

***Case No COMP/M.5629 -  
NORMESTON/MOL/  
MET JV***

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: 11/12/2009

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Brussels, 11.12.2009  
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C(2009)10277

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties

Dear Sir/Madam,

**Subject: Case No COMP/M.5629 – NORMESTON/ MOL/ MET JV  
Notification of 9/11/2009 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 9/11/2009, the Commission received a notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004 (“ECMR”) by which the undertakings Normeston Trading Limited (“Normeston”, Belize) and MOL Hungarian Oil and Gas Public Limited Company (“MOL”, Hungary) acquire within the meaning of Article 3(1)(b) ECMR joint control of MOL Energy Trade Ltd. (“MET”, Hungary) by way of sale and purchase of shares.

## **I. THE PARTIES**

2. MOL is an integrated oil and gas group which is active in Hungary and Central Europe on the markets for natural gas, oils, fuels and petrochemicals. It is a public company listed on the Budapest and Warsaw stock exchanges.
3. Normeston Trading Limited (“Normeston”) is a private company owned by [...], [...]. Normeston is active in the trading of crude oil and refined oil products (mainly gasoil 0.2).

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

4. The target MET is currently a wholly owned subsidiary of MOL located in Hungary. It was established in 2007, it has an independent market presence and engages in natural gas sales and trading in Hungary and to a lesser extent in neighbouring countries.

## **II. THE CONCENTRATION**

5. The envisaged transaction consists of (i) a Share Purchase Agreement and (ii) a Shareholders Agreement, whereby Normeston will purchase and MOL will sell 50% of the entire share capital of MET. After the transaction, MET will be jointly controlled by MOL and Normeston with each parent holding a 50% shareholding in the company. The board of directors will be composed of seven directors, [...]. Resolutions will be passed by a majority of five directors.
6. The JV will be full functional. MET will act independently of its parents on the gas trading market. This year approx. [>50]% of MET's total turnover was achieved as a result of sales to third parties and the sales to third parties are expected to increase further. On the supply side, [>50]% of the gas purchases came from the third parties. MET will have an independent personnel and the management. MET is currently financially self-supporting, however the parents will provide additional finance during the initial expansion after completion of the transaction.
7. Therefore, the operation constitutes a concentration within the meaning of Articles 3.1(b) and 3.4 of the ECMR.

## **III. COMMUNITY DIMENSION**

8. The notified concentration does not meet the turnover thresholds of Articles 1(2) and 1(3) of the Merger Regulation.
9. On 11/09/2009, the Commission received from the parties a referral request pursuant to Article 4(5) of the Merger Regulation which has been transmitted to all Member States. Since no Member State has expressed its disagreement as regards the request to refer the case to the Commission, the concentration is deemed to have a Community dimension.

## **IV. MARKET DEFINITIONS AND ASSESSMENT**

### **Relevant product and geographic markets**

10. *The exploration of crude oil and natural gas:* In previous decisions, the Commission has found the exploration, i.e. the finding of new hydrocarbon reserves, of crude oil and natural gas to be a single product market.<sup>2</sup>
11. The exploration market is defined as worldwide in scope as the companies engaged in exploration do not tend to limit their activities to a particular geographical area<sup>3</sup>

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<sup>2</sup> M.3294 Shell/BEB, para.11; M.3268 Sydkraft/Granninge, para. 12; M.3052 ENI/Fortum Gas, para. 13; M. 1383 Exxon/Mobil, para.69.

<sup>3</sup> M.1532 BP Amoco/Arco, para. 16; M.3294 Shell/BEB, para. 11

12. *The development, production and sale of crude oil*: In previous decisions, the Commission has defined production and sale of crude oil as encompassing both the setting up of adequate infrastructures for the production of crude oil and the exploitation of crude oil resources.<sup>4</sup> It might be argued that the development and production of crude oil and the sale of it are two separate product markets. However, given the absence of any competition concerns on any of these markets, the precise market definition can be left open.
13. In previous decisions, the Commission has defined the market for development, production and sale of crude oil as world-wide in scope.<sup>5</sup>
14. *The trading of crude oil and trading of refined petroleum products*: The Commission has previously defined a market for international trading of crude oil and refined petroleum products<sup>6</sup>.
15. The Commission has previously defined the market for international trading of crude oil and for the international trading of refined petroleum products as being EEA-wide or world-wide in scope.<sup>7</sup>
16. *The ex-refinery sales of refined oil products*: (also referred to as bulk sales, cargo sales or primary distribution) are sales based on single delivery purchases in high volume lots to the storage facilities (terminals, depots or tank farms) of other oil companies, traders, resellers and large industrial customers. The Commission has previously defined a separate market for the ex-refinery sales of diesel and gasoline<sup>8</sup>.
17. In BP-Mobil, the Commission found that the relevant geographic markets for ex-refinery sales appeared to be EU or Western Europe wide.<sup>9</sup> In subsequent cases the Commission considered that this scope could be narrower for certain products, in particular the market for ex-refinery sales of gasoline and diesel.<sup>10</sup> For Hungary it cannot be excluded that the ex-refinery sales of refined oil products are even national or encompass the region comprising Hungary, Slovakia and Eastern Austria. If a narrow national market definition is adopted, the sales from the two levels of distribution i.e. ex-refinery sales and non-retail sales can be combined for the purposes of the market assessment. However, the geographic market definition can be left open as on any alternative market, the concentration will not give rise to competition concerns.
18. *Non-retail sales of diesel* (also referred to as commercial, ex-rack/non-forecourt sales or secondary distribution) are sales to independent retailers (unbranded service station operators such as hypermarkets), other independent resellers and commercial end-users (such as trucking companies, car rental fleets and factories). The Commission has

