



EUROPEAN COMMISSION
DG Competition

***Case M.8689 - RUBIS /
PHILLIPS 66 /
ZELLER & CIE***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 21/12/2017

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Brussels, 21.12.2017
C(2017) 9124 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the Notifying Parties

**Subject: Case M.8689 - Rubis / Phillips 66 / Zeller & Cie
Commission decision pursuant to Article 6(1)(b) of Council
Regulation No 139/2004¹ and Article 57 of the Agreement on the
European Economic Area²**

Dear Sir or Madam,

- (1) On 17 November 2017, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertakings Rubis Terminal SA ("Rubis Terminal", France), belonging to the Rubis Group, and Phillips 66 Central Europe Inc. ("Phillips 66", USA), belonging to the Phillips 66 Group acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control of the whole of Zeller et Compagnie ("Zeller", France) by way of purchase of shares³. Rubis Terminal and Phillips 66 are referred to as the "Notifying Party" and together with Zeller as the "Parties".

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 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

³ Publication in the Official Journal of the European Union No C 401, 25.11.2017, p. 22.

1. THE PARTIES

- (2) Rubis Terminal is a subsidiary of the Rubis Group and is active in the storage of petroleum products, chemicals, agro-products and fertilisers in Europe. Rubis Terminal is also active in the market for wholesale of petroleum products in France. Rubis Group is specialised in distributing petroleum products (fuel, LPG, etc.) and storing liquid products (petroleum products, chemicals, agro-products, fertilisers) in Europe, Africa and the Caribbean.
- (3) Phillips 66 is part of the Phillips 66 Group, a diversified energy manufacturing and logistics company with a portfolio of integrated businesses: midstream, chemicals, refining and marketing and specialties. Phillips 66 processes, transports, stores and markets fuels and products globally.
- (4) Zeller is active in the sales of fuels, bitumen and oil and other petroleum products in Alsace and the Grand Est region in France. Zeller sells to companies active in different economic sectors and is currently jointly owned and controlled by Phillips 66 and Shell Deutschland Oil GmbH ("Shell").

2. THE OPERATION

- (5) The operation consists of the acquisition by Rubis Terminal of the shares and rights that Shell currently holds in Zeller (the "Transaction").

2.1. Joint control

- (6) Following the Transaction, Phillips 66 and Rubis Terminal will each hold 50% of the shares in Zeller. Pursuant to Zeller's bylaws, Zeller is managed by its managing director, which is appointed by the shareholders under a simple majority vote. Other strategic decisions, in particular in relation to the budget and business plan, need to be approved by all the shareholders or the supervisory board. The supervisory board currently consists of two members representing Phillips 66, and two members representing Shell. It thus follows that Shell and Phillips 66 currently jointly control Zeller, which post-Transaction will be jointly controlled by Rubis Terminal and Phillips 66.

2.2. Full functionality

- (7) Zeller has a management dedicated to its day-to-day operations, it employs staff and owns or rents the assets necessary to its activities, it has significant purchase and supply agreements with parties other than its parent companies and it has existed since 1970 and will continue to exist on a lasting basis. Zeller is therefore a full function joint venture.

3. THE CONCENTRATION

- (8) The Transaction represents an acquisition of joint control within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation by Rubis Terminal and Phillips 66 over Zeller.

4. EU DIMENSION

- (9) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁴ [Rubis Group: EUR 3 004 million, Phillips 66 Group: EUR 76 140 million, Zeller: EUR 112.3 million]. Two of them have an EU-wide turnover in excess of EUR 250 million [Rubis Group: [...], Phillips 66 Group: [...]], 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 within the meaning of Article 1(2) of the Merger Regulation .

5. RELEVANT MARKETS

- (10) Zeller is active in the markets for non-network sales of (i) diesel, (ii) gasoline, (iii) gas oil, (iv) fuel oil, (v) domestic heating oil, (vi) bitumen and (vii) jet fuel in Alsace and Grand Est region, in France, and Rubis Terminal has a small activity in the west part of the Grand Est region.

5.1. Non-retail sales of refined oil products

5.1.1. *Product market definition*

- (11) The Commission has previously consistently distinguished the retail and non-retail sale of refined oil products, the latter encompassing the supply to independent resellers or retailers not integrated upstream, as well as to large industrial and commercial consumers by secondary means of transport. In previous decisions, the Commission concluded that the non-retail sale of each of the products - gasoline, diesel, domestic heating oil (either gas oil/light fuel oil or kerosene), heavy fuel oil and LPG - constitutes a distinct product market.⁵
- (12) The Notifying Party does not contest the Commission's decisional practice which is retained for the present case.

