M.3291 – PREEM/Skandinaviska Rafinaderi.

5 Case Comp/M.1891 - BP Amoco/Castrol, case COMP M.2208 - Chevron/Texaco, and case COMP/M.3543 – PKN Orlen/Unipetrol. The Commission has also considered marine lubricants and aviation lubricants as separate markets.

6 Case Comp/M.1891 - BP Amoco/Castrol, case COMP M.2208 - Chevron/Texaco, and case COMP/M.3543 – PKN Orlen/Unipetrol.

24. Eni is active in Slovakia through its Agip brand. Eni's presence in the Slovak retail sector is fairly recent (2002). It runs a network of […] company-owned service stations representing [0-5]% of the total retail network ([…] service stations in 2006).

25. Esso Slovensko runs […] service stations representing approximately [0-5]% of the Slovak overall retail network. The competitive environment in this market is characterised by the presence of many competitors such as Slovnaft (a subsidiary of Mol, [30-40]% market share), OMV ([15-25]% market share taking into account its affiliate Avanti) and Shell ([10-20]% market share). Eni's post-merger position would therefore be weaker than the three main players on the market. The parties' combined market share ([5-15]%out of total of service stations and [5-15]% of total sales). Therefore, the proposed transaction does not give rise to any competition concerns in Slovakia.

b) Lubricants

26. In Hungary, Czech Republic and Slovakia, Eni does not have any producing or blending facilities. As a result, like other multinational companies active in these countries (ExxonMobil, Shell, Aral, BP-Castrol), it imports from abroad […] a vast part of the products it sells in these countries, while the remaining is blended from base oils provided by the local manufacturers.

27. At the same time, ExxonMobil's Lubs Assets and Agreements do not include any producing facility or capacity but commercial assets and the commercial agreements with customers of automotive and industrial lubricants in Hungary, Czech Republic and Slovakia.

28. After the transaction, the parties' market share for automotive lubricants at national level will be as follows: Hungary [10-20]%, Czech Republic [10-20]%, and Slovakia [0-10]%. For industrial lubricants the market share will be: Hungary [10-20]%, Czech Republic [0-10]%, and Slovakia [0-10]%. In these countries, the parties' main competitors' are Mol in Hungary and Slovakia, and Unipetrol/PKN Orlean in Czech Republic, all with market shares above 25 %.

29. In view of the absence of any local production facility the low combined market shares at the EEA level [0-10]%, and the existence of a competitive environment at the national level, it can be concluded that the transaction does not give rise to any competition concerns raise in any of these markets.

c) Vertical aspects

30. In the Czech Republic, Eni is active at the wholesale level, representing [5-15]% of sales for diesel and [5-15]% for gasoline. However, these shares include not only sales to third parties, but also captive sales to Eni's retail network, hence the relevant market shares are in all likelihood even lower. In view of this limited upstream presence, any foreclosure of the parties' competitors is unlikely.

VII. CONCLUSION

31. 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
Franco FRATTINI
Member of the Commission