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***Case No COMP/M.7311 - MOL / ENI CESKA / ENI  
ROMANIA / ENI SLOVENSKO***

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: 24/09/2014

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## EUROPEAN COMMISSION

Brussels, 24.9.2014  
C(2014) 7010 final

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PUBLIC VERSION

MERGER PROCEDURE

### **To the notifying party:**

Dear Sir/Madam,

**Subject: Case M.7311 - MOL / ENI CESKA / ENI ROMANIA / ENI SLOVENSKO  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

- (1) On 20 August 2014 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004<sup>2</sup> by which MOL Hungarian Oil and Gas Plc. ("MOL", Hungary) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control over the undertakings Eni Česká Republika, s.r.o. ("Eni Ceska", Czech Republic), Eni Romania S.R.L. ("Eni Romania", Romania) and Eni Slovensko, spol. s.r.o. ("Eni Slovensko") by way of purchase of shares. MOL, Eni Ceska, Eni Romania and Eni Slovensko are together referred to as the "Parties" while ENI Ceska, ENI Romania and ENI Slovensko are together referred to as the "Target Companies".

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<sup>1</sup> 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.

<sup>2</sup> OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

## 1. THE PARTIES

- (2) MOL is an integrated oil and gas company active in Hungary and Central Europe in the production and distribution of natural gas, oil, fuels and petrochemicals. It presently operates four oil refineries in Hungary, Croatia and the Slovak Republic and has a network of more than 1,700 filling stations in Central and South-Eastern Europe and Northern Italy.
- (3) ENI Ceska is active in the wholesale of various refined oil products. It should be noted that ENI's<sup>3</sup> non-controlling minority shareholding in Česká Rafinérská a.s. ("CRC"), a company that operates two processing refineries in the Czech Republic is being sold to its majority shareholder Unipetrol<sup>4</sup>.
- (4) On the retail level Eni Ceska is active in the sale and distribution of motor fuels, lubricants and convenience goods in the Czech Republic through a retail network of 125 service stations. Eni Ceska is mainly active in the Czech Republic and has minor sales in other Member States.
- (5) ENI Romania is active in the wholesale of diesel, gasoline and lubricants. On the retail level it is active in the sale and distribution of motor fuels, lubricants and convenience goods in Romania via its own retail network of 42 service stations. Eni Romania is only active in Romania.
- (6) ENI Slovensko is active in the wholesale of diesel and bitumen and the retail distribution of motor fuels lubricants and convenience goods in Slovakia via its retail network consisting of 41 service stations. Eni Slovensko is only active in Slovakia.<sup>5</sup>

## 2. THE OPERATION AND THE CONCENTRATION

- (7) The transaction consists of the acquisition of sole control by MOL over ENI Ceska, ENI Romania and ENI Slovensko by way of purchase of all the issued shares of the Target Companies. The transaction will be implemented by way of three *de jure* interlinked share sale and purchase agreements ("SPAs"). Therefore, the transaction constitutes a single concentration within the meaning of paragraphs 43 and 44 Commission Consolidated Jurisdictional Notice.
- (8) It is also noted that in parallel to these three SPAs, MOL and ENI concluded another SPA whereby MOL intended to acquire ENI's interest in the CRC refinery (the "CRC SPA"). However, following the signing of the CRC SPA, Unipetrol, the majority shareholder in CRC, exercised its pre-emption right. [...]. Therefore, under any scenario, MOL will not acquire ENI's stake in CRC pursuant to this transaction.

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<sup>3</sup> In fact owned by ENI International BV (100% owned by ENI Group), see below, point 8.

<sup>4</sup> The output of CRC refinery is currently split between ENI and Unipetrol according to their respective shareholdings. However, Unipetrol is in the process of acquiring ENI Ceska's stake in CRC pursuant to its pre-emption right (see paragraph 8 below). This transaction is being reviewed at the national level and this decision is without prejudice to the outcome of that case.

<sup>5</sup> With reference to ENI Slovensko, it is worth noting that in 2013 the amount of wholesale sales of bitumen and non-retail sales of diesels were negligible. The former, in fact, amounted to only [...] and the latter to [...], representing [0-5]% of the total market.