5.1.2. *Geographic market definition*

- (13) The Notifying Party submits that the geographic market was in previous Commission decision considered regional (sub-national), national or local in scope and that the geographic market definition can be left open for the purposes of this Transaction.
- (14) The Commission has previously considered the market for non-retail sale of refined oil products to be national, regional or even local in scope⁶. The exact

⁴ Turnover calculated in accordance with Article 5 of the Merger Regulation.

⁵ See cases COMP/M.3291 Preem / Skandinaviska Raffinader (2003); COMP/M.3375 Statoil / SDS (2004); COMP/M.3543 PKN Orlen / Unipetrol (2005); COMP/M.4208 Petroplus / European Petroleum Holdings (2006); COMP/M.4545 Statoil / Hydro (2007); COMP/M.5005 Galp Energia / Exxonmobil Iberia (2008); COMP/M.5169 Galp Enrgia Espana / Agip Espana (2008).

⁶ The possibility of a national market existing was however left open: COMP/M.1628 TotalFina / Elf (2000); COMP/M.6935 Argos / Sopetral (2013).

definition of the geographic market can however be left open as the Transaction does not create competition concerns under any plausible delineation.

5.2. Non-retail sales of bitumen

5.2.1. Product market definition

- (15) The Commission has previously considered the sale of bitumen as distinct from the non-retail sale of fuels as it has a distinct set of uses and a small number of customers which differentiates it from other non-retail sale fuel products⁷.
- (16) The Notifying Party does not contest the Commission's decisional practice which is retained for the present case.

5.2.2. Geographic market definition

- (17) The Notifying Party submits that the geographic market was in a previous Commission decision considered national or narrower but submits that the geographic market definition can be left open as no serious doubts arise irrespective of this definition.
- (18) The Commission has often considered the geographic market for bitumen to be national in scope⁸, but the high cost of transportation points to the existence of a market that is regional in scope. The Commission left open whether the geographic scope is national or narrower⁹ and also for the purposes of this proposed Transaction the precise geographic definition is left open.

5.3. Non-retail sales for jet fuel supply

5.3.1. Product market definition

- (19) The Notifying Party does not contest the Commission's decisional practice and submits that the precise product market definition can be left open as no competition problems arise on any of the alternative markets.
- (20) In previous Commission decisions¹⁰, the Commission considered jet fuel a separate product market, distinct from other refined oil products. At the upper level of the supply chain, aviation fuel is sold ex-refinery to wholesalers, oil companies and airlines and at the lower level of the supply chain, aviation fuel is supplied from an airport into planes ('into-plane sales'). The Commission has noted that from a demand side perspective aviation fuel could be further segmented into two different types of aviation fuel, jet fuel and avgas,

⁷ See Cases COMP/M.727 *BP/MOBIL* (1996).

⁸ See Cases COMP/M.727 *BP/MOBIL* (1996), COMP/M.3543 *PKN Orlen/Unipetrol* (2005).

⁹ See Cases COMP/M.1464 *Total/Petrofina* (1999), COMP/M.3516 *Repsol YPF/Shell Portugal* (2004).

¹⁰ See COMP/M.3110 *OMV / BP (Southern Germany package)* (2003); COMP/M.5005 *Galp Energia / Exxonmobil Iberia* (2008).

depending on what it is intended to be used for¹¹, but the Commission left the question open whether such segmentation constituted separate markets.

- (21) For the purposes of the proposed Transaction the exact product market definition can be left open, since on any plausible market the concentration does not raise competition concerns.

5.3.2. *Geographic market definition*

- (22) The Notifying Party submits that the geographic market was in previous Commission's decisions considered EU/Western Europe or in some cases narrower in scope but submits that the geographic market definition can be left open as the market is not affected by the proposed Transaction.
- (23) The Commission has previously defined geographic markets for into-plane service on a local scope, i.e. on the basis of individual airports.¹²
- (24) For the purposes of the proposed Transaction the exact geographic market definition can be left open, since on any plausible geographic market the concentration does not raise competition concerns.

5.4. **Storage of petroleum products**

5.4.1. *Product market definition*

- (25) The Notifying Party does not contest the Commission's decisional practice defining a separate product market for the leasing of storage capacity for petroleum products to third parties and submit that it is unnecessary to further subdivide the market according to the function or type of tank concerned since (i) all the operators in the market have storage capacities for several refined products or product categories, (ii) from a technical point of view, the same type of tanks are used for the storage of the different refined products and (iii) most of the clients need to store different products at the same time.
- (26) The storage of petroleum products available to third parties has been previously defined by the Commission as a distinct product market,¹³ separate from relevant product markets for the storage of crude oil, vegetable oils, chemicals and gas, due to technical and commercial considerations¹⁴.
- (27) The Notifying Party submitted that for storage purposes switching from storing jet fuel and gasoline to other non-heated refined products is easy. Switching

¹¹ See Case COMP/M.7387 *BP / Statoil Fuel and Retail Aviation*.

