EN

Case No IV/M.574 - Saudi Aramco / MOH

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 23/05/1995

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.05.1995

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case N° IV/M.574 - Saudi Aramco/MOH
Notification of 18.04.1995 pursuant to Article 4 of Council Regulation N° 4064/89

1. The above mentioned notification concerns a 50:50 joint venture between the Saudi Arabian Oil Company ("Saudi Aramco") and the Vardinoyannis brothers, by virtue of the acquisition of Saudi Aramco of a 50% stake in two pre-existing Greek companies: Motor Oil Corinth Refineries SA ("MOH"), an oil refining company, and Avinoil Industrial and Maritime Oil Company SA ("Avin"), a wholesaler and retailer of refined products. Before the operation, the Vardinoyannis brothers indirectly held controlling stakes in both MOH and Avinoil.

I. THE PARTIES

2. Saudi Aramco is a private company with limited liability established by a Royal Decree of the Kingdom of Saudi Arabia and is wholly owned by the Kingdom. It is engaged in the exploration, production and marketing of crude oil, and in the production and marketing of refined products primarily outside Europe. It also has activities in marine transportation.
   Saudi Aramco owns and operates four refineries in Saudi Arabia and holds significant interests in three other refineries in that country. Furthermore, it holds major stakes in three oil refining and marketing joint ventures in the United States, Korea and the Philippines.

3. Mr. V.J. Vardinoyannis and Mr. T.J. Vardinoyannis are Greek nationals with multiple business activities including oil and petroleum products, shipping, banking, real state,

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media, hotels, and leisure. The activities of the group of companies controlled by the Vardinoyannis brothers in connection to the oil sector generally are the following: i)a shipping fleet comprising mostly crude oil and product carriers; ii) minor exploration activities in the US, Yemen and Egypt; iii) trading activities through offices in Athens and London iv) refining of crude oil and retailing of refined products through MOH and Avin, which are the subject of the notified concentration.

II. THE OPERATION

4. Saudi Aramco will acquire, via its wholly-owned subsidiary Aramco Overseas Company ("AOC"), a 50% stake in the capital of each of MOH and Avin. The shares are sold by the Vardinoyannis brothers directly or through a wholly-owned holding, with the result that the capital stake of MOH will be held as to 50% by Saudi Aramco through AOC and as to the remaining 50% by a Luxembourg based holding (MOH Holdings SA) controlled by the Vardinoyannis brothers. With respect to Avin, the situation is similar, with Saudi Aramco holding 50% of the capital of Avin through AOC, and Avin Holdings SA, a Luxembourg based holding wholly-owned by the Vardinoyannis brothers, holding the remaining 50% share. The operation involves therefore the sale of shares of two distinct companies, but between the same seller and purchaser.

5. The parties have entered into a number of agreements, including a shareholders agreement, regulating inter-alia, the corporate governance and management of the joint venture, and a crude oil supply agreement by which Saudi Aramco will supply MOH with most of its crude requirements.

III. CONCENTRATION

Joint control

6. The Board of Directors of each of MOH and Avin will consist of not more than 14 individuals. Each of AOC and the respective holding controlled by the Vardinoyannis brothers will appoint one half of the Directors.

7. The Chairman and Vice-chairman of the Board of Directors of each of MOH and Avin will be designated by MOH and Avin holdings respectively, whereas AOC will designate the managing directors. All decisions of the Boards of Directors of MOH and Avin, will require at least a simple majority vote. Neither the Chairman nor Vice Chairman shall have a deciding vote. The approval of the Board of Directors of MOH and Avin is required for a number of issues relating to the strategic commercial behaviour of these companies. These matters include changes to the management structure of the company concerned, the entry into new lines of business or geographic markets, the adoption of the long range business plan, adoption or modification of capital and operating budgets, contracts with third parties above a certain amount, all matters relating to contracts for the supply of crude oil and other feedstocks, and a number of other financial issues.

8. In view of the equality of stakes in the capital of the joint venture, the equality of representation and voting rights in the Board of Directors, and the matters that the Board of Directors has to approve, it is concluded that MOH and Avin will be jointly controlled by Saudi Aramco through AOC, on the one hand and the Vardinoyannis brothers through MOH Holdings and Avin holdings respectively on the other hand.

