

***Case No COMP/M.4926 -
BASELL / BERRE
L'ETANG REFINERY***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 04/02/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 04-02-2008

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4926 – Basell/ Berre L'Etang Refinery
Notification of 19.12.2007 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 19.12.2007 the undertaking Basell Polyéthylène SAS ("Basell", Luxembourg) belonging to Access Industries ("Access" United States) agreed to acquire sole control of the refinery Compagnie de Distribution des Hydrocarbures SAS ("Berre Refinery", France) currently controlled by Royal Dutch Shell plc. ("Shell", UK/Netherlands) 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 the Merger Regulation and does not significantly impede effective competition in the common market or in a substantial part of it.

I. THE PARTIES

3. Basell is active in the manufacture and sale of various chemical products (polyolefins, polyolefin compounds and other specialty polyolefin products, catalysts, ethylene and propylene) as well as the development and licensing of technology.
4. The Berre Refinery is situated in the South of France and uses the fractional distillation process to convert crude oil into various petrochemical products, including LPG, naphtha, jet fuel, gasoline, heating oil, bitumen, fuel oil and gasoil. Basell will also buy

¹ OJ L 24, 29.1.2004 p. 1.

the infrastructure associated with the refinery (including pipeline and terminals), the contracts necessary for its operation and good-will.

II. CONCENTRATION

5. Basell will acquire all the shares of the issued capital of the target business and thereby exercise sole control over it. Therefore the operation constitutes a concentration 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 (Access (including Lyondell) [...] million; Berre Refinery [...] million)². Each of them have a Community-wide turnover in excess of EUR 250 million (Access (including Lyondell) [...] million; Berre Refinery [...] million), but 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.

IV. COMPETITIVE ASSESSMENT

A. Relevant markets

(i) Horizontally overlapping markets

7. In previous decisions the Commission has considered that ex-refinery/cargo sales of automotive fuels (diesel and gasoline) constitute a primary level of distribution and could be distinguished from smaller non-retail sales of the fuels (secondary level of distribution)³. The ex-refinery/cargo sales consist of large volume sales by refiners directly at the refinery gate to large wholesalers and traders. This distinction has been confirmed by the subsequent decisions; however in PKN/Mazeiku, it has been also pointed out that the refinery is capable of acting as non-retailer within the radius of 150 km. For the purpose of this decision the final product market definition can be left open as the transaction would not give rise to competition problems under any alternative market definition.
8. In BP/Mobil⁴, the Commission found that the relevant geographical market for ex-refinery sales appeared to be the EU or Western Europe wide. However in another decision Preem/Skandinaviska⁵, the Commission pointed out that, the relevant geographic market is at least Scandinavian. For the purpose of this decision it is not necessary to conclude whether ex-refinery sales of gasoline and diesel are EEA-wide or regional as the transaction would not give rise to competition problems under any alternative market definition.
9. In previous decisions the Commission has considered that jet fuel constitutes a separate relevant product market and that the ex-refinery sales of jet fuel could be distinguished from the into-plane supplies. It is not necessary to determine the precise product market for jet fuel supply as no competition problems arise on any of the alternative markets.

² 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).

³ M.1383 Exxon/Mobil, M. 727 BP/Mobil, M.3291 Preem / Skandinaviska Raffinaderi.

⁴ M. 727 BP/Mobil, paragraph 34.

⁵ M.3291 Preem/Skandinaviska Raffinaderi,

Ex-refinery sales of jet fuel have been considered either as national in scope or as local, i.e. deliveries to the airport from the nearby refinery.⁶ For the purpose of this decision it is not necessary to finally decide on the geographic markets, since on all alternative markets the transaction does not raise competition concerns.

