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Case M.7473 Zentraleuropa Lpg Holding/ Total Hungaria

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

Article 4(4)
Date: 08.01.2015



EUROPEAN COMMISSION

Brussels, 08.1.2015
C(2015) 65 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the Hungarian Competition Authority

Dear Sirs,

Subject: Case M.7473 – Zentraleuropa Lpg Holding / Total Hungaria
Commission decision following a reasoned submission pursuant to Article 4(4) of Regulation No 139/2004¹ for referral of the case to Hungary.

Date of filing: 25 November 2014

Legal deadline for response of Member States: 16 December 2014

Legal deadline for the Commission decision under Article 4(4): 9 January 2015

I. INTRODUCTION

1. On 25.11.2014, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Council Regulation (EC) No 139/2004 (the "Merger Regulation") with respect to the transaction cited above. The parties request the operation to be examined in its entirety by the competent authorities of Hungary.
2. A copy of this Reasoned Submission was transmitted to all Member States on 26.11.2014.

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.

3. According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition and which present all the characteristics of a distinct market.
4. By letter of 04.12.2014, the Hungarian Competition Authority, GVH, informed the Commission that it agrees with the proposed referral.

II. THE PARTIES

5. Zentraleuropa LPG Holding GmbH ("ZLH" or "Submitting Party") is a 100% subsidiary of the UGI Corporation ("UGI"), which is active through various subsidiaries in the supply of LPG in various EU Member States.
6. Total Hungária Kft ("Total Hungária" or "the Target") is a 100% subsidiary of the Total Group and is active in supply of LPG in Hungary.

III. THE OPERATION AND CONCENTRATION

7. The present transaction consists of ZLH/UGI acquiring sole control over Total Hungária by way of purchase of shares (the "present transaction").
8. The transaction follows another transaction which was subject to a referral request in case COMP/M.7350 – UGI BORDEAUX HOLDING / TOTALGAZ (the "French transaction"). The French transaction consists of UGI acquiring sole control over Totalgaz ("Totalgaz") from the Total Group. Upon request of the submitting party in that case, the European Commission referred this transaction to the French Autorité de la Concurrence on 9 September 2014.
9. The two transactions are not interdependent. Neither of them is conditional upon the completion of the other. The respective activities of the target companies have no operational link to each other, since Totalgaz is active in the supply of LPG in France and Total Hungária is active in the supply of LPG in Hungary. Both transactions therefore constitute separate concentrations within the meaning of Article 3 (1) (b) of the Merger Regulation.

IV. EU DIMENSION

10. The present transaction does not, in itself, fulfill the thresholds of Article 1 of the Merger Regulation. However, according to Article 5 (2) of the Merger Regulation, the two transactions, the present transaction and the French transaction, shall be treated as one and the same concentration for the purpose of the calculation of the turnover, because they take place within a period of two years between the same undertakings.
11. For the purpose of the calculation of the turnover, the undertakings concerned are therefore ZLH/UGI, Total Hungária, which is the target of the present transaction, as well as Totalgaz, which is the target of the French transaction.
12. The undertakings concerned have a combined world-wide turnover of more than EUR 5 000 million [ZLH/UGI EUR [...], Total Hungária EUR [...]] and Totalgaz EUR [...]]. Two of them have an EU-wide turnover in excess of EUR 250 million [ZLH/UGI EUR [...]] and Totalgaz EUR [...]]. While Totalgaz achieves more than two-thirds of its aggregate EU-wide turnover within one and the same Member State,

France, ZLH/UGI does not achieve more than two-thirds of its aggregate EU-wide turnover within one and the same Member State.

13. The concentration therefore has an EU dimension within the meaning of Article 1 (2) of the Merger Regulation.

V. ASSESSMENT

14. On the basis of the information submitted in the Reasoned Submission, the transaction concerns the sales of LPG.

A. Relevant product and geographic markets

15. In the past², the Commission has considered LPG as a separate relevant market and has established that, due to the different methods of distribution and the distinct composition of LPG products (propane, butane, or a mixture of both), the overall LPG market can be divided into three distinct market segments³: (i) LPG sold in bulk, (ii) LPG sold in cylinders, and (iii) autogas.
16. As to the geographic dimension of these markets, the Commission considered that the relevant markets for LPG sold in bulk, LPG sold in cylinders, and autogas are national or sub-national in scope.⁴

B. Assessment of the referral request

17. The proposed transaction mainly concerns the markets for LPG in Hungary where the activities of the Parties overlap as also confirmed by the GVH.⁵
18. On the basis of the information provided by the Parties in the Reasoned Submission, and the elements highlighted by the GVH in their letter dated 04.12.2014, the proposed transaction is an appropriate candidate for pre-filing referral from the Commission to Hungary in accordance with Article 4(4) of the EC Merger Regulation.

(1) Legal requirements

19. According to Article 4(4) of the Merger Regulation, a concentration may be referred to a Member State if it may significantly affect competition in a market or markets and where the markets in question are within a Member State and present all characteristics of distinct markets.

² M.7311- MOL/ENI CESKA/ENI ROMANIA/ENI SLOVENSKO; M.5005 – Galp Energia/Exxon Mobil Iberia; M.3664 – Repsol Butano / Shell Gas; M. 5637 – Motor Oil (Hellas) Conrinth Refineries/Shell Overseas Holdings; M.1628 TotalFina/Elf.