¹² See Cases COMP/M.1383 *Exxon / Mobil* (1999) and COMP/M.3110 *OMV/BP (Southern Germany Package)* (2003); COMP/M.5005 *Galp Energia / Exxonmobil Iberia* (2008).

¹³ See cases COMP/M.6935 *Argos / Sopetral* (2014); COMP/M.6261 *North Sea Group / Argos Groep / JV* (2011); COMP/M.4532 *Lukoil / ConocoPhillips* (2007), COMP/M.1621 *Pakhoed / Van Ommeren* (1999).

¹⁴ See cases COMP/M.6935 *Argos / Sopetral* (2014); COMP/M.6525 *SESA / DISA / SAE / JV* (2012); COMP/M.4532 *Lukoil / ConocoPhillips* (2007); COMP/M.1621 *Pakhoed/Van Ommeren* (1999); COMP/M.1464 *Total / Petrofina (II)* (1999).

from gasoline to diesel can be achieved within a week¹⁵, but switching from distillates (diesel, gasoil, domestic heating oil) to gasoline is more complex depending on the authorisations. If the new product is heated then a switch possibility depends on the existing equipment and may require very significant investments.

- (28) This suggests distinct markets could exist depending on the storage equipment (tank) needs. Therefore, the Commission considers also a further sub-segmentation of the storage of petroleum products by type of product but the precise product market definition can be left open since the Transaction would not lead to competition concerns under any of the plausible product market definitions.

5.4.2. *Geographic market definition*

- (29) The Notifying Party considers that the geographical delineation of the market for storage of refined products should be based on a radius of 150 km around each depot and not limited by administrative or national borders.
- (30) In previous decisions the Commission found that the geographic scope of the market of storage of petroleum products depends on the size of the Member State at hand and is accordingly national, regional or limited to a radius that in average does not exceed 150 kilometres around the relevant storage depot.¹⁶
- (31) The Commission considers that the question of the exact geographic market definition can be left open, as the Transaction does not lead to serious doubts as to its compatibility with the internal market even on the basis of the narrowest – local – market definition.

6. **COMPETITIVE ASSESSMENT**

- (32) The Transaction only leads to vertically affected markets as regards the (upstream) markets for storage of petroleum products available to third parties in (i) the SES/Wagram area and (ii) the Village Neuf area, on which Rubis Terminal is active, and the (downstream) market for the non-retail sales of heavy fuel oil in the Alsace region, on which Zeller is active. The Transaction leads to further vertical relationships if the storage market were to be further sub-segmented by type of product.

¹⁵ Responses submitted on 24 and 27.11.2017.

¹⁶ See cases COMP/M.6261 North Sea Group / Argos Groep (2011); COMP/M.6525 SESA / DISA / SAE / JV (2012); COMP/M.1621 TotalFina / Elf (2000).

6.1. The Notifying Party's view

- (33) The Notifying Party submits that the Transaction would not give rise to any competition concerns as Zeller represents a very small part of the demand of storage capacity in the relevant geographic market, as Rubis Terminal will continue to face strong buyer power on the part of its customers and strong competition from its competitors, and as Zeller already uses Rubis Terminal's facilities for [50-100]% of its storage needs.

6.2. The Commission's assessment

6.2.1. Non-horizontal effects: Storage of petroleum products available to third parties – non-retail supply of heavy fuel oil -

- (34) Rubis Terminal owns three storage depots in the market for storage of petroleum products available to third parties in the Grand Est region in France, which gives rise to two distinct geographic markets: the area within a radius of 150 km around the SES and Wagram Terminal depots ("SES/Wagram" area) and the area within a radius of 150 km around the depot in Village Neuf ("Village Neuf" area).
- (35) The market shares of Rubis Terminal and its competitors on each of these two geographic markets are as follows:

Storage of petroleum products available to third parties SES / Wagram Area	storage capacity	Market share (estimate for 2016)
Rubis Terminal	[...]	[20-30]%
Oil Tanking GmbH - [...] m3 in Rheinau-Honau (Germany) - [...] m3 in Breisach (Germany) - [...] m3 in Karlsruhe (Germany)	[...]	[10-20]%
TAU Tanklager Auhafen AG - [...] m3 in Birsfelden (Basel -Switzerland)	[...]	[10-20]%
Varo Energy Tankstorage AG - [...] m3 in Birsfelden (Basel -Switzerland)	[...]	[10-20]%
Others : - Bolloré Energy (Strasbourg, Mulhouse, Bale CICA) - []m ³ - EPM Mulhouse (raffinerie du midi) – []m ³ - Inter terminals Mannheim GMBH – []m ³ - Total Mineralol GMBH Kehl – []m ³	[...]	[10-20]%
TOTAL MARKET	[...]	100%

