

***Case No COMP/M.5169 -
GALP ENERGIA
ESPANA / AGIP
ESPANA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 09/09/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 09/09/2008

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5169 – Galp Energia España/ Agip España
Notification of 04/08/08 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 4 August 2008, the Commission received a notification of a proposed concentration by which the undertaking Galp Energia España, S.A.U. ("Galp Energia España", Spain) belonging to the Galp Energia group and controlled by ENI S.p.A. ("ENI", Italy), Amorim Energia B.V ("Amorim", Portugal) and Caixa Geral de Depositos S.A ("CGD" Portugal), acquires sole control of the whole of the undertaking Agip España, S.A.U. ("Agip España", Spain) controlled by ENI, 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 raises no serious doubts as to the compatibility with the common market.

I. THE PARTIES

3. **The Galp Energia group ("GALP")** is a vertically integrated energy company active in the markets for exploration, production and marketing of oil and petroleum products. Furthermore, GALP is present in supply, transport, storage and distribution of natural gas as well as in the market for electricity cogeneration. GALP is jointly controlled by ENI, Amorim and CGD². ENI is a vertically integrated energy company. Amorim is

¹ OJ L 24, 29.1.2004 p. 1.

² The creation of this joint venture was authorised by the Commission in case No COMP/M.4130 – ENI/Grupo Amorim/CGD/GALP. All strategic commercial decisions in relation to GALP's business still require unanimity between ENI, Amorim and CGD.

indirectly controlled by Mr Americo Amorim, whose business portfolio does not include any further stakes in the energy sector. CGD is a financial institution, a bank owned by the Portuguese state. CGD is active in retail and corporate banking services, investment banking and asset management.

4. **Galp Energia España** is a wholly owned subsidiary of GALP. It is mainly active in the wholesale and retail sales of refined oil products in the Iberian Peninsula. Galp Energia España owns the only two existing refineries in Portugal.³
5. **Agip España** as well as its 100% subsidiary, Agip Portugal Combustiveis S.A. (together referred to as "Agip España"), is active in the wholesale and retail sales of refined oil products in Spain and Portugal respectively. Agip España is currently solely controlled by ENI.

II. THE OPERATION

6. The transaction concerns the acquisition by Galp Energia España of entire share capital of Agip España. In that regard, Agip España's lubricants business will not be acquired by Galp Energia España. [...].

III. CONCENTRATION

7. Prior to the operation, Agip España was solely controlled by ENI. ENI also jointly controls GALP together with Amorim and CGD. Therefore, the only change caused by the present operation is the ultimate acquisition of joint control over Agip España by Amorim and CGD⁴.
8. Consequently, the operation leads to a change in control over Agip España⁵, which would no longer be under sole control of ENI, but under indirect joint control of ENI, Amorim and CGD. Agip España is and would remain an undertaking performing all the functions of an autonomous economic entity. Based on the above, the proposed transaction constitutes a concentration within the meaning of Article 3 of Council Regulation (EC) No 139/2004 ("Merger Regulation").

IV. COMMUNITY DIMENSION

9. 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 EURO 5 billion (GALP: EURO [...] million; Agip España: EURO [...] million) and

³ Namely in Oporto (north-western Portugal) and Sines (south-western Portugal). Their combined total annual capacity amounts to [...] million tons.

⁴ If one excepts GALP's activities due to ENI's existing controlling shareholding in both undertakings concerned, there are no overlaps between Amorim and CGD on the one hand, and AGIP on the other hand. Amorim and CGD do not hold any controlling shareholdings in companies (other than GALP) active in the energy sector.

⁵ The Commission assessed a comparable concentration in case No COMP/M.2008 – AOM/AIR LIBERTE/AIR LITORAL. See also the Commission's Consolidated Jurisdictional Notice, para 51.

each of at least two of the undertakings concerned has a Community-wide turnover in excess of €250 million (GALP: EURO [...] million; Agip España: EURO [...] million). The parties do not achieve more than two thirds of their Community-wide turnover in one and the same Member State.

V. RELEVANT MARKETS

10. The transaction concerns the downstream level of refined oil products value chain, namely the retail and non-retail sales of motor fuels in the Iberian Peninsula. This is where both GALP and Agip España are primarily active. GALP is also active in the supply of refined oil products at the ex-refinery/cargo market but no overlap arises at this level as Agip España is not active on this market. Thus, the proposed operation results in the following affected markets: (i) Non-retail sales of gasoline and diesel and (ii) Retail sales of motor fuels.

