

***Case No COMP/M.4934 -
KAZMUNAIGAZ /
ROMPETROL***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 19/11/2007

***In electronic form on the EUR-Lex website under document
number 32007M4934***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19-XI-2007

SG-Greffe(2007) D/207029

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4934 - KazMunaiGaz/Rompetrol
Notification of 12 October 2007 pursuant to Article 4 of Council
Regulation No 139/2004¹**

1. On 12/10/2007, the Commission received a notification of a proposed concentration by which the undertaking KazMunaiGaz PKOP Investment B. V. ("KazMunaiGaz Investment", Netherlands) controlled by JSC NC KazMunaiGaz ("KazMunaiGaz", Kazakhstan) which itself is controlled by the State of Kazakhstan acquires sole control of the Rompetrol Group N.V. ("Rompetrol", Netherlands) by way of purchase of shares.

I. THE PARTIES

2. **KazMunaiGaz Investment** is a special purpose company established mainly for the present transaction. It is registered in the Netherlands and is owned by KazMunaiGaz, a Kazakhstan state-owned company. KazMunaiGaz is active in the oil and gas sector covering the exploration, production, transportation and processing of oil and natural gas.
3. **Rompetrol** is active principally in the refining, marketing and trading of oil with additional operations in exploration and production, and other oil industry services such as engineering, procurement and construction management and transportation.

¹ OJ L 24, 29.1.2004 p. 1.

Rompetrol has its principal operations in Romania but is also active in France, Spain, Bulgaria and, to a minor extent, in Belgium, Cyprus, Czech Republic, Greece, Italy and Hungary.

II. THE OPERATION

1. KazMunaiGaz Investment intends to purchase 75 % of the shares of Rompetrol from Rompetrol Holding S.A., Netherlands. Rompetrol Holding S.A. will continue to hold the remaining 25% equity in Rompetrol. This minority shareholding does not confer on Rompetrol any veto rights that would give it joint control. Rompetrol will, therefore, be solely controlled by KazMunaiGaz Investment after the transaction.

III. CONCENTRATION

4. The notified operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

5. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (KazMunaiGaz €7,213 million, Rompetrol €3,049 million). Each of them have a Community-wide turnover in excess of EUR 250 million (KazMunaiGaz €[...] million, Rompetrol €[...] 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.

V. COMPETITIVE ASSESSMENT

A. Product Market

2. This transaction concerns the sector of natural gas and crude oil refining, exploration and production, the products and services destined to oil and gas exploration and production and the sale of refined products.
3. The market for the exploration of crude oil and natural gas comprises the search for new reserves of hydrocarbon resources. In previous decisions³, the Commission considered that it is not possible to distinguish between exploration for oil and exploration for natural gas. Accordingly, the product market is considered as one single market for the exploration of both crude oil and natural gas.
4. The oilfield services industry comprises a variety of products and services destined to oil and gas exploration and production companies around the world. Each of these services may be considered to constitute a relevant product market. Only Rompetrol is active in this sector.

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 Case COMP/M.1383, Exxon/Mobil

5. The market for the production of crude oil involves the exploitation of hydrocarbon reserves. The transaction will not give rise to any overlap on this market because Rompetrol does not produce any crude oil.
6. Crude oil refining involves the fractionation of crude oil into its component hydrocarbons. The Commission has found⁴ that crude oil refining can be further separated into markets for the refining of fuel and non-fuel products. Moreover the Commission has further distinguished within fuel products different markets⁵ for (i) gasoline, (ii) diesel, (iii) aviation fuels, (iv) LPG, (v) light fuels and (vi) heavy fuel oils (HFO). The Commission has considered HFOs a single market without distinguishing between (a) marine oil and (b) industrial oil⁶.
7. As regards non fuel products, the Commission has considered in its previous cases different markets for (i) propylene, (ii) polypropylene (further segmented by the Commission into (a) polypropylene resins and (b) polypropylene compounds), (iii) solvents, (iv) bitumen.
8. According to previous Commission's decisions⁷ the markets for sales of refined products may further be segmented into the markets for ex-refinery sales, non-retail sales and retail sales for each refined product. The products may be sold directly from the refinery to third parties in large quantities (*ex-refinery sales*). They can then be re-sold to retailers and other large industrial customers (*non-retail sales*). Non-retail sales, compared to ex-refinery sales, involve added value (including brand value) by the marketer, for instance, the provision of small parcels, storage at terminals. Finally they can be sold to end-customers (*retail sales*).
9. Rompetrol does not make any ex refinery sales and KazMunaiGaz does not have such sales in Europe. The markets for ex-refinery sales will not therefore be discussed further.
10. The market for the production and sale of natural gas involves the setting up of adequate infrastructures for the production and exploitation of gas resources and the subsequent sale of natural gas to wholesale transmission companies which in turn sell gas on to end consumers. Only KazMunaiGaz has activities in relation to the production and supply of natural gas. Therefore, given that the parties' activities do not overlap in this sector and the transaction does not give rise to any vertically affected market, gas markets will not be further discussed in this decision.

B. Geographic Market

11. In previous decisions the Commission considered that the relevant geographic markets for the exploration of crude oil and natural gas⁸, production of crude oil⁹ and for the

⁴ Case COMP/M.4588, Petroplus/Coryton

⁵ Case COMP/M. 1013, Shell UK/Gulfoil; Totalfina/Elf, and COMP/M.3543 - PKN Orlen / Unipetrol

⁶ Case COMP 4208 Petroplus/EPH.