- (9) Therefore, the transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

### **3. EU DIMENSION**

- (10) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>6</sup> [MOL: EUR 18 191 million, ENI Ceska: EUR [...], ENI Romania: EUR [...], ENI Slovensko: EUR [...]]. At least two of them have a EU-wide turnover in excess of EUR 250 million [MOL: EUR 16 467 million, ENI Ceska: EUR [...], ENI Romania: EUR [...], ENI Slovensko: EUR [...], target companies together: EUR [...]], but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

- (11) Therefore, the notified operation has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

### **4. ASSESSMENT**

- (12) The Parties' activities overlap in relation to the wholesale and retail supply of motor fuels and a number of refined fuel products and associated services in the Czech Republic, Slovakia and Romania. However, the transaction only leads to affected markets<sup>7</sup> in relation to the market for non-retail sale of bitumen in the Czech Republic; and the markets for non-retail sale of diesel and LPG in Slovakia, and the retail supply of motor fuel in Slovakia.<sup>8</sup> No affected markets arise in Romania. The transaction will also give rise to a vertically affected market with respect to the vertical link between the ex-refinery and non-retail sales of refined oil products in Slovakia and the retail sale of motor fuels in Slovakia.

#### **4.1. Market definition**

##### *4.1.1. Wholesale of refined fuel products*

- (13) In previous decisions, the Commission has identified two different levels of wholesale distribution of refined fuel products, namely ex-refinery sales (primary level of distribution) and non-retail sales (secondary level of distribution).

- (14) The Notifying Party submits that ex-refinery sales and non-retail sales belong to one single wholesale market for refined fuel products due to the high supply-side substitutability and the fact that there is no clear distinction between the two sales channels.

- (15) The Commission carried out a market investigation in which it sent questionnaires to parties' competitors and customers at both wholesale and retail levels. The market investigation confirmed that the two sales channels differ based on the customer base. While ex-refinery sales tend to flow to wholesalers and large resellers, non-retail sales tend to flow to large customers such as small independent resellers,

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<sup>6</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p.1).

<sup>7</sup> Commission Regulation (EC) No 802/2004 of 21 April 2004, Annex I, Section 6, part III.

<sup>8</sup> The remaining horizontally overlapping activities are minor and do not give rise to affected markets. [...], no affected market arises in relation to the market for issuance of fuel cards in Slovakia.

retailers not integrated upstream (e.g. unbranded service station operators) and large industrial and commercial consumers (such as public administrations and car rental fleets). Some respondents to the market investigation stated that pricing and contractual terms and conditions applied at ex-refinery level and at non-retail level tend to differ. According to the market investigation, these differences are mainly due to higher volumes typically off-taken ex-refinery, as opposed to lower volumes and increased flexibility in monthly off-take terms offered at the non-retail level. In this context some respondents also mentioned different delivery means required by ex-refinery clients, such as delivery by rail.

- (16) However, despite these indications that the market could be subdivided according to the sales channel, the overall results of the market investigation in the case at hand on whether the wholesale market should be subdivided into ex-refinery sales and non-retail sales were inconclusive. Therefore, for the purpose of the present decision the Commission assesses the effects of the proposed transaction on the basis of the narrowest possible market, i.e. on the basis of separate markets for ex-refinery sales and non-retail sales.

#### 4.1.1.1. Ex-refinery sales of refined fuel products

- (17) Ex-refinery sales of refined fuel products constitute a primary level of distribution whereby large cargo volumes are sold by refiners directly at the refinery gate or delivered by primary transport (i.e. generally by rail, pipeline, ship or barge) to clients' terminals or storage facilities. The customers are wholesalers, traders or an internal wholesale arm of the refiners which usually own or rent large storage facilities.<sup>9</sup>
- (18) In past decisions, the Commission considered that ex-refinery sales of refined oil products may constitute a separate relevant product market,<sup>10</sup> which could be further segmented into markets for fuel and non-fuel products.<sup>11</sup> The Commission has further considered that ex-refinery sales of fuel products ought to further be sub-segmented by product type into sale of gasoline, diesel, fuel oil, aviation fuel and LPG.<sup>12</sup>
- (19) In terms of geographic market, in previous cases the Commission considered the relevant geographic market for ex-refinery sales of refined fuel products to be EEA-wide or regional (in those cases Western Europe) due the relatively low transportation costs having little bearing on the total price, the fact that the product is a commodity bought and sold internationally, and the fact that prices are tracked and

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<sup>9</sup> COMP/M.4348 - PKN/Mazeikiu; COMP/M.6261 - North Sea Group/Argos Groep /JV.