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<sup>4</sup> M.3052 ENI/Fortum Gas, para. 10.

<sup>5</sup> *Idem* para. 14.

<sup>6</sup> M.4208 Petroplus/European Petroleum Holding para. 10

<sup>7</sup> *Idem*

<sup>8</sup> M.4348 PKN/Mazeikiu para.8.

<sup>9</sup> M.727 BP/Mobil para 37.

<sup>10</sup> M.4934 Kazmunaigaz/Romp petrol para.13; M.4348 PKN/Mazeikiu para. 23; M.3291 Preem Skandinaviska/Raffinaderi para. 16.

previously defined a separate market for the ex-refinery sales for every single refined oil product (i.e. diesel gasoline, LPG, jet fuel etc.)<sup>11</sup>.

19. *The retail sale of refined oil products*: In the past Commission practice the sale of diesel and gasoline to motorists through service stations has been defined as constituting a single product market.<sup>12</sup>
20. In previous decisions, the Commission has found that the market for retail sales of diesel and gasoline are national in scope.<sup>13</sup>

## Assessment

### *HORIZONTAL OVERLAPS*

21. The transaction does not give rise to any horizontal overlap between the parents. Normeston is solely active as a trader of crude oil and 0.2 gasoil, and neither MOL nor any company in the MOL group are engaged in such oil trading activities.

### *VERTICAL RELATIONSHIPS*

22. Upstream to Normeston's activities, MOL is active on the markets for exploration of crude oil and natural gas and for development, production and sale of crude oil but with a very small market share of [ $<5$ ] % and [ $<5$ ] % respectively. Therefore no vertically affected markets arise.
23. Normeston is active on the markets upstream of MOL for international trading of crude oil and refined petroleum products. Even if such a market is defined as narrowly as EEA (rather than world-wide), Normeston's market share would be at most [ $<5$ ] %. If the markets are defined to be world-wide in scope, Normeston's market share would be [ $<5$ ] % for the trading of refined oil products and [ $<5$ ] % for the trading of crude oil.
24. Downstream of Normeston's trading activity, MOL is active on the markets for ex-refinery, non-retail sales of refined oil products and had, in 2008, market shares of 25% or more on the following markets provided that the most narrow market definition is applied i.e. markets are to be defined as being national in scope:

<b>Product</b>	<b>Hungary</b>	<b>Slovak Republic</b>	<b>Slovenia</b>	<b>Romania</b>
Ex-refinery/non-retail sale of diesel	[80-90]%	[60-70]%	> 25%	> 25%
ex-refinery/non-retail sale of gasoline	[80-90]%	[60-70]%	> 25%	> 25%
ex-refinery/non-retail sales of LPG	[80-90]%	> 25%	[30-40]%	> 25%
sales of jet fuel	[90-100]%	[90-100]%	> 25%	> 25%
sales of heating oil	[90-100]%	> 25%	> 25%	> 25%
sales of heavy fuel oil	[90-100]%	[60-70]%	[80-90]%	> 25%
sales of bitumen	[70-80]%	[50-60]%	[60-70]%	[20-30]%
retail sales of motor fuels	[30-40]%	[30-40]%	> 25%	> 25%

<sup>11</sup> M.3516 Repsol YPF/Shell Portugal, para 11.

<sup>12</sup> M.4532 – Lukoil/ConocoPhillips, recital 7; case COMP/M.4348 – PKN/Mazeikiu, recital 16.

<sup>13</sup> M.4208 Petroplus/European Petroleum Holdings para 10 and M.4348 PKN/Mazeikiu para 29.

25. The high market shares of MOL in a number of downstream markets give rise to vertically affected markets between Normeston's upstream supply of crude oil and gasoil 0.2 (feedstock for regular diesel and heating oil). However given Normeston's minor position in the upstream market no input foreclosure arises as MOL's competitors would continue to have ample possibilities to source their feedstock from other suppliers. As Normeston is not active in any of the downstream markets, no risk of customer foreclosure arises post-transaction.

### **Competition assessment**

## **VI. CONCLUSION**

26. 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