EN

Case No COMP/M.7318 - ROSNEFT / MORGAN STANLEY GLOBAL OIL MERCHANTING UNIT

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party

Dear Sir/Madam,

Subject: Case M.7318 – Rosneft/ Morgan Stanley Global Oil Merchanting Unit Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1]

(1) On 29 July 2014, the European Commission received the notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which OJSC Oil Company Rosneft (the "Notifying Party", Russia) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of parts of Morgan Stanley ("Morgan Stanley", United States), namely the Morgan Stanley Global Oil Merchanting Unit (the "Target", and together with the Notifying Party the "Parties"), by way of purchase of shares and assets.[2]

1. THE PARTIES

(2) The Notifying Party is a Russian public company, indirectly owned by the Russian State for 69.5% and by BP plc ("BP") for 19.75%, with the remainder being free float on the Moscow and London Stock Exchanges.

(3) The Notifying Party is primarily engaged in the exploration, development, production and sale of crude oil and natural gas, primarily in Russia (no exploration and production activities in the EEA). The Notifying Party is also active in the refining and marketing of petroleum products and petrochemicals,

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.

2 Publication in the Official Journal of the European Union No C 255, 6.8.2014, p. 16.

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primarily in Russia and Ukraine. The Notifying Party also owns one refinery in Germany jointly with BP. The Notifying Party does not currently have any independent third party trading activities.

(4) Morgan Stanley is a US-registered company, globally active in the provision of a wide range of investment banking, securities, trading, investment management and wealth management services.

(5) The Target consists of Morgan Stanley's crude oil and petroleum products merchanting activities. In carrying out its activities, the Target acquires and resells supplies of crude oil and petroleum products (so called "physical trading"). To the extent that these physical trading activities require the use of storage and logistics assets, the Target leases storage facilities and charters vessels.

2. THE OPERATION AND THE CONCENTRATION

(6) On 20 December 2013, the Notifying Party and Morgan Stanley signed a Purchase Agreement, by which the Notifying Party will acquire the Target. The Target is currently a functional unit of Morgan Stanley, which will undergo an internal reorganization into a separate entity pre-closing. Morgan Stanley will transfer the Target's shares and assets to the Notifying Party, which will subsequently have sole control over the Target.

(7) In view of the above, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

(8) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Notifying Party: EUR 121 693 million, Target: EUR […] million). Each of them has an EU-wide turnover in excess of EUR 250 million (Notifying Party: EUR […] million, Target: EUR […] million),[3] 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 according to Article 1(2) of the Merger Regulation.

4. COMPETITIVE ASSESSMENT

4.1. Market definition

4.1.1. Exploration of crude oil and natural gas

(9) The Commission has in the past considered the market for the exploration of both crude oil and natural gas as one single product market.[4] The Commission has further considered that the relevant geographic scope of this market is worldwide.[5] The Notifying Party agrees with this market definition.

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3 Turnover calculated in accordance with Article 5 of the Merger Regulation.

4 COMP/M.1383 - Exxon/Mobil; COMP/M.4934 - Kazmunaigaz / Rompetrol; COMP/M.6801-Rosneft/TNK-BP.

5 M.4934 - KazMunaiGaz/Rompetrol.

(10) In any event, the exact market definition can be left open, as under none of the plausible market definitions the transaction raises serious doubts as to its compatibility with the internal market.

4.1.2. Production and wholesale of crude oil

(11) The Commission has in the past considered the production and wholesale of crude oil as a separate product market.[6] The Commission has generally considered the market for the production and wholesale of crude oil to be worldwide in scope.[7] However, with regard to specific 'difficult to reach' customers, such as refineries in certain land-locked EEA countries, the Commission has considered that the geographic scope could be limited to a specific supply pipeline, such as the Druzhba pipeline.[8]

(12) The Notifying Party considers the market for the production and wholesale of crude oil as worldwide, but has submitted market data under the narrowest plausible market definition (on a pipeline basis).

(13) In any event, the exact market definition can be left open, as under none of the plausible market definitions the transaction raises serious doubts as to its compatibility with the internal market.

4.1.3. Ex-refinery sales of certain refined fuel products

(14) The Commission has previously considered ex-refinery sales of refined fuel products as a separate relevant product market,[9] which can be further segmented into markets for ex-refinery sales of fuel and non-fuel products.[10] The Commission has further considered that fuel sales can be sub-segmented into sales of gasoline, diesel, fuel oil, aviation fuel and LPG.[11] The Commission has in the past considered the relevant geographic market for ex-refinery sales of refined fuel products to be Western Europe-wide, EU-wide or EEA-wide, depending on the product considered.[12]

(15) The Notifying Party generally agrees with these market definitions and has submitted market information under all plausible market delineations.