<sup>10</sup> COMP/M.6801 - Rosneft/TNK-BP (2013); COMP/M.6261 - North Sea Group/Argos Groep /JV (2011); COMP/M.6151 - Petrochina/Ineos/JV; COMP/M.5846 Shell / Cosan / JV (2011); COMP/M.5005 - Galp Energia/Exxonmobil Iberia; COMP/M.4934 - Kazmunaigaz/Rompetrol; COMP/M.4588 - Petroplus/Coryton Refinery Business; COMP/M.727 - BP/MOBIL.

<sup>11</sup> COMP/M.6801 - Rosneft/TNK-BP; COMP/M.6261 - North Sea Group/Argos Groep /JV; COMP/M.6151 - Petrochina/Ineos/JV (2005); COMP/M.5846 - Shell/Cosan/JV; COMP/M.5005 - Galp Energia/Exxonmobil Iberia; COMP/M.4934 - Kazmunaigaz/Rompetrol; COMP/M.727-BP/MOBIL.

<sup>12</sup> COMP/M.1383 - Exxon/Mobil, COMP/M.3516 - Repsol YPF/Shell Portugal, COMP/M.4348 - PKN/Mazeikiu; COMP/M.5637 - Motor Oil (Hellas) Corinth Refineries/Shell Overseas Holdings.

reported at the EEA level.<sup>13</sup> The market investigation in the case at hand did not contradict these findings.

- (20) In any event, for the purpose of the present decision the exact product and geographic market definition in relation to ex-refinery sales of refined products can be left open, as no serious doubts arise irrespective of the exact product and geographic market definition.

#### 4.1.1.2. Non-retail sales of refined fuel products

- (21) Non-retail sales refer to sales of smaller volumes usually from the supplier's inland storage facilities which are delivered to clients by secondary transport, generally by truck. Customers are generally branded and unbranded service stations, independent smaller resellers, industrial and commercial consumers and public institutions. Compared to ex-refinery sales of refined fuel products, non-retail sales involve value added services such as smaller delivery sizes, multiple delivery locations, infrastructure of storage and terminals, and in many cases payment term flexibility.<sup>14</sup>
- (22) In past cases, similarly to ex-refinery sales the Commission has considered that non-retail sales of refined fuel products can further be sub-segmented into sales of gasoline, diesel, domestic heating oil, heavy fuel oil<sup>15</sup> and LPG.<sup>16</sup>
- (23) According to previous Commission decisions, depending on the specifics of the case and considering the radius around each point of supply, the geographic markets for non-retail sales of refined fuel products were considered to be regional (sub-national), national or even regional (supra-national) in scope.<sup>17</sup> However, in most cases the existence of overlapping circles around the various points of supply led to indications of national markets.
- (24) In the case at hand, given the size and the geographic location of the countries concerned, the market investigation provided indications that non-retail customers source the product at both national level and in neighbouring countries.
- (25) In any event, for the purpose of the present decision the exact product and geographic market definition in relation to non-retail sale of refined products can be left open, as no serious doubts arise irrespective of the exact product and geographic market definition.

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<sup>13</sup> COMP/M.727 - BP/MOBIL paragraph 34; COMP/M. 4934 - Kazmunaigaz/Romp petrol, paragraph 12; COMP/M.5445 - Mytilineos/Motor Oil/Corinthos Power; COMP/M.6261 North Sea Group/Argos Groep/JV.

<sup>14</sup> COMP/M.4348 - PKN/Mazeikiu.

<sup>15</sup> COMP/M.4934 - Kazmunaigaz/Romp petrol.

<sup>16</sup> COMP/M.3291 - Preem/Skandinaviska Raffinaderi; COMP/M.3375 - Statoil/SDS; COMP/M.3543 PKN Orlen/Unipetrol; COMP/M.3516 - Repsol/Shell Portugal; COMP/M.4208 - Petroplus/European Petroleum Holdings; COMP/M.4545 - Statoil/Hydro; COMP/M.5005 - Galp Energia/Exxonmobil Iberia; COMP/M.5169 - Galp Energia Espana/Agip Espana.

<sup>17</sup> COMP/M.3291 - Preem/Skandinaviska Raffinaderi; COMP/M.3375 - Statoil/SDS; COMP/M.3543 - PKN Orlen/Unipetrol; COMP/M.3516 - Repsol/Shell Portuga.