A. RELEVANT PRODUCT MARKETS

Non-retail sales of gasoline and diesel

11. Non-retail sales of motor fuels are made to independent resellers and high volume end-consumers. In past decisions, the Commission has further subdivided the segment for non-retail sales of motor fuel into sales of gasoline, diesel, fuel oil and LPG⁶. The notifying party considers that this segmentation is not appropriate as there is a significant supply side substitution and the method of distributing the motor fuels to resellers and high-volume end-users would be identical. In any case, the final product market definition can be left open as even under the narrowest possible market definition no competition concerns arise.

Retail sales of motor fuels

12. Retail motor fuel sales include sales made to motorists from branded and unbranded service stations. In line with the Commission's past practice, the notifying party submits that the relevant product market is constituted by the retail sales of motor fuels with no need for a further segmentation between gasoline and diesel⁷. Whilst from the demand-side perspective, there is no substitutability between those products, as motorists must use the type of fuel suitable for their vehicle, there is considerable supply-side substitutability, since these different types of fuels are sold by the same points of sales in order to serve the maximum number of automotive customers.
13. In previous decisions, the Commission has considered a further sub-division of the market for retail sale of motor fuels into motorway and non-motorway sales⁸. However, it is not necessary to take a final decision on whether or not retail sales of motor fuels constitute one separate product market or a further segmentation of the market should

⁶ Case No IV/M.727 – BP/Mobil, case No COMP/M.1859 – ENI/GALP.

⁷ Case No M.1383 – Exxon/Mobil; case No M.3516 – Repsol YPF / Shell Portugal; M.3291 – Preem / Skandinaviska Raffinaderi.

⁸ Case IV/M.1383 – Exxon/Mobil, recital 437; case COMP/M.1628 – TotalFina/Elf.

be considered, since regardless of the definition retained the transaction would not raise competition concerns.

B. RELEVANT GEOGRAPHIC MARKETS

Non-retail sales of gasoline and diesel

14. With regard to the geographic scope of non-retail sales of gasoline and diesel, the Commission found in previous decisions that the markets could be narrower than national in scope as resellers and end-users seek to economise on transportation costs⁹. As such, each point of supply can supply a certain geographic area (hinterland, consumption area), of which the radius is a function of the transport costs for transporting the products to the final destination. In other decisions, however, the Commission took the view that the geographic market could be national¹⁰ or even regional¹¹ but ultimately left this question open.
15. The notifying party submits that the markets for non-retail sales of gasoline and diesel should be analysed from a pan-Iberian perspective due to the geography of Portugal, extending only 200 km from East to West. Consequently, the closest fuel storage facilities to many points in Portugal are actually located in Spain, thus the geographic scope of this market should be pan-Iberian.
16. In any case, given that the transaction will not raise competition concerns, a precise geographic scope of the market for non-retail sales of motor fuels can be left open as it does not modify the competitive assessment.

Retail sales of motor fuels

17. In previous Commission decisions, the geographic market for retail sales of motor fuels was defined as national in scope¹². However, it has been also pointed out that there is a strong local element to the retail fuel market (vehicle owners usually resort to service stations in their vicinity). It also appears a common practice in this industry for suppliers to monitor neighbouring retail fuel stations around each of their own retail fuel stations in a given country¹³.
18. The notifying party submits that the market for retail sales of motor fuels should be regarded as Iberian in scope as there would be extensive overlaps in the catchment

⁹ Case No M.1383 Exxon/Mobil, recitals: 443, 445.;

¹⁰ Case No COMP/M.3375 – Statoil/SDS; case No COMP/M.3543 – PKN Orlen/Unipetrol, case No COMP/M.3516 – Repsol/Shell Portugal.

¹¹ Case No M.3291 Preem/ Skandinaviska Raffineradi, recitals: 16 and 17

¹² Case No IV/M.1383 – Exxon/Mobil, case No COMP/M.3516 – Repsol/Shell Portugal.

¹³ This is done by defining a list, also called "cluster" or "trade area", of stations around each of their own station where prices are monitored regularly, the prices of these neighbouring competitors' stations being used in order to adjust their own prices to locally competitive levels.

areas of individual service stations which would transcend national boundaries. Pricing innovations would be liable to propagate over considerable distances much larger than the individual catchment area. Due to the geography of Portugal extending only 200 km from East to West but 700 km North to South, many service stations in Portugal would be closer to counterparts in Spain than in Portugal. Therefore, the notifying party submits that the constraints from across the Spanish boarder should be taken into account.