(16) In the market investigation, with regard to ex-refinery sales of fuel oil, all competitors replied that fuel oil is sourced on a worldwide level, which has also

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6 M.6801 - Rosneft/TNK-BP; M.2681 - Conoco/Philipps Petroleum; M.1383 - Exxon/Mobil; M.6807 - Mercuria Energy Asset Management/ Sinomart KTS Development/ Vesta Terminals; M.4208 - Petroplus/European Petroleum Holdings.

7 M.5629 - Normeston/Normeston/Mol/Met JV; M.4208 - Petroplus/European Petroleum Holdings.

8 M.6801 Rosneft/TNK-BP.

9 M.6801 -Rosneft/TNK-BP; M.6261 - North Sea Group/Argos Groep /JV; M.6151 - Petrochina/Ineos/JV; M.5846 - Shell/Cosan/JV; M.5005 - Galp Energia/Exxonmobil Iberia; M.4934 - Kazmunaigaz/Rompetrol; M.727- BP/MOBIL.

10 M.4934 - Kazmunaigaz/Rompetrol, paragraph 8.

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

12 M.727 - BP/MOBIL, paragraph 34; M. 4934 - Kazmunaigaz/Rompetrol; M.5445 - Mytilineos/Motor Oil/Corinthos Power; M.6261 - North Sea Group/Argos Groep/JV.

been confirmed by a majority of customers with the remaining customers stating that they source on an EEA-wide basis.

(17) In any event, the exact market definition can be left open, as under none of the plausible market definitions the transaction raises serious doubts as to its compatibility with the internal market.

4.1.4. Trading of crude oil and petroleum products

4.1.4.1. Product market

(18) The Commission has in the past considered a possible separate market for the trading of crude oil and petroleum products.[13] However, such market has never been investigated in-depth and the product market definition has consistently been left open in merger control procedures.

(19) It should also be noted that the Commission has considered in the past, as regards other commodities (certain metals[14], electricity[15]), that trading activities do not constitute a separate market but rather are a part of the production and wholesale market, on the basis that customers source such products interchangeably from producers and traders.

(20) The Notifying Party submits that a separate market for the trading of crude oil and petroleum products exists, on which traders buy and re-sell third party products with a view to obtaining a broker's margin. Such market would be distinct from the market on which producers are active, according to the Notifying Party, mainly because producers tend to sell under long-term agreements, while traders use spot and ad-hoc bilateral agreements to a larger extent.

(21) The market investigation, with regard to ex-refinery sales of fuel oil specifically, provided evidence that the physical trading of fuel oil may be part of the market for production and ex-refinery sales of fuel oil. A large majority of both competitors and almost all customers consider the sales conditions for fuel oil of traders and producers as comparable, while all customers and a large majority of competitors regard the price terms as comparable. All customers source fuel oil for their EEA operations from traders as well as producers, while all competitors state that they compete with traders and producers on the same market. Almost all customers would therefore switch between traders and producers/suppliers in case of a price increase by 5-10% and moreover have already done so, a fact that has been confirmed by almost all competitors.

(22) In any event, the exact product market definition can be left open, as under none of the plausible market definitions the transaction raises serious doubts as to its compatibility with the internal market. The transaction is analysed under both alternatives, a market including sales by producers and traders and separate markets for sales by producers and sales by traders.

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13 M.6807 - Mercuria/Sinomart/Vesta Terminals, paragraph 16; M. 5629 Normeston/MOL/Met JV, paragraph 14; M.4208 - Petroplus/European Petroleum Holding, paragraph 10; IV/M.85 - Elf/Occidental, paragraph 4.

14 M.6541 - Glencore/Xstrata, paragraphs 78-390.

15 M.5979 - KGHM/ Tauron Wytwarzanie/JV; M.5911 - Tennet/Elia/Gasunie; M.3696 - E.ON/MOL; M.3440 - EDP/ENI/GDP; M.3268 - Sydkraft/Graninge.

4.1.4.2. Geographic market

(23) The Commission previously considered the separate market for trading of crude oil and petroleum products to be at least EEA- or worldwide in scope, but left the geographic market definition open.[16] The Notifying Party submits that crude oil is traded on a worldwide basis.

(24) In any event, the exact geographic market definition can be left open, as under none of the plausible market definitions the transaction raises serious doubts as to its compatibility with the internal market.