#### 4.1.2. *Non-retail sales of liquid petroleum gas (LPG)*

- (26) In previous decisions<sup>18</sup> as regards the non-retail sales of LPG, the Commission has considered a sub-segmentation according to the format into LPG sold in bottles and LPG sold in bulk in view of different modes of distribution, uses and quantities consumed.
- (27) As to the geographic scope of the market, the Commission considered these markets to be at least national scope,<sup>19</sup> as well as – exceptionally – narrower (macro-regional for Italy<sup>20</sup>, local for France<sup>21</sup>, and the border region of Poland and the Czech Republic<sup>22</sup>) – depending on the Member State concerned.
- (28) In any event, for the purpose of the present decision the exact product and geographic market definition in relation to non-retail sales of LPG can be left open as no serious doubts arise irrespective of the product and geographic market definition.

#### 4.1.3. *Non-retail sales of bitumen*

- (29) The Commission has previously considered that there is a separate product market for the non-retail sales of bitumen as it has a distinct set of uses (e.g. road construction) and a small number of customers (independent resellers) which clearly differentiates it from other non-retail sales of fuel products.<sup>23</sup>
- (30) As to the geographic scope of the market, the Commission has previously considered it to be national in scope.<sup>24</sup> However, given the high cost of transportation (bitumen needs to be transported at temperatures above 130 C°) the Commission considered that the geographic market might be narrower in scope.<sup>25</sup>
- (31) In any event, for the purpose of the present decision the exact product and geographic market definition in relation to non-retail sales of bitumen can be left open as no serious doubts arise irrespective of the product and geographic market definition.

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18 COMP/M.1628 - TotalFina/Elf; COMP/M.5637 Motor Oil (Hellas) Corinth Refineries/ Shell Overseas Holdings; COMP/M.3664 Repsol Butano/ Shell Gas; COMP/M.3375 Statoil/SDS.

19 COMP/M.5005 Galp Energia/ExxonMobil Iberia; COMP/M.3664 Repsol Butano/ Shell Gas

20 Although some competitors pointed out that the use of local terminals does not necessarily prevent the existence of national markets: COMP/M.5781 *Total Holdings Europe SAS / ERG SPA / JV* (2010).

21 The possibility of a national market existing was however left open: COMP/M.1628 *TotalFina / Elf* (2000); COMP/M.6935 *Argos / Sopotral* (2013).

22 Although the markets concerned appeared to be national in scope, the Commission also assessed the impact of the transaction in this particular border region: COMP/M.3543 *PKN Orlen / Unipetrol* (2005), para. 19.

23 COMP/M.5005 - Galp Energia / Exxonmobil Iberia, paragraph 19; COMP/M.5637 - MOTOR OIL (HELLAS) CORINTH REFINERIES/SHELL OVERSEAS HOLDINGS, paragraph 48-50.

24 COMP/M.727 - BP/MOBIL; COMP/M.3543 - PKN Orlen/Unipetrol.

25 COMP/M.5005 - Galp Energia / Exxonmobil Iberia, paragraph 38; COMP/M.5781 – Total Holdings Europe SAS/ ERG SPA/ JV, paragraph 40-43; COMP/M.3516 - Repsol YPF/Shell Portugal.

#### 4.1.4. Retail sales of motor fuels

- (32) The Commission has previously considered that the market for retail sale of motor fuel products constitutes a distinct relevant product market which exclusively applies to forecourt sales.<sup>26</sup> This encompasses sales made at all service stations, both branded and unbranded, in and outside an integrated retail network.<sup>27</sup>
- (33) As regards the distinction between diesel, gasoline and automotive LPG ("LPG-c"), the Commission noted in past cases that, although no demand-side substitutability exists between the different types of fuels (as customers must use the type of fuel appropriate to their vehicle), there is a high degree of supply-side substitutability as various types of motor fuels, sometimes with the exception of LPG, are typically available at all points of sale. Regarding the LPG, the Commission considered whether LPG could constitute a separate relevant product market, distinct from the sales of gasoline and diesel, leaving this question open.<sup>28</sup>
- (34) In addition, in some cases where specific circumstances arise the Commission considered a further sub-segmentation of the retail sales of motor fuels market depending on the location of the filling station into on motorway and off-motorway sales.<sup>29</sup> This distinction has been considered in cases where there were identified different competitive conditions on and off motorway due to various factors. Amongst those the price levels at the filling stations and the existence of toll booths which may discourage motorists to exit motorways have been taken into consideration. However, in most cases it was concluded that such distinction was not warranted<sup>30</sup>.
- (35) The Notifying Party agrees that retail sales of motor fuels should not be subdivided according to the type of fuel. As concerns the sub-segmentation of the market into on and off motorway, the Notifying Party submits that such sub-segmentation is not relevant for the case at hand due to the absence of toll booths that would limit the possibilities of exit of the motorway and the ensuing absence of significant price differences between the different kind of stations in the Czech Republic and Slovakia.
- (36) The market investigation in the case at hand tested whether the market subdivision per type of fuel (diesel, gasoline and LPG) on the one hand and the distinction between motorway and off-motorway on the other are warranted in in this case.