³ In M.1628 TotalFina/Elf and M.3664 – Repsol Butano / Shell Gas the Commission left open whether the markets for LPG in bulk and in cylinders should be further subsegmented with regard to the size of the customer.

⁴ M.7311- MOL/ENI CESKA/ENI ROMANIA/ENI SLOVENSKO; M.5005 – Galp Energia/Exxon Mobil Iberia; M.3664 – Repsol Butano / Shell Gas; M. 5637 – Motor Oil (Hellas) Conrinth Refineries/Shell Overseas Holdings; M.1628 TotalFina/Elf.

⁵ The activities of the Parties also overlap in Bulgaria and Slovenia with regard to the sale of LPG. However their combined market share remains below 1% in these markets.

a. The transaction may significantly affect competition in a market or markets.

20. The Commission notice on case referral in respect of concentrations⁶ ("Notice on case referral", point 17) indicates that, in seeking a referral under Article 4(4), "*the requesting parties are ... required to demonstrate that the transaction is liable to have a potential impact on competition in a distinct market within a Member State, which may prove to be significant, thus deserving close scrutiny*", and that "*such indications may be no more than preliminary in nature...*". Hence, the existence of an affected market is generally considered sufficient to meet the requirements set forth in Article 4(4) of the Merger Regulation.
21. In the case at hand, the proposed transaction will generate a number of affected markets.
22. On the basis of the information submitted in the Reasoned Submission, the Parties' activities overlap in (i) the market for the sale of LPG in cylinders in Hungary, (ii) the market for the sale of LPG in bulk in Hungary and (iii) the market for the sale of LPG as autogas in Hungary.⁷
23. All of these markets constitute affected markets, because the Parties' combined market shares exceed 20%:
 - LPG sold in cylinder: [40-50] %;
 - LPG sold in bulk: [40-50] %;
 - LPG sold as autogas: [30-40] %.
24. In view of the relatively high combined market shares, the concentration may significantly affect competition in these markets.

b. The market in question must be within a Member State and must present all the characteristics of a distinct market.

25. According to paragraph 18 of the Commission Notice on case referral, the second requirement set forth by Article 4(4) of the Merger Regulation is satisfied if the geographic scope of the markets where competition is affected is national or narrower than national.
26. As indicated above, the markets for LPG sold in cylinder, in bulk and as autogas have been defined as national or sub-national. On the basis of the information submitted in the Reasoned Submission and confirmed by GVH the proposed transaction will have an impact in particular in the territory of Hungary or a subset of such territory.
27. Therefore, the Commission considers that the second legal requirement set forth in Article 4(4) of the Merger Regulation is met.

⁶ OJ C 56, 05.03.2005, p. 2.

⁷ According to the Submitting Party, there are no vertical relations between the Parties activities, in particular not with regard to the market for the supply of LPG through pipelines.

(2) Additional factors

28. According to paragraphs 9 to 14 of the Notice on case referral, jurisdiction should only be re-attributed to another authority where the latter is the more appropriate for dealing with the concentration, taking into account the benefits of one-stop-shop and legal certainty.
29. The Commission considers that GVH is the appropriate authority to deal with this case since it has issued several decisions and opinions with regard to these markets in the past.⁸ Therefore, GVH has a knowledge and experience on the markets affected by the present case.
30. Moreover, LPG distribution and sales are heavily regulated markets in Hungary and GVH already possesses the specific knowledge of the local regulatory framework needed to assess the present transaction and it may also turn to and rely on the relevant regulatory and enforcement authorities.
31. Finally, a referral of the proposed transaction to Hungary satisfies the need to preserve the benefit of a "one-stop-shop". In this case, the significant overlaps between the Parties' activities are limited to Hungary, the markets affected by the transaction are of national or infra-national dimension and, therefore, the main economic impact is limited to a single Member State, that is Hungary. Accordingly, in case of referral of the proposed transaction, the benefit of the "one-stop-shop" would be preserved.

VI. REFERRAL

32. On the basis of the information provided by the parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market. The Commission considers, on the basis of the information submitted in the Reasoned Submission, that the principal impact on competition of the concentration is liable to take place on distinct markets in Hungary, and that the requested referral would be consistent with point 20 of the Notice.

⁸ Vj-146-096/2009, dated April 28, 2010, in connection with the approval of the acquisition of Intergas Hungária Zrt. by Prímagáz; Vj-17/2009/34, dated April 8, 2009, in connection with the approval of the acquisition of the filling station shop business line of Tesco Global Áruházak Zrt. by Shell Hungary Zrt.; Vj-167/2005/23, dated March 27, 2006, in connection with the alleged unfair trading practices of Shell Gas Hungary Rt., TOTAL HU, MOL and Prímagáz; Vj-163/2005/30, dated March 16, 2006, in connection with the alleged collusion among Prímagáz, TOTAL HU, MOL and Shell Gas Hungary; and Vj-5/2004/36, dated September 3, 2004, in connection with the alleged breach of the prohibition on agreements that restrict competition;

VII. CONCLUSION

33. For the above reasons, and given that Hungary has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by Hungary. This decision is adopted in application of Article 4(4) of the Merger Regulation.

For the Commission
(signed)
Alexander ITALIANER
Director General