⁷ Case COMP/M.727, BP/Mobil

⁸ Case COMP/M.1383, Exxon/Mobil

⁹ Case COMP/M.1383, Exxon/Mobil

products and services destined to oil and gas exploration and production¹⁰ are world-wide in scope.

12. The Commission considered in previous cases the relevant geographic market for crude oil refining¹¹ to be EEA-wide, due to the significant cross-border trade of refined petroleum products in Europe, resulting from the absence of tariff or other substantial cost barriers.
13. The parties submit that the geographic scope for non-retail sales of fuels is trans-national because there are no specific trade barriers, national particularities or brand loyalties. The Commission in a previous case¹² has found that these markets are at least national and that the geographical scope may well be trans-national in some instances where there is a high level of exports/imports. For the purpose of the present case it is not necessary to ultimately conclude on the geographic dimension of this market given that, as further explained below, the transaction does not create competition concerns irrespective of the geographic market definition retained.
14. As regards non-retail sales of aviation fuel, previous Commission practice points towards a world-wide dimension of such markets. However the Commission recognized that in some cases an airport can be considered as a distinct geographic market. For the purpose of the present case it is not necessary to ultimately conclude on the geographic dimension of this market given that irrespective of the geographic market definition retained it will not be affected at either vertical or horizontal level.
15. The parties consider the geographic market for non-retail sales of propylene, polypropylene and solvents as at least EEA-wide, due to the absence of tariff barriers or other substantial cost discouragements. For the purpose of the present case it is not necessary to ultimately conclude on the geographic dimension of this market given that irrespective of the geographic market definition retained it will not be affected at either vertical or horizontal level.
16. The parties consider the market for non-retail sales of bitumen as at least national, due to the homogeneous prices within Romania. The Commission previously found that the geographical market for bitumen is regional (sub-national) in scope. For the purpose of the present case it is not necessary to ultimately conclude on the geographic dimension of this market given that irrespective of the geographic market definition retained it will not be affected at either vertical or horizontal level.
17. According to the Commission's previous findings the markets for retail motor fuels, LPG and light fuels¹³ are national in scope. For the purpose of the present case it is not necessary to ultimately conclude on the geographic dimension of this market given that irrespective of the geographic market definition retained it will not be affected at either vertical or horizontal level.

¹⁰ Case COMP/M.1140, Haliburton/Dresser

¹¹ Case COMP.M.727, BP/Mobil

¹² Case M.3543 - PKN Orlen / Unipetrol

¹³ Case COMP/M.1383, Exxon/Mobil

C. Competitive assessment

18. Due to the fact that KazMunaiGaz is only active on the upstream markets and Rompetrol only on the downstream markets, the parties' activities do not overlap horizontally in any of the above mentioned markets.
19. In particular, KazMunaiGaz carries out very limited exploration activities in Kazakhstan and in the neighbouring countries. Rompetrol holds six licences in Romania for exploration, none of which is exploited. [...]. Therefore the parties claim that Rompetrol is not active in the market and due to that there is no overlap. In any case the parties' share of global exploration activities is less than 1%.
20. Moreover the parties' activities do not overlap on the other upstream markets since: (i) Rompetrol carries out specialised services¹⁴ for oil and gas fields in Romania and internationally but KazMunaiGaz is not active on this market and (ii) Rompetrol does not produce crude oil. Therefore there are no horizontal overlaps in relation to these markets. Furthermore the vertical relationship between KazMunaiGaz's production of oil and gas and Rompetrol's services for oil and gas fields as Rompetrol's share of each of the global markets for these services is less than 1%.
21. KazMunaiGaz, which has a market share of less than 1% on the global market for crude oil, sells crude oil in the EEA but does not operate any refineries or have any refined products sales within the EEA. Rompetrol produces and sells into the EEA refined fuels (i.e. gasoline, diesel, aviation fuels, LPG, light fuels and HFO) and non-fuel (propylene, polypropylene, bitumen and solvents) products.
22. Rompetrol's market shares are below 5% in the EEA in all submarkets for the refining of fuel and non-fuel products. Its market share will not exceed 25% either on all EEA markets for non-retail sales of fuels and non-fuels (below 10 %) and retail sales of fuels. It does not have any retail sales of non-fuels.
23. The only markets where Rompetrol, on a worst-case scenario, would have a market share above 25% would be the hypothetical national markets for non-retail sales of (i) diesel and (ii) LPG in Romania. These two markets and the upstream market for crude oil production would be technically vertically affected markets.
24. However given that KazMunaiGaz' market share on the upstream global market for oil production is very limited (less than 1%) any risk of input foreclosure for Rompetrol's competitors in Romania can be excluded. Similarly, any risk of customer foreclosure may be excluded due to (i) the EEA-wide dimension of the market for the sale of crude oil, (ii) the fact that Rompetrol's significant positions are limited to the Romanian markets for diesel ([25-35]%) and LPG ([25-35]%) and that other players such as Petrom, Lukoil and Rafo are present on each of these markets.

¹⁴ The turnover Rompetrol derives from these activities is very minor. Their market share on the world-wide markets for the supply of completion products and services and supply of cement and cementing services is below 1%.

VI. CONCLUSION

25. 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