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<sup>26</sup> COMP/M.4919 - StatoilHydro/ConocoPhillips; COMP/M.4532 - Lukoil/ConocoPhillips; COMP/M.4348 - PKN/Mazeikiu; COMP/M.3516 - Repsol YPF/Shell Portugal; COMP/M.3291 Preem/Skandinaviska Raffinaderi.

<sup>27</sup> COMP/M.4919 *StatoilHydro / ConocoPhillips* (2009); COMP/M.4545 *Statoil / Hydro* (2007); COMP/M.4532 *Lukoil / ConocoPhillips* (2007); COMP/M.3516 *Repsol YPF / Shell Portugal* (2004).

<sup>28</sup> COMP/M.5005 - Galp Energia / Exxonmobil Iberia, paragraph 12.

<sup>29</sup> COMP/M.5637 - Motor Oil (Hellas) Corinth Refineries/Shell Overseas Holdings; COMP/M.5005 Galp Energia/Exxonmobil Iberia, paragraph 13; COMP/M.1383 - Exxon/Mobil, COMP/M.1628 – TotalFina/Elf.

<sup>30</sup> COMP/M.5637 - Motor Oil (Hellas) Corinth Refineries/Shell Overseas Holdings, paragraph 29; COMP/M.5005 Galp Energia/Exxonmobil Iberia, paragraph 13; COMP/M.1383 - Exxon/Mobil, COMP/M.1628 - TotalFina/Elf.



- (37) On the first question, while the market investigation for Slovakia<sup>31</sup> confirmed that all filling stations typically offer diesel and gasoline, LPG is offered at only about 30% to 40% of stations. According to the respondents to the market investigation this is because the demand for LPG in Slovakia is currently not fully developed and because LPG is the last type of fuel introduced in the Slovak market and not all gas stations are yet technically equipped to install LPG at their premises. However, the market investigation also indicated that LPG in Slovakia is increasing in popularity and the offer is evolving following the increase in demand. Therefore, it would be artificial to conclude that retail sales of LPG constitute a distinct market.
- (38) Regarding a possible segmentation of the product market between motorway and off-motorway sales in Slovakia, the market investigation indicated that there may be some price differences between on motorway and off motorway stations, however they seem minor. In addition, the stretches of highway in Slovakia are relatively short and there are no toll stations that would limit the exit off the motorways. Therefore, the segmentation of the market into on-motorway and off-motorway does not seem warranted in this case.
- (39) As to the geographic scope of the retail sale of motor fuels market, in its previous decisions the Commission regarded the market as national in scope due to the overlapping catchment areas and the chain of substitution.<sup>32</sup>
- (40) In the case at hand the market investigation seems to confirm the national scope of the market given that prices are set at national level. Although there may be some local price variations, general guidelines and all advertising and promotional activity are decided at national level.
- (41) In any event, for the purpose of the present decision the exact product and geographic market definition in relation to retail sales of motor fuels can be left open as no serious doubts arise irrespective of the product and geographic market definition.

## **4.2. Competitive Assessment**

### *4.2.1. Horizontally affected markets*

- (42) Although the Parties' activities overlap in a number of markets, the transaction results in the horizontally affected markets only in relation to the following segments:
- Non-retail sales of diesel in Slovakia<sup>33</sup>;
  - Non-retail sales of LPG in the Czech Republic;
  - Non-retail sales of bitumen in the Czech Republic; and,
  - Retail sales of motor fuels in Slovakia.