Source: Form CO

Storage of petroleum products available to third parties Village Neuf	storage capacity	Market share (estimate for 2016)
Rubis Terminal	[...]	[0-5]%
Varo energy Tankstorage AG - [...] m3 in Ridesheim (68) France; - [...] m3 in Birsfelden (Basel -Switzerland) - [...] m3 in Niedershali (Switzerland) - [...] m3 in Oberglatt (Switzerland) - [...] m3 in Rothenburg (Switzerland)	[...]	[20-30]%
Tankanlage Mellingen AG - [...] m3 in Mellingen (Switzerland)	[...]	[10-20]%
TAU Tanklager Auhafen AG - [...] m3 in Birsfelden (Basel -Switzerland)	[...]	[10-20]%
Others	[...]	[40-50]%
TOTAL MARKET	[...]	100%

Source: Form CO

- (36) On the downstream market for non-retail sales of heavy fuel oil in Alsace, Zeller has a market share of [30-40]%. However, on a slightly wider geographic market definition at the level of the Grand Est region, Zeller's market share would fall to [10-20]%. The market share of Zeller¹⁷ and its competitors are summarised by the Parties as follows:

Heavy Fuel oil	Zeller	Total	Bolloré LCN	Transcor	Total market
Alsace	[30-40]%	[30-50]%	[5-20]%	[5-20]%	[...] m ³
Grand-Est	[10-20]%	[40-70]%	[5-20]%	[20-40]%	[...] m ³

Source: Form CO

- (37) The Commission considers that given the limited upstream position of Rubis Terminal both in the SES/Walgram area (below 30%) and in the Village Neuf area (below [0-5]%), the merged entity would not have the ability to engage in an input foreclosure strategy with respect to Zeller's competitors on the market for non-retail sales of heavy fuel oil in Alsace.
- (38) The Commission considers that the Transaction will not create a risk of customer foreclosure either, as Zeller already uses Rubis Terminal's facilities for the majority of its storage needs. In 2016, Zeller relied on Rubis Terminal's depots for [50-100]% of its storage needs in the Grand Est region, as follows:

¹⁷ Rubis Terminal and Phillips 66 are not active on this market.

<i>Storage capacity used by Zeller</i>	Volume (m³)	Share in storage used by Zeller
SES	[...] m ³	[50-100]%
Village Neuf	[...] m ³	
Wagram Terminal	[...] m ³	
SFDM (Saint Baussant)	[...] m ³	[0-50]%

Source: Form CO

- (39) Thus, Zeller only uses limited storage capacity from other suppliers than Rubis Terminal pre-Transaction.

6.2.2. Non-horizontal effects: Storage of petroleum products available to third parties – non-retail sales of refined fuel products

- (40) If the upstream market for the storage of petroleum products is further divided according to the type of product(s) stored, Rubis Terminal's market shares on the some of the narrower markets may be higher than 30%, which could lead to other markets being vertically affected. The Notifying Party submits that its competitors also have storage capacities for several refined products (see paragraphs (25) and (35)).
- (41) The Notifying Party submits that it is unable to provide market share estimates under a narrower definition according to the type of petroleum product stored. However in the last 3 years Rubis Terminal did not store heavy fuel oil, bitumen, or avgas / jet fuel in the SES/Wagram area, respectively the Village-Neuf area. In addition, Zeller does not require storage for heavy fuel oil such products.
- (42) The merged entity would not have the ability to engage in an input foreclosure strategy as, with exception of the market for heavy fuel oil, Zeller has a small market share on all the markets for non-retail sales of refined fuel products (below 6%). It will therefore not be profitable for the merged entity to enter into an input foreclosure strategy.
- (43) The Commission also carried out a market investigation and none of the respondents, customers of Rubis Terminal and competitors of Zeller, raised concerns with regard to the proposed Transaction. The investigation also confirmed that other storage providers offer possibilities for different refined petroleum products.
- (44) Zeller already sources [50-100]% of its storage needs from Rubis Terminal and is not an important customer given that it uses [...] % of Rubis Terminal's storage capacity in the SES/Wagram area and [...] % of Rubis Terminal's storage capacity in the Village Neuf area (where Rubis Terminal's overall market share is [0-5]%). Thus, the merged entity would not have the ability to engage in a customer foreclosure strategy.

6.3. Conclusion on non-horizontal effects

- (45) Based on the above, the Commission considers that the concentration does not raise serious doubts as to its compatibility with the internal market with regard to non-horizontal effects under any plausible product and geographic market definition.

7. CONCLUSION

- (46) 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 and Article 57 of the EEA Agreement.

For the Commission

(Signed)

Margrethe VESTAGER

Member of the Commission