Autonomous economic entity and absence of coordination of competitive behaviour

9. Both MOH and Avin are pre-existing full function companies. According to the crude oil supply agreement, Saudi Aramco will supply and the joint venture will purchase [...][(1)] of its sour crude oil requirements, representing about [...][(2)] of the total feedstock requirements of MOH. The contract is for a period of [...][(3)] years. The contract also stipulates that the price per barrel of each grade of crude oil shall be Saudi Aramco's standard FOB price for deliveries at a specific place (terminals at Saudi Arabia or Egypt). Therefore, the terms of supply of crude oil are established at arms-length. These supply agreements does not call into question the functioning of the joint venture as an autonomous economic entity. Taking into account the substantial industrial activity and significant added value involved in refining crude oil and marketing refined products, MOH and Avin cannot be considered as a mere commercial agency of Saudi Aramco. The arms-length terms of the supply agreement further reinforce this conclusion.

10. Saudi Aramco on the one hand, and other companies controlled by the Vardinoyannis brothers on the other hand, are not simultaneously present to any significant extent in any markets related to those of the joint venture. Saudi Aramco has no refining capacity in Europe. It sells some refined products at the wholesale level in certain countries of the common market, with shares of national consumption below 5% in 1994 with just two exceptions (LPG in Spain, share of [...][(4)] and kerosene in Ireland, share of [...][(5)]). At EU level, the shares are below 5% in all cases. Save for the exceptions mentioned above, the Vardinoyannis brothers do not retain any business in the oil markets outside the joint venture.

IV. COMMUNITY DIMENSION

11. The combined aggregate worldwide turnover of the parties exceeds 5 billion ECU. The aggregate Community-wide turnover of each party exceeds 250 million Ecu. The parties do not achieve more than two-thirds of their turnover in one and the same Member State. The operation has therefore a Community dimension.

V. COMPATIBILITY WITH THE COMMON MARKET

12. The activities affected by the proposed concentration are the refining and distribution of petroleum products and the main effects of the concentration will take place in the Greek market.

Production of refined products

13. MOH owns a refinery in Corinth with a refining capacity of 5.5 million tons/year which represents about [...][(6)] of total refining capacity installed in Greece. The refined petroleum products produced by MOH which includes the so called "major products"

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(1) Deleted business secret - more than 85%
(2) Deleted business secret - between 60 and 90%
(3) Deleted business secret - between 20 and 30 years
(4) Deleted business secret - between 15 and 25%
(5) Deleted business secret - between 5% and 10%
(6) Deleted business secret - between 25% and 35%

(gasoline, gasoil, fuel oil) and other products such as kerosene, jet fuel, lubricants, base oil, asphalt and sulphur are mainly distributed in the Greek market, either for domestic consumption or as bunkering sales. However, MOH also exports a small proportion of its output to other EU countries, such as gasoline (Italy, Spain and Austria), fuel oil (Italy, France and Austria), jet fuel (Netherlands) and lubricants (Italy, UK and Spain), but all these exports represent an insignificant share of the consumption of the above-mentioned products in all these countries.

14. Saudi Aramco has no refining activities in Europe. In 1994 it has exported four different types of refined products to the EU, namely LPG, gasoline, fuel oil and kerosene. However, except for its exports of LPG to Spain which accounted for about [...](7) of total Spanish consumption and those of kerosene to Ireland with a [...](8) market share, all other exports have not exceeded a 5% market share in any country within the EU. For instance, in Greece the only product supplied by Saudi Aramco was fuel oil with a [...](9) market share. As MOH's market share in Greece for this product does not exceed [...](10), it can be considered that the proposed concentration will not have a significant impact on the supply of refined products to the Greek market or to the EU.

Retail market for refined products in Greece

15. For the retail distribution of refined oil products only the Greek market will be affected by the operation as the scope of this market is at most national. However, in this case there will be no addition of market shares since Saudi Aramco is not active in Greece in these markets.

Avin has relatively low market shares in the Greek market for the so called "major products" such as gasoline ([...](11)), gasoil ([...](11)) and fuel oil ([...](11)), as well as other products such as lubricants ([...](12)) and LPG ([...](13)). The only product in which Avin holds a significant market share is asphalt ([...](14)). Competition in the Greek retail market is important with a number of significant players among which some "majors" such as Shell, Mobil, BP and Texaco, in addition to the state-owned company EKO.

Vertical aspects

16. The oil industry traditionally has a pattern of vertical integration that is unequalled by any other industry. The main factor explaining this fact is a historical one linked to tax benefits accorded to petroleum producers in the USA in particular at the crude production stage as oil companies had the right to deduct percentage depletion and drilling costs as business expenses. The downstream expansion then followed as a simple quest for an assured source of supply in order to avoid dependence on companies which were competitors in the sale of final products. Therefore, most oil companies in particular the "majors" have developed a complete pattern of integration from the oil well to the retail distributor pump including the intermediate stages of refining and transportation.