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<sup>31</sup> There are no affected markets for this market in the Czech Republic and Romania.

<sup>32</sup> COMP/M.3291 - Preem/Skandinaviska Raffinaderi; COMP/M.3375 - Statoil/SDS; COMP/M.3543 - PKN Orlen/Unipetrol; COMP/M.3516 - Repsol/Shell Portuga.

<sup>33</sup> According to the Notifying Party ENI is not active in the non-retail sale of gasoline in Slovakia.

(43) All other markets are not affected. However, the Commission also analyses in the next subsection of this Decision the ex-refinery market in the Czech Republic where the market shares would be high if the market were to be considered national .

#### 4.2.1.1. Markets for ex-refinery sales

(44) The Parties are both active in the market for ex-refinery sales of diesel and gasoline. MOL has a refinery located in Slovakia (Slovnaft) while ENI is active through its tolling stake in the CRC refineries located in the Czech Republic.

(45) According to the Notifying Party, in the Central European region (comprising the cluster of neighbouring countries of the Czech Republic), the combined market share of the Parties in the ex-refinery sales market would be below [5-10]%. In this area, the Parties compete with players such as Shell having refineries in Germany and the Netherlands, Total with refineries in Germany and France, BP also having a refinery in Germany and PKN Orlen having a refinery in Poland. Should the market be EEA-wide the combined market share of the Parties would be even lower, around [0-5]%.

(46) Only if the markets were to be considered as national (quod non), the combined market shares of the parties would be higher, around [40-50]%, while Unipetrol, with its stake in the CRC refineries in the Czech Republic would have a share of [20-30]% with respect to diesel and [20-30]% with respect to gasoline.

(47) Notwithstanding the high market share at national level, however, the proposed transaction is unlikely to lead to serious doubts as regards to its compatibility with the internal market in relation these markets.

(48) First, imports of refined fuel products at ex-refinery level into the Czech Republic are significant. In fact, [50-60]% of the diesel sold ex-refinery in the Czech Republic is imported and [60-70]% of gasoline sold ex-refinery in the Czech Republic is imported. This is confirmed by the fact that Shell, BP and TotalFinaElf import gasoline and diesel from neighbouring Member States, such as Germany, and MOL itself has quite significant imports of gasoline and diesel in the Czech Republic. The market investigation also confirmed that ex-refinery customers do not source only at national level but also in neighbouring Member States. According to the information provided by the Notifying Party, there are 14 refineries in this region<sup>34</sup>.

(49) Second, the product is a commodity and suppliers compete on price. Customers can switch easily in a short timeframe and without substantial cost. The market investigation indicated that it is standard practice in the industry to conclude either short term contracts, of duration of less than one year, or make spot purchases. This contractual structure allows customers to select the more suitable supplier without incurring any contractual penalties and to swiftly respond to any price increase. Indeed, the market investigation surfaced evidence of past customer switching mainly as a consequence of better price offered by competitors.

(50) Further to this, the market investigation indicated that customers tend to adopt a multisourcing strategy to ensure security of supply. According to the respondent to the market investigation this strategy gives customers a stronger negotiation position, enabling them to obtain lower prices, and guarantees security of supply.

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This number would increase to 27 if France and the Netherlands were to be included.

- (51) Fourth, the market investigation indicated that MOL and ENI are not perceived by the market as close competitors due to their different customer focus. Particularly respondents to the market investigation mentioned CEPRO and Unipetrol as MOL's closest competitors with reference to price, scope of the distribution network and access to supply of refined oil products.
- (52) Fifth, according to some respondents to the market investigation there is no real advantage stemming from access to refining capacity on the Czech territory. This is also confirmed by the fact that access to the pipeline distribution network operated by CEPRO is available to any undertaking at the same commercial terms and on a non-discriminatory basis. Also, CEPRO owns and rents a network of storage facilities all linked to the pipeline. Hence, access to the distribution network and storage facilities is not a barrier.
- (53) It should also be noted that in any event, the reported market shares follow from ENI's stake in the CRC refinery which is not subject to this transaction.<sup>35</sup>
- (54) Finally, no substantiated concerns in relation to this market were raised during the market investigation.
- (55) In light of the above, the Commission considers that the transaction does not give rise to serious doubts as regards its compatibility with the internal market in relation to the markets for ex-refinery sale of diesel and gasoline under any plausible geographic market definition.

