

***Case No COMP/M.5796 -
ENI/ MOBIL OIL
AUSTRIA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 27/05/2010

***In electronic form on the EUR-Lex website under
document number 32010M5796***



EUROPEAN COMMISSION

Brussels, 27.05.2010

SG-Greffe(2010) D/7473
C(2010)3531

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5796 – ENI/ Mobil Oil Austria
Notification of 20 April 2010 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 20/04/2010 the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which Agip Austria GmbH ("Agip Austria", Austria) wholly controlled by Eni S.p.A. ("ENI", Italy) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Mobil Oil Austria GmbH ("Mobil Oil Austria", Austria), fully owned by ExxonMobil Central Europe Holding GmbH (Germany), by way of purchase of shares.

1. I. THE PARTIES AND THE OPERATION

2. **ENI** is active in exploration, production, supply, transmission, storage, distribution of and trade in natural gas as well as in exploration and production of oil.
3. **Mobil Oil Austria** operates in marketing, supply and distribution of refined petroleum products.

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

4. The envisaged transaction consists of the acquisition by ENI of the entire share capital of Mobil Oil Austria through its subsidiary Agip Austria . As a result ENI will acquire sole control over the target. At the same time as the main transaction, ENI will also purchase from Mobil Holdings (Europe and Africa) Limited 0.01% share in Esso Austria GmbH, a subsidiary of Mobil Oil Austria (99.99%).
5. As a consequence the two transactions qualify as one notifiable concentration.

II. EU DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (approximately EUR 83.542 billion according to preliminary 2009 figures). Each of them has a EU-wide turnover in excess of EUR 250 million (approximately EUR [...] billion according to preliminary 2009 figures), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

III. RELEVANT MARKETS

7. The envisaged transaction relates to the following oil markets: (i) retail sales of motor fuels (gasoline and diesel), (ii) non-retail sales of fuels (gasoline, diesel, heating oil and fuel oil) and (iii) sales of lubricants in Austria.
8. For the purpose of the present decision the assessment will focus only on the market for retail sales of motor fuels. The parties' combined market shares with respect to both non-retail sales of fuels and sales of lubricant are below 15% under any conceivable market definition³, therefore, these markets are not considered to be affected.

Relevant product and geographic market definition

Retail sales of motor fuels

9. Retail sales of motor fuels include sales made to motorists from branded and unbranded service stations. The products sold are predominantly gasoline and diesel. In line with the Commission's past practice⁴, the notifying party submits that the relevant product market constitutes of the retail sales of all motor fuels with no need for a further segmentation between gasoline and diesel. There is no need to conclude on whether both

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

³ The Commission has previously found that the market for non-retail sales of fuels should be segmented along the individual types of products, namely, (i) gasoline, (ii) diesel, (iii) heating oil and (iv) fuel oil and that those markets could be national or even regional. With respect to sales of lubricants, the Commission considered in its previous decisions that automotive and industrial lubricants belong to different product markets and that those markets are at least national and probably EEA-wide. COMP/M.3291 - Preem / Skandinaviska Raffinaderi, COMP/M.4348-PKN/Mazeikiu, CMP/M.1891-BP AMOCO/CASTROL; COMP/M.3543-PKN Orlen/Unipetrol; COMP/M.3375-Statoil/SDS, COMP/M.3516 -Repsol / Shell Portugal, COMP/M.5005-GALP ENERGIA/EXONMOBIL IBERIA.

⁴ Case No M.1383 – Exxon/Mobil; case No M.3516 – Repsol YPF / Shell Portugal; M.3291 – Preem / Skandinaviska Raffinaderi.

fuels belong to the same market as under any alternative product market definition the transaction does not give rise to competition concerns.

10. In previous decisions, the Commission has also considered a further sub-division of the market for retail sale of motor fuels into motorway and non-motorway sales⁵. The notifying party does not consider that this distinction is necessary in Austria due to the following reasons. First, unlike other countries, there is no system in Austria where toll booths at the entry/exit of motorways discourage motorists from leaving the motorway. The Austrian toll collecting system is based on periodic fees paid by motorists (so called "sticker" or "vignette"). Second, many petrol stations are located near the motorway entries/exits and are easily visible and accessible (even by truck drivers) from the motorway. Based on the foregoing, the notifying party concludes that from a demand-side perspective, roadways and motorways are mutually permeable and therefore motorway motorists cannot be considered as "captive customers" for motorway petrol stations.⁶
11. This view has been broadly confirmed by the market investigation, therefore the Commission considers that for the purpose of the present decision it is not relevant to assess the effects of the proposed concentration separately at the level of on-and off-motorway sales of motor fuels.
12. With regard to the geographic scope of the market for retail sales of motor fuels, the Commission has considered that the market has a local element in so far as motorists resort to service stations in their vicinity. On the other hand, the existence of a certain overlap between service stations' catchment areas not only determines the competitive interactions between geographically neighbouring service stations, but also, to some extent, has a "knock-on" effect on more distant service stations, therefore extending the geographic scope of the relevant market to be considered. In addition, the notifying party points out that important parameters of competition, such as the range of offered products, sources of such products, service level (opening hours, etc.), advertising, promotion and prices (on campaign products for example) are not decided on a local level, but on national level⁷.
13. The market investigation confirmed the notifying party's view. As a consequence, the effects of the proposed concentration will be assessed from a national perspective.

IV. COMPETITIVE ASSESSMENT

14. At national level the transaction would lead to a joint market share below [10-20]% with respect to combined sales of gasoline and diesel in Austria. The parties' market position has been confirmed by the Commission's market investigation. Of the other main players BP, OMV and Shell have higher market shares than the parties, while ConocoPhillips, with its JET brand is a very aggressive competitor on price. Therefore, no competition concerns arise from the envisaged operation.

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

6 Compare Case COMP/M.4723 – ENI / EXXON MOBIL, para 13 et seq.

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

Table-1 Market shares (in value) by suppliers for 2007 in the retail sales of motor fuels (gasoline and diesel) in Austria ⁸

Players	Market share		Market shares Combined
	Gasoline	Diesel	
ENI	[5-10]%	[5-10]%	[5-10]%
Mobil Oil Austria	[5-10]%	[5-10]%	[5-10]%
Combined	[10-20]%	[10-20]%	[10-20]%
BP	[20-30]%	[20-30]%	[20-30]%
OMV	[10-20]%	[10-20]%	[10-20]%
Shell	[10-20]%	[10-20]%	[10-20]%
ConocoPhilips	[5-10]%	[5-10]%	[5-10]%
Others	[10-20]%	[20-30]%	[20-30]%

(Source: Form CO. Note: market shares are estimated values for 2007 based on PFC Energy's data)

15. Based on the above, it can be concluded that the envisaged transaction does not raise serious doubts as to its compatibility with the internal market.

V. CONCLUSION

16. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the European Commission,
(signed)
Joaquín ALMUNIA
Vice-President of the European
Commission

⁸ Market share figures of the parties are even slightly lower in a volumetric comparison.