(ii) Upstream markets

10. Polyolefins (polyethylene, polypropylene) comprise a group of plastics that are produced by the chemical conversion (polymerisation) of base chemicals (monomers) known as olefins. Olefins (including propylene and ethylene) are made from hydrocarbon feedstocks such as naphtha and butane, which are manufactured by the target Business. Polyolefins are used in a number of consumer and industrial goods from food and beverage packaging to automobile components, and from household products to construction materials.
11. In previous decisions the Commission has considered the markets for (i) naphtha⁷, and (ii) gas oils (including vacuum gas oil) other than those used in the automotive sector to be distinct markets.
12. The Commission considered also a distinct market for LPG (propane and butane) including both propane and butane⁸. The Commission has further distinguished different market for each of these products for ex refinery sales, non-retail sales and retail sales⁹. The only markets which are relevant for the assessment of the present case are the markets for ex-refinery sales. LPG is used with other refinery products (for example naphtha and gas oils) to produce propylene among other products in crackers.
13. The Commission considered in its previous decision the market for naphtha to be Western European in scope¹⁰, the market for LPG¹¹ to be EEA or wider, the market for gas oils to be at least national. The parties provided the relevant data for all reasonable definition of the geographic market for these products. For the purposes of the assessment of the present transaction the precise definition of the relevant geographic market can be left open since the transaction is not likely to create competition concerns irrespective of the definitions retained.

(iii) Downstream markets

14. The Commission has previously determined that propylene is a separate relevant product market.¹² The European Commission has previously determined that the relevant geographic market for propylene is Western Europe.¹³ Most propylene is used in the production of polypropylene (PP) resins and compounds, and in the manufacture of propylene oxide.

⁶ Case No. COMP/M.3110 OMV/BP (Southern German Package),

⁷ M. 3110 OMV/BP

⁸ M.1628 TotalFina/Elf

⁹ M. 4348 PKN/Mazeikiu

¹⁰ M. 3110 OMV/BP

¹¹ M. 4348 PKN/Mazeikiu

¹² M.2345 Deutsche BP/Erdölchemie

¹³ M.2345 Deutsche BP/Erdölchemie

15. The Commission considered that propylene products (PP resins and PP compounds) constituted different product markets¹⁴. It considered the geographic dimension of such products to be Western European¹⁵. The relevant data have been provided also on EEA basis.
16. For the purposes of the assessment of the present transaction the precise definition of the relevant geographic market for both propylene and propylene products can be, in any event, left open since the transaction is not likely to create competition concerns irrespective of the definitions retained.
17. The Commission considered propylene oxide to constitute a different product market. It considered that such market had at least EEA-wide dimension¹⁶. However for the purposes of the assessment of the present transaction the precise definition of the relevant geographic market can be left open since the transaction is not likely to create competition concerns irrespective of the definitions retained.
18. The Commission has previously decided that ethylene is a separate relevant product market.¹⁷ In its most recent decisions, the Commission has left the geographic market definition open and has not decided whether the geographic market covers the EEA or is limited to the geographic areas covered by the relevant pipeline network(s).¹⁸ For the purposes of the assessment of the present transaction the precise definition of the relevant geographic market can be left open since the transaction is not likely to create competition concerns irrespective of the definitions retained.

B. Competitive assessment

(i) Horizontally overlapping markets

19. The proposed transaction concerns the petrochemical sector and does not give rise to horizontally affected markets. Access jointly controls the oil and gas company TNK-BP. TNK-BP has limited sales into the EEA of refined oil products at the ex-refinery level that could overlap with Berre L'Etang products. All the refineries owned by TNK-BP are located outside the EEA and TNK-BP sells its output to traders active in the whole of the EEA, therefore there is no overlap under the regional or near-by refinery (i.e. 150 km radius) market definition. Traders consulted by TNK-BP estimate that its share in automotive diesel and gasoline in the EEA is [0-10]%. Berre L'Etang does not have a market share of more than [0-5]% in relation to automotive diesel and gasoline in a geographic market defined as the EEA.
20. As regards jet fuel, neither the Berre Refinery nor TNK-BP have any into-plane operation in the EEA, therefore they are only capable of selling jet fuel on the ex-refinery level. TNK-BP has no refineries in the EEA and therefore no overlap arises under the near-by refinery market definition. On the national basis, Berre achieves [<5]% market share in France. TNK-BP is unable to precisely identify the destination of