#### 4.2.1.2. Market for non-retail sales

- (56) The Parties' activities overlap in relation to non-retail sales of diesel and gasoline in Romania and the non-retail sales of diesel in Slovakia. However, an affected market arises only in relation to non-retail sales of diesel in Slovakia.
- (57) On a national level, the combined market share of the Parties in relation to the non-retail sales of diesel in Slovakia would be [20-30]% with an increment of [0-5]% (ENI Slovensko).
- (58) OMV with a share of [10-20]% will continue to be present and exert competitive pressure on the merged entity on this market post-transaction. In addition, smaller wholesalers such as Gulf, Tanker, Oktan, Progress Trading and MG Logistic together accounting for [50-60]% of the market are active in the market and expanding.
- (59) The market investigation confirmed that ENI has a very limited presence on this market and MOL's main competitor is OMV. In addition, in the course of the market investigation no substantiated concerns in relation to this market have been raised..
- (60) In light of the above, the Commission considers that the transaction does not give rise to serious doubts as regards its compatibility with the internal market in relation to the market for non-retail sale of diesel in Slovakia.

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<sup>35</sup> See paragraph 8 of this decision.

#### 4.2.1.3. Market for retail sale of motor fuels

- (61) The Parties' activities in relation to retail sale of motor fuels overlap in Slovakia, the Czech Republic and Romania. However, affected markets arise only in relation to Slovakia.
- (62) On a national level, the combined market share of the parties in Slovakia will be [30-40]% (MOL [30-40]%, ENI Slovensko [5-10]%). A number of strong players are currently present and will continue to constrain the merger entity on this market. Specifically, OMV and Shell, with a [20-30]% market share each are significant players while smaller competitors such as Jukri, Lukoil and Hypers with individual market shares [5-10]% are also active.
- (63) The scopes of the Parties' networks are largely geographically complementary. Although there are overlaps especially in densely populated regions such as Bratislava and Kosice areas, their combined market share there remains [20-30]%.
- (64) If the market was to be segmented in on-motorway and off-motorway sales, the combined market share of the Parties on-motorway would reach [40-50]% with a limited increment of [5-10]%. OMV is the main competitor in this space holding a market share of [40-50]% while Shell has also a share higher than the target, namely [10-20]%. Other smaller players with market shares [0-5]% such as Juri and Lukoil are also active. In Slovakia the on-motorway market is rather small representing [5-10]% of the total sales of motor fuels in terms of volume. Due to the small size of the motorway network in Slovakia, also the total number of gas stations is quite limited. Of a total of 42 filling stations operated in Slovakia, ENI operates only 5 on-motorway while out of a total of 209 stations in Slovakia, MOL operates only 11 on-motorway. OMV currently controls the largest amount of stations on Slovak motorways.
- (65) On a possible off-motorway segment, the combined market share would reach [30-40]% with an [5-10]% increment. Shell with a [20-30]% market share and OMV with a [10-20]% market share will continue to compete and constrain the merged entity. Smaller players Jukri and Lukoil with market shares [0-5]% are also active.
- (66) The Notifying Party submits that the transaction will not have a negative effect on competition in any of these markets. It argues that, i) in particular OMV and Shell, the strongest competitors to the merged entity, both have an established service station network covering the whole of Slovakia and a strong brand; ii) unbranded gas stations, such as the one operated by large supermarket chains (Tesco, Carrefour, Hypernova) have a strong presence and will exert a strong competitive constraint on the merged entity, in particular in the off-motorway segment; iii) customer loyalty is very low and competition is driven by price; and iv) the market is very transparent and customers have many tools to compare prices, including online.
- (67) The market investigation largely confirmed the Notifying Party's claims. In the first place, the market investigation indicated that price is the main element of competition and the competitive pressure of unbranded gas stations is increasing. Thus is demonstrated by high volumes sold by these gas stations and their steady increase in number and popularity. According to the majority of respondents, brand recognition is still low on this market and does not drive the customers' purchasing decisions.