4.2. Competitive assessment

4.2.1. Horizontal overlaps

(25) The concentration would only give rise to horizontal overlaps, if the trading of (i) crude oil and (ii) refined petroleum products were to be considered part of, respectively, (i) the market for the production and wholesale of crude oil and (ii) the various markets for ex-refinery sales of (a) aviation fuels, (b) diesel, (c) fuel oil, (d) gasoline, (e) LPG and (f) naphtha.

(26) On all but one of these plausible markets, the Parties' combined market share would remain well below 10%.

(27) The only affected market[17] would be the market for ex-refinery sales of fuel oil at EEA-level, where the Parties' combined market share would reach around [30-40]% by value (Notifying Party: [20-30]%, Target: [5-10]%).

(28) Moreover, the new entity will face strong competition from a number of large integrated international oil companies such as ExxonMobil ([10-20]%), Shell ([10-20]%) and BP ([5-10]%) as well as large traders such as Gunvor, Trafigura and Vitol (5-10% each).

(29) Moreover, the Parties would be distant competitors. Fuel oil producers, such as the Notifying Party, essentially aim to secure a consistent off-take of the fuel oil produced as a by-product of the crude oil refining process, and thus typically enter into long-term supply contracts with customers. On the contrary, traders, such as the Target, derive their revenue through the buying and selling of third party volumes with a view to obtaining a margin and typically utilise spot market trades and ad-hoc bilateral sales agreements. The Parties would, therefore, be partially complementary in meeting different customer needs (long-term versus short-term supplies).

(30) In the market investigation, all responding customers and a large majority of competitors considered that the proposed transaction would have no or only a limited impact on their company or the availability of fuel oil in the EEA. Almost all customers and a large majority of competitors consider that the intensity of

16 M.6807 - Mercuria/Sinomart/Vesta Terminals, paragraph 25; M. 5629 Normeston/MOL/Met JV, paragraph 15; M.4208 - Petroplus/European Petroleum Holding, paragraph 10.

17 According to Section 6 of the Form CO horizontally affected markets are markets on which the combined market share of the Parties is 15% or more.

competition post-merger will remain the same, while some competitors and customers even expect an increased level of competition.

(31) In view of the above, the concentration does not raise serious doubts as to its compatibility with the internal market with regard to the EEA-wide market for the ex-refinery sales and trading of fuel oil.

4.2.2. Vertical relations

(32) If the trading of (i) crude oil and (ii) refined petroleum products was to be considered part of, respectively, (i) the market for the production and wholesale of crude oil and (ii) the various markets for ex-refinery sales of petroleum products, the concentration would give rise to a vertical relation between (i) upstream, both Parties' activities in the production and wholesale of crude oil and (ii) downstream, both Parties' activities in the ex-refinery sales of certain refined petroleum products.

(33) The concentration would give rise to vertically affected markets in relation to (i) upstream, the global market for the production and wholesale of crude oil including traders (combined market share below [10-20]%) and (ii) downstream, the EEA-wide ex-refinery sales and trading of fuel oil (combined market share of [30-40]%).

(34) Strong competitors will remain post-transaction on both the global market for the production and wholesale of crude oil (as for example ExxonMobil, BP and Chevron) and the EEA market for ex-refinery sales and trading of fuel oil, where the Parties would be distant competitors as explained in Section 4.2.1 above.. Such competitive constraints will limit the Parties' ability to foreclose competitors or customers.

(35) In view of the above, the concentration would not raise serious doubts as to its compatibility with the internal market with regard to the global market for the production and wholesale of crude oil and the EEA-wide market for the ex-refinery sales and trading of fuel oil.

(36) If the trading of (i) crude oil and (ii) refined petroleum products was to be considered separate from (i) the market for the production and wholesale of crude oil and (ii) the various markets for ex-refinery sales of refined petroleum products, the concentration would give rise to the following vertical relations:

a. Between (i) upstream, Rosneft's activities in the production and wholesale of crude oil and (ii) downstream, the Target's activities in the trading of crude oil;

b. Between (i) upstream, the Target's activities in the trading of crude oil and (ii) downstream, Rosneft's activities in ex-refinery sales of various refined petroleum products;

c. Between (i) upstream, Rosneft's activities in ex-refinery sales of various refined petroleum products and (ii) downstream, the Target's activities in the trading of various refined petroleum products.

(37) The above vertical relations would however not give rise to any affected market under any plausible market definitions.

5. CONCLUSION

(38) 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