¹⁴ M. 1751 Shell/BASF

¹⁵ M. 1751 Shell/BASF

¹⁶ M. 591 Dow/Buna

¹⁷ M.2389 Shell/DEA

¹⁸ M. 4094 Ineos/BP Dormagen, and Case No COMP/M.4401 Basell/Münchsmünster Cracker and Associated Assets

its EEA sales, however even if all its supplies were diverted to France the combined market share of Berre and TNK-BP would amount to less than 15%.

(ii) Upstream markets

21. The transaction will give rise to vertically affected markets given that the petrochemical products derived from the fractional distillation at the Berre Refinery are used as feedstock in the polyolefins sector, in which Basell is active.
22. The target company's position in each of the upstream markets, i.e. LPG (propane and butane), naphtha and gas oils, is below 15% at any reasonable geographical level¹⁹. Berre faces competition from significant players located in (i) the Berre Refinery surroundings²⁰, (ii) France and the (iii) EEA, therefore the transaction would not give rise to input foreclosure of Basell competitors under any alternative market definition

(iii) Downstream markets

23. Propylene is a vertically related market as the Berre L'Etang refinery produces feedstocks (e.g. naphtha and LPG) used to manufacture propylene. Basell's production capacity for propylene is approximately [...]kt representing [0-10]% of Western European market.
24. Basell's current share in the downstream market i.e. PP resins and PP compounds would not exceed [20-30]% and [30-40]% respectively at both Western European and EEA level. Basell's share on the EEA merchant market for propylene oxide would be around [20-30]%. The transaction is unlikely to result in customer foreclosure as: (i) the feedstocks for the production of propylene i.e. naphtha and LPG are also used for many other applications, (ii) other large potential customers for these feedstocks, such as Ineos, Total, Sabic, Shell, BASF etc. would remain active post-transaction.
25. As regards ethylene, the vertical link arises from the fact that the Berre L'Etang refinery produces a number of products – including naphtha and LPG – that may be used as feedstocks for the production of ethylene. Basell is active in the production of ethylene through its three crackers. The total ethylene production capacity of these three crackers is [...]kt, representing [0-10]% of the total EEA production capacity in 2006.
26. The parties additionally submit that the Berre refinery is already supplying the totality of its production of naphtha, vacuum gas oil and refinery gases to the Basell group²¹. Therefore for these feedstocks the transaction would not significantly change the current relationships between the two parties irrespective of their market shares.

¹⁹ It must be noted that apart from naphtha, vacuum gas oil and LPG, Berre refinery also supplies heavy fuel oil, refinery fuel gas and utility fuel gas to the Basell's Aubette Cracker, however these supplies are very small i.e. [...]kt, [...]kt and [...]kt a year, which excludes *prima facie* any competition issues.

²⁰ The Berre L'Etang refinery is France's second smallest oil refinery, with a capacity of 80 tb/d. It is in direct competition with three larger refineries: Lavéra (owned by Ineos, with a capacity of 218 tb/d), La Mède (owned by Total, with a capacity of 158 tb/d), and Fos-sur-Mer (owned by ExxonMobil, with a capacity of 119 tb/d).

²¹ The feedstocks are supplied to the Aubette Cracker which is located at the same site as the Berre Refinery. Basell acquired sole control over Aubette Cracker in 2005, which accounts in part for the extent of its extensive commercial interrelationship with the Berre L'Etang refinery.

27. Given the parties' limited position on all the upstream and downstream markets affected by the present transaction, the Commission concludes that the present transaction will not strengthen the parties' incentives and/or abilities to engage in practices of either input or customer foreclosure.

V. 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)
Neelie KROES
Member of the Commission