- (68) Second, ENI is generally not regarded as a close competitor to MOL both in terms of price and the size of the distribution network. This is also because the networks of MOL and ENI are mostly geographically complementary. On the contrary the market investigation indicated that OMV and Shell are perceived as closest competitors to MOL both in terms of price, level of service and the size of the distribution network.
- (69) Third, the market is highly transparent. In fact customers have the possibility to verify prices of motor fuels in different ways, such as specialised web site listing the prices at filling stations and the website of each competitor on the market advertising the ongoing campaigns.
- (70) Fourth, the market investigation did not bring to the surface any substantiated concerns in relation to this market. In fact none of the respondents is of the opinion that the proposed transaction may have a detrimental effect on competition. On the contrary, most of the respondents to the market investigation indicated that they expect the transaction to have no or minimal impact on competition.
- (71) Finally, regarding the retail sale of LPG-c in Slovakia, the following can be observed. Even if this could be considered as constituting a separate market, the post transaction estimated combined market share of the parties would be limited to [20-30]% mainly deriving from MOL's existing position. In fact the transaction would not lead to a substantial change in the structure of the market. Hypers with an [10-20]% market share and Shell and OMV both with an [10-20]% market share will continue to compete and constrain the merged entity. Smaller players such as Jukri and Lukoil with market shares [0-5]% are also active.
- (72) Also, on this market the target has only very marginal activities. In fact, of a total estimated market volume of [...], ENI accrued sales account only for [...] representing a [0-5]% market share.
- (73) In light of the above, the Commission considers that the transaction does not give rise to serious doubts as to its compatibility with the internal market on the market for the retail sale of motor fuels in Slovakia.

#### 4.2.1.4. Market for non-retail sales of LPG

- (74) The Parties' activities overlap in relation to non-retail sale of LPG in the Czech Republic which is an affected market. In Slovakia and Romania there is no overlapping activity in relation to this market.
- (75) On the market for LPG in the Czech Republic, MOL's market share amounts to only less than [0-5]% (irrespective of whether the market should be subdivided into bulk and bottles) and ENI Ceska's to [20-30]%. Post transaction the combined market share will be [20-30]%. Also in terms of volumes the position of MOL is marginal. In fact out of a total market volume estimated between [...], MOL's sales were only [...] in 2013.
- (76) The market is characterised by the presence of a very strong player, Unipetrol, with an estimated market share between [40-50]%. Also, Shell enjoys a strong market position, with an estimated market share between [10-20]%. In addition, a number of smaller players emerged in the recent years growing their aggregate market share from [0-5]% in 2011 to [10-20]% in 2013.

(77) No substantiated concerns in relation to this market were raised during the market investigation.

(78) In light of the above, the Commission considers that the transaction does not give rise to serious doubts as to its compatibility with the internal market on the market for the non-retail sale of LPG in the Czech Republic.

#### 4.2.1.5. Market for non-retail sales of bitumen in the Czech Republic

(79) On the market for bitumen in the Czech Republic, MOL's market share accounts to only [0-5]% and ENI Ceska's market share to [30-40]%. Post-transaction the combined market share will be [30-40]%.

(80) Two other players are currently present on this market, in particular PKN Unipetrol with a market share of [50-60] % and Shell with a market share of [10-20] %.

(81) No substantiated concerns in relation to this market were raised during the market investigation.

(82) In light of the above, the Commission considers that the transaction does not give rise to serious doubts as to its compatibility with the internal market on the market for the non-retail sale of bitumen in the Czech Republic.

#### 4.2.2. *Vertically affected markets*

(83) The transaction also gives rise to vertically affected markets between the upstream market for ex-refinery and non-retail sales of fuels in Slovakia where the combined market shares are around [40-50]% and the downstream market for retail sale of motor fuels in Slovakia where the combined market shares are also around [40-50] %.

(84) The Commission has concluded that in light of the results of the market investigation any merger specific foreclosure effects are unlikely. First, input foreclosure is unlikely as on the wholesale market ENI already sources [...] of its needs from MOL's refinery. Given MOL's refining capacity and the number of other refineries present in the region<sup>36</sup>, it is unlikely that the internalisation of [...] of ENI's current demand would cut off its downstream competitors from supplies. Second, no customer foreclosure is likely given that ENI currently does not purchase any fuel products from third parties. Indeed, [...] of its supply already comes from MOL while the other [...] comes from its stake in CRC refinery.

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<sup>36</sup> According to the information provided by the Notifying Party, there are 14 refineries in this region which would increase to 27 if France and the Netherlands are included.

## 5. CONCLUSION

(85) 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 Commission*

*(signed)*

*Joaquín ALMUNIA*

*Vice-President*