19. Given that the transaction will not raise competition concerns under any alternative market definition, a precise geographic scope of the market for retail sales of motor fuels can be left open.

VI. COMPETITIVE ASSESSMENT

20. The proposed transaction does not raise any vertical anti-competitive effects in spite of GALP's strong presence at the level of ex-refinery sales.¹⁴ The parties have already been engaged in mutual supply agreements for both Portugal and Spain prior to the operation. Agip Portugal acquires all its oil products from [...]. Additionally, [...] % of Agip España demand for petroleum products is supplied by ENI, GALP's jointly controlling shareholder. Any foreclosure concerns resulting from the operation can be ruled out given the existing supply relationship and the overall low market shares of Agip España in the affected markets (lower than [0-5] % in Portugal and [10-20] % in Spain in any possible product market).
21. The transaction would give rise to horizontally affected markets with regard to retail sales of motor fuels in Portugal and Spain as well as in markets for the non-retail sales of gasoline and diesel in Portugal and Spain. In this regard, Agip España is not active in fuel oil and LPG therefore no overlap arises.

Non-retail sales of gasoline and diesel

22. With regard to non-retail sales of motor fuels in Portugal, the parties' combined market share is below [30-40] % with regard to gasoline (GALP: [20-30] %, Agip España: [0-5] %) and below [40-50] % for diesel (GALP: [30-40] %, Agip España: [0-5] %). Thus, the increment to GALP's market share post-transaction would be minor in both of these possible markets. Furthermore, there are a number of competitors active in both markets, namely BP (with a [20-30] % and [20-30] % market share for gasoline and diesel respectively), Repsol ([20-30] % and [20-30] % respectively), CEPSA (around [5-10] % in both segments) and Total (around [0-5] % in both segments).
23. With regard to non-retail sales of motor fuels in Spain, the parties combined market shares are well below [20-30] % (for gasoline GALP: [5-10] %, Agip España: [10-20] % and for diesel GALP: [5-10] %, Agip España: [5-10] %). In the Spanish market similarly, the parties face competition from Repsol ([20-30] % for gasoline and [30-40] % for diesel), CEPSA (respectively [20-30] % and [20-30] %), BP ([5-10] % and [10-20] %) and Total (between [0-5] % and [0-5] %).

¹⁴ GALP estimates that it accounted for 80% of gasoline and diesel consumed in Portugal. However, due to many refineries in Spain, GALP provides for approximately 20% of the Iberian demand for petroleum products.

24. Given the small increment in market share and the presence of viable competitors, the operation does not give rise to any competition concerns in the market of non-retail sales of gasoline and diesel in Spain and Portugal.

Retail sales of motor fuels

25. On the market for retail sales of motor fuels in Portugal, GALP's market share post-transaction would increase slightly from its current estimated market share at [30-40]% to [30-40]%. There are significant competitors in the market, namely BP ([20-30]%), Repsol ([20-30]%), Cepsa ([10-20]%), Total (around [0-5]%) and a number of smaller players and unbranded stations.
26. As for Spain, the parties' combined market share is low, namely around [5-10]% (GALP: [0-5]%, Agip España: [0-5]%). The competitors are again Repsol ([30-40]% in Spain), Cepsa (around [20-30]%), BP (around [10-20]%), Total and a number of independent/unbranded filling stations.
27. Finally, even considering a further segmentation of the retail sales of motor fuels into motorway and non-motorway service stations, no additional competition concerns would arise. As regards the motorway market, no overlap occurs in Portugal and the combined market share in Spain would be below [5-10]% (with GALP's very small increment [0-5]%). As regards the non-motorway market, the combined market shares – [30-40]% in Portugal and [5-10]% in Spain - would be similar to retail market shares discussed above and the parties would continue to face similar competitive pressure.
28. It follows from the above that there are no indications of competition concerns with regard to the horizontally affected markets for the retail sales of motor fuels and for the non-retail sales of gasoline and diesel in Portugal and Spain.

VI. CONCLUSION

For the above reasons, the concentration does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement and it does not significantly impede effective competition. Thus, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market. 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