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(7) Deleted business secret - between 15 and 25%
(8) Deleted business secret - between 5 and 10%
(9) Deleted business secret - less than 5%
(10) Deleted business secrets - between 5 and 10%
(11) Deleted business secret - between 5 and 10%
(12) Deleted business secret - between 3 and 10%
(13) Deleted business secret - between 1 and 5%
(14) Deleted business secret - between 35 and 45%

17. Saudi Aramco, which was primarily a crude oil producer has already begun a downstream vertical integration and is further pursuing this objective with the present operation. The Vardinoyannis Group is also an integrated oil producer with exploration, trading and transportation activities in addition to those activities (refining and retailing) which are part of the present operation.

18. Since MOH represents a negligible proportion of refining capacity in Europe and worldwide, the shareholding link with a major producer of crude oil is not likely to create difficulties in access to raw materials for other refiners. Furthermore, there are sufficient alternative suppliers of crude oil.

19. The traditional advantages of vertical integration between the refining stage and the retail distribution of the petroleum products are further enhanced in Greece by the Greek compulsory stock obligation. According to this legislation, retail distributors of petroleum products must keep inventories amounting to about 1/4 of its sales during the previous year within the Greek territory. However, companies that have supply contracts with Greek refineries may pass this obligation to their suppliers. The compulsory stock obligation has the effect of considerably restraining the imports of refined petroleum products in Greece since the retail distributors of petroleum products do not have enough storage capacity to comply with this legal requirement and, therefore, are obliged to buy most of their requirements to the Greek refiners.

20. There are only two groups which have integrated activities of refining and retail distribution in Greece: the Greek state with DEP (refining) and EKO (distribution) and the Vardinoyannis family with MOH and Avin. However, the state-owned group has a much stronger presence in Greece as it owns [...][15] of total refining capacities (MOH [...][16]) and at retail distribution level has a total turnover which represents more than the double of that of the Vardinoyannis Group.

21. Although some competitors in the retail distribution market may expect that the financial power of Saudi Aramco will contribute to increase Avin's distribution activities in Greece leading to substantial gains in market share it is not likely that this will create a dominant position on the Greek market for the retail distribution of petroleum products. Indeed, for the time being Avin's market share does not exceed 6% of total sales of refined petroleum products at retail level and with about 550 distribution outlets Avin has less than 10% of total distribution outlets in Greece. Even if some cross subsidisation of retail activities by profits made at the refining stage were possible, the Vardinoyannis Group has already a stronger integrated competitor, the state-owned group, which is also vertically integrated.

VI. ANCILLARY RESTRAINTS

22. The parties also notified, as an integral part of the concentration the crude oil supply and purchase agreement between Saudi Aramco and MOH by which Saudi Aramco will supply and MOH will purchase for a period of [...][17] years a minimum of [...][18]

(15) Deleted business secret - between 40 and 55%
(16) Deleted business secret - between 25 and 35%
(17) Deleted business secret - between 20 and 30
(18) Deleted business secret - between 70 and 90

thousand barrels of crude oil per day representing about [...][19] of the total current capacity of the MOH Corinth refinery and approximately [...][20] of its total crude oil intake in 1994.

According to the parties, this supply agreement is clearly linked to the proposed concentration and meets the long term objectives of both partners as it gives a guaranteed outlet for Saudi crude exports and reinforces the security of crude supply of the MOH refinery.

However, even if the terms of the supply are established at an arm's length basis, this agreement considerably restrains the possibility for MOH to choose its sources of supply in the free market for a long period of time. The supply contract is not a transitional arrangement to make the concentration possible. Therefore, it cannot be considered either an integral part or as ancillary to the proposed concentration and should therefore be assessed separately under the provisions of Art. 85 of the Treaty.

23. The shareholders' agreement contains a non-compete clause pursuant to which both parents undertake, on behalf of themselves and any companies they control, not to compete with the refining and retail distribution of MOH and Avin in the Greek Market.

As this clause means that both parents withdraw on a lasting basis from the market of the joint venture, it can be considered as ancillary since it reinforces the concentrative nature of the refining and retailing joint ventures established by Saudi Aramco and the Vardinoyannis Group within the Greek territory.

VI. CONCLUSION

24. In view of the above, it is concluded that the proposed concentration will not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.

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 functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission,

(19) Deleted business secret - between 60 and 70%

(20) Deleted business secret - between 60 and 90%